



**First Report to Court of
KSV Restructuring Inc.
as Licensed Insolvency Trustee of
Mahal Venture Capital Inc.**

February 22, 2022

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ESTATE FILE NO. 32-2782563

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF MAHAL VENTURE CAPITAL INC.,
OF THE CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO

FIRST REPORT OF KSV RESTRUCTURING INC. AS LICENSED INSOLVENCY TRUSTEE
OF MAHAL VENTURE CAPITAL INC.

FEBRUARY 22, 2022

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on October 1, 2021 (the "Receivership Order"), KSV Restructuring Inc. ("KSV") was appointed as receiver and manager ("Receiver") of the assets, undertakings and properties of Mahal Venture Capital Inc. ("Mahal VC") and Golden Miles Food Corporation ("Golden Miles", and together with Mahal VC, the "Companies") owned or used in connection with the flour mill (the "Flour Mill") located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the "Real Property" and together with the Flour Mill, the "Property"). These proceedings are referred to herein as the "Receivership Proceedings".
2. On November 15, 2021, the Receiver filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") on behalf of the Companies pursuant to Paragraph 3(r) of the Receivership Order. KSV was appointed the licensed insolvency trustee (the "Trustee") of the Companies by the Office of the Superintendent of Bankruptcy (Canada) (the "OSB").
3. The First Meeting of Creditors for Mahal VC was convened on December 6, 2021. A copy of the Trustee's Preliminary Report to Creditors dated December 6, 2021 (the "Preliminary Report") is provided as Appendix "A". The Trustee's appointment was affirmed by creditor vote and Howard Dale and Robert Winterstein were appointed as inspectors (jointly, the "Inspectors").
4. The Preliminary Report summarizes the status of, among other things, an agreement of purchase and sale dated August 3, 2018 (the "APS") pursuant to which Mahal VC purchased a pre-construction penthouse condominium unit from Aquabella Bayside Toronto Inc. ("Aquabella") municipally described as Suite GPH1, 118 Merchant's Wharf, Toronto (the "Condominium").

5. On January 20, 2022, Santokh Mahal (“Santokh”), the father of Jesse Mahal (“Jesse”, and together with Santokh, the “Mahals”), sole officer, director and shareholder of Mahal VC, brought a motion seeking an order declaring that the Condominium is held in trust for Santokh and is not divisible among creditors of Mahal VC (the “Trust Motion”).
6. On February 16, 2022, the Inspectors unanimously passed a resolution authorizing the Trustee to respond to the Trust Motion.

1.1 Purposes of this Report

1. The purposes of this report (“Report”) are to:
 - a) provide background information about this proceeding and the Condominium;
 - b) respond to the Trust Motion; and
 - c) request that the Court issue an Order:
 - dismissing the Trust Motion;
 - declaring that the APS and the Condominium are property of Mahal VC; and
 - awarding costs to the Trustee as against Santokh.

1.2 Restrictions

1. In conducting its review and preparing this Report, the Trustee has relied upon certain of the Companies’ unaudited financial statements, limited books and records obtained from the Mahals, materials obtained from Aquabella and legal counsel to Aquabella and discussions with the Mahals.
2. The Trustee has also relied on expert evidence provided by Graham P. Ospreay of G.P. Ospreay & Associates (“Mr. Ospreay”) in conducting its review and preparing this Report. Where such expert evidence is relied on, the Trustee has disclosed such reliance and the source of the evidence in the Report.
3. The Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information.
4. All references to dollar amounts in this report are to Canadian dollars, unless otherwise stated.

2.0 Background

1. Mahal VC was incorporated in 2014 under the Canada *Business Corporations Act*. The Trustee understands that Jesse is the sole officer, director and shareholder of Mahal VC. Jesse is Santokh's son, and accordingly, Santokh and Mahal VC are "related persons" within the meaning of the BIA.
2. Golden Miles was incorporated in 2010 as Golden Miles Bread & Bagel Corporation under the *Business Corporations Act* (Ontario) and changed its name to Golden Miles Food Corporation in 2017. The Trustee understands that Santokh, Jesse's father, is the sole officer, director and shareholder of Golden Miles.
3. Upon its appointment, the Trustee understood that the Real Property was the only substantial asset of Mahal VC. The Mahals had previously advised the Receiver that Mahal VC owns the Real Property and that Golden Miles owns the machinery, equipment and vehicles used in connection with the Flour Mill. Golden Miles operates from the Real Property and describes itself in its unaudited financial statements as at June 30, 2020 as being "engaged in the sale of cookies, crackers, and dried plant material".
4. The Receiver is currently running a sale process for the Property (which does not include the Condominium or the APS). The bid deadline in the sale process was originally January 31, 2022; however, the Receiver, as authorized under the Court order approving the sale process, has extended the bid deadline to March 7, 2022.
5. As described in detail below, on November 30, 2021, the Condominium and the APS were disclosed to the Trustee for the first time. The purchase price for the Condominium, in a pre-construction state in 2017, was \$6,618,000. Aquabella has advised that deposits totaling \$1,323,600 have been paid to date (the "Deposits").
6. Aquabella has advised the Mahals and the Trustee that on March 29, 2022, it will be seeking to close on the Condominium. The dispute regarding ownership of the Condominium must therefore be resolved before that date.
7. Further information concerning the Receivership Proceedings is available on KSV's website at <https://www.ksvadvisory.com/experience/case/mahal-venture-capital-inc>.

3.0 Trustee's Conclusions and Recommendations

1. The Trustee is of the view that the Condominium, the purchaser's rights under the APS and any interest in the Deposits are not held in trust by Mahal VC for Santokh, for the following reasons, which will be further supported in the Trustee's factum:
 - a) the alleged trust is a sham that is characterized by several judicially recognized "badges of fraud", including:
 - i. the authenticity of the Trust Agreement (as defined further below) is sufficiently uncertain that the Trust Agreement should, on a balance of probabilities, be disregarded; and

- ii. the actions of the Mahals both before and after the appointment of the Trustee are inconsistent with the existence of the alleged trust;
 - b) even if the trust is not a sham and the Trust Agreement is legitimate, which the Trustee denies, the Trust Agreement is ineffective on its terms to create a trust, including because it purports to create a trust for future property (being title to the Condominium) that did not exist on the date it was allegedly signed and does not exist as of the date of this Report; and
 - c) there are no equitable grounds for the Court to recognize a trust or to order a trust as a remedy, and indeed the equities militate against such an order.
2. The Trustee respectfully recommends that the Court: a) dismiss the Trust Motion; b) issue a declaration that all the purchaser's rights under the APS, including the Condominium and the Deposits, are property of Mahal VC which vested in the Trustee and constitute property divisible among Mahal VC's creditors; and c) order costs against Santokh.

4.0 The Condominium and the Trust Agreement

1. The Mahals' interest in the Condominium was first brought to the Trustee's attention on November 30, 2021 in a letter from the Mahals' counsel (the "November 30 Letter"). The November 30 Letter was sent in response to a written request from the Trustee for disclosure of Mahal VC's assets sent on November 23, 2021, which was itself a follow-up to a written request for disclosure sent on November 17, 2021 to which no response was provided. A copy of the November 30 Letter is attached hereto as Appendix "B".
2. The November 30 Letter disclosed that Mahal VC was party to the APS, attached a copy of it, and advised that Mahal VC "entered into the APS, a [sic] trustee for the benefit of Jesse and Santokh". No trust agreement was provided or mentioned. The APS contains no reference to Mahal VC as trustee.
3. The Trustee's counsel responded to the November 30 Letter on December 8, 2021 (the "December 8 Letter"), advising that the Trustee had reviewed the APS and all documentation provided in the November 30 Letter, and concluded that there was no evidence of the APS being held in trust. The December 8 Letter included a request that: "If there are records that establish a trust, please provide those records and the Trustee will consider them". A copy of the December 8 Letter is attached hereto as Appendix "C".
4. Counsel for the Mahals responded to the December 8 Letter by email on December 10, 2021 (the "December 10 Email"), indicating in relevant part:

"Our clients intend to seek a declaration that MVC holds all of its interest in the APS for the purchase of the condominium unit in trust for Jesse and Santokh Mahal. The APS provides that the purchaser will provide, prior to closing, an irrevocable direction to the vendor setting out how the purchaser wishes to take title. In accordance with that provision, it was always intended that the title to the condominium would be held in the name of Jesse Mahal. Our clients are gathering the relevant information and

documentation to support this motion and we will be delivering motion materials shortly.”

5. No trust agreement was provided or referenced. A copy of the December 10 Email is attached hereto (without attachments) as Appendix “D”.
6. Santokh served and filed the Trust Motion on January 20, 2022. Included in the Trust Motion, as Exhibit 2A to the Affidavit of Santokh sworn January 19, 2022 (the “January 19 Affidavit”), was a document titled “Trust Agreement”, dated July 7, 2017, purporting to be between Santokh and Mahal VC (the “Trust Agreement”). This was the first time the Trust Agreement had been referred to or disclosed to the Trustee. A copy of the Trust Agreement, taken from the January 19 Affidavit, is attached hereto as Appendix “E”.
7. The January 19 Affidavit also included, as Exhibit 2B, a document purporting to be an invoice from Neil L. Boyko (“Mr. Boyko”) issued to Jesse and Santokh, dated July 21, 2017 (the “Boyko Invoice”). The Boyko Invoice is not notarized or commissioned, but the Trustee understands it to be “a copy of a statement of account from Neil L. Boyko, my then counsel, dated July 31, 2017, in respect of, among other things, drafting the Trust Agreement” referred to in Paragraph 5 of the January 19 Affidavit. A copy of the Boyko Invoice, taken from the January 19 Affidavit, is attached hereto as Appendix “F”.


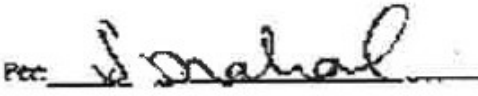
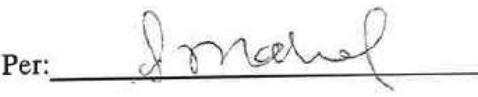
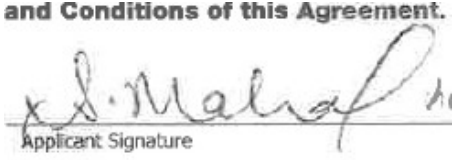
5.0 Irregularities in the Trust Agreement

1. Given the significance of the Trust Agreement to the Trust Motion and the fact that it was not produced (or even referred to) until almost two months after the Mahals first made the trust claim, the Trustee has attempted to authenticate the document. On February 10, 2022, the Trustee’s counsel sent an email to the Mahals’ counsel (the “February 10 Email”) requesting, among other things:
 - a) an originally signed, hard copy version of the Trust Agreement; and
 - b) any electronic version of the Trust Agreement (whether or not signed or in final form).
2. A copy of the February 10 Email is attached hereto as Appendix “G”.
3. As of the date of this Report, the Mahals have not responded to this request, which is consistent with non-responses or inadequate responses by the Mahals that have characterized the Receivership Proceedings and this bankruptcy proceeding. The Receiver’s First Report to Court dated October 20, 2021, attached hereto (without Appendices) as Appendix “H”, summarizes the Receiver’s attempts to obtain information, books and records from the Mahals and their lack of cooperation. Accordingly, the Trustee’s efforts to authenticate the Trust Agreement have been stymied.

4. As referenced above, the Trustee has been demanding disclosure of Mahal VC's books and records since November 17, 2021, two days after the Trustee's appointment, and only received an electronic version of the Trust Agreement on January 20, 2022 as part of the Trust Motion, which was more than two months after its original request. It is unclear to the Trustee why the purported Trust Agreement was not produced immediately after its appointment.
5. In addition to being unable to authenticate the Trust Agreement, either in original hard copy or digitally, the Trustee notes several irregularities in the Trust Agreement that cause the Trustee to question its authenticity.

5.1 Santokh's Signature

1. Santokh has executed numerous documents and affidavits in connection with this proceeding and the Receivership Proceedings. Samples of Santokh's signatures over a period of time beginning June 9, 2015 and ending January 20, 2022 are reproduced below, together with the signature purporting to be Santokh's on the Trust Agreement on July 7, 2017, as set out below:

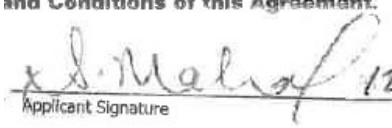



Document	Signature Sample	Purported Date
Trust Agreement ¹		July 7, 2017
Commitment Letter between Santosh Mahal and Skylark Holdings Limited ("Skylark"), dated June 8, 2015 ²		June 9, 2015
Commitment Letter between Mahal VC and Skylark, dated November 30, 2016 ³		Dec. 5, 2016
Home Improvement Credit Application and Agreement between Golden Miles Food Corporation and Skymark Finance, dated September 25, 2017 ⁴		Sept. 25, 2017

¹ Exhibit 2A, January 19 Affidavit, page 94 of Trust Motion

² Exhibit C, Affidavit of Paul Millar, sworn June 24, 2021 ("**June Millar Affidavit**"), page 38 of Application Record of Skymark Finance Corporation, dated June 29, 2021 ("**Application Record**")

³ Exhibit D, June Millar Affidavit, page 41 of Application Record

⁴ Exhibit H, June Millar Affidavit, page 50 of Application Record

Document	Signature Sample	Purported Date
Home Improvement Credit Application and Agreement between Golden Miles Food Corporation and Skymark Finance, dated December 6, 2017 ⁵		Dec. 6, 2017
Home Improvement Credit Application and Agreement between Golden Miles Food Corporation and Skymark Finance, dated January 22, 2019 ⁶		Jan 22, 2019
Affidavit of Santokh Mahal, sworn July 26, 2021 ⁷		July 26, 2021
Affidavit of Santokh Mahal, sworn January 19, 2022 ⁸		Jan. 19, 2022

2. Santokh’s signatures on affidavits or verified documents are consistent over the seven-year period during which samples are available to the Trustee. The signature on the Trust Agreement is conspicuously different in the letter formations and patterning.

5.2 Substantive Irregularities

1. In addition to the issues with the authenticity of Santokh’s signature on the Trust Agreement, the Trustee notes a number of other irregularities:
 - a) the Trust Agreement appears to be incomplete. For example, on the second page in the last paragraph, there is a “[Insert Address]” placeholder in the indemnity;
 - b) the signature page of the Trust Agreement contemplates that witnesses would sign for both the individual and corporate signatory, though none do so, and the format seems to suggest that Santokh and Mahal VC are the witnesses;

⁵ Exhibit H, June Millar Affidavit, page 53 of Application Record

⁶ Exhibit H, June Millar Affidavit, page 59 of Application Record

⁷ Tab 1, Responding Party’s Supplementary Application Record, dated July 26, 2021

⁸ Tab B, page 12 of Motion Record of Santokh Mahal, dated January 20, 2022

- c) the Trust Agreement includes a “Schedule of Advances”. The advances do not match the deposits due under the APS, but rather exactly match the dates and amounts of the funds allegedly paid by Santokh to Mahal VC, as set out in the January 19 Affidavit. The dates of the advances are all after the date of the Trust Agreement; and
- d) the Trust Agreement itself does not refer to a schedule, contemplate that “advances” would be scheduled, nor does a trust agreement in principle require “advances” or “principal balances” to be tracked.

5.3 Forensic Review

1. Given the Trustee’s concerns about the authenticity of the Trust Agreement, and in particular the signature of Santokh on that document, the Trustee engaged Mr. Ospreay. Mr. Ospreay is a Forensic Document Examiner & Forgery Analyst accredited by the American College of Forensic Examiners, with considerable experience in document analysis. A copy of Mr. Ospreay’s *curriculum vitae* is attached hereto as Appendix “I”.
2. Mr. Ospreay undertook an analysis of the signature on the Trust Agreement and compared it to samples of Santokh’s signatures available to the Trustee, including those reproduced above. A full copy of Mr. Ospreay’s report (the “Forensic Report”) is attached hereto as Appendix “J”.
3. Mr. Ospreay observes that the signature on the Trust Agreement “contains many fundamental dissimilarities of handwriting identification characteristics, this when compared to the known signature specimens of Santokh Mahal”, and concludes that “there is conclusive evidence that the author of the known signature specimens... Santokh Mahal, did not write the questioned signature on the Trust agreement” (emphasis in original).
4. The Trustee notes that at paragraph 4 of the January 19 Affidavit, Santokh states: “The trust arrangement is evidenced by a trust agreement between me, as beneficial owner, and MCV, as trustee, dated July 7, 2017...”. There is no indication or acknowledgement by Santokh that he did not sign the agreement himself.

5.4 Irregularities in the Boyko Invoice

1. The Boyko Invoice has ostensibly been submitted to corroborate the date of the Trust Agreement.
2. The Trustee has identified several irregularities in the Boyko Invoice that call into question its authenticity, including:
 - a) the Boyko Invoice is dated July 31, 2017 and provides that “.05 hrs” was spent “to receiving closing documents from vendors solicitor and having you sign same” (emphasis added). The Trustee understands that “closing documents” refers to the APS and related documents, which were signed on August 3, 2017, three days after the Boyko Invoice was issued;

- b) the Boyko Invoice further refers to “1 hrs” being spent “to all calls with you and the solicitor for the vendor”, in addition to the reference to “vendors solicitor” referred to above (emphasis added). The Trustee has been provided with correspondence sent by Aquabella’s counsel to Mahal VC on October 18, 2017 and October 24, 2017 (the “October DelZotto Letters”) several months after Mr. Boyko was apparently corresponding with them, indicating that “we have been advised by the Vendor’s sales representative that you have not yet notified the Vendor as to the name of the solicitor that you have retained (or will be retaining) to represent you in connection with the completion of the above-captioned transaction, and accordingly we are sending this letter directly to you”. Copies of the October DelZotto Letters are attached hereto as Appendix “K”. In addition, the APS reflects that Mahal VC did not have any counsel in connection with the purchase of the Condominium⁹;
 - c) the Boyko Invoice does not include HST on the fees, as required, but does provide for HST on the disbursements;
 - d) there are several unusual typos in the Boyko Invoice, including in the email address in the letterhead (“lawckerk@neilboykolaw.com”) and Mr. Boyko’s name in the signature block (“NEIL L. BOYK”); and
 - e) the hours in the docket of the Boyko Invoice total 5.1, but the Boyko Invoice bills the Mahals for 6 hours.
3. The Trustee has been provided by Paul Millar, principal of Skymark Finance Corporation. (“Skymark”), with invoices provided by Mr. Boyko to Santokh on July 11, 2017, several weeks prior to the date of the Boyko Invoice, and to Mahal VC on August 3, 2017, three days after the date of the Boyko Invoice, (collectively, the “Other Boyko Invoices”), copies of which are attached hereto as Appendix “L”.
 4. The Other Boyko Invoices are formatted differently than the Boyko Invoice, including that the Other Boyko Invoices do not provide a summary of time spent on each task and are not on Mr. Boyko’s office letterhead. Most significantly, the Other Boyko Invoices each (properly) charge HST on the professional fees.
 5. In the Receivership Proceedings, Santokh has attached to his affidavit sworn July 5, 2021 as Exhibit “B” a letter from Mr. Boyko to Skymark dated June 26, 2019 (the “Boyko Letter”). A copy of the Boyko Letter is attached hereto as Appendix “M”. While the Boyko Letter is dated over 2 years after the Boyko Invoice, the Trustee notes that the letterhead on the Boyko Letter is different than the letterhead on the Boyko Invoice.
 6. Given the Trustee’s concerns about the authenticity of the Boyko Invoice, the Trustee instructed Mr. Ospreay to review it, together with the Boyko Letter and the Other Boyko Invoices.

⁹ Page 1 of the APS has a location to identify the purchaser’s solicitors which is filled out in the APS as “NIL”.

7. Mr. Ospreay's Forensic Report notes a number of anomalies, but ultimately concludes that he is unable to determine whether the Boyko Invoice is authentic, and advises, among other things, that he "will require the submission of the original questioned document and several (5-10) known Statement of Account documents that have been composed by the individual keyboard typist noted as (NLB/gr) in the questioned document, for further examination and comparison purposes."
8. The February 10 Email referred to above requested (a) an original hard copy of the Boyko Invoice, or if this invoice was emailed by Mr. Bokyo to the Mahals, a copy of the email, and (b) a copy of the cheque or excerpt from the relevant bank statement evidencing payment of the Boyko Invoice. As of the date of this Report, the Mahals have not responded to this request, rendering further authentication of the Boyko Invoice impossible.

5.5 Mr. Boyko Regulatory Suspensions & Professional Sanctions

1. In addition to the Trustee's concerns about the authenticity of the Boyko Invoice, the Trustee has learned that Mr. Boyko has a history of professional misconduct sanctions and suspensions, including in October 2018 when he was found by the Law Society of Ontario's Tribunal (the "Tribunal") to have engaged in five transactions in May 2014 where he "ought to have known that he was being used to facilitate fraud or dishonesty" and in November 2019 when he was found by the Tribunal to have practiced law while under suspension and credibly accused of participating in an improper and possibly fraudulent mortgage transaction. The Trustee is concerned by Mr. Boyko's history of misconduct to the extent that the Boyko Invoice is being proffered as validation of the Trust Agreement, including in particular his participation in questionable real estate transactions where he ought to have known he was being used to facilitate fraud or dishonesty.
2. Copies of the reasons of the Tribunal dated October 24, 2018, November 20, 2019 and December 18, 2020 are attached collectively hereto as Appendix "N".
3. The Trustee attempted to contact Mr. Boyko, who is currently listed on the Law Society of Ontario's directory as being suspended. The Trustee phoned the number listed on the Boyko Invoice and was informed by the party that answered that Mr. Boyko has retired and that any inbound calls were being referred to a new law firm. The Trustee's counsel contacted the Law Society of Ontario on February 11, 2022 requesting contact information, and has not received a response. Finally, the Trustee has been advised by Santokh's counsel that their attempts to locate Mr. Boyko dating back to early January 2022 have been unsuccessful.

6.0 Correspondence Between Mahal VC and Aquabella After Execution of APS

1. On December 7, 2021, the Trustee contacted Aquabella to notify it of the Mahal VC bankruptcy. The Trustee was referred to Aquabella's counsel, DelZotto Zorzi LLP ("DelZotto"). Pursuant to its powers under the BIA, the Trustee requested that DelZotto provide all documents and correspondence related to the Condominium. Given the volume of the documentation, the Trustee agreed to pay Aquabella \$150/hour, to a maximum of \$1,500 (plus HST) to defray its costs of assisting the Trustee.

2. The Trustee has learned the following from the correspondence provided by Aquabella:

- a) Jesse selected and approved over \$1,135,000 of upgrades to the Condominium in August 2020, as itemized in the Addendum Confirming Extras, Upgrades or Personal Selections, attached hereto as Appendix "O". There is no evidence that this Addendum was entered into under the instruction of Santokh and appears to be a unilateral action of Jesse, inconsistent with the role of Mahal VC as bare trustee for Santokh.
- b) On October 18, 2017 and October 24, 2017, DelZotto sent the October DelZotto Letters to Mahal VC that requested, among other things, that Mahal VC advise as to the name of its counsel in connection with the transaction. This is inconsistent with the Boyko Invoice which reflects that Mr. Boyko was the purchaser's counsel in connection with the transaction.
- c) Jesse personally guaranteed the obligations of Mahal VC under the APS, pursuant to a personal guarantee dated August 3, 2017 (the "Personal Guarantee"). A copy of the Personal Guarantee is attached hereto as Appendix "P". Jesse was examined by the OSB on December 21, 2021 pursuant to s. 158 of the BIA. A copy of the transcript is attached hereto as Appendix "Q". In Jesse's examination by the OSB, in response to the question "Have you personally guaranteed any of the debts of the corporation", Jesse answered "No."
- d) Nowhere in any of the transaction documents, statutory disclosure, correspondence or other documentation among Mahal VC and Aquabella and DelZotto that has been provided to the Trustee is there any reference to the APS or the Condominium being held in trust by Mahal VC for Santokh.
- e) Jesse attempted to change the name of the purchaser of the Condominium from Mahal VC to him personally on November 17, 2021, after the Trustee was appointed and before the existence of the APS was disclosed to the Trustee:

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: November 18, 2021 4:13 PM
To: Natalie Via <NVia@Tridel.com>
Cc: Heather Daley <HDaley@dlaw.com>; Robert Calderwood <RCalderwood@dlaw.com>; Marc Sammons <MSammons@Tridel.com>; Aquabella Sales <Aquabella@Tridel.com>; Susan Shapiro <SShapiro@Tridel.com>
Subject: Re: Aquabella Bayside Toronto Inc. sale to Mahal Venture Capital Inc. - 118 Merchants' Wharf, Suite GPH1

Hi Natalie

May you provide me with any documentation to arrange name change.

Kind Regards

Jesse Mahal
905-781-1399

On Nov 18, 2021, at 3:57 PM, Susan Shapiro <SShapiro@Tridel.com> wrote:

Hi Jesse,
Please contact Natalie Via at our Aquabella sales centre in order to arrange for the name change. She will advise you on what documents are required for this change.

In the meantime, we look forward to receiving your solicitor information.

Regards,

 Susan Shapiro
Manager
Sales Control
4000 Dufferin Street, Toronto, ON M3H 5S9
O: 416.736.2555, Ext. 1279
F: 416.661.8923 tridel.com

COVID-19 Working Together, Differently to Ensure Workplace Health & Safety
While we maintain normal office hours on premises, we continue to restrict open access to our workplace and are limiting the presence of outside visitors and guests, which are by appointment only. Visit Tridel.com for hours of operation and how we are Working Together, Differently to serve you better or call 416.661.9290 for general inquiries.

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: Thursday, November 18, 2021 3:53 PM
To: Jesse Mahal <jesse.mahal@gmail.com>
Cc: Heather Daley <HDaley@dlaw.com>; Robert Calderwood <RCalderwood@dlaw.com>; Susan Shapiro <SShapiro@Tridel.com>; Marc Sammons <MSammons@Tridel.com>
Subject: Re: Aquabella Bayside Toronto Inc. sale to Mahal Venture Capital Inc. - 118 Merchants' Wharf, Suite GPH1

I would like to change the documents from Mahal venture capital to my personal name, Jesse Mahal

Sent from my iPhone

- i. On November 23, 2021, Jesse emailed Aquabella again to repeat his request to change the name:

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: November 23, 2021 6:59 PM
To: Natalie Via
Cc: Susan Shapiro; Heather Daley
Subject: Re: Aquabella: GPH1

Hi Natalie

the new law firm has reached out and I believe in contact. May you please provide me with the name change forms for closing.

Kind Regards

Jesse Mahal

On Nov 11, 2021, at 12:04 PM, Natalie Via <NVia@Tridel.com> wrote:

Hi Jesse,

I hope that you are doing well.

Would you please provide us with your updated lawyers information as soon as possible as the lawyer that we have on file has informed us that they will not be representing you. It is my understanding that there will be an extension made to the closing date of your suite and our lawyers are currently drafting a letter in regards to this and they need to know where to send it.

Kind Regards,

Natalie Via < >
Bayside Toronto Inc.
Phone: 416.514.2710
Fax: 416.603.9560
Email: nvia@tridel.com
Tridel.com | [Facebook](#) | [Twitter](#) | [Tridel Talks](#)
< >

COVID-19 Working Together, Differently to Ensure Workplace Health & Safety

While we maintain normal office hours on premises, we continue to restrict open access to our workplace and are limiting the presence of outside visitors and guests, which are by appointment only. Visit Tridel.com for hours of operation and how we are Working Together, Differently to serve you better or call 416.661.9290 for general inquiries.

- ii. On November 28, 2021, representatives of Aquabella provided Jesse with a list of information that they would require to transfer the Condominium to his name personally, which included mortgage approval or a comfort letter from Jesse's bank. Jesse responded to this email with updated counsel information, but to the Trustee's knowledge did not provide the information requested. A copy of this email chain, and the email chain excerpted above, is attached hereto as Appendix "R".
- iii. The Trustee was appointed over Mahal VC on November 16, 2021, and Jesse was notified of same by the Trustee by email at 11:52 am on the same day, which email included a "Notice to Officer of Bankrupt Corporation of Duties". A copy of the Trustee's email, and the Notice to Officer of Bankrupt Corporation of Duties, is attached hereto as Appendix "S".

- iv. As discussed above, the Condominium was not disclosed to the Trustee until November 30, 2021, which was after at least three separate attempts by Jesse to have the name of the purchaser transferred from Mahal VC to him personally, and not Santokh per the alleged Trust Agreement.
3. In the Trustee's view, all of the foregoing is fundamentally inconsistent with a trust arrangement whereby Mahal VC is the bare trustee for an asset beneficially owned by Santokh. Rather, it is entirely consistent with Mahal VC being the beneficial purchaser of the Condominium, which may have been intended to be used by Jesse, Mahal VC's sole shareholder, director and officer.
4. The Trustee notes that none of the above information was disclosed to it by the Mahals or Mahal VC, notwithstanding numerous requests for all books and records relating to Mahal VC, and Jesse explicitly told the OSB that he had not provided a personal guarantee. The foregoing information appears to have been intentionally withheld from the Trustee and Mahal VC's creditors.

7.0 Funding of Deposit for Condominium

1. The January 19 Affidavit provides considerable detail about the source of funds paid to Aquabella on account of the deposits owing under the APS. What the affidavit does not disclose, or make any reference to, is that in the case of each payment, the funds advanced by Santokh were only paid *after* Jesse or Mahal VC attempted to make the payment, and the applicable cheques were dishonoured by the bank.
2. The Trustee has prepared the following summary of attempted and successful payments on account of the deposits owing under the APS, together with the source of the Trustee's information:

Date	Payment	Amount	Source of Funds	Source of Information ¹⁰
Aug. 21, 2017	Deposit 1	\$330,900	NSF cheque drawn on Mahal VC account	Sept. 25, 2017 letter from Aquabella to Mahal VC and copy of dishonoured cheque.
Oct. 12, 2017	Deposit 1	\$330,900	NSF cheque drawn on Mahal VC account	Oct. 18, 2017 letter from DelZotto to Mahal VC and copy of dishonoured cheque. Exhibit 7 to January 19 Affidavit shows that this cheque was issued when Mahal VC had insufficient funds in its account to cover the payment.
Oct. 26, 2017	Deposit 1	\$310,000	Mahal VC, funded by: - RJ International Corp to Mahal VC (\$158,251.39) on October 25, 2017 - Santokh (CIBC) to Mahal VC (\$152,000) on October 25, 2017	January 19 Affidavit Oct. 27, 2017 DelZotto Letter to Mahal VC
	Deposit 1	\$20,900	Mahal VC, funded by: - Santokh (TD) to Mahal VC on October 26, 2017	January 19 Affidavit
Dec. 6, 2017	Deposit 2	\$330,900	NSF cheque drawn on Mahal VC account	Copy of dishonoured cheque Exhibit 9 to the January 19 Affidavit shows that this payment was made by Mahal VC at a time

¹⁰ Documents referred to in this column are collectively attached as Appendix "T".

Date	Payment	Amount	Source of Funds	Source of Information ¹⁰
				when Mahal VC had insufficient funds in its account to cover the payment.
Dec. 20, 2017	Deposit 2	\$330,900	Mahal VC, funded by: - Santokh (TD) to Jesse to Mahal VC on October 18, 2017	January 19 Affidavit
April 30, 2018	Deposit 3	\$330,900	NSF cheque drawn on Mahal VC account	May 30, 2018 Email from Aquabella to Jesse and copy of dishonoured cheque.
June 5, 2018	Deposit 3	\$330,900	Mahal VC, funded by: - Santokh (TD) to Jesse to Mahal VC (\$104,512.65) on May 24, 2018 - Santokh (TD) to Mahal VC (\$94,562.57) on May 25, 2018 - Santokh (TD) to Mahal VC (\$20,000) on May 30, 2018 - Santokh (TD) to Mahal VC (\$120,319.17) on May 30, 2018	January 19 Affidavit
Aug. 3, 2018	Deposit 4	\$330,900	NSF cheque drawn on Mahal VC account	Sept. 7, 2018 letter from Aquabella to Mahal VC and copy of dishonoured cheque.
Oct. 2, 2018	Deposit 4	\$330,900	Mahal VC, funded by: - Santokh (TD) to Mahal VC (\$390,000) on October 2, 2018	January 19 Affidavit
Feb. 4, 2021	Addendum	\$283,874.31	NSF cheque drawn on Jesse's personal account, "Issued as agent for Mahal Venture Capital Inc."	June 2, 2021 letter from Aquabella to Mahal VC and copy of dishonoured cheque.

3. The foregoing summary illustrates a pattern where, in every case that a payment was due to Aquabella, Mahal VC issued a cheque that a cursory review of Mahal VC's bank records would have confirmed would never clear, and only subsequently did Santokh provide Mahal VC with funds to cover the costs. In most cases, these funds were provided only after Aquabella notified Mahal VC that it was in default of the APS and that the agreement would be terminated if payment was not urgently provided.
4. Contrary to the narrative in the January 19 Affidavit, the payment history, when taken together with the conduct of Jesse set out in Section 7 of this Report, does not illustrate the practice of a beneficial owner funding its obligations under a trust agreement to fund the payments due by the trustee to the vendor; rather, it illustrates Santokh repeatedly stepping in to prevent the APS from being terminated, the deposits forfeit, and his son losing the Condominium that he was attempting to purchase for himself through his holding company.
5. The Trustee furthermore notes that, like the information set out in Section 6.0 hereof, the Mahals and Mahal VC did not disclose to the Trustee the dishonoured cheques, and the January 19 Affidavit selectively discloses Mahal VC's payments in a manner that is misleading.

8.0 Conclusions and Recommendation

1. In the Trustee's view, for the reasons set out in this Report, the alleged Trust Agreement is a sham. Accordingly, the Trustee requests that the Court: a) dismiss Santokh's Trust Motion; b) issue a declaration that all purchaser's rights under the APS, including the Condominium and the Deposits, are property of Mahal VC which vested in the Trustee and constitute property divisible among Mahal VC's creditors; and c) order costs against Santokh.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS LICENSED INSOLVENCY TRUSTEE
OF THE ESTATE OF MAHAL VENTURE CAPITAL INC.,
AND NOT IN ITS PERSONAL CAPACITY**

APPENDIX “A”



ksv advisory inc.

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

T +1 416 932 6262

F +1 416 932 6266

ksvadvisory.com

Estate File No.: 32-2782563

**IN THE MATTER OF THE BANKRUPTCY OF
MAHAL VENTURE CAPITAL INC.
OF THE CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO**

**TRUSTEE'S REPORT TO CREDITORS ON
PRELIMINARY ADMINISTRATION**

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on October 1, 2021 (the "Receivership Order"), KSV Restructuring Inc. ("KSV") was appointed as receiver and manager ("Receiver") of the assets, undertakings and properties of Mahal Venture Capital Inc. ("Mahal VC") and Golden Miles Food Corporation ("Golden Miles", and together with Mahal VC, the "Companies") owned or used in connection with the flour mill (the "Flour Mill") located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the "Real Property" and together with the Flour Mill, the "Property").
2. On November 15, 2021, the Receiver filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") on behalf of the Companies pursuant to Paragraph 3(r) of the Receivership Order. KSV was appointed the licensed insolvency trustee (the "Trustee") of the Companies by the Office of the Superintendent of Bankruptcy (Canada) (the "OSB"). The appointment of KSV as Trustee is subject to affirmation by creditors at the first meeting of creditors.
3. A separate report has been prepared regarding the bankruptcy of Golden Miles, a company related to Mahal VC.¹

1.1 Restrictions

1. In conducting its review and preparing this report, the Trustee has relied upon certain of the Companies' unaudited financial statements, limited books and records obtained from the Companies' principals, Santokh Mahal ("Santokh") and Jesse Mahal ("Jesse", and together with Santokh, the "Mahals") and discussions with the Mahals and a former advisor to the Companies.

¹ The Trustee understands that Golden Miles is controlled by Santokh Mahal and that Mahal VC is controlled by Jesse Mahal, Santokh Mahal's son. Golden Miles and Mahal VC are accordingly "related persons" pursuant to section 4(2)(c)(ii) of the BIA.

2. The Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information.
3. All references to dollar amounts in this report are to Canadian dollars, unless otherwise stated.

2.0 Background

1. Mahal VC was incorporated in 2014 under the *Canada Business Corporations Act* and is a single purpose corporation that owns the Real Property. The Trustee understands that Jesse is the sole officer, director and shareholder of Mahal VC.
2. Golden Miles was incorporated in 2010 as Golden Miles Bread & Bagel Corporation under the *Business Corporations Act* (Ontario) and changed its name to Golden Miles Food Corporation in 2017. The Trustee understands that Santokh, Jesse’s father, is the sole officer, director and shareholder of Golden Miles.
3. The Mahals advised KSV that Mahal VC owns the Real Property and that Golden Miles owns the machinery, equipment and vehicles used in connection with the Flour Mill. Golden Miles operates from the Real Property and describes itself in its unaudited financial statements as at June 30, 2020 as being “engaged in the sale of cookies, crackers, and dried plant material”.
4. Construction of the Flour Mill appears to be substantially complete; however, it has not been issued the permits, licenses and approvals necessary to operate from the relevant authorities, including the City of Brantford and various health and safety regulators. The City of Brantford has provided the Receiver with a list of deficiencies required to be addressed before an occupancy permit can be issued.
5. The Mahals have advised KSV that the Companies had no employees as of the date of the Receivership Order.
6. Further information concerning the receivership proceedings is available on KSV’s website at <https://www.ksvadvisory.com/experience/case/mahal-venture-capital-inc>.

3.0 Assets

1. Mahal VC’s unaudited balance sheet as at October 22, 2021 is provided as Appendix “A”. As reflected therein, Mahal VC’s only reported asset was land (which the Trustee presumes to be the Real Property) with a book value of \$2.1 million.
2. The Trustee understands that, for accounting purposes, all improvements to the Real Property including construction of the Flour Mill were recorded in the books and records of Golden Miles.

3. The balance sheet does not reflect a deposit of \$750,000 that Mahal VC paid in 2018 to Re/Max Twin City Realty Inc. in connection with a real estate transaction that was not completed (the “Trust Funds”). Vivian Group Inc. (“Vivian Group”), the vendor, issued a statement of claim against Golden Miles seeking, among other things, damages in the amount of \$1.5 million, including a proprietary claim to the Trust Funds. The Trustee will be assessing the merits of this claim.
4. On November 30, 2021, the Mahals advised the Trustee that Mahal VC has an interest in a pre-construction penthouse condominium unit at the Aquabella Bayside development in Toronto (the “Condominium”) pursuant to an agreement of purchase and sale dated August 3, 2017 between Mahal VC, as purchaser, and Aquabella Bayside Toronto Inc., as vendor. The Mahals have advised the Trustee that Mahal VC paid approximately \$1.3 million on account of the purchase price for the Condominium, and that Mahal VC holds the Condominium in trust for the Mahals. The Trustee has not yet assessed this trust claim.

4.0 Creditors

4.1 Secured Creditors

1. Skymark Finance Corporation (“Skymark”) is the Companies’ largest creditor. As of the date of the Receivership Order, the Companies were indebted to Skymark in the amount of approximately \$29.2 million². The Skymark debt relates to various loans to Mahal VC in connection with mortgages granted by Mahal VC on the Real Property (the “Mahal Loans”) and to Golden Miles in connection with equipment financing (the “GM Loans”, and together with the Mahal Loans, the “Loans”). The Receiver understands that the primary purpose of the Loans was to construct the Flour Mill on the Real Property.
2. Several parties have advised the Receiver that they have interests in the Mahal Loans and the mortgages that secure them, including Andrew Thompson, 2620509 Ontario Inc., 2580165 Ontario Inc., Cameron Renaud, 1061307 Ontario Inc. and KLN Holdings. These parties are collectively represented by Gardiner Roberts LLP (the “Gardiner Parties”). The Receiver has not yet assessed the claims of the Gardiner Parties but it has been provided with supporting documentation from their counsel.
3. Several other registrations have been made against the Real Property, including:
 - a) a construction lien in 2019 by Vicano Construction Limited, one of the Companies’ former general contractors, in the approximate amount of \$5.8 million;
 - b) a number of transfers of charges by the Gardiner Parties; and
 - c) a mortgage in 2021 by Golden Miles, in the amount of \$35 million (the “Golden Miles Mortgage”).

² This Skymark facility consists of approximately \$19.7 million owing by Mahal VC and approximately \$9.5 million owing by Golden Miles.

4. Mahal VC did not record any of these liabilities in its financial statements, nor did it reflect outstanding property taxes of at least \$123,000 payable to the City of Brantford³.
5. The Receiver's counsel, Blake, Cassels & Graydon LLP ("Blakes"), is in the process of reviewing the validity and priority of the security interests claimed or registered against the Property. The Receiver will report on the results of this security review when it is complete.

4.2 Unsecured Creditors

1. The Trustee has been provided with a statement of claim against the Companies by Garage Living Inc. ("Garage Living"), a contractor, where it is seeking approximately \$61,000 plus costs for flooring work it provided at the Flour Mill.
2. As at the date of this report, the Trustee has received one proof of claim filed against Mahal VC by Fluid Construction & Project Management Inc. ("Fluid") for approximately \$601,000. Although this claim was filed against Mahal VC, the Trustee understands that this liability is reflected on the books and records of Golden Miles, and Fluid also has a PPSA registration against Golden Miles. The Trustee has not yet determined which of the Companies is liable for this obligation.
3. The Trustee is not aware of any unsecured claims against Mahal VC other than those of Fluid, Garage Living and Vivian Group.

4.3 Property of the Bankrupt Not Divisible Amongst Creditors

1. Other than potentially the Trust Funds, which are subject to review by the Trustee, the only property that the Trustee is aware of that may not be divisible among Mahal VC's creditors by virtue of subsection 67(1) of the BIA or otherwise is the Condominium.
2. The Trustee is awaiting supporting documentation from the Mahals to substantiate their trust claim and will assess such trust claim when these documents have been provided.

5.0 Books and Records

1. Despite several requests to the Mahals, the Trustee has been provided with limited books and records related to Mahal VC. The Trustee has not been provided with, among other documents, Mahal VC's minute books.
2. The Trustee obtained Mahal VC's bank statements for the twelve months preceding the bankruptcy from Royal Bank of Canada ("RBC").

³ Although not a secured claim, this amount and any property tax that accrues will need to be paid when the Real Property is sold.

6.0 Preferences and Transfers Undervalue

1. A trustee is required to conduct a review for preferences and transfers at undervalue. In this regard, the Trustee reviewed Mahal VC's bank statements for the year preceding the date of bankruptcy, focusing on all disbursements greater than \$10,000.
2. The Trustee has requested support documentation from RBC regarding two transfers in April and May, 2021 totalling \$192,000, and is awaiting a response.
3. Once the Trustee has obtained the necessary records, it will review whether the granting of the Golden Miles Mortgage constitutes a preference or transfer-at-undervalue.
4. The Trustee continues to review Mahal VC's disbursements for the twelve months preceding the date of bankruptcy and will advise the inspectors appointed in these proceedings of its further findings.

7.0 Anticipated Realization and Projected Distribution

1. The Court issued an Order on November 22, 2021 which, among other things, approved a sale process to be carried out by the Receiver for the Flour Mill. The sale process contemplates a bid deadline of January 31, 2022, subject to flexibility for the Receiver to amend or extend the process in order to maximize value.
2. The results of the sale process will, to a large extent, determine the proceeds available for distribution to the creditors of Mahal VC.
3. The Companies are also party to numerous actions in Ontario, both as plaintiffs and as defendants. An assessment of the litigation and its value may be necessary, depending on the outcome of the sale process.

8.0 Third Party Guarantee

1. In consideration for KSV agreeing to act as Trustee in Mahal VC's bankruptcy proceedings, in the event there is insufficient funds available to pay administration costs incurred by the Trustee and its counsel, the Receiver has guaranteed the Trustee's fees, expenses and costs of administration of the bankrupt estate, including the fees and costs of Blakes, legal counsel to the Trustee. To the extent the Receiver is required to pay the Trustee's fees, expenses and costs of administration of the bankrupt estate, it will be entitled to be reimbursed from any recoveries made by the Trustee on behalf of the estate.

9.0 Debtor Compliance Exam

1. The Trustee requested that a representative of the OSB examine Jesse regarding, among other things, Mahal VC's assets and liabilities. The examination is scheduled for December 21, 2021. A similar examination has been requested of Santokh in Golden Miles' bankruptcy. The results of the examination, when completed, will be shared with the inspectors.

* * *

DATED at Toronto, Ontario, this 6th day of December 2021.

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS LICENSED INSOLVENCY TRUSTEE
OF THE ESTATE OF MAHAL VENTURE CAPITAL INC.,
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Mahal Venture Capital Inc.

Balance Sheet

All Dates

	TOTAL
Assets	
Current Assets	
Cash and Cash Equivalent	
Cash on hand	0.00
Total Cash and Cash Equivalent	\$0.00
Total Current Assets	\$0.00
Non-current Assets	
Property, plant and equipment	
Land	2,107,625.10
Total Property, plant and equipment	\$2,107,625.10
Total Non Current Assets	\$2,107,625.10
Total Assets	\$2,107,625.10
Liabilities and Equity	
Liabilities	
Non-current Liabilities	
Intra Company Transfer	1,000,000.00
Shareholder Notes Payable	1,107,625.10
Total Non-current Liabilities	\$2,107,625.10
Total Liabilities	\$2,107,625.10
Equity	
Retained Earnings	0.00
Total Equity	\$0.00
Total Liabilities and Equity	\$2,107,625.10

APPENDIX “B”

November 30, 2021

SENT VIA EMAIL

KSV Advisory Inc.
c/o Chris Burr
Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON
M5L 1A9

Dear Counsel:

Re: In the Matter of the Bankruptcy of Mahal Venture Capital Inc. and Golden Miles Food Corporation

We write with respect to the bankruptcy of Mahal Venture Capital Inc. ("**MVC**") and Golden Miles Food Corporation ("**Golden Miles**" and together with MVC, the "**Companies**").

Response to Letter dated November 23, 2021

Our clients' responses to the request for information set out in your letter dated November 23, 2021 is as follows:

- (a) The assets of the Companies not located at the Flour Mill consist of pallets of cookies consisting of 20 shortbread biscuits and 24 Animal Crackers, which have been shipped to Dollar Tree Canada. Additionally, MVC is the named purchaser under the APS, as defined below, which is not an asset of MVC but is held in trust for Jesse Mahal ("**Jesse**") and Santokh Mahal ("**Santokh**") as described below. With respect to the Ford F150, as described below, it was stolen in July, 2021;
- (b) MVC held a bank account bearing account no. 1870-5240286 with TD Canada Trust. The bank account was closed in 2018;
- (c) Copies of all outstanding invoices are attached at Tab 1. They consist of two invoices from Dollar Tree Canada, an invoice from SPS Commerce and invoices from the Companies' accountant, Gill & Co.;
- (d) The Companies have not made any payments, including any dividends or

November 30, 2021

Page 2

redemption of shares, to Jesse or Santokh or any “related person” as defined in the BIA;

- (e) Particulars of the Companies’ assets and liabilities were previously provided to KSV Restructuring Inc. through the Companies’ accountant, Gill & Co. A copy of MVC’s corporation income tax return for year-end December 31, 2020 is attached at Tab 2;
- (f) The names and addresses of the Companies’ creditors and any security held by them have all been disclosed in the receivership proceeding; and
- (g) There are no other property or business interests of the Companies beyond what is stated herein and what has been disclosed in the receivership proceeding.

The APS

We understand from Jesse and Santokh that MVC is the named purchaser in an agreement of purchase and sale dated August 3, 2017 (the “**APS**”) between it and Aquabella Bayside Toronto Inc. (the “**Vendor**”) for the purchase of a pre-construction condominium unit in Toronto, Ontario. A copy of the APS is attached at Tab 3.

MVC entered into the APS, a trustee for the benefit of Jesse and Santokh. Accordingly, pursuant to section 67(1)(a) of the *Bankruptcy and Insolvency Act*, the APS does not form part of the property divisible amongst creditors of MVC.

All deposit funds paid under the APS to the Vendor’s solicitor, in trust, are funds belonging to Santokh. None of the funds paid under the APS belonged to MVC. To date, Santokh has caused MVC to pay the sum of \$1,323,600.00 on account of deposits payable under the APS.

Copies of letters from the Vendor’s solicitor, Delzotto, Zorzi LLP, dated October 26, 2017, December 20, 2017, June 5, 2018 and October 2, 2018, together with the corresponding bank statements of MVC, are enclosed at Tab 4. The letters confirm the payment of the deposits. The bank statements of MVC show the inflow of funds, which Santokh caused to be deposited to the MVC bank account, and the outflow of said funds, which were used to satisfy payment of the deposits under the APS.

At present, our clients have obtained copies of bank drafts in the amount of \$158,251.39, and \$152,000, each dated October 25, 2017, payable to MVC. Copies of the bank drafts together with deposit slips are attached, collectively, at Tab 5. As evidenced in the bank statement of MVC for the month of October, 2017, these bank drafts were deposited into MVC’s bank account on October 25, 2017 and were subsequently withdrawn and paid to the Vendor’s solicitor, in trust, on account of the initial deposit payable under the APS.

November 30, 2021
Page 3

Our clients have requested and are awaiting receipt of the underlying documents to evidence that the funds deposited into the MVC bank account belonged to Santokh. Santokh's personal bank account from which he withdrew the funds that were used to satisfy payment of the deposits under the APS is closed. As the bank account is closed, the bank advised Santokh that it will take approximately 7-10 days for the bank to provide the bank statements and copies of any cancelled cheques and/or bank drafts drawn from the closed personal bank account. As such, the documentation in respect of the balance of the deposits paid under the APS, in the amount of \$1,013,348.61, will be produced upon receipt.

Please confirm that the trustee will not take any steps to exercise any rights in respect of the APS or realize on or otherwise dispose of the purchaser's rights pursuant to the APS until the issue of our clients' beneficial interest in the APS is fully and finally decided. Failure to provide such confirmation will result in our clients commencing an urgent application for a declaration that the property acquired and to be acquired pursuant to the APS constitutes trust property that is not divisible amongst creditors of MVC.

The Ford F150

With respect to the Ford F150, we are advised that it was stolen from Jesse's home driveway on July 10, 2021. Copies of an email thread dated from August 12, 2021 to September 20, 2021 between Jesse and the insurer, Chubb Canada, regarding the theft of the vehicle are attached, collectively, at Tab 6. The investigation remains ongoing.

Yours truly,



David Z. Seifer

DZS:

Encl.

TAB 1

INVOICE

DOLLAR TREE CANADA

Invoice #: 1566
 Order Number: 0001075522099412
 Customer Order #:
 Release #:
 Currency: Canadian Dollars

Invoice Date: 10/05/2021	PO Date: 10/05/2021
Ship Date: 10/15/2021	
Vendor #:	Department #:

Ship To:
Location ID: 99412
 MISSISSAUGA DC 412
 6780 CREDITVIEW ROAD
 MISSISSAUGA, ON L5N8E9 CA

Bill To:

Remit To:
Location ID:
 Golden Miles Food Corporation
 800 Swinbourne Drive
 Mississauga, ON L5W1M8

Freight Terms: Prepaid							Freight Terms:		
Terms Type: Basic	Terms Basis: Ship Date	Terms Disc %:	Disc. Due Date:	Disc. Days:	Net Due Date: 11/16/2021	Net Days: 30	Disc. Amt:	Description: NET 30	

LINE	SKU	VENDOR PN	UPC/GTIN	DESCRIPTION	UNIT COST	QTY INVOICED	UOM	GROSS PRICE
1	247966	79842	765573798425	Item Detail: GOLDEN MILES ANIMAL CRCKR 200G	0.82	2592.0	Each	2,125.44
2	247986	79869	765573798692	Item Detail: GLDN MLS SHRT BRD COOKIES 150G	0.85	1560.0	Each	1,326.00
Merchandise Total								\$3,451.44

ALLOWANCE, CHARGES AND TAX INFORMATION:

TYPE	SERVICE TYPE	PERCENT	RATE	QTY	UOM	DESCRIPTION	AMOUNT
	Harmonized Sales Tax (HST)	.000					.00

Notes/Comments/Special Instructions :

Total Qty: 4152.0 Each	Invoice Total	\$3,451.44
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Invoice Total(After Terms Disc)	\$3,451.44
---------------------------------	-------------------

Terms Discount Amount	\$0.00
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INVOICE

DOLLAR TREE CANADA

Invoice #: 1567
 Order Number: 0001077086699411
 Customer Order #:
 Release #:
 Currency: Canadian Dollars

Invoice Date: 11/24/2021	PO Date: 10/12/2021
Ship Date: 11/04/2021	
Vendor #:	Department #:

Ship To:
Location ID: 99411
 DELTA DC 411
 7530 HOPCOTT ROAD
 DELTA, BC V4G1J1 CA

Bill To:

Remit To:
Location ID:
 Golden Miles Food Corporation
 800 Swinbourne Drive
 Mississauga, ON L5V1J6 CA

Freight Terms: Prepaid							Freight Terms:		
Terms Type: Basic	Terms Basis: Ship Date	Terms Disc %:	Disc. Due Date:	Disc. Days:	Net Due Date: 12/05/2021	Net Days: 30	Disc. Amt:	Description: NET 30	

LINE	SKU	VENDOR PN	UPC/GTIN	DESCRIPTION	UNIT COST	QTY INVOICED	UOM	GROSS PRICE
1	247966	79842	765573798425	Item Detail: GOLDEN MILES ANIMAL CRCKR 200G	0.82	1296.0	Each	1,062.72
2	247986	79869	765573798692	Item Detail: GLDN MLS SHRT BRD COOKIES 150G	0.85	2688.0	Each	2,284.80
Merchandise Total								\$3,347.52

ALLOWANCE, CHARGES AND TAX INFORMATION:

TYPE	SERVICE TYPE	PERCENT	RATE	QTY	UOM	DESCRIPTION	AMOUNT
	Canadian Value-Added Tax (GST)	.000					.00

Notes/Comments/Special Instructions :

Total Qty: 3984.0 Each	Invoice Total	\$3,347.52
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Invoice Total(After Terms Disc)	\$3,347.52
---------------------------------	-------------------

Terms Discount Amount	\$0.00
-----------------------	---------------



SPS COMMERCE
INFINITE RETAIL POWER™

Pay online at:

<https://secure.versapay.com/payables/sps/login>

Remit payment to:

SPS Commerce, Inc.
C/O T99205U
PO Box 99205, Stn A
Toronto, ON M5W 0J6

INVOICE

Balance Due

\$103.50

(All amounts are in USD)

Billed To
GOLDEN MILES FOODS CORP.
Jesse Mahal
800 Swinbourne Drive
MISSISSAUGA, ON, CA L5V 1J6
Canada

Customer Number
C074185

Invoice Number
PSI-114557838

P.O. Number

Payment Terms
Due on Receipt

Invoice Date
10/31/21

Due Date
10/31/21

Description	Unit Cost	Qty	Amount
-------------	-----------	-----	--------

Subtotal	\$103.50
Sales Tax	\$0.00
Total	\$103.50
Payment Received	\$0.00
Balance Due	\$103.50



Pay your bill:

Online: Visit <https://secure.versapay.com/payables/sps/login>

Mail: SPS Commerce, Inc.
C/O T99205U
PO Box 99205, Stn A
Toronto, ON M5W 0J6

Wire: Bank Name: Wells Fargo Bank, N.A.
ABA/Transit No: 121000248
Account No: 4241542273

Online option at

<https://secure.versapay.com/payables/sps/login>

- Make a payment.
- Enroll in automatic bill pay with credit/debit card or bank account.
- View/download/print invoices.

For billing questions or inquiries:

- Phone: 888.739.3232 ext. 4
- Email: billing@spscommerce.com

Gill & Co. Chartered Accountants

2815 Thamesgate Drive
Mississauga ON L4T 1G5
905-677-3322
www.gillandco.ca
GST/HST Registration No.: 829656099



GILL & CO.
Chartered Accountants

BILL TO

Mahal Venture Capital

INVOICE # 264

DATE 29-10-2021

DUE DATE 29-10-2021

DATE	DESCRIPTION	RATE	AMOUNT
	Filing of Corporate Tax Returns for years ended; December 31, 2016, December 31, 2017, December 31, 2018, December 31, 2019, December 31, 2020	2,500.00	2,500.00
	Disbursements	250.00	250.00

***Accounts shall be due and payable when rendered. Interest shall be charged at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty (30) days after the invoice date to the date on which the entire account is paid.

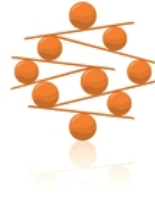
SUBTOTAL	2,750.00
HST (ON) @ 13%	357.50
TOTAL	3,107.50
BALANCE DUE	\$3,107.50

Thank you for your business!

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GILL & CO.
Chartered Accountants

BILL TO

Golden Miles Food Corporation

INVOICE # 265

DATE 04-11-2021

DUE DATE 04-11-2021

DATE	DESCRIPTION	RATE	AMOUNT
	Review Engagement as per signed engagement letter for YE June 30, 2021	12,500.00	12,500.00

***Accounts shall be due and payable when rendered. Interest shall be charged at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty (30) days after the invoice date to the date on which the entire account is paid.

SUBTOTAL	12,500.00
HST (ON) @ 13%	1,625.00
TOTAL	14,125.00
BALANCE DUE	\$14,125.00

Thank you for your business!

TAB 2



T2 Corporation Income Tax Return

Code 2001
Protected B
when completed

This form serves as a federal, provincial, and territorial corporation income tax return, unless the corporation is located in Quebec or Alberta. If the corporation is located in one of these provinces, you have to file a separate provincial corporation return. A shorter version of the return, the T2SHORT, is available for eligible corporations.

All legislative references on this return are to the federal Income Tax Act and Income Tax Regulations. This return may contain changes that had not yet become law at the time of publication.

Send one completed copy of this return, including schedules and the General Index of Financial Information (GIFI), to your tax centre. You have to file the return within six months after the end of the corporation's tax year.

For more information see canada.ca/taxes or Guide T4012, T2 Corporation – Income Tax Guide.

055 Do not use this area

Identification																											
Business number (BN) 001 8 3 4 9 4 1 5 9 3 R C 0 0 0 1																											
<p>Corporation's name 002 Mahal Venture Capital Inc.</p> <hr/> <p>Address of head office Has this address changed since the last time we were notified? 010 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, complete lines 011 to 018.</p> <p>011 6845 Second Line West</p> <p>012 _____</p> <table style="width:100%;"> <tr> <td style="width:50%;">City</td> <td style="width:50%;">Province, territory, or state</td> </tr> <tr> <td>015 Mississauga</td> <td>016 ON</td> </tr> <tr> <td>Country (other than Canada)</td> <td>Postal or ZIP code</td> </tr> <tr> <td>017 _____</td> <td>018 L5W 1M8</td> </tr> </table> <p>Mailing address (if different from head office address) Has this address changed since the last time we were notified? 020 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, complete lines 021 to 028.</p> <p>021 c/o</p> <p>022 6845 Second Line West</p> <p>023 _____</p> <table style="width:100%;"> <tr> <td style="width:50%;">City</td> <td style="width:50%;">Province, territory, or state</td> </tr> <tr> <td>025 Mississauga</td> <td>026 ON</td> </tr> <tr> <td>Country (other than Canada)</td> <td>Postal or ZIP code</td> </tr> <tr> <td>027 _____</td> <td>028 L5W 1M8</td> </tr> </table> <p>Location of books and records (if different from head office address) Has this address changed since the last time we were notified? 030 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, complete lines 031 to 038.</p> <p>031 6845 Second Line West</p> <p>032 _____</p> <table style="width:100%;"> <tr> <td style="width:50%;">City</td> <td style="width:50%;">Province, territory, or state</td> </tr> <tr> <td>035 Mississauga</td> <td>036 ON</td> </tr> <tr> <td>Country (other than Canada)</td> <td>Postal or ZIP code</td> </tr> <tr> <td>037 _____</td> <td>038 L5W 1M8</td> </tr> </table> <p>040 Type of corporation at the end of the tax year (tick one)</p> <p><input checked="" type="checkbox"/> 1 Canadian-controlled private corporation (CCPC)</p> <p><input type="checkbox"/> 2 Other private corporation</p> <p><input type="checkbox"/> 3 Public corporation</p> <p><input type="checkbox"/> 4 Corporation controlled by a public corporation</p> <p><input type="checkbox"/> 5 Other corporation (specify) _____</p> <p>If the type of corporation changed during the tax year, provide the effective date of the change 043 <input style="width:100px;" type="text"/></p>	City	Province, territory, or state	015 Mississauga	016 ON	Country (other than Canada)	Postal or ZIP code	017 _____	018 L5W 1M8	City	Province, territory, or state	025 Mississauga	026 ON	Country (other than Canada)	Postal or ZIP code	027 _____	028 L5W 1M8	City	Province, territory, or state	035 Mississauga	036 ON	Country (other than Canada)	Postal or ZIP code	037 _____	038 L5W 1M8	<p>To which tax year does this return apply?</p> <table style="width:100%;"> <tr> <td style="width:50%; text-align: center;">Tax year start Year Month Day 060 <input style="width:100px;" type="text"/> 2020/01/01 061</td> <td style="width:50%; text-align: center;">Tax year-end Year Month Day <input style="width:100px;" type="text"/> 2020/12/31</td> </tr> </table> <p>Has there been an acquisition of control resulting in the application of subsection 249(4) since the tax year start on line 060? 063 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, provide the date control was acquired 065 <input style="width:100px;" type="text"/></p> <p>Is the date on line 061 a deemed tax year-end according to subsection 249(3.1)? 066 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Is the corporation a professional corporation that is a member of a partnership? 067 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Is this the first year of filing after:</p> <p>Incorporation? 070 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Amalgamation? 071 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, complete lines 030 to 038 and attach Schedule 24.</p> <p>Has there been a wind-up of a subsidiary under section 88 during the current tax year? 072 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, complete and attach Schedule 24.</p> <p>Is this the final tax year before amalgamation? 076 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Is this the final return up to dissolution? 078 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If an election was made under section 261, state the functional currency used 079 _____</p> <p>Is the corporation a resident of Canada? 080 Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If no, give the country of residence on line 081 and complete and attach Schedule 97.</p> <p>081 _____</p> <p>Is the non-resident corporation claiming an exemption under an income tax treaty? 082 Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, complete and attach Schedule 91.</p> <p>If the corporation is exempt from tax under section 149, tick one of the following boxes:</p> <p>085 <input type="checkbox"/> 1 Exempt under paragraph 149(1)(e) or (l)</p> <p><input type="checkbox"/> 2 Exempt under paragraph 149(1)(j)</p> <p><input type="checkbox"/> 3 Exempt under paragraph 149(1)(t) (for tax years starting before 2019)</p> <p><input type="checkbox"/> 4 Exempt under other paragraphs of section 149</p>	Tax year start Year Month Day 060 <input style="width:100px;" type="text"/> 2020/01/01 061	Tax year-end Year Month Day <input style="width:100px;" type="text"/> 2020/12/31
City	Province, territory, or state																										
015 Mississauga	016 ON																										
Country (other than Canada)	Postal or ZIP code																										
017 _____	018 L5W 1M8																										
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025 Mississauga	026 ON																										
Country (other than Canada)	Postal or ZIP code																										
027 _____	028 L5W 1M8																										
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035 Mississauga	036 ON																										
Country (other than Canada)	Postal or ZIP code																										
037 _____	038 L5W 1M8																										
Tax year start Year Month Day 060 <input style="width:100px;" type="text"/> 2020/01/01 061	Tax year-end Year Month Day <input style="width:100px;" type="text"/> 2020/12/31																										
Do not use this area																											
095	096																										
898																											

Attachments

Financial statement information: Use GIF1 schedules 100, 125, and 141.

Schedules – Answer the following questions. For each **yes response, **attach** the schedule to the T2 return, unless otherwise instructed.**

	Yes	Schedule
Is the corporation related to any other corporations?	<input type="checkbox"/>	9
Is the corporation an associated CCPC?	<input type="checkbox"/>	23
Is the corporation an associated CCPC that is claiming the expenditure limit?	<input type="checkbox"/>	49
Does the corporation have any non-resident shareholders who own voting shares?	<input type="checkbox"/>	19
Has the corporation had any transactions, including section 85 transfers, with its shareholders, officers, or employees, other than transactions in the ordinary course of business? Exclude non-arm's length transactions with non-residents	<input type="checkbox"/>	11
If you answered yes to the above question, and the transaction was between corporations not dealing at arm's length, were all or substantially all of the assets of the transferor disposed of to the transferee?	<input type="checkbox"/>	44
Has the corporation paid any royalties, management fees, or other similar payments to residents of Canada?	<input type="checkbox"/>	14
Is the corporation claiming a deduction for payments to a type of employee benefit plan?	<input type="checkbox"/>	15
Is the corporation claiming a loss or deduction from a tax shelter?	<input type="checkbox"/>	T5004
Is the corporation a member of a partnership for which a partnership account number has been assigned?	<input type="checkbox"/>	T5013
Did the corporation, a foreign affiliate controlled by the corporation, or any other corporation or trust that did not deal at arm's length with the corporation have a beneficial interest in a non-resident discretionary trust (without reference to section 94)?	<input type="checkbox"/>	22
Did the corporation own any shares in one or more foreign affiliates in the tax year?	<input type="checkbox"/>	25
Has the corporation made any payments to non-residents of Canada under subsections 202(1) and/or 105(1) of the Income Tax Regulations?	<input type="checkbox"/>	29
Did the corporation have a total amount over CAN\$1 million of reportable transactions with non-arm's length non-residents?	<input type="checkbox"/>	T106
For private corporations: Does the corporation have any shareholders who own 10% or more of the corporation's common and/or preferred shares?	<input checked="" type="checkbox"/>	50
Has the corporation made payments to, or received amounts from, a retirement compensation plan arrangement during the year?	<input type="checkbox"/>	
Does the corporation earn income from one or more Internet web pages or websites?	<input type="checkbox"/>	88
Is the net income/loss shown on the financial statements different from the net income/loss for income tax purposes?	<input type="checkbox"/>	1
Has the corporation made any charitable donations; gifts of cultural or ecological property; or gifts of medicine?	<input type="checkbox"/>	2
Has the corporation received any dividends or paid any taxable dividends for purposes of the dividend refund?	<input type="checkbox"/>	3
Is the corporation claiming any type of losses?	<input type="checkbox"/>	4
Is the corporation claiming a provincial or territorial tax credit or does it have a permanent establishment in more than one jurisdiction?	<input type="checkbox"/>	5
Has the corporation realized any capital gains or incurred any capital losses during the tax year?	<input type="checkbox"/>	6
i) Is the corporation a CCPC and reporting a) income or loss from property (other than dividends deductible on line 320 of the T2 return), b) income from a partnership, c) income from a foreign business, d) income from a personal services business, e) income referred to in clause 125(1)(a)(i)(C) or 125(1)(a)(i)(B), f) aggregate investment income as defined in subsection 129(4), or g) an amount assigned to it under subsection 125(3.2) or 125(8); or		
ii) Is the corporation a member of a partnership and assigning its specified partnership business limit to a designated member under subsection 125(8)?	<input type="checkbox"/>	7
Does the corporation have any property that is eligible for capital cost allowance?	<input type="checkbox"/>	8
Does the corporation have any resource-related deductions?	<input type="checkbox"/>	12
Is the corporation claiming deductible reserves?	<input type="checkbox"/>	13
Is the corporation claiming a patronage dividend deduction?	<input type="checkbox"/>	16
Is the corporation a credit union claiming a deduction for allocations in proportion to borrowing or a provincial credit union tax reduction?	<input type="checkbox"/>	17
Is the corporation an investment corporation or a mutual fund corporation?	<input type="checkbox"/>	18
Is the corporation carrying on business in Canada as a non-resident corporation?	<input type="checkbox"/>	20
Is the corporation claiming any federal, provincial, or territorial foreign tax credits, or any federal logging tax credits?	<input type="checkbox"/>	21
Does the corporation have any Canadian manufacturing and processing profits?	<input type="checkbox"/>	27
Is the corporation claiming an investment tax credit?	<input type="checkbox"/>	31
Is the corporation claiming any scientific research and experimental development (SR&ED) expenditures?	<input type="checkbox"/>	T661
Is the total taxable capital employed in Canada of the corporation and its related corporations over \$10,000,000?	<input type="checkbox"/>	33/34/35
Is the total taxable capital employed in Canada of the corporation and its associated corporations over \$10,000,000?	<input type="checkbox"/>	
Is the corporation subject to gross Part VI tax on capital of financial institutions?	<input type="checkbox"/>	38
Is the corporation claiming a Part I tax credit?	<input type="checkbox"/>	42
Is the corporation subject to Part IV.1 tax on dividends received on taxable preferred shares or Part VI.1 tax on dividends paid?	<input type="checkbox"/>	43
Is the corporation agreeing to a transfer of the liability for Part VI.1 tax?	<input type="checkbox"/>	45
For financial institutions: Is the corporation a member of a related group of financial institutions with one or more members subject to gross Part VI tax?	<input type="checkbox"/>	39
Is the corporation claiming a Canadian film or video production tax credit?	<input type="checkbox"/>	T1131
Is the corporation claiming a film or video production services tax credit?	<input type="checkbox"/>	T1177
Is the corporation claiming a Canadian journalism labour tax credit?	<input type="checkbox"/>	58
Is the corporation subject to Part XIII.1 tax? (Show your calculations on a sheet that you identify as Schedule 92.)	<input type="checkbox"/>	92

Attachments (continued)

Did the corporation have any foreign affiliates in the tax year?	271	<input type="checkbox"/>	T1134
Did the corporation own or hold specified foreign property where the total cost amount of all such property, at any time in the year, was more than CAN\$100,000?	259	<input type="checkbox"/>	T1135
Did the corporation transfer or loan property to a non-resident trust?	260	<input type="checkbox"/>	T1141
Did the corporation receive a distribution from or was it indebted to a non-resident trust in the year?	261	<input type="checkbox"/>	T1142
Has the corporation entered into an agreement to allocate assistance for SR&ED carried out in Canada?	262	<input type="checkbox"/>	T1145
Has the corporation entered into an agreement to transfer qualified expenditures incurred in respect of SR&ED contracts?	263	<input type="checkbox"/>	T1146
Has the corporation entered into an agreement with other associated corporations for salary or wages of specified employees for SR&ED?	264	<input type="checkbox"/>	T1174
Did the corporation pay taxable dividends (other than capital gains dividends) in the tax year?	265	<input type="checkbox"/>	55
Has the corporation made an election under subsection 89(11) not to be a CCPC?	266	<input type="checkbox"/>	T2002
Has the corporation revoked any previous election made under subsection 89(11)?	267	<input type="checkbox"/>	T2002
Did the corporation (CCPC or deposit insurance corporation (DIC)) pay eligible dividends, or did its general rate income pool (GRIP) change in the tax year?	268	<input type="checkbox"/>	53
Did the corporation (other than a CCPC or DIC) pay eligible dividends, or did its low rate income pool (LRIP) change in the tax year?	269	<input type="checkbox"/>	54

Additional information

Did the corporation use the International Financial Reporting Standards (IFRS) when it prepared its financial statements?	270	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the corporation inactive?	280	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Specify the principal products mined, manufactured, sold, constructed, or services provided, giving the approximate percentage of the total revenue that each product or service represents.	284	<u>Asset Management</u>	285 <u>100.00</u> %
	286		287 _____ %
	288		289 _____ %
Did the corporation immigrate to Canada during the tax year?	291	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Did the corporation emigrate from Canada during the tax year?	292	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Do you want to be considered as a quarterly instalment remitter if you are eligible?	293	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If the corporation was eligible to remit instalments on a quarterly basis for part of the tax year, provide the date the corporation ceased to be eligible	294	Year Month Day <input type="text"/>	
If the corporation's major business activity is construction, did you have any subcontractors during the tax year?	295	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Taxable income

Net income or (loss) for income tax purposes from Schedule 1, financial statements, or GIFL	300	_____	A
Deduct:			
Charitable donations from Schedule 2	311	_____	
Cultural gifts from Schedule 2	313	_____	
Ecological gifts from Schedule 2	314	_____	
Gifts of medicine made before March 22, 2017, from Schedule 2	315	_____	
Taxable dividends deductible under section 112 or 113, or subsection 138(6) from Schedule 3	320	_____	
Part VI.1 tax deduction*	325	_____	
Non-capital losses of previous tax years from Schedule 4	331	_____	
Net capital losses of previous tax years from Schedule 4	332	_____	
Restricted farm losses of previous tax years from Schedule 4	333	_____	
Farm losses of previous tax years from Schedule 4	334	_____	
Limited partnership losses of previous tax years from Schedule 4	335	_____	
Taxable capital gains or taxable dividends allocated from a central credit union	340	_____	
Prospector's and grubstaker's shares	350	_____	
		Subtotal _____	B
		Subtotal (amount A minus amount B) (if negative, enter "0") _____	C
Section 110.5 additions or subparagraph 115(1)(a)(vii) additions	355	_____	D
Taxable income (amount C plus amount D)	360	_____	
Income exempt under paragraph 149(1)(t) (for tax years starting before 2019)	370	_____	
Taxable income for a corporation with exempt income under paragraph 149(1)(t) (line 360 minus line 370)		_____	Z

* This amount is equal to 3.5 times the Part VI.1 tax payable at line 724 on page 9.

Small business deduction

Canadian-controlled private corporations (CCPCs) throughout the tax year

Income eligible for the small business deduction from Schedule 7	400	_____	A
Taxable income from line 360 on page 3, minus 100/28 of the amount on line 632* on page 8, minus 4 times the amount on line 636** on page 8, and minus any amount that, because of federal law, is exempt from Part I tax	405	_____	B
Business limit (see notes 1 and 2 below)	410	_____	C
		500,000	

Notes:

- For CCPCs that are not associated, enter \$500,000 on line 410. However, if the corporation's tax year is less than 51 weeks, prorate this amount by the number of days in the tax year **divided** by 365, and enter the result on line 410.
- For associated CCPCs, use Schedule 23 to calculate the amount to be entered on line 410.

Business limit reduction

Taxable capital business limit reduction

Amount C 500,000 × **415***** D = _____ E
 11,250

Passive income business limit reduction

Adjusted aggregate investment income from Schedule 7**** **417** _____ - 50,000 = _____ F

Amount C 500,000 × Amount F _____ = _____ G
 100,000

The greater of amount E and amount G **422** _____ H

Reduced business limit for tax years starting before 2019 (amount C **minus** amount E) (if negative, enter "0") **425** _____ I

Reduced business limit for tax years starting after 2018 (amount C **minus** amount H) (if negative, enter "0") **426** 500,000 J

Business limit the CCPC assigns under subsection 125(3.2) (from line 515 on page 5) _____ K

Reduced business limit after assignment for tax years starting before 2019 (amount I **minus** amount K) **427** _____ L

Reduced business limit after assignment for tax years starting after 2018 (amount J **minus** amount K) **428** 500,000 M

Small business deduction

Tax years starting before 2019

Amount A, B, C, or L, whichever is the least _____ × $\frac{\text{Number of days in the tax year after December 31, 2017, and before January 1, 2019}}{\text{Number of days in the tax year}}$ × 18% = _____ 2

Amount A, B, C, or L, whichever is the least _____ × $\frac{\text{Number of days in the tax year after December 31, 2018}}{\text{Number of days in the tax year}}$ × 19% = _____ 3

Tax years starting after 2018

Amount A, B, C, or M, whichever is the least × 19% = _____ 4

Small business deduction (total of amounts 1 to 4) **430** _____ N

Enter amount N at amount J on page 8.

* Calculate the amount of foreign non-business income tax credit deductible on line 632 without reference to the refundable tax on the CCPC's investment income (line 604) and without reference to the corporate tax reductions under section 123.4.

** Calculate the amount of foreign business income tax credit deductible on line 636 without reference to the corporation tax reductions under section 123.4.

*** **Large corporations**

- If the corporation is not associated with any corporations in both the current and previous tax years, the amount to be entered on line 415 is: (total taxable capital employed in Canada for the **prior** year **minus** \$10,000,000) × 0.225%.
- If the corporation is not associated with any corporations in the current tax year, but was associated in the previous tax year, the amount to be entered on line 415 is: (total taxable capital employed in Canada for the **current** year **minus** \$10,000,000) × 0.225%.
- For corporations associated in the current tax year, see Schedule 23 for the special rules that apply.

**** Enter the total adjusted aggregate investment income of the corporation and all associated corporations for each tax year that ended in the preceding calendar year. Each corporation with such income has to file a Schedule 7. For a corporation's first tax year that starts after 2018, this amount is reported at line 744 of the corresponding Schedule 7. Otherwise, this amount is the total of all amounts reported at line 745 of the corresponding Schedule 7 of the corporation for each tax year that ended in the preceding calendar year.

Small business deduction (continued)

Specified corporate income and assignment under subsection 125(3.2)

O Business number of the corporation receiving the assigned amount	P Income paid under clause 125(1)(a)(i)(B) to the corporation identified in column O ³	Q Business limit assigned to corporation identified in column O ⁴
490	500	505
1.		
2.		
3.		
4.		
Total 510		Total 515

Notes:

- This amount is [as defined in subsection 125(7) specified corporate income (a)(i)] the total of all amounts each of which is income (other than specified farming or fishing income of the corporation for the year) from an active business of the corporation for the year from the provision of services or property to a private corporation (directly or indirectly, in any manner whatever) if
 - (A) at any time in the year, the corporation (or one of its shareholders) or a person who does not deal at arm's length with the corporation (or one of its shareholders) holds a direct or indirect interest in the private corporation, and
 - (B) it is not the case that all or substantially all of the corporation's income for the year from an active business is from the provision of services or property to
 - (I) persons (other than the private corporation) with which the corporation deals at arm's length, or
 - (II) partnerships with which the corporation deals at arm's length, other than a partnership in which a person that does not deal at arm's length with the corporation holds a direct or indirect interest.
- The amount of the business limit you assign to a CCPC cannot be greater than the amount determined by the formula $A - B$, where A is the amount of income referred to in column P in respect of that CCPC and B is the portion of the amount described in A that is deductible by you in respect of the amount of income referred to in clauses 125(1)(a)(i)(A) or (B) for the year. The amount on line 515 cannot be greater than the amount on line 425 (426 for tax years starting after 2018).

General tax reduction for Canadian-controlled private corporations

Canadian-controlled private corporations throughout the tax year

Taxable income from page 3 (line 360 or amount Z, whichever applies)	_____	A
Lesser of amounts 9B and 9H from Part 9 of Schedule 27	_____	B
Amount 13K from Part 13 of Schedule 27	_____	C
Personal services business income	432	D
Amount from line 400, 405, 410, or 427 (428 instead of 427 for tax years starting after 2018) on page 4, whichever is the least	_____	E
Aggregate investment income from line 440 on page 6*	_____	F
Subtotal (add amounts B to F)	_____	G
Amount A minus amount G (if negative, enter "0")	_____	H
General tax reduction for Canadian-controlled private corporations – Amount H multiplied by 13%	_____	I

Enter amount I on line 638 on page 8.

* Except for a corporation that is, throughout the year, a cooperative corporation (within the meaning assigned by subsection 136(2)) or a credit union.

General tax reduction

Do not complete this area if you are a Canadian-controlled private corporation, an investment corporation, a mortgage investment corporation, a mutual fund corporation, or any corporation with taxable income that is not subject to the corporation tax rate of 38%.

Taxable income from page 3 (line 360 or amount Z, whichever applies)	_____	J
Lesser of amounts 9B and 9H from Part 9 of Schedule 27	_____	K
Amount 13K from Part 13 of Schedule 27	_____	L
Personal services business income	434	M
Subtotal (add amounts K to M)	_____	N
Amount J minus amount N (if negative, enter "0")	_____	O
General tax reduction – Amount O multiplied by 13%	_____	P

Enter amount P on line 639 on page 8.

Refundable portion of Part I tax

Canadian-controlled private corporations throughout the tax year

Aggregate investment income from Schedule 7 **440** _____ × 30.67% = _____ A

Foreign non-business income tax credit from line 632 on page 8 _____ B

Foreign investment income from Schedule 7 **445** _____ × 8.0% = _____ C

Subtotal (amount B **minus** amount C) (if negative, enter "0") _____ D

Amount A **minus** amount D (if negative, enter "0") _____ E

Taxable income from line 360 on page 3 _____ F

Amount from line 400, 405, 410, or 427 (428 instead of 427 for tax years starting after 2018) on page 4, whichever is the least _____ G

Foreign non-business income tax credit from line 632 on page 8 _____ × 2.5862 = _____ H

Foreign business income tax credit from line 636 on page 8 _____ × 4 = _____ I

Subtotal (**add** amounts G to I) _____ J

Subtotal (amount F **minus** amount J) _____ K × 30.67% = _____ L

Part I tax payable minus investment tax credit refund (line 700 **minus** line 780 from page 9) _____ M

Refundable portion of Part I tax – Amount E, L, or M, whichever is the least **450** _____ N

Refundable dividend tax on hand (for tax years starting before 2019)

Refundable dividend tax on hand at the end of the previous tax year **460** _____

Dividend refund for the previous tax year **465** _____

Subtotal (line 460 **minus** line 465) _____ O

Refundable portion of Part I tax from line 450 above _____ P

Total Part IV tax payable from Schedule 3 _____ Q

Net refundable dividend tax on hand transferred on an amalgamation or the wind-up of a subsidiary **480** _____

Subtotal (amount P **plus** amount Q **plus** line 480) _____ R

Refundable dividend tax on hand at the end of the tax year – Amount O **plus** amount R **485** _____

Dividend refund (for tax years starting before 2019)

Private and subject corporations at the time taxable dividends were paid in the tax year

Taxable dividends paid in the tax year from line 460 on page 3 of Schedule 3 _____ × 38.33% = _____ S

Refundable dividend tax on hand at the end of the tax year from line 485 above _____ T

Dividend refund – Amount S or T, whichever is less _____ U

Enter amount U on line 784 on page 9.

Refundable dividend tax on hand

Refundable dividend tax on hand (RDTOH) at the end of the previous tax year	460	_____	
Dividend refund for the previous tax year	465	_____	
Net RDTOH transferred on an amalgamation or the wind-up of a subsidiary	480	_____	
Subtotal (line 460 minus line 465 plus line 480)		=====	▶ _____ A
General rate income pool (GRIP) at the end of the previous tax year (from line 100 of schedule 53)		_____	B
Total eligible dividends paid in the previous tax year (from line 300 of schedule 53)		_____	C
Total excessive eligible dividend designation in the previous tax year (from line 310 of Schedule 53)		_____	D
Subtotal (amount C minus amount D) (if negative, enter "0")		=====	▶ _____ E
Net GRIP at the end of the previous tax year (amount B minus amount E) (if negative, enter "0")		_____	F
GRIP transferred on an amalgamation or the wind-up of a subsidiary (total of lines 230 and 240 of schedule 53)		_____	G
Subtotal (amount F plus amount G)		=====	▶ _____ H
Amount H multiplied by 38 1/3%		_____	I
Eligible refundable dividend tax on hand (ERDTOH) at the end of the previous tax year (for the first tax year starting after 2018, amount A or I, whichever is less, otherwise, use line 530 of the preceding tax year)	520	_____	J
Non-eligible refundable dividend tax on hand (NERDTOH) at the end of the previous tax year (for the first tax year starting after 2018, amount A minus amount I, otherwise, use line 545 of the preceding tax year) (if negative, enter "0")	535	_____	K
Part IV tax payable on taxable dividends from connected corporations (amount 2G from Schedule 3)		_____	L
Part IV tax payable on eligible dividends from non-connected corporations (amount 2J from Schedule 3)		_____	M
Subtotal (amount L plus amount M)		=====	▶ _____ N
Net ERDTOH transferred on an amalgamation or the wind-up of a subsidiary	525	_____	O
ERDTOH dividend refund for the previous tax year	570	_____	P
Refundable portion of Part I tax (from line 450 on page 6)		_____	Q
Part IV tax before deductions (amount 2A from Schedule 3)		_____	R
Part IV tax allocated to ERDTOH (amount N)		_____	S
Part IV tax reduction due to Part IV.1 tax payable (amount 4D of Schedule 43)		_____	T
Subtotal (amount R minus total of amounts S and T)		=====	▶ _____ U
Net NERDTOH transferred on an amalgamation or the wind-up of a subsidiary	540	_____	V
NERDTOH dividend refund for the previous tax year	575	_____	W
38 1/3% of the total losses applied against Part IV tax (amount 2D from Schedule 3)		_____	X
Part IV tax payable allocated to NERDTOH, net of losses claimed (amount U minus amount X) (if negative enter "0")		_____	Y
NERDTOH at the end of the tax year (total of amounts K, Q, V, and Y minus amount W) (if negative, enter "0")	545	_____	
Part IV tax payable allocated to ERDTOH, net of losses claimed (amount N minus the amount, if any, by which amount X exceeds amount U) (if negative, enter "0")		_____	Z
ERDTOH at the end of the tax year (total of amounts J, O, and Z minus amount P) (if negative, enter "0")	530	_____	

Dividend refund

38 1/3% of total eligible dividends paid in the tax year (amount 3A from Schedule 3)	_____	AA
ERDTOH balance at the end of the tax year (line 530)	_____	BB
Eligible dividend refund (amount AA or BB, whichever is less)	=====	CC
38 1/3% of total non-eligible taxable dividends paid in the tax year (amount 3B from Schedule 3)	_____	DD
NERDTOH balance at the end of the tax year (line 545)	_____	EE
Non-eligible dividend refund (amount DD or EE, whichever is less)	=====	FF
Amount DD minus amount EE (if negative, enter "0")	_____	GG
Amount BB minus amount CC (if negative, enter "0")	_____	HH
Additional non-eligible dividend refund (amount GG or HH, whichever is less)	=====	II
Dividend refund – Amount CC plus amount FF plus amount II	=====	JJ
Enter amount JJ on line 784 on page 9.		

Part I tax

Base amount Part I tax – Taxable income from page 3 (line 360 or amount Z, whichever applies) multiplied by 38% **550** _____ A

Additional tax on personal services business income (section 123.5)

Taxable income from a personal services business **555** _____ 5.00 % = **560** _____ B

Recapture of investment tax credit from Schedule 31 **602** _____ C

Calculation for the refundable tax on the Canadian-controlled private corporation's (CCPC) investment income
(if it was a CCPC throughout the tax year)

Aggregate investment income from line 440 on page 6 _____ D

Taxable income from line 360 on page 3 _____ E

Deduct:

Amount from line 400, 405, 410, or 427 (428 instead of 427 for tax years starting after 2018) on page 4, whichever is the least _____ F

Net amount (amount E minus amount F) _____ ► _____ G

Refundable tax on CCPC's investment income – 10.67% of whichever is less: amount D or amount G **604** _____ H

Subtotal (add amounts A, B, C, and H) _____ I

Deduct:

Small business deduction from line 430 on page 4 _____ J

Federal tax abatement **608** _____

Manufacturing and processing profits deduction from Schedule 27 **616** _____

Investment corporation deduction **620** _____

Taxed capital gains **624** _____

Federal foreign non-business income tax credit from Schedule 21 **632** _____

Federal foreign business income tax credit from Schedule 21 **636** _____

General tax reduction for CCPCs from amount I on page 5 **638** _____

General tax reduction from amount P on page 5 **639** _____

Federal logging tax credit from Schedule 21 **640** _____

Eligible Canadian bank deduction under section 125.21 **641** _____

Federal qualifying environmental trust tax credit **648** _____

Investment tax credit from Schedule 31 **652** _____

Subtotal _____ ► _____ K

Part I tax payable – Amount I minus amount K _____ L

Enter amount L on line 700 on page 9.

Privacy statement

Personal information (including the SIN) is collected for the purposes of the administration or enforcement of the Income Tax Act and related programs and activities including administering tax, benefits, audit, compliance, and collection. The information collected may be used or disclosed for purposes of other federal acts that provide for the imposition and collection of a tax or duty. It may also be disclosed to other federal, provincial, territorial, or foreign government institutions to the extent authorized by law. Failure to provide this information may result in interest payable, penalties, or other actions. Under the Privacy Act, individuals have a right of protection, access to and correction of their personal information, or to file a complaint with the Privacy Commissioner of Canada regarding the handling of their personal information. Refer to Personal Information Bank CRA PPU 047 on Info Source at canada.ca/cra-info-source.

Summary of tax and credits

Federal tax

Part I tax payable from amount L on page 8	700	_____
Part III.1 tax payable from Schedule 55	710	_____
Part IV tax payable from Schedule 3	712	_____
Part IV.1 tax payable from Schedule 43	716	_____
Part VI tax payable from Schedule 38	720	_____
Part VI.1 tax payable from Schedule 43	724	_____
Part XIII.1 tax payable from Schedule 92	727	_____
Part XIV tax payable from Schedule 20	728	_____
Total federal tax		_____

Add provincial or territorial tax:

Provincial or territorial jurisdiction **750** ON
 (if more than one jurisdiction, enter "multiple" and complete Schedule 5)

Net provincial or territorial tax payable (except Quebec and Alberta) **760**
Total tax payable **770** _____ A

Deduct other credits:

Investment tax credit refund from Schedule 31	780	_____
Dividend refund from amount U on page 6 or JJ on page 7	784	_____
Federal capital gains refund from Schedule 18	788	_____
Federal qualifying environmental trust tax credit refund	792	_____
Canadian film or video production tax credit (Form T1131)	796	_____
Film or video production services tax credit (Form T1177)	797	_____
Canadian journalism labour tax credit from Schedule 58	798	_____
Tax withheld at source	800	_____
Total payments on which tax has been withheld 801		
Provincial and territorial capital gains refund from Schedule 18	808	_____
Provincial and territorial refundable tax credits from Schedule 5	812	_____
Tax instalments paid	840	_____
Total credits 890		_____ B

Refund code **894** Refund _____ ←

Direct deposit request

To have the corporation's refund deposited directly into the corporation's bank account at a financial institution in Canada, or to change banking information you already gave us, complete the information below:

Start Change information **910** _____ Branch number
914 _____ Institution number **918** _____ Account number

Balance (amount A minus amount B) _____

If the result is negative, you have a **refund**.
 If the result is positive, you have a **balance owing**.
 Enter the amount on whichever line applies.
 Generally, we do not charge or refund a difference of \$2 or less.

Balance owing _____

For information on how to make your payment, go to canada.ca/payments.

If the corporation is a Canadian-controlled private corporation throughout the tax year, does it qualify for the one-month extension of the date the balance of tax is due? **896** Yes No

If this return was prepared by a tax preparer for a fee, provide their EFILE number **920** _____

Certification

I, **950** Mahal Last name **951** Jesse First name **954** CEO Position, office, or rank

am an authorized signing officer of the corporation. I certify that I have examined this return, including accompanying schedules and statements, and that the information given on this return is, to the best of my knowledge, correct and complete. I also certify that the method of calculating income for this tax year is consistent with that of the previous tax year except as specifically disclosed in a statement attached to this return.

955 2021/10/29 Date (yyyy/mm/dd) **956** (905) 781-1399 Telephone number
 Signature of the authorized signing officer of the corporation

Is the contact person the same as the authorized signing officer? If **no**, complete the information below **957** Yes No

958 Jesse Mahal Name of other authorized person **959** (905) 781-1399 Telephone number

Language of correspondence – Langue de correspondance

Indicate your language of correspondence by entering 1 for English or 2 for French. **990** 1
 Indiquez votre langue de correspondance en inscrivant 1 pour anglais ou 2 pour français



Shareholder Information

Corporation's name <small>Mahal Venture Capital Inc.</small>	Business number <small>83494 1593 RC 0001</small>	Tax year-end Year Month Day <small>2 0 2 0 1 2 3 1</small>
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- All private corporations must complete this schedule for any shareholder who holds 10% or more of the corporation's common and/or preferred shares.
- Provide only one number (business number, partnership account number, social insurance number or trust number) per shareholder.

Name of shareholder (after name, indicate in brackets if the shareholder is a corporation, partnership, individual, or trust)	Business number or partnership account number (9 digits, 2 letters, and 4 digits. If not registered, enter "NR")	Social insurance number (9 digits)	Trust number (T followed by 8 digits)	Percentage common shares	Percentage preferred shares
100	200	300	350	400	500
<small>Jesse Mahal</small>		<small>521 674 259</small>		<small>100.000</small>	



**BALANCE SHEET INFORMATION****Schedule 100**

Assets	Code	Current year	Prior year
Cash and deposits	1000	100	
Land	1600	2,107,625	1,800,000
Prepaid expenses	1484	750,000	
Total assets	2599	2,857,725	1,800,000

Liabilities	Code	Current year	Prior year
Bank overdraft	2600		
Advances due to related parties	2863	1,750,000	
Due to members	3270	1,107,625	
Total liabilities	3499	2,857,625	

Equity	Code	Current year	Prior year
Common shares	3500	100	1,800,000
Retained earnings / deficit	3600		
Total equity	3620	100	1,800,000
Total liabilities and equity	3640	2,857,725	1,800,000

Retained earnings	Code	Current year	Prior year
Retained earnings/deficit-start	3660		
Net income / loss *	3680		
Total retained earnings	3849		

*The amount on line 3680 must equal the amount on line 9999 of S125 or S140 without considering line 9998.

Canada Revenue
AgencyAgence du revenu
du Canada**INCOME STATEMENT INFORMATION****Schedule 125****Details**

Operating name, if different from the corporations' legal name

0001 Mahal Venture Capital Inc.

Description of operation, if filing multiple Schedules 125

0002 AssetManagement

Sequence number

0003 _____

Revenue	Code	Current year	Prior year
Trade sales of goods and services	8000	1	1
Total sales of goods and services	8089	1	1
Total revenue	8299	1	1

Cost of sales	Code	Current year	Prior year
Opening inventory	8300		
Cost of sales	8518		
Gross profit / loss (item 8089 - item 8518)	8519	1	1

Operating expenses	Code	Current year	Prior year
Office expenses	8810	1	1
Total operating expenses	9367	1	1
Total expenses	9368	1	1
Net non-farming income	9369		

Farming revenue	Code	Current year	Prior year
Grains and oilseeds	9370		
Total farm revenue	9659		

Farming expenses	Code	Current year	Prior year
Crop expenses	9660		
Total farm expenses	9898		
Net farm income	9899		
Net income / loss before taxes and extraordinary items	9970		

Other comprehensive income

Revaluation surplus	7000		
Defined benefit gains/losses	7002 +		+
Foreign operation translation gains/losses	7004 +		+
Equity instruments gains/losses	7006 +		+
Cash flow hedge effective portion gains/losses	7008 +		+
Income tax relating to components of other comprehensive income	7010 +		+
Miscellaneous other comprehensive income	7020 +		+
Total – other comprehensive income	=		=

Summary

Complete this section if only one Schedule 125 is filed, Schedule 140 is used to summarize the information from multiple Schedules 125.

Extraordinary items	9975 -		-
Legal settlements	9976 -		-
Unrealized gains / losses	9980 +		+
Unusual items	9985 -		-
Current income taxes	9990 -		-
Future (deferred) income tax provision	9995 -		-
Total – other comprehensive income	9998 +		+

Net income / loss after taxes and extraordinary items

9999 =

=

Canada Revenue
AgencyAgence du revenu
du Canada**SCHEDULE 546**

Code 0902

CORPORATIONS INFORMATION ACT ANNUAL RETURN FOR ONTARIO CORPORATIONS

Corporation's name Mahal Venture Capital Inc.	Business Number 83494 1593 RC 0001	Tax year-end Year: 2 0 2 0 1 2 Month: 3 Day: 1
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- This schedule should be completed by a corporation that is incorporated, continued, or amalgamated in Ontario and subject to the Ontario *Business Corporations Act* (BCA) or Ontario *Corporations Act* (CA), except for registered charities under the federal *Income Tax Act*. This completed schedule serves as a *Corporations Information Act* Annual Return under the Ontario *Corporations Information Act*.
- Complete parts 1 to 4. Complete parts 5 to 7 only to report change(s) in the information recorded on the Ontario Ministry of Government Services (MGS) public record.
- This schedule must set out the required information for the corporation as of the date of delivery of this schedule.
- A completed Ontario *Corporations Information Act* Annual Return must be delivered within six months after the end of the corporation's tax year-end. The MGS considers this return to be delivered on the date that it is filed with the Canada Revenue Agency (CRA) together with the corporation's income tax return.
- It is the corporation's responsibility to ensure that the information shown on the MGS public record is accurate and up-to-date. To review the information shown for the corporation on the public record maintained by the MGS, obtain a Corporation Profile Report. Visit www.ServiceOntario.ca for more information.
- This schedule contains non-tax information collected under the authority of the Ontario *Corporations Information Act*. This information will be sent to the MGS for the purposes of recording the information on the public record maintained by the MGS.

Part 1 – Identification

100 Corporation's name (exactly as shown on the MGS public record) Mahal Venture Capital Inc.			
Jurisdiction incorporated, continued, or amalgamated, whichever is the most recent Ontario	110 Date of incorporation or amalgamation, whichever is the most recent Year: 2 0 1 4 Month: 0 9 Day: 3 0	120 Ontario Corporation No. 0 0 9037047	

Part 2 – Head or registered office address (P.O. box not acceptable as stand-alone address)

200 Care of (if applicable)			
210 Street number 6845	220 Street name/Rural route/Lot and Concession number Second Line West	230 Suite number	
240 Additional address information if applicable (line 220 must be completed first)			
250 Municipality (e.g., city, town) Mississauga	260 Province ON	270 Country CA	280 Postal code L5W 1M8

Part 3 – Change identifier

Have there been any changes in any of the information most recently filed for the public record maintained by the MGS for the corporation with respect to names, addresses for service, and the date elected/appointed and, if applicable, the date the election/appointment ceased of the directors and five most senior officers, or with respect to the corporation's mailing address or language of preference? To review the information shown for the corporation on the public record maintained by the MGS, obtain a Corporation Profile Report. For more information, visit www.ServiceOntario.ca.

- 300** 1 If there have been no changes, enter 1 in this box and then go to "Part 4 – Certification."
 2 If there are changes, enter 2 in this box and complete the applicable parts on the next page, and then go to "Part 4 – Certification."

Part 4 – Certification

I certify that all information given in this *Corporations Information Act* Annual Return is true, correct, and complete.

450 Mahal Last name **451** Jesse First name **454** Middle name(s)

- 460** 2 Please enter one of the following numbers in this box for the above-named person: 1 for director, 2 for officer, or 3 for other individual having knowledge of the affairs of the corporation. If you are a director and officer, enter 1 or 2.

Note: Sections 13 and 14 of the Ontario *Corporations Information Act* provide penalties for making false or misleading statements or omissions.

Complete the applicable parts to report changes in the information recorded on the MGS public record.

Part 5 – Mailing address

500	<input type="checkbox"/>	Please enter one of the following numbers in this box: 1 – Show no mailing address on the MGS public record. 2 – The corporation's mailing address is the same as the head or registered office address in Part 2 of this schedule. 3 – The corporation's complete mailing address is as follows:					
510	Care of (if applicable)						
520	Street number	530	Street name/Rural route/Lot and Concession number	540	Suite number		
550	Additional address information if applicable (line 530 must be completed first)						
560	Municipality (e.g., city, town)	570	Province/state	580	Country	590	Postal/zip code

Part 6 – Language of preference

600	<input type="checkbox"/>	Indicate your language of preference by entering 1 for English or 2 for French. This is the language of preference recorded on the MGS public record for communications with the corporation. It may be different from line 990 on the T2 return.
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Information Return for Corporations Filing Electronically

- Do not send this form to the Canada Revenue Agency (CRA) unless we ask for it. We will not keep or return this form.
- Complete this return for every initial and amended T2 Corporation Income Tax Return electronically filed with the CRA on your behalf.
- By completing Part 2 and signing Part 3, you acknowledge that, under the Income Tax Act, you have to keep all records used to prepare your T2 Corporation Income Tax Return, and provide this information to us on request.
- Part 4 must be completed by either you or the electronic transmitter of your T2 Corporation Income Tax Return.
- Give the signed original of this return to the transmitter and keep a copy in your own records for six years.
- We are responsible for ensuring the confidentiality of your electronically filed tax information only after we have accepted your return.

Part 1 – Identification

Corporation's name Mahal Venture Capital Inc.	Business number * * * * * 1 5 9 3 R C 0 0 0 1
--	--

Tax year start	Year	Month	Day	Tax year-end	Year	Month	Day	Is this an amended return?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	2 0 2 0	0 1	0 1		2 0 2 0	1 2	3 1			

Get your CRA mail electronically delivered in My Business Account at canada.ca/my-cra-business-account (optional)

Email address: _____

I understand that by providing an email address, I am **registering** the corporation to receive email notifications from the CRA. I understand and agree that all notices and other correspondence eligible for electronic delivery will no longer be printed and mailed. The CRA will notify the corporation at this email address when they are available in My Business Account and requiring immediate attention. They will be presumed to have been received on the date that the email is sent. For more information, see canada.ca/cra-business-email-notifications.

Part 2 – Declaration

Enter the following amounts, if applicable, from the T2 return for the tax year noted above:

Net income or loss for income tax purposes from Schedule 1, financial statements, or General Index of Financial Information (GIFI) (line 300)	_____
Part I tax payable (line 700)	_____
Part III.1 tax payable (line 710)	_____
Part IV tax payable (line 712)	_____
Part IV.1 tax payable (line 716)	_____
Part VI tax payable (line 720)	_____
Part VI.1 tax payable (line 724)	_____
Part XIV tax payable (line 728)	_____
Net provincial and territorial tax payable (line 760)	_____

Part 3 – Certification and authorization

I, <u>Mahal</u>	<u>Jesse</u>	<u>CEO</u>
Last name	First name	Position, office, or rank

am an authorized signing officer of the corporation. I certify that I have examined the T2 Corporation Income Tax Return, including accompanying schedules and statements, and that the information given on the T2 return and this T183 Corp information return is, to the best of my knowledge, correct and complete. I also certify that the method of calculating income for this tax year is consistent with that of the previous tax year except as specifically disclosed in a statement attached to this return.

I authorize the transmitter identified in Part 4 to electronically file the T2 Corporation Income Tax Return identified in Part 1. The transmitter can also modify the information originally filed in response to any errors Canada Revenue Agency identifies. This authorization expires when the Minister of National Revenue accepts the electronic return as filed.

2021/10/29		(905) 781-1399
Date (yyyy/mm/dd)	Signature of an authorized signing officer of the corporation	Telephone number

Part 4 – Transmitter identification

The following transmitter has electronically filed the tax return of the corporation identified in Part 1.

_____	_____
Name of person or firm	Electronic filer number

Privacy statement

Personal information is collected for the purposes of the administration or enforcement of the Income Tax Act and related programs and activities including administering tax, benefits, audit, compliance, and collection. The information collected may be used or disclosed for purposes of other federal acts that provide for the imposition and collection of a tax or duty. It may also be disclosed to other federal, provincial, territorial, or foreign government institutions to the extent authorized by law. Failure to provide this information may result in interest payable, penalties, or other actions. Under the Privacy Act, individuals have a right of protection, access to and correction of their personal information, or to file a complaint with the Privacy Commissioner of Canada regarding the handling of their personal information. Refer to Personal Information Bank CRA PPU 047 and CRA PPU 211 on Info Source at canada.ca/cra-info-source.

Summary

Tax Summary

Corporation name **Mahal Venture Capital Inc.**

Tax year ending 2020/12/31

Taxable income		Tax payable	
Net income for tax purposes		Part I tax	
Charitable donations and gifts	-	Taxable dividends received	
Taxable dividends	-	GRIP at the end of the tax year	
Losses of prior years	-	LRIP at the end of the tax year	
Other adjustments	±	Part III.1 tax	+
Taxable income	=	Part IV tax	+
Part I tax		Other federal tax payable	+
38% of taxable income		Subtotal	=
Surtax	+	Provincial and territorial tax (except AB, QC)	+
Recapture of investment tax credit	+	Provincial tax on large corporations (NB, NS)	+
Refundable tax on CCPC investment income	+	Tax payable	+
Active business income		Tax instalments paid	-
Small business deduction	-	Investment tax credit refund	-
Federal tax abatement	-	Taxable dividend paid (taxation years that begin before 2019)	
Manufacturing and processing deduction	-	Eligible dividend paid	
Additional deduction - credit unions	-	Non-eligible dividend paid	
Foreign tax credits	-	Dividend refund (taxation years that begin before 2019)	-
Investment tax credit	-	Dividend refund - eligible dividend	
Other deductions and credits	-	Dividend refund - non-eligible dividend	
Part I tax	=	Other refundable credits	-
		Balance owing (refund) on federal return	=
		Provincial income tax and registration fee (AB, QC)	
		Capital and other provincial taxes	+
		Tax instalments and credits	-
		Other provincial taxes	=
		Total balance owing (refund)	=

Provincial tax	% Provincial allocation	Taxable income	Income tax	Capital and other provincial taxes	Tax instalments and credits	Net provincial tax
Newfoundland						
Prince Edward Island						
Nova Scotia						
New Brunswick						
Ontario						
Manitoba						
Saskatchewan						
British Columbia						
Yukon Territory						
Northwest Territories						
Nunavut						
	Schedule 5 provincial tax payable					
Alberta						
Québec						
	Totals					

Loss continuity	Current year carry back	Carryforward end of year	Other carryforwards
Capital			Capital dividend account
Non-capital			RDTOH (taxation years that begin before 2019)
Farm			ERDTH
Restricted farm			NERDTH
Limited partnership			Unused Part 1.3 tax credit
Listed personal property			Foreign business tax credits
			Donations and gifts
			Investment tax credits
			Ontario S510 (CMT) losses
			Ontario S510 (CMT) credit

5Year **5 Year Tax Summary**

Years Ending:	2020/12/31	2019/12/31	2018/12/31	2017/12/31	2016/12/31
Taxable income					
Net Income for tax purposes					
Charitable donations and gifts	-	-	-	-	-
Taxable dividends	-	-	-	-	-
Losses of other years	-	-	-	-	-
Other adjustments	±	±	±	±	±
Taxable income	=	=	=	=	=
Active business income					
Part I tax					
38% of taxable income					
Surtax	+	+	+	+	+
Recapture of investment tax credit	+	+	+	+	+
Refundable tax on CCPC investment income	+	+	+	+	+
Small business deduction	-	-	-	-	-
Federal tax abatement	-	-	-	-	-
Manufacturing and processing deduction	-	-	-	-	-
Additional deduction - credit unions	-	-	-	-	-
Foreign tax credits	-	-	-	-	-
Resource deduction	-	-	-	-	-
Political contribution tax credit	-	-	-	-	-
Investment tax credit	-	-	-	-	-
Other deductions and credits	-	-	-	-	-
Part I tax	=	=	=	=	=
Tax payable					
Part I tax					
Part III.1 tax payable	+	+	+	+	+
Part IV tax	+	+	+	+	+
Other federal tax payable	+	+	+	+	+
Subtotal	=	=	=	=	=
Provincial and territorial tax (except AB, QC)	+	+	+	+	+
Provincial tax on large corporations (NB, NS)	+	+	+	+	+
Tax payable	=	=	=	=	=
Tax instalments made	-	-	-	-	-
Investment tax credit refund	-	-	-	-	-
Dividend refund (taxation years that begin before 2019)	-	-	-	-	-
Dividend refund - eligible dividend	-	-	-	-	-
Dividend refund - non-eligible dividend	-	-	-	-	-
Other refundable credits	-	-	-	-	-
Balance owing (refund)	=	=	=	=	=
Provincial income tax (AB, QC)					
Capital and other provincial taxes	+	+	+	+	+
Tax instalments and credits	-	-	-	-	-
Other provincial taxes	=	=	=	=	=
Total taxes owing (refund)	=	=	=	=	=

T2 RSI T2
#2000150

The corporation has not provided the net income or loss for income tax purposes at line 200300. If net income is nil, sign off this warning to proceed with filing.

Warning S7

Complete the Adjusted Aggregate Investment Income section from Amount 2A to Line 744 on Schedule 7, if applicable.

Friday, October 29, 2021

,

Mr. Jesse Mahal
Mahal Venture Capital Inc.
6845 Second Line West
Mississauga ON L5W 1M8 CA

Dear Mr. Mahal:

We have transmitted the tax return for Mahal Venture Capital Inc. electronically to the Canada Revenue Agency (CRA) using Corporation Internet Filing. The enclosed copy of the T2 return is for your records. We have prepared this return based on the information you provided to us.

The T2 return shows no balance owing and no refund.

We have calculated that the corporation will need to make tax instalment payments this year totalling \$0.

Please remit these payments to CRA according to the following schedule:

If you have any questions about your return(s), please contact me at .

Sincerely yours,

Enclosure

TAB 3

AGREEMENT OF PURCHASE AND SALE

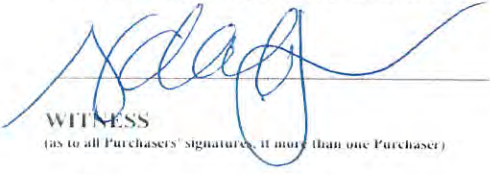
I, a) The undersigned

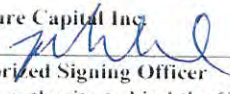
Mahal Venture Capital Inc.
(first name) (middle name) (last name)

(hereinafter collectively referred to as the "Purchaser"), hereby offer(s) to purchase from Aquabella Bayside Toronto Inc. (hereinafter referred to as the "Vendor" or the "Declarant") suite apt. no GPH1, design GPH1, being proposed dwelling unit no. 1 on level 12 (hereinafter referred to as the "Unit") and parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA and hobby/storage unit TBA, level TBA together with an undivided interest in the common elements appurtenant thereto, including any common element areas that may be designated for the exclusive use of the Unit (which Unit and its appurtenant common interest are hereinafter collectively referred to as the "Property"), in a proposed 13 storey residential condominium (hereinafter referred to as the "Condominium"), being developed by the Vendor on those lands and premises situate on the north and west sides of Merchants Wharf, and on the south side of a private roadway known as Edgewater Drive, situate south of Queens Quay East and north of the waters' edge boardwalk, with the address for the Condominium to be municipally known as 118 Merchants' Wharf, Toronto, Ontario, (or such other address as the City of Toronto may hereafter designate) for the sum of Six Million Six Hundred Eighteen Thousand Dollars (\$6,618,000) of lawful money of Canada (hereinafter referred to as the "Purchase Price") payable in Canadian currency as follows:

- i) The Purchaser shall pay to the Vendor the sum of Three Hundred Thirty Thousand Nine Hundred Dollars (\$330,900) DOLLARS as an **initial deposit (and representing 5% of the Purchase Price)** by way of a cheque made payable to the Vendor's solicitors, namely the law firm of DelZotto, Zorzi LLP (hereinafter referred to as the "Declarant's Solicitor") in trust, and delivered to the Vendor or its sales representative upon the Purchaser's execution of this Agreement.
- ii) The Purchaser shall pay to the Vendor the further sum of Three Hundred Thirty Thousand Nine Hundred Dollars (\$330,900) DOLLARS, as an **additional deposit (and representing 5% of the Purchase Price)**, by way of a cheque made payable to the Declarant's Solicitor in trust, dated **120 days** after the date of the Purchaser's execution of this Agreement and delivered to the Vendor or its sales representative concurrently with the Purchaser's execution of this Agreement.
- iii) a) The Purchaser shall pay to the Vendor the further sum of Three Hundred Thirty Thousand Nine Hundred Dollars (\$330,900) DOLLARS, as an **additional deposit (and representing 5% of the Purchase Price)**, by way of a cheque made payable to the Declarant's Solicitor in trust, dated **270 days** after the date of the Purchaser's execution of this Agreement and delivered to the Vendor or its sales representative concurrently with the Purchaser's execution of this Agreement; and
b) The Purchaser shall pay to the Vendor the further sum of Three Hundred Thirty Thousand Nine Hundred Dollars (\$330,900) DOLLARS, as an **additional deposit (and representing 5% of the Purchase Price)**, by way of a cheque made payable to the Declarant's Solicitor in trust, dated **365 days** after the date of the Purchaser's execution of this Agreement and delivered to the Vendor or its sales representative concurrently with the Purchaser's execution of this Agreement;
- iv) The Purchaser shall pay to the Vendor the further sum of NIL (\$NIL) DOLLARS as a **further and final deposit**, by way of a **certified cheque made payable to the Declarant's Solicitor in trust, and delivered to the Declarant's Solicitor on the Firm Occupancy Date** (as hereinafter defined), as the case may be, established or set by the Vendor pursuant to (and in accordance with) the provisions of the mandatory addendum issued by Tarion Warranty Corporation (hereinafter referred to as "Tarion") and annexed hereto as Schedule "OD" [which addendum comprises Tarion's condominium tentative occupancy date form, and includes the Statement of Critical Dates applicable to this transaction, and any Early Termination Conditions (if applicable) outlined in Schedule "A" thereto (and identified in section 6 (d) on page 5 thereof, and in any appendix thereto listing additional Early Termination Conditions, if applicable), and is hereinafter collectively referred to as the "Tarion Addendum"]; and
- v) The Purchaser shall **pay the balance owing on account of the Purchase Price**, by way of a **certified cheque made payable to the Declarant's Solicitor, and delivered to the Declarant's Solicitor on the Closing Date** (as hereinafter defined), subject to the adjustments provided or contemplated in Section 1.04 of Schedule "A" annexed hereto, and with all such adjustments to be reflected in the statement of adjustments prepared by the Vendor or the Declarant's Solicitor as of the Closing Date.
- b) The Purchaser hereby acknowledges and agrees that the following schedules annexed hereto form an integral part of this Agreement, and the Purchaser hereby confirms having read and understood all of the terms and provisions of said schedules, and agrees to be bound by same, namely:
 - Schedule "A" - GENERAL TERMS AND PROVISIONS, comprising pages A-1 to A-28 inclusive [version 10/12]
 - Schedule "AA" - SITE SPECIFIC TERMS AND PROVISIONS, comprising pages AA-1 to AA-23 inclusive [version 10/16]
 - Schedule "B" - SUITE FEATURES AND FINISHES, comprising page B-1
 - Schedule "C1" - FLOOR PLAN LAYOUT OF THE DWELLING UNIT, comprising page C1-1
 - Schedule "C2" - FLOOR PLAN OF THE CONDOMINIUM BUILDING, comprising page C2-1
 - Schedule "D" - SITE PLAN SKETCH OUTLINING THE LANDS, comprising page D-1
 - Schedule "LRA" - LIMITED RIGHT OF ASSIGNMENT, comprising pages LRA-1 to LRA-2
 - Schedule "OD" - THE TARIION ADDENDUM, comprising pages 1 to 12 inclusive
- c) This first page (that is ultimately signed by both parties hereto), together with all of the foregoing schedules that are annexed hereto, shall hereinafter and hereinafter be collectively referred to as this or the "Agreement". All capitalized terms used in this Agreement shall have the meanings respectively ascribed to them in Section 1.01 of Schedule "A" annexed hereto, or as otherwise defined elsewhere in this Agreement.
- d) It is acknowledged and agreed that the Purchaser's initial deposit cheque, and all subsequent deposit cheques, will be deposited by the Declarant's Solicitor into a designated trust account maintained specifically in connection with this Condominium, and that statutory interest (arising under the *Condominium Act 1998, S.O. 1998, as amended*) will only commence to accrue thereon at the rate prescribed thereunder from and after the respective dates that the Purchaser's deposit cheques have been respectively deposited into the aforementioned trust account.

