

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

Applicants

- and -

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871
ONTARIO INC., VANDYK – THE RAVINE LIMITED AND VANDYK – LAKEVIEW-
DXE-WEST LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**APPLICATION RECORD
Volume 4 of 5
(Returnable November 14, 2023)**

November 7, 2023

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Lawyers for the Applicants

TO: THE ATTACHED SERVICE LIST

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SERVICE LIST

As at November 7, 2023	
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<p>560789 ONTARIO INC. 254 Main Street North, Unit #2 Acton, ON L7J 1W9</p> <p><i>A Construction Lien Claimant</i></p>	
<p>MGI CONSTRUCTION CORP. 11 Dansk Court Etobicoke, ON M9W 5N6</p> <p><i>A Construction Lien Claimant</i></p> <p>With a copy to:</p> <p>DRUDI ALEXIOU KUCHAR LLP 4950 Yonge Street, Suite 508 Toronto, ON M2N 6K1</p>	

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THIS IS **EXHIBIT "VV"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

Dorr Capital Corporation

41 Scarsdale Road, Unit 6
 Toronto, ON M3B 2R2
www.dorrcapital.com



November 5, 2021

VANDYK – Lakeview-DXE-West Limited
 1944 Fowler Drive
 Mississauga, Ontario
 L5K 0A1

Attention: Mr. Bruce Milburn and Mr. Richard Ma

Dear Sirs:

Re: First Mortgage Land Loan
Project Name: 1345 Lakeshore Road East, Mississauga, Ontario
Loan No.: 21068

Dorr Capital Corporation is pleased to advise that we are prepared to offer the following loan facilities (the “**Loan**”) subject to the terms and conditions outlined below (hereinafter called the “**Commitment**”).

Borrower Name:	VANDYK – Lakeview-DXE-West Limited (the “ Borrower ”)
Lender:	Dorr Capital Corporation (the “ Lender ”)
Servicer:	Dorr Capital Corporation (“ DCC ”)
Guarantor(s):	Guarantee from: John Vandyk and any other parties as the Lender may deem advisable collectively known as (the “ Guarantor ” and/or “ Guarantors ”).
Loan Facility:	\$34,000,000 First Mortgage Land Loan
Project Description:	The subject property is located at 1345 Lakeshore Road East, Mississauga, Ontario (the “ Property ”). The site consists of 3.13 acres of land for a planned development on the Property of two mid-rise condominium towers (8 and 12 stories) with 476 residential units, 10,218 sq. ft. of commercial space, and two



levels of underground parking with 433 parking spaces (the "Project").

Property Legal

Description:

PIN: 13482-0071

LTS 1, 2, 3, 22, 23, 24, PL H23; EXCEPT PT 1 43R16245 & PT 1 43R21276; MISSISSAUGA

Purpose:

To assist the Borrower to: refinance the Property, to fund transaction closing costs and establish the Interest Reserve.

Initial Funding:

\$34,000,000 (the "Initial Advance")

Interest Rate:

8.75% per annum (the "Interest Rate")

Interest:

Interest shall accrue and be calculated daily on the outstanding balance of the amounts of the Loan advanced from time to time at the Interest Rate and be compounded monthly, not in advance, and shall be payable monthly, interest only, and will be funded monthly in arrears at the end of each month from the Interest Reserve until depleted. Once the Interest Reserve is depleted, the Borrower will be required to fund interest at the Interest Rate from its own resources.

Interest Reserve:

The Borrower shall establish an interest reserve (the "Interest Reserve") in the amount of \$2,975,000 representing interest on the Loan for the term of this Loan, to be funded from the Initial Advance. The Borrower and Guarantors acknowledge and agree that the Interest Reserve shall be held back from the Initial Advance and held by the Lender in the IR Account (as hereinafter defined). If the funds in the IR Account are invested in an interest bearing instrument (for example, a term deposit), the interest earned thereon will be paid to the Borrower upon repayment of this Loan and until such time, such interest will form a part of the Security. Sufficient funds will be drawn from the IR Account each month of the Term to satisfy the payment of the interest owing under the Loan. As part of the Security, the Lender will have a first priority assignment and pledge of the funds in the IR Account. The Borrower specifically acknowledges that once the funds in the IR Account are fully

utilized, or if an Event of Default occurs, the Borrower is responsible to pay the interest accruing on the Loan from its own resources. Upon the occurrence of an Event of Default, or upon maturity, the Lender may apply any unutilized funds in the IR Account against the principal, accrued interest or chargeable costs hereunder, at its sole, arbitrary and subjective discretion.

Term: Repayable on demand by the Lender, however, without prejudice to the right of the Lender to demand payment at any time for any reason whatsoever, the Loan is repayable in full on the date that is 12 months from the date of the Initial Advance if the same occurs on the first calendar day of a month otherwise 12 months from the first calendar day of the month next following the date of the Initial Advance (the "Maturity Date").

Optional extension: The term of the Loan is subject to two extension rights of three (3) months each, as follows: not later than 90 days prior to the Maturity Date but not less than 60 days prior to the Maturity Date (as it may have been extended), provided that no Event of Default has ever occurred during the term of the Loan, the Borrower shall be entitled to give written notice to the Lender advising that it wishes to extend the Maturity Date by 3 months, which notice must be accompanied by payment of the Extension Fee, whereupon at the Lender's option the term of the Loan shall be extended by 3 months. If the Lender elects not to extend the term, the payment accompanying the Borrower's notice as aforesaid shall be returned to the Borrower.

Commitment Fee: \$500,000 deemed earned upon acceptance of this Commitment (the "Commitment Fee") with \$100,000 payable upon acceptance and the balance of \$350,000 payable upon funding. The Lender acknowledges that \$50,000 has been received as a Good Faith Deposit. The Borrower acknowledges that this fee and the Placement Fee are a reasonable estimate of the Lender's costs incurred in sourcing, investigating, underwriting and preparing the Loan and holding monies available to fund the Loan and that these fees are still earned by the Lender and payable by the Borrower if the Loan is not advanced. In the event that the funding of the Loan is not completed for any reason other than

the Lender's default, the full Commitment Fee and Placement Fee will be payable and retained as liquidated damages without prejudice to and in addition to any other remedy available to the Lender. If the Lender suffers losses, costs and damages in excess of the amount of the Commitment Fee and the Placement Fee, the Lender shall be entitled to seek compensation from the Borrower in addition to the Commitment Fee and Placement Fee. The Borrower directs the Lender to deduct the amount of the Commitment Fee and the Placement Fee from the proceeds of the Initial Advance.

Placement Fee:	Not applicable
Administration Fee:	The Lender shall charge an administration fee (" Administration Fee ") of \$500 per advance throughout the term of the loan.
Discharge Fee:	<p>A discharge fee ("Discharge Fee") of \$51,000 shall be deemed earned by the Lender and payable by the Borrower prior to the delivery of the final discharge of the Security for the Project. The fee will be reduced to \$500 in the event take-out/construction financing is provided by The Lender.</p> <p>Discharge statements will be provided to the Borrower within three business days of written notice.</p>
Extension Fee:	<p>If an extension is granted by the Lender the following fees will apply.</p> <ul style="list-style-type: none"> • Extension Fee of 0.38% (per extension period) of the outstanding amount under the Loan shall become due and payable upon the first day of the Extension period.
Regulatory Fees:	A maximum amount of \$5,000 plus HST for applicable regulatory fees.
Legal Fees:	For the account of the Borrower and the Borrower hereby irrevocably directs the Lender and the Lender's solicitors to deduct the same from the proceeds of the initial advance and any other advance of the Loan.

-
- Repayment:** Interest only, payable monthly in arrears from the Interest Reserve. Upon full utilization of the Interest Reserve, the Borrower agrees to make payments of interest when due by way of pre-authorized debits to the Borrower's Project account.
- Prepayment:** The Loan is closed and the Borrower has no right to prepay the Loan prior to the Maturity Date, in whole or in part.
- Security:** The Borrower, prior to any advance of funds, shall deliver the following security documents (collectively the "Security") which shall be in form, scope and substance satisfactory to the Lender and its legal counsel:
1. First mortgage with a principal amount of \$34,000,000 granting a first fixed charge against the Project.
 2. A first-ranking assignment of rents and leases registered against title to the Project.
 3. The guarantee of the Guarantor for the full amount of the Loan and all other costs, expenses and amounts owing hereunder or under the Security, together with an assignment and postponement of claims by the Guarantor and all shareholders of the Borrower relating to any claims against the Borrower and the other Guarantor. The Borrower and the Guarantor shall represent and warrant to the Lender the amount (if any) of any existing claims by any shareholders of the Borrower and the Guarantor against the Borrower or any Guarantor.
 4. General Security Agreement registered under the Personal Property Security Act of Ontario granting a first-ranking security interest in all personal property of the Borrower, including without limitation:
 - Accounts and Book Debts of the Borrower in respect of the Project.
 - Agreements of Purchase and Sale inclusive of Purchasers' Deposits
 - All present and after acquired personal property of the Borrower in respect of Project.

- Rights of the Borrower (a) under all building/development permits and the monies paid thereunder, (b) to all plans, specifications and drawings related to the Project, and (c) under all contracts and agreements relating to the Property and the Project.
5. The Lender shall have received an acceptable insurance binder, certificate or cover note, to be followed, within 30 days of the issuance of the binder or cover note, with a certified copy of a policy or policies of insurance, satisfactory to the Lender, containing the requirements of Schedule "A" hereto and including evidence of a Comprehensive General Liability Insurance policy for the Project in an amount of not less than \$5,000,000 per occurrence. The Commercial General Liability Policy must reference the Property and DCC is to be added as an additional insured.
- We will require the insurance policy(ies) to be reviewed by an Independent Insurance Consultant, at the Borrower's expense.
6. If registered title to the Property is held by a nominee or trustee, the beneficial owner or owners will execute a beneficial owners agreement, pursuant to which, among other things, it or they charge its or their beneficial interest or interests in the Property in favour of the Lender, authorizes the nominee or trustee to execute all documentation as required pursuant to this Commitment (including, if such nominee or trustee is not the Borrower, a guarantee and postponement and assignment of claims), and agree to be bound thereby as if it or they executed the same itself or themselves.
7. The Lender's solicitors shall obtain Title Insurance, at the cost of the Borrower, on the mortgage and the Property.
8. Pledge of shares of the Borrower.

-
9. Subordination and Standstill Agreement with terms satisfactory to the Lender including but not limited to a 90 day standstill period .
 10. Assignment of all condominium voting rights upon registration of the condominium corporation to be exercisable in the event of default. *(if applicable)*
 11. Negative pledge by Borrower and Guarantors to not repay any shareholder loans, redeem shares, pay out dividends, withdraw equity from the Project or increase compensation to principals of any of the Borrower or Guarantors until the Loan has been fully repaid.
 12. Joint and several environmental warranty and indemnity agreement by the Borrower and Guarantors stated to survive repayment of the Loan.
 13. An assignment and pledge of an interest reserve deposit in the initial amount of \$2,975,000 (the "IR Account") is to be posted as additional security for the Loan. The Lender shall be provided with an assignment and pledge of the funds in the IR Account. If the funds in the IR Account are deposited into a term deposit with a financial institution all accrued interest earned on the IR Account will be paid to the Borrower on discharge of the Mortgage, provided that, until such time, the interest will become part of the security for the Loan;
 14. A cost overrun and completion guarantee from the Borrower and Guarantor with respect to the Project; and
 15. Such other and further security and documentation as may be required by the Lender or its counsel to complete and perfect the Security.

The Security may be completed and registered in the name of Dorr Capital Corporation or its Nominee. Notwithstanding such registration, day-to-day administration of the Loan shall be by:

Dorr Capital Corporation
41 Scarsdale Road, Unit 6
Toronto, Ontario
M3B 2R2

to which all correspondence, enquiries, principal and interest and other payments, and any other matters whatsoever with respect to the Loan should be directed.

Funding Conditions:

The obligation of the Lender to make the first advance of the Loan is subject to fulfillment by the Borrower of the following conditions, to the satisfaction of the Lender:

1. Title to the Property must be satisfactory to DCC and DCC's solicitors, with no encumbrances other than Permitted Encumbrances and no work orders.
2. All Security documents must be executed and registered, the Lender's solicitors must provide a satisfactory report on registration of the Security. The Lender shall have received such off-title inquiry responses for the Property, including from the applicable Tax Department and the Building and Zoning Department, as it may require.
3. Satisfactory confirmation of equity injection in the Project in the amount of \$11,460,000.
4. Inspection of the Property by DCC and if required a meeting with the Borrower, all to the satisfaction of the Lender.
5. A soils test report and Geotechnical Report by an acceptable professional engineer or such other similar report as is acceptable to the Lender, must be provided, demonstrating to the satisfaction of the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and with the recommendations, if any, which may be contained in such

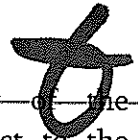
soils test report. Such report must be accompanied by the Form of Reliance Certificate (attached to this Commitment as Schedule "C") from the consultant to the Lender and shall confirm that the Lender and its assigns can rely upon such report for lending purposes.

6. The Borrower will obtain at its own expense an environmental audit, from a firm approved by the Lender, confirming that in their professional opinion there is no evidence that the site or any structures thereon are contaminated by any environmental hazards and recommending that no further action need be taken or will provide evidence of a remediation plan that will leave the site environmentally acceptable to the relevant Provincial and Federal Agencies and further evidence that said remediation plan is being performed, as budgeted for in the approved budget for the Project, and has been formally approved by the Ontario Ministry of the Environment and Climate Change. Such environmental audit must be accompanied by the Form of Reliance Certificate (attached to this Commitment as Schedule "C") from the consultant to the Lender and shall confirm that the Lender and its assigns can rely upon such report for lending purposes.

⁶ Satisfactory letter from environmental consultant to confirm the process towards RSC and environmental cost



7. ~~Acknowledgement from the Ontario Ministry of the Environment on the RSC submission with respect to the Property, in form and content satisfactory to the Lender.~~



8. All levies, impost fees, local improvement charges, property taxes and other charges affecting the Project due and payable shall have been paid to the date of the first advance of funds unless they are to be funded as part of the first advance.
9. The Borrower shall have provided the Lender with (a) a survey of the Project by an Ontario licensed land surveyor, indicating no encroachments, easements or rights of way, save those which the Lender may specifically accept and showing the relationship of the Property to public thoroughfares for access purposes and (b) all site plans, plans and specifications, applications to municipalities, building and servicing permits, and engineers reports, as applicable and as the Borrower may

have in its possession or control relating to the Property or the Project.

- 10 The Lender shall have received from an approved appraiser a satisfactory appraisal of the Project confirming a fair market land value of \$45,460,000 on an "as approved" basis. Such appraisal report must be accompanied by the Form of Reliance Certificate (attached to this Commitment as Schedule "C") from the appraiser to the Lender and shall confirm that the Lender and its assigns can rely upon such appraisal for lending purposes.
- 11 The Lender is to be satisfied in its sole discretion that the required municipal and/or regional approvals necessary to proceed with the Project are in place.
- 12 Receipt and satisfactory review of the Agreement of Purchase and Sale of the Property.
- 13 Receipt and satisfactory review by Lender of the project budget/proforma confirming the Project budget.
- 14 *Intentionally Deleted (Tarion Warranty Corporation enrolment)*
- 15 Receipt and satisfactory Anti-Money Laundering and Client Information inclusive of beneficial owners within the Project.
- 16 The Borrower and each Guarantor and beneficial owner authorize the Lender to make inquiries concerning its character, general reputation, personal characteristics, financial and credit data, including its respective directors, officers, shareholders, and principals, and to verify any information provided to the Lender hereunder, all for the purpose of underwriting and servicing the Loan.
- 17 Receipt and satisfactory review of a personal net worth and/or financial statement(s) for the last three years from the Borrower and the Guarantors on DCC's standard form, duly signed and witnessed. In addition, the Lender is to receive

satisfactory bank references and credit reports for the Borrower and Guarantors, both prior to the initial advance and at any time thereafter, as required by the Lender, until the Loan is fully repaid.

- 18 This Commitment is conditional on the Lender receiving full approval by the Lender's investment committee.
- 19 Receipt and satisfactory review of any cost sharing agreements related to the subject Project, by the Lender and its legal counsel (if applicable).
- 20 A statutory declaration regarding the Borrower's compliance with the *Construction Act* (Ontario).
- 21 The Borrower shall have provided a signed Mortgage Application in the form of Schedule "D".
- 22 Other conditions precedent deemed appropriate by the Lender for a project of this nature.

Other Conditions

1. Advances of the Loan shall take place only (a) if no Event of Default exists and (b) on title to the Project being acceptable to our solicitors and all matters in connection with the Security and other documentation deemed necessary or advisable by our solicitors being complied with by the Borrower and Guarantors and all Security and other instruments and agreements to evidence and secure the Loan are duly executed, with evidence of registration where applicable.
2. The Project may not be sold by the Borrower, in whole or in part, other than by individual unit sales in the normal course of business without the Lender's prior written consent, which consent may be unreasonably withheld, conditioned and/or delayed by the Lender.

Additionally, the Loan may not be assumed by a purchaser of the Project, in whole or in part, without the Lender's prior

written consent, which consent may be unreasonably withheld, conditioned and/or delayed by the Lender.

3. The Lender shall require a satisfactory opinion and report from its solicitors indicating, among other things, the validity, enforceability and priority of all Security and the state of title of the Project. The Borrower shall be entitled to pay for title insurance to replace any title opinion, if it wishes.
4. The Lender shall require for the Borrower, any corporate beneficial owners and corporate Guarantors, evidence of corporate existence and authority, including without limitation certified copies of articles, by-laws and authorizing resolutions of directors, a certificate of non-restriction and incumbency and a certificate of status, all as the Lender and its counsel may require, together with an opinion of counsel to the Borrower and the Guarantors as to usual matters such as: corporate existence, powers and authority, absence of litigation, and execution, delivery and enforceability of this Commitment and all Security.
5. The Borrower shall establish a separate bank account for the Project at a financial institution acceptable to the Lender, through which all advances and disbursements shall be made in respect to the Project.
6. The Lender will require a satisfactory Letter of Transmittal regarding all professional reports including, without limiting, the environmental report. A Transmittal Letter is to be issued for each report, addressed to DCC and state that the report can be relied upon by the Lender, and its assigns, for mortgage financing purposes.
7. The representations and warranties of the Borrower and the Guarantors set out herein and in the Security must be true and correct and there shall be no Event of Default that shall have occurred and be continuing.
8. Such other information that the Lender and/or its solicitor may reasonably require.

Availability: Single advance in the amount of \$34,000,000 less interest reserve and closing costs.

AVAILABILITY	
First Advance	\$ 34,000,000
Less:	
Interest Reserve	\$ 2,975,000
Lender Fee	\$ 500,000
Closing Costs	\$ 50,000
Net Advance	\$ 30,475,000

Financing Program:

USES	
	Total
Appraised Land Value	\$ 45,460,000
Total Use of Funds	\$ 45,460,000
SOURCES	
	Total
Land Loan	\$ 34,000,000
Borrower's Equity	\$ 11,460,000
Total Source of Funds	\$ 45,460,000

Closing Date: On or before November 30, 2021, or such other date as is agreed to by the lender and the Borrower. In any event if the initial advance of the Loan is not funded by December 15, 2021, for any reason other than Lender default, this Commitment, at the option of the Lender, shall be null and void and the Lender shall be released of any present or further obligations hereunder. Notwithstanding the foregoing, the Borrower and Guarantors shall remain liable for any outstanding fees and costs as set out herein.

**Representations and
Warranties:**

The Borrower and Guarantors represent and warrant the following to the Lender, each of which shall be true and correct for each advance hereunder:

- (i) If any of the Borrower and the Guarantors is a corporation, it is a corporation validly existing, duly organized and in good standing under the laws of its jurisdiction of incorporation and is in compliance with legal requirements applicable to doing business in such jurisdiction. The Borrower is not a "non-resident" within the meaning of the *Income Tax Act* (Canada). The Borrower and the Guarantors have the right to enter into this Commitment and to charge or pledge the Property and all other assets herein stipulated as security for the Loan and have the power and authority to execute and deliver this Commitment, the Security and all other documents contemplated hereby and to perform and complete the transaction contemplated herein;
- (ii) The legal description of the Property is accurately set out above. The legal and beneficial owner of the Property is the Borrower. Title to the Property is good and marketable and free from all easements, rights-of-way, agreements, restrictions, mortgages, charges, liens, executions and other encumbrances. The Borrower and the Guarantors have not withheld any information of a material nature relating to the Property, the Borrower or the Guarantors;
- (iii) The execution and delivery by the Borrower and the Guarantors of this Commitment and the applicable Security and the performance of their respective obligations hereunder and thereunder do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of their articles, charter documents, by-laws or any unanimous shareholder agreement, as applicable;
- (iv) The execution and delivery by the Borrower and the Guarantors of this Commitment and the applicable Security and the performance of their respective obligations

hereunder and thereunder have been duly authorized or will, prior to funding, have been ratified by all necessary corporate action, and no authorization under any applicable law and no registration, qualification, approval, designation, declaration or filing with any government body, agency, or authority having jurisdiction over the Borrower or any of the Guarantors is or was necessary therefor, except as contemplated herein;

- (v) The Borrower possesses all consents, approvals, permits and authorizations under any applicable law and under any agreement to which it is a party or by which it is bound, which are necessary in connection with the operation of its business, the Project, and the performance of its obligations hereunder and under the Security. All such consents, approvals, permits and authorizations are in full force and effect and the Borrower is not in default in any respect thereunder, which default would have a material adverse effect. No action exists, is pending or threatened which has as its object the revocation, amendment or qualification of any such consent or authorization and all applicable appeal periods in respect of such actions have expired. The Project and its development and construction are in compliance with all laws;
- (vi) The Borrower is not in default under any indenture, mortgage, deed of trust, agreement or other instrument to which it is a party or by which it or any of its property may be bound;
- (vii) Each of the Borrower and the Guarantors has filed all tax returns which is required to be filed by it and has paid or remitted when due all taxes, assessment and government charges imposed upon it except such tax, assessment or charge which is being contested in good faith and for which each of the Borrower or Guarantors, as the case may be, has made adequate reserves;
- (viii) With respect to the Property the Borrower has obtained and is in compliance with: (a) all terms and conditions of all

authorizations which are required under any environmental law; and (b) all environmental laws. The Borrower does not generate hazardous materials or transport, treat or dispose of any hazardous materials nor is the Borrower aware of any underground storage tanks or surface contaminants located on the Property. The Borrower has never caused or permitted (A) a release of any contaminant from or on the Property or (B) any hazardous materials to be placed, held, located, or disposed of on or under the Property. No enforcement action, investigation or outstanding order from any official body in respect of any hazardous materials or release of contaminants is existing, threatened or pending with respect to the Borrower or the Property. No hazardous substances are used, stored, discharged or present on the Property, except in compliance with environmental laws;

- (ix) The Borrower has complied with and will, at all times during the term of the Loan, comply with the requirements of the *Construction Act* (Ontario) and the regulations pursuant thereto;
- (x) The Property complies in all material respects with all relevant by-laws relating to the use thereof and there are no work orders issued against the Property by any governmental body;
- (xi) All documents and information delivered by or on behalf of the Borrower and the Guarantors to the Lender is true and accurate and may be relied upon by the Lender in executing this Commitment and making the Loan;
- (xii) There are no existing or pending claims, suits, actions, proceedings, judgments or orders outstanding against the Borrower or any of the Guarantors or involving the Property;
- (xiii) All necessary municipal services are available to the lot line of the Project;
- (xiv) All financial information provided by the Borrower and Guarantors to the Lender, including but not limited to,

financial information provided in respect of the values and other matters pertaining to the Property and financial statements for the Borrower and the Guarantors, is true and accurate and may be relied upon by the Lender in executing this Commitment and making the Loan and there has been no material adverse change in the Borrower's or any Guarantor's financial condition or operations since the date of such financial statements; and

- (xv) All property taxes, levies, assessments, penalties or other costs payable to a municipality or other local government in respect of the Property have been paid and no such amount is in arrears or is due and unpaid or will be paid on the Initial Advance.

Reporting Requirements:

The Borrower and/or Guarantors shall provide to the Lender:

1. Within 120 days of each fiscal year end during the term of the Loan, accountant prepared financial statements for the Borrower and each corporate Guarantor;
2. Updated financial statements and/or net worth statements annually for each personal Guarantor;
3. Quarterly updates regarding zoning approval and servicing progress, costs, and sales activity relating to the Project;
4. The Borrower and Guarantors agree to be fully responsible for remittance and payment of any and all HST collected by or due to any of them and submission of HST credits or claims, and will provide monthly accounting of same to the Lender if requested by the Lender; and
5. Such other financial and supporting information as the Lender may request acting reasonably.

Permitted Encumbrances:

Other than the DCC Security the Lender will allow an existing 2nd mortgage in the amount of approximately \$3,300,000 subject to it being acceptable to the Lender in its sole discretion and to be subject to a Subordination and Standstill Agreement on the Lender's form being entered into by such second mortgagee.

Subsequent Financing:

No financing subsequent to the Loan shall be permitted,

other than the Permitted Encumbrances, without the prior written consent of the Lender, with such consent not to be unreasonably withheld. The Borrower shall disclose to the Lender all existing or proposed financing related to the Project. The Borrower will provide evidence, satisfactory to the Lender, as to the source of the Borrower's required equity in the Project.

Assignment:

The Commitment and the Security may not be assigned, transferred or otherwise disposed of by the Borrower without the Lender's prior written consent. However, the Commitment and Security or any interest therein may be assigned or participated by the Lender (and its successors and assigns), in whole or in part, without the consent of the Borrower or the Guarantors. Except as hereinafter provided, the Borrower and Guarantors consent to the disclosure by the Lender to any such prospective assignee or participant of all information and documents regarding the Loan, the Project, the Borrower, and the Guarantors within the possession or control of the Lender.

Sign:

DCC shall have the right to erect a sign on the Project, at its own expense, indicating it has provided financing on the Project during the period for which the financing or any portion thereof, remains outstanding. DCC may also refer to this Project in its advertising at any time after the first advance under the Loan.

Defaults:

In this Commitment and the Security, "Event of Default" means any of the following:

1. in the event of the Borrower failing to pay any amount when due hereunder;
2. in the event of the Borrower or any Guarantor being in breach of any covenant, condition or term of the Commitment or the Security;
3. if any representation made by the Borrower, the Guarantors or their agents, or any information provided by them is found to be materially untrue or incorrect;

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4. if any of the Borrower or Guarantors commits an act of bankruptcy or becomes insolvent or bankrupt or has a receiver or receiver and manager appointed for it or over any of its material assets or if any creditor takes possession of any of its material assets or if any execution, distress or other like process is levied or enforced upon the Property or any part thereof or if any compromise or arrangement with creditors is made by any of them;
 5. if any of the Borrower or Guarantors shall be deceased or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation, reorganization, liquidation, winding-up, dissolution, receivership or material proceedings, material litigation or continuation under the laws of any other jurisdiction, including without limitation the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), whether initiated or commenced by them or not;
 6. in the event of any default by the Borrower or any Guarantor under any other mortgages or encumbrances registered against title to or otherwise affecting the Property or any part thereof;
 7. in the event of the registration of any construction lien against title to the Property or any part thereof which is not discharged or vacated within a period of ten (10) days after the date of registration thereof;
 8. in the event that the Property or any material part thereof is abandoned or there is any cessation of the business activities now being conducted thereupon by the Borrower or any beneficial owner thereof or any of their respective officers, agents, employees, tenants or invitees or any material part thereof;
 9. if any Event of Default as defined in the Security occurs;
 10. if in the sole opinion of the Lender, a material adverse change occurs relating to the Borrower, any Guarantor, the

Property, the Project, or the risk associated with the Loan;
and

11. if any default occurs under any loan made by the Lender or DCC to the Borrower or any of the Guarantors or any person controlled by any of the Guarantors.

Upon the occurrence of an Event of Default, the Lender, at its option, may (a) cease or delay further funding of the Loan; (b) declare the principal and interest on the Loan and any other amount due under the Commitment forthwith due and payable, whereupon the same shall be and become immediately due and payable in full, and make demand to the Borrower for immediate payment of the same, and (c) exercise any and/or all remedies available to it at law or in equity hereunder, under the Security or otherwise.

Construction Liens:

If a construction lien is filed or registered against title to the Property or if the Borrower, any Guarantor or Lender receives notice of any such lien, then, at the option of the Lender, and in addition to any other remedies it may have, the Lender shall not be required to make any further advance of the Loan until funds sufficient to satisfy such construction lien have been deposited with the Lender or until such time as such lien has been vacated, deleted or discharged.

Costs:

All appraisal, engineering, inspection, title, survey, legal, insurance review and other customary underwriting, inspection, securing or enforcement expenses of the Lender, are for the account of and shall be paid by the Borrower and may at the Lender's option be deducted from an advance of the Loan and the Borrower hereby irrevocably directs and authorizes the Lender to pay such expenses and costs, together with any outstanding balance of the Commitment Fee, or any other amount due to the Lender, from and out of any advance of funds under this Loan, in the event the same have not been paid at the time thereof.

Waiver:

No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or

anyone acting on its behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to, or waiver of any provision of, this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by the Borrower and Guarantors. The waiver by the Lender of any breach or default by the Borrower of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.

Governing Law: The Commitment and Loan shall be governed by and construed under laws of the Province of Ontario.

Time: Time is of the essence in this Commitment.

Severance: The Borrower and Guarantors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Joint and Several: If the Borrower or the Guarantors are comprised of more than one person or corporation, the obligations hereunder shall be the joint and several obligations of each such person or corporation comprising the Borrower or Guarantors unless otherwise specifically stated herein.

First Right: The Lender shall have a right of first refusal to finance or arrange financing for any subsequent phases of the development, of which the Project forms a part, or any further development to be developed on the lands adjacent thereto and shall be given the first opportunity and a reasonable period of time, after delivery to the Lender of all reasonably requested information, to provide a commitment to fund such further development.

Indemnity:

The Borrower and Guarantors, jointly and severally, shall indemnify and save harmless the Lender and its officers, agents, trustees, employees, contractors, licensees or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature whatsoever arising out of the provisions of this Commitment and the Security, any letters of credit or letters of guarantee issued, sale or lease of the Project and/or the use or occupation of the Project including, without limitation, those arising from the right to enter the Project from time to time and to carry out the various tests, inspections and other activities permitted by the Commitment and the Security. In addition to any liability imposed on the Borrower and Guarantors under any instrument evidencing or securing the Loan indebtedness, the Borrower and Guarantors shall be liable for any and all of the Lender's costs, expenses, damages or liabilities, including, without limitation, all reasonable legal fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Project of any hazardous or noxious substances. The representations, warranties, covenants and agreements of the Borrower and Guarantor set forth in this subparagraph:

- (i) Are separate and distinct obligations from the Borrower's and Guarantors' other obligations;
- (ii) Survive the payment and satisfaction of their other obligations and the discharge of the Security from time to time taken as security therefore;
- (iii) Are not discharged or satisfied by foreclosure of the charges created by any of the Security; and
- (iv) Shall continue in effect after any transfer of the land including, without limitation, transfers pursuant to foreclosure proceedings (whether judicial or non-judicial) or by any transfer in lieu of foreclosure.

Lender's Solicitors: The Lender's solicitor shall be:

Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario
M5C 3G5

Attention: Mr. Steven Jeffery

Lender's Insurance

Consultant:

The Lender's insurance consultant shall be:

Proincon Limited
287 Tache Avenue
Winnipeg, Manitoba
R2H 2A1

Attention: Wayne Fast

Lender's Cost Consultant: The Lender's cost consultant shall be:

CB Ross
1920 Yonge St. Suite 501
Toronto, ON
M4S 3E2

Attention: Charlie Ross

No Merger; Conflict:

The representations, warranties, covenants and obligations herein set out shall not merge or be extinguished by the execution or registration of the Security but shall survive until all obligations under this Commitment and the Security have been duly performed and the Loan, interest thereon and any other moneys payable to the Lender are repaid in full. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the provisions of the Commitment will prevail.

Confidentiality:

The Borrower and Guarantors acknowledge and agree that the terms and conditions recited herein are confidential between

themselves and the Lender, its solicitors, cost consultant, insurance consultant and Project monitor. The Borrower and Guarantors agree not to disclose the information contained herein to a third party, other than their lawyer, without the Lender's prior written consent.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act:

Pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the "Act"), the Lender is required to ask for identification of the Borrower, the Guarantors and any third party involved in the transaction, and for information with respect to the source of funds used in connection with the Borrower's equity in the Property. The Borrower and each Guarantor hereby covenant and agree to provide, prior to funding, such identification and information as may be reasonably required to ensure the Lender's compliance with the Act.

Material Changes:

If at any time before the Closing Date there is or has been any material change, discrepancy or inaccuracy in any information, statements, representations or warranties made or furnished to the Lender by or on behalf of the Borrower or upon the occurrence of an Event of Default under this Commitment which cannot be or is not rectified or nullified by the Borrower to the Lender's satisfaction within ten (10) days after written notification thereof by the Lender to the Borrower or the Lender's due diligence investigations regarding the Act produces a materially adverse result, the Lender shall be entitled forthwith to withdraw and cancel its obligations hereunder and to declare any funds which have been advanced, together with Interest and other amounts, to be forthwith due and repayable in full.

Further Assurances:

The Borrower and the Guarantors will execute all reasonable documentation required by DCC and its solicitors from time to time.

Timing of Payments:

Any payment to be made by the Borrower hereunder, including of principal or interest, shall be received by the Lender prior to

1:00 p.m. (Toronto time). Any payment received after that time shall be deemed to have been received on the next following banking day.

Privacy Act Consent:

By signing this Commitment, each of you, being the parties signing (including all mortgagors and all guarantors) agrees that the Lender is authorized and entitled to:

- a) Use your Personal Information (as hereinafter defined) to assess your ability to obtain your loan and to evaluate your ability to meet your financial obligations. This use includes disclosing and exchanging your Personal Information on an on-going basis with credit bureaus, credit reporting agencies and financial institutions or their agents, or to service providers, in order to determine and verify, on an on-going basis, your continuing eligibility for your loan and your continuing ability to meet your financial obligations. This use, disclosure and exchange of your Personal Information will continue as long as your loan is outstanding, and will help protect you from fraud and will also protect the integrity of the credit-granting system;
- b) If the security for your loan includes an insured mortgage, to disclose your Personal Information to the mortgage insurer and to exchange, on an on-going basis, your Personal Information with such mortgage insurer, for all purposes related to the provision of mortgage insurance; and;
- c) Use, disclose and exchange, on an on-going basis, all the personal information collected by us or delivered by you to us from time to time in connection with your loan and any information obtained by us from time to time pursuant to paragraphs (a) and (b) above (collectively your "**Personal Information**") to other organizations (including members of the Dorr Capital Corp) which may fund all or any part of your loan and/or own all or any part of your loan and the security securing your loan from time to time and permit prospective investors in your loan to inspect your Personal Information

1345 Lakeshore Road East, Mississauga, ON
File No: 21068

Even though your loan and the security securing your loan may be funded or owned by one or more other organizations, Dorr Capital Corp will continue to service your loan.

If you are in agreement with the foregoing terms and conditions, please indicate by signing and returning one (1) copy of this Commitment along with a cheque for \$100,000 to the Lender's office by noon on November 11, 2021. If the Loan is not advanced for any reason other than a Lender default, any deposits received on account of this loan will be applied against due diligence expenses of the Lender and fees owing hereunder and will not be refundable. If this letter is not returned to us, duly executed, by such date and time, this letter shall be deemed null and void.

Yours truly,

Dorr Capital Corporation



Brian Dorr – President and Principal Broker


1345 Lakeshore Road East, Mississauga, ON
File No: 21068

ACCEPTANCE

Borrower and Guarantors hereby accept the terms and conditions of the Commitment, agree to be responsible for all fees and disbursements payable in accordance with provisions of this Commitment and authorize the credit checks contemplated herein.

DATED AT _____, this 8th day of November, 2021.

VANDYK – Lakeview-DXE-West Limited




Name:

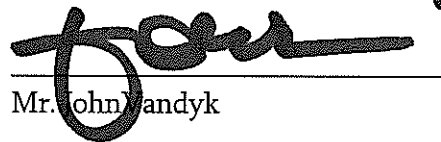
Title:

I have the authority to bind the corporation

Guarantor



[Witness]


Mr. John Vandyk

SCHEDULE "A"
INSURANCE REQUIREMENTS

1. GENERAL

- a. All insurance policies referred to herein shall be in form and with insurers reasonably acceptable to Lender and contain the original signatures of the insurers, not just the insurance broker or agent, unless otherwise agreed, and shall be delivered to the Lender within 30 days of issuance of the insurance cover note or binder.
- b. All policies shall be permitted to contain reasonable deductibles.
- c. If the Borrower fails to take out and keep in force such minimum insurance as is required hereunder, then Lender may, but shall not be obligated to, take out and keep in force such insurance at the immediate sole cost and expense of the Borrower plus costs incurred, or use other means at its disposal under the terms of the Mortgage.
- d. It is clearly understood and agreed that the Insurance Requirements contained herein are a minimum guide and, although must be adhered to throughout the life of the Mortgage, in no way represent an opinion as to the full scope of insurance cover a prudent Borrower would arrange to adequately protect its interest and the interest of Lender, and the Borrower must govern itself accordingly.

2. COURSE OF CONSTRUCTION

The following policies of insurance must be submitted:

- a. All Risks Builders Course of Construction on:
 - i) One hundred percent (100%) of the estimated final construction cost of the property, including reasonable soft costs.

ADDITIONAL INFORMATION

- All insurance policies must be forwarded to our insurance consultant for review. The cost of such review shall be for the account of the Borrower.
- All insurance policies shall be in form and with insurers reasonably acceptable to the Lender and contain the original signatures of the insurers.
- The Borrower and Beneficial Owner(s), if any, must be shown as a Named Insured or Additional Named Insured under all policies of insurance.
- The insurers, policy numbers, policy limits, policy term, applicable reasonable deductibles and the location of the Property as an insured location must be shown on the insurance policies.

- The Property and, where applicable, Pressure, Mechanical, & Miscellaneous Electrical Apparatus policies shall contain a standard mortgage clause in favour of the Lender.
- Insurance must be on an "All Risks" basis of physical loss or damage, including Earthquake and Flood Insurance.
- Insurance must be for 100% of Full Replacement Cost of the Property, without deduction for foundations and footings, and including confirmation that the "same or adjacent site" clause has been deleted from the Replacement Cost wording.
- There must be a Stated Amount clause to waive the co-insurance conditions, or confirmation that there are no co-insurance restrictions applicable to the building(s).
- There must be evidence Sewer Back-Up coverage under the Property policy.
- There must be evidence of full By-Laws extensions, including the increased cost of construction, cost of demolition of the undamaged portion of the Property and resultant loss of income.
- There must be evidence of Business Income Insurance, with a minimum period of indemnity of 18 months. This coverage should be written using the IBC Form 4109B, or an industry equivalent, providing 100% co-insurance, all-risk coverage, including full by-laws, earthquake and flood protection. The indemnity period must not cease when the premises become tenantable or operational.
- There must be evidence of comprehensive Pressure, Mechanical, & Miscellaneous Electrical Apparatus insurance covering all central HVAC and miscellaneous electrical equipment (and production machinery where applicable) for explosion, electrical and mechanical breakdown. Alternatively, there needs to be satisfactory evidence that there is no Pressure, Mechanical, & Miscellaneous Electrical Apparatus exposure at the Property (i.e. how are building(s) heated/ventilated and are there any elevators/escalators).
- If the Property is insured under a "blanket" insurance policy, please indicate what amounts have been declared relative to physical loss or damage as well as for business interruption for the Property under the statement of values filed with the insurers.
- There must be evidence of Liability Insurance, with a minimum limit of liability of \$5,000,000.00 per occurrence covering the Property. This may be in the form of primary insurance or primary and excess/umbrella insurance. The Lender must be shown as an Additional Insured with respect to claims arising out of the operations of the Insured.
- Such other insurance as the Lender may reasonably require given the nature of the security and that which a prudent owner of similar security would purchase and maintain, or cause to be purchased and maintained.

- All policies of insurance **must** provide the Lender with at least 30 days' prior written notice of adverse material change or cancellation (15 days' notice for non-payment). **Please note that the Lender WILL NOT ACCEPT "will endeavour to provide" language for such notice.**

If the Property is under construction, additional insurance coverage as set out below (as applicable).

- "All Risks" Builders Risk Course of Construction (Broad Form or CCDC 201 or equivalent) including (a) physical damage limit of not less than 100% of the total hard costs, (b) minimum 25% of the total soft costs or 100% of recurring soft costs, (c) delay in startup coverage with limit of 100% of the anticipated annual rents (assuming full occupancy) written on a delayed income basis. The policy shall allow for partial or full occupancy.
- Commercial General Liability or Wrap-up liability coverage with a limit of not less than \$25,000,000 or such other amount as may be required by the Lender acting reasonably with regard to the operations of the Borrower and shall include a "Cross Liability" clauses and must include all contractors, sub-contractors and trades.
- Architects' and Engineers' errors and omissions insurance for at least \$1,000,000 or such greater amount as the Lender may reasonably require.
- All other items and conditions of the Lender as applicable and as required by the Lender.

1345 Lakeshore Road East, Mississauga, ON
File No: 21068

SCHEDULE "B"
PERSONAL NET WORTH STATEMENT

PERSONAL & EMPLOYMENT INFORMATION

First Name: _____ Last Name: _____ Telephone (home): _____ SIN (required): _____ Driver's License: _____ Are you currently a client of Dorr Capital Corporation? Current Address: _____ _____ _____	Spouse's Name: _____ Marital Status: _____ Telephone (work): _____ Date of Birth: _____ # of dependents: _____ Present Position: _____ Length of Service: _____ Annual Employment Income: \$ _____ Income from other sources (specify): \$ _____ Total Annual Income (state year of reference) \$ _____ Bank Reference: Address: _____ _____ _____
Length of time at current address: _____	

SUMMARY ~ FINANCIAL INFORMATION

	ASSETS	VALUE	LIABILITIES	Description	BALANCE OWING
CASH, DEPOSITS & MARKETABLE SECURITIES	BANK/TRUST CR UNION	\$	OUTSTANDING LOANS	Refer to section D	\$
REAL ESTATE	Must agree with section "B"	\$	MARGIN ACCOUNTS	Refer to section A	\$
EQUITY IN NON-ARMS LENGTH COMPANIES	Must agree with section C	\$	OUTSTANDING MORTGAGES	Refer to section D	\$
INVESTMENTS (Specify)		\$	OTHER LIABILITIES (itemize)		\$
OTHER ASSETS (itemize)					
TOTAL ASSETS		\$	TOTAL LIABILITIES		\$
			NET WORTH		\$

1345 Lakeshore Road East, Mississauga, ON
File No: 21068

(Supporting Schedules)

ASSETS

Page 2 of 2

SECTION "A" ~ SECURITIES AND TAX SHELTERS

Description of Security and Quantity Held	Registered to/ To whom pledged	Market Value	Cost	Margin Accts Balance Owing	Annual Profit or Loss
1		\$		\$	\$
2		\$		\$	\$
3		\$		\$	\$
4		\$		\$	\$
	TOTAL	\$		\$	\$

SECTION "B" ~ REAL ESTATE

Address and Description (Acreage, Home, Business)	Title in Name of	Date Purchased	Market Value	Purchase Price	% Owned
1			\$ -		0%
2			\$ -		0%
3			\$ -		0%
4			\$ -		0%
5			\$ -		0%
6			\$ -		0%
	TOTAL		\$		

SECTION "C" ~ EQUITY IN NON ARMS-LENGTH COMPANIES

Name of Company	Nature of Business	Position / Relationship	Value of Equity Invested	% Ownership
1			\$	0%
2			\$	0%
3			\$	0%
4			\$	0%
5			\$	0%
6			\$	0%
NOTE: ATTACH FINANCIAL STATEMENTS		TOTAL	\$	

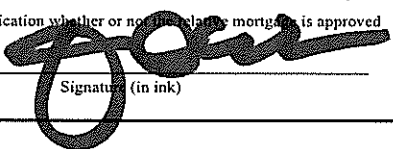
LIABILITIES

SECTION "D" ~ SECURITY

Lender Name	Security	Amount	Terms & Rate	Outstanding Balance
1				\$
2				\$
3				\$
4				\$
5				\$
6				\$
		TOTAL		\$

I warrant and confirm that the information given herein is true and I understand clearly that it is being used to determine my credit responsibility. You are authorized to obtain any information you require relative to this application from any sources to which you may apply and each such source is hereby authorized to provide you with such information. You are furthermore authorized to disclose any response to direct inquiries from any other lender or credit bureau, such information on my loaning account as you consider appropriate, and I hereby agree to indemnify you against and save you harmless from any and all claims in damages or otherwise arising from such disclosure on your part. You are also authorized to retain the application whether or not the related mortgage is approved.

Dated this _____ day of _____, _____


Signature (in ink)

SCHEDULE "C"
RELIANCE

TO: Dorr Capital Corporation, and such persons for whom they act as agent or trustee from time to time, and in each case, their respective successors and assigns

RE: Commitment Letter dated _____ by Dorr Capital Corporation and addressed to [name addressees of report] (the "Report")

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby certifies, agrees and confirms that the addressees hereof, and their respective successors and assigns, shall be entitled to rely on the Report to the same extent and with such effect as if such Report were prepared for and addressed to them. Potential liability to the Lender arising from this report is limited to the amount of professional liability insurance maintained in a minimum amount of \$1 million.

DATED the __ day of _____, 20__.

By: _____
Name:
Title:

SCHEDULE 'D'
MORTGAGE DISCLOSURE STATEMENT

Mortgage Brokerages, Lenders and Administrators Act
This document must be provided to the borrower 2 business days prior to signing of any mortgage instruments, unless waived below.

Disclosure to Borrower

Cost of Borrowing Disclosure

Property to be mortgaged: **1345 Lakeshore Road East, Mississauga, ON**

Details of Mortgage:

The principal amount of the mortgage **\$34,000,000** will be repayable monthly in arrears, interest only, paid on the 1st day of each month, starting one month after Interest Adjustment Date (IAD). The total amount of all payments over the **12-month** term will be **\$2,975,000.** The mortgage will be amortized over *n/a* years.

Interest:

The date on which interest begins to accrue is the first day of the month following the date of the first advance of funds under the Loan, if any grace period is given, the details are:

The annual interest rate is **8.75%**. Interest on the Loan shall be calculated daily, and compounded and payable monthly not in advance based on the number of days that the Loan is outstanding.

Where the annual interest rate may change, the method of determining the annual interest rate is: *N/A*

Fees and Costs Payable by Borrower:

	Comments	Value	Included in APR
Commitment Fee		\$500,000.00	Yes
Legal Fees and Other Transactions		\$ 25,400.00	Yes
Total Costs:		\$525,400.00	

Total Cost of Borrowing:

Total Cost of Borrowing (including interest) to be paid over the term of the mortgage: **\$3,500,400** APR: **10.30%**
The APR is not the contract rate of the mortgage. It is the interest costs, plus the non-interest costs required to obtain the mortgage, expressed as a percentage of the average mortgage balance over the term of the mortgage.

Terms and Conditions:

- Prepayment Privileges: See commitment for detail
- Transferability: See commitment for details
- Method of Payment: See commitment for details
- Special Conditions: See commitment for details
- Particulars / Penalties: See commitment for details

Mortgage Brokerages, Lenders and Administrators Act

This document must be provided to the borrower 2 business days prior to signing of any mortgage instruments, unless waived below.

Disclosure to Borrower

Conflict of Interest Disclosure:

Referral Fees to Brokerage and/or Broker/Agent:

Describe any direct or indirect interest that the Brokerage has or, as currently contemplated, may acquire in the transaction for which this disclosure statement is provided.

Mortgage – Commissions

The brokerage will receive a commission and receive a contingent commission from the Lender. Commissions are generally a fixed percentage of principle amounts of the mortgage being placed. Contingent commissions may be based on factors such as the volume of business placed with the Lender, or a certain percentage growth in the placement of business over a previous period and may be paid in cash or some other form of compensation.

Other Compensation

The Lender involved in this transaction may provide the brokerage fees or incentives dependent on the interest rate and the term(s) accepted by the Borrower. The brokerage may retain the fees and incentives or may use them for the benefit of another of the brokerage's clients.

Information on Brokerage:

The Brokerage is representing _____ the Lender _____ in this transaction.

The Brokerage has acted for _____ 38 _____ lenders during the previous fiscal year.

Name and Address of Brokerage: _____ Dorr Capital _____ Licence #: _____ 12099 _____

Name of Authorized Person on behalf of Brokerage: _____ Brian Dorr _____ Licence #: _____ M09002014 _____

Date: _____ November 5, 2021 _____ Authorized Signature: _____ 

Disclosure of Material Risks:

The brokerage has reviewed with the borrower the general risks associated with a mortgage commitment. These risks include: risk of falling into arrears, default and foreclosure, prepayment penalties, etc.

Acknowledgement

I / we acknowledge a receipt of a copy of this form, and corresponding Amortization Schedule and that I / we have reviewed the information.

Date: _____ Borrower: _____

Date: _____ Borrower: _____

Date: _____ Borrower: _____

I / we waive the 2 business days requirement for this disclosure:

Date: _____ Borrower: _____

Date: _____ Borrower: _____

Date: _____ Borrower: _____

Dorr Capital Corporation
41 Scarsdale Road, Unit 6
Toronto, ON M3B 2R2
www.dorrcapital.com



DELIVERED VIA EMAIL

November 25, 2021

VANDYK – Lakeview-DXE-West Limited
1944 Fowler Drive
Mississauga, Ontario
L5K 0A1

Attention: Mr. Bruce Milburn and Mr. Richard Ma

Dear Sirs:

Re: First Mortgage Land Loan
Project Name: 1345 Lakeshore Road East, Mississauga, Ontario
Loan No.: 21068

Reference is made to the commitment letter dated November 5, 2021 from Dorr Capital Corporation (“DCC”) to VANDYK – Lakeview-DXE-West Limited (the “Original Commitment”). DCC is pleased to provide the following amendment (the “Amendment”) to the Original Commitment, subject to the terms and conditions outlined below. Together, this Amendment and the Original Commitment shall collectively be known as the “Commitment”, and references to the Commitment in the Original Commitment and in the Security (as defined in the Original Commitment) shall be deemed to be references to the Commitment as defined herein.

DELETE:

Interest Rate: 8.75% per annum (the “Interest Rate”)

INSERT:

Interest Rate: The greater of RBC Prime plus 6.30% and 8.75% per annum (the “Interest Rate”)



DELETE:**Security:**

1. First mortgage with a principal amount of \$34,000,000 granting a first fixed charge against the Project.
9. Subordination and Standstill Agreement with terms satisfactory to the Lender including but not limited to a 90 day standstill period.

INSERT:**Security:**

1. First mortgage with a principal amount of \$40,000,000 granting a first fixed charge against the Project.
9. Subordination and Standstill Agreement with terms satisfactory to the Lender including but not limited to a 120 day standstill period.

DELETE:

Funding Conditions: 3. Satisfactory confirmation of equity injection in the Project in the amount of \$11,460,000.

INSERT:

Funding Conditions: 3. Satisfactory confirmation of equity injection in the Project in the amount of \$8,160,000.

23. Letter from Borrower's planner outlining the steps required and timelines for Project receipt of Site Plan Approval.
24. Copy of payout statement from all lenders being repaid on closing.
25. Execution of the Lender's ESG Form.

DELETE:
Financing Program:

USES	
	Total
Appraised Land Value	\$ 45,460,000
Total Use of Funds	\$ 45,460,000

SOURCES	
	Total
Land Loan	\$ 34,000,000
Borrower's Equity	\$ 11,460,000
Total Source of Funds	\$ 45,460,000

INSERT:
Financing Program:

USES			
	Total	Per Acre	%
Appraised Land Value	\$ 45,460,000	\$ 14,523,962	100.0 %
Total Use of Funds	\$ 45,460,000	\$ 14,523,962	100.0 %

SOURCES			
	Total	Per Acre	%
1st Mortgage Land Loan	\$ 34,000,000	\$ 10,862,620	74.8 %
2nd Mortgage Land Loan	\$ 3,300,000	\$ 1,054,313	7.3 %
Borrower's Equity	\$ 8,160,000	\$ 2,607,029	17.9 %
Total Source of Funds	\$ 45,460,000	\$ 14,523,962	100.0 %

INSERT:
Defaults:

12. Upon and during the continuance of an Event of Default, in addition to any other rights which the Lender may have, the Loan Parties each consent to the Lender's appointment of a receiver, or a receiver and manager either privately or by court appointment, to manage the Property and do all things necessary as an owner would be entitled to do;

13. If the 2nd mortgagee notifies the Lender their loan is in default, the Lender, at it's, sole unfettered discretion has the option to call it an event of default under the Loan;

All other terms and conditions of the Commitment shall remain unchanged and enforceable.

If you are in agreement; with the foregoing terms and conditions, please indicate by signing and returning one (1) copy of this Letter to the Lender's office by November 26, 2021, failing which this letter shall be deemed null and void.

Yours truly,

Dorr Capital Corporation



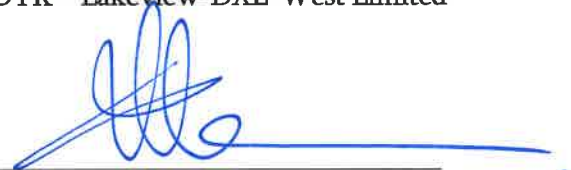
Brian Dorr – President

ACCEPTANCE

Borrower and Guarantors hereby accept the terms and conditions of the Commitment, agree to be responsible for all fees and disbursements payable in accordance with provisions of this Commitment and authorize the credit checks contemplated herein.

DATED AT Mississauga this 3rd day of Dec, 2021

VANDYK – Lakeview-DXE-West Limited

Per: 


Name:

Title:

I have the authority to bind the corporation

GUARANTOR:


[Witness]


John Vandyk

Dorr Capital Corporation

41 Scarsdale Road, Unit 6

Toronto, ON M3B 2R2

www.dorrcapital.com**DELIVERED VIA EMAIL**

December 12, 2022

VANDYK – Lakeview-DXE-West Limited

1944 Fowler Drive

Mississauga, Ontario

L5K 0A1

Attention: Mr. Bruce Milburn and Mr. Richard Ma

Dear Sirs:

Re: First Mortgage Land Loan**Project Name: 1345 Lakeshore Road East, Mississauga, Ontario****Loan No.: 21068**

Reference is made to the commitment letter dated November 5, 2021 from Dorr Capital Corporation (“DCC”) to VANDYK – Lakeview-DXE-West Limited (the “Original Commitment”). DCC is pleased to provide the following amendment (the “Amendment”) to the Original Commitment, subject to the terms and conditions outlined below. Together, this Amendment and the Original Commitment and Amendment(s) dated November 25, 2021 shall collectively be known as the “Commitment”, and references to the Commitment in the Original Commitment and in the Security (as defined in the Original Commitment) shall be deemed to be references to the Commitment as defined herein.

Purpose: To apply the first 3-month extension to the existing Loan Facility.

Interest Rate: The greater of Royal Bank of Canada’s Prime lending rate plus 6.30% or 12.75% per annum (the “**Interest Rate**”)

Term of Extension: 3 months



R

Extended Maturity

Date: April 1, 2023

Extension Fees: ~~\$129,200~~ ^{#110,000} deemed earned upon acceptance of this Amendment. 0.38%

All other terms and conditions of the Commitment shall remain unchanged and enforceable.

If you are in agreement; with the foregoing terms and conditions, please indicate by signing and returning one (1) copy of this Letter to the Lender's office by December 19, 2022, failing which this letter shall be deemed null and void.

Yours truly,

Dorr Capital Corporation




Brian Dorr – President

ACCEPTANCE

Borrower and Guarantors hereby accept the terms and conditions of the Commitment, agree to be responsible for all fees and disbursements payable in accordance with provisions of this Commitment and authorize the credit checks contemplated herein.

DATED AT 16th, this ~~20th~~ ^{16th} day of December, 2022


VANDYK – Lakeview-DXE-West Limited

Per: 
Name: John Vandyk
Title: CEO

I have the authority to bind the corporation



GUARANTOR:



[Witness] Natalie Chan



John Vandyk



Dorr Capital Corporation

41 Scarsdale Road, Unit 6
 Toronto, ON M3B 2R2
www.dorrcapital.com

**DELIVERED VIA EMAIL**

April 3, 2023

VANDYK – Lakeview-DXE-West Limited
 1944 Fowler Drive
 Mississauga, Ontario
 L5K 0A1

Attention: Mr. Bruce Milburn and Mr. Richard Ma

Dear Sirs:

Re: First Mortgage Land Loan
Project Name: 1345 Lakeshore Road East, Mississauga, Ontario
Loan No.: 21068

Reference is made to the commitment letter dated November 5, 2021 from Dorr Capital Corporation (“DCC”) to VANDYK – Lakeview-DXE-West Limited (the “Original Commitment”). DCC is pleased to provide the following amendment (the “Amendment”) to the Original Commitment, subject to the terms and conditions outlined below. Together, this Amendment and the Original Commitment and Amendment(s) dated November 25, 2021 and December 12, 2022 shall collectively be known as the “Commitment”, and references to the Commitment in the Original Commitment and in the Security (as defined in the Original Commitment) shall be deemed to be references to the Commitment as defined herein.

Purpose: To apply the second 3-month extension to the existing Loan Facility.

Interest Rate: The greater of Royal Bank of Canada’s Prime lending rate plus 6.30% or 13.00% per annum (the “Interest Rate”)

Term of Extension: 3 months



Extended Maturity

Date: July 1, 2023

Extension Fees: \$167,150 deemed earned upon acceptance of this Amendment.

All other terms and conditions of the Commitment shall remain unchanged and enforceable.

If you are in agreement; with the foregoing terms and conditions, please indicate by signing and returning one (1) copy of this Letter to the Lender's office by April 6th, 2023, failing which this letter shall be deemed null and void.

Yours truly,

Dorr Capital Corporation



Brian Dorr – President

ACCEPTANCE

Borrower and Guarantors hereby accept the terms and conditions of the Commitment, agree to be responsible for all fees and disbursements payable in accordance with provisions of this Commitment and authorize the credit checks contemplated herein.

DATED AT Mississauga, this 4th day of Apr, 2023

VANDYK – Lakeview-DXE-West Limited

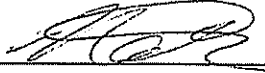
Per: 

Name: Richard He
Title: CFD.


I have the authority to bind the corporation

1345 Lakeshore Road East, Mississauga, ON
File No: 21068

GUARANTOR:



[Witness]



John Vandyk

K

Dorr Capital Corporation

41 Scarsdale Road, Unit 6
 Toronto, ON M3B 2R2
www.dorrcapital.com

**DELIVERED VIA EMAIL**

April 28, 2023

VANDYK – Lakeview-DXE-West Limited
 1944 Fowler Drive
 Mississauga, Ontario
 L5K 0A1

Attention: Mr. Bruce Milburn and Mr. Richard Ma

Dear Sirs:

Re: First Mortgage Land Loan
Project Name: 1345 Lakeshore Road East, Mississauga, Ontario
Loan No.: 21068

Reference is made to the commitment letter dated November 5, 2021 from Dorr Capital Corporation (“DCC”) to VANDYK – Lakeview-DXE-West Limited (the “Original Commitment”). DCC is pleased to provide the following amendment (the “Amendment”) to the Original Commitment, subject to the terms and conditions outlined below. Together, this Amendment and the Original Commitment and Amendment(s) dated November 25, 2021, December 12, 2022 and April 3, 2023 shall collectively be known as the “Commitment”, and references to the Commitment in the Original Commitment and in the Security (as defined in the Original Commitment) shall be deemed to be references to the Commitment as defined herein.

Purpose: 1) To renew the subject facility.
 2) To add collateral properties.
 3) To add limited recourse guarantors.

Term: 3 months

New Maturity Date: October 1, 2023

Renewal Fee: \$235,000 deemed earned and payable upon acceptance of this Renewal.



INSERT:**Collateral Properties:**320 Derry Road West, Mississauga, ON

A serviced subdivision of approximately 11.6 acres for the development of 39 detached units and 6 semi-detached units located at 320 Derry Road West, Mississauga, ON (the “**Derry Road Collateral Property**”)

10302 Heart Lake Road, Brampton, ON

A 6.5-acre site currently under construction consisting of 342 stacked townhouses with a total 379,842 sf of gross floor area, located at 10302 Heart Lake Road, Brampton, Ontario (the “**Uptowns Collateral**”).

10194 Heart Lake Road, Brampton, ON

A 22.47-acre site, of which 9.67 acres are developable, zoned for the development of 200 townhouses with a total gross floor area for the proposed development of 242,602 sf located at 10194 Heart Lake Road, Brampton, Ontario (the “**Jordan Lands Collateral**”).

(Collectively, the “**Collateral Property**”)

INSERT:**Limited Recourse****Guarantor(s):**

Vandyk – The Ravine Limited, Vandyk - Uptowns Limited, Vandyk – Heart Lake Limited, and Vandyk Holdings Incorporated (collectively, the “**Limited Recourse Guarantors**”).

DELETE:**Permitted Encumbrances:**

Other than the DCC Security the Lender will allow an existing 2nd mortgage in the amount of approximately \$3,300,000 subject to it being acceptable to the Lender in its sole discretion and to be subject to a Subordination and Standstill Agreement on the Lender's form being entered into by such second mortgagee.



INSERT:

Permitted Encumbrances: The Lender hereby acknowledges and consents to the following permitted encumbrances (each a "**Permitted Encumbrance**"), each to be on terms and conditions acceptable to the Lender:

Lakeview DXE Collateral Permitted Encumbrances	Ranking	Loan Amount	Charge Amount	Lender
Lakeview DXE 1 st Mortgage Land Loan	First	\$34,000,000	\$40,000,000	Dorr Capital
Lakeview DXE 2 nd Mortgage Land Loan***	Second/Fourth	\$3,300,000	\$3,300,000	BPA Group
Lakeview DXE 1 st Mortgage Construction Loan**	First	\$180,000,000	\$225,000,000	KingSett
Lakeview DXE DPI Mortgage*	Second	\$47,245,133	\$100,000,000	Westmount
Lakeview DXE 3 rd Mortgage Construction Loan**	Third	\$55,000,000	\$68,750,000	KingSett
Uptowns & Jordan 1 st Collateral Mortgage	Fifth	\$90,000,000	\$112,500,000	KingSett
Uptowns & Jordan 3 rd Collateral Mortgage	Sixth	\$59,380,000	\$74,225,000	KingSett
Derry Road 1st Mortgage	Eighth	\$21,000,000	\$25,000,000	KingSett
Derry Road 2nd Mortgage	Ninth	\$32,400,000	\$37,000,000	KingSett



*In the event that the amount of purchaser deposits used in the Project exceeds \$47,245,133, the amount available under the Lakeview DXE 1st Mortgage Construction Loan is to be permanently reduced dollar for dollar with the amount of the exceedance.

**Lakeview DXE 1st Mortgage Land Loan to be fully discharged concurrently with an advance under either the Lakeview DXE 1st Mortgage Construction Loan or the Lakeview DXE 3rd Mortgage Construction Loan.

***Lakeview DXE 2nd Mortgage Land Loan will become Fourth priority concurrently with an advance under either the Lakeview DXE 1st Mortgage Construction Loan or the Lakeview DXE 3rd Mortgage Construction Loan.

Derry Road Collateral Permitted Encumbrances	Ranking	Loan Amount	Charge Amount	Lender
Derry Road 1 st Mortgage	First	\$21,000,000	\$25,000,000	KingSett
Derry Road 2 nd Mortgage	Second	\$32,400,000	\$37,000,000	KingSett
Derry Road DPI	Third	\$9,030,000	\$9,030,000	TBD
Uptowns & Jordan 1st Collateral mortgage	Fourth	\$90,000,000	\$112,500,000	KingSett
Uptowns & Jordan 3rd Collateral Mortgage	Fifth	\$59,380,000	\$74,225,000	KingSett
Lakeview DXE 1st Collateral Mortgage Land Loan**	Seventh	\$34,000,000	\$40,000,000	Dorr Capital
Lakeview DXE 1st Collateral Mortgage Construction Loan**	Seventh	\$180,000,000	\$225,000,000	KingSett
Lakeview DXE 3rd Collateral Mortgage Construction Loan**	Eighth	\$55,000,000	\$68,750,000	KingSett



**Mortgage for the Lakeview DXE 1st Mortgage Land Loan to be fully discharged concurrently with an advance under either the Lakeview DXE 1st Mortgage Construction Loan or the Lakeview DXE 3rd Mortgage Construction Loan.

Uptowns Permitted Encumbrances	Ranking	Loan Amount	Charge Amount	Lender
Uptowns & Jordan 1 st Mortgage	First	\$90,000,000	\$112,500,000	KingSett
Uptowns DPI Mortgage*	Second	\$21,717,521	\$21,717,521	Trisura
Uptowns & Jordan 3 rd Mortgage	Third	\$59,380,000	\$76,725,000	KingSett
Lakeview DXE 1 st Mortgage Land Loan**	Fifth	\$34,000,000	\$40,000,000	Dorr Capital
Lakeview DXE 1 st Mortgage Construction Loan**	Fifth	\$180,000,000	\$225,000,000	KingSett
Lakeview DXE 3 rd Mortgage Construction Loan**	Sixth	\$55,000,000	\$68,750,000	KingSett
Derry Road 1st Mortgage	Seventh	\$21,000,000	\$25,000,000	KingSett
Derry Road 2nd Mortgage	Eighth	\$32,400,000	\$37,000,000	KingSett

*In the event that the amount of purchaser deposits used in the Project exceeds \$21,717,521, the amount available under the First Mortgage is to be permanently reduced dollar for dollar with the amount of the exceedance. Note, this charge is only registered against Uptowns.



**Mortgage for the Lakeview DXE 1st Mortgage Land Loan to be fully discharged concurrently with an advance under either the Lakeview DXE 1st Mortgage Construction Loan or the Lakeview DXE 3rd Mortgage Construction Loan.