IN WITNESS WHEREOF, the Purchaser has hereunto executed these presents this 3rd day of August, 2017


WITNESS
(as to all Purchasers' signatures, if more than one Purchaser)

Mahal Venture Capital Inc.
Per: 
Authorized Signing Officer
I have authority to bind the Corporation

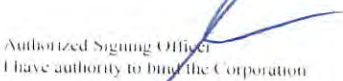
6845 Second Line West Mississauga, ON, L5W 1M8, Canada
Purchaser's Address for Service

Home: Business: (905) 781-1399 Fax:
Mobile:
Purchaser's Telephone Numbers

jesse.mahal@gmail.com
Purchaser's E-mail Address (to be used only for the Vendor's communication with the Purchaser regarding this transaction)

NOTICE TO PURCHASER: This "Pre-Authorized Agreement" shall only be binding upon the Vendor if executed without any handwritten changes to any of the standard pre-set/pre-printed terms and provisions of this Agreement whatsoever.

The Vendor hereby accepts the above offer and its terms, by hereunto executing these presents this 3rd day of August, 2017

Aquabella Bayside Toronto Inc.
P/R:

Authorized Signing Officer
I have authority to bind the Corporation

Vendor's Solicitors
DELZOTTO, ZORZI LLP, 4810 Dufferin Street, Suite D
Toronto, Ontario M3H 5S8, Attention: Harry Herskowitz

Vendor's Address:
4800 Dufferin Street, Suite 200, Toronto, Ontario
M3H 5S9, Attention: Susan Shapiro

pkhl
a

Property Aquabella at Bayside Toronto
suite # GPH1

Statement of Critical Dates
Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**

NOTE TO HOME BUYERS: Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.

VENDOR Aquabella Bayside Toronto Inc.
Full Name(s)
PURCHASER Mahal Venture Capital Inc.
Full Name(s)

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is:

March 22, 2021

The Vendor can delay Occupancy on one or more occasions by setting a subsequent **Tentative Occupancy Date**, in accordance with section 1 of the Addendum by giving proper written notice as set out in section 1.

By no later than 30 days after the Roof Assembly Date (as defined in section 12), with at least 90 days prior written notice, the Vendor shall set either (i) a **Final Tentative Occupancy Date**; or (ii) a **Firm Occupancy Date**.

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date.

the ___ day of _____, 20__
Final Tentative Occupancy Date

or

the ___ day of _____, 20__
Firm Occupancy Date

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a **Firm Occupancy Date** that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 1 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 7 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is:

March 22, 2024

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date.

Notice of a delay beyond the First Tentative Occupancy Date must be given no later than:

(i.e., at least **90 days** before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

December 22, 2020

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on:

April 22, 2024

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 7, 10 and 11 of the Addendum).

Note: Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).

Acknowledged this 3rd day of April, 2024
VENDOR: Aquabella Bayside Toronto Inc.
Per: [Signature]
Authorized Signing Officer

PURCHASER: Mahal Venture Capital Inc.
Per: [Signature]
Authorized signing officer
I have authority to bind the Corporation

**Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty**

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. This Addendum is to be used for a transaction where the home is a condominium unit (that is not a vacant land condominium unit). This Addendum contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "ONHWP Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

Tarion recommends that Purchasers register on Tarion's **MyHome** on-line portal and visit Tarion's website – **tarion.com**, to better understand their rights and obligations under the statutory warranties.

The Vendor shall complete all blanks set out below.

VENDOR Aquabella Bayside Toronto Inc.

<u>Full Name(s)</u>	<u>4800 Dufferin Street</u>		
<u>45786</u>	<u>Address</u>		
<u>Tarion Registration Number</u>	<u>Toronto</u>	<u>Ontario</u>	<u>M3H 5S9</u>
<u>416.661.9290</u>	<u>City</u>	<u>Province</u>	<u>Postal Code</u>
<u>Phone</u>	<u>ask@tridel.com</u>		
<u>416.661.8923</u>	<u>Email*</u>		
<u>Fax</u>			

PURCHASER Mahal Venture Capital Inc.

<u>Full Name(s)</u>	<u>6845 Second Line West, Mississauga, ON L5W 1M8</u>		
<u>6845 Second Line West,</u>	<u>City</u>	<u>Province</u>	<u>Postal Code</u>
<u>Address</u>	<u>905 781-1399</u>		
<u>905 781-1399</u>	<u>jesse.mahal@gmail.com</u>		
<u>Phone</u>	<u>Email*</u>		
<u>Fax</u>			

PROPERTY DESCRIPTION

118 Merchants' Wharf , SUITE# GPH1

<u>Municipal Address</u>	<u>Toronto, Ontario</u>		
<u>Toronto, Ontario</u>	<u>City</u>	<u>Province</u>	<u>Postal Code</u>
<u>Legal Level 12, Legal Unit 1</u>	<u>Short Legal Description</u>		

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

(a) The Vendor has obtained Formal Zoning Approval for the Building. Yes No

If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.

(b) Commencement of Construction: has occurred; or is expected to occur by January 30, 2018

The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

***Note: Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.**

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the Building subject to all prescribed requirements, to provide Occupancy of the home without delay, and, to register without delay the declaration and description in respect of the Building.
- (b) **First Tentative Occupancy Date:** The Vendor shall identify the First Tentative Occupancy Date in the Statement of Critical Dates attached to this Addendum at the time the Purchase Agreement is signed.
- (c) **Subsequent Tentative Occupancy Dates:** The Vendor may, in accordance with this section, extend the First Tentative Occupancy Date on one or more occasions, by setting a subsequent Tentative Occupancy Date. The Vendor shall give written notice of any subsequent Tentative Occupancy Date to the Purchaser at least 90 days before the existing Tentative Occupancy Date (which in this Addendum may include the First Tentative Occupancy Date), or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. A subsequent Tentative Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (d) **Final Tentative Occupancy Date:** By no later than 30 days after the Roof Assembly Date, the Vendor shall by written notice to the Purchaser set either (i) a Final Tentative Occupancy Date; or (ii) a Firm Occupancy Date. If the Vendor does not do so, the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Vendor shall give written notice of the Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, to the Purchaser at least 90 days before the existing Tentative Occupancy Date, or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, can be any Business Day on or before the Outside Occupancy Date. For new Purchase Agreements signed after the Roof Assembly Date, the Vendor shall insert in the Statement of Critical Dates of the Purchase Agreement either: a Final Tentative Occupancy Date; or a Firm Occupancy Date
- (e) **Firm Occupancy Date:** If the Vendor has set a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date. The Vendor shall give written notice of the Firm Occupancy Date to the Purchaser at least 90 days before the Final Tentative Occupancy Date, or else the Final Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Firm Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (f) **Notice:** Any notice given by the Vendor under paragraph (c), (d) or (e) must set out the stipulated Critical Date, as applicable.

2. Changing the Firm Occupancy Date – Three Ways

- (a) The Firm Occupancy Date, once set or deemed to be set in accordance with section 1, can be changed only:
 - (i) by the Vendor setting a Delayed Occupancy Date in accordance with section 3;
 - (ii) by the mutual written agreement of the Vendor and Purchaser in accordance with section 4; or
 - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 5.
- (b) If a new Firm Occupancy Date is set in accordance with section 4 or 5, then the new date is the "Firm Occupancy Date" for all purposes in this Addendum.

3. Changing the Firm Occupancy Date – By Setting a Delayed Occupancy Date

- (a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 4 and 5 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 7.
- (b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event at least 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 7(c). If notice of a new Delayed Occupancy Date is not given by the Vendor before the Firm Occupancy Date, then the new Delayed Occupancy Date shall be deemed to be the date which is 90 days after the Firm Occupancy Date.
- (d) After the Delayed Occupancy Date is set, if the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 5 or is mutually agreed upon under section 4, in which case the requirements of those sections must be met. Paragraphs (b) and (c) above apply with respect to the setting of the new Delayed Occupancy Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 10.

4. Changing Critical Dates – By Mutual Agreement

- (a) This Addendum sets out a framework for setting, extending and/or accelerating Critical Dates, which cannot be altered contractually except as set out in this section 4. Any amendment not in accordance with this section is voidable at the option of the Purchaser. For greater certainty, this Addendum does not restrict any extensions of the Closing date (i.e., title transfer date) where Occupancy of the home has already been given to the Purchaser.

- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:
- (i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
 - (ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
 - (iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
 - (iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
 - i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
 - ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
 - iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

If the Purchaser for his or her own purposes requests a change of the Firm Occupancy Date or the Delayed Occupancy Date, then subparagraphs (b)(i), (iii) and (iv) above shall not apply.

- (c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.

- (c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. Yes No
- (d) If the answer in (c) above is "Yes", then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed "Early Termination Conditions":

Condition Number One (if applicable):

Description of the Early Termination Condition:

Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged.

The Approving Authority (as that term is defined in Schedule A) is: Not Applicable

The date by which Condition One is to be satisfied or waived is October 1, 2020

Condition Number Two (if applicable):

Description of the Early Termination Condition:

Receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded 75% of the total dwelling units.

The Approving Authority (as that term is defined in Schedule A) is: Not Applicable

The date by which Condition Two is to be satisfied or waived is October 1, 2020

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following the later of: (A) the signing of the Purchase Agreement; and (B) the satisfaction or waiver by the Purchaser of a Purchaser financing condition permitted under paragraph (k) below.

Note. The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.

- (e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.
- (f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.
- (g) For conditions under paragraph 1(a) of Schedule A the following applies:
- (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;
 - (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (h) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
 - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
- (j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

MAKING A COMPENSATION CLAIM

7. Delayed Occupancy Compensation

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the Purchaser of a set amount of \$150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
- (i) includes the Vendor's assessment of the delayed occupancy compensation payable;
 - (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
 - (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.
- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.
- (g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

Only the items set out in Schedule B (or an amendment to Schedule B), shall be the subject of adjustment or change to the purchase price or the balance due on Closing. The Vendor agrees that it shall not charge as an adjustment or readjustment to the purchase price of the home, any reimbursement for a sum paid or payable by the Vendor to a third party unless the sum is ultimately paid to the third party either before or after Closing. If the Vendor charges an amount in contravention of the preceding sentence, the Vendor shall forthwith readjust with the Purchaser. This section shall not: restrict or prohibit payments for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the parties from agreeing on how to allocate as between them, any rebates, refunds or incentives provided by the federal government, a provincial or municipal government or an agency of any such government, before or after Closing.

MISCELLANEOUS

9. Ontario Building Code – Conditions of Occupancy

- (a) On or before the Occupancy Date, the Vendor shall deliver to the Purchaser:
- (i) an Occupancy Permit (as defined in paragraph (d)) for the home; or
 - (ii) if an Occupancy Permit is not required under the Building Code, a signed written confirmation by the Vendor that all conditions of occupancy under the Building Code have been fulfilled and Occupancy is permitted under the Building Code.



- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the "Purchaser Occupancy Obligations"):
- (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
 - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
 - (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor's delay in providing Occupancy alone.

11. Refund of Monies Paid on Termination

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.
- (c) Notwithstanding paragraphs (a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

"Building" means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.

"Business Day" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is



not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.

“**Closing**” means completion of the sale of the home, including transfer of title to the home to the Purchaser.

“**Commencement of Construction**” means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.

“**Critical Dates**” means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser’s Termination Period.

“**Delayed Occupancy Date**” means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.

“**Early Termination Conditions**” means the types of conditions listed in Schedule A.

“**Final Tentative Occupancy Date**” means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).

“**Firm Occupancy Date**” means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.

“**First Tentative Occupancy Date**” means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.

“**Formal Zoning Approval**” occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.

“**Occupancy**” means the right to use or occupy the home in accordance with the Purchase Agreement.

“**Occupancy Date**” means the date the Purchaser is given Occupancy.

“**Outside Occupancy Date**” means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.

“**Property**” or “**home**” means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.

“**Purchaser’s Termination Period**” means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).

“**Roof Assembly Date**” means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.

“**Statement of Critical Dates**” means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.

“**The ONHWP Act**” means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.

“**Unavoidable Delay**” means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.

“**Unavoidable Delay Period**” means the number of days between the Purchaser’s receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

14. Time Periods, and How Notice Must Be Sent

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5

Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.

- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.
- (i) Words in the singular include the plural and words in the plural include the singular.
- (j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

- (a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.
- (b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.
- (c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.
- (d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.
- (e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com



SCHEDULE A

Types of Permitted Early Termination Conditions

1. The Vendor of a condominium home is permitted to make the Purchase Agreement conditional as follows:

(a) upon receipt of Approval from an Approving Authority for:

- (i) a change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
- (ii) a consent to creation of a lot(s) or part-lot(s);
- (iii) a certificate of water potability or other measure relating to domestic water supply to the home;
- (iv) a certificate of approval of septic system or other measure relating to waste disposal from the home;
- (v) completion of hard services for the property or surrounding area (i.e., roads, rail crossings, water lines, sewage lines, other utilities);
- (vi) allocation of domestic water or storm or sanitary sewage capacity;
- (vii) easements or similar rights serving the property or surrounding area;
- (viii) site plan agreements, density agreements, shared facilities agreements or other development agreements with Approving Authorities or nearby landowners, and/or any development Approvals required from an Approving Authority; and/or
- (ix) site plans, plans, elevations and/or specifications under architectural controls imposed by an Approving Authority.

The above-noted conditions are for the benefit of both the Vendor and the Purchaser and cannot be waived by either party.

(b) upon:

- (i) receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;
- (ii) receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date;
- (iii) receipt of Approval from an Approving Authority for a basement walkout; and/or
- (iv) confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

2. The following definitions apply in this Schedule:

"Approval" means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.

"Approving Authority" means a government (federal, provincial or municipal), governmental agency, Crown corporation, or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government).

3. Each condition must:

- (a) be set out separately;
- (b) be reasonably specific as to the type of Approval which is needed for the transaction; and
- (c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

4. For greater certainty, the Vendor is not permitted to make the Purchase Agreement conditional upon:

- (a) receipt of a building permit;
- (b) receipt of an occupancy permit; and/or
- (c) completion of the home.



SCHEDULE "B"
TO THE TARION ADDENDUM

Adjustments to the Purchase Price or Balance Due on Closing

Part I - Stipulated Amounts/ Adjustments

The following are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below:

1. **\$500 plus H.S.T.**, as reimbursement to the Vendor for the extra legal fees incurred in the event the Purchaser's solicitor refuses to utilize the Vendor's desired electronic closing system (and correspondingly requires all interim or final closing documents to be photocopied and couriered, rather than transmitted electronically, over the internet pursuant to a secure designated portal) and which charge will correspondingly be increased to **\$1,000 plus H.S.T.**, if both interim and final closing documents must be photocopied and couriered, pursuant to **section 1.04(a)(viii) and section 4.07(a)(ii) of Schedule "A"** to the Purchase Agreement;
2. **\$750 plus H.S.T.**, as reimbursement to the Vendor for the extra legal fees incurred for having to revise, re-do, reproduce or re-send the interim or final closing package (eg. due to late changes in how the Purchaser wishes to take title, or the Purchaser adding or changing parking and/or locker units, etc., after the interim or final closing package has already been completed by the Vendor's solicitor) and which charge will correspondingly be increased to **\$1,500 plus H.S.T.**, if both the interim and final closing packages must be revised, re-done, reproduced or re-sent, pursuant to **section 1.04(a)(viii) and section 2.07 of Schedule "A"** to the Purchase Agreement;
3. **\$750 plus H.S.T.**, as reimbursement to the Vendor for the extra legal fees incurred for having to revise, re-do, reproduce or re-send the interim or final closing package (or any portion thereof) due to unilateral changes made to any of the interim or final closing documents by the Purchaser or the Purchaser's solicitor and who failed to inform the Vendor's solicitor regarding same prior to the scheduled Firm Occupancy Date or final closing date (as the case may be), and which changes were not ultimately acceptable to the Vendor or the Vendor's solicitor, and which charge will correspondingly be increased to **\$1,500 plus H.S.T.**, if both the interim and final closing packages must be revised, re-done, reproduced or re-sent due to any such unilateral changes so made by the Purchaser or the Purchaser's solicitor and ultimately deemed unacceptable by the Vendor or the Vendor's solicitor, pursuant to **section 2.07.1 of Schedule "AA"** to the Purchase Agreement;
4. **\$950 plus H.S.T.**, as reimbursement to the Vendor for the extra legal fees incurred in connection with the rectification of the Purchaser's outstanding default (eg. for all correspondence issued by the Vendor's solicitor in noting the Purchaser in default, tendering and terminating the transaction, and subsequently re-instating the transaction, and all other communications in connection therewith), pursuant to **section 1.04(a)(viii) and section 4.05(d)(iii) of Schedule "A"** to the Purchase Agreement;
5. **\$150 plus H.S.T.**, representing an administrative charge being exacted by the Vendor with respect to any cheque (whether for any deposit, or for extras or upgrades, or for any occupancy fees, or for any other portion of the Purchase Price) returned NSF, or upon which a stop payment has been ordered, pursuant to **section 1.04(a) (ix) of Schedule "A"** to the Purchase Agreement;
6. **\$400 plus H.S.T.**, representing a general administrative charge being exacted by the Vendor [ie. to cover the Vendor's Law Society transaction levy surcharge, and the cost of providing a status certificate on final closing (if the transaction is completed in the month in which the bulk final closings occur), and to reimburse the Vendor for the legal and administrative expenses incurred in connection with the handling of all deposit cheques and the issuance of a Form 4 - Certificate of Compliance in respect of each deposit cheque so received], pursuant to **section 1.04(a)(x) of Schedule "A"** to the Purchase Agreement;
7. **\$500 plus H.S.T.**, as reimbursement to the Vendor for the extra legal fees incurred for having to prepare and deliver an additional or revised interim or final closing package (eg. if the Purchaser fails to provide the name and address of the Purchaser's solicitor, or if the Purchaser changes lawyers mid-stream, etc., after the interim or final closing package has already been completed by the Vendor's solicitor), pursuant to **section 2.04 of Schedule "A"** to the Purchase Agreement;
8. **\$500 plus H.S.T.**, as reimbursement to the Vendor for the extra time and expense incurred in connection with having to send notices (and any accompanying documents) to the Purchaser by regular mail or registered mail [either because the Purchaser chooses not to have notices sent by e-mail (through or in conjunction with the Vendor's secure electronic portal), or because the e-mail address given by the Purchaser to the Vendor is no longer the Purchaser's correct or current e-mail address (and the Purchaser has failed to notify the Vendor or the Vendor's solicitor of the Purchaser's correct or current email address), or because the Purchaser's e-mail address box is full or otherwise not accepting incoming e-mails, or the Vendor believes (for whatever reason) that its e-mail deliveries to the Purchaser are not being received by the Purchaser], pursuant to **section 4.03(d) of Schedule "AA"** to the Purchase Agreement; and
9. **\$950 plus H.S.T.**, as reimbursement to the Vendor for the extra legal fees incurred in connection with the rectification of the Purchaser's outstanding default, prior to the termination of the transaction as a consequence of such default (eg. for all correspondence issued by the Vendor's solicitor in noting the Purchaser in default and/or tendering, and having to prepare for closing the transaction again), pursuant to **section 5.06(e) of Schedule "A"** to the Purchase Agreement.

Part II - All Other Adjustments, to be determined in accordance with the terms of the Purchase Agreement

The following are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement:

1. All occupancy fees owing or payable pursuant to **section 1.04(a)(ii) and section 2.08(c) of Schedule "A"** to the Purchase Agreement.

2. All common expenses attributable to the purchased unit(s), so owing or payable pursuant to **section 1.04(a)(ii) of Schedule "A"** to the Purchase Agreement;
3. All realty taxes attributable to the purchased unit(s), so owing or payable pursuant to **section 1.04(a)(iii) of Schedule "A"** to the Purchase Agreement;
4. The amount of the enrolment fee paid or payable by the Vendor to Tarion Warranty Corporation in respect of the dwelling unit being acquired by the Purchaser, plus the H.S.T. exigible in connection therewith, pursuant to **section 1.04(a)(iv) of Schedule "A"** to the Purchase Agreement;
5. An amount reflecting the increase in the aggregate of all development charges and/or education development charges paid by or on behalf of the Vendor upon the issuance of a building permit for the construction of the Condominium, and attributable to the dwelling unit being acquired by the Purchaser, plus any H.S.T. exigible in connection therewith, **if applicable** pursuant to **section 1.04(a)(v) of Schedule "A"** and **section 1.04(a)(v) of Schedule "AA"** to the Purchase Agreement;
6. An amount reflecting the aggregate of all mortgage application fees, mortgage inspection fees and/or mortgage insurance fees payable in connection with any high-ratio mortgage being given or assumed by the Purchaser on the final closing of this transaction, plus the H.S.T. exigible in connection therewith, **if applicable** pursuant to **section 1.04(a)(vi) of Schedule "A"** to the Purchase Agreement;
7. An amount reflecting the Vendor's cost of supplying and installing each meter or check meter (eg. for electricity, water, thermal energy, heating/cooling, and/or gas service respectively) appurtenant to the dwelling unit and any exclusive use common element area appurtenant thereto (including without limitation, the electricity check meter appurtenant to any electrical parking unit, if applicable) being acquired by the Purchaser, plus the H.S.T. exigible in connection therewith, pursuant to **section 1.04(a)(vii) of Schedule "A"** to the Purchase Agreement;
8. An amount reflecting the sum of money paid or payable by the Vendor to any local utility authority or provider, as a utility security charge, as a prerequisite to such utility authority providing its utility service to this Condominium, and attributable to the dwelling unit being acquired by the Purchaser, plus the H.S.T. exigible in connection therewith, **if applicable** pursuant to **section 1.04(a)(viii) of Schedule "A"** to the Purchase Agreement;
9. An amount equivalent to the federal and/or provincial HST new housing rebates that the Purchaser does not qualify for (or in respect of which the Vendor believes that the Purchaser does not qualify for, or no longer qualifies for), pursuant to **section 1.04(b) or section 1.04(c) of Schedule "A"** to the Purchase Agreement;
10. An amount reflecting the aggregate of any withholding tax required to be remitted by the Vendor to the Canada Revenue Agency in connection with any interest income arising from the statutory interest accruing and payable by the Vendor with respect to any non-resident Purchaser's deposits, **if applicable**, pursuant to **section 1.04(c) of Schedule "A"** to the Purchase Agreement;
11. An amount equivalent to the HST exigible with respect to any or all of the adjustments outlined in the statement of adjustments at final closing that are payable by the Purchaser, pursuant to **section 1.04(d)(i) of Schedule "A"** to the Purchase Agreement;
12. An amount reflecting the purchase price of all extras and/or upgrades so acquired from the Vendor by the Purchaser and that has not been fully paid for by the Purchaser at the time of installation, or that has not been reflected in an addendum to the Purchase Agreement which correspondingly increases the purchase price or the balance due on closing by the aggregate amount of all such extras or upgrades, pursuant to **section 3.05(e) of Schedule "A"** to the Purchase Agreement;
13. Interest on the outstanding balance of the purchase price that is due and payable on the scheduled interim-occupancy closing date, at the stipulated rate of 12% per annum, and accruing from the interim-occupancy closing date to and until the expiry of any agreed-upon extension thereof, pursuant to **section 4.05(d)(i) of Schedule "A"** to the Purchase Agreement;
14. Interest on the outstanding balance of the purchase price that is due and payable on the scheduled interim-occupancy closing date, at the stipulated rate of 12% per annum, and accruing from the interim-occupancy closing date to and until the date of the ultimate payment thereof (ie. from the date of the Purchaser's default, to and until the date of rectification of said default), pursuant to **section 4.05(d)(ii) of Schedule "A"** to the Purchase Agreement;
15. Interest on the outstanding balance of the purchase price that is due and payable on the scheduled final closing date, at the stipulated rate of 12% per annum, and accruing from the final closing date to and until the expiry of any agreed-upon extension thereof, pursuant to **section 4.05(d)(i) of Schedule "A"** to the Purchase Agreement;
16. Interest on the outstanding balance of the purchase price that is due and payable on the scheduled final closing date, at the stipulated rate of 12% per annum, and accruing from the final closing date to and until the date of the ultimate payment thereof (ie. from the date of the Purchaser's default, to and until the date of rectification of said default), pursuant to **section 4.05(d)(ii) of Schedule "A"** to the Purchase Agreement;
17. Interest on the outstanding balance of the purchase price that is due and payable on the scheduled final closing date, at the stipulated rate of 12% per annum, and accruing from the final closing date to and until the extended final closing date so established unilaterally by the Vendor, pursuant to **section 4.05(f)(ii) of Schedule "A"** to the Purchase Agreement; and
18. An amount reflecting the aggregate of any new tax or increased tax, or comparable charge, that may be levied or exacted at any time hereafter by any municipal, provincial, federal or other governmental authority or agency in connection with this Agreement and/or the purchase and sale transaction arising herefrom, such as (but not limited to) a new property transfer tax or otherwise (hereinafter collectively referred to as the "New Tax"), irrespective of whether the New Tax is (by virtue of the legislation authorizing and/or charging same) primarily exigible against (or payable by) the Vendor and/or the Purchaser alone, pursuant to **section 1.04(f) of Schedule "AA"** to the Purchase Agreement.

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SCHEDULE A - GENERAL TERMS AND PROVISIONS

ARTICLE I - DEFINITIONS, EXPLANATIONS, ADJUSTMENTS AND ACCEPTANCE OF OFFER

DEFINITIONS

- 1.01** In addition to any other words or terms defined elsewhere in this Agreement (and specifically in addition to the definitions outlined in section 12 on pages 7 and 8 of the Tarion Addendum), the defined words or terms set out below shall, whenever same are used or referred to in this Agreement, have the meanings respectively ascribed to them as follows, namely:
- a) the "**Act**" means *the Condominium Act 1998 S.O. 1998, as amended*, and the regulations promulgated thereunder from time to time, whenever same is referred to anywhere in this Agreement except for the Tarion Addendum (in which latter case the reference to "Act" in the Tarion Addendum means the *Ontario New Home Warranties Plan Act R.S.O. 1990, as amended*, including the regulations enacted thereunder);
 - b) the "**Agent**" means Del Realty Incorporated, and any sales representative(s) employed or retained by Del Realty Incorporated acting on behalf of the Vendor in connection with the sale of any units in the Condominium;
 - c) a "**Business Day**" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, then the following Monday is not a Business Day; and where Christmas Day falls on a Saturday or a Sunday, then the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, then the following Monday is not a Business Day;
 - d) the "**Closing Date**" or the "**Date of Closing**" or "**Closing**" means that date designated by the Vendor's solicitor as the final closing date on which a registrable transfer of title to the Property will be delivered to (or tendered upon) the Purchaser or the Purchaser's solicitor, and which date shall be at least 10 days after written notice is given by the Vendor's solicitor to the Purchaser or the Purchaser's solicitor that the Creating Documents (as hereinafter defined) have been registered on title to the Lands, provided however that in no event shall such date be later than 16 months from the Firm Occupancy Date (as hereinafter defined), or any extension or acceleration thereof established or implemented by the Vendor pursuant to (and in accordance with) the provisions of the Tarion Addendum;
 - e) the "**Condominium**" means the condominium which will be registered against the Lands pursuant to the provisions of the Act, and the condominium corporation created thereby (and sometimes hereinafter referred to as this or the "**Condominium**");
 - f) the "**Condominium Documents**" means the Creating Documents (as hereinafter defined), the by-laws and rules of the Condominium, the disclosure statement and budget statement, together with all other documents and agreements which the Vendor and/or the declarant of the Condominium wishes to have the Condominium enter into subsequent to its registration as a condominium under the Act but prior to the registration of the first transfer of title to any unit therein, as may be amended from time to time;
 - g) the "**Creating Documents**" means the declaration and description (as such terms are defined in the Act), which are intended to be registered against the Lands and which will serve to create the Condominium, as may be amended from time to time;
 - h) the "**Delayed Occupancy Date**" means the date established by the Vendor in accordance with the provisions of section 3 of the Tarion Addendum, on which date the Vendor agrees to provide occupancy of the Unit to the Purchaser in the event that the Vendor cannot provide occupancy thereof on the Firm Occupancy Date (as hereinafter defined) and is correspondingly unable to extend the Firm Occupancy Date pursuant to the provisions of the Tarion Addendum;
 - i) the "**Development Levies**" shall mean the aggregate of all development charges, education development charges, and any other similar charges or levies [including without limitation, any development levies or charges, density bonus levies or charges, parkland levies (or levies in lieu of any parkland dedication), school levies or charges, library levies, community centre levies and/or community improvement levies or charges, local and/or regional public transit or transit improvement levies (including Go Transit levies and/or related charges), subway levies and/or subway improvement levies, etc.] payable to (or at the insistence of) the local municipality, any regional, provincial or other governmental authority or agency, and/or any public or private school board [irrespective of whether same are charged, levied, imposed or payable pursuant to *the Development Charges Act 1997, S.O. 1997, as amended*, *the Education Act S.O. 1997, as amended*, and/or any other applicable legislation, or pursuant to the provisions of any agreement entered into with the local municipality, any regional, provincial or other governmental authority or agency, and/or any public or private school board, and exacted or imposed pursuant to a development charges by-law enacted by the local municipality or regional authority and/or an education charges by-law passed by a school board, or alternatively imposed pursuant to the provisions of any agreement entered into with the local municipality, any regional, provincial or other governmental authority or agency, and/or any public or private school board] as a pre-requisite to, or otherwise in connection with, the development of the Lands (or any portion thereof) and/or the development of the Condominium thereon, and ultimately assessed against the Vendor and/or the Lands, or any portion thereof (and correspondingly exigible and payable by or on behalf of the Vendor);
 - j) the "**First Mortgagee**" means the financial or lending institution designated by the Vendor to:
 - i) formally approve the Purchaser for a conventional or high-ratio first mortgage loan, if necessary, in order to enable the Purchaser to complete this transaction on an all-cash basis to the Vendor on the Closing Date, and which financing (if ultimately provided by the First Mortgagee) shall be secured by way of a first mortgage against the Property given by the Purchaser to the First Mortgagee on the Closing Date; **OR**
 - ii) to confirm to the Vendor that the Purchaser has the financial resources on his or her own to complete this transaction on an all-cash basis to the Vendor, without the necessity of third party financing whatsoever;
 and which financial or lending institution may constitute, without limitation, the Vendor or any corporation(s) or other legal entity affiliated or associated with (or related to) the Vendor;
 - k) the "**Firm Occupancy Date**" means the firm date on which the Vendor agrees to provide occupancy of the Unit to the Purchaser, or any extension or acceleration thereof established or implemented by the Vendor in accordance with the provisions of the Tarion Addendum, and on which date the Purchaser is correspondingly obliged to take possession and "interim occupancy" of the Unit as expressly contemplated in section 80 of the Act, and to concomitantly pay the Vendor the monies outlined in paragraph 1(a)(iv) on page 1 of this Agreement, and to commence paying the monthly occupancy fees outlined in Section 2.08 (c) hereof, and which date:
 - i) shall be established by the Vendor in accordance with the provisions of the Tarion Addendum; and
 - ii) shall in no event go beyond the Outside Occupancy Date (as hereinafter defined);
 provided however that if the Condominium Documents (exclusive of the disclosure statement and budget statement) have been registered on title to the Lands prior to the Firm Occupancy Date and the Vendor's solicitors have notified the Purchaser or the Purchaser's solicitor of same, and the Vendor's solicitors have also confirmed in writing to the Purchaser or the Purchaser's solicitor that they are ready to deliver on the Firm Occupancy Date a registrable deed/transfer of title to the Property to the Purchaser in accordance with the terms and provisions of this Agreement, then the Firm Occupancy Date shall also constitute (and be considered and construed as) the "Closing Date" under this Agreement, and the provisions of this Agreement shall then be read and construed as amended accordingly, *mutatis mutandis*, to give effect to same;
 - l) the "**First Tentative Occupancy Date**" means the first date outlined in paragraph 1, under the heading "Critical Dates", on page 1 of the Tarion Addendum, and constitutes the first tentative date on which the Vendor estimates, at the time of executing this Agreement, that the Purchaser will be able

(and correspondingly obliged) to occupy the Unit, provided however that the tentative occupancy date may be extended or accelerated by the Vendor pursuant to (and in accordance with) the provisions of the Tarion Addendum;

- m) the "**Governmental Authorities**" means the local municipality in which the Lands are situated, together with any regional, provincial, federal and/or other governmental authorities or agencies having jurisdiction over the development of the Lands and the construction of the Condominium thereon;
- n) the "**Lands**" shall mean those lands and premises more particularly described in Section 1.01(n) of Schedule "AA" annexed hereto, on the express understanding and agreement that the Lands (or any portion thereof) may be subject to the additional easements, restrictions and/or agreements more particularly described in Section 4.01 and 4.02 (a) hereof [and/or in Section 4.02 (a) of Schedule "AA" annexed hereto] and the Lands are more particularly outlined or illustrated on the site plan sketch annexed hereto as Schedule "D" (and sometimes hereinafter collectively referred to as the "**Real Property**");
- o) the "**Occupancy Agreement**" means the agreement described in Section 2.09(a) hereof which is required to be executed by the Purchaser prior to occupying or taking possession of the Property;
- p) the "**Outside Occupancy Date**" means the second date outlined in paragraph 1, under the heading "Critical Dates", on page 1 of the Tarion Addendum, and constitutes the latest date that the Vendor agrees, at the time of executing this Agreement, to provide occupancy of the Unit to the Purchaser;
- q) the "**Property**" means those proposed units described in paragraph 1 on page 1 of this Agreement being purchased by the Purchaser hereunder, together with the undivided interest in the common elements appurtenant to such units, and in any common elements designated in the Creating Documents as being for the exclusive use of the owner of such units;
- r) the "**Purchase Price**" means the purchase price of the Property as defined in paragraph 1 on page 1 of this Agreement, and which figure or amount shall be increased by the price or value of all extras, changes and/or upgrades to the Unit (as hereinafter defined) agreed upon by the Vendor and the Purchaser (as evidenced by one or more separate addendums to this Agreement, duly executed at any time hereafter by all parties hereto), on the express understanding and agreement that all monies paid by or on behalf of the Purchaser prior to Closing on account of any or all of such extras, changes and/or upgrades to the Unit shall be deemed and construed, for all purposes, to be additional deposits on account of the Purchase Price (and shall be held in trust, with interest accruing thereon at the prescribed rate, in accordance with the Act), and the statement of adjustments on final closing (including the value of consideration or figure for land transfer tax purposes set out in the deed/transfer) shall reflect the foregoing;
- s) the "**Purchaser**" means the purchaser as defined in paragraph 1 on page 1 of this Agreement;
- t) "**Tarion**" means Tarion Warranty Corporation, which oversees and enforces the statutory warranties applicable to all new homes and condominium dwelling units pursuant to the provisions of the *Ontario New Home Warranties Plan Act R.S.O. 1990, as amended*;
- u) the "**Unit**" means the dwelling unit described in paragraph 1 on page 1 of this Agreement which comprises part of the Property, together with its appurtenant interest in the common elements; and
- v) the "**Vendor**" means the vendor as defined in paragraph 1 on page 1 of this Agreement.

ALLOCATION OF PARKING, LOCKER AND OTHER ANCILLARY UNITS

- 1.02 a) Subject to the overriding provisions of Section 1.02 (b) below, it is understood and agreed that the Purchaser shall not be entitled to any parking unit(s), locker unit(s) and/or any other unit(s) ancillary to the dwelling unit being acquired hereunder, unless the unit and level number attributable to any such parking unit(s), locker unit(s) and/or other ancillary unit(s) has been inserted or otherwise clearly indicated on page 1 of this Agreement, or alternatively the initials "TBA" have been inserted in the space beside the reference to any parking unit(s), locker unit(s) and/or any other ancillary unit(s), in order to confirm that same is being included in the purchase price for the dwelling unit.
- b) Where the initials "TBA" have been inserted in the space beside the reference to any parking unit(s), locker unit(s) and/or any other ancillary unit(s), then the initials "TBA" shall mean "to be assigned by the Vendor in its sole, unfettered and unchallenged discretion, and confirmed by written notice delivered to the Purchaser or the Purchaser's solicitor on or before the earlier of the Firm Occupancy Date or the Closing Date". In such circumstances, the Vendor shall have the unilateral right, exercisable in its sole, unfettered and unchallenged discretion, to allocate or assign any such parking unit(s), locker unit(s) and/or other ancillary unit(s) to the Purchaser, wheresoever such unit(s) is/are located in this Condominium [and irrespective of its/their proximity to any other unit(s) acquired by the Purchaser hereunder], in such manner as the Vendor deems appropriate, on or before the earlier of the Firm Occupancy Date or the Closing Date, or any extension thereof, and the Purchaser shall be correspondingly obliged to accept title thereto, and to pay all common expenses attributable to same after final closing. Moreover, if any adjacent or neighbouring condominium is being developed (or has been developed) by the Vendor or a related company, then notwithstanding anything hereinbefore provided to the contrary, it is understood and agreed that in lieu of the Vendor allocating or assigning to the Purchaser any parking unit(s), locker unit(s) and/or other ancillary unit(s) situate within this Condominium as aforesaid, the Vendor shall have the unilateral right (exercisable in its sole, unfettered and unchallenged discretion) to allocate or assign any parking unit(s), locker unit(s) and/or other ancillary unit(s) situate within the said adjacent or neighbouring condominium to the Purchaser, wheresoever such unit(s) is/are located in said adjacent or neighbouring Condominium, and the Purchaser shall be correspondingly obliged to accept title thereto, and to pay all common expenses attributable to same after final closing.
- c) This Condominium may contain one or more non-visitor handicapped parking units (hereinafter individually referred to as a "**Handicapped Parking Unit**" and collectively referred to as the "**Handicapped Parking Units**"), and if so, same will be clearly designated for handicapped parking on the description plan sheet(s) filed concurrently with the registered declaration of this Condominium. Non-disabled owners and/or occupants of a Handicapped Parking Unit (including a disabled unit owner who is not personally using or occupying any Handicapped Parking Unit) shall be obligated, upon notification by the condominium corporation, to exchange, at no cost to a disabled driver who is a resident of this Condominium (and who holds a valid disabled parking permit that is appropriately displayed or visible in their vehicle), the use of the Handicapped Parking Unit with the disabled driver's non-handicapped parking unit, throughout the duration of such disabled person's residency in this Condominium.

DEPOSIT PROTECTION

- 1.03 All deposits paid by the Purchaser shall be held by the Vendor's solicitors in a designated trust account, and shall be released only in accordance with the provisions of Section 81(7) of the Act and the regulations thereto (or any successor statutory provision governing condominium deposit monies, if the Act is hereafter replaced or amended). Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that with respect to any deposit monies received from the Purchaser in excess of \$20,000.00, the Vendor's solicitors shall be entitled to withdraw such deposit monies from said designated trust account prior to the final closing of this transaction, if and only when the Vendor obtains one or more excess condominium deposit insurance policies (issued by any insurer selected by the Vendor, authorized to provide excess condominium deposit insurance in Ontario) insuring the deposit monies so withdrawn (or intended to be withdrawn), and delivers the said excess condominium deposit insurance policies (duly executed by or on behalf of the insurer and the Vendor) to the Vendor's solicitors holding the deposit monies for which said policies have been provided as security, in accordance with the provisions of Section 21 of O.Reg. 48/01 to the Act.

ADJUSTMENTS & HST PROVISIONS

- 1.04 a) It is understood and agreed that all statutory interest earned or accrued on the Purchaser's deposits, together with compound interest thereon as contemplated by section 82(5) of the Act, shall be paid or credited to the Purchaser in the statement of adjustments on the Closing Date, and with all adjustments hereinafter described to be reflected in the statement of adjustments prepared by the Vendor or the Vendor's solicitors in connection with the final closing of this transaction. The Purchase Price shall be adjusted to reflect the following items (where applicable, as determined by the Vendor in its sole and unfettered discretion), which shall be apportioned and allowed to the Closing Date, with that day itself to be apportioned to the Purchaser, namely:
- i) **rent or occupancy fees** owing by the Purchaser for the interim occupancy period prior to the Closing Date (if applicable);

- ii) **common expense contributions** attributable to the Property, with the Purchaser being obliged to complete all requisite account information in, and correspondingly execute and deliver to the Vendor's solicitors on or before the final closing of this transaction, the **pre-authorized cheque plan form prepared by the Vendor's solicitor** [and provided to the Purchaser's solicitor via the eClose website referred to in Section 4.07 hereof], **for the payment of all common expenses hereafter due or owing to the condominium corporation in respect of the Property from time to time, accompanied by an unsigned cheque marked "VOID" from the Purchaser's bank account** on which all such common expense payments shall be drawn or deducted; or alternatively at the Vendor's sole option, the Purchaser shall deliver to the Vendor's solicitors on or before the final closing of this transaction, a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Property, for such period of time after the Closing Date as determined by the Vendor (but in no event for more than one year);
- iii) **realty taxes**, with same being adjusted in a manner which either reflects the prevailing assessment of the Property as at the Closing Date (for example, based on a vacant land value assessment only, or a vacant land value assessment and partial building value assessment), or alternatively at the Vendor's sole option, adjusted as if the Property had been fully completed, separately assessed (including any supplementary or full building value assessment with respect thereto), and fully paid for by the Vendor, notwithstanding that said realty taxes may not have been levied, assessed and/or paid (in whole or in part) by the Closing Date, on the express understanding that if, in fact, any assessed realty taxes attributable to the Property have not been paid in accordance with the manner that same have been adjusted for in the statement of adjustments, then the Vendor shall provide the Purchaser on Closing with its written undertaking to pay same in accordance with the statement of adjustments forthwith after closing, and the Purchaser shall accept said undertaking and complete the transaction in accordance therewith. The aforementioned realty tax adjustment shall be subject to re-adjustment, as and when the actual final assessment for the Property (including any supplementary or full building value assessment with respect thereto) is available. In addition, the Purchaser shall, on the Closing Date, pay and/or reimburse the Vendor proportionately for any realty taxes required to be paid by the Vendor to the local municipality for the balance of the year in which the Closing Date occurs, and/or for the succeeding year after Closing. The Purchaser also expressly covenants and agrees that:
- A. after the final closing of this transaction, the Purchaser shall forthwith deliver copies of all assessment notices and supplementary realty tax bills that have been issued in respect of the Unit (relating to any portion of the year in which the final closing of this transaction has been completed), along with satisfactory evidence of the Purchaser's payment of all such supplementary realty tax bills, directly to the Vendor at its address for service, as soon as reasonably possible after the Purchaser's receipt of same, and in any event on or before the earlier of:
1. 60 days prior to the expiry of the appeal period applicable to any such assessment of realty taxes; and
 2. 30 days following the Purchaser's receipt of such assessment notices and/or supplementary realty tax bills;
- B. if any re-adjustment with respect to the realty taxes is sought by the Purchaser after final closing, then any such re-adjustment shall also reflect (or take into account) the realty tax component of the monthly occupancy fees payable by the Purchaser to the Vendor (if applicable); and
- C. where the Vendor believes that there is an error in the final or supplementary realty tax assessment attributable to the Unit (whether due to an incorrect building value assessment, or an incorrect possession or interim-occupancy closing date, or otherwise), then:
1. the Purchaser shall (as part of, and as a prerequisite to, the completion of any re-adjustment of realty taxes with the Vendor) deliver to the Vendor a standard form letter (that has been prepared or provided by the Vendor) executed by the then-current registered owner of the Unit, formally appealing such realty tax assessment, together with an irrevocable authorization & direction addressed to the tax department of the city, town or other municipal authority in which the Lands are situate (hereinafter sometimes referred to as the "City") and to the Municipal Property Assessment Corporation, expressly authorizing the Vendor to pursue and conduct the appeal of the realty tax assessment in respect of the Unit on behalf of the Purchaser (or the then-current registered owner of the Unit) at the Vendor's sole cost and expense, on the express understanding and agreement that any monies which the City ultimately agrees to refund to the Purchaser (or the then-current registered owner of the Unit) pursuant to (or as a result of) the successful appeal of such realty tax assessment, shall be considered for all purposes as a *pro tanto* payment made by or on behalf of the Vendor to the Purchaser in connection with the overall re-adjustment of realty taxes between the parties hereto, **provided however that any penalties levied and/or interest charges owing as a result of the late payment or non-payment of the final or supplementary realty taxes so assessed (despite same being assessed in error and/or being appealed) shall nevertheless be the sole responsibility of the Purchaser to bear;** and
 2. any re-adjustment of the realty taxes between the Vendor and the Purchaser shall be completed forthwith following (and based on the results of) any such appeal of the final or supplementary realty tax assessment attributable to the Unit;
- iv) **the amount of the Tarion enrolment fee** paid by or on behalf of the Vendor with respect to the Unit (together with any provincial and/or federal taxes exigible with respect thereto), shall be reimbursed by the Purchaser to and in favour of the Vendor, as an adjustment on Closing;
- v) **the amount of any increase in the Development Levies** (as hereinbefore defined) assessed against the Vendor and/or the Lands (or any portion thereof) in connection with the development of the Condominium thereon, determined as the difference between the amount of the Development Levies that would have been assessed and exigible as at the date that the first agreement of purchase and sale has been entered into by the Vendor with any purchaser of a dwelling unit in this Condominium (hereinafter referred to as the "**First Sale Date**"), and the amount of the Development Levies ultimately assessed, exigible and payable by or on behalf of the Vendor at the time that a superstructure building permit for this Condominium or a full final building permit (including where applicable, the excavation and shoring permit, the foundation permit and the super-structure permit) lawfully authorizing the construction of this Condominium has been issued by the building department of the relevant municipality (hereinafter referred to as the "**Final Permit Date**"), on the express understanding and agreement that:
- A. such portion of the Development Levies that are unit specific, or that are charged or levied on a per dwelling unit basis (ie. that are based on the number of dwelling units, or the size or bedroom count of each dwelling unit, such as development charges and/or education development charges) shall be allocated to the Unit based on the unit specific levy that is attributable to the Unit and/or its corresponding size or bedroom count, and the increase in such Development Levies between the First Sale Date and the Final Permit Date shall be determined accordingly;
- B. the balance of the Development Levies that are not unit specific, and that are charged or levied on any basis other than a per dwelling unit basis (ie. that are based on the size or area of any commercial/retail units in the Condominium, or based on the overall size or area of the development site, such as parkland levies or levies in lieu of parkland dedication that are based on a percentage of the market value referable to the size or area of the land being developed) shall be allocated to the Unit by dividing the aggregate amount of such Development Levies by the total number of dwelling units and commercial/retail units proposed to be created within the Condominium, in order to arrive at a per dwelling unit or per commercial/retail unit amount, and the increase in such Development Levies so attributable to the Unit between the First Sale Date and the Final Permit Date shall be determined accordingly; and
- C. any such increase in the Development Levies so attributable to the Unit (or so determined or calculated in respect of the Unit) shall be paid by the Purchaser to the Vendor by way of a corresponding charge to the Purchaser (or alternatively by way of a corresponding credit to the Vendor) in the statement of adjustments on the final closing of this transaction;
- vi) **all mortgage application fees, mortgage inspection fees and/or mortgage insurance fees paid or payable in connection with any high-ratio mortgage being given or assumed by the Purchaser on Closing**, if applicable, shall be paid by the Purchaser (or reimbursed by the Purchaser to and in favour of the Vendor) as an adjustment on Closing;
- vii) **the cost of supplying and installing any electricity, water, thermal energy and/or gas meter(s) appurtenant to the Unit** [and/or any check meter, sub-meter or consumption meter installed as an appurtenance to the Unit that measures the Unit's separate or individual consumption (or assists in calculating its proportionate consumption) of any electricity, water, thermal energy and/or gas service so consumed or utilized, including any thermal check meter(s) installed as an appurtenance to each fan coil unit or system within each dwelling unit, or any similar equipment], **if applicable** (ie in those instances where the Unit is individually metered, check metered or sub-metered for any or all of such utility services), **together with all federal and provincial taxes exigible in connection with any such meters or check meters**, shall be paid by the Purchaser (or reimbursed by the Purchaser to and in favour of the Vendor) as an adjustment on Closing; and

- viii) **any legal fees and disbursements charged to the Purchaser for not utilizing the Electronic Closing System** (as hereinafter defined) to facilitate the interim occupancy and final closing of this transaction, pursuant to the provisions of Section 4.07(a)(ii) hereof, and/or charged to the Purchaser for implementing any changes to any of the interim closing and/or final closing documents that have been requested by the Purchaser and ultimately agreed to by the Vendor, or for reproducing and resending any interim closing package or final closing package (or any portion thereof), pursuant to the provisions of Section 2.07 hereof, and/or charged to the Purchaser as reimbursement of the Vendor's reasonable legal fees and disbursements incurred in connection with any default by the Purchaser (and/or the rectification thereof) pursuant to the provisions of Section 4.05(d)(iii) and Section 5.06 (e) hereof, together with all federal and provincial taxes exigible in connection therewith;
- ix) **an administrative charge of \$150.00** plus all federal and provincial taxes exigible in connection therewith, **for each cheque** that is submitted or delivered by or on behalf of the Purchaser for payment of any portion of the Purchase Price, or for any extras or upgrades so ordered, or for any portion of the occupancy fees so payable, **which is returned "NSF"**, or upon which a **"stop payment"** has been ordered, or which is otherwise not honoured by the Purchaser's or drawer's bank for any reason whatsoever, which administration charge shall be payable by the Purchaser contemporaneous with the submission or delivery of any replacement cheque, or at the Vendor's option, shall be charged to the Purchaser in the statement of adjustments on Closing;
- x) **a general administrative charge of \$400.00** (plus all federal and provincial taxes exigible in connection therewith), to pay or reimburse the Vendor for the following items, namely:
- A. **the real estate transaction levy surcharge imposed by the Law Society of Upper Canada (or by its designated insurer LawPro) upon the Vendor** or the Vendor's solicitors, in respect of the completion of this transaction and the registration of any transfer or charge in connection therewith;
 - B. **the status certificate issued to the Purchaser by or on behalf of the condominium corporation** (in respect of the Property) in connection with the completion of this transaction, and which certificate shall be delivered electronically by the Vendor's solicitor (ie. by uploading same on the eClose website, for ultimate retrieval and review by the Purchaser's solicitor) on or before the final closing of this transaction, on the express understanding and agreement that if the final closing of this transaction occurs any time after the last day of the month in which the bulk final closing date (as scheduled by the Vendor's solicitor) transpires, then the Purchaser shall be obliged to obtain the status certificate directly from the Condominium's property manager; and
 - C. **the handling of all deposit cheques and the issuance of all required Form 4 - Certificates of Compliance** under O' Reg 49/01 pursuant to subsection 81(6) of the Act in connection with all deposit cheques made payable to (and correspondingly received by) the Vendor's solicitors; and
- xi) in the event that the Vendor, as a prerequisite to the procurement and provision of continuous utility service(s) to this Condominium, is required to pay or provide the local public utility authority or provider (for electricity, gas and/or water) with cash security or a letter of credit (hereinafter called the **"Utility Security Charge"**), then in such circumstances **the Vendor shall be entitled to a proportionate reimbursement of the Utility Security Charge from the Purchaser**, by charging the Purchaser in the statement of adjustments with that proportion of the Utility Security Charge which is **equivalent to the common interest allocation attributable or referable to the Property, as set forth in Schedule "D" to the declaration of this Condominium.**
- b) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to the combined federal and provincial single sales tax or harmonized sales tax exigible with respect to this purchase and sale transaction less each of the respective federal and provincial new housing rebates, if applicable (hereinafter referred to as the **"HST"**), and that the Vendor shall remit the HST to the Canada Revenue Agency on behalf of the Purchaser forthwith following the completion of this transaction. **The Purchaser hereby warrants and represents to the Vendor that the Purchaser qualifies for (and is eligible for):**
- i) **the new housing rebate applicable to the provincial component of the HST**, for that portion of the Purchase Price (exclusive of the HST component thereof) that is \$400,000.00 or less (hereinafter referred to as the **"Eligible Provincial Rebate"**); and
 - ii) **the new housing rebate applicable to the federal component of the HST**, in those circumstances where the Purchase Price (exclusive of the HST component thereof) is less than \$450,000.00 (hereinafter referred to as the **"Eligible Federal Rebate"**);

(with the Eligible Provincial Rebate and the Eligible Federal Rebate being hereinafter collectively referred to as the **"Rebate"**). Without limiting the generality of the foregoing, the Purchaser hereby expressly warrants and confirms that the Purchaser is a natural person who is acquiring the Property with the intention of being the sole beneficial owner thereof on Closing (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that from and after the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) the Purchaser or one or more of the Purchaser's relations (as such term is defined in *the Excise Tax Act*) shall personally occupy the Property as his, her or their primary place of residence, for such period of time as shall be required by the applicable legislation in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Property. The Purchaser further warrants and represents that the Purchaser has not claimed (and hereby covenants that the Purchaser shall not hereafter claim), for the Purchaser's own account, any part of the Rebate in connection with the Purchaser's acquisition of the Property, save as otherwise hereinafter expressly provided or contemplated. The Purchaser hereby irrevocably assigns and transfers to and in favour of the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs the Canada Revenue Agency to pay or credit the Rebate directly to the Vendor, on the express understanding and agreement that if the Purchaser is not eligible for the Rebate (or any portion thereof), or if the Rebate is not capable of being fully and lawfully assigned to the Vendor, then the Purchaser shall be obliged to pay to the Vendor on or before Closing (or alternatively the Purchaser shall be charged in the statement of adjustments on final closing with) an amount equivalent to the Rebate, or that portion of the Rebate to which the Purchaser is not entitled. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's request for same (and in any event on or before Closing), all requisite documents and assurances that the Vendor may reasonably require in order to confirm the Purchaser's entitlement to (or eligibility for) the Rebate and/or to enable the Vendor to obtain the benefit of the Rebate (by way of assignment or transfer, or otherwise), including without limitation, any form(s) required to be completed and submitted to the Canada Revenue Agency in connection with any claim for the Rebate, or any portion thereof (hereinafter collectively referred to as the **"Rebate Form"**). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially for the Rebate but subsequently being dis-entitled thereto (in whole or in part), or as a result of the inability to assign or transfer the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign or transfer the benefit of the Rebate to the Vendor). It is further understood and agreed by the parties hereto that:

- i) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitor forthwith upon the Vendor's request for same (and in any event on or before Closing) the Rebate Form duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or
- ii) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before Closing;

then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Purchaser shall be obliged to pay to the Vendor on or before Closing (or alternatively the Purchaser shall be charged in the statement of adjustments on final closing with) an amount equivalent to the Rebate, or that portion of the Rebate to which the Purchaser is not entitled, in addition to the outstanding balance of the Purchase Price subject to the adjustments contemplated in Section 1.04(a) above, and any failure to pay same to the Vendor on or before closing shall be deemed and construed to constitute a fundamental breach of contract, thereby entitling the Vendor to refuse to complete this transaction, and to thereafter exercise all of the rights and/or remedies available to the Vendor under this Agreement (and at law or in equity) as a consequence of such default or breach by the Purchaser, including without limitation, the right to refuse to release keys to the dwelling unit and to have all deposit monies theretofore paid by the Purchaser thereupon forfeited to the Vendor as its liquidated damages, and not as a penalty, without prejudice to any other rights and/or remedies available to the Vendor (at law or in equity) as a consequence of said breach or default by the Purchaser. In those circumstances where the Purchaser maintains that he or she is

eligible for the Rebate despite the Vendor's belief to the contrary, the Purchaser shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to file the Rebate Form directly with (and pursue the procurement of the Rebate directly from) the Canada Revenue Agency. It is further understood and agreed that in the event that the Purchaser intends to rent out the Unit [whether before Closing with the Vendor's written consent, and through a rental management agreement entered into by the Purchaser with Del Condominium Rentals Inc. (hereinafter sometimes referred to as "**Del Rentals**"), or after Closing with a third party tenant procured by the Purchaser], the Purchaser shall not be entitled to the Rebate, but may (for as long as the applicable tax legislation so permits) nevertheless be entitled to pursue, on his or her own after the Closing Date, any applicable new residential rental property rebate(s) directly with the Canada Revenue Agency.

- c) It is further understood and agreed that if the Vendor believes, for whatever reason, that the Purchaser is a non-resident of Canada which would thereby trigger withholding tax in connection with the interest income accruing on the Purchaser's deposits (ie. interest that the Vendor must pay or credit to the Purchaser in the statement of adjustments on final closing pursuant to section 82 of the Act), regardless of any documentation provided by or on behalf of the Purchaser in connection therewith (including any statutory declaration sworn by the Purchaser) to the contrary, and provided the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the final closing of this transaction, then notwithstanding anything contained in this Agreement to the contrary, the Vendor shall be entitled to withhold the requisite tax owing in respect of said interest income and shall remit same to the Canada Revenue Agency after the completion of this transaction, in which case the Vendor shall be credited in the statement of adjustments (or the Purchaser will correspondingly be charged in the statement of adjustments) with an amount equivalent to the withholding tax intended to be so remitted.
- d) Notwithstanding any other provision contained in this Agreement to the contrary, the Purchaser expressly acknowledges and agrees that:
- i) the Purchase Price does not include the HST exigible with respect to any of the adjustments outlined in the statement of adjustments at final closing that are payable by the Purchaser pursuant to the provisions of this Agreement (eg. the monthly occupancy fees, the Tarion enrollment fee, the check meter installation fees, etc.), and the Purchaser shall accordingly be responsible for payment of the HST so exigible in connection with any of such adjustments (or for reimbursing the Vendor for the HST exigible in connection therewith), by way of an appropriate charge to the Purchaser (or by a corresponding credit to the Vendor) in the statement of adjustments at final closing; and
 - ii) if, at any time after the final closing of this transaction, the Vendor believes that the Purchaser did not qualify for the Rebate, despite the Purchaser's affidavit or declaration confirming the Purchaser's eligibility for (or entitlement to) the Rebate (for example, and without limitation, if the Vendor discovers sometime after closing that the Purchaser had executed a rental management agreement which confirms the Purchaser's intention to lease the dwelling unit to a third party tenant), then unless the Purchaser remits an amount equivalent to the Rebate (or that portion of the Rebate to which the Purchaser is not entitled) directly to the Vendor's solicitor (by way of a certified cheque made payable to the Vendor's solicitor in trust) forthwith following written notice from the Vendor or the Vendor's solicitor to do so, the Vendor shall thereafter be entitled to register a vendor's lien against the title to the Property for an amount equivalent to the Rebate, or that portion of the Rebate to which the Purchaser is not entitled (together with the Vendor's solicitor's costs for the preparation, registration and ultimate discharge of said lien), and the Purchaser shall correspondingly be estopped and forever barred from demanding a discharge of said lien until payment of all amounts secured thereunder.
- e) If the Purchaser is a company, and is also an HST registrant who wishes to self-assess [and ultimately pay and remit the HST exigible on the completion of this transaction (less any applicable input tax credits for HST claimable by the Purchaser) directly to the Canada Revenue Agency after the final closing of this transaction], then the Purchaser shall be credited in the statement of adjustments on final closing with the amount of the HST so included in the Purchase Price, and shall correspondingly be charged in the said statement of adjustments with the aggregate of the HST new housing rebates which would otherwise be applicable (depending on the purchase price payable in connection with this transaction) had the Purchaser been an individual acquiring the Unit as his or her primary place of residence, and the Purchaser shall also be obliged to execute and deliver to the Vendor's solicitors, on or before the interim-occupancy closing of this transaction, and again on or before the final closing date, both the Vendor's standard form of indemnity (regarding the Purchaser's payment or remittance of the HST) and statutory declaration (confirming the Purchaser's HST registration status) respectively, pursuant to which:
- i) the Purchaser's authorized signing officer shall personally confirm, amongst other things, the Purchaser's eligibility or entitlement to self-assess for HST purposes, and the Purchaser's corresponding registration number for HST purposes, and that such registration has not been cancelled or revoked, and shall attach thereto a copy of the letter issued by the Canada Revenue Agency setting out the HST registration number issued to the Purchaser;
 - ii) the Purchaser's authorized signing officer shall personally confirm that the Unit has been acquired for the Purchaser's own use and account, and has not been purchased or acquired in trust for (nor is title being held or taken by the Purchaser in trust for) any other party or parties; and
 - iii) the Purchaser shall indemnify and save the Vendor harmless from and against all costs, claims, damages and/or liabilities which the Vendor may suffer, incur or be charged with as a result of the Purchaser's failure to maintain its registration status for HST purposes, or as a result of any inaccuracy or misrepresentation made in the affidavit sworn by the Purchaser's authorized signing officer in connection with the Purchaser's eligibility or entitlement to self-assess for HST purposes, and/or as a result of the HST exigible on the completion of this transaction not being paid or remitted to the Canada Revenue Agency by or on behalf of the Purchaser in accordance with the provisions of the *Excise Tax Act (Canada) S.C. 1990 as amended*, or any other applicable tax legislation.

IRREVOCABILITY OF OFFER

1.05 This offer by the Purchaser, constituted by his or her execution of this Agreement, shall (pending the acceptance of this offer by the Vendor) be irrevocable by the Purchaser until the 30th day (excluding Saturdays, Sundays and statutory holidays) following the date of the Purchaser's execution of this Agreement as set out on page 1 thereof, after which time, this offer may be withdrawn, and if so, same shall be null and void and the deposit shall be returned to the Purchaser without interest or deduction.

ACCEPTANCE OF OFFER

1.06 Acceptance by the Vendor of this offer shall be deemed to have been sufficiently made if this Agreement is executed by the Vendor on or before the irrevocable date specified in the preceding section or paragraph, without requiring any notice of such acceptance to be delivered to the Purchaser prior to such time. Without limiting the generality of the foregoing, acceptance of this offer (or any counter-offer with respect thereto) may be made by way of telefax transmission (or similar system reproducing the original) provided all of the necessary signatures and initials of both parties hereto are duly reflected on (or represented by) the telefaxed copy of the agreement of purchase and sale so transmitted, and such acceptance shall be deemed to have been effected or made when the accepted offer (or counter-offer, as the case may be) is telefaxed to the intended party, provided that a confirmation of such telefaxed transmission is received by the transmitting party at the time of such transmission, and the original executed document is thereafter forthwith couriered or personally delivered (or scanned and e-mailed) to the recipient of the telefaxed copy.

REQUIREMENT FOR PURCHASER'S ACKNOWLEDGEMENT OF RECEIPT OF THE DISCLOSURE STATEMENT AND A COPY OF THE EXECUTED PURCHASE AGREEMENT

1.07 Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that the Purchaser shall be obliged to personally attend at the Vendor's sales office or head office in order to:

- a) receive a copy of this fully executed Agreement (duly signed by both parties hereto); and
- b) execute and deliver to the Vendor's sales agent or representative an acknowledgment of receipt of both the condominium disclosure statement and a copy of this fully executed Agreement, in order to evidence the commencement of the Purchaser's statutory rescission period;

within 5 days (excluding Saturdays, Sundays and statutory holidays) from the date that the Purchaser has been notified in writing by the Vendor to attend at the Vendor's sales office or head office in order to receive a copy of this fully executed Agreement and to correspondingly execute and deliver the aforementioned acknowledgement of receipt, and the Purchaser's failure to attend at the Vendor's sales office or head office (as directed) and to concomitantly execute the aforementioned acknowledgement of receipt within said time period shall be deemed and construed, for all purposes, as a fundamental breach of contract so committed by the Purchaser, whereupon the Vendor shall have the unilateral right to terminate this Agreement at any time thereafter as a consequence of such default (but only before the Vendor or its sales representative has received the aforementioned written acknowledgment of receipt from the Purchaser), upon delivering written notice to the Purchaser confirming such termination, together with a refund of the Purchaser's initial deposit (or the return of the Purchaser's initial deposit cheque uncashed), without interest or deduction, in which event this purchase and sale transaction shall thereupon be null and void, and of no further force or effect, and the Vendor shall thereafter be fully and freely entitled to re-sell the Property (or any portion thereof) to any other prospective purchaser, without any interference from (and without any claim being made against the Vendor or the Vendor's agent by) the Purchaser in connection therewith.

ARTICLE II - PURCHASER'S OBLIGATIONS, RIGHTS AND OTHER MATTERS

PROHIBITION ON PURCHASER SELLING, LEASING OR ASSIGNING

2.01 The Purchaser covenants not to list for sale or lease, advertise for sale or lease, sell or lease, nor in any way assign his or her interest under this Agreement, or the Purchaser's rights and interests hereunder or in the Property, nor directly or indirectly permit any third party to list or advertise the Property for sale or lease, at any time until after the Closing Date, without the prior written consent of the Vendor, which consent may be arbitrarily withheld. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy Agreement, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply.

PROVISIONS CONFIRMING THE PURCHASER'S FINANCIAL RESOURCES

2.02 a) The Purchaser hereby warrants and represents that it has (or will have, on or before the Closing Date) the financial resources to complete the purchase and sale transaction contemplated herein on an all-cash basis to the Vendor, either wholly from the Purchaser's own resources or from third party financing that will ultimately be secured by one or more mortgages given by the Purchaser and registered against the Property on or shortly after the Closing Date. All deposit monies due or payable by the Purchaser prior to the Firm Occupancy Date shall be made or tendered only by way of a bank draft or cheque drawn on (or issued by) a Canadian chartered bank or trust company, on the express understanding that if a cheque or bank draft is delivered to the Vendor by a third party on behalf of the Purchaser (i.e. drawn on the bank account of such third party, rather than on the bank account of the Purchaser), then such bank draft or cheque shall be deemed to be a payment made by such third party as agent for and on behalf of the Purchaser, in which case it is agreed that the certificate confirming that such deposit monies are being held in a designated trust account by the Vendor's solicitors pending the completion or termination of this transaction or the provision of prescribed security in respect of same (being Form 4, prescribed by Section 39 of O.Reg. 49/01 to the Act) shall be issued and delivered directly to the Purchaser only, and not to such third party. In order to evidence and confirm the Purchaser's financial ability to complete this transaction on an all-cash basis to the Vendor on the Closing Date as aforesaid, the Purchaser hereby agrees to submit to the Vendor each of the following documents and items, within 30 days after the date of the Purchaser's signed receipt of this fully executed Agreement, and additionally thereafter within 15 days after the Vendor's written request for same, which request may be made from time to time, on one or more occasions, namely:

- i) an irrevocable direction to the Vendor indicating and confirming how the Purchaser wishes to take title to the Property, with such direction nevertheless being subject to the overriding approval of the Vendor and the First Mortgagee;
 - ii) evidence of the source of the Purchaser's down payment satisfactory to the Vendor and the First Mortgagee, accompanied by written confirmation of the Purchaser's annual income, and any other financial and personal information, documents, instruments or verifications which may be required or desired by the Vendor, the First Mortgagee and any mortgage insurer (if applicable), for the purpose of either confirming that the Purchaser has sufficient resources on its own (and therefore does not require any mortgage financing) to complete this transaction on an all-cash basis to the Vendor on Closing, or for the purpose of facilitating the mortgage approval of the Purchaser by the First Mortgagee in connection with any financing that may be required by the Purchaser to enable the Purchaser to complete this transaction on an all-cash basis to the Vendor on the Closing Date as hereinbefore provided, or for the purpose of determining and establishing the financial ability of the Purchaser to pay the cash balance of the Purchase Price due on the Firm Occupancy Date and/or the Closing Date; and
 - iii) in those circumstances where the Purchaser requires or desires third party financing to assist the Purchaser in completing this transaction on an all-cash basis to the Vendor, a copy of a binding and unconditional mortgage commitment, financial term sheet or loan agreement (together with any and all amendments made thereto from time to time) issued by the First Mortgagee, or by a third party financial institution or other lender which is satisfactory to the Vendor in its sole and unchallenged discretion, and which evidences and confirms the Purchaser's approval for a mortgage loan in such amount or amounts as may be necessary to enable the Purchaser to complete this transaction on an all-cash basis to the Vendor on the Closing Date, on the express understanding that even if the Purchaser ultimately intends to obtain such financing from a lender other than the First Mortgagee, the Vendor shall nevertheless be entitled to compel the Purchaser to obtain (and the Purchaser shall correspondingly be obliged to procure) mortgage approval for a first mortgage loan directly from the First Mortgagee, in such amounts as will enable the Purchaser to complete this transaction on an all-cash basis to the Vendor on the Closing Date, **and to deliver to the Vendor written confirmation of such approval by the First Mortgagee within 30 days after the date of the Purchaser's signed receipt of this fully executed Agreement.**
- b) The Purchaser is hereby notified that a consumer report containing credit and/or personal information may be referred to at any time in connection with this transaction, and the Purchaser hereby consents to such report being obtained by the Vendor, the Agent and/or the First Mortgagee.**

PURCHASER'S FAILURE TO PROVIDE FINANCIAL INFORMATION OR TO PROCURE NEEDED FINANCING

2.03 Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that in the event that:

- a) **the Purchaser fails to submit the information, evidence and/or documents contemplated in Section 2.02(a)(i), (ii) and (iii) above within the time period(s) hereinbefore stipulated, and as often as the Vendor, the Vendor's solicitors or the First Mortgagee shall require, or if the information, evidence and/or documentation submitted pursuant to the foregoing provisions hereof [or provided to the Vendor, the Vendor's solicitors or the First Mortgagee pursuant to any other provision(s) of this Agreement, or any amendment or addendum with respect to same] is, in whole or in part, false or misleading;**
- b) **the Purchaser fails to disclose any relevant facts pertaining to the Purchaser's mortgage approval and/or the Purchaser's financial circumstances or abilities;**
- c) **the Purchaser requires a first mortgage loan in order to complete this transaction on an all-cash basis to the Vendor on the Closing Date, but has not obtained the requisite mortgage approval from the First Mortgagee or from any other financial institution or lender satisfactory to the Vendor in its sole, unfettered and unchallenged discretion, and has not provided the Vendor with a copy of the binding and unconditional mortgage loan commitment within 30 days after the date of the Purchaser's signed receipt of this fully executed Agreement (as contemplated in Section 2.02 (a)(iii) hereof) for any reason whatsoever; or**

- d) **the Purchaser was initially approved for the requisite mortgage loan by the First Mortgagee or such third party lender satisfactory to the Vendor, and subsequently such approval has been withdrawn or the loan amount has been reduced by the First Mortgagee or such third party lender at any time prior to Closing;**

then in recognition of the fact that the Vendor has held the Property off the marketplace because of this Agreement and the Purchaser's unqualified and unconditional commitment to complete this transaction on an all-cash basis to the Vendor on the Closing Date, the Purchaser shall be deemed to be in default in any of the foregoing circumstances noted in Section 2.03 (a) to (d) above, in which case the Vendor shall then have the unilateral right to either:

- i) **unilaterally declare this Agreement terminated**, by and upon giving written notice thereof to the Purchaser or the Purchaser's solicitor at any time prior to the Closing Date, whereupon:
- A. the Purchaser shall forthwith vacate the Property (or cause same to be forthwith vacated) if same has theretofore been occupied, and shall leave the Property in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser; and
 - B. all terms and provisions of this Agreement shall thereupon be null and void, and of no further force or effect, and all deposit monies theretofore paid [together with any monies paid for any extras, upgrades or changes requested to be made to any portion of the Property (hereinafter sometimes collectively referred to as the "Extras") which have theretofore been ordered, implemented and/or paid for by the Vendor] shall be immediately forfeited to (and retained by) the Vendor as its liquidated damages and not as a penalty (in addition to, and without prejudice to, any other rights or remedies available to the Vendor, either at law or in equity, as a result of the Purchaser's default, or the Purchaser's failure or inability to complete this transaction on an all-cash basis to the Vendor on Closing as hereinbefore contemplated), and in such circumstances the Vendor and the Agent shall not be liable for any costs or damages incurred by the Purchaser as a result of this Agreement or the termination thereof pursuant to the foregoing provisions hereof; **OR**
- ii) **take back a first mortgage from the Purchaser on the Closing Date** (which the Purchaser shall correspondingly be obliged to give to the Vendor) for the amount of any shortfall in the unpaid balance of the Purchase Price, drawn on the Vendor's standard form of mortgage (which is available for review at the Vendor's solicitor's office during normal business hours), having a term ranging between a minimum of 6 months to a maximum of 3 years in duration (to be determined by the Vendor at any time prior to the Closing Date in its sole and unfettered discretion, which shall not be open to question or challenge for any reason whatsoever), bearing interest at a fixed rate applicable for the aforementioned term of the mortgage ultimately selected or determined by the Vendor as aforesaid, equivalent to the annual rate of interest (calculated semi-annually, not in advance) charged by the Royal Bank of Canada at its head office in Toronto on first mortgage loans of a similar type and term, and on similar residential condominium properties, and quoted or established by said bank as at the later of the date of registration of the Condominium, and the sixtieth (60th) day prior to the Closing Date (hereinafter referred to as the "**First Mortgage Rate**"), with such mortgage to be repayable in blended monthly installments of principal and interest (plus 1/12th of the estimated annual realty taxes attributable to the Property, if so desired or required by the Vendor) based on a 25 year amortization period. Such mortgage shall contain provisions permitting the Vendor, in its capacity as the mortgagee, to exercise the right of the mortgagor to vote or to consent in all matters relating to the affairs of the Condominium, and shall provide that upon the sale, transfer or other disposition of the Property, the entire outstanding indebtedness secured thereunder shall, at the option of the mortgagee, become immediately due and payable. Such mortgage may also require that all payments thereunder be made by way of a series of post-dated cheques, or pursuant to a pre-authorized cheque plan, and shall contain such other provisions not contrary to the provisions of this Agreement as may be contained in the Vendor's standard form of mortgage document, which will be available for review at the offices of the Vendor's solicitors during normal business hours, incorporating standard charge terms filed by Dye & Durham Co. Limited as no. 200033 (or such other standard charge terms as the Vendor may desire to utilize or incorporate therein, from time to time). Should the Vendor elect to take back a first mortgage on Closing as aforesaid, then the Purchaser shall execute and deliver to the Vendor's solicitors before Closing all documents and assurances required to comply with the provisions of the *Family Law Act R.S.O. 1990, as amended* (so as to ensure that the mortgage security obtained can be lawfully enforced against the Property, if same comprises a matrimonial home), as well as any documents or instruments required to ensure that the full proceeds of any mortgage loan obtained by or on behalf of the Purchaser from any third party lender(s) to finance the purchase of the Property from the Vendor (in whole or in part) are paid directly to the Vendor on the Closing Date, without any abatement or set-off whatsoever.

PURCHASER'S OBLIGATION TO RETAIN A SOLICITOR

- 2.04 **The Purchaser shall be obliged to retain a solicitor** (who is both an authorized user of the Teraview Electronic Registration System, and in good standing with the Law Society of Upper Canada, and who has formally entered into an electronic land registration agreement with Her Majesty the Queen in Right of Ontario, as represented by the Director of Land Registration) to represent the Purchaser in connection with the completion of this purchase and sale transaction, and to correspondingly assist and advise the Purchaser on both the interim occupancy closing and the final closing of this transaction. **The Purchaser shall notify the Vendor or the Vendor's solicitor, in writing, of the name, address, phone number and telefax number of the Purchaser's retained solicitor, at least sixty (60) days prior to the Firm Occupancy Date**, unless such information regarding the Purchaser's solicitor is already indicated on page one of the Agreement to which this schedule is annexed. Should the Purchaser fail to provide such information to the Vendor or the Vendor's solicitor within said time period, then the Purchaser shall be obliged to pay to the Vendor's solicitors (or correspondingly reimburse the Vendor on the interim-occupancy closing date or final closing date, as the case may be, for) **all additional legal fees and ancillary disbursements (including without limitation, all additional administration, photocopying and delivery costs or charges) which may be incurred by the Vendor or charged by the Vendor's solicitors in order to prepare and deliver an interim or final closing package to the Purchaser initially (and/or to thereafter subsequently prepare and deliver another interim or final closing package to the Purchaser's solicitor)**, with the Vendor's solicitors' legal fees for implementing same being **\$500 plus HST** for each additional interim or final closing package, and with such fees being subject to increase, from time to time, without any requirement or obligation to notify the Purchaser of same prior to closing). If the Purchaser notifies the Vendor or the Vendor's solicitors of a change in the Purchaser's solicitor (ie. the Purchaser is retaining a different law firm) after the interim closing or final closing package (as the case may be) has already been prepared for the original Purchaser's solicitor, then the Purchaser shall likewise be obliged to pay an additional fee of **\$500 plus HST** to the Vendor's solicitor in order to reimburse the Vendor for its legal fees incurred in having to get a second interim closing or final closing package prepared for the subsequent Purchaser's solicitor. **The Purchaser's failure to remit, on the interim-occupancy closing date, or the final closing date (as the case may be) a separate certified cheque made payable to the Vendor's solicitors for such fees, shall constitute a default that automatically entitles the Vendor and the Vendor's solicitors to refuse to complete this transaction and to correspondingly refrain from providing occupancy of the Unit to the Purchaser, and/or to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's solicitor.**

MANNER OF TAKING TITLE AND REGISTRATION COSTS

- 2.05 a) **The Purchaser shall notify the Vendor's solicitors** as to the manner in which title to the Property is to be taken and the date(s) of birth and marital status of all persons taking title to the Property, and the address for service to be inserted in the transfer and in any mortgage documents herein provided for or contemplated, and in the event that the Purchaser fails to so notify the Vendor's solicitors **within fifteen (15) days after the Vendor's or the Vendor's solicitors' written request for same, or in any event at least sixty (60) days before the Firm Occupancy Date**, then the Vendor or the Vendor's solicitors shall be entitled to engross the Occupancy Agreement, as well as the deed or transfer of title to the Property, in the name of the Purchaser, as noted on page 1 of this Agreement (or in the event that a mortgage is being given by the Purchaser to the First Mortgagee to enable the Purchaser to complete this transaction on an all-cash basis to the Vendor on Closing, then in such other manner as the First Mortgagee may require), and the Purchaser agrees to accept the Occupancy Agreement and the aforementioned conveyance in such manner, and acknowledges that he or she shall be bound thereby and shall be estopped from requiring any further changes to the manner in which the Occupancy Agreement and/or the transfer/deed are so engrossed.
- b) Each party shall pay all costs of registration and taxes with respect to their respective documents.

PURCHASER'S MANDATORY INSURANCE

- 2.06 a) The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium, unless subsequently altered or changed by the post-turnover board of directors) will not cover any floor coverings, nor any kitchen and bathroom countertops and appliances

whatsoever (whether originally installed by or on behalf of the Vendor, or otherwise), and will not cover any betterments or improvements made by or on behalf of the Purchaser to the Unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly **the Purchaser shall be obliged to obtain and maintain, at the Purchaser's sole cost and expense, throughout the entire period of the Purchaser's occupation and/or ownership of the Unit, the following insurance coverage** [and shall provide proof of such insurance, together with evidence that the premium(s) for such insurance coverage has been fully paid, to the Vendor's solicitor, forthwith upon the latter's request for same made at any time (and from time to time) prior to the final closing of this transaction (and in any event such proof shall be given to the Vendor's solicitor on or before the interim-occupancy closing of this transaction)], namely:

- i) **All-risks insurance** that provides adequate coverage, on a replacement cost basis, in respect of all floor coverings, and all kitchen and bathroom countertops and appliances, and in respect of all additions, upgrades, betterments and/or improvements made to the Purchaser's dwelling unit (to the extent that same are not included as part of the standard unit for the class of unit to which the Purchaser's dwelling unit belongs, and correspondingly not covered by the master insurance policy obtained and maintained by the condominium corporation), together with property damage insurance for all furnishings, equipment, personal property and chattels of the Purchaser contained within his or her dwelling unit (or elsewhere within the Condominium property), including his or her automobile(s) and/or bicycle(s), as well as insurance for the loss of use and occupancy of the Purchaser's unit in the event of damage. Such policy or policies of insurance shall contain waivers of subrogation against the condominium corporation and its directors, officers, managers, agents, employees and designated representatives from time to time, and against all other unit owners (and any residents, tenants, invitees or licensees of such other units), except for any damage arising from (or in connection with) any vehicle impact, arson, fraud, vandalism or malicious mischief caused or contributed by any of the aforementioned parties or individuals;
 - ii) **Public liability insurance** (providing coverage of not less than \$2 million dollars per occurrence), covering the liability of any owner (including any resident, tenant, invitee or licensee of such owner's unit), to the extent that any damage occasioned to any other unit(s) or to the common elements, or to any personal property situate within any other unit(s) or the common elements, is not covered by any public liability and/or property damage insurance obtained and maintained by the condominium corporation; and
 - iii) **Insurance covering any deductible amount** under the condominium corporation's master insurance policy, that is payable by a unit owner, or for which a unit owner may be responsible for reimbursing the condominium corporation pursuant to the provisions of the declaration or by-laws of the condominium corporation.
- b) The Purchaser also acknowledges being advised by the Vendor that **the following insurance coverage is recommended to be obtained** by each unit owner, at each unit owner's sole cost and expense, although same is not mandatory, namely:
- i) Insurance covering additional living expenses incurred by an owner, if forced to leave his or her dwelling unit by one of the hazards protected against under the condominium corporation's insurance policy or under the owner's personal insurance policy;
 - ii) Insurance covering any special assessments levied against an owner's unit by the condominium corporation; and
 - iii) Contingent insurance coverage, in the event that the condominium corporation's insurance is inadequate to fully cover any particular damage or injury involving or otherwise affecting any owner and/or his or her unit.

CHANGES TO CLOSING PACKAGE(S)

2.07 In the event that the Purchaser desires to:

- a) increase the amount to be paid to the Vendor's solicitors on the Firm Occupancy Date or the Delayed Occupancy Date, as the case may be [as set out in paragraph 1(a)(iv) on page 1 of this Agreement] at any time after the expiry of the initial 10 day statutory rescission period;
- b) vary the name(s) or manner in which the Purchaser has previously requested to take title to the Property;
- c) add or change any parking and/or locker unit(s) being acquired from the Vendor;
- d) change his or her solicitor; and/or
- e) change any other information or any documentation reflected in (or comprising part of) the interim closing package or final closing package that is prepared by the Vendor's solicitor;

but fails to inform the Vendor's solicitor regarding any of the foregoing changes prior to the time that the interim closing package or final closing package (as the case may be) has been completed (even if the package has not yet been forwarded to, or received by, the Purchaser or the Purchaser's solicitor), then the Purchaser shall be obliged to reimburse the Vendor, on either the Firm Occupancy Date or on the final closing date, for the Vendor's processing costs [inclusive of any legal fees and ancillary disbursements which may be incurred by the Vendor and/or charged by the Vendor's solicitors in order to revise the interim closing package or final closing package (or any portion thereof) and/or to reproduce and resend the interim closing package or final closing package (or any portion thereof) as the case may be, to the Purchaser or the Purchaser's solicitor], **but without there being any obligation whatsoever on the part of the Vendor (or the Vendor's solicitors) to approve of, or to implement, any such changes so requested by the Purchaser, and with such processing fees of the Vendor (inclusive of the Vendor's legal fees and ancillary disbursements charged in connection therewith) to be \$750.00 plus HST for each interim or final closing package so revised, reproduced or re-sent.**

TERMS OF INTERIM OCCUPANCY

- 2.08 a) **If the Property is substantially completed sufficient to permit lawful occupancy thereof by the Firm Occupancy Date** or the Delayed Occupancy Date (as the case may be), then provided that the Purchaser has satisfied the Vendor on or before said date as to the Purchaser's ability to complete this transaction on an all-cash basis to the Vendor on the Closing Date as hereinbefore provided or contemplated [and the Purchaser has correspondingly complied with the obligations set out in Section 2.02 (a) hereof, or such obligations have been expressly waived in writing by the Vendor], or alternatively, provided that the Vendor has agreed to take back a first mortgage on the Closing Date as hereinbefore provided or contemplated, **then in either of such events the Purchaser shall pay to the Vendor as a further deposit the sum set forth in paragraph 1(a)(iv) on page 1 of this Agreement, and shall take occupancy of the Property thereon as a monthly tenant**, at a monthly rental or occupancy fee paid monthly in advance, determined in accordance with the provisions of Section 2.08(c) hereof, and said monthly occupancy fees or rental payments shall not be credited as payments towards (nor on account of) the Purchase Price. In such case, the Purchaser covenants and agrees that save and except as otherwise provided or contemplated in Section 2.09 (a)(i) hereof, only the Purchaser and/or members of the Purchaser's immediate family exclusively **shall personally occupy the Property, and shall do so within fourteen (14) days from the Firm Occupancy Date** or the Delayed Occupancy Date (as the case may be) and shall continue to personally occupy the Property until the entire Purchase Price has been fully paid to the Vendor or the Vendor's solicitors, unless such requirement has been expressly waived in writing by the Vendor.
- b) **In the event that the Vendor is unable to register the Creating Documents within 14 months after the Firm Occupancy Date**, then the Purchaser shall have the unilateral right and option of terminating this Agreement by notice in writing given to the Vendor or its solicitors, and which notice shall terminate the Occupancy Agreement effective the last day in the month following the month in which said notice is given, provided however that no such notice or right to terminate can be given or exercised by the Purchaser after the date that the Condominium has been registered under the Act. If the Purchaser chooses to exercise such right of termination in the foregoing circumstances, then upon the Purchaser vacating the Property (and leaving same in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser), the Purchaser shall be entitled to the return of his or her deposit monies (inclusive of all monies paid for extras and/or upgrades), together with interest accrued thereon at the rate prescribed by the Act.

c) **The monthly rental or occupancy fee to be charged by the Vendor for the Purchaser's occupancy of the Property**, from and after the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), to the Closing Date, shall be the maximum amount allowed under Section 80(4) of the Act [equivalent to the aggregate of the following three components, namely: interest at the rate prescribed by the Act, calculated on a monthly basis on the unpaid balance of the Purchase Price (if any) payable and owing to the Vendor after the interim occupancy closing of this transaction; an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable to the Property; and the projected monthly common expense contributions in respect of the Property]. Section 19(1) of O.Reg. 48/01 confirms that for the purpose of computing the interest component of the aforementioned occupancy fee, the prescribed rate of interest under the Act shall be the rate of interest that the Bank of Canada has most recently reported as the chartered bank administered interest rate for a conventional one year mortgage, established or determined as of the first of the month in which the Purchaser assumes (or is required to assume) interim occupancy of the Property. However, for ease of administration purposes, it is understood and agreed that with respect to calculating the interest component of the occupancy fee payable by the Purchaser, the Vendor shall be entitled to utilize the Bank of Canada's reported chartered bank administered interest rate for a conventional one year mortgage, established as of the first of the month immediately preceding the month in which the first interim occupancy closing occurs in this Condominium, and which interest rate figure shall be utilized for calculating the interest component of the occupancy fee for all unit purchasers completing an interim occupancy closing with the Vendor, on the express understanding and agreement that all occupancy fees so paid by the Purchaser shall be re-adjusted between the parties hereto on the Closing Date, if necessary, in order to take into account any variance or discrepancy between the prescribed rate of interest and the rate of interest utilized by the Vendor as aforesaid. It is also expressly agreed that the "deemed re-investment" principle, and its corresponding requirement of an "interest factor", shall not apply to the calculation of the monthly interest component of the occupancy fee. It is further acknowledged and agreed that the common expense component of the occupancy fee shall likewise be re-adjusted between the parties hereto on the Closing Date, if necessary, in order to take into account any variance between the projected monthly common expense contributions in respect of the Property, and the final monthly common expense contributions attributable to the Property as set out in (or as confirmed by) the final first year budget statement in respect of the Condominium. Finally, in accordance with the provisions of subsections 80(8) and (9) of the Act, the realty tax component of the occupancy fee shall be re-adjusted between the parties hereto after the Closing Date, once the final realty taxes (incorporating or reflecting both a land and building value assessment) assessed against the Property (together with all supplementary taxes in connection therewith, if any, which may be assessed and applicable for the balance of the calendar year in which the Closing Date has occurred) have been finally determined or established by the tax department of the local municipality in which the Lands are situate, in order to take into account any variance between the estimated realty taxes attributable to the Property, and the final assessed realty taxes in respect of same. Such re-adjustment with respect to the realty tax component of the occupancy fee shall occur within 60 days following the Vendor's receipt of the final realty tax bill issued in respect of the Property (together with all applicable supplementary tax bills issued in respect of same, for the balance of the calendar year in which the Closing Date has occurred). To facilitate such last-mentioned re-adjustment, the Purchaser shall be obliged to forthwith deliver to the Vendor a copy of the final realty tax bill issued in respect of the Property (including all supplementary tax bills issued in respect of same for the balance of the calendar year in which the Closing Date has occurred) so received by the Purchaser from the tax department of the local municipality, forthwith following the Purchaser's receipt of same. In the event that realty taxes are only assessed against the dwelling unit comprising part of the Property, then the dwelling unit being purchased hereunder shall be deemed and construed to be the Property, for the purposes of construing the foregoing provisions hereof pertaining to the re-adjustment of the realty tax component of the occupancy fee. The Purchaser further agrees to effect and complete any re-adjustment with the Vendor (whether with respect to any of the components of the occupancy fee, or otherwise) within 30 days of being requested to do so by the Vendor.

2.09 a) **The Purchaser's occupancy** as a monthly tenant shall be based on the terms and conditions of the Vendor's standard form of occupancy agreement (hereinbefore and hereinafter referred to as the "**Occupancy Agreement**"), a copy of which is available for review at the sales office or at the offices of the Vendor's solicitor during normal business hours. The Purchaser shall execute the Occupancy Agreement prior to possession of the Property being given to the Purchaser, and same shall provide, inter alia that:

- i) Unless and until the Purchaser has executed a schedule to this Agreement entitled "Schedule "L" - Permission to Lease Dwelling Unit", and has correspondingly entered into a rental management agreement with the Vendor's designated leasing agent, namely Del Rentals, in order to have a third party tenant so approved by Del Rentals occupy the Unit for residential purposes, then only the Purchaser and/or members of the Purchaser's immediate family shall use and occupy the Property for residential purposes exclusively, in accordance with the provisions of the proposed Condominium Documents. In the event that the Purchaser is a corporation, any officer or director of the Purchaser and his or her immediate family shall be permitted to use and occupy the Property for residential purposes only, provided that on or before the Firm Occupancy Date, the Purchaser delivers to the Vendor's solicitor a certificate of incumbency executed by an officer of the Purchaser certifying the identity of all officers and directors of the Purchaser, accompanied by a statutory declaration sworn by the said officer or director who intends to personally reside within the Property confirming the names or identity of all other individuals intending to reside therein and that same are members of his or her immediate family.
- ii) The Purchaser shall maintain the Property in a clean and proper condition, and shall make no alterations of any nature or kind whatsoever to the Property (or any portion thereof) without obtaining the prior written approval of the Vendor thereto, and which approval may be arbitrarily withheld, and the Purchaser shall conform with all other obligations set forth in the Occupancy Agreement;
- iii) The Purchaser shall not have the right to assign or sublet the aforementioned tenancy or occupancy of the Property without obtaining the prior written consent of the Vendor thereto (which consent may be arbitrarily withheld), and without having entered into a rental management agreement with the Vendor's designated leasing agent (namely Del Rentals) prior to entering into any assignment or subletting of the aforementioned tenancy in respect of the Property, and in such case, the Purchaser acknowledges that he or she will no longer qualify for the new housing rebate applicable pursuant to section 254 of the *Excise Tax Act, S.C. 1990, as amended*, and will accordingly be charged in the statement of adjustments with an amount equivalent to the aforementioned rebate [on the express understanding that the Purchaser may nevertheless still be entitled to pursue, on his or her own behalf after the Closing Date, the new residential rental property rebate directly with the Canada Revenue Agency, pursuant to section 256.2 of the *Excise Tax Act*, which section was deemed to come into force on February 28th, 2000];
- iv) The Purchaser shall, from and after the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), pay all telephone, cable television and other charges and expenses billed directly to the owner of the Property by the supplier of such services, unless same are included as a proposed common expense;
- v) The Purchaser shall be responsible for all damages to the Property and to the common elements, caused by the Purchaser (or by any member of the Purchaser's family residing within the Unit), or by any agents, servants, workmen, invitees and/or licensees of the Purchaser (or of any member of the Purchaser's family residing within the Unit). The Purchaser shall reimburse the Vendor for the cost of repairs in respect of any such damage, and shall indemnify and save the Vendor harmless from and against all costs, damages and liabilities suffered or incurred by the Vendor in having to restore the Property to the condition existing before the possession of the Property was granted to the Purchaser; and
- vi) In the event of any physical damage to the Condominium or the Property (or to any portion thereof) caused by fire, explosion, flood, lightning, tempest, act of God, act of war or act of terrorism, or by any other insurable peril occurring prior to the commencement of the Purchaser's occupancy of the Unit, or during the period of the Purchaser's occupancy thereof which renders the Unit uninhabitable, then it is understood and agreed that:
 - A. if any such damage can be substantially repaired within one (1) year from the date of the damage occurring, as determined jointly by the Vendor and the project architect acting reasonably (and which determination shall be final and binding on the parties hereto, and not subject to challenge or appeal under any circumstances whatsoever), then such damage shall be deemed and construed to constitute an "Unavoidable Delay", as such term is defined in section 12 of the Tarion Addendum, in which case the provisions pertaining to Unavoidable Delay and the corresponding extension of the Firm Occupancy Date or Delayed Occupancy Date (as the case may be) outlined in the Tarion Addendum shall apply and prevail in such circumstances, and if the Purchaser has already taken possession of the Unit at the time of such damage, then the Purchaser's existing occupancy of the Property shall thereupon be temporarily suspended for the duration of the Unavoidable Delay Period (as such term is defined in section 12 of the Tarion Addendum), and the monthly rental or occupancy fees so payable by the Purchaser to the Vendor shall correspondingly be abated and suspended during and throughout the Unavoidable Delay Period; and
 - B. if the Vendor's construction lender elects to appropriate all (or substantially all) of the available insurance proceeds (if any) so triggered by such damage to reduce, *pro tanto*, the Vendor's outstanding indebtedness to it, and/or is unwilling to lend or advance any monies required to rebuild and/or repair such damage, or if such damage cannot be substantially repaired within one (1) year from the date of the damage occurring, as

determined jointly by the Vendor and the project architect acting reasonably (and which determination shall be final and binding on the parties hereto, and not subject to challenge or appeal under any circumstances whatsoever), then in either case such damage shall be deemed and construed for all purposes to have frustrated the completion of this transaction and this contract, and if the Purchaser has already taken possession of the Unit at the time of such damage, then the Purchaser's existing occupancy of the Property shall thereupon be forthwith terminated, and all monies paid by the Purchaser on account of the Purchase Price (inclusive of all monies paid to the Vendor for extras and/or upgrades) shall be fully refunded to the Purchaser, together with all interest accrued thereon at the prescribed rate, and the Vendor shall not be liable for any costs and/or damages incurred by the Purchaser thereby whatsoever, whether arising from (or in connection with) the termination of the Purchaser's existing occupancy of the Property, or the termination of this transaction, by virtue of the frustration of this contract occurring through no fault of the Vendor.

- b) In an effort to ensure that there are no outstanding executions against the Purchaser (or against a person with a name similar to, or identical to, that of the Purchaser) which might impede any third party financing sought or obtained by the Purchaser in order to facilitate the Purchaser's completion of this transaction on an all-cash basis to the Vendor on the Closing Date, it is expressly understood and agreed that on **the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), the Purchaser shall deliver to the Vendor's solicitors a clear and up-to-date execution certificate** in respect of the Purchaser's name from the Land Titles Office in which the Lands are registered, and if a clear execution certificate cannot be obtained from the said Land Titles Office because of any outstanding execution(s) filed against a person or persons with a name similar or identical to that of the Purchaser, then in lieu thereof the Purchaser shall be obliged to deliver to the Vendor's solicitors the execution certificate showing the outstanding execution(s) together with an unequivocal and unqualified statutory declaration duly sworn by the Purchaser's solicitor, confirming that the Purchaser is not one and the same person as the judgement debtor named in the said execution(s) [and shall also provide such other information and documentation as the Vendor's solicitors may reasonably require in order to be satisfied, in the Vendor's solicitor's sole and unchallenged discretion, that the Purchaser is not one and the same person as the particular execution debtor named in the outstanding execution, including without limitation, the delivery to the Vendor's solicitors of an execution abstract or summary providing details of all such outstanding executions, as issued and certified by the Sheriff at the Land Titles Office in which the Lands are registered. If the Purchaser's mortgage approval (for a loan secured by a mortgage to facilitate the Purchaser's completion of this transaction on an all-cash basis to the Vendor) is dependent upon one or more guarantors/covenantors agreeing to guarantee the Purchaser's obligations in respect of any such mortgage, then in addition to the foregoing, the Purchaser shall be obliged to deliver to the Vendor's solicitors, on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), a clear and up-to-date execution certificate in respect of each guarantor's/covenantor's name, and the foregoing provisions of this subparagraph shall apply, *mutatis mutandis*, to any such guarantor(s)/covenantor(s). **In addition, the Purchaser agrees to deliver to the Vendor's solicitors on or before the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be):**
- i) **three (3) copies of the Occupancy Agreement** signed by the Purchaser named on page one (1) of the Agreement to which this schedule is annexed (and with all signatures of the individuals comprising the Purchaser being duly witnessed), **together with a series of six (6) post-dated cheques** (or such greater number as the Vendor may require), each in the amount of the said monthly rental or occupancy fee, for the next six (6) months (or more) immediately following the Stub Period (as hereinafter defined);
 - ii) **a certified cheque** for the occupancy fee with respect to the period between the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), and the last day of the month following the month in which the interim occupancy closing of this transaction has occurred or transpired (hereinafter referred to as the "**Stub Period**");
 - iii) **an irrevocable direction to the Vendor confirming the manner in which the Purchaser wishes to take title** to the Property (which direction shall be subject to the overriding approval of the Vendor and the First Mortgagee), accompanied by the date of birth and social insurance number of each person taking title to the Property, and supported by a copy of their respective birth certificates (issued by the Department of Vital Statistics), if so requested by the Vendor. It is further understood and agreed that if the Purchaser fails to deliver the irrevocable direction at such time, then the Purchaser shall be deemed to have agreed to accept title to the Property in the name(s) that the Purchaser is identified or described in this Agreement (or in any amending agreement or addendum thereto), and thereafter the Purchaser shall not be entitled to request any further changes to the name(s) or manner in which title is to be taken; and
 - iv) **any other documents or instruments (including without limitation, any directions, acknowledgments, affidavits, declarations and/or undertakings)** which the Vendor's solicitor reasonably requires or requests from the Purchaser or the Purchaser's solicitor in order to complete this purchase and sale transaction in accordance with the terms and provisions hereof.
- c) The Purchaser acknowledges and agrees that in the event this Agreement is terminated, other than by way of the final closing of the purchase and sale transaction contemplated hereunder, then the provisions of section 58(1)(4) of the *Residential Tenancies Act S.O. 2006, as amended*, shall apply with respect to the termination of the tenancy between the Vendor and the Purchaser as hereinbefore provided.

METERING OF SERVICES / HEATING & COOLING SYSTEM

- 2.10 The details regarding the metering of water, electricity and/or gas service to this Condominium (and the corresponding responsibility for the payment of same), together with the particulars of the heating and cooling system servicing this Condominium (and each of the dwelling units therein), are more particularly described in Section 2.10 of Schedule "AA" annexed hereto.

NOISE WARNING AND OTHER SPECIAL NOTICES

- 2.11 a) The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed, from time to time, by any of the Governmental Authorities, and that the proximity of the Condominium to any nearby roadways, highways, subways (and corresponding transit operations) and/or railway tracks and lines (and corresponding railway operations, over which trains and other railway traffic may travel), as well as any nearby industrial, commercial/retail or office buildings, any nearby public park (which may or may not contain playground facilities for children), and/or any nearby hydro sub-station or hydro corridor (which may contain extensive overhead hydro towers, hydro lines and transformers, etc.), and to any other specific sources of excessive noise and/or vibration, as more particularly described in Section 2.11(a) of Schedule "AA" annexed hereto (if applicable), may result in noise and/or vibration transmissions to (or otherwise affecting) the Lands or any portion thereof, and may cause the noise exposure and/or vibration levels affecting the Lands to exceed the noise/vibration criteria established by the Governmental Authorities, and that despite the inclusion of noise control features within the Condominium, noise levels and vibration from any of the aforementioned sources may continue to be of concern, occasionally interfering with some activities of the dwelling occupants in the Condominium. The Purchaser nevertheless agrees to complete this transaction in accordance with the terms hereof, notwithstanding the existence of such potential noise and/or vibration concerns, and the Purchaser further acknowledges and agrees that a noise-warning clause similar to the preceding sentence (subject to amendment or enlargement by any wording or text recommended by the Vendor's noise consultants or by any of the Governmental Authorities) may be registered on title to the Lands on the Closing Date, if, in fact, same is required by any of the Governmental Authorities. Without limiting the generality of the foregoing, the Purchaser specifically acknowledges that the following noise warning clause has been inserted in this Agreement, at the request of the Governmental Authorities, namely: "**Purchasers are advised that despite the inclusion of noise control features in this development and within the condominium dwelling units, noise, sound and/or vibration levels from increasing vehicular traffic on nearby streets and/or nearby bus, subway and/or streetcar transit operations or nearby railway lines (and corresponding railway operations), may continue to be of concern, occasionally interfering with some activities of the dwelling occupants. Each of the dwelling units in this Condominium have been (or will be) supplied with a central air conditioning system, which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the Municipality's and the Ministry of Environment's noise criteria. Additional Warning: The Canadian National Railway Company, or its assigns or successors in interest, and/or the Canadian Pacific Railway Company, or its assigns or successors in interest, has (or may have) a right-of-way within 300 metres from the Lands. There may be alterations to or expansions of the rail facilities on such right-of-way in the future, including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and/or vibration attenuating measures in the design of the condominium development and individual dwellings. CNR and/or CPR shall not be responsible for any complaints or claims arising from the use of such facilities and/or operations on, over or under the aforesaid right-of-way.**"

- b) In addition to any special notices, warnings and/or provisions which the Vendor wishes to bring to the Purchaser's attention, and which may be set out in Section 2.11(b) of Schedule "AA" annexed hereto (if applicable), the Purchaser is hereby advised that:
- i) the City (through the auspices of its local transit commission or authority) operates (or may operate) a surface bus route system and/or a subway system adjacent to (or in the neighbouring vicinity of) the Lands, and that there may be alterations to (or expansions of) the aforementioned bus route and/or subway line and their appurtenant facilities and operations in the future, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and/or vibration attenuating measures in the design of the Condominium and the individual dwelling units, and that the City shall not be responsible for any complaints or claims arising from the use of its surface bus route and/or subway transit facilities and/or operations adjacent to the Lands;
 - ii) some activities which may be carried out by the City and/or the local public transit commission or authority (hereinafter sometimes referred to as the "Transit Authority") in connection with the ordinary operation of the Transit Authority's transit facilities situate within (or operated within) the neighbouring vicinity of this Condominium, may generate noise, vibrations, odours, omissions, dust, etc., as well as electro-magnetic interference and/or stray currents, which may affect the Lands and be transmitted into the building(s) developed thereon, and may correspondingly create some inconvenience, interference or disturbance to the residents of this Condominium, and that despite the foregoing, neither the Condominium, nor any unit owners or residents within this Condominium, shall be entitled to any compensation from the City and/or the Transit Authority arising from (or in connection with) any such resulting inconvenience, interference or disturbance, nor make, initiate or pursue any claim or cause of action against the City and/or the Transit Authority for damages arising from (or pertaining to) any noise, vibrations, odours, omissions (including smoke or exhaust), electro-magnetic interference and/or stray currents now or hereafter affecting the Lands, this Condominium and/or the owners or residents of this Condominium, and the City and the Transit Authority accept no responsibility or liability for any such effects;
 - iii) noise and vibration levels caused by the Condominium's bank of elevators, garbage chutes, electrical room(s), mechanical equipment, move-in bays and ancillary moving facilities and areas, and by the Condominium's indoor and/or outdoor recreation facilities (if applicable), may occasionally cause noise, vibrations and/or inconvenience to the dwelling occupants;
 - iv) as and when other units (and/or any exclusive use common element areas) in this Condominium are being completed and/or moved into, excessive levels of noise, vibration, dust and/or debris are possible, and same may accordingly temporarily cause noise and inconvenience to the dwelling occupants; and
 - v) at the point in time when the dwelling unit being acquired by the Purchaser hereunder is required to be occupied by the Purchaser in accordance with the foregoing provisions hereof, there still may be outstanding construction and/or finishing work to be undertaken thereafter by the Vendor to portions of the exterior and/or interior of the condominium building, which may require the continued placement and use of an exterior hoist (for hauling or conveying construction materials, workers and/or debris) that is temporarily anchored to the exterior facade of the building, immediately outside of or near the Purchaser's dwelling unit, which in turn may block or obstruct the Purchaser's view to the outside and/or give rise to an increase in noise and/or vibration levels during construction hours (between 7:00 a.m. and 7:00 p.m.) pending the completion of all construction and finishing work in respect of the Condominium, which obstruction of view, noise and/or vibration may be of concern to the Purchaser and which may interfere with some activities of the dwelling occupants;

and it is expressly understood and agreed that despite the foregoing, the Purchaser shall not make or pursue any claim against the Vendor (or any other party) for compensation, an abatement in the purchase price (or the occupancy fees so payable), for damages or otherwise, nor initiate or pursue any claim, action or proceeding against the Vendor (or any other party) by reason of the foregoing noise and/or vibration sources, concerns, obstruction of view and/or any inconvenience to the Purchaser caused thereby, including any proceeding to enjoin or restrain any of the foregoing activities which may cause any such noise, vibration, obstruction of view and/or inconvenience.

- c) If the Unit has the benefit of an outdoor terrace or rooftop terrace as an appurtenant exclusive use common element area (pursuant to Schedule "F" of the declaration of the Condominium), then the Purchaser as unit owner shall be responsible for maintaining all of the landscaping materials (including plants, soil materials, fencing, stones, etc.) in accordance with the provisions of the declaration, at the Purchaser's sole cost and expense, on the express understanding that with respect to any such landscaping materials that have been originally installed by the Vendor and are inaccessible by the Purchaser (or difficult to reach), the Purchaser as unit owner shall be obliged to notify the condominium corporation of any needed or desired maintenance work with respect thereto, and the condominium corporation's authorized agents, representatives or retained contractors shall thereafter carry out such maintenance work, at the sole cost and expense of such owner.
- d) The Purchaser acknowledges and agrees that equipment owned or used by or on behalf of the Declarant and/or the Condominium may, from time to time, be temporarily attached to the exterior of the Unit, and/or to any exclusive use common element areas appurtenant thereto, for the purposes of facilitating the Condominium's maintenance and repair of any exterior windows and other exterior building components of the Condominium, and to affix exterior marketing banners or signs [including without limitation, a davit arm and appurtenant cables (utilized to affix a swing stage and window washing scaffolding) and/or other similar equipment, mechanisms and/or apparatus], and the Purchaser hereby expressly consents to such attachment and affixation.
- e) The Purchaser is further advised that the City or any other Governmental Authorities may impose restrictions on traffic turning into and/or out of the Condominium, and the Purchaser agrees to accept any such restrictions, and to abide by same.
- f) The Purchaser also acknowledges and agrees that each dwelling unit within this Condominium shall be occupied and used only for residential purposes, and shall not be used for the business of providing transient residential accommodation on a furnished and/or unfurnished suite basis (with or without ancillary maid, cleaning and/or laundry services) through short term or long term licence/lease arrangements, unless:
 - i) such use is permitted in accordance with the provisions of the applicable zoning by-laws of the City pertaining to the Lands, as amended from time to time; and
 - ii) such use is expressly permitted or authorized in Section 2.11(f) of Schedule "AA" annexed hereto;

provided however that the foregoing shall not prevent or in any way restrict the Vendor, while owning and seeking to sell any of the dwelling units in this Condominium, from utilizing any of the units (or proposed units) and/or any common element areas in this Condominium for the purposes of creating and/or maintaining a sales office and/or a customer-service office, advertising signs, and model suites for display purposes, until such time as all of the dwelling units in this Condominium (or all of the dwelling units in any adjacent or neighbouring condominium being developed by the Vendor, if applicable), or such lesser number as the Vendor may determine in its sole and unfettered discretion, have been sold, conveyed and transferred by the Vendor to each of the respective unit purchasers thereof.