Jordan Lands Permitted Encumbrances	Ranking	Loan Amount	Charge Amount	Lender
Uptowns & Jordan 1 st Mortgage	First	\$90,000,000	\$112,500,000	KingSett
Uptowns & Jordan 3 rd Mortgage	Second	\$59,380,000	\$76,725,000	KingSett
Lakeview DXE 1 st Collateral Mortgage Land Loan**	Fourth	\$34,000,000	\$40,000,000	Dorr Capital
Lakeview DXE 1 st Collateral Mortgage Construction Loan**	Fourth	\$180,000,000	\$225,000,000	KingSett
Lakeview DXE 3 rd Collateral Mortgage Construction Loan**	Fifth	\$55,000,000	\$68,750,000	KingSett
Derry Road 1st Mortgage	Sixth	\$21,000,000	\$25,000,000	KingSett
Derry Road 2nd Mortgage	Seventh	\$32,400,000	\$37,000,000	KingSett

**Mortgage for the Lakeview DXE 1st Mortgage Land Loan to be fully discharged concurrently with an advance under either the Lakeview DXE 1st Mortgage Construction Loan or the Lakeview DXE 3rd Mortgage Construction Loan.

Each Permitted Encumbrance is acknowledged by the Lender provided that all terms and conditions thereof together with any related security are acceptable to the Lender in its sole but commercially reasonable discretion and the Permitted Encumbrance enters into a



subordination and standstill agreement with the Lender in the Lender's prescribed form including, without limitation, a covenant by the Permitted Encumbrance, as applicable, to provide a free partial discharge of its security over each Unit concurrently with the sale of such Unit (the "**Subordination and Standstill Agreement**").

INSERT:

Allocation of Net Closing Proceeds: In order of priority, the Net Closing Proceeds from the Property will be applied as (a) firstly to the permanent reduction of the First Mortgage until repaid in full, and (b) to the permanent reduction of any cross collateralized loans.

In order of priority, the Net Closing Proceeds from the Uptowns Collateral, Jordan Lands Collateral and from the 134-unit residential condominium building located at 144 Berry Road, Etobicoke, Ontario will be applied as (a) firstly to the permanent reduction of the indebtedness specific to that project, and (b) secondly to the permanent reduction of any of the following loans, at the Lender's discretion:

Commitment Letter Date	Loan Name	Loan Amount
November 5, 2021	Lakeview DXE 1 st Mortgage Land Loan	\$34,000,000
August 23, 2022	Lakeview DXE 1 st Mortgage Construction Loan	\$180,000,000
August 23, 2022	Lakeview DXE 3 rd Mortgage Construction Loan	\$55,000,000
April 20, 2023	Uptowns & Jordan 1 st Mortgage	\$90,000,000
May 6, 2022	Uptowns & Jordan 3 rd Mortgage	\$59,380,000
March 11, 2022	Derry Road 1st Mortgage	\$21,000,000
March 11, 2022	Derry Road 2nd Mortgage	\$32,400,000



Conditions Precedent to the Amendment:**Additional Security:**

1. A \$40,000,000 seventh ranking mortgage charge granted by Vandyk – The Ravine Limited on the Derry Road Collateral;
2. A \$40,000,000 fifth ranking mortgage charge granted by Vandyk - Uptowns Limited on the Uptowns Collateral;
3. A \$40,000,000 fourth ranking mortgage charge granted by Vandyk - Heart Lake Limited on the Jordan Lands Collateral; and
4. An assignment of rents and leases registered against title to the Derry Road Collateral granted by Vandyk – The Ravine Limited;
5. An assignment of rents and leases registered against title to the Uptowns Collateral granted by Vandyk Uptowns Limited;
6. An assignment of rents and leases registered against title to the Jordan Lands Collateral granted by Vandyk – Heart Lake Limited;
7. An assignment of insurance granted by Vandyk - The Ravine Limited with respect to any and all insurance proceeds arising in connection with all insurance for the Derry Road Collateral;
8. An assignment of insurance granted by Vandyk Uptowns Limited with respect to any and all insurance proceeds arising in connection with all insurance for the Uptowns Collateral;
9. An assignment of insurance granted by Vandyk – Heart Lake Limited with respect to any and all insurance proceeds arising in connection with all insurance for the Jordan Lands Collateral;
10. A specific assignment of the shareholder cash distributions from the following two projects:
 - a. A 10-storey, 234-unit residential condo project located at 15 Neighbourhood Lane, Etobicoke, Ontario. Unlimited assignment of approximately \$13,500,000 profit and equity to be provided to the Lender by Vandyk Holdings Incorporated. Which assignment relates to cash distributions provided from Vandyk-

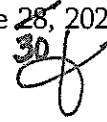


Backyard Kings Mill Limited and Vandyk-Backyard
HumberSide Limited; and

- b. A 37-storey, three-tower, 749-unit residential condo project located 23 Buckingham Street, Etobicoke, Ontario. Unlimited assignment of approximately \$66,800,000 profit and equity to be provided to the Lender by Vandyk Properties Incorporated. Which assignment relates to cash distributions provided from Vandyk – The Buckingham South – Grand Central Limited, Vandyk – The Buckingham North – Grand Central Limited, and Vandyk – The Buckingham Commercial – Grand Central Limited.

Existing security to be amended and/or extended as deemed necessary by the Lender and its legal counsel to reflect the revised terms specified in this subject Amendment.

If you are in agreement with the foregoing terms and conditions, please indicate by signing and returning one (1) copy of this Letter to the Lender's office by June 28, 2023, failing which this letter shall be deemed null and void.

30


Yours truly,

Dorr Capital Corporation

Brian Dorr
President and CEO



ACCEPTANCE

Borrower and Guarantors hereby accept the terms and conditions of the Commitment, agree to be responsible for all fees and disbursements payable in accordance with provisions of this Commitment and authorize the credit checks contemplated herein.

DATED AT MISSISSAUGA this 30th day of June, 2023.

VANDYK – Lakeview-DXE-West Limited

Per:

[Handwritten signature]

Name:

JOHN VANDYK

Title:

PRESIDENT & CEO

I have the authority to bind the corporation.

GUARANTOR:

[Handwritten signature]
[Witness]

[Handwritten signature]
John Vandyk

LIMITED RECOURSE GUARANTORS:

[Handwritten signature]
Vandyk - Uptowns Limited

[Handwritten signature]
Vandyk - Heart Lake Limited

[Handwritten signature]
Vandyk - The Ravine Limited

[Handwritten signature]
Vandyk Holdings Incorporated



TAB WW

THIS IS **EXHIBIT "WW"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

GUARANTEE AND POSTPONEMENT OF CLAIM

1. IN CONSIDERATION of **DORR CAPITAL CORPORATION** (the “**Lender**”) making loans and advances to **VANDYK-LAKEVIEW-DXE-WEST LIMITED** (the “**Debtor**”) pursuant to a commitment letter dated November 5, 2021, from the Lender, as lender, to the Debtor, as borrower (which commitment letter, as it may be amended, supplemented, restated or consolidated from time to time, is hereinafter called the “**Commitment**”) and in further consideration of the sum of TEN DOLLARS (\$10.00) paid by the Lender to each of the undersigned and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the undersigned) the undersigned (hereinafter sometimes each called a “**Guarantor**” and collectively, the “**Guarantors**”) hereby jointly and severally agree to duly and punctually pay to the Lender and to perform:
- (a) all present and future indebtedness, obligations and liabilities owing by the Debtor (and the Debtor's successors and assigns and any person substituted for the Debtor or added as a debtor under the Commitment) to the Lender from time to time pursuant to the Commitment, the Security (as defined in the Commitment) or pursuant to any other document, agreement, instrument or other writing contemplated by or arising out of or in connection with the Commitment (the “**Indebtedness**”); and
 - (b) all commissions, charges, costs and other expenses (including legal fees and disbursements on a solicitor and his own client basis) arising out of or incurred by the Lender in connection with any of the following:
 - (i) the collection of the Indebtedness;
 - (ii) the enforcement of the rights of the Lender against the Debtor under the Commitment or any of the Security;
 - (iii) the realization upon or disposition of any security or securities, including without limitation the Security, from time to time held by or on behalf of the Lender for the Indebtedness; and
 - (iv) the enforcement of this guarantee.

Notwithstanding anything to the contrary contained herein, it is understood and agreed that the only property of Vandyk Holdings Incorporated to which the Lender shall have recourse to satisfy the obligations of such guarantor under this guarantee shall be the rights and interest of the guarantor in and to its shares in the capital of the Debtor. Nothing contained in this paragraph shall mitigate, impair, prejudice or otherwise adversely affect the right of the Lender to exercise and enforce its full rights and recourses against the Debtor and all of the Debtor's property and assets of any description whatsoever in the event that the Debtor fails or neglects to repay in full the Indebtedness.

2. This guarantee shall be a continuing guarantee and shall apply to and secure all amounts referred to in paragraph 1 hereof, including, without limitation, any ultimate balance due

or remaining unpaid to the Lender; and this guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or from time to time of any sum of money for the time being due or remaining unpaid to the Lender. Each of the Guarantors agrees that it shall not be entitled to withdraw, terminate, cancel, revoke or determine its liability under this guarantee by notice respecting Indebtedness incurred or arising before or after such notice.

3. Each Guarantor's liability to make payment under this guarantee shall arise forthwith after demand for payment has been made upon such Guarantor, which demand shall be deemed to have been effectually made on the day upon which an envelope containing such demand addressed to such Guarantor at his address set out in paragraph 24 hereof (or such other address of which such Guarantor shall have given the Lender notice in accordance with paragraph 24 hereof) is posted, by registered mail, postage prepaid, in the post office. Each Guarantor's liability hereunder shall bear interest from and including the date of such demand at a rate of interest equal to the Interest Rate (as defined in the Commitment) calculated daily and compounded monthly after demand and default hereunder and before and after any judgement, if any.
4. This guarantee is irrevocable, absolute and unconditional and the liability and obligations of each of the Guarantors hereunder shall not be released, discharged, mitigated, impaired or affected by:
 - (a) any grant of time, renewals, extensions, indulgences, releases, discharges or modifications which the Lender may extend to or make with the Debtor, any of the Guarantors or any other person, firm or corporation;
 - (b) any amendments, modifications or variations, material or otherwise, of or made to the Commitment or any of the Security or any other document, agreement, instrument, security or writing contemplated by or arising out of or in connection with the Commitment, whether with or without the knowledge or consent of any of the Guarantors;
 - (c) any waiver by the Lender of, or failure or forbearance of the Lender to enforce, any of the terms, covenants, conditions or provisions of the Commitment, the Security or any other security or securities granted to the Lender in order to secure payment to the Lender of the Indebtedness owing by the Debtor to the Lender;
 - (d) the taking of security or securities (which word as used herein includes securities taken by the Lender from the Debtor and others, monies which the Debtor has on deposit with the Lender, other assets of the Debtor held by the Lender in safekeeping or otherwise, and other guarantees) from the Debtor or any other person, firm or corporation and the release, discharge or alteration of such security or securities, any dealing by the Lender with any security or securities which is or may be inconsistent with the provisions of any agreement between the Lender and the Debtor or which may contravene or breach any provision of any such agreement or which may contravene or breach any duty that the Lender may owe to or have in respect of the Debtor, or any other dealing with such security or securities;

- (e) the abstention from taking security or securities from the Debtor or any other person, firm or corporation or from perfecting, continuing to keep perfected or taking advantage of any security or securities;
 - (f) any loss, diminution of value or unenforceability of any security or securities received from the Debtor or any other person, firm or corporation and including any other guarantees received by the Lender;
 - (g) any other dealings with the Debtor, any one or more of the Guarantors or any other person, firm or corporation;
 - (h) the Lender's failure to give or extend credit or make loans or advances to the Debtor;
 - (i) the Lender's acceptance of compositions from the Debtor;
 - (j) the application by the Lender of all monies at any time and from time to time received from the Debtor, any one or more of the Guarantors or any other person, firm or corporation on account of such part or parts of the Indebtedness owing by the Debtor to the Lender, in such manner as the Lender deems best and the changing of such application in whole or in part and at any time or from time to time;
 - (k) the release or discharge of the Debtor (including, without limitation, as part of any novation effected in connection with the Commitment and the Indebtedness) or of any one or more of the Guarantors by operation of law or otherwise;
 - (l) any change in the name, objects, capital structure, constitution or legal status of the Lender, any of the Guarantors or the Debtor;
 - (m) the sale of the Debtor's business or any part thereof;
 - (n) any amalgamation, arrangement or reorganization of the Lender, the Debtor or any of the Guarantors;
 - (o) the death, incapacity or bankruptcy of the Lender, the Debtor or any of the Guarantors;
 - (p) any change in the membership of the Debtor's firm through the death or retirement of one or more partners or the introduction of one or more other partners or otherwise; or
 - (q) any other act, omission, matter or circumstance which, but for this paragraph 4, would or might constitute a legal or equitable discharge or defence of a surety or guarantor.
5. Each of the Guarantors hereby expressly waives notice of the acceptance of this guarantee and notice of non-performance, non-payment or non-observance on the part of the Debtor of any of the terms, covenants, conditions and provisions of the Commitment or any of the Security or the non-payment of any amounts owing by the Debtor to the Lender.

6. Without prejudice to any of the rights or recourses which the Lender may have against the Debtor, each of the Guarantors hereby expressly waives any right to require the Lender to:

- (a) value, realize upon or dispose of any security or securities of the Debtor or any other person, firm or corporation held by the Lender; or
- (b) initiate or exhaust any other remedy which the Lender may have in law or equity;

before requiring or becoming entitled to demand payment from the Guarantors or any of them under this guarantee and each of the Guarantors renounces all benefits of discussion and division.

7. The liability of the Guarantors under this guarantee shall not be, and shall not be deemed to have been, waived, released, discharged, mitigated, impaired or affected:

- (a) by or upon the receivership, bankruptcy, winding-up, dissolution or distribution of the assets of the Debtor (whether voluntary or compulsory); or
- (b) by the failure or omission of the Lender in any of the events set out in subparagraph 7(a) above to prove its claim or prove its full claim; or
- (c) in the event that the Debtor should make a bulk sale of any of its assets within the provisions of any *Bulk Sales Act* or any composition with creditors or scheme of arrangement,

and upon the occurrence of any of the events set out in subparagraphs 7(a) and (c) above, all Indebtedness owing to the Lender by the Debtor shall at the sole option of the Lender, thereupon immediately be due and payable to the Lender. In such event, the Lender shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full, and the Guarantors shall continue to be jointly and severally liable hereunder for any balance of the Indebtedness which may be owing to the Lender by the Debtor. The retention by the Lender of any security or securities shall not, as between the Lender and each of the Guarantors, be considered as a purchase of such securities, or as payment, satisfaction or reduction of the Indebtedness due to the Lender by the Debtor or any part thereof.

8. All advances, renewals, extensions and credits:

- (a) made or granted by the Lender to the Debtor;
- (b) made or granted by the Lender purportedly to or for the Debtor after the bankruptcy or insolvency of the Debtor, whether or not the Lender has received notice thereof; and
- (c) obtained from the Lender purportedly by or on behalf of the Debtor;

shall be deemed to form part of the Indebtedness of the Debtor that is guaranteed hereunder, and this guarantee and the covenants, agreements and obligations of the Guarantors

contained herein shall nevertheless be binding upon each of the Guarantors, jointly and severally, until such time as all such monies have been paid in full to the Lender and all Indebtedness owing to the Lender by the Debtor has been discharged, notwithstanding:

- (i) any lack or limitation of power, incapacity or disability of the Debtor or of the partners, directors, officers or agents thereof;
- (ii) that the Debtor may not be a legal or suable entity;
- (iii) any irregularity, defect or informality in the obtaining of such advances, extensions, renewals or credits, whether or not the Lender had or should have had knowledge thereof;
- (iv) that for any reason the Debtor has no legal existence, or is or becomes under no legal obligation to discharge and repay the Indebtedness owing to the Lender by the Debtor; or
- (v) that any monies owing by the Debtor to the Lender become irrecoverable from the Debtor by operation of law or for any reason whatsoever, including without limitation because the Commitment or any other agreement between the Debtor and the Lender is void or voidable or is ultra vires the Lender,

and any such advance, extension, renewal or credit which may not be recoverable from the undersigned as guarantors, shall be recoverable from each of the Guarantors, jointly and severally, as principal debtors in respect thereof and shall be paid to the Lender on demand with interest at the rate set out in paragraph 3 hereof.

9. All compositions and payments received by the Lender from the Debtor or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of the Guarantors to claim the benefit thereof in reduction of the Indebtedness owing to the Lender by the Debtor. The Guarantors shall not be entitled to claim repayment against the Debtor and shall not have any right to be subrogated in any rights of the Lender until all Indebtedness owing to the Lender by the Debtor have been discharged to the satisfaction of the Lender and the Lender has, by express release in writing, relieved all of the Guarantors of their joint and several obligations hereunder.
10. This guarantee shall be in addition to and not in substitution for any other guarantees or other securities which the Lender may now or hereafter hold in respect of the Indebtedness owing to the Lender by the Debtor and the Lender shall be under no obligation to marshal in favour of the Guarantors any other guarantees or other securities or any moneys or other assets which the Lender may be entitled to receive or may have a claim upon.
11.
 - (a) All debts and liabilities, present and future, of the Debtor to the Guarantors or any of them or of a Guarantor to the other Guarantor, and all claims, present and future, of the Guarantors or any of them against the Debtor or the other Guarantor (whether

by subrogation or otherwise) are hereby assigned to the Lender and postponed to the present and future debts and liabilities of the Debtor to the Lender and any payment by the Debtor or a Guarantor of any of the assigned and postponed debts and liabilities to the Guarantors or any of them shall be received and held in trust for the Lender by such Guarantor or Guarantors and paid over to the Lender forthwith upon demand therefor. In addition to the foregoing assignment, each of the Guarantors hereby assigns and transfers to the Lender all its right, title and interest in and to all debts, liabilities, demands and choses in action which are now due, owing, accruing due or which may hereafter become due, owing or accruing due to such Guarantor by the Debtor or the other Guarantor and all claims of whatsoever nature or kind which each Guarantor now has or may hereafter have under any agreement to which any of the Guarantors is or may hereafter be a party (and all amendments which have been made or may hereafter be made thereto) including, without limitation, all contracts, securities, bills, notes, judgements, mortgages and all other rights and benefits which now are or may hereafter be vested in such Guarantor in respect of or as security for any of the said debts, liabilities, demands, choses in action and claims; and also all books, accounts, invoices, letters, papers and documents in any way evidencing or relating to any of the said debts, liabilities, demands, choses in action and claims (all of the foregoing, including all debts and liabilities of the Debtor or any of the Guarantors to each of the Guarantors, being hereinafter collectively referred to as the “Assigned Debts”).

- (b) The Guarantors expressly authorize the Lender:
 - (i) to collect, demand, sue for, enforce, recover and receive any of the Assigned Debts and to give a valid and binding receipt and discharge therefor as if the Lender were the absolute owner thereof; and
 - (ii) to dispose of (either by public or private sale), realize or enforce any of the Assigned Debts at such time, in such manner, upon such terms and conditions and for such consideration as the Lender may deem advisable, either in its own name or in the name of the Guarantors or any of them, without notice to the Guarantors or any of them and without prejudice to any rights the Lender may have against other parties or to the right the Lender may have against the Guarantors for any deficiency; and upon a sale the Lender shall have the right to buy the whole or any portion of the Assigned Debts offered for sale and the rights of the Guarantors therein shall thereupon be extinguished.
- (c) Each of the Guarantors shall from time to time forthwith upon the request of the Lender furnish to the Lender in writing all information requested relating to the Assigned Debts, including, without limitation, details of any written evidence of such Assigned Debts and any security held by any of the Guarantors with respect to any of the Assigned Debts.

- (d) Each of the Guarantors covenants and agrees that all moneys received by the Guarantors or any of them from or in respect of any of the Assigned Debts shall be received and held by such Guarantor or Guarantors in trust for the Lender.
 - (e) Each of the Guarantors covenants and declares that none of the Assigned Debts have been assigned to or pledged or encumbered in favour of any other person, firm or corporation and each of the Guarantors covenants and agrees with the Lender not to assign, pledge or encumber the Assigned Debts or any of them, so long as this agreement remains in force, to or in favour of any other person, firm or corporation without the written consent of the Lender; and each of the Guarantors also covenants and declares that all taxes and imposts whatever levied or imposed upon or in respect of any dealings with goods from the sale of which the Assigned Debts or any of them may have arisen or may hereafter arise have been or will be fully paid and satisfied by the Guarantors and each of them.
 - (f) This assignment and postponement is independent of this guarantee and shall remain in full effect until repayment in full to the Lender of all indebtedness and liabilities owing by the Debtor to the Lender and the payment of any amounts owing to the Lender hereunder notwithstanding that the joint and several liabilities of the Guarantors or any of them under this guarantee may have been discharged or terminated. Each of the Guarantors hereby acknowledges that the assignments to the Lender as set forth herein shall not impose upon the Lender any obligation to do anything to realize on the Assigned Debts or to ensure that the Assigned Debts do not become statute barred by the operation of law relating to limitations of action or otherwise.
12. No action or proceeding brought or instituted under this guarantee and no recovery or judgement in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this guarantee by reason of any further default or defaults under this guarantee or in the payment of any amounts due by the Debtor.
13. No failure to exercise and no delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other rights, powers or privileges. The rights and remedies herein provided for are cumulative and not exclusive of any rights or remedies provided in law or equity.
14. No modification of this guarantee shall be effective unless it is in writing and signed by the Guarantors and the Lender.
15. The Lender shall not be concerned to see or inquire into the existence, powers or capacities of the Debtor, the Guarantors or the officers, directors or agents acting or purporting to act on behalf of the Debtor.
16. All terms, agreements and conditions of this guarantee shall extend to and be binding upon the Guarantors and their respective heirs, executors, administrators, personal

representatives, successors and permitted assigns and shall enure to the benefit of and may be enforced by the Lender and its successors and assigns.

17. This guarantee shall be exclusively governed by and construed in accordance with the laws of the Province of Ontario and for the purpose of legal proceedings, this guarantee shall be deemed to have been made in the Province of Ontario and the courts of the Province of Ontario shall have exclusive jurisdiction over all disputes which may arise under this guarantee.
18. This guarantee sets out all agreements between the parties hereto relative to the guarantee and the assignment and postponement of claim herein contained and none of the parties shall be bound by any representation, warranty or promise made by any person relative hereto which is not embodied herein; and it is specifically acknowledged and agreed that this guarantee has been delivered by each of the Guarantors free of any conditions whatsoever and that no representations, warranties or promises have been made to any one or more of the Guarantors affecting their joint and several liabilities hereunder, and that the Lender shall not be bound by any representations, warranties or promises now or at any time hereafter made by the Debtor to any one or more of the Guarantors. This guarantee shall be binding upon and enforceable against every signatory hereto notwithstanding the non-execution hereof by any other proposed signatory or signatories.
19. Any term, condition or provision of this guarantee which is or is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severable herefrom and be ineffective to the extent of such avoidance, prohibition or unenforceability without invalidating the remaining terms, conditions and provisions hereof and any such avoidance, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.
20. If the Debtor amalgamates with any other corporation or corporations, the undersigned acknowledges that the Indebtedness shall include: (i) all indebtedness and obligations of each amalgamating corporation (including the Debtor) to the Lender in existence at the time of such amalgamation; and (ii) all obligations of the amalgamated corporation to the Lender incurred or arising from time to time after such amalgamation. After such amalgamation, all references herein to the "**Debtor**" shall mean the amalgamated corporation and all other provisions of this Agreement shall be deemed to have been amended to the extent required by the context in order to reflect such amalgamation.
21. All nouns and personal pronouns herein shall be read and construed as the number and gender may require in each case and the verb shall be read and construed as agreeing with such noun or pronoun.
22. The words "**herein**", "**hereof**", "**hereunder**", "**herefrom**", "**the guarantee**" and "**this guarantee**" refer to this entire agreement and not to any particular paragraph or subparagraph unless the context so requires.
23. Each of the Guarantors hereby acknowledges receipt of a copy of this guarantee.

24. The address of each of the Guarantors for the purposes of this guarantee and postponement of claim shall be:

1944 Fowler Drive
Mississauga, Ontario
L5K 0A1

unless the Lender receives written notice of a change in such address.

25. The Guarantors each acknowledge receipt of a copy of the financing statement or statements registered under the *Personal Property Security Act* (Ontario) with respect to this Guarantee.
26. This Guarantee may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.

[Signing Page Follows]

IN WITNESS WHEREOF the Guarantors have duly executed this guarantee and postponement of claim this 31 day of Dec, 2021.
10

VANDYK HOLDINGS INCORPORATED

Per:


Name: Richard Ma
Title: Chief Financial Officer

I have authority to bind the corporation.


Witness


JOHN VANDYK l/s

LIMITED RECOURSE GUARANTEE

THIS GUARANTEE made as of the ____ day of _____, 2023.

B E T W E E N:

VANDYK HOLDINGS INCORPORATED

(the "**Guarantor**")

OF THE FIRST PART

- and -

DORR CAPITAL CORPORATION

(the "**Lender**")

OF THE SECOND PART

WHEREAS Vandyk – Lakeview-DXE-West Limited (the "**Mortgagor**"), as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Lender, as mortgagee, of the lands charged therein (the "**Lands**") notice of which was registered on December 10, 2021 as Instrument No. PR3960399 in the Land Registry Office for Peel to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

AND WHEREAS the Guarantor will benefit from extension of the Loan Indebtedness to the Mortgagor and the Lender has stipulated that the Guarantor enter into this Guarantee as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations,

NOW THEREFORE IN CONSIDERATION of the recitals, the Lender extending the Loan Indebtedness and for such other good and valuable consideration received by the Guarantor, the receipt and adequacy of which is acknowledged by the Guarantor, the Guarantor agrees with the Lender as follows:

ARTICLE 1

DEFINITIONS, INTERPRETATION

1.1 Definitions

In this Guarantee capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Mortgage. Otherwise, in this Guarantee:

- (a) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time

assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;

- (b) "**Loan Indebtedness**" means any Indebtedness from time to time of the Mortgagor and any of the other Covenantors to the Lender arising under any of the Loan Documents; and
- (c) "**Loan Obligations**" means the obligations of the Mortgagor and any of the other Covenantors arising under the Loan Documents.

1.2 Interpretation

For the purposes of this Guarantee, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

1.3 Headings

In this Guarantee, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Guarantee.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Guarantor

The Guarantor makes the following representations and warranties to the Lender which will continue to be true and correct as long as any Loan Indebtedness remains unpaid:

- (a) the Guarantor is executing and delivering this Guarantee at the sole and exclusive request of the Mortgagor;
- (b) the Guarantor has derived or expects to derive financial and other advantage from the Loan Indebtedness;
- (c) the Guarantor has not received or relied on any representation from the Lender or any agreement or undertaking with the Lender or any officer, employee or agent of the Lender, except as expressly set out in this Guarantee;
- (d) the Mortgagor has furnished the Guarantor with all financial and other information and copies of all agreements and documents the Guarantor has requested concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations and the nature and extent of the risk the Guarantor incurs under this Guarantee;

- (e) the Guarantor has established means satisfactory to it of obtaining from the Mortgagor, independently of the Lender, such other information and copies of all agreements and other writings the Guarantor deems desirable concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations, the Mortgagor's and any of the other Covenantors' relationship with the Lender and the nature and extent of the risk the Guarantor incurs under this Guarantee;
- (f) the Guarantor:
 - (i) is an entity validly formed and existing under the laws of its jurisdiction of incorporation;
 - (ii) has the legal right and all necessary corporate or other power and authority to own its assets and carry on its business in all material respects;
 - (iii) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect; and
 - (iv) has all requisite power and authority to enter into and perform its obligations under this Guarantee, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder to be done, observed or performed by it in accordance with the terms hereof;
- (g) the execution and delivery by the Guarantor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Guarantee will not conflict with or result in a breach of any of the terms, conditions or provisions of:
 - (i) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
 - (ii) any applicable laws;
 - (iii) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets; or
 - (iv) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;
- (h) the execution and delivery by the Guarantor of this Guarantee, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation,

declaration or filing with any governmental entity, or other person, is or was necessary in connection with the execution, delivery and performance of the Guarantor's obligations under this Guarantee to which it is a party, except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect;

- (i) this Guarantee has been duly executed and delivered, as the case may be, by the Guarantor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally), is (or will be immediately upon the execution thereof by such person) in full force and effect, and the Guarantor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by the Guarantor.

ARTICLE 3 **COVENANTS**

3.1 Covenants

The Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender:

- (a) in addition to and separate and distinct from its agreements in Subsections 3.1(b) and 3.1(c), to guarantee to the Lender the repayment by the Mortgagor and any of the other Covenantors of the Loan Indebtedness and to guarantee to the Lender the punctual performance of the Loan Obligations;
- (b) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(c), to indemnify and save harmless the Lender from and against all loss, damage, expenses, costs and liability whatsoever which shall arise from or be caused by the default or breach by the Mortgagor and any of the other Covenantors with respect to the repayment of the Loan Indebtedness and the performance of the Loan Obligations;
- (c) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(b), as primary obligor and not as guarantor, to repay the Loan Indebtedness and to perform the Loan Obligations; and
- (d) that it will not at any time prior to the repayment in full of all Loan Indebtedness accept from the Mortgagor; (i) the repayment of any loans (principal or interest) to, (ii) the redeeming or purchase of any shares or units or partnership interests held by or on behalf of, (iii) the payment of any compensation, fee or other amount to, or (iv) the payment of any distributions or dividends or return on partnership or shareholder investment to, in each case, the Guarantor or any shareholder, unitholder or partner of the Guarantor or any other person not at arms-length to any of the foregoing.

3.2 Nature of Obligations of the Guarantor

The Guarantor covenants and agrees with the Lender that:

- (a) except as expressly set out in this Guarantee the obligations and liabilities of the Guarantor under this Guarantee will be irrevocable and as long as any of the Loan Indebtedness remains unpaid, will continue and be of full force and effect and will not be terminated or in any manner affected, and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by:
 - (i) the dissolution, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors or the institution of any proceeding relating thereto, any continuance, reorganization or change in the business, directors, management, objects, organization or shareholders of the Mortgagor or any of the other Covenantors, the amalgamation of the Mortgagor or any of the other Covenantors with another corporation, the sale or disposal of or appointment of a liquidator, receiver, receiver-manager, receiver and manager or trustee in respect of any of the assets or undertaking of the Mortgagor or any of the other Covenantors, any distribution of the assets of the Mortgagor or any of the other Covenantors on any arrangement, bankruptcy, composition insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors, any other marshalling of any of the assets of the Mortgagor or any of the other Covenantors or any other act or event which constitutes a novation of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness and the Loan Obligations, whether by substitution of the obligations or liabilities of any other person in place of those of the Mortgagor or any of the other Covenantors or otherwise;
 - (ii) any obligation or liability of the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, the Guarantor, whether under this Guarantee or otherwise or any agreement or instrument evidencing any such obligation or liability at any time being unenforceable;
 - (iii) any defect in, omission from, failure to file or register, or defective filing or registration of any document under which the Lender has taken security for payment of the Loan Indebtedness or for performance of the Loan Obligations, or any failure or loss in respect of any such security of the Lender, whether arising in connection with the fault of the Lender or otherwise;
 - (iv) any issue or levy by any administrative, government, judicial or other authority or arbitrator of any award, execution, injunction, judgment, order, attachment, writ or similar process against the Mortgagor or any of the

Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise;

- (v) any occurrence or non-occurrence of any other act or event which would result in termination, discharge, limitation, merger, novation, reduction or release of the Guarantor or of any of its obligations or liabilities under this Guarantee or which would otherwise prejudice or impair any right of the Lender under this Guarantee; or
 - (vi) any sale, transfer, agreement to sell or other disposition of the Lands by the Mortgagor or any of the Covenantors;
- (b) the obligations and liabilities of the Guarantor under this Guarantee are absolute and independent of and not in consideration of or conditional on any other obligation or liability of the Guarantor, the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, or any prior notice or protest to, demand upon or action, suit or other proceeding against the Mortgagor or any of the other Covenantors. The Lender may bring or prosecute a separate action, suit or other proceeding against the Guarantor whether it is brought or prosecuted against the Mortgagor or any of the other Covenantors or whether the Mortgagor or any of the other Covenantors is joined;
- (c) this Guarantee will be binding in respect of any modification or renewal of the Loan Indebtedness or the Loan Obligations by the Mortgagor, any of the other Covenantors or any subsequent owner of the Lands, whether or not the Guarantor has consented to same and whether or not such modification or renewal constitutes an adverse or material alteration of the Guarantor's obligations under this Guarantee; and
- (d) any part payment by the Mortgagor and/or any of the other Covenantors of any of the Loan Indebtedness or part performance of any of the Loan Obligations that operates to extend any statute of limitations or law of prescription as to the Mortgagor and/or any of the other Covenantors will operate to extend such statute of limitations or law of prescription as to each Guarantor to the extent permitted by applicable law.

3.3 Recourse

It is a condition of this Guarantee, and the Lender hereby agrees that, notwithstanding any other provision of this Guarantee, the Lender's recourse against the Guarantor and the liability of the Guarantor for any indebtedness, liability or obligation to the Lender under this Guarantee shall be limited to the Lender's rights under the specific assignment of cash distributions dated as of the date hereof granted by the Guarantor to and in favour of the Lender (the "**Specific Assignment of Cash Distributions**"), in and to the Distributions (as defined therein), and the Lender shall have no claim against the Guarantor in respect of any deficiency or be entitled to seek recourse against any other asset or property of the

Guarantor, provided however nothing herein shall limit the Lender's recourse against the interest of the Guarantor in and to the Distributions as this term is defined in the Specific Assignment of Cash Distributions.

3.4 Authorizations

The Guarantor authorizes the Lender, in the sole discretion of the Lender, without notice to or demand on the Guarantor and without in any manner affecting any obligation or liability of the Guarantor under this Guarantee or any security furnished to the Lender by the Guarantor in connection with the Loan Indebtedness and the Loan Obligations or prejudicing or impairing any right of the Lender under this Guarantee, from time to time to:

- (a) adjust, compromise, extend, modify, accelerate, renew or otherwise change the time, form or manner for payment of or any term in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, increasing or decreasing the rate of interest, changing the method of calculation of interest, extending the term, or altering the periodic payments;
- (b) take any security for payment of the Loan Indebtedness or for performance of the Loan Obligations and enforce, exchange, perfect, release, subordinate, subrogate, substitute, surrender, waive or take advantage of or defer or waive taking, perfecting, enforcing or otherwise taking advantage of any such security and apply such security and direct the manner of sale as the Lender determines in its sole discretion;
- (c) compromise, release, substitute, delay or waive the exercise of any right or remedy against the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations;
- (d) grant any other indulgence to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations and deal with all or any of such persons as the Lender sees fit;
- (e) accept payment of any Loan Indebtedness from the Mortgagor or any of the other Covenantors incurred by the Mortgagor or any of the other Covenantors after the execution of this Guarantee;
- (f) apply any payment by, recovery from or credit, deposit or offset due to, or any funds realized from any security furnished to the Lender by the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations, to any Indebtedness, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise of the Mortgagor, the Guarantor or any of the other Covenantors to the Lender, as the case may be, in such manner and at such times as the Lender in its sole discretion determines;
- (g) otherwise deal with the Mortgagor, the Guarantor or any of the other Covenantors or the Loan Indebtedness, the Loan Obligations or any security provided to the

Lender by the Mortgagor, the Guarantor or any of the other Covenantors as the Lender deems appropriate; and

- (h) impose a lien on or set off any money, security or other property of the Guarantor at any time in the possession of or on deposit with the Lender, whether held in a special account or on deposit or for safekeeping or otherwise, against any payment due from the Guarantor to the Lender under this Guarantee.

3.5 Waiver

Subject to compliance with applicable laws by the Lender, the Guarantor unconditionally waives:

- (a) any right to receive from the Lender any communication with respect to the Loan Indebtedness, the Loan Obligations or any other obligation or liability of the Guarantor under this Guarantee, or of any of the other Covenantors liable in respect of any of the Loan Indebtedness or the Loan Obligations, including, without limitation:
 - (i) any notice of the creation or existence of any Indebtedness, the intention of the Lender to act on or in reliance on any obligation or liability of the Guarantor, whether under this Guarantee or otherwise, or of any of the other Covenantors, or any default by or non-observance of any obligation of the Mortgagor, the Guarantor or any of the other Covenantors;
 - (ii) any communication of any information known by the Lender relating to the financial condition of the Mortgagor or any of the other Covenantors or to any other circumstance bearing upon the risk of non-payment of any Loan Indebtedness or non-performance of any of the Loan Obligations; or
 - (iii) any demand for performance, notice of dishonour, notice of protest, presentment or protest relating to any obligation or liability of the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations;
- (b) any right to require the Lender to:
 - (i) proceed against the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, any right or benefit of discussion or division;
 - (ii) proceed against or exhaust any security furnished to the Lender by the Mortgagor, the Guarantor or any of the other Covenantors;
 - (iii) first apply any property or assets of the Mortgagor or any of the other Covenantors to the discharge of the Loan Indebtedness and the Loan Obligations or to marshal in favour of the Guarantor; or

- (iv) pursue or exercise any other right or remedy of the Lender whatsoever;
- (c) as long as any of the Loan Indebtedness remains unpaid or any of the Loan Obligations have not been performed, any right of subrogation to or any right to enforce any right or remedy of the Lender in respect of the Mortgagor or any of the other Covenantors or any security provided to the Lender by the Mortgagor or any of the other Covenantors or any benefit of or right to participate in any such security; and
- (d) any defence arising out of or in connection with:
 - (i) any absence, impairment or loss of any right of contribution, reimbursement or subrogation or any other right or remedy of the Guarantor in respect of the Mortgagor or any of the other Covenantors;
 - (ii) any disability, incapacity or other defence available to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, or any cessation from any cause whatsoever of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness or the Loan Obligations; or
 - (iii) any other circumstance which might otherwise constitute a defence to any action, suit or other proceeding against the Guarantor, whether under this Guarantee or otherwise.

3.6 Bankruptcy, etc.

In the event of any distribution of any of the assets of the Mortgagor, the Guarantor or any of the other Covenantors, any arrangement, bankruptcy, composition, execution, sale, insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any proceeding for the dissolution, liquidation, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors, voluntary or involuntary, whether or not involving bankruptcy or insolvency proceedings, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors or any other marshalling of any of the assets of any such person:

- (a) no obligation or liability of the Guarantor under this Guarantee will be terminated or in any manner affected and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by same or by any omission by the Lender to prove its claim or its full claim and the Lender may prove such claim as it sees fit and may refrain from proving any claim and may value or refrain from valuing any security held by the Lender; and
- (b) if any of the Loan Indebtedness is unpaid or if any of the Loan Obligations has not been performed, the Lender has the right to include in any claim made by it all sums paid by the Guarantor, whether under this Guarantee or otherwise, and to prove and rank for and receive dividends in respect of such claim, all right to prove and rank for such sums paid by the Guarantor and to receive the full amount of all dividends

in respect thereof, which are hereby assigned and transferred by the Guarantor to the Lender.

ARTICLE 4
MISCELLANEOUS

4.1 Payments

All payments required to be made by the Guarantor to the Lender under this Guarantee will be made at the address of the Lender set out in Section 4.12 (or at any other place specified by the Lender by written notice to the Guarantor) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

4.2 Guarantor to Keep Informed

As long as any of the Loan Indebtedness is unpaid or the Loan Obligations have yet to be performed in full the Guarantor assumes responsibility for keeping itself informed of the financial condition of the Mortgagor and any of the other Covenants and of all other circumstances bearing on the risk it incurs under this Guarantee.

4.3 Lender's Records

The records of the Lender as to the Loan Indebtedness, the Loan Obligations or any failure by the Mortgagor or any of the other Covenants to make full and punctual payment or performance when due are conclusive evidence of the relevant facts without further proof.

4.4 Release

Upon payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, this Guarantee shall terminate and the Lender shall, upon the receipt of a request in writing from the Guarantor and at the Guarantor's expense, provide such releases and other documents as the Guarantor may reasonably request evidencing the termination of this Guarantee.

4.5 Failure of Indulgence Not Waiver

No extension of time, waiver, or other indulgence given by the Lender to the Guarantor, or anyone claiming under the Guarantor, shall in any way affect or prejudice the rights of the Lender against the Guarantor or any other Covenantor. Each power and right under this Guarantee is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

4.6 Modification

No modification or waiver of this Guarantee is binding on the Lender unless made in writing and signed by a duly authorized officer of the Lender.

4.7 Entire Agreement

On execution and delivery by the Guarantor, this Guarantee is deemed to be finally executed and delivered by the Guarantor to the Lender and is not subject to or affected by any condition as to the receipt by the Lender of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Lender of any other Loan Documents, nor by any promise or condition affecting the liability of the Guarantor. No agreement, promise, representation or statement by the Lender or any of its officers, employees or agents unless in this Guarantee forms part of this Guarantee, has induced the making of it or affects the liability of the Guarantor and the Mortgagor under it.

4.8 Severability

If any Section or part thereof of this Guarantee is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Guarantee and will not affect the validity or enforceability of any other part of this Guarantee.

4.9 Non-Merger

The giving of this Guarantee is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Guarantee, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Lender.

4.10 Paramountcy

The provisions of any agreement between any Guarantor and the Lender in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Guarantee except where inconsistent with the provisions hereof. In the case of any inconsistency between this Guarantee and the Mortgage, the provisions of the Mortgage shall prevail.

4.11 Assignability

The Guarantor hereby consents to the Lender assigning, transferring or selling all or any portion of its interest under this Guarantee in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Lender may enter into participation, contending or syndication agreements with other lenders in connection with this Guarantee, the Loan Indebtedness and the Loan Obligations. The Lender may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning the Guarantor, this Guarantee, the Loan Indebtedness and the Loan Obligations.

4.12 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Guarantee shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Guarantor:

1944 Fowler Drive
Mississauga, Ontario
L5K 0A1

Attention: John Vandyk
Email: jvandyk@vandyk.com
Facsimile: 905-823-4014

with a copy to the Guarantor's solicitors at

Schneider Ruggiero Spencer Milburn LLP
120 Adelaide Street West, Suite 1000
Toronto, Ontario
M5H 3V1

Attention: Bruce Milburn
Email: bmilburn@srllawpractice.com
Facsimile: 416-363-0645

(b) to the Lender:

41 Scarsdale Road, Unit 6
Toronto, Ontario
M3B 2R2

Attention: Judy Wong
Email: JWong@DorrCapital.com

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered personally or by courier, or transmitted by electronic or digital transmission (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3rd) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as

aforsaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

4.13 Expenses, Fees and Indemnity

The Guarantor will pay to the Lender all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Lender in connection with the collection of any amount payable under this Guarantee by the Guarantor to the Lender. The Guarantor shall indemnify the Lender against all claims, loss or damages arising out of or in connection with any breach or default by the Guarantor under this Guarantee.

4.14 Applicable Law

This Guarantee and the rights and obligations of the Guarantor and the Lender under it are governed by and construed according to the laws of the jurisdiction in which the Lands are situate and the laws of Canada applicable therein.

4.15 Time of the Essence

Time is of the essence of this Guarantee.

4.16 Execution by the Lender

This Guarantee need not be executed by the Lender to be binding on and to enure to the benefit of the Lender.

4.17 Counterparts

This Guarantee may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document. A signed copy of this Guarantee or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this Guarantee.

4.18 Further Assurances

The Guarantor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this Guarantee.

4.19 Successors and Assigns

This Guarantee is binding on and enures to the benefit of the Lender and the Guarantor and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Lender may grant any participation in this Guarantee, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Lender under this Guarantee or any of the Lender's interest herein or in the Loan Indebtedness and the Loan Obligations.

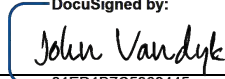
4.20 Multiple Parties

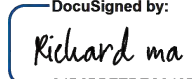
If the Guarantor consists of more than one party, this Guarantee will be read with all necessary grammatical changes and each reference to the Guarantor includes each and every such Person or corporation individually. All covenants and agreements herein of the Guarantor are the joint and several covenants and agreements of each such Person. If the Lender consists of more than one party, this Guarantee will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Lender under this Guarantee.

-- signatures follow on next page --

IN WITNESS WHEREOF the Guarantor has executed this Guarantee as of the date and year first written above.

VANDYK HOLDINGS INCORPORATED

Per: 
Name: 81ED1B7C5369445...
Title:

Per: 
Name: 04B6BBEDEC840B
Title:

LIMITED RECOURSE GUARANTEE

THIS GUARANTEE made as of the ____ day of _____, 2023.

B E T W E E N:

VANDYK PROPERTIES INCORPORATED

(the "**Guarantor**")

OF THE FIRST PART

- and -

DORR CAPITAL CORPORATION

(the "**Lender**")

OF THE SECOND PART

WHEREAS Vandyk – Lakeview-DXE-West Limited (the "**Mortgagor**"), as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Lender, as mortgagee, of the lands charged therein (the "**Lands**") notice of which was registered on December 10, 2021 as Instrument No. PR3960399 in the Land Registry Office for Peel to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

AND WHEREAS the Guarantor will benefit from extension of the Loan Indebtedness to the Mortgagor and the Lender has stipulated that the Guarantor enter into this Guarantee as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations,

NOW THEREFORE IN CONSIDERATION of the recitals, the Lender extending the Loan Indebtedness and for such other good and valuable consideration received by the Guarantor, the receipt and adequacy of which is acknowledged by the Guarantor, the Guarantor agrees with the Lender as follows:

ARTICLE 1
DEFINITIONS, INTERPRETATION

1.1 Definitions

In this Guarantee capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Mortgage. Otherwise, in this Guarantee:

- (a) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time

assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;

- (b) "**Loan Indebtedness**" means any Indebtedness from time to time of the Mortgagor and any of the other Covenantors to the Lender arising under any of the Loan Documents; and
- (c) "**Loan Obligations**" means the obligations of the Mortgagor and any of the other Covenantors arising under the Loan Documents.

1.2 Interpretation

For the purposes of this Guarantee, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

1.3 Headings

In this Guarantee, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Guarantee.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Guarantor

The Guarantor makes the following representations and warranties to the Lender which will continue to be true and correct as long as any Loan Indebtedness remains unpaid:

- (a) the Guarantor is executing and delivering this Guarantee at the sole and exclusive request of the Mortgagor;
- (b) the Guarantor has derived or expects to derive financial and other advantage from the Loan Indebtedness;
- (c) the Guarantor has not received or relied on any representation from the Lender or any agreement or undertaking with the Lender or any officer, employee or agent of the Lender, except as expressly set out in this Guarantee;
- (d) the Mortgagor has furnished the Guarantor with all financial and other information and copies of all agreements and documents the Guarantor has requested concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations and the nature and extent of the risk the Guarantor incurs under this Guarantee;

- (e) the Guarantor has established means satisfactory to it of obtaining from the Mortgagor, independently of the Lender, such other information and copies of all agreements and other writings the Guarantor deems desirable concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations, the Mortgagor's and any of the other Covenantors' relationship with the Lender and the nature and extent of the risk the Guarantor incurs under this Guarantee;
- (f) the Guarantor:
 - (i) is an entity validly formed and existing under the laws of its jurisdiction of incorporation;
 - (ii) has the legal right and all necessary corporate or other power and authority to own its assets and carry on its business in all material respects;
 - (iii) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect; and
 - (iv) has all requisite power and authority to enter into and perform its obligations under this Guarantee, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder to be done, observed or performed by it in accordance with the terms hereof;
- (g) the execution and delivery by the Guarantor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Guarantee will not conflict with or result in a breach of any of the terms, conditions or provisions of:
 - (i) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
 - (ii) any applicable laws;
 - (iii) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets; or
 - (iv) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;
- (h) the execution and delivery by the Guarantor of this Guarantee, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation,

declaration or filing with any governmental entity, or other person, is or was necessary in connection with the execution, delivery and performance of the Guarantor's obligations under this Guarantee to which it is a party, except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect;

- (i) this Guarantee has been duly executed and delivered, as the case may be, by the Guarantor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally), is (or will be immediately upon the execution thereof by such person) in full force and effect, and the Guarantor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by the Guarantor.

ARTICLE 3 **COVENANTS**

3.1 Covenants

The Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender:

- (a) in addition to and separate and distinct from its agreements in Subsections 3.1(b) and 3.1(c), to guarantee to the Lender the repayment by the Mortgagor and any of the other Covenantors of the Loan Indebtedness and to guarantee to the Lender the punctual performance of the Loan Obligations;
- (b) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(c), to indemnify and save harmless the Lender from and against all loss, damage, expenses, costs and liability whatsoever which shall arise from or be caused by the default or breach by the Mortgagor and any of the other Covenantors with respect to the repayment of the Loan Indebtedness and the performance of the Loan Obligations;
- (c) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(b), as primary obligor and not as guarantor, to repay the Loan Indebtedness and to perform the Loan Obligations; and
- (d) that it will not at any time prior to the repayment in full of all Loan Indebtedness accept from the Mortgagor; (i) the repayment of any loans (principal or interest) to, (ii) the redeeming or purchase of any shares or units or partnership interests held by or on behalf of, (iii) the payment of any compensation, fee or other amount to, or (iv) the payment of any distributions or dividends or return on partnership or shareholder investment to, in each case, the Guarantor or any shareholder, unitholder or partner of the Guarantor or any other person not at arms-length to any of the foregoing.

3.2 Nature of Obligations of the Guarantor

The Guarantor covenants and agrees with the Lender that:

- (a) except as expressly set out in this Guarantee the obligations and liabilities of the Guarantor under this Guarantee will be irrevocable and as long as any of the Loan Indebtedness remains unpaid, will continue and be of full force and effect and will not be terminated or in any manner affected, and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by:
 - (i) the dissolution, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors or the institution of any proceeding relating thereto, any continuance, reorganization or change in the business, directors, management, objects, organization or shareholders of the Mortgagor or any of the other Covenantors, the amalgamation of the Mortgagor or any of the other Covenantors with another corporation, the sale or disposal of or appointment of a liquidator, receiver, receiver-manager, receiver and manager or trustee in respect of any of the assets or undertaking of the Mortgagor or any of the other Covenantors, any distribution of the assets of the Mortgagor or any of the other Covenantors on any arrangement, bankruptcy, composition insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors, any other marshalling of any of the assets of the Mortgagor or any of the other Covenantors or any other act or event which constitutes a novation of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness and the Loan Obligations, whether by substitution of the obligations or liabilities of any other person in place of those of the Mortgagor or any of the other Covenantors or otherwise;
 - (ii) any obligation or liability of the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, the Guarantor, whether under this Guarantee or otherwise or any agreement or instrument evidencing any such obligation or liability at any time being unenforceable;
 - (iii) any defect in, omission from, failure to file or register, or defective filing or registration of any document under which the Lender has taken security for payment of the Loan Indebtedness or for performance of the Loan Obligations, or any failure or loss in respect of any such security of the Lender, whether arising in connection with the fault of the Lender or otherwise;
 - (iv) any issue or levy by any administrative, government, judicial or other authority or arbitrator of any award, execution, injunction, judgment, order, attachment, writ or similar process against the Mortgagor or any of the

Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise;

- (v) any occurrence or non-occurrence of any other act or event which would result in termination, discharge, limitation, merger, novation, reduction or release of the Guarantor or of any of its obligations or liabilities under this Guarantee or which would otherwise prejudice or impair any right of the Lender under this Guarantee; or
 - (vi) any sale, transfer, agreement to sell or other disposition of the Lands by the Mortgagor or any of the Covenantors;
- (b) the obligations and liabilities of the Guarantor under this Guarantee are absolute and independent of and not in consideration of or conditional on any other obligation or liability of the Guarantor, the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, or any prior notice or protest to, demand upon or action, suit or other proceeding against the Mortgagor or any of the other Covenantors. The Lender may bring or prosecute a separate action, suit or other proceeding against the Guarantor whether it is brought or prosecuted against the Mortgagor or any of the other Covenantors or whether the Mortgagor or any of the other Covenantors is joined;
- (c) this Guarantee will be binding in respect of any modification or renewal of the Loan Indebtedness or the Loan Obligations by the Mortgagor, any of the other Covenantors or any subsequent owner of the Lands, whether or not the Guarantor has consented to same and whether or not such modification or renewal constitutes an adverse or material alteration of the Guarantor's obligations under this Guarantee; and
- (d) any part payment by the Mortgagor and/or any of the other Covenantors of any of the Loan Indebtedness or part performance of any of the Loan Obligations that operates to extend any statute of limitations or law of prescription as to the Mortgagor and/or any of the other Covenantors will operate to extend such statute of limitations or law of prescription as to each Guarantor to the extent permitted by applicable law.

3.3 Recourse

It is a condition of this Guarantee, and the Lender hereby agrees that, notwithstanding any other provision of this Guarantee, the Lender's recourse against the Guarantor and the liability of the Guarantor for any indebtedness, liability or obligation to the Lender under this Guarantee shall be limited to the Lender's rights under the specific assignment of cash distributions dated as of the date hereof granted by the Guarantor to and in favour of the Lender (the "**Specific Assignment of Cash Distributions**"), in and to the Distributions (as defined therein), and the Lender shall have no claim against the Guarantor in respect of any deficiency or be entitled to seek recourse against any other asset or property of the

Guarantor, provided however nothing herein shall limit the Lender's recourse against the interest of the Guarantor in and to the Distributions as this term is defined in the Specific Assignment of Cash Distributions.

3.4 Authorizations

The Guarantor authorizes the Lender, in the sole discretion of the Lender, without notice to or demand on the Guarantor and without in any manner affecting any obligation or liability of the Guarantor under this Guarantee or any security furnished to the Lender by the Guarantor in connection with the Loan Indebtedness and the Loan Obligations or prejudicing or impairing any right of the Lender under this Guarantee, from time to time to:

- (a) adjust, compromise, extend, modify, accelerate, renew or otherwise change the time, form or manner for payment of or any term in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, increasing or decreasing the rate of interest, changing the method of calculation of interest, extending the term, or altering the periodic payments;
- (b) take any security for payment of the Loan Indebtedness or for performance of the Loan Obligations and enforce, exchange, perfect, release, subordinate, subrogate, substitute, surrender, waive or take advantage of or defer or waive taking, perfecting, enforcing or otherwise taking advantage of any such security and apply such security and direct the manner of sale as the Lender determines in its sole discretion;
- (c) compromise, release, substitute, delay or waive the exercise of any right or remedy against the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations;
- (d) grant any other indulgence to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations and deal with all or any of such persons as the Lender sees fit;
- (e) accept payment of any Loan Indebtedness from the Mortgagor or any of the other Covenantors incurred by the Mortgagor or any of the other Covenantors after the execution of this Guarantee;
- (f) apply any payment by, recovery from or credit, deposit or offset due to, or any funds realized from any security furnished to the Lender by the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations, to any Indebtedness, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise of the Mortgagor, the Guarantor or any of the other Covenantors to the Lender, as the case may be, in such manner and at such times as the Lender in its sole discretion determines;
- (g) otherwise deal with the Mortgagor, the Guarantor or any of the other Covenantors or the Loan Indebtedness, the Loan Obligations or any security provided to the

Lender by the Mortgagor, the Guarantor or any of the other Covenantors as the Lender deems appropriate; and

- (h) impose a lien on or set off any money, security or other property of the Guarantor at any time in the possession of or on deposit with the Lender, whether held in a special account or on deposit or for safekeeping or otherwise, against any payment due from the Guarantor to the Lender under this Guarantee.

3.5 Waiver

Subject to compliance with applicable laws by the Lender, the Guarantor unconditionally waives:

- (a) any right to receive from the Lender any communication with respect to the Loan Indebtedness, the Loan Obligations or any other obligation or liability of the Guarantor under this Guarantee, or of any of the other Covenantors liable in respect of any of the Loan Indebtedness or the Loan Obligations, including, without limitation:
 - (i) any notice of the creation or existence of any Indebtedness, the intention of the Lender to act on or in reliance on any obligation or liability of the Guarantor, whether under this Guarantee or otherwise, or of any of the other Covenantors, or any default by or non-observance of any obligation of the Mortgagor, the Guarantor or any of the other Covenantors;
 - (ii) any communication of any information known by the Lender relating to the financial condition of the Mortgagor or any of the other Covenantors or to any other circumstance bearing upon the risk of non-payment of any Loan Indebtedness or non-performance of any of the Loan Obligations; or
 - (iii) any demand for performance, notice of dishonour, notice of protest, presentment or protest relating to any obligation or liability of the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations;
- (b) any right to require the Lender to:
 - (i) proceed against the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, any right or benefit of discussion or division;
 - (ii) proceed against or exhaust any security furnished to the Lender by the Mortgagor, the Guarantor or any of the other Covenantors;
 - (iii) first apply any property or assets of the Mortgagor or any of the other Covenantors to the discharge of the Loan Indebtedness and the Loan Obligations or to marshal in favour of the Guarantor; or

- (iv) pursue or exercise any other right or remedy of the Lender whatsoever;
- (c) as long as any of the Loan Indebtedness remains unpaid or any of the Loan Obligations have not been performed, any right of subrogation to or any right to enforce any right or remedy of the Lender in respect of the Mortgagor or any of the other Covenantors or any security provided to the Lender by the Mortgagor or any of the other Covenantors or any benefit of or right to participate in any such security; and
- (d) any defence arising out of or in connection with:
 - (i) any absence, impairment or loss of any right of contribution, reimbursement or subrogation or any other right or remedy of the Guarantor in respect of the Mortgagor or any of the other Covenantors;
 - (ii) any disability, incapacity or other defence available to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, or any cessation from any cause whatsoever of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness or the Loan Obligations; or
 - (iii) any other circumstance which might otherwise constitute a defence to any action, suit or other proceeding against the Guarantor, whether under this Guarantee or otherwise.

3.6 Bankruptcy, etc.

In the event of any distribution of any of the assets of the Mortgagor, the Guarantor or any of the other Covenantors, any arrangement, bankruptcy, composition, execution, sale, insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any proceeding for the dissolution, liquidation, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors, voluntary or involuntary, whether or not involving bankruptcy or insolvency proceedings, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors or any other marshalling of any of the assets of any such person:

- (a) no obligation or liability of the Guarantor under this Guarantee will be terminated or in any manner affected and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by same or by any omission by the Lender to prove its claim or its full claim and the Lender may prove such claim as it sees fit and may refrain from proving any claim and may value or refrain from valuing any security held by the Lender; and
- (b) if any of the Loan Indebtedness is unpaid or if any of the Loan Obligations has not been performed, the Lender has the right to include in any claim made by it all sums paid by the Guarantor, whether under this Guarantee or otherwise, and to prove and rank for and receive dividends in respect of such claim, all right to prove and rank for such sums paid by the Guarantor and to receive the full amount of all dividends

in respect thereof, which are hereby assigned and transferred by the Guarantor to the Lender.

ARTICLE 4
MISCELLANEOUS

4.1 Payments

All payments required to be made by the Guarantor to the Lender under this Guarantee will be made at the address of the Lender set out in Section 4.12 (or at any other place specified by the Lender by written notice to the Guarantor) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

4.2 Guarantor to Keep Informed

As long as any of the Loan Indebtedness is unpaid or the Loan Obligations have yet to be performed in full the Guarantor assumes responsibility for keeping itself informed of the financial condition of the Mortgagor and any of the other Covenants and of all other circumstances bearing on the risk it incurs under this Guarantee.

4.3 Lender's Records

The records of the Lender as to the Loan Indebtedness, the Loan Obligations or any failure by the Mortgagor or any of the other Covenants to make full and punctual payment or performance when due are conclusive evidence of the relevant facts without further proof.

4.4 Release

Upon payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, this Guarantee shall terminate and the Lender shall, upon the receipt of a request in writing from the Guarantor and at the Guarantor's expense, provide such releases and other documents as the Guarantor may reasonably request evidencing the termination of this Guarantee.

4.5 Failure of Indulgence Not Waiver

No extension of time, waiver, or other indulgence given by the Lender to the Guarantor, or anyone claiming under the Guarantor, shall in any way affect or prejudice the rights of the Lender against the Guarantor or any other Covenantor. Each power and right under this Guarantee is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

4.6 Modification

No modification or waiver of this Guarantee is binding on the Lender unless made in writing and signed by a duly authorized officer of the Lender.

4.7 Entire Agreement

On execution and delivery by the Guarantor, this Guarantee is deemed to be finally executed and delivered by the Guarantor to the Lender and is not subject to or affected by any condition as to the receipt by the Lender of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Lender of any other Loan Documents, nor by any promise or condition affecting the liability of the Guarantor. No agreement, promise, representation or statement by the Lender or any of its officers, employees or agents unless in this Guarantee forms part of this Guarantee, has induced the making of it or affects the liability of the Guarantor and the Mortgagor under it.

4.8 Severability

If any Section or part thereof of this Guarantee is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Guarantee and will not affect the validity or enforceability of any other part of this Guarantee.

4.9 Non-Merger

The giving of this Guarantee is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Guarantee, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Lender.

4.10 Paramountcy

The provisions of any agreement between any Guarantor and the Lender in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Guarantee except where inconsistent with the provisions hereof. In the case of any inconsistency between this Guarantee and the Mortgage, the provisions of the Mortgage shall prevail.

4.11 Assignability

The Guarantor hereby consents to the Lender assigning, transferring or selling all or any portion of its interest under this Guarantee in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Lender may enter into participation, contending or syndication agreements with other lenders in connection with this Guarantee, the Loan Indebtedness and the Loan Obligations. The Lender may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning the Guarantor, this Guarantee, the Loan Indebtedness and the Loan Obligations.

4.12 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Guarantee shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Guarantor:

1944 Fowler Drive
Mississauga, Ontario
L5K 0A1

Attention: John Vandyk
Email: jvandyk@vandyk.com
Facsimile: 905-823-4014

with a copy to the Guarantor's solicitors at

Schneider Ruggiero Spencer Milburn LLP
120 Adelaide Street West, Suite 1000
Toronto, Ontario
M5H 3V1

Attention: Bruce Milburn
Email: bmilburn@srllawpractice.com
Facsimile: 416-363-0645

(b) to the Lender:

41 Scarsdale Road, Unit 6
Toronto, Ontario
M3B 2R2

Attention: Judy Wong
Email: JWong@DorrCapital.com

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered personally or by courier, or transmitted by electronic or digital transmission (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3rd) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as

aforsaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

4.13 Expenses, Fees and Indemnity

The Guarantor will pay to the Lender all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Lender in connection with the collection of any amount payable under this Guarantee by the Guarantor to the Lender. The Guarantor shall indemnify the Lender against all claims, loss or damages arising out of or in connection with any breach or default by the Guarantor under this Guarantee.

4.14 Applicable Law

This Guarantee and the rights and obligations of the Guarantor and the Lender under it are governed by and construed according to the laws of the jurisdiction in which the Lands are situate and the laws of Canada applicable therein.

4.15 Time of the Essence

Time is of the essence of this Guarantee.

4.16 Execution by the Lender

This Guarantee need not be executed by the Lender to be binding on and to enure to the benefit of the Lender.

4.17 Counterparts

This Guarantee may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document. A signed copy of this Guarantee or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this Guarantee.

4.18 Further Assurances

The Guarantor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this Guarantee.

4.19 Successors and Assigns

This Guarantee is binding on and enures to the benefit of the Lender and the Guarantor and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Lender may grant any participation in this Guarantee, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Lender under this Guarantee or any of the Lender's interest herein or in the Loan Indebtedness and the Loan Obligations.


4.20 Multiple Parties

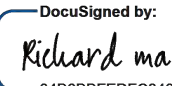
If the Guarantor consists of more than one party, this Guarantee will be read with all necessary grammatical changes and each reference to the Guarantor includes each and every such Person or corporation individually. All covenants and agreements herein of the Guarantor are the joint and several covenants and agreements of each such Person. If the Lender consists of more than one party, this Guarantee will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Lender under this Guarantee.

-- signatures follow on next page --

IN WITNESS WHEREOF the Guarantor has executed this Guarantee as of the date and year first written above.

VANDYK PROPERTIES INCORPORATED

Per: 
Name: 81ED1B7C5369445...
Title:

Per: 
Name: 04B0BBFEDFC340B...
Title:

LIMITED RECOURSE GUARANTEE

THIS GUARANTEE made as of the ____ day of _____, 2023.

B E T W E E N:

VANDYK – THE RAVINE LIMITED

(the "**Guarantor**")

OF THE FIRST PART

- and -

KINGSETT MORTGAGE CORPORATION

(the "**Lender**")

OF THE SECOND PART

WHEREAS Vandyk – Lakeview-DXE-West Limited (the "**Mortgagor**"), as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Lender, as mortgagee, of the lands charged therein (the "**Lands**") notice of which was registered on December 10, 2021 as Instrument No. PR3960399 in the Land Registry Office for Peel to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

AND WHEREAS the Guarantor will benefit from extension of the Loan Indebtedness to the Mortgagor and the Lender has stipulated that the Guarantor enter into this Guarantee as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations,

NOW THEREFORE IN CONSIDERATION of the recitals, the Lender extending the Loan Indebtedness and for such other good and valuable consideration received by the Guarantor, the receipt and adequacy of which is acknowledged by the Guarantor, the Guarantor agrees with the Lender as follows:

ARTICLE 1
DEFINITIONS, INTERPRETATION

1.1 Definitions

In this Guarantee capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Mortgage. Otherwise, in this Guarantee:

- (a) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time

assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;

- (b) "**Loan Indebtedness**" means any Indebtedness from time to time of the Mortgagor and any of the other Covenantors to the Lender arising under any of the Loan Documents; and
- (c) "**Loan Obligations**" means the obligations of the Mortgagor and any of the other Covenantors arising under the Loan Documents.