- g) It is further acknowledged that one or more of the Development Agreements [as defined in Section 4.01(c) hereof] may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines or airports. The Purchaser agrees to be bound by the contents of any such notice(s), whether given to the Purchaser at the time that this Agreement has been entered into, or at any time thereafter up to Closing, and the Purchaser further covenants and agrees to execute, forthwith upon the Vendor's request, an express acknowledgement confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the Development Agreements, if and when required to do so by the Vendor.
- h) The Purchaser is hereby advised that both the public and separate elementary, middle and secondary schools within the neighbouring vicinity of the Condominium are at (or are nearing) full capacity, and accordingly may not have sufficient space and/or permanent facilities in the future to accommodate new pupils anticipated from the dwelling units in this Condominium. There is no guarantee when or if a new school in the neighbouring vicinity of the Condominium will be built, and therefore students residing in the Condominium may have to be accommodated in portables, or bused to existing schools outside the area. In addition to any other specific warnings or notices pertaining to local schools, students and/or bussing issues which, if applicable to

this Condominium, shall be set out in Section 2.11(h) of Schedule "AA" annexed hereto, the Purchaser is also hereby advised that the local or district school board (in the region or jurisdiction within which this Condominium is situate) has requested that the Vendor advise and notify all prospective unit purchasers that:

- i) while the local or district school board makes every effort to accommodate students locally, due to residential growth, sufficient accommodation may not be available within the neighbouring vicinity or area of the Condominium for all students, and accordingly students may be accommodated in facilities outside of said vicinity or area until adequate funding or space becomes available; and
 - ii) if bussing is provided by the local or district school board in accordance with the board's policy, students will not be bussed (nor picked up and/or dropped off) directly from their home or the Condominium to the school, but rather will have to meet the bus at designated locations in or outside of the area or neighbouring vicinity of the Condominium.
- i) Door-to-door mail delivery will not be available to the residents of this Condominium. Instead, mail must be picked-up from super mailboxes or from one or more mail kiosks situate within the confines of the Condominium.
- j) Residents of the Condominium are absolutely prohibited from altering or interfering with the slope of the Lands and/or the grading and drainage patterns established by the Vendor with respect to the Lands and/or the Condominium, and from interfering with any drains installed or established on the Lands, and from altering the width of any driveways situate within the Lands (except in accordance with the approved lot grading plan and the building siting control plan), without the prior written consent of the City, and the Condominium shall maintain any such alterations so approved by the City. Subject to the provisions of the declaration, by-laws and rules of the Condominium in force from time to time, residents shall not place any fence, shrub, bush, hedge or other landscaping treatment on any portion of the common elements (including any portion of the unpaved municipal road allowance adjacent to the Condominium).
- k) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after Closing, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act and the provisions of the declaration, by-laws and/or rules of the Condominium in force from time to time.
- l) The Vendor reserves the right to increase or decrease the final number of dwelling, parking, locker, service and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the dwelling units ultimately comprised within the Condominium which have not yet been sold by the Vendor to any unit purchaser(s), all in the Vendor's sole and unchallenged discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the dwelling/parking/locker/service and/or other ancillary unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the dwelling, parking and/or locker units sold by the Vendor to the Purchaser pursuant to this Agreement and any addendum thereto. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more dwelling units situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall dwelling unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- m) The Purchaser hereby acknowledges and agrees that the Vendor cannot guarantee (and will not be responsible for) the arrangement of a suitable move-in time for purposes of accommodating the Purchaser's occupancy of the Unit on the Firm Occupancy Date, the Delayed Occupancy Date or the Closing Date, as the case may be, and that the Purchaser shall be solely responsible for directly contacting the Vendor's customer service office or representative in order to make suitable booking arrangements with respect to the Condominium's service elevator, if applicable (with such booking being allotted on a "first come, first served" basis), and under no circumstances shall the Purchaser be entitled to any claim, refund, credit, reduction/abatement or set-off whatsoever against any portion of the Purchase Price, or against any portion of the common expenses or other adjustments with respect thereto (nor with respect to any portion of the monthly occupancy fees so paid or payable, if applicable) as a result of the service elevator not being available to accommodate the Purchaser moving into the Condominium on (or within any period of time after) the Firm Occupancy Date, the Delayed Occupancy Date or the Closing Date, as the case may be.
- n) **All unit purchasers are hereby advised that private driveway windrow clearing and sidewalk snow clearing will not be provided by the City for streets with less than 18.5 metre rights of way and/or with sidewalks adjacent to the curb.**

CONFIRMATION OF PURCHASER'S DATE OF BIRTH AND SOCIAL INSURANCE NUMBER

2.12 The date of birth of each individual constituting the Purchaser is required in order to complete and register the deed/transfer of the Property from the Vendor to the Purchaser. In addition, since the purchase of a proposed condominium unit entitles the Purchaser to receive (or obtain a credit in the statement of adjustments for) interest at the rate prescribed by the Act on all deposit monies paid on account of the purchase price prior to interim occupancy, the social insurance number or S.I.N. of each individual constituting the Purchaser (or alternatively the business registration number of the corporation constituting the Purchaser, where the Purchaser is a corporate entity) is required for the completion of the T-5 Interest Income Tax Information Return or the NR-4 Non-Resident Withholding Tax Information Return (where applicable). Accordingly, the Purchaser hereby agrees to provide the Vendor's sales representative with the Purchaser's date of birth and social insurance number (or business registration number, as the case may be) contemporaneous with the Purchaser's execution of this Agreement, so that such information can be inputted in the Vendor's secure data base, and to forthwith provide the Purchaser's date of birth and social insurance number at any time thereafter, forthwith upon the written request for same made by the Vendor or the Vendor's solicitor.

PURCHASER'S CONSENT TO THE COLLECTION AND LIMITED USE OF PERSONAL INFORMATION

2.13 The Purchaser covenants and agrees to provide to the Vendor all required personal information and documentation pertaining to each of the individuals and/or companies comprising the Purchaser needed to enable the Vendor and/or the Vendor's agent to fully comply with the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act S.C. 2000, as amended* (hereinafter referred to as "FINTRAC"), forthwith upon the Vendor's request for same, including without limitation, the name, current home address, date of birth, and the principle business or occupation of each individual or corporation comprising the Purchaser, along with a copy of a validly-issued birth certificate, or an unexpired drivers license, passport, or government-issued record of landing or permanent resident card (together with a copy of government-issued photo I.D. for each individual comprising the Purchaser, or for each officer and director of each company comprising the Purchaser), as well as a copy of the articles of incorporation, a current certificate of status, a current certificate of incumbency, and evidence of the power to bind the corporation to this Agreement, for each company comprising the Purchaser, and correspondingly required to objectively verify the identity of each such individual or corporation. It is further understood and agreed that if any deposit monies are provided to the Vendor or the Vendor's solicitors by (or drawn on the account of) someone other than the Purchaser, then the Purchaser shall also be obliged to forthwith provide the Vendor with all of the foregoing information and documentation pertaining to said other party, as may be required to comply with the provisions of FINTRAC, failing which the Vendor shall be entitled to refuse to accept such deposit monies or deposit cheque, and the Purchaser shall thereupon be considered in breach of its obligations hereunder. For the purposes of facilitating compliance with the provisions of any applicable Federal and/or Provincial privacy legislation (including without limitation, *the Personal Information Protection and Electronic Documents Act S.C. 2000, as amended*), the Purchaser hereby consents to the Vendor's collection and use of the Purchaser's personal information [including without limitation, the Purchaser's name, age, date of birth, marital status, home address, principal business or occupation, work address, e-mail address, telefax/telephone number (for home and work), and business registration number (where the Purchaser is a corporation), residency status, social insurance number (for the limited purpose described in subparagraph (i) below), and any other personal information of the Purchaser contained in any identification document pertaining to the Purchaser and disclosed to or on behalf of the Vendor, as well as the Purchaser's desired suite design(s) and colour/finish selections], in connection with the completion of this transaction and for any post-closing customer care issues and post-closing Tarion warranty services and repairs. The Purchaser also expressly consents and agrees to the disclosure and/or distribution of any or all of the aforementioned personal information

to any or all of the following entities, on the express understanding and agreement that the Vendor shall not sell or otherwise provide or distribute such personal information to anyone other than the following entities, namely to:

- a) any companies or legal entities that are related to or affiliated with the Vendor or Tridel Corporation (or any other companies marketed under the Tridel brand), including without limitation, Del Property Management Inc. (a property management company), Delsuites Inc. (a company specializing in short term accommodation arrangements on a furnished suite basis), Del Condominium Rentals Inc. (a rental management company), Del Realty Incorporated (a real estate broker providing residential real estate listing, selling and marketing services), Provident Energy Management Inc. (a company specializing in cost-effective and efficient energy management services), Del Management Solutions Inc. (a company providing real estate management solutions and related services) and Del Manor Seniors Communities Inc. (a company providing independent and assisted living accommodation and related services to seniors), as well as any other future condominium declarants that are likewise related to or affiliated with the Vendor or Tridel Corporation (or which are marketed under the Tridel brand) and are correspondingly developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;
- b) any real estate agent(s) and/or broker(s) who introduced the Purchaser to this Condominium and/or the Vendor and which introduction has culminated in an executed agreement of purchase and sale between the Purchaser and the Vendor in respect of the Unit (and to whom the Vendor has paid, or intends to pay, a real estate commission in connection with the completion of this purchase and sale transaction), and allowing said real estate agent(s) and/or broker(s) to access, through the Vendor's information service provider, a designated computer portal in order to keep track of the various suites and corresponding sale transactions in respect of which commissions are (or may be) due and payable or otherwise owing to them, and where limited information about the Purchaser and the status of this transaction (eg. information regarding the Purchaser's name, current address and phone number, purchase price, amount of deposits paid to date, the Purchaser's mortgage approval status, whether the suite has finally closed, etc.) will be available to them for the purposes of facilitating the Purchaser's completion of this transaction, and keeping track of when and how much commissions are (or may be) due and owing to them;
- c) one or more third party data processing companies which handle or process marketing campaigns and who may send (by e-mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser and/or members of the Purchaser's family;
- d) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, including without limitation, the Vendor's construction lender(s), the project monitor (eg. Altus Helyar Cost Consulting Ltd. or Altus Group Limited), the Vendor's designated take-out lender(s), Tarion and/or any warranty bond provider and/or excess condominium deposit insurer (eg. Travelers Insurance Company of Canada, or Aviva Insurance Company of Canada, etc.);
- e) any insurance companies providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, including without limitation, any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
- f) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor), to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- g) one or more providers of cable television, telephone, telecommunication, internet and/or security alarm services, as well as electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Condominium, including without limitation, any company or companies retained by the Declarant or the Condominium from time to time to read any check or consumption meter(s) for water, electricity and/or gas service that may be appurtenant to any of the dwelling units, on a periodic basis, and to correspondingly issue invoices to the respective dwelling unit owners for the cost of their consumption of water, electricity and/or gas service;
- h) any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (ie with respect to Land Transfer Tax), the Canada Revenue Agency (ie with respect to the HST), the Municipal Property Assessment Corporation (ie with respect to realty taxes), and the Financial Transactions & Reports Analysis Centre of Canada, also known as FINTRAC, and the Law Society of Upper Canada (ie. with respect to reporting any cash transactions and/or any client identification and verification particulars, as well as details of any client transactions, to assist the federal government and/or the Law Society in identifying potential fraudulent client activities or other criminal activities);
- i) Canada Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the *Income Tax Act R.S.C. 1985, as amended*;
- j) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, to Teranet Enterprises Inc. (under whose auspices the deed/transfer of title to the Purchaser is ultimately registered through the Teraview Electronic Registration System), and to eClose Guaranteed Inc. (under whose auspices any or all of the interim closing documents and/or final closing documents will be electronically transmitted over the eClose website, for review and retrieval/downloading by the Purchaser's solicitor); and
- k) the condominium corporation, for purposes of facilitating the completion of the corporation's voting, leasing and/or other relevant records, and to the condominium's property manager, for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions.

T-5 INTEREST INCOME TAX RETURN

- 2.14 The Purchaser acknowledges that the Vendor shall be obligated to issue to the Purchaser a T-5 interest income tax information return (in the prescribed form) pursuant to the provisions of Regulation 201(1)(b)(ii)B of the *Income Tax Act R.S.C. 1985, as amended*, in respect of any interest accrued to, or earned by, the Purchaser, pursuant to the terms and provisions of the Act and/or this Agreement.

NO OTHER REPRESENTATIONS

- 2.15 This offer, when accepted, shall constitute a binding agreement of purchase and sale. It is understood and agreed that there is no representation, warranty, collateral term or condition affecting this Agreement or the Property, or for which the Vendor or the owner of the Lands (or the Agent, or any sales representative) can be held responsible or liable in any way, whether contained, portrayed, illustrated or represented by (or in) any plan, drawing, brochure, display, model or any other sales/marketing material(s), or alleged against the Agent or any sales representative, other than as expressed herein in writing. **Without limiting the generality of the foregoing, it is understood and agreed by the parties hereto that the Purchaser shall not make or pursue any claim or proceeding against the Vendor, nor hold the Vendor responsible or liable in any way, either directly or indirectly (whether based or founded in contract law, tort law or in equity) for innocent misrepresentation, negligent misrepresentation or otherwise in respect of (or arising from) any statement, representation, warranty, collateral term or condition alleged to have been made by the Agent or any other sales representative (or by any other person alleged to represent the Vendor or purporting to bind the Vendor), save and except only for those representations of the Vendor specifically set forth in this Agreement.**

ARTICLE III - VENDOR'S OBLIGATIONS, RIGHTS AND OTHER MATTERS

SITE PLAN APPROVAL AND/OR MINOR VARIANCES BEING SOUGHT

- 3.01 The Purchaser acknowledges that the Vendor is (or may in the future be) processing and/or completing one or more minor variance applications with respect to the Lands (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as well as a site plan approval/development application with respect

to the Lands, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the minor variance and/or site plan approval process, the footprint or siting of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of dwelling units comprising the Condominium) may vary, and the location of the Condominium's proposed recreational facilities and amenities may likewise be altered, without adversely affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned minor variance and site plan/development applications, nor any other applications ancillary thereto, including without limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.

ONE OR MORE EXTENSIONS OF THE TENTATIVE OCCUPANCY DATE

- 3.02 If, in the Vendor's reasonable opinion, the Property will not likely be substantially completed by the First Tentative Occupancy Date to a stage sufficient to permit lawful occupancy thereof in accordance with the applicable requirements of the Governmental Authorities, then the Vendor may, in accordance with the provisions of the Tarion Addendum, unilaterally extend the First Tentative Occupancy Date (and any subsequent tentative occupancy date) on one or more occasions, for any period or periods of time not exceeding the Outside Occupancy Date.

ESTABLISHING THE FIRM OCCUPANCY DATE

- 3.03 a) The Vendor shall establish the Firm Occupancy Date in accordance with the provisions stipulated by the Tarion Addendum. The Tarion Addendum shall govern all matters pertaining to any changes to the Firm Occupancy Date (once set or deemed to be set), and any delays in the occupancy of the Unit, including any delayed closing compensation payable in connection therewith.
- b) As expressly permitted by the Tarion Addendum, the Vendor shall be entitled (but not obliged) to unilaterally extend the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) for one (1) Business Day, to avoid the necessity of tender, where the Purchaser is not ready, willing and able to complete the interim occupancy closing of this transaction on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), in accordance with the provisions of this Agreement (for example, where all the documents and certified funds required to be provided by the Purchaser or the Purchaser's solicitor in accordance with the provisions of this Agreement have not been delivered to the office of the Vendor's solicitor, or have been delivered late to the Vendor's solicitor, after 2:00 p.m. on the Firm Occupancy Date or the Delayed Occupancy Date, as the case may be). Any such extension for one (1) Business Day, if so granted or exercised by the Vendor, shall be evidenced and confirmed by notice in writing telefaxed or e-mailed by the Vendor's solicitor to the Purchaser's solicitor prior to 8:00 p.m. on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), in which case all adjustments shall remain as of the original Firm Occupancy Date or the Delayed Occupancy Date (as the case may be).
- c) It is understood and agreed that the Tarion Addendum does not restrict any extensions of the Closing Date (ie. the title transfer date), where occupancy of the Unit has already been given to the Purchaser (ie. pursuant to an earlier interim occupancy closing).

CONSTRUCTION MATTERS

- 3.04 a) The Purchaser acknowledges that the net suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, is approximate only, and is generally measured to the outside of all exterior, corridor and stairwell walls, and to the centre line of all party walls separating one dwelling unit from another. **NOTE: For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by Tarion. Actual useable floor space may vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space or net floor area within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor.** In addition, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium building for each suite type, such that units on lower floors may have less floor space due to thicker structural members, mechanical rooms, etc., while units on higher floors may have more floor space. **Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit, or the net floor area of the Unit or otherwise, regardless of the extent of any variance or discrepancy with respect to the area (either gross or net) of the Unit, or the dimensions of the Unit.** The Purchaser further acknowledges and agrees that the ceiling height of the Unit (which may or may not be outlined or represented in Schedule "B" to this Agreement, describing the suite features and finishes), shall be measured from the upper surface of the concrete floor slab to the underside surface of the concrete ceiling slab. However, where ceiling bulkheads are installed within the Unit, and/or where dropped ceilings are required (in areas such as foyers, hallways, closets, laundry rooms, storage rooms, bathrooms, powder rooms, dining rooms and/or kitchens), then the Purchaser acknowledges and agrees that the ceiling height of the Unit in such areas will be less than the represented height, and the Purchaser shall correspondingly be obliged to accept any such reduction in height without any abatement or claim for compensation whatsoever, regardless of the significance in the ceiling height reduction or the extent or significance of the bulkheads.
- b) The parties hereto agree that the Purchaser shall meet with the Vendor's representative at the date and time designated by the Vendor, on or before the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), in order to conduct a pre-delivery inspection of the Unit (hereinafter referred to as the "Pre-Delivery Inspection"), and to list all items remaining uncompleted at the time of such inspection, together with all discernable and/or mutually-agreed deficiencies with respect to the Unit, on Tarion's Certificate of Completion and Possession, in the form prescribed from time to time by (and required to be completed pursuant to the provisions of) *the Ontario New Home Warranties Plan Act R.S.O. 1990, as amended*, and the regulations promulgated thereunder (which is referred to everywhere hereafter in this Agreement, except in the Tarion Addendum, as the "Tarion Legislation"). It is further understood and agreed that the most current version of the "homeowner information package" published by Tarion shall be delivered to the Purchaser by the Vendor no later than the date of the Pre-Delivery Inspection, and that said homeowner information package is also available for the Purchaser's review or possession at any prior time, directly from Tarion. The form and content of said homeowner information package has been prescribed or approved by Tarion, and said information package will include, amongst other things, standardized information for consumers about how the new home warranty process works, how to submit a claim to Tarion, outlining the time lines in which the Vendor must respond to the Purchaser's complaints (regarding any warrantable deficiencies in respect of the Unit) and is correspondingly obliged to repair any such warrantable defects, and identifying certain exceptions (such as emergency situations or seasonal items) where such stipulated time lines for effecting requisite repairs will change. The Purchaser shall be obliged to execute a confirmation of receipt of the homeowner information package, and to deliver same to the Vendor's representative forthwith following the Purchaser's receipt of the said homeowner information package, but in no event later than the date of the Pre-Delivery Inspection. In addition, the aforementioned Tarion Certificate of Completion and Possession shall be executed by both the Purchaser and the Vendor's representative, forthwith following the aforementioned inspection of the Unit. If the Purchaser is unable to personally attend and conduct the Pre-Delivery Inspection with the Vendor's representative, then the Purchaser shall be entitled to appoint and send a designate in his or her place, provided that the "Appointment of Designate for Pre-Delivery Inspection" form has been duly executed by the Purchaser and is delivered to the Vendor on or before the date of the Pre-Delivery Inspection. Said form of appointment can be obtained at any time, either from the Vendor, or from Tarion's website (at www.tarion.com), and expressly authorizes the Purchaser's designate to attend and conduct the Pre-Delivery Inspection (for and on behalf of the Purchaser) with the Vendor's representative, and to execute the following forms required by Tarion on behalf of the Purchaser (which shall then be binding upon the Purchaser to the same extent as if same had been personally executed by the Purchaser), namely: the Pre-Delivery Inspection form, the Certificate of Completion and Possession, and the Confirmation of Receipt of the Homeowner Information Package (if same has not already been signed by the Purchaser).
- c) Subject to clauses (i) and (ii) hereof, the Vendor agrees to rectify any deficient or incomplete construction items with respect to the Property that are covered or governed by the statutory warranties deemed to be given by the Vendor under the Tarion Legislation. In this regard, the Purchaser expressly acknowledges and agrees that:

- i) any warranties of workmanship or materials, in respect of any aspect of the construction of the Property, or of the common elements of the Condominium, whether expressed or implied by this Agreement, or imposed at common law or in equity, or by any statute or otherwise, shall be specifically restricted to those warranties deemed to be given by the Vendor under the Tarion Legislation, and shall extend only for the respective time periods (and only in respect of those items) stipulated or covered by the Tarion Legislation;
- ii) the Purchaser may be disentitled to the statutory warranties stipulated or covered by the Tarion Legislation if, in fact, the Unit is not initially owner-occupied by the Purchaser and/or members of his or her immediate family; and
- iii) any dispute involving construction deficiencies, incomplete work and/or missing items that are alleged or claimed by the Purchaser in respect of the Unit or any exclusive use common element area shall be resolved between the parties hereto through the processes established and/or administered by Tarion, and the condominium corporation shall have no rights or claim against the Vendor in respect of the common elements of the Condominium beyond those that are specifically granted to it under the Act and/or the Tarion Legislation.
- d) The Vendor shall complete the common elements as soon as reasonably practicable, but the failure of the Vendor to complete the common elements, or to complete the interior of the Unit beyond the minimum standards required by the Ontario Building Code in order to permit lawful occupancy thereof on or before the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), shall not entitle the Purchaser to refuse to take possession of the Property and/or complete this transaction on the scheduled interim occupancy closing date and/or final closing date, or to fail to remit to the Vendor the entire amount of purchase monies required to be paid by the Purchaser hereunder, or to maintain any holdback of any part of the Purchase Price, nor shall the non-completion of any portion of the common elements (including without limitation, any or all of the intended recreational facilities or amenities, outdoor landscaped areas, visitor parking, etc.) entitle the Purchaser to an abatement or waiver of the monthly occupancy fees so payable, in whole or in part (unless any such abatement or waiver is mandated by the Act or by Tarion), and the Vendor hereby undertakes to complete the Unit and all unfinished work and/or improvements thereto, in accordance with the provisions of this Agreement (and within the time frames required by Tarion in connection therewith), and to also complete all unfinished work with respect to the common elements within a reasonable time after the final closing of this transaction (weather conditions and the availability of all required materials, equipment and/or labour permitting) and in accordance with any time frames imposed by Tarion in connection with such common elements.
- e) The Purchaser acknowledges and agrees that the Vendor may, from time to time in its sole, unfettered and unchallenged discretion, due to site conditions or constraints, or for marketing considerations, or for any other legitimate reason, including without limitation any request or requirement of any of the Governmental Authorities, or any request or requirement of the Vendor's architect or other design consultants:
- i) **change the Property's municipal address or numbering of the Unit** (in terms of the unit number and/or level number ascribed to any one or more of the units comprising the Property);
- ii) **change, vary or modify the plans and specifications pertaining to the Property or the Condominium**, or any portion thereof (including architectural, structural, engineering, landscaping, grading, mechanical, site servicing and/or other plans and specifications) from the plans and specifications existing at the inception of the project, or existing at the time that the Purchaser has entered into this Agreement, or as same may be illustrated in any sales brochure(s), model(s) in the sales office or otherwise, including without limitation, making any change to the total number of dwelling, parking, locker and/or other ancillary units intended to be created within the Condominium, and/or any change to the total number of levels or floors within the Condominium, as well as any changes or alterations to the design, style, size and/or configuration of any dwelling or other ancillary units within the Condominium;
- iii) **change, vary, or modify the number, size and location of any window(s) and/or any heating, ventilation and/or air-conditioning equipment, fixtures and/or installations, as well as any column(s) and/or bulkhead(s), within or adjacent to (or comprising part of) the Unit**, from the number, size and/or location of same as displayed or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser, including the insertion or placement of any window(s) and/or any heating, ventilation and/or air-conditioning equipment, fixtures and/or installations, as well as any column(s) and/or bulkhead(s), in one or more locations within the Unit, which have not been shown or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser (regardless of the extent, significance or impact thereof), as well as the removal of any window(s) and/or any heating, ventilation and/or air-conditioning equipment, fixtures and/or installations, as well as any column(s) and/or bulkhead(s), from any location(s) previously shown or illustrated in any sales brochure(s), model(s) in the sales office or otherwise, on the express understanding and agreement that not only may some of the windows intended or depicted to be installed within the Unit be reduced or eliminated, but also that some of the windows installed within the Unit may not open (but rather are designed to be permanently closed); and/or
- iv) **change the layout of the Unit such that same is a mirror image** of the layout shown on the schedule attached to this Agreement (or a mirror image of the layout illustrated in any sales brochure or other marketing material(s) delivered to the Purchaser), all without limiting the generality of the provisions set forth in Section 3.04 (e)(ii) above;

and that the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor, the Agent or its sales representatives (whether based or founded in contract law, tort law or in equity) for any such changes, deletions, alterations or modifications, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever as a consequence thereof, nor any notice thereof (unless any such change, deletion, alteration or modification to the said plans and specifications is material or substantial in nature and significantly affects the fundamental character, use, size or value of the Property and/or the Condominium, in which case the Vendor shall be obliged to notify the Purchaser in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Vendor proposes to implement same, or otherwise becomes aware of same), and where any such change, deletion, alteration or modification to the said plans and specifications is material or substantial in nature, then the Purchaser's only recourse and remedy shall be the termination of this Agreement prior to the Closing Date (and specifically within 10 days after the Purchaser is notified or otherwise becomes aware of such material change), and the concomitant return of the Purchaser's deposit monies, together with interest accrued thereon at the rate prescribed by the Act. The Purchaser further expressly acknowledges that the Vendor's ability to change, alter or modify the unit numbering and/or the plans and specifications pertaining to the Property and/or the Condominium, and/or the number of levels or floors within the Condominium, and/or the design, style, size and/or configuration of any units within the Condominium, is an essential requirement for the successful marketing, overall design and/or completion of the Condominium project (which is agreed to be to the mutual benefit of the Vendor and all unit purchasers), and that in consideration of the Purchaser assuming this risk of potential major or minor changes to the Property and/or the Condominium, the Purchaser hereby acknowledges having received the benefit (or potential benefit) of a sale price which may be lower than the prices that are (or may be) applicable to other units within the Condominium which are comparable to the Property, when same are fully constructed and completed, even though the Vendor makes no representation or warranty whatsoever that such a price reduction or benefit will, in fact, materialize or accrue to the Purchaser. Without limiting the generality of the foregoing provisions, it is understood and agreed that if the Unit is hereafter re-designed by the Vendor as a result of (or in connection with) the Vendor's re-design of the condominium building or a portion thereof, then the Purchaser will be offered the option of either transferring to another suite, with an appropriate adjustment in the Purchase Price where required, or alternatively being released from the obligations arising under this Agreement (pursuant to a mutual release & termination agreement that will be executed by both parties hereto) and getting a full refund of all deposit monies theretofore paid (together with all statutory interest earned or accrued thereon, calculated at the prescribed rate), but under no circumstances shall the Purchaser be entitled to claim any damages or entitlement to any compensation whatsoever for (or in connection with) any such re-design, or as a consequence thereof, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever in connection therewith (or as a consequence thereof), regardless of how substantial, significant or material the results, effect or impact of the re-design may be to the Purchaser.

- f) The Purchaser acknowledges that the Vendor may, from time to time, substitute such other materials utilized in the construction of the Property, the common elements of the Condominium, (or in any shared amenities), from those specified or contemplated in the Vendor's plans or specifications, provided that the quality of any substituted material(s) is equal to or better than the material(s) originally indicated in said plans or specifications.
- g) The Purchaser acknowledges and agrees that the filing of the Vendor's consulting engineers' certificate(s) with the Municipality, or the issuance by the Municipality of an occupancy certificate or such other confirmation that the Property may be occupied shall, subject to the provisions of Section 3.04(b) hereof and section 9 of the Tarion Addendum, constitute complete and absolute acceptance by the Purchaser of all construction matters pertaining to the

Property, and the quality and sufficiency thereof, including without limitation, all mechanical, structural and architectural matters pertaining to the Condominium and the Property.

- h) Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed by the parties hereto that in the event that construction of the Unit is not substantially completed sufficient to permit lawful occupancy thereof on or by the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), for any reason whatsoever except for the Vendor's wilful neglect, or in the event that the Purchaser cannot take possession of the Property on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) by reason of any fire damage or any other hazard or damage whatsoever occasioned to the Condominium and/or the Property (or to any portion thereof), then in either case the Vendor shall not be held responsible or liable for reimbursing the Purchaser for any costs, expenses and/or damages which may be suffered or incurred by the Purchaser as a result of such delay, hazard or damage, and specifically the Vendor shall not be responsible or liable for any costs and expenses incurred by the Purchaser in obtaining alternate accommodation pending the completion of the Unit or the rectification of any such damage occasioned thereto (or to any other portion of the condominium building), nor for any costs incurred in having to store or move the Purchaser's furniture or other belongings pending such completion or rectification work, save and except for any delayed closing compensation that the Vendor is obliged to pay the Purchaser (or to credit the Purchaser for, in the statement of adjustments on final closing) pursuant to the provisions of the Tarion Addendum.
- i) The Purchaser further agrees that the Vendor shall have the right to enter upon the Property after the completion of the within transaction, in order to complete and/or rectify those items which are included in the said Certificate of Completion and Possession, and the Vendor agrees to complete and/or rectify same within a reasonable time after Closing, in accordance with the requirements and time frames established by Tarion, having regard to the availability of equipment, materials and labour.
- j) The Purchaser (or the Purchaser's authorized designate) shall be obliged to execute Tarion's Certificate of Completion and Possession (sometimes hereinafter referred to as the "**Certificate**") prior to the Purchaser obtaining possession of the Property. In the event that the Purchaser (or the Purchaser's authorized designate) fails or refuses to execute the Certificate prior to the Closing Date, in those circumstances where the Vendor has duly attended at the Property for the purposes of conducting the pre-delivery inspection with the Purchaser (or the Purchaser's authorized designate) and completing the Certificate, then the Purchaser shall be in default of his or her obligations hereunder, and the Vendor shall be entitled to complete this transaction notwithstanding the foregoing, but shall be entitled to refuse to allow possession of the Property by the Purchaser until the Certificate has been duly executed by the Purchaser (or the Purchaser's authorized designate), or alternatively may complete the transaction and allow possession by the Purchaser upon the Vendor completing the Certificate unilaterally (by the Vendor listing all patent or known deficiencies and any incomplete items on the Certificate) and submitting same to Tarion with a notation on the Certificate (or accompanied by a separate letter) confirming the Purchaser's failure or refusal to execute the Certificate.
- k) The Purchaser acknowledges and agrees that the monies paid to the Vendor's solicitors as a deposit hereunder, and which may hereafter be secured by prescribed security as defined in the Act, shall be recognized and treated for the purposes of Section 1(l) of the *Construction Lien Act R.S.O. 1990, as amended*, as monies held in trust pursuant to the provisions of Section 81 of the Act, and the Purchaser shall accordingly be deemed and construed to be a "**home buyer**" within the meaning of Section 1(l) of the *Construction Lien Act R.S.O. 1990, as amended* (and shall not constitute an "owner" as defined in Section 1(1) thereof), and as such, the Purchaser shall not be entitled to request or demand that any holdback for construction liens be maintained for any part of the Purchase Price, whether on the interim occupancy closing or final closing of this transaction, or otherwise.
- l) The Purchaser shall not be entitled to enter upon the Lands prior to the scheduled pre-delivery inspection of the Unit, other than to visit the Vendor's sales office or customer service office (if applicable), unless accompanied by a representative of the Vendor. The Purchaser hereby releases the Vendor (and its agents, employees and contractors) from all liability for personal injury and/or property damage directly or indirectly occasioned or resulting from the entry by the Purchaser (or by any of the Purchaser's relatives, friends, agents or retained contractors) onto the Lands in contravention of the preceding sentence, and the Purchaser shall indemnify and save the Vendor harmless from and against all costs, claims, damages and/or liabilities arising from (or in connection with) any personal injury and/or property damage directly or indirectly occasioned or resulting from any such entry by the Purchaser (or by any of the Purchaser's relatives, friends, agents or retained contractors) onto the Lands in contravention of the preceding sentence.

FINISHES, APPLIANCES AND EXTRAS

- 3.05 a) **The Purchase Price shall include** those suite finishes and/or appliances more particularly listed in Schedule "B" hereto. The Purchaser acknowledges that the finishing materials contained in any model suite, customer service office or sales office are for display purposes only, and may not reflect the actual type, quality or grade of materials and/or finishes included in the Unit being constructed.
- b) **The Purchaser covenants and agrees to notify the Vendor, in writing within fifteen (15) days of the Vendor's request**, as to the tile, hard surface flooring, paint colours and/or cabinet finishes (or any other colours and finishes) chosen by the Purchaser from the Vendor's samples, and if the Purchaser fails to so notify the Vendor of his or her broadloom, tile, colour and/or finish selections within such time, then the Vendor may, at its option, make such selections for the Purchaser and the Purchaser shall be deemed to accept same absolutely and without qualification, provided that the Vendor shall have no obligation to make such selection and, in any event, the Vendor shall not be held liable for any delays in having the Unit substantially completed sufficient to permit occupancy thereof by the Firm Occupancy Date, and the Purchaser shall nevertheless be obliged to execute and deliver to the Vendor on the Firm Occupancy Date all documents and instruments required to be given to the Vendor on the Firm Occupancy Date as hereinbefore provided or contemplated, and shall also pay to the Vendor's solicitor the monies specified in paragraph 1(a)(iv) on page 1 of this Agreement, notwithstanding that the Unit may not be substantially completed sufficient to permit occupancy thereof by the Firm Occupancy Date.
- c) **In the event that the Purchaser fails to make such selections** as aforesaid, or in the event that the Purchaser fails to submit the requisite personal and financial information (and any other documents, instruments or verifications) which may be required or desired by the Vendor, the First Mortgagee and/or by any mortgage insurer (if applicable), pursuant to the foregoing provisions hereof, or if the Purchaser is in default under any other term or provision contained in this Agreement (and has failed to rectify such default within five (5) days of being notified in writing to do so), then the Vendor shall be unilaterally entitled to make all colour and finish selections as contemplated in Section 3.05 (b) above, on behalf of the Purchaser, and the Purchaser shall correspondingly be bound by such selections, and shall be estopped from instituting any claim(s) against the Vendor as the result of such selections and/or denying the Vendor's authority to make and implement same.
- d) In addition to the foregoing, in the event that the Purchaser chooses to make changes to the standard materials and specifications for the Unit which are otherwise provided by the Vendor, then the Vendor shall not be held liable for any delays in having the Unit substantially completed sufficient to permit occupancy thereof by the Firm Occupancy Date (provided such delays are as a result of such up-grading or revised work not being completed in time), and the Purchaser shall nevertheless be obliged to execute and deliver to the Vendor on the Firm Occupancy Date all documents and instruments required to be given to the Vendor on the Firm Occupancy Date as hereinbefore provided or contemplated, and shall also pay to the Vendor's solicitors the monies specified in paragraph 1(a)(iv) on page 1 of this Agreement, notwithstanding that the Unit may not be substantially completed by such date. If any of the Extras ordered by the Purchaser, through the Vendor, are not supplied or completed, for whatever reason, by the Closing Date, then the Vendor shall refund to the Purchaser either before or after the Closing Date (but in any event forthwith following the Vendor's determination that the Extras cannot reasonably be supplied or completed by the Closing Date or within a reasonable period of time thereafter) all amounts paid by the Purchaser to the Vendor in connection with same, and the amount so refunded by the Vendor to the Purchaser for the Extras (or for which, at the Vendor's option, the Purchaser shall receive a credit in the statement of adjustments on Closing) shall be accepted by the Purchaser as full and final settlement of any claim by the Purchaser with respect to the Extras, and the Purchaser acknowledges that the Vendor's liability with respect to the Extras shall be limited solely to the return of the amounts referred to as aforesaid, and upon such payment being made or credit being given, the Vendor, the Vendor's solicitors and the Agent shall be released from any and all obligations, claims or demands whatsoever with respect thereto.
- e) It is further understood and agreed that **the Vendor shall not be responsible or liable in any way to the Purchaser for the quality of (and/or the workmanship with respect to) the Extras**, unless same are supplied and/or constructed directly by the Vendor, and then only if the Vendor specifically agrees in writing to be responsible or liable for same. The Purchaser shall be obliged to forthwith advise the Vendor in writing as to the details of all Extras (if same are not ordered directly from the Vendor) so that the Vendor may assess whether any revisions to the plans and specifications of the Property are needed, and/or whether any additional up-graded materials or changed items are required from other tradesmen or suppliers, in order to facilitate or expedite the completion and installation of the Extras; and if such revisions or additional up-graded materials or changed items are required,

as determined by the Vendor in its sole and unfettered discretion, then the Purchaser agrees to pay for all such costs and expenses attributable and/or incidental to the completion and installation of same, which costs and expenses shall be paid to the Vendor's solicitors by certified cheque forthwith upon the Vendor's written demand for payment thereof. An amount reflecting the aggregate of the purchase price of any and all extras and/or upgrades so ordered or acquired from the Vendor by the Purchaser, and that have not been fully paid for by the Purchaser at the time of installation, shall be charged to the Purchaser in the statement of adjustments on final closing, unless the purchase of all such extras and/or upgrades is reflected in an addendum to this Agreement that has been executed by both parties hereto and which correspondingly increases the total purchase price or the balance due on closing by the aggregate amount of all such extras and/or upgrades so ordered or acquired by the Purchaser from the Vendor.

- f) Notwithstanding anything hereinbefore provided to the contrary, it is expressly understood and agreed by the parties hereto that with respect to any extras or upgrades to the Unit that are not intended to be supplied and/or constructed directly by (or under the supervision or control of) the Vendor, the Purchaser shall not arrange for any work, services and/or materials to be undertaken, installed, provided and/or delivered to the Unit in connection therewith, prior to the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) and the Purchaser's payment of all deposit monies provided for or contemplated in subparagraphs 1(a)(ii), (iii) and (iv) on page 1 of this Agreement, without the prior written consent of the Vendor (which consent may be unilaterally and arbitrarily withheld). **Moreover, prior to the final closing of this transaction, the Purchaser shall not make or undertake any work or improvement to the Unit (or to any exclusive use common element area appurtenant to the Unit), whether in the nature of an addition, alteration, improvement or otherwise, without the prior written consent or approval of the Vendor** (which consent or approval may be unilaterally and arbitrarily withheld), and where any such work or improvement has been so approved, then the Purchaser shall be obliged to promptly pay all outstanding accounts and invoices issued by any of the Purchaser's tradesmen, contractors or material suppliers who may be lawfully entitled to register a construction lien against the Property and/or the Lands (or any portion thereof) in connection with any such work or improvement. In the event that any such lien is registered on title, then the Purchaser shall be obliged to forthwith discharge and remove same at the Purchaser's sole cost and expense, failing which the Purchaser shall be in breach of this Agreement, and in the event that any such lien remains undischarged and continues to be registered on title later than two (2) days after written notice thereof has been delivered to the Purchaser or the Purchaser's solicitor by the Vendor or the Vendor's solicitor, then without prejudice to (and in addition to) any other rights and/or remedies that the Vendor may have (at law or in equity) as a consequence of such default or breach, the Vendor shall have the right (but not the obligation) to discharge or vacate the said lien by paying the amount claimed to be due (or such other amount, as may be required) directly into court (or alternatively by posting security for said lien with the court), in order to obtain a court order vacating such lien, and the amount so paid or posted by the Vendor shall then be payable by the Purchaser to the Vendor forthwith on demand. All legal costs, interest charges and any other costs and expenses incurred by the Vendor or any mortgagee of the Lands (including any lender providing construction financing in connection with the development of the Condominium) as a result of the registration of any such lien shall likewise be payable by the Purchaser to the Vendor forthwith on demand, or at the Vendor's option, same may be charged to the Purchaser in the statement of adjustments prepared by the Vendor in connection with the final closing of this transaction.
- g) The Purchaser acknowledges and agrees that insofar as the wood finishes, carpeting, hardwood flooring, tiles (including any marble or granite slabs used for flooring, walls or counter purposes), kitchen and bathroom cabinetry and/or other manufactured finishing materials installed within the Unit are concerned:
- i) the colour, texture and/or shading of such wood finishes, carpet, tiles, kitchen and bathroom cabinetry or other manufactured finishing materials may vary slightly from that of those selected by the Purchaser from the Vendor's samples, due to minor variations or shading in dye-lots produced or manufactured by the suppliers;
 - ii) the colour, finish, grain and/or veining of wood products (including hardwood flooring) and/or natural stone materials may vary slightly from that of the wood and/or stone materials selected by the Purchaser from the Vendor's samples, inasmuch as wood and stone are natural materials which inherently cannot be precisely replicated or matched with other pieces or samples, thereby accounting for variations of colour, finish, grain and/or veining even within the same lot or section of wood or stone (as the case may be); and
 - iii) the various types of flooring that may be installed within the Unit (such as carpeting, marble, granite, ceramic tile and/or hardwood floors, etc.) may result in different floor heights or levels (which shall be established by the Vendor in its sole and unchallenged discretion) between rooms or areas within the Unit having different flooring materials (for example, a height or level differential between ceramic floor tiles in the kitchen, and hardwood flooring in the adjacent livingroom), and in this regard the Vendor shall be entitled to use or install appropriate reducers in the transitional areas between rooms having different flooring materials;

and the Purchaser shall accordingly be estopped from claiming any entitlement to an abatement in the Purchase Price, or any replacement (in whole or in part) of the carpet, hardwood flooring, tiles, kitchen cabinetry, manufactured finishing materials or wood products or flooring so installed, or any other relief or claim for compensation from or against the Vendor or Tarion as a result of the variations hereinbefore described or contemplated.

DAMAGE BEFORE CLOSING

3.06 The Condominium building and all equipment contained therein shall be and remain at the risk of the Vendor until Closing. In the event of any physical damage to the Condominium or the Property (or to any portion thereof) caused by fire, explosion, flood, lightning, tempest, act of God, act of war or act of terrorism, or by any other insurable peril occurring prior to the final closing of this transaction (and whether before or during the Purchaser's occupancy of the Unit) which renders the Unit uninhabitable, then it is understood and agreed that:

- a) if any such damage can be substantially repaired within one (1) year from the date of the damage occurring, as determined jointly by the Vendor and the project architect acting reasonably (and which determination shall be final and binding on the parties hereto, and not subject to challenge or appeal under any circumstances whatsoever), then such damage shall be deemed and construed to constitute an "Unavoidable Delay", as such term is defined in section 12 of the Tarion Addendum, in which case the provisions pertaining to Unavoidable Delay and the corresponding extension of the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) outlined in the Tarion Addendum shall apply and prevail in such circumstances, and if the Purchaser has already taken possession of the Unit at the time of such damage, then the Purchaser's existing occupancy of the Property shall thereupon be temporarily suspended for the duration of the Unavoidable Delay Period (as such term is defined in section 12 of the Tarion Addendum), and the monthly rental or occupancy fees so payable by the Purchaser to the Vendor shall correspondingly be abated and suspended during and throughout the Unavoidable Delay Period; and
- b) if the Vendor's construction lender elects to appropriate all (or substantially all) of the available insurance proceeds (if any) so triggered by such damage to reduce, *pro tanto*, the Vendor's outstanding indebtedness to it, and/or is unwilling to lend or advance any monies required to rebuild and/or repair such damage, or if such damage cannot be substantially repaired within one (1) year from the date of the damage occurring, as determined jointly by the Vendor and the project architect acting reasonably (and which determination shall be final and binding on the parties hereto, and not subject to challenge or appeal under any circumstances whatsoever), then in either case such damage shall be deemed and construed for all purposes to have frustrated the completion of this transaction and this contract, and if the Purchaser has already taken possession of the Unit at the time of such damage, then the Purchaser's existing occupancy of the Property shall thereupon be forthwith terminated, and all monies paid by the Purchaser on account of the Purchase Price (inclusive of all monies paid to the Vendor for extras and/or upgrades) shall be fully refunded to the Purchaser, together with all interest accrued thereon at the prescribed rate, and the Vendor shall not be liable for any costs and/or damages incurred by the Purchaser thereby whatsoever, whether arising from (or in connection with) the termination of the Purchaser's existing occupancy of the Property, or the termination of this transaction, by virtue of the frustration of this contract occurring through no fault of the Vendor.

CONDITIONAL ON PLANNING ACT COMPLIANCE AND CONDOMINIUM REGISTRATION

3.07 If the Condominium Documents have not yet been registered by the Vendor as at the date of this Agreement, then in accordance with the provisions of section 6(i) of the Tarion Addendum, the parties hereto hereby expressly acknowledge and agree that this Agreement (and the completion of this transaction) shall be conditional until Closing upon the Vendor's compliance with the subdivision-control and part lot-control provisions of the *Planning Act R.S.O. 1990, as amended* and the concomitant registration of this Condominium under the Act, which compliance and condominium registration shall be obtained by the Vendor at its sole cost and expense, failing which [in the absence of any extension of the Closing established or implemented by the Vendor pursuant to (and in accordance with) the provisions of the Tarion Addendum] this Agreement shall automatically be terminated and of no further force and effect, and the

Vendor and the Purchaser shall have no further liabilities or obligations hereunder, and neither of the parties hereto shall thereafter be liable to the other for any costs and/or damages that may be suffered or incurred by them in connection with this Agreement, or the termination thereof as a result of such non-registration of the Condominium, save and except for any delayed closing compensation that may be payable by the Vendor to the Purchaser in connection therewith pursuant to the provisions of the Tarion Addendum, and upon such termination all monies paid towards the Purchase Price (inclusive of all monies paid on account of extras and/or upgrades) shall be refunded to the Purchaser, together with all interest earned or accrued thereon at the rate prescribed by the Act, and without deduction of any kind, save for any deduction for the cost or price of any Extras ordered by the Purchaser and as yet unpaid.

RIGHT OF RE-ENTRY

3.08 Notwithstanding the Closing of this transaction, and for a period of two (2) years thereafter, the Vendor or any of its authorized representatives shall be entitled at all reasonable times to enter the Unit in order to make inspections, and to do any work or repairs to the Unit or to the Condominium required by the Vendor in its sole discretion. In addition to the foregoing, the Purchaser agrees that the Vendor shall have the right to enter upon and within the Unit (or any portion thereof) after the completion of this purchase and sale transaction, in order to relocate or alter any services or utilities which serve and benefit the Unit and/or any other unit(s) or common element area within the Condominium, provided that the Vendor restores the Unit to the same condition as existed prior to undertaking such work, but the Vendor shall not be liable or responsible for any consequential damages or losses of the Purchaser and/or its tenant(s), including without limitation, any additional expenses which may be occasioned or incurred during the time period of such work.

CUMULATIVE REMEDIES

3.09 No right or remedy herein conferred upon or reserved to the Vendor is intended to be exclusive of any other right or remedy arising under or by virtue of this Agreement (or arising pursuant to the general common law, in equity or by statute, or otherwise), and each and every right or remedy in favour of the Vendor shall be cumulative, and shall be in addition to every other right or remedy conferred upon (or reserved to) the Vendor pursuant to the provisions of this Agreement or otherwise available to the Vendor at law or in equity or by statute. Every right and/or remedy conferred upon (or reserved to) the Vendor by this Agreement may be exercised by the Vendor from time to time, as often as may be deemed expedient by the Vendor.

WAIVER

3.10 None of the respective rights and/or remedies of the Vendor (whether arising under or by virtue of this Agreement, or pursuant to the general common law, or in equity, or by statute, or otherwise) shall be capable of being waived or varied except pursuant to (and by virtue of) an express waiver or variation in writing duly executed by the Vendor. Without limiting the generality of the foregoing, any failure to exercise (or any delay in exercising) any of the respective rights and/or remedies of the Vendor shall not operate as a waiver or variation of that or any other of such rights and/or remedies; any defective or partial exercise of any of such rights and/or remedies shall not preclude any other or future exercise of that or any other of such rights and/or remedies; no act or course of conduct, nor any negotiation on the part of the Vendor, shall in any way preclude the Vendor from exercising any such rights and/or remedies, or constitute a suspension or variation of any such rights and/or remedies; and any waiver of an event of default or breach of this Agreement committed by or on behalf of the Purchaser shall apply only to the particular event of default or breach so waived, and shall not operate as a waiver of any other event of default or breach.

DECLARANT'S INTENTION TO LEASE UNSOLD UNITS

3.11 The Purchaser acknowledges that the Declarant of the Condominium may, from time to time, lease any and all unsold units in the Condominium to one or more third party tenants, for any period or periods of time, for residential purposes (and/or any uses or purposes ancillary thereto, in accordance with the provisions of the applicable zoning by-laws of the City, as may be amended from time to time).

DISCLAIMER

3.12 Notwithstanding the generality of any other provisions contained in this Agreement to the contrary, it is understood and agreed that **all models, plans, sketches, illustrations and/or displays utilized by or on behalf of the Vendor, including all descriptions, dimensions and/or representations indicated thereon or implied thereby, are merely reflective or indicative of the proposed condominium project, or various aspects thereof (and/or any other phases with respect thereto, if applicable) as originally conceived or intended, and in effect as at the time of their respective creation, and are therefore subject to one or more changes being made or implemented with respect thereto from time to time (whether significant or otherwise), without any notice thereof required to be given to the Purchaser.** Without limiting the generality of the foregoing, all unit purchasers (and prospective unit purchasers) are hereby advised that:

- a) the height, colour, size, shape, texture, dimensions, specifications and/or design of the:
 - i) exterior facade of the proposed condominium project and/or any future condominium phases with respect thereto;
 - ii) interior and exterior common element areas, including all roadways, walkways, ramps, driveway exits and/or landscaped areas; and
 - iii) recreational facilities and amenities, if specifically provided for in the disclosure statement;
- b) the layout, shape and/or size of the proposed condominium's building footprint, and/or the location, size and height of the proposed condominium building(s) in relation to any other present or future structure(s);
- c) the total number of dwelling, parking, locker and/or service units within the proposed condominium, and/or the total number of levels comprising the proposed condominium;
- d) the number, location, design and/or size of the windows within any dwelling unit(s); and/or
- e) the patio, balcony or terrace area(s) appurtenant to any dwelling unit(s), if applicable;

are subject to change, and may be varied at any time and from time to time, without notice to the Purchaser.

ARTICLE IV - TITLE, NOTICES, CLOSING AND TENDER

TITLE

4.01 Provided that the title to the Property is good and free from all encumbrances, save as otherwise provided or contemplated in this Agreement. **The Purchaser specifically agrees to accept title to the Property (and the Lands) on the Closing Date subject to any and all:**

- a) registered restrictions or covenants that run with the Lands (or any portion thereof), including without limitation, any site-specific municipal by-law(s) and/or heritage designation by-law(s) and any ancillary heritage easement(s) and/or preservation agreement(s) arising therefrom or in connection therewith, together with any record of site condition, any Certificate of Requirement and/or Certificate of Property Use issued by the Ministry of Environment under the provisions of the *Environmental Protection Act R.S.O. 1990, as amended* (or any successor environmental legislation), including any such certificate or risk management plan requiring the ongoing monitoring and/or testing of indoor air quality and/or ground water that may be discharged into the local sewer system, or involving any other matter or substance pertaining to the condominium project being developed on the Lands (or any portion thereof), as well as any encroachment agreement(s) with any Governmental Authorities or any adjacent land owner(s) [including, without limitation, any encroachment agreement between the Vendor or the condominium corporation and the local municipality which allows for any component of the condominium building (e.g. any below-grade structure, or any overhead sign band, canopy or awning, etc.) to encroach below, above or within

the adjacent public road allowance, and which may also impose ongoing obligations on the Condominium to maintain and repair the encroaching structure or component, to obtain and maintain insurance with respect to such encroachment in favour of the local municipality, and to pay an annual fee to the local municipality for the latter's permission to maintain such encroachment], provided that same are complied with as at the Closing Date:

- b) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor, or by any owner(s) of any adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, including any below-grade, at grade or above-grade encroachments and related easements areas, as well as any overhead air access/easement area for the swinging of any crane(s), which may be appurtenant to the Lands (or any portion thereof) or to which the Lands (or any portion thereof) may be subject and encumbered thereby, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with any adjacent or neighbouring property owner(s) or condominium corporation(s), provided that any such easement and/or cost-sharing agreements or reciprocal agreements are (insofar as the obligations thereunder pertaining to the Lands, or any portion thereof, are concerned) complied with as at the Closing Date;
- c) registered municipal agreements and registered agreements with any publicly-regulated or private utility authorities or providers, any local ratepayer associations, any quasi governmental authorities or agencies (such as Metrolinx, or any predecessor or successor entity thereto, or the Toronto Transit Commission) and/or any railway companies or transit authorities owning or controlling any adjacent or neighbouring lands (or operating any railway line, subway, light rapid transit line or bus/streetcar transit line on adjacent or neighbouring lands), including without limitation, any development agreement, site plan agreement, subdivision agreement, engineering agreement, section 37 density bonus/development agreement and/or any other municipal agreement(s) [as well as any other agreements entered into with any of the Governmental Authorities, quasi governmental authorities or agencies and/or railway companies or transit authorities, or any utility authorities or providers (ie. with respect to water, electricity and/or natural gas service), as a prerequisite to (or in connection with) the development of the Condominium on the Lands (or any portion thereof)], and possibly including any agreement(s) with the local municipality requiring the installation of any publicly-accessible outdoor park, landscaped amenity space or other type of amenity area, and/or the permanent installation and display of any public art, and the ongoing maintenance, repair and/or replacement thereof in accordance with the requirements imposed by the local municipality or its delegated authority or designated agent (including any restrictions prohibiting access thereto by the general public, as well as any restrictions on the removal or alteration of any such public art), as well as any agreement(s) with Metrolinx (or any predecessor or successor entity thereto) and/or with any of the aforementioned railway companies, transit authorities or utility authorities or providers which may require the erection and ongoing maintenance and repair of a crash wall, and/or may impose outstanding noise, vibration, electromagnetic interference and/or air quality control measures with respect to the development of the Condominium on the Lands (or any portion thereof) and/or in connection with the ongoing occupation of the Condominium, together with one or more restrictive covenants restricting or prohibiting any exterior additions or alterations to the habitable buildings so developed on the Lands (or any portion thereof), and prohibiting any alterations to the existing grading and drainage patterns of the Lands (or any portion thereof), along with an outstanding easement in favour of Metrolinx (or any predecessor or successor entity thereto) and/or in favour of any of the aforementioned railway companies, transit authorities or utility authorities or providers for operational emissions (eg. with respect to noise, vibrations, smoke, dust, etc.) which may emanate from any adjacent or nearby lands that may be owned or operated by Metrolinx (or any predecessor or successor entity thereto) or by any of the aforementioned railway companies, transit authorities or utility authorities or providers, and which may correspondingly impact the Lands (or any portion thereof), and expressly including those agreements more specifically described in paragraph 4.02(a) hereof (with all of such agreements hereinbefore described or contemplated being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Closing Date, or security has been posted by the Vendor [or its predecessor(s) in title] in such amounts and on such terms as may be required by the relevant Governmental Authorities, quasi governmental authorities or agencies, railway companies, transit authorities or utility authorities or providers (as the case may be) to ensure compliance therewith and/or the completion of any outstanding obligations thereunder;
- d) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Closing Date, if applicable), as soon as reasonably possible after the completion of this transaction;
- e) outstanding mortgages (and any other security collateral thereto, including any general assignment of rents and leases) registered against the Property and not intended to be assumed by the Purchaser, provided that the Vendor delivers to the Purchaser, on or before the Closing Date:
- i) a letter from each of the outstanding mortgagees (or from their respective solicitors) confirming that within a reasonable time after the Closing Date and the Purchaser's payment to the Vendor's solicitor (or to one or more of the outstanding mortgagees, if so directed by the Vendor's solicitor) of all monies owing to the Vendor on account of the Purchase Price (including the balance due on Closing as per the statement of adjustments prepared by or on behalf of the Vendor), a partial discharge of the said outstanding mortgage security in respect of the Property shall be delivered to the Vendor's solicitor for registration on title (or alternatively an irrevocable e-reg authorization and direction will be executed and delivered to the Vendor's solicitor authorizing the latter to electronically register a partial discharge of the mortgagee's outstanding mortgage security in respect of the Property, following the Vendor's solicitor's receipt of the outstanding balance due on closing paid by the Purchaser in accordance with the statement of adjustments prepared by and on behalf of the Vendor); and
 - ii) the Vendor's solicitor's personal written undertaking to obtain and register a partial discharge of the said outstanding mortgage security in respect of the Property, within a reasonable time after the later of the Closing Date, or the date that all monies owing to the Vendor on account of the Purchase Price (including the balance due on Closing as per the statement of adjustments prepared by or on behalf of the Vendor) have been paid in full by the Purchaser;
- f) the terms, provisions, restrictions and conditions contained in the registered Condominium Documents; and
- g) any Land Registrar's order(s) that has been registered on title to correct the legal description of the Lands (or any portion thereof) or any reference(s) to any prior registered instrument(s), or to alter, correct or affect any other notation on the parcel register.

IT IS UNDERSTOOD AND AGREED THAT THE VENDOR SHALL NOT BE OBLIGED TO OBTAIN OR REGISTER ON TITLE TO THE PROPERTY A RELEASE OF (OR AN AMENDMENT TO) ANY OF THE AFOREMENTIONED EASEMENTS, DEVELOPMENT AGREEMENTS, RECIPROCAL AGREEMENTS OR RESTRICTIVE COVENANTS, NOR SHALL THE VENDOR BE OBLIGED TO HAVE ANY OF SAME DELETED FROM THE TITLE TO THE PROPERTY, AND THE PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE PURCHASER SHALL SATISFY HIMSELF OR HERSELF AS TO COMPLIANCE THEREWITH. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants registered on title. The Purchaser further acknowledges and agrees that the retention by the local municipality within which the Lands are situate (sometimes hereinafter referred to as the "Municipality"), or by any of the other Governmental Authorities, of security (eg. in the form of cash, letters of credit, a performance bond, etc.), satisfactory to the Municipality and/or any of the other Governmental Authorities) intended to guarantee the fulfilment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements.

- 4.02 a) Subject to (and without limiting the generality of) the preceding Section 4.01 hereof, **the Purchaser acknowledges and agrees that title to the Property and/or the Lands, or any portion thereof, is (or may on Closing be) subject to following agreements, easements and/or interests [as well as those specific instruments, agreements, restrictive covenants, easement and/or interests more particularly described in Section 4.02(a) of Schedule "AA" annexed hereto, commencing with Section 4.02(a)(viii) of said Schedule "AA"], and expressly agrees to comply with (and abide by) all of the terms and provisions of said instruments, agreements, covenants and easements (as the case may be), AND THE PURCHASER SHALL NOT REQUIRE (NOR REQUISITION) ANY RELEASES OR DISCHARGES OF SAME WITH RESPECT TO THE PROPERTY OR THE**

LANDS, NOR REQUEST (OR REQUISITION) ANY AMENDMENTS WITH RESPECT THERETO, NOR ANY CONFIRMATION (OR EVIDENCE) OF COMPLIANCE THEREWITH, namely:

- i) a right of re-entry or licence in favour of the Vendor and/or the City, and each of their respective designated representatives, to enter upon the Lands (or any portion thereof) at any time or times after Closing, for the purposes of inspecting, maintaining and/or repairing any municipal works, services and/or facilities installed or constructed within the confines of the Condominium, on the express understanding and agreement that such right of re-entry or licence shall be deemed and construed to arise from and upon the date of registration of this Condominium, and shall automatically expire on the 7th anniversary of the date of registration of this Condominium;
 - ii) an easement in perpetuity in favour of the local hydro-electric utility authority or the electricity provider selected by the Vendor (the "**Electricity Company**") over, under, upon, across and through the common elements of the Condominium, for the purposes of facilitating the installation, operation, maintenance and/or repair of the Electricity Company's electrical plant, pipes, conduits, lines, cables and/or equipment (and all necessary appurtenances thereto) in order to facilitate the supply of electricity to the Condominium and the units therein, and if so requested by the Electricity Company, title may also be subject to an agreement between the Condominium and the Electricity Company pertaining to the provision of electricity and related services to the Condominium (hereinafter referred to as the "**Electricity Agreement**"), on the express understanding and agreement that the Electricity Company may retain ownership of all pipes, wires, cables, conduits and appurtenant equipment associated with the provision and distribution of electricity to each of the units and the common elements of the Condominium, as well as ownership of any or all hydro-electric or electricity meters or sub-meters appurtenant to each of the dwelling units in this Condominium;
 - iii) an easement in perpetuity in favour of the local gas utility authority or the gas service provider selected by the Vendor (the "**Gas Company**") over, under, upon, across and through the common elements of the Condominium for the purposes of facilitating the installation, operation, maintenance and/or repair of the Gas Company's gas lines (and all necessary appurtenances thereto) in order to facilitate the supply of gas service to the Condominium, and if so requested by the Gas Company, title may also be subject to an agreement between the Condominium and the Gas Company pertaining to the provision of gas service to the Condominium (hereinafter referred to as the "**Gas Agreement**"), and possibly subject to a notice of security interest in favour of the Gas Company with respect to any fixtures or equipment installed by the Gas Company within any portion of the lands and premises encompassed within the Condominium's description plan, on the express understanding and agreement that the Gas Company may retain ownership of all pipes, wires, cables, conduits and appurtenant equipment associated with the provision and distribution of gas service to each of the units and the common elements of the Condominium;
 - iv) an easement in perpetuity in favour of the cable television and/or telecommunication service provider selected by the Vendor, or the owner of the communication control unit in the Condominium, or a company associated, affiliated with or related to the Vendor (hereinafter collectively referred to as the "**Cable Company**") over, under, upon, across and through the common elements of the Condominium for the purposes of facilitating the installation, operation, maintenance and/or repair of the Cable Company's cable television and/or telecommunication lines and equipment (and all necessary appurtenances thereto) in order to facilitate the supply of cable television and/or telecommunication services to each of the units in the Condominium, and to facilitate the promotion, marketing and/or provision of the Cable Company's cable television and/or telecommunication services to each of the units in the Condominium, with each unit owner being separately billed or invoiced directly by the Cable Company for all cable television and/or telecommunication services so consumed, and if so requested by the Cable Company, title may also be subject to an easement/servicing agreement between the Condominium and the Cable Company pertaining to the promotion, marketing and/or provision of cable television and/or telecommunication services to the Condominium (hereinafter referred to as the "**Cable Agreement**"), on the express understanding and agreement that the Cable Company may retain ownership of all wires, cables, conduits and appurtenant equipment associated with the provision and distribution of cable television and/or telecommunication services to each of the units and the common elements of the Condominium;
 - v) an easement in perpetuity in favour of the telephone service provider selected by the Vendor (hereinafter referred to as the "**Telephone Company**") over, under, upon, across and through the common elements of the Condominium for the purposes of facilitating the installation, operation, maintenance and/or repair of the Telephone Company's telephone lines and equipment (and all necessary appurtenances thereto) in order to facilitate the supply of telephone services to each of the units in the Condominium, with each unit owner being separately billed or invoiced directly by the Telephone Company for all telephone services so utilized, and if so requested by the Telephone Company, title may also be subject to an easement/servicing agreement between the Condominium and the Telephone Company pertaining to the provision of telephone and/or other related services to the Condominium (hereinafter referred to as the "**Telephone Agreement**"), on the express understanding and agreement that the Telephone Company may retain ownership of all wires, cables, conduits and appurtenant equipment associated with the provision and distribution of telephone and/or other related services to each of the units and the common elements of the Condominium;
 - vi) a site plan or condominium development agreement between the Vendor and the City pertaining to the development of the Condominium on the Lands, together with any supplementary and/or amending agreement(s) with respect thereto (hereinafter collectively referred to as the "**Condominium Development Agreement**"), and which agreement may provide for, amongst other things, the maintenance of grading and drainage patterns, emergency fire/access routes, landscaping and other site completion matters, and/or address any other outstanding municipal concerns involving the ongoing operation and maintenance of the Condominium; and
 - vii) an assumption agreement entered into by this Condominium with the Vendor and/or the City, pursuant to which this Condominium shall formally assume all outstanding and/or ongoing obligations and liabilities of the Vendor arising under the Condominium Development Agreement, including the obligation to maintain the works, services and/or facilities constructed or installed on the lands and premises encompassed within the condominium description plan of the Condominium (hereinafter referred to as the "**Condominium Assumption Agreement**"), and pursuant to which the Vendor shall be fully released and discharged from all such obligations and liabilities.
- b) The Purchaser further agrees to accept **title to the Property subject to the Condominium Documents being registered on title**, notwithstanding that same may be amended and varied from the proposed Condominium Documents which were given to the Purchaser when entering into this Agreement. The Purchaser further acknowledges and agrees that the registered Condominium Documents and final budget statement for the one year period immediately following registration of the Condominium may vary from the proposed Condominium Documents and budget statement given to the Purchaser when entering into this Agreement, and the Purchaser hereby acknowledges and agrees that:
- i) **in the event there is a "material change" to this Condominium's disclosure statement and accompanying materials** (as the term "material change" is defined in Section 74(2) of the Act), or any material or significant amendment to any of the documentation or information comprising the Condominium Documents (whether or not registered on title), **then the Purchaser's only remedy and recourse shall be limited and restricted to the Purchaser's statutory right to rescind this Agreement (and obtain a refund of all deposit monies paid hereunder, together with all interest earned or accrued thereon at the rate prescribed by the Act) pursuant to the provisions of Section 73(2) or Section 74(6) of the Act, within ten (10) days of the Purchaser receiving notice of (or otherwise becoming aware of) such material change or amendment, and under no circumstances shall the Purchaser be entitled to claim specific performance and/or damages (either legal or equitable) against the Vendor or the Agent as a result thereof**, notwithstanding any rule of law or equitable principle to the contrary, nor shall the Purchaser be entitled to claim any abatement or set-off against the Purchase Price therefor, nor institute or pursue any other legal or equitable claim or relief whatsoever in connection therewith; and
 - ii) **in the event there are one or more non-material changes to this Condominium's disclosure statement and accompanying materials**, or any minor amendments to any of the documentation or information comprising the Condominium Documents (whether or not registered on title), **then the Purchaser shall simply accept any and all of such minor or non-material changes without any objection thereto whatsoever**, and shall proceed to complete this transaction as and when scheduled in accordance with the provisions of this Agreement, and shall not make or pursue any claim (nor seek any remedy or compensation whatsoever) for any or all of such minor or non-material changes, and under no circumstances shall the Purchaser be entitled to claim specific performance and/or damages (either legal or equitable) against the Vendor or the Agent as a result thereof, notwithstanding any rule of law or equitable principle to the contrary, nor shall the Purchaser be entitled to claim any abatement or set-off against the Purchase Price therefor, nor institute or pursue any other legal or equitable claim or relief whatsoever in connection therewith.

Without limiting the generality of the foregoing, it is expressly understood and agreed that the Vendor shall be entitled to unilaterally make changes to the proposed first year budget statement from time to time, on one or more occasions prior to the final closing of this transaction, as and when deemed necessary or appropriate by the Vendor to accurately reflect projected costs and/or any increases with respect to same, and in the event that any such change or series of changes (either individually or collectively) is (or would be) considered or construed by a court of competent jurisdiction to be material, then the Purchaser's only right, remedy and recourse in such circumstances is to rescind this agreement, in writing, within ten (10) days of the Purchaser or the Purchaser's solicitor receiving notice of any such revision(s) to the budget statement, failing which this transaction shall proceed to completion and the Purchaser shall not be entitled to thereafter claim specific performance and/or damages (either legal or equitable) against the Vendor or the Agent as a result of any such change or series of changes to the budget, nor shall the Purchaser be entitled to claim any abatement or set-off against the Purchase Price therefor, nor institute or pursue any other legal or equitable claim or relief whatsoever in connection therewith.

- c) The Purchaser agrees that **this Agreement shall be subordinated to and postponed to any and all of the mortgages arranged or given by the Vendor** (and presently registered or to be registered on title to the Lands) and to all advances made thereunder from time to time, and to any easements or agreements referred to herein to which title may be subject, and to all of the Condominium Documents. The Purchaser agrees to execute all necessary documents and provide all requisite assurances in order to give effect to the foregoing, as and when required or requested by the Vendor or the Vendor's solicitors.
- d) The Purchaser shall not register, or cause to be registered, this Agreement against the title to the Property and/or the Lands (or any portion thereof), nor any notice of this Agreement, nor any caution, certificate of pending litigation or other similar instrument, court process or notice, until after the completion of the purchase of the Property in accordance with the terms hereof, it being expressly understood and agreed by the parties hereto that in no event shall the Purchaser be deemed or construed to have any legal, equitable or proprietary interest whatsoever in the Property and/or the Lands (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor or the Vendor's solicitors as hereinbefore provided, and that the Purchaser's only remedy against the Vendor for breach of this Agreement shall be rescission and a claim for the return of the Purchaser's deposit monies (inclusive of all monies paid for extras or upgrades to the Unit), together with all interest earned or accrued thereon at the rate prescribed under the Act, and not a claim for specific performance or damages. Any registration by the Purchaser in contravention of this subparagraph shall constitute a fundamental breach of this Agreement, entitling the Vendor to the rights, remedies and powers hereinafter set out.
- e) The Purchaser further covenants and agrees to accept title to the Property subject to the covenants and restrictions hereinbefore and hereinafter described, and to accept a transfer/deed containing such covenants and restrictions (or any form similar thereto), and the Purchaser hereby undertakes and agrees to abide by such covenants and restrictions after the Closing Date, and to exact similar covenants and restrictions from his or her immediate successors in title to the Property, all of which shall be assigned to and for the benefit of the Vendor. The dominant lands to which the foregoing covenants and restrictions are intended to be annexed, and which are being benefited thereby, comprise all or any portion of the Lands, and any lands adjacent thereto or in the neighbouring vicinity thereof (i.e. within a maximum radius of one mile) which are owned or retained by the Vendor.
- f) The Purchaser further agrees to accept title from the registered owner of the Property and to accept such owner's title covenants in lieu of the Vendor's, in the event that the Vendor is not the registered owner of the Property on Closing. The Vendor shall be entitled to insert in the transfer specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to in this Agreement, and in such case, the Purchaser may be required to execute the transfer prior to Closing to evidence and confirm the Purchaser's acceptance, approval and/or assumption of same, or the Vendor may require that the Purchaser execute and deliver a separate written covenant or acknowledgement (to and in favour of the Vendor) on Closing, which evidences and confirms the Purchaser's acceptance, approval and/or assumption of said restrictions, easements, covenants and/or agreements so referred to.
- g) At any time prior to Closing, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation registered as a vendor with Tarion, and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the Vendor named herein shall thereupon be automatically released from (and relieved of) all obligations and liabilities to the Purchaser arising under or from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and stead of the Vendor, and any such assignment shall not be considered or construed as constituting (or giving rise to) a material change to the disclosure statement, and shall not entitle the Purchaser to refuse to complete this transaction or rescind this Agreement pursuant to Section 74 of the Act, under any circumstances whatsoever.
- h) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that if the Purchaser comprises more than one individual, then all individuals comprising the Purchaser shall be deemed and construed to have acquired the dwelling unit purchased hereunder (and all parking, locker and/or other units ancillary thereto, if any) on joint account with right of survivorship, and accordingly should any of the individuals comprising the Purchaser die before the final closing of this transaction, then the Vendor is hereby irrevocably authorized and directed to engross the deed/transfer of title in the name of the surviving individual(s) comprising the Purchaser, without requiring probate of the deceased individual's last will and testament (and regardless of the provisions of any last will and testament of the deceased individual comprising the Purchaser and/or any rules applicable on his or her intestacy), provided however that the surviving individual(s) comprising the Purchaser shall nevertheless be obliged to deliver to the Vendor's solicitor a notarial copy of the death certificate, or the funeral director's certificate, or other satisfactory proof of death of the deceased individual comprising the Purchaser, and shall also be obliged to execute and deliver, on or before Closing, the Vendor's standard form of indemnity pursuant to which the surviving individual(s) comprising the Purchaser shall jointly and severally indemnify and save the Vendor and its solicitors harmless from and against all costs, claims, damages and/or liabilities which either or both of them may suffer or incur as a result of transferring title to the Property to the surviving individual(s) exclusively (including any claims from any children, relatives or other heirs of the deceased individual comprising the Purchaser, or from any beneficiaries of the estate of the deceased individual comprising the Purchaser).

NOTICES BETWEEN THE PARTIES

- 4.03 a) Any notice required to be given under (or pursuant to the provisions of) the Tarion Addendum, shall be in writing and given to the Purchaser or the Vendor as applicable (and may also be sent to their respective solicitors, if such lawyer contact information is provided), and any such notice shall be deemed to have been sufficiently given to the intended party if same is either:
- i) personally delivered to the Purchaser or the Vendor (as the case may be), at the address of the Purchaser or the Vendor so noted or identified on page 2 of the Tarion Addendum, or any replacement address as may be provided pursuant to paragraph 14(c) of the Tarion Addendum;
 - ii) sent by courier to the Purchaser or the Vendor (as the case may be), at the address of the Purchaser or the Vendor so noted or identified on page 2 of the Tarion Addendum, or any replacement address as may be provided pursuant to paragraph 14(c) of the Tarion Addendum;
 - iii) sent by prepaid registered mail to the Purchaser or the Vendor (as the case may be), to the address of the Purchaser or the Vendor so noted or identified on page 2 of the Tarion Addendum, or any replacement address as may be provided pursuant to paragraph 14(c) of the Tarion Addendum;
 - iv) sent by telefax to the Purchaser or the Vendor (as the case may be), via the telefax number of the Purchaser or the Vendor so noted or identified on page 2 of the Tarion Addendum, or any replacement fax number as may be provided pursuant to paragraph 14(c) of the Tarion Addendum; or
 - v) sent by e-mail to the Purchaser or the Vendor (as the case may be), via the e-mail address of the Purchaser or the Vendor so noted or identified on page 2 of the Tarion Addendum, or any replacement e-mail address as may be provided pursuant to paragraph 14(c) of the Tarion Addendum.
- b) Any notice given or sent pursuant to the provisions of the Tarion Addendum by any of the foregoing means, shall be deemed to have been effectively given (and correspondingly deemed to have been received by the intended party) on:
- i) the date of such personal delivery or telefax transmission or e-mail transmission (as the case may be), or the next Business Day thereafter if the date of such personal delivery or such telefax or e-mail transmission was not made or given on a Business Day;

- ii) the second (2nd) Business Day following the date of sending same by courier; or
- iii) on the fifth (5th) Business Day following the date that same was sent by registered mail, except that if a postal stoppage or interruption occurs, then notices shall not be sent by registered mail, and any notice sent by registered mail within five (5) Business Days prior to the commencement of the postal stoppage or interruption shall be re-sent by any other of the foregoing permitted means, in order to be effective;

provided however that for the purposes of deeming when the foregoing notices have been received, the term "Business Day", when used in this subparagraph (b) or subparagraph (c) below, shall be deemed to include Remembrance Day (if it falls on a day other than Saturday or Sunday) and Easter Monday.

- c) Any notices required or desired to be given to either of the parties hereto in connection with this transaction, other than those notices that are required to be given or sent by the Vendor pursuant to the provisions of the Taron Addendum, shall be in writing, and may be given or sent:
 - i) by either party hereto to the other, in accordance with any of the methods outlined in subparagraph (a) above, and if so given shall correspondingly be deemed to have been received by the intended recipient on the respective dates outlined in subparagraph (b) above; and/or
 - ii) by the Vendor to the Purchaser by way of a courier, telefax or e-mail transmission given or sent by the Vendor's solicitor directly to the Purchaser's solicitor, at the Purchaser's solicitor's address, fax number or e-mail address (as the case may be), and if so given same shall be deemed, for all purposes, to have been received by both the Purchaser and the Purchaser's solicitor on the date of such courier delivery, telefax transmission or e-mail transmission to the Purchaser's solicitor (as the case may be), or on the next Business Day thereafter if the date of such courier delivery, telefax or e-mail transmission was not made or given on a Business Day.

TENDER - GENERAL

4.04 Subject to the overriding provisions of Section 4.05 hereof, any tender of documents or monies hereunder shall be made upon the Vendor and the Purchaser, or upon their respective solicitors, and notwithstanding anything hereinbefore or hereinafter provided to the contrary, **all monies due or payable by the Purchaser on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) and/or on the Closing Date, shall be tendered only by way of a certified cheque made payable to the Vendor's solicitors and drawn upon the trust account of the Purchaser's solicitor, and which account must be maintained at or with a Canadian chartered bank or trust company.** In the event that a bank draft is delivered for all (or any part of) the balance of the purchase monies due on closing, rather than (or in lieu of) a certified cheque drawn on the Purchaser's solicitor's trust account, then the Vendor and the Vendor's solicitors shall not be obliged to accept such bank draft unless and until it is also accompanied by a letter from the Purchaser's solicitor unequivocally confirming that all funds used to purchase or acquire said bank draft emanated from the Purchaser's solicitor's trust account maintained at or with a Canadian chartered bank or trust company, and not from the bank account of the Purchaser or any third party who is not a solicitor, and that the bank draft was issued by the Purchaser's solicitor's bank (and not the bank of any other person who is not a solicitor). In the event that such tender relates to the **interim occupancy closing** contemplated in Section 2.08 (a) hereof, then such tender shall be made on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) by the attendance of the parties hereto, or their respective solicitors or authorized representatives, at the office of the Vendor's solicitors (as set out on page 1 of this Agreement), and the office of the Vendor's solicitors shall be deemed to be the only and proper location of any such tender. Moreover, in the absence of an appointment to the contrary, such attendance (and the corresponding delivery of all required documents and certified funds) **shall occur at the office of the Vendor's solicitors between the hours of 1:00 p.m. and 2:00 p.m. in the afternoon of the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be).** In the event that such tender relates to the **final closing** of this transaction [evidenced by, amongst other things, the Vendor's delivery to (or tender upon) the Purchaser or the Purchaser's solicitor of a transfer/deed in respect of the Property, in registerable form], then such tender shall be effected pursuant to (and in accordance with) the overriding provisions of Section 4.05 hereof. The Purchaser hereby acknowledges and agrees that the key(s) to the Property shall be released to the Purchaser directly from the sales office, or the Vendor's construction site office, as soon as this transaction has been completed (either on an interim occupancy basis, or on an outright final closing basis), and the Vendor shall not otherwise be required to produce or deliver a key to the Property or the Unit on either of the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), nor on the Closing Date, nor as part of any tender in connection therewith.

ELECTRONIC REGISTRATION OF DOCUMENTS AND TENDER

4.05 In light of the fact that the Province of Ontario's electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or "TERS") is operative on a mandatory basis in the applicable Land Titles Office in which the Lands are registered, the parties hereto hereby waive personal tender upon each other, and it is understood and agreed that the following provisions shall prevail, namely:

- a) The Purchaser shall be obliged to retain a lawyer, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada, to represent the Purchaser in connection with the completion of this transaction, and shall authorize such lawyer to enter into a document registration agreement which outlines the procedures and timing for completing this transaction electronically, in the form of agreement adopted and approved by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29th, 2004 (and posted to the Law Society's web site on April 8th, 2004), or any successor version thereof which has been adopted and approved by the Law Society at the time of the final closing of this transaction, together with the following additional requirements (and which Law Society-approved agreement, as supplemented or revised in accordance with the following provisions, is hereinafter collectively referred to as the "**Document Registration Agreement**"), namely:
 - i) that if either the Vendor's solicitor or the Purchaser's solicitor receives a Teraview message, phone call or other communication from the Land Titles Office after closing regarding any problem or deficiency concerning any of the electronic documents so registered, then the solicitor receiving such message or communication shall forthwith advise the other solicitor of same, and both solicitors shall co-operate with each in an expeditious manner and take all requisite steps to forthwith correct, re-sign for completeness and re-register, as and where necessary, any of the electronic documents intended to be registered, so that same can thereafter be certified by the Land Titles Office;
 - ii) that where **keys to the Unit** are to be given or released to the Purchaser in connection with the interim closing or final closing of this transaction, then such keys may not be delivered directly to the Purchaser's solicitor in escrow, but rather upon the Vendor's solicitor having received all required documents and certified funds from the Purchaser or the Purchaser's solicitor as and when required pursuant to the provisions of this Agreement, then the Vendor's solicitor shall forthwith instruct the Vendor's customer service representative to release the keys to the Unit directly to the Purchaser (or to the Purchaser's duly authorized representative), on the express understanding and agreement that if the keys are called to be released after 5:00 p.m., then the Purchaser shall not be able to pick same up until the next day thereafter that the Vendor's sales office or construction site office is open for business, and the Purchaser hereby expressly agrees to such arrangements;
 - iii) that **any uncashed rent or occupancy fee cheques** in connection with the final closing of this transaction need not be delivered by the Vendor or the Vendor's solicitors directly to the Purchaser or the Purchaser's solicitors, whether in connection with any tender or otherwise, but rather all such uncashed rent or occupancy fee cheques shall be picked up by the Purchaser (or may be viewed and photocopied only by the Purchaser's solicitor, in the event of a tender) at the Vendor's sales office or customer service office (or at any other location so determined by the Vendor), and if such cheques have not been picked up by the Purchaser within one (1) month after the final closing of this transaction, then the Vendor shall be at liberty to thereafter destroy such cheques, without any notice to the Purchaser, and the Purchaser shall have no claim or cause of action against the Vendor as a result of same; and
 - iv) that a photocopy, a telefaxed copy or a scanned/e-mailed copy of the duly executed Document Registration Agreement (whether executed by hand or by electronic means) may be relied upon by each of the Vendor's solicitor and the Purchaser's solicitor, to the same extent as if it were an original executed version.
- b) The Document Registration Agreement shall be executed by both the Vendor's solicitor and the Purchaser's solicitor, and exchanged by courier or telefax between said solicitors (such that each solicitor has a photocopy or telefaxed copy of the Document Registration Agreement duly executed by both solicitors) by no later than five (5) days before the Closing Date. However, should either solicitor fail to execute and deliver the Document Registration Agreement to the other solicitor by such time, then said solicitor who fails to execute same shall nevertheless be bound by (and be obliged to comply with)

the provisions of the Document Registration Agreement as described above. Without limiting the generality of the foregoing, the parties hereto confirm and agree that the delivery and exchange of documents, monies and keys to the Property, and the release thereof to the Vendor and/or the Purchaser, as the case may be:

- i) shall not occur contemporaneously with the registration of the transfer/deed (and other registerable documentation); and
 - ii) shall be governed by the Document Registration Agreement, pursuant to which the solicitor receiving any documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Document Registration Agreement.
- c) If the Purchaser's lawyer is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Document Registration Agreement, then said lawyer (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's solicitor, at such time on the scheduled Closing Date as may be directed by the Vendor's solicitor or as mutually agreed upon (and in the absence of any such mutual agreement, by no later than 1:00 p.m. on the scheduled Closing Date), in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's solicitor's office.
- d) The Purchaser expressly acknowledges and agrees that the Vendor shall not be requested nor required to release the transfer/deed to the Property for registration electronically unless and until the **balance of all funds due on closing, in accordance with the Vendor's statement of adjustments, are remitted by certified cheque to the Vendor's solicitor (or in such other manner as the Vendor's solicitor may authorize or direct), and correspondingly received by the Vendor's solicitor (along with all other required documentation from the Purchaser or the Purchaser's solicitor) by no later than 2:00 p.m. on the scheduled Closing Date at the office of the Vendor's solicitor.** Without limiting the generality of the foregoing, and notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that:
- i) **if the Purchaser is not ready, willing or able to complete the interim occupancy closing and/or the final closing** of this transaction by delivering all required documents and/or certified funds to the Vendor's solicitors by 2:00 p.m. on the scheduled interim occupancy closing date or final closing date (as the case may be), **and the Purchaser or the Purchaser's solicitor correspondingly requests or requires an extension of the interim closing date or the final closing date (as the case may be) in order to avoid or delay being tendered upon as a consequence of such default, then in the absence of any subsequent written agreement to the contrary executed by the parties hereto or by their respective solicitors, any such extension that is agreed to by or on behalf of the parties hereto shall correspondingly entitle the Vendor to charge interest on a per diem basis** for every day of the agreed-upon extension period, **at the rate of 12% per annum**, calculated annually not in advance, calculated and accruing on the entire outstanding amount of money that is due and owing or otherwise payable on said interim occupancy closing date or final closing date (as the case may be), and the Purchaser's failure to remit a certified cheque made payable to the Vendor's solicitors for all such accrued interest, in addition to a certified cheque for the entire balance of the monies otherwise due and owing (or to include such accrued interest amount with the certified cheque for the entire balance of the monies otherwise due and owing) on the agreed-upon extended interim occupancy closing date or extended final closing date (as the case may be) shall automatically entitle the Vendor and the Vendor's solicitors to refuse to complete this transaction and to refrain from providing occupancy of the Unit to the Purchaser on the interim closing of this transaction and/or to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's solicitor on the final closing of this transaction;
 - ii) if and when the Purchaser is in default of his or her obligations under this Agreement, and whether such default pertains to the interim occupancy closing and/or the final closing of this transaction or otherwise, then **from and after the date of such default and the Vendor's solicitor's tender upon the Purchaser or the Purchaser's solicitor in connection therewith and as a consequence thereof (as hereinbefore provided), to and until the date that the Purchaser has fully rectified his or her default** and this transaction has correspondingly been completed on an interim occupancy or final closing basis (as the case may be), or to and until the date that this transaction has been formally terminated as a consequence of the Purchaser's default and concomitant failure to rectify same within five (5) days of being notified to do so in writing by the Vendor's solicitor (pursuant to the Vendor's solicitor's written correspondence confirming such termination), **the Vendor shall be entitled to charge interest at the rate of 12% per annum**, calculated annually not in advance, computed and accruing on the entire outstanding amount of money that is due and owing or otherwise payable on said interim occupancy closing date or final closing date (as the case may be), with such interest commencing to accrue **from the date of default and tender as aforesaid, to and until the full rectification of said outstanding default** and the actual interim occupancy closing or final closing of this transaction (as the case may be), and the Purchaser's failure to remit a certified cheque made payable to the Vendor's solicitors for all such accrued interest, in addition to a certified cheque for the entire balance of the monies otherwise due and owing (or to include such accrued interest amount with the certified cheque for the entire balance of the monies otherwise due and owing) shall automatically entitle the Vendor and the Vendor's solicitors to refuse to complete this transaction and to refrain from providing occupancy of the Unit to the Purchaser on the interim closing of this transaction and/or to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's solicitor on the final closing of this transaction; and
 - iii) **if and when the Purchaser is in default of his or her obligations under this Agreement, and as a consequence thereof the Vendor has effected a tender upon the Purchaser or the Purchaser's solicitor** in accordance with the foregoing provisions of this Agreement, **and subsequently thereafter the Purchaser purports to rectify such default** to the Vendor's satisfaction prior to the delivery by the Vendor or the Vendor's solicitor of formal written notice of the termination of this Agreement as a consequence of such default, **then the Purchaser agrees to fully reimburse the Vendor** on the interim closing or final closing of this transaction (as the case may be, depending on which closing the default relates to), by way of a separate certified cheque made payable to the Vendor's solicitors and delivered on the interim closing or final closing of this transaction (as the case may be) **for all reasonable legal fees and disbursements incurred by the Vendor and correspondingly charged by the Vendor's solicitor with respect to all correspondence and dealings with the Purchaser and/or the Purchaser's solicitor in connection with such default, tender and/or the rectification thereof**, which reimbursement shall be **in the amount of \$950.00 (plus HST)**, and the Purchaser's failure to remit a certified cheque made payable to the Vendor's solicitors in said amount on the actual interim occupancy closing or final closing of this transaction (as the case may be) shall automatically entitle the Vendor and the Vendor's solicitors to refuse to complete this transaction and to refrain from providing occupancy of the Unit to the Purchaser on the interim closing of this transaction and/or to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's solicitor on the final closing of this transaction, inasmuch as the Purchaser's default shall not be considered or construed to be rectified unless and until the interest amount so payable pursuant to the immediately preceding subsection 4.05(d)(ii), as well as the amount for the Vendor's solicitors legal fees and disbursements so payable pursuant to this subsection 4.05(d)(iii), have been received by the Vendor's solicitors.
- e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Real Property may be delivered to the other party's solicitor by e-mail or telefax transmission (or by a similar system reproducing the original), provided that all documents so e-mailed or telefaxed have been duly and properly executed by the appropriate parties/signatories thereto. The party transmitting any such documents shall also provide the original executed version(s) of same to the recipient within two (2) Business Days after the Closing Date, unless the recipient has indicated that he or she does not require such original copies.
- f) Notwithstanding anything contained in this Agreement or in the Document Registration Agreement to the contrary, it is expressly understood and agreed by the parties hereto that:
- i) **An effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:**
 - A. delivered all closing documents and/or any requisite funds (if applicable) to the Purchaser's solicitor in accordance with the provisions of the Document Registration Agreement;
 - B. advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete this transaction in accordance with the terms and provisions of this Agreement, and that the keys to the Property have already been (or will be) made available for pickup by the Purchaser at the Vendor's sales office or site office forthwith following the interim occupancy closing or final closing of this transaction (as the case may be) completed in accordance with the provisions of this Agreement; and

- C. has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the cooperation or participation of the Purchaser's solicitor, and specifically when the Vendor's solicitor has electronically "signed" the transfer/deed (and any vendor take-back mortgage, if applicable to this transaction) for "completeness" and has granted access thereto to the Purchaser's solicitor via TERS (but without the Vendor's solicitor or the Vendor's solicitor's secretary or law clerk releasing same for registration by the Purchaser's solicitor);

without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

- ii) In the event that:

A. TERS is unavailable to the Vendor's solicitor on the Closing Date for any reason whatsoever;

B. **the Vendor's solicitor receives the required documents and monies** to be provided by the Purchaser or the Purchaser's solicitor in accordance with the provisions of this Agreement **after 2:00 p.m. on the Closing Date;** or

C. **the Purchaser is not ready, willing and able to complete the final closing of this transaction on the Closing Date** in accordance with the provisions of this Agreement;

then in any of the foregoing circumstances, the Vendor shall be entitled (but not obliged) to unilaterally extend the Closing Date for one (1) Business Day, in order to avoid the necessity of tender, by notice in writing telefaxed or e-mailed by the Vendor's solicitor to the Purchaser's solicitor prior to 8:00 p.m. on the Closing Date, in which case all adjustments shall remain as of the original Closing Date, provided however that if the Unit has already been occupied by the Purchaser pursuant to an interim occupancy closing that has occurred prior to the Closing Date, then the Vendor shall also be entitled to add to the amount otherwise payable by the Purchaser on Closing (as set out in the final statement of adjustments) interest on the amount so payable at the rate of 12% per annum, calculated annually not in advance, with all such amounts (together with interest accrued thereon as aforesaid) to be paid on such extended Closing Date, by certified cheque made payable to the Vendor's solicitor in trust, and the Purchaser's failure to remit such certified cheque inclusive of such interest amount shall automatically entitle the Vendor and the Vendor's solicitors to refuse to complete this transaction and to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's solicitor.

REQUISITIONS

- 4.06 a) The Purchaser shall examine the title to the Property and the Lands, and shall correspondingly conduct all requisite searches and procure all requisite clearances and certificates in connection with the completion of this transaction, all at the Purchaser's sole cost and expense, and shall not requisition the production by the Vendor or the Vendor's solicitor of any surveys, title deeds, abstracts of title, grading certificates, occupancy certificates and/or condominium status certificates, nor any proof or evidence of the title or occupiability of the Property whatsoever, save and except for either an occupancy permit or a signed written confirmation by the Vendor which evidences or confirms that the conditions for residential occupancy in respect of the Unit have been fulfilled, as expressly provided or contemplated in section 9 of the Tarion Addendum. The Purchaser shall be allowed to submit his or her requisitions as to title and with respect to any other matters, up until fifteen (15) days prior to the Closing Date set forth in (or established by) this Agreement, and if within that time the Purchaser shall furnish the Vendor in writing with any valid objection to title, or to any outstanding work order, which the Vendor shall be unable or unwilling to remove, remedy or satisfy, or obtain title insurance in respect thereof in favour of the Purchaser and any mortgagee(s) financing the Purchaser's acquisition of the Property (with all related premiums for such insurance to be borne by the Vendor at its sole cost and expense), and which requisition(s) or objection(s) the Purchaser will not waive, then this Agreement shall, notwithstanding any intervening acts or negotiations, be null and void, and all deposit monies theretofore paid (inclusive of any monies paid by the Purchaser on account of extras or upgrades to the Unit) shall be returned to the Purchaser, together with interest earned and accrued thereon at the rate prescribed under the Act, and without deduction of any kind, save for any deduction for the cost or price of any Extras ordered by the Purchaser and as yet unpaid, and the Vendor shall have no further liability or obligation hereunder, and shall not be liable for any costs or damages incurred by the Purchaser thereby. Save as to any valid objection(s) so made within such time, the Purchaser shall be conclusively deemed to have accepted the title to the Property. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.
- b) In the event that the electronic registration system is operative on an optional basis in the applicable Land Titles Office in which the Lands are registered, and the Vendor has correspondingly elected (at its sole option, and in its sole and unfettered discretion) to utilize said system, or alternatively in the event that the electronic registration system is operative on a mandatory basis in said Land Titles Office, then in either of such circumstances it is understood and agreed that any reference in this Agreement which obliges a party to register a document on title to the Property or the Lands shall be equivalent to (and shall be deemed and construed to constitute) an obligation on said party to obtain the requisite e-reg authorization from their client and to complete and register such document in an electronic format, as may be required by the Teraview Electronic Registration System and the Ministry of Government & Consumer Services (or any successor Ministry) regulating same.
- c) The Purchaser hereby expressly waives the requirement for the Vendor to deliver any or all of the information and/or documentation prescribed pursuant to the provisions of the *Green Energy Act 2009* and/or the regulations promulgated thereunder, relating to the energy consumption and/or energy efficiency of the Property (or any portion thereof) and/or the Condominium (or any portion thereof). In light of the foregoing, it is understood and agreed that any request or requisition made by or on behalf of the Purchaser for any such information and/or documentation contemplated under the *Green Energy Act 2009* (and specifically the information and/or documentation required pursuant to section 3 thereof, and any regulations with respect thereto) shall automatically be null and void, and of no force or effect whatsoever (and need not be answered or satisfied by the Vendor or the Vendor's solicitor), and the Purchaser shall nevertheless be obliged to complete this transaction without same.

THE VENDOR'S ELECTRONIC CLOSING SYSTEM

- 4.07 a) It is understood and agreed that the Vendor intends to utilize the services of an internet-based electronic transaction management system to assist the Purchaser, the Vendor, and their respective solicitors in preparing the documents (and managing the procedures) required to complete the interim occupancy closing and the final closing of this transaction (hereinafter referred to as the "**Electronic Closing System**") through a secure password-protected internet website utilized by the Vendor (hereinafter referred to as the "**eClose website**"). As a result, the Purchaser acknowledges and agrees that the Vendor's **delivery of some or all of the interim closing and/or final closing documents**, as well as some or all of the Condominium Documents, and/or any amendments to same (including any corrigenda to the disclosure statement, any revised budget statement and/or any status certificate or accompanying documentation) **may be delivered electronically**, by the Vendor or the Vendor's solicitor uploading any such documentation **on the internet, via the eClose website**, and making same available for downloading (and ultimately for photocopying) by the Purchaser's solicitor (or alternatively, if the Vendor's solicitor so chooses, by the Vendor's solicitor e-mailing such documentation directly to the Purchaser's solicitor), and delivery by such means shall be considered acceptable and effective for all purposes. In light of the foregoing, the Purchaser shall be obliged to retain a lawyer who is in good standing with the Law Society of Upper Canada and who either:
- i) is (or following the execution of this Agreement, takes all necessary steps to become) a registered user of the Electronic Closing System administered by eClose Guaranteed Inc. (the particulars of which can be obtained through the Vendor's sales office or the Vendor's solicitors), to facilitate both the interim occupancy closing and the final closing of this transaction; **OR**
- ii) declines to become a registered user of the Electronic Closing System or is otherwise unable or unwilling to access and/or utilize the Electronic Closing System to facilitate both the interim occupancy closing and the final closing of this transaction, in which case, the Purchaser acknowledges that the Vendor's solicitors shall then be required to employ additional non-electronic systems and procedures in order to communicate with the Purchaser's lawyer in completing this transaction, and the Purchaser shall correspondingly be obliged to **pay to the Vendor's solicitors (or**

correspondingly reimburse the Vendor on Closing for) all additional legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's solicitors in order to implement such additional non-electronic systems and procedures (with the Vendor's solicitors' legal fees for implementing same being \$500 plus HST for each of the interim closing package and/or the final closing package, and with such fees being subject to increase, from time to time, without any requirement or obligation to notify the Purchaser of same prior to closing). The Purchaser's failure to remit a certified cheque for such fees (made payable to the Vendor's solicitors) on the interim closing or final closing of this transaction (as the case may be) shall automatically entitle the Vendor and the Vendor's solicitors to refuse to complete this transaction and to refrain from providing occupancy of the Unit to the Purchaser and/or to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's solicitor.

- b) Notwithstanding the utilization of the Electronic Closing System to manage and complete this transaction, it is nevertheless understood and agreed that the issues of tender, and the delivery and/or exchange of documents, monies and keys to the Property, and the release thereof to the Vendor and the Purchaser (as the case may be), shall continue to be governed by (and be subject to the overriding provisions of) Section 4.05 hereof.

CONSENT TO THE DELIVERY OF DOCUMENTS IN ELECTRONIC FORMAT

- 4.08 Pursuant to the provisions of *the Electronic Commerce Act 2000, S.O. 2000, as amended*, the Purchaser hereby expressly consents to the delivery by the Vendor or the Vendor's solicitor of the condominium disclosure statement and the documents accompanying same, and any amendments thereto [including without limitation, any corrigenda to the disclosure statement, and any documents pertaining to the interim occupancy closing and/or final closing of this transaction, and any other information and/or documentation pertaining to this transaction (such as the Form 4 Certificates issued in connection with the Purchaser's deposit cheques, pursuant to section 81(6) of the Act)], in electronic format [including without limitation, by copying such documents onto a computer disk that is delivered to the Purchaser or the Purchaser's solicitor (instead of being in paper format), or by delivering same via e-mail at the e-mail address of the Purchaser or the Purchaser's solicitor, or by posting such information or documentation on the internet via the password-protected customer website utilized by the Vendor to communicate with the Purchaser], if the Vendor chooses to do so. In addition, the Purchaser acknowledges and agrees that copies of the registered declaration and by-laws of the Condominium (including any agreements authorized by any of the by-laws) may be delivered to the Purchaser's solicitor via the Vendor's electronic closing system described in Section 4.07 hereof, rather than being delivered directly to the Purchaser or the Purchaser's solicitor in paper format.

ARTICLE V - EXECUTION OF DOCUMENTS, MISCELLANEOUS PROVISIONS AND DEFAULT

EXECUTION OF DOCUMENTS

- 5.01 a) The Purchaser hereby irrevocably constitutes and appoints the Vendor to be (and act as) the Purchaser's lawful attorney and agent, and which power of attorney is coupled with an interest, in order to enable the Vendor to lawfully execute (in the Purchaser's name, place and stead) the deposit receipt(s) issued by Tarion from time to time in connection with the first \$20,000.00 of deposit monies so paid by the Purchaser in accordance with the provisions of this Agreement, and any excess condominium deposit insurance policy (and related documents) issued by any insurer or bonding company selected by the Vendor and providing prescribed security for the Purchaser's deposit monies pursuant to the Act (if, in fact, such excess deposit insurance is procured by the Vendor), as well as the new housing application form for a rebate of any portion of the single sales tax (if applicable), together with any other ancillary documents required to be executed in order to procure or receive any available rebate(s) of the single sales tax applicable in connection with this transaction, with there being no restriction or limitation on such power in order to accomplish the foregoing purpose, and said power of attorney and agency appointment shall not be considered or construed as a continuing power of attorney in accordance with the provisions of *the Substitute Decisions Act S.O. 1992, as amended*, but such power may nevertheless be exercised during any subsequent legal incapacity on the part of the Purchaser, and the Purchaser agrees not to take any action in the future which results in the termination of the foregoing power of attorney and agency appointment hereby granted to the Vendor.
- b) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then any such power of attorney utilized by or on behalf of the Purchaser (or by any of the individuals comprising the Purchaser) must be expressly made (and duly executed and witnessed) in accordance with the provisions and requirements of *the Substitute Decisions Act S.O. 1992, as amended*, or alternatively in accordance with the provisions of *the Powers of Attorney Act R.S.O. 1990, as amended* (as the case may be), and not any power of attorney form drawn or made pursuant to the laws of any country, state or province other than Ontario, Canada, and a legible copy of such duly executed and properly witnessed power of attorney shall be delivered to the Vendor's solicitor on or before the interim occupancy closing and/or final closing of this transaction to which such documents relate, together with a statutory declaration sworn by the Purchaser's solicitor confirming either:
- i) that to the best of the Purchaser's solicitor's knowledge, information and belief, and after having made due inquiries of the donor, and relying on the donor's responses for the purposes of making this statutory declaration, the Purchaser's solicitor hereby confirms that:
- A. the power of attorney was properly executed and witnessed;
- B. the power of attorney was lawfully given, is still in full force and effect, and has not been revoked; and
- C. the attorney is the lawful party named in the power of attorney, and is acting within the scope of the authority granted to him or her under the power of attorney;
- or alternatively:
- ii) that to the best of the Purchaser's solicitor's knowledge, information and belief, and after having made due inquiries of the donee [because the donor has not responded to the telephone calls, telefax and/or e-mail inquiries of the Purchaser's solicitor] and relying on the donee's responses for the purposes of making this statutory declaration, the Purchaser's solicitor hereby confirms that:
- A. the power of attorney was properly executed and witnessed;
- B. the power of attorney was lawfully given, is still in full force and effect, and has not been revoked; and
- C. the attorney is the lawful party named in the power of attorney, and is acting within the scope of the authority granted under the power of attorney;
- c) Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed that where a third party has been appointed as the attorney for the Purchaser for the purposes of executing any documents contemplated by this Agreement, then any notices required or desired to be delivered to the Purchaser in accordance with the provisions of this Agreement may (but need not) be given to the said attorney, in lieu of the Purchaser or the Purchaser's solicitor (and shall be deemed to have been received by the Purchaser when so delivered to his or her attorney).
- d) Each of the individuals comprising the Purchaser, if more than one (hereinafter referred to as the "Donor") hereby constitutes and appoints the other (hereinafter referred to as the "Donee") to be and act as the Donor's lawful agent and attorney, in order to execute the Purchaser's acknowledgment of receipt of the disclosure statement (or any amended disclosure statement or corrigenda thereto, including receipt of any revised budget statement, if applicable), and/or for the purposes of receiving any or all notices required or desired to be delivered by the Vendor in accordance with the provisions of this Agreement, excluding all notices required to be given by the Vendor pursuant to the provisions of the Tarion Addendum [unless the Donee's address for service, fax number or e-mail address has been duly noted or identified on page 2 of the Tarion Addendum, or is subsequently provided pursuant to paragraph 14(c) of the Tarion Addendum]. The Donor hereby expressly confirms and agrees that this power of attorney may be exercised by the Donee during any subsequent legal incapacity of the Donor, and shall only be revoked upon the death of the Donor or upon the Donor delivering written notice of such revocation directly to the Vendor.

- e) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for a corporation to be incorporated, the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust for a corporation to be incorporated, as the case may be, shall be deemed and construed to constitute the personal guarantee of such person or persons so signing with respect to the obligations of the Purchaser herein, and such person or persons shall also be correspondingly obliged to unconditionally guarantee any mortgage(s) required to be given by the Purchaser on Closing, in accordance with the provisions hereof.
- f) In the event that any of the documents delivered by the Vendor's solicitor to the Purchaser or Purchaser's solicitor for execution by the Purchaser are signed in foreign characters or lettering (which bears no relation to the Purchaser's name in English, as same appears in the document(s) being executed), then the Purchaser agrees to ensure that his or her signature is duly witnessed, and that a statement is added in English by such witness confirming that the witness saw the Purchaser sign the document after same had been read to the Purchaser and the Purchaser appeared to fully understand same.
- g) It is expressly acknowledged and agreed that the Vendor's provision, delivery and/or execution of any documents required or desired in connection with the interim occupancy closing and/or final closing of this purchase and sale transaction (including without limitation, the Vendor's provision and delivery of any notices and/or documents that may be required to be in writing), as well as the condominium corporation's execution and/or delivery of any status certificates prior to the Condominium's turnover meeting, may, at the Vendor's sole option, be made or manifested in an electronic format and/or executed by way of electronic signature of any such documents (undertaken by or through a computer program, or by any other electronic means) as expressly provided or contemplated by the *Electronic Commerce Act 2000, S.O. 2000, as amended*. For purposes of clarification, the terms "electronic signature" and "electronic" shall have the meanings respectively ascribed to such terms in the *Electronic Commerce Act 2000, S.O. 2000, as amended*.

TIME OF THE ESSENCE

- 5.02 Time shall strictly be of the essence of this Agreement in all respects, and any waiver, extension, abridgement or other modification of any time provisions shall not be effective unless made in writing and signed by the parties hereto or by their respective solicitors who are hereby expressly authorized in that regard.

NON-MERGER

- 5.03 The covenants and agreements of each of the parties hereto shall not merge on the Closing Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled in accordance with the provisions of this Agreement, notwithstanding the conveyance of title to the Property to the Purchaser (or to any other party or parties pursuant to the Purchaser's direction re: title approved by the Vendor or the First Mortgagee as hereinbefore provided) and the payment of the Purchase Price to the Vendor or the Vendor's solicitors as hereinbefore provided. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

ENUREMENT

- 5.04 This Agreement shall enure to the benefit of, and be correspondingly binding upon, each of the parties hereto, and their respective heirs, estate trustees, successors and permitted assigns.

INTERPRETATION

- 5.05 a) The meanings of the words and phrases used in this Agreement shall have the meanings respectively ascribed to them in the Act, unless this Agreement or the context in which such words or phrases are used otherwise requires a different meaning for same.
- b) This Agreement shall be read with all changes in gender and/or number as may be required by the context. In the event that any provision of this Agreement shall be judicially determined to be illegal or unenforceable, then such provision shall be considered separate and severed from the remainder of this Agreement, and the remaining provisions of this Agreement shall accordingly remain in full force and effect, and shall continue to be binding on both parties hereto. In addition, in recognition of the fact that the Purchaser has the benefit of the statutory ten (10) day rescission period within which to have this Agreement thoroughly reviewed by the Purchaser's solicitor and to negotiate any desired revisions thereto or any new or additional provisions, it is expressly acknowledged and agreed by both parties hereto that notwithstanding any rule of law or rule of contract construction to the contrary, any ambiguity or uncertainty with respect to any provision(s) of this Agreement shall not be construed against the Vendor or the Purchaser by reason of the authorship of any of the provisions contained in this Agreement, and accordingly the "contra proferentem" principle of contract construction shall be inapplicable to the interpretation of this Agreement or any provision hereof.
- c) Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this Agreement.
- d) It is understood and agreed by the parties hereto that **the use of boldface print, capitalized terms or lettering, underlining and/or italics throughout this Agreement (including the bolding of certain key words or phrases within various paragraphs hereof)** are for ease of reference/identification purposes only, and/or to bring certain provisions to the specific attention of the Purchaser and his or her solicitor, but under no circumstances shall the foregoing print/drafting style be deemed or construed as any warranty or representation that the provisions so bolded, capitalized, underlined or italicized (as the case may be) are more important than any other provisions contained herein, or that those provisions which are not so bolded, capitalized, underlined or italicized are not important or significant provisions of this Agreement.

DEFAULT

- 5.06 a) **In the event that the Purchaser is in default with respect to any of the Purchaser's obligations contained in this Agreement (or in the Occupancy Agreement) at any time on or before the final closing of this transaction, and fails to remedy such default forthwith if such default is a monetary default and/or pertains to the execution and delivery of documentation required to be given to the Vendor on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), or within five (5) days of the Purchaser being so notified in writing with respect to any other non-monetary default,** then the Vendor, in addition to (and without prejudice to) any other rights or remedies available to the Vendor (at law or in equity) may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained herein (including without limitation, the right to make colour and finish selections with respect to the Unit as hereinbefore provided or contemplated), and/or unilaterally declare this Agreement and the Occupancy Agreement to be terminated and of no further force or effect, whereupon all deposit monies theretofore paid, together with all monies paid for any extras, upgrades and/or changes to the Property, shall be retained by the Vendor as its liquidated damages, and not as a penalty, in addition to (and without prejudice to) any other rights or remedies available to the Vendor at law or in equity. In the event of the termination of this Agreement and/or the Occupancy Agreement by reason of the Purchaser's default as aforesaid, or by reason of the Purchaser's failure to procure and/or deliver evidence of the Purchaser having obtained mortgage approval in connection with any required financing (to enable the Purchaser to complete this transaction on an all-cash basis to the Vendor as hereinbefore provided) as contemplated in Sections 2.02 and 2.03 hereof, or if this purchase and sale transaction is terminated for any other reason as a consequence of (or emanating from) the Purchaser's default or breach of contract, then the Purchaser shall be obliged to forthwith vacate the Property (or cause same to be forthwith vacated) if same has theretofore been occupied (and shall leave the Property in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser), and shall execute and deliver such releases and any other documents or assurances as the Vendor may desire or require, in order to facilitate the Vendor's re-sale of the Property in an effort to mitigate the damages suffered or incurred by it as a consequence of the Purchaser's default, and to confirm that the Purchaser does not have (and cannot, by virtue of the provisions set out in Section 4.02(d) hereof, be deemed or construed to have) any legal, equitable or proprietary interest whatsoever in the Property and/or the Lands (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor or the Vendor's solicitors as hereinbefore provided. The Purchaser hereby irrevocably appoints the Vendor to be the Purchaser's lawful attorney and agent, and which power of attorney is coupled with an interest, in order to enable the Vendor to lawfully execute the aforementioned releases, documents and assurances in the Purchaser's name, place and stead, in the event that the Purchaser fails or refuses to execute same when requested to do so by the Vendor, with there being no restriction or limitation on such power in order to accomplish the foregoing purpose, and said power of attorney and agency appointment shall not be considered or construed as a continuing power of attorney in accordance with the provisions of the *Substitute Decisions Act S.O. 1992, as amended*, but such power may nevertheless be exercised during any subsequent legal incapacity

on the part of the Purchaser, and the Purchaser agrees not to take any action in the future which results in the termination of the foregoing power of attorney and agency appointment hereby granted to the Vendor.

b) The Purchaser acknowledges and agrees that **notwithstanding any other terms and provisions contained in this Agreement to the contrary**, in the event that:

- i) **one or more material amendments are made to the Condominium Documents** (or any portion thereof), the Property (or any portion thereof), and/or to the Condominium being developed on the Lands, **then the Purchaser's only remedy and recourse shall be limited and restricted to the Purchaser's statutory right to rescind this Agreement** (and obtain a refund of all deposit monies paid hereunder, together with all interest earned or accrued thereon at the rate prescribed by the Act) pursuant to the provisions of Section 73(2) or Section 74(6) of the Act, and the Purchaser shall not make or pursue any claim (nor seek any remedy or compensation whatsoever) for any or all of such material amendments, and under no circumstances shall the Purchaser be entitled to claim specific performance and/or damages (either legal or equitable) against the Vendor or the Agent as a result thereof, notwithstanding any rule of law or equitable principle to the contrary, nor shall the Purchaser be entitled to claim any abatement or set-off against the Purchase Price therefor, nor initiate or pursue any other legal or equitable claim or relief whatsoever in connection therewith; and/or
- ii) **one or more non-material changes are made to the Condominium Documents** (or any portion thereof), the Property (or any portion thereof), and/or to the Condominium being developed on the Lands, **then the Purchaser shall simply accept any and all of such minor or non-material changes without any objection thereto whatsoever**, and shall proceed to complete this transaction as and when scheduled in accordance with the provisions of this Agreement, and shall not make or pursue any claim (nor seek any remedy or compensation whatsoever) for any or all of such minor or non-material changes, and under no circumstances shall the Purchaser be entitled to claim specific performance and/or damages (either legal or equitable) against the Vendor or the Agent as a result thereof, notwithstanding any rule of law or equitable principle to the contrary, nor shall the Purchaser be entitled to claim any abatement or set-off against the Purchase Price therefor, nor initiate or pursue any other legal or equitable claim or relief whatsoever in connection therewith;

and the foregoing provisions hereof may be pleaded as an estoppel and bar against the Purchaser in any action or proceeding brought by the Purchaser to assert any such claim or cause of action against the Vendor (whether for damages or other compensation, and/or specific performance, or otherwise).

c) The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties.

d) Notwithstanding anything hereinbefore provided to the contrary, it is understood and agreed by the parties hereto that **in the event the Purchaser is in default** with respect to any of his or her obligations under this Agreement, then in addition to (and without prejudice to) any other rights or remedies which the Vendor may pursue as a result of such default, **the Vendor expressly reserves the right to accelerate the payment due date(s) of the deposits agreed to be paid by the Purchaser pursuant to paragraph 1(a) (ii), (iii) and (iv) on page 1 of this Agreement**, by delivering a written demand upon the Purchaser or the Purchaser's solicitor to pay the balance of said deposits, and same must be paid within forty-eight (48) hours of the Vendor's demand therefor, failing which the Purchaser shall be deemed to have committed a fundamental breach of this Agreement, entitling the Vendor to unilaterally declare this Agreement to be terminated and of no further force or effect, whereupon all deposit monies theretofore paid (together with all monies paid for any Extras or changes to the Property) shall be retained by the Vendor as its liquidated damages, and not as a penalty, in addition to (and without prejudice to) any other rights or remedies available to the Vendor at law or in equity.

e) In the event the Purchaser is in default with respect to any of his or her obligations under this Agreement, and thereafter rectifies such default to the Vendor's satisfaction prior to the delivery by the Vendor or the Vendor's solicitor of formal written notice of the termination of this Agreement as a consequence of such default, then the Purchaser agrees to fully reimburse the Vendor on closing (by way of an appropriate charge to the Purchaser or credit to the Vendor in the statement of adjustments prepared as at the final closing of this transaction) for all legal fees and disbursements incurred by the Vendor and correspondingly charged by the Vendor's solicitor with respect to all correspondence and dealings with the Purchaser and/or the Purchaser's solicitor in connection with such default and/or the rectification thereof, and being a minimum of **\$950.00 plus HST** on account of legal fees.