1.2 Interpretation

For the purposes of this Guarantee, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

1.3 Headings

In this Guarantee, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Guarantee.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Guarantor

The Guarantor makes the following representations and warranties to the Lender which will continue to be true and correct as long as any Loan Indebtedness remains unpaid:

- (a) the Guarantor is executing and delivering this Guarantee at the sole and exclusive request of the Mortgagor;
- (b) the Guarantor has derived or expects to derive financial and other advantage from the Loan Indebtedness;
- (c) the Guarantor has not received or relied on any representation from the Lender or any agreement or undertaking with the Lender or any officer, employee or agent of the Lender, except as expressly set out in this Guarantee;
- (d) the Mortgagor has furnished the Guarantor with all financial and other information and copies of all agreements and documents the Guarantor has requested concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations and the nature and extent of the risk the Guarantor incurs under this Guarantee;

- (e) the Guarantor has established means satisfactory to it of obtaining from the Mortgagor, independently of the Lender, such other information and copies of all agreements and other writings the Guarantor deems desirable concerning the Mortgagor, any of the other Covenantors, the Lands, the Loan Documents, the Loan Indebtedness, the Loan Obligations, the Mortgagor's and any of the other Covenantors' relationship with the Lender and the nature and extent of the risk the Guarantor incurs under this Guarantee;
- (f) the Guarantor:
 - (i) is an entity validly formed and existing under the laws of its jurisdiction of incorporation;
 - (ii) has the legal right and all necessary corporate or other power and authority to own its assets and carry on its business in all material respects;
 - (iii) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect; and
 - (iv) has all requisite power and authority to enter into and perform its obligations under this Guarantee, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder to be done, observed or performed by it in accordance with the terms hereof;
- (g) the execution and delivery by the Guarantor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Guarantee will not conflict with or result in a breach of any of the terms, conditions or provisions of:
 - (i) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
 - (ii) any applicable laws;
 - (iii) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets; or
 - (iv) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;
- (h) the execution and delivery by the Guarantor of this Guarantee, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation,

declaration or filing with any governmental entity, or other person, is or was necessary in connection with the execution, delivery and performance of the Guarantor's obligations under this Guarantee to which it is a party, except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect;

- (i) this Guarantee has been duly executed and delivered, as the case may be, by the Guarantor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally), is (or will be immediately upon the execution thereof by such person) in full force and effect, and the Guarantor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by the Guarantor.

ARTICLE 3 **COVENANTS**

3.1 Covenants

The Guarantor unconditionally, absolutely and irrevocably covenants and agrees with the Lender:

- (a) in addition to and separate and distinct from its agreements in Subsections 3.1(b) and 3.1(c), to guarantee to the Lender the repayment by the Mortgagor and any of the other Covenantors of the Loan Indebtedness and to guarantee to the Lender the punctual performance of the Loan Obligations;
- (b) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(c), to indemnify and save harmless the Lender from and against all loss, damage, expenses, costs and liability whatsoever which shall arise from or be caused by the default or breach by the Mortgagor and any of the other Covenantors with respect to the repayment of the Loan Indebtedness and the performance of the Loan Obligations;
- (c) in addition to and separate and distinct from its agreements in Subsections 3.1(a) and 3.1(b), as primary obligor and not as guarantor, to repay the Loan Indebtedness and to perform the Loan Obligations; and
- (d) that it will not at any time prior to the repayment in full of all Loan Indebtedness accept from the Mortgagor; (i) the repayment of any loans (principal or interest) to, (ii) the redeeming or purchase of any shares or units or partnership interests held by or on behalf of, (iii) the payment of any compensation, fee or other amount to, or (iv) the payment of any distributions or dividends or return on partnership or shareholder investment to, in each case, the Guarantor or any shareholder, unitholder or partner of the Guarantor or any other person not at arms-length to any of the foregoing.

3.2 Nature of Obligations of the Guarantor

The Guarantor covenants and agrees with the Lender that:

- (a) except as expressly set out in this Guarantee the obligations and liabilities of the Guarantor under this Guarantee will be irrevocable and as long as any of the Loan Indebtedness remains unpaid, will continue and be of full force and effect and will not be terminated or in any manner affected, and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by:
 - (i) the dissolution, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors or the institution of any proceeding relating thereto, any continuance, reorganization or change in the business, directors, management, objects, organization or shareholders of the Mortgagor or any of the other Covenantors, the amalgamation of the Mortgagor or any of the other Covenantors with another corporation, the sale or disposal of or appointment of a liquidator, receiver, receiver-manager, receiver and manager or trustee in respect of any of the assets or undertaking of the Mortgagor or any of the other Covenantors, any distribution of the assets of the Mortgagor or any of the other Covenantors on any arrangement, bankruptcy, composition insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors, any other marshalling of any of the assets of the Mortgagor or any of the other Covenantors or any other act or event which constitutes a novation of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness and the Loan Obligations, whether by substitution of the obligations or liabilities of any other person in place of those of the Mortgagor or any of the other Covenantors or otherwise;
 - (ii) any obligation or liability of the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, the Guarantor, whether under this Guarantee or otherwise or any agreement or instrument evidencing any such obligation or liability at any time being unenforceable;
 - (iii) any defect in, omission from, failure to file or register, or defective filing or registration of any document under which the Lender has taken security for payment of the Loan Indebtedness or for performance of the Loan Obligations, or any failure or loss in respect of any such security of the Lender, whether arising in connection with the fault of the Lender or otherwise;
 - (iv) any issue or levy by any administrative, government, judicial or other authority or arbitrator of any award, execution, injunction, judgment, order, attachment, writ or similar process against the Mortgagor or any of the

Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise;

- (v) any occurrence or non-occurrence of any other act or event which would result in termination, discharge, limitation, merger, novation, reduction or release of the Guarantor or of any of its obligations or liabilities under this Guarantee or which would otherwise prejudice or impair any right of the Lender under this Guarantee; or
 - (vi) any sale, transfer, agreement to sell or other disposition of the Lands by the Mortgagor or any of the Covenantors;
- (b) the obligations and liabilities of the Guarantor under this Guarantee are absolute and independent of and not in consideration of or conditional on any other obligation or liability of the Guarantor, the Mortgagor or any of the other Covenantors, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise, or any prior notice or protest to, demand upon or action, suit or other proceeding against the Mortgagor or any of the other Covenantors. The Lender may bring or prosecute a separate action, suit or other proceeding against the Guarantor whether it is brought or prosecuted against the Mortgagor or any of the other Covenantors or whether the Mortgagor or any of the other Covenantors is joined;
- (c) this Guarantee will be binding in respect of any modification or renewal of the Loan Indebtedness or the Loan Obligations by the Mortgagor, any of the other Covenantors or any subsequent owner of the Lands, whether or not the Guarantor has consented to same and whether or not such modification or renewal constitutes an adverse or material alteration of the Guarantor's obligations under this Guarantee; and
- (d) any part payment by the Mortgagor and/or any of the other Covenantors of any of the Loan Indebtedness or part performance of any of the Loan Obligations that operates to extend any statute of limitations or law of prescription as to the Mortgagor and/or any of the other Covenantors will operate to extend such statute of limitations or law of prescription as to each Guarantor to the extent permitted by applicable law.

3.3 Recourse

It is a condition of this Guarantee, and the Lender hereby agrees that, notwithstanding any other provision of this Guarantee, the Lender's recourse against the Guarantor and the liability of the Guarantor for any indebtedness, liability or obligation to the Lender under this Guarantee shall be limited to the Guarantor's interest in the Derry Road Collateral Property (as defined in the Commitment Letter), notwithstanding that the amount of the Loan Indebtedness may exceed such amount.

3.4 Authorizations

The Guarantor authorizes the Lender, in the sole discretion of the Lender, without notice to or demand on the Guarantor and without in any manner affecting any obligation or liability of the Guarantor under this Guarantee or any security furnished to the Lender by the Guarantor in connection with the Loan Indebtedness and the Loan Obligations or prejudicing or impairing any right of the Lender under this Guarantee, from time to time to:

- (a) adjust, compromise, extend, modify, accelerate, renew or otherwise change the time, form or manner for payment of or any term in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, increasing or decreasing the rate of interest, changing the method of calculation of interest, extending the term, or altering the periodic payments;
- (b) take any security for payment of the Loan Indebtedness or for performance of the Loan Obligations and enforce, exchange, perfect, release, subordinate, subrogate, substitute, surrender, waive or take advantage of or defer or waive taking, perfecting, enforcing or otherwise taking advantage of any such security and apply such security and direct the manner of sale as the Lender determines in its sole discretion;
- (c) compromise, release, substitute, delay or waive the exercise of any right or remedy against the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations;
- (d) grant any other indulgence to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations and deal with all or any of such persons as the Lender sees fit;
- (e) accept payment of any Loan Indebtedness from the Mortgagor or any of the other Covenantors incurred by the Mortgagor or any of the other Covenantors after the execution of this Guarantee;
- (f) apply any payment by, recovery from or credit, deposit or offset due to, or any funds realized from any security furnished to the Lender by the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness and the Loan Obligations, to any Indebtedness, whether in respect of the Loan Indebtedness, the Loan Obligations or otherwise of the Mortgagor, the Guarantor or any of the other Covenantors to the Lender, as the case may be, in such manner and at such times as the Lender in its sole discretion determines;
- (g) otherwise deal with the Mortgagor, the Guarantor or any of the other Covenantors or the Loan Indebtedness, the Loan Obligations or any security provided to the Lender by the Mortgagor, the Guarantor or any of the other Covenantors as the Lender deems appropriate; and

- (h) impose a lien on or set off any money, security or other property of the Guarantor at any time in the possession of or on deposit with the Lender, whether held in a special account or on deposit or for safekeeping or otherwise, against any payment due from the Guarantor to the Lender under this Guarantee.

3.5 Waiver

Subject to compliance with applicable laws by the Lender, the Guarantor unconditionally waives:

- (a) any right to receive from the Lender any communication with respect to the Loan Indebtedness, the Loan Obligations or any other obligation or liability of the Guarantor under this Guarantee, or of any of the other Covenantors liable in respect of any of the Loan Indebtedness or the Loan Obligations, including, without limitation:
 - (i) any notice of the creation or existence of any Indebtedness, the intention of the Lender to act on or in reliance on any obligation or liability of the Guarantor, whether under this Guarantee or otherwise, or of any of the other Covenantors, or any default by or non-observance of any obligation of the Mortgagor, the Guarantor or any of the other Covenantors;
 - (ii) any communication of any information known by the Lender relating to the financial condition of the Mortgagor or any of the other Covenantors or to any other circumstance bearing upon the risk of non-payment of any Loan Indebtedness or non-performance of any of the Loan Obligations; or
 - (iii) any demand for performance, notice of dishonour, notice of protest, presentment or protest relating to any obligation or liability of the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations;
- (b) any right to require the Lender to:
 - (i) proceed against the Mortgagor, the Guarantor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, including, without limitation, any right or benefit of discussion or division;
 - (ii) proceed against or exhaust any security furnished to the Lender by the Mortgagor, the Guarantor or any of the other Covenantors;
 - (iii) first apply any property or assets of the Mortgagor or any of the other Covenantors to the discharge of the Loan Indebtedness and the Loan Obligations or to marshal in favour of the Guarantor; or
 - (iv) pursue or exercise any other right or remedy of the Lender whatsoever;

- (c) as long as any of the Loan Indebtedness remains unpaid or any of the Loan Obligations have not been performed, any right of subrogation to or any right to enforce any right or remedy of the Lender in respect of the Mortgagor or any of the other Covenantors or any security provided to the Lender by the Mortgagor or any of the other Covenantors or any benefit of or right to participate in any such security; and
- (d) any defence arising out of or in connection with:
 - (i) any absence, impairment or loss of any right of contribution, reimbursement or subrogation or any other right or remedy of the Guarantor in respect of the Mortgagor or any of the other Covenantors;
 - (ii) any disability, incapacity or other defence available to the Mortgagor or any of the other Covenantors liable in respect of the Loan Indebtedness or the Loan Obligations, or any cessation from any cause whatsoever of any obligation or liability of the Mortgagor or any of the other Covenantors in respect of the Loan Indebtedness or the Loan Obligations; or
 - (iii) any other circumstance which might otherwise constitute a defence to any action, suit or other proceeding against the Guarantor, whether under this Guarantee or otherwise.

3.6 Bankruptcy, etc.

In the event of any distribution of any of the assets of the Mortgagor, the Guarantor or any of the other Covenantors, any arrangement, bankruptcy, composition, execution, sale, insolvency, liquidation, receivership, reorganization or other similar proceeding or occurrence, any proceeding for the dissolution, liquidation, winding-up or other cessation of existence of the Mortgagor or any of the other Covenantors, voluntary or involuntary, whether or not involving bankruptcy or insolvency proceedings, any assignment by the Mortgagor or any of the other Covenantors for the benefit of creditors or any other marshalling of any of the assets of any such person:

- (a) no obligation or liability of the Guarantor under this Guarantee will be terminated or in any manner affected and no right of the Lender under this Guarantee will in any manner be prejudiced or impaired by same or by any omission by the Lender to prove its claim or its full claim and the Lender may prove such claim as it sees fit and may refrain from proving any claim and may value or refrain from valuing any security held by the Lender; and
- (b) if any of the Loan Indebtedness is unpaid or if any of the Loan Obligations has not been performed, the Lender has the right to include in any claim made by it all sums paid by the Guarantor, whether under this Guarantee or otherwise, and to prove and rank for and receive dividends in respect of such claim, all right to prove and rank for such sums paid by the Guarantor and to receive the full amount of all dividends in respect thereof, which are hereby assigned and transferred by the Guarantor to the Lender.

ARTICLE 4
MISCELLANEOUS

4.1 Payments

All payments required to be made by the Guarantor to the Lender under this Guarantee will be made at the address of the Lender set out in Section 4.12 (or at any other place specified by the Lender by written notice to the Guarantor) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

4.2 Guarantor to Keep Informed

As long as any of the Loan Indebtedness is unpaid or the Loan Obligations have yet to be performed in full the Guarantor assumes responsibility for keeping itself informed of the financial condition of the Mortgagor and any of the other Covenants and of all other circumstances bearing on the risk it incurs under this Guarantee.

4.3 Lender's Records

The records of the Lender as to the Loan Indebtedness, the Loan Obligations or any failure by the Mortgagor or any of the other Covenants to make full and punctual payment or performance when due are conclusive evidence of the relevant facts without further proof.

4.4 Release

Upon payment in full of the Loan Indebtedness and the satisfaction of all of the Loan Obligations, this Guarantee shall terminate and the Lender shall, upon the receipt of a request in writing from the Guarantor and at the Guarantor's expense, provide such releases and other documents as the Guarantor may reasonably request evidencing the termination of this Guarantee.

4.5 Failure of Indulgence Not Waiver

No extension of time, waiver, or other indulgence given by the Lender to the Guarantor, or anyone claiming under the Guarantor, shall in any way affect or prejudice the rights of the Lender against the Guarantor or any other Covenantor. Each power and right under this Guarantee is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

4.6 Modification

No modification or waiver of this Guarantee is binding on the Lender unless made in writing and signed by a duly authorized officer of the Lender.

4.7 Entire Agreement

On execution and delivery by the Guarantor, this Guarantee is deemed to be finally executed and delivered by the Guarantor to the Lender and is not subject to or affected by

any condition as to the receipt by the Lender of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Lender of any other Loan Documents, nor by any promise or condition affecting the liability of the Guarantor. No agreement, promise, representation or statement by the Lender or any of its officers, employees or agents unless in this Guarantee forms part of this Guarantee, has induced the making of it or affects the liability of the Guarantor and the Mortgagor under it.

4.8 Severability

If any Section or part thereof of this Guarantee is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Guarantee and will not affect the validity or enforceability of any other part of this Guarantee.

4.9 Non-Merger

The giving of this Guarantee is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Guarantee, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Lender.

4.10 Paramountcy

The provisions of any agreement between any Guarantor and the Lender in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Guarantee except where inconsistent with the provisions hereof. In the case of any inconsistency between this Guarantee and the Mortgage, the provisions of the Mortgage shall prevail.

4.11 Assignability

The Guarantor hereby consents to the Lender assigning, transferring or selling all or any portion of its interest under this Guarantee in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Lender may enter into participation, contending or syndication agreements with other lenders in connection with this Guarantee, the Loan Indebtedness and the Loan Obligations. The Lender may provide information of a financial or other nature to any prospective assignee, transferee, purchaser or other lenders concerning the Guarantor, this Guarantee, the Loan Indebtedness and the Loan Obligations.

4.12 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Guarantee shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Guarantors:

1944 Fowler Drive
Mississauga, Ontario
L5K 0A1

Attention: John Vandyk
Email: jvandyk@vandyk.com
Facsimile: 905-823-4014

with a copy to the Guarantors' solicitors at

Schneider Ruggiero Spencer Milburn LLP
120 Adelaide Street West, Suite 1000
Toronto, Ontario
M5H 3V1

Attention: Bruce Milburn
Email: bmilburn@srllawpractice.com
Facsimile: 416-363-0645

(b) to the Lender:

41 Scarsdale Road, Unit 6
Toronto, Ontario
M3B 2R2

Attention: Judy Wong
Email: JWong@DorrCapital.com

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered personally or by courier, or transmitted by electronic or digital transmission (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3rd) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

4.13 Expenses, Fees and Indemnity

The Guarantor will pay to the Lender all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Lender in connection with the collection of any amount payable under this Guarantee by the Guarantor to the

Lender. The Guarantor shall indemnify the Lender against all claims, loss or damages arising out of or in connection with any breach or default by the Guarantor under this Guarantee.

4.14 Applicable Law

This Guarantee and the rights and obligations of the Guarantor and the Lender under it are governed by and construed according to the laws of the jurisdiction in which the Lands are situate and the laws of Canada applicable therein.

4.15 Time of the Essence

Time is of the essence of this Guarantee.

4.16 Execution by the Lender

This Guarantee need not be executed by the Lender to be binding on and to enure to the benefit of the Lender.

4.17 Counterparts

This Guarantee may be executed in any number of counterparts, each of which will constitute an original, but all of which together will constitute one and the same document. A signed copy of this Guarantee or a counterpart of it delivered by email, facsimile or other means of electronic or digital transmission or signature is deemed to have the same legal effect as delivery of an original signed copy of this Guarantee.

4.18 Further Assurances

The Guarantor will promptly do all further acts and execute and deliver further documents as may be required to carry out the terms or intent of this Guarantee.

4.19 Successors and Assigns

This Guarantee is binding on and enures to the benefit of the Lender and the Guarantor and their respective executors, administrators, successors and permitted assigns and to any Person to whom the Lender may grant any participation in this Guarantee, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Lender under this Guarantee or any of the Lender's interest herein or in the Loan Indebtedness and the Loan Obligations.

4.20 Multiple Parties


If the Guarantor consists of more than one party, this Guarantee will be read with all necessary grammatical changes and each reference to the Guarantor includes each and every such Person or corporation individually. All covenants and agreements herein of the Guarantor are the joint and several covenants and agreements of each such Person. If the Lender consists of more than one party, this Guarantee will be read with all necessary


grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Lender under this Guarantee.

-- signatures follow on next page --

IN WITNESS WHEREOF the Guarantor has executed this Guarantee as of the date and year first written above.

VANDYK – THE RAVINE LIMITED

Per: 
Name: 81ED1B7C5369445...
Title:

Per: 
Name: 04B6BBFEDFC840B...
Title:

TAB XX

THIS IS **EXHIBIT "XX"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

Properties

PIN 13482 - 0071 LT *Interest/Estate* Fee Simple
Description LTS 1, 2, 3, 22, 23 & 24, PL H23 ; EXCEPT PT 1 43R16245 & PT 1 43R21276 ;
 MISSISSAUGA
Address 1345 LAKESHORE RD E
 MISSISSAUGA

Chargor(s)

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

Name VANDYK-LAKEVIEW-DXE-WEST LIMITED
Address for Service 1944 Fowler Drive
 Mississauga, Ontario
 L5K 0A2

I, Richard Ma, CFO, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Chargee(s) *Capacity* *Share*

Name DORR CAPITAL CORPORATION
Address for Service 41 Scarsdale Road
 Unit 6
 Toronto, Ontario
 M3B 2R2

Statements

Schedule: See Schedules

Provisions

Principal \$40,000,000.00 *Currency* CDN
Calculation Period See schedule
Balance Due Date ON DEMAND
Interest Rate See schedule
Payments
Interest Adjustment Date
Payment Date 1st of each month
First Payment Date 2022 01 01
Last Payment Date 2023 01 01
Standard Charge Terms
Insurance Amount Full insurable value
Guarantor

Signed By

Natalie Shoujia Yao 2 Queen Street East Suite 1500 acting for Signed 2021 12 10
 Toronto
 M5C 3G5
 Chargor(s)

Tel 416-593-1221

Fax 416-593-5437

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

Submitted By

BLANEY MCMURTRY LLP 2 Queen Street East Suite 1500 2021 12 10
 Toronto
 M5C 3G5

Tel 416-593-1221

Fax 416-593-5437

Fees/Taxes/Payment

Statutory Registration Fee	\$66.30
Total Paid	\$66.30

File Number

Chargee Client File Number : CHG/DORR/1077280025

SCHEDULE - ADDITIONAL PROVISIONS

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

Capitalized terms used in this Charge shall have the respective meanings assigned to them in Appendix I attached hereto.

1.2 Interpretation and Headings

The Chargor acknowledges that this Charge and each of the other Loan Documents are the result of negotiations between the parties and shall not be construed in favour of or against any party by reason of the extent to which any party or its legal counsel participated in its preparation or negotiation. The words “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to the whole of this Charge including, without limitation, these additional provisions, and not to any particular Section or other portion thereof or hereof and extend to and include any and every document supplemental or ancillary hereto or in implementation hereof. The words “Article”, “Section”, and “Subsection”, and similar expressions refer to the specified article, section, subsection or other portion of this Schedule. Words in the singular include the plural and words in the plural include the singular. Words importing the masculine gender include the feminine and neuter genders where the context so requires. Words importing the neuter gender include the masculine and feminine genders where the context so requires. The headings do not form part of this Charge and have been inserted for convenience of reference only. Any reference to “including” shall mean “including without limitation” whether or not expressly provided. If more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Chargor, then all such Persons shall be jointly and severally liable for all such obligations and liabilities.

**ARTICLE 2
CHARGE, PAYMENT AND INTEREST**

2.1 Charge

To secure the full and timely payment and performance of the Indebtedness, the Chargor hereby charges the Charged Property to the Chargee. The Charge shall operate until all Indebtedness is fully paid and performed to the Chargee in the manner contemplated by the Charge and the other Loan Documents.

2.2 Covenant to Pay

The Chargor hereby acknowledges itself indebted and covenants with the Chargee to pay the Indebtedness to the Chargee as and when provided in this Charge without any deduction, set-off, abatement, or counterclaim.

2.3 Interest Rate

The Principal Amount shall bear and accrue interest at the Interest Rate both before and after default, demand, maturity and judgment until paid.

2.4 Payment

The Chargor shall pay the Indebtedness to the Chargee as follows:

- (a) interest at the Interest Rate on the Principal Amount or such portion as may be advanced from time to time, calculated daily from the respective dates of such advances, shall become due and payable in monthly instalments on the first day of each calendar month following the date of advance and on the first day of each and every month thereafter and, at the option of the Chargee, may be deducted from any advance;
- (b) any part of the Indebtedness that is not principal or interest on principal will be payable on demand with interest thereon at the Interest Rate; and

(c) the Principal Amount will become due and payable on demand.

2.5 Prepayment

The Chargor shall not have the right to prepay all or any part of the Principal Amount of the Loan.

2.6 Intentionally Deleted

2.7 Timing and Place of Payment

Notwithstanding any other provision of this Charge, all payments under this Charge shall be made to the Chargee or as it may direct in writing by electronic direct-debit transfer before 1:00 o'clock in the afternoon (Eastern Standard Time) on any day on which payment is to be made. The Chargor shall provide all written authorizations and sample cheques as the Chargee may require from time to time. If for any reason the electronic direct-debit transfer for any payment is made after 1:00 o'clock in the afternoon (Eastern Standard Time) on any particular day, such payment will be deemed to have been made on the next following Business Day for the purpose of calculating interest. If an electronic direct-debit transfer is not made on the day such payment is required to be made, the Chargor will immediately pay the Chargee a reasonable servicing fee as determined by the Chargee or its servicer to cover the administration costs and expenses arising therefrom. Until paid, such servicing fee, together with interest thereon at the Interest Rate shall be added to the Indebtedness and be secured by this Charge.

2.8 Compound Interest

If the Chargor defaults in any payment of interest or other payment due pursuant to this Charge, compound interest at the Interest Rate will accrue and be payable on the sum in arrears (including all arrears of interest) from time to time, both before and after default, demand, maturity and judgment until paid and shall be paid forthwith. If the arrears and the compound interest are not paid within the interest calculation period provided in the Provisions section of the electronic Charge/Mortgage to which the Schedule is attached from the time of default, a rest will be made and compound interest at the Interest Rate will be payable on the aggregate amount then due, both before and after maturity, default and judgment, and so on from time to time until paid. All such compound interest shall be added to the Indebtedness and shall be secured by this Charge.

2.9 Application of Payment

Prior to an Event of Default, all payments received by the Chargee on account of the Indebtedness shall be applied as follows, regardless of any other designation of such payments as principal, interest or other charges: first, to the repayment of sums advanced by the Chargee pursuant to this Charge or any of the other Loan Documents for any reason (other than the Principal Amount), including sums advanced to pay Realty Taxes, Costs, insurance premiums or other charges against the Charged Property (together with interest thereon at the Interest Rate from the date of advance until paid), then to the payment of accrued but unpaid interest which is then due and payable, and finally, to reduction of the Principal Amount. Notwithstanding the foregoing, from and after an Event of Default, all payments received by the Chargee pursuant to the Loan shall be applied by the Chargee to principal, interest and such other charges due hereunder or under the other Loan Documents in such order as the Chargee shall determine in its sole discretion.

2.10 Advances and Costs

Neither the preparation, execution nor registration of this Charge or the other Loan Documents shall bind the Chargee to advance all or any part of the Principal Amount. The Chargor covenants to pay all Costs to the Chargee forthwith on demand whether or not all or any part of the Principal Amount is advanced. Until paid, all Costs together with interest thereon at the Interest Rate shall be added to the Indebtedness and secured by this Charge.

2.11 Proof of Outstanding Amounts

The records maintained by the Chargee of the amounts of the Loan advanced to the Chargor and secured by this charge, the amount of advances of the Loan which are outstanding and the amount of interest and other fees and costs payable or secured under this Charge shall constitute *prima facie* proof thereof in any legal proceedings or action in respect of the Loan or this Charge.

ARTICLE 3
REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representations, Warranties and Covenants

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

(a) **Organization, Power and Authority**

The Chargor (i) is a duly organized and validly existing corporation under the laws of its governing jurisdiction; (ii) has full power, authority and legal right to own the Charged Property and to carry on its business thereon in compliance with all Applicable Laws and is duly licensed, registered or qualified in all jurisdictions where the character of its undertaking, property and assets or the nature of its activities makes such licensing, registration or qualification necessary or desirable; (iii) has full power, authority and legal right to enter into each of the Loan Documents to which it is a party and to do all acts and execute and deliver all other documents as are required to be done, observed or performed by it in accordance with their respective terms; (iv) has taken all necessary action and proceedings to authorize the execution, delivery and performance of the Loan Documents to which it is a party and to observe and perform the provisions of each in accordance with its terms; and (v) shall maintain in good standing its existence, capacity, power and authority as a corporation and shall not liquidate, dissolve, wind-up, terminate, merge, amalgamate, consolidate, reorganize or restructure or enter into any transaction or take any steps in connection therewith.

(b) **Enforceability of Loan Documents**

The Loan Documents constitute valid and legally binding obligations of the Chargor, enforceable against it in accordance with their terms, and are not subject to any right of rescission, right of set-off, counterclaim or defence of any nature or kind. Neither execution and delivery of the Loan Documents, nor compliance with the terms and conditions of any of them (i) has resulted or will result in a violation of the constating documents governing the Chargor, including any unanimous shareholders' agreement, or any resolution passed by the board of directors or shareholders of the Chargor, (ii) has resulted or will result in a breach of or constitute a default under Applicable Laws or any agreement or instrument to which the Chargor is a party or by which it or the Charged Property or any part thereof is bound, or (iii) requires any approval or consent of any Person except such as has already been obtained.

(c) **Title**

The Chargor has good and marketable title in fee simple to the Charged Property free and clear of all Liens except Permitted Encumbrances and the Lien of this Charge. The Chargor is the sole legal and beneficial owner of the Charged Property. The Chargor shall defend title to the Charged Property for the benefit of the Chargee from and against all actions, proceedings and claims of all Persons. No Person has any option, right of first refusal or other right to acquire the Charged Property or any part thereof or interest therein.

(d) **Priority**

This Charge and the other Loan Documents are and shall be a valid first Lien or Liens on the Charged Property at all times, subject only to Permitted Encumbrances.

(e) **Transfer or Encumbrance of Charged Property**

Neither the Chargor nor any other Person having a beneficial or ownership interest in the Chargor, the Charged Property, or any part thereof (which shall include, without limitation, a partnership interest in any partnership that has an interest in the Charged Property) shall directly or indirectly sell, transfer, convey, dispose, or assign any legal or beneficial interest in the Chargor, the Charged Property or any part thereof (whether voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration of record), except with the prior written consent of the Chargee, which consent may be arbitrarily withheld. No Liens shall be created, issued, incurred or permitted to exist (by operation of law or otherwise) on any part of the Charged Property or any interest therein, other than the security of this Charge and the other Loan Documents, and Permitted Encumbrances. If any other Lien is asserted against the Charged Property, the Chargor shall promptly, and at its expense, (i) give the Chargee a detailed written

notice of such Lien (including origin, amount and other terms), and (ii) pay the underlying claim in full or take such other action so as to cause it to be released and discharged or, in the Chargee's discretion, provide a bond or other security satisfactory to the Chargee for the payment of such claim.

(f) **Realty Taxes and Utility Charges**

All Realty Taxes have been paid when due. The Chargor shall pay all Realty Taxes when due and, within 15 days after the end of each calendar year or upon request by the Chargee from time to time, shall provide the Chargee with evidence satisfactory to the Chargee that all Realty Taxes have been paid when due. The Chargor shall not suffer or permit the joint assessment of the Charged Property with any other real property constituting a separate tax lot or with any other real or personal property. The Chargor shall promptly pay for all utility services provided to the Charged Property when due.

(g) **Litigation**

The Chargor has no judgments or orders of any court or tribunal outstanding against it. There is no litigation, administrative proceeding, investigation or other legal action or claims (including any proceeding under any applicable bankruptcy or insolvency laws) pending or, to the knowledge of the Chargor, threatened, against the Charged Property or the Chargor, including any dispute between the Chargor and any governmental authority affecting the Chargor or the Charged Property. Upon becoming aware of any such matters, the Chargor shall promptly notify the Chargee of same and shall provide the Chargee with reasonable information in respect thereof as the Chargee may require from time to time, provided that in doing so, the Chargor shall not be deemed to have cured the fact that its representation set out in this Subsection has become incorrect.

(h) **Rights of Way, Easements, Permits, Services and Access**

The Chargor has obtained and shall maintain in good standing at all times all rights of way, easements, grants, privileges, licenses, certificates, permits, approval entitlements, franchises and other similar property and rights necessary for the lawful construction, occupancy, operation and use of the Charged Property. The Charged Property has unrestricted and unconditional rights of access to public highways at all existing access points and is served by all services and utilities necessary or convenient to the full use and enjoyment of the Charged Property. All such services and utilities are located in the public highway(s) abutting the Land, and are connected so as to serve the Charged Property without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Charged Property. All roads necessary for the full utilization of the Charged Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

(i) **Management**

There shall be no change in the day-to-day control and management of the Chargor or the Charged Property. The Chargor shall not terminate, replace or appoint any manager or terminate or amend the management agreement for the Chargor or the Charged Property without the Chargee's prior written approval, which approval shall not be unreasonably withheld. Any change in ownership or control of the manager shall be cause for the Chargee to re-approve such manager and the applicable management agreement. Each manager shall hold and maintain all necessary licenses, certifications and permits required by law. The Chargor shall fully perform all of its covenants, agreements and obligations under the management agreement.

(j) **Inspection**

The Chargee, its servicer, agents, representatives and employees, upon reasonable prior notice to the Chargor, may inspect the Charged Property and conduct such environmental and engineering studies as the Chargee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Charged Property.

(k) **Operation; Maintenance**

The Chargor shall diligently maintain, use, manage, operate and repair the Charged Property in a good, safe and insurable condition in accordance with all Applicable Laws, Permitted

Encumbrances and all Property Agreements, so as to preserve and protect the Charged Property and maximize the earnings, incomes, rents, issues and profits therefrom. The Chargor has complied and will hereafter at all times comply with all of its obligations under the Property Agreements, the Permitted Encumbrances and all other Liens and agreements relating to the Charged Property. The Chargor shall promptly make all necessary repair and replacements to the Charged Property. All repairs, replacements and work done under this Subsection 3.1(k) or under Subsection 3.1(n), or otherwise, shall be made in good and workmanlike manner, shall (if applicable) be of equal or better in quality to the original work, shall be free of all Liens and shall comply with all Applicable Laws, Permitted Encumbrances and Property Agreements. The Chargor shall preserve and keep in full force and effect its corporate status, franchises, rights and privileges under the laws of the jurisdiction of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Charged Property.

(l) **Compliance with Law**

The Charged Property, including the construction thereof, complies with all Applicable Laws, Permitted Encumbrances and all Property Agreements. The present use and location of the Improvements are legal conforming uses under all Applicable Laws. No Improvements have been made or removed from the Land since the date of the survey of the Land and Improvements delivered by the Chargor prior to the Loan advance and such survey accurately shows the location of all Improvements. The Chargor shall not change the use of the Charged Property, abandon the Charged Property, commit or permit any waste on or of the Charged Property, apply for or consent to any public restriction (including any zoning by-law or amendment or minor variance) or private restriction, or permit the removal of any Improvements or Fixtures from the Charged Property (other than a tenant's improvements removable by a tenant in accordance with its Lease).

The Charged Property is free of structural defects, and all building systems contained therein are in good working order and repair subject to ordinary wear and tear. No proceedings have been commenced or, to the Chargor's knowledge are contemplated with respect to the expropriation of all or any portion of the Charged Property or for the relocation of roadways providing access to the Charged Property.

(m) **Representations and Warranties on Environmental Matters**

To the Chargor's knowledge, (i) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, treated, discharged, disposed of or otherwise present at or about the Charged Property or any property adjacent to the Charged Property (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Charged Property in full compliance with Environmental Laws) and no Hazardous Material was removed or transported from the Charged Property, (ii) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of the Charged Property does not, and did not previously, violate any Environmental Laws, (iii) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened, nor have any settlements been reached by or with any parties or any liens imposed in connection with the Charged Property concerning Hazardous Materials or Environmental Laws; and (iv) no underground storage tanks exist on any part of the Charged Property.

(n) **Covenants on Environmental Matters**

The Chargor shall (i) comply strictly and in all respects with applicable Environmental Laws; (ii) notify the Chargee immediately upon the Chargor's discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting the Charged Property; (iii) promptly remove such Hazardous Materials and remediate the Charged Property in full compliance with Environmental Laws or as reasonably required by the Chargee based upon the recommendations and specifications of an independent environmental consultant approved by the Chargee; and (iv) promptly forward to the Chargee copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Materials or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Charged Property or the Chargor.

The Chargor shall not cause, shall prohibit any other Person within the control of the

Chargor from causing, and shall use prudent, commercially reasonable efforts to prohibit other Persons (including tenants) from causing (i) any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Charged Property or the transportation of any Hazardous Materials to or from the Charged Property (except for cleaning and other products used in connection with routine maintenance or repair of the Charged Property in full compliance with Environmental Laws), (ii) installing any underground storage tanks at the Charged Property, or (iii) conducting any activity that requires a permit or other authorization under Environmental Laws.

The Chargor shall provide to the Chargee, at the Chargor's expense promptly upon the written request of the Chargee from time to time, documents, records, permits, licences, certificates, approvals, orders, agreements, environmental audits, reports, assessments and inspections to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within the Charged Property.

The Chargee or an agent of the Chargee may conduct on-site inspections and other investigations of the Charged Property and of the current and past uses of the Charged Property and, at the sole option of the Chargee, may require an environmental assessment by a qualified environmental consultant acceptable to the Chargee at any time during the term of this Charge or any renewal or extension hereof. Without in any way limiting the generality of the foregoing, the Chargee or its agent may enter upon the Charged Property upon reasonable notice to the Chargor to conduct environmental testing, site assessment, investigation or study determined necessary by the Chargee, in its sole discretion. The exercise of any of the powers enumerated in this clause shall not deem the Chargee or its agents to be in possession, management or control of the Charged Property.

The results of all such inspections, investigations, tests, studies and assessments shall be satisfactory to the Chargee and, without limitation, evidence the absence of any Hazardous Materials at the Charged Property and the absence of any contamination of any part of the Charged Property by any Hazardous Materials. If the results of an environmental assessment, inspection, test, study or investigation conducted during the term of the Charge or any renewal or extension thereof are not satisfactory to the Chargee, then, at the option of the Chargee, the entire Indebtedness shall become immediately due and payable. In this regard, the acceptance of any payments by the Chargee at any time during or after the term of the Charge or any renewal or extension thereof shall not constitute a waiver of or otherwise prejudice the right of the Chargee to demand and receive full repayment of the Charge.

All costs of such inspections, investigations and environmental assessments shall be borne by the Chargor, shall be paid on demand by the Chargee and shall be secured by this Charge.

(o) **Environmental Indemnity**

As between the Chargor and the Chargee, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Materials at, upon, within, contiguous to or otherwise affecting the Charged Property, shall lie solely with the Chargor. Accordingly, the Chargor shall bear all risks and costs associated with any loss (including any loss in value attributable to Hazardous Materials), damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required by the Chargee or by law. The Chargor shall indemnify, defend and hold the Chargee and its shareholders, directors, officers, employees and agents harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defence and consultant fees, investigation and laboratory fees, court costs, and other litigation expenses) arising out of or associated, in any way, with (i) the non-compliance with Environmental Laws, (ii) the existence of Hazardous Materials in, on, or about the Charged Property, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials, (iv) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, (v) a breach of any representation, warranty or covenant contained in Subsections 3.1(m), (n) or (o) whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, or (vi) the imposition of any environmental lien encumbering the Charged Property; provided, however, the Chargor shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from the Chargee's gross negligence or wilful misconduct. The Chargor's obligations under this Subsection 3.1(o) shall arise

whether or not any governmental authority has taken or threatened any action in connection with the presence of any Hazardous Materials, and whether or not the existence of any such Hazardous Materials or potential liability on account thereof is disclosed and shall continue notwithstanding the repayment of the Loan or any transfer or sale of any right, title and interest in the Charged Property (by foreclosure, deed in lieu of foreclosure or otherwise). Additionally, if any Hazardous Materials affect or threaten to affect the Charged Property, the Chargee may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable at the expense of the Chargor in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials. Any amounts payable to the Chargee by reason of the application of this Subsection 3.1(o) shall become immediately due and payable and shall bear interest at the Interest Rate from the date loss or damage is sustained by the Chargee until paid. The obligations and liabilities of the Chargor under this Subsection 3.1(o) shall survive the making of any advance or replacement of the Loan, any full or partial release, termination or discharge of any Loan Document or the security thereof and any remedial proceedings taken by or on behalf of the Chargee under any Loan Document or otherwise at law or in equity.

(p) **Full and Accurate Disclosure**

None of the Loan Documents, Property Agreements, Permitted Encumbrances and other documents and materials provided by or on behalf of the Chargor to the Chargee contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. No statement of fact made by or on behalf of the Chargor in this Charge or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to the Chargor which has not been disclosed to the Chargee which adversely affects, nor as far as the Chargor can foresee, might adversely affect, the Charged Property or the business, operations or condition (financial or otherwise) of the Chargor.

(q) **Financial Statements, Reports and Budgets**

- (i) The financial statements and net worth statements (if any) delivered by the Chargor to the Chargee in connection with the Chargor, any guarantor, indemnifier or beneficial owner and the Loan are true and correct with no material change since the date of preparation to the date of the Loan advance. Except as disclosed in such financial statements and net worth statements, there are no liabilities (fixed or contingent) affecting the Charged Property or the Chargor.
- (ii) The Chargor shall furnish to the Chargee:
 - (a) copies of all management reports, if any, provided to the Chargor from time to time, within 10 days after the same are provided to the Chargor;
 - (b) within 15 days before each anniversary of the Loan advance, a detailed rent roll and detailed operating statement (showing yearly activity and year-to-date) stating operating revenues, operating expenses, operating income and net cash flow for the preceding calendar year;
 - (c) within 120 days after the end of each fiscal year of the Chargor, the Chargor shall furnish to the Chargee a current (as of the end of such fiscal year) balance sheet and a detailed operating statement stating operating revenues, operating expenses, operating income, net worth statement and net cash flow for each of the Chargor, each Covenantor, and the Charged Property, and, if required by the Chargee, prepared on a review basis and certified by an independent public accountant reasonably satisfactory to the Chargee;
 - (d) quarterly updates regarding zoning approval and servicing progress, costs, and sales activity relating to the Project;

- (e) if required by the Chargee, monthly accounting of any and all HST collected by or due to the Chargor or any Covenantor; and
- (f) such other financial and supporting information requested by the Chargee.

All financial statements shall be in scope and detail reasonably satisfactory to the Chargee and certified by the chief financial representative of the Chargor. All financial statements shall be prepared in accordance with generally accepted accounting principles in Canada in effect on the date so indicated and consistently applied (or such other accounting basis reasonably acceptable for the Chargee).

- (iii) The Chargor shall deliver to the Chargee such additional information regarding the Chargor, its subsidiaries, its business, any guarantor, indemnifier or beneficial owner and the Charged Property promptly after the Chargee's request therefor. The Chargor shall permit the Chargee to examine such records, books and papers of the Chargor which reflect upon its financial condition and the income and expenses of the Charged Property.
- (iv) At least thirty (30) days prior to the commencement of each of its fiscal years, the Chargor will provide to the Chargee its proposed annual operating and capital improvements budget for such fiscal year for the Charged Property (the "**Annual Operating Budget**") for review and approval by the Chargee. Each operating budget shall contain such usual, proper and reasonable categories and breakdowns for items of revenue, expenses and cash flow as dictated by reasonable and prudent practice, and as would be prepared by reasonable and prudent building owners and managers similar to the Charged Property, with monthly and year-to-date columns. The Chargee shall be entitled to advise as to whether or not it is satisfied with the Annual Operating Budget and, if it is not satisfied, its proposals as to modification or amendment. The Annual Operating Budget as revised and approved by the Chargee shall become the Chargee approved operating budget for the Charged Property for the next succeeding fiscal period. If the Chargee has areas of dissatisfaction upon which it and the Chargor are unable to agree, then the balance of the Annual Operating Budget shall be deemed to be approved by the Chargee and the areas in dispute shall be governed by the most recent Chargee approved operating budget until the dispute is resolved. If any such dispute is not resolved within 30 days after the Chargee has identified the areas of dissatisfaction, then either the Chargor or the Chargee may commence arbitration proceedings under the *Arbitration Act, 1991* (Ontario) to resolve the dispute, and the result of such arbitration shall be binding on the parties hereto.

(r) **Tax Returns**

The Chargor has filed all federal, provincial and municipal tax returns required to be filed and have paid or made adequate provision for the payment of all federal, provincial and municipal taxes, charges and assessments payable by the Chargor. The Chargor believes that its tax returns properly reflect the income and taxes of the Chargor for the periods covered thereby, subject only to reasonable adjustments required by the Canada Revenue Agency or other applicable tax authority upon audit. As of the date of the Loan advance, the Chargor has no liability (fixed or contingent) for any taxes, surtaxes, duties, rates, and other similar charges or statutory trusts imposed by Applicable Laws or any governmental authority (including all related interest, penalties and fines), except as reflected in its financial statements delivered to the Chargee.

(s) **Notice of Certain Events**

Upon becoming aware of same, the Chargor shall promptly notify the Chargee of any Event of Default or other events which, with the giving of notice, lapse of time or both, would constitute an Event of Default. The Chargor represents and warrants to the Chargee that no such Event of Default or other event has occurred as of the date of the Loan advance.

(t) **Estoppel Certificates**

The Chargor, within 10 days after request, and without charge, shall furnish to the Chargee a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defences exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as the Chargee reasonably may request.

(u) **Further Assurances**

The Chargor shall promptly (i) cure any defects in the execution and delivery of the Loan Documents and (ii) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as the Chargee may reasonably request to further evidence and more fully describe the collateral for the Loan, to correct any omissions in the Loan Documents, to perfect, protect or preserve any liens created under any of the Loan Documents or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

(v) **Leasing**

All Leases entered into after the date of registration of this Charge and all terminations or surrenders of Leases proposed to be done or agreed to after such date shall first be approved by the Chargee.

(w) **Condominium**

If the Charged Property is a condominium:

- (i) The Chargor shall at all times and from time to time observe and perform all duties and obligations imposed on it by the Condominium Act, the Declaration, the by-laws and the rules of the condominium in effect from time to time. The Chargor agrees to transmit to the Chargee forthwith upon the demand of the Chargee, satisfactory proof that all Common Expenses assessed against the Units have been paid as assessed.
- (ii) Without limiting the generality of the preceding paragraph (i), the Chargor shall pay promptly when due any contributions to Common Expenses required of it as an owner of the Charged Property, including any amounts added to Common Expenses or otherwise payable by him to the Condominium Corporation and, in the event of his default in doing so, the Chargee shall be entitled but shall not be obliged to pay the same whether or not any payment in default has priority over the mortgage or any part of the moneys secured thereby, and the amount thereof shall be without demand, payable forthwith with interest at the Interest Rate and shall be secured by this Charge.
- (iii) The Chargor shall deliver by mailing to the Chargee, by prepaid registered mail, a copy of each and every:
 - (a) notice of any meeting of members of the Condominium Corporation called for the purpose of, or at which there may be the taking of, a vote of the members of the Condominium Corporation at least ten clear days prior to the date upon which such meeting is fixed to convene;
 - (b) claim or demand for payment by the Chargor to the Condominium Corporation or to any person, firm or corporation duly authorized to receive monies otherwise payable to the Condominium Corporation at least five clear days prior to the date upon which such claim or demand is due and payable;
 - (c) notice of any breach of any of the provisions of the Condominium Act, or of the Declaration or any By-law or By-laws of the Condominium Corporation and made pursuant to the provisions of

the Condominium Act, within five days of the date upon which such notice is received by the Chargor; and

- (d) request or demand for the consent of the Chargor to any matter affecting the Units or the common elements included in the Condominium Corporation within five days of the date upon which such request or demand is received by or made of the Chargor; and
- (iv) The Chargor shall pay any and all monies due and payable by the Chargor in accordance with the provisions of the Condominium Act, or the Declaration or the by-law or by-laws of the Condominium Corporation from time to time on or before the dates for payment thereof.
- (v) The Chargor hereby assigns to the Chargee the right of the Chargor as owner of the Units to vote at a meeting of owners in the place of the Chargor or to consent in the place of the Chargor in all matters relating to the affairs of the Condominium Corporation, and the Chargee is hereby irrevocably authorized and empowered to exercise such right, whether or not the Chargor is in default or in breach of any of the covenants or provisions contained in this Charge. The Chargee shall be entitled to give written notice of its rights provided for in this Paragraph to the Condominium Corporation in accordance with subsection 46.1(3)(c) of the Condominium Act.
- (vi) Any exercise by the Chargee of the right of the Chargor to either vote or consent shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Charged Property or any part thereof.
- (vii) The Chargee shall not be in any way responsible to protect the interest of the Chargor when exercising the right to vote or consent assigned herein, and the Chargee shall not be responsible for any exercise of the right to vote or consent assigned herein or any failure to exercise the right to vote or consent assigned herein.
- (viii) If there is any charge or mortgage of the Units subsequent in priority to this Charge, the Chargor agrees to obtain a covenant from the holder of such charge or mortgage (the "Subsequent Chargee"), benefitting the Chargee, whereby the Subsequent Chargee agrees that, if the Chargee has not exercised its right to vote or consent under this Section, the Subsequent Chargee will not exercise its right (if any) to vote or consent.
- (ix) The Chargor shall not amend the Declaration, registered condominium plan or the description of the Units without first obtaining the Chargee's written consent thereto, which consent may be arbitrarily withheld at the Chargee's sole discretion.

3.2 Due on Sale or Encumbrance

If, without the prior written consent of the Chargee, the Chargor or any beneficial or unregistered owner of the Charged Property:

- (a) directly or indirectly sells, conveys, transfers, or disposes of all or any part of the Charged Property or any interest therein or agrees to do so; or
- (b) is a corporation or company and the effective voting control of such corporation or company changes, or if such corporation or company merges or amalgamates with any other corporation or company; or
- (c) creates, assumes or permits to exist any Lien (whether prior or subordinate to the security of this Charge and the other Loan Documents) on all or any part of the Charged Property;

then, the Chargee may, at its option, declare the Indebtedness to be immediately due and payable and all powers conferred by the Charge and the other Loan Documents, at law or in equity shall become exercisable, including the power of sale herein contained. This provision shall apply to

every sale, conveyance, transfer, disposition or Lien of the Charged Property regardless of whether voluntary or not. The Chargee's consent to one sale, conveyance, transfer, disposition or Lien of the Charged Property or any interest in the Chargor shall not be deemed to be a waiver of the Chargee's right to require such consent to any future occurrence of same.

3.3 Survival of Representations, Warranties and Covenants

The representations, warranties, covenants and obligations of the Chargor in each of the Loan Documents are now and will continue to be true and correct at all times until the Loan is repaid in full and shall survive the making of any advance or partial repayment of the Loan, any full or partial release, termination or discharge of any Loan Document or security, and any remedial proceedings taken by the Chargee under any Loan Document or otherwise at law or in equity and shall be fully effective and enforceable by the Chargee notwithstanding any due diligence performed by or on behalf of the Chargee or any breach or other information (to the contrary or otherwise) known to the Chargee at any time.

ARTICLE 4 INSURANCE, DAMAGE AND DESTRUCTION

4.1 Insurance

The Chargor shall maintain insurance as follows:

- (a) **Property and Business Interruption Insurance** The Chargor shall keep the Charged Property insured against damage by fire and the other hazards covered by a standard extended coverage and all-risk insurance policy for the full insurable value thereof (including footings and foundation) on a replacement cost claim recovery basis (without reduction for depreciation or co-insurance and with such endorsements as the Chargee may require), and shall maintain such other property insurance as required by the Chargee from time to time. The Chargee reserves the right to require from time to time the following additional insurance: boiler and machinery; flood; earthquake/sinkhole; worker's compensation and/or building law or ordinance. The Chargor shall maintain use and occupancy insurance covering, as applicable, rental income or business interruption, with coverage in an amount not less than 12 months anticipated gross rental income or gross business earnings, as applicable in each case, attributable to the Charged Property. The Chargor shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise reasonably satisfactory to the Chargee in all respects. The proceeds of insurance paid on account of any damage or destruction to the Charged Property shall be paid to the Chargee to be applied as provided in Subsection 4.2.
- (b) **Condominium Insurance** If the Charged Property is a condominium, the Chargor has caused and shall continue to cause the Condominium Corporation to obtain and maintain insurance on the buildings and improvements forming part of the Charged Property, excluding improvements and betterments made or acquired by the Chargor or any tenant, against major perils as defined in the Condominium Act and the other perils that the Declaration or the by-laws of the Condominium Corporation specify, to the replacement cost of such property, and liability, boiler, machinery and pressure vessel, motor vehicle and other insurance as it may be required to be obtained and maintained by the Condominium Act, the Declaration or the by-laws of the Condominium Corporation.
- (c) **Improvements Insurance** If the Charged Property is a condominium, the Chargor shall obtain and maintain insurance on improvements and betterments to the Units owned by the Chargor, or cause any tenants of such Units to obtain and maintain the same, and, in the event of termination of the government of the Charged Property by the Condominium Act, will to the extent the Charged Property is insurable, obtain insurance on the Chargor's interest therein for the full insurable value thereof or, if the Chargee so requires, the replacement cost thereof, in lawful money of Canada, against loss or damage by fire, lightning and tempest and such other risks as the Chargee may require, including risks and perils covered by an all risks policy. In the case of a Unit used for commercial purposes, this covenant shall

in addition include boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Chargee.

- (d) Liability The Chargor shall maintain “Comprehensive General Liability Form” of commercial general liability insurance coverage with the “Broad Form CGL” endorsement (or a comparatively worded form of coverage) with respect to the Charged Property providing for limits of liability of not less than \$5,000,000 for both injury to or death of a person and for property damage per occurrence, and such other liability insurance as reasonably required by the Chargee from time to time.
- (e) Construction During the period in which construction of the Improvements is taking place, the Chargor shall maintain or cause to be maintained (i) builder's “all risk” (including coverage for the perils of earthquake, flood, and sewer backup) insurance on a replacement cost, no co-insurance basis, for an amount covering insured physical loss or damage representing not less than 100% of the total hard costs of the Project plus at least 25% of total soft costs of the Project (each as approved by the Chargee), with loss payable to the Chargee, as its interest may appear, including an Insurance Bureau of Canada approved mortgage clause acceptable to the Chargee and (ii) wrap-up liability insurance in an amount per occurrence that is satisfactory to the Chargee from time to time, for third party bodily injury and/or property damage liability and in the aggregate for products and completed operations liability, in which policy or policies of insurance the definition of insured shall include, in addition to the Chargor, all contractors, sub-contractors and trades engaged in the Project with respect to work or operations at the Project, provided that such work or operations directly relate to the Charged Property. The architects and engineers engaged in any Project at the Charged Property will maintain professional liability insurance for an amount satisfactory to the Chargee per claim and in the annual aggregate.
- (f) Form and Quality All insurance policies shall be in form and substance acceptable to the Chargee and shall name the Chargee as a first mortgagee, an additional insured, and loss payee or chargee thereunder, as its interest may appear, with loss payable to the Chargee, without contribution, under a standard Canadian mortgage clause. All such insurance policies and endorsements shall be fully paid for and shall have a term of not less than one year. All insurers shall be acceptable to the Chargee in its sole discretion. Each policy shall provide that such policy may not be cancelled or materially changed except upon 30 days’ prior written notice of intention of non-renewal, cancellation or material change to the Chargee and that no act or thing done by the Chargor shall invalidate any policy as against the Chargee. Original or certified copies of all insurance policies shall be delivered by the Chargor to and held by the Chargee prior to the Loan advance, provided that if insurance certificates or binders evidencing such insurance and acceptable to the Chargee are delivered prior to the Loan advance, such insurance policies may be delivered to the Chargee within 60 days thereafter. Upon renewal or amendment of any policy from time to time, the Chargor shall provide the Chargee with a copy of the renewal or amendment within 10 Business Days of it being issued. Blanket policies shall be permitted only if the Chargee receives appropriate endorsements and/or duplicate policies containing the Chargee’s right to continue coverage on a *pro rata* pass-through basis and that coverage will not be affected by any loss on other properties covered by the policies. The Chargor shall pay or cause to be paid all the premiums for such policies as the same become due and payable in advance except to the extent provision for such payment has been made from a reserve fund established under the Commitment. If the Chargor fails to pay such premiums when due, the Chargee may obtain such insurance and pay the premium therefor and the Chargor shall, on demand, immediately reimburse the Chargee for all expenses incurred in connection therewith. The Chargor shall assign the policies and proceeds of insurance to the Chargee, in such manner and form that the Chargee and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. The Chargor hereby authorizes and directs the issuer of any such insurance or awards to make payment directly to the Chargee. The proceeds of insurance policies coming into the possession of the Chargee shall not be deemed trust funds, and the Chargee shall be entitled to apply such proceeds as

herein provided.

- (g) Adjustments The Chargor shall give immediate written notice of any loss to the insurance carrier and to the Chargee. The Chargor hereby irrevocably authorizes and empowers the Chargee, as attorney-in-fact for the Chargor coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom the Chargee's reasonable expenses incurred in the collection of such proceeds. Nothing contained in this Section 4.1(g), however, shall require the Chargee to incur any expense or take any action hereunder.
- (h) Compliance with Insurance Policies The Chargor promptly shall comply with, and shall cause the Charged Property to comply with, all the terms of each insurance policy required by this Charge and all requirements of the insurer of each such policy. The Chargor shall not by any action or omission invalidate any insurance policy required to be carried hereunder or materially increase the premiums on any such policy above the normal premium charged by the carrier of such policy.

4.2 Use and Application of Insurance Proceeds

If the Charged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, the Chargor shall give prompt notice thereof to the Chargee. All insurance proceeds and expropriation awards arising in respect of the Charged Property shall, at the option of the Chargee in its sole discretion, be applied in reduction of the Indebtedness, whether or not the Indebtedness is at that time due and payable and whether or not any Event of Default has occurred. Following the occurrence of such damage or destruction, the Chargor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with Applicable Laws.

ARTICLE 5 EVENTS OF DEFAULT

5.1 Events of Default

Each of the following shall constitute an Event of Default under this Charge:

- (a) the failure of the Chargor or any guarantor, joint debtor, indemnifier, beneficial owner or other obligor of or in respect of the Indebtedness or the Charged Property (collectively, with the Chargor, the "**Covenantors**") to pay any regularly scheduled instalment of principal, interest or other amount due under the Loan Documents when due, or the Covenantors' failure to pay any amount relating to the Loan on demand, whether by acceleration or otherwise;
- (b) the Covenantors default in performing or observing any covenant or obligation on its part to be observed and performed in this Charge or in any of the other Loan Documents;
- (c) any representation or warranty of any Covenantor in any Loan Document or in any financial statement, rent roll or other document at any time delivered by or on behalf of any Covenantor in connection with the Loan is or becomes incorrect or misleading in any material respect;
- (d) proceedings are commenced by any Person seeking the dissolution, liquidation, winding-up or termination of any Covenantor or a resolution is passed or an order is made for the dissolution, liquidation or winding-up of or termination of any Covenantor or other cancellation or suspension of its incorporation or termination of its existence;
- (e) a decree or order of a court of competent jurisdiction is entered adjudging any Covenantor a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up, reorganization, reconstruction or arrangement of any Covenantor under the *Companies' Creditors Arrangement Act (Canada)*, the *Bankruptcy and*

Insolvency Act (Canada) or the *Winding-Up and Restructuring Act (Canada)* or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any Covenantor or against all or any part of the assets of any Covenantor or ordering the winding up or liquidation of its affairs, or appointing a trustee, receiver, receiver and manager, interim receiver, custodian, liquidator or other person with similar powers of any Covenantor or all or any part of its assets;

- (f) any Covenantor becomes insolvent, commits an act of bankruptcy, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act (Canada)* or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act (Canada)*, the *Winding-Up and Restructuring Act (Canada)* or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal in bankruptcy, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself or of all or any part of its assets, or files a petition or application or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditor's rights or consents to, or acquiesces in, the filing of such petition;
- (g) a receiver, receiver-manager or receiver and manager of any Covenantor of any material part of its properties, assets or undertakings is appointed, or if a monitor is appointed in respect of any Covenantor;
- (h) an encumbrancer takes possession of the Charged Property or any other property of any Covenantor, or any distress or analogous process is levied upon any Covenantor;
- (i) all or any part of the Charged Property becomes subject to any Lien, other than the Permitted Encumbrances, the Lien of this Charge and the other Loan Documents;
- (j) any default by any Covenantor or the Chargor under any of the Permitted Encumbrances or under any other security or agreement made or assumed by any Covenantor (or by which it is bound) in favour of any person in connection with the Charged Property or made or assumed by any Covenantor (or by which it is bound) in favour of the Chargee whether or not such security or agreement is in connection with the Charged Property;
- (k) any sale, transfer, conveyance, or assignment of any part or all of the Charged Property, or any interest therein, or of any interest in the Chargor, except as permitted by this Charge;
- (l) a final judgment or decree for the payment of money due shall have been obtained or entered or any writ of execution, distress, attachment or other similar process shall have been issued or levied against any Covenantor in an amount which, in the opinion of the Chargee, acting reasonably, would materially and adversely affect the ability of such Covenantor to fulfil its obligations to the Chargee under the Loan or any of the Loan Documents;
- (m) any part of the Charged Property is condemned or expropriated;
- (n) if the Charged Property is a condominium and the Chargor fails to pay any Common Expenses that it is required to contribute with respect to the Units owned by it or the Condominium Corporation obtains a lien or registers a certificate of lien against the Chargor's Units or any of them; or
- (o) any other Event of Default under any other Loan Document.

ARTICLE 6 REMEDIES

6.1 Acceleration

Upon an Event of Default, the entire Indebtedness shall, at the option of the Chargee in its sole discretion, immediately become due and payable, with interest thereon at the Interest Rate to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, each of which are hereby expressly waived, and all the Chargee's rights and remedies under this Charge, the other Loan Documents, and otherwise at law and in equity shall immediately become enforceable.

6.2 Power of Sale

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee may sell the Charged Property or any part thereof by public auction or private sale and on such terms as to credit and otherwise as may appear to it most advantageous, and for such price as can be reasonably obtained therefor. The Chargee shall be entitled to buy in or rescind or vary any contract for sale of any of the Charged Property, and resell without being answerable for any loss occasioned thereby. In the case of a sale on credit, the Chargee shall only be accountable for monies actually received in cash as and when so received. For such purposes, the Chargee may make and execute all agreements and assurances which it shall think fit. The purchaser shall in no case be bound to enquire whether notice of intention to sell has been given or default made, or otherwise as to the regularity or validity of any sale made hereunder, and any sale by the Chargee shall be valid as regards the purchaser and shall not in any way be affected thereby. The Chargee shall be entitled to apply the proceeds of any sale hereunder first in payment of all costs, charges and expenses incurred in respect of such sale, as more particularly described below, and secondly in payment of all amounts of interest and principal owing hereunder. If any surplus remains after the Chargee has fully satisfied its claims, such surplus shall be paid to the party then entitled by law to receive such surplus. The powers conferred on the Chargee hereunder are in addition to and not in limitation of any other rights or powers of the Chargee under this Charge, or at law or in equity.

The costs of any sale proceedings hereunder, whether such sale proves abortive or not, including all commissions and other fees payable to real estate agents and brokers in connection with any such sale, and all costs, charges and expenses (including, without limitation, legal fees on a substantial indemnity basis) incurred in inspecting the Charged Property, which the Chargee shall be entitled to do, or about taking, recovering or keeping possession of the Charged Property, or in enforcing the remedies of the Chargee under this Charge, or by reason of non-payment or in procuring payment of the monies hereby secured, shall be added to the Indebtedness and bear interest at the Interest Rate provided for in this Charge as well after as before maturity, and shall be a charge on the Charged Property and shall be payable immediately with interest as aforesaid, and in default of payment, may be paid from the proceeds of any sale of the Charged Property.

6.3 Possession

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee may enter into and take possession of the Charged Property and shall be entitled to:

- (a) have, hold, use, occupy, possess and enjoy the Charged Property without let, suit, hindrance, interruption or denial of the Chargor or any other Person;
- (b) maintain, repair and complete the construction of the Improvements;
- (c) inspect, manage, take care of, collect Rents and lease the Charged Property or any part thereof for such terms and for such rents (which may extend beyond the date of demand) and on such conditions and provisions (including providing any leasehold improvements and tenant inducements) as the Chargee may determine in its sole discretion, which leases shall have the same effect as if made by the Chargor; and
- (d) pay from such Rents received all expenses of maintaining, preserving, protecting and operating the Charged Property, making any additions and replacements thereto and all charges payment of which may be necessary to preserve or protect the Charged Property and the Chargee shall have and enjoy and may exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation power to advance its own monies at the Interest Rate and to enter into contracts and undertake obligations for the foregoing

purposes upon the security hereof,

and all costs, charges and expenses incurred by the Chargee in the exercise of such rights (including allowances for the time, service or effort of any Person appointed by the Chargee for the above purposes, and all reasonable legal fees and disbursements incurred and all commissions and other fees payable to real estate agents and brokers in connection with any lease), together with interest thereon at the Interest Rate, shall be payable forthwith by the Chargor to the Chargee, and until paid shall be added to the Indebtedness and shall be secured by this Charge. Each lease or renewal of lease made by the Chargee while in possession of the Charged Property shall continue for its full term notwithstanding the termination of the Chargee's possession. The Chargee shall not be liable for any loss or damage sustained by the Chargor or any other Person resulting from any lease entered into by the Chargee, any failure to lease the Charged Property, or any part thereof, or from any other act or omission of the Chargee or any receiver in managing the Charged Property, nor shall the Chargee be obligated to perform or discharge any obligation or liability of the Chargor under any Lease, Loan Document or otherwise at law or in equity.

6.4 Exercise Rights of Chargor; Distraint

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee shall have, enjoy and exercise all of the powers and rights of and enjoyed by the Chargor with respect to the Charged Property or incidental, ancillary, attaching or deriving from the ownership by the Chargor of the Charged Property, including without limitation the powers of the receiver set out in Section 6.5 and the power to enter into agreements, to grant or agree to mortgages and other encumbrances, and to grant or reserve easements, rights-of-way, rights in the nature of easements and licences, in each case over or pertaining to the whole or any part of the Charged Property. If the Chargor shall make default in payment of any part of the interest payable under this Charge at any of the dates or times fixed for payment thereof, it shall be lawful for the Chargee to distraint therefor upon the Charged Property or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the Charged Property, so much of such interest as shall from time to time be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. The Chargee may distraint for arrears of principal or other monies owing hereunder in the same manner as if the same were arrears of interest.

6.5 Receiver

Upon the Chargee's rights and remedies hereunder becoming enforceable, the Chargee may, in its sole discretion, at such time and from time to time and with or without entry into possession of the Charged Property or any part thereof by writing appoint a receiver or receiver and manager either privately or by court appointment (hereinafter referred to as a "Receiver") of the Charged Property or any part thereof and with or without security and may from time to time by similar writing remove any Receiver and appoint another in his stead and that, in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. Upon the appointment of any such Receiver or Receivers from time to time the following provisions shall apply:

- (a) the statutory declaration of an officer of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;
- (b) every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect of the Charged Property or any part thereof whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (c) every such Receiver may, in the discretion of the Chargee and by writing, be vested with all or any of the powers and discretions of the Chargee under this Charge and the other Loan Documents, including without limitation the power to:
 - (i) exercise the powers of the Chargee set out in Sections 6.2, 6.3 and 6.4, as if the word "Chargee" in those Sections was replaced with the word "Receiver", and every such Receiver shall have authority to execute any lease of any premises in the Charged Property in the name of and on behalf of the Chargor, and the Chargor undertakes to ratify and confirm whatever

- any such Receiver may do on the Charged Property;
- (ii) complete any unfinished construction upon the Charged Property or any part thereof, including without limitation the power to:
 - (A) appoint and engage superintendents, architects, engineers, decorators, planners, consultants, managers, advisors and such other personnel which, in the discretion of the receiver, may be required to complete the construction, furnishing and operation of the Charged Property or any part thereof;
 - (B) enter into contracts for the supply of materials and services which the receiver deems necessary for the completion and operation of the Charged Property or any part thereof;
 - (C) enter into and enforce and take the benefit of contracts and arrangements in respect of the Charged Property or any part thereof which provide loans, grants, licences, concessions or franchises from municipal or other governmental authorities or from any other source whatsoever;
 - (D) enforce, use and take the benefit of construction contracts, contracts for services or materials, performance bonds, insurance contracts, development agreements, plans, studies, reports, information or any other matter, material or arrangement in respect of the Charged Property or any part thereof;
 - (E) arrange financing and borrow money on such terms as the receiver deems reasonable in the circumstances and which the receiver deems necessary, to pay for any of the matters herein mentioned which financing may be secured against the Charged Property or any part thereof in priority to this Charge or otherwise; and
 - (F) terminate any contracts or arrangements made by the Chargor in connection with the Charged Property on such terms as the receiver deems reasonable;
 - (iii) mortgage, operate, use, amend, repair, alter or extend the Charged Property or any part thereof in the name of the Chargor; and
 - (iv) grant extensions of time, take and perfect or abstain from taking and perfecting security, give up security, accept compositions or compromises, grant releases and discharges, and release any part of the Charged Property or otherwise deal with the Chargor, debtors of the Receiver, sureties and others and with the Charged Property and other security as the Receiver sees fit without prejudice to the liability of the Chargor to the Chargee or the Chargee's rights hereunder;
- (d) the Chargee may from time to time by such writing fix the remuneration of every such Receiver who shall be entitled to deduct the same out of the Charged Property or the proceeds thereof;
 - (e) every such Receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Chargor and in no event the agent of the Chargee;
 - (f) the appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Charged Property or any part thereof; and
 - (g) no such Receiver shall be liable to the Chargor to account for monies or damages other than cash received by him in respect of the Charged Property or any part

thereof and out of such cash so received every such Receiver shall in the following order pay:

- (i) its remuneration aforesaid;
- (ii) all payments made or incurred by it in connection with the management, operation, repair, alteration or extension of the Charged Property or any part thereof;
- (iii) in payment of interest, principal and other monies which may, from time to time, be or become charged upon the Charged Property in priority to this Charge, and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect of the Charged Property or any part thereof,
- (iv) in payment to the Chargee of all Indebtedness and all reserves payable under the Commitment, to be applied by the Chargee in such order as the Chargee may determine, and
- (v) thereafter any surplus remaining in the hands of every such Receiver after payments made as aforesaid shall be accountable to the party entitled by law to receive such surplus.

The Chargee may at any time and from time to time terminate any such receivership by notice in writing to the Chargor and to any such Receiver. Save as to claims for accounting under subsection (g) of this Section, the Chargor hereby releases and discharges the Chargee and every such Receiver from every claim of every nature, whether sounding in damages or not, which may arise or be caused to the Chargor or any person claiming through or under him by reason or as a result of anything done by the Chargee or any successor or assign claiming through or under it or any such Receiver under the provisions of this Section unless such claim be the direct and proximate result of its gross negligence or wilful misconduct.

6.6 Chargee's Right to Perform Obligations

If the Chargor shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, including without limitation any failure to pay any amount due to any party under any reciprocal shared facilities agreement or similar agreement with respect to the Charged Property, then while any Event of Default exists, and without notice to or demand upon the Chargor and without waiving or releasing any other right, remedy or recourse the Chargee may have because of such Event of Default, the Chargee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the Chargor, and shall have the right to enter upon the Charged Property for such purpose and to take all such action thereon and with respect to the Charged Property as it may deem necessary or appropriate. If the Chargee shall elect to pay any sum due with reference to the Charged Property, the Chargee may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, the Chargee shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. The Chargor shall indemnify the Chargee for all losses, expenses, damages, claims and causes of action, including legal fees (on a solicitor and client basis), incurred or accruing by reason of any acts performed by the Chargee pursuant to the provisions of this Subsection 6.6. All sums paid by the Chargee pursuant to this Subsection 6.6, including without limitation any failure to pay any amount due to any party under any reciprocal shared facilities agreement or similar agreement with respect to the Charged Property, and all other sums expended by the Chargee to which it shall be entitled to be indemnified, together with interest thereon at the Interest Rate from the date of such payment or expenditure until paid, shall be added to the Indebtedness, shall be secured by the Loan Documents and shall be paid by the Chargor to the Chargee upon demand.

6.7 Concurrent Remedies

The Chargee may exercise all remedies provided for in this Charge or otherwise at law or

in equity concurrently or in such order and at such times as it may see fit and will not be obligated to exhaust any right or remedy before exercising any of its other rights or remedies pursuant to any other provisions contained in this Charge, any other Loan Document or otherwise at law or in equity.

6.8 Judgments

The taking of a judgment or judgments against the Chargor or any other Person for breach of its obligations contained in this Charge or any other Loan Document will not merge or extinguish such obligations or affect the Chargee's rights to interest on the Indebtedness at the Interest Rate. Any such judgment may provide that interest thereon will be computed at the Interest Rate until such judgment is fully paid and satisfied.

6.9 Remedies Cumulative

The rights and remedies of the Chargee under the Loan Documents are cumulative and are in addition to and not in substitution for any rights or remedies otherwise provided at law or in equity. No right or remedy of the Chargee shall be exclusive of or dependent on any other right or remedy and any one or more of such rights and remedies may be exercised independently or in combination from time to time. Any single or partial exercise by the Chargee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in any Loan Document shall not waive, alter, affect or prejudice any other right or remedy to which the Chargee may be lawfully entitled for such default or breach.

6.10 Extension of Time and Waiver

Neither any extension of time given by the Chargee to the Chargor or any Person claiming through the Chargor, nor any amendment to this Charge or other dealing by the Chargee with a subsequent owner of the Charged Property will in any way affect or prejudice the rights of the Chargee against the Chargor or any other Person or Persons liable for payment of the Indebtedness. The Chargee may waive any Event of Default in its sole discretion. No waiver will extend to a subsequent Event of Default, whether or not the same as or similar to the Event of Default waived, and no act or omission by the Chargee will extend to, or affect, any subsequent Event of Default or the rights of the Chargee arising from such Event of Default. Any such waiver must be in writing and signed by the Chargee. No failure on the part of the Chargee or the Chargor to exercise, and no delay by the Chargee or the Chargor in exercising, any right pursuant to this Charge will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right.

6.11 Discharge of Charge and Release

The Chargee will have a reasonable period of time after full payment and satisfaction of the Indebtedness to prepare and execute a discharge of this Charge. Interest at the Interest Rate will continue to run and accrue on all Indebtedness until full payment has been received by the Chargee. All reasonable legal and other expenses for the preparation, execution, delivery and registration of the discharge shall be paid by the Chargor upon demand. The Chargor shall register such discharge. The Chargee may release in its discretion and at any time any Person or any part or parts of the Charged Property from all or any part of the Indebtedness or the security either with or without any consideration and without releasing any other part of the Charged Property or any other Person from this Charge or from any of the covenants contained in this Charge, and without being accountable to the Chargor for the value of the Charged Property released or for any money except that actually received by the Chargee. Every part or lot into which the Charged Property is or may hereafter be divided will stand charged with the entire Indebtedness. The Chargee may grant time, renewals, extensions, indulgences, releases and discharges, may take securities from and give the same up, may abstain from taking securities from or from perfecting securities, may accept compositions and proposals, and may otherwise deal with the Chargor and all other Persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under the Loan or the Loan Documents.

ARTICLE 7 MISCELLANEOUS

7.1 Notice

Any notice, demand or other communication required or permitted to be given or made to the Chargor pursuant to this Charge may be given or made in any manner permitted or provided by the laws applicable thereto, notwithstanding any provision of any other Loan Document to the contrary. Subject to the foregoing, any such notice, demand or communication may be given or made, at the option of the Chargee by personal delivery, by prepaid ordinary, electronic transmission or registered mail (to the address for service of the Chargor set out in this Charge or to the last known address of the Chargor as shown in the Chargee's records) or by facsimile transmission to the facsimile number of the Chargor set out herein or the last known facsimile number of the Chargor as shown in the Chargee's records. Such notice will be sufficient although not addressed to any Person by name or designation and notwithstanding that any Person to be affected thereby may be unknown, unascertained or under a disability. Subject to Applicable Laws, the giving of such notice in the manner aforesaid will be as effective as if the notice had been personally served on all Persons required to be served therewith.

Subject to this Section 7.1, any demand, notice or communication to be made or given in connection with this Charge or any of the Loan Documents shall be in writing and may be made or given by personal delivery, by registered mail, electronic transmission or by facsimile transmission addressed to the recipient as follows: (i) to the Chargor: 1944 Fowler Drive, Mississauga, Ontario, L5K 0A1 Attention: John Vandyk; (ii) to the Chargee: 41 Scarsdale Road, Unit 6, Toronto, Ontario, M3B 2R2, Attention: Brian Dorr, Facsimile No.: 1-866-839-7075, or to such other address, individual or facsimile number as any party may designate by notice given to the other(s) in accordance with this Section. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and if made or given by registered mail, on the third Business Day following the deposit thereof in the mail, and if made or given by facsimile transmission, on the first Business Day following the transmittal thereof. If the party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal system that might affect the delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by facsimile transmission.

7.2 General Indemnity

The Chargor shall protect, defend, indemnify and save harmless the Chargee its shareholders, directors, officers, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable legal fees and expenses), imposed upon or incurred by or asserted against the Chargee by reason of (a) ownership of the Charge, the Charged Property or any interest therein or receipt of any rents; (b) any accident, injury to or death of persons or loss of or damage to the Charged Property occurring in, on or about the Charged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent Charged Property or adjacent parking areas, streets or ways; (c) any use, non-use or condition in, on or about the Charged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent Charged Property or adjacent parking areas, streets or ways; and (d) performance of any labour or services or the furnishing of any materials or other property in respect of the Charged Property or any part thereof. Any amounts payable to the Chargee by reason of the application of this subsection shall become immediately due and payable and shall bear interest at the Interest Rate from the date loss or damage is sustained by the Chargee until paid.

7.3 Disclosure

The Chargor acknowledges that the Chargee and its successors and assigns may sell or transfer or grant a participation in all or any interest in the Loan and Loan Documents to a third party, without further notice to or consent of the Chargor. The Chargor shall co-operate with the Chargee in any such sale, transfer or grant. The Chargor shall provide such information, legal opinions and documents relating to the Chargor, the Charged Property and any tenants of the Charged Property as the Chargee may reasonably request in connection with such sale, transfer or grant at no cost or expense to the Chargee. The Chargee and each Person having an interest in the Loan from time to time may release, disclose, exchange, share, transfer and assign as it may determine in its sole discretion, all information and materials (including financial statements and information concerning the status of the Loan, such as existing or potential Loan defaults, Lease defaults or other facts or circumstances which might affect the performance of the Loan) provided to or obtained by the Chargee relating to the Chargor, any guarantor, indemnitor or beneficial owner, the Charged Property or the Loan (both before and after the Loan advance and/or default)

without notice to or the consent of the Chargor or any other Person to any prospective purchaser, transferee or grantee of the Loan and their respective employees, third party advisors and agents.

7.4 Amendments and Waivers

No amendment or waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought.

7.5 Time of the Essence

Time is of the essence with respect to this Agreement.

7.6 Waivers

No course of dealing on the part of the Chargee, its officers, employees, consultants or agents, nor any failure or delay by the Chargee with respect to exercising any right, power or privilege of the Chargee under the any of the Loan Documents, shall operate as a waiver thereof.

7.7 Governing Law

This Charge and the Loan Documents shall be governed by and construed in accordance with the laws of the Province in which the Charged Property is located and the applicable laws of Canada.

7.8 Successors and Assigns

This Charge shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. This Charge may be assigned by the Chargee at any time without prior notice to or consent of the Chargor.

7.9 No Merger

Notwithstanding the execution and delivery of this Charge and the other Loan Documents and the advance of all or part of the Loan, the Commitment shall remain in full force and effect and the provisions thereof are intended not to merge or be extinguished. In the event of any conflict or inconsistency between the provisions of this Charge and the provisions of the Commitment, the provisions of the Commitment shall prevail to the extent of any such conflict or inconsistency. In the event of any conflict or inconsistency between the provisions of this Charge and the provisions of any other Loan Document (other than the Commitment), the provisions of this Charge shall prevail to the extent of any such conflict or inconsistency. This Charge is intended to supplement and not derogate from the other Loan Documents.

7.10 Currency

All dollar references in this Charge are expressed in Canadian dollars.

7.11 Obligations as Covenants

Each obligation of the Chargor expressed in this Charge, even though not expressed as a covenant, is deemed for all purposes to be a covenant made with the Chargee.

7.12 Land Registration Reform Act

The parties hereby exclude from this Charge all of the covenants deemed to be included by section 7(1) of the *Land Registration Reform Act* (Ontario) (the “Act”), which covenants are hereby replaced by the covenants and agreements contained herein.

7.13 Severability

If any one or more of the provisions contained in this Charge shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Chargee, be severable from and shall not affect any other provision of this Charge, but this Charge shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Charge.

7.14 Limit on Rate of Interest

- (a) If any provision of the Charge would oblige the Chargor to make any payment of interest or other amount payable to the Chargee in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Chargee of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Chargee of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows:
- (i) firstly, by reducing the amount or rate of interest required to be paid to the Chargee under Section 2.3; and
 - (ii) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Chargee which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).
- (b) Notwithstanding the provisions of this Section 7.14, and after giving effect to all adjustments contemplated thereby, if the Chargee shall have received an amount in excess of the maximum permitted by Subsection 7.14(a), then the Chargor shall be entitled, by notice in writing to the Chargee, to obtain reimbursement from the Chargee in an amount equal to such excess, and pending such reimbursement, such amount shall be deemed to be an amount payable by the Chargee to the Chargor.
- (c) Any amount or rate of interest referred to in this Section 7.14 shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term of the Loan on the assumption that any charges, fees or expenses that fall within the meaning of “interest” (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the date of the first advance of the Loan to the date of demand and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Chargee shall be conclusive for the purposes of such determination.

7.15 Credit and Personal Information Investigations

Each of the Covenantors and their respective principal(s) each acknowledges that for credit purposes the Chargee (including its agents and those to whom the Chargee may assign all of any portion of its interest in the Loan) will collect, use and, where necessary, disclose information in connection with the Commitment and this Charge and will consult its existing files about each of them. Credit purposes include, without limitation, (i) assessing and processing the Commitment and this Charge; (ii) administering the Loan; (iii) enforcing any obligation owed by any Covenantor under or in respect of the Loan or any principal; (iv) fraud prevention; and (v) credit reporting. Each of the Covenantors and their respective principal(s) each hereby authorizes the Chargee, now or at any time in the future, to the extent necessary for credit purposes, to collect, use and disclose information about each of them and each of their creditworthiness, including, without limitation, information collected and exchanged with third parties (such as references, personal information agents, credit reporting bureaus and other institutions with whom any of the Covenantors or any principal may have financial dealings). Such third parties are hereby authorized to disclose to the Chargee any information it requests pursuant to this Section.

7.16 Construction

In the event that the monies advanced hereunder are or are deemed to be a construction loan, the following conditions shall apply:

- (a) the Chargor further covenants that all installation of services and construction on the Charged Property shall be carried out by reputable contractors with sufficient experience in a project of this nature and size, which contractors must be approved by the Chargee and which approval shall not be unreasonably withheld;

- (b) that the installation of services and the construction of residential dwelling units on the Charged Property, once having been commenced, shall be continued in a good and workmanlike manner, with all due diligence and in substantial accordance with the plans and specifications delivered to the Chargee and to the satisfaction of the municipality and all governmental and regulatory authorities having jurisdiction;
- (c) provided that should the servicing and construction on the Charged Property cease for any reason whatsoever (strikes, material shortages, weather and conditions or circumstances beyond the control of the Chargor excepted), for a period of fifteen (15) consecutive days (Saturdays, Sundays and statutory holidays excepted) unless explained to the satisfaction of the Chargee, then the monies hereby secured, at the option of the Chargee shall immediately become due and payable. In the event that construction does cease, then the Chargee shall have the right, at its sole option, to assume complete control of the servicing and construction of the Project on the Charged Property in such manner and on such terms as it deems advisable. The cost of completion of the servicing and construction of the Project by the Chargee and all expenses incidental thereto together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Chargee shall form part of the Indebtedness. All costs and expenses, as well as the said management fee, shall bear interest at the rate as herein provided for and shall form part of the Indebtedness and the Chargee shall have the same rights and remedies with respect to collection of same as it would have with respect to collection of principal and interest hereunder or at law;
- (d) at the option of the Chargee, at all times there shall be a holdback of ten percent (10%) with respect to work already completed; and
- (e) all advances which are made from time to time hereunder shall be based on certificates of the Chargee's agents, prepared at the expense of the Chargor, which certificates shall, without limitation, certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or servicing to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in a good and workmanlike manner and in accordance with the permits issued for such servicing and construction and in accordance with all municipal and other governmental requirements of any authority having jurisdiction pertaining to such servicing and construction and there shall be no outstanding work orders or other requirements pertaining to servicing and construction on the said lands. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the buildings or the services.

APPENDIX I

As used herein, the following terms have the following meanings unless there is something in the subject matter or context inconsistent therewith:

“**Act**” has the meaning set out in Section 7.12.

“**Applicable Laws**” means, in respect of any Person, property, transaction or event, all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licenses, authorization, approvals and all applicable common laws or equitable principles whether now or hereafter in force and effect.

“**Business Day**” means a day other than a Saturday, a Sunday, or a statutory or civic holiday in the Province of Ontario.

“**Charge**” means collectively, the electronic Charge/Mortgage to which the Schedule is attached, the Schedule and all other Schedules and Appendices to the Charge/Mortgage or to the Schedule.

“**Charged Property**” means all legal and beneficial right, title, estate and interest in (a) the land described in the Properties section of the electronic Charge/Mortgage to which the Schedule is attached, together with any greater estate therein as hereafter may be acquired by the Chargor (the “**Land**”), (b) all buildings, structures and other improvements, now or hereafter situated, placed or constructed upon the Land from time to time (the “**Improvements**”), (c) all fixtures, materials, supplies, machinery, equipment, apparatus and other items of personal property now owned or hereafter acquired by the Chargor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including without limitation, water, gas, electrical, heating, cooling, ventilation, storm and sanitary sewer fixtures, equipment and facilities and all other utilities whether or not situated in easements (the “**Fixtures**”), (d) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the “**Plans**”), (e) all leases, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Land and the Improvements, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof and all related security and other deposits (the “**Leases**”), (f) all rents, revenues, issues, income, proceeds, profits, and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any part of the Land and the Improvements (the “**Rents**”), (g) all other agreements, including without limitation property management agreements, construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Charged Property (the “**Property Agreements**”), (h) all rights, privileges, tenements, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (i) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above Charged Property now or hereafter acquired by the Chargor, (j) all of the Chargor’s right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures and (k) all renewals, substitutions, improvements, accessions, attachments, additions, replacements and proceeds to, of or from each of the foregoing, and all conversions of the security constituted thereby so that the foregoing shall immediately and automatically be deemed a part of the Charged Property and subject to the security of the Charge as fully and completely and with the same priority and effect as those now owned by the Chargor and specifically described herein, without any further mortgage or assignment or conveyance by the Chargor. As used in this Charge, the term “Charged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

“**Chargee**” means the Person or Persons named as Chargee in the Chargee(s) section of the electronic Charge/Mortgage to which the Schedule is attached and their respective successors and assigns.

“**Chargor**” means the Person or Persons named as Chargor in the Chargor(s) section of the electronic Charge/Mortgage to which the Schedule is attached and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

“**Commitment**” means the commitment letter dated November 5, 2021, from the Chargee to the Chargor, as it may be amended, restated or reissued from time to time.

“**Common Expenses**” means the expense of the performance of the objects and duties of the Condominium Corporation and any expenses identified to be common expenses in either the Condominium Act or in the Declaration.

“**Condominium Act**” means the *Condominium Act, 1998*, S.O. 1998, ch. 19, as amended and supplemented from time to time.

“**Condominium Corporation**” means the condominium corporation to be incorporated with respect to the Charged Property.

“**Costs**” means all fees, costs, charges and expenses incurred by or on behalf of the Chargee for or incidental to (a) preparing, executing and registering the Loan Documents, (b) collecting payments due to the Chargee under the Loan Documents, (c) enforcing and realizing on this Charge and the other Loan Documents, including power of sale, foreclosure, execution, judicial sale, court appointed or private receivership, possession and/or management of the Charged Property and other enforcement proceedings, (d) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, managing, selling or leasing the Charged Property, including all protective disbursements and curing any defaults under or renewing any leasehold interests, (e) exercising any rights of a receiver appointed under this Charge or otherwise and such receiver’s fees and expenses (including all legal fees and disbursements and agents’ costs and expenses), (f) obtaining any environmental audits or other inspections, tests or reports with respect to the Charged Property, (g) complying with any notices, orders, judgments, directives, permits, licenses, authorizations or approvals with respect to the Charged Property, (h) performing the obligations of the Chargor under the Loan Documents, (i) all legal fees and disbursements in connection with the Loan, on a full indemnity basis, and (j) any other fees, costs, charges or expenses payable to the Chargee under the Commitment or any of the Loan Documents or otherwise at law or in equity. “Costs” will also include interest at the Interest Rate on all such fees, costs, charges and expenses.

“**Covenantors**” has the meaning set out in Subsection 5.1(a).

“**Declaration**” means the declaration to be registered under the Condominium Act or its predecessor in the Registry Office.

“**Environmental Laws**” means all Applicable Laws, now or hereafter enacted, governing the environment or natural resources, occupational health and safety matters and/or Hazardous Materials, including, without limitation, such laws governing or regulating (a) the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials, (b) requiring notification or disclosure of releases of Hazardous Materials or other environmental conditions whether or not in connection with a transfer of title to or interest in Charged Property, or (c) the presence of Hazardous Materials on or at the Charged Property.

“**Event of Default**” has the meaning set out in Article 5.

“**Fixtures**” has the meaning set out in the definition of Charged Property in this Appendix.

“**Hazardous Materials**” means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (b) asbestos or asbestos-containing materials, (c) polychlorinated biphenyls (PCBs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, or (h) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

“**Improvements**” has the meaning set out in the definition of Charged Property in this Appendix.

“Indebtedness” means all existing and future indebtedness and other covenants, obligations and liabilities owing by the Chargor to the Chargee from time to time pursuant to the Loan and the Loan Documents, matured or not, direct or indirect, absolute or contingent, including without limitation (a) the Principal Amount, (b) all interest and compound interest at the Interest Rate, (c) Costs, (d) the Prepayment Charge, if any, (e) any amount, cost, charge, expense or interest which has been added to the Indebtedness under the Loan Documents or which is otherwise due and payable thereunder or secured thereby, and (f) the payment, performance, discharge and satisfaction of all other obligations of the Chargor to the Chargee under or in respect of the Loan, the Indebtedness and/or Loan Documents.

“Interest Adjustment Date” means the Interest Adjustment Date specified in the Provisions section of the electronic Charge/Mortgage to which the Schedule is attached.

“Interest Rate” means the rate of interest set out in the Commitment.

“Land” has the meaning set out in the definition of Charged Property in this Appendix.

“Leases” has the meaning set out in the definition of Charged Property in this Appendix.

“Lien” means any mortgage, charge, pledge, hypothec, assignment, lien, lease, sublease, easement, right of way, security interest, restrictions, covenants or encroachments of any kind or nature affecting all or any part of the Charged Property.

“Loan” means the loan made by the Chargee to the Chargor in the original principal amount of \$34,000,000.00 and all other amounts secured by this Charge and the other Loan Documents.

“Loan Documents” means, collectively, all documents, instruments, agreements and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the Loan and the Indebtedness or any part thereof, including the Commitment, this Charge, and the Security referred to in the Commitment. Reference in this Charge to any Loan Document or other instrument or agreement shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto or thereof from time to time.

“Payment Date” means the first day of each calendar month in each and every year commencing on the first day of the first calendar month following the Interest Adjustment Date and ending on the date of demand.

“Permitted Encumbrances” means as of any particular time any of the following encumbrances, provided that the Chargee is satisfied in its sole discretion that same do not, in the aggregate, materially impair the servicing, development, construction, operation, management or marketability of the Charged Property, or the validity, enforceability or priority of security of this Charge and the other Loan Documents: (a) Liens for Realty Taxes or utility charges in either case only if same are not yet due or payable; (b) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility provided in each case that (i) same has been complied with and (ii) the Chargee is satisfied in its sole discretion with the nature, scope and cost of any outstanding obligations thereunder and security has been posted to ensure performance of all such obligations; (c) any subsisting reservations contained in the original grant of the Land from the Crown; (d) Leases which are either disclosed by the Chargor to the Chargee prior to the Loan advance in a rent roll or other document, or entered into after the Loan advance in accordance with the Loan Documents; and (e) such other Liens consented to in writing by the Chargee in its sole discretion.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

“Principal Amount” means the principal amount of the Loan advanced and outstanding from time to time, together with all money that is added from time to time to such principal amount under the terms of this Charge.

“**Property Agreements**” has the meaning set out in the definition of Charged Property in this Appendix.

“**Realty Taxes**” means all taxes, duties, rates, imposts, levies, assessments and other similar charges, whether general or special, ordinary or extraordinary, or foreseen or unforeseen and all related interest, penalties and fines which at any time may be levied, assessed, imposed or be a Lien on, against or in respect of the Charged Property or any part thereof, the Chargor or any beneficial or unregistered owner with respect to its interest in the Charged Property, or any leasing, occupancy, operation, use or possession of the Charged Property.

“**Registry Office**” means the Land Registry Office for the Land Titles Division of Peel (Brampton) (No. 43).

“**Rents**” has the meaning set out in the definition of Charged Property in this Section.

“**Schedule**” means the Schedule - Additional Provisions to which this Appendix is attached and includes this Appendix and all other Appendices attached to such Schedule.

“**Units**” means the condominium unit or units and its or their appurtenant common interests which comprise part of the Charged Property.

TAB YY

THIS IS **EXHIBIT "YY"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

Properties

PIN 13482 - 0071 LT
Description LTS 1, 2, 3, 22, 23 & 24, PL H23 ; EXCEPT PT 1 43R16245 & PT 1 43R21276 ;
 MISSISSAUGA
Address 1345 LAKESHORE RD E
 MISSISSAUGA

Applicant(s)

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name VANDYK-LAKEVIEW-DXE-WEST LIMITED
Address for Service 1944 Fowler Drive
 Mississauga, Ontario
 L5K 0A2

I, Richard Ma, CFO, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Party To(s)

	<i>Capacity</i>	<i>Share</i>
<i>Name</i> DORR CAPITAL CORPORATION		
<i>Address for Service</i> 41 Scarsdale Road Unit 6 Toronto, Ontario M3B 2R2		

Statements

The applicant applies for the entry of a notice of general assignment of rents.
 This notice may be deleted by the Land Registrar when the registered instrument, PR3960399 registered on 2021/12/10 to which this notice relates is deleted
 Schedule: See Schedules

Signed By

Natalie Shoujia Yao	2 Queen Street East Suite 1500 Toronto M5C 3G5	acting for Applicant(s)	Signed	2021 12 10
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Tel 416-593-1221
 Fax 416-593-5437

I have the authority to sign and register the document on behalf of all parties to the document.

Natalie Shoujia Yao	2 Queen Street East Suite 1500 Toronto M5C 3G5	acting for Party To(s)	Signed	2021 12 10
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Tel 416-593-1221
 Fax 416-593-5437

I have the authority to sign and register the document on behalf of all parties to the document.

Submitted By

BLANEY MCMURTRY LLP	2 Queen Street East Suite 1500 Toronto M5C 3G5		2021 12 10
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Tel 416-593-1221
 Fax 416-593-5437

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$66.30
<i>Total Paid</i>	\$66.30

File Number

Party To Client File Number : GAR/DORR/1077280025

GENERAL ASSIGNMENT OF RENTS AND LEASES

THIS AGREEMENT made as of the ¹⁰~~2nd~~ day of Dec, 2021.

B E T W E E N :

VANDYK – LAKEVIEW-DXE-WEST LIMITED

(hereinafter called the “Assignor”)

- and -

DORR CAPITAL CORPORATION

(hereinafter called the “Lender”)

WHEREAS as additional security for the Assignor's covenants and obligations as set out in the Mortgage and set out in all other agreements, documents, instruments, undertakings and assignments entered into between the Assignor and the Lender, made by the Assignor in favour of the Lender or assigned by the Assignor to the Lender, the Assignor agreed to assign, to the Lender, the Rents and the Leases, together with all benefits, powers and advantages of the Assignor to be derived therefrom.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00) paid by the Lender to the Assignor (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree with each other as follows:

1. **Recitals Correct:**

The Assignor confirms the validity and truth of the above-noted recital, which has the same force and effect as if repeated herein at length.

2. **Definitions:**

In this Agreement, the following capitalized terms have the respective meanings set out below:

- (a) “**Agreement**”, “**this Agreement**”, “**the Agreement**”, “**hereto**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions mean or refer to this entire agreement as amended from time to time and any agreement or instrument supplemental or ancillary hereto or in implementation hereof;
- (b) “**Buildings**” means all buildings, improvements, installations, facilities, erections or structures now or hereafter located on, made to, placed upon or erected in, under or on the Lands, any additions and alterations thereto, and any expansions, improvements and replacements thereof and all equipment, chattels and fixtures which may be owned by or on behalf of the Assignor and may now or hereafter be located on the Lands;
- (c) “**Commitment**” means the commitment letter dated the 5th day of November, 2021 from the Lender, as lender, to the Assignor, as borrower as it may be amended, modified, restated or consolidated from time to time;
- (d) “**Default**” has the meaning ascribed thereto in Section 8;
- (e) “**Dispute**” has the meaning ascribed thereto in Subsection 8(c);
- (f) “**Event of Default**” has the meaning ascribed thereto in the Mortgage;
- (g) “**Indebtedness**” has the meaning ascribed thereto in Section 3;
- (h) “**Lands**” means the lands described in Schedule “A” attached hereto;

- (i) **“Leases”** means all leases, subleases, agreements to lease or sublease, offers to lease or sublease, agreements to use or occupy and licenses in respect of the whole or any part or parts of the Project and all revisions, alterations, modifications, amendments and changes thereto, extensions, renewals and replacements thereof or substitutions therefor which have been or may hereafter be effected or entered into; and **“Lease”** means any one of the Leases;
- (j) **“Mortgage”** means the charge/mortgage of the Project granted by the Assignor in favour of the Lender and registered on the date of registration of this Agreement in the Land Registry Office for the Land Titles Division of Peel (Brampton) (No. 43), as it may be amended or supplemented from time to time;
- (k) **“Project”** means the Lands and Buildings;
- (l) **“Rents”** means all present and future income, rents, issues, profits and any other monies, including without limitation security deposits, rental deposits (including for rent for the last month or any other future period in the term of a Lease), rental insurance proceeds and expropriation awards, to be derived from, reserved or payable under the Leases; and
- (m) **“Tenant”** means any person (other than the Assignor) who is hereafter a party to a Lease; and **“Tenants”** means all such persons.

3. **Assignment:**

As continuing and additional security for:

- (a) the repayment to the Lender of all indebtedness and liability (the **“Indebtedness”**) from time to time of the Assignor to the Lender, under, in connection with or arising out of or from the Mortgage, the Commitment and all other agreements, documents, instruments, undertakings and assignments entered into by the Assignor with the Lender, made by the Assignor in favour of the Lender or assigned by the Assignor to the Lender; and
- (b) the due performance by the Assignor of the terms, agreements, provisions, conditions, obligations and covenants on the part of the Assignor to be performed, including without limitation under the Mortgage, the Commitment and all other agreements, documents, instruments, undertakings and assignments entered into by the Assignor with the Lender, made in favour of the Lender or assigned to the Lender;

the Assignor, upon and subject to the terms of this Agreement, assigns, sets over and transfers to the Lender all its rights, benefits, title and interest under, in and to, and all claims of whatsoever nature or kind which the Assignor now has or may hereafter have under or pursuant to:

- (c) the Leases;
- (d) the Rents;
- (e) the benefit of any and all present and future guarantees of and indemnities with respect to any Lease and the performance of any or all of the obligations of any Tenant thereunder;
- (f) the benefit of any and all present and future letters of credit and security documents provided to secure the obligations of any Tenant under any of the Leases;
- (g) the benefit of any and all present and existing assignments of Leases by the Tenants thereunder and agreements to assume the obligations of the Tenants thereunder; and
- (h) all books, accounts, invoices, letters, papers, drawings and documents in any way evidencing or relating to the Leases, the Rents and any guarantees or indemnities of any Lease;

all of the foregoing described in Subsections 3(c) to and including 3(h) together with all agreements pertaining thereto and all proceeds therefrom being hereinafter collectively called the "Premises Hereby Assigned".

4. **Acknowledgment of Assignor:**

The Assignor acknowledges that none of this Agreement, the assignment constituted hereby or the enforcement by the Lender of any of its rights and remedies hereunder:

- (a) shall in any way lessen or relieve the Assignor from:
 - (i) the obligation of the Assignor to observe, satisfy and perform each and every term, agreement, provision, condition, obligation and covenant set out in, or required to be observed by the Assignor in order to fulfil its obligations under, any of the Premises Hereby Assigned; and
 - (ii) any liability of the Assignor to each Tenant, the Lender or to any other person, firm or corporation;
- (b) imposes any obligation on the Lender to assume any liability or obligation under, or to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in any of the Premises Hereby Assigned;
- (c) imposes any liability on the Lender for any act or omission on its part in connection with this Agreement or the assignment constituted hereby including, without limitation, the fulfilment or non-fulfilment by the Lender of the obligations, covenants and agreements of the Assignor set out in the Premises Hereby Assigned;
- (d) obligates the Lender to give notice of this Agreement and the assignment constituted hereby to any Tenant or any other person, firm or corporation whatsoever; provided that the Lender may, in its absolute discretion, give any such notice at any time or from time to time without further notice to the Assignor;
- (e) shall cause the Lender to be or be deemed to be a mortgagee in possession;
- (f) shall delay, prejudice, impair, diminish or adversely affect the rights and remedies of the Lender pursuant to the Mortgage or any other agreement (including, without limitation, any loan agreement) entered into by the Assignor with the Lender, made by the Assignor in favour of the Lender or assigned by the Assignor to the Lender; or
- (g) authorizes the Assignor to dispose of or transfer by way of conveyance, mortgage, lease, assignment or otherwise, the Project, the interest of the Assignor in the Project or any part of either.

5. **Positive Covenants of Assignor:**

The Assignor covenants and agrees:

- (a) to observe, perform and satisfy each and every term, agreement, provision, condition, obligation and covenant set out in, or required to be observed, performed and satisfied by the Assignor pertaining to or under or pursuant to, the Premises Hereby Assigned;
- (b) to deliver to the Lender a copy of all written notices, demands or requests given under, in connection with or pursuant to the Premises Hereby Assigned that are:
 - (i) received by the Assignor, forthwith upon receipt of same; and
 - (ii) delivered by the Assignor, contemporaneously with the delivery of same;
- (c) to indemnify and save the Lender harmless from and against any liabilities, losses, costs, charges, expenses (including legal fees and disbursements on a solicitor and his own client basis), damages, claims, demands, actions, suits, proceedings,

judgments and forfeitures (collectively referred to hereinafter as the "**Liabilities**") suffered, incurred or paid by the Lender in connection with, on account of or by reason of:

- (i) the assignment to the Lender of the Premises Hereby Assigned;
 - (ii) any alleged obligation of the Lender to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in any of the Premises Hereby Assigned;
 - (iii) any failure of the Assignor to observe, perform or satisfy its covenants, agreements, warranties and representations set out in this Agreement; and
 - (iv) the enforcement of the assignment constituted by this Agreement or any of its rights and remedies hereunder;
- (d) to notify the Lender in writing as soon as the Assignor becomes aware of any Dispute (as hereinafter defined), claim or litigation in respect of any of the Premises Hereby Assigned or of any breach of default by the Assignor or any other person, firm or corporation in the observance, performance or satisfaction of any of the terms, agreements, provisions, conditions, obligations or covenants set out in the Premises Hereby Assigned;
- (e) to keep, with regard to the Project, separate, up-to-date, detailed and accurate records of all revenues, including, without limitation, all Rents, and expenditures;
- (f) to obtain such consents from third parties including, without limitation, Tenants as may be necessary or required pursuant to any of the Premises Hereby Assigned in connection with the assignment constituted by this Agreement and, in addition, such other consents and acknowledgments from third parties as the Lender may require or desire;
- (g) upon the request of the Lender from time to time, to execute and deliver to the Lender specific assignments of any of the Leases duly acknowledged by the respective Tenants under such Leases, which specific assignments and acknowledgements shall be in form and substance acceptable to the Lender;
- (h) the Assignor will obtain in any new Lease a covenant of the respective Tenant whereby such Lease and all of the rights of the Tenant thereunder are subject and subordinate to this Agreement, the Mortgage and all other security agreements, mortgages, charges, assignments and security interests securing the Indebtedness or any part thereof and whereby such Tenant, at the request of the Lender, will attorn to and become the Tenant of the Lender for the then unexpired residue of the term of such Lease;
- (i) to deliver to the Lender, at the request of the Lender from time to time, a notarial copy of any Lease and of any guarantee or indemnity in respect of the obligations of any Tenant under a Lease;
- (j) to execute and deliver to each Tenant and the Lender, at the request of the Lender from time to time, a written notice to each Tenant directing such Tenants to pay the Rents and all other sums owing under the Leases to the Lender;
- (k) if requested to do so by the Lender, from time to time, it will enforce any or all of its rights and remedies under the Premises Hereby Assigned;
- (l) that each of its warranties and representations set out in this Agreement is now and will continue to be true and correct; and
- (m) that it will pay or cause to be paid to the Lender or pursuant to the Lender's direction, upon demand, all costs, charges, fees and expenses, including, without limitation, legal fees and disbursements on a solicitor and his own client basis, court costs and any other out-of-pocket costs and expenses, incurred by the Lender in connection with or arising out of or with respect to this Agreement including,

without limitation, any one or more of the following:

- (i) the negotiation, preparation, execution and enforcement of this Agreement and all documents, agreements and other writings incidental or ancillary hereto;
- (ii) any act done or taken pursuant to this Agreement including, without limitation, recovering the Indebtedness and registering, discharging and reassigning this Agreement;
- (iii) the preservation, protection, enforcement or realization of the Premises Hereby Assigned including, without limitation, retaking, holding, repairing, preparing for disposition and disposing of the Premises Hereby Assigned;
- (iv) any action or other proceeding instituted by the Assignor, the Lender, any Tenant or any other person, firm or corporation in connection with or in any way relating to:
 - (1) this Agreement or any part hereof;
 - (2) the preservation, protection, enforcement or realization of the Premises Hereby Assigned; or
 - (3) the recovery of the Indebtedness;
- (v) all Liabilities suffered, incurred or paid by the Lender as set out in Subsection 5(c) hereof; and
- (vi) all amounts incurred or paid by the Lender pursuant to Section 8 hereof;

together with interest thereon from the date of the incurring of such expenses at the rate provided for in the Mortgage, calculated daily and compounded monthly. Whether any action or any judicial proceedings to enforce the aforesaid payments has been taken or not, the amount owing to the Lender under this Subsection shall be added to the Indebtedness and secured by the Mortgage, this Agreement and all other security agreements entered into by the Assignor in favour of the Lender and relating to the Project.

6. **Negative Covenants of Assignor:**

The Assignor covenants and agrees that it shall not:

- (a) sell, assign, transfer, dispose of, collect, receive or accept any of the Premises Hereby Assigned including, without limitation, the Rents, except as may be permitted in this Agreement, nor do, nor permit to be done, any act or thing whereby the Lender may be prevented or hindered from so doing, in each case, without the prior written consent of the Lender;
- (b) pledge, charge, mortgage, hypothecate, create a security interest in or otherwise encumber the Premises Hereby Assigned or any part thereof in any manner whatsoever other than to the Lender without the prior written consent of the Lender;
- (c) enter into, terminate, accept a surrender of, amend or vary any Lease other than with the Lender's prior written consent;
- (d) accept payment of any Rents under any Lease in advance except for the current monthly rental period and except for security deposits provided for in such Lease;
- (e) suffer or permit anything allowing any Tenant under any Lease to cancel, terminate, forfeit any of the Premises Hereby Assigned, or suffer or permit anything allowing the surrender of any of the Premises Hereby Assigned, in each case without the prior written approval of the Lender;
- (f) waive, amend, modify or vary any of the terms, agreements, provisions, conditions,

obligations and covenants set out in the Premises Hereby Assigned, or otherwise agree or consent to any waiver, amendment, modification or variation of any of them, whether by way of collateral agreement or otherwise, in each case without the prior written approval of the Lender;

- (g) waive or agree to waive any failure of any party to any of the Premises Hereby Assigned including, without limitation, any Tenants, to observe, perform or satisfy any of the terms, agreements, provisions, conditions, obligations or covenants set out in any of the Premises Hereby Assigned, in each case without the prior written approval of the Lender;
- (h) give any consent or approval contemplated by, or required or permitted to be given pursuant to, any of the Premises Hereby Assigned, without the prior written consent of the Lender; or
- (i) settle or resolve any Dispute, without the prior written consent of the Lender.

7. **Representations and Warranties of Assignor:**

The Assignor represents and warrants to the Lender that:

- (a) each of the Premises Hereby Assigned including, without limitation, each of the Leases in effect as of the date hereof, is valid and subsisting, is in full force and effect, unamended, in good standing and there are no defaults thereunder;
- (b) the Assignor has good, valid and legal right to absolutely assign and transfer to the Lender the Premises Hereby Assigned, free and clear of all assignments, mortgages, charges, pledges, security interest and other encumbrances;
- (c) the Assignor has not performed any act or executed any agreement that might prevent the Lender from operating under, or exercising its rights and remedies under, any of the provisions of this Agreement or that would limit the Lender in any such operation or exercise;
- (d) the Assignor has the corporate power, authority and capacity to enter into this Agreement, to make the assignment constituted hereby and to perform its obligations hereunder;
- (e) the Assignor has taken all necessary action, corporate or otherwise, to authorize the execution and delivery of this Agreement and the performance of its obligations set out in this Agreement and in each of the Leases;
- (f) neither the execution nor the delivery of this Agreement by the Assignor, nor the consummation by it of the transactions herein contemplated, nor the compliance by it with the terms, conditions and provisions hereof will conflict with or result in a breach of any terms, conditions or provisions of:
 - (i) the constating documents of the Assignor;
 - (ii) any agreement, instrument or arrangement to which the Assignor is a party or by which the Assignor or any of its property is, or may be bound, or constitute a default thereunder, or result thereunder in the creation or imposition of any security interest, mortgage, lien, charge or encumbrance of any nature whatsoever upon the Project or upon any of the other properties or assets of the Assignor;
 - (iii) any judgment, order, writ, injunction or decree of any court, relating to the Assignor; or
 - (iv) any applicable law or governmental regulation relating to the Project;
- (g) this Agreement has been duly executed and, when delivered, will be in full force and effect and constitutes a legal, valid and binding obligation of the Assignor, enforceable in accordance with its terms, subject to applicable laws relating to

bankruptcy, insolvency and other similar laws affecting creditors' rights generally and subject to the qualification that equitable remedies, including specific performance and injunction, may only be granted in the discretion of a court of competent jurisdiction;

- (h) there is no pending or threatened litigation, action, claim or fact known to the Assignor and not disclosed to the Lender in writing which adversely affect or could adversely affect any of the Premises Hereby Assigned or the rights of the Assignor or any other party thereunder or the rights of the Lender under this Agreement;
- (i) none of the Premises Hereby Assigned in existence on the date hereof is incapable of assignment to the Lender in accordance with the provisions of this Agreement, nor is any of the Premises Hereby Assigned incapable of further assignment by the Lender or by any receiver or receiver and manager, nor is the consent of any third party required for any assignment set out in this Agreement or in connection with any further assignment by the Lender; and
- (j) no Rents, payments, proceeds, receipts or other distributions due or to become due on any date subsequent to the date of this Agreement have been collected or paid in advance of the time when the same become due under the terms of any of the Premises Hereby Assigned.

8. **Enforcement Upon Default:**

Without limiting in any manner whatsoever the Lender's rights, remedies, and recourses pursuant to this Agreement, by operation of law or otherwise, upon a default by the Assignor in the observance or performance of any of its covenants and agreements hereunder or upon the occurrence of an Event of Default (hereinafter collectively called a "**Default**"), the Lender and any receiver or any receiver and manager appointed by the Lender, may from time to time and at any time, in its own name or in the name of the Assignor and without notice to the Assignor, do any one or more of the following:

- (a) observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant which, pursuant to any of the Premises Hereby Assigned, could or should be observed, performed or satisfied by the Assignor;
- (b) enforce, realize, sell or otherwise deal with the Premises Hereby Assigned upon such terms and conditions and at such time or times as to the Lender seems advisable;
- (c) exercise any of the rights, powers, authority and discretion which, pursuant to any of the Premises Hereby Assigned, by operation of law or otherwise, could be exercised, observed, performed or satisfied by the Assignor, including, without limitation, entering into, terminating, amending, renewing and assigning the Leases and otherwise dealing with the Tenants and others, making other agreements or granting waivers and consents and giving notices in respect of any of the Leases or any part or parts thereof for such consideration and on such terms as the Lender may deem appropriate, and participating in all settlement negotiations and arbitration proceedings resulting from a dispute (the "**Dispute**") arising out of, in connection with or pursuant to any of the Premises Hereby Assigned;
- (d) collect any Rents, proceeds, receipts or income arising from or out of the Premises Hereby Assigned including, without limitation, demanding the same, instituting proceedings for the collection thereof, accepting reductions therein or compromises with respect thereto, and recovering, receiving and giving receipts therefor, whether in the name of the Assignor or the Lender or both;
- (e) manage generally the business and operations of the Assignor and deal with the Leases and the Tenants to the same extent as the Assignor could do; and
- (f) by instrument in writing appoint any person to be a receiver (which term shall include a manager and a receiver and manager) in respect of the Leases or any part thereof and may remove any receiver so appointed and appoint another in its stead; and any receiver so appointed shall have the authority to do any of the acts specified

in Subsections 8(a), (b), (c), (d) and (e) hereof and further to take possession of and collect the Rents and other moneys of all kinds payable to the Assignor in respect of the Leases and pay therefrom all reasonable expenses in connection therewith and all charges, the payment of which may be necessary to preserve and protect the Leases. Any such receiver shall be deemed to be the agent of the Assignor for all purposes.

The Assignor agrees that the Lender shall be entitled to charge on its own behalf for services rendered, and retain such agents as the Lender wishes to assist the Lender, in doing, or to effect, any of the foregoing. The Assignor acknowledges and agrees that all costs, charges and expenses incurred or charged by the Lender in connection with doing anything permitted in this Section 8, including, without limitation, legal fees and disbursements on a solicitor and his own client basis, and the fees and disbursements of any agent as aforesaid, shall be added to the Indebtedness and be forthwith paid by the Assignor to the Lender.

9. **Lender Not Liable:**

The Lender shall not be bound to exercise any of the rights afforded to it hereunder nor to collect, dispose of, realize, preserve or enforce any of the Premises Hereby Assigned. The Lender shall not be liable or responsible to the Assignor or any other person for the fulfilment or non-fulfilment of this Agreement or the terms, obligations, covenants or agreements set out in this Agreement or for any loss or damage incurred or suffered by the Assignor or any other person, firm or corporation as a result of:

- (a) any delay by, or any failure of, the Lender to:
 - (i) exercise any of the rights afforded to it under this Agreement; or
 - (ii) collect, dispose of, realize, preserve or enforce any of the Premises Hereby Assigned; or
- (b) the negligence of any receiver, receiver and manager, officer, servant, agent, counsel or other attorney employed or appointed by the Lender in the exercise of the rights afforded to the Lender hereunder, or in the collection, disposition, realization, entering into, terminating, preservation or enforcement of the Premises Hereby Assigned.

10. **Application of Funds:**

The Lender shall be entitled (in the sole discretion of the Lender) to utilize any amount received by the Lender arising out of or from the collection, disposition, realization or enforcement of any of the Premises Hereby Assigned in any one or more of the following ways:

- (a) to pay all costs, charges and expenses incurred by the Lender in connection with the collection, disposition, realization or enforcement of the same, including without limitation the fees and disbursements of any agents retained by the Lender to assist or effect such collection, disposition, realization or enforcement;
- (b) to pay any prior mortgages, charges, assignments or encumbrances of or against the Premises Hereby Assigned or the Project or any part thereof;
- (c) to pay any costs, charges or expenses arising from the Project or any part thereof or the operation thereof, including without limitation realty and other taxes, utilities costs and charges, ground rent (if any), repair, maintenance and replacement costs, management fees and costs and employees' salaries and costs; and
- (d) to apply such amount or any part thereof in reduction of the Indebtedness.

Notwithstanding the generality of the foregoing, the Lender shall be entitled to apply all or any part of such amounts received by it on account of such part or parts of the Indebtedness, in such manner and at such times or from time to time, as the Lender deems best and the Lender may at any time and from time to time change any such application.

11. **Further Assurances:**

The Assignor covenants and agrees to execute all such further assignments and other documents and to do all such further acts and things including, without limitation, obtaining any consents which are required by the Lender, from time to time, to more effectively assign, set over and transfer the Premises Hereby Assigned to the Lender including, without limitation, execute and deliver one or more specific assignments of the Assignor's rights, benefits, title and interest in any of the agreements, documents, commitments and other writings that constitute the Premises Hereby Assigned in form, substance and execution satisfactory to the Lender, to perfect and keep perfected the security interest constituted hereby and to assist in the collection, disposition, realization or enforcement thereof, and the Lender is hereby irrevocably constituted the true and lawful attorney of the Assignor, with full power of substitution, to execute in the name of the Assignor any assignment or other document for such purposes.

12. **Information:**

The Assignor covenants and agrees that from time to time forthwith, upon the request of the Lender, it shall furnish to the Lender in writing all information requested by the Lender relating to the Premises Hereby Assigned.

13. **Dealing with Leases:**

The Assignor confirms and agrees that the Lender, as assignee hereunder, has the authority to exercise all of the rights, powers, authority and discretion of the Assignor pursuant to the Premises Hereby Assigned, including without limitation to collect any Rents and other monies payable or arising out of or from the Premises Hereby Assigned. Notwithstanding the foregoing sentence, the Assignor shall have the authority, subject to Section 6 hereof:

- (a) to collect any Rents and other monies properly payable or arising out of or from the Premises Hereby Assigned; and
- (b) to exercise in good faith all of the benefits, advantages and powers as landlord under the Premises Hereby Assigned,

unless and until such authority is revoked in writing by the Lender, provided, however, that any monies received by the Assignor arising out of or from any of the Premises Hereby Assigned shall be received and held in trust for the Lender and forthwith upon request by the Lender remitted to the Lender. The Lender may, at any time or times by notice to any Tenant, direct such Tenant to pay Rent and other monies to the Lender and such notice shall be good and sufficient authority for any Tenant so doing. Any payment of Rents and other monies by a Tenant to the Lender shall not constitute a default under such Tenant's Lease. The receipt by the Lender of Rent or other monies from a Tenant shall constitute and be deemed receipt thereof by the Assignor.

14. **No Novation:**

This Assignment and transfer to the Lender of the Premises Hereby Assigned:

- (a) is continuing security granted to the Lender without novation or impairment of any other existing or future security held by the Lender in order to secure payment to the Lender of the Indebtedness and the due performance of the Assignor's obligations under the Mortgage and all other agreements (including, without limitation, any loan agreement), documents, instruments, undertakings and commitments entered into between the Assignor and the Lender, made by the Assignor in favour of the Lender or assigned by the Assignor to the Lender;
- (b) is in addition to and not in substitution for any other security now or hereafter granted to or held by the Lender in connection with the Indebtedness; and
- (c) shall remain in full force and effect without regard to and shall not be affected or impaired by:
 - (i) any amendment or modification of or addition or supplement to the Mortgage, this Agreement or any other security or securities (the "**Additional Securities**") now or hereafter held by or on behalf of the Lender in connection with the Indebtedness or any part thereof;

- (ii) any exercise or non-exercise of any right, remedy, power or privilege in respect of the Mortgage, this Agreement or the Additional Securities;
- (iii) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of the Mortgage, this Agreement or the Additional Securities;
- (iv) any default by the Assignor under, or any invalidity or unenforceability of, or any limitation on the liability of the Assignor or on the method or terms of payment under, or any irregularity or other defect in, the Mortgage, this Agreement or the Additional Securities;
- (v) any merger, consolidation or amalgamation of the Assignor into or with any other company or corporation; or
- (vi) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor.

15. **Re-assignment:**

Upon the Indebtedness being paid in full, the Lender shall, within a reasonable time following its receipt of a written request from the Assignor and at the sole cost and expense of the Assignor, reassign the Premises Hereby Assigned to the Assignor.

16. **Enurement:**

Subject to Section 6 and the other provisions hereof, this Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

17. **Notices:**

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if delivered to the party for whom it is intended, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail to the address of the addressee provided for in the Mortgage, and shall be deemed to have been received by such addressee after the time periods with respect thereto in the Mortgage.

18. **Waiver:**

No consent or waiver, express or implied, by the Lender to or of any breach or default by the Assignor in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by the Assignor of its obligations hereunder. Failure on the part of the Lender to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder.

19. **Amendments:**

This Agreement may not be modified or amended except with the written consent of the Lender and the Assignor.

20. **Entire Agreement:**

This Agreement constitutes the entire agreement between the Lender and the Assignor pertaining to the assignment of the Premises Hereby Assigned and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, relating thereto.

21. **Assignment:**

The Lender may assign, transfer, negotiate, pledge or otherwise hypothecate this Agreement, any of the Premises Hereby Assigned, any of its rights hereunder or any part thereof

and all rights and remedies of the Lender in connection with the interest so assigned shall be enforceable against the Assignor as the same would have been by the Lender but for such assignment.

22. **No Agency, Joint Venture or Partnership:**

The Lender is not the agent, representative, partner of or joint-venturer with the Assignor, and the Assignor is not the agent, representative, partner of or joint-venturer with the Lender, and this Agreement shall not be construed to make the Lender liable to any person or persons for goods or services furnished to, on behalf of or for the benefit of the Assignor nor for debts, liability or claims accruing therefrom against the Assignor.

23. **Rights, Powers and Remedies:**

Each right, power and remedy of the Lender provided for herein or available at law or in equity or in any other agreement shall be separate and in addition to every other such right, power and remedy. Any one or more or any combination of such rights, remedies and powers may be exercised by the Lender from time to time and no such exercise shall exhaust the rights, remedies or powers of the Lender or preclude the Lender from exercising any one or more of such rights, remedies and powers or any combination thereof from time to time thereafter or simultaneously. Without limiting the foregoing provisions of this Section 23, the Lender in its discretion may exercise its rights, powers and remedies hereunder in respect of each of the Premises Hereby Assigned separately and whether or not the Lender exercises such rights, powers and remedies in respect of any or all of the other Premises Hereby Assigned.

24. **Survival:**

All covenants, undertakings, agreements, representations and warranties made by the Assignor in this Agreement and any instruments delivered pursuant to or in connection herewith, shall survive the execution and delivery of this Agreement and any advances made by the Lender to the Assignor, and shall continue in full force and effect until the Indebtedness is paid in full. All representations and warranties made by the Assignor shall be deemed to have been relied upon by the Lender.

25. **Severability:**

Any term, condition or provision of this Agreement which is or is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severable herefrom, be ineffective to the extent of such avoidance, prohibition or unenforceability without invalidating the remaining terms, conditions and provisions hereof and any such avoidance, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

26. **Governing Law:**

This Agreement and the interpretation, construction, application and enforcement of this Agreement shall be governed by and construed in all respects, exclusively in accordance with the laws of the Province of Ontario.

27. **Headings:**

The insertion in this Agreement of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

28. **Number and Gender:**

All nouns and personal pronouns relating thereto shall be read and construed as the number and gender may require and the verb shall be read and construed as agreeing with the noun and pronoun.

29. **Registrations:**

Neither the preparation, execution nor any registrations or filings with respect hereto, in and of itself, shall bind the Lender to make an advance under the Mortgage.

30. **Receipt of Copy:**

The Assignor acknowledges receipt of a copy of this Agreement and of any financing statement registered under the *Personal Property Security Act* (Ontario) with respect hereto.

[Signing Page Follows]

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the date and year first above-written.

VANDYK – LAKEVIEW-DXE-WEST LIMITED

Per:



Name: Richard Ma
Title: Chief Financial Officer

I have authority to bind the Corporation.

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

1345 Lakeshore Road East, Mississauga, Ontario

PIN: 13482-0071

LTS 1, 2, 3, 22, 23, 24, PL H23; EXCEPT PT 1 43R16245 & PT 1 43R21276; MISSISSAUGA

TAB ZZ

THIS IS **EXHIBIT "ZZ"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

Properties

<i>PIN</i>	13214 - 0871	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 1, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0872	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 2, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0873	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 3, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0874	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 4, PLAN 43M2113; SUBJECT TO AN EASEMENT IN GROSS OVER PART 4, 43R40043 AS IN PR3908805; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0875	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 5, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0876	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 6, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0877	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 7, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0878	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 8, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0879	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 9, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0880	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 10, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0881	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 11, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0882	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 12, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0883	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 13, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0884	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 14, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0885	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 15, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0886	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 16, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0887	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 17, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0888	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 18, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			

Properties

<i>PIN</i>	13214 - 0889	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 19, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0890	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 20, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0891	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 21, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0892	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 22, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0893	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 23, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0894	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 24, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0895	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 25, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0896	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 26, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0897	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 27, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0898	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 28, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0899	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 29, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0900	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 30, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0901	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 31, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0902	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 32, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0903	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 33, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0904	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 34, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0905	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 35, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0906	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LOT 36, PLAN 43M2113; CITY OF MISSISSAUGA			
<i>Address</i>	MISSISSAUGA			
<i>PIN</i>	13214 - 0907	LT	<i>Interest/Estate</i>	Fee Simple

Properties

Description LOT 37, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0908 LT *Interest/Estate* Fee Simple
Description LOT 38, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0909 LT *Interest/Estate* Fee Simple
Description LOT 39, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0910 LT *Interest/Estate* Fee Simple
Description LOT 40, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0911 LT *Interest/Estate* Fee Simple
Description LOT 41, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA

Chargor(s)

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

Name VANDYK - THE RAVINE LIMITED
Address for Service 1944 Fowler Drive
 Mississauga, ON L5K 0A1

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Chargee(s)	<i>Capacity</i>	<i>Share</i>
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<i>Name</i>	KINGSETT MORTGAGE CORPORATION
<i>Address for Service</i>	Scotia Plaza, 40 King Street West, Suite 3700 Toronto, Ontario M5H 3Y2

Statements

Schedule: See Schedules

Provisions

<i>Principal</i>	\$40,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	See Schedule		
<i>Balance Due Date</i>	See Schedule		
<i>Interest Rate</i>	See Schedule		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>	See Schedule		
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>			
<i>Insurance Amount</i>	Full insurable value		
<i>Guarantor</i>			

Signed By

Nasim Akbari-Balderlou	3400-1 First Canadian Place Toronto M5X 1A4	acting for Chargor(s)	Signed 2023 07 28
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Tel 416-863-1200

Fax 416-863-1716

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

Submitted By

BENNETT JONES LLP	3400-1 First Canadian Place	2023 07 28
	Toronto	
	M5X 1A4	
Tel 416-863-1200		
Fax 416-863-1716		

Fees/Taxes/Payment

Statutory Registration Fee	\$69.00
Total Paid	\$69.00

File Number

Chargee Client File Number : 59445.93 (JVG/MOG/MW/NC)

MORTGAGE

VANDYK – THE RAVINE LIMITED having an office at 1944 Fowler Drive, Mississauga, Ontario L5K 0A1 (hereinafter referred to as the "**Mortgagor**") being registered as owner of an estate in fee simple in possession of the Property;

IN CONSIDERATION of the sum of \$40,000,000.00 of lawful money of Canada, (the "**Principal Amount**"), or any portion thereof, lent to the Mortgagor by **DORR CAPITAL CORPORATION**, having an office at 41 Scarsdale Road, Unit 6, Toronto, Ontario M3B 2R2 (hereinafter referred to as the "**Mortgagee**"), the Mortgagor **HEREBY COVENANTS WITH** the Mortgagee as follows:

DEFINITIONS

1. The terms defined below shall have the indicated meanings unless the context expressly or by necessary implication requires otherwise:
 - (a) "**Assessments**" has the meaning ascribed thereto in Section 12(b);
 - (b) "**Borrower**" means Vandyk – Lakeview-DXE-West Limited;
 - (c) "**Commitment Letter**" means the mortgage commitment letter dated as of November 5, 2021 between, inter *alios*, the Borrower and the Mortgagee, as amended, varied, supplemented, restated, renewed or replaced at any time and from time to time;
 - (d) "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise;
 - (e) "**Covenantors**" means, collectively, the Mortgagor or any joint debtor or any obligor to the Mortgagee in connection with repayment of the Loan Indebtedness or the performance of the Loan Obligations;
 - (f) "**Derry Road Actions**" means, collectively, the actions bearing the following court file numbers: CV-22-00689146-0000, CV-22-00686376-0000, CV-22-00685887-0000 and CV-22-00689645-0000;
 - (g) "**Event of Default**" has the meaning ascribed thereto in Section 29;
 - (h) "**Extension Fee**" means a fee of 0.38% of the then outstanding Loan Indebtedness;
 - (i) "**Final Derry Units**" has the meaning ascribed thereto in Section 22;
 - (j) "**Governmental Authority**" means the government of Canada or any other nation, or of any political subdivision thereof, whether state/provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency;
 - (k) "**Hazardous Substance**" means any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, liquid waste, industrial waste, hauled liquid waste, deleterious substances, corrosive or toxic substances, hazardous wastes, hazardous materials, hazardous substances, special waste or waste of any kind or any other substance, the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under any applicable environmental law;
 - (l) "**Heart Lake Lands**" means the properties municipally known as 10302 and 10194 Heart Lake Road, Brampton, Ontario;
 - (m) "**Heart Lake Project**" means:

- (i) the development of 342 stacked townhouses with a total 379,842 square feet of gross floor area located at 10302 Heart Lake Road, Brampton, Ontario, and all landscaping, all plants, machinery, improvements and equipment and all other property whether free-standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto; and
- (ii) a development site approved for 200 townhouses located at 10194 Heart Lake Road, Brampton, Ontario, and all landscaping, all plants, machinery, improvements and equipment and all other property whether free-standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto;
- (n) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
- (o) "**Interest Adjustment Date**" means the first day of the calendar month following the calendar month in which the initial advance of all or any portion of the Loan Indebtedness is made, unless such initial advance takes place on the first day of a calendar month, in which case the interest adjustment date shall be the date of such initial advance;
- (p) "**Interest Rate**" means the greater of: (i) the RBC Prime Rate plus 6.30% per annum; and (ii) 12.75% per annum, calculated daily, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgement with respect to the Loan Indebtedness;
- (q) "**Lakeview Lands**" means the property municipally known as 1345 Lakeshore Road East, Mississauga, Ontario;
- (r) "**Lakeview Project**" means a two-tower project comprised of a 478 unit residential condo project with 10,218 ground floor retail space located at 1345 Lakeshore Road East, Mississauga, and all landscaping, all plants, machinery, improvements and equipment and all other property whether free-standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto;
- (s) "**Lands**" means those lands and premises more particularly described in Schedule "A" attached hereto;
- (t) "**Lease Benefits**" means, collectively, the benefit of all covenants and obligations of lessees, tenants, licensees, or occupants as well as all other rights, privileges, advantages and benefits contained in any of the Leases, including without limitation, all rights and benefits of any guarantees thereof, the right to demand, sue for, collect, recover and receive all Rents, to enforce the Mortgagor's rights under any Lease, and generally any collateral advantage or benefit to be derived from the Leases or any of them;
- (u) "**Leases**" means, collectively, all present and future leases, subleases, licenses, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Mortgagor or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Property, and including all agreements collateral thereto;
- (v) "**Lien**" means, collectively, any: (i) lien, charge, mortgage, pledge, security interest or conditional sale agreement; (ii) assignment, lease, consignment, trust or deemed trust that secures payment or performance of an obligation; (iii) garnishment; (iv) other encumbrance of any kind; and (v) any commitment or agreement to enter into or grant any of the foregoing;
- (w) "**Loan Documents**" means, collectively, the Commitment Letter, this Mortgage, the Security Documents and all certificates, instruments, agreements and other

documents delivered, or to be delivered, to the Mortgagee under, pursuant to or in connection with this Mortgage or any of the other Loan Documents, each as amended, varied, supplemented, restated, renewed or replaced at any time and from time to time and, when used in relation to any Person, the term "**Loan Documents**" means the Loan Documents executed and delivered by such Person;

- (x) "**Loan Indebtedness**" means any Indebtedness from time to time of the Mortgagor or any of the other Covenantors to the Mortgagee arising under any of the Loan Documents;
- (y) "**Loan Obligations**" means the obligations from time to time of the Mortgagor or any of the other Covenantors arising under the Loan Documents;
- (z) "**Material Adverse Effect**" means a material adverse effect on:
 - (i) the Property or the economic viability thereof;
 - (ii) the business, operations, property or financial condition of any of the Covenantors which would materially impact the ability of the Covenantors, taken as a whole, to repay the Loan Indebtedness and to perform and discharge the Loan Obligations;
 - (iii) the validity or enforceability of this Mortgage or any of the other Loan Documents; or
 - (iv) the Mortgagee's ability to enforce its rights or remedies under this Mortgage or any of the other Loan Documents, including with respect to the Mortgagee's security position;
- (aa) "**Maturity Date**" means October 1, 2023 as may be extended in accordance with the Commitment Letter;
- (bb) "**Maximum Loan Amount**" means, notwithstanding the Principal Amount, the amount of \$34,000,000.00;
- (cc) "**Mortgaged Premises**" means every building, structure, improvement and fixture (including those more fully set out in Section 18 hereof), including replacements therefor, on or which may hereafter be erected or placed on the Lands, including all plate glass, plant, equipment, apparatus and machinery of every kind now or hereafter located therein, thereon or used in connection therewith, and all personal property including, contents thereof to the extent that they are the property of the Mortgagor;
- (dd) "**Mortgagee**" means Dorr Capital Corporation;
- (ee) "**Mortgagor**" means Vandyk – The Ravine Limited;
- (ff) "**Other Obligations**" has the meaning ascribed thereto in Section 38;
- (gg) "**Permitted Encumbrances**" mean, collectively:
 - (i) any Lien in respect of any property or assets of the Mortgagor created by or arising pursuant to any applicable legislation in favour of any Person (such as, but not limited to, a Governmental Authority), including a Lien for the purpose of securing the Mortgagor's obligation to deduct and remit employee source deductions and goods and services tax pursuant to the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), the *Canada Pension Plan* (Canada), the *Employment Insurance Act* (Canada) and any legislation in any jurisdiction similar to or enacted in replacement of the foregoing from time to time (each individually a "**Statutory Lien**") in respect of any amount which is not at the time due;
 - (ii) any Statutory Lien in respect of any amount which may be due but the validity of which is being contested in good faith and in respect of which reserves have been established as reasonably required by the Mortgagee;

- (iii) in respect of the Property: (A) any registered agreement (or unregistered agreement that is required in connection with the further development of the Property) with any Governmental Authority and any public utilities or private suppliers of services, including site plan agreements, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements, which has not and is not reasonably likely to have a Material Adverse Effect, provided the same is complied with in all material respects; (B) any registered easement for the supply of utilities or telephone services to the Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services and all licences, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto not registered on title to the Property, including agreements, easements, licences, rights-of-way and interests in the nature of easements for sidewalks, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone telegraphic conduits, poles, wires and cables, which has not and is not reasonably likely to have a Material Adverse Effect; (C) any registered easement or right-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Lands, which has not and is not reasonably likely to have a Material Adverse Effect; (D) any registered or unregistered easement, rights-of-way, agreement or other unregistered interest or claims not disclosed by registered title which has not and is not reasonably likely to have a Material Adverse Effect; (E) any zoning, land use and building restriction, bylaw, regulation and ordinance of any Governmental Authority, including municipal by-laws and regulations and airport zoning regulations, which has not any is not reasonably likely to have a Material Adverse Effect; (F) any obligation with respect to any permit required in connection with the construction and use of the Property provided such permit is in good standing and has not and is not reasonably likely to have a Material Adverse Effect; and (G) any minor defect in title which has not and is not reasonably likely to have a Material Adverse Effect;
- (iv) any reservation, limitation, proviso, condition, restriction and exception (including royalties, reservation of mines, mineral rights, access to navigable waters and similar rights) expressed in the letters patent or grant from the Crown, as varied by statute, of the lands of which the Lands form a part and any statutory limitation, exception, reservation and qualification, provided same has been complied with in all material respects;
- (v) any Lien incurred or deposit made or pledged to secure any obligation under workers' compensation legislation or similar legislation, or in connection with contracts, bids, tenders or expropriation proceedings, or surety, performance or appeal bonds in connection with construction of the further development of the Property;
- (vi) security given to a public utility or any Governmental Authority to secure obligations incurred to such utility, Governmental Authority or other authority in the ordinary course of business and not at the time overdue;
- (vii) any inchoate Lien (statutory or otherwise) arising in connection with the construction or improvement of the Property or arising out of the furnishing of materials or supplies therefor, provided that such Lien secures moneys not at the time overdue (or if overdue, the validity of which is being contested in good faith and in respect of which and reserves have been established as reasonably required by the Mortgagee), notice of such Lien has not been given to the Mortgagee and such Lien has not been registered against title to the Property;
- (viii) purchase-money security interests incurred or assumed in connection with the purchase, leasing or acquisition of capital equipment in the ordinary course of business, provided that the aggregate amount of the Mortgagor's liability thereunder is not at any time greater than one million (\$1,000,000.00) dollars;

- (ix) any present and future lease, offer to lease, sublease, concession, licence or other contract or agreement by which the use, enjoyment or occupancy of the Property or any portion thereof is granted which has not and is not reasonably likely to have a Material Adverse Effect;
 - (x) this Mortgage and the other Security Documents;
 - (xi) the Prior Permitted Encumbrances; and
 - (xii) any Subsequent Encumbrances with the express prior written consent of the Mortgagee in its sole, absolute and unfettered discretion;
- (hh) "**Person**" means, and includes, natural persons, corporations, limited liability companies, limited partnerships, limited liability partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental person, the successor functional equivalent of such Person);
- (ii) "**Principal Amount**" has the meaning ascribed thereto in the preamble to this Mortgage;
- (jj) "**Prior Permitted Encumbrances**" means those encumbrances registered against title to the Property in priority to this Mortgage on the date of the registration of this Mortgage against title to the Lands and which the Mortgagee has agreed to accept in its sole, absolute and unfettered discretion, including for greater certainty a first charge/mortgage and a second charge/mortgage each granted by the Mortgagor to and in favour of Mortgagee (collectively, the "**Prior Ranking Charges**");
- (kk) "**Project**" means the development of an infill serviced lot development site approved for 39 detached units and 6 semi-detached units located at 320 Derry Road West, Mississauga, Ontario, and all landscaping, all plants, machinery, improvements and equipment and all other property whether free-standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto;
- (ll) "**Property**" means, collectively, the Lands and the Mortgaged Premises;
- (mm) "**RBC Prime Rate**" means, for any day, the rate of interest per annum established and published from time to time by Royal Bank of Canada as the reference rate of interest for the determination of interest rates that Royal Bank of Canada will charge its customers of varying degrees of creditworthiness in Canada for Canadian Dollar demand loans made by the Royal Bank of Canada in Toronto, Ontario;
- (nn) "**Rents**" means, collectively, all rents, issues and profits now due or to become due under or derived from the Leases and/or the Property;
- (oo) "**Security Documents**" means, collectively, the Loan Documents creating Liens on the undertaking, property and assets of the Covenantors in favour of the Mortgagee, and all other instruments, agreements and documents which have been or may hereafter from time to time be executed in connection therewith, in each case as the same may be hereafter amended, modified, supplemented or restated in accordance with the terms thereof;
- (pp) "**Statutory Lien**" has the meaning ascribed thereto in Section 1(dd)(i);
- (qq) "**Subsequent Encumbrances**" means, collectively, encumbrances registered against title to the Lands subsequent in priority to this Mortgage with the prior consent of the Mortgagee, which consent shall be granted in the Mortgagee's sole, absolute and unfettered discretion;
- (rr) "**Taxes**" means all present or future taxes, rates, liens, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any

Governmental Authority, including any interest, additions to tax or penalties applicable thereto; and

(ss) "**Title Agreements**" has the meaning ascribed thereto in Section 49;

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise: (i) any definition of or reference to any agreement, instrument or other document herein (including this Mortgage) shall be construed as referring to such agreement, instrument or other document amended, varied, supplemented, restated, renewed or replaced at any time and from time to time (subject to any restrictions on such amendments, variations, supplements, restatements, renewals or replacements set forth herein); (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns; (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Mortgage in its entirety and not to any particular provision hereof; (iv) unless otherwise expressly stated, all references in this Mortgage to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Mortgage, and references to a Section, means such Section or an enumerated sub-Section thereof, as applicable; (v) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, varied, supplemented, restated, renewed or replaced at any time and from time to time; and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

PROMISE TO PAY AND FULFIL OBLIGATIONS

2. The Mortgagor will pay or cause to be paid to the Mortgagee, on demand, in lawful money of Canada the full amount of the Loan Indebtedness in the manner of payment provided by this Mortgage before as well as after maturity, both before and after default, and both before and after judgment on this Mortgage, without any deduction or abatement, and shall do, observe, perform, fulfil and keep all of the Loan Obligations.