AQUABELLA AT BAYSIDE TORONTO

SCHEDULE AA - SITE SPECIFIC TERMS & PROVISIONS

ARTICLE 1 - DEFINITIONS, EXPLANATIONS, ADJUSTMENTS AND ACCEPTANCE OF OFFER

DEFINITIONS

The capitalized terms used on the first page of the agreement of purchase and sale to which this schedule is annexed, and in all schedules annexed thereto (hereinafter collectively referred to as this or the "Agreement"), shall have the meanings respectively ascribed to them in Section 1.01 of Schedule "A", or as otherwise defined elsewhere in this schedule (or in any of the other schedules annexed thereto).

1.01 (n) the "Lands" shall mean the L-shaped parcel of land situate in the City of Toronto, in the Province of Ontario, fronting on the north and west sides of Merchants Wharf, and on the south side of a private roadway running in an east-west, then north-south, then east-west direction known as Edgewater Drive, situate south of Queens Quay East and north of the waters' edge boardwalk (also known as Waters' Edge Promenade) that runs along the north side of Lake Ontario and the Toronto Harbour, with the address for the Condominium being developed thereon to be municipally known as **118 Merchants Wharf, Toronto** (or such other address as the City of Toronto may hereafter designate), and currently consisting of all of Block 8 on Registered Plan 66M-2514, comprising all of PIN 21384-0184(L1), and part of Lots 24 and 25 on Registered Plan 694-E, comprising part of PIN 21384-0186(L1), more particularly designated as **Parts 1, 2, 3 and 4 on Reference Plan 66R-28781**, registered in the Land Titles Division of the Toronto Registry Office (No. 66), and:

- i) having an appurtenant easement for pedestrian access and egress purposes, over, along, across and upon the waters' edge boardwalk (also known as Waters' Edge Promenade) extending from the westerly perimeter of the Parliament Street Slip to the easterly perimeter of Sherbourne Common;
- ii) being subject to a servient easement in favour of the City of Toronto and the general public, for pedestrian and vehicular access and egress purposes, over that portion of the common elements of this Condominium comprising part of Edgewater Drive and more particularly designated as **Parts 2 and 3 on Reference Plan 66R-28781**, traversing along the northerly perimeter of this Condominium, and extending from the north-east corner of the municipal park that is situate to the west of this Condominium known as Aitken Place Park, and continuing easterly to the north-south extension of the public roadway known as Merchants Wharf (with said portion of Edgewater Drive, inclusive of all public sidewalks and street landscaping elements to be developed in conjunction therewith, along either side of same, being hereinafter collectively referred to as the "Shared Roadway"); and
- iii) being subject to a servient easement in favour of the City of Toronto and the general public, for pedestrian access and egress purposes, over that portion of the common elements of this Condominium more particularly designated as **Part 1 on Reference Plan 66R-28781**, and comprising a public pedestrian walkway situate along the westerly perimeter of this Condominium and known as Kanadarto Lane (hereinafter referred to as the "Public Walkway");

all as more particularly outlined or illustrated on the site plan sketch of this Condominium annexed as Schedule "D" to this Agreement (and the Lands are also sometimes hereinafter collectively referred to as the "Real Property"); upon which the Vendor is developing an integrated mixed-use condominium/freehold project (hereinafter collectively referred to as the "Project" or the "Aquabella Project") consisting of the following three (3) distinct components (hereinafter individually referred to as a "Component" and collectively referred to as the "Components"), namely:

- A. this Condominium, being a 13 storey residential condominium comprising approximately 173 dwelling units [together with various parking units, locker units, hobby/storage room units, shared service units and other ancillary units], having its main entrance lobby (with an on-site concierge station) located at the south/east corner of this Condominium facing or fronting onto Merchants Wharf, together with a separate smaller lobby (served by a remote electronic virtual concierge only) located at the north/west corner of this Condominium facing or fronting onto Edgewater Drive, and with the underground parking garage that serves this Condominium being accessible from the south side of Edgewater Drive, and with the Condominium presently intended to comprise a **total finished area above-grade of approximately 27,823 square meters** (with the lands and premises encompassing this Condominium being municipally known as **118 Merchants Wharf, Toronto**, or such other address as the City of Toronto may hereafter designate, and hereinafter collectively referred to as the "Condominium Lands");
- B. a freehold two-storey daycare centre, accessible at grade (hereinafter referred to as the "Daycare Centre"), that will be owned by the City of Toronto (hereinafter referred to as the "Daycare Centre Owner"), and specifically leased to, and operated by, a licensed daycare centre operator approved by the City of Toronto (hereinafter referred to as the "Daycare Centre Operator"), available to care for children from the general public, and which will accommodate approximately 72 children (including infants, toddlers, pre-schoolers and school-aged children), and with the Daycare Centre including a separate garbage storage room and an elevator that will service the Daycare Centre exclusively, along with a designated lay-by or drop-off area situate along the west side of Edgewater Drive, together with a contiguous outdoor playground area situate on level 2 of the Daycare Centre (comprising approximately 364 square meters in total area) and intended to be used exclusively for the children attending the Daycare Centre, together with 3 designated parking units situate on level A of the underground parking garage within this Condominium which are located most closely proximate to the most direct access to the Daycare Centre, and which parking units will be required to pay only nominal common element expenses (hereinafter collectively referred to as the "Daycare Centre Parking Units"), and which will be conveyed by the Declarant to the Daycare Centre Owner for nil consideration, and with the Daycare Centre Parking Units to be accessed and used exclusively by the Daycare Centre Owner and the Daycare Centre Operator and its authorized employees and licensees during the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, both inclusive (hereinafter collectively referred to as the "Daycare Centre Hours"), and to be utilized by the condominium corporation (hereinafter referred to as the "Condominium Corporation" or the "Corporation") when the Daycare Centre is not in operation, namely from 7:00 p.m. to 7:00 a.m. weekdays and all throughout every weekend and all statutory holidays (hereinafter collectively referred to as the "Condominium's Visitor Hours") as additional visitor parking to accommodate any visitors to this Condominium, pursuant to a license granted by the Daycare Centre Owner to the Condominium Corporation for nil consideration shortly after the registration of this Condominium [and which license shall endure for as long as this Condominium is in existence, with the proviso that the Daycare Centre shall only be used for the purposes of a licensed daycare centre or nursery school, and for no other use or purpose unless same has been expressly consented to by the Condominium Corporation, failing which the aforementioned parking license in favour of the Condominium Corporation shall thereupon be automatically extended to envelop or encompass all of the Daycare Centre Hours, in addition to the Condominium's Visitor Hours, and with the Daycare Centre Parking Units to be clearly designated for such use by means of a clearly visible sign that is posted or affixed to each of said parking units], and with the Daycare Centre presently intended to comprise a **total finished area above-grade of approximately 784 square meters** (with the lands and premises encompassing the Daycare Centre being municipally known as **75 Edgewater Drive**, or such other address as the City of Toronto may hereafter designate, and hereinafter collectively referred to as the "Daycare Centre Lands"); and
- C. a freehold commercial/retail component comprising ground floor rentable retail space, accessible at grade, and located beneath (and around portions of the perimeter of) this Condominium (hereinafter collectively referred to as the "Retail Component"), and to be accessible by the general public from and along Merchants Wharf, with the commercial/retail loading area being accessible from the south side of Edgewater Drive, and correspondingly utilized as a shared loading area that will also be used by the Condominium and the Daycare Centre, and with the Retail Component presently intended to comprise a **total finished area above-grade of approximately 938 square meters** (with the lands and premises encompassing the Retail Component being municipally known as **100 Merchants Wharf, Toronto**, or such other address as the City of Toronto may hereafter designate, and hereinafter collectively referred to as the "Retail Lands"), and with the owner of the Retail Lands being hereinafter referred to as the "Retail Component Owner");

on the express understanding and agreement that:

1. the Lands (or any portion thereof) may also be subject to (and be encumbered by) those easements, encroachments, restrictions, notices and/or agreements more particularly described in Section 4.02(a) hereof [and in Sections 4.01 and 4.02(a) of Schedule "A"];
2. the Public Walkway shall comprise part of the non-exclusive use common elements of this Condominium, and shall be maintained and repaired exclusively by this Condominium, at its sole cost and expense, notwithstanding the fact that same shall be used, enjoyed and accessible by the general public;
3. the Shared Roadway shall ultimately be designated as part of the non-exclusive use common elements of this Condominium, but shall nevertheless be used and accessible by this Condominium, the Daycare Centre Owner and the Retail Component Owner (hereinafter individually referred to as a "Contributor" and collectively referred to as the "Contributors"), and by their respective residents, tenants, occupants, invitees and licensees from time to time, and the Shared Roadway shall also be used and accessible by other neighbouring landowners and the general public;
4. the Shared Roadway is intended to connect to the municipal roadway known as Merchants Wharf to the east of this Condominium, and to ultimately link or connect to the westerly portion of Edgewater Drive situate to the west of this Condominium and comprising Part 10 on Reference Plan 66R-28781 (hereinafter referred to as the "Westerly Edgewater Section"), and with the Westerly Edgewater Section ultimately comprising part of the non-exclusive use common elements of the Aquavista Condominium as hereinafter defined, and the City of Toronto accordingly requires that easements for pedestrian and vehicular access and egress over the Shared Roadway be granted or created sometime hereafter to or in favour of the following landowners (hereinafter collectively referred to as the "Neighbouring Owners"), namely:
 - a) the residential high-rise condominium comprising approximately 227 dwelling units, being developed on those lands and premises comprising all or part of Block 3 on Registered Plan 66M-2514, more particularly designated as Part 1 on Reference Plan 66R-28259 (hereinafter referred to as the "Aquavista Condominium");
 - b) the owner of the freehold commercial retail component being developed at grade along the perimeter of the Aquavista Condominium, on those lands and premises comprising all or part of Block 3 on Registered Plan 66M-2514, more particularly designated as Part 1 on Reference Plan 66R-28259 (hereinafter referred to as the "Aquavista Retail Component");
 - c) the owner of the 9 storey freehold rental housing project comprising approximately 80 rental apartment suites, to be owned by the City of Toronto and presently intended to be leased to (and operated by) Toronto Artscape Inc., a not-for-profit corporation created specifically for the creative and artistic community, being developed on those lands and premises comprising all or part of Block 3 on Registered Plan 66M-2514, more particularly designated as Parts 2 and 3 on Reference Plan 66R-28259 (hereinafter referred to as the "Artscape Project");
 - d) the owner of the freehold commercial parking garage containing approximately 58 parking spaces on level A and approximately 10 parking spaces on level B, within the underground parking garage serving both the Aquavista Condominium and the Artscape Project, being developed on those lands and premises comprising all or part of Block 3 on Registered Plan 66M-2514, more particularly designated as Part 1 on Reference Plan 66R-28259 (hereinafter referred to as the "Aquavista Commercial Parking Garage");
 - e) the owner of the lands comprising Part 9 on Reference Plan 66R-28781 (hereinafter referred to as the "C-1 Lands"), upon which it is presently intended that a freehold office building (ranging anywhere from 9 to 12 storeys in height) will be developed thereon sometime hereafter, or alternatively a residential high-rise building (which may either be a freehold rental apartment building or a residential condominium) being up to 15 storeys in height, or possibly a mixed-use building with a combination of office and residential premises ranging anywhere from 9 to 15 storeys in height (and with such future development of the C-1 Lands being hereinafter referred to as the "C-1 Project");
 - f) the owner of the lands comprising Part 5 on Reference Plan 66R-28781 (hereinafter referred to as the "C-2 Lands"), upon which it is presently intended that a freehold office building (ranging anywhere from 9 to 12 storeys in height) will be developed thereon sometime hereafter, or alternatively a residential high-rise building (which may either be a freehold rental apartment building or a residential condominium) being up to 15 storeys in height, or possibly a mixed-use building with a combination of office and residential premises ranging anywhere from 9 to 15 storeys in height (and with such future development of the C-2 Lands being hereinafter referred to as the "C-2 Project");
 - g) the owner of the lands comprising Part 7 on Reference Plan 66R-28781 (hereinafter referred to as the "R-6 Lands"), upon which it is presently intended that a high-rise freehold rental housing project comprising approximately 265 dwelling units will be developed thereon sometime hereafter, which is presently intended to be owned by the City of Toronto and ultimately leased to (and operated by) a not-for-profit community housing operator or provider approved by the City (and with such future development of the R-6 Lands being hereinafter referred to as the "Non-Profit Housing Project" or the "R-6 Project");
5. the cost of insuring, illuminating, maintaining and repairing the Shared Roadway (hereinafter collectively referred to as the "Shared Roadway Costs") shall be shared by and amongst each of the three Contributors, based on the percentages reflecting their respective or relative total finished areas above-grade, on the express understanding and agreement that the Shared Roadway Costs shall be borne and paid for by (and be collected from) the three Contributors exclusively, notwithstanding that the Shared Roadway may be traversed and utilized by the Neighbouring Owners and others (including the general public) sometime in the future, unless and until any of the Neighbouring Owners has formally agreed to participate in a cost-sharing arrangement with all of the Contributors with respect to the Shared Roadway, based on the same formula for sharing the Shared Roadway Costs as outlined above [in turn, each of the three Contributors shall be required to contribute to the shared roadway costs that are attributable to the Westerly Edgewater Section, pursuant to the provisions of an easement and cost-sharing agreement pertaining to same, and entered into with the Aquavista Condominium, the owner of the Aquavista Retail Component, the owner of the Artscape Project and the owner of the Aquavista Commercial Parking Garage, as a prerequisite to their ability and entitlement to use, and drive over, the Westerly Edgewater Section], and
6. in the event that the City of Toronto hereafter decides that it does not want or need the Daycare Centre to be developed and constructed on the Daycare Centre Lands, then it is understood and agreed that in lieu of the Daycare Centre, the Vendor will expand or increase the size of this Condominium [by creating up to 13 additional dwelling units in the aggregate, with up to 5 additional dwelling units on level 1 and up to 8 additional dwelling units on level 2 of this Condominium, plus additional common element areas on levels 1 and 2 of this Condominium, within the Daycare Centre Lands] or alternatively expand or increase the size of the Retail Component (by adding or creating more ground floor rentable retail space) within the Daycare Centre Lands, or implement a combination of both, and if such is the case then the provisions hereinafter set forth pertaining to the Two-Way Shared Facilities, the Three-Way Shared Facilities and the Shared Roadway (as such terms are hereinafter respectively defined) shall be revised to reflect the foregoing (and that there is no Daycare Centre Owner as a contributor to any of the cost-sharing arrangements hereinafter described), and accordingly the development of any additional dwelling units (and/or common element areas) within this Condominium and/or the creation of additional rentable retail space, upon or within the Daycare Centre Lands (including any revisions to the provisions governing or pertaining to the Two-Way Shared Facilities, the Three-Way Shared Facilities and the Shared Roadway, to reflect the fact that the Daycare Centre will no longer be developed) shall not be considered or construed to constitute a material change to the disclosure statement of this Condominium under any circumstances whatsoever, and shall not give rise to any claim or right to compensation (nor any other relief or remedy whatsoever) in favour of the Purchaser;
 - w) the term "repair" when used or referred to in this Agreement, or in the declaration of this Condominium or in any shared facilities agreement, with respect to any item, matter or component, shall expressly include the obligation to repair and replace the item, matter or component (as the case may be) after damage or failure, but shall not include the obligation to repair or replace any improvements made to the item, matter or component unless the Act, this Agreement, the declaration or any shared facilities agreement provides otherwise;
 - x) the term "Special Landscaped Units" shall mean the following dwelling units, each of which is hereinafter referred to as a "Special Landscaped Unit" having an outdoor terrace within which the Special Terrace Landscaping (as hereinafter defined) will be installed and maintained as part of a unified planting strategy for this Condominium, namely **dwelling units 5, 6 and 11 on level 8; dwelling units 4, 5, 7 and 8 on level 9; dwelling units 3, 6 and 7 on level 10; dwelling units 2, 3, 5 and 6 on level 11; and dwelling units 1, 2 and 3 on level 12;**
 - y) the term "total built area" when used or referred to in this Agreement, or in the declaration of this Condominium, or in any shared facilities agreement, in the context of sharing the costs for illuminating, insuring, operating, maintaining and/or repairing the Westerly Edgewater Section (which comprises part of the common elements of the Aquavista Condominium), and specifically with respect to the relative total built area of each of the parties or entities contributing to the payment of said costs, shall mean or include all above-ground finished areas (measured between the exterior face of the exterior

walls of the building or structure) and all above-grade and below-grade recreational amenity areas and lobbies, and shall expressly include all below-grade lockers and parking areas (but shall nevertheless exclude all outdoor terraces and mechanical areas above and below-grade), as conclusively determined by the Vendor's architect as at the date of registration of this Condominium;

- z) the term "Total finished area above-grade" when used or referred to in this Agreement, or in the declaration of this Condominium, or in any shared facilities agreement, in the context of sharing the costs for illuminating, insuring, operating, maintaining and/or repairing the Shared Roadway (which comprises part of the common elements of this Condominium), and specifically with respect to the relative total finished area above-grade of each of the parties or entities contributing to the payment of said costs, shall expressly include all above-ground finished areas (measured between the exterior face of the exterior walls of the building or structure, and inclusive of all stairwells, elevators, mechanical areas and recreational amenity spaces or areas, but exclusive of all below-grade lockers, parking areas, mechanical areas and/or amenity areas), as conclusively determined by the Vendor's architect as at the date of registration of this Condominium, and accordingly any figures in this Agreement which describe the intended or projected total finished area above-grade of any portion of the Project (and any resulting percentages or proportions of any shared facilities' costs) are subject to adjustment hereafter depending on the final total finished area above-grade of each of the components of the Project, as conclusively determined by the Vendor's architect as at the date of registration of this Condominium; and
- aa) the term "Waterfront Toronto" shall mean Toronto Waterfront Revitalization Corporation.

ADJUSTMENTS TO THE PURCHASE PRICE

- 1.04 (a) v). Without limiting the generality of the provisions outlined in Section 1.04 (a)(v) of Schedule "A" to this Agreement, the parties hereto hereby acknowledge and agree to the following, namely that:
- A. As at the date of the launch of the Vendor's marketing and sales campaign for this Condominium, namely **September 15th, 2016**, the outstanding development charges imposed by the City of Toronto in connection with the development of this Condominium amount to \$16,599.00 for each dwelling unit comprising a one bedroom unit or a one bedroom plus den unit, and \$23,864.00 for each dwelling unit having two or more bedrooms, and \$200.99 per square meter of floor area for each commercial/retail unit or premises, and the outstanding education development charge imposed by the Toronto Catholic District School Board amounts to \$1,493.00 per dwelling unit and \$1.07 per square foot of non-residential gross floor area, and there are currently no outstanding development charges nor any outstanding education development charges imposed by the Toronto District School Board;
- B. As soon as the superstructure building permit for this Condominium has been issued by the building department of the City of Toronto, and the applicable development charges and/or education development charges so payable by the Vendor in connection with the development of this Condominium have been fixed and crystallized by the issuance of said permit, any increase in the aforementioned development charges so imposed by the City of Toronto and/or any increase in the aforementioned education development charges so imposed by the Toronto Catholic District School Board and/or the Toronto District School Board, over and above the foregoing stipulated amounts or figures, shall be charged to the Purchaser in the statement of adjustments on the Closing Date, plus any H.S.T. exigible in connection therewith, and shall accordingly be paid by the Purchaser on the Closing of this transaction [provided, however, there shall be no credit or adjustment whatsoever in favour of the Purchaser in the event of any decrease in the aforementioned development charges and/or education development charges]; and
- C. In the event that the City of Toronto (or any governmental or quasi-governmental authority or agency, or any other public or private authority or agency) has established (or hereafter establishes) a program to encourage the development and construction of energy efficient or environmentally-friendly buildings or structures which exceed minimum performance or threshold standards, in terms of energy efficiency, renewable energy consumption characteristics, environmentally-friendly attributes, or other similar or related factors, then regardless of whether the incentive payment is characterized as a rebate of development charges or otherwise, the Vendor shall be entitled to keep and retain all rebates, refunds and/or performance incentives which may be granted or awarded by the City of Toronto or any such agency or authority, either before or after the final closing of this transaction, without any duty or obligation whatsoever on the part of the Vendor to account for same, or to refund any portion of same, to or with the Purchaser, and without any requirement or obligation to re-adjust any item or component in the final statement of adjustments, either before or after the final closing of this transaction, as a consequence thereof. Without limiting the generality of the foregoing, in the event that this Condominium, when constructed and completed, satisfies all applicable criteria imposed by (or pursuant to) the Toronto Green Standard Program, such that this Condominium qualifies for development charge credits, then it is expressly understood and agreed that the Vendor shall be exclusively entitled to receive and retain the benefit of all such credits, without having to provide the Purchaser with any credit or compensation, nor any abatement in the purchase price [nor any reduction in the amount of any development charges (or the amount of any increase in the development charges) ultimately charged to the Purchaser in the statement of adjustments at final closing] whatsoever in connection therewith.
- 1.04(F) Notwithstanding any other provision contained in this Agreement to the contrary, in the event that any new tax or increased tax, or comparable charge, is levied or exacted at any time hereafter by any municipal, provincial, federal or other governmental authority or agency in connection with this Agreement and/or the purchase and sale transaction arising herefrom, such as (but not limited to) a new property transfer tax or otherwise (hereinafter collectively referred to as the "New Tax"), then irrespective of whether the New Tax is (by virtue of the legislation authorizing and/or charging same) primarily exigible against (or payable by) the Vendor and/or the Purchaser, it is understood and agreed that as between the parties hereto, the New Tax shall nevertheless be payable by the Purchaser alone, and if the New Tax is, in fact, primarily exigible against (or payable by) the Vendor, then notwithstanding same the Vendor shall nevertheless be entitled to be directly reimbursed by the Purchaser in full for same, by way of a corresponding charge to the Purchaser in the statement of adjustments on the final closing of this transaction.

CHANGES TO CLOSING PACKAGE(S)

- 2.07.1 In the event that the Purchaser or the Purchaser's solicitor makes one or more unilateral changes to any of the interim-occupancy or final closing documents prepared by the Vendor's solicitor, and provided to the Purchaser's solicitor for the Purchaser's execution (or posted on the eClose website for downloading by the Purchaser's solicitor, for ultimate execution by the Purchaser), but fails to inform the Vendor's solicitor regarding any of the foregoing changes prior to the scheduled Firm Occupancy Date or final closing date (as the case may be), then if the Vendor's solicitor is required to change any of those documents back to their original form and content because the changes so made by the Purchaser's solicitor were not acceptable to the Vendor or the Vendor's solicitor, then the Purchaser shall be obliged to reimburse the Vendor, on either the Firm Occupancy Date or on the final closing date (as the case may be), for the Vendor's processing costs [inclusive of any legal fees and ancillary disbursements which may be incurred by the Vendor and/or charged by the Vendor's solicitors in order to revise the interim closing package or final closing package (or any portion thereof) and/or to reproduce and resend the interim closing package or final closing package (or any portion thereof), as the case may be, to the Purchaser or the Purchaser's solicitor], and with such processing fees of the Vendor (inclusive of the Vendor's legal fees and ancillary disbursements charged in connection therewith) to be \$750.00 plus HST, for each interim or final closing package (or any portion thereof) so revised, reproduced or re-sent.

ARTICLE II - PURCHASER'S OBLIGATIONS, RIGHTS AND OTHER MATTERS

METERING OF SERVICES / HEATING & COOLING SYSTEM

- 2.10 (a) Water, electricity and natural gas services to the non-exclusive use common elements will be bulk-metered, and the cost of same shall correspondingly comprise part of the common expenses.
- (b) Each of the dwelling units in this Condominium shall be:

- i) serviced by a central plant fluid cooler situated on the roof of the Condominium, together with a water-cooled condenser unit on each floor or level, and each dwelling unit shall be equipped with an in-suite VRF - variable refrigerant flow system (comprising a horizontal and/or vertical fan coil heating and cooling/air-conditioning system, utilizing a separate metering device appurtenant to the heating/cooling system, along with condensing units that are wired and/or piped into the VRF central controller) which will provide year-round heating and cooling services to each dwelling unit, together with an individual heat recovery ventilator that is intended to provide fresh air and heat recovery to the suite;
 - ii) separately sub-metered (and correspondingly separately invoiced) for electricity service provided to the dwelling unit and its appurtenant exclusive use common elements, pursuant to a check meter, sub-meter or consumption meter appurtenant to the dwelling unit that is read by Toronto Hydro-Electric Service Limited, or a company associated or affiliated therewith (hereinafter referred to as "Toronto Hydro"), and accordingly the dwelling unit's consumption of electricity (including the electricity consumption relating to any exclusive use common element area appurtenant thereto) shall not comprise part of the common expenses, but rather shall be borne and paid for solely by the dwelling unit owner;
 - iii) separately sub-metered (and correspondingly separately invoiced) for the domestic cold water service provided to the dwelling unit and its appurtenant exclusive use common elements, pursuant to a cold water check meter, sub-meter or consumption meter appurtenant to the dwelling unit that is read by the Utility Monitor (as hereinafter defined), so that the cost of the consumption of cold water by the dwelling unit (and any exclusive use common element area appurtenant thereto) shall not comprise part of the common expenses, but rather shall be borne and paid for solely by the dwelling unit owner;
 - iv) separately sub-metered (and correspondingly separately invoiced) for the domestic hot water service provided to the dwelling unit and its appurtenant exclusive use common elements, pursuant to a hot water check meter, sub-meter or consumption meter appurtenant to the dwelling unit that is read by the Utility Monitor (as hereinafter defined), so that the cost of the consumption of hot water by the dwelling unit (and any exclusive use common element area appurtenant thereto) shall not comprise part of the common expenses, but rather shall be borne and paid for solely by the dwelling unit owner; and
 - v) separately sub-metered (and correspondingly separately invoiced) for heating services and for cooling services respectively within each dwelling unit and its appurtenant exclusive use common elements, pursuant to the metering device comprising part of the in-suite VRF - variable refrigerant flow system (so installed by the Vendor as an appurtenance to the dwelling unit's heating and cooling system) that is read by the Utility Monitor (as hereinafter defined), so that the cost of heating and cooling each dwelling unit shall not comprise part of the common expenses, but rather shall be borne and paid for solely by each dwelling unit owner.
- (c) In addition, it is understood and agreed that:
- i) each of the Special Landscaped Units shall, in addition to the aforementioned check meters appurtenant to each dwelling unit, be separately sub-metered (and correspondingly separately invoiced) for the natural gas consumed by same (and by any exclusive use common element area appurtenant thereto), pursuant to a check meter for gas appurtenant to each Special Landscaped Unit that is read by the Utility Monitor (as hereinafter defined), so that the cost of each Special Landscaped Unit's natural gas consumption shall not comprise part of the common expenses, but rather shall be borne and paid for solely by the owner of the Special Landscaped Unit; and
 - ii) if and when any electrical parking units are created by the Vendor within this Condominium (hereinafter individually referred to as an "Electrical Parking Unit" and collectively referred to as the "Electrical Parking Units"), then same will be completed with a standard electrical outlet, and a separate electricity check meter will also be installed as an appurtenance thereto, in order to measure and confirm the cost of the electricity consumed or utilized by any electric vehicle parked from time to time within any such Electrical Parking Unit, on a periodic basis, and the owner of any Electrical Parking Unit shall accordingly be responsible for paying for the cost of such electricity consumption, in addition to the common expenses attributable to such owner's Electrical Parking Unit.
- (d) Each owner of a dwelling unit shall be responsible for the cost of maintaining and repairing the complete VRF system (and the in-suite heat recovery ventilator) installed within such owner's dwelling unit, including the fan coil system connected to same (and all fans, coils, valves, controls, pumps, etc., and all equipment appurtenant thereto) comprising all or part of the heating/cooling system servicing his or her dwelling unit (whether same is installed or located within or beyond the boundaries of the dwelling unit), provided however that all maintenance and repair work undertaken in connection therewith shall be arranged by the condominium corporation, and shall be carried out exclusively by the condominium corporation's authorized contractors, agents and/or representatives, but shall nevertheless be paid for by the affected unit owner immediately upon the condominium corporation's presentation of an invoice for same. Each owner of a dwelling unit shall accordingly notify the condominium corporation or this Condominium's property manager regarding any needed maintenance and/or repair work to the VRF system (and to the heat recovery ventilator) servicing such owner's dwelling unit (including the fan coil system comprising part of same, and any equipment appurtenant thereto), and shall allow the condominium corporation's authorized contractors, agents and/or representatives access thereto at all reasonable times in order to carry out said work.
- (e) The condominium corporation created upon the registration of this Condominium (sometimes hereinafter referred to as this or the "Condominium Corporation" or the "Corporation") will retain the services of:
- i) a third party utility contractor/monitor (hereinafter and hereinafter referred to as the "Utility Monitor") [and who initially shall be Provident Energy Management Inc., a company that is related to or affiliated with the Vendor (hereinafter referred to as "Provident")] to monitor the check meters for hot water, cold water and the VRF heating and cooling services appurtenant to each dwelling unit (as well as the check meter for natural gas appurtenant to each of the Special Landscaped Units). The Utility Monitor shall receive the bulk invoices for the water, gas and heating/cooling services utilized or consumed by all of the units and common elements as a whole, from or on behalf of the Condominium Corporation (as the latter's agent and designated representative) from the local water and natural gas authorities or providers, pursuant to readings taken by such authorities or providers on a bulk meter basis (hereinafter referred to as the "Bulk Utility Bills"). The Utility Monitor shall, at first instance, pay the Bulk Utility Bills in full on behalf of the Condominium, as and when due. However, in an effort to promote water conservation, the Vendor will be installing both a cold water and a hot water check meter or consumption meter appurtenant to each of the dwelling units in this Condominium (for the purposes of measuring and gauging the amount of cold water and hot water consumed by each owner's dwelling unit, and by any exclusive use common element areas appurtenant thereto). In addition, in an effort to promote energy conservation, the Vendor will be installing separate check or consumption meters for heating and cooling services appurtenant to each of the dwelling units in this Condominium (for the purposes of measuring and gauging the heating and cooling services consumed by each owner's dwelling unit, and any exclusive use common element areas appurtenant thereto). The Utility Monitor shall read the respective check or consumption meters for cold water, hot water, and heating/cooling services appurtenant to each of the dwelling units (as well as the natural gas check meter appurtenant to each of the Special Landscaped Units) on a periodic basis, and shall correspondingly issue invoices periodically to each of the respective dwelling unit owners for the cost of heating and cooling their respective dwelling units, and for the cost of their respective consumption of cold water and hot water (and for the cost of the consumption of natural gas in respect of any of the Special Landscaped Units), determined in accordance with the Utility Monitor's sub-meter readings. In turn, the Condominium Corporation shall pay the Utility Monitor the difference between the Bulk Utility Bills (on the one hand), and the aggregate of all utility charges attributable to the respective dwelling units, based on the Utility Monitor's reading of the aforementioned check or consumption meters appurtenant thereto (on the other hand), and which amount or differential shall comprise part of the common expenses, and is referred to in the servicing agreement or utility monitoring agreement to be entered into between the Condominium Corporation and the Utility Monitor as the "Corporation's Share"; and
 - ii) Toronto Hydro, who shall monitor the check meter for electricity appurtenant to each of the dwelling units (and the check meter appurtenant to each of the Electrical Parking Units, if applicable). The Condominium Corporation shall be responsible for paying the bulk electricity bill(s) reflecting the cost of the consumption of electricity in respect of all of the units and common elements as a whole (hereinafter referred to as the "Bulk Electricity Bills"). However, in an effort to promote energy conservation, the Vendor will be installing an electricity check meter or consumption meter appurtenant to each of the dwelling units in this Condominium (as well as a check meter appurtenant to each of the Electrical Parking Units, if applicable), for the purposes of measuring and gauging the amount of electricity consumed by each owner's dwelling unit, and by any exclusive use common element areas appurtenant thereto (as well as the amount of electricity consumed by each of the Electrical Parking Units, if applicable). Toronto Hydro shall read the check or consumption meter for electricity appurtenant to each of the dwelling units (as well as the check meter appurtenant to each of the Electrical Parking Units, if applicable) on a periodic basis, and shall correspondingly issue invoices periodically to each of the respective dwelling unit owners for the cost of their respective consumption of electricity, determined in accordance with Toronto Hydro's sub-meter readings.
- (f) The servicing agreement or utility monitoring agreement to be entered into between this Condominium and the Utility Monitor shall make the Utility Monitor responsible for attending to the maintenance, repair and/or replacement, as and when necessary, of the check meters for hot water, cold water and heating/cooling services appurtenant to each of the dwelling units in this Condominium (as well as the check meter for natural gas appurtenant

to each of the Special Landscaped Units), in order to ensure that same are operating properly, subject however to the overriding obligation of the Corporation to fully pay for (or to forthwith fully reimburse the Utility Monitor for) all costs and expenses incurred in connection with such maintenance or repair work and/or replacement (all of which costs so incurred by the Corporation shall comprise part of the common expenses). The servicing agreement or electricity monitoring agreement to be entered into between this Condominium and Toronto Hydro shall make Toronto Hydro responsible for attending to the maintenance, repair and/or replacement, as and when necessary, of the check meters for electricity appurtenant to each of the dwelling units (and appurtenant to each of the Electrical Parking Units, if applicable), in order to ensure that same are operating properly, subject however to the overriding obligation of the Corporation to fully pay for (or to forthwith fully reimburse Toronto Hydro for) all costs and expenses incurred in connection with such maintenance or repair work and/or replacement (all of which costs so incurred by the Corporation shall comprise part of the common expenses). In turn, the Utility Monitor shall be entitled to charge a monthly administration fee directly to each of the dwelling unit owners in this Condominium, incorporated as part of each unit owner's respective periodic invoices for the cost of the cold water, hot water and heating/cooling services so consumed (and for the cost of the natural gas so consumed by each of the Special Landscaped Units), as compensation for the Utility Monitor's reading and invoicing services. In addition, Toronto Hydro shall be entitled to charge a monthly administration fee directly to each of the dwelling unit owners in this Condominium, incorporated as part of each unit owner's respective periodic invoices for the cost of the electricity so consumed, as compensation for Toronto Hydro's reading and invoicing services.

- (g) Forthwith following the Corporation's receipt of each of the Bulk Utility Bills, the Corporation shall cause the Utility Monitor to read, on a monthly basis, the check meters for cold water, hot water and heating/cooling services appurtenant to each of the dwelling units (as well as the check meter for natural gas appurtenant to each of the Special Landscaped Units), either by a direct visual reading or by remote electronic/computerized means, or by any other method, provided same is reasonably reliable and accurate, and the Utility Monitor (as agent for and on behalf of the Corporation) shall thereafter issue and submit its own separate periodic invoice(s) to each of the dwelling unit owners, reflecting the cost of heating and cooling their respective dwelling units (and any exclusive use common element areas appurtenant thereto), and the cost for their respective cold water and hot water consumption (and for the cost of the natural gas consumption in respect of any of the Special Landscaped Units). Furthermore, following the Corporation's receipt of each of the Bulk Electricity Bills, the Corporation shall cause Toronto Hydro to read, on a monthly basis, the check meter for electricity appurtenant to each of the dwelling units (as well as the check meter for electricity appurtenant to each of the Electrical Parking Units, if applicable), either by a direct visual reading or by remote electronic/computerized means, or by any other method, provided same is reasonably reliable and accurate, and Toronto Hydro (on its own behalf or as the agent of the Corporation) shall thereafter issue and submit its own separate periodic invoice(s) to each of the dwelling unit owners, reflecting the cost of their respective electricity consumption.
- (h) The cost of heating and cooling each of the dwelling units and any exclusive use common element areas appurtenant thereto, as well as the cost of the cold water and hot water service so consumed by each of the dwelling units, and by any exclusive use common element areas appurtenant thereto (including the cost of any natural gas so consumed by any of the Special Landscaped Units) shall hereinafter be collectively referred to as each dwelling unit owner's "**Proportionate Share of Residential Utility Consumption**" or "**P.S.R.U.C.**" Each unit owner shall be obliged to pay to the Utility Monitor (as agent for the Corporation) his or her P.S.R.U.C., on or before the sixteenth (16th) day following the receipt of an invoice for same from the Utility Monitor (hereinafter referred to as the "**Due Date**"). In the event that any unit owner fails to pay to the Utility Monitor his or her P.S.R.U.C., on or before the Due Date, then in addition to any other rights, remedies or powers available to the Corporation (at common law, by statute, or in equity), the Corporation shall be entitled to:
- i) charge and levy interest against any delinquent or non-compliant dwelling unit owner (hereinafter referred to as the "**Defaulting Owner**") on such unpaid P.S.R.U.C., and on all costs and expenses incurred by the Corporation (or the Utility Monitor on behalf of the Corporation) in collecting (or attempting to collect) same, including all legal expenses incurred by the Corporation (or by the Utility Monitor on behalf of the Corporation) on a solicitor-and-client basis or substantial-indemnity scale, at a rate equal to 24% per annum, calculated monthly not in advance, with interest on the unpaid P.S.R.U.C. commencing to accrue from and after the Due Date, and with interest on all of the expenses incurred in collecting (or attempting to collect) same commencing to accrue from and after the respective dates that the Corporation (or the Utility Monitor, on behalf of the Corporation) incurred or expended same, and all such interest shall continue to accrue at the aforesaid rate until the date that all of the foregoing amounts are fully paid;
 - ii) add, to the extent permitted by law, the outstanding amount owing by the Defaulting Owner for such unpaid P.S.R.U.C., together with all outstanding interest accrued thereon as aforesaid, to the common expenses that are otherwise due and owing or payable by such Defaulting Owner to the Corporation, and to recover same from the Defaulting Owner in the same manner as common expenses (and with corresponding or similar lien rights in favour of the Corporation as apply to common expense arrears); and/or
 - iii) maintain and enforce a lien against the Defaulting Owner's unit, as security for the payment of his or her P.S.R.U.C., and for all costs and expenses incurred by the Corporation (or by the Utility Monitor, on behalf of the Corporation) in collecting (or attempting to collect) same, together with all outstanding interest accruing thereon as aforesaid (hereinafter referred to as the "**Utility Lien**"), and such Utility Lien shall be enforceable by the Corporation in the same manner, and to the same extent, as a real property mortgage or charge, and with all the rights, remedies and powers inherent in (or available to) a mortgagee or chargee when a mortgage or charge of real estate is in default pursuant to the provisions of the *Mortgages Act R.S.O. 1990, as amended*, and/or any other applicable statutory provision or common law principle applicable thereto, and in the event that the Land Titles Registrar requires the Corporation (as a prerequisite to the registration and/or enforcement of the Utility Lien) to apply to a court of competent jurisdiction for any order, direction, advice or authorization, then the Corporation shall be entitled to forthwith apply to such court for same, and the Defaulting Owner shall, for all purposes, be deemed to have consented to any such application by the Corporation. Moreover, all arrears of any check metered utilities, namely for cold water, hot water and/or heating/cooling services, as applicable (including for natural gas in respect of any Special Landscaped Unit, if applicable) that arise because any of the invoices issued by the Utility Monitor in connection therewith have not been paid by any dwelling unit owner(s), as and when said invoices are due and payable shall, to the extent permitted by law, thereupon be deemed and construed to constitute common expenses (and shall thereby specifically become common expense arrears), and may thereafter be collected by the Corporation in the same manner (and to the same extent, and with all the same rights and powers) as any other common expense arrears, and accordingly all such arrears of any check metered utilities shall properly constitute the subject matter of a common expense arrears lien, and may be enforceable by way of such lien (ie. with all of the super priority rights applicable thereto, as provided by or under the Act) against the delinquent owner's unit; provided however that if the immediately preceding clause is hereafter successfully judicially challenged, then same shall nevertheless not preclude, restrict or limit in any way (nor detract from, or negatively effect) the Corporation's Utility Lien and this Condominium's enforcement thereof in accordance with the foregoing provisions.
- (i) The cost of the electricity so consumed by each of the dwelling units, and by any exclusive use common element areas appurtenant thereto (including the cost of any electricity consumed by any of the Electrical Parking Units, if applicable) shall hereinafter be collectively referred to as each dwelling unit owner's "**Proportionate Share of Electricity Consumption**" or "**P.S.E.C.**" Each unit owner shall be obliged to pay to Toronto Hydro (as agent for the Corporation) his or her P.S.E.C., on or before the tenth (10th) day following the receipt of an invoice for same from Toronto Hydro (hereinafter referred to as the "**Electricity Due Date**"). In the event that any unit owner fails to pay to Toronto Hydro his or her P.S.E.C., on or before the Electricity Due Date, then in addition to any other rights, remedies or powers available to the Corporation (at common law, by statute, or in equity), the Corporation shall be entitled to:
- i) charge and levy interest against the Defaulting Owner on such unpaid P.S.E.C., and on all costs and expenses incurred by the Corporation (or Toronto Hydro on behalf of the Corporation) in collecting (or attempting to collect) same, including all legal expenses incurred by the Corporation (or by Toronto Hydro on behalf of the Corporation) on a solicitor-and-client basis or substantial-indemnity scale, at a rate equal to 24% per annum, calculated monthly not in advance, with interest on the unpaid P.S.E.C. commencing to accrue from and after the Electricity Due Date, and with interest on all of the expenses incurred in collecting (or attempting to collect) same commencing to accrue from and after the respective dates that the Corporation (or Toronto Hydro, on behalf of the Corporation) incurred or expended same, and all such interest shall continue to accrue at the aforesaid rate until the date that all of the foregoing amounts are fully paid;
 - ii) add, to the extent permitted by law, the outstanding amount owing by the Defaulting Owner for such unpaid P.S.E.C., together with all outstanding interest accrued thereon as aforesaid, to the common expenses that are otherwise due and owing or payable by such Defaulting Owner to the Corporation, and to recover same from the Defaulting Owner in the same manner as common expenses (and with corresponding or similar lien rights in favour of the Corporation as apply to common expense arrears); and/or
 - iii) maintain and enforce a lien against the Defaulting Owner's unit, as security for the payment of his or her P.S.E.C., and for all costs and expenses incurred by the Corporation (or by Toronto Hydro, on behalf of the Corporation) in collecting (or attempting to collect) same, together with all outstanding interest accruing thereon as aforesaid (hereinafter referred to as the "**Electricity Lien**"), and such Electricity Lien shall be enforceable by the Corporation in the same manner, and to the same extent, as a real property mortgage or charge, and with all the rights, remedies and powers

inherent in (or available to) a mortgagee or chargee when a mortgage or charge of real estate is in default pursuant to the provisions of the *Mortgages Act R.S.O. 1990, as amended*, and/or any other applicable statutory provision or common law principle applicable thereto, and in the event that the Land Titles Registrar requires the Corporation (as a prerequisite to the registration and/or enforcement of the Electricity Lien) to apply to a court of competent jurisdiction for any order, direction, advice or authorization, then the Corporation shall be entitled to forthwith apply to such court for same, and the Defaulting Owner shall, for all purposes, be deemed to have consented to any such application by the Corporation. Moreover, all arrears in respect of any electricity so consumed (based on the aforementioned electricity check meter readings from time to time), that arise because any of the invoices issued by Toronto Hydro in connection therewith have not been paid by any dwelling unit owner(s), as and when said invoices are due and payable shall, to the extent permitted by law, thereupon be deemed and construed to constitute common expenses (and shall thereby specifically become common expense arrears), and may thereafter be collected by the Corporation in the same manner (and to the same extent, and with all the same rights and powers) as any other common expense arrears, and accordingly all such arrears of any check metered electricity service shall properly constitute the subject matter of a common expense arrears lien, and may be enforceable by way of such lien (ie. with all of the super priority rights applicable thereto, as provided by or under the Act) against the delinquent owner's unit; provided however that if the immediately preceding clause is hereafter successfully judicially challenged, then same shall nevertheless not preclude, restrict or limit in any way (nor detract from, or negatively effect) the Corporation's Electricity Lien and this Condominium's enforcement thereof in accordance with the foregoing provisions.

- (j) The execution by the Corporation of a certificate confirming that the Corporation does, or does not, maintain or claim the Utility Lien and/or the Electricity Lien against a particular dwelling unit, shall constitute irrefutable evidence and proof of same, and the Corporation shall be obliged to execute such a certificate forthwith upon its receipt of a written request for same from the Vendor, any prospective purchaser or mortgagee of any unit, the then current registered owner of any unit, or from any other party interested in such information, at a charge, fee or expense to the party so requesting same not exceeding \$100 plus HST (but at no charge, fee or expense whatsoever to the Vendor or the Vendor's solicitor requesting same).
- (k) As previously mentioned, the Vendor is proposing that this Condominium shall enter into the utility monitoring agreement with Provident Energy Management Inc. (hereinafter referred to as "Provident"), which company is related to or affiliated with the Vendor, to serve and act as the Utility Monitor for and on behalf of the Corporation, and it is presently proposed that its administration fee (to be charged with each monthly invoice to each dwelling unit owner during the first year following the registration of this Condominium) covering its monitoring and invoicing services with respect to the individual check or consumption meters appurtenant to each of the dwelling units in this Condominium, for hot water, cold water and VRF heating/cooling services (and for natural gas in respect of each of the Special Landscaped Units) shall be **approximately:**
- i) **\$19.50 per month plus HST, payable by each dwelling unit owner with respect to the monitoring and invoicing services regarding each of the cold water, hot water and heating/cooling check meters appurtenant to each of the dwelling units [unless any such dwelling unit owner agrees in writing with Provident to receive all periodic invoices from the Utility Monitor electronically (by e-mail), rather than in paper form, in which case the monthly administration fee will be discounted by \$2.00 per month, and correspondingly reduced to approximately \$17.50 per month plus HST]; and**
 - ii) **\$21.50 per month plus HST, payable by each owner of any of the Special Landscaped Units, with respect to the monitoring and invoicing services regarding each of the cold water, hot water, natural gas and heating/cooling check meters appurtenant to such Special Landscaped Unit [unless any such dwelling unit owner agrees in writing with Provident to receive all periodic invoices from the Utility Monitor electronically (by e-mail), rather than in paper form, in which case the monthly administration fee will be discounted by \$2.00 per month, and correspondingly reduced to approximately \$19.50 per month plus HST].**

Please note that the aforementioned monthly fees charged by the Utility Monitor are subject to change, from time to time, upon written notice from the Utility Monitor to the Corporation and/or to each of the dwelling unit owners in this Condominium, and are also subject to an automatic increase on each anniversary of the date of registration of this Condominium, based on the equivalent proportionate increase in the Consumer Price Index published by Statistics Canada. Furthermore, the Purchaser shall be obliged to reimburse the Vendor, on closing, for the cost of procuring and installing the respective cold water, hot water and heating/cooling check meters appurtenant to the Unit (as well as the check meter for natural gas appurtenant to each of the Special Landscaped Units), plus any HST exigible in connection therewith, by way of a credit to the Vendor (or a corresponding charge to the Purchaser) in the statement of adjustments at final closing, and shall also be obliged to pay (on a monthly basis) all consumption charges for the cold water, hot water and heating/cooling services respectively consumed by the Unit, and any exclusive use common element areas appurtenant thereto (as well as the cost of the natural gas so consumed by the Unit, if same comprises one of the Special Landscaped Units), from and after the date that the Purchaser assumes (or is deemed to assume) possession or occupancy of the Unit, together with all applicable administration fees so charged by the Utility Monitor in connection therewith.

- (l) It is presently proposed that Toronto Hydro's administration fee (to be charged with each monthly invoice to each dwelling unit owner during the first year following the registration of this Condominium) covering its monitoring and invoicing services with respect to the individual check or consumption meter for electricity appurtenant to each of the dwelling units (and with respect to the electricity check meter appurtenant to each of the Electrical Parking Units, if applicable) shall be **approximately \$19.50 per month plus HST, payable by each dwelling unit owner per dwelling unit, and per Electrical Parking Unit (if any), subject to increase on each anniversary of the date of registration of the Condominium**, based on equivalent proportionate increases in the Consumer Price Index published by Statistics Canada. Furthermore, the Purchaser shall be obliged to reimburse the Vendor, on closing, for the cost of procuring and installing the electricity check meter appurtenant to the Unit, plus HST exigible in connection therewith, by way of a credit to the Vendor (or a corresponding charge to the Purchaser) in the statement of adjustments at final closing, and shall also be obliged to pay (on a monthly basis) all electricity consumption charges consumed by the Unit, and any exclusive use common element areas appurtenant thereto, from and after the date that the Purchaser assumes (or is deemed to assume) possession or occupancy of the Unit, together with all applicable administration fees so charged by Toronto Hydro in connection therewith.
- (m) In accordance with the foregoing, the Unit's consumption of cold water, hot water and electricity respectively [including the cost of cold water, hot water and electricity consumed or utilized by any exclusive use common element area(s) appurtenant to the Unit], as well as the cost of heating and cooling the Unit (and the cost of natural gas so consumed, if the Unit comprises one of the Special Landscaped Units), pursuant to the aforementioned check meters appurtenant to the Unit, along with the aforementioned monthly administrative charges or fees payable to each of the Utility Monitor and Toronto Hydro as hereinbefore provided, shall **not** comprise part of the common expenses, but rather shall be borne and paid for solely by the Purchaser, from and after the earlier of the Firm Occupancy Date or the date that the Purchaser first occupies the Unit. Accordingly, the Purchaser shall be obliged to pay for (on a monthly basis) all charges for cold water, hot water, electricity and heating/cooling services so consumed by the Unit and any exclusive use common element area appurtenant thereto (and all charges for natural gas so consumed by the Unit, if same constitutes one of the Special Landscaped Units), from and after the date that the Purchaser assumes (or is deemed to assume) possession or occupancy of the Unit, together with all applicable administration fees so charged by the Utility Monitor and Toronto Hydro in connection therewith, separate and apart from (and in addition to) the monthly occupancy fees payable by the Purchaser prior to the registration of the Condominium, if applicable [and separate and apart from (and in addition to) the monthly common expenses assessed against (and attributable to) the Unit from and after the date of registration of the Condominium]. The Purchaser shall permit access by the Utility Monitor and Toronto Hydro and their respective designated representatives to the Unit (and to all requisite common element areas) at all reasonable times and from time to time, in order to allow the Utility Monitor and Toronto Hydro to take meter readings of the cold water, hot water, electricity and heating/cooling service check meters appurtenant to the Unit (including meter readings of the natural gas check meter appurtenant to each of the Special Landscaped Units), and to carry out any necessary maintenance or repairs thereto, as and when required, in order to ensure that said cold water, hot water, electricity and heating/cooling check meters (and the natural gas check meter appurtenant to each of the Special Landscaped Units) are operating properly. The Corporation shall be obliged to fully pay for (or to forthwith fully reimburse the Utility Monitor and Toronto Hydro for) all costs and expenses incurred in connection with the maintenance, repair and/or replacement of any of the cold water, hot water, electricity and/or heating/cooling check meters appurtenant to each of the dwelling units (as well as the maintenance, repair and/or replacement of the check meter for natural gas appurtenant to each of the Special Landscaped Units), as and when required, and all such maintenance, repair and/or replacement costs shall comprise part of the common expenses of this Condominium. Furthermore, the Purchaser shall be obliged to reimburse the Vendor, on closing, for the cost of procuring and installing the aforementioned cold water, hot water, electricity and heating/cooling check meters appurtenant to the Unit (as well as the check meter for natural gas appurtenant to each of the Special Landscaped Units), plus any HST exigible in connection therewith, by way of a credit to the Vendor (or a corresponding charge to the Purchaser) in the statement of adjustments at final closing.
- (n) In order to facilitate the payment of all invoices issued by the Utility Monitor and Toronto Hydro from time to time, each of the unit owners shall make their requisite payments directly to each of the Utility Monitor and Toronto Hydro by way of a pre-authorized payment plan, and shall execute and deliver such bank forms, authorizations, documents and instruments (including the provision of an unsigned cheque marked "void" from the bank

account to be used for making all such payments to each of the Utility Monitor and Toronto Hydro) as may be reasonably required from time to time by the Corporation, the Utility Monitor and/or Toronto Hydro in order to implement (and give full force and effect to) any such pre-authorized payment plan. Without limiting the generality of the foregoing, the Purchaser hereby agrees to execute and deliver to the Vendor's solicitors, on or before the earlier of the interim occupancy closing or the final closing of this transaction (as applicable), the Utility Monitor's pre-authorized payment plan form, together with an unsigned cheque marked "void" from the Purchaser's bank account to be used for making all such payments to the Utility Monitor, as well as Toronto Hydro's pre-authorized payment plan form, together with an unsigned cheque marked "void" from the Purchaser's bank account to be used for making all such payments to Toronto Hydro.

- (o) The Vendor intends to develop this Condominium with some high-performance and energy-efficient equipment and materials, so that the residents of this Condominium will benefit from energy-related cost savings during the life of the installed equipment and materials. In addition, the Vendor may endeavor to obtain third party authentication of the condominium building's energy performance, including confirmation that this Condominium has been designed and built to achieve suitable energy performance targets (and correspondingly designed to use 25% less energy than a comparable building designed to the specifications of the 1997 Model National Energy Code for buildings, as determined by third-party verified energy performance modeling), and will also endeavour to have this Condominium attain or achieve "LEED Gold" certification (ie. by having this Condominium attain the minimum number of credits required for certification by the **Leadership in Energy and Environmental Design**, in respect of the "green building rating system") as determined by the Canada Green Building Council or the United States Green Building Council, a national non-governmental organization, or any other comparable independent third party energy-modelling agency, following the completion and occupancy of the condominium building. To this end, representatives of said governmental agencies (together with representatives of environmental and/or energy-related consultants retained by the Vendor) will need to access the individual units and common elements of this Condominium from time to time, both before and after registration of this Condominium, in order to inspect the aforementioned energy efficient equipment and materials so installed by the Vendor, and to measure the resulting energy output or consumption (and the corresponding energy savings achieved), and the Purchaser hereby expressly agrees to such access (and to the Corporation maintaining the building to the **LEED Gold certified standard**), and further agrees to allow the Vendor and its consultants to monitor and use the aforementioned energy data for a period of seven years following the date of registration of this Condominium, for research and for future design, development, redevelopment, renovation and/or retrofitting purposes. **However, it is expressly understood and agreed that the Vendor is not guaranteeing (nor making any warranty or representation whatsoever) that the condominium building will, in fact, ultimately attain or achieve LEED Gold certification or equivalent status, nor shall the Vendor be responsible or liable in any way for maintaining the condominium building according to the LEED Gold certified standard, after the point of initial certification (if LEED Gold certification is, in fact, ever achieved or attained), under any circumstances whatsoever.**
- (p) The Purchaser is hereby advised that this Condominium will be subject to various ongoing risk management and/or risk mitigation measures imposed by one or more certificates of requirement and/or certificates of property use (hereinafter collectively referred to as the "CPU") that will be issued by the Ministry of Environment & Climate Change ("MOECC") in connection with the development of the Real Property and the ongoing maintenance and administration of this Condominium (and shall also be subject to the risk assessment filed in respect of the Real Property with the MOECC's Site Registry, along with the record of site condition), including without limitation, the requirement for the ongoing inspection, testing and monitoring of the soil and/or the ground water situate within the confines of the Condominium (or within the adjacent lands) that is ultimately discharged into the City of Toronto's sewer system, together with the ongoing testing and monitoring of the air quality in respect of the air within the below-grade portions of the Condominium, along with periodic reporting requirements in connection therewith. Accordingly, soil and/or ground water samples and air samples will have to be taken from this Condominium's below-grade common element areas on a periodic basis, as stipulated by the CPU, for ultimate analysis by an accredited laboratory, with records of all sampling events and analytical test results to be maintained by the Condominium Corporation and available for inspection by the MOECC upon request. The performance and fulfilment of all outstanding obligations and requirements outlined in the CPU, including without limitation, all periodic testing, monitoring and/or reporting requirements in respect of the soil, ground water and/or air quality, and/or the implementation of any health and safety plan, to the satisfaction of the MOECC, and the maintenance of all required records relating thereto for ultimate inspection and approval by the MOECC (all of which obligations are hereinafter collectively referred to as the "CPU Obligations") shall be undertaken and coordinated by the committee representing all three Contributors (hereinafter referred to as the "Three-Way Shared Facilities Committee"), and all costs and expenses incurred in connection with the CPU Obligations (hereinafter collectively referred to as the "CPU Compliance Costs") will ultimately be shared by and amongst the three Contributors (namely this Condominium, the Daycare Centre Owner and the Retail Component Owner) and shall correspondingly comprise part of the Three-Way Shared Facilities Costs (as hereinafter defined).
- (q) This Condominium will be constructed and completed so that the ground water that emanates from or through this Condominium's building foundation (and/or its appurtenant drainage system) will ultimately be discharged directly into the City of Toronto's storm sewer system. In order to accommodate same, the Vendor intends to install a permanent ground water filtration and drainage system within the confines of this Condominium, in order to filter and cleanse the ground water emanating from the lands upon which the Project (or any portion thereof) has been erected, and to ultimately drain said ground water directly into the City of Toronto's storm sewer system (hereinafter collectively referred to as the "Ground Water Filtration System"). In addition, a ground water discharge agreement will ultimately be entered into by the Vendor with the City of Toronto (pursuant to the City of Toronto's Municipal Code Chapter 681, as amended from time to time), and correspondingly assigned to (and assumed by) this Condominium (hereinafter referred to as the "Ground Water Discharge Agreement"), which will impose various outstanding and ongoing obligations with respect to the control and treatment of the ground water being discharged into the City of Toronto's storm sewer system, including without limitation, the requirement for the ground water to be tested periodically to ensure that same is clean filtered water, or water that meets the City of Toronto's tolerance levels or standards (hereinafter collectively referred to as the "Ground Water Discharge Obligations"). The performance and fulfilment of the Ground Water Discharge Obligations shall be undertaken and coordinated by the Three-Way Shared Facilities Committee, on behalf of all three Contributors. All costs and expenses incurred in connection with any ground water control and/or ground water treatment measures pertaining to the Project, including all costs incurred in connection with the operation, maintenance and/or repair of the Ground Water Filtration System, as well as all costs and expenses incurred in connection with (or arising from) the indemnity of the City of Toronto and/or the Vendor in respect of (or by reason of) any contravention of the City of Toronto's requirements applicable to foundation drainage and/or ground water discharge into the City of Toronto's storm sewer system, or by reason of any damage or injury occasioned to (or in connection with) the Ground Water Filtration System (or any portion thereof), or arising from (or pursuant to) the Ground Water Discharge Agreement (all of which are hereinafter collectively referred to as the "Ground Water Discharge Costs") shall ultimately be shared by and amongst the three Contributors (namely this Condominium, the Daycare Centre Owner and the Retail Component Owner) and shall correspondingly comprise part of the Three-Way Shared Facilities Costs (as hereinafter defined).
- (r) This Condominium, when completed, will incorporate various mandatory green building initiatives and sustainability features imposed by the City of Toronto and/or Waterfront Toronto (hereinafter referred to as the "City's Green Development Standards"), including without limitation, one or more green roofs, and the Condominium Corporation will be obliged to ensure that the City's Green Development Standards are being properly maintained, on an ongoing basis. The Condominium Corporation shall also permit representatives of Waterfront Toronto reasonable access, from time to time, to this Condominium's bulk energy data, in order to determine the extent to which the City's Green Development Standards (and/or any energy-efficient equipment & materials so installed or incorporated in the course of constructing and completing this Condominium) are affecting or impacting this Condominium's overall water and energy consumption. Furthermore, as a prerequisite to the development and completion of this Condominium, a noise study, a vibration study, and an emissions study will be submitted to (and ultimately approved by) the City of Toronto, and the Condominium Corporation will be obliged to maintain any required noise, vibration and/or emissions mitigation, attenuation and/or equivalent measures identified in each of the approved studies, to the satisfaction of the City of Toronto, at all times following the registration of this Condominium, and all costs and expenses incurred in connection therewith shall comprise part of the common expenses, and such anticipated costs shall be reflected in this Condominium's annual operating budgets.
- (s) Notwithstanding anything heretofore provided to the contrary, it is understood and agreed that the Vendor shall have the unilateral right to alter, modify or completely replace all or any portion of the heating and cooling system proposed to service this Condominium and/or the individual dwelling units (including any or all of the water, gas, electricity, thermal energy and/or other utility or similar services and/or systems proposed to service this Condominium, or any portion thereof) with a different system and/or related equipment (in whole or in part), including making changes to the metering or check metering system associated therewith or appurtenant thereto, if and when the Vendor deems same to be necessary, appropriate or more desirable under the circumstances, and the Purchaser hereby confirms not only that the Vendor shall be entitled to implement same unilaterally, but that same shall not be deemed or construed to constitute a material change to the disclosure statement, and shall not give rise to any rights or claims (whether for rescission, termination, damages, compensation, an abatement in the purchase price or otherwise) by the Purchaser or the Condominium Corporation against the Vendor whatsoever.

NOISE WARNING AND OTHER SPECIAL NOTICES

2.11 (a) The Purchaser specifically acknowledges and agrees that in addition to the sources of excessive noise and/or vibrations referred to in Section 2.11 (a) of Schedule "A", it is understood and agreed that the proximity of this Condominium to the Gardiner Expressway, Lake Shore Blvd. East, Queens Quay East, Lower Sherbourne Street and Merchants Wharf respectively (being major arterial roadways), and to the Shared Roadway known as Edgewater Drive (being the access and connecting route to this Condominium, as well as the access route for some or all of the Neighbouring Owners), and to the nearby Redpath Sugar Ltd.'s refinery to the west of this Condominium, and to the nearby Essroc Canada Inc.'s cement transfer facility to the east of this Condominium, and to various other commercial and/or industrial operations being carried on within the Portlands section of the City of Toronto, or at the Jarvis Street Slip to the west of this Condominium, or at the Parliament Street Slip to the east of this Condominium, as well as the proximity of this Condominium to the municipal park to the west of this Condominium (known as Aitken Place Park), and to the adjacent Daycare Centre (including the outdoor playground area on level 2 thereof), and to the Public Walkway also known as Kanadario Lane situate to the west of this Condominium, and to the adjacent ground floor commercial/retail businesses and operations comprising part of the Retail Component (including any outside patios or terraces used by any restaurant or other food service operations comprising part of same), and to the nearby Toronto City Centre Airport (formerly the Toronto Island Airport), the Toronto Port Authority and the Toronto Island Ferry Terminal, and to the nearby downtown railway corridor running into and out of the downtown core of the City of Toronto, and to the City of Toronto's harbour (where ships, barges and cargo vessels traverse the waters in Lake Ontario transporting and loading/unloading materials), and to the proposed future light rail transit line to be operating along Queens Quay East (hereinafter referred to as the "LRT"), along with the corresponding noises, vibrations, emissions, dust, odours and pedestrian/vehicular traffic congestion generated thereby (as well as the likelihood of increasing pedestrian and vehicular traffic, bus/street car traffic, LRT traffic and/or train traffic noises and/or airplane take-off and landing noises, generated therefrom), and the proximity of this Condominium to commercial/retail buildings in the neighbouring vicinity of this Condominium (and any noises generated from the commercial vehicles loading and unloading goods and materials to the commercial/retail buildings in the neighbouring vicinity of this Condominium), and to other future nearby high-rise, mid-rise and/or low-rise condominiums, as well as to nearby commercial, retail and/or office buildings, and to the nearby waterfront walkways and related boating facilities, may result in noise, vibrations, emissions, dust, odours and electro-magnetic interference and stray current transmissions to (or otherwise affecting) this Condominium and the respective occupants of the dwelling units in this Condominium, and may cause the noise exposure levels, vibration levels, electro-magnetic interference and/or stray current transmissions affecting this Condominium and/or the occupants thereof to exceed the noise/vibration/electro-magnetic interference and/or stray current transmission levels and/or criteria established or approved by the Governmental Authorities, with the potential for the occupants of this Condominium to be negatively impacted by excessive noise, air emissions, dust, odours, vibrations, electro-magnetic interference, stray current transmissions and/or negative visual impacts, respectively. In light of the foregoing, the development agreement and/or the subdivision agreement governing the development of the lands upon which this Condominium is being constructed, requires the following warning clauses in all agreements of purchase and sale and in all rental agreements for residential dwelling units, namely: "Purchasers are advised that despite the (proposed) inclusion of noise and vibration control features in this development and within the condominium dwelling units, noise, sound and/or vibration levels from increasing vehicular traffic on nearby streets and highways and/or nearby bus, train and/or air plane transit operations from nearby railway lines (and corresponding railway operations), and from the nearby airport facility (and corresponding airline operations), may continue to be of concern, occasionally interfering with some activities of the dwelling occupants. Each of the dwelling units in this Condominium have been (or will be) supplied with a central air-conditioning system, which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the Municipality's and the Ministry of Environment & Climate Change's noise criteria. Purchasers and/or tenants are also advised that due to the proximity of nearby industrial and commercial facilities in this area, sound levels from these facilities may result in noise and vibration transmissions." The Purchaser nevertheless agrees to complete this transaction in accordance with the terms hereof, notwithstanding the existence of such potential noise, vibration, electro-magnetic interference and/or stray current transmission concerns, and the Purchaser further acknowledges and agrees that the following warning clauses [which may or may not be similar to the warning clause outlined in Section 2.11(a) of Schedule "A"], have been inserted in this Agreement at the insistence of the City of Toronto, the Toronto Transit Commission, GO Transit/Metrolinx, the Canadian Pacific Railway, the Canadian National Railway and/or the Toronto Island Airport, respectively:

- i) **Redpath Facility Warning Clause:** "Warning: This site is in close proximity to the heavy industrial Redpath Sugar refinery located at 95 Queens Quay Boulevard East (the "Redpath Facility") which operates 24 hours a day, 7 days a week. Various processes, shipping and receiving operations, and rail operations may either operate continuously or at any time of day or night. Activities may include: loading, unloading and repair of large tractor trailers or bulk bin trucks; loading, unloading and movements of railway cars along Queens Quay Boulevard; docking and unloading of ocean and lake-going ships; venting of steam; construction and repair; and operation of various sugar refining processes; and permitted electrical co-generation facilities. In addition, there may be industrial odours and light emanating from the refinery from time to time. Redpath may apply to alter or expand the Redpath Facility in the future. Notwithstanding the inclusion of certain mitigation features within this development to lessen potential noise, air emissions, dust, odour, vibration, and visual impact from the Redpath Facility, from time to time noise from the Redpath Facility is likely to be audible, odours may be unpleasant, and dust and light emissions may be bothersome and such potential noise, air emissions, dust, odour, vibrations and visual impact may impact the enjoyment of indoor and outdoor areas of this development. Redpath Sugar advises that it will not be responsible for any complaints or claims arising from any of the activities at or relating to the Redpath Facility property or operations thereon." The foregoing warning clause regarding the Redpath Facility shall be included within this Condominium's disclosure statement and declaration, and all unit purchasers and their successors and assigns shall be advised of said warning clause in any status certificate issued by the Condominium Corporation.
- ii) **Noise, Vibrations & Emissions Mitigation Measures:** As a prerequisite to the development and completion of this Condominium, a noise study, a vibrations study, and an emissions study will ultimately be submitted to (and approved by) the City of Toronto, and the Condominium Corporation will be obliged to maintain any and all required mitigation, attenuation and/or equivalent measures identified in each of the approved noise study, vibrations study and emissions study respectively, to the satisfaction of the City of Toronto, at all times following the registration of the Condominium, and all costs and expenses incurred in connection therewith shall comprise part of the common expenses. In addition, neither the board of directors of the Condominium, nor any unit owner(s) or tenant(s), nor anyone else, shall be permitted to make any change(s) to any of the units or common elements that would contravene the mitigation and architectural control measures required by the approved noise study, vibrations study, emissions study and/or the building permit plans for the Condominium, as applicable.
- iii) **Risk Management Measures Involving Ground Water & Air Quality Testing & Monitoring:** Purchasers are further notified that a certificate of property use has been (or will be) issued pursuant to Section 168.6(1) of the *Environmental Protection Act R.S.O. 1990, as amended*, in respect of the Real Property (hereinafter referred to as the "CPU"). Inter alia, the CPU details certain on-going risk management measures which the Condominium Corporation will be obliged to carry out and which are to be implemented to ensure that the Real Property (and the Condominium developed thereon) remains suitable for the intended residential use. The risk management measures include, inter alia, the implementation of on-going inspection and maintenance measures, ground water testing and monitoring, air testing and monitoring, and reporting requirements. The ground water monitoring program [to ensure that groundwater contaminants of concern remain at acceptable levels] will consist of sampling from the sump/pumping system and/or storm sewer and shall be carried out as frequently as the Ministry of Environment & Climate Change may require from time to time. Air monitoring [to ensure that indoor air contaminants of concern remain at acceptable levels] shall be carried out at the lowest level of the Condominium's parking garage below grade, at a minimum of two different monitoring locations, as frequently as the Ministry of Environment & Climate Change may require from time to time. Sampling records shall be maintained by the Condominium Corporation and shall be available for inspection by the Ministry of Environment & Climate Change officials upon request. A copy of the CPU shall be delivered by the Vendor/Declarant to the board of directors elected at the turnover meeting held pursuant to Section 43 of the Act, and shall thereafter be maintained as part of the records of the Condominium Corporation. At any time after said turnover meeting, a copy of the CPU shall be provided by the Condominium Corporation to any owner who requests same, subject only to the payment of a reasonable copying charge.
- iv) **Warning of Potential Interferences:** Each unit purchaser and/or lessee specifically acknowledges and agrees that the development of the Lands upon which this Condominium is being (or has been) constructed, will be developed in accordance with any requirements that may be imposed from time to time by any Governmental Authorities and that the proximity of this Condominium to the Toronto Transit Commission's transit operations may result in noise, vibration, electro-magnetic interference and stray current transmissions,

as well as smoke and particulate matter transmissions (hereinafter collectively referred to in this subparagraph as the "Interferences") to this Condominium, and despite the inclusion of control features within this Condominium, Interferences from transit operations may continue to be of concern, occasionally interfering with some activities of the occupants in this Condominium. Notwithstanding the above, each unit purchaser and/or lessee agrees to indemnify and save the City of Toronto, Waterfront Toronto and the Toronto Transit Commission harmless, from and against all claims, losses, judgments or actions arising or resulting from any and all Interferences. Furthermore, each unit purchaser and/or lessee acknowledges and agrees that an electro-magnetic, stray current and noise-warning clause similar to the one contained herein shall be inserted into any succeeding or subsequent sales agreement, lease or sublease, and that this requirement shall be binding not only on the parties hereto but also their respective heirs, estate trustees, successors and permitted assigns, and shall not die or terminate with the closing of the purchase and sale transaction with the Declarant. Finally, the City of Toronto, Waterfront Toronto and the Toronto Transit Commission do not, and will not, accept any responsibility for any of the Interferences in respect of this Condominium and/or its occupants;

- v) **Toronto Hydro's Warning Clause:** Each unit purchaser specifically acknowledges and agrees that the development of the Lands upon which this Condominium is being constructed, will be undertaken and completed in accordance with any requirements that may be imposed from time to time by any governmental authorities having jurisdiction thereover, and that the proximity of this Condominium to an on-site hydro transformer vault installed by the Vendor, that may ultimately be owned or operated by Toronto Hydro Electric System Limited (hereinafter referred to as "Toronto Hydro"), as well as the proximity of this Condominium to various facilities, installations and/or equipment owned and/or operated by Toronto Hydro, may result in noise, vibration, electro-magnetic interference and/or stray current transmissions (hereinafter collectively referred to in this subparagraph as the "Interferences") to this Condominium, and despite the inclusion of noise and/or vibration control features within this Condominium, Interferences from the aforementioned sources may continue to be of concern, occasionally interfering with some activities of the occupants in this Condominium. Notwithstanding the above, the Purchaser hereby agrees to indemnify and save each of the City of Toronto and Toronto Hydro harmless, from and against all claims, losses, judgments or actions arising or resulting from any and all of the Interferences. Furthermore, the Purchaser acknowledges and agrees that an electro-magnetic, stray current and/or noise-warning/vibration clause similar to the foregoing must be inserted into any succeeding or subsequent sale agreement or lease hereafter entered into by the Purchaser with respect to the unit(s) being acquired by the Purchaser hereunder, and that this requirement shall be binding not only on the Purchaser, but also upon the Purchaser's respective heirs, estate trustees, successors and permitted assigns, and shall not cease or terminate on the closing of this purchase and sale transaction with the Vendor. Finally, it is expressly acknowledged and agreed that the City of Toronto and Toronto Hydro do not, and will not, accept any responsibility or liability for any of the Interferences in respect of this Condominium and/or its occupants;
- vi) **Warning Regarding Handicapped Parking:** Any visitor handicapped parking space(s) situate in this Condominium may only be used by a disabled or handicapped visitor to this Condominium, provided that he or she holds a valid disabled parking permit that is appropriately displayed or visible in his or her vehicle. The Condominium Corporation shall retain control of any handicapped parking spaces at all times, and none of the handicapped parking spaces can ever be made, converted to, nor considered part of the exclusive use portions of the common elements. If any handicapped parking is utilized in this Condominium, then non-disabled owners and/or occupants of any handicapped parking unit shall be obliged, upon notification by the condominium corporation, to exchange, at no cost to a disabled driver who is a resident of this Condominium (and who holds a valid disabled parking permit that is appropriately displayed or visible in their vehicle), the use of the handicapped parking unit with the disabled driver's non-handicapped parking unit, throughout the duration of such disabled person's residency in this Condominium;
- vii) **CNR Warning Clause:** "Warning: Canadian National Railway Company ("CNR") or its assigns or successors in interest has or have a rights-of-way within 300 metres from the land the subject hereof. CNR or its successors and assigns have facilities and operations in the vicinity, including but not limited to, station platform operations, train movements through various switch and track routings, diesel locomotive storage, start-up and idling. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid, or other railway companies or their assigns or successors (including without limitation, Metrolinx or Via Rail Canada Inc.) may expand their operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise, vibration and/or air quality attenuating measures in the design of the development and the individual dwelling(s). CNR, Metrolinx and/or Via Rail Canada Inc. will not be responsible for any complaints or claims arising from the use of such facilities and/or operations on, over or under the aforesaid right-of-way.";
- viii) **CPR Warning Clause:** "Warning: Canadian Pacific Railway ("CPR") or its assigns or successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and the individual dwelling(s). CPR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way.";
- ix) **Berm, Fencing or Vibration Isolation Warning Clause:** "Warning: Purchasers and tenants of dwelling units are advised that any berm fencing or vibration isolation features so implemented are not to be tampered with or altered, and that the Owner (and ultimately the Condominium Corporation) shall have the sole responsibility for and shall maintain these features.";
- x) **CPR/CNR Railway Yard Warning Clause:** One or more of the agreements governing the development of the lands upon which this Condominium is being constructed, requires the following warning clauses in all agreements of purchase and sale and/or rental agreements, namely: "Warning: Canadian Pacific Railway and/or Canadian National Railway or their respective assigns or successors in interest (hereinafter collectively referred to in this subparagraph as the "Railway") has or have a railway classification yard located within 1,000 metres from the land the subject hereof; that its operations are conducted 24 hours a day, 7 days a week, which includes the shunting of trains and the idling of locomotives. There may be alterations to or expansions of the railway yard operations in the future, which alterations or expansions may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and the individual dwelling(s), and the Railway will not be responsible for complaints or claims arising from the use of its facilities and/or its operations.";
- xi) **TTC Warning Clause - Regarding Existing Bus/Streetcar System and Future LRT:** "Warning: Parts of this development are in close proximity to the Toronto Transit Commission's ("TTC") existing bus and/or streetcar system operating along Queens Quay East, and the future light rail transit system to be installed and operating along Queens Quay East (hereinafter referred to as the "LRT"). Notwithstanding the inclusion of certain mitigation features within this development to lessen potential noise, vibration, odour, visual impact, EMI and stray current, from time-to-time noise, vibration and stray current from the TTC's bus and/or streetcar operations and/or the future LRT operations may be audible and/or experienced, noise and odours from the bus and/or streetcar operations and/or the LRT operations may be unpleasant, and lighting at or near the existing bus and/or streetcar station, or at or near the future LRT station, may sometimes be intrusive and may affect the living environment of the residents in the development. The TTC shall not be responsible for any complaints or claims arising from any of the activities at or relating to the TTC's bus and/or streetcar station and operations, or the future LRT station and operations, comprising part of the TTC facilities."

The Purchaser hereby expressly (i) acknowledges and confirms having read the foregoing TTC Warning Clause, and (ii) releases the TTC from any and all liability resulting from the construction of and/or the continued operation of the bus and/or streetcar line and/or the LRT in compliance with applicable provincial requirements, and (iii) agrees to obtain from any subsequent purchaser or transferee of the Property a similar written acknowledgement confirming the provisions contained in (i), (ii) and (iii) of this acknowledgement and release;

- xii) **TTC Warning Clause - Regarding Future LRT Operations:** The City of Toronto and/or the Toronto Transit Commission (hereinafter sometimes referred to as the "TTC") operates a public surface bus and/or streetcar transit system (along Queens Quay East), in the neighbouring vicinity of the Lands, and there may be alterations to (or expansions of) said surface transit system and its appurtenant facilities and operations in the future, including without limitation, the construction, installation and operation of a future light rail transit system (hereinafter referred to as the "LRT") running along Queens Quay East, and such alterations and/or expansion of the existing surface transit system, including the aforementioned LRT system, may create significantly increased noise and vibrations (and particularly disturbances during the installation and operation of the LRT system itself), potentially negatively impacting or affecting

the living environment of the residents in this Condominium and in the vicinity, notwithstanding the inclusion of any noise and/or vibration attenuating measures in the design of this Condominium and the individual dwelling units, and neither the City of Toronto nor the TTC shall be responsible for any complaints or claims arising from the use of the public surface transit system and its related facilities and operations (including the installation and use of the LRT system and its related facilities and operations) in the neighbouring vicinity of the Lands, including complaints or claims arising from the construction, installation and/or operation of the aforementioned LRT system along Queens Quay East. Without limiting the generality of the foregoing, all unit purchasers are hereby further advised that some activities which may be carried out by the City of Toronto and/or the TTC in connection with the ordinary operation of the TTC's transit facilities situate within (or operated within) the neighbouring vicinity of the Lands and this Condominium, and particularly the aforementioned LRT system hereafter installed and operating along Queens Quay East, may generate noise, vibrations, odours, emissions, dust, etc., as well as electro-magnetic interference and/or stray currents, which may affect the Lands and this Condominium so developed thereon, and may correspondingly create some inconvenience, interference and/or disturbance to the residents of this Condominium, and that despite the foregoing, neither this Condominium, nor any unit owners or residents within this Condominium, shall be entitled to any compensation from the City of Toronto and/or the TTC arising from (or in connection with) any such resulting inconvenience, interference or disturbance, nor make, initiate or pursue any claim or cause of action against the City of Toronto and/or the TTC for damages arising from (or pertaining to) any noise, vibrations, odours, emissions (including smoke or exhaust), electro-magnetic interference and/or stray currents now or hereafter affecting the Lands and/or the owners or residents of this Condominium, nor make, initiate or pursue any claim or cause of action against the Vendor and/or its agents and representatives for damages arising from (or pertaining to) any noise, vibrations, odours, emissions (including smoke or exhaust), electro-magnetic interference and/or stray currents now or hereafter affecting the Lands and/or the owners or residents of this Condominium;

- xiii) Metrolinx (created by the Greater Toronto Transit Authority and formerly known as Go Transit): Metrolinx, and its assigns and successors in interest, have a right-of-way within 300 metres from the Lands. Metrolinx or its successors and assigns have facilities and operations in the vicinity, including but not limited to, station platform operations, train movements through various switch and track routings, diesel locomotive storage, start-up and idling. There may be alterations to or expansions of the rail facilities on such right-of-way in the future, including the possibility that Metrolinx or any other railway company or companies entering into an agreement with Metrolinx to use the right-of-way, or their assigns or successors as aforesaid, may expand their operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise, vibration and/or air quality attenuating measures in the design of the development and individual dwelling(s). Metrolinx (and any other railway companies who may use the aforementioned right-of-way, including without limitation, the Canadian National Railway Company, the Canadian Pacific Railway Company and/or Via Rail Canada Inc.) will not be responsible for any complaints or claims arising from the use of such facilities and/or operations on, over or under the aforesaid right-of-way;
- xiv) *Metrolinx Warning Clause:* "Warning: Any crash wall, security fencing and noise/vibration mitigation measures implemented in accordance with the approved noise/migration studies for these lands (if any) are not to be tampered with or altered and further the Owner shall have sole responsibility for and shall maintain these measures to the satisfaction of Metrolinx";
- xv) *M.O.E. Standard Warning Clause:* "Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road/railway traffic may on occasion interfere with some activities of the dwelling occupants, as the sound levels exceed the Municipality's and the Ministry of the Environment's noise criteria. The dwelling units within this Condominium have been supplied with a central air-conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the Ministry of the Environment's noise criteria.";
- xvi) *Go Transit & CNR Warning Clause:* "The Canadian National Railway Company ("CNR") and/or Go Transit, or their respective assigns or successors in interest, has or have rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future, including the possibility that the CNR and/or Go Transit or their respective assigns or successors as aforesaid may expand their respective operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwellings. CNR and Go Transit will not be responsible for any complaints or claims arising from the use of such facilities and/or operations on, over or under the aforesaid rights-of-way.";
- xvii) *Proximity to Gardiner Expressway Warning:* "It is acknowledged that the proximity of the Real Property to the Gardiner Expressway and Lakeshore Blvd. East means that noise, vibration, smoke, exhaust gases, and particulate matter (collectively referred to as the "Interferences") will affect the Real Property, and that notwithstanding the inclusion of control and mitigation features in any improvements to be built on the Real Property, the Interferences will be of concern to, and may interfere with the activities of, occupants of and visitors to the Real Property from time to time, and may constitute a nuisance." The Purchaser agrees to include the foregoing acknowledgement and warning clause in every offer to sell, offer to lease, agreement of purchase and sale, lease, joint venture, partnership, or any similar agreement providing for the use, occupation or ownership of the Real Property or any portion thereof;
- xviii) *Warning to Solicitors:* Solicitors are advised to stress the importance of the above-noted warning clauses when advising their clients on the purchase of units in the development.

2.11 (b) In addition to those special notices, warnings and/or provisions which the Vendor has brought to the Purchaser's attention, as set out above and in Section 2.11 (b) of Schedule "A" annexed hereto, the Purchaser is hereby advised that:

- vi) The Toronto District School Board requires that the following notice or warning clause be included in all agreements of purchase and sale, and in all leases or offers to lease, that are entered into by the Vendor/Declarant with any unit purchaser(s) or unit lessee(s), and also included in all subsequent re-sale offers or agreements of purchase and sale, and all subsequent leases/occupancy agreements, that are hereafter entered into by any unit owner(s) in connection with any sale or lease of any dwelling unit in this Condominium, for a period of 10 years after the registration of this Condominium:

"Despite the best efforts of the Toronto District School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area, and further, that students may later be transferred

Purchasers agree for the purpose of transportation to school, if bussing is provided by the Toronto District School Board in accordance with the Board's policy, that students will not be bussed home to school, but will meet the bus at designated locations in or outside of the area."

- vii) The Toronto Catholic District School Board requires that the following notice or warning clause be included in all agreements of purchase and sale, and in all leases or offers to lease, that are entered into by the Vendor/Declarant with any unit purchaser(s) or unit lessee(s), and also included in all subsequent re-sale offers or agreements of purchase and sale, and all subsequent leases/occupancy agreements, that are hereafter entered into by any unit owner(s) in connection with any sale or lease of any dwelling unit in this Condominium, for a period of 10 years after the registration of this Condominium:

"The Toronto Catholic District School Board has plans to accommodate Catholic students from this development area in a Catholic school. If no Catholic school is located in the development area, students will be accommodated in a Catholic school in an adjacent area. If the elementary or secondary school which serves this development area is oversubscribed, students from this development may need to be accommodated in portable classrooms or may have to attend a Catholic school located outside the area. The purchaser or tenant acknowledges that school bus service for students, if required, will be from designated school bus stops located within or outside the development area."

- viii) The following warning clause or restriction is required to be included in all agreements of purchase and sale with respect to any unit(s) in this Condominium, namely: "The Purchaser, as the transferee of any unit(s) in this Condominium, for themselves, their heirs, estate trustees, successors and assigns, covenants and agrees that they will not alter the slope of the Condominium lands, nor interfere with any drains established on or within said lands, nor alter the width of any approved driveway(s), except in accordance with the approved lot grading and building siting control plan (or except in accordance with the grading and drainage plans approved by the City of Toronto), without the prior written consent of the City of Toronto thereto, and further agrees to maintain any such alterations so approved by the City of

Toronto. This covenant is for the benefit of all other lands in the plan of subdivision which includes the Lands (or any portion thereof), and shall run with the title to said lands. The Purchaser shall abide by, and comply with, the foregoing restrictions, and expressly acknowledges and agrees that the declaration shall provide that the Condominium Corporation shall be duty bound not to permit the slope of the Lands to be altered, nor permit any drains to be altered or interfered with, nor permit the width of any approved driveways to be altered, except in accordance with the grading and drainage plans (and the building siting control plan) approved by the City of Toronto

- ix) *Noise and vibration levels caused by the Condominium's bank of elevators, garbage chutes, electrical room(s), mechanical equipment, move-in bays and ancillary moving facilities and areas, and/or by the use of the Condominium's indoor recreation facilities and amenities, may occasionally cause noise, vibrations and/or inconvenience to the dwelling occupants. Moreover, as and when other dwelling units in this Condominium are being completed and/or occupied, excessive levels of noise, vibration, dust and/or debris are possible, and same may accordingly temporarily cause noise and inconvenience to the dwelling occupants. Furthermore, at the point in time when any dwelling unit in this Condominium is required to be occupied by the purchaser thereof, there still may be outstanding construction and/or finishing work to be undertaken thereafter by the Declarant to portions of the exterior and/or interior of the condominium building, which may require the continued placement and use of an exterior hoist (for hauling or conveying construction materials, workers and/or debris) that is temporarily anchored to the exterior facade of the building, immediately outside of or near the subject purchaser's dwelling unit, which in turn may block or obstruct the purchaser's view to the outside and/or give rise to an increase in noise and/or vibration levels during construction hours (between 7:00 a.m. and 7:00 p.m.) pending the completion of all construction and finishing work in respect of this Condominium, which obstruction of view, noise and/or vibration may be of concern to the unit purchaser and which may interfere with some activities of the dwelling occupants*

Although the Vendor has used its best efforts to ensure that the foregoing warning clauses are the most up-to-date and current warning clauses required by the various governmental authorities having jurisdiction over the Lands, the Purchaser hereby undertakes and agrees to sign an addendum to this Agreement confirming receipt of any new or revised warning clauses, from time to time, as may be required or mandated by the Vendor or the various governmental authorities or agencies having jurisdiction over the development of the Lands.

- 2.11 (f) Notwithstanding anything to the contrary contained in Section 2.11(f) of (or elsewhere within) Schedule "A", the Purchaser hereby acknowledges and agrees that each dwelling unit in this Condominium shall be occupied and used only for residential purposes, in accordance with the provisions of all applicable zoning and building by-laws and regulations of the City of Toronto (with all such applicable zoning and building by-laws, as amended or varied from time to time, being hereinafter collectively referred to as the "**Applicable Zoning By-laws**"), provided however that:

- i) any lease, sub-lease, license or sub-license (as the case may be) of any dwelling unit or group of dwelling units (or with respect to any portion of any dwelling unit), whether in a furnished or unfurnished state, shall in each case be for a minimum initial term or duration of not less than thirty (30) consecutive days, and may occur or be created (and shall be permitted) on any number of occasions, and
- ii) nothing contained in this Condominium's declaration (nor in any by-laws, rules or board resolutions hereafter passed or enacted), shall prevent or in any way restrict the Declarant from completing the building situate on the Real Property and all improvements thereto, nor prevent the Declarant, while owning and seeking to sell any of the dwelling units in this Condominium, as well as any of the dwelling units within any neighbouring condominium project being developed by the Declarant (or by any company related, associated or affiliated with the Declarant) on any portion of the lands bounded by Lake Ontario, Sherbourne Park, Queens Quay East and the Parliament Street Slip (hereinafter collectively referred to as the "**East Bayfront Units**"), or any mortgagee who has a registered mortgage or charge against not less than twenty-five (25%) percent of the dwelling units in this Condominium and who seeks to sell the dwelling units so encumbered by said mortgage or charge, from utilizing any unsold dwelling units in this Condominium for the purposes of creating and/or maintaining therein one or more marketing, sales, construction and/or customer-service office(s), as well as advertising signs and temporary model suites for display purposes (at such locations and having such dimensions and designs as the Declarant or such mortgagee may determine in their respective sole, unfettered and unchallenged discretion), until such time as all of the dwelling units in this Condominium and all of the East Bayfront Units (or such lesser number as the Declarant or any such mortgagee may determine in their respective sole, unfettered, and unchallenged discretion) have been sold and transferred by the Declarant or such mortgagee to each of the respective unit purchasers thereof.

- 2.11(l) Notwithstanding anything to the contrary contained in Section 2.11(l) of (or elsewhere within) Schedule "A", the Purchaser acknowledges and agrees that the Vendor shall be entitled to increase or decrease the total finished area above-grade attributable to any or all of the three components of the Aquabella Project (namely this Condominium, the Daycare Centre and the Retail Component), and/or to increase or decrease the final number of dwelling units, parking units, locker units, hobby/storage room units, shared service units and/or any other ancillary units intended to be created within this Condominium, as well as the right to substitute any level in this Condominium with an alternate floor plate containing a modified design of units and/or a modified number of units on the level [which change(s) would necessitate a re-allocation of each owner's proportionate percentage of the common expenses, and with the first year budget being modified accordingly], together with the right to alter the design, style, size and/or configuration of any of the dwelling units ultimately comprised within this Condominium which have not yet been sold by the Vendor to any unit purchaser(s), all in the Vendor's sole and unchallenged discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the dwelling/parking/locker/hobby/storage room/shared service and/or other ancillary unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the dwelling, parking, locker and/or hobby/storage room units sold by the Vendor to the Purchaser pursuant to this Agreement and any addendum thereto. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more dwelling units situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall dwelling unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.

- 2.11(o) Notwithstanding anything hereinbefore provided to the contrary, it is expressly acknowledged and agreed that:

- i) The City of Toronto and/or Waterfront Toronto shall be solely and exclusively responsible and liable for the creation and completion of all publicly-accessible and/or public realm amenities and/or facilities that are planned or proposed to be developed upon or within City-owned lands and/or Waterfront Toronto lands in the near future, including without limitation, the proposed light rail transit system running along Queens Quay East, and various landscaped walkways and boulevards, parks, fountains, bicycle paths, lakefront boardwalks and any other public spaces or amenities that are correspondingly intended to ultimately benefit the residents of this Condominium and the surrounding neighbourhood (all of which are hereinafter collectively referred to as the "**Public Amenities**"). However, under no circumstances whatsoever shall the Vendor or its Agent be liable or responsible for any warranties or representations made by or on behalf of the City of Toronto and/or Waterfront Toronto regarding the Public Amenities, nor for any delays in the construction and/or completion of the Public Amenities (or any portion thereof), nor for any changes or modifications (whether substantial or otherwise) that are made or implemented to any of the Public Amenities at any time hereafter by or on behalf of the City of Toronto and/or Waterfront Toronto, nor for any deletion or elimination (in whole or in part) of any of the Public Amenities, nor for any failure to implement and/or complete any or all of the Public Amenities whatsoever, on the express understanding and agreement that all dealings pertaining to (and all work associated with) any of the Public Amenities shall be totally at the discretion of the City of Toronto and/or Waterfront Toronto, and accordingly the Purchaser shall not initiate or pursue (nor be associated or involved in) any claim against the Vendor (or against any other party or parties whatsoever) for compensation or damages, or for an abatement in the Purchase Price (or for a reduction in the occupancy fees so payable), nor seek to terminate this Agreement or attempt to void or vitiate the purchase and sale transaction contemplated hereunder, due to (or as a result of) any such delays in the construction and/or completion of the Public Amenities (or any portion thereof), or due to any changes or modifications that are made or implemented to any of the Public Amenities at any time hereafter, or due to the deletion or elimination (in whole or in part) of any of the Public Amenities, including the failure on the part of the City of Toronto and/or Waterfront Toronto to implement and/or complete any or all of the Public Amenities whatsoever, no matter how significant or substantial the negative or prejudicial impact thereof may be, under any circumstances whatsoever,
- ii) Parking units, locker units, hobby/storage room units and bicycle storage facilities will be located within the underground parking garage of this Condominium, below grade, and correspondingly situate below the water table. Notwithstanding the implementation of prudent and customary industry construction practices for the construction of portions of buildings below the water table, the occurrence of minor shrinkage cracks may nevertheless result and be evident in portions of the below-grade structure of this Condominium, with the potential for resulting dampness or minor leakages. The periodic maintenance and repairs of such cracks by the Condominium Corporation shall be considered to be part of the ongoing maintenance responsibilities of the Condominium Corporation, and the cost of carrying out any such maintenance or repair work shall

- comprise part of the common expenses. Furthermore, the Purchaser is hereby advised to store any objects, materials, personal property or contents within any locker unit or hobby/storage room unit at least 30 centimetres above the floor or bottom of any locker unit or hobby/storage room unit, as the case may be (ie. in an elevated location), and it is expressly understood and agreed that the Vendor shall have no responsibility or liability to the Purchaser whatsoever in connection with any damage to any objects, materials, personal property or contents placed or stored within any locker unit(s) or hobby/storage room unit(s) caused by any water leakage or dampness (howsoever originated or created), and the Purchaser shall not make or pursue any claim against the Vendor (nor against any other party) for compensation, or for an abatement in the Purchase Price (or the occupancy fees so payable), and/or for damages in connection with any such loss or damage occasioned to any personal property or contents so stored within any locker unit or hobby/storage room unit;
- iii) In the event that an in-suite private elevator has been installed by the Vendor within any two-storey dwelling unit in this Condominium, and correspondingly services said dwelling unit exclusively, then it is hereby understood and agreed that the said elevator shall be maintained and repaired by or on behalf of the owner of said dwelling unit (and not by the Condominium Corporation), all at such owner's sole cost and expense, and such in-suite elevator maintenance and repair costs shall not comprise part of the common expenses (but rather shall be in addition thereto);
- iv) Noise, dust and vibrations from any nearby elevator bank(s), garbage and/or recycling room(s), garage entry door(s), loading dock(s), move-in bay(s), recreational amenities and/or facilities, any on-site hydro electric vault or transformer, the Condominium's mechanical equipment and any corresponding service room(s) housing or containing any mechanical, electrical, plumbing, heating and/or cooling equipment, fixtures and ancillary installations, as well as noise from the adjacent Daycare Centre (and the outdoor playground area on level 2 thereof) may cause this Condominium's noise and/or vibration levels to exceed a comfortable level and may occasionally interfere with some activities of the dwelling occupants in this Condominium. However, despite any or all of the foregoing noise, odour, vibration and visual interference concerns (as well as concerns regarding the dust and debris caused or contributed by any construction and completion work in respect of the balance of this Condominium), the Purchaser shall not make or pursue any claim against the Vendor (nor against any other party) for compensation, an abatement in the Purchase Price (or the occupancy fees so payable), for damages or otherwise, nor initiate or pursue any claim, action or proceeding against the Vendor (nor against any other party or parties whomsoever) by reason of the foregoing noise, odours, vibration, obstruction of view, dust and/or debris concerns, or because of any inconvenience to the Purchaser caused thereby, no matter how significant or substantial the interference may be or how long same may have to be endured, and the Purchaser shall not initiate or pursue any proceeding to enjoin or restrain any of the foregoing activities which may cause any such noise, odours, vibration, obstruction of view, dust, debris and/or inconvenience, under any circumstances whatsoever;
- v) Several parking units within this Condominium may ultimately be completed as Electrical Parking Units, with a standard electrical outlet installed as an appurtenance thereto, in order to accommodate (and correspondingly service or charge) any electric vehicle that may be owned or operated by the owner or tenant of any such parking unit. If such is the case, then a separate electricity check meter will be installed as an appurtenance to the Electrical Parking Unit, in order to measure and confirm the cost of the electricity consumed or utilized by any electric vehicle(s) parked from time to time within any such Electrical Parking Unit, on a periodic basis, and the owner of any Electrical Parking Unit shall accordingly be responsible for paying for the cost of such electricity consumption (in addition to the common expenses attributable to his or her Electrical Parking Unit), pursuant to the invoices periodically issued to the owner of the Electrical Parking Unit by the Condominium's Utility Monitor (or by any other third party contractor retained by the Condominium Corporation in connection with the sub-metering, servicing and reading of the check meters or sub-meters appurtenant to each of the Electrical Parking Units within this Condominium). Moreover, all arrears of any check-metered electricity consumption in respect of any Electrical Parking Unit that arises because any of the invoices issued by the Utility Monitor in connection therewith have not been paid by the owner of the Electrical Parking Unit, as and when any such invoices are due and payable shall, to the extent permitted by law, thereupon be deemed and construed to constitute common expenses (and shall thereby specifically become common expense arrears), and may thereafter be collected by the Condominium Corporation against the owner of the Electrical Parking Unit in the same manner (and to the same extent, and with all the same rights and powers) as any other common expenses, and accordingly all such arrears shall properly constitute the subject matter of a common expense arrears lien, and may be enforceable by way of such lien (ie. with all of the super priority rights applicable thereto, as provided by or under the Act) against the delinquent owner's Electrical Parking Unit;
- vi) In an effort to reduce the incidence or frequency of birds colliding into this Condominium, the Vendor will construct and complete this Condominium in compliance with the bird-collision-deterrence requirements of the Toronto Green Building Standards imposed by the City of Toronto with respect to Tier 1 type buildings, and accordingly it is acknowledged and agreed that the exterior windows of this Condominium (including glass balcony railings, if any) on any or all of the levels of this Condominium (particularly the windows situate directly above any open landscaped terrace or other landscaped area) may contain or comprise special bird-friendly glazing (intended to mute or dim reflections of the glass surface, and containing visual markers applied or affixed to the exterior glazing or glass facade), and the Purchaser shall accordingly be estopped and precluded from hereafter making or pursuing any complaint or claim against the Vendor, the City of Toronto or any other parties as a consequence of such special window glazing, if same is ultimately situate within (or comprises part of) the Purchaser's Unit;
- vii) This Condominium has been designed such that: (A) four designated elevators will access and service all levels of this Condominium (namely two for the east tower comprising part of this Condominium, and traversing from and between level D to level 11 inclusive, and two for the north tower comprising part of this Condominium, and traversing from and between level D to level 12 inclusive), with another elevator designated as a move-in or service elevator (traversing between level B and level 1) to be used for the moving of furniture, bicycles and/or personal belongings in and out of this Condominium, in conjunction with a separate move-in room located on level B, together with a shared outdoor loading area designated as unit 6 on level 1 (and comprising the shared loading unit that will ultimately be shared and used by this Condominium, the Daycare Centre and the Retail Component), along with another designated elevator intended to be used for the purpose of transporting the bicycles of the respective residents of this Condominium from each of levels A, B, C and D to level 1, and another service elevator intended for the transport of the Condominium's garbage (and traversing between level B and level 1); (B) the main entrance lobby (or the east lobby) of this Condominium will be located at the south-east corner of the Condominium, near the intersection of Merchants Wharf and Edgewater Drive, and accessed directly from Merchants Wharf, and said lobby will contain a concierge station that is intended to be monitored and controlled by on-site and on-duty personnel; (C) a separate smaller lobby (or the west lobby) serving this Condominium will be located at the north-west corner of the Condominium, near the intersection of Edgewater Drive and Kanadario Lane, and accessed directly from Kanadario Lane, and said lobby will be serviced by a "virtual electronic concierge", namely a remote surveillance service that will be provided to this Condominium through the use of a computerized camera network and a flat panel display or monitor, and ancillary equipment, located within the confines of said lobby, and which surveillance shall be conducted by and from the on-duty concierge physically situate at (and monitoring) the main concierge station located within the main entrance lobby of this Condominium; and (D) notwithstanding anything hereinbefore provided (regarding the on-duty concierge) to the contrary, it is understood and agreed that the concierge services for this Condominium may ultimately be provided, either partially or totally, by means of an off-site virtual electronic concierge system/service;
- viii) This Condominium will have one or more resident bicycle storage areas and one or more visitor bicycle storage areas situate on levels A, B, C and D and comprising part of the common elements, having a total resident bicycle storage capacity of approximately 162 bicycles in the aggregate, and a total visitor bicycle storage capacity of approximately 18 bicycles in the aggregate, and all bicycle spaces within any such bicycle storage areas shall be assigned and allocated on a "first come, first served" basis, by the Condominium Corporation or its property manager. Bicycles shall be permitted to be transported along, upon and within the common element lobbies, elevators, hallways and corridors of this Condominium, without having to carry the entire bicycle in the air in an effort to avoid any bicycle tire(s) touching the ground or the floor surface, and despite the potential for staining or damaging the common element flooring or carpeting of this Condominium;
- ix) In the course of developing and completing this Condominium, a section 37 density bonus/development agreement may have already been entered into (or may hereafter be entered into) with the City of Toronto, which pertains to the provision of public benefits (or cash in lieu thereof) in exchange for increases in the height and/or density of this Condominium, and which may also require the installation of public art within the outdoor common element areas of this Condominium, or within the neighbouring vicinity of this Condominium. The aforementioned public art may take the form of sculptured artwork and/or sculptured landscaping features, statues, patterned paving stones, etc. that will be designed and created by (or in collaboration with) an artist selected by the City of Toronto's Chief Planner and approved by the Council of the City of Toronto (hereinafter referred to as the "Public Art"). Following its completion and installation, the Public Art must be clearly visible by the general public at all times (ie. from public sidewalks or walkways or publicly-accessible spaces), and the Public Art may have to be maintained and repaired (as and when required) by the Condominium Corporation at its sole cost and expense, in accordance with the requirements and guidelines imposed by the City of Toronto, through the Toronto Public Art Commission or its delegate (with all costs incurred by the Condominium Corporation in connection with the maintenance and repair of the Public Art, if applicable, to comprise part of the common expenses). If the aforementioned section 37 agreement does, in fact, require the installation of Public Art, then once installed the Public Art shall,

not be removed, relocated, altered or modified in any material respect, without the prior approval of the City of Toronto's Chief Planner and the Toronto Public Art Commission. If such Public Art is so installed, then the Purchaser hereby agrees not to raise or pursue any challenge or objection whatsoever to (or in connection with) the Public Art (whether with respect to its design, composition, configuration, location or otherwise), nor with respect to any costs incurred (or to be incurred) by the Condominium Corporation in connection with the maintenance and/or repair of the Public Art.

- x) In addition to the foregoing noise and/or vibration warning clauses, the Purchaser hereby expressly acknowledges being advised that:
- A. those purchasers of any of the dwelling units on levels 1, 2 and 3, each of which is situate directly beside, above or near either of the entrance lobbies to this Condominium, or above or near the loading areas, move-in rooms or garbage holding rooms located on level 1, or situate directly beside, above or near any of the ground floor retail stores comprising part of the Retail Component (including any outside patios or terraces used by any restaurant or other food service operations comprising part of the Retail Component), may endure excessive or disturbing noises, vibrations and/or odours emanating from the use and enjoyment of said areas on level 1;
 - B. those purchasers of any of the dwelling units on levels 1, 2, 3 and 4, each of which is situate directly beside, above or near the Daycare Centre (and near the Daycare Centre's outdoor playground area situate on level 2 thereof), may endure excessive or disturbing noises, vibrations and/or odours emanating therefrom;
 - C. those purchasers of any of the dwelling units on levels 1 and/or 2 situate above this Condominium's recreational amenity areas or facilities located on level A (including this Condominium's fitness room, theatre, and change/steam rooms), as well as those purchasers of any of the dwelling units on levels 6, 7 or 8 situate directly beneath, beside or above this Condominium's recreational amenity areas or facilities located on level 7 (including this Condominium's private bar, lounge, dining room and catering kitchen, as well as an outdoor terrace and outdoor swimming pool), may endure excessive or disturbing noises, odours and/or vibrations emanating from the use and enjoyment of said recreational amenity areas or facilities; and
 - D. those purchasers of any of the dwelling units on levels 11 and 12, each of which is situate directly beneath, beside, across or near (or in the neighbouring vicinity of): (i) any mechanical room(s), emergency generator room and/or elevator machine room(s) and/or any other area or room which houses or contains any mechanical, electrical, plumbing, heating and/or cooling equipment, fixtures and ancillary installations serving this Condominium, the Daycare Centre and/or the Retail Component; and/or (ii) any rooftop mechanical equipment, fixtures, systems and/or installations servicing this Condominium, Daycare Centre and/or the Retail Component (including the communication control unit designated as unit 1 on level 14), may endure excessive or disturbing noises, odours and/or vibrations emanating therefrom;

and the Purchaser hereby expressly agrees that no claim or cause of action shall be initiated or pursued against the Vendor and/or its agents and representatives for any compensation or abatement in the Purchase Price (or for any abatement in the occupancy fees so payable) as a consequence of any or all of the foregoing matters hereinbefore outlined, nor for any damages or inconvenience arising therefrom or caused thereby, no matter how extensive or excessive any of the foregoing noise, vibrations, odours, emissions and/or interferences so disclosed may be, and no matter how long same may endure or negatively impact the Purchaser.

- xi) There are various shared facilities, services, areas and/or building components (including fixtures and/or equipment) comprising part of the overall Project that are intended to serve or benefit this Condominium and the Daycare Centre, namely:

- A. the central fluid cooling system;
- B. the boilers (for heating) and ancillary hot water storage tanks, and the shared boiler room unit; and
- C. the electrical transformer and distribution system, together with the shared electrical room unit;

(hereinafter collectively referred to as the "**Two-Way Shared Facilities**"). The cost of operating, insuring, maintaining and repairing the Two-Way Shared Facilities (hereinafter collectively referred to as the "**Two-Way Shared Facilities Costs**") shall also include the cost of window cleaning (in respect of both the Condominium and the Daycare Centre). The Two-Way Shared Facilities Costs shall be borne and paid for by each of the Condominium and the Daycare Centre Owner on a pro-rata basis, based on the percentages reflecting their respective or relative total finished areas above grade (hereinafter referred to as their respective "**Proportionate Share of the Two-Way Shared Facilities Costs**"). It is presently intended that this Condominium will contain or comprise a total finished area above-grade of approximately 27,823 square meters, and that the Daycare Centre will contain or comprise a total finished area above-grade of approximately 784 square meters. Accordingly, this Condominium's Proportionate Share of the Two-Way Shared Facilities Costs will amount to approximately 97.26%, and the Daycare Centre Owner's Proportionate Share of the Two-Way Shared Facilities Costs will amount to approximately 2.74% thereof, on the express understanding that the foregoing percentages or proportions are subject to adjustment hereafter, depending on the final total finished area above-grade of each of the Condominium and the Daycare Centre respectively, as conclusively determined by the Vendor's architect as at the date of registration of this Condominium.

- xii) There are various shared facilities, services, areas and/or building components (including fixtures and/or equipment) comprising part of the overall Project that are intended to serve or benefit this Condominium, the Retail Component and the Daycare Centre, namely:

- A. the emergency generator;
- B. the storm and sanitary sump pits, and the elevator sump pits;
- C. the shared sprinkler/meter room (containing incoming water meters and the fire pump, and ancillary equipment);
- D. the telecom room containing telecommunication conduits, wiring and appurtenant equipment;
- E. the incoming water, gas, and electrical servicing pipes, along with the storm and sanitary sewer pipes, emanating from the street to the Condominium's parking garage and/or basement area, including the incoming water meter room;
- F. the outdoor shared loading bay or area;
- G. the shared storm water storage tank unit; and
- H. the Ground Water Filtration System;

(hereinafter collectively referred to as the "**Three-Way Shared Facilities**"). The cost of operating, insuring, maintaining and repairing the Three-Way Shared Facilities (hereinafter collectively referred to as the "**Three-Way Shared Facilities Costs**") shall also include the CPU Compliance Costs, the Ground Water Discharge Filtration Costs, and the cost of insuring, maintaining and repairing all Shared Roadways and walkways leading into and out of the Project (including the outdoor shared loading area and the Public Walkway, but excluding Edgewater Drive which will be governed under a separate shared facilities agreement), and keeping same free and clear of snow, ice and debris. The Three-Way Shared Facilities Costs shall be borne and paid for by each of the Condominium, the Retail Component Owner and the Daycare Centre Owner on a pro-rata basis, based on the percentages reflecting their respective or relative total finished areas above grade (hereinafter referred to as their respective "**Proportionate Share of the Three-Way Shared Facilities Costs**"). It is presently intended that this Condominium will contain or comprise a total finished area above-grade of approximately 27,823 square meters, the Retail Component will contain or comprise a total finished area above-grade of approximately 938 square meters, and that the Daycare Centre will contain or comprise a total finished area above-grade of approximately 784 square meters. Accordingly, this Condominium's Proportionate Share of the Three-Way Shared Facilities Costs will amount to approximately 94.18%, the Retail Component Owner's Proportionate Share of the Three-Way Shared Facilities Costs will amount to approximately 3.17%, and the Daycare Centre Owner's Proportionate Share of the Three-Way Shared Facilities Costs will amount to approximately 2.65% thereof, on the express understanding that the foregoing percentages or proportions are subject to adjustment hereafter, depending on the final total finished area above-grade of each of the Condominium, the Retail Component and the Daycare Centre respectively, as conclusively determined by the Vendor's architect as at the date of registration of this Condominium.