PAYMENTS

3. The Loan Indebtedness shall be repaid as follows:
 - (a) interest on the Loan Indebtedness advanced and remaining unpaid from time to time at the fixed rate per annum equal at all times to the Interest Rate, calculated daily not in advance, before as well as after maturity, default and judgment, on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be, and compounded monthly not in advance and computed from and including the respective dates of such advances;
 - (b) subject to Section 3(d)(iii), interest, at the Interest Rate, shall become due and be paid on the Interest Adjustment Date and thereafter in monthly instalments on the first business day of the month which is one month after the Interest Adjustment Date and continuing on the first business day of each and every month which is one month after the date of each such payment, and in addition, at the option of the Mortgagee, may be deducted from advances of moneys under this Mortgage, and the balance, if any, of the aforesaid interest on advances shall become due and be paid at the same time as is hereinafter provided for payment in full of the Loan Indebtedness;
 - (c) the Loan Indebtedness shall become due and be paid in full on the earlier of:
 - (i) the Mortgagee demanding repayment of the Loan Indebtedness in full and the performance of the Loan Obligations at any time; and
 - (ii) the Maturity Date;

- (d) it is acknowledged and agreed that:
- (i) notwithstanding the Principal Amount, the maximum amount to be advanced by the Mortgagee from time to time in respect of the Loan Indebtedness shall not exceed the Maximum Loan Amount;
 - (ii) an initial and subsequent advances of Loan Indebtedness representing advances from time to time of the Loan may be made by the Mortgagee, subject to and in accordance with the Commitment Letter and the conditions precedent and other provisions set out therein.
 - (iii) beginning on the Interest Adjustment Date, the amount of monthly interest, shall, provided no Event of Default has occurred hereunder which is continuing, be capitalized monthly to the Loan Indebtedness advanced hereunder until the earlier of:
 - A. such capitalized interest, at the Interest Rate, reaching in the aggregate the amount of \$2,975,000.00;
 - B. the sum of such capitalized interest and all other amounts advanced hereunder reaching, in the aggregate, the Maximum Loan Amount;
 - C. repayment of all amounts outstanding hereunder;
 - D. any Event of Default or a default by any of the Covenantors under any of the Loan Documents; and
 - (e) in the event that amounts are no longer available in accordance with the provisions of Section 3(d)(iii), any additional interest payments shall not be capitalized and shall be required to be paid by the Mortgagor from sources other than subsequent advances of moneys under this Mortgage.

CHARGE

4. **THE MORTGAGOR HEREBY** grants, mortgages and charges to and in favour of the Mortgagee all right, title and interest of the Mortgagor in and to the Property as security for the payment of the Loan Indebtedness and performance of the Loan Obligations by the Borrower arising pursuant to the guarantee dated as of the date hereof granted by, *inter alios*, the Mortgagor to and in favour of the Mortgagee.

COMPOUND INTEREST

5. It is hereby agreed that in case default shall be made in payment of any sum to become due for interest, at the Interest Rate, at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, before as well as after maturity, shall bear interest, at the Interest Rate, and in case the interest and compound interest are not paid within the next thirty (30) days, compound interest, at the Interest Rate, shall be payable on the aggregate amount then due of outstanding interest and compound interest, before as well as after maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Property.

INTEREST RATE

6. Notwithstanding the provisions hereof in no event shall the aggregate "**interest**" (as that term is defined in Section 347 of the *Criminal Code* (Canada)) exceed the effective annual rate of interest on the "**credit advanced**" (as defined therein) lawfully permitted under that section. The effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles from the date of the initial advance of the Loan Indebtedness until the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Mortgagee will be conclusive for the purposes of such determination. If any provision of the Mortgage would obligate the Mortgagor to make any payment of interest or other amount payable to the Mortgagee in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Mortgagee of interest at a criminal rate, then notwithstanding that

provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by the Mortgagee of interest at a criminal rate, the adjustment to be effected, to the extent necessary, as follows:

- (a) first, by reducing the amount or rate of interest required to be paid to the Mortgagee under this Mortgage; and
- (b) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to the Mortgagee which would constitute "**interest**" (as that term is defined in Section 347 of the *Criminal Code* (Canada)).

RENEWALS AND NON-REVOLVING NATURE OF LOAN

7. That:

- (a) in the event that this Mortgage shall be renewed or extended pursuant to Section 7(b) or by written agreement executed by the Mortgagor and the Mortgagee, such renewal or extension (and the rate of interest, term, instalment and other stipulations of such renewal or extension) shall be binding upon Subsequent Encumbrances, the Mortgagor and the Mortgagee, its successors in title and assigns, and all Subsequent Encumbrances, and shall take full priority over all Subsequent Encumbrances, whether or not the said renewal, extension or notice thereof is registered, filed or recorded by caveat at the applicable Land Titles Office and whether or not the rate of interest payable or payment amortization period applicable during the renewal or extension term is greater than or less than the rate or amortization stipulated in this Mortgage. The Mortgagor shall, forthwith on request therefor by the Mortgagee, provide to the Mortgagee, at the Mortgagor's expense, all such postponements and other assurances as the Mortgagee may require to ensure the foregoing binding effect and priority. All renewals (if any) shall be done at the Mortgagor's expense (including without limitation payment of the Mortgagee's reasonable legal expenses on a solicitor and his own client basis). In the event the within Mortgagor is a corporation, no such renewal or extension, even if made by a successor in title to the Mortgagor named herein and whether or not the Mortgagor shall consent thereto, shall in any way release or abrogate or render unenforceable the covenants or obligations of the Mortgagor named herein, which shall continue notwithstanding such renewal or extension and shall apply to this Mortgage as renewed or extended;
- (b) the Mortgagor has the option, subject to the prior consent of the Mortgagee, such consent to be granted in its sole, absolute and unfettered discretion, to extend the Maturity Date by up to two (2) extensions with each extension being for a period of three (3) months on the terms and conditions set out in the Commitment Letter, and provided that in connection with each extension option:
 - (i) the Mortgagor pays to the Mortgagee an Extension Fee, which shall be deemed earned by the Mortgagee upon receipt of notice requesting an extension of the Maturity Date, and payable on or before the date which is ten (10) days prior to the Maturity Date, provided that if such extension is not granted by the Mortgagee, the Mortgagee will return such amount to the Mortgagor;
 - (ii) the Mortgagor or any other Covenantor delivering not more than ninety (90) days' written notice prior to the Maturity Date but at least sixty (60) days' written notice prior to the Maturity Date to the Mortgagee requesting each extension; and
 - (iii) no Event of Default has occurred which is continuing;
- (c) other than the extension rights set forth in Section 7(b), there are no further rights to renew or extend this Mortgage; and
- (d) no amount that is borrowed or advanced hereunder may, if repaid or prepaid, be reborrowed at any time, it being acknowledged and agreed that this Mortgage creates a non-revolving loan.

PREPAYMENT

8. This Mortgage is closed and may not be prepaid in whole or in part, save and except for each prepayment of Net Closing Proceeds on the terms and conditions set out in the Commitment Letter.

TAXES

9. Subject as hereinafter in this Section 9 provided, the Mortgagor will pay when and as the same fall due all Taxes; provided that in respect of municipal taxes, school taxes, local improvements charges and all taxes and levies made or assessed in lieu of real property taxes, the Mortgagor shall provide the Mortgagee with a paid receipted tax bill within fifteen (15) days after the payment deadline of each such tax bill, and in the event the Mortgagor should default in payment of same and such default continues for more than three (3) business days following written notice to the Mortgagor, the Mortgagee shall have the right to implement any of the following:
- (a) the Mortgagee may deduct from time to time, from advances of moneys under this Mortgage, amounts sufficient to pay the Taxes which have become due and payable or will have become due and payable and are unpaid from time to time as advances are made;
 - (b) the Mortgagor shall in each year during the currency hereof at the request of the Mortgagee pay to the Mortgagee in equal monthly instalments, such amounts as the Mortgagee may estimate as being the annual Taxes next becoming due and payable, the said monthly instalments to be paid in addition to the payments required under Section 2, and the Mortgagor shall also pay to the Mortgagee before the due date of the current annual Taxes such additional sums as may be requisite to enable the Mortgagee to pay out of such monthly instalments and additional payments, the whole amount of the annual Taxes on or before the due date thereof, provided, however, that the exercise of the foregoing right shall be subject to the rights and obligations of the Mortgagor and the Mortgagee under all Permitted Encumbrances;
 - (c) so long as there is not an Event of Default that has occurred and is continuing, the Mortgagee shall apply such deduction and payments on the Taxes as they become due, but nothing herein contained shall obligate the Mortgagee to apply such payments on account of Taxes more often than yearly, nor to pay the same in advance of the due date for payment of the same. Provided however, that if (before any sum or sums so paid to the Mortgagee shall have been so applied) an Event of Default shall have occurred which is continuing, the Mortgagee may, at its option, apply such sum or sums in or towards payment of the Loan Indebtedness;
 - (d) in the event that there is default in the payment by the Mortgagor of moneys for Taxes as aforesaid, then the Mortgagee may pay such Taxes and, in addition, upon providing the Mortgagor with ten (10) days' prior written notice, the Mortgagee may pay any and all liens, charges and encumbrances which may be charged against the Property which are not otherwise first paid by the Mortgagor. All moneys expended by the Mortgagee for any of such purposes together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default;
 - (e) if the Property or any part thereof becomes subject to sale or forfeiture for non-payment of Taxes while any Loan Indebtedness remains outstanding, then, subject to all applicable laws, the Mortgagee may acquire title and rights of the purchaser at any sale, or the rights of any other Person or corporation becoming entitled on or under any such forfeiture, or the Mortgagee may pay, either in its own name or in the Mortgagor's name or on the Mortgagor's behalf, any and all sums necessary to be paid to redeem the Property so sold or forfeited, and to re-vest the Property in the Mortgagor, and the Mortgagor hereby nominates and appoints the Mortgagee agent of the Mortgagor to pay such moneys on the Mortgagor's behalf and in the Mortgagor's name, and any moneys so expended by the Mortgagee together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness hereby

secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default, or, in the alternative, the Mortgagee shall have the right to bid on and purchase the Property at any tax sale of the same and shall thereupon become the absolute owner thereof; and

- (f) the Mortgagor shall transmit to the Mortgagee evidence, satisfactory to the Mortgagee acting reasonably, of the payment of all Taxes affecting the Property to the Mortgagee at least quarterly or as otherwise reasonably requested by the Mortgagee from time to time, and the Mortgagor authorizes the Mortgagee to obtain any tax or assessment information concerning the Property directly from the municipal taxing authority having jurisdiction over the Property.

INSURANCE

10. That:

- (a) the Mortgagor will, at the Mortgagor's expense, forthwith insure or cause to be insured, and during the continuance of this security keep insured in favour of the Mortgagee, the Property on an all risks basis, or as otherwise allowed by the Mortgagee, including coverage for course of construction, earthquake, flood and such other risks or perils as the Mortgagee may require or consider expedient and satisfactory to the Mortgagee, acting reasonably, including and pursuant to the following coverages, provisions and conditions:
- (i) the Mortgagee must be shown as a named insured, or an additional named insured, and mortgagee and loss payee as the Mortgagee's interest may appear;
 - (ii) the limit of insurance shall not be less than one hundred (100%) percent of new replacement cost including recurring soft costs and costs of foundations and all parts below ground level including confirmation that the "same or adjacent site" clause has been deleted from the replacement cost wording;
 - (iii) any co-insurance clause contained in the policy shall be a stated amount co-insurance clause;
 - (iv) the policy shall include an Insurance Bureau of Canada standard mortgage clause or its equivalent;
 - (v) losses shall be made payable to the Mortgagee according to its interest;
 - (vi) rental income coverage on an "all risks" basis sufficient to cover one hundred (100%) percent of the gross annual revenues, including Rents and if leases are on a net-net basis, the equivalent gross revenues, including rentals for a period of not less than twelve (12) months; or if the property is owner-occupied, business interruption coverage;
- (b) the Mortgagor will maintain liability insurance coverage, including without limitation earthquake, flood and sewer back-up insurance at least equivalent in scope to a Commercial General Liability form, such insurance to be in the minimum amount of five million (\$5,000,000.00) dollars per occurrence, to include all required extensions of liability and naming the Mortgagee as co-insured;
- (c) the Mortgagor will cause its contractors to maintain contractors liability insurance coverage, and wrap-up liability insurance coverage, in each instance to be in the minimum amount of five million (\$5,000,000.00) dollars per occurrence, to include all required extensions of liability and naming the Mortgagor as an additional named insured, but only with respect to claims arising out of the operations of the named insured;
- (d) as applicable, the Mortgagor will maintain builders "all risks" or "broad form" insurance, subject to the latest CCDC policy wording and will include:

- (i) coverage sufficient to cover one hundred (100%) percent of the projected hard costs and not less than twenty-five (25%) percent of the projected recurring soft costs;
 - (ii) a "permission to occupy" clause, "delayed rental income / soft costs" insurance to cover the anticipated loss of revenue for one (1) year, which may be incurred in the event of an insured loss, during construction;
 - (iii) coverage for the installation, testing and commissioning, of machinery and equipment; and
 - (iv) the Mortgagee as loss payee and as mortgagee as its interest appears, pursuant to a standard mortgage clause satisfactory to the Mortgagee;
- (e) the Mortgagor will maintain boiler and machinery insurance covering all central HVAC and miscellaneous electrical equipment (and production machinery where applicable) for explosion, electrical and mechanical breakdown;
- (f) promptly upon written request, the Mortgagor will deliver to the Mortgagee and directly to its insurance consultants all policy binders of insurance together with all applicable certificates of insurance or such other evidence of insurance as the Mortgagee may reasonably require, and, prior to their due date, proof of payment of the premiums and renewal premiums therefor;
- (g) all policies shall be with insurers and subject to terms and conditions reasonably satisfactory to the Mortgagee. Any deviation from these requirements shall be approved in writing by the Mortgagee acting reasonably. The policies must provide for thirty (30) days' written notice to the Mortgagee of material alteration, if available, and cancellation and must be signed by the insurer(s) or their authorized representative(s);
- (h) if the Mortgagor shall neglect to keep the Property insured as aforesaid, or to deliver all policy binders of insurance together with all applicable certificates of insurance or such other evidence of insurance as the Mortgagee may reasonably require and evidence proving payment of premiums or renewal premiums when reasonably requested by the Mortgagee, or to produce to the Mortgagee at least forty-five (45) days' before the termination of such insurance evidence of the renewal thereof, the Mortgagee shall, without reference to the Mortgagor, be entitled (but shall not be obliged) to insure the Property, or any part thereof, as set forth above, and the amount of any premiums paid by the Mortgagee together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default;
- (i) promptly upon the occurrence of any loss or damage, the Mortgagor at its own expense will furnish all necessary proof and do all necessary acts to enable the Mortgagee to obtain payment of the insurance moneys, subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances;
- (j) subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, if any cheque issued by an insurer in complete or partial settlement of an insurance claim pursuant to the coverages above, other than the coverage for general public liability insurance, is given, sent or delivered to the Mortgagor or the solicitor or agent of the Mortgagor, then the Mortgagor shall cause such cheque to be delivered to the Mortgagee forthwith and if any such cheque is made payable to the Mortgagor alone or jointly to the Mortgagor and another or others, then the Mortgagor shall forthwith endorse and deliver such cheque over to the Mortgagee, and the Mortgagor does hereby constitute the Mortgagee as the Mortgagor's true and lawful attorney to receive and endorse any such cheque for and on behalf of the Mortgagor; and
- (k) subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, all monies received by virtue of such policy or policies

of insurance may at the option of the Mortgagee either be applied in or towards substantially rebuilding, reinstating or repairing the Property or towards the payment of the Loan Indebtedness, interest and other amounts secured hereby, whether or not the same are then due, in such manner as the Mortgagee shall from time to time determine, or may be paid in full or in part to the Mortgagor or its assigns, or may be applied or paid partly in one way and partly in another, as the Mortgagee may determine.

PAYMENT METHOD

11. The Mortgagor shall from time to time as required by the Mortgagee, provide a signed pre-authorized withdrawal form /or forms directed to the bank or financial institution at which the Mortgagor regularly keeps a chequing account, in such form and manner so as to enable the Mortgagee to receive payments from time to time of the monthly instalments payable hereunder and/or the Mortgagee's estimate of the monthly instalment for property Taxes, if applicable, from the Mortgagor's account with such bank or financial institution. Any payments received by the Mortgagee which are payable on a non-business day in the Province of Ontario or are received after 2 p.m. (Toronto time) on any business day in the Province of Ontario on or after receipt thereof, shall be credited to the mortgage account on the next business day thereafter.

CONDOMINIUM

12. That in the event the Property is or becomes a Condominium within the *Condominium Act* (Ontario), the Mortgagor further covenants with the Mortgagee that:
 - (a) the Mortgagor will comply with, observe and perform all provisions of the *Condominium Act* (Ontario), its regulations and the bylaws, rules and regulations of the condominium corporation from time to time in force;
 - (b) the Mortgagor shall pay on or before the due dates thereof, each and every assessment, contribution, charge, fine or levy made by or on behalf of the condominium corporation in respect of the unit charged hereunder (hereinafter collectively called "**Assessments**"). If the Mortgagor fails to pay the Assessments, on or before their due date, such failure shall constitute default hereunder and shall entitle the Mortgagee to exercise any and all remedies available to the Mortgagee upon the occurrence of an Event of Default. Upon default under this Section 12 and notwithstanding any other right or action of the condominium corporation or the Mortgagee, the Mortgagee may pay the Assessments, and any Assessments so paid and all costs, charges, expenses and outlays of the Mortgagee thereby incurred together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default;
 - (c) the Mortgagor hereby irrevocably authorizes the Mortgagee to apply at any time and from time to time to the condominium corporation for certification of the amount and manner in which any Assessment is payable and the extent to which such Assessment has been paid;
 - (d) subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, the Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the Mortgagor's rights which now exist or may hereafter come into existence to vote at meetings of the condominium corporation:
 - (i) in all cases in which a unanimous resolution is required by the *Condominium Act* (Ontario), as amended, the bylaws of the condominium corporation or any agreement with the condominium corporation; and
 - (ii) in all other cases other than as referred to in (i) of this Section 12(d), provided that, if the Mortgagee is not present in Person or by proxy, or if present does not wish to vote, then the Mortgagor may exercise his voting right without further authority;

- (e) if for any reason whatsoever the Mortgagor has the right to vote at any meeting of the condominium corporation it shall, if directed by the Mortgagee, vote in such manner as the Mortgagee directs with respect to each and every matter to be voted on and the Mortgagor covenants to execute any documents requested by the Mortgagee, including, proxies if required, in order to give effect to the foregoing assignment of voting rights;
- (f) if requested by the Mortgagee, at least five (5) days prior to each and every general meeting of the condominium corporation, the Mortgagor shall deliver to the Mortgagee written notice of each such meeting specifying the place, date, hour and purpose of the meeting and in addition, immediately upon receipt of the same shall deliver to the Mortgagee true copies of the bylaws, rules and regulations of the condominium corporation from time to time in force, all notices, minutes, resolutions, accounts, financial statements and other documents relating to the financial statements and to the affairs of the condominium corporation as the Mortgagor may from time to time receive;
- (g) if requested by the Mortgagee (which the Mortgagee shall only make if it, acting reasonably, believes that the occurrence of an Event of Default or Material Adverse Effect is imminent or an event having a Material Adverse Effect is reasonably likely to occur), the Mortgagor shall deliver to the Mortgagee a further charge of the Property (in substantially the same form as this Mortgage) with respect to all units and the pro-rata share of common elements, which replacement charge shall be registered after the date of registration the declaration pursuant to and in accordance with the *Condominium Act* (Ontario) creating the Condominium;
- (h) upon the occurrence of an Event of Default which is continuing and notwithstanding any other right or action of the condominium corporation or the Mortgagee, the Mortgagee may distrain for arrears of any assessment, contribution, charge, fine or levy in respect of a unit and paid by it and such distraint shall not result in the Mortgagee being a Mortgagee in possession; and
- (i) as individual Units are sold, the Net Closing Proceeds shall be applied pursuant to the terms and conditions set out in the Commitment Letter.

INSPECTION

13. The Mortgagee, at such time or times as it may deem necessary, acting reasonably, and without the concurrence of any other Person but upon reasonable prior notice except, upon and during the continuance of an Event of Default when no notice shall be required, and in all cases subject to the rights of tenants at the Property, may send its inspector or agent to report upon the value, state and condition of the Property and, upon the occurrence of an Event of Default which is continuing, make arrangements for the improving, repairing, finishing and putting in order of the Property which may be reasonably required, and for leasing, collecting the Rents of and managing generally the Property, and may expend money, for any and all the purposes aforesaid, as it may deem expedient, and all moneys reasonably expended, costs, charges and out-of-pocket expenses together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

RESTRICTION ON TRANSFER, ENCUMBRANCES ETC.

14. The Mortgagor shall not convey, transfer, mortgage, alienate, or otherwise encumber all or any part of the Property or any direct or indirect interest therein (including as a result of a direct or indirect change in Control of the Mortgagor) nor allow all or any part of the Property or any direct or indirect interest therein to be encumbered without the prior written consent of the Mortgagee, in its absolute discretion, provided that, notwithstanding the foregoing, the Permitted Encumbrances shall be permitted to encumber the Property and that the Mortgagee shall act reasonably in providing its consent to any non-arm's length transfer. In the event that the Mortgagor breaches this Section 14 and has not first or contemporaneously prepaid the loan secured hereby in full in compliance with Section 8

hereof, then the entire Loan Indebtedness (but with interest at the Interest Rate calculated and compounded to the Maturity Date), shall immediately be due and payable.

ADVANCES

15. Neither the execution nor the registration nor the acceptance of this Mortgage, nor the advance of part of the Loan Indebtedness, shall bind the Mortgagee to make an advance of moneys under this Mortgage or any unadvanced portion thereof notwithstanding the provisions of the Commitment Letter, this Mortgage or any of the other Loan Documents, but nevertheless this Mortgage shall take effect forthwith on the execution of these presents, and if any Loan Indebtedness shall not be advanced at the date hereof, the Mortgagee may advance the same in one or more sums to or on behalf of the Mortgagor at any future date or dates, and the amount of such advances then so made together with interest at the Interest Rate shall be secured hereby.

SUBROGATION

16. In the event that the moneys advanced hereunder or any part thereof are applied to the payment of any charge or encumbrance, the Mortgagee shall be subrogated to all the rights and stand in the position of and be entitled to all the equities of the party so paid off whether such charge or encumbrance has or has not been discharged; and the decision of the Mortgagee as to the validity or amount of any advance or disbursement made under this Mortgage or of any claim so paid off, shall be final and binding on the Mortgagor.

WASTE

17. Subject to the provisions of Section 19, the Mortgagor will not commit any act of waste on the Property or do any other thing by which the value of the Property shall, in the opinion of the Mortgagee, be diminished and will at all times remain in actual possession of the said Property. The Mortgagor will take good and reasonable care of the Property and without cost and expense to the Mortgagee manage, operate, maintain and keep or cause the same to be kept in good order, repair and condition throughout, both exterior and interior, structural or otherwise, and promptly make all required or necessary repairs and replacements thereto, including without limitation, the roof, walls, foundations and appurtenances, pipes and mains, and all other fixtures, machinery, facilities and equipment that belong to or are used in connection with the Property, all of the foregoing to the extent that a prudent owner would do. Notwithstanding the foregoing, the Mortgagor shall not be obligated to repair any damage caused by reasonable wear and tear which does not affect the use and enjoyment of the improvements beyond the extent to which they would ordinarily be repaired by a prudent owner. If, in the opinion of the Mortgagee, acting reasonably, the Property is not at any time in a proper state of repair, the Mortgagee may serve notice upon the Mortgagor to make such repairs or replacements as the Mortgagee, acting reasonably, deems proper within a period of thirty (30) days and in the event of the Mortgagor not having complied or not being in the process of diligently complying with such requisition, the Mortgagee may authorize the making of such repairs or replacements by its agents, employees or contractors and they may enter upon the Property for the purpose of doing such work with or without the Mortgagor's concurrence, but in all cases subject to the rights of tenants at the Property, and the cost thereof, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid, shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

FIXTURES

18. All erections, buildings, fences, improvements, machinery, plant, furnaces, boilers, electric light fixtures, plumbing and heating equipment, aerials, incinerators, radiators and covers, fixed mirrors, fitted blinds and drapes, window screens, doors, storm windows and storm doors, shutters and awnings, floor coverings, air conditioning, ventilating, water heating equipment, partitions, elevators, and all component parts of any of the foregoing, fixed or otherwise now on or in or hereafter put on or in the Property (and also in all cases where the Mortgaged Premises are units rented in whole or in part, all refrigeration equipment, gas and electric stoves, ovens, washers, dryers, garburators, garbage compactors, microwave ovens and dishwashers whether affixed or not, and provided that same are

owned by the Mortgagor) are and shall in addition to other fixtures thereon be and become fixtures and form part of the realty and of the security and are included in the expression the "Mortgaged Premises", and that the Mortgagor will not commit any act of waste thereon, and that the Mortgagor will at all times during the continuance of the security granted by this Mortgage, repair, maintain, restore, amend, keep, make good, finish, add to and put in order, the Property and in the event of any loss or damage thereto or destruction thereof which has had or is reasonably likely to have a Material Adverse Effect, the Mortgagee may give notice to the Mortgagor to repair, rebuild, or reinstate the same, and upon the Mortgagor failing so to repair, rebuild, or reinstate within such time such failure shall constitute a breach of covenant hereunder and thereupon the Loan Indebtedness shall, at the sole option of the Mortgagee, become immediately due and payable and without any demand by the Mortgagee upon the Mortgagor, provided that the Mortgagee may (but shall not be obligated to) repair, rebuild or reinstate the Property and the cost thereof, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid, shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing. This provision shall be in addition to any statutory covenants implied in this Mortgage.

ALTERATIONS

19. The Mortgagor shall not make or permit to be made, any additions or alterations to the Property without the prior written consent of the Mortgagee acting reasonably and except as may be permitted or required under the Permitted Encumbrances (including any leases which are Permitted Encumbrances), and the Mortgagor shall not use the Property nor permit the Property to be used, without the written consent of the Mortgagee, for a purpose not approved by the Mortgagee acting reasonably. Notwithstanding the forgoing:
- (a) the Mortgagor, its agents, employees and parties authorized by it may conduct building operations, construction and development on the Property including, without limitation, grading and excavation operations, installation of services and all other acts incidental to the development of the Property without the same being deemed acts of waste or requiring the prior written consent of the Mortgagee in accordance with this Section 19; and
 - (b) the Mortgagee shall, upon reasonable notice, promptly execute:
 - (i) such plans, agreements, documents, easements, rights-of-way and consents as may be required to facilitate the development of the Property;
 - (ii) such partial discharges as may be required to convey to any Governmental Authority such portion of interest in the Property as may be required for municipal or governmental purposes and for which the Mortgagor receives no financial compensation, provided that in each case the Mortgagee's security is not adversely affected thereby (as determined by the Mortgagee, acting reasonably); and
 - (iii) applications, documents and plans for rezoning, development review, site plan approval, land titles registration, subdivision plan registration, severance consents and other related development matters required by the Mortgagor,

provided that the Mortgagee's reasonable legal fees and disbursements and out-of-pocket expenses in connection with the review and execution of the forgoing together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing. In addition to the forgoing, the Mortgagor hereby indemnifies and agrees to hold the Mortgagee harmless with respect to the payment of any such reasonable legal fees and disbursements and out-of-pocket expenses in connection with the review and execution of the forgoing.

PLACE OF PAYMENT

20. All moneys reflecting Loan Indebtedness shall be payable, in lawful money of Canada, to the Mortgagee at its address hereinbefore stated, or such other place as may be designated by the Mortgagee from time to time.

CROSS-DEFAULT

21. The occurrence of an Event of Default hereunder shall constitute default under the other Security Documents and the Commitment Letter and default, beyond any applicable cure or notice periods, under any of the other Security Documents or the Commitment Letter shall constitute an Event of Default hereunder. The Mortgagee may, upon and during the continuance of an Event of Default or a default under the other Security Documents, pursue its remedies separately under any of the Security Documents, including without limitation, this Mortgage, or jointly all together, or jointly one with any one or more of the Security Documents, without any of the rights and remedies of the Mortgagee not so pursued merging therewith or with any action or judgment with respect thereto.

RELEASE OF SECURITY

22. Subject to the provisions in Section 41, the Mortgagee may (but shall have no obligation to) at any time release any part or parts of the Property or any of the Covenantors from any of the Security Documents, or may release the Mortgagor or any other Covenantor from any covenant or other liability to pay any of the Loan Indebtedness or perform any of the Loan Obligations, either with or without any consideration therefor, without being accountable for the value of any such consideration or for any moneys except those actually received by the Mortgagee, and without thereby releasing any other part of the Property or any of the other Covenantors from any of the Security Documents, it being specifically agreed that notwithstanding any such release, the Property, securities and covenants remaining unreleased shall stand charged with the whole of the Loan Indebtedness, and no Person shall have the right to require that any of the Loan Indebtedness be apportioned. Notwithstanding the foregoing, upon the closing of the sale of each unit comprising part of the Property, and provided that no Event of Default has occurred that is continuing and either: (i) a corresponding partial discharge of the Prior Ranking Charges (or any replacement prior ranking mortgage(s)/charge(s) in favour of the Mortgagee) from title to such unit is also being granted concurrently; or (ii) the Mortgagor has performed and observed the terms and conditions contained in the partial discharge provisions of the Commitment Letter (which terms and conditions are subject to change in the Mortgagee's sole and unfettered discretion), the Mortgagee shall provide a partial discharge of this Mortgage from title to such unit. The Mortgagor's solicitor shall prepare the mortgage discharge document for review by the Mortgagee and the Mortgagee's solicitor. All legal fees, disbursements and GST related to the discharge of this Mortgage and any other Security from title to a unit in the Project shall be paid by the Mortgagor. The Mortgagee acknowledges and agrees that, in the event any of the Derry Road Actions remain active at such time as the Lands against which this Mortgage is registered consists solely of the final three Units in the Project (the "**Final Derry Units**"), the Mortgagee shall provide a full discharge of this Mortgage from title to the Final Derry Units without any fee, bonus or penalty other than payment of the Discharge Fee. Notwithstanding the foregoing, in the event that the Derry Road Actions have reached a final disposition prior to only the Final Derry Road Units comprising the security under this Mortgage, any partial discharge from each Final Derry Unit shall be subject to the terms and conditions contained in the Commitment Letter and this Mortgage.

WAIVER

23. No extension of time, waiver, or other indulgence given by the Mortgagee to the Mortgagor, or anyone claiming under the Mortgagor, shall in any way affect or prejudice the rights of the Mortgagee against the Mortgagor, any guarantor, or any other Person liable for payment of the moneys hereby secured.

USE OF MONEY

24. The Mortgagee shall not be charged with any moneys receivable or collectible out of the Property or otherwise, except those actually received; and all revenue of the Property received or collected by the Mortgagee from any source other than payment by the

Mortgagor may, provided an Event of Default has occurred which is continuing, at the option of the Mortgagee, be used in maintaining or insuring or improving the Property, or in payment of Taxes or other charges against the Property, or applied on the mortgage account, and the Mortgagee may (at its option) retain such moneys received or collected, in suspense account; and the Mortgagee shall not, by reason of the collection of any moneys receivable or collectible out of the Property, be deemed to be a mortgagee in possession.

LIABILITY OF MORTGAGOR

25. No sale or other dealings by the Mortgagee or any receiver with the Property or any part thereof, shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other Person liable for payment of the moneys hereby secured.

ATTORNMENT

26. For better securing the punctual payment of the said mortgage moneys, the Mortgagor hereby attorns and becomes tenant to the Mortgagee of the Property at a monthly rental equivalent to the monthly instalments secured hereby, the same to be paid on such day appointed for the payment of instalments; and if any judgment, execution or attachment shall be issued against any of the goods or lands of the Mortgagor or if the Mortgagor shall become insolvent or bankrupt or commit an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act of Canada* as amended, or shall take the benefit of any statute relating to bankruptcy or insolvent debtors, then such rental shall, if not already payable, be payable immediately thereafter. The legal relation of landlord and tenant is hereby constituted between the Mortgagee and the Mortgagor, but neither this Section 26 nor anything done by virtue hereof, shall render the Mortgagee a mortgagee in possession or accountable for any moneys except those actually received. The Mortgagee may at any time after default hereunder enter upon the Property, or any part thereof, and determine the tenancy hereby created without giving the Mortgagor any notice to quit.

RECORDS

27. The Mortgagor will maintain full and correct books and records showing in detail the earnings and expenses of the Property, and will permit the Mortgagee and its representatives to examine the said books and records and all supporting vouchers and data at any time and from time to time upon reasonable prior request by the Mortgagee, and at any time and from time to time will furnish the Mortgagee at its request within thirty (30) days of such request, a statement showing in detail reasonably satisfactory to the Mortgagee all such earnings and expenses since the last such statement, certified by an officer of the Mortgagor.

ASSIGNMENT OF LEASE RIGHTS AND BENEFITS

28. The Mortgagor:
- (a) hereby assigns, transfers and sets over unto the Mortgagee, all of the Mortgagor's right, title and interest, both at law and in equity, in and to the Leases, the Rents and the Lease Benefits, to hold and receive the same unto the Mortgagee with full power and authority to demand, collect, sue for, recover and receive and give receipts for Rents and to enforce payment of the same and enforce performance of obligations under the Leases, including without limitation, the Lease Benefits, assigned in accordance with and subject to the terms of this Mortgage, to have and to hold unto the Mortgagee until payment in full of the Loan Indebtedness and performance of all of the Loan Obligations, provided that the Mortgagor may, subject to any other terms contained in any of the other Security Documents which restrict the Mortgagor's ability to deal with the Leases, collect the Rents and deal with the Leases from time to time as would a prudent landlord so long as an Event of Default does not exist, and upon the occurrence of an Event of Default which is continuing, the Mortgagee shall be entitled to:
 - (i) demand, collect and receive the Rents or any part thereof and to give acquittances therefor, and to take from time to time, in the name of the Mortgagor, any proceeding which may be, in the opinion of the Mortgagee or its counsel, expedient for the purpose of collecting Rents or for securing

the payment thereof or for enforcing any of the Mortgagor's rights under the Leases, and the Mortgagor hereby grants to the Mortgagee irrevocable authority to join the Mortgagor in any such proceedings or actions, whether judicial or extra-judicial;

- (ii) to compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rent, and any settlement arrived at shall be binding upon the Mortgagor;
 - (iii) to enter upon the Property by its officers, agents or employees for the purpose of collecting the Rents and to manage, operate and maintain its interest in the Property including without limitation, the making of repairs or replacements to maintain the Mortgaged Premises;
 - (iv) to receive, enjoy or otherwise avail itself of the Lease Benefits;
 - (v) to appoint and dismiss such agents or employees as may be necessary or desirable for exercise of the Mortgagee's rights hereunder;
 - (vi) to alter, modify, amend or change the terms of Leases; to enter into new Leases; to give consents, concessions or waivers of any rights or provisions of Leases; to accept surrenders of Leases; to give consents to assignment of or subletting under Leases;
 - (vii) to send or employ any inspector or agent to inspect and report upon the value, state and condition of the Property and to employ a solicitor to examine and report upon title to the same and the lease documentation pertaining to same;
 - (viii) to appoint a receiver or a receiver and manager in accordance with the provisions of the Mortgage which are hereby incorporated by reference into this Agreement; and
 - (ix) to generally perform all such acts as may in the reasonable opinion of the Mortgagee be necessary or desirable for the proper operation and maintenance of the Property, which acts may be performed in the name of the Mortgagor, or in the name of the Mortgagee;
- (b) whenever any and all Events of Default have been cured after the exercise by the Mortgagee of its rights under this Section 28, may resume collection of the rentals until a further Event of Default has occurred, whereupon the Mortgagee may re-exercise its rights hereunder, and thereafter at any time any Event of Default occurs;
- (c) shall not at any time during the existence of this Mortgage assign, pledge or hypothecate any of the Leases or the Rents or revenues due or to become due thereunder, or any part thereof, other than to the Mortgagee or pursuant to a Permitted Encumbrance nor shall the Mortgagor grant any general assignment of book debts which would cover such rentals, except pursuant to a Permitted Encumbrance;
- (d) shall not collect more than two (2) month's rental in advance;
- (e) acknowledges and agrees that neither the taking of this assignment nor anything done in pursuance hereof shall make the Mortgagee liable in any way, as landlord or otherwise, for the performance of any covenants, obligations and liabilities under the Leases or any of them; and
- (f) acknowledges and agrees that the exercise of this Section 28 or of any collateral security with respect to Rents shall not entitle the Mortgagor to redeem this mortgage.

EVENT OF DEFAULT

29. Notwithstanding the Mortgagee's rights to demand repayment of the Loan Indebtedness in full and the performance of the Loan Obligations at any time in the Mortgagee's sole,

absolute and unfettered discretion, any one or more of the following events shall constitute an event of default under the provisions of this Mortgage (an "**Event of Default**"), whether such Event of Default shall be voluntary or involuntary or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or other rule or regulation of any Governmental Authority:

- (a) any of the Covenantors fail to pay on the date upon which the same is due and payable any monies payable hereunder or under any of the other Loan Documents with respect to principal secured hereunder;
- (b) any of the Covenantors fail to pay on the date upon which the same is due and payable any monies payable hereunder or under any of the other Loan Documents (other than on account of principal), and such failure is not remedied within three (3) business days written notice to the Mortgagor;
- (c) any of the Covenantors fail to perform or observe any of the terms and conditions contained in this Mortgage or any of the other Loan Documents, and such failure is not remedied within thirty (30) days of written notice to the Mortgagor (but for greater certainty, there shall be no grace or cure period in respect of any Event of Default expressly enumerated hereunder, except as otherwise provided in respect of such Event of Default);
- (d) any funds secured under this Mortgage are used for any purpose other than as set forth in the Commitment Letter;
- (e) the breach or failure to perform or observe the terms and conditions contained in the Commitment Letter with respect to the Mortgagee's right of first refusal to finance or arrange financing for any subsequent phases of the Project, and such failure is not remedied within five (5) days of written notice to the Mortgagor (but for greater certainty, there shall be no grace or cure period in respect of any Event of Default expressly enumerated hereunder, except as otherwise provided in respect of such Event of Default);
- (f) the failure of the Borrower to maintain the minimum equity in the Lakeview Project, and such failure is not remedied within five (5) days of written notice to the Mortgagor (but for greater certainty, there shall be no grace or cure period in respect of any Event of Default expressly enumerated hereunder, except as otherwise provided in respect of such Event of Default);
- (g) any representation or warranty by any of the Covenantors that is contained in this Mortgage or any of the other Loan Documents furnished to the Mortgagee in connection herewith or therewith shall prove at any time to be untrue or incorrect as of the date made in any material respect;
- (h) a resolution is passed or an order is made for the dissolution, liquidation or winding-up of any of the Covenantors or other cancellation or suspension of its incorporation or termination of its existence or if a petition is filed for the winding-up of the any of the Covenantors;
- (i) any of the Covenantors is found to be insolvent or bankrupt by a court of competent jurisdiction or makes an authorized assignment or bulk sale of its assets or a compromise or arrangement for the benefit of its creditors, makes a proposal to its creditors under the *Bankruptcy and Insolvency Act* (Canada), seeks relief under the *Companies Creditors Arrangement Act* (Canada), or any other bankruptcy, insolvency or analogous law, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian or other Person with similar powers over all or any substantial portion of its assets, files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditor's rights or consents to, or acquiesces in, the filing of such a petition; or if a petition in bankruptcy is filed or presented against any of the Covenantors;

- (j) an encumbrancer takes possession of the property of any of the Covenantors which has had or is reasonably likely to have a Material Adverse Effect, or any distress or analogous process is levied upon any of the Covenantors provided that this Section 29(j) shall not apply to any judgment, court order for the payment of money, execution, sequestration, extant or other process that is being contested in good faith if reserves deemed by the Mortgagee to be adequate therefor have been set aside with the Mortgagee or insurance coverage acceptable to the Mortgagee is held, as the case may be, and if there is no Material Adverse Effect regarding the Mortgagee's security position;
- (k) any of the Covenantors permit any sum which has been admitted as due or which is not disputed to be due and which forms or is capable of forming a charge, Lien the Property in priority to or *pari passu* with the charge or security interest created by this Mortgage and any of the other Security Documents, to remain unpaid after proceedings have been taken to enforce the same as a Lien upon the Property has been vacated or discharged within ten (10) business days of such proceedings having been taken;
- (l) the occurrence of a default under: (i) any other security or agreement (including any Permitted Encumbrance) made or assumed by any of the Covenantors (or by which it is bound) in favour of any Person in connection with the Property, to the extent such default has had or is reasonably likely to have a Material Adverse Effect; and (ii) any other security or agreement made or assumed by any of the Covenantors (or by which it is bound) in favour of the Mortgagee whether or not such security or agreement is in connection with the Property; and in each case if not remedied within the applicable cure or notice period provided for in such security or agreement;
- (m) the Mortgagor does not comply within a reasonable period with any work order issued by a municipal or provincial authority;
- (n) a receiver, receiver-manager or receiver and manager of the any of the Covenantors of any material part of its properties, assets or undertakings is appointed, or if a monitor is appointed in respect of any of the Covenantors;
- (o) any writ of execution, distress, attachment or other similar process is issued or levied against any of the Covenantors or all or any part of its assets, or attachment or other similar process is issued or levied against any of the Covenantors by a court of competent jurisdiction and, in the opinion of the Mortgagee, such judgement or order would materially and adversely affect the ability of any of the Covenantors to fulfil its obligations to the Mortgagee hereunder or under any of the other Loan Documents;
- (p) any part of the Property is condemned or expropriated and, in the opinion of the Mortgagee in respect of any expropriation, such expropriation materially impairs the value of the Property, the validity, enforceability or priority of the security of this Mortgage, or the ability of the Mortgagor to pay the Loan Indebtedness or to perform any of the Loan Obligations;
- (q) any direct or indirect change (i) in the ownership of (A) the Property; or (B) any Covenantor; or (ii) any change of Control of any of the Covenantors, in each case without the consent of the Mortgagee in its sole, absolute and unfettered discretion;
- (r) if a Material Adverse Effect occurs; or
- (s) the occurrence of a cross-default pursuant to Section 21.

RECEIVER

30. Upon the occurrence of an Event of Default which is continuing, the Mortgagee may at such time and from time to time and with or without entry into possession of the Property or any part thereof, appoint a receiver (which term includes a receiver or a manager or a receiver and manager) of the Property or any part thereof and of the Rents and profits thereof and with or without security, and may from time to time remove any receiver and appoint another in his stead and that, in making any such appointment or removal, the

Mortgagee shall be deemed to be acting as the agent or attorney for the Mortgagor and not of the Mortgagee. Such appointment may be made at any time either before or after the Mortgagee shall have entered into or taken possession of the Property or any part thereof. Upon the appointment of any such receiver or receivers from time to time, the following provisions shall apply, subject to compliance with applicable laws:

- (a) the statutory declaration of an officer of the Mortgagee as to the Event of Default under the provisions of this Mortgage, shall be conclusive evidence thereof;
- (b) every such receiver shall be the irrevocable agent or attorney of the Mortgagor for the collection of all Rents falling due in respect of the Property or any part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
- (c) every such receiver may, in the discretion of the Mortgagee and by writing under its corporate seal, be vested with all or any of the powers and discretions of the Mortgagee;
- (d) the Mortgagee may from time to time, by such writing fix the remuneration of every such receiver who shall be entitled to deduct the same out of the Rents from the Property or from the proceeds of the judicial sale of the Property;
- (e) every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Mortgagor and in no event the agent of the Mortgagee, and the Mortgagee shall not in any way be responsible for any acts or omissions (including negligence, misconduct or misfeasance) on the part of any such receiver;
- (f) the appointment of every such receiver by the Mortgagee shall not create any liability on the part of the Mortgagee to the receiver in any respect, and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Mortgagee a mortgagee in possession in respect of the Property or any part thereof;
- (g) every such receiver shall from time to time have the power to rent any portion of the Property which may become vacant, for such term and subject to such provisions as he may deem advisable or expedient, and in so doing every such receiver shall act as the attorney or agent of the Mortgagor and he shall have authority to execute under seal any lease of such portion of the Property in the name of and on behalf of the Mortgagor, and the Mortgagor undertakes to ratify and confirm whatever any such receiver may do in respect of the Property;
- (h) every such receiver shall have full power to complete any unfinished construction upon the Property with the intent that the Mortgaged Premises when so completed shall be a complete structure;
- (i) every such receiver shall have full power to manage, operate, amend, repair, alter or extend the Property or any part thereof in the name of the Mortgagor for the purpose of securing the payment of rental from the Property or any part thereof;
- (j) no such receiver shall be liable to the Mortgagor to account for moneys or damages other than cash received by him in respect of the Property or any part thereof, and out of such cash so received every such receiver shall, subject to the approval of the Mortgagee, in the following order, pay:
 - (i) his remuneration aforesaid;
 - (ii) all payments including, without limitation, costs as between solicitor and his own client made or incurred by him in connection with the management, operation, amendment, repair, alteration or extension of the Property or any part thereof;
 - (iii) interest, principal and other moneys which may from time to time, be or become charged upon the Property in priority to these presents, and all

- Taxes, insurance premiums and every other proper expenditure made or incurred by him in respect to the Property or any part thereof;
- (iv) to the Mortgagee, all interest due or falling due under these presents and the balance to be applied upon principal due and payable and secured by these presents;
 - (v) into a reserve account in the name of the receiver, an appropriate sum of money as a reserve fund for unusual, emergency or lump sum payments or expenses with respect to the Property; and
 - (vi) any surplus thereafter remaining in the hands of every such receiver after payments made as aforesaid, to the Mortgagor;
- (k) save as to claims for an accounting under Section 30(j) above, the Mortgagor hereby releases and discharges every such receiver and the Mortgagee from every claim of every nature which may arise or accrue to the Mortgagor or any Person claiming through or under the Mortgagor by reason or as a result of anything done by any such receiver under the provisions of this Section 30, unless such claim by the direct and proximate result of gross negligence or wilful misconduct;
 - (l) the power of sale, foreclosure and any other remedies of the Mortgagee may be exercised either before, concurrent with, during, or after the appointment of any receiver hereunder.

RIGHTS OF MORTGAGEE

31. The Mortgagor further covenants and agrees with the Mortgagee upon the occurrence of an Event of Default which is continuing:
- (a) the Mortgagee may and when and to such extent as the Mortgagee deems advisable, observe and perform or cause to be observed and performed such covenants, agreements, provisos or stipulations and the costs incurred by the Mortgagee in connection therewith, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing;
 - (b) the Mortgagee may at such time or times as the Mortgagee may deem necessary and without the concurrency of any Person, enter upon the Property and may make such arrangements for completing the construction, repairing or putting in order of the Mortgaged Premises, or for inspecting, taking care of, leasing, collecting the Rents of and managing generally the Property as the Mortgagee may deem expedient; all reasonable costs, charges and expenses, including allowances for the time and services of any employee of the Mortgagee or other Person appointed for the above purposes, together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing;
 - (c) the Mortgagee may send or employ an inspector or agent to inspect and report upon the value, state and condition of the Property, and a solicitor to examine and report upon the title to the same;
 - (d) the Mortgagee or agent of the Mortgagee may enter into possession of the Property and whether in or out of possession collect the Rents and profits thereof, and make any demise or lease of the Property, or any part thereof, for such terms and periods and at such Rents as the Mortgagee shall think proper; and the power of sale hereunder may be exercised either before or after and subject to any such demise or lease;

- (e) it shall and may be lawful for and the Mortgagor does hereby grant full power, right and license to the Mortgagee to enter, seize and distrain upon the Property, or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of demise of the Property or any part thereof, as much of the mortgage moneys as shall from time to time be or remain in arrears and unpaid, together with costs, charges and expenses attending such levy or distress, as in like cases of distress for rent;
- (f) the Mortgagee shall be entitled forthwith to take such proceedings to obtain repayment of the moneys and interest payable to the Mortgagee hereunder and to realize on its security under this Mortgage by foreclosing the same or by whatever other action it may by law be entitled to do, it being acknowledged that nothing herein shall limit such recourse to the Property only;
- (g) subject to applicable law, the Mortgagee shall be entitled to sell and dispose of the Property with or without entering into possession of the same and with or without notice to the Mortgagor or any party interested in the Property; and all remedies competent may be resorted to; and all the rights, powers and privileges granted to or conferred upon the Mortgagee under and by virtue of any statute or by this Mortgage may be exercised; and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made of the Property hereunder, and the Mortgagee may sell, transfer and convey any part of the Property on such terms of credit, or part cash and part credit, secured by contract or agreement for sale or mortgage, or otherwise, as shall in the opinion of the Mortgagee be most advantageous, and for such price as can reasonably be obtained therefor; and in the event of a sale on credit, or part cash and part credit, whether by way of contract for sale or by conveyance or transfer and mortgage, the Mortgagee is not to be accountable for or charged with any moneys until the same shall be actually received in cash; and the sales may be made from time to time of any portion or portions of the Property to satisfy interest or parts of the principal overdue, leaving the principal or parts thereof to run with interest payable as aforesaid; and the Mortgagee may make stipulations as to the title or evidences or commencement of title or otherwise as the Mortgagee shall deem proper; and the Mortgagee may buy in or rescind or vary any contract for sale of the Property and any resale thereof; and on any sale or release, the Mortgagee shall not be answerable for loss occasioned thereby; and for any of such purposes the Mortgagee may make and execute all agreements and assurances that the Mortgagee shall deem advisable or necessary; and in case any sale held by the Mortgagee under and by virtue of the laws of the Province of Ontario under the power of sale herein contained should prove abortive the Mortgagee may take foreclosure proceedings in respect of the Property in accordance with the provisions of the laws of the Province of Ontario; and in the event of any deficiency on account of the moneys secured by this Mortgage remaining due to the Mortgagee after realizing all the Property, then Mortgagor will pay to the Mortgagee on demand the amount of such deficiency with interest at the Interest Rate both before and after judgment; and in the exercise of any of the foregoing powers, the Mortgagor hereby appoints the Mortgagee the attorney of the Mortgagor for the purpose of making any agreements and assurances on behalf of the Mortgagor as the Mortgagee may deem necessary which power of attorney is coupled with an interest; and the proceeds of any sale hereunder shall be applied as above provided for or in payment of moneys payable under this Mortgage and costs on a solicitor and his own client basis, the balance, if any, to be paid to the Mortgagor;
- (h) the whole of the mortgage moneys shall, at the option of the Mortgagee, become due and payable;
- (i) the Mortgagee may exercise each of the foregoing powers without notice to the Mortgagor.

COVENANTOR MISREPRESENTATION

32. Notwithstanding any other provision in this Mortgage, the Mortgagee may demand repayment of all Loan Indebtedness and exercise all of its rights hereunder, including without limitation pursuant to Sections titled "**Receiver**" and "**Rights of Mortgagee**" if

any of the Covenantors, any agent of any of the Covenantors or any officers or director of any of the Covenantors shall have made any material misrepresentation in any of the Loan Documents.

ATTORNEY

33. As further assurance to the rights and remedies granted by the Mortgagor to the Mortgagee herein, the Mortgagor, as the owner of the Property hereby irrevocably appoints the Mortgagee on its own behalf or any receiver or manager or receiver and manager appointed by the Mortgagee attorney on behalf of the Mortgagor to sell, lease, mortgage, transfer or convey the Property in accordance with the provisions of this Mortgage and to execute all instruments, and do all acts, matters and things that may be necessary for carrying out the powers hereby given and for the recovery of all Rents and Lease Benefits and sums of money that may become or are now due or owing to the Mortgagor in respect of the Property, and for the enforcement of all contracts, covenants or conditions binding on any lessee or occupier of the Property or on any other Person in respect of it, and for the taking and maintaining possession of the Property, and for protecting it from waste, damage, or trespass, in all cases only following an Event of Default which is continuing. Such power of attorney is coupled with an interest.

JUDGMENT

34. The taking of a judgment on any of the covenants or agreements herein contained shall not operate as a merger thereof or affect the Mortgagee's rights to interest to the Maturity Date at the Interest Rate and at the times herein provided. Further, any and all such judgments shall provide for interest thereon to be computed at the Interest Rate and in the same manner as herein provided to the Maturity Date shall have been fully paid and satisfied and, without limiting the generality of the foregoing, the Mortgagee shall be entitled to receive interest at the Interest Rate to the Maturity Date on all moneys payable to the Mortgagee under this Mortgage, after any judgment has been rendered with respect to this Mortgage.

EXPENSES

35. All expenses, fees, charges or payments incurred, expended or paid by the Mortgagee, acting reasonably and without duplication, (whether with the knowledge, consent, concurrence or acquiescence of the Mortgagor or otherwise) with respect to the following matters:
- (a) all reasonable solicitors', inspectors', valuers' and surveyors' fees and expenses for drawing and registering this Mortgage and for examining the Property and the title thereto, and for making or maintaining this Mortgage a good and valid charge and mortgage (subject only to the Prior Permitted Encumbrances);
 - (b) all sums which the Mortgagee may advance for insurance premiums, Taxes, or rates;
 - (c) any unpaid amount due to the Mortgagee for the Lender's Fee, and, if applicable, the Extension Fee, the Regulatory Fees and the Administration Fee;
 - (d) all sums which the Mortgagee may expend in payment of prior liens, charges, encumbrances or claims charged or to be charged against the Property or on this Mortgage or against the Mortgagee in respect of this Mortgage;
 - (e) all sums which the Mortgagee may expend in maintaining, repairing, restoring or completing the construction on the Property pursuant to the terms of this Mortgage;
 - (f) the cost of inspecting, leasing, managing or improving the Property, including the price or value of any goods of any sort or description supplied for use on the Property pursuant to the terms of this Mortgage;
 - (g) all sums paid to a receiver of the Property;
 - (h) the cost of exercising or enforcing or attempting to exercise or enforce any right, power, remedy or purpose hereunder provided or implied, and including an

allowance for the time, work and expenses of the Mortgagee or any agent or employee of the Mortgagee, for any purpose provided for herein; and

- (i) the Mortgagee's reasonable solicitors' costs as between solicitor and his own client incurred or paid by the Mortgagee as a result of any Event of Default, or of endeavouring to collect (with or without suit) any money payable hereunder, or of taking, recovering or keeping possession of the Property, and generally in any other proceedings, matter or thing taken or done to protect or realize this security or any other security for payment of the Loan Indebtedness and performance of the Loan Obligations;

together with interest thereon, at the Interest Rate, shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

COVENANTS AND REPRESENTATIONS

36. The Mortgagor:

- (a) further represents and warrants to the Mortgagee that:
 - (i) the Mortgagor:
 - (A) is a corporation incorporated formed and existing under the laws of its jurisdiction of incorporation;
 - (B) has the legal right and all necessary corporate or other power and authority to own its assets, possess a freehold interest in the Property, and carry on its business in all material respects; and
 - (C) is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions where it conducts business, except where failure to be so qualified, licensed or registered has not and is not reasonably likely to have a Material Adverse Effect;
 - (ii) the Mortgagor has all requisite corporate power and authority to enter into and perform its obligations under this Mortgage and the other Loan Documents, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms hereof and thereof;
 - (iii) the execution and delivery by the Mortgagor, and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Mortgage and the other Loan Documents will not conflict with or result in a breach of any of the terms, conditions or provisions of:
 - (A) its articles, by-laws, shareholders' agreements or other organizational documents; as the case may be;
 - (B) any applicable laws;
 - (C) any material contracts, material authorizations or material contractual restriction binding on or affecting it or its assets, including without limitation, the Property; or
 - (D) any material judgment, injunction, determination or award which is binding on it in each such case, except to the extent that such breach has not and is not reasonably likely to have a Material Adverse Effect;
 - (iv) the execution and delivery by the Mortgagor of this Mortgage and the other Loan Documents, and the performance by it of its Loan Obligations have

been duly authorized by all necessary corporate or other action including, without limitation, the obtaining of all necessary partner, shareholder or other material and relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Authority, or other Person, is or was necessary in connection with the execution, delivery and performance of the Mortgagor's obligations under this Mortgage the other Loan Documents, except where failure to obtain same would not have or be reasonably likely to have a Material Adverse Effect;

- (v) this Mortgage and the other Loan Documents have been duly executed and delivered, as the case may be, by the Mortgagor, and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally), is (or will be immediately upon the execution thereof by such Person) in full force and effect, and the Mortgagor has performed and complied in all material respects with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by the Mortgagor;
- (vi) the Mortgagor is not a non-resident within the meaning of the *Income Tax Act* (Canada);
- (vii) there is not now pending or, to the knowledge of the Mortgagor, threatened in writing, against the Mortgagor, any litigation, action, suit, investigation (to the knowledge of the Mortgagor) or other proceeding by or before any Governmental Authority or before any arbitrator which has had or is reasonably likely to have a Material Adverse Effect;
- (viii) as of the date hereof, the written information heretofore supplied by any of the Covenantors (other than information or reports prepared by third parties) to the Mortgagee is true and accurate in all material respects as at the date thereof;
- (ix) all financial statements delivered to the Mortgagee as of the date hereof pursuant to Section 48 present fairly and in all material respects the financial position of any of the Covenantors as of the date thereof and for the fiscal years or financial quarters, as the case may be, then ended;
- (x) since the later of the date hereof and the date of the most recent financial statements delivered to the Mortgagee, there has been no change regarding the financial condition or operations, of any of the Covenantors as reflected in such financial statements or Personal net worth statements, as applicable which has had or is reasonably likely to have a Material Adverse Effect;
- (xi) there is no Event of Default under this Mortgage, nor has the Mortgagor done or omitted to do anything which constitutes an Event of Default which has not been waived or cured. None of the Covenantors is in default under any agreement, guarantee, indenture or instrument to which it is a party or by which it is bound, the breach of which has had or is reasonably likely to have a Material Adverse Effect;
- (xii) as of the date hereof, there are no outstanding judgments, orders, writs, injunctions or decrees that have not been stayed or of which enforcement has not been suspended, against the Mortgagor or any of its assets, including without limitation the Property, which would reasonably be expected to result in a Material Adverse Effect regarding the financial condition or operations of the Mortgagor;
- (xiii) the Mortgagor is the legal owner of a freehold interest in the Property with good and marketable title thereto, and any other real and personal property of the Mortgagor of any nature which is part of the Property, in each case free and clear of all encumbrances, except Permitted Encumbrances, and no

Person has any agreement or right to acquire an interest in the Property except as previously disclosed to the Mortgagee in writing by the Mortgagor or permitted in connection with the Permitted Encumbrances;

- (xiv) the Mortgagor has not received notice of any proposed rezoning of all or any part of the Property which has had or is reasonably likely to have a Material Adverse Effect;
 - (xv) the Mortgagor has not received notice of any expropriation of all or any part of the Property;
 - (xvi) the Mortgagor has the right to mortgage the Property;
 - (xvii) upon the enforcement of its remedies under this Mortgage the Mortgagee shall have quiet possession of the Property, free from all encumbrances, other than Permitted Encumbrances;
 - (xviii) the Mortgagor, and the operation of its business and assets, including without limitation, the Property, are in compliance in all material respects with all applicable laws (including any environmental laws), except where any non-compliance is not reasonably likely to have a Material Adverse Effect; and
 - (xix) the Mortgagor has filed all tax returns which are required to be filed, other than such tax returns the failure of which to file has had or is reasonably likely to have a Material Adverse Effect, and has paid all Taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it and adequate provision for payment has been made for Taxes not yet due except any such payment of which the concerned party is contesting in good faith by appropriate proceedings and for which appropriate reserves have been provided on its books and as to which no foreclosure, distraint, seizure, attachment, sale or other similar proceedings have been commenced or the non-payment of which would not reasonable be excepted to result in a Material Adverse Effect regarding the financial condition or operations of the Mortgagor;
- (b) to the extent within the control of the Mortgagor, covenants to cause the forgoing representations and warranties to be true and correct in all material respects until the Loan Indebtedness is repaid in full and the Loan Obligations are fully performed;
- (c) acknowledges and agrees that all representations and warranties of the Mortgagor made in this Mortgage or in any of the other Loan Documents are material, shall survive and shall not merge upon the execution and delivery of this Mortgage and shall continue in full force and effect. The Mortgagee shall be deemed to have relied upon such representations and warranties notwithstanding any investigation made by or on behalf of the Mortgagee at any time;
- (d) shall not, at any time prior to the repayment in full of the Loan Indebtedness and the performance of all of the Loan Obligations:
- (i) repay any loans (principal or interest) to;
 - (ii) redeem or purchase any shares or units or partnership interests held by or on behalf of;
 - (iii) pay any compensation, fee or other amount to; or
 - (iv) pay any distributions or dividends or return on partnership or shareholder investment to,

in each case, any of the Covenantors or any other shareholder, unitholder or partner of any Covenantor, or any other Person not at arms-length to any of the foregoing, save and except for those development, marketing and/or construction fees approved in writing by the Mortgagee;

- (e) acknowledges and agrees that any third party property manager of the Property and each property management agreement will be subject to the prior written approval of the Mortgagee, acting reasonably; and
- (f) acknowledges and agrees that each new Lease of the Property, including each renewal or extension of an existing Lease (other than any extension or renewal of an existing Lease which is exercised pursuant to, and the terms of which are governed by, such existing Lease), must:
 - (i) be a commercially reasonable arm's length transaction made in the ordinary course of business and in accordance with prudent property management and leasing standards and practices; and
 - (ii) provide for rental rates and other terms and conditions consistent with prevailing market rates, terms and conditions.