- xiii) Each of the Condominium, the Retail Component Owner and the Daycare Centre Owner shall be solely responsible for insuring, maintaining and repairing their own respective exterior facades (namely all exterior walls, roofs, ceilings, floors, windows and doors), all at their respective sole cost and expense, provided however that:

- A. the exterior facades must at all times be maintained and repaired in a first class manner (commensurate with comparable buildings in the City of Toronto having a similar or comparable design, type, composition, quality and age to that of the Project); and

- B. any additions, alterations or improvements to any portion of the exterior facade of the Condominium and/or the Daycare Centre that are visible from the exterior, including the painting of any exterior building component (or the hanging or affixing of any material from the underside surface or ceiling of any exterior building component) that is visible from the exterior, as well as any changes or alterations affecting the integrity of the skin or surface of the Condominium building or the Daycare Centre, or its substrate and/or insulation value, must first be approved by the Two-Way Shared Facilities Committee (as hereinafter defined), provided however that the foregoing shall not in any way restrict, limit or interfere with any of the outdoor playground equipment and/or facilities that may be placed or utilized within the confines of the outdoor playground area situate on level 2 of the Daycare Centre from time to time, nor the bolting or affixation of any such equipment or facilities to the floor of the outdoor playground area.
- xiv) The operation, use, insurance, maintenance and/or repair of the Two-Way Shared Facilities (or any portion thereof), including the budgeting (on an annual basis) of the Two-Way Shared Facilities Costs, and the intended design or impact of any addition, alteration or improvement to any portion of the exterior facade of the Condominium and/or the Daycare Centre, shall be governed and administered by a committee, for and on behalf of the Condominium and the Daycare Centre Owner (hereinafter referred to as the **"Two-Way Shared Facilities Committee"**). The Two-Way Shared Facilities Committee shall be comprised of 7 members, 5 members of which shall be appointed by the Condominium, and 2 of which shall be appointed by the Daycare Centre Owner, and all decisions of the Two-Way Shared Facilities Committee shall be determined by a majority vote of all members thereof who are present, in person or represented by proxy, at any meeting thereof.
- xv) The operation, use, insurance, maintenance and/or repair of the Three-Way Shared Facilities (or any portion thereof), including the budgeting (on an annual basis) of the Three-Way Shared Facilities Costs, and the responsibility for insuring, maintaining and repairing all Shared Roadways and walkways leading into and out of the Project (including the outdoor shared loading area and the Public Walkway, but excluding Edgewater Drive which will be governed under a separate shared facilities agreement), and the responsibility for keeping same free and clear of snow, ice and debris, shall be governed and administered by a committee, for and on behalf of the Condominium, the Retail Component Owner and the Daycare Centre Owner (hereinafter referred to as the **"Three-Way Shared Facilities Committee"**). The Three-Way Shared Facilities Committee shall be comprised of 9 members, 5 members of which shall be appointed by the Condominium, 2 of which shall be appointed by the Retail Component Owner, and 2 of which shall be appointed by the Daycare Centre Owner, and all decisions of the Three-Way Shared Facilities Committee shall be determined by a majority vote of all members thereof who are present, in person or represented by proxy, at any meeting thereof.
- xvi) All of the foregoing mutual use and cost-sharing arrangements in respect of the Two-Way Shared Facilities and the Three-Way Shared Facilities respectively, shall be detailed in a mutual easement and cost sharing agreement or reciprocal agreement that will be entered into by and amongst this Condominium, the Retail Component Owner and the Daycare Centre Owner shortly after the registration of this Condominium, with the Vendor entering into same in its capacity as the owner of the Retail Component (hereinafter referred to as the **"Shared Facilities Agreement"**). **By-law 2 of this Condominium will be specifically enacted in order to authorize this Condominium's execution of the Shared Facilities Agreement**, along with the performance and fulfilment of this Condominium's obligations thereunder, including the obligation to pay this Condominium's Proportionate Share of the Two-Way Shared Facilities Costs and this Condominium's Proportionate Share of the Three-Way Shared Facilities Costs, as hereinbefore outlined. The Shared Facilities Agreement shall also set out the respective duties and responsibilities of the Two-Way Shared Facilities Committee and the Three-Way Shared Facilities Committee, and the budgeting of the Two-Way Shared Facilities Costs and the Three-Way Shared Facilities Costs respectively on an annual basis, and outline provisions for resolving disputes between or amongst any of the Contributors by mediation and/or binding arbitration, and shall contain such other provisions as may be agreed to by the parties thereto. The Two-Way Shared Facilities and the Three-Way Shared Facilities shall be managed by this Condominium's property manager under the direction of the Two-Way Shared Facilities Committee and the Three-Way Shared Facilities Committee (as the case may be).
- xvii) Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed that all buildings, structures, facilities and/or installations (and all future additions, alterations and/or improvements thereto or in connection therewith) now or hereafter comprising:
- A. part of the Two-Way Shared Facilities or the Three-Way Shared Facilities, as the case may be (including all support structures forming part of the Two-Way Shared Facilities or the Three-Way Shared Facilities and which provide support to any of the other components of the Project), shall be properly maintained and kept in a good state of repair and condition at all times, by the Two-Way Shared Facilities Committee or the Three-Way Shared Facilities Committee that governs or oversees same (as the case may be); and
- B. part of each Contributor's respective lands or common elements (including all support structures forming part of its respective lands or common elements which provide support to any of the other components of the Project), shall be properly maintained and kept in a good state of repair and condition at all times, by such Contributor who owns or controls same;
- all in accordance with a "first class" standard of building maintenance and repair practices and procedures prevailing in the City of Toronto for (or applicable to) buildings, structures, facilities and/or installations that are similar or comparable in type, design, composition, quality and age to that of the Project. In addition, each of the Contributors shall be obliged to restore and/or rebuild any buildings, structures, facilities and/or installations (or any portions thereof) that have been damaged or destroyed, in whole or in part (whether by any insured loss or otherwise), as soon as reasonably possible after any such damage or destruction has occurred (weather conditions, and the availability of labour, materials and/or equipment permitting), all in a good and workmanlike manner, in accordance with all applicable laws, building codes, property standards and required permits, and in accordance with a "first class" standard of building and/or repair practices and procedures prevailing in the City of Toronto for (or applicable to) buildings, structures, facilities and/or installations that are similar or comparable in design, type, composition, quality and age to that of the Project. The Shared Facilities Agreement entered into by the three Contributors will reflect the foregoing.
- xviii) The operation, insurance, maintenance and repair of the Shared Roadway shall be governed by a separate agreement entered into by the Condominium, the Retail Component Owner and the Daycare Centre Owner shortly after the registration of this Condominium, with the Vendor entering into same in its capacity as the owner of the Retail Component (hereinafter referred to as the **"Shared Roadway Agreement"**). All decisions pertaining to the manner in which the Shared Roadway is operated, insured, maintained and/or repaired shall be governed and administered by a committee, for and on behalf of the Condominium, the Retail Component Owner and the Daycare Centre Owner (hereinafter referred to as the **"Shared Roadway Committee"**). The Shared Roadway Committee shall initially be comprised of 6 members, 2 members of which shall be appointed by the Condominium, 2 of which shall be appointed by the Retail Component Owner, and 2 of which shall be appointed by the Daycare Centre Owner, and all decisions of the Shared Roadway Committee shall be determined by a majority vote of all members thereof who are present, in person or represented by proxy, at any meeting thereof. The composition of the Shared Roadway Committee shall automatically be increased by 2 additional members appointed by each of the Neighbouring Owners who executes a counterpart to the Shared Roadway Agreement and thereby commits to contribute towards the Shared Roadway Costs (with such party or entity being hereinafter referred to as a **"Contributing Neighbour"**). The Shared Roadway Costs shall be borne and paid for initially by each of the Condominium, the Retail Component Owner and the Daycare Centre Owner, on a pro-rata basis, based on the percentages reflecting their respective or relative total finished areas above grade (hereinafter referred to as their respective **"Proportionate Share of the Shared Roadway Costs"**), notwithstanding that the Shared Roadway may be traversed and utilized by the Neighbouring Owners and others (including the general public) sometime in the future, unless and until any of the Neighbouring Owners has formally agreed to participate in a cost-sharing arrangement with all of the Contributors with respect to the Shared Roadway, based on the same formula for sharing the Shared Roadway Costs as outlined above [and in turn, each of the three Contributors shall be required to contribute to the shared roadway costs that are attributable to the Westerly Edgewater Section, pursuant to the provisions of a counterpart to an easement and cost-sharing agreement pertaining to the Westerly Edgewater Section (the **"Aquavista Roadway Agreement"**) entered into with the Aquavista Condominium, the owner of the Aquavista Retail Component, the owner of the Artscape Project and the owner of the Aquavista Commercial Parking Garage, in accordance with a cost-sharing formula predicated on (and reflecting) their respective or relative total built areas (as hereinbefore defined), as a prerequisite to their ability and entitlement to use, and drive over, the Westerly Edgewater Section]. It is presently intended that this Condominium will contain or comprise a total finished area above-grade of approximately 27,823 square meters, the Retail Component will contain or comprise a total finished area above-grade of approximately 938 square meters, and that the Daycare Centre will contain or comprise a total finished area above-grade of approximately 784 square meters. Accordingly, this Condominium's Proportionate Share of the Shared Roadway Costs will initially amount to approximately 94.18%, the Retail Component Owner's Proportionate Share of the Shared Roadway Costs will initially amount to approximately 3.17%, and the Daycare Centre Owner's Proportionate Share of the Shared Roadway Costs will initially amount to approximately 2.65% thereof, on the express understanding that the foregoing percentages or proportions are subject to adjustment hereafter, depending on the final total finished area above-grade of each of the Condominium, the Retail Component and the Daycare Centre respectively, as conclusively determined by the Vendor's architect as at the date of registration of this Condominium. **By-law 3 of this Condominium will be specifically enacted in order to authorize this**

Condominium's execution of the Shared Roadway Agreement, along with the performance and fulfilment of this Condominium's obligations thereunder, including the obligation to pay this Condominium's Proportionate Share of the Shared Roadway Costs, as hereinbefore outlined. The Shared Roadway Agreement shall also set out the respective duties and responsibilities of the Shared Roadway Committee, and the budgeting of the Shared Roadway Costs on an annual basis, and outline provisions for resolving disputes between or amongst any of the Contributors by mediation and/or binding arbitration, and shall contain such other provisions as may be agreed to by the parties thereto. The Shared Roadway Agreement will expressly provide for the following, namely:

- A. The Shared Roadway Agreement will permit Hines Canada Management II ULC, or any company related, associated or affiliated therewith (hereinafter referred to as "**Hines**"), in its capacity as the future ground lessee of the C-1 Lands and the C-2 Lands situate to the north of Edgewater Drive and comprising Parts 5 and 9 on Reference Plan 66R-28781 [upon which the C-1 Project and the C-2 Project will be developed sometime hereafter], to complete, alter and/or re-align the curbs, sidewalks, roadway areas and/or landscaping features situate within the northerly 3.9 metres of that portion of Edgewater Drive situate to the south of each of the C-1 Lands and the C-2 Lands, comprising Parts 2 and 10 on Reference Plan 66R-28781, as well as the northerly 3.9 metres of Edgewater Drive situate to the south of the C-2 Lands comprising part of Part 3 on Reference Plan 66R-28781 (and which 3.9 metre strip along the northerly perimeter of Edgewater Drive, adjacent to the south of the C-1 Lands and the C-2 Lands as aforesaid, is hereinafter collectively referred to as the "**North Edgewater Strip**"), as soon as final site plan approval has been granted by the City of Toronto in connection with the development of the C-1 Project on the C-1 Lands, and the development of the C-2 Project on the C-2 Lands, in order to more properly align and configure the North Edgewater Strip with the driveways, walkways, entrances, exits and/or loading areas comprising part of the C-1 Project and the C-2 Project respectively, all at Hines' sole cost, risk and expense, and undertaken by Hines in its capacity as the authorized agent of this Condominium. It is further acknowledged and agreed that within the North Edgewater Strip, only a temporary asphalt surface may be installed in lieu of pavers, and the installation of tree cells and other landscaping features (including the placement or installation of permanent surface landscape furniture) may be deferred pending the construction and completion of the C-1 Project on the C-1 Lands, and the C-2 Project on the C-2 Lands, if the foregoing is permitted by the City of Toronto in connection with the completion and registration of this Condominium, in an effort to avoid or minimize "throw-away" costs resulting from the removal of said features or elements in the course of the aforementioned realignment and re-configuration. This Condominium shall correspondingly be obliged to appoint Hines to carry out the foregoing as its agent, as and when so requested by the Vendor or Hines, and this Condominium shall also be obliged to apply for any required amendment to the approved site plan for this Condominium, if and when the City of Toronto determines that same is necessary, in order to re-align and/or re-configure portions of the North Edgewater Strip with the driveways, walkways, entrances, exits and/or loading areas comprising part of the C-1 Project on the C-1 Lands and the C-2 Project on the C-2 Lands respectively, and this Condominium shall correspondingly be obliged to appoint Hines as its authorized agent to pursue, process and implement said application for any required amendment to the approved site plan for this Condominium, all at Hines' sole cost and expense, on the express understanding and agreement that the precise location of all such curb cuts, driveways, walkways, entrances, exits and/or loading areas, emanating from (or ultimately connected to or with) the North Edgewater Strip (or any portion thereof), as well as the precise location of all landscaping treatments and features associated therewith, shall be determined by the City of Toronto in its sole and unfettered discretion, and Hines will merely be carrying out the foregoing alteration work in accordance with the directions and/or requirements imposed by the City of Toronto with respect to same. It is further understood and agreed that the foregoing proposed future alterations to the North Edgewater Strip, comprising part of the common elements of this Condominium, shall be made or implemented in accordance with the provisions of section 97(2)(a) of the Act [inasmuch as the aforementioned alterations will be undertaken in order to comply with the provisions of the Shared Roadway Agreement (and which agreement shall, for all purposes, be deemed and construed to be an agreement entered into pursuant to section 113 of the Act)], and shall also be expressly authorized by by-law 3 of this Condominium. To facilitate the construction and completion of the C-1 Project on the C-1 Lands, as well as the construction and completion of the C-2 Project on the C-2 Lands, and any future maintenance, repairs, renovations and/or alterations thereto, this Condominium will be obliged to grant Hines the following rights and entitlements, namely:
1. the right to install (and to permanently encroach, below grade) within and beneath the North Edgewater Strip, the shoring system for the C-1 Project and the shoring system for the C-2 Project, including without limitation, the installation and encroachment of caissons, tiebacks, anchors and h-piles, provided and so long as same do not permanently interfere with any vehicular traffic utilizing the balance of Edgewater Drive;
 2. the right to temporarily block (and prevent or restrict) pedestrian and vehicular access over, upon or across the North Edgewater Strip, during and throughout the construction of the C-1 Project on the C-1 Lands, and during and throughout the construction of the C-2 Project on the C-2 Lands, including the right to erect and maintain construction hoarding along the 3.9 metre line delineating the southerly limit of the North Edgewater Strip during and throughout said construction [which construction period is presently estimated to endure for approximately thirty (30) consecutive months, for each of the C-1 Project and the C-2 Project];
 3. the right to temporarily close (and prevent or restrict) pedestrian and vehicular access over, upon or across the northerly driving lane of Edgewater Drive, for excavation, concrete and/or steel trailer deliveries to and from the C-1 Lands during and throughout the construction of the C-1 Project, and to and from the C-2 Lands during and throughout the construction of the C-2 Project;
 4. the right to swing an overhead crane above and through the entire airspace of Edgewater Drive (and not just through the airspace of the North Edgewater Strip), during and throughout the construction of the C-1 Project on the C-1 Lands, and during and throughout the construction of the C-2 Project on the C-2 Lands; and
 5. the right, at any time following the respective completion of the C-1 Project and the C-2 Project, to temporarily block (and prevent or restrict) pedestrian and vehicular access over, upon or across the North Edgewater Strip, during (and in connection with) any maintenance or repair work to the C-1 Project (including any future renovations or alterations thereto), and during (and in connection with) any maintenance or repair work to the C-2 Project (including any future renovations or alterations thereto); and
- B. The Shared Roadway Agreement will permit the City of Toronto or its designated agent or appointee (hereinafter referred to as the "**City's Designate**"), in connection with the development of the R-6 Project on the R-6 Lands, to complete, alter and/or re-align the curbs, sidewalks, roadway areas and/or landscaping features situate within the easterly and northerly 3.9 metres of that portion of Edgewater Drive situate to the west and south of the R-6 Lands, comprising part of Part 3 on Reference Plan 66R-28781 (and which 3.9 metre strip situate adjacent to the west and south of the R-6 Lands as aforesaid, is hereinafter collectively referred to as the "**East/North Edgewater Strip**"), as soon as final site plan approval has been granted by the City of Toronto in connection with the development of the R-6 Project on the R-6 Lands, in order to more properly align and configure the East/North Edgewater Strip with the driveways, walkways, entrances, exits and/or loading areas comprising part of the R-6 Project developed on the R-6 Lands, all at the sole cost, risk and expense of the City of Toronto or the City's Designate, and undertaken by the City's Designate in its capacity as the authorized agent of this Condominium. It is further acknowledged and agreed that within the East/North Edgewater Strip, only a temporary asphalt surface may be installed in lieu of pavers, and the installation of tree cells and other landscaping features (including the placement or installation of permanent surface landscape furniture) may be deferred pending the construction and completion of the R-6 Project on the R-6 Lands, if the foregoing is permitted by the City of Toronto in connection with the completion and registration of this Condominium, in an effort to avoid or minimize "throw-away" costs resulting from the removal of said features or elements in the course of the aforementioned realignment and re-configuration. This Condominium shall correspondingly be obliged to appoint the City's Designate to carry out the foregoing as its agent, as and when so requested by the Vendor, the City of Toronto or the City's Designate, and this Condominium shall also be obliged to apply for any required amendment to the approved site plan for this Condominium, if and when the City of Toronto determines that same is necessary, in order to re-align and/or re-configure portions of the East/North Edgewater Strip with the driveways, walkways, entrances, exits and/or loading areas comprising part of the R-6 Project being developed on the R-6 Lands, and this Condominium shall correspondingly be obliged to appoint the City's Designate as its authorized agent to pursue, process and implement said application for any required amendment to the approved site plan for this Condominium, all at the sole cost and expense of the City of Toronto or the City's Designate, on the express understanding and agreement that the precise location of all such curb cuts, driveways, walkways, entrances, exits and/or loading areas, emanating from (or ultimately connected to or with) the East/North Edgewater Strip (or any portion thereof), as well as the precise location of all landscaping treatments and features associated therewith, shall be determined by the City of Toronto in its sole and unfettered discretion, and the City's Designate will merely be carrying out the foregoing alteration work in accordance with the directions and/or requirements imposed by the City of Toronto with respect to same. It is further understood and agreed that the foregoing proposed future alterations to the East/North Edgewater Strip, comprising part of the common elements of this Condominium, shall be made or implemented in accordance with the provisions of

section 97(2)(a) of the Act [inasmuch as the aforementioned alterations will be undertaken in order to comply with the provisions of the Shared Roadway Agreement (and which agreement shall, for all purposes, be deemed and construed to be an agreement entered into pursuant to section 113 of the Act)], and shall also be expressly authorized by by-law 3 of this Condominium. To facilitate the construction and completion of the R-6 Project on the R-6 Lands, and any future maintenance, repairs, renovations and/or alterations thereto, this Condominium will be obliged to grant the City's Designate the following rights and entitlements, namely:

1. the right to install (and to permanently encroach, below grade) within and beneath the East/North Edgewater Strip, the shoring system for the R-6 Project, including without limitation, the installation and encroachment of caissons, tiebacks, anchors and h-piles, provided and so long as same do not permanently interfere with any vehicular traffic utilizing the balance of Edgewater Drive;
 2. the right to temporarily block (and prevent or restrict) pedestrian and vehicular access over, upon or across the East/North Edgewater Strip, during and throughout the construction of the R-6 Project on the R-6 Lands, including the right to erect and maintain construction hoarding along the 3.9 metre line delineating the southerly limit of the East/North Edgewater Strip during and throughout said construction [which construction period in respect of the R-6 Project is presently estimated to endure for approximately thirty (30) consecutive months];
 3. the right to temporarily close (and prevent or restrict) pedestrian and vehicular access over, upon or across the northerly driving lane of Edgewater Drive, for excavation, concrete and/or steel trailer deliveries to and from the R-6 Lands during and throughout the construction of the R-6 Project;
 4. the right to swing an overhead crane above and through the entire airspace of Edgewater Drive (and not just through the airspace of the East/North Edgewater Strip), during and throughout the construction of the R-6 Project on the R-6 Lands; and
 5. the right, at any time following the completion of the R-6 Project, to temporarily block (and prevent or restrict) pedestrian and vehicular access over, upon or across the East/North Edgewater Strip, during (and in connection with) any maintenance or repair work to the R-6 Project (including any future renovations or alterations thereto).
- xix) Notwithstanding anything hereinbefore provided to the contrary, it is understood and agreed that the Two-Way Shared Facilities and the Three-Way Shared Facilities shall expressly exclude:
- A. any or all of the equipment, fixtures, systems and/or appurtenant installations so installed, supplied or connected to or within the confines of this Condominium, the Retail Component and/or the Daycare Centre, but which are (or will be) earmarked and intended for the ongoing operation, servicing, maintenance and/or repair of this Condominium (or any portion thereof) exclusively (hereinafter collectively referred to as the "**Exclusive Condominium Equipment**"), and the entire cost of operating, maintaining, repairing and insuring the Exclusive Condominium Equipment shall comprise part of the common expenses of this Condominium and shall correspondingly be borne and paid for solely by this Condominium, and shall not comprise part of the Two-Way Shared Facilities Costs and/or the Three-Way Shared Facilities Costs;
 - B. any or all of the equipment, fixtures, systems and/or appurtenant installations so installed, supplied or connected to or within the confines of this Condominium, the Retail Component and/or the Daycare Centre, but which are (or will be) earmarked and intended for the ongoing operation, servicing, maintenance and/or repair of the Daycare Centre (or any portion thereof) exclusively (hereinafter collectively referred to as the "**Exclusive Daycare Centre Equipment**"), and the entire cost of operating, maintaining, repairing and insuring the Exclusive Daycare Centre Equipment shall be borne and paid for solely by the Daycare Centre Owner, and shall not comprise part of the Two-Way Shared Facilities Costs and/or the Three-Way Shared Facilities Costs; and
 - C. any or all of the equipment, fixtures, systems and/or appurtenant installations so installed, supplied or connected to or within the confines of this Condominium, the Retail Component and/or the Daycare Centre, but which are (or will be) earmarked and intended for the ongoing operation, servicing, maintenance and/or repair of the Retail Component (or any portion thereof) exclusively (hereinafter collectively referred to as the "**Exclusive Retail Equipment**"), and the entire cost of operating, maintaining, repairing and insuring the Exclusive Retail Equipment shall be borne and paid for solely by the Retail Component Owner, and shall not comprise part of the Two-Way Shared Facilities Costs and/or the Three-Way Shared Facilities Costs.
- xx) A. All purchasers are hereby advised that in connection with the design and completion of this Condominium, the Vendor intends to install various outdoor plants, shrubs, trees and/or other landscaping elements, materials and/or features within special planters or landscaping bases along the perimeter of each outdoor terrace that is appurtenant to each of the Special Landscaped Units, and that correspondingly comprises part of the exclusive use common element areas appurtenant thereto (hereinafter collectively referred to as the "**Special Terrace Landscaping**"). The Special Terrace Landscaping is designed to be visible from the exterior of the Condominium, reflecting a unified planting strategy, and is intended to create the illusion of a vertical botanical garden or condominium "*garden in the sky*".
- B. The Special Terrace Landscaping shall be accessed and maintained by this Condominium's authorized landscaping contractor and its personnel (hereinafter collectively referred to as the "**Designated Landscaping Staff**"), by gaining access to the affected terrace areas and the Special Terrace Landscaping directly from (and through) each of the Special Landscaped Units, not less than four times per year (namely in April, June, September and November) during the first year following the registration of this Condominium, and thereafter not less than three times per year (namely in April, June and September). The Designated Landscaping Staff shall gain access to and through each of the Special Landscaped Units on not less than 10 days prior written notice of any desired or scheduled entry [save and except for an emergency situation, where the Special Terrace Landscaping (or any portion thereof) is believed to be in imminent danger of damage or decay, or requires immediate protective or restorative care and attention, in which case the access by the Designated Landscaping Staff may be attained on 48 hours prior notice].
- C. Approximately 99% of the total annual cost of all landscape maintenance work and related services with respect to the Special Terrace Landscaping, including without limitation, the fees charged by the Condominium's retained landscape consultant (hereinafter referred to as the "**Landscape Specialist**") in connection therewith, and the cost of all pruning, trimming, planting, weed removal, pest control/management, fertilization, and wrapping of shrubs or trees in respect of the Special Landscaping, as well as the cost of any required repairs to the irrigation system and/or to the planters or containers housing the Special Terrace Landscaping, or with respect to any other matter, feature or installation pertaining to the Special Landscaping (hereinafter collectively referred to as the "**Special Landscape Costs**"), shall be allocated amongst (and shall correspondingly be borne and paid for by) each of the respective owners of the Special Landscaped Units exclusively, pursuant to Schedule "D" of this Condominium's declaration, as part of their respective additional common expenses, and the total projected annual cost of all such landscape work and related services in connection with the Special Terrace Landscaping shall accordingly be reflected in this Condominium's overall annual budget(s).
- D. None of the owners and residents of any of the Special Landscaped Units, nor their respective invitees or licensees, shall alter, damage, tamper with, prune or remove the Special Terrace Landscaping (or any portion thereof), nor plant any additional landscaping materials within same, on their own, but rather shall leave the pruning, maintenance and care of the Special Terrace Landscaping to the exclusive attention and services of the Designated Landscaping Staff and the Landscape Specialist.
- E. In addition to the Special Terrace Landscaping, an umbrella for shade has been (or will be) installed by the Vendor within the confines of the outdoor terrace appurtenant to each of the Special Landscaped Units, with there being two anchor location ports on each such terrace to anchor, fasten and/or support said umbrella. In order to maintain a uniformity of design and appearance, it is hereby understood and agreed that no owner or resident of a Special Landscaped Unit shall be entitled or permitted to alter or change the design, color and/or specifications of the aforementioned umbrella, nor replace same, nor attempt to place or install the umbrella in a location other than within either of the two designated anchor location ports on each terrace, without the prior approval of the Condominium Corporation thereto. The aforementioned umbrella shall be maintained and repaired by each owner of a Special Landscaped Unit, at their respective sole cost and expense.
- F. If the dwelling unit being acquired by the Purchaser hereunder comprises one of the Special Landscaped Units, then the Purchaser agrees to all of the foregoing provisions, including the provision of access to and through the dwelling unit by the Designated Landscaping Staff and the Landscape Specialist as and when required, as well as the payment of the Special Landscape Costs, and further acknowledges and agrees to abide by (and comply with) all of the provisions set forth in this Condominium's declaration governing the Special Terrace Landscaping and the Special Landscaped Units.

- xxi) Notwithstanding anything heretofore provided to the contrary, it is understood and agreed that in the event that the Daycare Centre is not ultimately constructed and completed within the Daycare Centre Lands (whether because the City of Toronto does not ultimately approve of such use, or believes that there will be an insufficient number of children in the neighbourhood to warrant such use, or because the City of Toronto is unable to find or contract with a suitable or acceptable Daycare Centre Operator to operate same, or for any other reason whatsoever), then the Daycare Centre Lands may alternatively be used for any one or more of retail, office and/or residential condominium uses, or a combination thereof (eg. with ground floor retail uses on level 1, and residential condominium uses on level 2 thereof), and with any residential condominium component thereof to ultimately comprise part of this Condominium, in which case the cost-sharing arrangements relative to the Two-Way Shared Facilities, the Three-Way Shared Facilities and the Shared Roadway shall be revised and adjusted accordingly (and may, in fact, thereby ultimately reduce all cost-sharing arrangements affecting the Aquabella Project to a two-way cost-sharing regime between this Condominium and the Retail Component Owner), and none of the foregoing possible changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction. Furthermore, it is understood and agreed that the ultimate use of the Daycare Centre Lands shall be restricted to that of a daycare centre or nursery, or to any commercial business and/or institutional-type uses that are expressly permitted under the applicable zoning by-law but which are also not incompatible with the Condominium adjacent thereto, and which do not directly compete with any existing (or then prevailing) commercial/retail use(s) within the Retail Lands (or within the neighbouring Aquavista retail component), and which do not undermine the ground floor animation plan designed and/or approved for the Bayside Lands (as hereinafter defined), and with various specified prohibited uses in respect of the Daycare Centre Lands to be outlined in a schedule to the Shared Facilities Agreement.

CONSTRUCTION MATTERS

3.04 The parties hereto hereby acknowledge and agree that Section 3.04(c) of Schedule "A" to this Agreement shall be replaced in its entirety with the following sub-paragraph, namely:

- c) Subject to clauses (i) and (ii) hereof, the Vendor agrees to rectify any deficient or incomplete construction items with respect to the Property that are covered or governed by the statutory warranties deemed to be given by the Vendor under the Tarion Legislation. In this regard, the Purchaser expressly acknowledges and agrees that:
- i) any warranties of workmanship or materials, in respect of any aspect of the construction of the Property and/or any common elements of the Condominium, whether expressed or implied by this Agreement, or imposed at common law or in equity, or imposed by any statute or otherwise, shall be specifically restricted to those warranties deemed to be given by the Vendor under the Tarion Legislation, and shall extend only for those respective time periods (and only in respect of those items or matters) stipulated or covered by the Tarion Legislation; and
 - ii) to the extent permitted by law, any dispute involving construction deficiencies, incomplete work and/or missing items that are alleged or claimed by the Purchaser and/or the Condominium Corporation in respect of the Unit and/or any exclusive use common element areas shall:
 - A. at the Vendor's sole option and election, be resolved with the Purchaser and/or the Condominium Corporation (as the case may be) by binding arbitration in accordance with the provisions of the *Arbitration Act 1991, S.O. 1991 as amended* (rather than by judicial proceedings initiated by or on behalf of the Purchaser or the Condominium Corporation, through the filing of a notice of application or a statement of claim); or
 - B. be resolved with the Purchaser and/or the Condominium Corporation (as the case may be) through the processes established and/or administered by Tarion (rather than by arbitration in accordance with option (A) above, and rather than by judicial proceedings initiated by or on behalf of the Purchaser or the Condominium Corporation), if the Vendor has not selected arbitration pursuant to option (A) above as the method or forum for resolving such disputes, or if the law compels the resolution of such disputes by or through the processes established and/or administered by Tarion;

and in either of the foregoing scenarios or circumstances, both the Purchaser and the Condominium Corporation shall have no rights or claims against the Vendor in respect of any of the units and/or common elements of the Condominium beyond those that are specifically granted to it or them under the Act and/or pursuant to the Tarion Legislation.

ARTICLE IV - TITLE, NOTICES, CLOSING AND TENDER

TITLE

- 4.02 (a) In addition to the easements, restrictions, covenants, agreements and interests more particularly outlined in Sections 4.01 and 4.02(a)(i) to (vii) inclusive of Schedule "A", to which the title to the Lands may be subject, the Purchaser hereby expressly acknowledges and agrees that on Closing, the building permit or permits issued by the building department of the City of Toronto in connection with the construction and completion of this Condominium may not be closed, but rather may still be open or active in light of the fact that some exterior and/or interior finishing work may be ongoing or still outstanding with respect to other dwelling units (or with respect to any other units, including parking or locker units) in this Condominium and/or any common element areas comprising part of this Condominium (or with respect to any portion of the Daycare Centre and/or the Retail Component), but so long as there is no outstanding work order or no formal notice of any outstanding violation or deficiency issued by the building department of the City of Toronto in respect of the unit(s) being acquired by the Purchaser hereunder (and/or with respect to any exclusive use common element areas appurtenant thereto) then the Purchaser shall be expressly obliged to complete this transaction as and when scheduled, notwithstanding the existence of one or more open or active building permits in respect of this Condominium, or any portion thereof (or with respect to any portion of the Daycare Centre and/or the Retail Component), and without requesting any abatement in the purchase price or any holdback of any purchase monies whatsoever in connection therewith or as a consequence thereof, and without making or pursuing any claim or demand against the Vendor whatsoever with respect thereto, and the Purchaser shall not be entitled to submit any requisitions (nor request any action by, or relief from, the Vendor or any other party) with respect to same, or arising therefrom. The Purchaser also hereby expressly acknowledges and agrees that title to the Property and/or the Lands, or any portion thereof, is (or may on Closing be) subject to the following specific instruments, agreements, restrictive covenants, easement and/or interests, and expressly agrees to comply with (and abide by) all of the terms and provisions of said instruments, agreements, covenants and easements (as the case may be), AND THE PURCHASER SHALL NOT REQUIRE (NOR REQUISITION) ANY RELEASES OR DISCHARGES OF SAME WITH RESPECT TO THE PROPERTY OR THE LANDS, NOR REQUEST (OR REQUISITION) ANY AMENDMENTS WITH RESPECT THERETO, NOR ANY CONFIRMATION (OR EVIDENCE) OF COMPLIANCE THEREWITH, namely:
- vii) Instrument No. A1-1847636, registered on July 29th, 2008, being notice of Minutes Of Settlement dated November 15th, 2007 (hereinafter referred to as the "November 2007 Minutes of Settlement"), entered into by Toronto Waterfront Revitalization Corporation (hereinafter referred to as "Waterfront Toronto"), Redpath Sugar Ltd. (hereinafter referred to as "Redpath"), the City of Toronto (sometimes hereinafter referred to as the "City") and the City of Toronto Economic Development Corporation (hereinafter referred to as "TEDCO"), in respect of Redpath's appeal to the Ontario Municipal Board of an official plan amendment and zoning by-law amendment enacted by the City regarding the future development of certain lands owned by the City situate to the south of Queens Quay East, between lower Jarvis Street and lower Sherbourne Street, along the north shore of Lake Ontario, and comprising the western half of the East Bayfront lands (hereinafter collectively referred to as the "West Precinct Lands"). Even though the Real Property upon which this Condominium is being developed is situate to the east of the West Precinct Lands, the November 2007 Minutes of Settlement were registered against the Lands because there was no severance or subdivision plan separating the West Precinct Lands from the balance of the East Bayfront lands owned by the City of Toronto along the waterfront. Pursuant to the November 2007 Minutes of Settlement,

- A. Redpath acknowledges that it is currently operating a sugar processing and storage plant (where raw sugar is being refined) on those lands and premises situate to the west of the West Precinct Lands and municipally known as 95 Queens Quay East, Toronto (the "**Redpath Lands**"), together with the potential future operation of an accessory electricity co-generation system on the Redpath Lands (with the aforementioned processing and storage plant and the aforementioned electricity co-generation system being hereinafter collectively referred to as the "**Redpath Facility**");
- B. Redpath confirms that it has concerns about the future development of the West Precinct Lands due to the noise, air emissions, vibration, odours, fugitive dust and light emanating from the Redpath Facility, and that Redpath's current and future operations may cause undue adverse impacts on the West Precinct Lands and its occupants and visitors, and that the future development of the West Precinct Lands may conversely cause undue adverse impacts on Redpath's ability to comply with various regulatory approvals, guidelines and standards relative to its current and future operations; and
- C. prior to the development of the West Precinct Lands: (i) various noise, emission and vibration studies shall be undertaken, taking into account the future full capacity and operation of the Redpath Facility; (ii) any future development of the West Precinct Lands shall address and incorporate appropriate noise, emission and vibration mitigation measures, as well as measures to monitor the ground water and air quality within any such development, in accordance with Ministry of the Environment guidelines; and (iii) an emissions warning clause approved by Redpath shall be given to all purchasers, lessees and/or transferees of any portion of the West Precinct Lands, warning them of the potential for excessive noise, vibrations, air emissions, odours, dust and light emanating from the Redpath Facility, and shall correspondingly be inserted in all agreements of purchase and sale, and in all leases, entered into in respect of any sale or lease of any portion of the West Precinct Lands;
- (ix) **Instrument No. A1-1863348**, registered on August 13th, 2008, being notice of an agreement made pursuant to the *Industrial and Mining Lands Compensation Act R.S.O. 1990, as amended*, dated November 2007 (hereinafter referred to as the "**Compensation Agreement**"), entered into by Redpath, the City of Toronto and TEDCO, which confirms, amongst other things, that the November 2007 Minutes of Settlement constitutes the payment of compensation in full, for the purposes set out in section 1 of the *Industrial and Mining Lands Compensation Act R.S.O. 1990, as amended*, and that the November 2007 Minutes of Settlement and the Compensation Agreement collectively afford a complete answer to any action that may be brought for damages, or for an injunction, or both, now or at any time in the future, because of any noise, dust, odour, air quality and/or other emissions from the present or future operations (at full capacity) of the Redpath Facility;
- x) **Instrument No. A1-3554854**, registered on April 9th, 2014, being a plan document that confirms the City of Toronto's application to register a plan of subdivision in respect of part of Lots 23, 24 and 25 on Registered Plan 694-E (and now comprising Plan 66M-2514);
- xi) **Instrument No. A1-3554855**, registered on April 9th, 2014, being a subdivision agreement dated June 26th, 2013, entered into between the City of Toronto in its capacity as the municipal authority, and Waterfront Toronto in its capacity as the master developer selected or appointed by the City of Toronto to oversee, manage and coordinate the overall development of certain designated portions of Toronto's waterfront lands (hereinafter collectively referred to as the "**East Bayfront Lands**"), and which agreement governs or pertains to the servicing and development of the Real Property, and other adjacent or neighbouring lands situate within the plan of subdivision registered as Plan 66M-2514 (hereinafter referred to as the "**Subdivision Agreement**");
- xii) **Instrument No. A1-3605430**, registered on June 12th, 2014, is notice of an outstanding Section 37 Density Bonus/Development Agreement, entered into by Waterfront Toronto with the City of Toronto, pertaining to the provision of public benefits in exchange for increases in the height and/or density of the Condominium being developed on the Real Property (and/or with respect to other residential projects being developed on any portion of the East Bayfront Lands), and which agreement requires, amongst other things, certain community facilities to be developed or paid for by Waterfront Toronto in exchange for being granted increased height and/or density rights with respect to the development of the Condominium on the Real Property (and/or with respect to other residential projects being developed on any portion of the East Bayfront Lands), and which agreement may be amended, augmented, supplemented and/or replaced, in whole or in part, by one or more subsequently-registered agreements with the City of Toronto;
- xiii) **Instrument No. A1-3680825**, registered on September 4th, 2014, being a re-statement of the agreement referred to in Instrument No. A1-3605430, but specifically correcting page 5 thereof (and with the agreement registered as Instrument No. A1-3605430, as amended by Instrument No. A1-3680825, being hereinafter collectively referred to as the "**Section 37 Agreement**");
- xiv) **Instrument No. A1-3683820**, registered on September 9th, 2014, being a certificate of requirement issued pursuant to section 197(2) of the *Environmental Protection Act*, which confirms that **Certificate of Property Use No. 6181-9HMJAY** has been issued by the MOECC in respect of the development of a portion of the Real Property (hereinafter referred to as the "**First CPU**"), and which imposes various risk management measures (and other preventative measures) including without limitation, building construction restrictions, barriers to site soils, inspection and maintenance programs, ground water and air monitoring programs, coal tar mitigation barriers, a soil management plan and a health and safety plan, and various reporting requirements in connection therewith [with the corresponding requirement that ground water samples and air samples will have to be taken from this Condominium's below-grade common element areas on a periodic basis, as stipulated by the First CPU, for ultimate analysis by an accredited laboratory, with records of all sampling events and analytical test results to be maintained by the Condominium Corporation and available for inspection by the MOECC upon request], on the express understanding and agreement that: (i) all of the on-going inspection, testing, monitoring and reporting requirements outlined in the First CPU shall, forthwith following the registration of this Condominium and the execution of the Shared Facilities Agreement, become the obligation of the Three-Way Shared Facilities Committee to carry out (on behalf of the Condominium, the Retail Owner and the Daycare Centre Owner respectively); (ii) all costs and expenses incurred in connection therewith shall comprise part of the CPU Compliance Costs, which in turn shall comprise part of the Three-Way Shared Facilities Costs, and such anticipated costs shall be reflected in this Condominium's annual operating budget(s); and (iii) any person having an interest in that portion of the Real Property so encumbered by the First CPU is required, before dealing with such interest in the Real Property, to give a copy of the First CPU (including any amendments thereto) to every person acquiring an interest therein, and this requirement or obligation applies to each person who, subsequent to the registration of the First CPU, acquires an interest in that portion of the Real Property so encumbered by the First CPU;
- xv) **Instrument No. A1-3689842**, registered on September 16th, 2014, being a certificate of requirement issued pursuant to section 197(2) of the *Environmental Protection Act*, which confirms that **Certificate of Property Use No. 0340-9NKKFM** has been issued by the MOECC in respect of the development of a portion of the Real Property (hereinafter referred to as the "**Second CPU**"), and which imposes various risk management measures (and other preventative measures) including without limitation, building construction restrictions, barriers to site soils, inspection and maintenance programs, ground water and air monitoring programs, coal tar mitigation barriers, a soil management plan and a health and safety plan, and various reporting requirements in connection therewith [with the corresponding requirement that ground water samples and air samples will have to be taken from this Condominium's below-grade common element areas on a periodic basis, as stipulated by the Second CPU, for ultimate analysis by an accredited laboratory, with records of all sampling events and analytical test results to be maintained by the Condominium Corporation and available for inspection by the MOECC upon request], on the express understanding and agreement that: (i) all of the on-going inspection, testing, monitoring and reporting requirements outlined in the Second CPU shall, forthwith following the registration of this Condominium and the execution of the Shared Facilities Agreement, become the obligation of the Three-Way Shared Facilities Committee to carry out (on behalf of the Condominium, the Retail Owner and the Daycare Centre Owner respectively); (ii) all costs and expenses incurred in connection therewith shall comprise part of the CPU Compliance Costs, which in turn shall comprise part of the Three-Way Shared Facilities Costs, and such anticipated costs shall be reflected in this Condominium's annual operating budget(s); and (iii) any person having an interest in that portion of the Real Property so encumbered by the Second CPU is required, before dealing with such interest in the Real Property, to give a copy of the Second CPU (including any amendments thereto) to every person acquiring an interest therein, and this requirement or obligation applies to each person who, subsequent to the registration of the Second CPU, acquires an interest in that portion of the Real Property so encumbered by the Second CPU;
- xvi) **an amending agreement with respect to the November 2007 Minutes of Settlement**, to be entered into sometime hereafter amongst Redpath, Waterfront Toronto and the City, pursuant to which the City will assume all of the obligations of TEDCO under the November 2007 Minutes of Settlement, and the November 2007 Minutes of Settlement will expressly apply to the future development of those lands and premises located in the East Bayfront Precinct Area, situate south of Queens Quay East, east of Sherbourne Common and west of the Parliament Street slip, inclusive of the Real Property, and any reference to the term "this Agreement" in the November 2007 Minutes of Settlement, as well as any reference to the November 2007 Minutes of Settlement in any other agreement(s), shall thereafter automatically mean the November 2007

Minutes of Settlement, as amended by this amending agreement. Pursuant to this amending agreement, and in an effort to reduce the impact of noises and odours emanating from the Redpath Facility, the declaration of this Condominium is required to expressly oblige the Condominium Corporation to operate, maintain, repair and replace the carbon or other odour-absorptive filter system installed by the declarant of the Condominium within each dwelling unit, in accordance with the manufacturer's specifications, and pursuant to a maintenance protocol developed in accordance with the requirements of the air and/or noise emissions study approved or accepted by the City of Toronto, and all costs and expenses incurred in connection therewith shall comprise part of the common expenses of the Condominium;

- xvii) **an assumption of the obligations under the November 2007 Minutes of Settlement**, to be entered into by Redpath, Waterfront Toronto, the City of Toronto and the Vendor, pursuant to which the Vendor shall assume all of the outstanding and ongoing obligations of Waterfront Toronto and the City of Toronto under the November 2007 Minutes of Settlement, as amended by the aforementioned amending agreement referred to in the preceding paragraph;
- xviii) **a master project agreement**, entered into between Waterfront Toronto and Hines Canada Management Company III ULC, or Hines Bayside III ULC, or a company related, associated or affiliated therewith (hereinafter referred to as "**Hines Canada**"), governing the development of those lands and premises bounded by Lake Ontario on the south, Sherbourne Park (also known as Sherbourne Common) on the west, Queens Quay East on the north, and the Parliament Street Slip on the east (hereinafter collectively referred to as the "**Bayside Lands**"), with Hines Canada being selected by Waterfront Toronto as the latter's development partner in respect of the development of the Bayside Lands, inclusive of the Real Property (hereinafter referred to as the "**Master Project Agreement**");
- xix) **a development agreement**, entered into between Waterfront Toronto and the Vendor, pursuant to which the Vendor is appointed or designated by Waterfront Toronto as the site developer of the Real Property (and possibly other lands adjacent thereto or in the neighbouring vicinity thereof), and which agreement governs the nature, timing, design, construction, animation and overall function of the development of the Real Property, and specifically governs the development and completion of this Condominium, the Daycare Centre and the Retail Component collectively comprising the Project being developed upon or within the Real Property (hereinafter referred to as the "**Development Agreement**");
- xx) **an outstanding site plan agreement**, entered into between the Vendor and the City of Toronto, pertaining to the development of this Condominium on the Real Property, and which agreement may provide for, amongst other things, the maintenance of grading and drainage patterns, emergency fire/access routes, residential garbage storage and pickup, landscaping and other site completion matters, and may also address other outstanding municipal concerns involving or affecting the ongoing operation and maintenance of this Condominium, and which agreement may be amended, augmented, supplemented and/or replaced, in whole or in part, by one or more subsequently-registered agreements (hereinafter referred to as the "**Site Plan Agreement**");
- xxi) **a right of re-entry or licence in favour of the Vendor and the City of Toronto**, and each of their respective designated representatives, employees, agents and/or contractors, to enter upon the Lands (or any portion thereof) at any time or times after Closing, for the purposes of inspecting, maintaining and/or repairing any works, services and/or facilities installed or constructed within the confines of (or associated with) this Condominium, on the express understanding and agreement that such right of re-entry or licence shall be deemed and construed to arise from and upon the date of registration of this Condominium, and shall automatically expire on the 10th anniversary of the date of registration of this Condominium;
- xxii) **one or more additional certificates of requirement and/or certificates of property use** (hereinafter and hereinafter collectively referred to as the "**Additional CPUs**") which may be registered on title pursuant to the provisions of the *Environmental Protection Act R.S.O. 1990, as amended*, and the regulations promulgated thereunder from time to time, in connection with the development of the Real Property and the ongoing maintenance and administration of this Condominium, and correspondingly imposing the obligation for the ongoing inspection, testing and monitoring of the ground water within the confines of this Condominium (or within the adjacent lands) that is ultimately discharged into the City of Toronto's sewer system, together with the ongoing testing and monitoring of the air quality in respect of the air within the below-grade portions of this Condominium, along with periodic reporting requirements in connection therewith (with the corresponding requirement that ground water samples and air samples will have to be taken from this Condominium's below-grade common element areas on a periodic basis, as stipulated by the Additional CPUs, for ultimate analysis by an accredited laboratory, with records of all sampling events and analytical test results to be maintained by the Condominium Corporation and available for inspection by the MOECC upon request), on the express understanding and agreement that: (i) all of the on-going inspection, testing, monitoring and reporting requirements outlined in the Additional CPUs (if any) shall, forthwith following the registration of this Condominium and the execution of the Shared Facilities Agreement, become the obligation of the Three-Way Shared Facilities Committee to carry out (on behalf of the Condominium, the Retail Owner and the Daycare Centre Owner respectively); (ii) all costs and expenses incurred in connection therewith shall comprise part of the CPU Compliance Costs, which in turn shall comprise part of the Three-Way Shared Facilities Costs, and such anticipated costs shall be reflected in this Condominium's annual operating budget(s); and (iii) any person having an interest in that portion of the Real Property so encumbered by the Additional CPUs shall be required, before dealing with such interest in the Real Property, to give a copy of the Additional CPUs (including any amendments thereto) to every person acquiring an interest therein, and this requirement or obligation applies to each person who, subsequent to the registration of the Additional CPUs, acquires an interest in that portion of the Real Property so encumbered by the Additional CPUs;
- xxiii) **a restriction on any transfer of title to any portion of the Real Property**, registered by or in favour of Waterfront Toronto, pursuant to section 118 of the *Land Titles Act R.S.O. 1990, as amended*, and which restriction shall be lifted by Waterfront Toronto prior to the first final closing of a unit sale transaction in this Condominium;
- xxiv) **an easement in perpetuity** in favour of one or more of the Utility Monitors selected by the Vendor, in, over, under, upon, across and through the common elements of this Condominium, in order to facilitate the installation, operation, monitoring, maintenance and/or repair of the meters and check meters installed within the confines of this Condominium (including the electricity check meters appurtenant to each of the dwelling units and the Electrical Parking Units, if any), and if so requested by the Utility Monitor, title may also be subject to an agreement between the Condominium Corporation and the Utility Monitor pertaining to the installation, operation, monitoring, maintenance and/or repair of the meters and check meters so installed within the confines of this Condominium, and specifically providing for the periodic reading of the individual check meters and the corresponding issuance of periodic invoices in connection therewith, and any related services provided to this Condominium (hereinafter referred to as the "**Utility Monitoring Agreement**"), on the express understanding and agreement that the Utility Monitor may retain ownership of any or all of the electricity meters or check meters appurtenant to each of the dwelling units and the Electrical Parking Units (if any), and possibly ownership of the cables, conduits and appurtenant equipment associated therewith;
- xxv) **one or more easements in perpetuity**, in favour of one or more cable television, telephone and/or telecommunication service providers (hereinafter collectively referred to as the "**Telecommunication Service Providers**"), over, under, upon, across and through the common elements of this Condominium, for the purposes of facilitating the installation, operation, maintenance and/or repair of cable television, telephone and/or telecommunication lines, cables and equipment (and all necessary appurtenances thereto) in order to facilitate the supply of cable television, telephone and/or other telecommunication services to each of the units in this Condominium by the Telecommunication Service Providers, with each unit owner being separately billed or invoiced directly by the Telecommunication Service Providers for all cable television, telephone and any other telecommunication services so consumed, and if so requested by any or all of the Telecommunication Service Providers, title may also be subject to one or more easement/servicing agreements between this Condominium and each of the Telecommunication Service Providers pertaining to the provision of cable television, telephone and/or other telecommunication services to this Condominium (hereinafter referred to as the "**Telecommunication Agreements**"), on the express understanding and agreement that
- A. any or all of the Telecommunication Service Providers may retain ownership of all wires, cables, conduits and appurtenant equipment associated with the provision and distribution of its/their cable television, telephone and/or telecommunication services to each of the units and the common elements of this Condominium, and
- B. the aforementioned easements and/or the Telecommunication Agreements may specifically allow each of the Telecommunication Service Providers access to and from the common elements of this Condominium for the purposes of facilitating the promotion and marketing of their respective telecommunication services and products, from time to time;
- xxvi) **a bulk internet easement and servicing agreement** entered into between the Vendor and Beanfield Metroconnect W Inc (hereinafter referred to as "**Beanfield**"), with respect to the provision by Beanfield of broadband internet services (and possibly other telecommunication services) to this Condominium (hereinafter referred to as the "**Beanfield Agreement**"), pursuant to which Beanfield shall have an easement or right-of-

way over, under, upon, across and through the common elements of this Condominium, for the purposes of facilitating the installation, operation, maintenance and/or repair of its broadband internet telecommunication lines, cables and appurtenant equipment (and all necessary appurtenances thereto) in order to enable and facilitate Beanfield's supply of broadband internet and/or other telecommunication services to each of the units in this Condominium, and pursuant to which Beanfield shall be entitled to charge a monthly per dwelling unit internet service fee during and throughout the initial term of the Beanfield Agreement (being approximately 10 years in duration, commencing 90 days from and after the date of the first occupancy of any dwelling unit in this Condominium), with the projected monthly internet service fee (that will comprise part of the common expenses) to be approximately \$60 per dwelling unit per month plus H.S.T. during the first year of this Condominium's registration (and throughout the balance of the initial term of the Beanfield Agreement), for approximately 100Mbps of broadband internet speed/capacity to be provided by Beanfield, on the express understanding that:

- A. Beanfield may retain ownership of all wires, cables, conduits and appurtenant equipment associated with the provision and distribution of its broadband internet and/or other telecommunication services to each of the units and the common elements of this Condominium;
- B. Beanfield shall be allowed access to and from (and upon, over and throughout) the common elements of this Condominium for the purposes of facilitating the promotion and marketing of Beanfield's broadband internet and other telecommunication services and products, from time to time;
- C. Beanfield shall be this Condominium's designated (but not necessarily exclusive) internet, cable television and other telecommunication services provider; and
- D. Beanfield shall have a right of first refusal to match any competing third party offer involving the provision of internet services to this Condominium, received during the term of the Beanfield Agreement and/or at any time thereafter;

xxvii) **an assumption of the Beanfield Agreement** entered into by the Condominium Corporation with the Vendor (and with Beanfield as a party, but not necessarily as a signatory, thereto), pursuant to which this Condominium shall formally assume (and be bound by, and comply with) all outstanding and/or ongoing covenants and obligations of the Vendor arising under the Beanfield Agreement (including the obligation to provide Beanfield with the right of first refusal to match any competing third party offer involving the provision of internet services to the Condominium, received during the term of the Beanfield Agreement and/or at any time thereafter), and pursuant to which the Vendor shall be fully released and discharged from all such assumed obligations and liabilities arising thereunder or therefrom (hereinafter referred to as the "Assumption of the Beanfield Agreement");

xxviii) **an assumption of the Development Agreement** entered into by the Condominium Corporation with the Vendor (and with Waterfront Toronto as a party, but not necessarily as a signatory, thereto), pursuant to which this Condominium shall formally assume (and be bound by, and comply with) all outstanding and/or ongoing covenants and obligations of the Vendor arising under the Development Agreement which pertain or relate to this Condominium and/or the lands encompassed within the boundaries of this Condominium (hereinafter referred to as the "Condominium Lands"), but excluding those covenants and/or obligations relating to the Daycare Centre and/or the Retail Component exclusively, and excepting or excluding those covenants and obligations that have already been fully performed by the Vendor at the time that the Condominium has been registered [and except for such other excluded covenants and obligations which are collectively referred to as (and correspondingly defined as) the "Non-Assumed Covenants" in section 1.01 of (or elsewhere within) the Development Agreement], but including the obligation to maintain the works, services and/or facilities constructed or installed by the Vendor on or within the Condominium Lands, and pursuant to which the Vendor shall be fully released and discharged from all such assumed covenants and obligations, and from all liabilities respectively arising thereunder or therefrom (hereinafter referred to as the "Assumption of the Development Agreement");

xxix) **an assumption agreement** entered into by the Condominium Corporation with the Vendor (and with Waterfront Toronto, the City of Toronto and Redpath Sugar Limited as parties, but not necessarily as signatories, thereto), pursuant to which this Condominium shall formally assume (and be bound by, and comply with) all outstanding and/or ongoing obligations and liabilities of Waterfront Toronto and/or the Vendor arising under the Amended Minutes of Settlement, pursuant to which (and in an effort to reduce the impact of noises and odours emanating from the Redpath Facility) this Condominium shall be obliged to operate, maintain, repair and replace the carbon or other odour-absorptive filter system installed by the Declarant within each dwelling unit, in accordance with the manufacturer's specifications, and pursuant to a maintenance protocol developed in accordance with the requirements of the air and/or noise emissions study approved or accepted by the City of Toronto, and all costs and expenses incurred in connection therewith shall comprise part of the common expenses of the Condominium, and each of the Declarant and Waterfront Toronto shall be fully indemnified by the Condominium for all costs, claims, damages and/or liabilities which the Declarant and/or Waterfront Toronto may hereafter suffer or incur as a result of (or in connection with) any claim or proceeding hereafter made or pursued against the Declarant and/or Waterfront Toronto by the City of Toronto and/or Redpath, because of any breach or contravention of any of the obligations so assumed by this Condominium pursuant to this assumption agreement, or because of any security heretofore provided or posted by the Declarant and/or Waterfront Toronto with the City of Toronto (to ensure the fulfilment of any outstanding obligations arising under the Amended Minutes of Settlement) being drawn down upon by the City of Toronto (in whole or in part), as a direct or indirect result of any breach or contravention of any of the obligations so assumed by this Condominium pursuant to this assumption agreement, so committed by the Condominium Corporation, or by anyone else for whose actions or omissions the Condominium Corporation is liable, at law or in equity (hereinafter referred to as the "Assumption of Obligations Under the Amended Minutes of Settlement");

xxx) **an assumption agreement** entered into by the Condominium Corporation with the Vendor (and with Waterfront Toronto and the City of Toronto as parties, but not necessarily as signatories, thereto), pursuant to which this Condominium shall formally assume (and be bound by, and comply with) all outstanding and/or ongoing obligations and liabilities of Waterfront Toronto and/or the Vendor arising under each of the Subdivision Agreement, the Section 37 Agreement, the Site Plan Agreement, the Master Project Agreement and the Development Agreement respectively, as well as all obligations arising under any of the Encroachment Agreements (as hereinafter defined) pertaining to (or otherwise affecting) this Condominium and/or the Condominium Lands, including the obligation to maintain the works, services and/or facilities constructed or installed by Waterfront Toronto and/or the Vendor on the lands and premises encompassed within the condominium description plan of this Condominium, and pursuant to which Waterfront Toronto and the Vendor shall be fully released and discharged from all such assumed covenants and obligations, and from all liabilities respectively arising thereunder or therefrom (hereinafter referred to as the "Assumption of Outstanding Municipal Agreements");

xxxi) **one or more servient easements** affecting or burdening all or portions of the common elements of this Condominium situate on levels 1, A, B, C and/or D, in favour of:

- A. Toronto Hydro, and its successors and assigns from time to time, for vehicular and/or pedestrian access and egress purposes, as well as for maintenance, servicing and/or support purposes, in order to enable Toronto Hydro and its authorized agents, representatives, employees, contractors and/or subcontractors from time to time to access, service, maintain and/or repair Toronto Hydro's electrical transformer and all ancillary equipment appurtenant thereto so installed and/or owned by Toronto Hydro and situate within the hydro vault located within the confines of this Condominium (or situate on any lands adjacent thereto or in the neighbouring vicinity thereof);
- B. the Daycare Centre Owner, for vehicular and/or pedestrian access and egress purposes, as well as for maintenance, servicing and/or support purposes, in order to enable the Daycare Centre Owner and/or the Daycare Centre Operator, and their respective authorized agents, representatives, employees, tenants, sub-tenants, invitees, contractors and/or subcontractors from time to time to access, service, maintain and/or repair any portion of the Daycare Centre and all appurtenant equipment, fixtures, installations and/or systems which service or benefit the Daycare Centre (or any portion thereof), and to correspondingly physically support the Daycare Centre; and
- C. the Retail Component Owner, for vehicular and/or pedestrian access and egress purposes, as well as for maintenance, servicing and/or support purposes, in order to enable the Retail Owner and its authorized agents, representatives, employees, tenants, sub-tenants, invitees, contractors and/or subcontractors from time to time to access, service, maintain and/or repair any portion of the Retail Component and all appurtenant equipment, fixtures, installations and/or systems which service or benefit the Retail Component (or any portion thereof), and to correspondingly physically support the Retail Component;

xxxii) **a storm sewer easement agreement** entered into with the City of Toronto, pertaining to the installation, maintenance and repair of a municipal storm sewer within (or adjacent to) the Lands, and which agreement shall include an indemnity in favour of the City of Toronto against any damages resulting from sewer discharge or overflow, and from any physical damage caused or occasioned to the City of Toronto's storm sewer line by and from the development of the Lands (or any portion thereof) and/or the construction of the Condominium thereon;

- xxxiii) **one or more servient easements** in favour of the owner or operator of the District Energy service, over, under, upon, across, within and through all of the common elements on all levels of this Condominium, for the purposes of enabling or facilitating the installation, maintenance and/or repair of all of District Energy's pipes, cables, wires, ducts, equipment and appurtenant installations, required for the ongoing provision of District Energy's services to this Condominium and/or to any neighbouring lands;
- xxxiv) **one or more environmental emissions easements** for excessive or operational noise emissions and/or vibration emissions, in favour of any or all of the City of Toronto, the Toronto Transit Commission, Redpath, Metrolinx, the Canadian National Railway Company, the Canadian Pacific Railway Company, the provincial Ministry of Transportation and/or the Toronto Island Airport Authority, over all of the units and common elements of this Condominium;
- xxxv) **various servient easements** affecting all or portions of the common elements of this Condominium (for pedestrian and vehicular access and egress purposes and/or for servicing, maintenance, repair and/or support purposes, in perpetuity) in favour of each of: (i) the Daycare Centre and/or the Daycare Centre Owner, and (ii) the Retail Component and/or the Retail Owner; including without limitation, an easement for pedestrian and vehicular access and egress purposes over all roadways and walkways situate within the confines of this Condominium, including all ramps and driveways within the underground parking garage (on all levels thereof) serving this Condominium, in favour of the respective owners and residents of each of the other components comprising part of the overall Project, and their respective invitees and licensees from time to time;
- xxxvi) **various appurtenant easements** that may be reserved, transferred or created in favour of this Condominium and its authorized agents, representatives, contractors and subcontractors from time to time (and/or in favour of the respective unit owners of this Condominium from time to time, and their respective residents, tenants, invitees and/or licensees), in, over, upon, across and/or through designated portions of the Daycare Centre Lands and/or the Retail Lands respectively, for vehicular and/or pedestrian access and egress purposes, and/or for servicing, maintenance, repair and/or support purposes (if and where so required);
- xxxvii) **a pedestrian and vehicular access/egress easement in perpetuity**, to be granted by the Vendor in favour of the City of Toronto (and the general public), and in favour of the Neighbouring Owners, over, across and upon the Shared Roadway which shall ultimately comprise part of the common elements of this Condominium, on the express understanding and agreement that: (i) the Shared Roadway shall be maintained and repaired (as and when required) by the Shared Roadway Committee on behalf of all three Contributors, in accordance with all standards, requirements and/or guidelines imposed by the City of Toronto in connection therewith; (ii) all costs and expenses incurred in connection with the illumination, insurance, maintenance and/or repair of the Shared Roadway shall comprise part of the Shared Roadway Costs, and be dealt with as such in accordance with the cost-sharing formula outlined in section 2.11(o)(xvii) hereof; and (iii) the Shared Roadway shall, once constructed and completed (and correspondingly approved by the City of Toronto for pedestrian and vehicular access and egress thereover) be fully accessible to each of the Neighbouring Owners and the general public at all times (subject to a few limited exceptions and/or restrictions);
- xxxviii) **a pedestrian access/egress easement in perpetuity**, to be granted by the Vendor in favour of the City of Toronto (and the general public), over, across and upon the Public Walkway known as Kanadario Lane, on the express understanding and agreement that: (i) the Public Walkway shall be maintained and repaired (as and when required) by this Condominium exclusively, in accordance with all standards, requirements and/or guidelines imposed by the City of Toronto in connection therewith; (ii) all costs and expenses incurred in connection with the illumination, insurance, maintenance and/or repair of the Public Walkway shall comprise part of the common expenses of this Condominium, and be dealt with as such; (iii) the Public Walkway shall, once constructed and completed (and correspondingly approved by the City of Toronto for pedestrian access and egress thereover) be fully accessible to the general public at all times (but nevertheless subject to certain limited exceptions and/or restrictions on such public access); and (iv) all landscape maintenance and landscape servicing costs involving the maintenance and repair of the walkways and landscaping features comprising part of Kanadario Lane shall be borne and paid for by this Condominium exclusively;
- xxxix) **the Shared Facilities Agreement** (as hereinbefore defined), to be entered into between this Condominium, the Daycare Centre Owner and the Vendor as soon as reasonably possible after this Condominium has been registered under the Act (and with the Vendor entering into same in its capacity as the Retail Owner), and which agreement shall provide, amongst other things, for the shared use and enjoyment of the Two-Way Shared Facilities by this Condominium and the Daycare Centre, and for the shared use and enjoyment of the Three-Way Shared Facilities by this Condominium, the Retail Component and the Daycare Centre, as well as the operation, insurance, maintenance and repair of the Two-Way Shared Facilities and the Three-Way Shared Facilities respectively, and the maintenance and repair of the respective building exteriors of each of the three components of the Project, and shall confirm the allocation and payment of the Two-Way Shared Facilities Costs and the Three-Way Shared Facilities Costs respectively, in accordance with the various cost-sharing formulae outlined in section 2.11(o)(x) and (xi) hereof;
- xl) **the Shared Roadway Agreement** (as hereinbefore defined), to be entered into between this Condominium, the Daycare Centre Owner and the Vendor as soon as reasonably possible after this Condominium has been registered under the Act (and with the Vendor entering into same in its capacity as the Retail Owner), and which agreement shall provide, amongst other things, for the shared use and enjoyment of the Shared Roadway comprising part of Edgewater Drive, as well as the illumination, operation, insurance, maintenance and repair of the Shared Roadway so governed and administered by the Shared Roadway Committee, and shall confirm the allocation and payment of the Shared Roadway Costs in accordance with the cost-sharing formula outlined in section 2.11(o)(xvii) hereof (pursuant to a formula based on relative or proportionate total finished area above-grade);
- xli) **a counterpart to the shared roadway agreement** initially entered into with respect to the Westerly Edgewater Section, by and amongst the Aquavista Condominium, the owner of the Aquavista Retail Component, the owner of the Artscape Project and the owner of the Aquavista Commercial Parking Garage (hereinafter referred to as the "**Aquavista Edgewater Roadway Agreement**"), with said agreement being initially registered only against the Aquavista project lands, and pursuant to which counterpart agreement this Condominium shall assume various outstanding and ongoing obligations arising thereunder, including the obligation to pay its proportionate share of the outstanding and ongoing costs for illuminating, insuring, maintaining and repairing the Westerly Edgewater Section (pursuant to a formula based on relative or proportionate total built area);
- xlii) **a linkage roadway agreement** to be entered into between the Aquavista Condominium (and possibly the Aquavista Retail Component owner, the Artscape Project owner, and the Aquavista Commercial Parking Garage owner) and either the Vendor (on behalf of this Condominium) or this Condominium (and possibly also the Retail Component Owner and the Daycare Centre Owner), confirming that to the extent possible and practically feasible (ie from an economic affordability and physical implementation perspective), the Westerly Edgewater Section shall be physically maintained, repaired and operated in conjunction with (and shall have the same physical components, appearance and be used in a manner that is identical to, and indistinguishable from) the Shared Roadway, and vice versa, and that any future alterations or improvements hereafter made to the Westerly Edgewater Section shall likewise be made to the Shared Roadway, and vice versa, pursuant to the decisions of a joint shared roadway committee governing same, represented by two members from (and appointed by) each of the Aquavista Condominium and this Condominium respectively;
- xliii) **various additional counterparts to either or both of the Shared Roadway Agreement and the Aquavista Edgewater Roadway Agreement**, to be registered sometime hereafter and entered into by the respective Neighbouring Owners from time to time who will be accessing and using Edgewater Drive, with said counterpart agreements evidencing their respective assumption of various outstanding and ongoing obligations arising thereunder, including the obligation to pay their respective proportionate share of the outstanding and ongoing costs for illuminating, insuring, maintaining and repairing the Shared Roadway and/or the Westerly Edgewater Section (as the case may be);
- xliv) **one or more limiting distance agreements** which may be entered into by the Vendor with the City of Toronto, which will restrict and prohibit any future development or construction upon or within: (A) the southerly 7 metres of Edgewater Drive situate along the northerly perimeter of the Aquavista site comprising part of the Aquavista Condominium and/or the Artscape Project; and (B) the southerly and westerly 7 metres of Edgewater Drive situate along the northerly and easterly perimeter of the Aquabella site comprising part of this Condominium and/or the Daycare Centre;
- xlv) **the Ground Water Discharge Agreement** (including any assignment and/or assumption agreement with respect to same) pertaining to the ground water that emanates from or through this Condominium's building foundation (and/or its appurtenant drainage system) and which will ultimately be discharged directly into the City of Toronto's storm sewer system, once same has been filtered and cleansed by and through the permanent ground water filtration and drainage system so installed by the Vendor within the confines of this Condominium, and which agreement may be assigned to (and assumed by) this Condominium, and which agreement will impose various outstanding and ongoing

obligations with respect to the control and treatment of the ground water being discharged into the City of Toronto's storm sewer system, including without limitation, the requirement for the ground water to be tested periodically to ensure that same is clean filtered water, or water that meets the City of Toronto's tolerance levels or standards, on the express understanding that the performance and fulfilment of all ground water discharge obligations arising thereunder (or in connection therewith) shall be undertaken and coordinated by the Three-Way Shared Facilities Committee, on behalf of all three Contributors, and all Ground Water Discharge Costs (as hereinbefore defined) shall ultimately be shared by and amongst the three Contributors (namely this Condominium, the Daycare Centre Owner and the Retail Component Owner) and shall correspondingly comprise part of the Three-Way Shared Facilities Costs.

- xlv) **a parking license agreement** to be entered into with the Daycare Centre Owner as the licensor, for nil consideration, shortly after the registration of this Condominium, pertaining to the three (3) Daycare Centre Parking Units, pursuant to which the Condominium Corporation as the licensee shall be entitled to access and use the Daycare Centre Parking Units during and throughout the Condominium's Visitor Hours when the Daycare Centre is not in operation (namely between 7:00 p.m. to 7:00 a.m. weekdays, and all throughout every weekend and all statutory holidays), as additional visitor parking to accommodate any visitors to this Condominium [and which license shall endure for as long as this Condominium is in existence, with the proviso that the Daycare Centre shall only be used for the purposes of a licensed daycare centre or nursery school, and for no other use or purpose unless same has been expressly consented to by the Condominium Corporation, failing which the aforementioned parking license in favour of the Condominium Corporation shall thereupon be automatically extended to envelop or encompass all of the Daycare Centre Hours (namely between 7:00 a.m. to 7:00 p.m. Monday through Friday), in addition to the Condominium's Visitor Hours];
- xlvii) **one or more encroachment agreements** to be entered into by the Vendor or the Condominium Corporation with the City of Toronto (hereinbefore and hereinafter collectively referred to as the "**Encroachment Agreements**"), permitting any portion of this Condominium, the Daycare Centre and/or the Retail Component (including without limitation, any buildings or structures, any covered or partially-covered entrance canopy and/or any sign band or sign box, if applicable) to encroach across, over or above any portion of the adjacent lands owned by the City of Toronto, including any adjacent sidewalk(s) and/or public road allowance, and expressly permitting the Condominium's lobby entrance canopy (if any) to encroach over or above any portion of the City of Toronto's sidewalk and/or public road allowance along the perimeter of this Condominium adjacent to Merchants Wharf and/or Edgewater Drive, and/or permitting any sign band/canopy that may be affixed to the exterior wall of this Condominium (which assists in the advertising or marketing of any retail stores, and/or the businesses or services of any retail tenants within the Retail Component) to encroach over and above the City of Toronto's sidewalk and/or public road allowance (all of which possible encroachments are hereinafter collectively referred to as the "**Encroachments**"), pursuant to which the Condominium Corporation shall ultimately be obliged, amongst other things, to:
- A. keep and maintain the Encroachments in good and proper repair and condition;
 - B. alter or remove the Encroachments, either on the re-building of the Condominium or upon receiving 30 days written notice from the City of Toronto's general manager to do so, without any compensation, reimbursement or other entitlement whatsoever;
 - C. indemnify and save the City of Toronto harmless from and against all claims, suits and actions (and from all costs, damages and expenses) which may be sustained, incurred or paid, by reason of the City granting permission to the installation, erection and/or maintenance of the Encroachments;
 - D. at all times maintain the Encroachments in such a manner so as to ensure that there will be no interference with pedestrian access and egress (or pedestrian traffic) over and along the City of Toronto's sidewalk/road allowance, along any portion of the perimeter of this Condominium, and that the line of sight of any traffic sign or signal is not obscured thereby; and
 - E. obtain and maintain, at all times throughout the duration of the Encroachments, public liability insurance (for personal injury and property damage) covering the maintenance of the Encroachments in an amount not less than \$5 million dollars coverage per occurrence, naming the City of Toronto as an additional named insured, which policy or policies of insurance shall contain cross-liability and severability endorsements, and a waiver of subrogation in favour of the City of Toronto (and those for whom the City of Toronto is, at law, responsible), and providing for thirty (30) days advance written notice to the City of Toronto in the event of a cancellation or material change to such insurance coverage;
- xlviii) **one or more below-grade shoring/encroachment agreements and/or overhead crane swinging and airspace access agreements**, entered into between the Vendor on the one hand, and the City of Toronto, the Toronto Transit Commission and/or any other owner(s) of adjacent or neighbouring lands on the other hand, pertaining to the development of the Project (inclusive of this Condominium, the Daycare Centre and the Retail Component) on the Real Property, and providing for the installation and encroachment by the Vendor of an underground shoring system (including tie back wires, cables, anchors and all appurtenant installations in connection therewith) within and beneath portions of adjoining lands (including the City of Toronto's road allowances and/or sidewalk areas), and also possibly providing for the use and operation of a swinging overhead crane (including the boom of a tower crane, and all containers, loading platforms, equipment and material being lifted and/or transported thereby) through or above the airspace located on adjoining lands (including portions of the City of Toronto's road allowances and/or sidewalk areas), as may be required from time to time in order to facilitate the construction and completion of the Project, as well as reciprocal encroachment and/or overhead air access rights granted to and in favour of the City of Toronto, the Toronto Transit Commission and/or any other owner(s) of adjacent or neighbouring lands, within, beneath or over portions of the Lands and/or this Condominium (and to which the title to the Lands or any portion thereof are now, or may hereafter be, subject); and
- xlx) **a storm sewer easement agreement** which may be entered into by the Vendor with the City of Toronto, pertaining to the installation, maintenance and repair of a municipal storm sewer within (or adjacent to) the Lands, and which agreement shall include an indemnity in favour of the City of Toronto against any damages resulting from sewer discharge or overflow, and from any physical damage caused or occasioned to the City of Toronto's storm sewer line by and from the development of the Lands (or any portion thereof) and/or the construction of this Condominium thereon.

NOTICES BETWEEN THE PARTIES

- 4.03(d) The Purchaser hereby expressly consents to receiving any and all notices emanating from the Vendor electronically, by e-mail, transmitted to the Purchaser's e-mail address set forth on page one of this Agreement (unless a different e-mail address for the Purchaser is set forth in the Tarion Addendum, in which case the e-mail address of the Purchaser set forth in the Tarion Addendum shall prevail), or alternatively, the Vendor may send an e-mail to the Purchaser notifying them that a detailed notice (and possibly accompanying documentation) has been posted on the Vendor's secure electronic portal and that same may be accessed, viewed and retrieved therefrom by the Purchaser using a confidential and secure personal password (hereinafter referred to as the "**Secured Portal**"), and the Purchaser hereby expressly acknowledges and agrees that:
- i) sending notices to the Purchaser by e-mail, through (and in conjunction with) the Secured Portal, is (and will be) the Vendor's desired and primary method of communication with the Purchaser, and by the Purchaser providing his or her e-mail address to the Vendor, the Purchaser is hereby consenting to the Vendor's delivery of notices to the Purchaser exclusively by e-mail, through (or in conjunction with) the Secured Portal, if in fact the Vendor chooses to send notices in that way;
 - ii) it is the Purchaser's responsibility to regularly check his or her e-mail, and to ensure that spam/junk mail filters are re-configured so as to recognize and accept e-mails from the Vendor as being safe (or alternatively to regularly check spam/junk mail folders for all e-mails emanating from the Vendor);
 - iii) notices or other communications sent by e-mail to the Purchaser, through (or in conjunction with) the Secured Portal, shall be deemed to have been received by the Purchaser on the day that an e-mail notifying the Purchaser of same has been sent, or on the next Business Day thereafter if the date of the Vendor's e-mail transmission was not made or given on a Business Day, and that proof of the Purchaser's receipt of any such e-mailed notice(s) will not be required in order for such notice(s) to be deemed sufficient;

- iv) in the event that the e-mail address which the Purchaser has provided to the Vendor on the first page of this Agreement is different from the e-mail address of the Purchaser set forth in the Tarion Addendum, then the latter e-mail address shall prevail, and the Vendor is hereby irrevocably authorized and directed to send notices by e-mail (through or in conjunction with the Secured Portal) to the Purchaser via the e-mail address set forth in the Tarion Addendum;
- v) if and when the Purchaser's e-mail address hereafter changes, then the Purchaser shall be obliged to forthwith notify the Vendor or the Vendor's solicitor of the Purchaser's new e-mail address; and
- vi) if the Purchaser does not have an e-mail address, or chooses not to have notices from the Vendor sent to the Purchaser by e-mail, or if the Purchaser's e-mail address so given to the Vendor hereafter changes (without the Purchaser notifying the Vendor or the Vendor's solicitor of the Purchaser's new e-mail address), or if the Purchaser's e-mail address box is full (and therefore cannot receive any incoming e-mails, or any further e-mails, from the Vendor), then in any of the foregoing circumstances the Vendor may charge the Purchaser in the statement of adjustments on final closing an extra administration fee (charged on a flat rate basis) in the amount of \$500 plus H.S.T., in order to compensate the Vendor for the additional time and expense incurred in having to send notices (and any accompanying documents) to the Purchaser by regular mail or registered mail, on the express understanding and agreement that: (A) the Vendor shall not be obliged to monitor any electronic responses or bounce-backs of e-mails to determine whether e-mail delivery to the Purchaser was successful; and (B) if the Vendor believes (for whatever reason) that the e-mails purported to be delivered to the Purchaser are not, in fact, being received by the Purchaser, then in said circumstances the Vendor may (but shall not be obliged) to deliver all notices issued thereafter (and any accompanying documents) to the Purchaser by regular mail or registered mail, in which case the Vendor shall also be entitled to charge the Purchaser in the statement of adjustments on final closing an extra administration fee (charged on a flat rate basis) in the amount of \$500 plus H.S.T., in order to compensate the Vendor for the additional time and expense incurred in having to send notices (and any accompanying documents) to the Purchaser by regular mail or registered mail

TENDER - GENERAL

4.04 The parties hereto hereby acknowledge and agree that Section 4.04 of Schedule "A" to this Agreement shall be replaced in its entirety with the following subparagraph, namely:

Subject to the overriding provisions of Section 4.05 hereof, any tender of documents or monies hereunder shall be made upon the Vendor and the Purchaser, or upon their respective solicitors, and notwithstanding anything hereinbefore or hereinafter provided to the contrary, **all monies due or payable by the Purchaser on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) and/or on the Closing Date, shall be tendered only by way of a certified cheque made payable to the Vendor's solicitors and drawn upon the trust account of the Purchaser's solicitor, and which account must be maintained at or with a Canadian chartered bank or trust company.** In the event that a bank draft is delivered for all (or any part of) the balance of the purchase monies due on closing, or is utilized in connection with any direct deposit into the Vendor's solicitor's bank account, rather than (or in lieu of) the delivery of a certified cheque drawn on the Purchaser's solicitor's trust account, then in either case the Vendor and the Vendor's solicitors shall not be obliged to accept such bank draft or such direct deposit via bank draft (as the case may be), unless and until such method of payment via bank draft is also accompanied by a letter from the Purchaser's solicitor unequivocally confirming that all funds used to purchase or acquire said bank draft emanated directly from the Purchaser's solicitor's trust account maintained at or with a Canadian chartered bank or trust company, and not from the bank account of the Purchaser or any third party who is not a solicitor. Furthermore, in the event that a direct deposit is made by the Purchaser's solicitor for all (or any part of) the balance of the purchase monies due on closing [rather than by way of (or in lieu of) the delivery of a certified cheque drawn on the Purchaser's solicitor's trust account or the delivery of a bank draft issued by the Purchaser's solicitor's bank], then the Vendor and the Vendor's solicitors shall not be obliged to accept such direct deposit unless such form of payment is also accompanied by the delivery to the Vendor's solicitors of a copy of the deposit receipt issued by the Canadian chartered bank or trust company which received or accepted the direct deposit, together with a copy of the certified cheque drawn on the Purchaser's solicitor's trust account or the bank draft issued by the Purchaser's solicitor's bank that was correspondingly utilized or tendered in connection with the aforementioned direct deposit, and provided further that the Vendor's solicitors' own bank independently confirms that the monies purported to be direct deposited into the Vendor's solicitors' bank account have, in fact, been received by the Vendor's solicitors' own bank. In the event that such tender relates to the **interim occupancy closing** contemplated in Section 2.08 (a) hereof, then such tender shall be made on the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) by the attendance of the parties hereto, or their respective solicitors or authorized representatives, at the office of the Vendor's solicitors (as set out on page 1 of this Agreement), and the office of the Vendor's solicitors shall be deemed to be the only and proper location of any such tender. Moreover, in the absence of an appointment to the contrary, such attendance (and the corresponding delivery of all required documents and certified funds) **shall occur at the office of the Vendor's solicitors between the hours of 1:00 p.m. and 2:00 p.m. in the afternoon of the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be).** In the event that such tender relates to the **final closing** of this transaction [evidenced by, amongst other things, the Vendor's delivery to (or tender upon) the Purchaser or the Purchaser's solicitor of a transfer/deed in respect of the Property, in registerable form], then such tender shall be effected pursuant to (and in accordance with) the overriding provisions of Section 4.05 hereof. The Purchaser hereby acknowledges and agrees that the key(s) to the Property shall be released to the Purchaser directly from the sales office, or from the Vendor's construction site office, as soon as this transaction has been completed (either on an interim occupancy basis, or on an outright final closing basis), and the Vendor shall not otherwise be required to produce or deliver a key to the Property or the Unit on either of the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be), nor on the Closing Date, nor as part of any tender effected in connection therewith.

Aquabella at Bayside Toronto

Terrace Collection Features and Finishes (Includes Suites 102, 103, 104, 105, 106, GPH01, 206, 306, 406, 506, 606, 706, 806, 906, 1006, PH06, GPH06, 809, 210, 310, 410, 510, 610, 710, 810, 910, 1010, PH10, 912, 1012, PH12, 818, 918, 1018, PH18, GPH18)

SCHEDULE 'B'

1. General

- 1.1 Smooth ceilings painted white to all areas of suite
- 1.2 The ceiling height of suites on floors ground to 6th will be approximately 9'-0" measured from the upper surface of the concrete floor slab to the underside of the concrete ceiling slab, provided however that various areas of the dwelling unit may contain (or be subject to) ceiling bulkheads and/or dropped complete ceilings (included but not limited to bedrooms(s) and den) in order to facilitate the installation of structural components, mechanical systems and/or ductwork, and accordingly in those areas of the unit that are subject to said bulkheads and/or dropped ceilings the overall ceiling height will be reduced accordingly. Ceiling heights for 2 storey suites on the ground floor will be approximately 9'-0" for both the first and second level.
- 1.3 The ceiling height of suites on floors 7th to GPH will be approximately 10'-0" with the exception of Suites 702, 703, 704, 705, 709, 713, 714, 810, 812, 813, 819, 903, 920, 1002, 1010, 1021, PH11, and PH22 which will feature 9'-0" and suite 902 which will feature 9'-6", measured from the upper surface of the concrete floor slab to the underside of the concrete ceiling slab, provided however that various areas of the dwelling unit may contain (or be subject to) ceiling bulkheads and/or dropped complete ceilings (included but not limited to bedrooms(s) and den) in order to facilitate the installation of structural components, mechanical systems and/or ductwork, and accordingly in those areas of the unit that are subject to said bulkheads and/or dropped ceilings the overall ceiling height will be reduced accordingly.
- 1.4 Interior walls are primed and then painted with two coats of quality latex paint with choice of colour**. Bathroom(s) will be painted with white satin finish paint, and all woodwork and trim painted with durable white semi-gloss paint. Paints have low levels of volatile organic compounds (VOCs).
- 1.5 8'-0" interior contemporary solid core doors with metal lever hardware, with the exception of suites with 9'-0" ceilings which shall have 7'-0" interior contemporary solid core doors with metal lever hardware.
- 1.6 7" paint finish, contemporary styled baseboards with 3/2" matching door casing with backband.
- 1.7 Architecturally designed thermally insulated aluminium window frames with low E coated, argon gas filled, double pane, sealed glazing units, with operable awning windows. Interior window frame color to match exterior window frame color.
- 1.8 White bathroom fixtures throughout.
- 1.9 All balcony areas* to have one exterior electrical receptacle.
- 1.10 Elegant swing closet doors** and/or frosted glass sliding doors** in bedrooms where indicated on plan.
- 1.11 Terrace(s)* will feature one oversized parasol anchored to the structure for overhead sun and rain protection.
- 1.12 Suites will feature central vacuum** system and hose connection.
- 1.13 Two storey suites will feature elegant stairs** with choice of metal handrail and posts or contemporary glass railing with choice of wood steps**.
- 1.14 Two storey suites may feature unique independent elevator** to provide assisted access to upper level. The private elevator (and both the elevator pit and the elevator machine room) shall comprise part of the unit, and the cost of maintaining, repairing and/or replacing shall be borne solely by the unit owner, over and above the common expenses attributable to the unit.

2. Floor Coverings

- 2.1 Premium plank engineered floor** with acoustic underlay to all rooms excluding bathrooms and laundry.
- 2.2 Selection of natural stone or porcelain floor tiles** for master ensuite and powder room(s)*. Designer selected premium porcelain floor tiles** in other bathroom(s) and laundry.

3. Kitchen

- 3.1 Designer kitchen cabinetry** with contemporary, full height flat panel doors complete with built in appliances. Finishes include a selection of matte finish and wood grain laminate or wood veneer. All suites featuring 10'-0" ceiling heights shall feature extended height kitchen cabinets*.
- 3.2 Natural stone or quartz kitchen countertop** and matching backsplash with polished double square edge and deep undermount, stainless steel double bowl sink.
- 3.3 Distinctive multitask island* with waterfall edge countertop with choice of natural stone or quartz.
- 3.4 Polished chrome, single lever Hansgrohe Axor kitchen faucet with integrated pull down spray.
- 3.5 Miele 36" built-in integrated refrigerator with matching panel door.
- 3.6 Miele 30" built-in stainless steel convection wall oven.
- 3.7 Miele 36" built-in gas cooktop.
- 3.8 Miele 24" integrated dishwasher with matching panel door.
- 3.9 24" high efficiency wine fridge.
- 3.10 Built-in stainless steel microwave.
- 3.11 Recessed stainless steel hood fan insert.
- 3.12 Energy saving LED under cabinet lighting.
- 3.13 Recessed LED potlights in kitchen area.

4. Bathroom(s)

- 4.1 Master ensuite bathroom to feature custom vanity with choice of natural stone or quartz countertop with double square edge and undermount rectangular basin, featuring contemporary flat panel cabinetry**. All other bathrooms to feature custom vanity with white quartz countertop.
- 4.2 Bathrooms to feature vanity mirror with integrated lighting.
- 4.3 Master ensuite tub features 5'-6" free standing tub* with wall or floor mounted Hansgrohe Axor faucet where indicated on plan. All other bathroom(s) to feature 5' soaker tub* with polished chrome single lever Hansgrohe Axor faucet and glass enclosure (no door).
- 4.4 Master ensuite bathroom(s) to feature natural stone slab* feature ledge and wall.
- 4.5 Pressure balanced, thermally controlled chrome Hansgrohe Axor shower faucet.
- 4.6 Master ensuite bathrooms to feature a choice of natural stone or porcelain tiles** in shower enclosure*. Other bathrooms to feature porcelain tiles** in tub and shower enclosure* and vanity wall subject to design.
- 4.7 Recessed light in ceiling of shower stalls* and tub(s)*.
- 4.8 Master ensuite bathrooms to feature comfort radiant floor heating.
- 4.9 Energy efficient, low flow Hansgrohe Axor shower head(s).
- 4.10 Master ensuite bathroom(s) to feature Hansgrohe Axor polished chrome wall mounted vanity faucet. All other bathrooms to feature Hansgrohe Axor polished chrome wide spread vanity faucet.
- 4.11 Low-flow high performance toilet(s).
- 4.12 Shower stall(s) feature frameless glass enclosure with chrome hardware.

5. Powder Room(s)

- 5.1 Custom vanity with choice of natural stone or quartz countertop with semi recessed sink, featuring flat panel cabinetry**.
- 5.2 Vanity mirror with integrated lighting.
- 5.3 Hansgrohe Axor polished chrome wall mounted vanity faucet in bathroom(s).
- 5.4 Low-flow high performance toilet(s).

5. Laundry

- 5.1 Heavy-duty wiring and receptacle for dryer.
- 5.2 Stacked or side by side white front loading dryer and Energy Star high efficiency front loading washer (complete with stainless steel flexible hose water connections).
- 5.3 Stainless steel laundry sinks** complete with upper and lower cabinetry, with white quartz countertop and pull down spray faucet.

6. Safety and Security

- 6.1 Concierge monitoring community access systems including two-way communication from selected zones in underground garage and entry areas.
- 6.2 Personally encoded suite intrusion alarm system integrated with Tridel Smart Suite wall pad and connected to Concierge station and your smart phone. Door security monitored by concierge.
- 6.3 Exterior doors and operable windows at grade connected to suite alarm system* for enhanced security.
- 6.4 Access control system located in the lobby vestibule and at visitor's main entry points permits guests to communicate with residents from the building entrance(s).
- 6.5 Surveillance cameras in selected locations at the points of access to the building and garage may be monitored by the Concierge and can be viewed on Tridel Smart Suite wall pad and mobile app.
- 6.6 Smartphone access to common area entrances and automated garage door opening and closing.
- 6.7 In-suite sprinkler system complete with concealed heads and/or drywall window valences*.
- 6.8 Hard wired smoke alarm(s), fire alarm speaker and Carbon monoxide detector*.
- 6.9 Suites to feature a Tridel Smart Suite wall pad with integrated smartphone functionality. The Tridel Smart Suite system is an inter-community video communication platform with integrated suite security and a scalable solution for smart home features.
- 6.10 Suite entry door(s) will feature a digital door lock system, enabling an enhanced level of suite access control, to be operated and managed with programmable digital codes, smart phone device or conventional fobs.
- 6.11 Parking garage to feature an automated license plate recognition system to manage access and security into the garage.
- 6.12 Integrated electronic lockers will assist the community with managing package delivery.

7. Comfort System

- 7.1 Vertical and/or horizontal VRF (variable refrigerant flow) heating and air conditioning system for year round seasonal comfort.
- 7.2 Individual metering of electricity, water, gas** heating and cooling consumption.
- 7.3 Superior air filter media for use in VRF Unit.
- 7.4 Central building water filtration system.

8. Electrical Service and Fixtures

- 8.1 Individual service panel with circuit breakers.
- 8.2 Designer series receptacles and switches throughout.
- 8.3 Energy efficient light fixtures in foyer, hallway(s), walk-in closet(s)*, bedroom(s), kitchen, breakfast area*, den* and study*.
- 8.4 Capped ceiling light outlet in the main living area*.
- 8.5 Lighting fixtures complete with long-lasting, energy saving lamps.

9. Communications

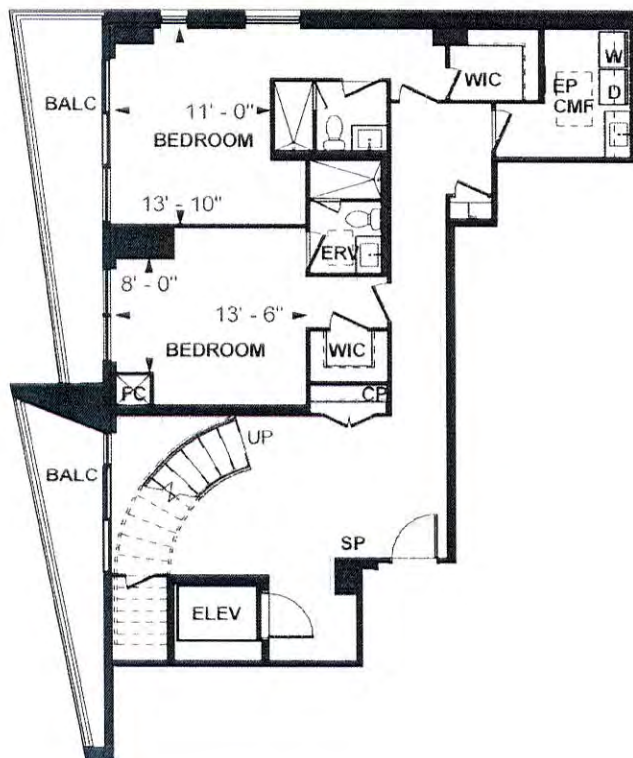
- 9.1 Fiber optic cabling to each suite (complete with in-suite junction box with optical media converter).
- 9.2 Ethernet cable wiring to living room, den* or study (if applicable) and bedroom(s).
- 9.3 Commercial grade Wifi will be provided in common area amenities.
- 9.4 Community will be equipped with a neutral DAS (Distributed Antenna System) to support the transmission of cell signals from multiple carriers within the building to ensure cell coverage.
- 9.5 Access to Waterfront Toronto's open access, ultra high speed fibre optic broadband community network, provided by Beamfield Metroconnect.

* - denotes availability determined by suite design. ** - denotes finishes to be selected from the vendor's samples

All features and finishes subject to change without notice, E. & O.E. May 5, 2017

TRIDEL | *lives*

BAYSIDE TORONTO
Schedule C1



LEGEND

- SP - Smart Wall Pad
- CP - Communication Panel
- EP - Electrical Panel
- ERV - Energy Recovery Ventilator
- FC - Fan Coil
- CMF - Ceiling Mounted Fan Coil
- F - Fridge
- WF - Wine Fridge
- DW - Dishwasher
- WO - Wall Oven
- OB - Oven Below
- WD - Washer / Dryer
- P - Pantry
- WIC - Walk in Closet
- L - Linen
- GC - Exterior Gas Connection
- HB - Hose Bib
- EUP - Exclusive Use Planter
- CAP - Common Area Planter
- *Note: - Grey Shaded Areas Indicate Reduced Ceiling heights

FLOOR GPH

01

GPH1

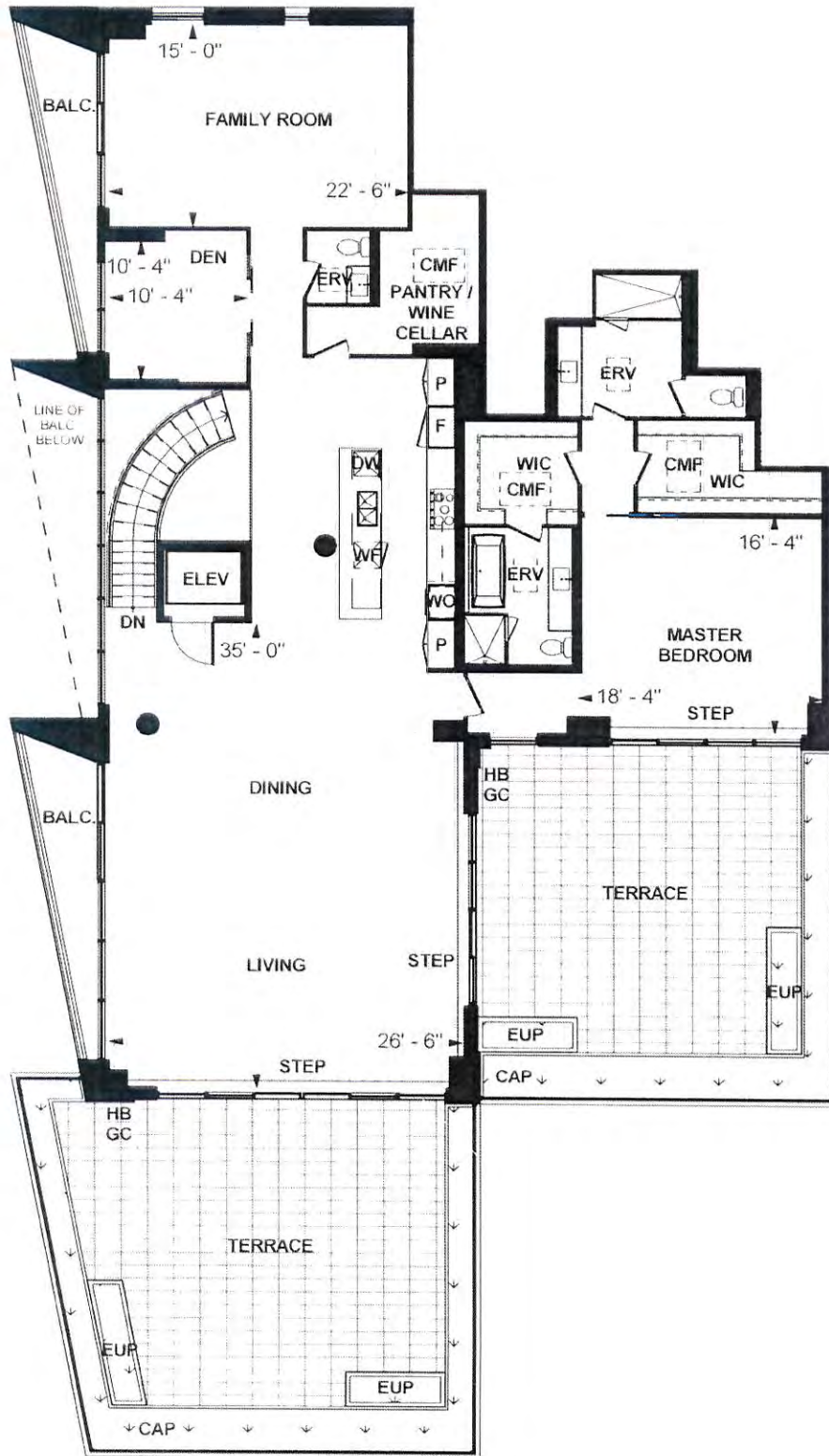
Purchaser _____ Date _____
Acknowledgement GPH1
Municipal Number: _____

Materials, specifications, floor plans and dimensions are subject to change without notice. Window size and type may vary. Actual usable floor space may vary from the stated floor area. Landscaping, patio and balcony areas subject to change. E. & O. E.

TRIDEL | Hines

October 19, 2016

BAYSIDE TORONTO
Schedule C1



FLOOR GPH UPPER

01

GPH1



LEGEND

- SP - Smart Wall Pad
- CP - Communication Panel
- EP - Electrical Panel
- ERV - Energy Recovery Ventilator
- FC - Fan Coil
- CMF - Ceiling Mounted Fan Coil
- F - Fridge
- WF - Wine Fridge
- DW - Dishwasher
- WO - Wall Oven
- OB - Oven Below
- W/D - Washer / Dryer
- P - Pantry
- WIC - Walk in Closet
- L - Linen
- GC - Exterior Gas Connection
- HB - Hose Bib
- EUP - Exclusive Use Planter
- CAP - Common Area Planter
- *Note: -Grey Shaded Areas Indicate Reduced Ceiling heights

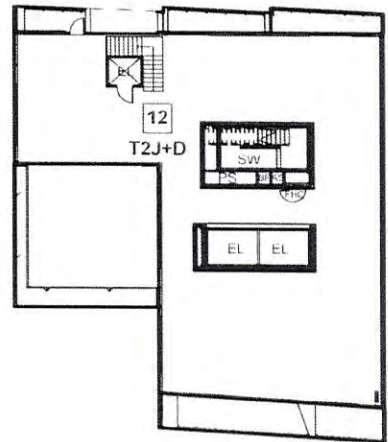
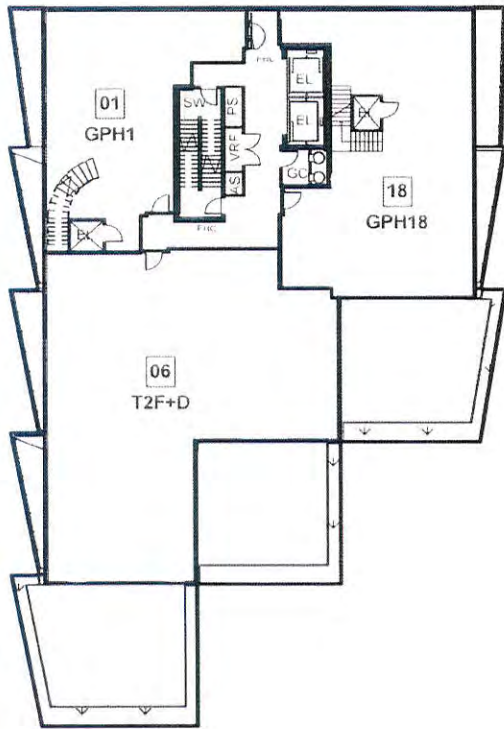
TRIDEL | Hines

Purchaser _____ Date _____
Acknowledgement _____
Municipal Number: GPH1

Materials, specifications, floor plans and dimensions are subject to change without notice. Window size and type may vary. Actual usable floor space may vary from the stated floor area. Landscaping, patio and balcony areas subject to change. E. & O. E.

October 19, 2016

BAYSIDE TORONTO
 Schedule C2
 FLOOR GPH



LEGEND

- EL - Elevator
- SW - Stairwell
- FHC - Fire Hose Cabinet
- GC - Garbage Compactor
- AS - Air Shaft
- PR - Pipe Riser
- EC - Electrical Closet
- VRF - Variable Refrigerant Flow Closet
- BF - Boiler Flues
- PS - Pipe Space

TRIDEL | Hines

Purchaser Acknowledgement
 Date: GPH1
 Municipal Number:

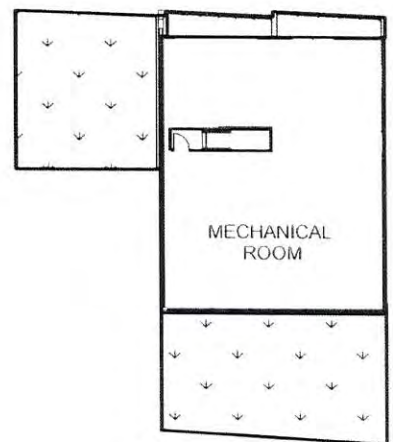
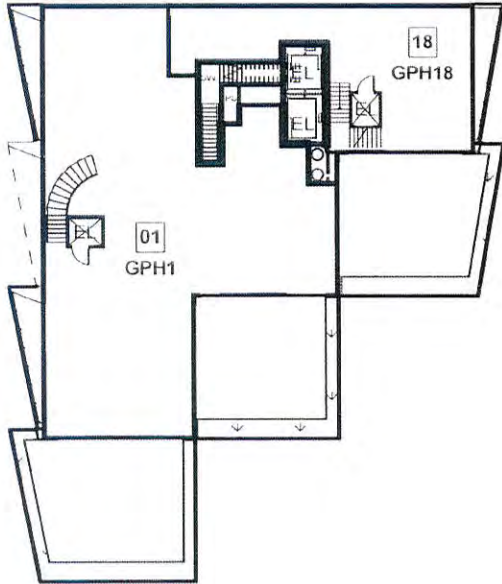
Materials, specifications, floor plans and dimensions are subject to change without notice. Window size and type may vary. Actual usable floor space may vary from the stated floor area. Landscaping, patio and balcony areas subject to change. E. & O. E.

October 19, 2016

BAYSIDE TORONTO

Schedule C2

FLOOR GPH UPPER



LEGEND

- EL - Elevator
- SW - Stairwell
- FHC - Fire Hose Cabinet
- GC - Garbage Compactor
- AS - Air Shaft
- PR - Pipe Riser
- EC - Electrical Closet
- VRF - Variable Refrigerant Flow Closet
- BF - Boiler Flues
- PS - Pipe Space

TRIDEL | Hines

Purchaser Acknowledgement
 Date: CIPH
 Municipal Number:

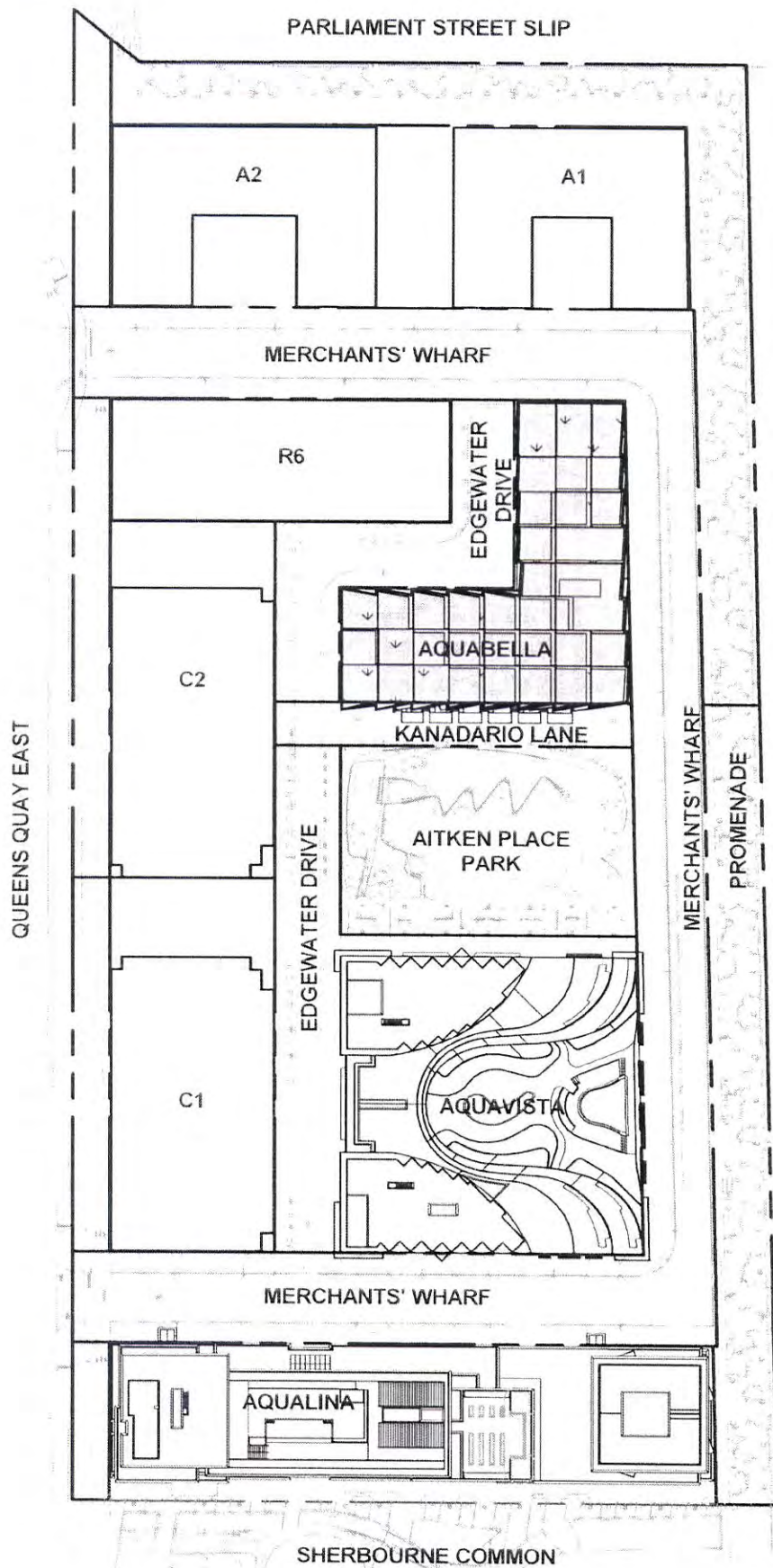
Materials, specifications, floor plans and dimensions are subject to change without notice. Window size and type may vary. Actual usable floor space may vary from the stated floor area. Landscaping, patio and balcony areas subject to change. E & O E.

October 19, 2016

Handwritten initials/signature

BAYSIDE TORONTO

Schedule D



TRIDEL | Hines

Purchaser _____ Date _____
Acknowledgement CPHI
Municipal Number _____

Materials, specifications, floor plans and dimensions are subject to change without notice. Window size and type may vary. Actual usable floor space may vary from the stated floor area. Landscaping, patio and balcony areas subject to change. E & O E.

October 19, 2016

Handwritten initials: CPHI

SCHEDULE "LRA" – PURCHASER'S LIMITED RIGHT OF ASSIGNMENT

Notwithstanding anything to the contrary contained in the agreement of purchase and sale to which this schedule is annexed (the "Purchase Agreement"), and despite the fact that the Purchaser has warranted to the Vendor that the Purchaser is acquiring the Property for the personal use of the Purchaser (or for one or more members of the Purchaser's immediate family), the parties hereto hereby confirm and agree to the following:

1. The Purchaser shall be permitted to assign the Purchaser's rights and interests in and to the Property arising under the Purchase Agreement, to one or more third parties (hereinafter collectively referred to as the "New Purchaser" or the "Assignee"), but only:
 - a) if the Unit has not been listed for sale or lease, and has not been advertised for sale or lease, by or on behalf of the Purchaser, in contravention of the provisions of section 2.01 of Schedule "A" to the Purchase Agreement; and
 - b) in accordance with the terms and provisions of the Vendor's form of addendum confirming new purchaser, a copy of which is attached hereto (hereinafter referred to as the "Addendum Confirming New Purchaser"), and only if and when each of the following matters has been completed or satisfied, namely:
 - i) the Purchaser has obtained or received the requisite mortgage approval from the First Mortgagee, or from any other financial institution or lender satisfactory to the Vendor in its sole and unchallenged discretion, as expressly contemplated by section 2.02 and section 2.03 of Schedule "A" to the Purchase Agreement;
 - ii) all deposit monies required to be paid by or on behalf of the Purchaser on account of the Purchase Price, save and except for those deposit monies that are due and payable on the Firm Occupancy Date, have been duly paid and remitted to the Vendor's solicitor (unless the Purchaser's desired assignment to the New Purchaser occurs after the interim closing date, in which case all deposit monies, including the deposit monies due and payable on the Firm Occupancy Date, have been duly paid and remitted to the Vendor's solicitor); and
 - iii) both the Purchaser and the New Purchaser have executed the Addendum Confirming New Purchaser without any alteration or amendment thereto whatsoever, and have delivered same to the Vendor's sales agent or representative for ultimate execution by the Vendor, at least:
 - A) 60 days prior to the Firm Occupancy Date, if any such assignment is intended to take place on or before the interim occupancy closing of this transaction; or
 - B) 60 days prior to the Closing Date, if any such assignment is intended to take place on or before the final closing of this transaction, in those circumstances where no prior interim occupancy closing has taken place (or is intended to take place), but rather only an outright or straight final closing is intended.
2. Without limiting the generality of the foregoing, it is understood and agreed that if the Unit has been listed for sale or lease and/or has been advertised for sale or lease, by or on behalf of the Purchaser, at any time prior to the final closing of this purchase and sale transaction, then not only will the Purchaser be automatically precluded from forever exercising the right of assignment outlined in this Schedule, but should the Vendor choose to waive such default and proceed to complete this transaction with the Purchaser (rather than terminate this transaction as a consequence of the Purchaser's default, pursuant to the provisions of section 2.01 of Schedule "A"), then the Purchaser shall be charged in the statement of adjustments on final closing with an amount equivalent to the aggregate of the HST new housing rebates that would otherwise have been applicable [and which charge to the Purchaser reflects the fact that the act of listing or advertising the Unit for sale or lease constitutes prima facie evidence that the Purchaser had no intention of ever occupying the Unit as the Purchaser's primary place of residence, and that the Purchaser therefore does not (or may not) qualify for said rebates].
3. Notwithstanding anything contained in this Schedule to the contrary, it is understood and agreed that this Schedule "LRA" shall be deemed and construed to be inapplicable to the purchase and sale transaction involving the New Purchaser and the Vendor, and shall not be effective or enforceable by the New Purchaser despite any Addendum Confirming New Purchaser that may be executed in accordance with the foregoing provisions hereof, and accordingly **the New Purchaser shall not have any right to assign the Purchase Agreement, nor his or her rights and interests in and to the Property under (or by virtue of) the Purchase Agreement, to any third party or parties, without the Vendor's prior written consent thereto.**
4. All terms and provisions contained in the Purchase Agreement, save and except for those which conflict with (or are inconsistent with) the foregoing terms and provisions of this Schedule, shall remain the same, and shall continue to be binding upon each of the parties hereto and their respective heirs, estate trustees, successors and permitted assigns. Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that the Purchaser shall not list the Property (or any portion thereof) for sale or lease on the Multiple Listing Service or on the internet (including facebook, instagram, snapchat, twitter or any other similar publicly-accessed medium over the internet), nor publicly advertise the Property for sale or lease, notwithstanding the foregoing limited right of assignment.
5. Time shall be of the essence with respect to the fulfilment and completion of all covenants and obligations herein contained.
6. This Schedule shall be read and construed with all changes of gender and/or number as may be required by the context.
7. A photocopy, a telefaxed copy or scanned e-mailed copy of this fully executed Schedule may be relied upon to the same extent as an originally-executed version.



**ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE STATEMENT
AND ACCOMPANYING CONDOMINIUM DOCUMENTS
PERTAINING TO THE AQUABELLA AT BAYSIDE TORONTO CONDOMINIUM PROJECT**

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. of dwelling unit no. 1 on level 12, in a proposed residential condominium developed by the Declarant and marketed as "**Aquabella at Bayside Toronto**" (hereinafter called this or the "**Condominium**") on the lands and premises municipally located at 118 Merchants Wharf (or such other address as the City of Toronto may hereafter designate), Toronto, Ontario (hereinafter called the "**Condominium Lands**" or the "**Real Property**")

THE UNDERSIGNED, being the Purchaser of the above-noted unit, **hereby acknowledges receipt of the current disclosure statement** for the Condominium prepared in accordance with the provisions of the *Condominium Act 1998, S.O. 1998, as amended*, and the regulations promulgated thereunder (hereinafter collectively referred to as the "**Act**"), and containing, amongst other things, a **table of contents** located at the beginning of the disclosure statement, along with **Schedule "A"** thereto (being a site plan sketch depicting the site of this Condominium in relation to the surrounding lands), **Schedule "B"** thereto (being the proposed rules governing the use of the units and common elements), and **Schedule "C"** thereto (being the proposed rules governing the use of the recreational facilities), together with the following documents pertaining to this Condominium, namely:

- 1) The proposed declaration;
- 2) The proposed by-law no. 1 (being a general organizational by-law, and which includes, amongst other things, the standard unit definition for repair and insurance purposes, and proposed procedures for the mediation and arbitration of disputes);
- 3) The proposed by-law no. 2 [authorizing the Condominium's execution of a shared facilities agreement pertaining to the use, operation, insurance, maintenance and/or repair of various shared facilities, services, easement areas, building components and/or equipment (hereinafter collectively referred to as the "**Shared Facilities**") intended to be shared by and amongst any two or more (or all of) this Condominium, the Daycare Centre Owner and the Retail Component Owner (as such terms are respectively defined in this Condominium's declaration), and which agreement governs the sharing, allocation and payment of the costs of operating, maintaining and repairing the Shared Facilities (hereinafter collectively referred to as the "**Shared Facilities Costs**")];
- 4) The proposed by-law no. 3 [authorizing the Condominium's execution of a shared roadway agreement pertaining to the illumination, insurance, operation, maintenance and/or repair of the Shared Roadway (as such term is defined in this Condominium's declaration), intended to be shared initially by and amongst this Condominium, the Daycare Centre Owner and the Retail Component Owner (as such terms are respectively defined in this Condominium's declaration), and which agreement governs the sharing, allocation and payment of the costs of illuminating, insuring, operating, maintaining and repairing the Shared Roadway (hereinafter collectively referred to as the "**Shared Roadway Costs**")];
- 5) The proposed by-law no. 4 [authorizing the Condominium's execution of a counterpart to the Aquavista Roadway Agreement (as such term is defined in this Condominium's declaration) pertaining to the illumination, insurance, operation, maintenance and/or repair of the Westerly Edgewater Section (as such term is defined in this Condominium's declaration), and which agreement governs the sharing, allocation and payment of the costs of illuminating, insuring, operating, maintaining and repairing the Westerly Edgewater Section (hereinafter collectively referred to as the "**Shared Westerly Edgewater Section Costs**"), and which counterpart agreement obliges this Condominium, amongst other things, to pay its Proportionate Westerly Roadway Share (as such term is defined in this Condominium's declaration) of the Shared Westerly Edgewater Section Costs];
- 6) The proposed by-law no. 5 [being a by-law authorizing the Corporation to enter into an assumption agreement with the Declarant, and with Toronto Waterfront Revitalization Corporation (hereinafter referred to as "**Waterfront Toronto**") as a party (but not as a signatory) thereto (but nevertheless enforceable by Waterfront Toronto against this Condominium directly), pursuant to which the Corporation shall formally assume (and be bound by, and comply with) all outstanding and/or ongoing covenants and obligations of the Declarant arising under the Development Agreement (as such term is defined in this Condominium's declaration) relating or pertaining to this Condominium];
- 7) The proposed by-law no. 6 [being a by-law authorizing the Corporation to enter into an assumption agreement with the Declarant, and with Waterfront Toronto, the City of Toronto and Redpath Sugar Ltd. ("**Redpath**") as parties (but not as signatories) thereto (but nevertheless enforceable by each of Waterfront Toronto, the City of Toronto and Redpath against this Condominium directly), pursuant to which the Corporation shall be obliged to operate, maintain, repair and replace the carbon or other odour-absorptive filter system installed by the Declarant within each of the dwelling units in this Condominium, in accordance with the manufacturer's specifications, and pursuant to a maintenance protocol developed in accordance with the requirements of the air and/or noise emissions study approved or accepted by the City of Toronto, all in an effort to mitigate or reduce the impact of noises and/or odours emanating from the nearby Redpath facility];
- 8) The proposed by-law no. 7 [being a by-law authorizing the Corporation to enter into an assumption agreement with the Declarant, and with the City of Toronto as a party (but not as a signatory) thereto (but nevertheless enforceable by the City of Toronto against this Condominium directly), pursuant to which the Corporation shall formally assume all outstanding and ongoing obligations and liabilities of the Declarant arising under an outstanding section 37 density bonus/development agreement, an outstanding site plan agreement, an outstanding subdivision agreement, an outstanding transfer of easement and/or condominium agreement, and an outstanding encroachment agreement entered into with the City of Toronto (hereinafter collectively referred to as the "**Outstanding Municipal Agreements**"), insofar as same relate or pertain to this Condominium, or any portion thereof];
- 9) The proposed by-law no. 8 [being a by-law authorizing the Corporation to enter into either the Ground Water Discharge Agreement or the Ground Water Discharge Assumption Agreement (as such terms are respectively defined in this Condominium's declaration), and with the City of Toronto as a party (but not necessarily as a signatory) thereto (but nevertheless enforceable by the City of Toronto against this Condominium directly), pursuant to which the Corporation shall formally assume all outstanding and ongoing obligations and liabilities of the Declarant arising under the Ground Water Discharge Agreement, including any assignment and/or assumption agreement with respect to same, pertaining to the ground water that emanates from or through this Condominium's building foundation (and/or its appurtenant drainage system) and which will ultimately be discharged directly into the City of Toronto's storm sewer system, once same has been filtered and cleansed by and through the permanent ground water filtration and drainage system so installed by the Declarant within the confines of this Condominium];
- 10) The proposed by-law no. 9 [being a by-law authorizing the Corporation to enter into a parking license agreement with the City of Toronto (in its capacity as the Daycare Centre Owner) as the licensor, to and in favour of the Corporation as the licensee, pursuant to which the Condominium will be granted a license, for nil consideration, to use the Daycare Centre Owner's 3 designated parking units situate on level A within this Condominium (the "**Daycare Centre Parking Units**") when the Daycare Centre is not in operation, namely from 7:00 p.m. to 7:00 a.m., weekdays and all throughout every weekend and all statutory holidays (hereinafter collectively referred to as the "**Licensed Hours**" or the "**Condominium's Visitor Hours**"), as additional visitor parking to accommodate any visitors to this Condominium];

11. The proposed by-law no. 10 [being a by-law authorizing the Corporation to enter into an assumption agreement with the Declarant (and with Beanfield Metroconnect WI Inc. (hereinafter referred to as **"Beanfield"**) as a party (but not as a signatory), thereto (but nevertheless enforceable by Beanfield against this Condominium directly), pursuant to which the Corporation shall formally assume (and be bound by, and comply with) all outstanding and/or ongoing covenants and obligations of the Declarant arising under a bulk internet service agreement entered into with Beanfield, governing Beanfield's provision of broadband internet and other telecommunication services to this Condominium, and correspondingly confirming that Beanfield shall have an easement or right-of-way over, under, upon, across and through the common elements of this Condominium, for the purposes of facilitating the installation, operation, maintenance and/or repair of its broadband internet telecommunication lines, cables and appurtenant equipment];
12. The proposed rules governing the use and enjoyment of the units and common elements within this Condominium;
13. The proposed rules governing the use and enjoyment of the recreational facilities available to the residents of this Condominium;
14. The proposed management agreement, between the Condominium and Del Property Management Inc.;
15. The proposed utility monitoring agreement, between the Condominium and Provident Energy Management Inc.;
16. The proposed electricity monitoring agreement, between the Condominium and Toronto Hydro-Electric Service Limited;
17. The proposed agreement to provide natural gas, between the Condominium and Canadian Riterate Energy Corporation;
18. The proposed agreement to provide energy management services, between the Condominium and Provident Energy Management Inc.;
19. The proposed insurance trust agreement, by and amongst the Condominium, the Daycare Centre Owner, the Declarant (in its capacity as the Retail Component Owner) and The Canada Trust Company;
20. The proposed trademark license agreement, between the Condominium and the Declarant, entitling this Condominium to use the trademark or tradename **"Aquabella"**; and
21. The proposed budget statement for the one year period immediately following the registration of this Condominium [inclusive of the Two-Way Shared Facilities Budget, the Three-Way Shared Facilities Budget and the Shared Roadway Budget (as such terms are respectively defined in this Condominium's declaration) annexed thereto as Schedules "H", "I" and "J" respectively].
22. Revised Schedule of Common Element Assessments and Schedule "D1" and "D2" to the declaration, dated May 5, 2017, outlining the proportionate common interest and common expenses attributable to each of the units in this condominium.

THE PURCHASER is hereby advised that the disclosure statement contains a table of contents located at the beginning of same (being a guide to where the disclosure statement deals with some of the more common areas of concern to unit purchasers, and intended to facilitate the review of the information contained in the disclosure statement and the condominium documents accompanying same), and expressly discloses or includes, amongst other things, the following information:

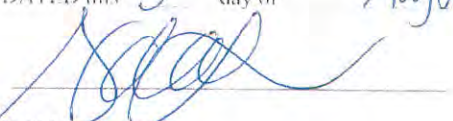
- a) the name and municipal address of the Declarant and the mailing and municipal address of the Condominium (if available);
- b) a general description of the Condominium property, including the types and number of buildings, units, recreational and other amenities (if any) to be provided by the Declarant (together with any conditions that apply to the provision of same), and a statement of the proposed commencement and completion dates in respect of any such amenities that are not fully completed or operational;
- c) a statement of the portion of units or proposed units which the Declarant intends to market in one or more blocks of units to investors;
- d) a brief description of the significant features of the proposed management agreement, utility monitoring agreement and the agreement to provide energy management services and all other agreements intended to be entered into by or on behalf of this Condominium shortly after registration, for the provision of goods or services to the Condominium on a continuing basis; and
- e) a budget statement for the first year following the registration of this Condominium.

THE UNDERSIGNED hereby acknowledges that the purpose of the disclosure statement is to enable the Purchaser to review the relevant documents which will govern the Condominium, and to provide the Purchaser with the requisite information to enable the Purchaser to make an informed decision as to whether or not to proceed with the completion of the above-noted purchase and sale transaction. *If the Purchaser has received the foregoing documentation on a computer disc or USB key, then the Purchaser acknowledges that copies of all of the foregoing documents are also available in paper format at any time, free of charge, upon the Purchaser's request for same. The Purchaser hereby consents to receiving the disclosure statement and the accompanying documents in electronic format.*

THE UNDERSIGNED further acknowledges that the Purchaser shall be entitled to rescind or terminate the agreement of purchase and sale entered into with the Vendor in connection with the above-noted purchase and sale transaction (the "Purchase Agreement"), and obtain a refund of all deposit monies paid thereunder (together with all interest accrued thereon at the rate prescribed by the Act, if applicable), provided written notice of the Purchaser's desire to so rescind or terminate the Purchase Agreement is delivered to the Vendor or the Vendor's solicitor within 10 days after the later of:

- i) the date set out below (evidencing and confirming the date of the Purchaser's receipt of the current disclosure statement, including all of the foregoing accompanying documents); and
- ii) the date of the Purchaser's receipt of a copy the Purchase Agreement duly executed by both the Purchaser and the Vendor.

DATED this 30th day of August, 2017



WITNESS
(as to all Purchasers' signatures, if more than one Purchaser)

Mahal Venture Capital Inc.
Per: 
Authorized Signing Officer
I have authority to bind the Corporation

TAB 4



DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS

ELVIO DELZOTTO, Q.C. HARRY HERSKOWITZ
EDWARD P. MICHELI MARY G. CRITELLI STEVEN B. WEISS
LORI R. TANEL MICHAELE DELZOTTO RICHARD P. HOFFMAN
ROBERT W. CALDERWOOD ALEXANDER A. FOUNDOS
SABRINA ADAMSKI ELISE MICHELI AMY J. CHAPLICK

LETTER CONFIRMING DEPOSITS HELD IN TRUST

October 26, 2017

DELIVERED BY PREPAID MAIL

Mahal Venture Capital Inc.
6845 Second Line West,
Mississauga, ON
L5W 1M8

To Whom It May Concern:

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. (the "**Purchaser**") of dwelling unit 1, level 12, being suite # GPH1 (the "**Dwelling Unit**") parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA hobby/storage unit TBA, level TBA, in a proposed condominium being developed by the Vendor (the "**Condominium**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Real Property**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project (with all such units so acquired, and their appurtenant common interests, being hereinafter collectively referred to as the "**Purchased Units**") - Our General File Number 1639523

Please find enclosed herewith evidence of compliance with subsections 81(1) and (5) of The Condominium Act, 1998, with respect to the deposit monies paid by or on behalf of the Purchaser (as well as all monies paid on account of the purchase price in respect of the interim-occupancy closing, if applicable), to date, in connection with the above-captioned transaction, and which monies are being held in trust by the law firm of DelZotto, Zorzi LLP. Such evidence comprises Form 4, prescribed by section 39 of Ontario Regulation 49/01, duly completed by our law firm.

Should you have any questions regarding the contents of the enclosed Form 4, please direct same to your sales representative at (416) 514-2710, inasmuch as we are not at liberty to further communicate with you directly.

Yours very truly,

DELZOTTO, ZORZI LLP

Per:

Stella Vilardo

C:\WPDocs\Deposits\Deposit Covering Letter.frm
DTA File No. 1639711

Form 4
The Condominium Act, 1998

EVIDENCE OF COMPLIANCE
[subsection 81 (6) of The Condominium Act, 1998]

To: Mahal Venture Capital Inc. (the "**Purchaser**") of 6845 Second Line West, , Mississauga, ON L5W 1M8

The law firm of DelZotto, Zorzi LLP hereby certifies that:

1. We are the prescribed trustee (or escrow agent) holding purchasers' deposit monies in connection with the condominium being developed by Aquabella Bayside Toronto Inc. (hereinafter referred to as the "**Declarant**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Condominium**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project.
2. On the **26th day of October, 2017, we received the amount of \$310,000.00 and the amount of \$20,900.00** (hereinafter referred to as the "**Money**") that was paid by or on behalf of the Purchaser under subsection 81 (1) of *The Condominium Act, 1998* in respect of the purchase (or a right to the purchase) of aproposed unit in the Condominium described as: Dwelling Unit 1 on Level 12 (being suite # GPH1), together with all parking, locker and/or other ancillary units (if any) being acquired by the Purchaser from the Declarant in the Condominium.
3. We are holding the Money in trust in a separate account in Ontario designated as a trust account and identified as:
 - a) Trust Account No. 86-08415 with Canadian Imperial Bank of Commerce, located at 3940 Keele St, North York, ON, M3J 1P2 (the "**Bank**"), phone number 905-572-5953.
 - b) As at the date hereof, the total amount of monies we have received from (or on behalf of) the Purchaser in connection with the purchase of the aforementioned unit in the Condominium [including all monies received for extras and upgrades, as well as all deposit monies received on account of the purchase price (including any monies received in connection with the interim-occupancy closing, if applicable)] amounts to \$330,900.00. **This amount is predicated on the deposit cheque(s) set out in paragraph 2 above, having cleared the Bank and being duly honoured.**
4. You will receive notice if there is any change in the prescribed trustee (or escrow agent) holding the Money in trust, before our law firm no longer has any obligations under *The Condominium Act, 1998* (or the regulations made thereunder) relating to the Money, or to any security of a prescribed class that the Declarant may provide for the Money.

Dated: October 26, 2017.

DELZOTTO, ZORZI LLP

Per:



Stella Vilardo

4810 Dufferin Street, Suite D,
Toronto, Ontario, M3H 5S8
Telephone #416-665-5555
Fax #416-665-9653



CREDIT VALLEY TOWN PLAZA
6051 CREDITVIEW RD
MISSISSAUGA, ON L5V 2A8

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_4858217_006 E D 01870 18410

MAHAL VENTURE CAPITAL INC.
6845 SECOND LINE W
MISSISSAUGA ON L5W 1M8



Statement of Account		Account Type	Statement From - To
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD BASIC	SEP 29/17 - OCT 31/17
1870	1870-5240286		Page 1 of 1



DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			SEP29	271.49
[REDACTED]				
DEPOSIT		158,251.39	OCT25	
DEPOSIT		152,000.00	OCT25	
CERTIFIED CHQ #00020	310,000.00		OCT25	
CASH WITHDRAWAL	10.00		OCT25	273.38
TRANSFER		20,900.00	OCT26	
CERTIFIED CHQ #00021	20,900.00		OCT26	
[REDACTED]				
PAPER STMT FEE	2.00		OCT31	252.63
[REDACTED]				
[REDACTED]				
[REDACTED]				

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: **THE TORONTO-DOMINION BANK**

JTA188806-0053159-18410-0001-0001-00-



DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS

ELVIO DELZOTTO, Q.C. HARRY HERSKOWITZ
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ROBERT W. CALDERWOOD ALEXANDER A. FOUNDOS
SABRINA ADAMSKI ELISE MICHELI AMY J. CHAPLICK

LETTER CONFIRMING DEPOSITS HELD IN TRUST

December 20, 2017

DELIVERED BY PREPAID MAIL

Mahal Venture Capital Inc.
6845 Second Line West,
Mississauga, ON
L5W 1M8

To Whom It May Concern:

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. (the "**Purchaser**") of dwelling unit 1, level 12, being suite # GPH1 (the "**Dwelling Unit**") parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA hobby/storage unit TBA, level TBA, in a proposed condominium being developed by the Vendor (the "**Condominium**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Real Property**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project (with all such units so acquired, and their appurtenant common interests, being hereinafter collectively referred to as the "**Purchased Units**") - Our General File Number 1639523

Please find enclosed herewith evidence of compliance with subsections 81(1) and (5) of The Condominium Act, 1998, with respect to the deposit monies paid by or on behalf of the Purchaser (as well as all monies paid on account of the purchase price in respect of the interim-occupancy closing, if applicable), to date, in connection with the above-captioned transaction, and which monies are being held in trust by the law firm of DelZotto, Zorzi LLP. Such evidence comprises Form 4, prescribed by section 39 of Ontario Regulation 49/01, duly completed by our law firm.

Should you have any questions regarding the contents of the enclosed Form 4, please direct same to your sales representative at (416) 514-2710, inasmuch as we are not at liberty to further communicate with you directly.

Yours very truly,

DELZOTTO, ZORZI LLP

Per:

Stella Vilardo

C:\WP\Docs\Deposits\Deposit Covering Letter.frm
DTA File No. 1639711

Form 4
The Condominium Act, 1998

EVIDENCE OF COMPLIANCE
[subsection 81 (6) of The Condominium Act, 1998]

To: Mahal Venture Capital Inc. (the "**Purchaser**") of 6845 Second Line West, , Mississauga, ON L5W 1M8

The law firm of DelZotto, Zorzi LLP hereby certifies that:

1. We are the prescribed trustee (or escrow agent) holding purchasers' deposit monies in connection with the condominium being developed by Aquabella Bayside Toronto Inc. (hereinafter referred to as the "**Declarant**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Condominium**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project.
2. On the **20th day of December, 2017, we received the amount of \$330,900.00** (hereinafter referred to as the "**Money**") that was paid by or on behalf of the Purchaser under subsection 81 (1) of *The Condominium Act, 1998* in respect of the purchase (or a right to the purchase) of a proposed unit in the Condominium described as: Dwelling Unit 1 on Level 12 (being suite # GPH1), together with all parking, locker and/or other ancillary units (if any) being acquired by the Purchaser from the Declarant in the Condominium.
3. We are holding the Money in trust in a separate account in Ontario designated as a trust account and identified as:
 - a) Trust Account No. 86-08415 with Canadian Imperial Bank of Commerce, located at 3940 Keele St, North York, ON, M3J 1P2 (the "**Bank**"), phone number 905-572-5953.
 - b) As at the date hereof, the total amount of monies we have received from (or on behalf of) the Purchaser in connection with the purchase of the aforementioned unit in the Condominium [including all monies received for extras and upgrades, as well as all deposit monies received on account of the purchase price (including any monies received in connection with the interim-occupancy closing, if applicable)] amounts to \$661,800.00. **This amount is predicated on the deposit cheque(s) set out in paragraph 2 above, having cleared the Bank and being duly honoured.**
4. You will receive notice if there is any change in the prescribed trustee (or escrow agent) holding the Money in trust, before our law firm no longer has any obligations under *The Condominium Act, 1998* (or the regulations made thereunder) relating to the Money, or to any security of a prescribed class that the Declarant may provide for the Money.

Dated: December 20, 2017.

DELZOTTO, ZORZI LLP

Per:



Stella Vilardo

4810 Dufferin Street, Suite D,
Toronto, Ontario, M3H 5S8
Telephone #416-665-5555
Fax #416-665-9653



CREDIT VALLEY TOWN PLAZA
6051 CREDITVIEW RD
MISSISSAUGA, ON L5V 2A8

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_6195807_006 E D 01870 19364

MAHAL VENTURE CAPITAL INC.
6845 SECOND LINE W
MISSISSAUGA ON L5W 1M8



Statement of Account		Account Type	Statement From - To
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD BASIC	NOV 30/17 - DEC 29/17
1870	1870-5240286		Page 1 of 1

DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			NOV30	267.63
[REDACTED]				
UJ170 TFR-FR 6280528 CERTIFIED CHQ #00023	330,900.00	330,900.00	DEC18 DEC18	
[REDACTED]				
PAPER STMT FEE	2.00		DEC29 DEC29	182.63
[REDACTED]				

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: THE TORONTO-DOMINION BANK

JTA2118724J055526719364-0001-00-



DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS

ELVIO DELZOTTO, Q.C. HARRY HERSKOWITZ
EDWARD P. MICHELI MARY C. CRITELLI STEVEN B. WEISS LORI R. TANEL
MICHAELE DELZOTTO RICHARD P. HOFFMAN ROBERT W. CALDERWOOD
ALEXANDER A. FOUNDOS GIULIO LAVECCHIA SABRINA ADAMSKI
ELISE MICHELI AMY J. CHAPLICK

LETTER CONFIRMING DEPOSITS HELD IN TRUST

June 5, 2018
DELIVERED BY PREPAID MAIL

Mahal Venture Capital Inc.
6845 Second Line West
Mississauga, ON
L5W 1M8

To Whom It May Concern:

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. (the "**Purchaser**") of dwelling unit 1, level 12, being suite # GPH1 (the "**Dwelling Unit**") parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA hobby/storage unit TBA, level TBA , in a proposed condominium being developed by the Vendor (the "**Condominium**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Real Property**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project (with all such units so acquired, and their appurtenant common interests, being hereinafter collectively referred to as the "**Purchased Units**")
Our General File Number 1639523

Please find enclosed herewith evidence of compliance with subsections 81(1) and (5) of The Condominium Act, 1998, with respect to the deposit monies paid by or on behalf of the Purchaser (as well as all monies paid on account of the purchase price in respect of the interim-occupancy closing, if applicable), to date, in connection with the above-captioned transaction, and which monies are being held in trust by the law firm of DelZotto, Zorzi LLP. Such evidence comprises Form 4, prescribed by section 39 of Ontario Regulation 49/01, duly completed by our law firm.

Should you have any questions regarding the contents of the enclosed Form 4, please direct same to your sales representative at (416) 514-2710, inasmuch as we are not at liberty to further communicate with you directly.

Yours very truly,

DELZOTTO, ZORZI LLP

Per:

Stella Vilaro

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DTA File No. 1639711

Form 4
The Condominium Act, 1998

EVIDENCE OF COMPLIANCE
[subsection 81 (6) of The Condominium Act, 1998]

To: Mahal Venture Capital Inc.
6845 Second Line West
Mississauga, ON
L5W 1M8

(the "**Purchaser**")

The law firm of DelZotto, Zorzi LLP hereby certifies that:

1. We are the prescribed trustee (or escrow agent) holding purchasers' deposit monies in connection with the condominium being developed by Aquabella Bayside Toronto Inc. (hereinafter referred to as the "**Declarant**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Condominium**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project.
2. On the **5th day of June, 2018, we received the amount of \$330,900.00** (hereinafter referred to as the "**Money**") that was paid by or on behalf of the Purchaser under subsection 81 (1) of *The Condominium Act, 1998* in respect of the purchase (or a right to the purchase) of a proposed unit in the Condominium described as: Dwelling Unit 1 on Level 12 (being suite # GPH1), together with all parking, locker and/or other ancillary units (if any) being acquired by the Purchaser from the Declarant in the Condominium.
3. We are holding the Money in trust in a separate account in Ontario designated as a trust account and identified as:
 - a) Trust Account No. 86-08415 with Canadian Imperial Bank of Commerce, located at 3940 Keele St, North York, ON, M3J 1P2 (the "**Bank**"), phone number 905-572-5953.
 - b) As at the date hereof, the total amount of monies we have received from (or on behalf of) the Purchaser in connection with the purchase of the aforementioned unit in the Condominium [including all monies received for extras and upgrades, as well as all deposit monies received on account of the purchase price (including any monies received in connection with the interim-occupancy closing, if applicable)] amounts to \$992,700.00. **This amount is predicated on the deposit cheque(s) set out in paragraph 2 above, having cleared the Bank and being duly honoured.**
4. You will receive notice if there is any change in the prescribed trustee (or escrow agent) holding the Money in trust, before our law firm no longer has any obligations under *The Condominium Act, 1998* (or the regulations made thereunder) relating to the Money, or to any security of a prescribed class that the Declarant may provide for the Money.

Dated: June 05, 2018.

C:\WP\Docs\Deposits\Form 4.wpd

DELZOTTO, ZORZI LLP

Per: 
Stella Vilardo

4810 Dufferin Street, Suite D,
Toronto, Ontario, M3H 5S8
Telephone #416-665-5555
Fax #416-665-9653



CREDIT VALLEY TOWN PLAZA
6051 CREDITVIEW RD
MISSISSAUGA, ON L5V 2A8

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_2577574_006 E D 01870 13196

MAHAL VENTURE CAPITAL INC.
6845 SECOND LINE W
MISSISSAUGA ON L5W 1M8



Statement of Account		Account Type	Statement From - To
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD BASIC	APR 30/18 - MAY 31/18
1870	1870-5240286		Page 1 of 1

DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			APR30	126.43
[REDACTED]				
GC 1597-DEPOSIT			MAY18	78.43
GC 1185-DEPOSIT		104,512.65	MAY24	104,591.08
GC 1185-DEPOSIT		25,000.00	MAY25	
CAD DRAFT 85078817		94,562.57	MAY25	
[REDACTED]				
DEPOSIT		20,000.00	MAY30	
HZ515 TER TO 6280528		120,319.17	MAY30	
[REDACTED]				
PAPER STMT FEE	3.00		MAY31	335,156.04
[REDACTED]				

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: THE TORONTO-DOMINION BANK

JCA217317-0026391-13196-0001-0001-00-



CREDIT VALLEY TOWN PLAZA
6051 CREDITVIEW RD
MISSISSAUGA, ON L5V 2A8

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_3274547_006 E D 01870 12947

MAHAL VENTURE CAPITAL INC.
6845 SECOND LINE W
MISSISSAUGA ON L5W 1M8



Statement of Account		Account Type	Statement From - To
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD BASIC	MAY 31/18 - JUN 29/18
1870	1870-5240286		Page 1 of 2



DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			MAY31	335,156.04
CERTIFIED CHQ #00028	330,900.00		JUN01	
[REDACTED]				
SERVICE CHARGE	3.75		JUN29	
PAPER STMT FEE	3.00		JUN29	2,207.85
[REDACTED]				
[REDACTED]				

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: THE TORONTO-DOMINION BANK



DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS

ELVIO DELZOTTO, Q.C. HARRY HERSKOWITZ
EDWARD P. MICHELI STEVEN B. WEISS LORI R. TANEL
MICHAELE DELZOTTO RICHARD P. HOFFMAN ROBERT W. CALDERWOOD
ALEXANDER A. FOUNDOS GIULIO LAVECCHIA SABRINA ADAMSKI
ELISE MICHELI AMY J. CHAPLICK LYDIA SYME

LETTER CONFIRMING DEPOSITS HELD IN TRUST

October 2, 2018

DELIVERED BY PREPAID MAIL

Mahal Venture Capital Inc.
6845 Second Line West
Mississauga, ON
L5W 1M8

To Whom It May Concern:

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. (the "**Purchaser**") of dwelling unit 1, level 12, being suite # GPH1 (the "**Dwelling Unit**") parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA hobby/storage unit TBA, level TBA, in a proposed condominium being developed by the Vendor (the "**Condominium**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Real Property**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project (with all such units so acquired, and their appurtenant common interests, being hereinafter collectively referred to as the "**Purchased Units**") Our General File Number 1639523

Please find enclosed herewith evidence of compliance with subsections 81(1) and (5) of The Condominium Act, 1998, with respect to the deposit monies paid by or on behalf of the Purchaser (as well as all monies paid on account of the purchase price in respect of the interim-occupancy closing, if applicable), to date, in connection with the above-captioned transaction, and which monies are being held in trust by the law firm of DelZotto, Zorzi LLP. Such evidence comprises Form 4, prescribed by section 39 of Ontario Regulation 49/01, duly completed by our law firm.

Should you have any questions regarding the contents of the enclosed Form 4, please direct same to your sales representative at (416) 514-2710, inasmuch as we are not at liberty to further communicate with you directly.

Yours very truly,

DELZOTTO, ZORZI LLP

Per:

Stella Vilardo

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DTA File No. 1639711

Form 4
The Condominium Act, 1998

EVIDENCE OF COMPLIANCE
[subsection 81 (6) of The Condominium Act, 1998]

To: Mahal Venture Capital Inc.
6845 Second Line West
Mississauga, ON
L5W 1M8
(the "Purchaser")

The law firm of DelZotto, Zorzi LLP hereby certifies that:

1. We are the prescribed trustee (or escrow agent) holding purchasers' deposit monies in connection with the condominium being developed by Aquabella Bayside Toronto Inc. (hereinafter referred to as the "**Declarant**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Condominium**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project.
2. On the **2nd day of October, 2018, we received the amount of \$330,900.00** (hereinafter referred to as the "**Money**") that was paid by or on behalf of the Purchaser under subsection 81 (1) of *The Condominium Act, 1998* in respect of the purchase (or a right to the purchase) of a proposed unit in the Condominium described as: Dwelling Unit 1 on Level 12 (being suite # GPH1), together with all parking, locker and/or other ancillary units (if any) being acquired by the Purchaser from the Declarant in the Condominium.
3. We are holding the Money in trust in a separate account in Ontario designated as a trust account and identified as:
 - a) Trust Account No. 86-08415 with Canadian Imperial Bank of Commerce, located at 3940 Keele St, North York, ON, M3J 1P2 (the "**Bank**"), phone number 905-572-5953.
 - b) As at the date hereof, the total amount of monies we have received from (or on behalf of) the Purchaser in connection with the purchase of the aforementioned unit in the Condominium [including all monies received for extras and upgrades, as well as all deposit monies received on account of the purchase price (including any monies received in connection with the interim-occupancy closing, if applicable)] amounts to \$1,323,600.00. **This amount is predicated on the deposit cheque(s) set out in paragraph 2 above, having cleared the Bank and being duly honoured.**
4. You will receive notice if there is any change in the prescribed trustee (or escrow agent) holding the Money in trust, before our law firm no longer has any obligations under *The Condominium Act, 1998* (or the regulations made thereunder) relating to the Money, or to any security of a prescribed class that the Declarant may provide for the Money.

Dated: October 02, 2018.

C:\WP\Docs\Deposits\Form 4.wpd

DELZOTTO, ZORZI LLP

Per:



Stella Vilardo

4810 Dufferin Street, Suite D,
Toronto, Ontario, M3H 5S8
Telephone #416-665-5555
Fax #416-665-9653



CREDIT VALLEY TOWN PLAZA
6051 CREDITVIEW RD
MISSISSAUGA, ON L5V 2A8

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_6053907_006 E D 01870 11659

MAHAL VENTURE CAPITAL INC.
6845 SECOND LINE W
MISSISSAUGA ON L5W 1M8



Statement of Account		Account Type	Statement From - To	
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD BASIC	SEP 28/18 - OCT 31/18	
1870	1870-5240286			Page 1 of 2
DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			SEP28	57.2100
OC 1597-DEPOSIT		331,000.00	OCT02	
CHQ#00030-0142850291 CHQ#00031-0160076868	330,900.00		OCT02	49.55
OVERDRAFT INTEREST	0.89		OCT31	604.93

JCA3364689-0023317-11659-0001-0001-00-

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: THE TORONTO-DOMINION BANK

TAB 5

Transit 05432 Branch / Centre bancaire BRITANNIA & LATIMER HEARTLAND B CTR Account No. / N° de compte 05432/7039034
 FOR THE PURCHASE OF A BANK DRAFT 152,000.00
 PAID TO - MAHAL VENTURE CAPITAL INC.*****

2207400 172 BIL-2007/02

2017-10-25
 DATE Y/A MM DJ
 *****152,000.00

Total \$

Debit Advice / Avis de débit

- MR SANTOKH MAHAL
- 800 SWINBOURNE DR
- MISSISSAUGA
- L5V 1J6

ON



Pro Manager / Pour le directeur
 Le logo CIBC est une marque déposée de la Banque CIBC.

Transit 05432 Branch / Centre bancaire BRITANNIA & LATIMER HEARTLAND B CTR Account No. / N° de compte 05432/7039034
 FOR THE PURCHASE OF A BANK DRAFT 152,000.00
 PAID TO - DELZOTTO, ZORZI LLP, IN TRUST*****

2207400 172 BIL 2015/06

2017-10-24
 DATE Y/A MM DJ
 *****152,000.00

Total \$

Debit Advice / Avis de débit

- MR SANTOKH MAHAL
- 800 SWINBOURNE DR
- MISSISSAUGA
- L5V 1J6

ON



Pro Manager / Pour le directeur
 Le logo CIBC est une marque déposée de la Banque CIBC.

VOID

BMO Bank of Montreal • Banque de Montréal
 CREDITVIEW AND BRITANNIA
 6085 CREDITVIEW RD, UNIT 1
 MISSISSAUGA, ONTARIO, CANADA L5V 2A8
 CTI

CANADIAN \$ DRAFT / TRAITE EN DOLLARS CANADIENS

087460

DATE 2017 10 25
 Y/A M/M D/J

Name of payee / Nom du bénéficiaire

MAHAL VENTURE CAPITAL INC \$ 152,000.00



for Bank of Montreal / pour la Banque de Montréal /100 Canadian Dollars Canadiens

Name of remitter / Nom de l'expéditeur

Signing Officer / Signataire

Address of remitter / Adresse de l'expéditeur

Signing Officer / Signataire

0 208 74603

3 - Purchaser's Receipt / Reçu de l'acheteur



Branch: 1870 CREDIT VALLEY TOWN
PLAZA
6051 CREDITVIEW RD
MISSISSAUGA, ON

Date: Oct 25, 2017, 03:30 PM
Ref #: 004994786 - ZALA

From: Cheque Total
152,000.00

To: 1870-52***86
Deposit
Cash: 0.00
Number of Items: 1
MAHAL VENT
152,000.00

From: 1870-52***86 Certified
Cheque
MAHAL VENT
310,000.00

To: 1870-115 Cert Chq Date:
Oct 25 2017 #: 20
Pay To: DELZOTTO
ZORZILLP, IN TRUST
Desc: 1870-5240286
310,000.00

To: 1870-225 CC - Account
Holder Fee
10.00

From: 1870-52***86
Withdrawal
MAHAL VENT
10.00

Banking can be this comfortable

TAB 6

Begin forwarded message:

From: "Wiseman, Lindsay" <Lindsay.Wiseman@Chubb.com>
Subject: RE: [EXTERNAL] Date of Loss July 10, 2021; Claim# 14521005056 ; Policy# 30605245
Date: September 20, 2021 at 3:19:20 PM EST
To: Jesse Mahal <jesse.mahal@gmail.com>
Cc: Canadian Claim Reports <canadaclaims@chubb.com>

Hello Jesse,

Thank you for your email.

I apologize for the delay, I was not in the office the latter part of the week.

We are still actively investigating the theft of your vehicle. I will update you later this week regarding next steps.

Take care,
Lindsay

Lindsay Wiseman
Claims Specialist, Auto & Property - Canada Claims
Special Investigations Unit

199 Bay Street, Suite 250, P.O. Box 139, Commerce C, Toronto, ON M5L 1E2, Canada
O 647-798-6105
E lindsay.wiseman@chubb.com

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: Friday, September 17, 2021 10:57 AM
To: Wiseman, Lindsay <Lindsay.Wiseman@Chubb.com>
Subject: Re: [EXTERNAL] Date of Loss July 10, 2021; Claim# 14521005056 ; Policy# 30605245

Hi Lindsay

How are you?

What are the next steps for the claim?

Kind Regards

Jesse Mahal
905-781-1399

On Aug 18, 2021, at 3:37 PM, Wiseman, Lindsay
<Lindsay.Wiseman@chubb.com> wrote:

Hi Jesse,

Thank you for reaching out regarding this.

You can contact your local Enterprise branch and let them know the claim information noted in the subject line.

Please let me know if you have any difficulties and I will reach out to them tomorrow morning.

Take care,
Lindsay

Lindsay Wiseman
Claims Specialist, Auto & Property - Canada Claims
Special Investigations Unit

199 Bay Street, Suite 250, P.O. Box 139, Commerce C, Toronto, ON M5L 1E2,
Canada
O 647-798-6105
E lindsay.wiseman@chubb.com

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: Wednesday, August 18, 2021 11:18 AM
To: Wiseman, Lindsay <Lindsay.Wiseman@Chubb.com>
Subject: Re: [EXTERNAL] Date of Loss July 10, 2021; Claim# 14521005056
; Policy# 30605245

Hi Lindsay

I haven't received any call from enterprise. Do you have a number and I can reach out directly.

Kind Regards

Jesse Mahal
905-7811399

On Aug 17, 2021, at 9:17 PM, Jesse Mahal
<jesse.mahal@gmail.com> wrote:

Hi Lindsay

Owner of the vehicle is the Company Golden Miles Food Corporation (Sarbjit Mahal - my mother, co signed the finance agreement)

attached is the signed copy

Kind Regards

Jesse Mahal

<chubb consent form.pdf>

On Aug 17, 2021, at 12:28 PM, Wiseman,
Lindsay <Lindsay.Wiseman@Chubb.com>
wrote:

Hello Jesse,

I am writing in follow up to our investigation of the theft of your vehicle.

Can you please provide me with the contact information for the owner of the vehicle, Sarbjit Mahal?

Furthermore, can you please sign the attached consent form and send back to me?

Please let me know if you have any questions.

Thank you,
Lindsay

Lindsay Wiseman
Claims Specialist, Auto & Property - Canada
Claims
Special Investigations Unit

199 Bay Street, Suite 250, P.O. Box 139,
Commerce C, Toronto, ON M5L 1E2, Canada
O 647-798-6105
E lindsay.wiseman@chubb.com

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: Friday, August 13, 2021 11:23 AM
To: Jesse Mahal <jesse.mahal@gmail.com>
Cc: Wiseman, Lindsay
<Lindsay.Wiseman@Chubb.com>; Canadian
Claim Reports <canadaclaims@chubb.com>
Subject: [EXTERNAL] Re: Date of Loss July 10,
2021; Claim# 14521005056 ; Policy# 30605245

**** This attachment(s) originated from a public website. Use caution when opening these messages. - Chubb Global Information Security ****

On Aug 13, 2021, at 9:27 AM,
Jesse Mahal
<jesse.mahal@gmail.com> wrote:

Attachments available
until Sep 12, 2021

[Click to Download](#)

Camera1_Second Line_Second
Line_20210710015900_20210710020359_6371471421.mp4
32.6 MB

[Click to Download](#)

Camera2_Second Line_Second
Line_20210710015900_20210710020359_6371472290.mp4
16.9 MB

[Click to Download](#)

Ford Raptor Bill of Sale.pdf
872 KB

On Aug 12, 2021, at
11:51 AM, Wiseman,
Lindsay
<[Lindsay.Wiseman@
Chubb.com](mailto:Lindsay.Wiseman@Chubb.com)> wrote:

Hello Jesse,

Thank you for
speaking with me
earlier today
regarding your
vehicle claim.
Further to our
conversation, there
is a 30 day waiting
period prior to
settling your claim in
hopes that the
vehicle is recovered.

In the interim, we

ask that you please
provide the
following
documentation:

1. Bill of Sale
2. Vehicle Ownership
3. Please forward
the video
surveillance of the
incident

Once we have
received the above
documentation, we
will touch base with
you closer to the 30
day mark to discuss
the next steps.

As discussed,
Enterprise will be
contacting you
directly to set up the
rental vehicle. Please
note there is a
\$3,000 rental max
and we do not cover
the cost of gas,
mileage or any
additional insurance
required. Your
current auto policy
will roll over to the
rental vehicle.

If you have any
questions or
concerns, please feel
free to contact me.

Thank you,

Lindsay Wiseman
Claims Specialist,
Auto & Property -
Canada Claims
Special Investigations
Unit

199 Bay Street, Suite
250, P.O. Box 139,
Commerce C,
Toronto, ON M5L
1E2, Canada
O 647-798-6105
E
lindsay.wiseman@chubb.com



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<Consent form EN-Claim.pdf>

APPENDIX “C”



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Chris Burr

Partner

Dir: 416-863-3261

chris.burr@blakes.com

December 8, 2021

VIA E-MAIL

Reference: 00025198/000002

David Seifer
Dickinson Wright LLP
199 Bay Street, Suite 2200
Commerce Court West
Toronto, ON M5L 1G4

Re: Mahal Venture Capital & Golden Miles Food Bankruptcy & Receivership Proceedings

David:

Thank you for your letter of November 30, 2021 (the "**November 30 Letter**"). This response is being sent on behalf of KSV Restructuring Inc., in its capacity as receiver and licenced insolvency trustee (the "**Receiver**" and the "**Trustee**", respectively) of Mahal Venture Capital Inc. ("**Mahal VC**") and Golden Miles Food Corporation ("**GM**").

Suite GPH1, Aquabella Bayside Toronto Inc.

We have reviewed the transaction documents, bank records and correspondence included in the November 30 Letter. We see no evidence in any of the documentation provided to indicate that Mahal VC entered into the August 3, 2017 agreement and purchase and sale (together with schedules and addenda, the "**APS**") for Suite GPH1, 118 Merchants' Wharf, Toronto (the "**Condominium**") in trust for Jesse and Santokh Mahal. You have provided banking records that appear to demonstrate that certain funds were deposited in Mahal VC accounts by Santokh, and have indicated that additional bank records will be provided when available, however banking records and flows of funds do not create a trust or demonstrate an intention to create a trust.

Beyond the absence of evidence of a trust, an intention to create a trust, or the object or subject matter of such trust, the APA includes several elements that are contrary to or inconsistent with the creation of a trust, including:

- Mahal VC is clearly identified as "Purchaser" in all of the agreements that have been provided, without any mention of its capacity as a trustee or identification of a beneficiary.

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- The Purchaser (Mahal VC) represents to the vendor that it is acquiring the Condominium “with the intention of being the sole beneficial owner thereof on Closing”.¹
- Because the Purchaser is a company, it agrees that on closing its authorized signing officer will confirm that the Condominium “has not been purchased or acquired in trust for (nor is title being held or take by the Purchaser in trust for) any other party or parties.”²
- Where the Purchaser is a corporation, or where the Purchaser is buying in trust for a corporation to be incorporated, the principal or principals of the corporation or the person named as the Purchaser in trust for a corporation to be incorporated, are deemed to be personal guarantors,³ and the APA makes no provision for corporations purchasing in trust for third parties.

Accordingly, the Trustee does not accept, based on the documents provided in the November 30 Letter, that Mahal VC’s interest in the APA (including the \$1,323,600 of deposits thereunder (the “**Deposits**”)) and the Condominium is being held in trust for Santokh and Jesse, and does not accept that the APA and Condominium are not property of Mahal VC pursuant to s. 67(1)(a) of the BIA.

If there are records that establish a trust, please provide those records and the Trustee will consider them. Additional bank records indicating that the Deposits were paid by Mahal VC using money provided to it by Santokh may be proof that Santokh has an equity interest in Mahal VC, but based on the records provided to date, they will not be evidence of a trust, or evidence of a loan by Santokh to Mahal VC.

The Trustee has written to Aquabella Bayside Toronto Inc., the vendor under the APA, to (a) notify it of the Mahal VC bankruptcy and the Trustee’s interest in Mahal VC’s property, (b) request documentation and correspondence related to the APA, Condominium and Deposits, and (c) advise that the Trustee is the only party authorized to give instructions or consents under the APA. No response has been received as of the date of this letter.

The Trustee will not confirm that it will take no steps to exercise rights in respect of the APA or otherwise deal with Mahal VC’s interest in the APA, Condominium or Deposits until the outstanding trust claim is finally decided. However, the Trustee confirms that it will not take any such steps without (a) inspector approval, and (b) prior written notice to you.

The Ford F150

Thank you for the details regarding the theft of the Ford F150 and the ongoing insurance claim. We were surprised to learn of both the theft in July and the insurance claim, given that the Receiver specifically requested details about the truck on November 12, 2021, and given that no information

¹ APA Schedule A, s. 1.04(b).

² APA Schedule A, s. 1.04(e)(ii).

³ APA Schedule A, s. 5.01(e).

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about a Chubb insurance policy in favour of GM has ever been provided, notwithstanding requests for books and records going back to October 1, 2021.

The Trustee has written to Chubb to (a) notify it of the GM bankruptcy and the Trustee's interest in GM's property, (b) request documentation and correspondence related to the stolen vehicle, insurance policy and insurance claim, and (c) advise that the Trustee is the only party authorized to give instructions or consents in respect of the vehicle or the claim. No response has been received as of the date of this letter.

Data Review & Disclosure Protocol

The Receiver provided a draft data review and disclosure protocol (the "**Protocol**") on November 12, 2021. We have not received a written response or any comments, but I did speak to Lisa Corne briefly on November 15, 2021, and understood from our discussion that the Protocol was generally acceptable. Please confirm that the Mahals are signed-off on the form of Protocol circulated on November 12, 2021, or alternatively provide any comments you may have. If we do not hear from you by December 15, 2021, we will assume that the Mahals have agreed to the Protocol.

Santokh Mahal Security Motion

The affidavit of Santokh Mahal, sworn November 21, 2021, and served in connection with Mr. Mahal's motion for a declaration regarding his security interest in the property of GM (the "**Security Motion**"), indicates at paragraphs 9 and 11 that additional evidence in connection with the Security Motion would be forthcoming.

As the Trustee indicated in the GM first meeting of creditors on December 6, 2021, the Receiver will be opposing the Security Motion, and the Trustee expects to bring a cross-motion seeking a declaration that the security granted to Mr. Mahal by GM in December 2020 is a preference.

As set out in the Supplement to the Second Report of the Receiver (the "**Supplementary Report**"), the Receiver does not have the documentary support to fully assess the validity, enforceability or priority of Mr. Mahal's security. Given the limited extent of the books and records that have been disclosed to the Receiver and the Trustee to date, virtually the only evidence available to the Receiver and the Trustee regarding the Security Motion and the Trustee's preference analysis is what is included in Mr. Mahal's November 21, 2021 motion record. We will require all of Mr. Mahal's evidence to be provided in order to properly respond. Accordingly, please advise if a supplementary motion record will be served, and if so, when.

Finally, with respect to the Security Motion, please advise if you have taken any steps to secure a return date for that motion. We requested from you a timetable for the adjudication of the Security Motion issues by email on November 17, 2021, and the Receiver stated in the Supplementary Report that it is prepared to agree to a reasonable and expedited timeline for the adjudication of the Security Motion. In the Receiver's view, it is not our responsibility to schedule the Security Motion. Accordingly, please advise when you are available for a hearing of the Security Motion. In this regard, we remind

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you that the bid deadline in the Receiver's sale process is January 31, 2021, and that we expect that the Security Motion will be heard before that date.

Outstanding Disclosure Requests

We have not yet received from you the following requested items, and require that they be delivered:

- Corporate minute books for each of Mahal VC and GM;
- Copies of each unpaid invoice issued by GM corresponding with the accounts receivable aging that Jesse has provided; and
- All banking records, including cancelled cheques, wires and transfers, for each of Mahal VC and GM.

* * * * *

We look forward to your response.

Regards,

Chris Burr

Cc: N. Goldstein & M. Vininsky, KSV

APPENDIX “D”

Thompson, Nancy

From: Lisa S. Corne <LCorne@dickinson-wright.com>
Sent: Friday, December 10, 2021 4:27 PM
To: Burr, Chris; Jorgensen, Maia
Cc: David P. Preger; David Z. Seifer
Subject: In the Matter of the Bankruptcy of Mahal Venture Capital Inc. and Golden Miles Food Corporation
Attachments: Skymark.zip; William Dunne.zip; Warehouse Trading.zip; wmd overdue accounts .pdf; AR Summary excluding compound interest .pdf; warehouse trading overdue account.pdf; Invoice 1377.pdf

External Email | Courrier électronique externe

Hi Chris,

In response to your letter to David Seifer dated December 8, 2021, we respond as follows:

Suite GPH1 Aquabella Bayside

Our clients intend to seek a declaration that MVC holds all of its interest in the APS for the purchase of the condominium unit in trust for Jesse and Santokh Mahal. The APS provides that the purchaser will provide, prior to closing, an irrevocable direction to the vendor setting out how the purchaser wishes to take title. In accordance with that provision, it was always intended that the title to the condominium would be held in the name of Jesse Mahal. Our clients are gathering the relevant information and documentation to support this motion and we will be delivering motion materials shortly.

Data Disclosure

The data disclosure protocol is acceptable to our clients.

Santokh Mahal PPSA Security

We will be delivering a supplementary affidavit by the end of next week. I suggest a hearing during the third week of January and estimate we will need approximately two hours. Can you please canvass the Commercial List for dates during that week which are available and let us know.

Additional Records

We are informed that there were no minute books prepared for either MVC or GM. As requested, copies of the invoices to support the accounts receivable of GM are attached.

Sale Process

Please provide me with the form of offer to purchase, which is to be used in the sale process and the NDA required to access the data room so that each of Jesse and Santokh Mahal and our firm may access the data room.

Best regards,

Lisa

Lisa S. Corne Partner

199 Bay Street
Suite 2200
Commerce Court West
Toronto ON M5L 1G4

Phone 416-646-4608
Fax 844-670-6009
Email LCorne@dickinsonwright.com

[Profile](#) [V-Card](#)

DICKINSON WRIGHT LLP

ARIZONA CALIFORNIA FLORIDA ILLINOIS KENTUCKY MICHIGAN NEVADA
OHIO TENNESSEE TEXAS WASHINGTON D.C. TORONTO

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APPENDIX “E”

TRUST AGREEMENT

BETWEEN:

SANTOKH MAHAL
Beneficial Owner

- and -

MAHAL VENTURE CAPITAL INC.
Trustee

WHEREAS, SANTOKH MAHAL, desires to purchase the property municipally known as Suite GPH1, 118 Merchants' Wharf, Toronto, Ontario.

AND WHEREAS SANTOKH MAHAL, and **MAHAL VENTURE CAPITAL INC.,** desire and agree that **MAHAL VENTURE CAPITAL INC.,** take title to this property in trust and on behalf of **SANTOKH MAHAL,** until such time that **SANTOKH MAHAL,** directs **MAHAL VENTURE CAPITAL INC.,** to transfer title to the property legally described as Aquabella GPH1 (the condominium), and municipally known as Suite GPH1, 118 Merchants' Wharf, Toronto, said time not to be later than five years from date of execution.

AND WHEREAS SANTOKH MAHAL and **MAHAL VENTURE CAPITAL INC.** have agreed to certain terms and provisions as hereinafter set forth.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the

mutual covenants, conditions and agreements herein contained, the parties hereto do hereby each covenant and agree with the other as follows:

MAHAL VENTURE CAPITAL INC., (hereinafter referred to as the “**Trustee**”) agrees to take title of **Suite GPH1, 118 Merchants’ Wharf, Toronto**, in trust for **SANTOKH MAHAL** of the City of Mississauga, in the Regional Municipality of Peel (hereinafter referred to as the “**Beneficial Owner**”) until such time as **SANTOKH MAHAL** directs **MAHAL VENTURE CAPITAL INC.**, in writing to transfer title to **SANTOKH MAHAL**, said time not to be later than five years from date of execution.

SANTOKH MAHAL agrees to pay all carrying costs in regards to **Suite GPH1, 118 Merchants’ Wharf, Toronto**, including mortgage payments, taxes, utilities until the property is transferred to **SANTOKH MAHAL** from **MAHAL VENTURE CAPITAL INC.**.

SANTOKH MAHAL agrees to indemnify and save harmless **MAHAL VENTURE CAPITAL INC.** from all actions, lawsuits and claims incurred by **MAHAL VENTURE CAPITAL INC.** in regards to any liens or carrying costs incurred in paying any carrying costs for the said property.

MAHAL VENTURE CAPITAL INC. agrees to indemnify and save harmless **SANTOKH MAHAL** from any lawsuits, liens, or executions registered against [**Insert Address**], **Toronto** incurred by **MAHAL VENTURE CAPITAL INC.** not arising from any

carrying cost in regards to the said property and **MAHAL VENTURE CAPITAL INC.** agrees to discharge any such lien or execution so registered against the said property.

SANTOKH MAHAL agrees to provide the full cash down payment and to pay all legal fees and disbursements including land transfer tax incurred in purchasing the property and further agrees to pay all fees and disbursements incurred in transferring title from **MAHAL VENTURE CAPITAL INC.** to **SANTOKH MAHAL**.

SANTOKH MAHAL and **MAHAL VENTURE CAPITAL INC.** agree to execute all documentation required to purchase the property, finalize any mortgage financing commitment and to transfer title from **MAHAL VENTURE CAPITAL INC.** to **SANTOKH MAHAL**.

MAHAL VENTURE CAPITAL INC. agrees to transfer title which he holds in trust for **SANTOKH MAHAL** who shall retain the beneficial interest in the property forthwith upon **SANTOKH MAHAL** so directing and **MAHAL VENTURE CAPITAL INC.** acknowledges that he takes title to the property in trust on behalf of **SANTOKH MAHAL**.

SANTOKH MAHAL and **MAHAL VENTURE CAPITAL INC.** agree that the terms of the herein agreement shall enure to the benefit of their respective successors, assigns, heirs and legal representatives and shall be binding upon them.

IN WITNESS WHEREOF the respective signatures of the herein parties dated at this 7
day of July, 2017

Witness: 
_____ **SANTOKH MAHAL**

Witness: 
_____ **MAHAL VENTURE CAPITAL INC.**

DATED: 7 day of July 2017

TRUST AGREEMENT

BETWEEN:

SANTOKH MAHAL
Beneficial Owner

- and -

MAHAL VENTURE CAPITAL INC.
Trustee

6845 Second line West, Mississauga Ontario.

APPENDIX “F”

NEIL L. BOYKO, B.A., LL.B.

BARRISTER, SOLICITOR AND NOTARY

98

TEL: (416) 743-3232
FAX: (416) 743-5034
lawckerk@neilboykolaw.com

3500 DUFFERIN STREET
SUITE 303
TORONTO, ONTARIO
M3K 1N2

STATEMENT OF ACCOUNT

July 31, 2017

Mr. J. Mahal and S. Mahal
6845 Second Line W
Mississauga, Ontario
L5W 1M8

Dear Sir:

Re: MAHAL PURCHASE FROM AQUABELLA BAYSIDE TORONTO SUITE GPH1.
118 MERCHANTS' WHARF TORONTO, ONTARIO

FOR SERVICES RENDERED IN THE ABOVE MATTER
INCLUDING,

To writing and receiving letters	3 hrs
To receiving closing documents from vendors solicitor having you sign same	.05 hrs
To all meetings with you	.05 hrs
To all calls with you and the solicitor for the vendor	1 hrs
To drafting trust agreement	1 hrs
TOTAL TIME THIS BILL	6 hrs


My Fees herein at the rate of \$490.00 p/h **2,940.00**

DISBURSEMENTS SUBJECT TO HST

Paid for all searches	286.30	
Paid clerk's fees	375	
Paid for photocopies, fax, telephone	50	
HST 13%	92.47	803.77

TOTAL OWING TO NEIL L. BOYKO **\$3,743.77**

THIS IS MY ACCOUNT
NEIL L. BOYK

Per: 

NLB/gr

APPENDIX “G”

Parente, Alexia

From: Burr, Chris
Sent: Thursday, February 10, 2022 3:28 PM
To: David Z. Seifer; David P. Preger; Lisa S. Corne
Cc: Noah Goldstein; Mitch Vininsky; McIntyre, Caitlin
Subject: Mahal - Confirmation of Delivery Dates and Request for Documents

Hi All,

Further to our call on Tuesday, I confirm that, subject to the below, the Trustee's materials in respect of the March 9, 2022 Condo motion will be delivered on or before Friday, February 18, 2022. I further confirm that the Trustee/Receiver's materials in respect of Mr. Mahal's security motion and Skymark's oppression motion will be delivered on or before Friday, February 25, 2022.

Regarding the Condo motion and Mr. Mahal's Affidavit sworn January 19, 2022 (the "**Mahal Affidavit**"), the Trustee hereby requests the following, each of which constitute records or information of the bankrupt Mahal Venture Capital Inc. to which the Trustee is entitled:

1. An originally signed, hard copy version of the Trust Agreement attached to the Mahal Affidavit as Exhibit 2A;
2. Any electronic version of the Trust Agreement attached to the Mahal Affidavit as Exhibit 2A (whether or not signed or in final form);
3. An original hard copy invoice from Neil Boyko dated July 31, 2017, attached to the Mahal Affidavit as Exhibit 2B or if this invoice was emailed to your client, a copy of the email;
4. A copy of the cheque or excerpt from the relevant bank statement evidencing payment of Mr. Boyko's July 31, 2017 invoice;
5. Confirmation that Dickinson Wright has not been able to contact Mr. Boyko, or alternatively Mr. Boyko's contact information that Dickinson Wright has used to contact him.

We look forward to the receipt of these materials. Each of the documents or files in points 1-4 ought to have been disclosed to the Trustee, as records of Mahal Venture Capital Inc., in response to any of the several requests for books and records in your clients' possession, including without limitation in requests sent on November 17, 2021, November 23, 2021 and December 8, 2021. Any further delay in delivering the documents in 1-4 above may impact the Trustee's ability to deliver its responding motion materials on February 18, 2022, as indicated above.

Thank you.

Chris.

APPENDIX “H”



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Mahal Venture Capital Inc. and
Golden Miles Food Corporation**

October 20, 2021

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COURT FILE NO. CV-21-00664778-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SKYMARK FINANCE CORPORATION

APPLICANT

- AND -

MAHAL VENTURE CAPITAL INC. AND
GOLDEN MILES FOOD CORPORATION

RESPONDENTS

FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

OCTOBER 20, 2021

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager ("Receiver") of the assets, undertakings and properties of Mahal Venture Capital Inc. ("Mahal VC") and Golden Miles Food Corporation ("Golden Miles", and together with Mahal VC, the "Companies") owned or used in connection with the flour mill (the "Flour Mill") located on the property municipally known as 155 Adams Blvd., Brantford, Ontario (the "Real Property" and together with the Flour Mill, the "Property").
2. KSV was appointed Receiver of the Companies pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on October 1, 2021 (the "Receivership Order"). A copy of the Receivership Order is provided as Appendix "A".
3. The principal purpose of the receivership proceedings is to allow the Receiver to take possession, preserve, market and sell the Property to maximize value for the Companies' creditors and other stakeholders.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about these proceedings;
 - b) summarize the Receiver's activities since the date of its appointment;
 - c) outline the Receiver's attempts to obtain information and Property from the Companies' principals, Santokh Mahal ("Santokh") and Jesse Mahal ("Jesse", and together with Santokh, the "Mahals"); and
 - d) request that the Court issue an Order:
 - i. directing each of Santokh and Jesse to comply with their obligations under the Receivership Order, including to, among other things, immediately provide to the Receiver all Property and records (physical and electronic) in their possession, power and control;
 - ii. directing each of Santokh and Jesse to return to the Receiver, no later than 5 p.m. (Toronto Time) on October 22, 2021, the PLC (as defined below), or, if not in their possession, to provide to the Receiver the complete contact information of the party in possession of the PLC, including all correspondence regarding the chain of custody of the PLC from the Companies to such party;
 - iii. directing Santokh to return, no later than 5 p.m. (Toronto Time) on October 22, 2021, \$21,500 that was transferred from the bank account of Golden Miles to his personal account on October 4, 2021, after the date of the Receivership Order;
 - iv. directing the Companies' accountants, Gill & Co. ("Gill"), to provide no later than 5 p.m. (Toronto Time) on October 28, 2021 certain Records (as defined in the Receivership Order) and supporting documentation for the payment it received from Golden Miles on October 4, 2021;
 - v. making certain declarations and orders commensurate with the foregoing, as further set out in the draft order attached to the Receiver's motion record; and
 - vi. directing the Mahals, on a joint and severally basis, to pay the costs of the Receiver and its counsel incurred in preparing this Report and seeking the relief herein .

1.2 Currency

1. All amounts in this Report are expressed in Canadian Dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon certain of the Companies' unaudited financial statements, limited books and records obtained from Jesse (as discussed below) and discussions with the Mahals and a former advisor to the Companies.

2. The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.

2.0 Background

1. Mahal VC was incorporated in 2014 under the *Business Corporation Act* (Canada) and is a single purpose corporation that owns the Real Property. The Receiver understands that Jesse is the sole officer, director and shareholder of Mahal VC.
2. Golden Miles was incorporated in 2010 as Golden Miles Bread & Bagel Corporation under the *Business Corporations Act* (Ontario) and changed its name to Golden Miles Food Corporation in 2017. The Receiver understands that Santokh, Jesse’s father, is the sole officer, director and shareholder of Golden Miles.
3. The Mahals have advised the Receiver that Mahal VC owns the Real Property and that Golden Miles owns the machinery, equipment and vehicles used in connection with the Flour Mill. Golden Miles operates from the Real Property and describes itself in its unaudited financial statements as at June 30, 2020 as being “engaged in the sale of cookies, crackers, and dried plant material”.
4. Construction of the Flour Mill appears to be substantially complete; however, it has not been issued the permits, licenses and approvals necessary to operate from the relevant authorities, including the City of Brantford and various health and safety regulators.
5. The Receiver understands that the Companies had no employees as of the date of the Receivership Order. As discussed further below, the Mahals have not provided the Receiver with any information regarding the Companies’ obligations, including any amounts owing to its former employees.
6. Skymark Financial Corporation (“Skymark”) is the Companies’ largest creditor. As of the date of the Receivership Order, and for the reasons described below, KSV determined that the Companies were indebted to Skymark in the amount of approximately \$29.2 million¹. The Skymark debt relates to various loans to Mahal VC in connection with mortgages granted by Mahal VC on the Real Property (the “Mahal Loans”) and to Golden Miles in connection with equipment financing (the “GM Loans”, and together with the Mahal Loans, the “Loans”). The Receiver understands that the primary purpose of the Loans was to construct a Flour Mill on the Real Property.
7. The Skymark receivership application materials and related documentation provide details concerning the defaults under the Loans and subsequent events resulting in these proceedings. These materials include the Minutes of Settlement dated July 26, 2021 between Skymark and the Companies (the “Minutes”) pursuant to which, among other things, KSV was engaged to determine the amount owing under the Loans.

¹ This Skymark facility consists of approximately \$19.7 million owing by Mahal VC and approximately \$9.5 million owing by Golden Miles.

8. The Receiver has been provided with a copy of a promissory note allegedly issued by Golden Miles to Santokh in the approximate amount of \$24.1 million, together with a general security agreement dated December 14, 2020. Santokh filed a financing statement in the *Personal Property Security Act* (Ontario) (the “PPSA”) registry against Golden Miles on December 16, 2020.
9. Several other parties have also made registrations against Golden Miles under the PPSA and/or filed charges or liens against the Real Property, including (i) a construction lien in 2019 by Vicano Construction Limited (“Vicano”), one of the Companies’ former general contractors, in the approximate amount of \$5.8 million; (ii) a number of transfers of charges by parties that funded Skymark so that Skymark could make the Loans; and (iii) a mortgage in 2021 by Santokh, in the approximate amount of \$35 million.
10. As set out in Section 3 below, the Receiver has located virtually no books and records of the Companies and therefore has been unable to compile creditor lists, which were required for the Receiver’s statutory report to the Office of Superintendent of Bankruptcy which was due ten days after the granting of the Receivership Order. Accordingly, all indebtedness referred to in this Report should be considered preliminary.
11. The Receiver’s counsel, Blake, Cassels & Graydon LLP (“Blakes”), is currently reviewing the validity and priority of the security interests claimed or registered against the Property. The limited records provided by the Companies have forced the Receiver and Blakes to rely on records provided by the respective secured creditors, which has delayed the process. The Receiver will report on the results of this security review when it is complete.

3.0 Receiver’s Activities

1. The Mahals have provided minimal cooperation and information to the Receiver since its appointment. The Receiver’s dealings with the Mahals are set out in Section 3.1 and 3.2 below.
2. Notwithstanding the minimal cooperation, the Receiver has taken steps to secure the Property and gather information relating to the Companies as expeditiously and cost-effectively as possible. Among other things, the Receiver has:
 - a) secured the Flour Mill by changing the locks, installing exterior security cameras, disabling the exterior gates (the “Gates”) and arranging periodic security patrols at the Real Property;
 - b) reviewed records provided by Skymark and its counsel;
 - c) met with certain of the Companies’ vendors, including:
 - i. Buhler Canada Inc., an international milling equipment supplier;
 - ii. Fluid Construction Inc., the most recent general contractor of the Flour Mill;
 - iii. Vicano, the former general contractor and current construction lien claimant, as described above;

- iv. Pelican Woodcliff Inc., a cost consultant engaged by Golden Miles to review its construction budget; and
- v. several vendors that maintained the Flour Mill's alarms, sprinklers and equipment;
- d) met with Richard Rossetti, an engineer involved in the design and construction of the Flour Mill. Mr. Rossetti accompanied the Receiver on a tour of the Flour Mill, identified deficiencies that, in his view, need to be addressed, and provided the Receiver with extensive electronic data regarding the Property;
- e) met with the Companies' insurance agent and representatives of one of the Companies' insurers in order to maintain insurance for the Property;
- f) corresponded with financial institutions where the Companies hold accounts²;
- g) held discussions and corresponded with certain judgment creditors or counterparties to litigation, such as Garage Living Inc. (which has a \$61,000 judgment against the Companies) and Vivian Group Inc. (which has advanced a \$750,000 trust claim, among other claims, against the Companies); and
- h) corresponded with Gill, the Companies' accountants.

3.1 Attendances at the Flour Mill and Missing Records and Property

First Attendance – July 30, 2021

1. Pursuant to the Minutes, the Companies agreed that KSV would be entitled to “attend at the [Flour Mill] to make an inventory of and inspect the condition of the collateral secured under the [Loans] and report its findings to Skymark.” The Companies agreed in the Minutes to “provide all reasonable assistance to KSV or its representatives to enable the inspection provided for in [the Minutes] to take place, including without limitation, providing physical access to the [Flour Mill] and promptly responding to any questions or requests from KSV or its representatives”.
2. On July 30, 2021, KSV engaged an agent to visit the Flour Mill (the “July Inspection”). KSV's agent was initially refused access by Santokh, and ultimately only permitted by Santokh to enter the Flour Mill on the basis that no photographs, notes or other recordings be taken. KSV's records of the July Inspection are accordingly based on a recount by its agent immediately following the July Inspection.

Second Attendance – October 1, 2021

3. On October 1, 2021, representatives of the Receiver attended outside the Flour Mill, awaiting the granting of the Receivership Order which was being taken out on consent that day pursuant to the terms of the Minutes.

² Based on banking information the Receiver obtained from Skymark related to the Companies. The Mahals have not provided the Receiver with any of the Companies' bank account details.

4. Pending the granting of the Receivership Order, the Receiver observed both Jesse and Santokh removing bags and boxes from the office entrance of the Flour Mill into their respective vehicles. The Receiver did not review the contents of these bags and boxes as the removal was completed prior to the Receiver's appointment. The Receiver has requested that the contents of these bags and boxes be provided to the Receiver; however, this request has been ignored.
5. Immediately upon issuance of the Receivership Order, the Receiver entered the Flour Mill, accompanied by the Mahals, to undertake its duties and exercise the powers granted by the Receivership Order. The Receiver's observations on October 1, 2021 included:
 - a) numerous empty racks with loose/disconnected wiring inside the server room – only one server remained;
 - b) office furniture, including desks, chairs, monitors, keyboards and wires, but no CPUs or laptop computers;
 - c) no physical records, financial or otherwise, stored on the site;
 - d) no security camera monitoring equipment, despite numerous security cameras installed both inside and outside the Flour Mill; and
 - e) large bags and boxes of raw tobacco located inside and outside the premises (the "Tobacco").
6. The Receiver questioned the Mahals regarding the above, including the absence of records inside the office area. The Mahals advised the Receiver that no Property or records had been removed, yet neither of them identified where any records were located.
7. At the July Inspection, KSV's agent observed equipment, including servers, security monitoring equipment and CPUs, in the Flour Mill that were no longer there on October 1, 2021. The Receiver inquired about the location of these specific assets, and the Mahals again advised, without explanation, that no Property had been removed.
8. As part of securing of the Flour Mill, the Receiver attempted to change the passcode on the Gates which secure the premises from vehicle access. The Receiver was unable to reprogram the Gates and therefore disabled them by disconnecting the Gate-opening mechanism from the power source. This would ensure that no vehicles could access the Flour Mill over the weekend of October 2 and 3, 2021.
9. On Monday, October 4, 2021, the Receiver re-attended at the Property and observed that the Gates were open and the power supply physically reconnected. The Receiver requested an explanation from the Mahals. The Mahals' counsel at the time, Kirwin Partners LLP ("Kirwin"), advised that "the gate to the plant has a malfunction which causes it to open spontaneously in damp weather." An explanation was not provided as to how the weather could cause cables to be physically reconnected. Kirwin advised that the Mahals did not attend at the Property on October 2 or 3, 2021.

3.2 Written Requests for Information From the Companies and Mahals

1. Due to the issues described above, the Receiver and Blakes made numerous written requests to the Mahals and their counsel.
2. On October 1, 2021, Blakes advised Kirwin, the Companies' counsel at the time, (the "October 1st Correspondence") that the Receiver's representatives did not locate any digital or physical records and required that Jesse and Santokh "advise of the existence of all physical and digital records, and to provide access to and copies of same." In a follow up email on the same date, Blakes requested details regarding the Companies' insurance as soon as possible. Neither Kirwin nor the Companies responded to these requests. A copy of the October 1st Correspondence is attached as Appendix "B".
3. Blakes sent a letter dated October 4, 2021 (the "October 4th Letter") to Kirwin and requested, among other things, that:
 - a) Jesse and Santokh return the Property that was found to be missing from the Flour Mill and disclose the location of any and all other Property of the Companies that is subject to the Receivership Order;
 - b) Jesse and Santokh disclose the location of the Companies' books and records and permit the Receiver to make, retain and take copies of these records; and
 - c) all information and records specifically identified in Schedule "A" to the October 4th Letter be provided to the Receiver by noon on October 5, 2021. The Receiver also requested that the computers and other electronic devices of the Mahals (the "Devices") be provided to the Receiver so that they could be imaged.

A copy of the October 4th Letter is provided as Appendix "C".

4. Kirwin responded by email on October 5, 2021 to the October 4th Letter (the "October 5th Email") and indicated that "Santosh takes his obligations under the order seriously. I will assist in coordinating a meaningful response to the information requested in schedule A to your letter without further delay." The response from Kirwin, among other things, requested that the Receiver provide further specifics regarding the missing Property and the books and records. The October 5th Email is provided, without attachments, as Appendix "D".
5. Along with the October 5th Email, the Receiver was provided with a one-page document that listed six vendor accounts and court file links to ongoing litigation between the Companies and Vicano. In addition to the response from Kirwin, Santokh emailed to Blakes a copy of a recent electricity bill. The electricity bill was addressed to Santokh's personal residence.
6. Following the October 5th Email, Blakes sent a follow-up letter dated October 5, 2021 (the "October 5th Letter") to Kirwin which responded to questions from Kirwin. A copy of the October 5th Letter is attached as Appendix "E".
7. The Receiver was advised by Jesse on October 6, 2021 that the Mahals had retained Dickinson Wright LLP ("Dickinson"). A notice of change of lawyer was filed by Dickinson in these proceedings on October 6, 2021, which advised that Kirwin had been replaced by Dickinson as lawyers of record for the Companies.

8. On October 6, 2021, Blakes prepared an email (the "October 6th Email") to Dickinson regarding the complete lack of cooperation from the Mahals and their breaches of and disregard for the Receivership Order. The October 6th Email, which included the October 4th Letter and the October 5th Letter, is provided, without attachments, as Appendix "F".
9. On October 7, 2021, on a call with the Receiver, Blakes, Dickinson and Jesse (the "October 7th Phone Call"), Jesse advised that he would upload the information requested by the Receiver to a data room. While Jesse provided numerous documents, he did not do so in a manner that was responsive to the Receiver's information requests. He provided a "data dump" of what appear to be selective and outdated engineering files, site-drawings, floor plans, old invoices, budgets, old statements of account from Vicano and Fluid and certain property assessment documents. The documents uploaded in the data room did not include any of the financial books and records, bank or Canada Revenue agency ("CRA") account numbers, permit related documents, and certain other documents which the Receiver had requested on a priority basis. The Mahals also ignored the Receiver's requirement that they provide the Devices.
10. Following its review of the data upload, the Receiver advised Jesse on October 12, 2021 that the information it received was deficient and summarized, yet again, its requirements, including the Devices. No response was provided.
11. Later on October 12, 2021, the Receiver requested that Jesse provide the Receiver with the key to the mailbox at the Real Property and the "PCL (*sic*) Controller unit which has all the software programs to run the mill" as Jesse had previously advised the Receiver that the programmable logic controller (the "PLC"), an industrial computer adapted for the control of manufacturing processes which contains the essential software and source code required to operate the Flour Mill, was moved to the basement of the Flour Mill.
12. It is the Receiver's understanding, based on its consultations with third party experts, that without the PLC, the Flour Mill is inoperable.
13. On October 13, 2021, Jesse advised the Receiver:
 - a) "Still acquiring remaining information requested"; and
 - b) "PLC control is with supplier in Europe for further coding. They require payment and need to come over to install and commission all machines."
14. Copies of the October 12 and 13, 2021 emails (the "October 12th and 13th Emails") are attached as Appendix "G".
15. On the morning of October 20, 2021, Jesse attended at the Flour Mill with a representative of the Receiver in order to recover certain property that is not subject to the Receivership Order. Jesse produced a laptop and agreed to let the Receiver copy it; however, he advised that he was not willing to leave the laptop with the Receiver and requested to be present when the device is being imaged. This is acceptable to the Receiver, and the Receiver is prepared to coordinate a technician to undertake such imaging forthwith with Jesse present.

3.3 Gill & Co.

1. During the October 7th Phone Call, Jesse advised the Receiver that hard copies of the Companies' books and records had recently been sent to Gill.
2. Based on the Receiver's review of bank account information obtained directly from the Companies' banks (described below in section 3.4), the Receiver identified a \$15,750 cheque from Golden Miles to Gill that cleared on October 4, 2021, three days after the Receiver was appointed.
3. On October 14, 2021, representatives of the Receiver contacted Pardeep Gill of Gill ("Ms. Gill") by telephone to request access to the accounting and tax records of the Companies. On this call, the Receiver specifically requested the Companies' financial statements and tax returns. On October 14, 2021, the Receiver followed up with an email, attaching the Receivership Order and requesting a call the next day (October 15, 2021).
4. Ms. Gill responded by email on October 18, 2021 proposing a call on Wednesday, October 20, 2021. The Receiver responded by requesting a call that day (October 18, 2021) due to urgency. Receiving no response, the Receiver followed up by email again on October 18, 2021 reiterating its request for the Companies' financial statements and tax returns. No response was received.
5. On October 19, 2021, the Receiver emailed Ms. Gill again, asking for a response and specifically requesting (a) all trial balances and financial statements of the Companies, in draft or final form, (b) all draft and filed tax returns of the Companies, (c) details of any and all funds that Gill currently holds on behalf of the Companies or the Mahals, and (d) a copy of the invoice related to the \$15,750 cheque that cleared on October 4, 2021. This email requested a response by noon the next day (October 20, 2021).
6. At 12:56 p.m. on October 20, 2021, the Receiver was contacted by Navjot Mahant of Gill who advised "I see a meeting scheduled with you today in Pardeep's calendar for 1 o'clock. However, Pardeep is out of the office and has been sick for the last two days. I will find a new time for you and schedule a meeting". Copies of the emails between the Receiver and Gill are provided in Appendix "H".
7. The Receiver has not been provided with any of the Records it has requested from Gill. Gill is in receipt of funds that may be Property (as defined in the Receivership Order) and the Receiver has been advised by Jesse that material Records (as defined in the Receivership Order) have been transferred to Gill. Accordingly, the Receiver is seeking an order specifically directing Gill to make the disclosure required by the Receivership Order.

3.4 Bank Accounts

1. As referenced above, the Mahals have not provided the Receiver with any of the Companies' banking information.

2. Based on information provided by Skymark (including cheque copies), the Receiver has been able to identify a bank account held by Mahal VC at Royal Bank of Canada (“RBC”) and accounts held by Golden Miles at Toronto-Dominion Bank (“TD”). Based on this information, the Receiver advised RBC and TD of the Receivership Order and requested account details. Their responses are summarized below:
 - a) RBC advised that Mahal VC’s account has been set to deposits only per the Receiver’s request. The Receiver has requested account balance details and an account history for the last 12 months; and
 - b) TD advised that Golden Miles maintained three accounts and provided to the Receiver account histories for the last 12 months. The Receiver notes that:
 - i. two of these accounts were closed on July 26, 2021 and the remaining active account had a balance of \$41,074 on the date of the Receivership Order;
 - ii. the address of the bank statements is Jesse’s personal residence; and
 - iii. a transfer was made on October 4, 2021 from account 5325309 in the amount of \$21,500. Following an inquiry with TD, the Receiver was advised that this transfer was made to Santokh. An extract of the TD statement for account 5325309 and confirmation from TD regarding the transfer is provided as Appendix “I”.

3.5 The Tobacco

1. Blakes and the Receiver requested documentation from the Mahals related to the Tobacco that was discovered at the Property, described above.
2. The response to this request in the October 5th Email was that “the Tobacco leaf product at the mill is not Property as defined in the receivership order. In any event, it is damaged and is at the mill waiting to be discarded.” In a subsequent phone call on October 5, 2021 between Blakes and Kirwin, Blakes was advised that the Tobacco was imported from India and sold to local indigenous communities.
3. During the October 7th Phone Call, Jesse advised that certain unknown parties dumped tobacco near the Companies’ garbage bin for disposal, without the Companies’ knowledge or consent. The Receiver asked Jesse to explain how several large unopened boxes of tobacco were also located inside the warehouse of the Flour Mill. Jesse responded that they were “moving stuff around” and so some of the Tobacco was moved into the warehouse.
4. Having been provided with no permits, licences, stamps or other documentation with respect to the Tobacco, and having received inconsistent explanations for the existence of a material volume of a controlled substance at the Flour Mill, the Receiver contacted Health Canada and the City of Brantford for guidance and direction on the disposal of the Tobacco. The Receiver anticipates that the Tobacco will be disposed of in the short term, in accordance with directions from Health Canada and the City of Brantford.

4.0 Summary of Deficiencies

1. As of the date of this Report, the Receiver has not been provided with most of the items requested in its original information request list or in the October 12th and 13th Emails, including without limitation:
 - a) the financial accounting records of the Companies, digital or physical;
 - b) information regarding the Companies' bank accounts;
 - c) copies of all permits, certifications, licenses, patents, and approvals obtained or pending in connection with the Property;
 - d) the Devices for Jesse and Santokh;
 - e) the location of the Property that was identified as missing from the Flour Mill;
 - f) accounts payable listings with addresses and contact information for the Companies;
 - g) access to all email accounts associated with Mahal VC and Golden Miles;
 - h) any permits, stamps or registrations connected to the Tobacco identified at the Property; and
 - i) notices and account statements from CRA.
2. The Receiver has also not been provided with any information regarding the location of the PLC, despite it being one of the most important components of the Flour Mill.
3. Santokh furthermore appears to have transferred \$21,500 from Golden Miles to himself after the Receiver was appointed, without the Receiver's authorization or knowledge. The absence of books and records has prevented the Receiver from reviewing this transfer. Unless and until those funds have been determined by the Receiver to be outside of the scope of the Receivership Order, they should be returned.
4. The virtual absence of cooperation and disclosure by the Mahals and their apparent attempts to frustrate the process is preventing the Receiver from undertaking its duties under the Receivership Order. The realizable value of the Property may be materially impaired if the Mahals do not provide the Receiver with the information and Property it has requested.

5.0 Conclusion and Recommendation

1. Overall, the Receiver is of the view that the Mahals have demonstrated an intent to delay, hinder and defeat the Receiver in its ability to perform its duties as set out in the Receivership Order. The majority of the Receiver's requests have been ignored, and in the limited circumstances where information has been provided, the Mahals' responses have been implausible (for example that rain re-connected the disconnected power source for the Gates) or inconsistent (for example with respect to the Tobacco).

2. The Receiver and its counsel have made numerous and repeated requests and demands for Records and Property since being appointed, each in accordance with the Receiver's powers and entitlements under the Receivership Order. As outlined above, these requests and demands have had very little effect and have largely been ignored by the Mahals. This has left the Receiver with no choice but to bring the within motion, incur the costs of preparing this Report and attend at Court. These costs could have been avoided had the Mahals cooperated and fulfilled their obligations under the Receivership Order. In the Receiver's view, it is unfair and inappropriate for the creditors of the Companies to bear these costs. The Mahals ought to be personally liable for the costs that their behaviour has caused.
3. The Receiver respectfully requests the Court's assistance to fulfil its mandate. The Receiver is not, at this time, seeking an expansion of the powers granted to it in the Receivership Order, but rather directions to the Mahals and Gill to comply with the Receiver's existing powers. It is apparent to the Receiver that without such directions, the Receiver will continue to be ignored.
4. Accordingly, the Receiver respectfully requests that the Court make an Order:
 - a) directing each of Santokh and Jesse to comply with their obligations under the Receivership Order, including to, among other things, immediately provide to the Receiver all Property and records (physical and electronic) in their possession, power and control;
 - b) directing each of Santokh and Jesse to return to the Receiver, no later than 5 p.m. (Toronto Time) on October 22, 2021, the PLC, or, if not in their possession, to provide to the Receiver the complete contact information of the party in possession of the PLC, including all correspondence regarding the chain of custody of the PLC to such party;
 - c) directing Santokh to return, no later than 5 p.m. (Toronto Time) on October 22, 2021, \$21,500 that was transferred from the bank account of Golden Miles to his personal account on October 4, 2021, after the date of the Receivership Order;
 - d) directing Gill to provide, no later than 5 p.m. (Toronto Time) on October 28, 2021, certain Records (as defined in the Receivership Order) and supporting documentation for the payment it received from Golden Miles on October 4, 2021;
 - e) declaring that the Mahals are personally liable, on a joint and several basis, for the reasonable costs of the Receiver and its counsel incurred in connection with the preparation of this Report and their attendance at the motion seeking the within relief; and
 - f) making certain declarations and orders commensurate with the foregoing, as further set out in the draft order attached to the Receiver's motion record.
5. The Receiver is also seeking that the Mahals pay personally and forthwith the Receiver's costs of preparing this Report, costs thrown away due to Mahals' refusal to comply with the terms of the Receivership Order which was granted three weeks ago.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
MAHAL VENTURE CAPITAL INC. AND GOLDEN MILES FOOD CORPORATION
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX “I”



CURRICULUM VITAE

GRAHAM P. OSPREAY

Court Experience: District Court of Ontario (Criminal); Provincial Court (Criminal) - Ontario Court of Justice (Provincial); Superior Court of Justice (General Division); Small claims court; Labour Board of Ontario; Rent Review Hearings Board; Arbitration hearings.

Current Positions: Forensic Document Examiner & Forgery Analyst - G. P. Ospreay & Associates, established – 1995.

Accreditation: Fellow of the American College of Forensic Examiners, (FACFE), 1999; Diplomate of the American Board of Forensic Examiners / Board Certified Forensic Examiner (DABFE, BCFE), 1996; The Canadian Society for Industrial Security / Certified Security Professional, (CSP), 2004.

Forensic Training / Apprenticeships: Completion of a two year apprenticeship in Forensic Document Examination, M.I. Duncan & Associates, Toronto, Ontario. 1992, with position as Forensic Document Examiner (Associate) 1992-1997. Tutored studies in the Psychology & Physiology of Handwriting and Human Motor Control Skills, with Mrs. Beryl Gilbertson, M. A. Toronto, Ontario 1998 – 2004. Apprenticeship and position as a Copyist and Restorer, including training in forgery detection of art, antiquities and artefacts, with W.D. Shelly Restorations, Thornhill, Ontario 1982-85. Completion of a three year apprenticeship as a Master Copyist of art and artefacts, under Graeme Rowe Art Conservator / Restorer, Oak Ridges, Ontario 1986-1988.

Relevant / Related Training: *American Institute of Applied Science, Diploma program in Forensic Science, NC. USA 1995.* Restoration certificate, Seneca College, Toronto, Ontario 1984. Case Analysis Charting - International Association of Law Enforcement Intelligence Analysts, USA, since 1991. Arson Investigation and Fire Prevention Certification, (examination and handling of charred documents), Fire Academy / Fire Prevention Institute, Toronto, Ontario. 1992. Canadian Region of Certified Fraud Examiners, Professional Development Meetings, since 1991. The Reid Technique of Interviewing and Interrogation, (forensic linguistics), John E. Reid and Associates Inc. course certification, Toronto, Ontario. 1996. Laboratory For Scientific Interrogation, course on the SCAN Technique - Scientific Content Analysis, (Statement Analysis, written and verbal), certification for course held at the Ontario Police College, Aylmer, Ontario, 1997. International Society of Appraisers, Core Course in Appraisal Studies, ISA Accredited - 2002.

Professional Society Memberships: Associate Member - Association of Certified Fraud Examiners, USA, since 1997; Affiliate Member - The Chartered Society of Forensic Sciences (UK) since 1995;

Meetings / Seminars / Courses: Executive Protection Institute, (Extortion Letters) seminars, USA, since 1987. The American Society & The Canadian Society for Industrial Security, seminars, since 1990. Royal Canadian Mounted Police, (Counterfeit Detection) seminar, Toronto, Ont. 1990. The International Association of Law Enforcement Intelligence Analysts, (Transnational Documents) seminars, USA, since 1991. Retail Council of Canada, (Security & Fraud) seminars, since 1993. The American Hotel & Motel Association, (Document Forgery in Casinos & Gaming), seminar, London, Ont. 1994. Symposium of the International Graphonomics Society & the Association of Forensic Document Examiners, (Basic & Applied Issues in Handwriting & Drawing Research), University of Western Ontario, London, Ont. 1995. National Association of Document Examiners' Annual Conference, Las Vegas, NV 1997. Toronto Police Service Forensic Identification Services Annual Conference, Toronto, Ontario, since 1998. Continuing education includes research and regular attendance at various related seminars and conferences. Various courses and training sessions in advanced investigation and security techniques and procedures, since 1983.

Areas of Expertise: Comparison and identification of handwriting, hand printing and signatures; Assessment and identification of anonymous writing; Examination of altered documents and obscure, obliterated or erased entries; Identification of mechanical impressions; Document security; Identification of historical documents including paleographic and epigraphic research and interpretations; Decipherment of encrypted writings including graffiti related tags and markings; Authentication, Identification and Appraisal of Documents, Art Works on Paper, Prints, Drawings & Paintings, (Fine Art). Investigation and identification of trademark infringements; Counterfeit product identification; ID Theft / Fraud examination.

Previous Board / Advisory & Positions Held: Technical Board Member (program & product analysis, including validation testing in the area of forensic document examination & art forgery) to the Measurement of Internal Consistency (MICS) Program - Lumen (Limbic) IQ Systems Inc. Washington, USA, 2001-2003; Technical Advisor / Risk Management Consultant (counterfeit & forgery identification issues) - Paystation Inc. Ontario, Canada, 2000-2006; Planning Committee Member (private security & investigation issues) to The Law Commission of Canada, International Conference on Policing and Security ("In Search of Security") Ottawa, Ontario, Canada, 2002-2003; Director of Forensic Investigations (fraud & forgery issues) to Dubros & Associates, Ontario, Canada, 1996-2001. Industry Advisory Participant to the Canada-United States Secretariat / Privy Council Office for the establishment of the "Security and Prosperity Partnership of North America" (SPP) Ottawa, Ontario, Canada, 2005; Member - The Canadian Society of Industrial Security, Inc., awarded lifetime membership in 2009. National President and Chairman of the Board - Canadian Society for Industrial Security, Incorporated (CSIS), 2001-2006 and Chair for the Canadian Security Certification Authority (CSCA), 2004-2008; Member of the Private Security and Investigative Services Committee (PSISAC) – Ministry of Community Safety and Correctional Services, 2005-2008. Advisory Board Member - The Centre for Justice Studies, Humber Institute of Technology and Advanced Learning, 2003 - 2010; Member and Chair of the Canadian General Standards Board (CGSB), Committee for Review of the Canadian Security Standard, 2004 - 2010. Member and Chair for the Town of Newmarket Graffiti Abatement Task Force, 2010 - 2012. Board Member / Director - Association of Certified Fraud Examiners, Toronto CFE Chapter, 2003 - 2014. Part time Academic Professor - teaching Handwriting and Document Examination / Counterfeit Identification / Detection of Deception in the Law & Security Administration Program / Crime Scene Investigation Course and Part time Academic Professor – teaching Investigative Interviewing - Statement & Discourse Analysis / Conflict Resolution / Canadian Criminal Code in the Protection Security & Investigation (PSI) program; Two year position as the PSI Program Coordinator; – Humber Institute of Technology and Advanced Learning, from 2011-17; Chair of the Federal Canadian General Standards Board (CGSB), Committee for Review of the Canadian Security Standard, (second term), 2015-2017. Steering Committee Member – First Nation, Métis, Inuit Education / York Region District School Board, 2013-2018.

Types of Cases: Opinions given on cases involving: author identification; suspect signatures/initials; disputed wills; suspect/altered documents such as contracts, insurance receipts, mortgage/land transfers and deeds, medical records, cheques/financial negotiables, printed data recordings and personal identification; disguised handwritings; anonymous and threatening letters; kidnap and extortion letters; typewriting, photocopier and printer identifications; Ink and paper differentiation; stamp/seal verifications; accounting/bookkeeping records; sequence of writing entries; document age determination and dating issues; Investigative discourse analysis; graffiti; counterfeit product identification; infringement of intellectual property rights and product diversion investigations; forgery detection of fine art, antiques & collectibles; dealer fraud; ID theft analysis & prevention; civil and criminal investigation cases, etc.

Laboratory Equipment includes: Microview Inspection System - video microscope with triocular head, video enhancer, infrared sensitive CCD camera, Sony monitor, video printer, high intensity fibre-optic illuminator and ring fluorescent illuminator. Long and short-wave UV lamps. Barrier Filters. Leica Wild M3Z stereoscopic microscope with Volpi Intralux 4000-1 fibre-optic lighting system. V-Doc/3300 Infrared Spectral Detector and Video Microscope. Carson Digital Microscope Scanning Electron Microscope. Sirchie - FX8B Forensic Optical Comparator. RF Inter-Science Macroscope 18-36 Zoom with calibrated measuring scale. Kinderprint Indentation Materializer. Canon G7 digital camera. Canon EOS 40D digital SLR camera. Digital Scanning equipment, including various image enhancement and processing programs. Veriprobe Multimode document examination device. Light table, low powered magnifiers. Various measuring devices. Peak measuring scopes. Mitutoyo electronic micrometer. Associate Laboratories for fingerprint identifications, DNA analysis, Ink dating, Metallurgy analysis, Chemical analysis, X-ray examinations, Thermoluminescence and Radiocarbon dating.

Articles & Papers / Presentations & Lectures:

- Eight hour presentation to the Ontario Graphoanalysis Society / "The Identification of Handwriting in Criminal Profiling Cases" and a follow up article published in their news letter 'Penstrokes' - Willowdale, Ontario. June 04, 1994.
- *Lecture to BDO Dunwoody Chartered Accountants - Professional Development Day / "Forensic Document Examination in Financial Investigations"* - Toronto, Ontario. September 18, 1996.
- *Lecture to the Ontario Graphoanalysis Society / "Document Forgery & Fraud as Related to Elder Abuse Cases"* - Willowdale, Ontario. November 23, 1996.
- *Presentation & Lecture to the National Association of Forensic Document Examiners - Annual Conference / "The Document Examiners Role in Complex Fraud Investigations"* - Las Vegas, Nevada, USA. November 01, 1997.
- *Presentation to the York Region Branch of the Ontario Genealogical Society / "The Forensic Examination of Historical Documents"* - Richmond Hill, Ontario. February 11, 1998.
- *Presentation to the Sheba Shrine Club / "Document Examination and Counterfeit Identifications"* - Barrie, Ontario. June 17, 1998.
- *Presentation to B'Nai Brith Canada - Maven Lodge / "Forensic Document Examination & Counterfeit Identification"* - Thornhill, Ontario. September 26, 1998.
- *Eight hour presentation to the Ontario Graphoanalysis Society Annual Conference / "The Origins of the Alphabet & Writing Systems of the World"* - Toronto, Ontario. September 16, 1999.
- *Paper and Presentation to the Canadian Bar Association - Ontario Institute 2000 Civil Litigation Document Evidence: The Great Paper Chase / "Forensic Document Examination"* - Toronto, Ontario. January 29, 2000.
- *Presentation to the Commercial Security Association / "Forensic Document Examination"* - Toronto, Ontario. March 27, 2000.
- *Lecture to the Bradford District High School - Grade 11 & 13 Law Class / "Forensic Document Examination"* - Bradford, Ontario. April 20, 2000.
- *Training seminar to the Ontario Hydro Services Company - Corporate Security Services / "Forensic Document Examination and Case Analysis Charting"* - Toronto, Ontario. April 26, 2000.
- *Presentation to The Seminar on Success and Cost Management in Private Sector Forensic Investigations - (sponsored by Maxxam Analytics Inc.) / "Forensic Document Examination & Counterfeit Identification"* - Toronto, Ontario. May 11, 2000.
- *Published Article in the Lawyers Weekly - (Butterworths Canada Ltd.) / "Document Sleuths: A Primer for Private Eyes"* - Markham, Ontario. July 21, 2000.
- *Published Article in the Lawyers Weekly - (Butterworths Canada Ltd.) / "Forensic Evidence: Writing Style Can Reveal The Identity of an Unknown Author"* - Markham, Ontario. August 8, 2000.

- Eight hour presentation to the International Graphoanalysis Society - Pennsylvania Chapter / "History of The Alphabet and World Writing Systems" - Reading, Pennsylvania, USA. September 16, 2000.
- Published Article in the Canadian Security Journal - (Canada Law Book Inc.) / "Fraudulent Documentation: "A Historical View of Fraud and Forgery Prevention in the area of Document Security" - Aurora, Ontario. April 2001.
- Presentation to the One Parent Families of York Region / "Document Fraud and Forgery in Civil Cases" - Newmarket, Ontario. March 21, 2001.
- Presentation to the Canadian Society for Industrial Security, National Conference and Trade Show / "Forensic Document Examination and Product Counterfeiting" - Toronto, Ontario. June 10, 2001.
- Presentation to the Council of International Investigators, Inc., 47th Annual General Meeting and Seminars / "Forensic Document Examination and Counterfeit Identification" - Toronto, Ontario. August 23, 2001.
- Presentation to the Auctioneers Association of Ontario, Annual Conference and Trade Show / "Forgery Detection of Historical Documents & Scientific Analysis in the Authentication of Fine Art" - Mississauga, Ontario. February 16, 2002.
- Presentation to American Association of Handwriting Analysts and The American Handwriting Analysis Foundation / "Investigation & Examination of Interpretive Images" (authentication of artists under-drawings, sketches and signatures). AAHA/AHAF, Joint Conference, The Great Canadian Rendezvous, Toronto, Ontario. July 12, 2002.
- Presentation to the International Society of Appraisers (Eastern Canada Chapter) / "Forgery Detection of Artefacts and Associated Documents" - ISA Meeting, The University of Toronto Art Centre, Toronto, Ontario. February 05, 2003.
- Eight hour presentation (two parts) to the Ontario Graphoanalysis Society / Part One: "The Identification of Counterfeit Documents and Document Security Issues". Part Two: "The Investigation & Examination of Interpretive Images In Works of Art" (authentication of artists under-drawings, sketches and signatures). McConaghy Centre, Richmond Hill, Ontario. April 12 2003.
- Presentation to B'Nai Brith Canada - Thornhill Lodge # 2994 / "Forgery Analysis in Historical Documents and Artefacts" - Thornhill, Ontario. September 26, 2003.
- Presentation to Loyalist College – CSIS Chapter & Law and Security Administration Department / "Professional Standards and Certification" – Loyalist College, Belleville, Ontario. February 11, 2004.
- Four Hour Training seminar to State Farm Insurance Special Investigations Unit / "Forensic Examination of Documents; Brand Counterfeiting Issues; Artefact Forgery & Artefact Theft Investigations" – SFI Claims Office, Mississauga, Ontario. June 02, 2004.
- Presentation to Seneca College Graduate Class in Forensic Accounting - FAC866, / "Fraud & Forgery Identification in Financial Investigations", - Seneca College Newman Campus, Toronto, Ontario, March 30, 2005.
- Presentation to the International Graphoanalysis Society 2005 Congress – A three hour session on "Forensic Document Examination & Forgery Analysis" and "Why there is no place for Graphology in Forensic Document Examination", - Renaissance Fallsview Hotel, Niagara Falls, Ontario, October 29, 2005.
- Presentation to the Barrie Masonic Temple - Annual Meeting / "Frauds, Scams and Identity Theft", - Barrie, Ontario, May 24, 2006.
- Training Session and Presentation to the Royal Bank of Canada RBC Travel Insurance Company Special Investigation Unit / "Forensic Document Examination & Counterfeit and forgery Identification", Mississauga, Ontario, May 30, 2006.
- Presentation to the Senior Educators of the McMichael Canadian Art Collection / "Forgery Detection and Authentication Analysis of Artists Signatures and Art & Artefacts" – Kleinburg, Ontario, November 02, 2006.

- Training Session and Presentation to the Law & Security Administration and Police Foundations Program at Conestoga College Institute of Technology and Advanced Learning / “Forensic Document Examination and Forgery Analysis” – Kitchener, Ontario, November 6, 2006.
- Presentation to the Gallery Docents of the McMichael Canadian Art Collection / “Forgery Detection and Authentication Analysis of Paintings and Artists Signatures” – Kleinburg, Ontario, January 08, 2007.
- Presentation to the Gallery Docents of the McMichael Canadian Art Collection / “Forgery Detection and Authentication Analysis of Paintings and Artists Signatures” – Kleinburg, Ontario, May 12, 2007.
- Presentation to the National Association of Document Examiners (NADE) / “Art and Artefact Forgery Identification / Identifying Signatures & Monograms” - NADE 2007 Conference – Innovations in Forensic Technology and Expertise, Westward Look Resort, Tucson, Arizona, USA, May 17, 2007.
- Presentation to the Association of Certified Fraud Examiners & the Canadian Association of Special Investigation Units / “Forensic Document Examination & Forgery Analysis” – Annual Toronto Fraud Forum - Richmond Hill, Ontario, September 25, 2007.
- Presentation to the Law & Security Administration and Police Foundations Program at Conestoga College Institute of Technology and Advanced Learning / “Forensic Document Examination and Forgery Analysis” – Kitchener, Ontario, November 14, 2007.
- Presentation to the International Society of Appraisers (ISA) / “Forensic Document Examination & Forgery Analysis and Related Fraud Issues” – ISA Annual Conference, Baltimore, Maryland, USA, April 25, 2008.
- Two training/information sessions to the Independent Order of Foresters – Special Investigations Unit / Internal Audit Department (including associated companies) – “Forensic Document Examination & Forgery Analysis” – Toronto, Ontario, November 27 & 28, 2008.
- Presentation – International Graphoanalysis Society / “Analyzing Violence – Identifying the Potential for Workplace Violence and Disruptive Behaviour Through the Analysis of Written Communications” – Ontario IGAS Workshop, McConaghy Centre Richmond Hill, Ontario, April 4, 2009.
- Presentation – International Graphoanalysis Society / “Analyzing and Identifying Written Communications in Cases of Stalkers and Stalking – A Risk Management Approach” – Ontario IGAS Annual Conference, Mt. Carmel, Niagara Falls, Ontario, October 10, 2009.
- Published article (peer reviewed) – “Issues in Identification and the Authenticity of Artist’s Signatures”, published in the "Journal of Advanced Appraisal Studies 2009." Edited by Todd W. Sigety and published by the Foundation for Appraisal Education 8546 Broadway, Suite 202, San Antonio, Texas 78217 – March 2009. Article was republished (peer reviewed) in the “Journal of Art Crime” Volume 2, Number 1, Fall 2009, as edited by Noah Charney and published by the Association for Research into Crimes Against Art (ARCA) PO Box 175 Hampton Falls, NH, USA 03844 – November 2009.
- Presentation - Canadian Society for Industrial Security – GTA Chapter / “The Identification of Anonymous and Threatening Communications” – Toronto, Ontario, January 27, 2010.
- Presentation – Rodman Hall Arts Centre Brock University / “The Truth About Art Theft – Fraud & Forgery” Joint presentation with Mr. Robert Marentette, Director of Security Art Gallery of Hamilton, St. Catharines, Ontario, February 4, 2010.
- Presentation - The Institute of Internal Auditors and The Association of Certified Fraud Examiners / “Forensic Document Examination and Forgery Analysis” – IIA & ACFE Joint Session at the Royal Canadian Military Institute (RCMI), Toronto, Ontario, February 25, 2010.
- Presentations (two sessions) to the Law & Security Administration and Police Foundations Program at Conestoga College Institute of Technology and Advanced Learning / “Forensic Document Examination and Forgery Analysis” – Kitchener, Ontario, March 24, 2010.
- Eight hour presentation/training two part session – International Graphoanalysis Society Pennsylvania Chapter / Part 1 – “Forensic Document Examination & Forgery Analysis;” Part 2 – “Anonymous & Threatening Communications” – Reading, Pennsylvania, USA, March 27, 2010.

- Presentation (two parts) – International Graphoanalysis Society Ontario Chapter / “The CSIs of Language: Linguistic Profiling & Forensic Discourse Analysis” – OIGAS Annual Conference, Niagara Falls, Ontario, September 24 – 26, 2010.
- Joint Presentation – The Canadian Society for Industrial Security & The Canadian Security Association / “Anonymous & Threatening Communications in the Work Place” – Security Central Canada Show, Toronto, Ontario, October 20, 2010.
- Presentation – Centennial College of Applied Arts and Technology, Financial Crimes Investigation Course / “Forensic Document Examination and Forgery Analysis” – Toronto, Ontario, March 1, 2011.
- Presentation – York Regional Police Central Fraud Bureau, / “The Identification of Identification” (Bank and Business Community Relations) – YRP Headquarters Aurora, Ontario, June 1, 2011.
- Presentation – International Graphoanalysis Society Ontario Chapter / “Estate and Inheritance Fraud & Theft” – OIGAS Workshop McConaghy Centre, Richmond Hill, Ontario, June 11, 2011.
- Presentation – International Graphoanalysis Society / “Identification of Graffiti and the Language of the Street” – Ontario IGAS Annual Conference, Mt. Carmel, Niagara Falls, Ontario, September 30, 2011.
- Presentation – Life2 / “Estate and Inheritance Fraud & Theft” – Life2 Education Group Session, Rouge Woods Community Centre, Richmond Hill, Ontario, November 30, 2011.
- Presentation – Association of Certified Fraud Examiners Toronto, Ontario Chapter / “Estate and Inheritance Fraud & Theft” – The University Club of Toronto, Ontario, November 13, 2012.
- Presentation – Muskoka & Simcoe Dental Association / “Estate and Inheritance Fraud & Theft and other related Forgeries” – Brooklea Golf Course, Midland, Ontario, November 29, 2012.
- Presentation – Ministry of Government Services/HR Ontario / Security Services and Contingency Planning Branch – “Anonymous & Threatening Communications-Issues in Identification” – 900 Bay Street Toronto, Ontario, December 5, 2012.
- Day training session to the Certified Acceptance Agents (CAA’s) for the US Internal Revenue Service – “Identification of Identification and Document Forgery Issues” – In conjunction with the Association of Certified Fraud Examiners, Toronto Chapter, University of Toronto Club, Ontario, January 28, 2013.
- Presentation – Certified General Accountants & Financial Advisors – “Estate & Inheritance Fraud & Theft” – Best Western Guildwood Inn, Sarnia, Ontario, September 17, 2013.
- Presentation – The Niagara Pumphouse Arts Centre – “Art Forgeries, Fakes & Fraud” – 247 Ricardo Street, Niagara-on-the-Lake, Ontario, May 24, 2014.
- Presentation – Sarnia Lampton CGA Regional Conference – “Forensic Document Examination and Document Fraud” – Best Western Guildwood Inn, Sarnia, Ontario, October 24, 2014.
- Presentation – Bennington Brokers Annual Conference – “Forensic Document Examination and Document Fraud & Analyzing Digital Signatures” – Shangri-La Hotel, 188 University Avenue, Toronto, Ontario, June 09, 2016.
- Presentation – The King Street Gallery – “Art Forgeries, Fakes & Fraud” – 153 King Street, Niagara-on-the-Lake, Ontario, April 29, 2017.
- Presentation – Chartered Professional Accountants of Ontario – “Forensic Document Examination and Document Fraud” – Tru’s Grill House 220 Riverview Drive, Chatham, Ontario, May 17, 2018.
- Presentation – Council of Professional Investigators of Ontario (CPIO), Webinar learning sessions, Part One & Two – “Forensic Document Examination” – October 14, 2020 & November 25, 2020.

APPENDIX “J”

REPORT

G.P. OSPREAY & ASSOCIATES
FORENSIC DOCUMENT EXAMINERS



PRIVATE AND CONFIDENTIAL

February 17, 2022

REPORT

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000
Toronto, Ontario
M5L 1A9

Attention: Chris Burr

Re: Bankruptcy of Mahal Venture Capital Inc. – (Questioned Signature & Document)

NOTE:

The following contains my opinion as to authorship of the questioned signature and the authenticity & integrity of the questioned document (defined below). It is based on a thorough examination of documentation submitted, using procedures and standards of forensic document examination.

Responsibility for any use to which this report and / or any part of it is put, and for any outcome of such usage, rests solely with the client and / or the client's duly appointed agent.

.....

The questioned and known documents for examination were delivered by email in a PDF file format and received on February 09, 2022.

THE QUESTIONED DOCUMENTS

- Q1 A five-page Trust Agreement with an attached Schedule (pdf copy), dated: "this 7 day of July, 2017", page four of the Agreement bears the questioned signature of Santokh Mahal.
- Q2 A Statement of Account from the law office of Neil L. Boyko (pdf copy), dated: "July 31, 2017", the authenticity and or integrity of the entire document is in question.

PROBLEM

You have submitted documents containing known signature specimens of Santokh Mahal and you have submitted documents known to have been composed from the office of Neil L. Boyko and you have asked me to render an expert opinion upon the following:

1. Whether or not the questioned signature on the Trust Agreement (Q1) was written by the writer of the known signature specimens, Santokh Mahal.
2. Whether or not the questioned Statement of Account (Q2) is an authentic document composed from the office of Neil L. Boyko or whether it is a partial or fully fabricated document.

STANDARDS (Known Signature Specimens)

As a standard of comparison, I have used the following documents purportedly containing the known signatures of Santokh Mahal:

- K1 Skylark Holdings Limited letter of Conditions (pdf copy), dated: "June 9, 2015", bearing the known signature of Santokh Mahal.
- K2 Skylark Holdings Limited letter of Conditions (pdf copy), dated: "Dec. 5, 2016", bearing the known signature of Santokh Mahal.
- K3 Skymark Finance Home Improvement Credit Application and Agreement form (pdf copy), dated: "10. 25. 2017", bearing the known signature of Santokh Mahal.
- K4 Skymark Finance Home Improvement Credit Application and Agreement form (pdf copy), dated: "12. 06. 2017", bearing the known signature of Santokh Mahal.
- K5 Skymark Finance Home Improvement Credit Application and Agreement form (pdf copy), dated: "01. 22. 2019", bearing the known signature of Santokh Mahal.
- K6 TD Canada Trust cheque #000475 for Golden Miles Bread & Bagel Corporation (reduced pdf copy), dated: "2020-12-01", bearing the known signature of Santokh Mahal.
- K7 TD Canada Trust cheque #000528 for Golden Miles Bread & Bagel Corporation (reduced pdf copy), dated: "2020-12-11", bearing the known signature of Santokh Mahal.
- K8 TD Canada Trust cheque #000529 for Golden Miles Bread & Bagel Corporation (reduced pdf copy), dated: "2020-12-17", bearing the known signature of Santokh Mahal.

- K9 TD Canada Trust cheque #000527 for Golden Miles Bread & Bagel Corporation (reduced pdf copy), dated: "2020-12-11", bearing the known signature of Santokh Mahal.
- K10 Page #9 of a Security Agreement (pdf copy), dated: "this 14 day of December, 2020", bearing the known signature of Santokh Mahal.
- K11 An Acknowledgement (pdf copy), dated: "this 14 day of December, 2020", bearing the known signature of Santokh Mahal.
- K12 A Promissory Note (pdf copy), dated: "this 14 day of December, 2020", bearing the known signature of Santokh Mahal.
- K13 Page #6 of an Affidavit (pdf copy), Sworn: "November 21, 2021", bearing the known signature of Santokh Mahal.
- K14 A TD Branch transfer receipt (pdf copy), dated: "Jul 2, 2021", bearing the known signature of Santokh Mahal.
- K15 Page #7 of an Affidavit (pdf copy), Sworn: "January 19, 2022", bearing the known signature of Santokh Mahal.

As a standard of comparison, I have used the following documents purportedly composed from the office of Neil L. Boyko:

- K16 A letter addressed to Skymark Finance Corporation (pdf copy), dated: "June 26, 2019".
- K17 A two-page letter of account addressed to Mr. S. Mahal (pdf copy), dated: "July 11, 2017".
(a-b)
- K18 A letter of account addressed to Mahal Venture Capital Inc. (pdf copy), dated: "August 3, 2017".

QUALIFICATION

All of the questioned and known documents submitted for examination are pdf copies. And some (K6-9) have been reduced in size from their original production. Copies are helpful for comparison purposes but cannot take the place of the original document. Any opinion given based upon a copy is subject to verification when the original is examined.

METHOD

The questioned and known documents were examined with low powered illuminated magnifiers. Selected portions were examined with a Leica Wild M3Z stereoscopic Microscope with Volpi Intralux 4000-1 fibre-optic lighting system, under low (6.5x) to high (40x) magnification power. Examination with a Sirchie - FX8B Forensic Optical Comparator was conducted. Measurements were taken with measuring plates and a Peak 7x measuring scope utilizing a Lupe scale. Comparison charts were made. A file copy and a working copy were made of the documents. On the working copies, similarities and / or differences of handwriting (signature) identification characteristics were noted. Similarities and / or differences of document formatting were also noted.

OBSERVATIONS

The examination of copied documents is often necessary when the originals are not available or do not exist. And with good quality copies there is usually adequate material for a useful comparison to be made.

In determining whether or not a submitted copy is adequate enough for the examiner to render an opinion, consideration must be given to the overall quality of the copy, the generation of the copy and all examiner limitations.

There are several limitations imposed on the examiner when copies are substituted for originals. Such limitations include the inability of the examiner to identify or determine: pen pressure, sequence of line crossings, ink examination, erasures, and traced lines or indented impressions, etc.

The quality of the reproduced (pdf copy) images of the questioned documents (Q1-2) and the known documents (K1-18) were assessed for examination suitability and all were found to contain sufficient line detail for comparison purposes.

With problems involving the determination of the source or authenticity / integrity of a computer-generated document, it is important to not only identify the particular printer, but also the individual keyboard operator. If the keyboard operator composed as well as keyed in the letter, certain errors of the other characteristics of language will be present. Errors of punctuation, spelling, diction, and grammar may be present in the text. Further identification can be made by the comparison of mechanical habits. The general appearance of the printed document is characteristic, the use of certain fonts/letters, margins, length of lines, spacing, indentation of paragraphs and other computer settings are valuable identifiers. Through the examination of sufficient comparison standards, computer operators can be identified by their various keyboarding habits and characteristic use of language.

Due to a lack of sufficient comparison standards for the purported typist (NLB/gr) of the questioned Statement of Account (Q2), a proper comparison of keyboard operator composition and or formatting in order to determine authorship or the keyboard operator was not possible.

Notwithstanding the above, a document format comparison between documents (Q2) and (K16) found some dissimilarities. Both documents have the lawyers name at the top middle of the document, however the formatting and lower printing font size is noticeably different. Document (Q2) contains the lawyer's credentials (B.A., LL.B.) after his name, document (K16) does not. Both documents have the law firm address printed in the upper right-hand side and the telephone, fax and email address printed in the upper left-hand side, however the placement of these entries is wider in (Q2) then that observed in (K16). As both documents are reproduced copies it is not possible to determine whether this information and the lawyers name have been printed on pre-printed letterhead or they are printed from an in-office computer template.

Document (K16) has an email address for the solicitor printed/entered as 'E-mail: neil@neilboykolaw.com,' however the email address noted on document (Q2) is 'lawckerk@neilboykolaw.com,' noting that the word "clerk" has been misspelled as "ckerk". There is also a misspelling in the surname of the lawyer at the bottom left-hand side of the page on document (Q2) were the final letter [o] has been omitted so it has been spelled as "Boyk" as opposed to "Boyko".

A partial double lining located at the right-hand portion of the underling of the "Re:" information and a double lining of the amount indicated for/beside "Total owing to Neil L. Boyko" is observed in document (Q2).

In the course of my examination, I considered such characteristics as signature design, letter formations, variation, movement, size, proportion, writing speed, spacing, base line alignment, skill, etc.

There is a normal variation in writing, and no one writes their signature in exactly the same way twice. Some people are consistent in the way they form their letters, and their writing varies little from one time to another, while others have a greater degree of variation. The variation range is characteristic of the individual. In this case, the variation in Santokh Mahal's known signatures is narrow.

Natural variation is the imprecision with which the habits of the writer are executed on repeated occasions. Whatever the difference may be between variations affected by differing circumstances, for the most part, variations tend to lie within ranges peculiar to the individual and to the elements of the writing. Generally, the more practiced the hand or the more skillful the writer, the more consistent is the writing and the more limited is the range of these variations.

There are various factors that can affect a person's writing, this would include: a deliberate act such as attempting to disguise, a change in health, a change in physical ability, the influence of alcohol or drugs, the type of writing instrument, the writing surface, and the body position of the writer such as when writing from an abnormal position like prone or standing.