EXPROPRIATION

37. Subject to the rights of creditors of the Mortgagor in accordance with Prior Permitted Encumbrances, the Mortgagor hereby assigns to the Mortgagee, that portion of any proceeds which may become due and payable to the Mortgagor by an expropriating authority upon an expropriation of the Property or the proceeds of any condemnation, eminent domain or like proceeding or the sale in lieu of or in reasonable anticipation thereof of the whole or any part of the Property or any portion thereof, not to exceed the balance outstanding under the Mortgage, provided that the Mortgagee shall permit the Mortgagor to use such portion of any proceeds as reasonably necessary to pay the cost to repair any damage resulting from such expropriation. The Mortgagor shall forward to the Mortgagee, copies of any documentation relating to an expropriation or a proposed expropriation of the Property or any portion thereof, forthwith upon receipt of the said documentation by it and shall execute and deliver any further or additional documentation which the Mortgagee in its sole discretion deems necessary to effect the above assignment or which is requested by the expropriating authority. Notwithstanding anything to the contrary contained herein, if the Mortgagor or the Mortgagee receives a notice of intention to expropriate in relation to the Property, or any portion thereof, that has had or is reasonably likely to have a Material Adverse Effect, at the option of the Mortgagee, the whole of the outstanding balance secured under this Mortgage at the date of the expropriation, shall immediately become due and payable in like manner and to all intents and purposes as if the time for payment of the said balance had fully come and expired. If any or all of the Property is expropriated, it is agreed that the proceeds from any such expropriation up to the amount outstanding under this Mortgage shall be paid directly to the Mortgagee in priority to the claims of any other party, except such creditors of the Mortgagor and other parties with priority to collect such proceeds pursuant to any Prior Permitted Encumbrances. Service of a copy of this Mortgage on the expropriating authority shall be sufficient authority for the expropriating authority to deliver proceeds to the Mortgagee, in accordance with the terms of the assignment contained herein.

PERMITTED ENCUMBRANCES AND OTHER OBLIGATIONS

38. The Mortgagor hereby covenants to perform and observe and satisfy all the terms, covenants and conditions to be performed and observed by the Mortgagor under the terms of any Prior Permitted Encumbrances and the Leases (hereinafter called the "**Other Obligations**"). It is expressly agreed and understood by the Mortgagor that in the event of default by the Mortgagor under any of the terms of any Other Obligations, beyond any applicable notice or cure periods, then at the option of the Mortgagee an Event of Default shall have occurred hereunder. The Mortgagee may at its option make any payment or cure any default under the any Prior Permitted Encumbrance and any amount or amounts so paid together with all costs, charges, expenses and outlays of the Mortgagee thereby incurred together with interest thereon at the Interest Rate shall be added to the Loan Indebtedness hereby secured, shall be repaid by the Mortgagor to the Mortgagee forthwith, and until repaid shall be a charge upon the Property and the Mortgagee shall have the same rights and remedies to enforce payment thereof as it would have upon the occurrence of an Event of Default which is continuing.

SEVERABILITY

39. In the event any Section or part thereof or any Section or part thereof is invalid and not enforceable for any reason, then such Section or part thereof or such Section or part thereof shall be severable from this Mortgage and not affect the validity or enforceability of any other part of this Mortgage.

SUCCESSORS AND ASSIGNS

40. When the context makes it possible, the word "**Mortgagee**" wherever it occurs in this Mortgage, shall include the successors and assigns of the Mortgagee, and the word "**Mortgagor**" shall include heirs, executors, administrators, successors and permitted assigns of the Mortgagor; and that words in the singular include the plural, and that words in plural include the singular, and words importing the masculine gender include the feminine; and that if there is more than one entity comprising the Mortgagor all covenants herein contained and implied are to be construed as joint and several; and that heirs, executors, administrators, successors and assigns of any party executing this Mortgage are jointly and severally bound by the covenants, provisos and agreements herein contained or implied. The Documents, including without limitation this Mortgage, together with the Loan Indebtedness and the Loan Obligations may be assigned or participated by the Mortgagee (and its successors and assigns), in whole or in part, without the consent of the Mortgagor.

DISCHARGE

41. The Mortgagee shall upon payment and performance of all indebtedness and obligations secured hereby in full deliver an executed discharge of this Mortgage; it being agreed that the Mortgagor's solicitor shall be responsible for preparing the mortgage discharge document for review by the Mortgagee and its counsel at least seven (7) days prior to payment, and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Mortgagee; and all reasonable legal and other expenses and Taxes thereon, if any, for the preparation and execution of such discharge shall be borne by the Mortgagor. For greater certainty, the Mortgagor acknowledges and agrees that payment and performance of all indebtedness and obligations secured by either Prior Ranking Charge (or any replacement prior ranking mortgage(s)/charge(s) in favour of the Mortgagee) shall not be cause for a discharge of this Mortgage (other than the partial discharges specifically set out in Section 22), with this Mortgage only to be discharged upon payment and performance of all indebtedness and obligations secured hereby in full.

LAW

42. This Mortgage is made pursuant to the *Land Titles Act* (Ontario) and any amendments thereto.

COMMITMENT LETTER

43. The parties agree that the accepted terms and conditions of the Commitment Letter, shall survive the initial advance of monies by the Mortgagee to the Mortgagor as contemplated hereunder and continue to be in full force and effect after said initial advance. In the event there is a direct conflict between the terms and conditions of this Mortgage and the Commitment Letter, then the Commitment Letter shall prevail to the extent necessary to resolve the conflict. In the event there is a direct conflict between the terms and conditions of this Mortgage and any other Loan Document (other than the Commitment Letter), the terms and conditions of this Mortgage shall prevail to the extent necessary to resolve the conflict.

HAZARDOUS MATERIALS

44. The Mortgagor,
- (a) has not nor, to the best knowledge of the Mortgagor, has any other Person ever caused or permitted any hazardous materials to be placed, held, located or disposed of on, under or at the Property and that its business and assets are operated in compliance with applicable laws intended to protect the environment (including,

without limitation, laws respecting the disposal or emission of hazardous materials) and that no enforcement actions in respect thereof are threatened or pending.

- (b) covenants and agrees that it will at all times during the continuance of this Mortgage, operate the Property in compliance with applicable laws intended to protect the environment (including, without limitation, laws respecting the disposal or emission of hazardous materials) and shall, subject to the rights of tenants under the Leases, permit the Mortgagee to conduct inspections and appraisals of all or any of its records, business and assets at any time or from time to time upon reasonable prior notice to ensure such compliance.
- (c) in addition to the representations and warranties contained in Section 36, hereby represents, warrants and agrees that,
- (i) to the best of the knowledge of the Mortgagor, the condition and use of the Property is, and will continue to be in compliance with all applicable environmental laws and standards; all necessary licenses and permits relating to the release of contaminants, production of dangerous materials and carrying on of hazardous activities have been obtained and are being complied with; there are no outstanding orders against the Mortgagor from any Governmental Authority responsible for protecting the environment;
 - (ii) to the best of the knowledge of the Mortgagor, the Property is not being subjected to environmental damage or contamination and to the best of the Mortgagor's knowledge, the Property incurred no such damage or contamination prior to the Mortgagor's control;
 - (iii) the Mortgagor will use commercially reasonable efforts to use the Property and conduct its business thereon so as not to cause environmental damage and that the use of the Property will not change without the Mortgagee's approval, acting reasonably;
 - (iv) to the best of the knowledge of the Mortgagor, the terms of any past credit arrangement have not been altered, cancelled or not renewed due to environmental risk considerations;
 - (v) all legally required remedial action will be taken with respect to violations of environmental laws, and spills or other contaminations;
 - (vi) the Mortgagor will give notice to the Mortgagee of any contamination of which the Mortgagor has or acquires knowledge of, or any pending or threatened government enforcement action or civil suit arising out of alleged environmental damage of which the Mortgagor has or acquires knowledge of;
 - (vii) in accordance with Section 13 above, the Mortgagor will permit the Mortgagee and its agents to enter onto the Property at any time to conduct an environmental inspection and to permit the Mortgagee to take such action as it deems reasonably necessary to remedy any environmental damage or breach of law which the Mortgagor fails to take, subject to the rights of tenants under the Leases;
 - (viii) the Mortgagor will provide copies of its own internal/external environmental audits to the Mortgagee upon request;
 - (ix) subject to the terms of the existing Leases, the Mortgagor will use commercially reasonable efforts to cause any other occupants or Persons in control of the Property to comply with the foregoing covenants;
 - (x) the Mortgagor will defend and indemnify the Mortgagee, its directors, officers, employees and agents against all costs, etc., arising out of any environmental damage caused by the Mortgagor's activities or by contamination of or from the Property (unless caused by the Mortgagee or those for whom in law it is responsible); and

- (xi) if the Mortgagor fails to perform any of the foregoing covenants beyond any applicable notice or cure periods, the Mortgagee may do so and any money expended by the Mortgagee shall be paid by the Mortgagor out of any funds coming into the Mortgagee's possession in priority to the Loan.

DUE ON SALE

- 45. The Loan Indebtedness shall, at the election of the Mortgagee, immediately become due and payable in full without notice by nor demand from the Mortgagee if the Property or any part thereof or interest therein is, without the prior consent in writing of the Mortgagee sold, transferred, conveyed, foreclosed, exchanged, assigned, mortgaged, or otherwise disposed of, or if the Mortgagor enters into an agreement to effect any of the foregoing whether by registered or unregistered instrument and whether for valuable or nominal consideration (and if the Mortgagor is a corporation, any change in Control of the Mortgagor or any other Covenantor shall constitute a default under this Section 45), in all cases except as specifically permitted in this Mortgage or in the Commitment Letter; provided however that nothing herein shall be construed as permitting the Mortgagor to prepay this Mortgage in whole or in part except in accordance with Section 8 hereof; and provided further that the acceptance by the Mortgagee of any instalment payment or other payment under this Mortgage from any entity other than the Mortgagor shall not constitute a waiver by the Mortgagee of its rights under this Section 45, nor a consent by the Mortgagee of any such sale or disposal of the Property as above described.

SUBSEQUENT FINANCING

- 46. The Loan Indebtedness shall, at the election of the Mortgagee, become due and payable in full if the Property or any part thereof or interest therein is, without the prior consent in writing of the Mortgagee acting reasonably, mortgaged or similarly charged, except as may be specifically permitted in this Mortgage, the Commitment Letter or under a Permitted Encumbrance; provided however that nothing herein shall be construed as permitting the Mortgagor to repay this Mortgage in whole or in part except in accordance with Section 8 hereof.

PROHIBITED BUSINESSES

- 47. The Mortgagor agrees not to operate, nor allow any tenant to operate a business on the Property that:
 - (a) is sexually exploitive or that is inconsistent with generally accepted community standards of conduct and propriety, including those that feature sexually explicit entertainment, products or services; or
 - (b) are engaged in or associated with illegal activities.

FINANCIAL STATEMENTS AND REPORTS

- 48. The Mortgagor shall deliver or cause to be delivered the following documentation to the Mortgagee:
 - (a) any and all insurance certificate renewals and/or amendments within ten (10) business days of the issuance thereof. In the event of any change to the insurance held by the Mortgagor, the Mortgagee may, in its unfettered discretion, require its insurance consultant to conduct an insurance review at the Mortgagor's expense;
 - (b) property tax statements supported by proof of payment on an annual basis or as otherwise requested by the Mortgagee from time to time;
 - (c) each year, or more often if requested by the Mortgagee, within one hundred twenty (120) days of the Mortgagor's fiscal year end, accountant prepared financial statements of the Mortgagor and of any corporate Covenantor, including a balance sheet and supporting schedules, a detailed statement of income and expenditures and supporting schedules, and a statement of change in cash flow and, in the case of any personal Covenantor, certified and current-dated net worth statements in lieu of financial statements with supporting documentation of asset values;

- (d) at the request of the Mortgagee from time to time any other relevant updates regarding the Property.

BENEFIT OF EASEMENTS

49. As additional security for the indebtedness and other obligations secured hereunder and interest thereon and the due performance of the Mortgagor's obligations hereunder and under any collateral security the Mortgagor hereby assigns, transfers, mortgages, charges and sets over to and in favour of the Mortgagee as and by way of a specific assignment, mortgage and charge all of the right, title and interest of the Mortgagor in and with respect to any and all easements, restrictive covenants, rights of way, party wall agreements and encroachment agreements benefiting the Property (the "**Title Agreements**") and all of the benefit, power and advantage of the Mortgagor to be derived therefrom (including without limitation the benefit of any positive covenants) and otherwise to enforce the rights of the Mortgagor under the Title Agreements in the name of the Mortgagor. Nothing herein contained shall render the Mortgagee liable to any Person for the fulfilment or non-fulfilment of the obligations covered in any of the Title Agreements, including, but not limited to, the payment of any moneys thereunder or in respect thereto and the Mortgagor hereby indemnifies and agrees to save and hold harmless the Mortgagee from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever arising directly or indirectly from or out of any of the Title Agreements. The Mortgagor covenants and agrees with the Mortgagee that the Mortgagor shall not surrender, alter, amend or modify any of the Title Agreements or any of the terms or conditions thereof except with the prior written consent of the Mortgagee or as required to complete the Project, if applicable, as determined by the Mortgagor, acting as a prudent owner.

INDEMNITY

50. The Mortgagor shall indemnify and save harmless the Mortgagee and its officers, agents, trustees, employees, contractors, licensees or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature whatsoever in connection with any breach or default by the Mortgagor under this Mortgage and any of the other Loan Documents.

GENERAL

51. This Mortgage shall be construed in accordance with and governed under the laws of the Province of Ontario and the federal laws of Canada applicable therein.
52. The Mortgagor agrees with the Mortgagee as follows:
- (a) to comply with the terms and conditions of this Mortgage and the other Loan Documents at all times;
 - (b) to maintain the Property in a sound state of repair at all times as would other prudent owners of similar property;
 - (c) to allow the Mortgagee and its appointees to have access to the property at all reasonable times upon reasonable prior notice, subject to the rights of tenants at the Property; and
 - (d) at the Mortgagee's request, acting reasonably, to promptly deliver or cause to be delivered to the Mortgagee promptly such information about the financial condition and operation with respect to the Property as the Mortgagee may request from time to time.
53. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Commitment Letter.
54. This Mortgage may be executed or executed electronically and delivered in any number of counterparts, each of which when so executed or executed electronically and delivered shall be an original, but all of which taken together shall constitute one and the same instrument. It shall not be necessary in making proof of this Mortgage to produce or account for more than one such counterpart. Transmission of executed or electronically executed

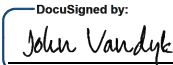
copies of this Mortgage whether or not in counterpart, by facsimile or other electronic transmission, shall be deemed to have the same effect as delivery of an original executed copy to the party receiving the transmission.


55. Notwithstanding anything in this Mortgage, in dealing with enforcing and realizing on this Mortgage, the Mortgagee shall not claim hereunder any greater amount in the aggregate than the amounts advanced by the Mortgagee that remain unpaid, together with all accrued and unpaid interest, and any other amounts unpaid hereunder.

-- signatures follow on next page --

IN WITNESS WHEREOF the Mortgagor has duly executed this Mortgage this 28th day
of July, 2023.

VANDYK – THE RAVINE LIMITED

Per: 
Name: _____
Title:

Per: 
Name: _____
Title:

I/We have authority to bind the Corporation

SCHEDULE "A"

DESCRIPTION OF THE LANDS

13214-0871 (LT)

LOT 1, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0872 (LT)

LOT 2, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0873 (LT)

LOT 3, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0874 (LT)

LOT 4, PLAN 43M2113; SUBJECT TO AN EASEMENT IN GROSS OVER PART 4, 43R40043 AS IN PR3908805; CITY OF MISSISSAUGA

13214-0875 (LT)

LOT 5, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0876 (LT)

LOT 6, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0877 (LT)

LOT 7, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0878 (LT)

LOT 8, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0879 (LT)

LOT 9, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0880 (LT)

LOT 10, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0881 (LT)

LOT 11, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0882 (LT)

LOT 12, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0883 (LT)

LOT 13, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0884 (LT)

LOT 14, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0885 (LT)

LOT 15, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0886 (LT)

LOT 16, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0887 (LT)

LOT 17, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0888 (LT)

LOT 18, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0889 (LT)

LOT 19, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0890 (LT)

LOT 20, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0891 (LT)

LOT 21, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0892 (LT)

LOT 22, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0893 (LT)

LOT 23, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0894 (LT)

LOT 24, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0895 (LT)

LOT 25, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0896 (LT)

LOT 26, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0897 (LT)

LOT 27, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0898 (LT)

LOT 28, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0899 (LT)

LOT 29, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0900 (LT)

LOT 30, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0901 (LT)

LOT 31, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0902 (LT)

LOT 32, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0903 (LT)

LOT 33, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0904 (LT)

LOT 34, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0905 (LT)

LOT 35, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0906 (LT)

LOT 36, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0907 (LT)

LOT 37, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0908 (LT)

LOT 38, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0909 (LT)

LOT 39, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0910 (LT)

LOT 40, PLAN 43M2113; CITY OF MISSISSAUGA

13214-0911 (LT)

LOT 41, PLAN 43M2113; CITY OF MISSISSAUGA

TAB AAA

THIS IS **EXHIBIT "AAA"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

Properties

<i>PIN</i>	13214 - 0871 LT
<i>Description</i>	LOT 1, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0872 LT
<i>Description</i>	LOT 2, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0873 LT
<i>Description</i>	LOT 3, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0874 LT
<i>Description</i>	LOT 4, PLAN 43M2113; SUBJECT TO AN EASEMENT IN GROSS OVER PART 4, 43R40043 AS IN PR3908805; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0875 LT
<i>Description</i>	LOT 5, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0876 LT
<i>Description</i>	LOT 6, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0877 LT
<i>Description</i>	LOT 7, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0878 LT
<i>Description</i>	LOT 8, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0879 LT
<i>Description</i>	LOT 9, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0880 LT
<i>Description</i>	LOT 10, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0881 LT
<i>Description</i>	LOT 11, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0882 LT
<i>Description</i>	LOT 12, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0883 LT
<i>Description</i>	LOT 13, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0884 LT
<i>Description</i>	LOT 14, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0885 LT
<i>Description</i>	LOT 15, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0886 LT
<i>Description</i>	LOT 16, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0887 LT
<i>Description</i>	LOT 17, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0888 LT
<i>Description</i>	LOT 18, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA

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

yyyy mm dd Page 2 of 21

Properties

<i>PIN</i>	13214 - 0889 LT
<i>Description</i>	LOT 19, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0890 LT
<i>Description</i>	LOT 20, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0891 LT
<i>Description</i>	LOT 21, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0892 LT
<i>Description</i>	LOT 22, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0893 LT
<i>Description</i>	LOT 23, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0894 LT
<i>Description</i>	LOT 24, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0895 LT
<i>Description</i>	LOT 25, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0896 LT
<i>Description</i>	LOT 26, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0897 LT
<i>Description</i>	LOT 27, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0898 LT
<i>Description</i>	LOT 28, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0899 LT
<i>Description</i>	LOT 29, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0900 LT
<i>Description</i>	LOT 30, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0901 LT
<i>Description</i>	LOT 31, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0902 LT
<i>Description</i>	LOT 32, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0903 LT
<i>Description</i>	LOT 33, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0904 LT
<i>Description</i>	LOT 34, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0905 LT
<i>Description</i>	LOT 35, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0906 LT
<i>Description</i>	LOT 36, PLAN 43M2113; CITY OF MISSISSAUGA
<i>Address</i>	MISSISSAUGA
<i>PIN</i>	13214 - 0907 LT

Properties

Description LOT 37, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0908 LT

Description LOT 38, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0909 LT

Description LOT 39, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0910 LT

Description LOT 40, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA
PIN 13214 - 0911 LT

Description LOT 41, PLAN 43M2113; CITY OF MISSISSAUGA
Address MISSISSAUGA

Applicant(s)

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name VANDYK - THE RAVINE LIMITED
Address for Service 1944 Fowler Drive
 Mississauga, ON L5K 0A1

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Party To(s)	Capacity	Share
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<i>Name</i>	KINGSETT MORTGAGE CORPORATION
<i>Address for Service</i>	Scotia Plaza, 40 King Street West, Suite 3700 Toronto, Ontario M5H 3Y2

Statements

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, PR4229964 registered on 2023/07/28 to which this notice relates is deleted

Schedule: See Schedules

Signed By

Nasim Akbari-Balderlou	3400-1 First Canadian Place Toronto M5X 1A4	acting for Applicant(s)	Signed	2023 07 28
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Tel 416-863-1200

Fax 416-863-1716

I have the authority to sign and register the document on behalf of all parties to the document.

Nasim Akbari-Balderlou	3400-1 First Canadian Place Toronto M5X 1A4	acting for Party To(s)	Signed	2023 07 28
------------------------	---	---------------------------	--------	------------

Tel 416-863-1200

Fax 416-863-1716

I have the authority to sign and register the document on behalf of all parties to the document.

Submitted By

BENNETT JONES LLP	3400-1 First Canadian Place Toronto M5X 1A4	2023 07 28
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Tel 416-863-1200

Fax 416-863-1716

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

Fees/Taxes/Payment

Statutory Registration Fee	\$69.00
Total Paid	\$69.00

File Number

Party To Client File Number : 59445.93 (JVG/MOG/MW/NC)

GENERAL ASSIGNMENT OF LEASES AND RENTS

THIS AGREEMENT made as of the 28th day of July, 2023.

B E T W E E N:

VANDYK – THE RAVINE LIMITED

(the "**Assignor**")

OF THE FIRST PART

- and -

DORR CAPITAL CORPORATION

(the "**Assignee**")

OF THE SECOND PART

WHEREAS the Assignor, as mortgagor, has granted a mortgage (the "**Mortgage**") to and in favour of the Assignee, as mortgagee, of the lands and premises charged therein (the "**Property**"), notice of which was registered on the date hereof in the Land Registry Office for the Land Titles Division of Peel (No. 43) to secure the payment of principal, interest and other monies and the performance of all obligations arising thereunder, as amended, modified, supplemented or replaced from time to time;

AND WHEREAS as a condition for receiving the Loan Indebtedness, the Assignor agreed to assign to the Assignee, its successors and assigns, as a further continuing and collateral security for the payment of the Loan Indebtedness and observance and performance of the Loan Obligations, in all of the Assignor's right, title and interest in and to:

- (a) all present and future leases, subleases, licenses, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Assignor or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Property, and including all agreements collateral thereto (collectively, the "**Leases**");
- (b) all rents, issues, profits and other monies now due or accruing due or to become due and payable under or derived from the Leases or receivable by the Assignor pursuant to the Leases or the Property (collectively, the "**Rents**"); and
- (c) the benefit of all covenants and obligations of lessees, tenants, licensees, or occupants as well as all other rights, privileges, advantages and benefits contained in any of the Leases, including without limitation, all rights and benefits of any present and future guarantees or indemnities thereof, with full power and authority to demand, sue for, collect, recover and receive all Rents, to enforce the Assignor's rights under any Lease, and generally any collateral advantage or benefit to be

derived from the Leases or any of them together with the full benefit of all security in support of any guarantees or indemnities (collectively, the "**Lease Benefits**" and together with the Leases and the Rents, collectively, the "**Assigned Rights and Benefits**").

NOW THEREFORE IN CONSIDERATION of the recitals, the Assignee extending the Loan Indebtedness and for such other good and valuable consideration received by the Assignor, the receipt and adequacy of which is acknowledged by the Assignor, the Assignor agrees with the Assignee as follows:

ARTICLE 1 **DEFINITIONS, INTERPRETATION**

1.1 Definitions

Capitalized terms that are not defined herein have the meanings set out in the Mortgage. Otherwise, in this Agreement:

- (a) "**Excluded Lease**" has the meaning ascribed to it in Section 2.3;
- (b) "**Indebtedness**", in respect of any Person, is used in its most comprehensive sense and includes any and all advances, debts, duties, endorsements, guarantees, liabilities, obligations, responsibilities and undertakings of such Person at any time assumed, incurred or made, however arising, whether or not now due, absolute or contingent, liquidated or unliquidated, direct or indirect, and whether such Person is liable individually or jointly with others, irrespective of the regularity or validity thereof or of any security therefor;
- (c) "**Loan Indebtedness**" means any Indebtedness from time to time of the Assignor or any of the other Covenantors to the Assignee arising under any of the Loan Documents;
- (d) "**Loan Obligations**" means the obligations of the Assignor or any of the other Covenantors arising under the Loan Documents;
- (e) "**Other Parties**" has the meaning ascribed to it in Section 2.13(a); and
- (f) "**Receiver**" has the meaning ascribed to it in Section 2.12(a).

1.2 Interpretation

For the purposes of this Agreement, all references to the singular include the plural where the context so admits, the masculine to include the feminine and neuter gender and, where necessary, a body corporate, and vice versa.

1.3 Headings

In this Agreement, the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this Agreement.

ARTICLE 2 **AGREEMENT**

2.1 Assignment

As continuing collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations, the Assignor hereby assigns, transfers and sets over unto the Assignee and grants to the Assignee a security interest in all of the Assignor's right, title, estate, interest and benefit, both at law and in equity, in and to the Assigned Rights and Benefits, to hold and receive the same unto the Assignee with full power and authority to demand, sue for, collect, recover and receive and give receipts for the Rents and to enforce the payment of the Rents and the payment and performance of all Assigned Rights and Benefits, assigned in accordance with and subject to the terms of this Agreement.

2.2 Last Day of Term

This Agreement shall not extend or apply to the last day of the term, or the last day of any extended or renewed term, of any of the Leases provided that if this Agreement is enforced by the Assignee, the Assignor shall stand possessed of each such last day and shall hold same in trust and if this Agreement is enforced by the Assignee, to assign at the direction of the Assignee or any Person who may acquire any such term or renewal term or who in the course of enforcement hereof may be entitled to so direct.

2.3 Excluded Leases

Nothing in this Agreement shall constitute an assignment or attempted assignment of any of the right, title, estate, interest and benefit of the Assignor in any Assigned Rights and Benefits which require the consent of a third party to assignment unless such consent has been obtained (an "**Excluded Lease**"). The Assignor shall, upon request, obtain the required consent of any third party to the assignment of any Excluded Lease under this Agreement and to its further assignment by the Assignee to any third party as a result of the exercise by the Assignee of its remedies hereunder after an Event of Default. Upon consent being obtained, this Agreement shall apply to the applicable Excluded Lease without regard to this Section and without the necessity of any further assurance to effect assignment under this Agreement. Until consent to assignment is obtained, the Assignor shall, to the extent it may do so at law or pursuant to the provisions of the Excluded Lease and without giving rise to any default or penalty under the Excluded Lease, hold all right, title, estate, interest and benefit to be derived from the Excluded Lease in trust for the Assignee as additional security for the payment of the Loan Indebtedness and performance of the Loan Obligations as if this Agreement applied.

2.4 Representations and Warranties

The Assignor represents and warrants to and in favour of the Assignee that:

- (a) each of the Leases is in existence, and is in full force and effect, and there is currently no default by any party to any Lease under any term, condition or covenant required to be performed by it under the Assigned Rights and Benefits and there exists no event or circumstance, which would with the passage of time or the giving of notice or both constitute a default or an event of default under any of the Assigned Rights and Benefits;
- (b) there is no outstanding dispute under any Lease by any of the parties to it and no lessee under any Lease is entitled to any set off or defense against the payment of Rent under the Lease; and
- (c) the Assignor has good right, full power and absolute authority to assign the Assigned Rights and Benefits in the manner aforesaid, and has not performed any act or executed any other instrument which might prevent the Assignee from operating under the terms and conditions of this Agreement or which would limit the Assignee in such operation.

2.5 Covenants

The Assignor hereby covenants with the Assignee:

- (a) that it will at all times perform or cause to be performed all of the covenants and obligations on the part of lessor contained in the Leases as would a prudent landlord (except to the extent that the same have been expressly waived by the Other Parties to the Leases);
- (b) to maintain or cause to be maintained the Leases in good standing and not to do, permit to be done or omit to do, anything which may impair the enforceability of the Leases;
- (c) that in respect of all of the Leases, save for the deposits for the first and last month rentals, not to accept Rents more than one month in advance of the dates when Rents fall due;
- (d) except as provided for in Section 2.7 below, all offers to lease and all tenancy agreements, leases or subleases entered into with lessees of the Property shall be on the standard forms previously approved by the Assignee to be used in connection with the Property, amended as deemed appropriate in the circumstances by the Assignor, acting reasonably, to give effect to the arrangements made with each lessee or, if not on a pre-approved standard form, then in all cases in form and substance acceptable to the Assignee acting reasonably;
- (e) it shall operate the Property in compliance with all applicable laws, including for greater certainty the *Residential Tenancies Act* (Ontario), pertaining to residential

leases and shall administer the Leases in a commercially reasonable manner that is consistent with prudent industry practice for the management of residential leases;

- (f) upon and during the continuance of an Event of Default, to facilitate in all ways the Assignee's exercise of its rights hereunder, including without limitation, upon request of the Assignee:
 - (i) to deliver to the Assignee up-to-date rent rolls and true copies of all then outstanding Leases and any other document giving rise to any of the Lease Benefits;
 - (ii) to permit access by the Assignee or its agent during regular business hours, upon reasonable notice to the Assignor, to all records pertaining to the Property, wherever held;
 - (iii) to provide written notices to the lessees or any Other Parties, directing them to make payment of Rents to the Assignee or as it may direct; and
- (g) to obtain estoppel certificates from the lessees under the Leases (provided that the lessees are obliged to do so pursuant to their Lease) when and as reasonably required by the Assignee, or if any of such estoppel certificate is not forthcoming, to furnish a certificate of a senior officer of the Assignor in lieu thereof attesting (to the extent within the Assignor's knowledge and without Personal liability) to the information which would have been provided in such estoppel certificate.

2.6 Right to Deal

Until the occurrence of an Event of Default which is continuing, and subject to Section 2.5, the Assignor is permitted to enjoy the benefits of and deal with the Assigned Rights and Benefits, and may demand, receive, collect and enjoy the Rents, but only as the same fall due and payable according to the terms of each of the Leases and any of the documents giving rise to any of the Lease Benefits, and not more than one month in advance (except for prepayment of the last month of the term if so provided in the Lease) as would a prudent landlord. Upon the occurrence of an Event of Default which is continuing, the Assignee may, in addition to any other rights and remedies it may have, deliver a written notice to any lessee or any Other Party directing it to deal with the Assignee and to pay the Rents payable under its Lease to the Assignee, and such notice shall be good and sufficient authority for so doing.

2.7 No Dealings with Leases

The Assignor shall not, without the prior written consent of the Assignee:

- (a) do any act or thing or omit to do any act or thing that would materially adversely change the obligations of the Assignor under that Lease, other than as permitted by the Mortgage (except where the provisions of the Lease require the landlord to do so); or

- (b) enter into any Lease, including each renewal or extension of an existing Lease (other than any extension or renewal of an existing Lease which is exercised pursuant to, and the terms of which are governed by, such existing Lease), unless:
 - (i) it is a commercially reasonable arm's length transaction made in the ordinary course of business and in accordance with prudent property management and leasing standards and practices;
 - (ii) it provides for rental rates and other terms and conditions consistent with prevailing market rates, terms and conditions; and
 - (iii) the Assignor has notified the Assignee of the proposed Lease and provided a copy of it to the Assignee;
- (c) upon the Assignee delivering a written notice to the Assignor notifying the Assignor that the Assignee has elected to exercise its rights under this Section, enter into any Lease unless the Assignee has approved, acting reasonably, the form and content thereof.

Whenever the Assignee's consent is required hereunder, the Assignee shall act in a commercially reasonable manner as would a prudent owner of similar real estate and the Assignee shall communicate its consent or non-consent within ten (10) Business Days of any written request (unless otherwise indicated herein), failing which the Assignee shall be deemed to have given its consent.

The Assignor covenants to specifically assign any future Lease to the Assignee upon the Assignee's request in a form satisfactory to the Assignee. In such event, the Assignor further covenants that it will use its commercially reasonable efforts to have the lessee of all such future Leases, covenant to attorn to the Assignee on request.

2.8 Assigned Rights and Benefits Not Impaired

The within assignment to the Assignee of the Assigned Rights and Benefits shall remain in full force and effect without regard to, and the obligations of the lessees under the Leases shall not be affected or impaired by:

- (a) any amendment, modification, renewal or replacement of or addition or supplement to any of the other Loan Documents or the loan secured by the Security Documents; or
- (b) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the other Security Documents; or
- (c) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of this Agreement or any of the other Security Documents; or

- (d) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor or any of the lessees under any of the Leases.

2.9 Power of Attorney

So long as the Loan Indebtedness and the Loan Obligations, or any portion thereof, remains outstanding:

- (a) the Assignor hereby irrevocably appoints the Assignee, or any Receiver appointed by the Assignee as provided for in this Agreement, to be the attorney of the Assignor with full power of substitution, and with full authority in the place of the Assignor and in the name of the Assignor or otherwise, from time to time in the Assignee's discretion, to do all acts, matters and things that may be necessary for, incidental to, or advisable for, carrying out the powers given to the Assignee under this Agreement and the Mortgage upon the occurrence of any Event of Default which is continuing (but the Assignee is not obligated to take such action and will have no liability to the Assignor or any third party for failure to take any action). This power of attorney is given for valuable consideration, is coupled with an interest, and is irrevocable until registration of a complete discharge of the Mortgage; and
- (b) in the event any action is brought by the Assignee to enforce any rights under the Assigned Rights and Benefits, the Assignor agrees to cooperate fully with and assist the Assignee in the prosecution thereof.

2.10 Acceleration

Upon the occurrence of an Event of Default which is continuing all of the Loan Indebtedness shall, at the Assignee's option and without notice to the Assignor, become immediately due and payable and the Assignee may, in its sole, absolute and unfettered discretion, exercise its rights in respect of the Assigned Rights and Benefits in addition to all other rights and remedies afforded by applicable law, in equity or otherwise. The Assignee shall have the right to enforce one or more remedies successively or concurrently in accordance with applicable law and the Assignee expressly retains all rights and remedies not inconsistent with the provisions in this Agreement including any rights it may have under the PPSA. The provisions of this clause do not and are not intended to affect in any way any rights of the Assignee with respect to any Loan Obligations or any Loan Indebtedness which may now or hereafter be payable on demand.

2.11 Enforcement

Upon the occurrence of and during the continuance of an Event of Default, the security hereby constituted will, at the option of the Assignee, immediately become enforceable.

2.12 Assignee's Rights and Remedies

In addition to the Assignee's rights under the Mortgage, the Assignee may, at its option and without any obligation or liability therefor and in addition to any other remedy in respect of the Assigned Rights and Benefits to which it is entitled under any of the Loan Documents, upon the occurrence of any Event of Default which is continuing and to the extent permitted by applicable law, enforce and realize on the security constituted by this Agreement and take any action permitted by law or in equity, as it may deem expedient, and in particular, but without limiting the generality of the foregoing, the Assignee may do the following:

- (a) appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Assignee or not, to be a receiver or receivers, or may institute proceedings in any court of competent jurisdiction for the appointment of a receiver (the "**Receiver**", which term includes a receiver or a manager or a receiver and manager) of the Assigned Rights and Benefits and may remove any appointed Receiver and appoint a replacement. Any Receiver shall, so far as concerns responsibility for its acts, be deemed the agent of the Assignor and not of the Assignee, and the Assignee shall not in any way be responsible for any misconduct, negligence, or nonfeasance on the part of any Receiver, the Receiver's servants, agents or employees. Subject to the provisions of the instrument appointing it, any Receiver shall be vested with all or any of the rights, powers and discretions of the Assignee. Except as may be otherwise directed by the Assignee all monies received from time to time by the Receiver in carrying out its appointment shall be received in trust for and paid over to the Assignee for the benefit of the Assignee;
- (b) compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rents or any other matter relating to the Assigned Rights and Benefits, and any settlement arrived at shall be binding upon the Assignor and any Other Parties;
- (c) at its option and without notice to the Assignor, take possession of or enter upon the Property by its officers, agents or employees for the purpose of collecting the Rents and any and all amounts which may be or become due or payable or remain unpaid at any time to the Assignor pursuant to the Assigned Rights and Benefits and give acquittances for them and to manage, operate and maintain its interest in the Property including without limitation, the making of repairs or replacements to maintain the Property;
- (d) receive, enjoy or otherwise avail itself of the Lease Benefits;
- (e) appoint and dismiss such agents or employees as may be necessary or desirable to exercise the Assignee's rights hereunder;

- (f) alter, modify, amend or change the terms of Leases; enter into new Leases; give consents, concessions or waivers of any rights or provisions of Leases; accept surrenders of Leases; give consents to assignment of or subletting under Leases;
- (g) send or employ any inspector or agent to inspect and report upon the value, state and condition of the Property and employ a solicitor to examine and report upon title to the same and the lease documentation pertaining to same;
- (h) in the Assignor's name, perform, at the Assignor's expense, any and all of the Assignor's obligations or covenants relating to the Assigned Rights and Benefits and enforce performance by any Other Parties of their obligations in relation to the Assigned Rights and Benefits and settle any disputes with Other Parties upon terms that the Assignee deems appropriate, in its discretion;
- (i) make payment of or cure any default under any Permitted Encumbrance or any Liens or other claims that may exist or be threatened against the Assigned Rights and Benefits, and any amount so paid together with costs, charges and expenses incurred together with interest at the Interest Rate shall be added to the Loan Indebtedness;
- (j) if the proceeds of realization are insufficient to pay all of the Loan Indebtedness, the Assignor shall forthwith pay or cause to be paid to the Assignee any deficiency and the Assignee may sue the Assignor to collect the amount of such deficiency;
- (k) subject to applicable law, seize, collect, realize, borrow money on the security of, release to third parties, sell (by way of public or private sale), lease or otherwise deal with the Assigned Rights and Benefits in such manner, upon such terms and conditions, at such time or times and place or places and for such consideration as may seem to the Assignee advisable and without notice to the Assignor. The Assignee may charge on its own behalf and pay to others sums for expenses incurred and for services rendered (expressly including legal, consulting, broker, management, receivership and accounting fees) in or in connection with seizing, collecting, realizing, borrowing on the security of, selling or obtaining payment of the Assigned Rights and Benefits and may add all such sums to the Loan Indebtedness;
- (l) perform all such acts as may in the reasonable opinion of the Assignee be necessary or desirable for the proper operation and maintenance of the Property, which acts may be performed in the name of the Assignor or in the name of the Assignee and the Assignor hereby grants to the Assignee irrevocable authority to join the Assignor in any proceedings or actions relating to the Assigned Rights and Benefits whether judicial or extra-judicial; and
- (m) waive any Event of Default, and any waiver of an Event of Default shall not extend to any subsequent Event of Default, nor shall the Assignee be bound to serve any notice on any lessees or any Other Parties on the happening of any Event of Default.

2.13 Assignee's Dealings with Other Parties

The Assignor and the Assignee hereby covenant and agree that:

- (a) the Assignee may at any time upon the occurrence of an Event of Default which is continuing, with respect to any and all Assigned Rights and Benefits, give to any lessee or other Person from whom the Assignor would have been entitled to receive or claim any benefit under the Assigned Rights and Benefits in question (the "**Other Parties**" or "**Other Party**") upon written notice to it by the Assignee to pay the Rents directly to the Assignee and such notice shall be good and sufficient notice for doing so. Without limiting the foregoing the Assignee may, after giving such notice, deal with the Other Party or Other Parties in respect of the Assigned Rights and Benefits without reference to or consent of the Assignor while the Event of Default is continuing;
- (b) this Agreement constitutes an irrevocable direction and authorization of the Assignor to any Other Party to pay Rents to the Assignee and otherwise honour the rights of the Assignee under this Agreement;
- (c) any Other Party may rely upon any notice given by the Assignee or on its behalf and the Assignor hereby waives as against any Other Party any claims they might otherwise have by reason of the Other Party acting on such notice;
- (d) in the event all Events of Defaults are subsequently cured, the Assignee shall upon request of the Assignor, and at the Assignor's expense, execute and deliver to the Assignor directions and authorizations to any Other Party who received notice of this Agreement in connection with the Events of Default so cured as aforesaid, authorizing and directing such Other Party to resume payment of Rents to the Assignor until such time as a further written notice is delivered by the Assignee pursuant to the terms of this Agreement;
- (e) all receipts given by the Assignee to any lessee under the Leases after delivery of a written notice pursuant to Section 2.13(a) and prior to the delivery of a notice pursuant to Section 2.13(d) on account of any Rents paid to the Assignee in accordance with the terms of this Agreement shall constitute a good and valid discharge therefor to each such lessee; and
- (f) the Assignee shall not be required or obligated in any manner to make any demand or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to the Assignee or to which the Assignee may be entitled hereunder at any time or times.

2.14 Assignee's Obligations and Limitation on Liabilities

It is expressly acknowledged and agreed by the Assignor and the Assignee that:

- (a) nothing herein contained shall oblige the Assignee to assume or perform any obligation of the Assignor to any Other Party in respect of or arising out of the Assigned Rights and Benefits or any of them. The Assignee may, however, after the occurrence of an Event of Default which is continuing, at its option assume or perform any such obligations as the Assignee considers necessary or desirable to obtain the benefit of the Assigned Rights and Benefits free of any set-off, deduction or abatement, and any money expended by the Assignee in this regard shall form part of and be deemed to form part of the Loan Indebtedness and bear interest at the maximum rate stipulated in the Mortgage;
- (b) the Assignee shall only be liable to account for such moneys as shall actually be received by the Assignee by virtue of this Agreement at the address provided herein, less reasonable collection charges and costs (including, without limitation, legal costs on a solicitor and client basis) and other reasonable expenses to which the Assignee may be put, and the Assignee shall not be responsible for any act or default of any agent employed by the Assignee for the collection of any such amounts. Such moneys when so received by the Assignee shall be applied in accordance with the provisions of the Mortgage and the Assignee shall not be responsible for diligence in the collection of any monies as contemplated herein. No credit shall be given for any Rent received by the Assignee after it obtains ownership of the Property under court order or by operation of law;
- (c) exercise by the Assignee of its rights under this Agreement or the assumption of certain obligations of the Assignor upon the occurrence of an Event Default as referred to in Section 2.14(a) shall not constitute or have the effect of making the Assignee a mortgagee in possession nor shall the entering into of this Agreement or anything done in pursuance of it make the Assignee liable in any way, as landlord or otherwise, for the performance of any covenants, obligations and liabilities under any of the Leases;
- (d) care, control and management of the Property shall remain and be deemed to be with the Assignor, in the absence of clear and unequivocal action by the Assignee depriving the Assignor of such care, control and management and the assumption thereof by the Assignee;
- (e) the Assignee's obligations as to any Rents or other amounts actually collected (including, without limitation, those arising from the Lease Benefits) shall be discharged by application of such Rents or other amounts (including, without limitation, those arising from the Lease Benefits) against the Loan Indebtedness or for any of the other purposes described in this Agreement; and
- (f) the Assignee shall not be:
 - (i) liable for and no credit shall be given in respect of any uncollected Rents or other uncollected amounts;

- (ii) liable to any lessee for the return of any security deposit made under any Lease unless the Assignee shall have actually received such security deposit; and
- (iii) by reason of this Agreement or the exercise of any right granted herein, responsible for any act committed by the Assignor or any breach or failure to perform by the Assignor with respect to any of the Assigned Rights and Benefits.

2.15 Continuing Security

Notwithstanding any variation of the terms of the Mortgage or any of the other Security Documents, or any extension of time for payment or any release of any security, this Agreement shall continue as general and collateral security for the Loan Indebtedness and observance and performance of all of the Loan Obligations. This Agreement and the assignments granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Assignee and this Agreement will remain in full force and effect until registration of a complete discharge of the Mortgage by the Assignee, which discharge shall be deemed to be a reassignment of this Agreement and the Assigned Rights and Benefits in favour of the Assignor. On the complete discharge of the Mortgage, the Assignee will, at the request and at the sole cost and expense of the Assignor, execute and deliver to the Assignor such instruments in registrable form as may be necessary to evidence the termination of this Agreement and the reassignment to the Assignor of the Assigned Rights and Benefits.

2.16 Reassignment/Discharge

The Assignee may, at any time and whether or not an Event of Default has occurred, without further request or agreement by the Assignor, reassign to the Assignor, its successors and assigns, the Assigned Rights and Benefits or any part or parts thereof, by an instrument of reassignment in writing executed by the Assignee delivered to the Assignor, its successors and assigns, at the address for notice herein provided. Such instrument upon delivery shall constitute a good and sufficient reassignment of all of the Assignee's right, title and interest in and benefit of the Assigned Rights and Benefits to which it pertains and a good and valid release and termination of obligations (if any) of the Assignee with respect thereto. Such reassignment shall not expressly or impliedly constitute any representation or warranty by the Assignee to the Assignor as to the Assigned Rights and Benefits or anything related thereto.

ARTICLE 3 MISCELLANEOUS

3.1 Payments

All payments required to be made by the Assignor to the Assignee under this Agreement will be made at the address of the Assignee set out in Section 3.9 (or at any other place specified by the Assignee by written notice to the Assignor) in immediately available funds in lawful Canadian currency, without any set off, counter claim or deduction.

3.2 Failure of Indulgence Not Waiver

No extension of time, waiver, or other indulgence given by the Assignee to the Assignor, or anyone claiming under the Assignor, shall in any way affect or prejudice the rights of the Assignee against the Assignor or any Covenantor unless explicitly set forth in writing and signed by the waiving party. No failure to exercise or delay in exercising any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Each power and right under this Agreement is cumulative and is in addition to and not in substitution for any other rights and remedies at law, or in equity or otherwise.

3.3 Modification

No modification or waiver of this Agreement is binding on the Assignee unless made in writing and signed by a duly authorized officer of the Assignee.

3.4 Entire Agreement

On execution and delivery by the Assignor, this Agreement is deemed to be finally executed and delivered by the Assignor to the Assignee and is not subject to or affected by any condition as to the receipt by the Assignee of any of the other Security Documents or as to the execution and delivery by any of the other Covenantors to the Assignee of any other Loan Documents, nor by any promise or condition affecting the liability of the Assignor. No agreement, promise, representation or statement by the Assignee or any of its officers, employees or agents unless in this Agreement forms part of this Agreement, has induced the making of it or affects the liability of the Assignor or any Covenantor under it.

3.5 Severability

If any Section or part thereof of this Agreement is invalid or unenforceable for any reason, then such Section or part thereof will be severable from this Agreement and will not affect the validity or enforceability of any other part of this Agreement.

3.6 Non-Merger

The giving of this Agreement is by way of additional and collateral security for the payment of the Loan Indebtedness and the performance of the Loan Obligations and not in substitution for or in satisfaction thereof, and the Commitment Letter, the Mortgage or any of the other Loan Documents shall not be merged hereby and in case of an Event of Default that is continuing, proceedings may be taken under this Agreement, the Mortgage, or any of the other Security Documents or any one or more of them at the option of the Assignee.

3.7 Paramountcy

The provisions of any agreement between the Assignor and the Assignee in connection with the Loan Indebtedness, including but not limited to any loan application in respect thereof, the Mortgage and all of the other Loan Documents, shall form part of this Agreement except where inconsistent with the provisions hereof. In the case of any inconsistency between this Agreement and the Mortgage, the provisions of the Mortgage, as the case may be, shall prevail.

3.8 Assignability

The Assignor hereby consents to the Assignee assigning, transferring or selling all or any portion of its interest under this Agreement in connection with the proportionate assignment, transfer or sale of its interest in the Loan Indebtedness and the Loan Obligations. Without limiting the foregoing, the Assignee may enter into participation, contending or syndication agreements with other lenders in connection with this Agreement, the Loan Indebtedness and the Loan Obligations. The Assignee may provide information of a financial or other nature to any prospective assignee or transferee or other lenders concerning the Assignor, this Agreement, the Loan Indebtedness and the Loan Obligations.

3.9 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication to be given under or in connection with this Agreement shall be in writing and shall be delivered by personal delivery, prepaid courier service, postage prepaid registered mail or by electronic or digital transmission to the relevant party, addressed:

(a) to the Assignor:

1944 Fowler Drive
Mississauga, Ontario
L5K 0A1

Attention: John Vandyk
Email: jvandyk@vandyk.com
Facsimile: 905-823-4014

with a copy to the Assignor's solicitors at

Schneider Ruggiero Spencer Milburn LLP
120 Adelaide Street West, Suite 1000
Toronto, Ontario
M5H 3V1

Attention: Bruce Milburn
Email: bmilburn@srlawpractice.com

Facsimile: 416-363-0645

(b) to the Assignee:

41 Scarsdale Road, Unit 6
Toronto, Ontario
M3B 2R2

Attention: Judy Wong
Email: JWong@DorrCapital.com

and such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third (3rd) business day following the date of mailing; provided, however, that if at the time of mailing or within three (3) business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid. Each party may change its address for notice by providing notice of same in accordance with the foregoing.

3.10 Expenses, Fees and Indemnity

The Assignor will pay to the Assignee all costs, charges and expenses, including all administrative fees, legal fees and professional fees, incurred by the Assignee in connection with the collection of any amount payable under this Agreement by the Assignor to the Assignee. The Assignor shall indemnify the Assignee against all claims, loss or damages arising out of or in connection with any breach or default by the Assignor under this Agreement.

3.11 Applicable Law

This Agreement and the rights and obligations of the Assignor and the Assignee under it are governed by and construed according to the laws of the jurisdiction in which the Property is situate and the laws of Canada applicable therein.

3.12 Time of the Essence

Time is of the essence of this Agreement.

3.13 Execution by the Assignee

This Agreement need not be executed by the Assignee to be binding on and to enure to the benefit of the Assignee.

3.14 Counterparts

This Agreement may be executed (including by DocuSign or other electronic means) in any number of counterparts and delivered (including by DocuSign or other electronic means) in any number of counterparts, each of which (including any electronic transmission of an executed signature page), is deemed to be an original, and such counterparts together constitute one and the same agreement.

3.15 Further Assurances

The Assignor will promptly do all further acts and execute and deliver such further documents as the Assignee considers necessary or advisable to carry out the terms or intent of this Agreement.

3.16 Successors and Assigns

This Agreement is binding on and enures to the benefit of the Assignee and the Assignor, and their respective executors, administrators, successors and assigns and to any Person to whom the Assignee may grant any participation in this Agreement, the Loan Indebtedness or any of the Loan Obligations or any power, remedy or right of the Assignee under this Agreement or any of the Assignee's interest herein or in the Loan Indebtedness and the Loan Obligations.

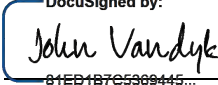
3.17 Multiple Parties

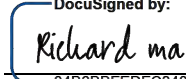
If the Assignor consists of more than one party, this Agreement will be read with all necessary grammatical changes and each reference to the Assignor includes each and every such Person individually. All covenants and agreements herein of the Assignor are the joint and several covenants and agreements of each such Person or corporation. If the Assignee consists of more than one party, this Agreement will be read with all necessary grammatical changes and each such party or any one or more of them is entitled to enforce each right and remedy of the Assignee under this Agreement.

-- signatures follow on next page --

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the date and year first written above.

VANDYK – THE RAVINE LIMITED

Per:  DocuSigned by:
Name: _____
Title:

Per:  DocuSigned by:
Name: _____
Title:

I/We have authority to bind the Corporation

TAB BBB

THIS IS **EXHIBIT "BBB"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

GENERAL SECURITY AGREEMENT

THIS AGREEMENT made this ~~3~~¹⁰ day of Dec, 2021.

B E T W E E N:

VANDYK-LAKEVIEW-DXE-WEST LIMITED

(hereinafter referred to as the “**Debtor**”)

- and

DORR CAPITAL CORPORATION

(hereinafter referred to as the “**Secured Party**”)

WHEREAS the Secured Party has agreed to make a loan (the “**Loan**”) to the Debtor pursuant to a commitment letter dated the 5th day of November, 2021, from the Secured Party, as lender, to the Debtor, as borrower (which commitment letter, as it may be amended, modified, restated or consolidated from time to time, is hereinafter referred to as the “**Commitment**”) and secured by, *inter alia*, a charge/mortgage (the “**Mortgage**”) of the Property (as defined in the Commitment).

AND WHEREAS the Debtor has agreed to grant to the Secured Party a security interest in and an assignment, mortgage and charge of the Collateral (as defined in Section 2.1) to secure the Loan and the Indebtedness (as defined in the Mortgage) owing by it to the Secured Party.

NOW THEREFORE in consideration of the premises the Debtor hereby agrees with the Secured Party as follows:

**ARTICLE 1
INTERPRETATION**

Section 1.1 Definitions

Unless otherwise provided herein, all capitalized terms and expressions used herein shall have the same meaning as set out in the Mortgage. The following terms have the following meanings:

“**Agreement**” means this agreement and all amendments made thereto by written agreement between the Secured Party and the Debtor;

“**Collateral**” has the meaning ascribed to that term in Section 2.1.

“**Lien**” means any mortgage, charge, pledge, hypothec, assignment, lien, lease, sublease, easement, right of way, security interest, restrictions, covenants or encroachments of any kind or nature affecting all or any part of the Charged Property;

“**Permitted Encumbrances**” means as of any particular time any of the following encumbrances: (a) Liens for Taxes or utility charges in either case only if same are not yet due or payable; (b) registered easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility; (c) any subsisting reservations contained in the original grant of real property from the Crown; (d) Leases; and (e) such other Liens consented to in writing by the Secured Party in its sole discretion; and

“**Property Agreements**” means all agreements, including without limitation property management agreements, construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Charged Property.

Section 1.2 Interpretation and Headings

The terms “accessions”, “chattel paper”, “document of title”, “goods”, “instruments”, “intangibles”, “money”, “proceeds” and “security” whenever used herein shall, except as expressly defined herein or as the context may require otherwise, have the meanings given to those terms, or the singular or plural thereof, as the case may be, in the *Personal Property Security Act* (Ontario) (the “PPSA”), as now enacted or as the same may from time to time be amended, re-enacted or replaced. The words “hereto”, “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to the whole of this Agreement and not to any particular Section or other portion thereof or hereof and extend to and include any and every document supplemental or ancillary hereto or in implementation hereof. Words in the singular include the plural and words in the plural include the singular. Words importing the masculine gender include the feminine and neuter genders where the context so requires. Words importing the neuter gender include the masculine and feminine genders where the context so requires. Any reference to “including” shall mean “including without limitation” whether or not expressly provided. If more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Debtor, then all such Persons shall be jointly and severally liable for such obligations and liabilities. The headings do not form part of this Agreement and have been inserted for convenience of reference only.

ARTICLE 2 SECURITY INTEREST

Section 2.1 Security Interest

As general and continuing security for the payment and performance of all indebtedness of the Debtor to the Secured Party from time to time, including the Indebtedness, the Debtor hereby grants to the Secured Party a security interest in all of the present and future undertaking and property, both real and personal, of the Debtor (collectively, the “**Collateral**”), and as further general and continuing security for the payment and performance of the Indebtedness, the Debtor hereby assigns the Collateral to the Secured Party and mortgages and charges the Collateral as and by way of a fixed and specific mortgage and charge to the Secured Party. Without limiting the

generality of the foregoing, the Collateral shall include all right, title and interest that the Debtor now has or may hereafter have in all property of the following kinds:

- (a) Accounts Receivable: all debts, accounts, claims and choses in action which are now or which may hereafter become due, owing or accruing due to the Debtor (collectively, the “**Receivables**”);
- (b) Equipment: all machinery, equipment, fixtures, furniture, tools, plant, vehicles and other tangible personal property, whether or not described in any schedule hereto (collectively, the “**Equipment**”);
- (c) Inventory: all chattels, goods and other tangible personal property that are held by the Debtor for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession, including, without limitation, raw materials, work-in-process and materials used or consumed or to be used or consumed in the business of the Debtor;
- (d) Chattel Paper: all chattel paper;
- (e) Contracts: any and all present and future undertakings, commitments, contracts and other agreements of every nature and kind entered into or assumed by the Debtor, whether written or oral, in respect of the Charged Property, or any part thereof, or any right or interest of the Debtor therein or thereto and any amendments, extensions, renewals and replacements which have been made or may hereafter be made thereto, together with:
 - (i) all benefits, proceeds and advantages which now are or may hereafter be derived therefrom;
 - (ii) all debts, demands, choses in action and claims which are now or may hereafter be or become due, owing or accruing due to the Debtor therefrom; and
 - (iii) all books, accounts, invoices, letters, papers and documents in any way evidencing or relating thereto;
- (f) Documents of Title: all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (g) Intangibles: all intangibles not described in Section 2.1(a), including, without limitation, all goodwill, patents, trademarks, copyrights and other industrial property;
- (h) Investment Property: all present and future investment property held by the Debtor, including security, shares, options, rights, warrants, joint venture interests, interests in limited partnerships, trust units, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Debtor in

property or in an enterprise or which constitute evidence of an obligation of the issuer; and all substitutions therefor and dividends and income derived therefrom (collectively, the “**Investment Property**”);

- (i) Money: all coins or bills or other medium of exchange adopted for use as part of the currency of Canada or of any foreign government;
- (j) Books, Records, Etc.: all books, papers, accounts, invoices, documents and other records in any form evidencing or relating to any of the property described in Sections 2.1(a) to (i) inclusive, and all contracts, security, instruments and other rights and benefits in respect thereof;
- (k) Permitted Encumbrances: all Permitted Encumbrances and all Property Agreements;
- (l) Reserves: all reserves and deposits paid to the Secured Party;
- (m) Permits, Licences, Etc.: all permits, consents, licenses, authorizations and approvals granted by any governmental authority or utility in respect of the Charged Property and all rights and benefits in respect thereof;
- (n) Proceeds: all proceeds of the property described in Sections 2.1(a) to (k) inclusive including, without limiting the generality of the foregoing, all personal property in any form or fixtures derived directly or indirectly from any dealing with such property or the proceeds therefrom and any payment that indemnifies or compensates for the loss of or damage to such property or the proceeds therefrom; and
- (o) Substitutions, Etc.: all replacements of, substitutions for and increases, additions and accessions to any of the property described in Sections 2.1(a) to (n) inclusive;

provided that such grant, assignment, mortgage and charge shall not (i) extend or apply to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Debtor, but should the Secured Party enforce the said assignment or mortgage and charge, the Debtor shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person acquiring such term in the course of the enforcement of the said assignment and mortgage and charge, or (ii) render the Secured Party liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Debtor is a party or by which it is bound. Without limiting the foregoing, the Collateral shall include, and the security interest granted hereby shall attach to, all present and future right, title, estate and interest of any beneficial owner in the Collateral.

Section 2.2 Attachment of Security Interest

The Debtor acknowledges that value has been given and agrees that the security interest granted hereby will attach when the Debtor signs this Agreement and the Debtor has any rights in the Collateral. There is no agreement between the parties hereto, express or implied, to postpone the attachment of the assignment and security interest granted hereby. Upon full repayment and

performance of the Indebtedness, the Collateral shall be re-assigned to the Debtor at the Debtor's expense.

Section 2.3 No Need for Consent

The Debtor represents to the Secured Party that none of the Collateral in existence on the date hereof (a) is incapable of being assigned or otherwise secured in favour of the Secured Party in accordance with the provisions of this Agreement, (b) is incapable of further assignment or security granted by the Secured Party or by any receiver or receiver and manager after an Event of Default, or (c) requires the consent of any third party to the security interest, assignment, mortgage and charge granted hereby, except for any consent that has already been obtained.

Section 2.4 Where Consent Required

If any Collateral cannot be secured in favour of the Secured Party in accordance with the provisions of this Agreement or requires the consent of any third party to such security, the following provisions shall apply: (a) the Debtor shall forthwith attempt to obtain the consent of any necessary third party to the security in favour of the Secured Party; and (b) the Debtor shall hold all benefit to be derived therefrom in trust for the Secured Party as security for payment of the Indebtedness and shall deliver up all such benefit to the Secured Party forthwith and upon demand.

Section 2.5 Collateral Consisting of Investment Property

If any of the Collateral consists of Investment Property, (a) the Debtor authorizes the Secured Party to transfer such Collateral or any part thereof into its own name or that of its nominee so that the Secured Party or its nominee may appear of record as the sole owner thereof; provided, that until the security hereby constituted becomes enforceable, the Secured Party shall deliver promptly to the Debtor all notices, statements or other communications received by it or its nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give to the Debtor or its designee a proxy or proxies to vote and take all action with respect to such property; provided further that after the security hereby constituted becomes enforceable, the Debtor waives all rights to be advised of or to receive any notices, statements or communications received by the Secured Party or its nominee as such record owner, and agrees that no proxy or proxies given by the Secured Party to the Debtor or its designee as aforesaid shall thereafter be effective; and (b) the Debtor further agrees to execute such other documents and to perform such other acts, and to cause any issuer or securities intermediary to execute such other documents and to perform such other acts as may be necessary or appropriate in order to give the Secured Party "control" of such Investment Property, as defined in the *Securities Transfer Act, 2006* (Ontario), which "control" shall be in such manner as the Secured Party shall designate in its sole judgment and discretion, including, without limitation, an agreement by any issuer or securities intermediary that it will comply with instructions in the case of an issuer or entitlement orders in the case of a securities intermediary, originated by the Secured Party, whether before or after security hereby constituted becomes enforceable, without further consent by the Debtor.