In this case, the questioned signature contains many fundamental dissimilarities of handwriting identification characteristics, this when compared to the known signature specimens of Santokh Mahal. When obvious dissimilarities are found four hypotheses may be considered:

1. That the writer of the known signature specimens has in fact a very wide variation and the differences simply fall within the writer's natural range of variation.
2. That the known writer has or utilizes more than one method of signing their name and uses different signature designs. This is often seen when someone uses a signature design for business purposes which differs from their signature which they use for personal correspondence. Or for one reason or another, the known writer purposely changes their signature design by necessity or need.
3. That the questioned signature is an attempt at disguise by the writer of the known specimens. Genuine signatures that are deliberately disguised occur when an individual disguises their own signature in order avoid responsibility for signing a document, by later denying or claiming that they did not sign the signature on a document in question.
4. That the questioned signature is a free hand simulation with little or no attempt to copy or imitate the writing habits of the known writer. And which have been written by someone other than the writer of the known signature specimens.

When considering the above:

Hypotheses #1 in theory can be ruled out as the differences in the overall formation of the questioned signature is deemed to be too far removed in fundamental structure to be considered a natural variation.

Hypotheses #2 in theory can be ruled out as no information has been made available to suggest that the known writer utilizes more than one signature design and there have been no known signature specimens submitted that indicate or would be representative of a second or alternative signature used by the known writer.

Hypotheses #3 in theory can be ruled out as generally a writer who attempts to disguise their normal signature would more often use either their unaccustomed hand or create such awkward or gross letter formations that disclaiming the signature or initials as their own would appear to be more than obvious. And there does not appear to be any attempt at disguise as one would normally see it within the questioned signature.

Hypotheses #4 in theory cannot be ruled out as the fundamental dissimilarities observed in the questioned signature is more indicative of an attempt at freehand simulation. When a questioned signature contains little or no evidence of direct simulation, tracing or copying and no attempt has been made to imitate the genuine signature of another, it is usually because a model of the genuine signature was not available or because the writer could not write as well as the model signature.

FINDINGS

Comparison between the known signatures of Santokh Mahal:

The known signature specimens (K1-15) were compared with each other to ensure that they were all written by the same individual and to assess the writer's range of variation.

Comparison between the questioned signature and the known signature specimens of Santokh Mahal:

When the questioned signature on document (Q1), was compared to the known signature specimens of Santokh Mahal (Standards K1-15), many fundamental dissimilarities of handwriting identification characteristics were found, such as:

Dissimilarities

- Relative skill of the writing
- Variation
- Line quality
- Pictorial Appearance
- Size
- Spacing between letters
- Speed
- Movement
- Heights of letters
- Connecting strokes
- Curves and Angles
- Initial and terminal strokes
- Letter formations

Fundamental features in handwriting are the basic structures that give material form to the writing. Individual fundamental features are the structural characteristics that identify the writing as belonging to one writer. Fundamental differences are structural deviations that assist to distinguish one writing from another. When a particular structure is found to occur in a questioned writing but is not found in the other writings under examination, it cannot be evaluated as normal variation but would be classified as a fundamentally different structure in comparison to the other writings. And when such structural differences cannot be reasonably accounted for by any reason or cause, a conclusion of different writers can be inferred.

OPINION

It is my opinion, based upon the documents submitted for examination, that:

1. There is conclusive evidence that that the author of the known signature specimens (standards K1-15) Santokh Mahal, did not write the questioned signature on the Trust Agreement, document (Q1).

The possibility that an alternative hypothesis is true can, in practice, be excluded.

2. I am unable to determine whether or not the questioned Statement of Account (Q2) is an authentic document that was composed from the office of Neil L. Boyko or whether it is a partial or fully fabricated document.

It is not possible to determine whether the advanced hypothesis or an alternative hypothesis is true.

REMARKS

In order to potentially render a more conclusive opinion in this case regarding the authenticity of the questioned Statement of Account (Q2), I will require the submission of the original questioned document and several (5-10) original known Statement of Account documents that have been composed by the individual keyboard typist noted as (NLB/gr) in the questioned document, for further examination and comparison purposes.

It should also be determined whether or not the office of Neil L. Boyko utilized preprinted letterhead or an in-office computer template for printing letterhead.

Copies of all documents submitted for examination, are returned with this report to Chris Burr.

Blake, Cassels & Graydon LLP
February 17, 2022
Page 9

SUBMITTED BY:



Graham P. Ospreay, FACFE, CSP
Forensic Document Examiner & Forgery Analyst
G. P. OSPREAY & ASSOCIATES

Attachments:

- **Illustrative Charts One to Nine**
- **Opinion Scale**
- **Copies of Questioned Documents (Q1-2)**
- **Copies of Known Documents (K1-18)**
- **Form 53 (Acknowledgement of Experts Duty)**
- **CV for Graham Ospreay**

ILLUSTRATIVE CHART ONE

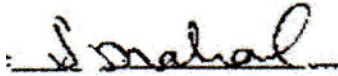
Questioned Signature of Santokh Mahal



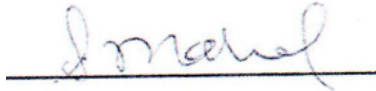
SANTOKH MAHAL

Q1

Known Signature Specimens of Santokh Mahal

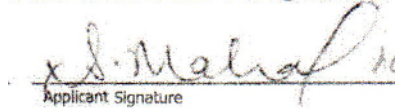


K1



K2

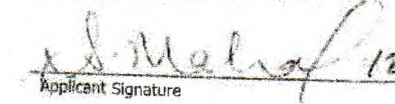
Terms and Conditions of this Agreement.



Applicant Signature

K3

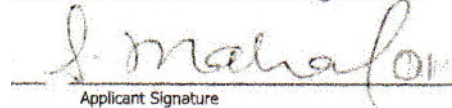
Terms and Conditions of this Agreement.



Applicant Signature

K4

Terms and Conditions of this Agreement.



Applicant Signature

K5

Image Scale: 100% - Resolution: @ 300dpi

ILLUSTRATIVE CHART TWO

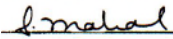
Questioned Signature of Santokh Mahal


SANTOKH MAHAL

Q1

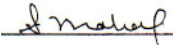
Known Signature Specimens of Santokh Mahal

JEN MILES BREAD & BAGEL CORPORATION




K6

JEN MILES BREAD & BAGEL CORPORATION



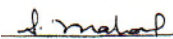
K7

JEN MILES BREAD & BAGEL CORPORATION

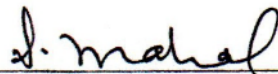


K8

JEN MILES BREAD & BAGEL CORPORATION



K9


Santokh Singh Mahal, President
K10


Santokh Singh Mahal, President
K11

Image Scale: 100% - Resolution: @ 300dpi

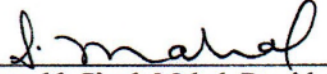
ILLUSTRATIVE CHART THREE

Questioned Signature of Santokh Mahal

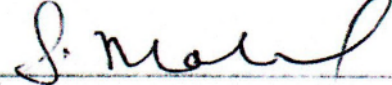

SANTOKH MAHAL

Q1

Known Signature Specimens of Santokh Mahal


Santokh Singh Mahal, President
K12


SANTOKH MAHAL
K13


K14


SANTOKH MAHAL
K15

Image Scale: 100% - Resolution: @ 300dpi

ILLUSTRATIVE CHART FOUR

Questioned Signature of Santokh Mahal



SANTOKH MAHAL

Q1

Image Scale: 300% - Resolution: @ 300dpi

ILLUSTRATIVE CHART FIVE

Questioned Invoice of Neil L. Boyko

TEL: (416) 743-3232
FAX: (416) 743-5034
lawckerk@neilboykolaw.com

NEIL L. BOYKO, B.A., LL.B.
BARRISTER, SOLICITOR AND NOTARY

98

3500 DUFFERIN STREET
SUITE 303
TORONTO, ONTARIO
M3K 1N2

STATEMENT OF ACCOUNT

July 31, 2017

Mr. J. Mahal and S. Mahal
6845 Second Line W
Mississauga, Ontario
L5W 1M8

Dear Sir:

Re: MAHAL PURCHASE FROM AQUABELLA BAYSIDE TORONTO SUITE GPH1.
118 MERCHANTS' WHARF TORONTO, ONTARIO

FOR SERVICES RENDERED IN THE ABOVE MATTER
INCLUDING,

To writing and receiving letters	3 hrs
To receiving closing documents from vendors solicitor having you sign same	.05 hrs
To all meetings with you	.05 hrs
To all calls with you and the solicitor for the vendor	1 hrs
To drafting trust agreement	1 hrs

TOTAL TIME THIS BILL 6 hrs

My Fees herein at the rate of \$490.00 p/h 2,940.00

DISBURSEMENTS SUBJECT TO HST

Paid for all searches	286.30
Paid clerk's fees	375
Paid for photocopies, fax, telephone	50
HST 13%	92.47
	<u>803.77</u>

TOTAL OWING TO NEIL L. BOYKO \$3,743.77

THIS IS MY ACCOUNT
NEIL L. BOYK

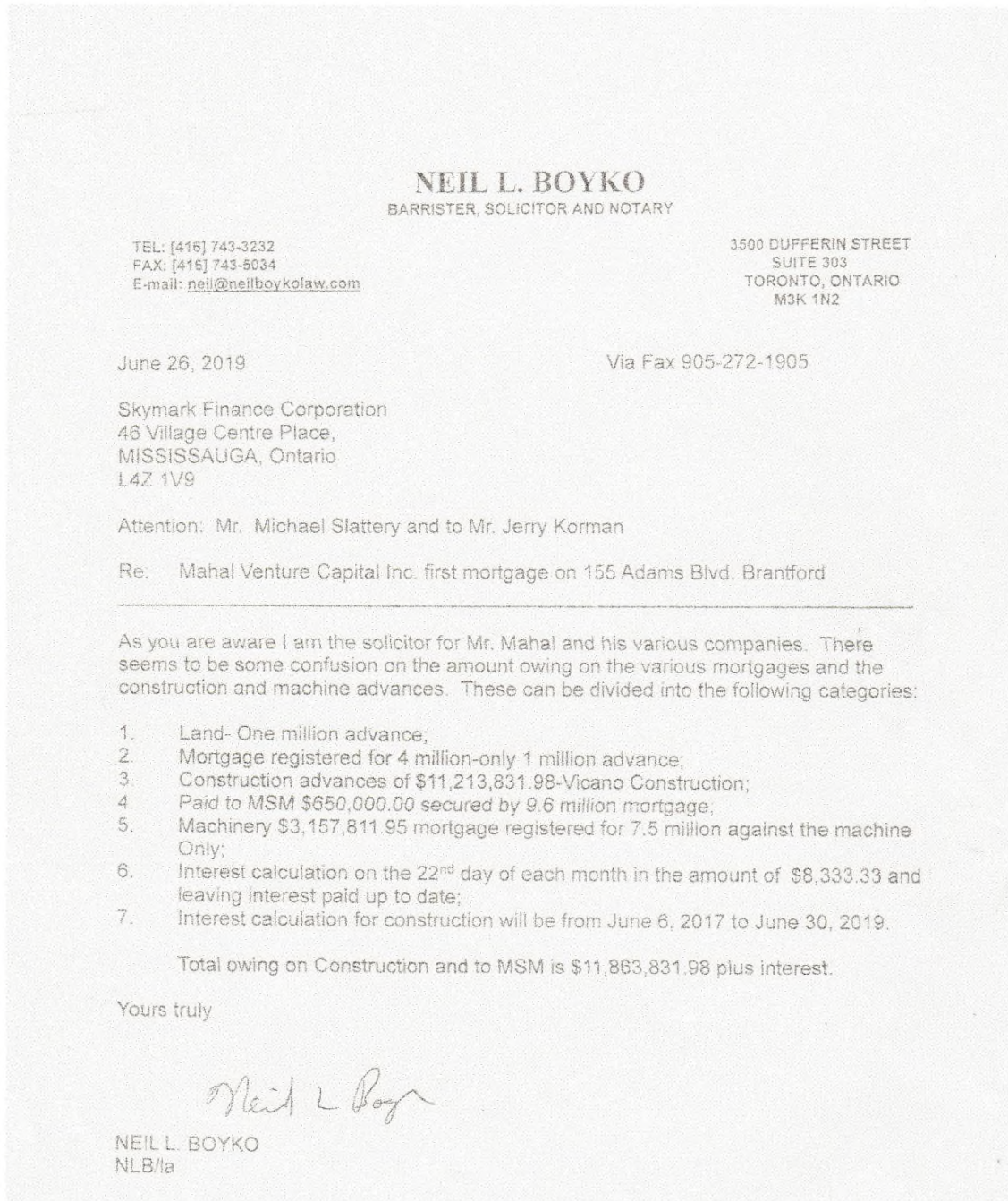
Per: 
NLB/gr

Q2

Image Scale: 100% - Resolution: @ 300dpi

ILLUSTRATIVE CHART SIX

Known Letter of Neil L. Boyko



K16

Image Scale: 100% - Resolution: @ 300dpi

ILLUSTRATIVE CHART SEVEN

Known Letter of Neil L. Boyko

July 11, 2017

Mr. S. Mahal
800 Swinbourne Drive
Mississauga, Ontario
L5V 1J6

Dear Sir:

Re: 2581150 Ontario Inc. - Application Vesting Order
For property

Received from Skymark \$56,575.00

For services rendered in the above matter from the beginning of June to July 7th, 2017, including numerous meetings and calls with you and the other solicitors involved in this complicated transaction including the exchange of many hundreds of emails, additional letters, title searches and examination of extensive contractual material and to registering vesting order in favour of 2581150 Ontario Inc. For the Windsor property in exchange for \$20,000,000.00 in Skymark debit financing

My Fees herein \$17,500.00
HST 13% 2,275.00

DISBURSEMENTS NOT SUBJECT TO HST

Paid Land Transfer Tax 56,575.00
Paid to register Application for Vesting Order 75.27

K17-(a)

Image Scale: 100% - Resolution: @ 300dpi

ILLUSTRATIVE CHART EIGHT

Known Letter of Neil L. Boyko

DISBURSEMENTS SUBJECT TO HST

<i>Paid for Execution Search</i>	29.50
Paid for all searches	286.30
Paid for sub-searches	29.55
Paid clerk closing disbursements	10.00
Paid clerk's fees	375.00
Paid for photocopies, fax, telephone	50.00
Paid for Law Society Surcharge	65.00
HST 13%	109.90

Balance owing to NEIL L. BOYKO

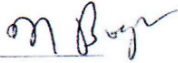
20,805.52

\$77,380.52

\$77,380.52

THIS IS MY ACCOUNT
NEIL L. BOYKO

Per: _____



NLB\gr

K17-(b)

Image Scale: 100% - Resolution: @ 300dpi

ILLUSTRATIVE CHART NINE

Known Letter of Neil L. Boyko

August 3, 2017

Mahal Venture Capital Inc.
800 Swinbourne Drive
Mississauga, Ontario L5V 1J6

Attention: Mr. Jesse Mahal

RE: Mortgage with Skymark Finance Corporation - 155 Adams Blvd., Brantford

FOR SERVICES RENDERED in the above matter
including:

To receipt of documentation from Skymark Finance Corporation;
To reviewing the documentation with Jesse Mahal and to having him sign all required documents and returning them to Jerry S. Korman

MY NOMINAL FEES HEREIN
HST

\$ 450.00
58.50

DISBURSEMENTS SUBJECT TO HST
Paid courier charges

20.00

BALANCE DUE AND OWING - PLEASE REMIT

\$ 528.50


THIS IS MY ACCOUNT HEREIN

NEIL L. BOYKO
NLB/ar

K18

Image Scale: 100% - Resolution: @ 300dpi

OPINION SCALE

<p>Strongest</p>  <p>LEVEL OF CERTAINTY</p> <p>Weakest</p>	a)	<p>There is <u>conclusive evidence</u> that the author of the specimen material wrote/did not write the questioned material.</p> <p>The possibility that an alternative hypothesis is true can, in practice, be excluded.</p>
	b)	<p>It is highly probable that the author of the specimen material <u>wrote/did not write</u> the questioned material.</p> <p>The possibility that an alternative hypothesis is true is considered to be very unlikely.</p>
	c)	<p>It is probable that the author of the specimen material <u>wrote/did not write</u> the questioned material.</p> <p>The possibility that an alternative hypothesis is true is considered to be unlikely.</p>
	d)	<p>There are indications that the author of specimen material <u>wrote/did not write</u> the questioned material.</p> <p>There is more support for the advanced hypothesis than the alternative hypothesis.</p>
	e)	<p><u>Unable to determine</u> whether or not the writer of the specimen material wrote the questioned material.</p> <p>It is not possible to determine whether the advanced hypothesis or an alternative hypothesis is true.</p>

TRUST AGREEMENT

BETWEEN:

SANTOKH MAHAL
Beneficial Owner

- and -

MAHAL VENTURE CAPITAL INC.
Trustee

WHEREAS, SANTOKH MAHAL, desires to purchase the property municipally known as Suite GPH1, 118 Merchants' Wharf, Toronto, Ontario.

AND WHEREAS SANTOKH MAHAL, and **MAHAL VENTURE CAPITAL INC.,** desire and agree that **MAHAL VENTURE CAPITAL INC.,** take title to this property in trust and on behalf of **SANTOKH MAHAL,** until such time that **SANTOKH MAHAL,** directs **MAHAL VENTURE CAPITAL INC.,** to transfer title to the property legally described as Aquabella GPH1 (the condominium), and municipally known as Suite GPH1, 118 Merchants' Wharf, Toronto, said time not to be later than five years from date of execution.

AND WHEREAS SANTOKH MAHAL and **MAHAL VENTURE CAPITAL INC.** have agreed to certain terms and provisions as hereinafter set forth.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the

mutual covenants, conditions and agreements herein contained, the parties hereto do hereby each covenant and agree with the other as follows:

MAHAL VENTURE CAPITAL INC., (hereinafter referred to as the “**Trustee**”) agrees to take title of **Suite GPH1, 118 Merchants’ Wharf, Toronto**, in trust for **SANTOKH MAHAL** of the City of Mississauga, in the Regional Municipality of Peel (hereinafter referred to as the “**Beneficial Owner**”) until such time as **SANTOKH MAHAL** directs **MAHAL VENTURE CAPITAL INC.**, in writing to transfer title to **SANTOKH MAHAL**, said time not to be later than five years from date of execution.

SANTOKH MAHAL agrees to pay all carrying costs in regards to **Suite GPH1, 118 Merchants’ Wharf, Toronto**, including mortgage payments, taxes, utilities until the property is transferred to **SANTOKH MAHAL** from **MAHAL VENTURE CAPITAL INC.**.

SANTOKH MAHAL agrees to indemnify and save harmless **MAHAL VENTURE CAPITAL INC.** from all actions, lawsuits and claims incurred by **MAHAL VENTURE CAPITAL INC.** in regards to any liens or carrying costs incurred in paying any carrying costs for the said property.

MAHAL VENTURE CAPITAL INC. agrees to indemnify and save harmless **SANTOKH MAHAL** from any lawsuits, liens, or executions registered against [**Insert Address**], **Toronto** incurred by **MAHAL VENTURE CAPITAL INC.** not arising from any

carrying cost in regards to the said property and **MAHAL VENTURE CAPITAL INC.** agrees to discharge any such lien or execution so registered against the said property.

SANTOKH MAHAL agrees to provide the full cash down payment and to pay all legal fees and disbursements including land transfer tax incurred in purchasing the property and further agrees to pay all fees and disbursements incurred in transferring title from **MAHAL VENTURE CAPITAL INC.** to **SANTOKH MAHAL**.

SANTOKH MAHAL and **MAHAL VENTURE CAPITAL INC.** agree to execute all documentation required to purchase the property, finalize any mortgage financing commitment and to transfer title from **MAHAL VENTURE CAPITAL INC.** to **SANTOKH MAHAL**.

MAHAL VENTURE CAPITAL INC. agrees to transfer title which he holds in trust for **SANTOKH MAHAL** who shall retain the beneficial interest in the property forthwith upon **SANTOKH MAHAL** so directing and **MAHAL VENTURE CAPITAL INC.** acknowledges that he takes title to the property in trust on behalf of **SANTOKH MAHAL**.

SANTOKH MAHAL and **MAHAL VENTURE CAPITAL INC.** agree that the terms of the herein agreement shall enure to the benefit of their respective successors, assigns, heirs and legal representatives and shall be binding upon them.

IN WITNESS WHEREOF the respective signatures of the herein parties dated at this 7
day of July, 2017

Witness:



SANTOKH MAHAL

Witness:



MAHAL VENTURE CAPITAL INC.

21

DATED: 7 day of July 2017

TRUST AGREEMENT

BETWEEN:

SANTOKH MAHAL
Beneficial Owner

- and -

MAHAL VENTURE CAPITAL INC.
Trustee

6845 Second line West, Mississauga Ontario.

NEIL L. BOYKO, B.A., LL.B.

BARRISTER, SOLICITOR AND NOTARY

TEL: (416) 743-3232
FAX: (416) 743-5034
lawckerk@neilboykolaw.com

3500 DUFFERIN STREET
SUITE 303
TORONTO, ONTARIO
M3K 1N2

STATEMENT OF ACCOUNT

July 31, 2017

Mr. J. Mahal and S. Mahal
6845 Second Line W
Mississauga, Ontario
L5W 1M8

Dear Sir:

Re: MAHAL PURCHASE FROM AQUABELLA BAYSIDE TORONTO SUITE GPH1.
118 MERCHANTS' WHARF TORONTO, ONTARIO

FOR SERVICES RENDERED IN THE ABOVE MATTER
INCLUDING,

To writing and receiving letters	3 hrs
To receiving closing documents from vendors solicitor having you sign same	.05 hrs
To all meetings with you	.05 hrs
To all calls with you and the solicitor for the vendor	1 hrs
To drafting trust agreement	1 hrs

TOTAL TIME THIS BILL 6 hrs

My Fees herein at the rate of \$490.00 p/h 2,940.00

DISBURSEMENTS SUBJECT TO HST

Paid for all searches	286.30	
Paid clerk's fees	375	
Paid for photocopies, fax, telephone	50	
HST 13%	92.47	803.77

TOTAL OWING TO NEIL L. BOYKO \$3,743.77

THIS IS MY ACCOUNT
NEIL L. BOYK

Per: _____
NLB/gr

Neil L. Boyko

Q2



CONDITIONS:

The closing is conditional upon the Mortgagee having good and marketable title to the property.
Purchase price of property - \$1,700,000.00
Cost of construction approximately \$4,300,000.00
Total investment - \$6,000,000.00

BROKERAGE FEE:
LENDER'S FEE:
LEGAL FEES
LEGAL FEES
INSPECTION & ADMINISTRATION FEE:

5% 450,000
2% 192,000
\$1,500.00 + disbursements
\$350.00 + disbursements for every further advance
\$750.00 for every further advance for inspection & administration

I **SANTOSH MAHAL**, hereby accept the above Commitment and acknowledge that I have had ample opportunity to consider the above proposal, and that by my signature hereto, I wish to form a binding contract to take the said money.

WITNESS:

Per: S Mahal June 9, 2015
Date

WE, **SKYLARK HOLDINGS LIMITED**, hereby commit to give the funds based on the above conditions.

SKYLARK HOLDINGS LIMITED
Per: [Signature] June 8/15
Michael Slattery Date

[Handwritten mark]



CONDITIONS:

The closing is conditional upon the Mortgagor having good and marketable title to the property.

- BROKERAGE FEE:**
- LENDER'S FEE:**
- MONITORING FEE:**
- LEGAL FEES**

480,000
4% = \$384,000.00 *EM*
1% - \$96,000.00 *EM* 192,000⁰⁰
\$5,000.00 per month
Lender's legal fees + disbursements

I Mahal Venture Capital Inc., hereby accept the above Commitment and acknowledge that I have had ample opportunity to consider the above proposal, and that by my signature hereto, I wish to form a binding contract to take the said money.

WITNESS:

Per: *J Mahal* DEC 5 2016
Date

WE, SKYLARK HOLDINGS LIMITED, hereby commit to give the funds based on the above conditions.

SKYLARK HOLDINGS LIMITED
Licence No. 10341

PER: *[Signature]* Dec 05/16
Michael Slattery Date

K12

HOME IMPROVEMENT CREDIT APPLICATION AND AGREEMENT

HOMEOWNER INFORMATION		PRINT NEATLY IN CAPITAL LETTERS	
APPLICANT FIRST NAME GOLDEN MILE FOOD CORPORATION	APPLICANT LAST NAME	APPLICANT E-MAIL (MANDATORY)	
CO-APPLICANT FIRST NAME	CO-APPLICANT LAST NAME	CO-APPLICANT E-MAIL (MANDATORY)	
INSTALLATION ADDRESS 155 ADAMS BLVD.			
CITY BRANTFORD, ONTARIO		POSTAL CODE N3S 7V8	HOME PHONE
APPLICANT DL# OR OTHER ID	APPLICANT SIN	APPLICANT DOB	CELL PHONE
CO-APPLICANT DL# OR OTHER ID	CO-APPLICANT SIN	CO-APPLICANT DOB	CELL PHONE 905-781-0575
APPLICANT EMPLOYER	APPLICANT SALARY	YEARS THERE	BUSINESS PHONE
CO-APPLICANT EMPLOYER	CO-APPLICANT SALARY	YEARS THERE	BUSINESS PHONE

DISCLOSURE OF CREDIT COSTS (O.A.G.)		Term 12 Months	
① TOTAL AMOUNT FINANCED	\$928,500.00	<input checked="" type="checkbox"/> Deferred Payment	6 Months
② INTEREST RATE PER ANNUM	9.95%	<input type="checkbox"/> 1ST	<input checked="" type="checkbox"/> 15 PAP DATE (VOID CHEQUE REQUIRED)
③ TOTAL COST OF BORROWING	\$92,385.75	04 15 2018 First Payment Date	
④ TOTAL AMOUNT PAYABLE	\$1,020,885.75	Interest accrues during the Deferral Period. No interest is payable if the Total Amount Financed is paid in full before the expiration of the Deferral Period. After the Deferral Period, if the Total Amount Financed has not been paid, all accrued interest shall be due and payable pursuant to s. 5 on the reverse side of this Agreement.	
⑤ INTEREST ONLY MONTHLY PAYMENT	\$7,698.81		
EQUIPMENT DESCRIPTION: SEE ATTACHED - SCHEDULE 'A'		REQUESTED PAP AMOUNT	

By signing this Credit Application and Agreement ("Agreement") (1) You certify that the information contained herein is true and you authorize us to make inquiries concerning your credit with consumer reporting agencies or any other company with whom you have a financial relationship (2) **you have read and agree to all the terms on the front and back of this Agreement including the Acknowledgements in s. 1, the Deferral Period set out in s. 5 and the Default Interest Rate Increase in s. 7** (3) you have read and you consent to the collection and use of Information as set out in s. 20 (4) you authorize pre-authorized payments (5) you acknowledge receipt of the duplicate copy of this Agreement on the date set out below (6) your Interest Only Monthly Payments to Skymark Finance Corporation ("Skymark") will begin on the First Payment Date and (7) you declare that you are not acting on behalf of any third-party and that there are no beneficial owners. **Your "Consumer Rights" are outlined in s. 23 of the Terms and Conditions of this Agreement.**

Mr. SANTOSH MAHAL
Applicant Print Name

x.S. Mahal 10 25 2017
Applicant Signature

Co-Applicant Print Name

Co-Applicant Signature

Co-Applicant Print Name

Co-Applicant Signature

Representative Signature on behalf of the Vendor	Representative Name	VENDOR COMPANY NAME
--	---------------------	---------------------

HOME IMPROVEMENT CREDIT APPLICATION AND AGREEMENT

HOMEOWNER INFORMATION		PRINT NEATLY IN CAPITAL LETTERS	
APPLICANT FIRST NAME GOLDEN MILE FOOD CORP.	APPLICANT LAST NAME	APPLICANT E-MAIL (MANDATORY)	
CO-APPLICANT FIRST NAME	CO-APPLICANT LAST NAME	CO-APPLICANT E-MAIL (MANDATORY)	
INSTALLATION ADDRESS 155 ADAMS BLVD.			
CITY BRANTFORD, ON	POSTAL CODE N3S 7V8	HOME PHONE	
APPLICANT DL# OR OTHER ID	APPLICANT SIN	APPLICANT DOB	CELL PHONE
CO-APPLICANT DL# OR OTHER ID	CO-APPLICANT SIN	CO-APPLICANT DOB	CELL PHONE 905-781-0575
APPLICANT EMPLOYER	APPLICANT SALARY	YEARS THERE	BUSINESS PHONE
CO-APPLICANT EMPLOYER	CO-APPLICANT SALARY	YEARS THERE	BUSINESS PHONE

DISCLOSURE OF CREDIT COSTS (D.A.C)		Term 12 Months	
① TOTAL AMOUNT FINANCED	\$ 3,360,000	<input checked="" type="checkbox"/>	Deferred Payment 6 Months
② INTEREST RATE PER ANNUM	9.95%	<input checked="" type="checkbox"/> 1ST	<input type="checkbox"/> 15 PAP DATE (VOID CHEQUE REQUIRED)
③ TOTAL COST OF BORROWING	\$ 334,320	06 01 2018 First Payment Date	
④ TOTAL AMOUNT PAYABLE	\$ 3,694,320	Interest accrues during the Deferral Period. No interest is payable if the Total Amount Financed is paid in full before the expiration of the Deferral Period. After the Deferral Period, if the Total Amount Financed has not been paid, all accrued interest shall be due and payable pursuant to s. 5 on the reverse side of this Agreement.	
⑤ INTEREST ONLY MONTHLY PAYMENT	\$ 27,860		
EQUIPMENT DESCRIPTION : SEE SCHEDULE "A"		REQUESTED PAP AMOUNT	

By signing this Credit Application and Agreement ("Agreement") (1) You certify that the information contained herein is true and you authorize us to make inquiries concerning your credit with consumer reporting agencies or any other company with whom you have a financial relationship (2) **you have read and agree to all the terms on the front and back of this Agreement including the Acknowledgements in s. 1, the Deferral Period set out in s. 5 and the Default Interest Rate Increase in s. 7** (3) you have read and you consent to the collection and use of Information as set out in s. 20 (4) you authorize pre-authorized payments (5) you acknowledge receipt of the duplicate copy of this Agreement on the date set out below (6) your Interest Only Monthly Payments to Skymark Finance Corporation ("Skymark") will begin on the First Payment Date and (7) you declare that you are not acting on behalf of any third-party and that there are no beneficial owners. **Your "Consumer Rights" are outlined in s. 23 of the Terms and Conditions of this Agreement.**

MR. SANTOSH MAHAL
Applicant Print Name

S. Mahal 12 06 2017
Applicant Signature

Co-Applicant Print Name

Co-Applicant Signature

Co-Applicant Print Name

Co-Applicant Signature *KAD*

Representative Signature on behalf of the Vendor	Representative Name	VENDOR COMPANY NAME
--	---------------------	---------------------

Replaced s 1

HOME IMPROVEMENT CREDIT APPLICATION AND AGREEMENT

HOMEOWNER INFORMATION		PRINT NEATLY IN CAPITAL LETTERS	
APPLICANT FIRST NAME	APPLICANT LAST NAME	APPLICANT E-MAIL (MANDATORY)	
GOLDEN MILE FOOD CORPORATION			
CO-APPLICANT FIRST NAME	CO-APPLICANT LAST NAME	CO-APPLICANT E-MAIL (MANDATORY)	
INSTALLATION ADDRESS			
155 ADAMS BLVD.			
CITY	POSTAL CODE	HOME PHONE	
BRANFORD, ON	N3S 7V8	905-781-0575	
APPLICANT DL# OR OTHER ID	APPLICANT SIN	APPLICANT DOB	CELL PHONE
		02.10.1956	
CO-APPLICANT DL# OR OTHER ID	CO-APPLICANT SIN	CO-APPLICANT DOB	CELL PHONE
APPLICANT EMPLOYER	APPLICANT SALARY	YEARS THERE	BUSINESS PHONE
CO-APPLICANT EMPLOYER	CO-APPLICANT SALARY	YEARS THERE	BUSINESS PHONE

DISCLOSURE OF CREDIT COSTS TO A C		Term 12 Months	
① TOTAL AMOUNT FINANCED	\$879,500	<input checked="" type="checkbox"/> Deferred Payment	6 Months
② INTEREST RATE PER ANNUM	9.95%	<input checked="" type="checkbox"/> 1ST	<input type="checkbox"/> 15 PAP DATE
③ TOTAL COST OF BORROWING	\$87,510.25	(VOID CHEQUE REQUIRED)	
④ TOTAL AMOUNT PAYABLE	\$967,010.25	07/01/2019 First Payment Date	
⑤ INTEREST ONLY MONTHLY PAYMENT	\$7292.52	Interest accrues during the Deferral Period. No interest is payable if the Total Amount Financed is paid in full before the expiration of the Deferral Period. After the Deferral Period, if the Total Amount Financed has not been paid, all accrued interest shall be due and payable pursuant to s. 5 on the reverse side of this Agreement.	
EQUIPMENT DESCRIPTION :		REQUESTED PAP AMOUNT	
SEE SCHEDULE "A"			

By signing this Credit Application and Agreement ("Agreement") (1) You certify that the information contained herein is true and you authorize us to make inquiries concerning your credit with consumer reporting agencies or any other company with whom you have a financial relationship (2) **you have read and agree to all the terms on the front and back of this Agreement including the Acknowledgements in s. 1, the Deferral Period set out in s. 5 and the Default Interest Rate Increase in s. 7** (3) you have read and you consent to the collection and use of Information as set out in s. 20 (4) you authorize pre-authorized payments (5) you acknowledge receipt of the duplicate copy of this Agreement on the date set out below (6) your Interest Only Monthly Payments to Skymark Finance Corporation ("Skymark") will begin on the First Payment Date and (7) you declare that you are not acting on behalf of any third-party and that there are no beneficial owners. **Your "Consumer Rights" are outlined in s. 23 of the Terms and Conditions of this Agreement.**

SANTOSH MAHAL *S. Mahal* 22.2019
 Applicant Print Name Applicant Signature

 Co-Applicant Print Name Co-Applicant Signature

 Co-Applicant Print Name Co-Applicant Signature

Representative Signature on behalf of the Vendor	Representative Name	VENDOR COMPANY NAME
		KSF



1275-5325309
CHEQUE # 00475 \$285,288.59

GOLDEN MILES BREAD & BAGEL CORPORATION
800 SWINBOURNE DR
MISSISSAUGA, ON L5V 1J6

DATE 20 20-12-01
YYYYMMDD

PAY to the order of Skymark Finance Corp \$ 285,288.59
Two Hundred Eighty Five Thousand Two Hundred Eighty Eight DOLLARS

TD CANADA TRUST
MISSISSAUGA CENTRE
20 MILVERTON DR. 8 HWY. #10
MISSISSAUGA, ONTARIO L5R 9G2

GOLDEN MILES BREAD & BAGEL CORPORATION

RE Final Payment of 155 Adams PER J. Mahaf

⑆000475⑆ ⑆12752⑆004⑆ 0646⑆5325309⑆

CHEQUE # 00475

N6WSZ 221992614656
14746-002 8509433
Scotiabank
SQUARE ONE SHOPPING CTR,
MISSISSAUGA, ON
01-Dec-2020
8509433 14746-002
14746 0025216

Printer ID# 1021

16746 002-0025216

Endorsement - Signature or Stamp

TDCT OFI 003
20201201 ISN: 3142088145

BACKVERSO

65052-002 BNS
CID Toronto ON
01-Dec-2020
220973000

K6

1275-5325309
CHEQUE # 00528 \$14,535.23

GOLDEN MILES BREAD & BAGEL CORPORATION
800 SWINBOURNE DR
MISSISSAUGA, ON L5V 1J6

DATE 20 20-12-11
YYYYMMDD

PAY to the order of Enbridge Gas Inc \$ 14,535.23
Fourteen Thousand Five Thirty Five DOLLARS

TD CANADA TRUST
MISSISSAUGA CENTRE
20 MILVERTON DR. 8 HWY. #10
MISSISSAUGA, ONTARIO L5R 9G2

GOLDEN MILES BREAD & BAGEL CORPORATION

RE 155 Adams 810 881 287
819 983 PER J. Mahaf

⑆000528⑆ ⑆12752⑆004⑆ 0646⑆5325309⑆

CHEQUE # 00528

Deposit to the Credit of
ENBRIDGE GAS INC.
TR # 60809-004 ACC. #0800-6427210

Printer ID# 1021

20201218
Pichim2
0011 00961558
1241380746 00000000809095427216

Endorsement - Signature or Stamp

TDCT BRN 00112
20201218 ISN: 1143034374
CR 86009-547216

BACKVERSO

PAID CIA

DEC 1 2020

K7

1275-5325309
CHEQUE # 00529 \$1,052.03

GOLDEN MILES BREAD & BAGEL CORPORATION
800 SWINBOURNE DR
MISSISSAUGA, ON L5V 1J6

DATE 20 20-12-17
YYYYMMDD

PAY to the order of LITHO COLOR Services LTD \$ 1,052.03
one thousand fifty two dollars DOLLARS

TD CANADA TRUST
MISSISSAUGA CENTRE
20 MILVERTON DR. 8 HWY. #10
MISSISSAUGA, ONTARIO L5R 9G2

GOLDEN MILES BREAD & BAGEL CORPORATION

RE 11142 104226 PER J. Mahaf

⑆000529⑆ ⑆12752⑆004⑆ 0646⑆5325309⑆

CHEQUE # 00529

20201216
Jhamm2
3810 00995154
1241385871 0000000103325278526

Printer ID# 1021

Endorsement - Signature or Stamp

TDCT BRN 38102
20201216 ISN: 414048092
CR 10332-5278526

BACKVERSO

K8

1275-5325309
CHEQUE # 00527 \$5,381.63

GOLDEN MILES BREAD & BAGEL CORPORATION
800 SWINBOURNE DR
MISSISSAUGA, ON L5V 1J6

DATE 20 20-12-11
YYYYMMDD

PAY to the order of United Trailers Inc \$ 5,381.63
Five Thousand Three Hundred Eighty one DOLLARS

TD CANADA TRUST
MISSISSAUGA CENTRE
20 MILVERTON DR. 8 HWY. #10
MISSISSAUGA, ONTARIO L5R 9G2

GOLDEN MILES BREAD & BAGEL CORPORATION

RE Invoice 7211, 12/13/14, 13/14/17 PER J. Mahaf

⑆000527⑆ ⑆12752⑆004⑆ 0646⑆5325309⑆

CHEQUE # 00527

Virtual Endorsement
DSPACC: 1000348
DSPTR: 02952-003
CSID: 7203565951409300667
TXNID: 1
SCANSES: 141,876,080
ITMSEQ: 8
CHANID: 003
APPCD: S900
TRANSIT: 00667
DSPCUR: CAD
TEFID: 21/12/20
OPID: 335364519

Printer ID# 1021

Endorsement - Signature or Stamp

TDCT OFI 003
20201211 ISN: 2148048327

BACKVERSO

K9

014007


TDCA71400_1269940_008 - 0076198

ARTICLE TWELVE
COPY OF AGREEMENT

12.1 The Debtor hereby acknowledges receipt of a copy of this security agreement.

IN WITNESS WHEREOF the Debtor has executed this security agreement this 14 day of December, 2020.

GOLDEN MILES FOOD CORPORATION

Per: 
Santokh Singh Mahal, President
I have the authority to bind the corporation.

K10

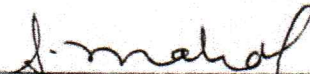
ACKNOWLEDGEMENT

TO: Santokh Singh Mahal (the "Secured Party")
AND TO: Kirwin Partners LLP
FROM: Golden Miles Food Corporation (the "Debtor")
RE: REGISTRATION PURSUANT TO THE PERSONAL PROPERTY SECURITY ACT

The undersigned hereby acknowledges receipt of the attached copy of a verification statement indicating that a notice has been registered pursuant to the *Personal Property Security Act* naming the undersigned as a debtor in a transaction with the Secured Party.

DATED this 14 day of December, 2020

GOLDEN MILES FOOD CORPORATION

Per: 
Santokh Singh Mahal, President
I have the authority to bind the corporation.



PROMISSORY NOTE

FOR VALUE RECEIVED, GOLDEN MILES FOOD CORPORATION (the "**Borrower**") promises to pay on demand to or to the order of SANTOKH SINGH MAHAL (the "**Lender**"), the principal amount as may be advanced and outstanding from time to time, between the Borrower and the Lender, as shown on the schedule annexed hereto or any continuation schedule which may at any time be attached hereto.

THIS PROMISSORY NOTE is issued to evidence the principal amounts advanced, any repayments on account thereof and the unpaid balance of the principal amount outstanding from time to time. The Lender is hereby authorized to endorse on the schedule annexed hereto, or any continuation schedule which may at any time be attached hereto, the date and amount of each advance, and each payment of principal on account thereof, together with the unpaid balance of the principal amount outstanding owing by the Borrower to the Lender. Each such endorsement shall be prima facie evidence of the amounts so advanced and repaid and, in the absence of manifest mathematical error, this promissory note shall be conclusive evidence of the amount of the Borrower's liability to the Lender for the unpaid balance of the principal amount outstanding owing by the Borrower to the Lender.

THE BORROWER shall pay interest on the amount the principal outstanding from time to time at the rate as is agreed between the Borrower and the Lender until payment in full.

IN THE EVENT of the non-payment when due, whether by acceleration or otherwise, of all or any part of the principal, or in the event of the bankruptcy or insolvency of the Borrower, or the institution by or against the Borrower of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act* or otherwise, the entire unpaid balance of the principal and accrued interest shall, at the option of the Lender, become immediately due and payable.

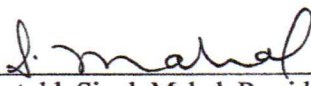
THE BORROWER shall have the privilege of repaying the whole or any part of the principal sum at any time or from time to time without notice, bonus, premium or penalty.

THE BORROWER hereby waives presentment, notice of dishonour, protest and notice of protest.

THIS PROMISSORY NOTE shall be governed and construed by the laws of the Province of Ontario and the laws of Canada applicable therein.

DATED at Windsor, Ontario this 14 day of December, 2020.

GOLDEN MILES FOOD CORPORATION

Per: 
Santokh Singh Mahal, President

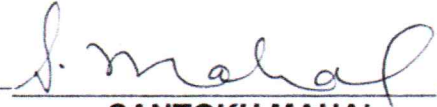
I have the authority to bind the corporation.



SWORN by videoconference, in the City of Mississauga, before me at the City of Toronto, in the Province of Ontario, on November 21, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



SANTOKH MAHAL

Nov. 21. 2021 at 3.40p



Branch: 2116 BRAMPTON DIXIE & OREN
ONT
8125 DIXIE ROAD
BRAMPTON, ON

Date: Jul 2, 2021, 02:41 PM
Ref #: 00280223/2 - ZDIII

From: **Cheque Total**
48,310.52

To: 1275-53***09
Deposit
Cash: 0.00 CAD
Number of Items: 1
GOLDEN MILES
48,310.52

From: 1275-53***09
Debit Memo Transfer
GOLDEN MILES
48,310.52

To: 2116-52***86
Credit Transfer
KING TRUCK
48,310.52

Account Balance:
1275-53***09: 391.07

Thank You for banking with TD.
For information call
EasyLine 1-866-222-3456
or visit td.com

KIA

F. The Fourth Deposit

16. On October 2, 2018, I drew a cheque bearing cheque number 30-142850291 in the amount of \$331,000 from the Santokh TD Account payable to MVC for the specific purpose of paying the Fourth Deposit. On October 2, 2018, the above-noted cheque was deposited into the MVC Account. On the same day, MVC paid \$330,900 to Delzotto on account of the Fourth Deposit.

17. Copies of the Santokh TD Account bank statement and the MVC Account bank statement for October, 2018, are attached, collectively, as **Exhibit 13**.

18. A copy of a letter from Delzotto to MVC dated October 2, 2018, confirming MVC's payment of the Fourth Deposit is attached as **Exhibit 14**.

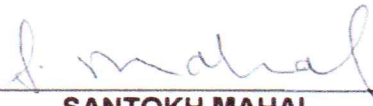
G. Closing

19. The escrow closing of the APS is currently scheduled for March 29, 2022, as appears from the letter from Delzotto to MVC dated November 17, 2021, a copy of which is attached as **Exhibit 15**.

SWORN by videoconference, in the City of Mississauga, before me at the City of Toronto, in the Province of Ontario, on January 19, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



SANTOKH MAHAL

K156

NEIL L. BOYKO
BARRISTER, SOLICITOR AND NOTARY

TEL: [416] 743-3232
FAX: [416] 743-5034
E-mail: neil@neilboykofaw.com

3500 DUFFERIN STREET
SUITE 303
TORONTO, ONTARIO
M3K 1N2

June 26, 2019

Via Fax 905-272-1905

Skymark Finance Corporation
46 Village Centre Place,
MISSISSAUGA, Ontario
L4Z 1V9

Attention: Mr. Michael Slattery and to Mr. Jerry Korman

Re: Mahal Venture Capital Inc. first mortgage on 155 Adams Blvd. Brantford

As you are aware I am the solicitor for Mr. Mahal and his various companies. There seems to be some confusion on the amount owing on the various mortgages and the construction and machine advances. These can be divided into the following categories:

1. Land- One million advance;
2. Mortgage registered for 4 million-only 1 million advance;
3. Construction advances of \$11,213,831.98-Vicano Construction;
4. Paid to MSM \$650,000.00 secured by 9.6 million mortgage;
5. Machinery \$3,157,811.95 mortgage registered for 7.5 million against the machine Only;
6. Interest calculation on the 22nd day of each month in the amount of \$8,333.33 and leaving interest paid up to date;
7. Interest calculation for construction will be from June 6, 2017 to June 30, 2019.

Total owing on Construction and to MSM is \$11,863,831.98 plus interest.

Yours truly



NEIL L. BOYKO
NLB/la



July 11, 2017

Mr. S. Mahal
800 Swinbourne Drive
Mississauga, Ontario
L5V 1J6

Dear Sir:

Re: 2581150 Ontario Inc. - Application Vesting Order
For property

Received from Skymark \$56,575.00

For services rendered in the above matter from the beginning of June to July 7th, 2017, including numerous meetings and calls with you and the other solicitors involved in this complicated transaction including the exchange of many hundreds of emails, additional letters, title searches and examination of extensive contractual material and to registering vesting order in favour of 2581150 Ontario Inc. For the Windsor property in exchange for \$20,000,000.00 in Skymark debit financing

My Fees herein	\$17,500.00
HST 13%	2,275.00

DISBURSEMENTS NOT SUBJECT TO HST

<i>Paid Land Transfer Tax</i>	56,575.00
<i>Paid to register Application for Vesting Order</i>	75.27

K17(a) b

DISBURSEMENTS SUBJECT TO HST

<i>Paid for Execution Search</i>	29.50
Paid for all searches	286.30
Paid for sub-searches	29.55
Paid clerk closing disbursements	10.00
Paid clerk's fees	375.00
Paid for photocopies, fax, telephone	50.00
Paid for Law Society Surcharge	65.00
HST 13%	109.90

Balance owing to NEIL L. BOYKO

20,805.52

\$77,380.52

\$77,380.52

THIS IS MY ACCOUNT
NEIL L. BOYKO

Per: _____



NLB\gr

K17(b)g

August 3, 2017

Mahal Venture Capital Inc.
800 Swinbourne Drive
Mississauga, Ontario L5V 1J6

Attention: Mr. Jesse Mahal

RE: Mortgage with Skymark Finance Corporation - 155 Adams Blvd., Brantford

FOR SERVICES RENDERED in the above matter
including:

To receipt of documentation from Skymark Finance Corporation;
To reviewing the documentation with Jesse Mahal and to having him sign all required documents and returning them to Jerry S. Korman

MY NOMINAL FEES HEREIN
HST

\$ 450.00
58.50

DISBURSEMENTS SUBJECT TO HST

Paid courier charges

20.00

BALANCE DUE AND OWING - PLEASE REMIT

\$ 528.50

THIS IS MY ACCOUNT HEREIN

NEIL L. BOYKO
NLB/ar

KIS

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

IN THE MATTER OF THE BANKRUPTCY OF MAHAL VENTURE CAPITAL INC.,
OF THE CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO

ACKNOWLEDGEMENT OF EXPERT'S DUTY

1. My name is Graham Ospreay. I live in the Township of Bonnechere Valley, in the Province of Ontario.
2. I have been engaged by or on behalf of KSV Restructuring Inc. in its capacity as Trustee of Mahal Venture Capital Inc. to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: February 17th, 2022



GRAHAM OSPREAY

NOTE: This form must be attached to any expert report under subrules 53.03(1) or (2) and any opinion evidence provided by an expert witness on a motion or application.

Court File No.: 32-2782563

IN THE MATTER OF THE BANKRUPTCY OF MAHAL VENTURE CAPITAL INC.
OF THE CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

ACKNOWLEDGEMENT OF EXPERT'S DUTY

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Chris Burr, LSO #55172H
Tel: 416-863-3261
Email: chris.burr@blakes.com

Caitlin McIntyre, LSO #72306R
Tel: 416-863-4174
Email: caitlin.mcintyre@blakes.com

Alexia Parente, LSO #81927G
Tel: 416-863-2417
Fax: 416-863-2653
Email: alexia.parente@blakes.com

Lawyers for the Trustee



CURRICULUM VITAE

GRAHAM P. OSPREAY

Court Experience: District Court of Ontario (Criminal); Provincial Court (Criminal) - Ontario Court of Justice (Provincial); Superior Court of Justice (General Division); Small claims court; Labour Board of Ontario; Rent Review Hearings Board; Arbitration hearings.

Current Positions: Forensic Document Examiner & Forgery Analyst - G. P. Ospreay & Associates, established – 1995.

Accreditation: Fellow of the American College of Forensic Examiners, (FACFE), 1999; Diplomate of the American Board of Forensic Examiners / Board Certified Forensic Examiner (DABFE, BCFE), 1996; The Canadian Society for Industrial Security / Certified Security Professional, (CSP), 2004.

Forensic Training / Apprenticeships: Completion of a two year apprenticeship in Forensic Document Examination, M.I. Duncan & Associates, Toronto, Ontario. 1992, with position as Forensic Document Examiner (Associate) 1992-1997. Tutored studies in the Psychology & Physiology of Handwriting and Human Motor Control Skills, with Mrs. Beryl Gilbertson, M. A. Toronto, Ontario 1998 – 2004. Apprenticeship and position as a Copyist and Restorer, including training in forgery detection of art, antiquities and artefacts, with W.D. Shelly Restorations, Thornhill, Ontario 1982-85. Completion of a three year apprenticeship as a Master Copyist of art and artefacts, under Graeme Rowe Art Conservator / Restorer, Oak Ridges, Ontario 1986-1988.

Relevant / Related Training: *American Institute of Applied Science, Diploma program in Forensic Science, NC. USA 1995.* Restoration certificate, Seneca College, Toronto, Ontario 1984. Case Analysis Charting - International Association of Law Enforcement Intelligence Analysts, USA, since 1991. Arson Investigation and Fire Prevention Certification, (examination and handling of charred documents), Fire Academy / Fire Prevention Institute, Toronto, Ontario. 1992. Canadian Region of Certified Fraud Examiners, Professional Development Meetings, since 1991. The Reid Technique of Interviewing and Interrogation, (forensic linguistics), John E. Reid and Associates Inc. course certification, Toronto, Ontario. 1996. Laboratory For Scientific Interrogation, course on the SCAN Technique - Scientific Content Analysis, (Statement Analysis, written and verbal), certification for course held at the Ontario Police College, Aylmer, Ontario, 1997. International Society of Appraisers, Core Course in Appraisal Studies, ISA Accredited - 2002.

Professional Society Memberships: Associate Member - Association of Certified Fraud Examiners, USA, since 1997; Affiliate Member - The Chartered Society of Forensic Sciences (UK) since 1995;

Meetings / Seminars / Courses: Executive Protection Institute, (Extortion Letters) seminars, USA, since 1987. The American Society & The Canadian Society for Industrial Security, seminars, since 1990. Royal Canadian Mounted Police, (Counterfeit Detection) seminar, Toronto, Ont. 1990. The International Association of Law Enforcement Intelligence Analysts, (Transnational Documents) seminars, USA, since 1991. Retail Council of Canada, (Security & Fraud) seminars, since 1993. The American Hotel & Motel Association, (Document Forgery in Casinos & Gaming), seminar, London, Ont. 1994. Symposium of the International Graphonomics Society & the Association of Forensic Document Examiners, (Basic & Applied Issues in Handwriting & Drawing Research), University of Western Ontario, London, Ont. 1995. National Association of Document Examiners' Annual Conference, Las Vegas, NV 1997. Toronto Police Service Forensic Identification Services Annual Conference, Toronto, Ontario, since 1998. Continuing education includes research and regular attendance at various related seminars and conferences. Various courses and training sessions in advanced investigation and security techniques and procedures, since 1983.

Areas of Expertise: Comparison and identification of handwriting, hand printing and signatures; Assessment and identification of anonymous writing; Examination of altered documents and obscure, obliterated or erased entries; Identification of mechanical impressions; Document security; Identification of historical documents including paleographic and epigraphic research and interpretations; Decipherment of encrypted writings including graffiti related tags and markings; Authentication, Identification and Appraisal of Documents, Art Works on Paper, Prints, Drawings & Paintings, (Fine Art). Investigation and identification of trademark infringements; Counterfeit product identification; ID Theft / Fraud examination.

Previous Board / Advisory & Positions Held: Technical Board Member (program & product analysis, including validation testing in the area of forensic document examination & art forgery) to the Measurement of Internal Consistency (MICS) Program - Lumen (Limbic) IQ Systems Inc. Washington, USA, 2001-2003; Technical Advisor / Risk Management Consultant (counterfeit & forgery identification issues) - Paystation Inc. Ontario, Canada, 2000-2006; Planning Committee Member (private security & investigation issues) to The Law Commission of Canada, International Conference on Policing and Security (“In Search of Security”) Ottawa, Ontario, Canada, 2002-2003; Director of Forensic Investigations (fraud & forgery issues) to Dubros & Associates, Ontario, Canada, 1996-2001. Industry Advisory Participant to the Canada-United States Secretariat / Privy Council Office for the establishment of the “Security and Prosperity Partnership of North America” (SPP) Ottawa, Ontario, Canada, 2005; Member - The Canadian Society of Industrial Security, Inc., awarded lifetime membership in 2009. National President and Chairman of the Board - Canadian Society for Industrial Security, Incorporated (CSIS), 2001-2006 and Chair for the Canadian Security Certification Authority (CSCA), 2004-2008; Member of the Private Security and Investigative Services Committee (PSISAC) – Ministry of Community Safety and Correctional Services, 2005-2008. Advisory Board Member - The Centre for Justice Studies, Humber Institute of Technology and Advanced Learning, 2003 - 2010; Member and Chair of the Canadian General Standards Board (CGSB), Committee for Review of the Canadian Security Standard, 2004 - 2010. Member and Chair for the Town of Newmarket Graffiti Abatement Task Force, 2010 - 2012. Board Member / Director - Association of Certified Fraud Examiners, Toronto CFE Chapter, 2003 - 2014. Part time Academic Professor - teaching Handwriting and Document Examination / Counterfeit Identification / Detection of Deception in the Law & Security Administration Program / Crime Scene Investigation Course and Part time Academic Professor – teaching Investigative Interviewing - Statement & Discourse Analysis / Conflict Resolution / Canadian Criminal Code in the Protection Security & Investigation (PSI) program; Two year position as the PSI Program Coordinator; – Humber Institute of Technology and Advanced Learning, from 2011-17; Chair of the Federal Canadian General Standards Board (CGSB), Committee for Review of the Canadian Security Standard, (second term), 2015-2017. Steering Committee Member – First Nation, Métis, Inuit Education / York Region District School Board, 2013-2018.

Types of Cases: Opinions given on cases involving: author identification; suspect signatures/initials; disputed wills; suspect/altered documents such as contracts, insurance receipts, mortgage/land transfers and deeds, medical records, cheques/financial negotiables, printed data recordings and personal identification; disguised handwritings; anonymous and threatening letters; kidnap and extortion letters; typewriting, photocopier and printer identifications; Ink and paper differentiation; stamp/seal verifications; accounting/bookkeeping records; sequence of writing entries; document age determination and dating issues; Investigative discourse analysis; graffiti; counterfeit product identification; infringement of intellectual property rights and product diversion investigations; forgery detection of fine art, antiques & collectibles; dealer fraud; ID theft analysis & prevention; civil and criminal investigation cases, etc.

Laboratory Equipment includes: Microview Inspection System - video microscope with triocular head, video enhancer, infrared sensitive CCD camera, Sony monitor, video printer, high intensity fibre-optic illuminator and ring fluorescent illuminator. Long and short-wave UV lamps. Barrier Filters. Leica Wild M3Z stereoscopic microscope with Volpi Intralux 4000-1 fibre-optic lighting system. V-Doc/3300 Infrared Spectral Detector and Video Microscope. Carson Digital Microscope Scanning Electron Microscope. Sirchie - FX8B Forensic Optical Comparator. RF Inter-Science Macroscope 18-36 Zoom with calibrated measuring scale. Kinderprint Indentation Materializer. Canon G7 digital camera. Canon EOS 40D digital SLR camera. Digital Scanning equipment, including various image enhancement and processing programs. Veriprobe Multimode document examination device. Light table, low powered magnifiers. Various measuring devices. Peak measuring scopes. Mitutoyo electronic micrometer. Associate Laboratories for fingerprint identifications, DNA analysis, Ink dating, Metallurgy analysis, Chemical analysis, X-ray examinations, Thermoluminescence and Radiocarbon dating.

Articles & Papers / Presentations & Lectures:

- Eight hour presentation to the Ontario Graphoanalysis Society / "The Identification of Handwriting in Criminal Profiling Cases" and a follow up article published in their news letter 'Penstrokes' - Willowdale, Ontario. June 04, 1994.
- *Lecture to BDO Dunwoody Chartered Accountants - Professional Development Day* / "Forensic Document Examination in Financial Investigations" - Toronto, Ontario. September 18, 1996.
- *Lecture to the Ontario Graphoanalysis Society* / "Document Forgery & Fraud as Related to Elder Abuse Cases" - Willowdale, Ontario. November 23, 1996.
- *Presentation & Lecture to the National Association of Forensic Document Examiners - Annual Conference* / "The Document Examiners Role in Complex Fraud Investigations" - Las Vegas, Nevada, USA. November 01, 1997.
- *Presentation to the York Region Branch of the Ontario Genealogical Society* / "The Forensic Examination of Historical Documents" - Richmond Hill, Ontario. February 11, 1998.
- *Presentation to the Sheba Shrine Club* / "Document Examination and Counterfeit Identifications" - Barrie, Ontario. June 17, 1998.
- *Presentation to B'Nai Brith Canada - Maven Lodge* / "Forensic Document Examination & Counterfeit Identification" - Thornhill, Ontario. September 26, 1998.
- *Eight hour presentation to the Ontario Graphoanalysis Society Annual Conference* / "The Origins of the Alphabet & Writing Systems of the World" - Toronto, Ontario. September 16, 1999.
- *Paper and Presentation to the Canadian Bar Association - Ontario Institute 2000 Civil Litigation Document Evidence: The Great Paper Chase* / "Forensic Document Examination" - Toronto, Ontario. January 29, 2000.
- *Presentation to the Commercial Security Association* / "Forensic Document Examination" - Toronto, Ontario. March 27, 2000.
- *Lecture to the Bradford District High School - Grade 11 & 13 Law Class* / "Forensic Document Examination" - Bradford, Ontario. April 20, 2000.
- *Training seminar to the Ontario Hydro Services Company - Corporate Security Services* / "Forensic Document Examination and Case Analysis Charting" - Toronto, Ontario. April 26, 2000.
- *Presentation to The Seminar on Success and Cost Management in Private Sector Forensic Investigations - (sponsored by Maxxam Analytics Inc.)* / "Forensic Document Examination & Counterfeit Identification" - Toronto, Ontario. May 11, 2000.
- *Published Article in the Lawyers Weekly - (Butterworths Canada Ltd.)* / "Document Sleuths: A Primer for Private Eyes" - Markham, Ontario. July 21, 2000.
- *Published Article in the Lawyers Weekly - (Butterworths Canada Ltd.)* / "Forensic Evidence: Writing Style Can Reveal The Identity of an Unknown Author" - Markham, Ontario. August 8, 2000.

- Eight hour presentation to the International Graphoanalysis Society - Pennsylvania Chapter / "History of The Alphabet and World Writing Systems" - Reading, Pennsylvania, USA. September 16, 2000.
- Published Article in the Canadian Security Journal - (Canada Law Book Inc.) / "Fraudulent Documentation: "A Historical View of Fraud and Forgery Prevention in the area of Document Security" - Aurora, Ontario. April 2001.
- Presentation to the One Parent Families of York Region / "Document Fraud and Forgery in Civil Cases" - Newmarket, Ontario. March 21, 2001.
- Presentation to the Canadian Society for Industrial Security, National Conference and Trade Show / "Forensic Document Examination and Product Counterfeiting" - Toronto, Ontario. June 10, 2001.
- Presentation to the Council of International Investigators, Inc., 47th Annual General Meeting and Seminars / "Forensic Document Examination and Counterfeit Identification" - Toronto, Ontario. August 23, 2001.
- Presentation to the Auctioneers Association of Ontario, Annual Conference and Trade Show / "Forgery Detection of Historical Documents & Scientific Analysis in the Authentication of Fine Art" - Mississauga, Ontario. February 16, 2002.
- Presentation to American Association of Handwriting Analysts and The American Handwriting Analysis Foundation / "Investigation & Examination of Interpretive Images" (authentication of artists under-drawings, sketches and signatures). AAHA/AHAF, Joint Conference, The Great Canadian Rendezvous, Toronto, Ontario. July 12, 2002.
- Presentation to the International Society of Appraisers (Eastern Canada Chapter) / "Forgery Detection of Artefacts and Associated Documents" - ISA Meeting, The University of Toronto Art Centre, Toronto, Ontario. February 05, 2003.
- Eight hour presentation (two parts) to the Ontario Graphoanalysis Society / Part One: "The Identification of Counterfeit Documents and Document Security Issues". Part Two: "The Investigation & Examination of Interpretive Images In Works of Art" (authentication of artists under-drawings, sketches and signatures). McConaghy Centre, Richmond Hill, Ontario. April 12 2003.
- Presentation to B'Nai Brith Canada - Thornhill Lodge # 2994 / "Forgery Analysis in Historical Documents and Artefacts" - Thornhill, Ontario. September 26, 2003.
- Presentation to Loyalist College – CSIS Chapter & Law and Security Administration Department / "Professional Standards and Certification" – Loyalist College, Belleville, Ontario. February 11, 2004.
- Four Hour Training seminar to State Farm Insurance Special Investigations Unit / "Forensic Examination of Documents; Brand Counterfeiting Issues; Artefact Forgery & Artefact Theft Investigations" – SFI Claims Office, Mississauga, Ontario. June 02, 2004.
- Presentation to Seneca College Graduate Class in Forensic Accounting - FAC866, / "Fraud & Forgery Identification in Financial Investigations", - Seneca College Newman Campus, Toronto, Ontario, March 30, 2005.
- Presentation to the International Graphoanalysis Society 2005 Congress – A three hour session on "Forensic Document Examination & Forgery Analysis" and "Why there is no place for Graphology in Forensic Document Examination", - Renaissance Fallsview Hotel, Niagara Falls, Ontario, October 29, 2005.
- Presentation to the Barrie Masonic Temple - Annual Meeting / "Frauds, Scams and Identity Theft", - Barrie, Ontario, May 24, 2006.
- Training Session and Presentation to the Royal Bank of Canada RBC Travel Insurance Company Special Investigation Unit / "Forensic Document Examination & Counterfeit and forgery Identification", Mississauga, Ontario, May 30, 2006.
- Presentation to the Senior Educators of the McMichael Canadian Art Collection / "Forgery Detection and Authentication Analysis of Artists Signatures and Art & Artefacts" – Kleinburg, Ontario, November 02, 2006.

- Training Session and Presentation to the Law & Security Administration and Police Foundations Program at Conestoga College Institute of Technology and Advanced Learning / “Forensic Document Examination and Forgery Analysis” – Kitchener, Ontario, November 6, 2006.
- Presentation to the Gallery Docents of the McMichael Canadian Art Collection / “Forgery Detection and Authentication Analysis of Paintings and Artists Signatures” – Kleinburg, Ontario, January 08, 2007.
- Presentation to the Gallery Docents of the McMichael Canadian Art Collection / “Forgery Detection and Authentication Analysis of Paintings and Artists Signatures” – Kleinburg, Ontario, May 12, 2007.
- Presentation to the National Association of Document Examiners (NADE) / “Art and Artefact Forgery Identification / Identifying Signatures & Monograms” - NADE 2007 Conference – Innovations in Forensic Technology and Expertise, Westward Look Resort, Tucson, Arizona, USA, May 17, 2007.
- Presentation to the Association of Certified Fraud Examiners & the Canadian Association of Special Investigation Units / “Forensic Document Examination & Forgery Analysis” – Annual Toronto Fraud Forum - Richmond Hill, Ontario, September 25, 2007.
- Presentation to the Law & Security Administration and Police Foundations Program at Conestoga College Institute of Technology and Advanced Learning / “Forensic Document Examination and Forgery Analysis” – Kitchener, Ontario, November 14, 2007.
- Presentation to the International Society of Appraisers (ISA) / “Forensic Document Examination & Forgery Analysis and Related Fraud Issues” – ISA Annual Conference, Baltimore, Maryland, USA, April 25, 2008.
- Two training/information sessions to the Independent Order of Foresters – Special Investigations Unit / Internal Audit Department (including associated companies) – “Forensic Document Examination & Forgery Analysis” – Toronto, Ontario, November 27 & 28, 2008.
- Presentation – International Graphoanalysis Society / “Analyzing Violence – Identifying the Potential for Workplace Violence and Disruptive Behaviour Through the Analysis of Written Communications” – Ontario IGAS Workshop, McConaghy Centre Richmond Hill, Ontario, April 4, 2009.
- Presentation – International Graphoanalysis Society / “Analyzing and Identifying Written Communications in Cases of Stalkers and Stalking – A Risk Management Approach” – Ontario IGAS Annual Conference, Mt. Carmel, Niagara Falls, Ontario, October 10, 2009.
- Published article (peer reviewed) – “Issues in Identification and the Authenticity of Artist’s Signatures”, published in the "Journal of Advanced Appraisal Studies 2009." Edited by Todd W. Sigety and published by the Foundation for Appraisal Education 8546 Broadway, Suite 202, San Antonio, Texas 78217 – March 2009. Article was republished (peer reviewed) in the “Journal of Art Crime” Volume 2, Number 1, Fall 2009, as edited by Noah Charney and published by the Association for Research into Crimes Against Art (ARCA) PO Box 175 Hampton Falls, NH, USA 03844 – November 2009.
- Presentation - Canadian Society for Industrial Security – GTA Chapter / “The Identification of Anonymous and Threatening Communications” – Toronto, Ontario, January 27, 2010.
- Presentation – Rodman Hall Arts Centre Brock University / “The Truth About Art Theft – Fraud & Forgery” Joint presentation with Mr. Robert Marentette, Director of Security Art Gallery of Hamilton, St. Catherines, Ontario, February 4, 2010.
- Presentation - The Institute of Internal Auditors and The Association of Certified Fraud Examiners / “Forensic Document Examination and Forgery Analysis” – IIA & ACFE Joint Session at the Royal Canadian Military Institute (RCMI), Toronto, Ontario, February 25, 2010.
- Presentations (two sessions) to the Law & Security Administration and Police Foundations Program at Conestoga College Institute of Technology and Advanced Learning / “Forensic Document Examination and Forgery Analysis” – Kitchener, Ontario, March 24, 2010.
- Eight hour presentation/training two part session – International Graphoanalysis Society Pennsylvania Chapter / Part 1 – “Forensic Document Examination & Forgery Analysis;” Part 2 – “Anonymous & Threatening Communications” – Reading, Pennsylvania, USA, March 27, 2010.

- Presentation (two parts) – International Graphoanalysis Society Ontario Chapter / “The CSIs of Language: Linguistic Profiling & Forensic Discourse Analysis” – OIGAS Annual Conference, Niagara Falls, Ontario, September 24 – 26, 2010.
- Joint Presentation – The Canadian Society for Industrial Security & The Canadian Security Association / “Anonymous & Threatening Communications in the Work Place” – Security Central Canada Show, Toronto, Ontario, October 20, 2010.
- Presentation – Centennial College of Applied Arts and Technology, Financial Crimes Investigation Course / “Forensic Document Examination and Forgery Analysis” – Toronto, Ontario, March 1, 2011.
- Presentation – York Regional Police Central Fraud Bureau, / “The Identification of Identification” (Bank and Business Community Relations) – YRP Headquarters Aurora, Ontario, June 1, 2011.
- Presentation – International Graphoanalysis Society Ontario Chapter / “Estate and Inheritance Fraud & Theft” – OIGAS Workshop McConaghy Centre, Richmond Hill, Ontario, June 11, 2011.
- Presentation – International Graphoanalysis Society / “Identification of Graffiti and the Language of the Street” – Ontario IGAS Annual Conference, Mt. Carmel, Niagara Falls, Ontario, September 30, 2011.
- Presentation – Life2 / “Estate and Inheritance Fraud & Theft” – Life2 Education Group Session, Rouge Woods Community Centre, Richmond Hill, Ontario, November 30, 2011.
- Presentation – Association of Certified Fraud Examiners Toronto, Ontario Chapter / “Estate and Inheritance Fraud & Theft” – The University Club of Toronto, Ontario, November 13, 2012.
- Presentation – Muskoka & Simcoe Dental Association / “Estate and Inheritance Fraud & Theft and other related Forgeries” – Brooklea Golf Course, Midland, Ontario, November 29, 2012.
- Presentation – Ministry of Government Services/HR Ontario / Security Services and Contingency Planning Branch – “Anonymous & Threatening Communications-Issues in Identification” – 900 Bay Street Toronto, Ontario, December 5, 2012.
- Day training session to the Certified Acceptance Agents (CAA’s) for the US Internal Revenue Service – “Identification of Identification and Document Forgery Issues” – In conjunction with the Association of Certified Fraud Examiners, Toronto Chapter, University of Toronto Club, Ontario, January 28, 2013.
- Presentation – Certified General Accountants & Financial Advisors – “Estate & Inheritance Fraud & Theft” – Best Western Guildwood Inn, Sarnia, Ontario, September 17, 2013.
- Presentation – The Niagara Pumphouse Arts Centre – “Art Forgeries, Fakes & Fraud” – 247 Ricardo Street, Niagara-on-the-Lake, Ontario, May 24, 2014.
- Presentation – Sarnia Lampton CGA Regional Conference – “Forensic Document Examination and Document Fraud” – Best Western Guildwood Inn, Sarnia, Ontario, October 24, 2014.
- Presentation – Bennington Brokers Annual Conference – “Forensic Document Examination and Document Fraud & Analyzing Digital Signatures” – Shangri-La Hotel, 188 University Avenue, Toronto, Ontario, June 09, 2016.
- Presentation – The King Street Gallery – “Art Forgeries, Fakes & Fraud” – 153 King Street, Niagara-on-the-Lake, Ontario, April 29, 2017.
- Presentation – Chartered Professional Accountants of Ontario – “Forensic Document Examination and Document Fraud” – Tru’s Grill House 220 Riverview Drive, Chatham, Ontario, May 17, 2018.
- Presentation – Council of Professional Investigators of Ontario (CPIO), Webinar learning sessions, Part One & Two – “Forensic Document Examination” – October 14, 2020 & November 25, 2020.

APPENDIX “K”



DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS

ELVIO DELZOTTO, Q.C. HARRY HERSKOWITZ
EDWARD P. MICHELI MARY G. CRITELLI STEVEN B. WEISS
LORI R. TANEL MICHAELE DELZOTTO RICHARD P. HOFFMAN
ROBERT W. CALDERWOOD ALEXANDER A. FOUNDOS
SABRINA ADAMSKI ELISE MICHELI AMY J. CHAPLICK

E-MAIL: ltanel@dzlaw.com

DELIVERED BY ORDINARY AND REGISTERED MAIL

October 18, 2017

Mahal Venture Capital Inc.
6845 Second Line West,
Mississauga, ON
L5W 1M8

WITHOUT PREJUDICE

Dear Sir/Madam:

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. (the "**Purchaser**") of dwelling unit 1, level 12, being suite # GPH1 (the "**Dwelling Unit**") parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA hobby/storage unit TBA, level TBA, in a proposed condominium being developed by the Vendor (the "**Condominium**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Real Property**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project (with all such units so acquired, and their appurtenant common interests, being hereinafter collectively referred to as the "**Purchased Units**") - Our General File Number 1639523

Please be advised that we are the solicitors for the Vendor, and understand that you have entered into an agreement of purchase and sale with the Vendor to acquire the Dwelling Unit (the "**Purchase Agreement**"). We have been advised by the Vendor's sales representative that you have not yet notified the Vendor as to the name of the solicitor that you have retained (or will be retaining) to represent you in connection with the completion of the above-captioned transaction, and accordingly we are writing this letter directly to you. **However, in light of the fact that the information set out in this letter is extremely important and of a legal/technical nature, we strenuously urge you to obtain independent legal representation, and correspondingly to retain a solicitor as soon as possible to explain the contents of this letter to you, and to assist you in connection with the completion of this transaction. You should not proceed under the impression that your interests are being protected (or will be protected) by our law firm, because we are acting solely and exclusively on behalf of (and in the interests of) the Vendor, and accordingly our views and comments may be partisan. Please let us know the name of your solicitor as soon as you have retained one, and bear in mind that any delay or failure to retain a solicitor to assist you in this matter will not entitle you to delay, postpone or avoid responding to our formal demand for payment of the outstanding deposit(s) owing by you in connection with the above-captioned transaction, as detailed below.**

Our client has corresponded directly with you, by letter dated September 25, 2017, in an effort to have you pay the outstanding deposits owing by you under the Purchase Agreement, totalling the amount of **\$330,900.00**, which should be made payable to DelZotto, Zorzi LLP in trust. Following such correspondence, our client received a cheque from you in the amount of **\$330,900.00** dated October 12, 2017, but regrettably this cheque was returned N.S.F. Therefore, as of the date hereof, neither the Vendor nor our law firm has received any of the additional deposits owing by you on account of the purchase price payable for the Dwelling Unit, and these monies are long overdue.

Please be advised that your failure to pay the additional deposits so owing constitutes a fundamental breach of the Purchase Agreement, and your continued default will no longer be tolerated. Accordingly, in accordance with paragraph 5.06 of Schedule "A" to the Purchase Agreement, you are hereby given until **4:00 p.m. on Tuesday, October 24, 2017** to rectify your outstanding default, by delivering directly to the Vendor's head office (at 4800 Dufferin Street, Toronto, Ontario, M3H 5S9, Attention: Susan Shapiro) a **certified cheque** in the amount of **\$330,900.00** made payable to DelZotto, Zorzi LLP, in trust.

Furthermore, please be advised that pursuant to Schedule "A" of the Purchase Agreement, the Vendor is entitled to reimbursement on closing for all legal fees and disbursements, including all N.S.F. charges, if applicable, charged by the Vendor's solicitor with respect to all correspondence and dealings with the Purchaser and/or the Purchaser's solicitor in connection with this default and/or the rectification thereof. In the event that the Purchaser rectifies the default, the Vendor intends to collect such legal fees and disbursements from the Purchaser by way of a credit to the Vendor on the final statement of adjustments. Correspondingly, in the event that the Agreement of Purchase and Sale between the parties hereto includes (and is correspondingly subject to) the Tarion Addendum issued by Tarion Warranty Corporation effective on and after October 1st, 2012 (and which contains a Schedule "B" to the Tarion Addendum which outlines all of the fixed and variable closing adjustments), then in such circumstances please note that said Schedule "B" to the Tarion Addendum shall be deemed and construed, for all purposes, to be amended to reflect and incorporate the foregoing costs to the Purchaser, and the corresponding increase in either the purchase price or the balance due on closing thereby.

Any failure on your part to pay the additional deposit monies owing, by said date and time, will result in the termination of the Purchase Agreement, whereupon all deposit monies heretofore paid by you (if any) shall be immediately forfeited to the Vendor as its liquidated damages, and not as a penalty, without prejudice to any other rights and/or remedies available to the Vendor at law, or in equity, as a result of your breach of contract. Without limiting the generality of the foregoing, the Vendor hereby expressly reserves its right to pursue a claim for damages against you personally, pursuant to an action instituted in the Ontario Superior Court of Justice, for any and all losses incurred by the Vendor in connection with its re-selling of the Dwelling Unit in an effort to mitigate its loss, consequent upon your default (ie. reflecting the difference, if any, between the purchase price payable by you under the Purchase Agreement, and any ultimate price that the Vendor is hereafter able to sell the Dwelling Unit for, together with all ancillary expenses, including real estate commissions, legal fees, disbursements and HST incurred as a result of the Purchaser's default).

Finally, please be advised that the Vendor will also be claiming pre-judgment and post-judgment interest against you, with respect to any damage amount ultimately awarded, pursuant to the provisions of the *Courts of Justice Act R.S.O. 1990, as amended*.

You are therefore urged to kindly govern yourself accordingly.

Yours very truly,

DELZOTTO, ZORZI LLP

Per:

Lori Tanel

LT:sv

cc: Susan Shapiro

Andrew Pateras
Royal LePage Vision Realty
1 - 2210 Markham Road
Toronto, Ontario
M1B 5V6



DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS

ELVIO DELZOTTO, Q.C. HARRY HERSKOWITZ
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LORI R. TANEL MICHAELE DELZOTTO RICHARD P. HOFFMAN
ROBERT W. CALDERWOOD ALEXANDER A. FOUNDOS
SABRINA ADAMSKI ELISE MICHELI AMY J. CHAPLICK

E-MAIL: rhoffman@dzlaw.com

SENT BY EMAIL: JESSE.MAHAL@GMAIL.COM

October 24, 2017

Mahal Venture Capital Inc.
6845 Second Line West,
Mississauga, ON
L5W 1M8

Dear Sir:

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. (the "**Purchaser**") of dwelling unit 1, level 12, being suite # GPH1 (the "**Dwelling Unit**") parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA hobby/storage unit TBA, level TBA, in a proposed condominium being developed by the Vendor (the "**Condominium**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Real Property**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project (with all such units so acquired, and their appurtenant common interests, being hereinafter collectively referred to as the "**Purchased Units**") - Our General File Number 1639523

We have been advised by the Vendor's sales representative that you have not yet notified the Vendor as to the name of the solicitor that you have retained (or will be retaining) to represent you in connection with the above-captioned transaction, and accordingly we are writing this letter directly to you. **However, in light of the fact that the information set out in this letter is extremely important and of a legal/technical nature, we strenuously urge you to obtain independent legal representation, and correspondingly to retain a solicitor as soon as possible to explain the contents of this letter to you, and to assist you in connection with the completion of this transaction. You should not proceed under the impression that your interests are being protected (or will be protected) by our law firm, because we are acting solely and exclusively on behalf of (and in the interests of) the Vendor, and accordingly our views and comments may be partisan. Please let us know the name of your solicitor as soon as you have retained one, and bear in mind that any delay or failure to retain a solicitor to assist you in this matter will not entitle you to delay, postpone or avoid responding to our formal demand for payment of the outstanding deposit(s) owing by you in connection with the above-captioned transaction, as detailed below.**

Further to our letter to you dated October 18, 2017, which provided you with a rectification period in respect of your outstanding default that would expire at 4:00 p.m. on October 24, 2017, please be advised that the Vendor is prepared, on a without prejudice basis, to extend the rectification period to **5:00 p.m. on October 27, 2017**, by which time you can rectify and remedy your outstanding default by delivering a certified cheque in the amount of **\$330,900.00** made payable to DelZotto, Zorzi LLP, in trust to the Vendor's head office (at 4800 Dufferin Street, Toronto, Ontario, M3H 5S9, Attention: Susan Shapiro), **with time to be strictly of the essence in all respects.**

Should you fail to provide us with this outstanding deposit monies owing within the aforementioned time period, then be advised that the Vendor will proceed to terminate the agreement of purchase and sale as a consequence of your default, in accordance with our letter to you dated October 18, 2017, without any further notice to you.

Once again, please note that the Vendor will be claiming interest on all damages it may suffer or incur as a result of your default, pursuant to the provisions of The Courts of Justice Act R.S.O. 1990, c.43, as amended. Kindly govern yourself accordingly.

Yours very truly,

DELZOTTO, ZORZI LLP

Per:
Richard Hoffman

RH:sv
cc: Susan Shapiro

Andrew Pateras
Royal LePage Vision Realty
1 - 2210 Markham Road
Toronto, Ontario
M1B 5V6

C:\WPDocs\b90fe56c8e084ad2bb740a7de37bde40.wpd

APPENDIX “L”

*** TX REPORT ***

TX IMAGE SET NOT TO DISPLAY

JOB NO. 4539
ST. TIME 08/18 12:36
SHEETS 4
FILE NAME

TX INCOMPLETE -----
TRANSACTION OK s.mahal@rogers.com
ERROR -----

August 3, 2017

Mahal Venture Capital Inc.
800 Swinbourne Drive
Mississauga, Ontario L5V 1J6

Attention: Mr. Jesse Mahal

RE: Mortgage with Skymark Finance Corporation - 155 Adams Blvd., Brantford

FOR SERVICES RENDERED in the above matter
including:

To receipt of documentation from Skymark Finance
Corporation;
To reviewing the documentation with Jesse Mahal and
to having him sign all required documents and returning
them to Jerry S. Korman

MY NOMINAL FEES HEREIN
HST

\$ 450.00
58.50

DISBURSEMENTS SUBJECT TO HST

Paid courier charges

20.00

BALANCE DUE AND OWING - PLEASE REMIT

\$ 528.50

THIS IS MY ACCOUNT HEREIN

NEIL L. BOYKO
NLB/ar

July 11, 2017

Mr. S. Mahal
800 Swinbourne Drive
Mississauga, Ontario
L5V 1J6

Dear Sir:

Re: 2581150 Ontario Inc. - Application Vesting Order
For property

Received from Skymark \$56,575.00

For services rendered in the above matter from the beginning of June to July 7th, 2017, including numerous meetings and calls with you and the other solicitors involved in this complicated transaction including the exchange of many hundreds of emails, additional letters, title searches and examination of extensive contractual material and to registering vesting order in favour of 2581150 Ontario Inc. For the Windsor property in exchange for \$20,000,000.00 in Skymark debit financing

My Fees herein	\$17,500.00
HST 13%	2,275.00

DISBURSEMENTS NOT SUBJECT TO HST

<i>Paid Land Transfer Tax</i>	<i>56,575.00</i>
<i>Paid to register Application for Vesting Order</i>	<i>75.27</i>

DISBURSEMENTS SUBJECT TO HST

<i>Paid for Execution Search</i>	29.50
Paid for all searches	286.30
Paid for sub-searches	29.55
Paid clerk closing disbursements	10.00
Paid clerk's fees	375.00
Paid for photocopies, fax, telephone	50.00
Paid for Law Society Surcharge	65.00
HST 13%	109.90

Balance owing to NEIL L. BOYKO

20,805.52

\$77,380.52

\$77,380.52

THIS IS MY ACCOUNT
NEIL L. BOYKO

Per: _____



NLB\gr

APPENDIX “M”

NEIL L. BOYKO
BARRISTER, SOLICITOR AND NOTARY

TEL: [416] 743-3232
FAX: [416] 743-5034
E-mail: neil@neilboykolaw.com

3500 DUFFERIN STREET
SUITE 303
TORONTO, ONTARIO
M3K 1N2

June 26, 2019

Via Fax 905-272-1905

Skymark Finance Corporation
46 Village Centre Place,
MISSISSAUGA, Ontario
L4Z 1V9

Attention: Mr. Michael Slattery and to Mr. Jerry Korman

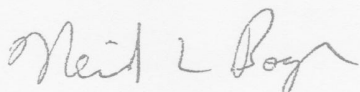
Re: Mahal Venture Capital Inc. first mortgage on 155 Adams Blvd. Brantford

As you are aware I am the solicitor for Mr. Mahal and his various companies. There seems to be some confusion on the amount owing on the various mortgages and the construction and machine advances. These can be divided into the following categories:

1. Land- One million advance;
2. Mortgage registered for 4 million-only 1 million advance;
3. Construction advances of \$11,213,831.98-Vicano Construction;
4. Paid to MSM \$650,000.00 secured by 9.6 million mortgage;
5. Machinery \$3,157,811.95 mortgage registered for 7.5 million against the machine Only;
6. Interest calculation on the 22nd day of each month in the amount of \$8,333.33 and leaving interest paid up to date;
7. Interest calculation for construction will be from June 6, 2017 to June 30, 2019.

Total owing on Construction and to MSM is \$11,863,831.98 plus interest.

Yours truly



NEIL L. BOYKO
NLB/la

APPENDIX “N”



**LAW SOCIETY TRIBUNAL
HEARING DIVISION**

Citation: *Law Society of Ontario v. Boyko*, 2018 ONLSTH 168

Date: December 12, 2018

Tribunal File No.: 18H-002

BETWEEN:

Law Society of Ontario

Applicant

- and -

Neil Lawrence Boyko

Respondent

Before: Raj Anand (chair), Michael M. Lerner, Marilyn Thain

Heard: October 24, 2018, in Toronto, Ontario

Appearances:

Leslie Maunder, for the applicant

Bill Trudell, for the respondent

Summary:

BOYKO – Professional Misconduct – Findings and Penalty – Failing to be on Guard, Failing to Maintain Proper Books and Records, Failing to Maintain Security of “e-reg” Diskette and Passphrase, Acting in a Conflict of Interest, Failing to Obtain Client Identification – The Lawyer entered an agreed statement of facts and admitted that he engaged in professional misconduct as alleged when he: acted in five real estate transactions in circumstances where he ought to have known he was being used to facilitate fraud; failed to maintain proper books and records for a period exceeding three years; permitted his conveyancer to use his “e-reg” diskette and passphrase; in five transactions acted for parties in a conflict of interest without their consent; and in ten files failed to obtain complete client identification – Joint penalty submission for a suspension of two-and-one-half-months followed by one year of monitoring by an approved lawyer accepted as reasonable – The most serious misconduct spanned less than one month, the Lawyer had a 40-year unblemished practice record and fully co-operated in the investigation and hearing.

REASONS FOR DECISION**INTRODUCTION**

- [1] Raj Anand (for the panel):– This application proceeded to hearing on the basis of an agreed statement of facts (ASF) and a joint submission regarding both penalty and costs. After the presentation of the ASF and brief argument, we made a finding of professional misconduct in accordance with the particulars in the notice of application. The parties then presented evidence and argument in support of their joint penalty submission, which we accepted. We indicated that our written reasons would follow.
- [2] This application related to: (a) a serious allegation that the respondent allowed himself to be made a tool or dupe of a fraudster; and (b) four less serious allegations of practice deficiencies arising from a spot audit in 2014. The four practice management allegations were: failure to maintain proper books and records; failure to maintain the security of his Teranet USB key and password; acting for several parties with conflicting interests without proper disclosure and consent; and failure to obtain the required client identification in ten client files.
- [3] I conducted several pre-hearings with the parties, and with their consent I was assigned to the hearing panel together with two adjudicators who had no prior involvement in the application. Relying on the parties’ ASF, we outline the facts below.

THE AGREED FACTS

- [4] The respondent has been practising law for 40 years. He has been a sole practitioner, mostly doing real estate, since 1993.

The Carandale Homes Complaint (Particular 1)

[5] In November 2016 Carandale Homes complained about the respondent's involvement in five condominium purchase transactions.

i) The Context – The Respondent's Relationship with Lucio Cengarle

[6] The respondent's involvement in these transactions arose from his relationship with Lucio Cengarle. He and Cengarle were undergraduates together at the University of Toronto (1964-1968) and then law students together at Osgoode Hall (1968-1971). Since then, they have both practised in Toronto with offices close to each other and on occasion provide services to their respective clients in the same transaction. Their friendship is such that the respondent has named Cengarle as the executor of his will.

[7] In May 2014 Cengarle was required to serve a disciplinary suspension of 30 days. The respondent agreed to assist with real estate closings in Cengarle's practice that occurred during the suspension.

[8] Because of their 40-year friendship, the respondent knew Cengarle's office staff well, including his law clerk of many years, Rose De Filippis.

ii) The Context — Carandale Homes' Relationship with Cengarle

[9] Carandale Homes, a family-owned and operated residential construction company, had been a long-time client of Cengarle. It retained him for real estate purchases and sales, including a project of 80 homes it built in Collingwood between 2006 and 2014. Carlos Caravaggio, the president of Carandale Homes, joined the company in 2001 and had been dealing with Cengarle ever since.

[10] Throughout Caravaggio's relationship with Cengarle, his primary contact at the law firm was De Filippis. Caravaggio met with De Filippis when closing documents needed to be signed and communicated almost exclusively with her.

iii) The Loan

[11] Around May 2014 Carandale Homes had recently sold a few properties and had money to invest. De Filippis suggested that Carandale provide first mortgage financing of \$285,600 to the owners of a property in Brampton ("the Joseph Street property") and Caravaggio agreed to do so. Coinciding with these discussions, De Filippis asked Caravaggio for a short-term loan of \$751,564.03 to assist her in purchasing four condominiums while she awaited funds from other investments. Caravaggio had some reservations but agreed to the short-term loan at 10% interest.

[12] Although De Filippis denies it, Caravaggio says she guaranteed the funds would be repaid in a matter of weeks and the funds advanced would be secured with registered charges.

iv) The Transactions

[13] On May 26, 2014 Carandale Homes advanced \$1,037,164.03 to the respondent in trust via certified cheque. De Filippis delivered the cheque to the respondent with no covering letter. The money was deposited into the respondent's trust account the same day. Although the respondent had no knowledge of it, the amount represented the requested loan to De Filippis and the first mortgage advance on the Joseph Street property.

[14] De Filippis then provided instructions to the respondent's clerk regarding the Carandale funds and the purchase of five condominiums. All five were in two new adjacent buildings on Lansdowne Avenue in Toronto and were being transferred from the condo developer. The details of the purchase transactions are as follows:

Address	Transfer Date	Purchaser	Purchase Price
911-812 Lansdowne	May 26, 2014	Gino De Filippis	\$186,537.55
109-816 Lansdowne	May 27, 2014	Gino De Filippis	\$168,794.25
314-816 Lansdowne	May 26, 2014	Rose De Filippis	\$170,564.16
213-816 Lansdowne	May 26, 2014	Emilio De Filippis	\$170,121.69
1011-812 Lansdowne	May 26, 2014	Andria Gallippi	\$186,537.55

According to De Filippis, she and her husband (Gino) were the beneficial owners of all five condos but 213-816 Lansdowne was transferred to their son, and 1011-812 Lansdowne was transferred to their daughter.

[15] De Filippis provided all documentation for the five purchases. She had "signed up" her family members. Other than receiving and disbursing the funds as directed, the respondent registered the transfers (including statements) as prepared for him by De Filippis.

[16] After paying the funds due on closing for each of the five condominiums and a disbursement account for amounts paid for Land Transfer Tax and to a conveyancer, the respondent had \$78,297.36 of the Carandale funds left in trust. De Filippis instructed the respondent to disburse these funds as follows:

- Luxury and Sports Cars: \$26,500.00
- Mario Agostino: \$20,000.00
- Anthony Ianiero: \$31,797.36



The respondent did so by certified cheques, each dated May 27, 2014. None of the payees appeared to have any connection to the transactions.

- [17] The respondent, who knew Carandale Homes to be a client of Cengarle, had no direct communications with Caravaggio or anyone else at Carandale Homes. He did not ask De Filippis (or anyone else) why Carandale Homes was providing the purchase funds, whether they expected security in exchange, or why the funds exceeded the amounts due on closing. Nor did he clarify his retainer – he was unable to say whether he was acting for Carandale or who was. He simply trusted De Filippis.
- [18] Nor was Caravaggio certain of the relationships. When asked who was acting for him on these matters, he said Cengarle/De Filippis, but he also knew that Cengarle was suspended, that the respondent was handling matters in Cengarle’s absence, and that the funds were going to the respondent’s trust account. He added, “It was Mr. Boyko’s trust account, you know, signed the cheques, so I had assumed he had knowledge of it, but...” He concluded, regarding the retainer question, “I don’t know. You guys maybe have to tell me.”
- [19] Cengarle resumed his practice on June 1, 2014 and the respondent had no further involvement. According to the respondent, he heard nothing more about these transactions until November 2016 (two years and five months later), when Carandale’s lawyer wrote him a demand letter. Prior to that, he had no knowledge of the deception that was carried out by De Filippis.

v) What Happened with the Loan

- [20] As mentioned above, Caravaggio states that De Filippis assured him that his loans would be secured by charges against the properties. Caravaggio provided the Law Society with four “charges” he was given by De Filippis. He could not remember when he received them. The “charges” were fraudulent, since:
- no charges in favour of Carandale Homes or Caravaggio were ever registered against the properties;
 - the documents De Filippis provided included a note “this document has not been submitted and may be incomplete” (as drafts do);
 - the registration numbers on the documents are in fact the registration numbers of the transfers for each property; and
 - De Filippis admitted she provided Caravaggio with false “charges” by cutting and pasting from other documents.

- [21] According to De Filippis, the loan was to be for a period of three months (not weeks). She said she had never promised that the loan would be secured by charges but that after three months when the loan was extended to six months, she prepared the false charges because she “wanted to give them something.”
- [22] As described above, Caravaggio advanced loans for the purchase of four condos and mortgage funds for the Joseph Street property investment arranged by De Filippis. De Filippis then used most of the funds to purchase five condos (with the leftover funds going to third party payments). Nonetheless, in July 2014 (two months after the advance), Cengarle transferred a charge on the Joseph Street property from Elle Mortgage Corporation to Carandale Homes with a principal of \$285,000 – that is, Carandale did ultimately receive the benefits of the intended investment by way of mortgage loan and security on the Joseph Street property. That mortgage has since been discharged.
- [23] De Filippis made significant repayments of the loan (four payments for a total of \$550,000) to Carandale Homes in 2014. One further payment (\$70,000) was made in April 2016. Caravaggio and Carandale calculate they are still owed approximately \$200,000 in principal and interest. Carandale Homes filed a statement of claim in May 2017 naming Rose De Filippis (and her other family members that took title to the condominiums), Lucio Cengarle, and the respondent (who is represented by LawPRO) as defendants. All five of the condos have been sold by De Filippis and her family.
- [24] Based on these facts, we found that as alleged in the notice of application, Mr. Boyko acted in May 2014 on the five Lansdowne Avenue transactions in circumstances where he ought to have known that he was being used to facilitate fraud or dishonesty, contrary to Rule 2.02(5.0.1) of the former *Rules of Professional Conduct* (the “Rules”). The respondent failed to ensure that the funds advanced by Carandale were invested and secured as intended by Caravaggio and as represented to him by DeFilippis. This followed from his failure to make several necessary inquiries, detailed in paragraph 17 above, which enabled DeFilippis to divert Carandale's funds to the benefit of her family members and herself.

The Spot Audit Complaint (Particulars 2-5)

- [25] The second investigation arose from a 2014 spot audit. The audit was the fourth conducted on the respondent’s practice since 2006. The earlier spot audit reports noted deficiencies in the respondent’s books and records and lack of compliance with certain rules and requirements in his real estate practice. The respondent was cautioned as a result of an investigation arising from the 2009 spot audit.

[26] The 2014 spot audit and subsequent investigation confirmed recurring violations.

i) Books and Records

[27] In April 2015 the forensic auditor with carriage of the investigation asked the respondent to provide his most recent trust bank reconciliation and comparison with the related bank statement(s) and client trust listing. He did not provide a trust bank reconciliation until January 2016 when he provided the November 2015 reconciliation. It was illegible and did not, in fact, reconcile. In a follow-up meeting with the forensic auditor, April 2014 was identified as the last month for which the respondent had a proper reconciliation.

[28] The following problems associated with delayed reconciliations (April 2014-February 2016) were apparent:

- The list of uncashed cheques went unaddressed. It became inaccurate resulting in a discrepancy (of \$4,000-\$5,000) between the ledger and statement. Fourteen cheques totalling \$6,904.04 became stale-dated and no follow-up steps were taken.
- Many small errors (19 in total, each less than \$1,000) in the respondent's recording of deposits and bank errors went uncorrected, such that his client trust listing was inaccurate during the entire period. Three larger errors were identified by the accountant for correction in February 2016. One dated back to July 2015 and the other two only to November 2015.
- GICs and term deposits were not included in the trust reconciliations.

[29] The review also revealed that on three occasions (one in 2015, one in 2016 and one in 2017) fees for real estate transactions (\$400 plus taxes and disbursements) were transferred from trust for fees prior to the delivery of accounts to clients. On two occasions the fees were taken about a week before, and on the third occasion about six weeks before the date of the reporting letter with account.

[30] After meeting with the investigator to discuss the problems with his books and records, the respondent hired a professional bookkeeper. She has rectified the past errors and reconciled the respondent's books and records on a monthly basis. On the respondent's instructions, she has been providing the investigator with those monthly reconciliations since February 2016.

[31] Based on these facts, we found that as alleged in the notice of application, the respondent failed to maintain proper books and records from May 2014 to November 2017, contrary to By-Law 9, s. 18.

ii) E-Reg Diskette and Passphrase

- [32] The 2014 spot audit noted that the respondent had not maintained the security of his Teranet USB key and password. He had also delegated the signing of law statements for electronic registration. The respondent had been cautioned regarding the same issues in 2010.
- [33] In a January 2016 meeting with the forensic auditor, the respondent acknowledged he had shared his key and password and was having his conveyancer sign law statements. Some time after the commencement of this investigation but before the January 2016 meeting, the respondent retrieved the key from his conveyancer and stopped permitting her to sign legal statements.
- [34] The respondent states (by way of clarification) that in 2014 he gave the key and password to his conveyancer for approximately two weeks. At all other times he has been in possession of the key and when he got the key back from the conveyancer, he changed the password.
- [35] Based on these facts, we found that as alleged in the notice of application, the respondent failed to maintain the security of his personalized, specially encrypted E-Reg diskette and passphrase and permitted a non-lawyer to make statements on registered documents, contrary to Rule 5.01(3) of the former *Rules* and Rule 6.1-5 of the current *Rules*.

iii) Consent of Clients to Joint Retainer

- [36] In five transactions between 2014 and 2017 the respondent acted for more than one party with conflicting interests on a joint retainer without obtaining consent. This was contrary to Rule 2.04(8) of the previous *Rules* and Rule 3.4-7 of the current *Rules*, as alleged in the notice of application.

iv) Identification

- [37] Between 2014 and 2017, the respondent failed to obtain all required identification information from ten clients in six transaction files. In the vast majority of the respondent's files he obtained all the required identification information. In five of the six transaction files at issue, the respondent had copies of government-issued identification (driver's licence, passport, social insurance number) but lacked additional information required by the By-law, in particular: occupations, business addresses and phone numbers. In the sixth file, the respondent did not obtain identification.
- [38] The respondent states that many of these individuals were self-employed and worked from home. Some of these individuals had been clients for years and he had previously obtained identification information.

- [39] Based on these facts, we found that the respondent breached By-Law 7.1, s. 23, as alleged in the notice of application.

PENALTY AND COSTS

- [40] Having made findings of professional misconduct, we proceeded to consider the parties' joint submission regarding penalty and costs.

- [41] As I noted in *Law Society of Upper Canada v. Henry*,¹

... the penalties in [the dupe] cases vary widely: generally, a suspension of from one to twelve months. Of course, there are different kinds or degrees of conduct that fall within the category of "failure to be on guard" or "dupe"; there is often related or additional misconduct; and there are contrasting levels of mitigating circumstances in individual cases.

- [42] In the present case, we have taken these factors into account in assessing the reasonableness of the parties' joint submission, which was a suspension of two-and-a-half months, together with one year's monitoring by an approved licensee. We have also considered the other cases the parties put before us.²

- [43] As I noted at the outset, the failure to be on guard in this case is accompanied by four additional particulars of practice management misconduct. However, Mr. Boyko's involvement in the most serious incident – the Carandale matter – spanned less than a month. The respondent has a lengthy history as a licensee with no prior disciplinary record. He also facilitated the expeditious resolution of this case by executing an ASF and coming to a full agreement with the Law Society on penalty and costs.

- [44] Mr. Trudell, on behalf of the respondent, filed an impressive character letter written by Edward Tonello, a senior practitioner who supported Mr. Boyko through the investigation and application process and will be his monitor for one year following the completion of the respondent's suspension.

- [45] Mr. Tonello, who also attended the hearing, wrote that he had "not met anyone – lawyer or otherwise – who is more caring of the problems of people who are challenged one way or another. Without drawing attention to himself, he has done substantial pro bono work, and continues to do so." In short, Mr. Tonello attested that Mr. Boyko's "integrity is beyond question."

- [46] After considering the seriousness of the misconduct, together with the mitigating circumstances, we had no hesitation in accepting the parties' joint submission

¹ 2018 ONLSTH 36 at para. 44.

² *Law Society of Upper Canada v. Diaz*, 2014 ONLSTH 229, *Law Society of Upper Canada v. Chandra*, 2017 ONLSTH 214 and *Law Society of Upper Canada v. Haxall*, 2016 ONLSTH 165.

as falling within a range of reasonable penalties. We also accepted the parties' agreement that the respondent would pay the Law Society costs of \$6,500 within about 18 months.

ORDER

[47] We therefore ordered:

1. The respondent shall be suspended for two-and-one-half months starting on December 15, 2018 and ending on March 1, 2019.
2. The respondent shall comply fully with the terms of the Law Society's *Guidelines for Lawyers Who Are Suspended or Who Have Given an Undertaking Not to Practise* while suspended pursuant to this Order.
3. For a period of one year following his return to practice on March 1, 2019, the respondent shall be monitored by a lawyer approved of by the Executive Director, Professional Regulation Division of the Law Society of Ontario or her/his designate, which approval shall be obtained in writing prior to his return to practice. The monitoring shall include at a minimum: (a) one meeting each month; and (b) one telephone conversation each week.
4. The respondent shall provide the Executive Director, Professional Regulation Division of the Law Society of Ontario or her/his designate written confirmation from his lawyer monitor that he has satisfied the requirements in paragraph 3 no later than the last day of the second month following his return to practice and thereafter the last day of every second month for the duration of the monitoring.
5. The respondent shall pay costs to the Law Society in the amount of \$6,500.00 on or before March 1, 2020, failing which interest will accrue on any unpaid costs at the rate of 3% per year.



**LAW SOCIETY TRIBUNAL
HEARING DIVISION**

Citation: *Law Society of Ontario v. Boyko*, 2019 ONLSTH 143

Date: November 20, 2019

Tribunal File No.: 19H-088

BETWEEN:

Law Society of Ontario

Applicant

- and -

Neil Lawrence Boyko

Respondent

Before: Frederika Rotter (chair), Sabita Maraj, Tanya Walker

Heard: September 6, 2019, in Toronto, Ontario

Appearances:

Leslie Maunder, for the applicant

Respondent, self-represented

Summary:

BOYKO – Motions – Interlocutory Suspension/Restrictions – The Law Society sought interlocutory suspension or restriction of the Lawyer’s licence pending investigation into whether he may have practised while under suspension, participated in a possibly fraudulent transaction, misled the Law Society, and failed to fulfill undertakings, keep books and records and comply with the guidelines for suspended lawyers – The panel found a risk of harm to the public was demonstrated by the Lawyer’s failure, despite having previously been suspended for acting in transactions where he ought to have known he was being used to facilitate fraud, to make appropriate inquiries, as well as his failure to respond in a timely manner in litigation proceedings causing costs to be thrown away – The panel imposed an order restricting the Lawyer from engaging in real estate law or operating a trust account.

**REASONS FOR DECISION ON A MOTION
FOR INTERLOCUTORY SUSPENSION OR RESTRICTIONS**

- [1] Frederika Rotter (for the panel):– The Law Society brought an interlocutory motion to suspend or restrict the licence of the respondent Neil Lawrence Boyko (the Lawyer), pending a hearing on the merits.
- [2] The Society is investigating the Lawyer for, among other things, practising while suspended and otherwise breaching his obligations as a suspended lawyer, failing to be on guard against fraudulent activities, and failing to keep proper books and records.

FACTUAL BACKGROUND

- [3] The Lawyer is 73 years old and was licensed in 1973. He operates his own firm in North York as a sole practitioner.
- [4] The Lawyer’s licence to practise law was suspended for two and a half months by an order of the Tribunal dated October 24, 2018 (the order). The suspension began on December 15, 2018.
- [5] The Lawyer had been suspended because:
- in May 2014 he acted in five transactions in circumstances where he ought to have known he was being used to facilitate fraud or dishonesty;
 - from May 2014 to November 2017, he failed to keep proper books and records;
 - between May 2014 and November 2017, he failed to maintain the security of his e-diskette and allowed a non-lawyer to use it;

- between June 2014 and November 2017, he acted for multiple parties with conflicting interests in five real estate transactions, without disclosure to and consent from his clients; and
 - between 2014 and May 2017, the Lawyer failed to obtain complete client identification in ten client files, contrary to By-law 7.1, s. 23 under the *Law Society Act* (the Act).
- [6] The Law Society filed a motion record showing that the order required the Lawyer to comply with the *Guidelines for Lawyers Who Are Suspended or Who Have Given an Undertaking Not to Practise* (the Guidelines) and included a requirement to be monitored upon the Lawyer's return to practice.
- [7] In his affidavit in the motion record, John Rae, of the Law Society's Regulatory Compliance department, attests that he wrote to the Lawyer on November 5, 2018 to ensure that the Lawyer understood his obligations under the Guidelines, including his obligation to disburse and close his trust account for the duration of the suspension, to complete a compliance report within 30 days of the start of the suspension, and to name a monitor for his return to practice.
- [8] Mr. Rae had multiple contacts with the Lawyer throughout the period of his suspension. He became concerned that the Lawyer was not complying with his obligations under the order. After the suspension ended, he referred the matter to the Society's Investigations Department.
- [9] The evidence in the motion record, including the affidavit of Mr. Rae and the affidavits of Christopher Wight, a forensic auditor in the Society's Investigations Department, establishes that a reasonable suspicion existed that the Lawyer may have been engaged in professional misconduct during the course of his suspension, as follows:
- He practised law while under a disciplinary suspension.
 - He participated in an improper and possibly fraudulent mortgage transaction at or about that time.
 - He misled the Law Society.
 - He failed to fulfill his undertakings.
 - He failed to maintain his books and records.
 - He failed to comply with By-Law 7.1.
 - He failed to co-operate with the Law Society.
 - He failed to comply with the Guidelines.

- [10] The facts as outlined in the affidavits of Messrs. Rae and Wight are that for various reasons, the Lawyer had failed to completely disburse or close his trust account. He still maintained some active client files in his office, as he had been unable to find any practitioners to deal with the matters.
- [11] The auditor, Mr. Wight, also found that although the Lawyer's books and records were up to date in October 2018, a number of errors and discrepancies were identified almost immediately afterwards, which later required corrections. The Lawyer's trust ledgers were overdrawn and were subsequently corrected. There seemed to have been two concurrent accounts set up in respect of one particular file (AB), and some money held in trust was not accounted for.
- [12] The Lawyer responded to the allegations in the motion by explaining that in or about 2011 he developed a condition known as hydrocephaly, in which cerebrospinal fluid collects in the brain. This leads to problems with mentation and memory, as well as difficulties walking and other physical problems.
- [13] The condition was addressed in November 2016 in a procedure using shunts inserted into the Lawyer's brain to drain the excess spinal fluid. Following this procedure, the Lawyer's condition improved, and he returned to his practice. He hired a bookkeeper to deal with his books and records.
- [14] The Lawyer testified that circumstances had made it very difficult for him to comply with his suspension conditions. He could not locate certain clients for whom he held funds in trust. He did not know and could not find a lawyer to whom he could turn over the management of his trust account or his few active files. He claims he tried his best to co-operate with the Society.
- [15] The Lawyer claimed he was allowed to do "transitional" work during his suspension.
- [16] The Lawyer also advised that during the period of his suspension he was asked to reissue, and did reissue (by means of two separate cheques), a trust cheque in a mortgage transaction that the bank (a Money Mart) would not honour. The Lawyer had been acting for the purported mortgagors but had failed to thoroughly check the identities of his clients, and to recognize and investigate suspicious details of the transaction. It was subsequently established that this was a fraudulent transaction.
- [17] The Lawyer also acknowledged that, in a matrimonial matter, he had appeared in court to request an adjournment of a trial that had been scheduled to start during his suspension. The Lawyer stated that he had attempted to transfer the matter to another lawyer who, it transpired, was unable to act. The Lawyer felt compelled to attend to request an adjournment on behalf of his client.

- [18] He said that he only learned on the Friday before the Monday court date that the lawyer who he had expected to attend could not speak to the adjournment. He stated he “panicked” and went to court on his own to explain the situation to the judge.
- [19] The Lawyer subsequently billed the client for attending on the adjournment and for other services performed during the suspension period.
- [20] The Lawyer acknowledged that in the AB litigation file, he had erroneously set up two accounts which he later merged. A deficiency was found in the trust account which he subsequently made good.
- [21] Also, with respect to the AB file, on the day before his suspension was to start, the Lawyer received correspondence from the opposing lawyer advising that the Lawyer’s client would be noted in default unless a response was received by December 31, 2018. The opposing lawyer wrote again on January 9, 2019 with a new deadline of January 15, 2019.
- [22] The Lawyer wrote to the other counsel on February 26, 2019 advising that he was awaiting instructions and also that he was suspended until March 1, 2019. The other counsel replied that, as she had heard nothing, the Lawyer’s client had already been noted in default and a motion for a default judgment had been scheduled. Ultimately, the noting in default was set aside with the Lawyer’s client being obliged to pay the other side \$750 for “costs thrown away.”
- [23] When asked to explain why he reported having no active files during his suspension, the Lawyer stated that he did not intend to work on the files during his suspension period, so to him they were not active files.
- [24] With respect to the fraudulent real estate transaction, the Lawyer explained that he treated it as a “normal” file and was not concerned by the many unusual features. The title insurer had approved the transaction and the mortgage broker (who had referred the clients to him) was “quarterbacking” everything, so he felt he was not required to do more than the “usual.”
- [25] We found that although the Lawyer was willing and had agreed to certain undertakings with respect to his books and records, his memory was poor, his responses to many of the questions posed about his files and his business arrangements were vague, his reporting was not accurate, and he could not provide many of the follow-up details requested. He had omitted or forgotten to comply with certain undertakings to the Society.
- [26] The Lawyer stated that he currently had about 100 open files, of which 30% were real estate matters.

ISSUES AND THE LAW

- [27] The issues on this motion for an interlocutory order are:
1. Are there reasonable grounds for believing that there is a significant risk of harm to the public or to the public interest in the administration of justice if an interlocutory order is not made?
 2. Is the making of such an order likely to reduce the risk?
- [28] Section 49.27 of the Act deals with interlocutory suspensions or restrictions on a practitioner's licence as follows:
- (1) The Hearing Division may make an interlocutory order authorized by the rules of practice and procedure, subject to subsection (2).
 - (2) The Hearing Division shall not make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services, unless there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made and that making the order is likely to reduce the risk.
- [29] An interlocutory order may be made if a risk of harm exists. Two separate risks are identified in s. 49.27(2).
- [30] The first risk concerns potential harm to members of the public. The second risk is the risk to the "public interest in the administration of justice." The "public interest" includes public confidence and trust that the administration of justice and the integrity of public processes will be protected and will not be undermined by the licensee's unrestricted practice.
- [31] To issue an interlocutory order, the hearing panel must consider whether the Society has shown that there are "reasonable grounds for believing" that either or both of the identified risks of harm have been established, such that the order should be made. The Law Society is not required to prove that the Lawyer has actually engaged in any professional misconduct – that determination is for a future proceeding.
- [32] In this particular case, both categories of risk are at play.
- [33] If "reasonable grounds" for believing that a significant risk of harm have been established, the panel must then consider whether it should make the proposed order. It must consider whether it should issue a suspension order or whether a lesser order, such as restrictions, would adequately protect the public from the identified risk.

ANALYSIS

Reasonable Grounds

- [34] “Reasonable grounds” for believing that a significant risk of harm exists have been defined as something more than mere suspicion, but less than proof on the civil standard of balance of probabilities. What is required is evidence of “an objective basis for the belief which is based on compelling and credible information.”¹ This is considered a relatively low standard, less than the civil standard otherwise applicable in Tribunal matters.²
- [35] The Law Society has the burden of showing an objective basis for the belief in the risk, and that the level of the risk or danger to the public or to the public interest in the administration of justice justifies making an order to suspend or restrict a lawyer’s ability to practise law.
- [36] The test requires that the Law Society demonstrate, on a balance of probabilities, that a risk exists – and that it is something more than a mere suspicion. In *Law Society of Upper Canada v. Ejidike*,³ the panel said at para. 55:
- ... The degree of risk need not be very likely or even probable. The potential harm need not be substantial although it must be to members of the public or the public interest.
- [37] The Lawyer argues that in this case there is no basis to suggest a significant risk of harm to any members of the public or to any current or potential clients. He also submits that there is no significant risk of harm to the public interest in the administration of justice.
- [38] He argued that he was not responsible for the mortgage fraud in which he had acted for the fraudulent mortgagors, that he had done nothing wrong and treated the file as “usual.”
- [39] He also argued that although he was aware that he should not have attended at court while he was suspended, that it was “the lesser of evils” since no one else was available to speak to the matter. He has no associates and no colleagues to whom he can readily turn. Finally, he acknowledged that although there have been some issues with his books and records, since he hired his bookkeeper those problems were corrected relatively promptly when they were identified.

¹ *Law Society of Upper Canada v. McGee*, 2011 ONLSHP 70 at para. 38, citing *Law Society of Upper Canada v. Baksh*, 2010 ONLSAP 18 at para. 47, and *Law Society of Upper Canada v. Sullivan*, 2008 ONLSHP 83 at para. 38.

² *Law Society of Upper Canada v. Townley-Smith*, 2010 ONLSHP 77 at para. 8

³ 2016 ONLSTH 69.

- [40] The Lawyer suggested that the Society's concerns were "smoke and mirrors" and not very serious. They were isolated incidents, being used to make him "look bad." He stated that he co-operated with the Law Society to the best of his ability and handed over all the documents requested.
- [41] The Society submitted that reasonable grounds for believing that there is a significant risk of harm to the public or to the public interest in the administration of justice have been made out.
- [42] It is possible that innocent members of the public may be harmed if the Lawyer's practice continues unrestricted, since the Lawyer has failed to comply with certain important responsibilities and has made a number of errors in his practice. Also, the administration of justice and the integrity of our public processes may be undermined by the Lawyer's unrestricted practice.
- [43] Despite the disciplinary suspension imposed in October 2018, for having acted in May 2014 on five transactions in circumstances where he ought to have known that he was being used to facilitate fraud or dishonesty, the Lawyer apparently again failed to make several necessary inquiries, or to take note of "red flags" in the mortgage transaction which subsequently proved to be fraudulent.
- [44] The Lawyer's failure to act appropriately in that transaction, and his insistence that he did nothing wrong, could be seen as reasonable grounds for believing that there is a significant risk of harm to members of the public if the Lawyer continues with such conduct.
- [45] Similarly, the Lawyer's conduct in the litigation where costs were thrown away because he failed to respond in a timely manner is concerning, and also suggests a significant risk of harm to potential clients.
- [46] The Society also submitted that the investigation evidence strongly suggests that the Lawyer's books and records were not being maintained as they should have been, and that a trust ledger had been, for a period, overdrawn. Finally, the Society submits that the evidence suggests that the Lawyer had failed to abide by his obligations under the Guidelines. These allegations are sufficient to constitute a significant risk of harm to the public interest in the administration of justice.
- [47] Although none of the allegations have been proven, we conclude there are reasonable grounds on which to make an order, given the relatively low standard of proof required. The affidavit evidence of the Law Society, together with apparently credible and reliable supporting documents, provides a sufficiently objective basis for our concerns.

The Order

- [48] The panel may make an order for an interlocutory suspension pending a hearing of the allegations, or it may make an interlocutory order restricting the manner in which a licensee may practise law or provide legal services.
- [49] Generally, the least intrusive or restrictive order which would protect the public should be made.
- [50] Traditionally an interlocutory suspension is required when there is evidence touching on a lawyer's integrity, or it appears that lesser restrictions have not been effective.⁴
- [51] In the present case, the allegations do not touch on the Lawyer's integrity. The allegations, if proven, might lead to a more or less lengthy suspension, but we find that these allegations are not of such serious misconduct as would suggest or justify revocation of the Lawyer's licence to practise law.
- [52] The Lawyer impressed us as honest and well-meaning, but for various reasons (including his medical difficulties) unable to fully appreciate the nature and seriousness of his professional responsibilities. He failed to comply with his obligations in real estate transactions, or to maintain books and records and comply with other Law Society requirements.
- [53] We order that the Lawyer be restricted from practising real estate law and from operating any trust account.

ORDER

- [54] We make the following order:
1. The Lawyer shall not directly or indirectly, including by instructing another lawyer or non-lawyer:
 - a. engage in the practice of real estate law;
 - b. provide any form of opinion or certificate with respect to the title, transfer or charge of land or with respect to the issuance of any title insurance policy or in relation to any real estate transaction;
 - c. register any instrument under the *Land Titles Act* or *Registry Act*;

⁴ *McGee*, above at para. 39.

- d. act in the actual or contemplated transfer, charge, insurance or any other transaction or action affecting any estate, right or interest in land; or
 - e. engage in the provision of any services relating to real estate law, including without limitation: receiving instructions, preparing documents, searching or reviewing title, preparing requisition or clearance letters, answering requisitions or meeting with clients to attend to the execution of documents.
 2. The Lawyer shall take immediate steps to close any existing trust account and provide proof that he has done so within 45 days of this order; and the Lawyer shall not open or operate any other trust account.
 3. The order shall be in effect until the earliest of the following:
 - a. A panel varies or cancels the order on the consent of the Law Society and the respondent prior to the hearing on the merits of the proceeding to which the motion relates.
 - b. A panel varies or cancels the order on the basis of fresh evidence or a material change in circumstances that is brought by the Law Society or the respondent to the panel prior to the hearing on the merits of the proceeding to which the motion relates.
 - c. The panel presiding at the hearing on the merits of the proceeding to which the motion relates, prior to disposing of the proceeding, varies or cancels the order.
 - d. The panel presiding at the hearing on the merits of the proceeding to which the motion relates disposes of the proceeding.
 4. The Lawyer may bring a motion to vary or cancel this order, on the basis that the order should not be continued, after the order has been in effect for at least five months. If such a motion has already been brought and subject to any order made on such motion, he may bring a motion at least five months after the previous such motion has been disposed of by the Hearing Division, and prior to authorization by the Proceedings Authorization Committee of any further proceedings.



**LAW SOCIETY TRIBUNAL
HEARING DIVISION**

Citation: *Law Society of Ontario v. Boyko*, 2020 ONLSTH 146

Date: December 18, 2020

Tribunal File No.: 20H-097

BETWEEN:

Law Society of Ontario

Applicant

- and -

Neil Lawrence Boyko

Respondent

Before: Peter C. Wardle (chair), Sabita Maraj, Geoff Pollock (dissenting)

Heard: September 14, 2020, by videoconference

Appearances:

Patrick Copeland and Leslie Maunder, for the applicant
Respondent, self-represented

REASONS FOR DECISION ON A MOTION TO VARY AN INTERLOCUTORY ORDER

- [1] Peter C. Wardle (Sabita Maraj concurring):— This is a motion by the Law Society for an order varying an earlier interlocutory order of the Hearing Division which provided that the respondent Neil Boyko (the Lawyer) not engage in the practice of real estate law and take immediate steps to close his trust account.
- [2] The Law Society alleges that the Lawyer continued to practise real estate law after the date of the original order by attempting to seek instructions from clients with respect to an outstanding real estate transaction deposit after the date of the order and by eventually returning that deposit to the purchaser some months later. The Law Society also alleges that the Lawyer's trust account was not closed immediately as the order required, but remained open for an indefinite period, during which client funds appear to have been mishandled. As a result of the Lawyer's failure to comply with the earlier order, as well as the Lawyer's failure to comply with its ongoing investigation into these matters, the Law Society now asks that the Lawyer's licence be suspended in its entirety.
- [3] The Lawyer for his part does not dispute that his trust account was not closed immediately as the Tribunal's order required, but says that he could not do so because he could not get client instructions regarding the deposit. He denies he practised real estate law contrary to the Tribunal's order. He also says that he is now taking steps to close the trust account, which has had a minimal balance since March 2020. He claims to have made reasonable efforts to comply with all of the Law Society's requests for information in connection with its investigation.
- [4] On a motion of this kind, it is not the panel's responsibility to determine whether the Law Society has proved that the earlier order has been breached, as that determination will be left to another panel hearing the matter on its merits. Rather, our obligation is to consider whether there has been a material change in circumstances justifying a variation to the earlier order, and if so, whether those circumstances warrant imposing a complete suspension of the licensee's license.
- [5] We are satisfied that there has been a material change in circumstances such that had this new evidence been known at the time of the original hearing, the hearing panel would have made an order with different terms. We also conclude that these new circumstances constitute reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made. In our view, it is clear that the restrictions found in the 2019 order have been ineffective in protecting the public from what appears to be a pattern of troubling behaviour, which raises serious questions about whether the Lawyer is governable.

THE FACTS

The 2019 Tribunal Order

- [6] The Lawyer is 74 years old and has been practising law for more than 45 years. He is a sole practitioner with a practice that historically included a significant amount of real estate.
- [7] In 2018, the Lawyer was suspended for two-and-a-half months pursuant to an order of the Tribunal following a finding of professional misconduct in relation to his real estate practice.
- [8] In 2019, the Law Society brought a motion seeking the interlocutory suspension of the Lawyer's licence. On November 20, 2019, the hearing panel which heard the motion declined to suspend the Lawyer's licence, but instead ordered that the Lawyer be prohibited from practicing real estate law and from operating a trust account. The relevant parts of the hearing panel's order are as follows:
1. The Lawyer shall not directly or indirectly, including by instructing another lawyer or non-lawyer:
 - a. engage in the practice of real estate law;
 - ...
 - e. engage in the provision of any services relating to real estate law, including without limitation: receiving instructions....
 2. The Lawyer shall take immediate steps to close any existing trust account and provide proof that he has done so within 45 days of this order, and the Lawyer shall not open or operate any other trust account.
 3. The order shall be in effect until the earliest of the following:
 - ...
 - b. A panel varies or cancels the order on the basis of fresh evidence or a material change in circumstances that is brought by the Law Society or the respondent to the panel prior to the hearing on the merits....
- [9] The hearing panel concluded that the information before it established that a reasonable suspicion existed that the Lawyer may have been engaged in professional misconduct during the course of the earlier suspension, including practising while suspended, participating in an improper and possibly fraudulent mortgage transaction, misleading the Law Society, and failing to co-operate with the Law Society. However, in its reasons (2019 ONLSTH 143), the hearing panel concluded that while there were reasonable grounds to make an interim order in order to protect the public, it was unnecessary to suspend his licence.

According to the panel, the allegations, if proven, might lead to a lengthy suspension, but were not serious enough to justify revocation. It commented that the Lawyer had impressed them as someone who was honest and well-meaning, but for various reasons (including his medical difficulties) was unable to fully appreciate the nature and seriousness of his professional responsibilities.

The Trolleybus Transaction

- [10] Trolleybus Land Development (Trolleybus) entered into an agreement of purchase and sale in August 2019 to purchase a property in Toronto from the Lawyer's clients. Trolleybus provided the Lawyer with a deposit of \$25,000, which was deposited into his trust account on September 17, 2019.
- [11] The transaction failed to close after a due diligence condition in the agreement was not completed or waived by November 28, 2019. The agreement provided that the deposit was to be returned to Trolleybus within five business days in such circumstances. By this date, of course, the Lawyer was subject to the hearing panel's November 20, 2019 order, which prevented him from practising real estate law and required him to immediately close his trust account.
- [12] Between December 2019 and March 2020, Trolleybus repeatedly attempted to contact the Lawyer regarding the return of the \$25,000 deposit. These efforts were unsuccessful. On February 13, 2020, Trolleybus complained to the Law Society. On March 9, 2020, shortly after being advised of the complaint by the Law Society, the Lawyer finally returned the funds to Trolleybus.
- [13] An investigator from the Law Society spoke to the Lawyer in March 2020 about the complaint. The Lawyer's explanation was that the delay in returning the deposit was caused by the need to obtain a direction from his clients to return the funds. After he was unable to contact his clients, he had returned the funds to Trolleybus. The Lawyer provided the same explanation during his evidence on this motion.

The Lawyer's Failure to Close His Trust Account

- [14] Following the 2019 order of the hearing panel, a Law Society compliance officer attempted to obtain confirmation from the Lawyer that he had closed his trust account. This representative had various e-mail communications with a lawyer who was monitoring the Lawyer's practice pursuant to the 2018 order of the hearing panel. Despite having initially advised this lawyer that he had closed his trust account, the Lawyer later advised him that he had been reminded of the existence of the \$25,000 deposit's existence while preparing to move offices. The Lawyer also advised that additional monies remained in the trust account

as a result of certain unclaimed trust fund applications. This information was provided to the Law Society.

- [15] On February 28, 2020, a Law Society investigator wrote two letters to the Lawyer seeking books and records relating to the Lawyer's practice, including banking records for the trust account, his client file for the Trolleybus transaction, and representations with respect to the regulatory matters under investigation, which included the Trolleybus complaint and the Lawyer's failure to close the trust account.
- [16] The Lawyer did not provide the requested information. As a result, the Law Society obtained a transaction history for the trust account from the Lawyer's bank. This showed that the trust account had remained active from November 20, 2019 to March 9, 2020 (when the funds were returned to Trolleybus), and that at various points during that period there had been less than \$25,000 in the account. As of March 9, 2020, there was still \$0.06 left in the trust account, which remained open as of the date of this motion (during argument the Lawyer promised to close it and he has now done so). The Law Society's investigation also shows that there was a shortage of as much as \$2,416.33 in the trust account during December 2019 and that three days before paying the \$25,000 deposit out of trust to Trolleybus, the Lawyer deposited \$2,034 from his general account to ensure that the trust account would have sufficient funds as make the Trolleybus payment.

Evidence Regarding the Lawyer's Failure to Co-operate

- [17] The Lawyer has never provided a response to the Law Society's investigator's February 28, 2020 letters. In communications with the investigator, he confirmed that his books and records had not been kept up to date and that his trust account had not been reconciled since September or October 2019. He also suggested that there would be no point in complying with the investigator's requests for information and documents unless he received an extension to pay the costs arising from the 2018 hearing panel order. Commencing March 2, 2020, the Lawyer was suspended due to his failure to pay that costs award (his suspension was lifted in May 2020 when he finally paid the award). In a letter to the investigator dated March 23, 2020, the Lawyer stated:

... I will give you what you want if I receive a six month postponement of my suspension which began on March 1st, 2020. The extension relates to the current market condition and my inability to make any money for the next six months to pay the \$6,500.00 penalty.

Outstanding Complaints

- [18] There are two outstanding complaints being investigated by the Law Society

involving the Lawyer, one of which appears to relate to his alleged participation in an improper or possibly fraudulent mortgage scheme. These investigations are at an early stage.

The Lawyer's Evidence

- [19] The Lawyer provided affidavit evidence for this motion and was cross-examined on that affidavit. He did not contest the facts outlined above regarding the Trolleybus transaction or his failure to close the trust account. In his affidavit he repeated his explanation that he had been unable to pay out the \$25,000 earlier as he could not locate his vendor clients. He blamed his staff for the shortage in his trust account. He suggested that he had only agreed to the outcome of the 2018 discipline proceeding as a result of bad legal advice he had received. He called the Law Society investigator a “complete liar,” although in cross-examination he was unable to identify any misstatements in the investigator’s affidavit. In oral submissions, he took the position that he had acted appropriately in seeking client instructions before returning the funds to Trolleybus and had not practiced real estate law by doing so. He explained that he had finally paid the funds out to protect his clients from further legal proceedings. In answer to a question from a panellist, he admitted that his trust account remained open, but stated that it was insignificant whether he closed it or not as he was currently not practising law. He appeared to have no explanation for his failure to provide the information the Law Society was seeking other than that it appeared unnecessary and that the Law Society was “milking” the file.

LEGAL FRAMEWORK FOR THIS MOTION

- [20] At the time the hearing panel made its 2019 order, s. 49.27(2) of the Law Society Act provided as follows:

The Hearing Division shall not make an interlocutory order suspending a licensee’s licence or restricting the manner in which a licensee may practise law or provide legal services, unless there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made and that making the order is likely to reduce the risk.¹

¹ Section 49.27(2) has recently been amended to remove the concluding words “and that making the order is likely to reduce the risk.” In the circumstances of this case, where the original hearing panel concluding that some form of interlocutory order, albeit short of suspension, was required to protect the public and we are being asked to vary that order to provide for a more extensive order, the removal of the final words of this section are not relevant to our decision.

- [21] The jurisprudence under former s. 49.27 establishes that reasonable grounds for believing that there is a significant risk to the public or to the public interest in the administration of justice is a relatively low standard. The Law Society need not demonstrate on a balance of probabilities that a risk exists, only that there is an objective basis for the belief based on compelling and credible information. Nor does the Law Society have to prove that the licensee has committed professional misconduct; that question is left for a future hearing panel at a hearing on the merits.²
- [22] There are two types of potential harm to be considered in a motion for an interlocutory suspension. The first is the potential harm to members of the public, such as clients, adverse parties, or others. The second is potential harm to the public interest in the administration of justice. The latter reflects the central role and obligations of lawyers and paralegals in support of the administration of justice.³
- [23] Where there is a realistic prospect of loss of licence or of a lengthy suspension, protection of the public and the public interest will ordinarily require an interlocutory suspension unless effective lesser restrictions are available and appropriate in the circumstances.⁴ The 2019 hearing panel appears to have concluded based on this principle that a prohibition on the Lawyer practising real estate law coupled with the closing of his trust account would be sufficient to protect the public and the public interest.
- [24] Rule 12.7 of the *Rules of Practice and Procedure* provides that an interlocutory suspension or restriction may be varied or cancelled on the basis of fresh evidence or a material change in circumstances.
- [25] The jurisprudence establishes that the onus is on the moving party (here the Law Society) to establish a material change in circumstances. It is not the role of the hearing panel considering such a request to review or reconsider the earlier decision. Rather, its function is to assess whether the change in circumstances is “material,” i.e. if the new facts had been known at the time, the terms of the resulting order would have been different.⁵
- [26] As a result, our analysis focuses on the following questions:
1. Has there been a material change in circumstances, such that if the new facts had been known at the time, the 2019 hearing panel would likely have imposed different terms?

² *Law Society of Upper Canada v. McGee*, 2011 ONLSHP 70 at para. 38; *Law Society of Upper Canada v. Townley-Smith*, 2010 ONLSHP 77 at paras. 8-9.

³ *Law Society of Upper Canada v. Ejidike*, 2016 ONLSTH 69 at para. 51.

⁴ *Ejidike*, above at para. 79.

⁵ *Law Society of Upper Canada v. Marusic*, 2017 ONLSTH 197 at para. 39.

2. If so, would the hearing panel have imposed an interlocutory suspension of the Lawyer's licence?

ANALYSIS

1. Has There Been a Material Change in Circumstances?

- [27] As outlined earlier, the 2019 hearing panel in reaching its decision appears to have relied on the fact that the allegations did not touch on the Lawyer's integrity and were not of such a serious nature as would suggest or justify revocation of his licence. It described him as honest and well-meaning.
- [28] The evidence on this motion, on the other hand, strongly suggests that the Lawyer has deliberately ignored his obligations to the Law Society and flouted the provisions of the panel's order.
- [29] First, the evidence suggests that the Lawyer took no immediate steps to close the trust account in compliance with the panel's order. Indeed, as of the date this motion was argued (almost 10 months after the hearing panel's order was made), the account remained open. As a result, the Lawyer remained in breach of a key provision of the order as of the date of this motion. He also appears to have misled his practice monitor by initially advising him that the account was closed.
- [30] Second, we do not accept the Lawyer's explanation for his failure to close the trust account.
- [31] The Lawyer argues that he was unable to close the trust account until he had dealt with the Trolleybus deposit, which required a direction from his clients. He claims that he ultimately decided to turn the funds over to Trolleybus to protect the clients from further legal proceedings. He has no explanation for his failure to close the trust account after March 9, 2020, other than the fact that only \$0.06 remained in the account and it was "insignificant" whether it was open or not.
- [32] We agree that after the hearing panel made its order, the Lawyer could no longer operate a trust account and had an obligation to notify his vendor clients of that fact and seek direction from them as to what should happen to the \$25,000 deposit, as well as to make arrangements to have another lawyer take over the file. However, if in fact the Lawyer was unable to get client instructions, as he claims, this did not mean that he could simply sit back and do nothing. At a minimum, he had an obligation to advise the Law Society compliance officer that he had been unable to get instructions from the clients and as a result was unable to dispose of the funds. If necessary, steps could have been taken to have the hearing panel's order varied so that he was not in breach of it.

Alternatively, he could have brought an application to pay the funds into court. He did none of those things.

- [33] Furthermore, although the Lawyer's practice was restricted, he still was subject to the obligations of all licensees to respond to communications from third parties relating to pending transactions. The Lawyer should have advised Trolleybus and its counsel that he was no longer able to act in connection with the transaction and that he had been unable to get client instructions with respect to the deposit. This would have allowed Trolleybus to consider bringing its own proceeding to obtain a court order directing that the Lawyer turn over the funds. Instead, by his silence, he led Trolleybus to believe that he was still acting on the matter.
- [34] In fact, the Lawyer remained silent until he learned that Trolleybus had complained to the Law Society, following which he paid the funds out of trust to Trolleybus. This course of conduct directly contradicts the Lawyer's initial position that he required client direction to do so. In addition, the Lawyer's explanation that his motivation was to protect the clients from further legal proceedings strongly suggests that he had concluded that Trolleybus was legally entitled to the funds, something he was not entitled to do, given the hearing panel's order.
- [35] Third, the trust account continued to be active from December to March for matters unrelated to the Trolleybus transaction, as during that period there were several transfers from trust into the Lawyer's general account which had the effect of creating a shortage in the trust account. As a result, there are reasonable grounds for believing that the \$25,000 deposit was the subject of a mishandling or misappropriation, albeit a temporary one.
- [36] Fourth, the Lawyer's failure to co-operate with the ongoing Law Society investigations, his unsavoury proposal to trade his suspension for co-operation, his unfounded accusations against the investigator, and his comment at the hearing that it was insignificant whether he closed the trust account or not, all are strongly suggestive of a licensee who has no respect for his regulator or orders of this Tribunal and who has become ungovernable. As a result, this has become a case where a very lengthy suspension or revocation is on the table if these allegations are pursued to a hearing.
- [37] In short, in our view there has been a material change in circumstances. Had this information been available to the 2019 hearing panel, it is likely that it would not have concluded that the Lawyer was honest and well-meaning and that the allegations were not serious enough to warrant revocation. As a result, it would likely have ordered different terms.

2. Should an Interlocutory Suspension Be Ordered?

- [38] Put simply, it is clear that an interim suspension is necessary to protect the public and public confidence in the administration of justice. The Lawyer has not complied with an earlier order which was carefully tailored to allow him to continue to practise outside of real estate law. Further measures must be put in place to protect the public and ensure that the Lawyer does not cause further harm.
- [39] In addition, the Lawyer's conduct raises serious questions about his integrity and governability. In a motion for an interlocutory suspension involving serious concerns about a licensee's integrity, it may simply be the case that given the gravity of the misconduct, public confidence in the administration of justice and in the legal profession compels a determination by the hearing panel that the licensee must be suspended.⁶
- [40] In some cases, the significant risk of harm either to members of the public or to the public interest in the administration of justice can only be addressed through a suspension. This has become one of those cases, as a result of the Lawyer's course of conduct since the 2019 order was made.

CONCLUSION

- [41] For the reasons outlined above, we order that the November 20, 2019 order of the hearing panel be varied as follows:
1. The Law Society's motion for an interlocutory order suspending the respondent's licence is granted effective December 18, 2020.
 2. This order shall be in effect until a final order is made in the conduct proceeding to which this motion relates, or the Tribunal varies or cancels this order.
 3. The costs of this motion are reserved to the panel presiding at the conduct proceeding to which this motion relates.

⁶ *Law Society of Upper Canada v. Borkovich*, 2015 ONLSTH 36 at para. 25.

DISSENTING REASONS

- [42] Geoff Pollock (Dissenting):– I have read my colleagues’ reasons for making an interlocutory order (varying an earlier order) to suspend the licence of Neil Boyko. With respect, I cannot agree.
- [43] For the reasons below, I would have denied varying the earlier interlocutory order.

EVIDENCE

- [44] I agree with the legal framework and the background in the majority’s reasons. However, I will set out some additional evidence and with a different analysis, in reaching the opposite conclusion.

The Trolleybus Transaction – The Heart of the Matter

- [45] At its heart, the essential elements of this motion all flow directly, or indirectly from the Trolleybus transaction. The applicant’s position is that through this transaction, Mr. Boyko violated two essential elements of the earlier order of this Tribunal:
- that he no longer practise real estate law and
 - that he no longer operate a trust account.

Practising Real Estate Law

- [46] It is central to the position of the Law Society that Mr. Boyko was practising real estate law, in violation of the order of this Tribunal.
- [47] The applicable portion of the order is as follows:

The Lawyer shall not directly or indirectly, including by instructing another lawyer or non-lawyer:

- a. engage in the practice of real estate law;
- b. provide any form of opinion or certificate with respect to the title, transfer or charge of land or with respect to the issuance of any title insurance policy or in relation to any real estate transaction;
- c. register any instrument under the *Land Titles Act* or *Registry Act*;
- d. act in the actual or contemplated transfer, charge, insurance or any other transaction or action affecting any estate, right or interest in land; or

- e. engage in the provision of any services relating to real estate law, including without limitation: receiving instructions, preparing documents, searching or reviewing title, preparing requisition or clearance letters, answering requisitions or meeting with clients to attend to the execution of documents.

- [48] It is useful to first set out some context. Mr. Boyko’s client, as vendor, and Trolleybus entered into an Agreement of Purchase and Sale in August 2019. On September 17, 2019, Trolleybus gave him a cheque for \$25,000, to be held in trust for his vendor client, as a deposit for the sale of their property. Mr. Boyko placed the funds in his trust account.
- [49] As is common for commercial real estate transactions, this deal was conditional on due diligence by the purchaser. Should the due diligence conditions not be met, then it would not become a “firm” transaction and deposit monies would be returned.
- [50] Mr. Boyko was not subject to the Tribunal’s order when he was retained by his vendor client, nor when he accepted a deposit for the sale of this property. The transaction had its genesis several months prior to the order of this Tribunal.
- [51] The panel made its order on November 20, 2019. Approximately one week later, Trolleybus advised Mr. Boyko that the conditions had not been fulfilled, that the transaction was at an end, and demanded the return of its deposit.
- [52] Mr. Boyko’s unchallenged evidence is that he then sought instructions from his vendor client to release the deposit funds back to Trolleybus.
- [53] It was this – Mr. Boyko seeking instructions from his client to return the funds – that counsel for the Law Society alleged was the practise of real estate law, in violation of the order of the panel.
- [54] Paragraph 51(e) of the order specifically states the prohibition includes “without limitation” receiving instructions and can be read to also include seeking instructions. However, as Mr. Boyko had already been retained before this order was made, he was in a genuine Catch-22, if only the most narrow and technical interpretation of this order is accepted.
- [55] For the purposes of this motion, I would take a take a different approach.
- [56] In my opinion, Mr. Boyko’s attempted communication with his client was a reasonable, indeed integral, part of fulfilling the Tribunal’s order and closing his real estate practice.

Operation of a Trust Account Past January 4, 2020

- [57] In my view, the Law Society's submission that Mr. Boyko was practising real estate law in doing what was required to close his real estate practice was weak. But there is a second part of the order and so the analysis must now turn to the question of the operation of his trust account past the deadline for its closure on January 4, 2020.
- [58] All parties are in agreement that the trust account was still open and operational until at least March 9, 2020, when the Trolleybus funds were returned.
- [59] Thus, all parties agreed that a violation of the order of this Tribunal took place. The question becomes the degree and severity of the violation.
- [60] Mr. Boyko's position is that he was holding the funds for the Trolleybus transaction in trust for the benefit of his client and that he was unable to contact his client, and thus could not get instructions to release the funds. This is an entirely reasonable position.
- [61] Mr. Boyko released the funds to the solicitor for Trolleybus on March 9, 2020. This was only after Trolleybus made a complaint to the Law Society and that Mr. Boyko became aware that the Law Society had opened a discipline file on the matter.
- [62] My colleagues have said that Mr. Boyko ought to have contacted counsel for Trolleybus and told them that he was unable to obtain instructions from his client. I disagree. Doing so could have prejudiced Mr. Boyko's client. However, he ought to have contacted the solicitor for Trolleybus and informed them of the order of the Tribunal, and as a consequence he could no longer represent his client and a new lawyer was needed to act for his vendor client on the matter.
- [63] Releasing the funds, absent instructions from his client, was the wrong thing to do. Mr. Boyko's testimony was that he did so in order to protect his client from further proceedings. His client would have had virtually no claim to keep the deposit. However, virtually no claim is entirely different from no claim. Having correctly determined that he could not release the deposit absent his client's instructions, he ought not to have done so when faced with the disciplinary proceeding by the Law Society. It was, however, understandable.
- [64] My colleagues rightly point out that Mr. Boyko ought to have contacted a Law Society compliance officer to advise them of the situation. He also ought to have contacted LAWPRO to advise them that a situation had occurred that may give rise to a claim. LAWPRO could have then retained counsel on his behalf, or otherwise assisted.

- [65] Mr. Boyko also ought to have sought a variation of the order requiring the closing of his trust account. He could have asked that he be permitted to continue to hold the Trolleybus funds in trust pending resolution of this matter, either by obtaining instructions from his client, by having his client appoint a new lawyer, or by bringing an interpleader motion.
- [66] While he made an error in judgment, it was an understandable error. At the time, Mr. Boyko would have been going through tremendous stress and anxiety in attempting to close his trust account, wind up his real estate practice and most importantly avoid a further complaint to the Law Society. With the dual benefits of being a neutral third party and looking back through hindsight, it is easy to pick apart his action or inaction. But from the evidence, I am not persuaded that Mr. Boyko was doing anything more than trying his best to resolve a difficult situation, in the worst of circumstances.

Operation of a Trust Account Past March 9, 2020

- [67] On March 9, 2020, Mr. Boyko returned the Trolleybus deposit. At this point, his trust account had a balance of \$0.06, and with a balance of \$0.06 it remained. Mr. Boyko testified that his trust account was dormant and was “essentially closed.” This is true. It was dormant and it was “essentially closed.” However, the hearing panel did not order that his trust account be “essentially closed,” it ordered it to be closed, full stop.
- [68] As an experienced lawyer, Mr. Boyko ought to know that orders of the court and of administrative tribunals require full compliance. Mr. Boyko expressed surprise in the hearing about the seriousness with which we took the fact that his trust account was still open on the day of the hearing. The failure of compliance and the surprise that full compliance was required are of concern.
- [69] Following the hearing, Mr. Boyko moved with a sense of urgency and purpose: both closing his dormant trust account and providing proof of this to the Law Society within the same week as the hearing. This goes to mitigation.

Shortage of Funds in the Trust Account

- [70] The Law Society’s evidence was that there was a shortage of \$2,416.33 in Mr. Boyko’s trust account from December 2019, until three days before he paid out the Trolleybus deposit, when he transferred \$2,034 from his general account to his trust account.
- [71] Mr. Boyko’s evidence is that previously he employed a bookkeeper who assisted him with his monthly reconciliations, but that he could no longer afford to do so. As well, his trust account was essentially inactive. While I find the shortage and misallocation of trust funds extremely troubling, and while the amounts involved were not negligible, they were also not substantial. For the

purpose of this motion, I conclude that this was indicative of improper care and attentiveness to his trust responsibilities and that this was more likely mishandling than an issue of integrity and misappropriation.

THE FRAMEWORK FOR THE DECISION

- [72] My colleagues have already outlined the legal framework for this motion, with which I concur. Two questions must be answered:
- Has there been a material change in circumstances, such that if the new facts had been known at the time, the 2019 hearing panel would likely have imposed different terms?
 - If so, would the hearing panel have imposed an interlocutory suspension of the Lawyer’s licence?

A Change in Circumstances?

- [73] In its early order, the hearing panel found Mr. Boyko to be honest and well-meaning. They did not find that the allegations touched upon his integrity. The panel relied heavily upon this as the basis for making its order.
- [74] My colleagues have stated that they are of the opinion that Mr. Boyko’s actions (and inactions) strongly suggest that he “deliberately ignored his obligations to the Law Society and flouted the provisions of the panel’s order.” I respectfully disagree.
- [75] For the reasons that I have already stated, Mr. Boyko made errors in his actions and his inactions, plus errors in judgment. However, I do not attribute these errors to malevolence, avarice, dishonestly, a lack of integrity, or bad faith.
- [76] Mr. Boyko’s behaviour suggests to me that he was someone who was under an honest, but mistaken, belief that having “essentially closed” his trust account was “good enough.” When he realized the significance of continuing to have an open (albeit dormant) trust account, Mr. Boyko took immediate steps to remedy this situation.
- [77] I have also addressed his behaviour in the Trolleybus matter. I view this behaviour not as suggesting someone who intentionally disobeyed an order of this Tribunal but rather suggesting someone who genuinely felt that he had found himself in an impossible situation.

SHOULD AN INTERLOCUTORY SUSPENSION BE ORDERED?

- [78] For the reasons that I have already stated, I disagree with my colleagues that there has been a material change in circumstances. But assuming that there was a material change, should an interim suspension be ordered?

- [79] I do not find Mr. Boyko's actions raise serious questions about his integrity. Mr. Boyko's actions in closing his trust account so quickly address concerns that I would otherwise have had about his governability. I disagree with my colleagues about the danger to public confidence in the administration of justice by allowing him to continue to practise because we see Mr. Boyko differently on the evidence before us.
- [80] Finally, the risk of the harm to the members of the public must be addressed. Mr. Boyko's trust account has been closed. He no longer practises real estate law. Indeed, Mr. Boyko's evidence before us is that he has not practised law at all since March 2020. He said that if he returns at all to practice, this will be part-time and extremely limited in scope. I find little, if any, risk of harm to members of the public.

CONCLUSION

- [81] I would dismiss the motion for the reasons above.

APPENDIX “O”

Addendum No: 47427

**Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)**



Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Bedroom 2

Outlet.65

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Supply and install Cable outlet at 55" AFF adjacent to existing Multiport and duplex. Refer to A7.

INSTRUCTION:

COST: **\$406.52**

Outlet.98

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Updated ELECTRICAL - Relocate - Move an existing duplex receptacle to a new location as noted on attached plan. Only available within same room. **Locations are approximate and may vary from customer specifications due to site conditions.** Refer to Schedule C1.

INSTRUCTION: Refer to item #21

COST: **\$268.94**

Layout Redesign.56

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Electrical Reconfiguration in Bedroom 2 & Closet. Drop middle of ceiling to have flush ceiling height - See RCP A5. *Price does not include Custom Light Fixture. Low-Voltage Wiring for future LED lighting in millwork is not included per Drawing.

INSTRUCTION:

COST: **\$1,918.17**

Bedroom 2\EnsuiteBathroom

Reconfiguration.16

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Electrical & Plumbing Reconfiguration to accommodate layout including KOHLER toilet, Wall-Mounted faucet and sink changes. Relocate ensuite door to face walk-in closet. See A3. Add wall bracing to support floating vanity by Irpinia. Delete standard backlit mirror and convert power for strip lighting integrated in millwork. Supply and install capped outlets for custom light fixtures - see A5. See Irpinia Shop Drawings for reference.

INSTRUCTION: info only; Faucet on C-notes don't match.

COST: **\$17,584.04**

Shower.60

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: SHOWER FIXTURES - Upgrade to Kohler Purist Shower with Handshower on sidebar. DTV+ Control on wall mounted bracket included. Finish in Matte Black. (Based on Plumbing Package dated May 28, 2020)

INSTRUCTION:

COST: **\$10,089.52**

Shower Niche.68

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install custom shower niche on opposite wall to Shower fixtures. Refer to A15 and A19 for dimensions. Niche to be finished in shower enclosure tiles.

INSTRUCTION:

COST: **\$1,429.45**

Countertop.62

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) - Irpinia to supply substrate platform for apron stone mitred countertop. Supply and install apron fronted countertop to vanity in standard 'Terrace' finishes. Refer to Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$4,051.05**


Custom.71

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Bathroom Accessories - Supply and install KOHLER Towel Bar, Toilet Paper Holder and Hand Towel Arm in lieu of standard hardware. See A15. Finish in Matte Black.

INSTRUCTION:

COST: **\$1,391.03**


INITIAL 

Addendum No: 47427

Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)

TRIDEL®

Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Bedroom 2\EnsuiteBathroom**Receptacles & Outlets.85**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Do not install included Backlit Mirror at Vanity, convert power for strip lighting in vanity per Irpinia Shop Drawings. Supply and install GFI outlet and Cable outlet on Vanity Wall for TV Mirror (by others). *Must be approved with PA#16.

INSTRUCTION:

COST: **\$1,356.57****Bedroom 3****Cable.99**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Supply and install Cable outlet at 55"AFF on north wall. See A7.

INSTRUCTION:

COST: **\$406.52****Ceilings.64**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Drop Bedroom ceiling to match with corridor to accommodate recessed lighting (PA#53).
Sprinklers to accommodate lighting locations.

INSTRUCTION:

COST: **\$1,452.05****Receptacles & Outlets.22**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install combination duplex receptacle and USB beside existing duplex receptacle in location as noted on plan (A7).

INSTRUCTION:

COST: **\$537.03****Bedroom 3\EnsuiteBathroom****Reconfiguration.63**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Electrical & Plumbing Reconfiguration to accommodate layout including KOHLER toilet, Wall-mounted faucet and sink changes. See A3. Add wall bracing to support floating vanity by Irpinia. Delete standard backlit mirror and convert power for strip lighting integrated in millwork.
*Pricing does not include custom light fixtures.

INSTRUCTION:

COST: **\$16,962.54****Shower.66**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: SHOWER FIXTURES - Upgrade to Kohler Purist Shower with Handshower on sidebar. DTV+ Control on wall mounted bracket included. Finish in Matte Black. (Based on Plumbing Package dated May 28, 2020)

INSTRUCTION:

COST: **\$10,089.52****Shower Niche.70**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install custom shower niche on right side wall to Shower fixtures. Refer to A17 and A19 for dimensions. Niche to be finished in shower enclosure tiles.

INSTRUCTION:

COST: **\$1,429.45****Countertop.69**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) - Irpinia to supply material for countertop. Refer to Irpinia Shop Drawings.

INSTRUCTION:

COST: **No Charge****Custom.72**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Bathroom Accessories - Supply and install KOHLER Towel Bar, Toilet Paper Holder and Hand Towel Arm in lieu of standard hardware. See A17. Finish in Matte Black.

INSTRUCTION:

COST: **\$1,341.88**


INITIAL

Addendum No: 47427

Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)

Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Bedroom 3\EnsuiteBathroom

Receptacles & Outlets.91

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Supply and install GFI outlet and Cable outlet on Vanity Wall for TV Mirror (by others). *Must be approved with PA#63.

INSTRUCTION:

COST: **\$1,252.04**

Butlers Pantry

Lighting.97

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Supply and install capped outlet for undercabinet lighting. On separate circuit. Refer to A6 and Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$764.45**

Plumbing.59

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: PLUMBING - Supply and install Faucet (Kohler Karbon Articulating 2-hole Faucet - K-6227-C11-CP) and Undermount Sink (JULIEN Pro Chef IH0-US-232810) to added pantry millwork. Refer to Irpinia Shop Drawings. *Must be approved with PA#57 Reconfiguration item.

INSTRUCTION:

COST: **\$7,284.83**

Countertop.89

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Supply and install Stone countertop and backsplash to Pantry cabinetry. Countertop in double, mitred edge. Refer to Irpinia Shop Drawings. *Price based on included "Terrace" kitchen stones.

INSTRUCTION:

COST: **\$7,684.00**

Microwave.51

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install Wolf 24" MS24/1100 Standard Microwave in lieu of included. Refer to Irpinia Shop Drawings. Trim Kit (MWTRIM27) E Series Black Glass Trim Kit 820036 included.

INSTRUCTION:

COST: **\$1,367.23**

Wine Fridge.7

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install wine storage panel ready model #IW-18-LH - refer to Irpinia shop drawings. Press-to-open accessory included.

INSTRUCTION:

COST: **\$12,422.58**

Family Room

Wall Mount TV.95

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Frame TV Niche per detail on A19 and provide plywood backing for wall-mount TV. Relocate standard Multiport and outlet; add one cable outlet in TV niche. See A8 for locations.

INSTRUCTION:

COST: **\$2,774.72**

Receptacles & Outlets.93

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Updated ELECTRICAL - Supply and install a floor receptacle with brushed aluminum cover plate and trim approximate location noted on attached plan. Floor receptacle cover to sit on top of flooring. Post Concrete. **Locations are approximate and may vary from customer specifications due to site conditions. ** Refer to Floorplan.

INSTRUCTION: Qty: 3

COST: **\$16,543.20**

Foyer

Layout Redesign.15

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: MAIN FLOOR (LEVEL 12) - reconfigure linen closet as noted on plan. SINGLE Swing door. See A3. Supply and install Automatic Door light switch on double door opening.

INSTRUCTION:

COST: **\$2,438.54**

INITIAL

Addendum No: 47427

Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)

Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Foyer**103**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Close off Foyer ceiling.Sprinklers in Foyer and corridor to accommodate per RCP.

INSTRUCTION:

COST: **\$1,127.17****Foyer\FoyerCloset****Switches.104**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Supply and install Door Jamb Switch to Foyer Closet, Bedroom 2 Closet, and Bedroom 3 Closet. Refer to A5.

INSTRUCTION:

COST: **\$2,504.08****Kitchen****Reconfiguration.57**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: RECONFIGURATION - Electrical, Plumbing and Mechanical coordination to accommodate new Kitchen layout and Pantry, and appliance changes. Kitchen island plumbing centerline shifted. Extend stone countertop/backsplash per kitchen layout, price based on included 'Terrace' finishes. Custom mitred apron front surrounding cooktop knobs required. Refer to Irpinia Shop Drawings dated June 2, 2020. *Must be approved with all kitchen changes.

INSTRUCTION:

COST: **\$28,662.45****Plumbing.58**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: PLUMBING - Upgrade KOHLER Kitchen Faucet (K596-CP) in Polished Chrome, and Kitchen Stainless Steel Sink (003676) with Maple cutting board (210064) in lieu of included. Refer to Plumbing Package dated May 27, 2020 and Irpinia Shop Drawings for placement.

INSTRUCTION:

COST: **\$5,090.09****Coffee Maker.11**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install Wolf Coffee System 24" Black - model EC24/B - refer to Irpinia Shop Drawings. (NON-PLUMBED)

INSTRUCTION:

COST: **\$8,335.37****Coffee Maker.12**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install Wolf Cup Warmer System 24"/Black - model CW24/B - refer to Irpinia Shop Drawings

INSTRUCTION:

COST: **\$2,824.51****Appliance Modifications.45**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install Wolf 30" warming drawer WWD30 with an integrated panel kit 808152 under Wolf wall oven. Refer to Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$4,985.21****Kitchen\ApplianceCooktop****Stove Top.8**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install Wolf 36" Contemporary gas cooktop - 5 burners (model CG365C/S) with RED knobs in lieu of included 36" cooktop - refer to Irpinia Shop Drawings and Quote for cabinetry modifications.

INSTRUCTION:

COST: **\$4,591.30****Kitchen\ApplianceDishwasher****Plumbing.48**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Additional Electrical & plumbing to second Dishwasher. See PA#14. Location per Irpinia Shop Drawings. Post Concrete.

INSTRUCTION:

COST: **\$1,318.71**

INITIAL DS

Addendum No: 47427

**Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)**



Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Kitchen\ApplianceDishwasher

Dishwasher.14

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install TWO Cove Dishwasher 24" (model DW2450) in lieu of included dishwasher. Refer to Irpinia Shop Drawings

INSTRUCTION:

COST: **\$7,453.48**

Kitchen\ApplianceFridge

Fridge.3

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install SubZero 30" column freezer with ice maker - panel ready model #IC-30FI-RH with integrated column press-to-open accessory - right hinge model #9018427. Dual Installation Kit not required. - refer to Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$16,250.53**

Fridge.4

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install SubZero 30" column refrigerator with internal dispenser - panel ready model #IC-30RID-LH with integrated column press-to-open accessory - in lieu of included fridge - refer to Irpinia Shop drawings

INSTRUCTION:

COST: **\$6,808.00**

Fridge.5

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install SubZero fridge drawers panel ready (model #ID-30R) in lieu of included Undercounter Wine Fridge. Refer to Irpinia shop drawings.

INSTRUCTION:

COST: **\$8,565.74**

Kitchen\ApplianceHood

Hoodfan.49

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install Wolf 42" pro ventilation hood liner insert PL4019-12 & internal blower 814421 in lieu of included Hoodfan.

INSTRUCTION:

COST: **\$3,463.70**

Kitchen\ApplianceWall Oven

Appliance Change.44

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install Wolf 30" steam oven CSO30CM/B with water tank. Refer to Irpinia shop Drawings for location.

INSTRUCTION:

COST: **\$13,034.90**

Appliance Change.46

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install Wolf 30" convection wall oven M-Series SO30/CM/B from standard wall oven. Refer to Irpinia Shop Drawings for location,

INSTRUCTION:

COST: **\$7,403.89**

Kitchen\KitchensIsland

Appliance Change.50

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: UPDATED - Supply and install 24" Vacuum seal drawer VS24 828801 panel ready adaptor.

INSTRUCTION:

COST: **\$7,490.28**

Laundry Room



Plumbing.88

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Upgrade Laundry Faucet and sink to KOHLER - SIMPLICE KITCHEN FAUCET (K596-CP) in Polished Chrome and Urbanedge Undermount Stainless steel utility sink (003676). Refer to Irpinia shop Drawings.

INSTRUCTION:

COST: **\$4,193.71**


INITIAL 

Addendum No: 47427

Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)



Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Laundry Room

Countertop.87

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Supply and install countertop in single square edge over washer and dryer. Relocate water shut-offs above countertop. Refer to Irpinia Shop Drawings. Colour: Caesarstone - Pure White.

INSTRUCTION:

COST: **\$1,214.75**

Custom.96

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) - Supply and install power on single pole switch for undercabinet lighting (by others). Shift location of washer and dryer to meet clearance for door swing. Fur out wall behind deeper sink cabinet. Shut offs to clear washer/dryer. Refer to Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$994.97**

Laundry Room\ApplianceDryer

Appliance Change.2

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install LG dryer model #DLE5000V with steam in lieu of included Whirlpool dryer. Connection with compatible LG washer is required for Steam function.

INSTRUCTION:

COST: **\$1,848.99**

Laundry Room\ApplianceWasher

Appliance Change.1

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install LG washer model #WM5000HVA in lieu of included Whirlpool washer

INSTRUCTION:

COST: **\$1,744.41**

Living Room

Cable.102

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Supply and install Cable outlet.

INSTRUCTION:

COST: **\$400.87**

Ceilings.101

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Drop Living Room ceiling to accommodate Recessed Lighting per PA#53. Relocate 2 included lighting fixtures per RCP - A6.

INSTRUCTION:

COST: **\$3,320.51**

Receptacles & Outlets.100

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Relocate one included floor outlet and add two floor outlets as annotated on Floorplan A8. Supply and install one floor Cable outlet adjacent to floor outlet to accommodate Free standing TV.

INSTRUCTION:

COST: **\$6,971.53**

Master Bedroom

Ceilings.20

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Extend Drop Ceiling per RCP. Cove Light along demising wall, see detail on A5. *Must be approved with custom Lighting PA#53.

INSTRUCTION:

COST: **\$3,141.40**

Appliance Change.41

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install LG Styler (3SRFBN).

INSTRUCTION:

COST: **\$3,743.13**


INITIAL

Addendum No: 47427

Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)



Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Master Bedroom**Custom.94**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Walk-in Closet - Supply and install Plywood backing along all walls for full height built-ins. Hardwiring power on single pole switch to accommodate Custom Built-ins. Refer to Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$1,724.94****109**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Refer to Irpinia Paperwork - Master Bedroom Wardrobes items 44--60; Dated August 13, 2020

INSTRUCTION:

COST: **\$165,935.98****Master Bedroom\EnsuiteBathroom****Lighting.77**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Supply and install two wall capped outlets on separate switches. Cove light detail in Shower ceiling. Refer to A11a and RCP. *Price does not include custom light fixtures. See PA#53.

INSTRUCTION:

COST: **\$3,096.76****Reconfiguration.19**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Reconfigure master ensuite and master walk in closet as noted on drawing - relocation of toilet, relocation of shower, relocation of tub, delete second ensuite. Convert to double vanity. Reposition door to new closet as noted on plan Water closet enclosed in clear glass door with pull knob. *Price does not include custom lighting fixtures.

INSTRUCTION:

COST: **\$27,287.27****Plumbing.79**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: PLUMBING - Upgrade to KOHLER Bathroom plumbing fixtures including toilet, vanity sinks, and faucets. Wasteline p-trap to clear bottom shelf per Irpinia Shop Drawings. Fixtures Colour: Vibrant Titanium.

INSTRUCTION:

COST: **\$19,758.81****Plumbing.81**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: FREESTANDING TUB - Upgrade freestanding tub to KOHLER 72" x 36" freestanding Heated BubbleMassage air Bath with Bask® heated surface and fluted shroud in White. Tub filler to be floor mounted with handshower, in Vibrant Titanium. Price based on Plumbing Package dated May 28, 2020.

INSTRUCTION:

COST: **\$25,543.06****Shower.80**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: SHOWER - Upgrade Shower fixtures to KOHLER Rainshower Panel with handshower on slidebar. Controlled on DTV+ interface. Price based on Plumbing Package dated May 28, 2020. Refer to A13.

INSTRUCTION:

COST: **\$16,144.85****Shower Niche.84**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install custom shower niche on side wall to Shower, and one behind Freestanding Tub. Refer to A13 and A19 for dimensions. Niche to be finished in shower enclosure tiles.

INSTRUCTION:

COST: **\$2,858.90****Countertop.86**ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Supply and install stone countertop with slab apron fronted countertop on 3-sides. Substrate platform for apron stone mitered countertop to be supplied by Irpinia. Refer to Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$1,050.00**

Addendum No: 47427

**Addendum Confirming Extras, Upgrades or Personal Selections
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Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Master Bedroom\EnsuiteBathroom

Receptacles & Outlets.78

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Do not install included backlit mirrors to vanity. Convert one to receptacle for TV Mirror (by other) at vanity wall, and one for hardwired strip lighting in vanity cabinets. See Irpinia Shop Drawings. Add Cable outlet to vanity wall - see A8.

INSTRUCTION:

COST: **\$1,068.41**

Plumbing Miscellaneous.82

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Bathroom Accessories - Supply and install KOHLER Toilet Paper holder and Hand Towel arm in lieu of included hardware. Refer to A13.

INSTRUCTION:

COST: **\$1,067.29**

Towel Bar.83

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Heated Bath Towel Bar - Supply and install Rough-in for heated towel bar. Plywood backing included. Refer to A13.*Heated Towel Bar not included in price.

INSTRUCTION:

COST: **\$1,642.74**

Powder Room

Plumbing.74

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install KOHLER toilet, Wall-mount faucet and undermount sink in lieu of included.

INSTRUCTION:

COST: **\$15,431.31**

Countertop.75

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Supply and install Slab apron to vanity per Irpinia Shop Drawings. Irpinia to supply substrate platform to apron stone mitred countertop.

INSTRUCTION:

COST: **\$768.40**

Custom.73

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: (Construction Notes) Fur out wall behind sink to prep for future tile cladding. Do not install included backlit mirror to vanity. Relocate existing recessed potlight and add one wall capped outlet on separate switch. Refer to A9-A10 and Irpinia Shop Drawings.

INSTRUCTION:

COST: **\$1,443.58**

Custom.76

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Bathroom Accessories - Supply and install KOHLER Towel Ring, Toilet Paper Holder and Soap Dispenser in lieu of standard hardware. See A10. Finish in Vibrant Brushed Bronze.

INSTRUCTION:

COST: **\$1,485.95**

Receptacles & Outlets.92

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: ELECTRICAL - Supply and install GFI outlet and Cable outlet on Vanity Wall for TV Mirror (by others). See YHCAV plan.

INSTRUCTION:

COST: **\$1,471.26**

Suite GPH1

Your Home Custom AV..54

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Custom Wiring - Supply and install conduits and custom wirings to accommodate YHCAV plan dated February 11, 2020. Post Concrete Pricing.

INSTRUCTION:

COST: **\$18,165.88**

INITIAL

Addendum No: 47427

**Addendum Confirming Extras, Upgrades or Personal Selections
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Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Suite GPH1

Custom.53

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Supply and install Custom Lighting Fixtures per "Lighting Schedule" dated March 27, 2020 to entire suite. Cost includes coordination with other involved trades.**Stairs lighting or recessed wall panel lighting are not included.

INSTRUCTION:

COST: **\$279,161.95**

Electrical Panel.55

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Upsize Suite Panel to accommodate all upgraded Appliances, Lighting Loads and added Electrical Loads.

INSTRUCTION:

COST: **\$1,271.25**

Miscellaneous.105

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: MILLWORK - Supply and install Wood Panelling along Entry Corridors and Foyer. 8" Recessed Baseboards along corridor/foyer, and Solid Core Doors in specified casing and concealed Hinges (Simonswerk Hinge Systems Tectus A8 - TE 640 3D A8) to be installed as noted on A3a and A4a, and Elevations A21-26. *Price based on Dvira Interiors Drawings dated March 30, 2020.

INSTRUCTION:

COST: **\$142,124.05**

107

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: OUTDOOR HOT TUB --- Supply and install Sunrise Spas 870S hot tub for 6 persons. Location on which terrace and specification of tub to be finalized at design appointment. Due to weight bearing restriction, exact location will be limited to areas approved by structural consultant. model number subject to change. Shell Colour: Sterling Marble; Cabinet colour: Grey

INSTRUCTION:

COST: **\$74,229.70**

108

ACCEPTED ON: **Aug 13,2020**

DESCRIPTION: Refer to Irpinia Paperwork - Kitchen items 1-21; Pantry items 22-32; Powder Room items 33-34; Master Bath items 35-36; 2nd ensuite items 37-38; 3rd ensuite item 39; Laundry Room items 40-43; Dated June 2, 2020

INSTRUCTION:

COST: **\$113,898.35**

***111**

ACCEPTED ON: **Aug 18,2020**

DESCRIPTION: Tridel Volume Discount

INSTRUCTION:

COST: **-\$59,763.01**

Total Amount for extras, upgraded or personal selections: **\$1,135,497.23**

Deposit Amount required: **\$283,874.31**

Outstanding Balance of Deposit for extras, upgraded or personal selections owing: **\$283,874.31**

INITIAL

Addendum No: 47427

**Addendum Confirming Extras, Upgrades or Personal Selections
(Reflecting A Change in the Purchase Price of the Suite)**



Aug 18, 2020

Aquabella at Bayside Toronto

Legal Level: 12

Legal Unit: 1

Suite: GPH1

Design: GPH1

Addendum Confirming Extras, Upgrades or Personal Selections (Reflecting A Change in the Purchase Price of the Suite)

1. In light of the foregoing provisions of this Addendum, the total Purchase Price is hereby amended to \$7,753,497.23, which correspondingly represents an adjustment to the original Purchase Price of the above-noted suite equivalent to the total value or price of all of the extras, upgrades and/or personal selections so desired by the Purchaser and expressly confirmed by the foregoing provisions of this Addendum, less any extras, upgrades and/or personal selections which are being deleted or discounted in accordance with the foregoing provisions hereof, on the express understanding that all such extras, upgrades or personal selections are being sold to the Purchaser on a tax inclusive basis (and with all pricing for same incorporating or reflecting any applicable credits).

2. All monies paid on account of the extras, upgrades and/or personal selections so outlined and confirmed by the foregoing provisions of this Addendum, prior to Closing, shall be deemed and construed to be additional deposits on account of the Purchase Price, and all monies so paid by or on behalf of the Purchaser in connection therewith shall be held in trust by the Vendor's solicitors (with statutory interest accruing on all deposits paid prior to the interim-occupancy closing of this transaction, in accordance with the provisions of the Act, and with no interest accruing thereon from and after the interim-occupancy closing date, and with no interest accruing on any deposit monies received on or after the interim-occupancy closing date), and the statement of adjustments on final closing (as well as the value of consideration or figure for land transfer tax purposes set out in the deed/transfer) shall reflect the foregoing provisions of this Addendum.

3. This Addendum replaces and supersedes all previous Addendums Confirming Extras, Upgrades or Personal Selections, and shall be deemed and construed, for all purposes, as an amendment to the Agreement of Purchase and Sale entered into between the Vendor and the Purchaser in respect of the above-noted suite, inasmuch as it has the effect of altering the Purchase Price as herein before provided.

4. To ensure clarity and quality, no verbal agreement, arrangement or understanding involving any extras, upgrades or personal selections (or other desired changes to the purchased suite) shall be honored or implemented, inasmuch as any and all agreements regarding same must be in writing and signed by both parties hereto, and it is the Purchaser's responsibility to ensure that the foregoing provisions of this Addendum accurately reflect the Purchaser's choices and selections. The Purchaser hereby expressly acknowledges and agrees that by making his or her colour and/or finish selections, including any selection of extras and/or upgrades (from the Vendor's available samples and/or selection options), whether in person or online (or by any other electronic or remote means), the Vendor cannot guarantee exact matches in the stain and/or colour of the materials so selected or affected, and the Vendor shall correspondingly not be responsible or liable (nor shall the Vendor be obliged to give the Purchaser any credit, abatement or compensation whatsoever) for any shade, colour, texture or finish differences occurring, including any veining in any of the materials or components so selected or affected, and whether as a result of different dye lots or because of any natural or manufactured variations in the components or materials so selected, including (but not limited to) tile, carpet, hardwood or laminate flooring, cabinetry, fixtures, railing, natural or manufactured stone, trim and/or doors. Samples viewed in person or online (or by any other electronic or remote means), at the time that choices and selections are made from the Vendor's samples, are only a general indication or depiction of the materials available for selection.


5. This Addendum may be executed by the undersigned parties electronically, in accordance with the provisions of the Electronic Commerce Act, 2000, S.O. 2000, as amended (including without limitation, through the DocuSign electronic signing platform), and a photocopy or a scanned and e-mailed copy of this Addendum may be relied upon and/or enforced to the same extent as if it were an original executed version.

6. In the event that the Agreement of Purchase and Sale between the parties hereto includes (and is correspondingly subject to) the Taron Addendum issued by Taron Warranty Corporation effective on and after October 1st, 2012 (and which contains a Schedule "B" to the Taron Addendum which outlines all of the fixed and variable closing adjustments), then in such circumstances the parties hereto hereby expressly confirm and agree that said Schedule "B" to the Taron Addendum shall be deemed and construed to be hereby amended to reflect and incorporate the corresponding change to the Purchase Price and/or the balance due on closing, pursuant to (or as a consequence of) this Addendum.

IN WITNESS WHEREOF, the Purchaser has hereunto executed these presents this 18 day of August, 2020.

WITNESS
(as to all Purchaser's signature, if more than one Purchaser)

Mahal Venture Capital Inc.

DocuSigned by:
Per: 
Authorized Signing Officer
I have authority to bind the Corporation

IN WITNESS WHEREOF, the Vendor has hereunto executed these presents this 29 day of July, 2021


Aquabella Bayside Toronto Inc.
PER: 
Authorized Signing Officer
I HAVE AUTHORITY TO BIND THE CORPORATION

APPENDIX “P”

RE: Aquabella Bayside Toronto Inc. (the "Vendor") sale Mahal Venture Capital Inc. (the "Purchaser") of dwelling unit 1 on level 12, parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA and hobby/storage unit TBA, level TBA, and their appurtenant common interests (hereinafter collectively referred to as the "Purchased Units"), in a proposed condominium to be developed by the Vendor (the "Condominium") on the lands and premises municipally known as 118 Merchants' Wharf (the "Real Property"), pursuant to the provisions of an agreement of purchase and sale dated 03-Aug-2017 (the "Purchase Agreement")

IN CONSIDERATION OF the Vendor entering into the Purchase Agreement with the Purchaser, and in consideration of the sum of ten dollars (\$10.00) of lawful money of Canada now paid by the Vendor to the undersigned, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the undersigned **Jesse Mahal** (the "Guarantor") hereby unconditionally guarantees the due and timely performance and fulfilment of all covenants and obligations of the Purchaser to and in favour of the Vendor arising under (or pursuant to) the Purchase Agreement, including without limitation, the obligation to pay the purchase price in respect of the Purchased Units to the Vendor, and all other monies owing or payable to the Vendor by the Purchaser in accordance with the provisions of the Purchase Agreement, on the respective dates or times and in the manner that all such amounts are due and payable (including without limitation, all occupancy fees payable between the confirmed possession date and the final closing date, and all monies owing or secured by any vendor take-back mortgage, and/or any mortgage to be assumed by the Purchaser on the final closing of the above-captioned transaction), and in the event that the Purchaser fails to perform or fulfil any such obligations and/or covenants, then the Guarantor shall immediately remedy or rectify such default, and shall be correspondingly obliged to pay any outstanding amounts so due and payable to the Vendor forthwith upon the written demand for same delivered by the Vendor or the Vendor's solicitor to the undersigned, without the necessity for any prior written notice to the Guarantor regarding the Purchaser's default or any other matter whatsoever.

IT IS FURTHER understood and agreed that the Guarantor shall be primarily liable to the Vendor for the unpaid balance of the purchase price in respect of the Purchased Units, and that the Guarantor's liability hereunder shall not be impaired or discharged by reason of any waiver by the Vendor of any breach or default by the Purchaser, nor by reason of any variation in (or departure from) any of the terms or provisions of the Purchase Agreement (nor shall the Guarantor be entitled to any notice of any such amendment or variation in the Purchase Agreement), nor by reason of any time or other indulgence(s) granted to the Purchaser by the Vendor, nor by reason of the Vendor accepting other covenants, guarantees or sureties from other parties or taking further or other security for the performance of the Purchaser's obligations and covenants, nor by virtue of the Purchaser's subsequent bankruptcy or insolvency, nor as a result of any similar or other act, thing or matter whatsoever, it being expressly understood and agreed that the Guarantor's liability hereunder to the Vendor shall subsist and continue until payment in full of the entire unpaid balance of the purchase price is received by the Vendor, and nothing whatsoever shall reduce, release or extinguish such liability of the Guarantor until such payment to the Vendor has been made. In the event that the Purchaser is in default of any of its obligations under the Purchase Agreement, the Vendor shall not be bound to proceed against the Purchaser, nor be obliged to enforce or exhaust its rights, remedies or recourse against the Purchaser pursuant to the Purchase Agreement, nor against any other person or persons, before being entitled to enforce its rights against the Guarantor by virtue of this guarantee, it being expressly understood and agreed that the Vendor shall be entitled to pursue and make demand upon the Guarantor, and concomitantly enforce the Guarantor's obligations hereunder, forthwith upon (or at anytime after) the Purchaser's default as aforesaid, and such enforcement proceedings against the Guarantor may take place before, after, or contemporaneous with any proceedings taken or pursued by the Vendor against the Purchaser.

THE GUARANTOR FURTHER covenants and agrees to indemnify and save the Vendor harmless from and against all losses, damages, costs and expenses which the Vendor may sustain, incur or become liable for, by reason of the Purchaser's default under the Purchase Agreement, or by reason of any action(s) or proceeding(s) taken or pursued by the Vendor with respect to the enforcement of the Vendor's rights and remedies against the Purchaser and/or the Guarantor pursuant to the Purchase Agreement and/or this Guarantee.

IT IS FURTHER acknowledged and agreed by the Guarantor that this Guarantee has been given to the Vendor free of any conditions, that no representations whatsoever have been made to the Guarantor affecting (or with respect to) the Guarantor's liability to the Vendor hereunder, that this Guarantee is in addition to (and not in substitution for) any other guarantee now or hereafter held of taken by the Vendor in respect of the Purchaser's outstanding obligations and liabilities arising under the Purchase Agreement, and that this Guarantee shall not be deemed or construed to have been waived, released, discharged, impaired or affected by reason of the transfer of the Purchased Units to the Purchaser on the final closing of the above-captioned transaction, nor by reason of any subsequent sale, transfer or other conveyance of the Purchased Units by the Vendor to any third party or parties consequent upon the Purchaser's default under the Purchase Agreement.

Dated this 3rd day of August, 20 17.


WITNESS


GUARANTOR'S NAME: **Jesse Mahal**

APPENDIX “Q”

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

Date of Examination: **December 21, 2021**

Time: **9:26 AM EST**

In Attendance:

Official Receiver: Mustafa Sherif

Officer of Bankrupt Corporation: Jesse Mahal

Legal Counsel of the Bankrupt: Lisa Corne

Note:

Prior to the administration of the Oath, the officer of the bankrupt corporation was advised of the following facts:

1. Under section 167 of the *Bankruptcy and Insolvency Act* (the Act), the officer of the bankrupt corporation is bound to answer all questions relating to the business or property of the bankrupt, to the causes of the bankruptcy, and the disposition of the bankrupt's property.
2. Under section 198(1)(b) of the Act, it is an offence to knowingly make an incomplete and/or false statement during the examination.

Language:

Prior to commencing the examination, the Official Receiver confirmed that the corporate officer's official language preference is that the examination be conducted in English. The corporate officer was asked if they require the services of an accredited interpreter to be present during the course of the examination.

Proof of Identity:

Prior to commencing the examination, the Official Receiver confirmed the corporate officer's identity using his/her Canadian Passport.

Affirmation:

Do you solemnly affirm that the information to be given by you shall be the truth, the whole truth and nothing but the truth?

Answer: I do

General Information (Corporate Officer)
--

1. **What is your full legal name, by what other names are you known, and what is your date of birth?**

Answer: Jesse Jaswinder Mahal

August 17, 1988

2. **What is your address?**

Answer: 6845 Second Line W. Mississauga L5W 1M8

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

Date of Examination: **December 21, 2021**

Time: **9:26 AM EST**

3. **Are you an officer of the corporation referred to in these proceedings?**

Answer: Yes

4. **Have you been made aware of the duties imposed upon you by sections 158 and 159 of the *Bankruptcy & Insolvency Act*?**

Answer: Yes

5. **What was your position(s) in the bankrupt corporation? Please describe your job title(s), work duties and applicable dates.**

Answer: I was sole shareholder. CEO.
Since the incorporation. I believe in 2014.

6. **What relevant experience and/or education did you possess prior to obtaining your position with the bankrupt corporation?**

Answer: Undergraduate degree and 2 post graduate degrees.

7. **Did you personally keep track of the corporation's day-to-day financial position? If not who?**

Answer: Yes.

General Information (Corporation)

8. **Under what name did the bankrupt corporation carry on business? What is the legal name of the corporation?**

Answer: Mahal Venture Capital Inc.

9. **When did the corporation start doing business?**

Answer: 2015

10. **When did the corporation cease operations and activities?**

Answer: The date was in November this year (2021).
The court appointed a receiver on October 1st of this year and they're the ones who declared the bankruptcy.

11. **What are the names of the officers and directors of the corporation?**

Answer: Just myself. Jesse Mahal

12. **What were the corporation's principal business activities?**

Answer: Holding property.

13. **Does the corporation have any wholly owned subsidiaries? If so, provide details.**

Answer: No.

14. **Where was business conducted?**

Answer: 6845 Second Line W. Mississauga, Ontario L5W 1M8

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

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15. **What was the address of the corporation's head office?**

Answer: 6845 Second Line W. Mississauga, Ontario L5W 1M8

16. **Did the corporation own this property?**

Answer: No.

17. **How long did the corporation operate at this location?**

Answer: Since incorporation.

18. **Who were the rent/mortgage payments made to?**

Answer: There are no rent payments.

19. **Did the corporation operate from any other locations? If yes, provide details.**

Answer: No.

Drawings & Salaries

20. **Did you take draws from the corporation?**

Answer: No.

21. **In what form did you derive income from the corporation?**

Answer: There's no income for the corporation.

22. **What was your total compensation from the corporation for each of the last three years of operation, including expenses?**

Answer: Zero sales and zero compensation since it's existence.

23. **Have you ever used the accounts of the corporation for personal use (e.g. purchases, bill payments, etc.)? If yes, provide details including how these transactions were recorded in the books and records of the corporation.**

Answer: Yes. On one transaction.

Deposit for a condo in trust.

How much was the deposit?

Roughly \$1.3 million

Causes of Bankruptcy

24. **Approximately on what date did you become aware that the corporation was unable to meet its debts as they became due and what made you aware of this fact? When did the bankrupt corporation become aware of its insolvency?**

Answer: The receivership was appointed on October 1st.

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

Date of Examination: **December 21, 2021**

Time: **9:26 AM EST**

Books & Records

25. Did the corporation maintain a proper set of books and records?

Answer: Yes.

26. Where are the corporation's books and records?

Answer: I have a copy at the home address and the accountant has a copy as well.

27. When were the books and records last updated?

Answer: October 2021

28. How often were the books and records updated?

Answer: Yearly

29. Were the books & records audited annually? If so, by whom?

Answer: No. There was always nil return.

30. Who was the bookkeeper and/or who were the corporation's accountants?

Answer: Myself and corporations accountant is Gill and Co. Pardeep Gill.

Where is Gill and Co. located?

2815 Thamesgate Dr, Mississauga, ON. L4T 1G5

Do they have copies of Mahal Venture Capital's books and records?

Yes they do.

How long have they been your accountant?

Just this year.

Who was the accountant prior?

Myself and Perry Singh. He's a chartered accountant. I prepared all the HST and he would submit them as there were nil returns every single time.

How long did you work with Perry Singh?

From 2016 to 2019

31. When were the corporation's last financial statements prepared?

Answer: October 2021.

32. Did the corporation keep a minute book? If so, where is the minute book, when was it last updated, and how often was it updated?

Answer: No.

33. Were all books and records, including the minute book, client list and share register (as applicable), provided to the trustee? If not, why not?

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

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Time: **9:26 AM EST**

Answer: Yes.

34. **Have all required tax returns (and statements regarding source deductions) been filed for the corporation? If not, provide details such which ones and why.**

Answer: Yes they have.

35. **Have you been assessed personally for outstanding balances on source deductions?**

Answer: No

Capital Investment & Shares

36. **How much was the initial investment in the corporation? Where did the money come from?**

Answer: \$100 per share. 100 shares.

37. **Following the initial investment, how many shares were issued?**

Answer: 100 shares. No other shares have been issued in existence.

38. **Following the initial investment, how many shareholders were there and what are their names?**

Answer: Officer of the corporation was the only shareholder.

39. **Were other shares issued subsequent to the initial investment? If so, provide details.**

Answer: No.

40. **What amount of the capital was paid in cash, and what was the consideration for any other issue of the share capital?**

Answer: Regarding share capital everything was cash.

41. **Does the corporation own any shares in any other corporation? Did it ever own any shares in any other corporation? If so, provide details.**

Answer: No. No.

Financial Management

42. **When did the corporation last show a profit?**

Answer: Never shown a profit.

43. **What financial institutions did the business use for banking or have accounts at?**

Answer: RBC. Previously at TD.

44. **Do any of the corporate bank accounts remain open? If so which ones and what are the current balances?**

Answer: No.

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

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45. Who had signing authority for cheques and other banking instruments?

Answer: Only myself.

46. Who was responsible for bank transactions in the corporate name?

Answer: Myself.

47. Who made the bank deposits?

Answer: Myself but there aren't any.

48. Were specific types of deposits made to certain accounts? If so, provide details.

Answer: No.

49. How many banking cards were issued on the corporate bank accounts and who held those cards?

Answer: One and myself.

50. Were any of the corporation's accounts seized by creditors or government authorities? If so, provide details including when, which accounts and by whom.

Answer: The trustee.

51. Have you personally guaranteed any of the debts of the corporation?

Answer: No

52. Were there any corporate credit cards? If so provide details including outstanding balances, who held the cards and what they were used for.

Answer: No

53. When did the corporation stop paying its creditors?

Answer: Summer of 2021.

54. Did the corporation draw on its credit facilities or obtain credit after this date?

Answer: No

55. What was the corporation's approximate debt load at that moment?

Answer: Approximately \$20,000,000.00

56. How was the corporation planning on paying its creditors?

Answer: Through another corporation that was to operate at the address 155 Adams Blvd.

57. Explain the following debts, giving the date they were started, and the reason or cause of the debt. For each debt: When did you get this credit? What type of credit debt was this? What was this credit used for? What items did you buy? Do you still have them? If not, what happened to them? How were you planning on paying back the debt? If applicable, why was this debt not listed on your *Statement of Affairs*?

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

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Amount	Creditor Name	Account #	Source Document
\$123,918.00	City of Brantford (Property Tax)	Secured	Statement of Affairs
Answer: Property tax. It started during the pandemic. I believe it is for over 1 year.			
\$19,672,870.00	Skymark Finance Corporation	Secured	Statement of Affairs
Answer: 3 mortgages with Skymark for construction which were supposed to be due once constructing was to be completed in terms of payments not principle. Interest only.			
Was the construction completed?			
No due to lack of advances from Skymark.			
Up to what point were the interest payments made?			
I'd have to refer to the accounting.			
\$5,079,998.00	Vicano Construction Limited	Secured	Statement of Affairs
Answer: Construction lien and cost over run on construction.			
\$1,500,000.00	Vivian Group Inc.	Contingent	Statement of Affairs
Answer: To purchase a building and we provided a deposit and the building was not closed. So the claim is to return the deposit. The deposit was \$750,000. I have not seen \$1.5 million in any documents.			
When was the deposit made?			
Deposit was made in 2018.			
Where was the property?			
79 Easton, Brantford, Ontario. It was a commercial property for another company to be held by Mahal Venture Capital. Closing was to be on a different company not Mahal Venture Capital.			
What company was it supposed to close under? Do you have any ownership of the company.			
Canada Fresh Corporation. No I do not.			

OR Note: The above debts are listed as per the Statement of Affairs attached as Appendix 'B' and/or the Claims Register attached as Appendix 'C'.

Travel

58. Did you take any business related trips?

Answer: No

Holdings & Transfers

59. What did the corporation hold (such as inventory, equipment, accounts receivable, vehicles, patents, trademarks, other intellectual property, etc.)?

Answer: 0 assets just the property.

60. What happened to the corporation's assets (such as inventory, equipment, accounts receivable, vehicles, patents, trademarks, etc.)?

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

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Answer: Corporation never held any assets.

61. Did the corporation own any vehicles? If yes, what type of vehicles and what is their status?

Answer: No.

62. Does the corporation have any other assets or liabilities that were not disclosed on the *Statement of Affairs*? If yes, give details.

Answer: No

OR Note: The Statement of Affairs is attached as Appendix 'B'

63. In the 3 months prior to the date of insolvency, did the corporation enter into any transactions outside of the ordinary course of business including:

- (a) Payments to creditors? → No
- (b) Return of goods to creditors? → No
- (c) Delivery of property to creditors? → No
- (d) Repayment plans with creditors? → No
- (e) Sale of assets? → No – N/A
- (f) Payments for legal services or proceedings? → No
- (g) Returns to suppliers? → No
- (h) Security agreements to lenders or renegotiation of security agreements with existing creditors? → No
- (i) Issuance of dividends to shareholders? → No
- (j) Payments to any investors, shareholders, directors, officers, and/or employees? → No

64. In the 12 month period prior to insolvency did the corporation:

- (a) Provide security on any of its property or assets? → No
- (b) Acquire any assets except in the ordinary course of business? → No
- (c) Sell, dispose of, transfer, give away or remove any property outside of the normal course of business? → No
- (d) Liquidate any shares, notes, bonds, debentures, or other commercial paper? → No
- (e) Enter into any transactions or agreements (e.g. loans, payments, etc.) with past or present staff, other corporations or corporate officers, directors or their relatives. If yes, and the agreement was with another corporation, was there any type of interest between that corporation and this bankrupt corporation's past or present corporate officers, directors or staff? → No

65. In the 5 year period prior to insolvency did the corporation:

- (a) Provide security on any of its property or assets? → Only a mortgage. To Skymark Financial. First would be 2016 and then 2017 and 2018. Mortgage charges.
- (b) Have all documents with the mortgages been provided to the trustee? - Correct
- (c) Sell, dispose of, transfer, give away or remove any assets outside the normal course of business? → No
- (d) Make, or was party to, any settlement of property? → No
- (e) Liquidate any shares, notes, bonds, debentures, or other commercial paper? → No
- (f) Enter into any transactions or agreements (e.g. loans, payments, etc.) with past or present staff, other corporations or corporate officers, directors or their relatives. If yes, and the agreement was with another corporation, was there any type of interest between

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

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that corporation and this bankrupt corporation's past or present corporate officers, directors or staff? → No

66. Did the corporation accept goods or charitable donations in lieu of monetary forms of payment for services rendered? If yes, provide details.

Answer: No

67. Are any of the creditors or customers of the corporation related to it in any way?

Answer: No.

Golden Miles Mortgage is a related party.

68. Do any third parties hold assets belonging to the corporation? If yes, provide details.

Answer: No

69. At the time of filing for bankruptcy, was the corporation in a position to perform any of its contracted work?

Answer: There's no contracted work.

70. At the time of bankruptcy, were there any monies on deposit for goods or services not delivered? If yes, provide details.

Answer: No

71. Were all transactions involving assets of the corporation, for the 12 month period ending with the date of the bankruptcy, disclosed to the trustee?

Answer: Yes. And that was zero transactions.

72. On August 3, 2017, the Debtor entered into an agreement of purchase and sale with Aquabella Bayside Toronto Inc. (the "APS") for Suite GPH1, 118 Merchant's Wharf, Toronto (the "Condominium"), and the Trustee has been advised that deposits totalling \$1,323,600 have been paid (the "Deposits"). Where is the documentation with regards to the transaction? Who were the Debtor's secured and unsecured creditors on March 26, 2021, and what were their respective debt claims? Please provide documentation.

Answer: It's with the legal counsel.

Legal Counsel: We are in the process of collecting the information from the client and providing it to the trustee.

Related Parties & Proceedings

73. Prior to the date of bankruptcy, were you an officer, director or manager in any competing business or corporation? If yes, provide details.

Answer: No

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

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74. **Prior to the date of bankruptcy, did you have an interest in any competing business or corporation? If yes, provide details.**

Answer: No

75. **Subsequent to the date of bankruptcy, have you acted as officer, director or manager, or held an interest in any other business or corporation? If yes, provide details.**

Answer: No

76. **Were the corporation's goods or services ever used for the personal benefit of any of the directors, officers, or other business personnel?**

Answer: No

77. **With regard to Golden Miles Food Corporation:**

(a) **What is your connection to this business? → My father's company.**

(b) **Does it operate under any other names? → No**

(c) **Is it incorporated? → Yes it is**

On March 26, 2021, the Debtor granted a mortgage to Golden Miles Food Corporation in the registered amount of \$35,000,000 (the "GM Mortgage"). Is this correct?

Answer: Yes it was. Removing it from third priority to last was not done by my consent it was done by Skymark which is confirmed by their affidavit prior receivership. It was confirmed by the directors of Skymark Financial during their examination.

The mortgage was granted prior to 2021. I believe in 2019. And it will show on title of the property. I believe it to have been in May of 2019.

Has the documentation with regards to the GM Mortgage been provided to the trustee? When was the documentation provided?

Answer: Yes. Provided in July 2021.

Are you aware of any other documentation that the trustee has asked for?

Answer: None. They have been provided everything they have asked for.

Have all bank account documents been provided, specifically between November 15, 2020 and November 15, 2021?

Answer: Yes

Who were the Debtor's secured and unsecured creditors on March 26, 2021, and what were their respective debt claims?

Answer: I do not know.

78. **Has the corporation, or any of its subsidiaries, ever been bankrupt or made a proposal prior to this bankruptcy? If yes, provide details.**

Answer: No

79. **Have you personally ever been bankrupt before, or made a proposal to your creditors? If yes, when did you get your discharge? What was the reason for your bankruptcy/proposal? What was the total amount of your debt? Who was the trustee?**

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

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What did you learn from your previous insolvency? Did you disclose you previous insolvency to the other officers and directors of the bankrupt corporation?

Answer: No

- 80. Have you ever previously been involved in the insolvency or receivership of another corporation, either as an officer or director? If yes, what was the reason for the insolvency? What was the total amount of debt? Who was the trustee? What did you learn from the previous insolvency? Did you disclose the previous insolvency to the other officers and directors of the bankrupt corporation?**

Answer: No.

In the Matter of the Bankruptcy of: **Mahal Venture Capital**

Officer of Bankrupt Corporation: **Jesse Mahal**

Estate Number: **32-2782563**

Date of Examination: **December 21, 2021**

Time: **9:26 AM EST**

I, Jesse Mahal of the city of Mississauga, in the province of Ontario, do solemnly declare that to the best of my knowledge the answers recorded in this document are true in every respect. I understand that this examination is being adjourned sine die and may be continued at a later date if necessary.

SOLEMNLY DECLARED

before me at the city of Mississauga
in the province of Ontario, via video conference
this 21st day of December 2021.

Mustafa Sherif

Mustafa Sherif
Official Receiver for Bankruptcy
Division No. 7 of the Bankruptcy District of Ontario

APPENDIX “R”

From: Natalie Via <NVia@Tridel.com>
Sent: Monday, November 29, 2021 11:34 AM
To: Susan Shapiro <SShapiro@Tridel.com>
Subject: FW: Aquabella: GPH1

Kind Regards,

Natalie Via
Bayside Toronto Inc.
Phone: 416.514.2710
Fax: 416.603.9560
Email: nvia@tridel.com



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Please consider the environment before printing this email

From: Jesse Mahal <jesse.mahal@gmail.com>
Sent: November 29, 2021 10:09 AM
To: Natalie Via <NVia@Tridel.com>
Subject: Re: Aquabella: GPH1

Hi Natalie

Lawyers are:

David Z. Seifer Lawyer

199 Bay Street Phone 416-646-6867
Suite 2200 Fax 844-670-6009
Commerce Court West Email DSeifer@dickinsonwright.com
Toronto ON M5L 1G4

DICKINSON WRIGHT LLP

ARIZONA CALIFORNIA FLORIDA ILLINOIS KENTUCKY MICHIGAN NEVADA
OHIO TENNESSEE TEXAS WASHINGTON D.C. TORONTO

Full Name - JESSE MAHAL
Address - 6845 SECOND LINE WEST MISSISSAUGA ONTARIO L5W1M8
Phone Number - 905781-1399
Email Address - JESSE.MAHAL@GMAIL.COM
Occupation - DIRECTOR
Employer - MAHAL HOLDINGS CO.
2 pieces of Government issues Photo ID - ATTACHED
SIN number (please do not email this to me. We will have to have a virtual appointment to go through the paperwork and you can provide the number to me at that time)

On Nov 28, 2021, at 2:17 PM, Natalie Via <NVia@Tridel.com> wrote:

Hi Jesse,

I hope that you are doing well.

We still not have received your lawyers information.

However, please see the information below that we will require in order to transfer the suite into your personal name.

Full Name

Address

Phone Number

Email Address

Occupation

Employer

2 pieces of Government issues Photo ID

SIN number (please do not email this to me. We will have to have a virtual appointment to go through the paperwork and you can provide the number to me at that time)

We will also require a mortgage approval or a comfort letter from the bank saying that you will be able to close the suite in order to complete the name change.

Kind Regards,

Natalie Via

<image001.jpg>

Bayside Toronto Inc.

Phone: 416.514.2710

Fax: 416.603.9560

Email: nvia@tridel.com

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<image002.jpg>

From: Jesse Mahal <jesse.mahal@gmail.com>

Sent: November 23, 2021 6:59 PM

To: Natalie Via <NVia@Tridel.com>

Cc: Susan Shapiro <SShapiro@Tridel.com>; Heather Daley <HDaley@dzlaw.com>

Subject: Re: Aquabella: GPH1

Hi Natalie

the new law firm has reached out and I believe in contact. May you please provide me with the name change forms for closing.

Kind Regards

Jesse Mahal

On Nov 11, 2021, at 12:04 PM, Natalie Via <NVia@Tridel.com> wrote:

Hi Jesse,

I hope that you are doing well.

Would you please provide us with your updated lawyers information as soon as possible as the lawyer that we have on file has informed us that they will not be representing you. It is my understanding that there will be an extension made to the closing date of your suite and our lawyers are currently drafting a letter in regards to this and they need to know where to send it.

Kind Regards,

Natalie Via

Bayside Toronto Inc.

Phone: 416.514.2710

Fax: 416.603.9560

Email: nvia@tridel.com

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COVID-19 Working Together, Differently to Ensure Workplace Health & Safety

While we maintain normal office hours on premises, we continue to restrict open access to our workplace and are limiting the presence of outside visitors and guests, which are by appointment only. Visit Tridel.com for hours of operation and how we are Working Together, Differently to serve you better or call 416.661.9290 for general inquiries.

APPENDIX “S”

Thompson, Nancy

From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: Tuesday, November 16, 2021 11:52 AM
To: Santosh Mahal; jesse.mahal@gmail.com
Cc: Lisa S. Corne; Mitch Vininsky; Murtaza Tallat; Burr, Chris
Subject: Golden Miles/Mahal Ventures
Attachments: Golden Miles - Notice to Officer with Duties.pdf; MVCI - Notice to Officer with Duties.pdf

Importance: High

External Email | Courrier électronique externe

Santokh, Jesse,

As we explained to Lisa, the Receiver filed assignments in bankruptcy for Golden Miles Food Corporation and Mahal Venture Capital Inc. yesterday. Attached please find Notices to Officers with Duties in respect of both entities. We would like to schedule a call with you later this afternoon to discuss the bankruptcies. Let us know when you are available.

Noah



Noah Goldstein
Managing Director

T 416.932.6207
M 416.844.4842
W www.ksvadvisory.com



ksv advisory inc.

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

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ksvadvisory.com

**IN THE MATTER OF THE BANKRUPTCY OF MAHAL VENTURE CAPITAL INC., OF THE
CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO**

NOTICE TO OFFICER OF BANKRUPT CORPORATION OF DUTIES

You are hereby notified of the duties imposed upon you by the *Bankruptcy and Insolvency Act* ("Act") and other features of the Act that affect you in your capacity as the designated officer of the bankrupt corporation. You are expected to study carefully the documents you have received, namely copies of Sections 67, 158, 159, 178, 198, 199 and 200 of the Act, as a breach of your duties could make you liable to prosecution.

ACKNOWLEDGEMENT

I, Jesse Mahal, designated officer of the above bankrupt corporation, hereby acknowledge receipt of the above documents and state that the contents have been adequately explained to me.

Jesse Jaswinder Mahal

November 15, 2021

Witness

(Print name of witness)



ksv advisory inc.

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Toronto, Ontario, M5H 1J9

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**IN THE MATTER OF THE BANKRUPTCY OF MAHAL VENTURE CAPITAL INC., OF THE
CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO**

NOTICE TO OFFICER OF BANKRUPT CORPORATION OF DUTIES

You are hereby notified of the duties imposed upon you by the *Bankruptcy and Insolvency Act* and certain other features of this Act that affect you in your capacity as a bankrupt (or, when the bankrupt is a limited company, an officer designated by section 159 of the *Bankruptcy and Insolvency Act*). You are expected to study this document carefully as a breach of your duty hereunder set out would make you liable to criminal prosecution.

Section 67

(1)The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person;

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;

(b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);

(b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or

(b.3) without restricting the generality of paragraph (b), property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the Income Tax Act, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the Income Tax Act in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that

(i) is not subject to the operation of this Act, or

(ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the Family Orders and Agreements Enforcement Assistance Act, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

(2) Subject to Subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under Subsection 227(4) or (4.1) of the Income Tax Act, Subsection 23(3) or (4) of the Canada Pension Plan or Subsection 86(2) or (2.1) of the Employment Insurance Act (each of which is in this Subsection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the Income Tax Act and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in Subsection 227(4) or (4.1) of the Income Tax Act, or

(b) the province is a "province providing a comprehensive pension plan" as defined in Subsection 3(1) of the Canada Pension Plan, that law of the province establishes a "provincial pension plan" as defined in that Subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in Subsection 23(3) or (4) of the Canada Pension Plan,

and for the purpose of this Subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

Section 158

The bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;

(b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;

(d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

(h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;

(i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;

(j) submit to such other examinations under oath with respect to his property or affairs as required;

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(l) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;

(m) examine the correctness of all proofs of claims filed, if required by the trustee;

(n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

(n.1) inform the trustee of any material change in the bankrupt's financial situation;

(o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and

(p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all time of his place of residence or address.

Section 159

Where a bankrupt is a corporation, the officer executing the assignment, or such

(a) officer of the corporation, or

(b) person who has, or has had, directly or indirectly, control in fact of the corporation

as the official receiver may specify, shall attend before the official receiver for examination and shall perform all of the duties imposed on a bankrupt by Section 158, and, in case of failure to do so, the officer or person is punishable as though that officer or person were the bankrupt.

Section 178

(1)An order of discharge does not release the bankrupt from

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;

(a.1) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting therefrom;

(b) any debt or liability for alimony or alimentary pension;

(c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;

(e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;

(f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;

(g) any debt or obligation in respect of a loan made under the Canada Student Loans Act, the Canada Student Financial Assistance Act or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred

(i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or

(ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student; or

(h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g).

(1.1) At any time after five years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the court may, on application, order that Subsection (1) does not apply to the debt if the court is satisfied that

(a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

(2) Subject to Subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

Section 198

(1) Any bankrupt who

(a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,

(b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,

(c) makes a false entry or knowingly makes a material omission in a statement or accounting,

(d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,

(e) after or within one year immediately preceding the date of the initial bankruptcy event obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,

(f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty or more or any debt due to or from the bankrupt, or

(g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

(2) A bankrupt who, without reasonable cause, fails to comply with an order of the court made under Section 68 or to do any of the things required of the bankrupt under Section 158 is guilty of an offence and is liable

(a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Section 199

An undischarged bankrupt who

(a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or

(b) obtains credit to a total of \$1,000 or more from any person or persons without informing them that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Section 200

(1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to the person's creditors is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, if

(a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account; or

(b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or document affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.

(2) For the purposes of this Section , a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual or other stock takings.

Section 204

If a corporation commits an offence under this Act, any officer or director, or agent or mandatary, of the corporation, or any person who has or has had, directly or indirectly, control in fact of the corporation, who directed, authorized, assented to, acquiesced to or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

APPENDIX “T”



4800 Dufferin Street
 Toronto, Ontario M3H 5S9
 Telephone (416) 661-9290
 Fax: (416) 661-8923

September 25, 2017

URGENT NOTICE SENT VIA EMAIL

jesse.mahal@gmail.com

Mahal Venture Capital Inc.
 6845 Second Line West,
 Mississauga, ON L5W 1M8
 Attention: Mr. Jesse Mahal

Dear Mr. Mahal:

RE: CONCERNING YOUR PURCHASE OF SUITE # GPH1 (LEGAL LEVEL 12, LEGAL UNIT 1) AT AQUABELLA AT BAYSIDE TORONTO

We write to you in reference to the above-mentioned agreement of purchase and sale.

Our record indicates that the initial deposits of **\$330,900.00** you provided to the vendor has been returned from the bank with an uncleared status. To date, we have no deposit monies on this sale. You are currently in default of your Agreement of Purchase and Sale. If you wish to proceed with this sale, please replace the above-mentioned deposit no later than **October 5, 2017**. If you do not wish to proceed with this sale, please contact our sales office at (416) 514-2710.

Should you wish to proceed with this sale, please forward above-mentioned deposit and make your cheque payable to DELZOTTO, ZORZI LLP, IN TRUST, and mail to:

Aquabella Bayside Toronto Inc.
 c/o Susan Shapiro
 4800 Dufferin Street, Suite 200
 Toronto, ON M3H 5S9

We remind you that we may only accept cheques that are from the personal account of one or all of the purchasers named on the Agreement of Purchase and Sale. If the person issuing the above cheque(s) is NOT on the Agreement of Purchase and Sale, then please add the following clause on the back of the cheque(s) and have all account holder(s) put their signatures beside the clause: **Issued as agent for Mahal Venture Capital Inc. as purchaser for Suite # GPH1 at Aquabella at Bayside Toronto.** If any of the account holders are not the purchaser, then a piece of government issued identification, as required by FINTRAC, must be presented at the sales office for this person. Please contact the sales office for further instruction at (416) 514-2710. Include your **SUITE # GPH1 and AQUABELLA AT BAYSIDE TORONTO** on the bottom on your cheque.

If no funds are received by October 5, 2017, we will consider this agreement null and void and will be putting the suite back on the market for sale.

We thank you in advance for your attention to the above urgent matter.

Yours truly,
AQUABELLA BAYSIDE TORONTO INC.

Per:
 Susan Shapiro
 Manager, Sales Control

c.c. Aquabella at Bayside Toronto Sales Centre
 Winnie Chan, Director of Sales
 Andrew Pateras, Royal LePage Vision Realty, via email: info@andrewpateras.com
 DelZotto, Zorzi LLP
 File

RETURN ITEM

From Member: 18702-004
Toronto-Dominion Bank

To Member: 33402-010
Canadian Imperial Bank of Commerce

Date: 2017-08-22
Amount/Montant: \$330,900.00

Reason: Insufficient Funds

Raison: Provisions insuffisantes

000015

DATE 2017-08-21

\$ 330,900

DOLLARS

MAN-VAL VENTURES CAPITAL INC.

[Signature]

#000015# 18702-004# 18705240286#

⑈000015⑈ 4: 18702-004: 18705240286⑈ ⑈0033090000⑈

⑈28⑈ 5: 33402-010: 28 ⑈0033090000⑈

Printer (30 1021

Issued as agent for: Mohal Venture Capital Ltd

The Purchaser of Suite No. CPH1

At: Aquabella Condominium Project

Signature of drawer of cheque

Print Name: JESSE MARR

Aquabella Bayade Toronto
Account 866-88415
File #1639711491
Transit #099522

AUG 21 2017

Def# 201605-46555-1
C.I.B.C.
TORONTO PC
882227817
2800527434



DELZOTTO, ZORZI LLP
BARRISTERS & SOLICITORS

ELVIO DELZOTTO Q.C. HARRY HERSKOWITZ
EDWARD P MICHELI MARY G CRITELLI STEVEN B WEISS
LORI R TANEL MICHAELE DELZOTTO RICHARD P HOFFMAN
ROBERT W CALDERWOOD ALEXANDER A. FOUNDOS
SABRINA ADAMSKI ELISE MICHELI AMY J. CHAPLICK

E-MAIL: ltanel@dzlaw.com

DELIVERED BY ORDINARY AND REGISTERED MAIL

October 18, 2017

Mahal Venture Capital Inc.
6845 Second Line West,
Mississauga, ON
L5W 1M8

WITHOUT PREJUDICE

Dear Sir/Madam:

RE: Aquabella Bayside Toronto Inc. (the "**Vendor**" or the "**Declarant**") sale to Mahal Venture Capital Inc. (the "**Purchaser**") of dwelling unit 1, level 12, being suite # GPH1 (the "**Dwelling Unit**") parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA parking unit TBA, level TBA hobby/storage unit TBA, level TBA, in a proposed condominium being developed by the Vendor (the "**Condominium**") on the lands and premises municipally located at 118 Merchants' Wharf, Toronto, Ontario (hereinafter referred to as the "**Real Property**") and marketed as the "**Aquabella at Bayside Toronto**" Condominium Project (with all such units so acquired, and their appurtenant common interests, being hereinafter collectively referred to as the "**Purchased Units**") - Our General File Number 1639523

Please be advised that we are the solicitors for the Vendor, and understand that you have entered into an agreement of purchase and sale with the Vendor to acquire the Dwelling Unit (the "**Purchase Agreement**"). We have been advised by the Vendor's sales representative that you have not yet notified the Vendor as to the name of the solicitor that you have retained (or will be retaining) to represent you in connection with the completion of the above-captioned transaction, and accordingly we are writing this letter directly to you. **However, in light of the fact that the information set out in this letter is extremely important and of a legal/technical nature, we strenuously urge you to obtain independent legal representation, and correspondingly to retain a solicitor as soon as possible to explain the contents of this letter to you, and to assist you in connection with the completion of this transaction. You should not proceed under the impression that your interests are being protected (or will be protected) by our law firm, because we are acting solely and exclusively on behalf of (and in the interests of) the Vendor, and accordingly our views and comments may be partisan. Please let us know the name of your solicitor as soon as you have retained one, and bear in mind that any delay or failure to retain a solicitor to assist you in this matter will not entitle you to delay, postpone or avoid responding to our formal demand for payment of the outstanding deposit(s) owing by you in connection with the above-captioned transaction, as detailed below.**

Our client has corresponded directly with you, by letter dated September 25, 2017, in an effort to have you pay the outstanding deposits owing by you under the Purchase Agreement, totalling the amount of **\$330,900.00**, which should be made payable to DelZotto, Zorzi LLP in trust. Following such correspondence, our client received a cheque from you in the amount of **\$330,900.00** dated October 12, 2017, but regrettably this cheque was returned N.S.F. Therefore, as of the date hereof, neither the Vendor nor our law firm has received any of the additional deposits owing by you on account of the purchase price payable for the Dwelling Unit, and these monies are long overdue.

Please be advised that your failure to pay the additional deposits so owing constitutes a fundamental breach of the Purchase Agreement, and your continued default will no longer be tolerated. Accordingly, in accordance with paragraph 5.06 of Schedule "A" to the Purchase Agreement, you are hereby given until **4:00 p.m. on Tuesday, October 24, 2017** to rectify your outstanding default, by delivering directly to the Vendor's head office (at 4800 Dufferin Street, Toronto, Ontario, M3H 5S9, Attention: Susan Shapiro) a **certified cheque** in the amount of **\$330,900.00** made payable to DelZotto, Zorzi LLP, in trust.

- 2 -

Furthermore, please be advised that pursuant to Schedule "A" of the Purchase Agreement, the Vendor is entitled to reimbursement on closing for all legal fees and disbursements, including all N.S.F. charges, if applicable, charged by the Vendor's solicitor with respect to all correspondence and dealings with the Purchaser and/or the Purchaser's solicitor in connection with this default and/or the rectification thereof. In the event that the Purchaser rectifies the default, the Vendor intends to collect such legal fees and disbursements from the Purchaser by way of a credit to the Vendor on the final statement of adjustments. Correspondingly, in the event that the Agreement of Purchase and Sale between the parties hereto includes (and is correspondingly subject to) the Tarion Addendum issued by Tarion Warranty Corporation effective on and after October 1st, 2012 (and which contains a Schedule "B" to the Tarion Addendum which outlines all of the fixed and variable closing adjustments), then in such circumstances please note that said Schedule "B" to the Tarion Addendum shall be deemed and construed, for all purposes, to be amended to reflect and incorporate the foregoing costs to the Purchaser, and the corresponding increase in either the purchase price or the balance due on closing thereby.

Any failure on your part to pay the additional deposit monies owing, by said date and time, will result in the termination of the Purchase Agreement, whereupon all deposit monies heretofore paid by you (if any) shall be immediately forfeited to the Vendor as its liquidated damages, and not as a penalty, without prejudice to any other rights and/or remedies available to the Vendor at law, or in equity, as a result of your breach of contract. Without limiting the generality of the foregoing, the Vendor hereby expressly reserves its right to pursue a claim for damages against you personally, pursuant to an action instituted in the Ontario Superior Court of Justice, for any and all losses incurred by the Vendor in connection with its re-selling of the Dwelling Unit in an effort to mitigate its loss, consequent upon your default (ie. reflecting the difference, if any, between the purchase price payable by you under the Purchase Agreement, and any ultimate price that the Vendor is hereafter able to sell the Dwelling Unit for, together with all ancillary expenses, including real estate commissions, legal fees, disbursements and HST incurred as a result of the Purchaser's default).

Finally, please be advised that the Vendor will also be claiming pre-judgment and post-judgment interest against you, with respect to any damage amount ultimately awarded, pursuant to the provisions of the *Courts of Justice Act R.S.O. 1990, as amended*.

You are therefore urged to kindly govern yourself accordingly.

Yours very truly,

DELZOTTO, ZORZI LLP

Per:

Lori Tanel

LT:sv

cc: Susan Shapiro

Andrew Pateras
Royal LePage Vision Realty
1 - 2210 Markham Road
Toronto, Ontario
M1B 5V6

RETURN ITEM

From Member: 18702-004
Toronto-Dominion Bank

To Member: 09522-010
Canadian Imperial Bank of Commerce

Date: 2017-10-13
Amount/Montant: \$330,900.00

Reason: Insufficient Funds

Raison: Provisions insuffisantes

000018

DATE 2017-10-13

\$ 330,900

= DOLLARS

PER *[Signature]*

MAHAL VENTURE
1000018 18702-004 18705240286

PAY TO *Dezotto, Zorzi LP, In Trust*

FOR THE ORDER OF *Three Hundred + Thirty Thousand Nine Hundred*

Canada Trust
CREDIT VALLEY TOWER PLAZA
901 CREDITVIEW RD
MISSISSAUGA, ON L5V 3A7

MAHAL VENTURES CAPITAL INC.

Apabella GP17

⑈000018⑈ ⑆18702⑈004⑆ 18705240286⑈ ⑈0033090000⑈

⑈28⑈ 5⑆09522⑈010⑆ 28 ⑈0033090000⑈

Date: 10/12/17
Dep: 000053
Transit-FI: 09522-010
Source Number: 98
Account 8608415

Printer ID# 1021

Endorsement - Signature or Stamp

TEXT OF 1010 TOR IDCT VEX TOR
20171013 15N: 0144021203 BACKWARDS 142598135

C T R C
TORONTO PC
10/13/2017
3600095113

RETURN ITEM

From Member: 18702-004
Toronto-Dominion Bank

To Member: 09522-010
Canadian Imperial Bank of Commerce

Date: 2017-12-07
Amount/Montant: \$330,900.00

Reason: Insufficient Funds

Raison: Provisions insuffisantes

000012

DATE 2017-12-07

\$ 330,900.00

PAY TO DelZotto, Zora I.L.P. In Trust

the order of Three Hundred Thousand & Thirty Thousand Nine Hundred DOLLARS @

Canada Trust
CREDIT VALLEY TOWN PLAZA
8851 CREDIT VALLEY RD
MISSISSAUGA, ON L4V 3A8

MANAL VENTURE CAPITAL INC.

Agriabella - Suite GPH-1 - deposit

[Signature]

⑈000012⑈ ⑆18702⑈004⑆ 1870⑈5240286⑈

⑈000012⑈ ⑆18702⑈004⑆ 18705240286⑈ ⑆0033090000⑆

⑈28⑈ ⑆09522⑈010⑆ 28 ⑆0033090000⑆

Date: 12/06/17
Dep: 000160
Trans-FI: 09522-010

Printer ID# 1021

Source: As agent for Manal Venture Capital Inc.

Account: Drawer of Suite No. GPH-1

At: Agriabella Condominium Project

Per: *[Signature]*

Signature of drawer of cheque
Print Name: YSE CHAN

Def#: 201605-46555-2

TORONTO, PC
12/07/2017
3500320773

Parente, Alexia

From: May Tsui
Sent: Wednesday, May 30, 2018 4:53 PM
To: jesse.mahal@gmail.com
Cc: info@andrewpateras.com; Winnie Chan; Aquabella Sales
Subject: Aquabella - GPH1 - NSF

Dear Mr. Mahal,

Your deposit cheque #13 dated April 30, 2018 for the amount of \$330,900 has been returned from the bank.

Will you please replace the deposit of \$330,900.00 payable to DelZotto Zorzi LLP In Trust immediately?
Also, please provide another cheque for the NSF fee of \$45 payable to Aquabella at Bayside Toronto Inc.

If you have any questions, please feel free to contact me.

Regards,



May Tsui
Broker
Del Realty Inc. Brokerage

Bayside Toronto
261 Queens Quay East
Toronto, ON M5A 1B6

T: 416.514.2710
E: mtsui@tridel.com

tridel.com

7

RETURN ITEM

From Member: 18702-004
Toronto-Dominion Bank

To Member: 09522-010
Canadian Imperial Bank of Commerce

Date: 2018-05-01
Amount/Montant: \$330,900.00

Reason: Insufficient Funds

Raison: Provisions insuffisantes

000013

DATE 2018-04-30
Y Y Y M M D D

\$ 330,900.⁰⁰
DOLLARS

MAHAL VENTURE
5095 SECOND LINE W.
MISSISSAUGA, ONTARIO L5W 1W8

PAY TO DelZotto, Zorzi LLP, In Trust
the order of Three Hundred Thousand & Thirty Thousand Nine Hundred

Canada Trust
CREDIT VALLEY TOWER PLAZA
1851 CREDITVIEW RD
MISSISSAUGA, ON L5V 1A8

Agabella - GPH1

phil

⑈000013⑈ ⑈18702⑈004⑈ ⑈1870⑈5240286⑈

⑈000013⑈ ⑈18702⑈004⑈ ⑈18705240286⑈ ⑈0033090000⑈

⑈28⑈ ⑈09522⑈010⑈ ⑈28 ⑈0033090000⑈

Printer ID# 1021

Date: 04/30/18
Dep: 000298
Transit-FI: 09522-010
Source Number: 9800415
Account: 9800415

Drawn for: Manhal Venture Capital Inc.
The Purchaser of Suite No. GPH1
At: Agabella Condominium Project
Per: phil
Signature of drawer of cheque: phil
Print Name: phil

FOR THE USE OF THE BANK ONLY
20180430 1807 41410463
BACK OF CHEQUE

ref # 201605 - 48555 - B

TORONTO, ONT
05/01/2018
3500322279



4800 Dufferin Street
 Toronto, Ontario M3H 5S9
 Telephone (416) 661-9290
 Fax: (416) 661-8923

September 7, 2018

URGENT NOTICE SENT VIA EMAIL

jesse.mahal@gmail.com

Mahal Venture Capital Inc.
 6845 Second Line West,
 Mississauga, ON
 L5W 1M8

Attention: Mahal Venture Capital Inc.:

RE: CONCERNING YOUR PURCHASE OF SUITE # GPH1 (LEGAL LEVEL 12, LEGAL UNIT 1) AT AQUABELLA AT BAYSIDE TORONTO

We write to you in reference to the above-mentioned agreement of purchase and sale, in particular, to an outstanding deposit.

As per the above-mentioned, you provided to the vendor a deposit of **\$330,900.00** on August 03, 2018. This deposit has been returned from the bank with an uncleared status. We would ask that you submit these monies to the Vendor **no later than September 26, 2018**. *We would also request an additional cheque in the amount of \$45.00, payable to Aquabella Bayside Toronto Inc., for bank charges on this matter.*

Please forward above-mentioned deposits and make your cheques payable to DELZOTTO, ZORZI LLP, IN TRUST, and mail to:

Aquabella Bayside Toronto Inc.
c/o Susan Shapiro
4800 Dufferin Street, Suite 200
Toronto, ON M3H 5S9

We remind you that we may only accept cheques that are from the personal account of one or all of the purchasers named on the Agreement of Purchase and Sale. If the person issuing the above cheque(s) is NOT on the Agreement of Purchase and Sale, then please add the following clause on the back of the cheque(s) and have all account holder(s) put their signatures beside the clause: **Issued as agent for Mahal Venture Capital Inc. as purchaser for Suite # GPH1 at Aquabella at Bayside Toronto.** If any of the account holders are not the purchaser, then a piece of government issued identification, as required by FINTRAC, must be presented at the sales office for this person. Please contact the sales office for further instruction at (416) 514-2710. Include your **SUITE # GPH1 and AQUABELLA AT BAYSIDE TORONTO** on the bottom on your cheque.

We thank you in advance for your attention to the above urgent matter.

Yours truly,
 Aquabella Bayside Toronto Inc.

Per:
 Susan Shapiro
 Manager, Sales Control

c.c. Aquabella at Bayside Toronto Sales Centre
 Winnie Chan, Vice President, Sales Management
 Andrew Pateras, Royal LePage Vision Realty, via email info@andrewpateras.com
 DelZotto, Zorzi LLP
 File

RETURN ITEM

From Member: 18702-004
Toronto-Dominion Bank

To Member: 33402-010
Canadian Imperial Bank of Commerce

Date: 2018-08-08
Amount/Montant: \$330,900.00

Reason: Insufficient Funds

Raison: Provisions insuffisantes

000014

DATE 2018-08-08

MAHAL VENTURE
9845 SECOND LINE W
MISSISSAUGA, ONTARIO L4W 1A8

PAY to DelZotto, Zorzi LLP, In Trust \$ 330,900.00

The order of Three Hundred Thousand Three Hundred Nine Hundred DOLLARS

Canada Trust
CREDIT VALLEY TOWER PLAZA
8041 CREDITVIEW RD.
MISSISSAUGA, ON L4W 2A8

MAHAL VENTURES CAPITAL INC.

By Agabella - CPH2 FOR phhl

⑈000014⑈ ⑆18702⑈004⑆ 1870⑈5240286⑈

⑈000014⑈ ⑆18702⑈004⑆ 18705240286⑈ ⑈0033090000⑈

⑈28⑈ ⑆33402⑈0010⑆ 28 ⑈0033090000⑈

Printer ID# 1021

06312-010 10

ATM - 3 2739

800 BROADVIEW ST
THORNHILL, ONTARIO

10 AUG 03 2018

Issued as agent for: Maha Venture Capital Inc.

The Purchaser of Suite No. CPH2

At: Agabella Condominium Project

Signature of phhl

Print Name: VSE MARR

For Deposit Only
To the Credit of
DelZotto, Zorzi LLP In Trust For
Aviva Insurance Company of Canada
Aquabella Bayside Toronto Condominium
Account #86-08415
File #1639711/44
Transit #09522

REF # 201605-48555-4 C
TORONTO PC
08/08/2018
3500394687

June 2, 2021

URGENT NOTICE SENT VIA EMAIL AND REGISTERED MAIL**jesse.mahal@gmail.com**Mahal Venture Capital Inc.
6845 Second Line West,
Mississauga, ON L5W 1M8Attention: Mr. Jesse Mahal

Dear Sir:

RE: Aquabella Bayside Toronto Inc. (the "Vendor") sale to Mahal Venture Capital Inc. of Suite # GPH1 (LEGAL LEVEL 12, LEGAL UNIT 1) ("Purchased Unit") at Aquabella at Bayside Toronto

We refer you to the Addendum No. 47427, signed by you on August 18, 2020 and our receipt of a deposit cheque from you in the amount of \$283,874.31, representing 25% of the deposits due on the total amount of extras, upgrades and personal selections of \$1,135,497.29 set forth in said Addendum.

The above-mentioned deposit cheque, which was deposited on February 4, 2021, has been returned from the bank with an NSF status.

We confirm that you were previously made aware of the NSF status of said deposit and that you have promised to deliver a replacement deposit cheque on multiple occasions thereafter. However, a replacement deposit has still yet to be received from you as of today's date.

Please be advised that such replacement deposit cheque in the amount of **\$283,874.31** is now required without any further delay.

Accordingly, kindly now deliver **to the Vendor at 4800 Dufferin Street, Entrance G, Toronto, Ontario M3H 5S9, Attention: Susan Shapiro**, by no later than **4:00 p.m. on Tuesday June 15, 2021**, a certified cheque from a Canadian Bank account in the amount of \$283,874.31, made payable to **DELZOTTO, ZORZI LLP, IN TRUST**. We remind you that we may only accept cheques that are from the personal account of one or all of the purchasers named in your Purchase Agreement. **Due to COVID restrictions, please ensure you are wearing a mask when entering the building.**

Govern yourself accordingly.

Yours truly,

AQUABELLA BAYSIDE TORONTO INC.

Per:

Winnie Chan
Vice President, Sales Managementc.c. Aquabella at Bayside Toronto Sales Centre
DelZotto, Zorzi LLP
File

tridel.com

4800 Dufferin Street, Toronto, ON M3H 5S9 Tel 416.661.9290

RETURN ITEM

From Member: 03212-003
Royal Bank of Canada

To Member: 09522-010
Canadian Imperial Bank of Commerce

Date: 2021-02-05
Amount/Montant: \$283,874.31

Reason: Insufficient Funds

Raison: Provisions insuffisantes

JESSE MAHAL

DATE 2021-02-05

PAY to the order of

\$ 283,874.31

Two Hundred Eighty-three Thousand Eight Hundred Seventy-Four

3/100 DOLLARS



At: Aquabella GPH1

Signature of drawer of cheque



Printer ID# 1021

Date: 02/04/21
Dep: 001151
Transit FI: 09522-010
Source Number: 98
Account: [Redacted]

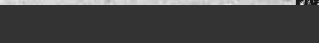
Issued as agent for: MAHAL VENTURE CAPITAL INC.

The Purchaser of Suite No. GPH1

At: Aquabella London Inium Project

Per: [Signature] Signature of drawer of cheque

Print Name: JESSE MAHAL



C.I.B.C.
TORONTO 901768 FEB 05 2021
07/05/2021
3500061741