ARTICLE 3 COVENANTS

Section 3.1 Covenants

Without limiting other covenants, obligations and liabilities of the Debtor under the Loan Documents, the Debtor covenants with the Secured Party that the Debtor shall:

- (a) maintain, use and operate the Collateral and carry on and conduct its business in a lawful and business-like manner and in accordance with any agreement now or hereafter entered into with the Secured Party;
- (b) upon the request of the Secured Party, deliver to the Secured Party from time to time as the same are acquired by the Debtor all Investment Property (to the extent certificated). Such delivery shall be effected by depositing with the Secured Party all certificates representing such Investment Property (to the extent certificated). All certificates so deposited shall, unless all necessary consents and approvals are obtained, not contain any reference to restrictions on the transfer of the shares represented thereby and shall be duly endorsed in blank for transfer or shall be attached to duly executed powers of attorney or forms of transfer;
- (c) not, without the prior written consent of Secured Party, permit any of the Equipment to be removed at any time from the property where it is currently located, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Debtor and is free and clear of any Lien except the security of the Loan Documents;
- (d) defend the Collateral against all claims and demands respecting the Collateral made by all persons at any time and, except as otherwise provided herein, shall keep the Collateral free and clear of all Liens except those in favour of the Secured Party;
- (e) not change its chief executive office and the location of the office where it keeps its records respecting the Receivables, or move any of the Investment Property or Equipment from the property where it is currently located, without the prior written consent of the Secured Party;
- (f) pay all rents, taxes, levies, assessments and government fees or dues lawfully levied, assessed or imposed in respect of the Collateral or any part thereof as and when the same become due and payable, and will exhibit to the Secured Party, when required, the receipts and vouchers establishing such payment;
- (g) keep proper books of account in accordance with sound accounting practice, will furnish to the Secured Party such financial information and statements and such information and statements relating to the Collateral as the Secured Party may from time to time require, and the Debtor will permit the Secured Party or its authorized agents at any time at the expense of the Debtor to examine the books of account

and other financial records and reports relating to the Collateral and to make copies thereof and take extracts therefrom;

- (h) not change its name or, if the Debtor is a corporation, will not amalgamate with any other corporation without first giving notice to the Secured Party of its new name and the names of all amalgamating corporations and the date when such new name or amalgamation is to become effective;
- (i) from time to time forthwith at the request of the Secured Party execute and deliver all such financing statements, schedules, assignments and documents, and do all such further acts and things as may be reasonably required by the Secured Party to effectively carry out the full intent and meaning of this Agreement or to better evidence and perfect the security interest, assignment and mortgage and charge granted hereby; and
- (j) pay to the Secured Party forthwith upon demand all reasonable costs incurred by or on behalf of the Secured Party in connection with the preparation, execution and perfection of this Agreement and the carrying out of any of the provisions of this Agreement including, without limiting the generality of the foregoing, protecting and preserving the security interest, assignment and mortgage and charge granted hereby and enforcing by legal process or otherwise the remedies provided herein; and all such costs and expenses, together with interest thereon at the Interest Rate shall be added to and form part of the Indebtedness.

ARTICLE 4 INSURANCE

Section 4.1 Insurance

The Debtor shall obtain and maintain, at its own expense, insurance against loss or damage to the Collateral as required by Article 4 of the schedule of additional provisions to the Mortgage. The Debtor shall give the Secured Party notice of any damage to, or loss of, the Collateral forthwith upon the occurrence of any such damage or loss. Should the Debtor fail to make any payment or perform any other obligation provided in this Section 4.1, the Secured Party shall have the right, but not the obligation, without notice or demand upon the Debtor and without releasing the Debtor from any obligation hereunder or waiving any rights to enforce this Agreement, to make such payment or perform any or all of such obligations. The amount of all such payments made and all costs, fees and expenses incurred by the Secured Party in performing such obligations shall be immediately due and payable by the Debtor and until paid, shall be added to the Indebtedness and shall bear interest at the Interest Rate.

ARTICLE 5 DEALING WITH COLLATERAL

Section 5.1 No Liability for Loss

The Secured Party may perform any of its rights and duties hereunder by or through agents and is entitled to retain counsel and to act in reliance upon the advice of such counsel concerning

all matters pertaining to its rights and duties hereunder. In the holding or dealing with any of the Collateral, the Secured Party and any nominee on its behalf shall have no liability for, and the Debtor hereby agrees to indemnify and save harmless the Secured Party from and against any loss, damage, liability, cost or expense of any nature or kind incurred by the Debtor or any other Person excluding only any loss or damage arising directly from the Secured Party's gross negligence or wilful misconduct.

Section 5.2 Notification of Account Debtors

Both before and after an Event of Default occurs, the Secured Party may give notice of this Agreement and the security interest and assignment granted hereby to any account debtors of the Debtor or to any other person liable to the Debtor and to make all further payments to the Secured Party, and any payment or other proceeds of Collateral received by the Debtor from account debtors or from any other person liable to the Debtor whether before or after any notice is given by the Secured Party shall be held by the Debtor in trust for the Secured Party and paid over to the Secured Party on request. Nothing herein shall release, discharge, postpone, reassign, or amend or otherwise affect the security of the Secured Party in and to the Collateral and the immediate attachment thereof.

Section 5.3 Application of Funds

All money collected or received by the Secured Party in respect of the Collateral may be applied on account of such parts of the Indebtedness as the Secured Party in its sole discretion determines, or may be held unappropriated in a collateral account, or in the discretion of the Secured Party may be released to the Debtor, all without prejudice to the Secured Party's rights against the Debtor.

ARTICLE 6 REMEDIES

Section 6.1 Remedies

- (a) On or after the occurrence of any Event of Default and at any time thereafter (i) the entire Indebtedness shall at the option of the Secured Party become immediately due and payable or be subject to immediate performance, as the case may be, without presentment, protest or notice of dishonour, all of which are expressly waived; and (ii) any or all security granted hereby shall, at the option of the Secured Party, become immediately enforceable.
- (b) In addition to any right or remedy provided by any Loan Documents or otherwise at law or in equity, the Secured Party will have the rights and remedies set out below, all of which rights and remedies will be enforceable successively, concurrently or both:
 - (i) the Secured Party may by appointment in writing appoint a receiver or receiver and manager (each herein referred to as the "**Receiver**") of the Collateral (which term when used in this Section 6.1(b) shall include the whole or any part of the Collateral) and may remove or replace such

Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a Receiver of the Collateral; and the term "Secured Party" when used in this Section 6.1(b) shall include any Receiver so appointed and the agents, officers and employees of such Receiver; and the Secured Party shall not be in any way responsible for any misconduct or negligence of any such Receiver;

- (ii) the Secured Party may take possession of the Collateral and require the Debtor to assemble the Collateral and deliver or make the Collateral available to the Secured Party at such place or places as may be specified by the Secured Party;
- (iii) to have Investment Property included in the Collateral registered on the books of the issuers of such Investment Property in the name of the Secured Party or such nominee of the Secured Party as the Secured Party shall direct;
- (iv) the Secured Party may take such steps as it considers desirable to maintain, preserve or protect the Collateral;
- (v) the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor;
- (vi) the Secured Party may enforce any rights of the Debtor in respect of the Collateral by any manner permitted by law;
- (vii) the Secured Party may sell, lease or otherwise dispose of the Collateral at public auction, by private tender, by private sale or otherwise either for cash or upon credit upon such terms and conditions as the Secured Party may determine and without notice to the Debtor unless required by law;
- (viii) the Secured Party may accept the Collateral in satisfaction of the Indebtedness upon notice to the Debtor of its intention to do so in the manner required by law;
- (ix) the Secured Party may, for any purpose specified herein, borrow money on the security of the Collateral in priority to the security interest, assignment and mortgage and charge granted by this Agreement;
- (x) the Secured Party may enter upon, occupy and use all or any of the premises, buildings and plant occupied by the Debtor and use all or any of the Equipment and other personal property of the Debtor for such time as the Secured Party requires to facilitate the realization of the Collateral, free of charge, and the Secured Party will not be liable to the Debtor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;
- (xi) the Secured Party may charge on its own behalf and pay to others all reasonable amounts for expenses incurred and for services rendered in

connection with the exercise of the rights and remedies of the Secured Party hereunder, including, without limiting the generality of the foregoing, reasonable legal, Receiver and accounting fees and expenses, and in every such case the amounts so paid together with all costs, charges and expenses incurred in connection therewith, including interest thereon at the Interest Rate, will be added to and form part of the Indebtedness hereby secured; and

- (xii) the Secured Party may discharge any claim, lien, mortgage, charge, security interest, encumbrance or any rights of others that may exist or be threatened against the Collateral, and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith and Interest thereon at the Interest Rate shall be added to the Indebtedness hereby secured.
- (c) On or after the occurrence of any Event of Default and at any time thereafter, the Debtor will not demand or receive any income from or interest on Investment Property, and if the Debtor receives any such income or interest without any demand by it, such income or interest shall be held by the Debtor in trust for the Secured Party in the same medium in which received, shall not be commingled with any assets of the Debtor and shall be delivered to the Secured Party in the form received, properly endorsed to permit collection, not later than the next business day following the day of its receipt. The Secured Party may apply the net cash receipts from such income or interest to payment of any of the Indebtedness, provided that the Secured Party shall account for and pay over to the Debtor any such income or interest remaining after payment in full of the Indebtedness.
- (d) The Secured Party may grant extensions of time, take, abstain from taking and perfecting and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party sees fit without prejudice to the liability of the Debtor to the Secured Party or the Secured Party's rights hereunder.
- (e) The Secured Party will not be liable or responsible for any failure to seize, collect, realize, or obtain payment with respect to the Collateral and is not bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment with respect to the Collateral or for the purpose of preserving any rights of the Secured Party, the Debtor or any other person, firm or corporation in respect of the Collateral.
- (f) The Secured Party may apply any proceeds of realization of the Collateral to payment of expenses in connection with the preservation and realization of the Collateral as above described and the Secured Party may apply any balance of such proceeds to payment of the Indebtedness in such order as the Secured Party sees fit, in its sole discretion.

ARTICLE 7 GENERAL

Section 7.1 Entire Agreement

There are no understandings and agreements between the parties concerning the subject matter of this Agreement, except as set forth in this Agreement and the other Loan Documents. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Secured Party and the Debtor concerning the subject matter hereof except as expressly set forth in this Agreement or in the other Loan Documents. No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto.

Section 7.2 Benefit of Agreement and Assignment

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The rights of the Secured Party under this Agreement may be assigned by the Secured Party without prior notice to or consent of the Debtor. The Debtor may not assign its obligations under this Agreement.

Section 7.3 Notices

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be delivered in accordance with the notice provisions set out in the Mortgage.

Section 7.4 Severability

If any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Secured Party, be severable from and shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

Section 7.5 Further Assurances

The Debtor hereby agrees to execute such further assurances as may be reasonably required by the Secured Party from time to time to perfect this agreement and assignment.

Section 7.6 Waivers

No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived. No course of dealing on the part of the Secured Party, its officers, employees, consultants or agents, nor any failure or delay by the Secured Party with respect to exercising any right, power or privilege of Secured Party under this Agreement, shall operate as a waiver thereof.

Section 7.7 Successors and Assigns

This Agreement shall be binding upon the heirs, executors, administrators, successors and permitted assigns of the Debtor and shall benefit the heirs, executors, administrators, successors and assigns of the Secured Party.

Section 7.8 Assignment

The Secured Party may assign this Agreement without prior written notice to or consent of the Debtor.

Section 7.9 Additional Continuing Security

This Agreement and the security interest, assignment and mortgage and charge granted hereby are in addition to and not in substitution for any other security now or hereafter held by the Secured Party and this Agreement is a continuing agreement and security that shall remain in full force and effect until discharged by the Secured Party or until the charge securing the Indebtedness is discharged.

Section 7.10 Discharge

The Debtor shall not be discharged from any of the Indebtedness or from this Agreement except by a release or discharge signed in writing by the Secured Party or until the charge securing the Indebtedness is discharged.

Section 7.11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Section 7.12 Executed Copy

The Debtor acknowledges receipt of a fully executed copy of this Agreement and the financing statement registered against the Debtor under the PPSA in favour of the Secured Party.

Section 7.13 Counterpart

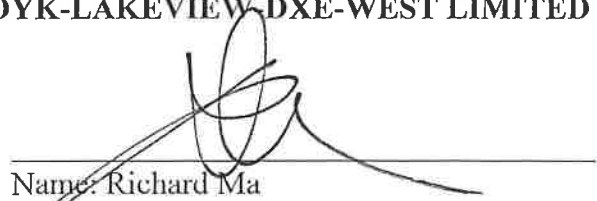
This Agreement may be executed in counterparts and all counterparts taken together shall constitute an executed copy of this Agreement.

[Signing Page Follows]

IN WITNESS WHEREOF the Debtor has executed this Agreement.

VANDYK-LAKEVIEW-DXE-WEST LIMITED

Per:


Name: Richard Ma
Title: Chief Financial Officer

I have authority to bind the Corporation.

TAB CCC

THIS IS **EXHIBIT "CCC"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

ASSIGNMENT OF MATERIAL AGREEMENTS

THIS AGREEMENT made as of the ~~2~~¹⁰ day of Dec, 2021.

B E T W E E N:

VANDYK – LAKEVIEW-DXE-WEST LIMITED

(hereinafter referred to as the "Assignor"),

- and -

DORR CAPITAL CORPORATION

(hereinafter referred to as the "Lender")

WHEREAS by a commitment letter dated the 5th day of November, 2021, from the Lender, as lender, to the Assignor, as borrower (which commitment letter, as it may be amended, modified, restated or consolidated from time to time, is hereinafter referred to as the "Commitment"), the Assignor agreed to assign, as security, to the Lender, inter alia, its rights, benefits, title and interest in, to and under certain material agreements and documents;

AND WHEREAS as security for the obligations of the Assignor to the Lender pursuant to the Commitment, the Assignor delivered to the Lender on the date hereof a charge/mortgage (which charge/mortgage, as it may be amended, renewed, extended or substituted for, is hereafter referred to as the "Mortgage") charging to the Lender the Property (as defined in the Commitment).

NOW THEREFORE, in consideration of the Lender agreeing to make advances to the Assignor under and subject to the Commitment and the sum of Ten Dollars (\$10.00) now paid by the Lender to the Assignor and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Assignor) the parties hereto covenant and agree with each other as follows:

ARTICLE 1
ASSIGNMENT

1.1 Recital Correct

The Assignor confirms the validity and truth of the above-noted recital, which has the same force and effect as if repeated herein at length.

1.2 Assignment

As continuing and additional security for the payment to the Lender of all Indebtedness (as defined in the Mortgage) from time to time of the Assignor to the Lender, the Assignor hereby assigns, sets over and transfers to the Lender all its rights, benefits, title and interest in and to, and all claims of whatsoever nature or kind which the Assignor now has or may hereafter have under or pursuant to:

- (a) the agreements described in Schedule "A" annexed hereto;
- (b) if the Property is a condominium, all agreements of purchase and sale entered into, by or on behalf of the Assignor (or an affiliate of the Assignor) with third party purchasers of condominium units or other portions of the Property, together with all amendments thereto and all deposits paid or payable thereunder;
- (c) all present and future approvals, licenses, permits, and other approvals, licenses and permits now or hereafter issued or required to be issued by any public authority in respect of the Property or its use or operation or any construction, renovation, refurbishment or development taking place or to take place on, in or under the Property or any part thereof;
- (d) the plans, specifications, working drawings, budgets and schedules now or hereafter in existence for the Property or any part thereof or any proposed expansion or renovation thereof or addition thereto or for any new building, structure, erection or improvement to be on, in or under the Property or any part thereof;
- (e) all present and future builder's risk, property, fire, hazard, boiler and machinery, damage, rental abatement, business interruption and income loss insurance policies now or hereafter obtained or maintained by the Assignor in respect of the Property, including without limitation the insurance policies described in Schedule "B" annexed hereto;
- (f) all construction and other contracts for the provision of materials, labour, equipment and services to the Property in connection with any construction on the Property;
- (g) all development and construction agreements, architect's agreements, site plan agreements and other agreements, documents and contracts now or hereafter entered into by the Assignor or anyone on its behalf relating to any construction, development, renovation or expansion of, on, in or under the Property or any portion thereof;
- (h) all service, management and maintenance contracts and all cost sharing, reciprocal, parking and other agreements, in each case relating to the Property or any part thereof;
- (i) all present and future undertakings, commitments and agreements entered into, assumed by or assigned to the Assignor and all moneys and proceeds payable thereunder to the Assignor or to anyone on its behalf in respect of a financing or

refinancing of the Property or any part thereof or in respect of a mortgage, charge, security interest or other encumbrance to be granted upon the Property, any part thereof or any interest therein or in respect of the sale or other disposition by the Assignor of the Property or any portion thereof or interest therein (provided that this section shall not be deemed to constitute the consent of the Lender to any such financing or refinancing); and

- (j) any other present and future undertakings, commitments and agreements entered into or assumed by the Assignor, whether written or oral, in respect of the Property or any part thereof or any right or interest of the Assignor therein or thereto,

and any amendments, extensions, renewals and replacements which have been made or may hereafter be made thereto, together with:

- (k) all benefits, proceeds and advantages which now are or may hereafter be derived therefrom;
- (l) all debts, demands, choses in action and claims which are now or may hereafter be or become due, owing or accruing due to the Assignor therefrom;
- (m) all books, accounts, invoices, letters, papers and documents in any way evidencing or relating thereto; and
- (n) all performance, labour and material, and maintenance bonds with respect to any work of maintenance to be performed on the Property;

all of the foregoing described in Subsections 1.2(a) to (n) above, inclusive, together with the proceeds therefrom being hereinafter collectively referred to as the "**Premises Hereby Assigned**".

1.3 Acknowledgment of Assignor

The Assignor acknowledges that neither this Agreement nor the assignment set out herein:

- (a) shall in any way lessen or relieve the Assignor from:
 - (i) the obligation of the Assignor to observe, satisfy and perform each and every term, agreement, provision, condition, obligation and covenant set out in, or required to be observed by the Assignor in order to fulfil its obligations pursuant to, any of the Premises Hereby Assigned; and
 - (ii) any liability of the Assignor to the Lender or to any other person, firm or corporation;
- (b) imposes any obligation on the Lender to assume any liability or obligation under, or to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in, any of the Premises Hereby Assigned;
- (c) imposes any liability on the Lender for any act or omission on its part in connection with this Agreement or the assignments constituted hereby including, without

limitation, the fulfilment or non-fulfilment by the Lender of the obligations, covenants and agreements of the Assignor set out in any of the Premises Hereby Assigned;

- (d) obligates the Lender to give notice of this Agreement and the assignments constituted hereby to any person, firm or corporation whatsoever; provided that the Lender may, in its absolute discretion, give any such notice at any time or from time to time without further notice to the Assignor;
- (e) shall cause the Lender to be or be deemed to be a mortgagee in possession;
- (f) shall delay, prejudice, impair, diminish or adversely affect the rights and remedies of the Lender pursuant to the Commitment and the Security (as defined in the Commitment); or
- (g) authorizes the Assignor to dispose of or transfer by way of conveyance, mortgage, lease, assignment or otherwise, the Property, the interest of the Assignor in the Property or any part of either, other than in accordance with the provisions of the Commitment.

ARTICLE 2 **COVENANTS**

2.1 Positive Covenants of Assignor

The Assignor covenants and agrees:

- (a) to observe, perform and satisfy each and every term, agreement, provision, condition, obligation and covenant set out in, or required to be observed, performed and satisfied by it in order to fulfil its obligations under or pursuant to, the Premises Hereby Assigned;
- (b) to deliver to the Lender a copy of all written notices, demands or requests given under, in connection with or pursuant to the Premises Hereby Assigned that are:
 - (i) received by the Assignor, forthwith upon receipt of same; and
 - (ii) delivered by the Assignor, contemporaneously with the delivery of same;
- (c) to indemnify and save the Lender harmless from and against any liabilities, losses, costs, charges, expenses (including legal fees and disbursements on a solicitor and his own client basis), damages, claims, demands, actions, suits, proceedings, judgments and forfeitures (collectively referred to hereinafter as the "**Liabilities**") suffered, incurred or paid by the Lender in connection with, on account of or by reason of:
 - (i) the assignment to the Lender of the Premises Hereby Assigned or any part thereof;

- (ii) any alleged obligation of the Lender to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in any of the Premises Hereby Assigned;
 - (iii) any failure of the Assignor to observe, perform or satisfy their or its covenants, agreements, warranties and representations set out in this Agreement; and
 - (iv) the enforcement by the Lender of any of the assignments constituted by this Agreement or any of its rights and remedies hereunder;
- (d) to notify the Lender in writing, as soon as the Assignor becomes aware thereof, of any Dispute (as hereinafter defined), claim or litigation in respect of any of the Premises Hereby Assigned or of any breach or default by the Assignor or any other person, firm or corporation in the observance, performance or satisfaction of any of the terms, agreements, provisions, conditions, obligations or covenants set out in any of the Premises Hereby Assigned;
- (e) to obtain such consents from third parties as may be necessary or required pursuant to any of the Premises Hereby Assigned in connection with the assignments constituted by this Agreement and, in addition, such other consents and acknowledgments from third parties as the Lender may require or desire;
- (f) that each of its warranties and representations set out in this Agreement is now and will continue to be true and correct;
- (g) if requested to do so by the Lender, it will give notice of this Agreement to third parties under the Premises Hereby Assigned and will enforce any or all of the rights and remedies available to it pursuant to the Premises Hereby Assigned;
- (h) to furnish to the Lender from time to time, forthwith upon the request of the Lender, in writing all information requested by the Lender relating to the Premises Hereby Assigned;
- (i) to execute and deliver to the Lender, upon request of the Lender, from time to time, specific assignments of any of the Premises Hereby Assigned, such assignments to be in form and content satisfactory to the Lender; and
- (j) that it will pay or cause to be paid to the Lender or pursuant to the Lender's direction, upon demand, all Liabilities, costs, charges, fees and expenses, including, without limitation, legal fees and disbursements on a solicitor and his own client basis, court costs and any other out-of-pocket costs and expenses, incurred by the Lender in connection with or arising out of or with respect to this Agreement including, without limitation, any one or more of the following:
- (i) the negotiation, preparation, execution and enforcement of this Agreement and all documents, agreements and other writings incidental or ancillary hereto;

- (ii) any act done or taken pursuant to this Agreement including, without limitation, recovering the Indebtedness and registering, discharging and reassigning this Agreement;
- (iii) the preservation, protection, enforcement or realization of the Premises Hereby Assigned including, without limitation, retaking, holding, repairing, preparing for disposition and disposing of the Premises Hereby Assigned;
- (iv) any action or other proceeding instituted by the Assignor, the Lender or any other person, firm or corporation in connection with or in any way relating to:
 - (1) this Agreement or any part hereof;
 - (2) the preservation, protection, enforcement or realization of the Premises Hereby Assigned; or
 - (3) the recovery of the Indebtedness;
- (v) all Liabilities suffered, incurred or paid by the Lender as set out in Subsection 2.1(c); and
- (vi) all amounts incurred or paid by the Lender pursuant to Section 4.1;

together with interest thereon from the date of the payment thereof by the Lender (if the Lender paid the same) at the rate provided for in the Mortgage, calculated daily and compounded monthly. Whether or not any action or any judicial proceedings has been taken to enforce the obligation of the Assignor to pay or cause to be paid as set out in this Section 2.1, the amounts owing to the Lender under this Section 2.1 shall be added to the Indebtedness and secured by the Security.

2.2 Negative Covenants of Assignor

The Assignor covenants and agrees that it shall not:

- (a) sell, assign, transfer, dispose of, collect, receive or accept the Premises Hereby Assigned or any of them nor do, nor permit to be done, any act or thing whereby the Lender may be prevented or hindered from so doing, in each case, without the prior written consent of the Lender;
- (b) pledge, charge, mortgage, hypothecate, create a security interest in or otherwise encumber the Premises Hereby Assigned or any of them, nor shall it subordinate any of its interest therein nor shall it perform any act or execute any agreement which might prevent the Lender from operating under, or exercising its rights under, any of the provisions of this Agreement or which would limit the Lender in any such operation or exercise, in each case without the prior written consent of the Lender;

- (c) enter into, cancel or terminate any of the Premises Hereby Assigned or any of them without the prior written consent of the Lender;
- (d) waive, amend, modify, or vary any of the terms, conditions or provisions of the any of the Premises Hereby Assigned, or any of them without the prior written consent of the Lender;
- (e) waive or agree to waive any failure of any party to any of the Premises Hereby Assigned to observe, perform or satisfy any of the terms, agreements, provisions, conditions, obligations or covenants set out in the Premises Hereby Assigned or any of them, without the prior written consent of the Lender;
- (f) give any consent or approval contemplated by, or required or permitted to be given pursuant to, any of the Premises Hereby Assigned without the prior written consent of the Lender; or
- (g) settle or resolve any Dispute (as that term is hereinafter defined) without the prior written consent of the Lender.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Assignor

The Assignor represents and warrants to the Lender that:

- (a) each of the Premises Hereby Assigned is in full force and effect, unamended, and all of the parties thereto are in good standing thereunder and there are no defaults thereunder;
- (b) it has good, valid and legal right to absolutely assign and transfer to the Lender the Premises Hereby Assigned, free and clear of all assignments, mortgages, charges, pledges, security interests and other encumbrances;
- (c) it has not performed any act or executed any agreement which might prevent the Lender from operating under, or exercising its rights under, any of the provisions of this Agreement or which would limit the Lender in any such operation or exercise;
- (d) it has the corporate power, authority and capacity to enter into this Agreement, to make the assignments constituted hereby and to perform its obligations hereunder;
- (e) it has taken all necessary action, corporate or otherwise, to authorize the execution, delivery and performance of its obligations set out in each of the Premises Hereby Assigned and in this Agreement;
- (f) neither the execution nor the delivery of this Agreement by the Assignor, nor the consummation by it of the transactions herein contemplated, nor the compliance by

it with the terms, conditions and provisions hereof will conflict with or result in a breach of any of the terms, conditions or provisions of:

- (i) the constating documents of the Assignor;
 - (ii) any agreement, instrument or arrangement to which the Assignor is a party or by which the Assignor or any of its property is, or may be, bound, or constitute a default thereunder, or result thereunder in the creation or imposition of any security interest, mortgage, lien, charge or encumbrance of any nature whatsoever upon the Property or any part thereof or upon any of the other properties or assets of the Assignor;
 - (iii) any judgment, order, writ, injunction or decree of any court relating to the Assignor; or
 - (iv) any applicable law or governmental regulation relating to the Property;
- (g) this Agreement has been duly executed and when delivered, will be in full force and effect and constitutes a legal, valid and binding obligation of the Assignor, enforceable in accordance with its terms, subject to applicable laws relating to bankruptcy and insolvency and other similar laws affecting creditor's rights generally and subject to the qualification that equitable remedies, including specific performance and injunction, may only be granted in the discretion of a court of competent jurisdiction;
- (h) there is no pending or, to the knowledge of the Assignor, threatened litigation, action, claim or fact known to the Assignor and not disclosed to the Lender in writing which adversely affects or could adversely affect any of the Premises Hereby Assigned or the rights of the Assignor thereunder or the rights of the Lender under this Agreement;
- (i) none of the Premises Hereby Assigned in existence on the date hereof is incapable of assignment to the Lender in accordance with the provisions of this Agreement, nor is any of the Premises Hereby Assigned incapable of further assignment by the Lender or by any receiver or receiver and manager, nor is the consent of any third party required for any assignment set out in this Agreement or in connection with any such further assignment; and
- (j) no payments, proceeds, receipts or other distributions due or to become due on any date subsequent to the date of this Agreement have been collected in advance of the time when the same became due under the terms of any of the Premises Hereby Assigned.

ARTICLE 4
DEFAULT AND ENFORCEMENT

4.1 Enforcement Upon Default

Without limiting in any manner whatsoever the Lender's rights, remedies and recourses pursuant to this Agreement, by operation of law or otherwise, if: any Event of Default (as defined in the Mortgage) occurs (hereinafter called a "**Default**"), then the Lender and any receiver or receiver and manager appointed by or on the application of the Lender may, from time to time and at any time, in its own name or in the name of the Assignor and without notice to the Assignor, do any one or more of the following:

- (a) observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant which, pursuant to any of the Premises Hereby Assigned, could or should be observed, performed or satisfied by the Assignor;
- (b) enforce, realize, sell or otherwise deal with the Premises Hereby Assigned upon such terms and conditions and at such time or times as to the Lender seems advisable;
- (c) exercise any of the rights, powers, authority and discretion which, pursuant to any of the Premises Hereby Assigned, by operation of law or otherwise, could be exercised, observed, performed or satisfied by the Assignor, including, without limitation, entering into, terminating, amending, renewing and assigning the Premises Hereby Assigned and otherwise dealing with the third parties thereunder and others, making other agreements or granting waivers and consents and giving notices in respect of any of the Premises Hereby Assigned or any part or parts thereof for such consideration and on such terms as the Lender may deem appropriate, and participating in all settlement negotiations and arbitration proceedings resulting from a dispute (the "**Dispute**") arising out of, in connection with or pursuant to any of the Premises Hereby Assigned;
- (d) collect any rents, proceeds, receipts or income arising from or out of the Premises Hereby Assigned including, without limitation, demanding the same, instituting proceedings for the collection thereof, accepting reductions therein or compromises with respect thereto, and recovering, receiving and giving receipts therefor, whether in the name of the Assignor or the Lender or both;
- (e) manage generally the business and operations of the Assignor and deal with the Premises Hereby Assigned and the third parties thereunder to the same extent as the Assignor could do; and
- (f) by instrument in writing appoint any person to be a receiver (which term shall include a manager and a receiver and manager) in respect of the Premises Hereby Assigned or any part thereof and may remove any receiver so appointed and appoint another in its stead; and any receiver so appointed shall have the authority to do any of the acts specified in Subsections 4.1(a), (b), (c), (d) and (e) and further to take possession of and collect the moneys of all kinds payable to the Assignor in respect

of the Premises Hereby Assigned and pay therefrom all reasonable expenses in connection therewith and all charges, the payment of which may be necessary to preserve and protect the Premises Hereby Assigned. Any such receiver shall be deemed to be the agent of the Assignor for all purposes.

The Assignor agrees that the Lender shall be entitled to charge on its own behalf for services rendered, and retain such agents as the Lender wishes to assist the Lender, in doing, or to effect, any of the foregoing. The Assignor acknowledges and agrees that all costs, charges and expenses incurred or charged by the Lender in connection with doing anything permitted in this Section 4.1, including, without limitation, legal fees and disbursements on a solicitor and his own client basis, and the fees and disbursements of any agent as aforesaid, shall be added to the Indebtedness and be forthwith paid by the Assignor to the Lender.

4.2 Lender Not Liable

The Lender shall not be bound to exercise any of the rights afforded to it hereunder, nor to collect, dispose of, realize or enforce any of the Premises Hereby Assigned. The Lender shall not be liable or responsible to the Assignor or any other person for the fulfilment or non-fulfilment of this Agreement or the terms, obligations, covenants or agreements set out in the Premises Hereby Assigned or for any loss or damage incurred or suffered by the Assignor or any other person, firm or corporation as a result of:

- (a) any delay by, or any failure of, the Lender to:
 - (i) exercise any of the rights afforded to it under this Agreement; or
 - (ii) collect, dispose of, realize or enforce any of the Premises Hereby Assigned;
or
- (b) the negligence of any receiver, receiver and manager, officer, servant, agent, counsel or other attorney employed or appointed by the Lender in the exercise of the rights afforded to the Lender hereunder, or in the collection, disposition, realization or enforcement of the Premises Hereby Assigned.

4.3 Application of Funds

The Lender shall be entitled (in the sole discretion of the Lender) to utilize any amount received by the Lender arising out of or from the collection, disposition, realization or enforcement of any of the Premises Hereby Assigned in any one or more of the following ways:

- (a) to pay all costs, charges and expenses incurred by the Lender in connection with the collection, disposition, realization or enforcement of the same, including without limitation the fees and disbursements of any agents retained by the Lender to assist or effect such collection, disposition, realization or enforcement;
- (b) to pay any prior mortgages, charges, assignments or encumbrances of or against the Premises Hereby Assigned or the Property or any part thereof;
- (c) to pay any costs, charges or expenses arising from the Property or any part thereof or the operation thereof, including without limitation realty and other taxes, utilities

costs and charges, ground rent (if any), repair, maintenance and replacement costs, management fees and costs and employees' salaries and costs; and

- (d) to apply such amount or any part thereof in reduction of the Indebtedness.

Notwithstanding the generality of Subsection 4.3(d) the Lender shall be entitled to apply all or any part of such amounts received by it on account of such part or parts of the Indebtedness, in such manner and at such times or from time to time, as the Lender deems best and the Lender may at any time and from time to time change any such application.

4.4 Authority to Collect Monies and Exercise Rights

The Assignor confirms and agrees that the Lender, as assignee hereunder, has the authority to exercise all of the rights, powers, authority and discretion of the Assignor pursuant to the Premises Hereby Assigned, including without limitation to collect any monies payable or arising out of or from the Premises Hereby Assigned. Notwithstanding the foregoing sentence, the Assignor shall have the authority:

- (a) to collect any monies payable or arising out of or from the Premises Hereby Assigned, except with respect to proceeds payable under any policy of insurance, which proceeds shall be payable to the Lender and dealt with in the manner set out in the Mortgage and other Loan Documents (as defined in the Mortgage); and
- (b) subject to Section 2.2, to exercise, in good faith, all of the rights, powers, authority and discretion of the Assignor pursuant to the Premises Hereby Assigned,

unless and until such authority is revoked in writing by the Lender; provided, however, that any such monies received by or on behalf of the Assignor shall be received and held in trust for the Lender and forthwith upon request by the Lender remitted to the Lender.

4.5 Further Assurances

The Assignor covenants and agrees to execute all such further assignments and other documents and to do all such further acts and things, including without limitation obtaining any consents, which are required by the Lender, from time to time, to more effectively assign, set over and transfer the Premises Hereby Assigned to the Lender (including, without limitation, execute and deliver one or more specific assignments of the Assignor's rights, benefits, title and interest in any of the agreements, documents, commitments and other writings that constitute the Premises Hereby Assigned in form, substance and execution satisfactory to the Lender), to perfect and keep perfected the security interest constituted hereby and to assist in the collection, disposition, realization or enforcement thereof, and the Lender is hereby irrevocably constituted the true and lawful attorney of the Assignor, with full power of substitution, to execute in the name of the Assignor any assignment or other document for such purposes. Without limiting the generality of the foregoing, the Assignor hereby irrevocably nominates, constitutes and appoints each officer of the Lender the true and lawful attorney of the Assignor, with full power of substitution, for and in the name of and on behalf of and at the expense of the Assignor to act in relation to the insurance policies described in Schedule "B" annexed hereto and in securing the enforcement of all the rights of the Assignor therein and thereunder as fully and effectually in all respects as the Assignor could do, and, without limiting the generality of the foregoing, to demand surrender of any cash value

and terminate such policies, as such attorney may deem advisable and to execute on behalf of the Assignor any documentation or correspondence as any insurer under such policies may require.

ARTICLE 5
GENERAL PROVISIONS

5.1 No Novation

This assignment and transfer to the Lender of the Premises Hereby Assigned:

- (a) is continuing security granted to the Lender, without novation or impairment of any other existing or future security held by the Lender in order to secure payment to the Lender of the Indebtedness and the due performance of the obligations of the Assignor referred to in Subsections 1.2(a) and (c) hereof;
- (b) is in addition to and not in substitution for any other security now or hereafter granted to or held by the Lender in connection with the Indebtedness; and
- (c) shall remain in full force and effect without regard to and shall not be affected, or impaired by:
 - (i) any amendment or modification of or addition or supplement to the Commitment, this Agreement or any other Security now or hereafter held by or on behalf of the Lender in connection with the Indebtedness or any part thereof;
 - (ii) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement, the Commitment or the Security;
 - (iii) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of this Agreement, the Commitment or the Security;
 - (iv) any default by the Assignor under, or any invalidity or unenforceability of, or any limitation on the liability of the Assignor or on the method or terms of payment under, or any irregularity or other defect in, this Agreement, the Commitment or the Security;
 - (v) any merger, consolidation or amalgamation of the Assignor into or with any other corporation or company; or
 - (vi) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor.

5.2 Re-assignment

Upon the Indebtedness being paid in full the Lender shall, within a reasonable time following its receipt of a written request from the Assignor and at the sole cost and expense of the Assignor, reassign the Premises Hereby Assigned to the Assignor.

5.3 Enurement

Subject to Section 2.2 and the other provisions hereof, this Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

5.4 Notices

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be delivered in accordance with the notice provisions set out in the Mortgage.

5.5 Waiver

No consent or waiver, express or implied, by the Lender to or of any breach or default by the Assignor in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by the Assignor of its obligations hereunder. Failure on the part of the Lender to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder.

5.6 Amendments

This Agreement may not be modified or amended except with the written consent of the Lender and the Assignor.

5.7 Entire Agreement

This Agreement constitutes the entire agreement between the Lender and the Assignor pertaining to the assignment of the Premises Hereby Assigned and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, relating thereto.

5.8 Assignment

The Lender may assign, transfer, negotiate, pledge or otherwise hypothecate this Agreement, any of the Premises Hereby Assigned, any of its rights hereunder or any part thereof and all rights and remedies of the Lender in connection with the interest so assigned shall be enforceable against the Assignor as the same would have been by the Lender but for such assignment. The Assignor shall not assign this Agreement or any interest herein.

5.9 No Agency, Joint Venture or Partnership

The Lender is not the agent, representative, partner of or joint-venturer with the Assignor, and the Assignor is not the agent or representative of the Lender, and this Agreement shall not be construed to make the Lender liable to any person or persons for goods or services furnished to, on behalf of or for the benefit of the Assignor nor for debts, liability or claims accruing therefrom against the Assignor.

5.10 Rights, Powers and Remedies

Each right, power and remedy of the Lender provided for herein or available at law or in equity or in any other agreement shall be separate and in addition to every other such right, power and remedy. Any one or more and/or any combination of such rights, remedies and powers may be exercised by the Lender from time to time and no such exercise shall exhaust the rights, remedies or powers of the Lender or preclude the Lender from exercising any one or more of such rights, remedies and powers or any combination thereof from time to time thereafter or simultaneously.

5.11 Survival

All covenants, undertakings, agreements, representations and warranties made by the Assignor in this Agreement and any certificates, reports, statements, information, data, documents or instruments delivered pursuant to or in connection herewith, shall survive the execution and delivery of this Agreement and any advances under the Commitment made by the Lender, and shall continue in full force and effect until the Indebtedness is paid in full. All representations and warranties made by the Assignor shall be deemed to have been relied upon by the Lender.

5.12 Severability

Any term, condition or provision of this Agreement which is or is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severable herefrom, be ineffective to the extent of such avoidance, prohibition or unenforceability without invalidating the remaining terms, conditions and provisions hereof and any such avoidance, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

5.13 Governing Law

This Agreement, and the interpretation, construction, application and enforcement of this Agreement, shall be governed by and construed, in all respects, exclusively in accordance with the laws of the Province of Ontario.

5.14 Headings

The insertion in this Agreement of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

5.15 Number and Gender

All nouns and personal pronouns relating thereto shall be read and construed as the number and gender may require and the verb shall be read and construed as agreeing with the noun and pronoun.

5.16 Extended Meanings

The words "**the Agreement**", "**this Agreement**", "**hereby**", "**herein**", "**hereof**", "**hereto**", "**hereunder**" and similar expressions used in any paragraph of this Agreement relate or refer to the whole of this Agreement and not to that paragraph only, unless otherwise expressly provided. The words "**Article**", "**Section**", "**Subsection**", "**Paragraph**" and similar words refer to the specified article, section, subsection, paragraph or other part of this Agreement.

5.17 Registrations

Neither the preparation, execution nor any registrations or filings with respect hereto, in and of itself, shall bind the Lender to make an advance under the Commitment. The Assignor acknowledges receipt of a copy of the financing statement registered by the Lender under the *Personal Property Security Act* (Ontario) against the Assignor pertaining to this Agreement.

5.18 Receipt of Copy

The Assignor acknowledges receipt of a copy of this Agreement.

[Signing Page Follows]

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the date first written above.

VANDYK – LAKEVIEW-DXE-WEST LIMITED

Per:



Name: Richard Ma
Title: Chief Financial Officer

I have authority to bind the Corporation.

SCHEDULE "A"

To be inserted, if any.

SCHEDULE "B"

Insurance Policy

1. Policy No. CBC0656471 issued by Northbridge General Insurance Corporation

TAB DDD

THIS IS **EXHIBIT "DDD"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

INTEREST RESERVE ACCOUNT ASSIGNMENT AGREEMENT

THIS AGREEMENT made as of the ¹⁰~~3~~ day of ~~Dec~~ Dec, 2021.

B E T W E E N :

VANDYK-LAKEVIEW-DXE-WEST LIMITED

(hereinafter called the "Debtor"),

OF THE FIRST PART;

- and -

DORR CAPITAL CORPORATION

(hereinafter called the "Lender"),

OF THE SECOND PART.

WHEREAS by a commitment letter dated November 5, 2021, from the Lender to the Debtor (which commitment letter, as it may be amended, modified, restated or consolidated from time to time, is hereinafter referred as the "**Commitment**"), the Debtor has agreed to assign and pledge to the Lender the interest reserve deposit in the initial amount of \$2,975,000.00 as additional security for the Loan (as defined in the Commitment);

AND WHEREAS the Debtor has agreed to establish and maintain in its name with the Lender or a financial institution acceptable to the Lender an account more particularly described in Schedule "A" attached hereto (the "**IR Account**") and to execute and deliver this Agreement creating a first perfected security interest in and to the IR Account, all monies therein and all proceeds therefrom.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and of the sum of One Dollar (\$1.00) now paid by the Lender to the Debtor (the receipt and sufficiency of which are hereby acknowledged), the Debtor and the Lender hereby covenant and agree with each other as follows:

1. In this Agreement and in any amendments hereto, the following terms shall have the following meanings, respectively:
 - (a) "**Act**" means the *Personal Property Security Act* (Ontario), as it may be amended or re-enacted from time to time;
 - (b) "**Collateral**" means, at any time, the amount standing to the credit of the Debtor in the IR Account and shall include, without limiting the generality of the foregoing, all amounts deposited in the IR Account pursuant to the Commitment and all interest accrued thereon, all accounts, cash, monies and paper writing relating to the IR Account and the amount standing to the credit of the Debtor therein and the

term deposits and guaranteed investment certificates, if any, set out in Schedule "A" attached hereto;

- (c) **"Obligations"** means all present and future indebtedness and liabilities of the Debtor to the Lender under the Commitment and all other agreements, documents and security documents entered into between the Debtor and the Lender, made by the Debtor in favour of the Lender or assigned by the Debtor to the Lender relating to or in connection with the Commitment;
 - (d) **"Proceeds"** means personal property in any form derived directly or indirectly from any dealing in or with the Collateral or Proceeds; and
 - (e) **"Security Interest"** shall have the meaning ascribed thereto in section 2 hereof.
2. As continuing security for the due and punctual payment to the Lender by the Debtor of the Obligations, the Debtor hereby transfers, pledges and assigns to and with the Lender, and grants a security interest (the **"Security Interest"**) in, the Collateral.
 3. The Security Interest shall extend to the Proceeds.
 4. The Debtor and the Lender acknowledge and agree that value has been given for the granting of the Security Interest and that they intend the Security Interest to attach to the Collateral on the date of execution of this Agreement.
 5. Upon the failure by the Debtor to make due and punctual payment of any Obligations in the amounts and at the times provided for in the Commitment or any other agreement, document or security document entered into between the Debtor and the Lender, made by the Debtor in favour of the Lender or assigned by the Debtor to the Lender, the Security Interest hereby granted shall immediately become enforceable at the option of the Lender and the Lender may, forthwith or at any time thereafter and without notice, except as may be provided in the Act, to the Debtor:
 - (a) if the IR Account is maintained with the Lender, set off against any or all of the Obligations all or any portion of the amount standing to the credit of the Debtor in the IR Account or its book debt representing such amount, including without limitation amounts deposited in the IR Account pursuant to the Commitment and any interest earned thereon;
 - (b) file such proof of claim or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding-up, liquidation, dissolution or other proceedings (voluntary or otherwise) relating to the Debtor;
 - (c) take any action, suit, remedy or proceeding authorized or permitted by this Agreement, the Act or by law or equity; and
 - (d) notify the financial institution at which the IR Account is maintained and demand payment of any credit balance in the IR Account and otherwise realize the debt owing by such financial institution to the Debtor, all at such time and from time to

time and in such manner as the Lender may, in its sole discretion, deem advisable (but the Lender shall not be bound to realize the same unless it sees fit) and all without notice to or the consent of the Debtor.

6. The rights and remedies of the Lender, whether provided for in this Agreement or otherwise, are, to the fullest extent possible in law, mutually exclusive and are cumulative and not alternative.
7. For greater certainty, this Agreement shall not preclude the right of the Lender to exercise any right of set-off it might obtain in respect of the Obligations other than pursuant to this Agreement or the Act.
8. Wherever used herein in relation to the rights and remedies of the Lender hereunder, the term "Collateral" shall, where the context permits, mean the whole or any part of the Collateral.
9. To the extent not prohibited by law, the Debtor hereby waives the benefit of all of the provisions of the Act or any other legislation which would in any manner affect the rights or remedies of the Lender hereunder.
10. All expenses (including without limitation legal fees and disbursements on a solicitor and his own client basis) incurred by the Lender in recovering the Obligations or any part thereof or in enforcing or realizing upon the security hereby constituted shall be added to and shall be deemed to be a part of the Obligations and shall be payable by the Debtor to the Lender, together with interest, in the manner and at the Interest Rate (as defined in the Commitment).
11. The Lender may compound, compromise, grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Collateral, the Debtor and with other parties and other securities as the Lender may reasonably see fit, without prejudice to the Obligations or to the Lender's rights in respect to the security hereby constituted. The Lender shall not be obliged to exhaust its recourses against the Debtor or any other party or parties or against any other security or securities held by the Lender from time to time before realizing or otherwise disposing of or dealing with the Collateral in such manner as the Lender sees fit.
12. No consent or waiver, express or implied, by the Lender to or of any breach or default by the Debtor in the performance of the Obligations or their obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by them of the Obligations and their obligations hereunder. Failure on the part of the Lender to complain of any act or failure to act of the Debtor or to declare the Debtor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder.
13. This Agreement may not be modified or amended except with the written consent of the Lender and the Debtor.

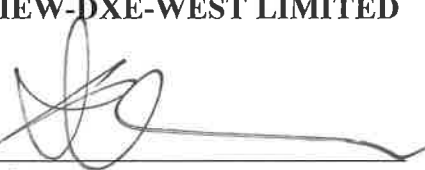
14. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid, illegal or unenforceable to any extent, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable shall not be affected thereby and each provision herein contained shall be separately valid and enforceable to the fullest extent permitted by law; provided however that such provision shall not be by reason thereof invalid, illegal or unenforceable in any other jurisdiction.
15. This Agreement and each of the terms, conditions and covenants herein contained shall enure to the benefit of the successors and assigns of the Lender and be binding upon the respective successors and permitted assigns of the Debtor.
16. This Agreement shall be exclusively governed by and construed in accordance with the laws of the Province of Ontario.
17. Time shall be of the essence hereof.
18. The Debtor acknowledges having received a copy of this Agreement.

Signing page follows

IN WITNESS WHEREOF the Debtor has executed this Agreement as of the date first written above.

VANDYK-LAKEVIEW-DXE-WEST LIMITED

Per: _____


Name: Richard Ma
Title: Chief Financial Officer

I/We have authority to bind the Corporation.

SCHEDULE "A"

IR ACCOUNT

To be inserted, if any.

TERM DEPOSITS

To be inserted, if any.

GUARANTEED INVESTMENT CERTIFICATES

To be inserted, if any.

TAB EEE

THIS IS **EXHIBIT "EEE"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

LAND
REGISTRY
OFFICE #43

13482-0071 (LT)

PAGE 1 OF 3
PREPARED FOR katherine01
ON 2023/11/06 AT 10:40:05

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

PROPERTY DESCRIPTION: LTS 1, 2, 3, 22, 23 & 24, PL H23 ; EXCEPT PT 1 43R16245 & PT 1 43R21276 ; MISSISSAUGA

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
RE-ENTRY FROM 13482-0156

PIN CREATION DATE:
1998/01/23

OWNERS' NAMES
VANDYK-LAKEVIEW-DXE-WEST LIMITED

CAPACITY SHARE
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1997/03/18 ON THIS PIN**</p> <p>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1998/01/23**</p> <p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *</p> <p>** AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF</p> <p>** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY</p> <p>** CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 1998/01/26 **</p>						
43R21276	1995/10/18	PLAN REFERENCE				C
LT2057426	2000/03/27	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF THE DEPARTMENT OF TRANSPORT CANADA		C
		REMARKS: PEARSON AIRPORT ZONING REGULATION				
PR3202429	2017/09/15	TRANSFER	\$16,000,000	LAGO TERRACE DEVELOPMENTS INC.	2587916 ONTARIO INC,	C
		REMARKS: PLANNING ACT STATEMENTS.				
PR3202432	2017/09/15	CHARGE	\$3,300,000	2587916 ONTARIO INC.	2471867 ONTARIO LIMITED	C
PR3202539	2017/09/15	NO ASSGN RENT GEN		2587916 ONTARIO INC.	2471867 ONTARIO LIMITED	C
		REMARKS: PR3202432				
PR3605847	2020/01/27	APL CH NAME OWNER		2587916 ONTARIO INC,	2587916 ONTARIO INC.	C

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

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REGISTRY
OFFICE #43

13482-0071 (LT)

PREPARED FOR katherine01
ON 2023/11/06 AT 10:40:05

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
PR3941840	2021/11/08	APL CH NAME OWNER		2587916 ONTARIO INC.	VANDYK - THE MASON LIMITED	C
PR3941841	2021/11/08	APL CH NAME OWNER		VANDYK - THE MASON LIMITED	VANDYK - MASON - WEST LIMITED	C
PR3941842	2021/11/08	APL CH NAME OWNER		VANDYK - MASON - WEST LIMITED	VANDYK-LAKEVIEW-DXE-WEST LIMITED	C
PR3960399	2021/12/10	CHARGE	\$40,000,000	VANDYK-LAKEVIEW-DXE-WEST LIMITED	DORR CAPITAL CORPORATION	C
PR3960400	2021/12/10	NO ASSGN RENT GEN <i>REMARKS: PR3960399</i>		VANDYK-LAKEVIEW-DXE-WEST LIMITED	DORR CAPITAL CORPORATION	C
PR3960999	2021/12/10	POSTPONEMENT <i>REMARKS: PR3202432 TO PR3960399</i>		2471867 ONTARIO LIMITED	DORR CAPITAL CORPORATION	C
PR4096774	2022/08/05	CHARGE	\$100,000,000	VANDYK-LAKEVIEW-DXE-WEST LIMITED	WESTMOUNT GUARANTEE SERVICES INC.	C
PR4096775	2022/08/05	POSTPONEMENT <i>REMARKS: PR3202432 TO PR4096774</i>		2471867 ONTARIO LIMITED	WESTMOUNT GUARANTEE SERVICES INC.	C
PR4193973	2023/04/27	CONSTRUCTION LIEN	\$622,305	560789 ONTARIO INC.		C
PR4204275	2023/05/26	CONSTRUCTION LIEN	\$269,415	MGI CONSTRUCTION CORP.		C
PR4212521	2023/06/15	CERTIFICATE <i>REMARKS: PR4193973</i>		560789 ONTARIO LIMITED	VANDYKLAKEVIEW-DXE-WEST LIMITED	C
PR4217034	2023/06/28	CERTIFICATE <i>REMARKS: CERTIFICATE OF ACTION PR4204275</i>		MGI CONSTRUCTION CORP.		C
43R40951	2023/07/05	PLAN REFERENCE				C
PR4229977	2023/07/28	CHARGE	\$68,750,000	VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C
PR4229978	2023/07/28	NO ASSGN RENT GEN <i>REMARKS: PR4229977</i>		VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C
PR4229979	2023/07/28	CHARGE	\$56,250,000	VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C
PR4229980	2023/07/28	NO ASSGN RENT GEN <i>REMARKS: PR4229979</i>		VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C
PR4229981	2023/07/28	CHARGE	\$25,000,000	VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

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ON 2023/11/06 AT 10:40:05

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR4229982	2023/07/28	NO ASSGN RENT GEN <i>REMARKS: PR4229981</i>		VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C
PR4229983	2023/07/28	CHARGE	\$37,000,000	VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C
PR4229984	2023/07/28	NO ASSGN RENT GEN <i>REMARKS: PR4229983</i>		VANDYK-LAKEVIEW-DXE-WEST LIMITED	KINGSETT MORTGAGE CORPORATION	C
PR4251959	2023/09/20	CONSTRUCTION LIEN	\$56,532	KOHN PARTNERSHIP ARCHITECTS INCORPORATED		C
PR4264648	2023/10/23	CONSTRUCTION LIEN	\$1,026,461	PCL CONSTRUCTORS CANADA INC.		C
PR4264947	2023/10/24	CONSTRUCTION LIEN	\$8,136	READ JONES CHRISTOFFERSEN LTD.		C

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

TAB FFF

THIS IS **EXHIBIT "FFF"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

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

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

RESPONSE CONTAINS: APPROXIMATELY 4 FAMILIES and 18 PAGES.

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

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 4 ENQUIRY PAGE : 1 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

00 FILE NUMBER : 731262789 EXPIRY DATE : 25AUG 2027 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20170825 1720 2080 3949 REG TYP: P PPSA REG PERIOD: 05
02 IND DOB : IND NAME:
03 BUS NAME: 2587916 ONTARIO INC.
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
2471867 ONTARIO LIMITED
09 ADDRESS : 300 - 90 BURNHAMTHORPE ROAD WEST
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B 3C3
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION
13 GENERAL ASSIGNMENT OF RENTS AND LEASES WITH RESPECT TO PROPERTY
14 MUNICIPALLY KNOWN AS 1345 LAKESHORE ROAD EAST, MISSISSAUGA, ONTARIO
15
16 AGENT: LOOPSTRA NIXON LLP (JRH/2687003)
17 ADDRESS : 135 QUEENS PLATE DRIVE, SUITE 600
CITY : TORONTO PROV: ON POSTAL CODE: M9W 6V7

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 4 ENQUIRY PAGE : 2 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED
 FILE NUMBER 731262789

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 002 MV SCHED: 20171221 1059 1862 2610
 21 REFERENCE FILE NUMBER : 731262789
 22 AMEND PAGE: NO PAGE: X CHANGE: J OTHER REN YEARS: CORR PER:
 23 REFERENCE DEBTOR/ IND NAME:
 24 TRANSFEROR: BUS NAME: 2587916 ONTARIO INC.

25 OTHER CHANGE: SUBORDINATION
 26 REASON: 2471867 ONTARIO LIMITED HEREBY POSTPONES AND SUBORDINATES ITS
 27 /DESCR: SECURITY INTEREST PURSUANT TO REFERENCE FILE #731262789, TO AND IN
 28 : FAVOUR OF THE SECURITY INTEREST OF CAMERON STEPHENS FINANCIAL
 02/05 IND/TRANSFEREE:
 03/06 BUS NAME/TRFEE:
 OCN:
 04/07 ADDRESS:
 CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :
 CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE
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 16 NAME : SCHNEIDER RUGGIERO LLP (39903.LS)
 17 ADDRESS : 1000-120 ADELAIDE STREET W.
 CITY : TORONTO PROV : ON POSTAL CODE : M5H 3V1

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 4 ENQUIRY PAGE : 3 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 731262789

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 002 OF 002 MV SCHED: 20171221 1059 1862 2610

21 REFERENCE FILE NUMBER : 731262789

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE: SUBORDINATION

26 REASON: CORPORATION PERFECTED BY REFERENCE FILE #734679234.

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 4 ENQUIRY PAGE : 4 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 731262789

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 1 MV SCHED: 20200203 1337 1590 6091

21 REFERENCE FILE NUMBER : 731262789

22 AMEND PAGE: NO PAGE: CHANGE: J OTHER REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: 2587916 ONTARIO INC.

25 OTHER CHANGE: SUBORDINATION

26 REASON: 2471867 ONTARIO LIMITED HAS SUBORDINATED ITS SECURITY INTEREST IN

27 /DESCR: THE ASSETS OF THE DEBTOR IN FAVOUR OF DUCA FINANCIAL SERVICES CREDIT

28 : UNION LTD.

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :						
CONS.	MV	DATE OF	NO FIXED					
GOODS	INVTRY	EQUIP	ACCTS	OTHER	INCL	AMOUNT	MATURITY OR	MAT DATE

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16 NAME : CHAITONS LLP (DB/65126)

17 ADDRESS : 5000 YONGE STREET, 10TH FLOOR

CITY : TORONTO PROV : ON POSTAL CODE : M2N 7E9

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 4 ENQUIRY PAGE : 5 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 731262789

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 2 MV SCHED: 20220314 1149 1590 2491

21 REFERENCE FILE NUMBER : 731262789

22 AMEND PAGE: NO PAGE: CHANGE: J OTHER REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: 2587916 ONTARIO INC.

25 OTHER CHANGE: SUBORDINATION

26 REASON: 2471867 ONTARIO LIMITED HEREBY POSTPONES ITS FINANCING STATEMENT

27 /DESCR: REGISTERED UNDER FILE REFERENCE NUMBER 731262789, TO AND IN FAVOUR

28 : OF THE FINANCE STATEMENT IN FAVOUR OF WESTMOUNT GUARANTY SERVICES

02/05 IND/TRANSFEREE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : SCHNEIDER RUGGIERO SPENCER MILBURN LLP

17 ADDRESS : 1000-120 ADELAIDE STREET WEST

CITY : TORONTO PROV : ON POSTAL CODE : M5H 3V1

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 4 ENQUIRY PAGE : 6 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 731262789

PAGE	TOT	REGISTRATION NUM	REG TYPE
01	CAUTION :	002 OF 2	MV SCHED: 20220314 1149 1590 2491
21	REFERENCE FILE NUMBER : 731262789		
22	AMEND PAGE:	NO PAGE:	CHANGE: REN YEARS: CORR PER:
23	REFERENCE DEBTOR/ IND NAME:		
24	TRANSFEROR: BUS NAME:		

25 OTHER CHANGE:

26 REASON: INC. AS ADMINISTRATIVE AGENT FOR THE SURETY REGISTERED UNDER FILE

27 /DESCR: REFERENCE NUMBER 780729975.

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :
CONS.	MV	DATE OF NO FIXED
GOODS INVTRY EQUIP ACCTS OTHER	INCL	AMOUNT MATURITY OR MAT DATE

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16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 4 ENQUIRY PAGE : 7 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 731262789

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 1 MV SCHED: 20220817 1219 2080 4243

21 REFERENCE FILE NUMBER : 731262789

22 AMEND PAGE: NO PAGE: CHANGE: A AMNDMNT REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: 2587916 ONTARIO INC.

25 OTHER CHANGE:

26 REASON: AMEND DEBTOR NAME FROM 2587916 ONTARIO INC. TO

27 /DESCR: VANDYK-LAKEVIEW-DXE-WEST LIMITED PURSUANT TO ARTICLES OF AMENDMENT.

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE: VANDYK-LAKEVIEW-DXE-WEST LIMITED

OCN:

04/07 ADDRESS: 1944 FOWLER DRIVE

CITY: MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :	DATE OF	NO FIXED
CONS.	MV		MATURITY OR	MAT DATE
GOODS	INVTRY	EQUIP	ACCTS	OTHER
INCL	AMOUNT			

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16 NAME : LOOPSTRA NIXON LLP (JRH/02948-0003)

17 ADDRESS : 135 QUEENS PLATE DRIVE, SUITE 600

CITY : TORONTO PROV : ON POSTAL CODE : M9W 6V7

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 4 ENQUIRY PAGE : 8 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 731262789

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 1 MV SCHED: 20220817 1226 2080 4244

21 REFERENCE FILE NUMBER : 731262789

22 AMEND PAGE: NO PAGE: CHANGE: B RENEWAL REN YEARS: 05 CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: VANDYK-LAKEVIEW-DXE-WEST LIMITED

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :	DATE OF	NO FIXED
CONS.	MV		MATURITY OR	MAT DATE
GOODS	INVTRY	EQUIP	ACCTS	OTHER
INCL	AMOUNT			

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16 NAME : LOOPSTRA NIXON LLP (JRH/02948-0003)

17 ADDRESS : 135 QUEENS PLATE DRIVE, SUITE 600

CITY : TORONTO PROV : ON POSTAL CODE : M9W 6V7

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 4 ENQUIRY PAGE : 9 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

00 FILE NUMBER : 778522365 EXPIRY DATE : 25NOV 2024 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20211125 1336 1590 6003 REG TYP: P PPSA REG PERIOD: 3
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK-LAKEVIEW-DXE-WEST LIMITED
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
DORR CAPITAL CORPORATION
09 ADDRESS : 41 SCARSDALE ROAD, UNIT 6
CITY : TORONTO PROV: ON POSTAL CODE: M3B 2R2
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION
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16 AGENT: BLANEY MCMURTRY LLP (J. HICKS)
17 ADDRESS : 1500-2 QUEEN STREET EAST, MARITIME LIFE
CITY : TORONTO PROV: ON POSTAL CODE: M5C 3G5

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 2 OF 4 ENQUIRY PAGE : 10 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 778522365

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 2 MV SCHED: 20220314 1138 1590 2488

21 REFERENCE FILE NUMBER : 778522365

22 AMEND PAGE: NO PAGE: CHANGE: J OTHER REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: VANDYK-LAKEVIEW-DXE-WEST LIMITED

25 OTHER CHANGE: SUBORDINATION

26 REASON: 2471867 ONTARIO LIMITED HEREBY POSTPONES ITS FINANCING STATEMENT

27 /DESCR: REGISTERED UNDER FILE REFERENCE NUMBER 731262789, TO AND IN FAVOUR

28 : OF THE FINANCE STATEMENT IN FAVOUR OF WESTMOUNT GUARANTY SERVICES

02/05 IND/TRANSFEREE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : SCHNEIDER RUGGIERO SPENCER MILBURN LLP

17 ADDRESS : 1000-120 ADELAIDE STREET WEST

CITY : TORONTO PROV : ON POSTAL CODE : M5H 3V1

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 2 OF 4 ENQUIRY PAGE : 11 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE NUMBER 778522365

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 002 OF 2 MV SCHED: 20220314 1138 1590 2488
 21 REFERENCE FILE NUMBER : 778522365
 22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:
 23 REFERENCE DEBTOR/ IND NAME:
 24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON: INC. AS ADMINISTRATIVE AGENT FOR THE SURETY REGISTERED UNDER FILE

27 /DESCR: REFERENCE NUMBER 780729975.

28 :

02/05 IND/TRANSFeree:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 2 OF 4 ENQUIRY PAGE : 12 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED
FILE NUMBER 778522365

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 001 OF 2 MV SCHED: 20220317 0856 1590 3055
21 REFERENCE FILE NUMBER : 778522365
22 AMEND PAGE: NO PAGE: CHANGE: J OTHER REN YEARS: CORR PER:
23 REFERENCE DEBTOR/ IND NAME:
24 TRANSFEROR: BUS NAME: VANDYK-LAKEVIEW-DXE-WEST LIMITED

25 OTHER CHANGE: SUBORDINATION
26 REASON: DORR CAPITAL CORPORATION HEREBY POSTPONES ITS FINANCING STATEMENT
27 /DESCR: REGISTERED UNDER FILE REFERENCE NUMBER 778522365 WITH RESPECT TO THE
28 : DEPOSIT MONIES ONLY WHILE HELD BY THE ESCROW AGENT, TO AND IN FAVOUR
02/05 IND/TRANSFEREE:
03/06 BUS NAME/TRFEE:
OCN:
04/07 ADDRESS:
CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :
CITY : PROV : POSTAL CODE :
CONS. MV DATE OF NO FIXED
GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : SCHNEIDER RUGGIERO SPENCER MILBURN LLP
17 ADDRESS : 1000-120 ADELAIDE STREET WEST
CITY : TORONTO PROV : ON POSTAL CODE : M5H 3V1

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 2 OF 4 ENQUIRY PAGE : 13 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED
 FILE NUMBER 778522365

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 002 OF 2 MV SCHED: 20220317 0856 1590 3055
 21 REFERENCE FILE NUMBER : 778522365
 22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:
 23 REFERENCE DEBTOR/ IND NAME:
 24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON: OF THE FINANCE STATEMENT IN FAVOUR OF WESTMOUNT GUARANTY SERVICES
 27 /DESCR: INC. AS ADMINISTRATIVE AGENT FOR THE SURETY REGISTERED UNDER FILE
 28 : REFERENCE NUMBER 780729975.

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 14 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

00 FILE NUMBER : 780729975 EXPIRY DATE : 01MAR 2032 STATUS :
01 CAUTION FILING : PAGE : 001 OF 4 MV SCHEDULE ATTACHED :
REG NUM : 20220301 1016 1590 0312 REG TYP: P PPSA REG PERIOD: 10
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK-LAKEVIEW-DXE-WEST LIMITED
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
WESTMOUNT GUARANTEE SERVICES INC. AS ADMINISTRATIVE AGENT FOR THE
09 ADDRESS : 600 COCHRANE DRIVE, SUITE 205
CITY : MARKHAM PROV: ON POSTAL CODE: L3R 5K3
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION
13 SECURITY INTEREST IN ALL DEPOSIT MONIES (AND IN ALL WARRANTY
14 RETENTION MONIES REQUIRED TO BE DEPOSITED BY THE DEBTOR TO SECURE ANY
15 OUTSTANDING OBLIGATIONS TO OR IN FAVOUR OF THE SECURED PARTY)
16 AGENT: SCHNEIDER RUGGIERO SPENCER MILBURN LLP
17 ADDRESS : 1000-120 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 3V1

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 15 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

00 FILE NUMBER : 780729975 EXPIRY DATE : 01MAR 2032 STATUS :
 01 CAUTION FILING : PAGE : 002 OF 4 MV SCHEDULE ATTACHED :
 REG NUM : 20220301 1016 1590 0312 REG TYP: REG PERIOD:
 02 IND DOB : IND NAME:
 03 BUS NAME:
 OCN :
 04 ADDRESS :
 CITY : PROV: POSTAL CODE:
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

SURETY
 09 ADDRESS :
 CITY : PROV: POSTAL CODE:
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10
 YEAR MAKE MODEL V.I.N.
 11
 12

GENERAL COLLATERAL DESCRIPTION

13 TOGETHER WITH ALL INTEREST EARNED OR ACCRUED THEREON, PURSUANT TO A
 14 DEPOSIT TRUST AGREEMENT DATED FEBRUARY 23, 2022, AS MAY BE AMENDED OR
 15 SUPPLEMENTED HEREAFTER FROM TIME TO TIME, IN RESPECT OF A 315 UNIT

16 AGENT:

17 ADDRESS :
 CITY : PROV: POSTAL CODE:

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 16 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

00 FILE NUMBER : 780729975 EXPIRY DATE : 01MAR 2032 STATUS :
 01 CAUTION FILING : PAGE : 003 OF 4 MV SCHEDULE ATTACHED :
 REG NUM : 20220301 1016 1590 0312 REG TYP: REG PERIOD:
 02 IND DOB : IND NAME:
 03 BUS NAME:
 OCN :
 04 ADDRESS :
 CITY : PROV: POSTAL CODE:
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
 CITY : PROV: POSTAL CODE:
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10
 YEAR MAKE MODEL V.I.N.
 11
 12

GENERAL COLLATERAL DESCRIPTION

13 TARIO TYPE D CONDOMINIUM PROJECT MARKETED AS "LAKEVIEW DXE CLUB WEST
 14 CONDOMINIUM" TO BE MUNICIPALLY LOCATED AT 1338 ST. JAMES AVENUE,
 15 MISSISSAUGA, ONTARIO, OR SUCH OTHER ADDRESS AS THE CITY OF
 16 AGENT:
 17 ADDRESS :
 CITY : PROV: POSTAL CODE:

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 17 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

00 FILE NUMBER : 780729975 EXPIRY DATE : 01MAR 2032 STATUS :
01 CAUTION FILING : PAGE : 004 OF 4 MV SCHEDULE ATTACHED :
REG NUM : 20220301 1016 1590 0312 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 MISSISSAUGA MAY HEREAFTER DESIGNATE.
14
15
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK-LAKEVIEW-DXE-WEST LIMITED

FILE CURRENCY: November 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 4 ENQUIRY PAGE : 18 OF 18

SEARCH : BD : VANDYK-LAKEVIEW-DXE-WEST LIMITED

00 FILE NUMBER : 786086073 EXPIRY DATE : 24AUG 2027 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20220824 1208 2080 4245 REG TYP: P PPSA REG PERIOD: 05
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK-LAKEVIEW-DXE-WEST LIMITED
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
2471867 ONTARIO LIMITED
09 ADDRESS : 300 - 90 BURNHAMTHORPE ROAD WEST
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5B 3C3
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION

13 GENERAL SECURITY AGREEMENT

14

15

16 AGENT: LOOPSTRA NIXON LLP (JRH/02948-0003)

17 ADDRESS : 135 QUEENS PLATE DRIVE, SUITE 600

CITY : TORONTO PROV: ON POSTAL CODE: M9W 6V7

LAST SCREEN

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

TAB GGG

THIS IS **EXHIBIT "GGG"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

PRIORITY AGREEMENT

THIS AGREEMENT dated the 14th day of January, 2020.

B E T W E E N:

TRISURA GUARANTEE INSURANCE COMPANY
(hereinafter collectively called the "**Surety**")

- and -

MCAP FINANCIAL CORPORATION
(hereinafter called the "**Lender**")

WHEREAS:

1. **Vandyk-Uptowns Limited** (hereinafter called the "**Principal**") has executed a commitment letter with the Lender dated as of the 25th day of June, 2019, pursuant to which it has executed and delivered certain security to the Lender, including, without limitation, a charge of land dated the 14th day of January, 2020, in the principal amount of One Hundred Forty Million Dollars (\$140,000,000.00) (the "**First Charge**") and certain other security (all present and future security granted by the Principal to the Lender, collectively referred to herein as the "**Lender Security**").
2. The First Charge was registered in the Land Registry Office for the Regional Municipality of Peel (No. 43) on the 14th day of January, 2020, as Instrument No. PR3599910 against the lands described in PIN 14227-1291 (LT) and municipally known as 10302 Heartlake Road, Brampton, ON (hereinafter collectively called the "**Property**").

AND WHEREAS

3. Whereas all deposit monies received from time to time from purchasers of dwelling units in the condominium being developed by the Principal on the Property (the "**Project**") and accrued interest thereon (the "**Deposit Monies**") have (or will be) deposited in a designated trust account at the Meridian Credit Union Limited (the "**Designated Trust Account**");
4. By a mortgage (the "**Surety Mortgage**") made between the Principal as mortgagor and the Surety as mortgagee which Surety Mortgage was registered on the 14th day of May, 2019, in the said Land Registry Office (No. 43) as Instrument No. PR3479210, the Principal did mortgage the Property to the Surety to secure payment of the sum of Forty Five Million Seven Hundred Fifty Thousand Dollars (\$45,750,000.00) and interest as set out in the Surety Mortgage.
5. The Principal has granted to the Surety, pursuant to the provisions of the Surety Mortgage, security interests in certain of its personal property, including the Deposit Monies (all present and future security granted by the Principal to the Surety, including such security pursuant to the Surety Mortgage, hereinafter collectively referred to as the "**Surety Security**").
5. The parties hereto wish to record their agreement as to the priorities of the Lender Security and the Surety Security.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Lender agree as follows:


- (a) The Lender's Security and all amounts secured thereby (including all costs, charges and fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith but including advances made thereunder only to the extent of \$140,000,000.00, plus interest thereunder and secured thereby and all additional advances for construction cost overruns, shall be an encumbrance upon the Property prior to the Surety Security, and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Security, to and in favour of the Lender's Security, and to all amounts secured thereby (including all costs, charges, fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith), and to all advances made thereunder to the extent noted above and to all interest accruing thereunder and secured thereby. In order to give effect to this postponement and subordination, the Surety releases to the Lender all of its rights and claims to priority with respect to the Surety Security, to the extent noted above.
- (b) Subject to the provisions of paragraph (a) above, the Surety Security shall at all times be postponed to (and shall correspondingly rank subordinate to) the Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain the Designated Trust Account, in respect of which the Lender Security shall constitute a second charge and security interest in the Deposit Monies.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Lender Security and the Surety Security, in whole or in part, or the date of attachment or perfection of any security interest(s) granted thereby, the date of any advance(s), the date of any default(s), or any other matter(s). Each of the parties hereto agrees that it shall not claim against the others the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out herein.

- (d) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Principal except in respect of the Project, while any amounts under the Lender Security remains unpaid.
- (e) The Surety and the Lender hereby consent to the granting of the security by the Principal referred to herein, and shall at all times (and from time to time) execute and deliver to the others all such further documents, agreements or other assurances as may be necessary to give effect to this agreement, and to carry out the intent hereof.
- (f) Nothing herein shall affect the rights of the Surety and the Lender, respectively against the Principal. The provisions of this agreement shall enure to the benefit of, and be correspondingly binding upon, the Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (g) The Surety will authorize the release of the Deposit Monies in accordance with the terms and conditions letter relating to the Excess Condominium Deposit Insurance (the "ECDI") facility issued by the Surety and dated the 26th day of April, 2019 (the "Terms and Conditions Letter").
- (h) The Surety hereby covenants, agrees and undertakes to and with the Lender to:
- i) execute and deliver any usual documentation required in connection with the development and registration of the Property as a Condominium;
 - ii) deliver (or cause to be registered electronically), without any payment therefor, partial discharges of their respective mortgage security against the Property, namely the Surety Security, in respect of each of the condominium units (and their appurtenant common interests) which have been sold.
- (i) Provided the Construction Lender continues to advance monies under and in accordance with the commitment letter dated June 25, 2019, and the Construction Lender Security in connection with the development and construction of the condominium at the Property irrespective of the Principal's default, and provided the Construction Lender will honour the existing agreements of purchase and sale and transfer title to those purchasers for whom the Surety has insured their Deposits (excluding those purchasers whose agreements have been terminated because of fundamental breach of contract committed by them), then the Surety hereby covenants and agrees that from and after the date hereof, to and until the date of repayment of the outstanding indebtedness secured under the Construction Lender Security and the complete discharge thereof (which period of time is hereinafter referred to as the "Standstill Period"), the Surety hereby agrees that it shall not take any steps to enforce the Surety Security with respect to all or any part of the Property or against the Principal without reasonable prior notice to and the written consent of the Construction Lender, which consent may be given or withheld by the Construction Lender in its sole discretion. The Surety shall not challenge, contest or bring into question the validity or priority of the Charge or any enforcement action taken by the Construction Lender under or in respect of the Charge or the Construction Lender Security against all or any part of the Property or against the Principal.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.


TRISURA GUARANTEE INSURANCE COMPANY

Per: 
 Name: Alastair Cartwright
 Title: Manager, Developer Surety


Per: 
 Name: Frankie Perce
 Title: Financial Analyst, Developer Surety

I/We have authority to bind the Corporation

MCAP FINANCIAL CORPORATION

Per:  _____

Name: **PHILIP FRANK**
Title: **NATIONAL DIRECTOR**

Per:  _____

Name: **BRUNO IACOVETTA**
Title: **MANAGING DIRECTOR**
DEVELOPMENT FINANCE GROUP

I/We have authority to bind the Corporation

K:\Clients O to Z\Trisura Guarantee Insurance Company\Vandyk-Uptowns Limited 39342\Documents\Priority Agreement
MCAP_new.docx

TAB HHH

THIS IS **EXHIBIT "HHH"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of June 7, 2022 between Trisura Guarantee Insurance Company (the "**Lender**"), KingSett Mortgage Corporation (the "**Subordinate Lender**"), Vandyk-Uptowns Limited (the "**Borrower**") and John Vandyk (the "**Guarantor**").

WHEREAS the Subordinate Lender has made or will make a loan or credit facility (the "**Subordinate Loan**") available to the Borrower which is secured or will be secured by the following security: (a) a third charge of the lands and premises described in Schedule "A" hereto (the "**Property**") registered in the Land Registry Office for the Land Titles Division of Peel (the "**LRO**") on the date hereof as Instrument No. PR4070552; (b) a general assignment of leases and rents registered in the LRO on the date hereof as Instrument No. PR4070553; and (c) a general security agreement dated the date hereof filed under the *Personal Property Security Act* (Ontario), as amended (the "**PPSA**"), as Registration No. 20220601 1206 9234 2983, Reference File No. 783544473 (the Subordinate Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower and the Guarantor to the Subordinate Lender thereunder from time to time are herein called the "**Subordinate Indebtedness**", and such security, including all other additional or collateral security granted by the Borrower or the Guarantor now or hereafter securing the Subordinate Indebtedness, is herein called the "**Subordinate Security**");

AND WHEREAS the Lender agreed to make a loan (the "**Prior Loan**") to the Borrower in the original principal sum of \$45,750,000.00 which is secured by the following security: (a) a second charge of the Property registered in the LRO on May 14, 2019 as Instrument No. PR3479210; and (b) a deposit security agreement dated May 30, 2017, registered under the PPSA as Registration No. 20170608 0927 1862 6423, Reference File No. 728510535 (the Prior Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower and the Guarantor to the Lender thereunder from time to time are herein called the "**Prior Indebtedness**", and such security, including all other additional or collateral security granted by the Borrower or the Guarantor now or hereafter securing the Prior Indebtedness, is herein called the "**Prior Security**");

AND WHEREAS the Subordinate Lender has agreed to subordinate and postpone the Subordinate Indebtedness and the Subordinate Security to and in favour of the Prior Indebtedness and the Prior Security. Reference herein to the Subordinate Indebtedness, Subordinate Security, Prior Indebtedness and Prior Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time, provided that there is no increase in the principal amount of the Prior Indebtedness and Prior Security (save and except for any advances relating to cost overruns or protective disbursements) nor any increase in the rate of interest applicable to any portion of the Prior Indebtedness;

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties agree as follows:

1. **Covenants, Representations and Warranties of Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security and represents and warrants to the Lender that the Subordinate Indebtedness and the Subordinate Security are in good standing, unamended, and that neither the Borrower nor the Guarantor is in default thereunder. Upon request by the Lender from time to time, the Subordinate Lender shall provide to the Lender copies of the Subordinate Security and/or a statement confirming the status thereof, including the amount of the Subordinate Indebtedness then outstanding, the then applicable interest rate and payment terms and particulars of all existing or alleged defaults by the Borrower, the Guarantor, or any other covenantor with respect to the Subordinate Indebtedness (a "**Covenantor**") in respect thereof.

2. **Covenants, Representations and Warranties of Lender.** The Lender consents to the registration of a subsequent charge against the Property in the face amount of \$68,750,000.00 and a related assignment of rents securing credit facilities in the amount of \$55,000,000.00, and to a security agreement delivered by, *inter alios*, the Borrower in connection therewith. The Lender represents and warrants to the Subordinate Lender that the Prior Indebtedness and the Prior Security are in good standing, unamended, and that neither the Borrower nor the Guarantor is in default thereunder.

3. **Subordination and Postponement.** The Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness to the Prior Security and the Prior Indebtedness to the extent of the maximum principal amount of the Prior Indebtedness of \$36,600,000.00, which priority limit will reduce to the extent that: (a) any principal is repaid to the Lender on account of non-revolving Prior Indebtedness; or (b) the authorized limit of the principal amount of the Prior Indebtedness is permanently reduced, and agrees with the Lender that the Prior Security shall be a second priority lien and charge against the Property for the full amount of the Prior Indebtedness in full priority to the Subordinate Security. Any deposits released in excess of \$23,703,427 required as a source of funds shall reduce the availability of the construction loan on a dollar for dollar basis. The Subordinate Lender shall not accept any money or other property from the Borrower or the Guarantor in payment of the Subordinate Indebtedness (save and except for fees and monthly payments of accrued interest of such indebtedness and liability or as otherwise set forth in Section 9) until the Prior Indebtedness has been repaid in full. No discharge, release or waiver by the Lender of any of the Prior Security against or in respect of any part of the Property or any person, or any amendment, replacement, modification, supplement or restatement of any Prior Indebtedness and/or the Prior Security, shall otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender, provided that there shall be no increase in the principal amount of the Prior Indebtedness and Prior Security (save and except for any advances relating to cost overruns or protective disbursements) nor any increase in the rate of interest, the method of calculating the interest rate applicable thereto which results in an increase in the amount of interest payable nor any change to the amortization period (if applicable) during the term of the Prior Indebtedness without, in each case, notice to and the consent of the Subordinate Lender. The Subordinate Lender shall not amend, modify, replace, supplement or restate the Subordinate Indebtedness or the Subordinate Security without the prior written consent of the Lender, such consent not to be unreasonably withheld, provided however that the Subordinate Lender shall not be required to obtain consent with respect to certain extension rights as set out in the Subordinate Security. The Lender hereby acknowledges that, subject to Section 6, the maximum amount which could be outstanding under the Prior Loan is \$36,600,000.00 plus interest and costs and further amounts advanced for cost overruns.

4. **Rights of Subordinate Lender regarding Default.** In the event that the Borrower or the Guarantor is in default under the Prior Security, the Subordinate Lender shall have the right (but without obligation) to cure any default under the Prior Security within the applicable curing period (if any) under the Prior Security relating thereto. In addition, with respect to any monetary default under the Prior Security, the Subordinate Lender shall be entitled (but without obligation) to cure any such default within the period that is ten (10) Business Days beyond any applicable curing period under the Prior Security relating thereto (or, if there is no applicable curing period, that is ten (10) Business Days beyond the date on which the Subordinate Lender receives notice of such default). Further, with respect to any default under the Prior Security that has resulted in the Lender demanding repayment of the entire Prior Indebtedness, or should the Borrower or the Guarantor be in default under the Subordinate Security, the Subordinate Lender shall be entitled (but without obligation) until such time that: (a) the Prior Indebtedness has been repaid in full; (b) the demand for repayment has been withdrawn; or (c) such default has been cured, to provide notice (the "**Purchase Notice**") of its intention to repay the then outstanding amount of the Prior Indebtedness, excluding any exit fees, prepayment fees, yield maintenance payments or similar prepayment charges, any additional liquidated damages amounts, and any amounts charged in violation of applicable law (collectively, the "**Purchased Indebtedness**"). Within the period that is twenty (20) Business Days after

the date that the Purchase Notice is received by the Lender the Subordinate Lender shall pay to the Lender an amount equal to the Purchased Indebtedness and upon receipt by the Lender of the Purchased Indebtedness the Subordinate Lender shall be entitled to an assignment of, and the Lender hereby covenants and agrees to complete an assignment of, all of the Prior Security and the Prior Indebtedness to the Subordinate Lender. In this Agreement, "**Business Day**" means a day other than a Saturday, a Sunday, or a statutory or civic holiday in the Province of Ontario.

5. **Cost Overruns.** In the event there are cost overruns in relation to the development or construction of the Property by the Borrower, the Lender shall require that the amount of any such overruns be paid by the Borrower. In the event the Borrower is not able or fails to pay such cost overruns, then, prior to the Lender making any advances under the Prior Loan with regard to such overruns, the Lender shall give written notice to the Subordinate Lender of the requirement for the amount of such cost overruns to be advanced, and the Subordinate Lender shall have ten (10) Business Days from the date of receipt of such written notice to advise the Lender that the Subordinate Lender wishes to increase the Subordinate Loan by the amount of such overruns, and advance such amount to the Borrower, failing which the Lender shall be entitled, in its sole discretion, to advance the amount of such cost overruns, provided that, in any event, the amount to be advanced for any such cost overruns must be mutually agreed to by the parties hereto. In the event the Subordinate Lender advances the amount of such cost overruns to the Borrower, such amounts shall be secured under the Subordinate Security, shall form part of the Subordinate Indebtedness, and shall be subordinated and postponed to the Prior Security and the Prior Indebtedness to the full extent provided for in Section 3. In the event the Lender advances the amount of such cost overruns to the Borrower (a "**Cost Overrun Advance**"), each such Cost Overrun Advance shall be secured under the Prior Security and form part of the Prior Indebtedness, and the Subordinate Lender agrees: (a) that the maximum principal amount of the Prior Indebtedness set out in Section 3 shall be automatically increased by the amount of each such Cost Overrun Advance; and (b) to execute such amendments to this Agreement and such registrable postponements of the Subordinate Security and other documents as the Lender may reasonably require in connection with such Cost Overrun Advance.

6. **Free Partial Discharges and Postponements.** The Subordinate Lender covenants and agrees that it will, at no expense to the Lender:

- (a) execute such postponements and partial discharges of its security as may be required to convey any part of the Property to bona fide purchasers of lots/units comprising the Property at the minimum sale prices as set out in the minimum price schedule attached hereto as Schedule "B" and further provided that the Prior Security is also discharged from such lots/unit; or, to convey and/or grant easements over the Project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender and the Subordinate Lender in respect of the Project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided however, that any monies received by the Borrower from such purchasers or governmental authorities in connection therewith shall be remitted to the Lender until the Prior Indebtedness is paid in full and the Prior Security is discharged and then shall be remitted to the Subordinate Lender until the Subordinate Indebtedness is paid in full and the Subordinate Security is discharged; and
- (b) execute any and all plans and documents required to facilitate development of the Project and to re-zone the Property, if necessary, and to co-operate in all respects (but without requirement to expend funds) to facilitate such registration and re-zoning including, without limitation, the execution of agreements with any relevant governmental authorities or utilities which may be required for such registration or rezoning.

7. **Payments.** After receiving notice of a default under the Prior Loan, the Subordinate Lender agrees that: (a) all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property (collectively, the "**Rents**") shall not be applied to any payment on account of the Subordinate Indebtedness until the Prior Indebtedness is paid in full or until such default has been cured; and (b) it shall not accept any payment on account of the Subordinate Indebtedness which the Subordinate Lender knows or reasonably ought to know are payments made from Rents, and if any such payments are received, the Subordinate Lender shall immediately pay such amount to the Lender without deduction unless otherwise approved by the Lender. Notwithstanding the foregoing, the Subordinate Lender shall be entitled to payment of any interest owing on the Subordinate Indebtedness or any other payments on account of the Subordinate Indebtedness in accordance with Section 9 from an interest reserve established at any time for such purpose. All expropriation and condemnation proceeds relating to the Property shall be dealt with and applied, whether before or after any default under or in respect of the Prior Loan or the Subordinate Loan, in accordance with the provisions of the Prior Security and notwithstanding any provision to the contrary in the Subordinate Security. The Lender and the Subordinate Lender shall provide reasonable co-operation to each other following the giving of such notice of default to ensure the provisions of this Section 7 are complied with. For greater clarity, the Lender agrees that the Subordinate Lender shall be entitled to accept the full repayment of the Subordinate Indebtedness from the Borrower on maturity of the Subordinate Loan or in accordance with the Subordinate Security.

8. **Standstill.** From and after the date hereof, to and until the date of repayment in full of the Prior Indebtedness and the discharge of the Prior Security, save and except for the exercise of the Subordinate Lender's rights pursuant to Section 9, and for the giving of, or making a demand for payment, and the issuance of a notice of intention to enforce security to the Borrower and the Guarantor, the Subordinate Lender shall not take any Enforcement Action under or in respect to the Subordinate Indebtedness or the Subordinate Security with respect to all or any part of the Property or against the Borrower or the Guarantor without reasonable prior notice to and the written consent of the Lender, which consent may be given or withheld by the Lender in its sole discretion; provided that, if the Lender fails to initiate any Enforcement Action within ninety (90) days after the delivery of a notice of default under the Subordinate Loan or if the Lender has commenced and discontinued Enforcement Action, the Subordinate Lender may take any and all such actions without the Lender's consent but on at least two (2) Business Days' prior written notice to the Lender, which notice shall specify the proposed Enforcement Action to be taken by the Subordinate Lender. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Lender under or in respect of the Prior Indebtedness or the Prior Security against the Borrower, the Guarantor or against all or any part of the Property. In this Agreement "**Enforcement Action**" means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of rents, taking possession or control of any property or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

9. **Rights of Subordinate Lender against Covenants and Subordinate Collateral.** Nothing in this Agreement shall prevent the Subordinate Lender from accepting payment, whether before or after any default under or in respect of the Prior Loan or the Subordinate Loan, on account of the Subordinate Indebtedness from any Covenantor or with respect to any other real or personal property other than the Property (collectively, the "**Subordinate Collateral**") securing the Subordinate Indebtedness under security documents with respect to the Subordinate Loan other than the Subordinate Security (collectively, the "**Subordinate Collateral Security**"). The Lender agrees that the Subordinate Lender may take any Enforcement Action under or in respect of the Subordinate Indebtedness or the Subordinate Collateral

Security with respect to all or any part of the Subordinate Collateral or against any Covenantor without the Lender's consent but on at least two (2) Business Days' prior written notice to the Lender, which notice shall specify the proposed Enforcement Action to be taken by the Subordinate Lender. The Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Subordinate Collateral Security or any Enforcement Action taken by the Subordinate Lender under or in respect of the Subordinate Indebtedness or the Subordinate Collateral Security against any Covenantor or against all or any part of the Subordinate Collateral. For greater certainty, the Subordinate Lender shall not accept any money or other property from the Borrower or the Guarantor in payment of the Subordinate Indebtedness (save and except as otherwise contemplated in Section 3 and Section 7) until the Prior Indebtedness has been repaid in full.

10. **Assignment.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Indebtedness, the Subordinate Security or this Agreement to any person or persons except upon terms and conditions which are expressly subject to the terms of this Agreement and provided that the Subordinate Lender shall notify the Lender of any such transfer or assignment forthwith upon the completion thereof. The Lender may transfer or assign its interest in the Prior Indebtedness, the Prior Security and this Agreement, provided that the Lender shall notify the Subordinate Lender of any such transfer or assignment forthwith and provided any such assignee agrees to be bound by the terms and conditions of this Agreement as if it was named herein as the Lender.

11. **Further Assurances.** The Subordinate Lender shall execute upon request by the Lender such further documents or instruments and take such further action as the Lender may reasonably require from time to time to carry out the intent of this Agreement, including, without limitation, executing and delivering any short form subordination and postponement agreement or instrument to register or record or file notice of the subordination and postponement of the Subordinate Indebtedness and the Subordinate Security on title to the Property and/or in any other office of public record and to give notice to third parties of the provisions of this Agreement.

12. **Notices.** Any notice, demand or other communication which any party may desire or may be required to give to any other party shall be in writing and may be made or given by personal delivery, by registered mail or by facsimile or other electronic transmission to the address for service of the recipient set forth below. Any demand, notice or communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, and if given by registered mail, on the third (3rd) Business Day following the deposit thereof in the mail, and if given by facsimile or other electronic transmission, on the first (1st) Business Day following the transmittal thereof. The address for service for each party is as follows: (a) if to the Lender, 333 Bay Street, Suite 1610, Box 22, Toronto, Ontario M5H 2R2, Fax No. ●, Email ● [NTD: to be completed]; and (b) if to the Subordinate Lender, c/o Dorr Capital Corporation, 41 Scarsdale Road, Unit 6, Toronto, Ontario M3B 2R2, Email JWong@DorrCapital.com. If any party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal system that might affect delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by facsimile or other electronic transmission. Any party hereto may change its address for service to which notices hereunder are required to be made or given by notice to other parties in accordance herewith.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province in which the Property is located and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Agreement; and the Subordinate Lender consents to the jurisdiction for the courts of such Province and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts and the Subordinate Lender unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably

agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein shall affect the right to serve process in any other manner permitted by law.

14. **Successors.** The acknowledgements and agreements contained in this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns. Where any reference is made in this Agreement to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust.

15. **Counterparts.** This Agreement may be executed (including by DocuSign or other electronic means) in any number of counterparts and delivered (including by DocuSign or other electronic means) in any number of counterparts, each of which (including any electronic transmission of an executed signature page), is deemed to be an original, and such counterparts together constitute one and the same agreement.

16. **Electronic Execution of Agreement and Certain Other Documents.** The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada) and the *Electronic Commerce Act, 2000* (Ontario), or any other similar laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada.

17. **Reciprocal Notice.** Any default notice sent by the Lender to the Borrower as provided herein shall also at the same time be sent to the Subordinate Lender provided that the failure to provide notice will not attract any liability or damages against the Lender. Any default notice sent by the Subordinate Lender to the Borrower as provided herein shall also at the same time be sent to the Lender provided that the failure to provide notice will not attract any liability or damages against the Subordinate Lender.

18. **Further Assurances by the Borrower and the Guarantor.** The Borrower and the Guarantor hereby acknowledge this Agreement and the subordination of the priority of the Subordinate Indebtedness and the Subordinate Security to the Prior Indebtedness and the Prior Security to the same effect as if all monies secured or intended to be secured by the Prior Security were events prior to the creation and registration of the Subordinate Security and the advance of any monies secured by the Subordinate Security as have been or will be advanced, and the Borrower and the Guarantor expressly agrees to perform its obligations to the Lender and the Subordinate Lender, to hold and deal with the Property in accordance with the priorities set out in this Agreement, and to execute any instruments giving effect to such subordination and postponement as may be required by the Lender or Subordinate Lender from time to time for such purpose.

19. **No Rights Conferred on Borrower or Guarantor.** Nothing in this Agreement will be construed as conferring any rights upon the Borrower, the Guarantor, any Covenantor or any other third party. The terms and conditions hereof are and will be for the sole and exclusive benefit of the Lender and the Subordinate Lender.

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20. **Paramountcy.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior proposals and agreements, whether oral or written. In the event of any conflict, omission, inconsistency, ambiguity or difference between the provisions of this Agreement and the provisions of any of the Prior Security or the Subordinate Security, the provisions of this Agreement shall govern and be paramount to the extent necessary to resolve such conflict or inconsistency so long as this Agreement is in force.

21. **Amendment of Agreement.** No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Lender and the Subordinate Lender. The parties agree that the consent of the Borrower or the Guarantor shall not be required for any such supplement, modification, waiver or termination.

-- signatures follow on next page -


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

KINGSETT MORTGAGE CORPORATION


Per: _____
Name:
Title:

TRISURA GUARANTEE INSURANCE COMPANY

Per: 
Name: Frankie Porco
Title: Manager, Developer Surety

Per: 
Name: Victor A. Bandiera, P. Eng.
Title: Senior Vice President,
Underwriting and Construction Services

VANDYK-UPTOWNS LIMITED

Per: 
Name: Richard Wain
Title: CFO

Per: _____
Name:
Title:

Witness: 


JOHN VANDYK

SCHEDULE "A"**LANDS****Municipal Address:**

10302 Heart Lake Road, Brampton, Ontario

Legal Description:**PIN 14227-1291 (LT):**

PT LOT 12, CONCESSION 2, EHS DES PT 1, PL 43R33117; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1, 43R35581 AS IN PR2508870; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3253482; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3770466; SUBJECT TO AN EASEMENT AS IN PR3853334; CITY OF BRAMPTON

SCHEDULE "B"
MINIMUM PRICE SCHEDULE

Uptowns

No	Subd	Block	Phase	Collection	Dist	Purchase Price	PSF	Minimum Net Closing Proceeds
1	101	1	1	Garden Towns	01	\$489,990	\$35,132	\$454,858
2	102	1	1	Garden Towns	02	\$449,990	\$28,917	\$421,073
3	103	1	1	Garden Towns	03	\$449,990	\$28,917	\$421,073
4	104	1	1	Garden Towns	04	\$449,990	\$28,917	\$421,073
5	105	1	1	Garden Towns	05	\$449,990	\$28,917	\$421,073
6	106	1	1	Garden Towns	06	\$449,990	\$28,917	\$421,073
7	107	1	1	Garden Towns	07	\$464,990	\$31,344	\$433,646
8	108	1	1	Garden Towns	08	\$449,990	\$28,917	\$421,073
9	109	1	1	Garden Towns	09	\$449,990	\$28,917	\$421,073
10	110	1	1	Garden Towns	10	\$489,990	\$35,132	\$454,858
11	111	1	1	Urban Towns	01	\$464,990	\$31,344	\$433,646
12	112	1	1	Rooftop Towns	02	\$579,990	\$45,486	\$534,504
13	113	1	1	Rooftop Towns	03	\$579,990	\$45,486	\$534,504
14	114	1	1	Urban Towns	04	\$439,990	\$27,299	\$412,691
15	115	1	1	Rooftop Towns	05	\$549,990	\$42,034	\$507,956
16	116	1	1	Rooftop Towns	06	\$549,990	\$42,034	\$507,956
17	117	1	1	Urban Towns	07	\$439,990	\$27,299	\$412,691
18	118	1	1	Rooftop Towns	08	\$549,990	\$42,034	\$507,956
19	119	1	1	Rooftop Towns	09	\$579,990	\$45,486	\$534,504
20	120	1	1	Urban Towns	10	\$439,990	\$27,299	\$412,691
21	121	1	1	Rooftop Towns	11	\$579,990	\$45,486	\$534,504
22	122	1	1	Rooftop Towns	12	\$579,990	\$45,486	\$534,504
23	123	1	1	Urban Towns	13	\$464,990	\$31,344	\$433,646
24	124	1	1	Rooftop Towns	14	\$614,990	\$49,512	\$565,478
25	125	1	1	Rooftop Towns	15	\$614,990	\$49,512	\$565,478
26	126	1	1	Urban Towns	16	\$464,990	\$31,344	\$433,646
27	127	1	1	Rooftop Towns	17	\$579,990	\$45,486	\$534,504
28	128	1	1	Rooftop Towns	18	\$579,990	\$45,486	\$534,504
29	129	1	1	Urban Towns	19	\$439,990	\$27,299	\$412,691
30	130	1	1	Rooftop Towns	20	\$579,990	\$45,486	\$534,504
31	131	1	1	Rooftop Towns	21	\$579,990	\$45,486	\$534,504
32	132	1	1	Urban Towns	22	\$439,990	\$27,299	\$412,691
33	133	1	1	Rooftop Towns	23	\$579,990	\$45,486	\$534,504
34	134	1	1	Rooftop Towns	24	\$579,990	\$45,486	\$534,504
35	135	1	1	Urban Towns	25	\$439,990	\$27,299	\$412,691
36	136	1	1	Rooftop Towns	26	\$579,990	\$45,486	\$534,504
37	137	1	1	Rooftop Towns	27	\$579,990	\$45,486	\$534,504
38	138	1	1	Urban Towns	28	\$464,990	\$31,344	\$433,646
39	139	1	1	Rooftop Towns	29	\$614,990	\$49,512	\$565,478
40	140	1	1	Rooftop Towns	30	\$624,990	\$50,663	\$574,327
41	201B	2	1	Garden Towns	11	\$339,990	\$16,006	\$323,984
42	201A	2	1	Garden Towns	12	\$324,990	\$16,064	\$308,926
43	202	2	1	Garden Towns	13	\$899,990	\$82,300	\$817,690
44	203A	2	1	Garden Towns	14	\$324,990	\$16,064	\$308,926
45	203B	2	1	Garden Towns	15	\$649,990	\$33,539	\$595,451
46	204	2	1	Garden Towns	16	\$534,990	\$40,309	\$494,681
47	205	2	1	Garden Towns	17	\$290,990	\$14,028	\$285,162
48	206	2	1	Garden Towns	18	\$299,990	\$14,826	\$285,162
49	207	2	1	Garden Towns	19	\$539,990	\$40,884	\$499,106
50	208	2	1	Urban Towns	31	\$499,990	\$26,282	\$463,708

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No	Suite	Block	Phase	Collection	Unit	Purchase Price	BST	Minimum Net Closing Proceeds
51	209	2	1	Rooftop Towns	32	\$589,990	\$46,636	\$543,354
52	210	2	1	Rooftop Towns	33	\$559,990	\$43,185	\$516,805
53	211	2	1	Urban Towns	34	\$469,990	\$32,153	\$437,837
54	212	2	1	Rooftop Towns	35	\$589,990	\$46,636	\$543,354
55	213	2	1	Rooftop Towns	36	\$584,990	\$46,061	\$538,929
56	214	2	1	Urban Towns	37	\$494,990	\$35,707	\$459,283
57	215	2	1	Rooftop Towns	38	\$664,990	\$55,264	\$609,726
58	216	2	1	Rooftop Towns	39	\$614,990	\$49,512	\$565,478
59	217	2	1	Urban Towns	40	\$464,990	\$31,344	\$433,646
60	218	2	1	Rooftop Towns	41	\$579,990	\$45,486	\$534,504
61	219	2	1	Rooftop Towns	42	\$579,990	\$45,486	\$534,504
62	220	2	1	Urban Towns	43	\$439,990	\$27,299	\$412,691
63	221	2	1	Rooftop Towns	44	\$579,990	\$45,486	\$534,504
64	222	2	1	Rooftop Towns	45	\$549,990	\$42,034	\$507,956
65	223	2	1	Urban Towns	46	\$469,990	\$32,153	\$437,837
66	224	2	1	Rooftop Towns	47	\$619,990	\$50,087	\$569,903
67	225	2	1	Rooftop Towns	48	\$669,990	\$55,840	\$614,150
68	301B	3	2	Garden Towns	20	\$334,990	\$16,558	\$318,432
69	301A	3	2	Garden Towns	21	\$324,990	\$16,064	\$308,926
70	302	3	2	Garden Towns	22	\$539,990	\$40,884	\$499,106
71	303A	3	2	Garden Towns	23	\$324,990	\$16,064	\$308,926
72	303B	3	2	Garden Towns	24	\$334,990	\$16,558	\$318,432
73	304	3	2	Garden Towns	25	\$939,990	\$86,902	\$853,088
74	305	3	2	Garden Towns	26	\$309,990	\$15,323	\$294,667
75	306	3	2	Garden Towns	27	\$309,990	\$15,323	\$294,667
76	307	3	2	Garden Towns	28	\$534,990	\$40,309	\$494,681
77	308	3	2	Urban Towns	49	\$514,990	\$38,008	\$476,982
78	309	3	2	Rooftop Towns	50	\$1,019,990	\$96,105	\$923,885
79	310	3	2	Rooftop Towns	51	\$994,990	\$93,229	\$901,761
80	311	3	2	Urban Towns	52	\$479,990	\$33,770	\$446,220
81	312	3	2	Rooftop Towns	53	\$1,019,990	\$96,105	\$923,885
82	313	3	2	Rooftop Towns	54	\$624,990	\$50,663	\$574,327
83	314	3	2	Urban Towns	55	\$504,990	\$36,857	\$468,133
84	315	3	2	Rooftop Towns	56	\$674,990	\$56,415	\$618,575
85	316	3	2	Rooftop Towns	57	\$639,990	\$52,388	\$587,602
86	317	3	2	Urban Towns	58	\$474,990	\$32,962	\$442,028
87	318	3	2	Rooftop Towns	59	\$1,009,990	\$94,955	\$915,035
88	319	3	2	Rooftop Towns	60	\$589,990	\$46,636	\$543,354
89	320	3	2	Urban Towns	61	\$449,990	\$28,917	\$421,073
90	321	3	2	Rooftop Towns	62	\$589,990	\$46,636	\$543,354
91	322	3	2	Rooftop Towns	63	\$589,990	\$46,636	\$543,354
92	323	3	2	Urban Towns	64	\$474,990	\$32,962	\$442,028
93	324	3	2	Rooftop Towns	65	\$639,990	\$52,388	\$587,602
94	325	3	2	Rooftop Towns	66	\$674,990	\$56,415	\$618,575
95	401	4	2	Garden Towns	29	\$539,990	\$40,884	\$499,106
96	402	4	2	Garden Towns	30	\$539,990	\$40,884	\$499,106
97	403	4	2	Garden Towns	31	\$564,990	\$43,760	\$521,230
98	404	4	2	Garden Towns	32	\$534,990	\$40,309	\$494,681
99	405	4	2	Garden Towns	33	\$314,990	\$15,570	\$299,420
100	406	4	2	Garden Towns	34	\$314,990	\$15,570	\$299,420

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No.	Suite	Block	Phase	Collection	Unit	Purchase Price	HST	Minimum Net Closing Proceeds
101	407	4	2	Garden Towns	35	\$534,990	\$40,309	\$494,681
102	408	4	2	Urban Towns	67	\$504,990	\$36,857	\$468,133
103	409	4	2	Rooftop Towns	68	\$599,990	\$47,786	\$552,204
104	410	4	2	Rooftop Towns	69	\$999,990	\$93,804	\$906,186
105	411	4	2	Urban Towns	70	\$479,990	\$33,770	\$446,220
106	412	4	2	Rooftop Towns	71	\$999,990	\$93,804	\$906,186
107	413	4	2	Rooftop Towns	72	\$999,990	\$93,804	\$906,186
108	414	4	2	Urban Towns	73	\$514,990	\$38,008	\$476,982
109	415	4	2	Rooftop Towns	74	\$1,014,990	\$95,530	\$919,460
110	416	4	2	Rooftop Towns	75	\$639,990	\$52,388	\$587,602
111	417	4	2	Urban Towns	76	\$484,990	\$34,556	\$450,434
112	418	4	2	Rooftop Towns	77	\$564,990	\$43,760	\$521,230
113	419	4	2	Rooftop Towns	78	\$969,990	\$90,353	\$879,637
114	420	4	2	Urban Towns	79	\$459,990	\$30,535	\$429,455
115	421	4	2	Rooftop Towns	80	\$589,990	\$46,636	\$543,354
116	422	4	2	Rooftop Towns	81	\$969,990	\$90,353	\$879,637
117	423	4	2	Urban Towns	82	\$474,990	\$32,962	\$442,028
118	424	4	2	Rooftop Towns	83	\$989,990	\$92,654	\$897,336
119	425	4	2	Rooftop Towns	84	\$674,990	\$56,415	\$618,575
120	501	5	3	Garden Towns	36	\$549,990	\$42,034	\$507,956
121	502	5	3	Garden Towns	37	\$539,990	\$40,884	\$499,106
122	503	5	3	Garden Towns	38	\$909,990	\$83,450	\$826,540
123	504	5	3	Garden Towns	39	\$544,990	\$41,459	\$503,531
124	505	5	3	Garden Towns	40	\$334,990	\$26,558	\$318,432
125	506	5	3	Garden Towns	41	\$344,990	\$27,053	\$327,937
126	507	5	3	Garden Towns	42	\$544,990	\$41,459	\$503,531
127	508	5	3	Urban Towns	85	\$539,990	\$40,884	\$499,106
128	509	5	3	Rooftop Towns	86	\$1,039,990	\$98,406	\$941,584
129	510	5	3	Rooftop Towns	87	\$1,029,990	\$97,255	\$932,735
130	511	5	3	Urban Towns	88	\$529,990	\$39,733	\$490,257
131	512	5	3	Rooftop Towns	89	\$1,029,990	\$97,255	\$932,735
132	513	5	3	Rooftop Towns	90	\$619,990	\$50,087	\$569,903
133	514	5	3	Urban Towns	91	\$539,990	\$40,884	\$499,106
134	515	5	3	Rooftop Towns	92	\$669,990	\$55,840	\$614,150
135	516	5	3	Rooftop Towns	93	\$634,990	\$51,813	\$583,177
136	517	5	3	Urban Towns	94	\$499,990	\$36,282	\$463,708
137	518	5	3	Rooftop Towns	95	\$1,009,990	\$94,955	\$915,035
138	519	5	3	Rooftop Towns	96	\$594,990	\$47,211	\$547,779
139	520	5	3	Urban Towns	97	\$479,990	\$33,770	\$446,220
140	521	5	3	Rooftop Towns	98	\$594,990	\$47,211	\$547,779
141	522	5	3	Rooftop Towns	99	\$564,990	\$43,760	\$521,230
142	523	5	3	Urban Towns	100	\$509,990	\$37,432	\$472,558
143	524	5	3	Rooftop Towns	101	\$989,990	\$92,654	\$897,336
144	525	5	3	Rooftop Towns	102	\$669,990	\$55,840	\$614,150
145	601B	6	3	Garden Towns	43	\$379,990	\$29,584	\$350,406
146	601A	6	3	Garden Towns	44	\$369,990	\$28,410	\$341,580
147	602	6	3	Garden Towns	45	\$559,990	\$43,185	\$516,805
148	603A	6	3	Garden Towns	46	\$369,990	\$28,410	\$341,580
149	603B	6	3	Garden Towns	47	\$389,990	\$29,758	\$360,232
150	604	6	3	Garden Towns	48	\$544,990	\$41,459	\$503,531

B-4

No.	Suite	Block	Phase	Collection	Unit	Purchase Price	HST	Minimum Net Closing Proceeds
151	605	6	3	Garden Towns	49	\$349,990	\$17,300	\$332,690
152	606	6	3	Garden Towns	50	\$299,990	\$14,828	\$285,162
153	607	6	3	Garden Towns	51	\$544,990	\$41,459	\$503,531
154	608	6	3	Urban Towns	103	\$539,990	\$40,884	\$499,106
155	609	6	3	Rooftop Towns	104	\$624,990	\$50,663	\$574,327
156	610	6	3	Rooftop Towns	105	\$624,990	\$50,663	\$574,327
157	611	6	3	Urban Towns	106	\$509,990	\$37,432	\$472,558
158	612	6	3	Rooftop Towns	107	\$1,029,990	\$97,255	\$932,735
159	613	6	3	Rooftop Towns	108	\$594,990	\$47,211	\$547,779
160	614	6	3	Urban Towns	109	\$864,990	\$78,273	\$786,717
161	615	6	3	Rooftop Towns	110	\$669,990	\$55,840	\$614,150
162	616	6	3	Rooftop Towns	111	\$634,990	\$51,813	\$583,177
163	617	6	3	Urban Towns	112	\$499,990	\$36,282	\$463,708
164	618	6	3	Rooftop Towns	113	\$559,990	\$43,185	\$516,805
165	619	6	3	Rooftop Towns	114	\$589,990	\$46,636	\$543,354
166	620	6	3	Urban Towns	115	\$499,990	\$36,282	\$463,708
167	621	6	3	Rooftop Towns	116	\$569,990	\$90,353	\$479,637
168	622	6	3	Rooftop Towns	117	\$589,990	\$46,636	\$543,354
169	623	6	3	Urban Towns	118	\$499,990	\$36,282	\$463,708
170	624	6	3	Rooftop Towns	119	\$639,990	\$52,388	\$587,602
171	625	6	3	Rooftop Towns	120	\$669,990	\$55,840	\$614,150
172	701	7	4	Garden Towns	52	\$919,990	\$84,601	\$835,389
173	702	7	4	Garden Towns	53	\$559,990	\$43,185	\$516,805
174	703	7	4	Garden Towns	54	\$574,990	\$44,910	\$530,080
175	704	7	4	Garden Towns	55	\$544,990	\$41,459	\$503,531
176	705	7	4	Garden Towns	56	\$367,990	\$18,190	\$349,800
177	706	7	4	Garden Towns	57	\$234,990	\$16,558	\$218,432
178	707	7	4	Garden Towns	58	\$544,990	\$41,459	\$503,531
179	708	7	4	Urban Towns	121	\$909,990	\$83,450	\$826,540
180	709	7	4	Rooftop Towns	122	\$624,990	\$50,663	\$574,327
181	710	7	4	Rooftop Towns	123	\$594,990	\$47,211	\$547,779
182	711	7	4	Urban Towns	124	\$864,990	\$78,273	\$786,717
183	712	7	4	Rooftop Towns	125	\$619,990	\$50,087	\$569,903
184	713	7	4	Rooftop Towns	126	\$589,990	\$46,636	\$543,354
185	714	7	4	Urban Towns	127	\$539,990	\$40,884	\$499,106
186	715	7	4	Rooftop Towns	128	\$664,990	\$55,264	\$609,726
187	716	7	4	Rooftop Towns	129	\$639,990	\$52,388	\$587,602
188	717	7	4	Urban Towns	130	\$509,990	\$37,432	\$472,558
189	718	7	4	Rooftop Towns	131	\$589,990	\$46,636	\$543,354
190	719	7	4	Rooftop Towns	132	\$589,990	\$46,636	\$543,354
191	720	7	4	Urban Towns	133	\$499,990	\$36,282	\$463,708
192	721	7	4	Rooftop Towns	134	\$589,990	\$46,636	\$543,354
193	722	7	4	Rooftop Towns	135	\$589,990	\$46,636	\$543,354
194	723	7	4	Urban Towns	136	\$509,990	\$37,432	\$472,558
195	724	7	4	Rooftop Towns	137	\$634,990	\$51,813	\$583,177
196	725	7	4	Rooftop Towns	138	\$1,064,990	\$101,282	\$963,708
197	801	8	4	Garden Towns	59	\$549,990	\$42,034	\$507,956
198	802	8	4	Garden Towns	60	\$969,990	\$90,353	\$879,637
199	803	8	4	Garden Towns	61	\$959,990	\$89,202	\$870,788
200	804	8	4	Garden Towns	62	\$549,990	\$42,034	\$507,956

B-5

No.	Suite	Block	Phase	Collection	Unit	Purchase Price	HST	Minimum Net Closing Proceeds
201	805	8	4	Urban Towns	139	\$514,990	\$38,008	\$476,982
202	806	8	4	Rooftop Towns	140	\$1,059,990	\$100,707	\$959,283
203	807	8	4	Rooftop Towns	141	\$704,990	\$59,866	\$645,124
204	808	8	4	Urban Towns	142	\$924,990	\$85,176	\$839,814
205	809	8	4	Rooftop Towns	143	\$1,044,990	\$98,981	\$946,009
206	810	8	4	Rooftop Towns	144	\$1,044,990	\$98,981	\$946,009
207	811	8	4	Urban Towns	145	\$914,990	\$84,025	\$830,965
208	812	8	4	Rooftop Towns	146	\$1,069,990	\$101,857	\$968,133
209	813	8	4	Rooftop Towns	147	\$1,019,990	\$96,105	\$923,885
210	814	8	4	Urban Towns	148	\$514,990	\$38,008	\$476,982
211	815	8	4	Rooftop Towns	149	\$569,990	\$44,335	\$525,655
212	816	8	4	Rooftop Towns	150	\$599,990	\$47,786	\$552,204
213	901	9	4	Garden Towns	63	\$549,990	\$42,034	\$507,956
214	902	9	4	Garden Towns	64	\$964,990	\$89,778	\$875,212
215	903	9	4	Garden Towns	65	\$979,990	\$91,503	\$888,487
216	904	9	4	Garden Towns	66	\$549,990	\$42,034	\$507,956
217	905	9	4	Urban Towns	151	\$894,990	\$81,725	\$813,265
218	906	9	4	Rooftop Towns	152	\$1,029,990	\$97,255	\$932,735
219	907	9	4	Rooftop Towns	153	\$1,079,990	\$103,008	\$976,982
220	908	9	4	Urban Towns	154	\$924,990	\$85,176	\$839,814
221	909	9	4	Rooftop Towns	155	\$1,054,990	\$100,132	\$954,858
222	910	9	4	Rooftop Towns	156	\$1,054,990	\$100,132	\$954,858
223	911	9	4	Urban Towns	157	\$934,990	\$86,326	\$848,664
224	912	9	4	Rooftop Towns	158	\$1,124,990	\$108,185	\$1,016,805
225	913	9	4	Rooftop Towns	159	\$1,049,990	\$99,556	\$950,434
226	914	9	4	Urban Towns	160	\$544,990	\$41,459	\$503,531
227	915	9	4	Rooftop Towns	161	\$594,990	\$47,211	\$547,779
228	916	9	4	Rooftop Towns	163	\$599,990	\$47,786	\$552,204
229	1001B	10	3	Garden Towns	67	\$334,990	\$16,558	\$318,432
230	1001A	10	3	Garden Towns	68	\$324,990	\$16,064	\$308,926
231	1002	10	3	Garden Towns	69	\$509,990	\$37,432	\$472,558
232	1003	10	3	Garden Towns	70	\$509,990	\$37,432	\$472,558
233	1004A	10	3	Garden Towns	71	\$344,990	\$17,053	\$327,937
234	1004B	10	3	Garden Towns	72	\$334,990	\$16,558	\$318,432
235	1005	10	3	Garden Towns	73	\$539,990	\$40,884	\$499,106
236	1006	10	3	Garden Towns	74	\$329,990	\$16,311	\$313,679
237	1007	10	3	Garden Towns	75	\$329,990	\$16,311	\$313,679
238	1008	10	3	Garden Towns	76	\$329,990	\$16,311	\$313,679
239	1009	10	3	Garden Towns	77	\$329,990	\$16,311	\$313,679
240	1010	10	3	Garden Towns	78	\$544,990	\$41,459	\$503,531
241	1011	10	3	Urban Towns	163	\$514,990	\$38,008	\$476,982
242	1012	10	3	Rooftop Towns	164	\$569,990	\$44,335	\$525,655
243	1013	10	3	Rooftop Towns	165	\$569,990	\$44,335	\$525,655
244	1014	10	3	Urban Towns	166	\$479,990	\$33,770	\$446,220
245	1015	10	3	Rooftop Towns	167	\$569,990	\$44,335	\$525,655
246	1016	10	3	Rooftop Towns	168	\$539,990	\$40,884	\$499,106
247	1017	10	3	Urban Towns	169	\$479,990	\$33,770	\$446,220
248	1018	10	3	Rooftop Towns	170	\$594,990	\$47,211	\$547,779
249	1019	10	3	Rooftop Towns	171	\$569,990	\$44,335	\$525,655
250	1020	10	3	Urban Towns	172	\$509,990	\$37,432	\$472,558

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No.	Suite	Block	Phase	Collection	Unit	Purchase Price	BST	Minimum Net Closing Proceeds
251	1021	10	3	Rooftop Towns	173	\$994,990	\$93,229	\$901,761
252	1022	10	3	Rooftop Towns	174	\$629,990	\$51,238	\$578,752
253	1023	10	3	Urban Towns	175	\$504,990	\$36,857	\$468,133
254	1024	10	3	Rooftop Towns	176	\$544,990	\$41,459	\$503,531
255	1025	10	3	Rooftop Towns	177	\$544,990	\$41,459	\$503,531
256	1026	10	3	Urban Towns	178	\$484,990	\$34,556	\$450,434
257	1027	10	3	Rooftop Towns	179	\$549,990	\$42,034	\$507,956
258	1028	10	3	Rooftop Towns	180	\$589,990	\$46,636	\$543,354
259	1029	10	3	Urban Towns	181	\$484,990	\$34,556	\$450,434
260	1030	10	3	Rooftop Towns	182	\$574,990	\$44,910	\$530,080
261	1031	10	3	Rooftop Towns	183	\$574,990	\$44,910	\$530,080
262	1032	10	3	Urban Towns	184	\$514,990	\$38,008	\$476,982
263	1033	10	3	Rooftop Towns	185	\$639,990	\$52,388	\$587,602
264	1034	10	3	Rooftop Towns	186	\$989,990	\$92,654	\$897,336
265	1101B	11	2	Garden Towns	79	\$329,990	\$16,311	\$313,679
266	1101A	11	2	Garden Towns	80	\$319,990	\$15,817	\$304,173
267	1102	11	2	Garden Towns	81	\$509,990	\$37,432	\$472,558
268	1103A	11	2	Garden Towns	82	\$324,990	\$16,064	\$308,926
269	1103B	11	2	Garden Towns	83	\$329,990	\$16,311	\$313,679
270	1104	11	2	Garden Towns	84	\$544,990	\$41,459	\$503,531
271	1105	11	2	Garden Towns	85	\$314,990	\$15,570	\$299,420
272	1106	11	2	Garden Towns	86	\$314,990	\$15,570	\$299,420
273	1107	11	2	Garden Towns	87	\$539,990	\$40,884	\$499,106
274	1108	11	2	Urban Towns	187	\$474,990	\$32,962	\$442,028
275	1109	11	2	Rooftop Towns	188	\$539,990	\$40,884	\$499,106
276	1110	11	2	Rooftop Towns	189	\$539,990	\$40,884	\$499,106
277	1111	11	2	Urban Towns	190	\$459,990	\$30,535	\$429,455
278	1112	11	2	Rooftop Towns	191	\$569,990	\$44,335	\$525,655
279	1113	11	2	Rooftop Towns	192	\$579,990	\$45,486	\$534,504
280	1114	11	2	Urban Towns	193	\$484,990	\$34,556	\$450,434
281	1115	11	2	Rooftop Towns	194	\$989,990	\$92,654	\$897,336
282	1116	11	2	Rooftop Towns	195	\$999,990	\$93,804	\$906,186
283	1117	11	2	Urban Towns	196	\$534,990	\$40,309	\$494,681
284	1118	11	2	Rooftop Towns	197	\$594,990	\$47,211	\$547,779
285	1119	11	2	Rooftop Towns	198	\$589,990	\$46,636	\$543,354
286	1120	11	2	Urban Towns	199	\$454,990	\$29,726	\$425,264
287	1121	11	2	Rooftop Towns	200	\$594,990	\$47,211	\$547,779
288	1122	11	2	Rooftop Towns	201	\$584,990	\$46,061	\$538,929
289	1123	11	2	Urban Towns	202	\$479,990	\$33,770	\$446,220
290	1124	11	2	Rooftop Towns	203	\$999,990	\$93,804	\$906,186
291	1125	11	2	Rooftop Towns	204	\$619,990	\$50,087	\$569,903
292	1201B	12	1	Garden Towns	88	\$329,990	\$16,311	\$313,679
293	1201A	12	1	Garden Towns	89	\$319,990	\$15,817	\$304,173
294	1202	12	1	Garden Towns	90	\$509,990	\$37,432	\$472,558
295	1203A	12	1	Garden Towns	91	\$319,990	\$15,817	\$304,173
296	1203B	12	1	Garden Towns	92	\$329,990	\$16,311	\$313,679
297	1204	12	1	Garden Towns	93	\$539,990	\$40,884	\$499,106
298	1205	12	1	Garden Towns	94	\$299,990	\$14,328	\$285,162
299	1206	12	1	Garden Towns	95	\$299,990	\$14,328	\$285,162
300	1207	12	1	Garden Towns	96	\$539,990	\$40,884	\$499,106

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No.	Suite	Block	Phase	Collection	Unit	Purchase Price	HST	Minimum Net Closing Proceeds
301	1208	12	1	Urban Towns	205	\$464,990	\$31,344	\$433,646
302	1209	12	1	Rooftop Towns	206	\$569,990	\$44,335	\$525,655
303	1210	12	1	Rooftop Towns	207	\$539,990	\$40,884	\$499,106
304	1211	12	1	Urban Towns	208	\$439,990	\$27,299	\$412,691
305	1212	12	1	Rooftop Towns	209	\$539,990	\$40,884	\$499,106
306	1213	12	1	Rooftop Towns	210	\$539,990	\$40,884	\$499,106
307	1214	12	1	Urban Towns	211	\$464,990	\$31,344	\$433,646
308	1215	12	1	Rooftop Towns	212	\$624,990	\$50,663	\$574,327
309	1216	12	1	Rooftop Towns	213	\$619,990	\$50,087	\$569,903
310	1217	12	1	Urban Towns	214	\$469,990	\$32,153	\$437,837
311	1218	12	1	Rooftop Towns	215	\$544,990	\$41,459	\$503,531
312	1219	12	1	Rooftop Towns	216	\$589,990	\$46,636	\$543,354
313	1220	12	1	Urban Towns	217	\$444,990	\$28,108	\$416,882
314	1221	12	1	Rooftop Towns	218	\$584,990	\$46,061	\$538,929
315	1222	12	1	Rooftop Towns	219	\$574,990	\$44,910	\$530,080
316	1223	12	1	Urban Towns	220	\$469,990	\$32,153	\$437,837
317	1224	12	1	Rooftop Towns	221	\$619,990	\$50,087	\$569,903
318	1225	12	1	Rooftop Towns	222	\$614,990	\$49,512	\$565,478
319	1401	14	1	Garden Towns	97	\$579,990	\$45,486	\$534,504
320	1402	14	1	Garden Towns	98	\$319,990	\$15,817	\$304,173
321	1403	14	1	Garden Towns	99	\$299,990	\$14,828	\$285,162
322	1404	14	1	Garden Towns	100	\$899,990	\$82,300	\$817,690
323	1405	14	1	Garden Towns	101	\$329,990	\$16,311	\$313,679
324	1406	14	1	Garden Towns	102	\$609,990	\$48,937	\$561,053
325	1408	14	1	Urban Towns	223	\$549,990	\$42,034	\$507,956
326	1409	14	1	Rooftop Towns	224	\$594,990	\$47,211	\$547,779
327	1410	14	1	Rooftop Towns	225	\$594,990	\$47,211	\$547,779
328	1411	14	1	Urban Towns	226	\$439,990	\$27,299	\$412,691
329	1412	14	1	Rooftop Towns	227	\$594,990	\$47,211	\$547,779
330	1413	14	1	Rooftop Towns	228	\$1,009,990	\$94,955	\$915,035
331	1414	14	1	Urban Towns	229	\$464,990	\$31,344	\$433,646
332	1415	14	1	Rooftop Towns	230	\$614,990	\$49,512	\$565,478
333	1416	14	1	Rooftop Towns	231	\$624,990	\$50,663	\$574,327
334	1417	14	1	Urban Towns	232	\$474,990	\$32,962	\$442,028
335	1418	14	1	Rooftop Towns	233	\$594,990	\$47,211	\$547,779
336	1419	14	1	Rooftop Towns	234	\$594,990	\$47,211	\$547,779
337	1420	14	1	Urban Towns	235	\$449,990	\$28,917	\$421,073
338	1421	14	1	Rooftop Towns	236	\$594,990	\$47,211	\$547,779
339	1422	14	1	Rooftop Towns	237	\$589,990	\$46,636	\$543,354
340	1423	14	1	Urban Towns	238	\$479,990	\$33,770	\$446,220
341	1424	14	1	Rooftop Towns	239	\$629,990	\$51,238	\$578,752
342	1425	14	1	Rooftop Towns	240	\$619,990	\$50,087	\$569,903
Totals						\$201,554,560	\$15,856,228	\$185,698,332

TAB III

THIS IS **EXHIBIT "III"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of April 28, 2022 between KingSett Mortgage Corporation (the “**Lender**”), 1820277 Ontario Limited (the “**Subordinate Lender**”) and 2402871 Ontario Inc. (the “**Borrower**”) and John Vandyk (the “**Guarantor**”).

Whereas the Lender has made a loan (the “**Loan**”) to the Borrower in the original principal sum of \$45,000,000.00 on the security of a first mortgage (the “**Mortgage**”) of the lands and premises described in Schedule “A” hereto (the “**Lands**”) and other property more particularly described in the Mortgage (collectively, the “**Property**”) pursuant to a commitment letter entered into between the Borrower and the Lender dated the 8th day of September, 2021 (the “**Commitment Letter**”). All existing and future indebtedness and other obligations and liabilities owing by the Borrower and the Guarantor to the Lender from time to time pursuant to the Commitment Letter, including but not limited to the principal sum, all interest thereon, all future advances and all other amounts owing to the Lender thereunder from time to time, and including all reserves payable to the Lender relating to the Loan and all Cost Overrun Advances, as defined herein called the “**Prior Indebtedness**”. “**Cost Overrun Advances**” means any loan advances made by the Lender to the Borrower as the Lender, in its sole discretion deems necessary, to complete the proposed project to be constructed on the Property and any protective disbursements necessary for the preservation of the Property (collectively, “**Cost Overruns**”) (which Cost Overruns are not available to be funded by the remaining undrawn portion of the Loan) and which Cost Overrun Advances are necessary in the event that the Borrower or the Guarantor does not advance necessary funds from its own resources to meet such Cost Overruns. The Mortgage and all other additional or collateral security now or hereafter securing the Prior Indebtedness, including without limitation an assignment of all rents and leases from or relating to the Property and a general security agreement with respect to all equipment and other personal property of the Borrower and the Guarantor located on, arising from, comprising or used in connection with the operation of the Property, are herein collectively called the “**Prior Security**”.

And whereas the Subordinate Lender has made a loan or credit facility (the “**Subordinate Loan**”) available to the Borrower in the original principal sum of \$7,500,000.00 (the Subordinate Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Subordinate Lender thereunder from time to time are herein called the “**Subordinate Indebtedness**”), which is secured by security described in Schedule “B” attached hereto (such security, including all other additional or collateral security now or hereafter securing the Subordinate Indebtedness, is herein called the “**Subordinate Security**”);

And whereas it is a condition of the Lender making any advance to the Borrower that the Subordinate Lender and Borrower and the Guarantor execute and deliver this Subordination and Standstill agreement pursuant to which the Subordinate Security will at all times be postponed and subordinate to the Prior Security;

And whereas the Subordinate Lender has agreed to subordinate and postpone the Subordinate Loan and the Subordinate Security to and in favour of the Prior Indebtedness and the Prior Security. Reference herein to the Subordinate Indebtedness, Subordinate Security, Prior Indebtedness and Prior Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

1. **Covenants, Representations and Warranties of Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security and covenants, represents and warrants to the Lender that (i) the Subordinate Indebtedness and the Subordinate Security are in good standing and the Borrower and the Guarantor are not in default thereunder, (ii) it holds no security of any kind against the Property other than the Subordinate Security, (iii) it is the sole owner of the Subordinate Indebtedness and the Subordinate Security and has full power, authority and legal right to enter into this agreement, (iv) the total amount owing to the Subordinate Lender under the Subordinate Indebtedness is \$7,500,000.00 as of April 26, 2022, and (v) the Subordinate Indebtedness bears interest at 7%, calculated and payable monthly, not in advance, and is due and payable to the Subordinate Lender as follows: on demand, and (vi) it will not allow the principal amount of the Subordinate Loan to exceed \$7,500,000.00 without the Lender's prior written consent. Upon request by the Lender from time to time, the Subordinate Lender shall provide to the Lender copies of the Subordinate Security or a statement of the Subordinate Indebtedness then outstanding.

2. **Subordination and Postponement.** The Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness, which shall be a second priority lien and charge against the Property, to the Prior Security and the Prior Indebtedness and agrees with the Lender that the Prior Security shall be a first priority lien and charge against the Property for the full amount of the Prior Indebtedness plus interest and costs. No discharge, release or waiver by the Lender of any of the Prior Security against or in respect of the Property or any person or any amendment, renewal, extension, replacement, modification, supplement or restatement of any Prior Indebtedness and/or the Prior Security shall require notice to or the consent of Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender. The Subordinate Lender agrees to execute and deliver, upon request by the Lender, such further instruments and agreements as may be reasonably required by the Lender to confirm and give effect to the provisions of this agreement and to register and record or file notice of this agreement and/or this subordination and postponement of the Subordinate Security in any office of public record as the Lender may consider necessary or desirable from time to time.

3. **Amendment.** Nothing in this agreement, nor in the Subordinate Security or in any other arrangements or agreements between the Borrower, the Guarantor, the Subordinate Lender or any other person; shall restrict, limit or otherwise prevent the Lender from taking any such action or making any other amendment, renewal, extension, replacement, modification, supplement or restatement of the Prior Indebtedness or the Prior Security without the consent of the Subordinate Lender and without otherwise affecting the subordination and postponement of the Subordinate Security and Subordinate Indebtedness hereby granted, provided that the Lender shall not increase the principal amount of the Mortgage being \$56,250,000.00 (exclusive of Cost Overrun Advances) without the written consent of the Subordinate Lender. The Subordinate Lender shall not amend, extend, renew, modify, replace, supplement or restate the Subordinate Indebtedness or the Subordinate

Security without the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion.

4. **Notices from Subordinate Lender.** The Subordinate Lender shall give to the Lender, contemporaneously with the giving thereof to the Borrower and the Guarantor, copies of any notices given by it to the Borrower and the Guarantor under the Subordinate Loan, including without limitation any notices of defaults, breaches or events of default or of events that with the giving of notice or the passage of time and failure to cure, would result in a default, breach or event of default under the Subordinate Loan.

5. **Payments.** The Subordinate Lender agrees that, until the Prior Indebtedness is paid in full, (i) all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property shall not be applied to any payment on account of the Subordinate Indebtedness and (ii) it shall not accept any payment on account of the Subordinate Indebtedness whether of principal, interest, fees, costs, expenses or any other amounts, provided that notwithstanding the foregoing and as long as the Subordinate Lender has not received a written notice of default under the Loan and the Prior Security, the Subordinate Lender shall be entitled to receive interest payments pursuant to the Subordinate Loan and the Subordinate Lender's legal fees provided such payments come from sources outside of the Property, and if any such payments are received, such monies shall be received and held by the Subordinate Lender in trust for the Lender and the Subordinate Lender shall immediately pay all such monies to the Lender. The Lender and the Subordinate Lender shall provide reasonable cooperation to each other to ensure the provisions of this section are complied with.

6. **Free Partial Discharges and Postponements.** The Subordinate Lender covenants and agrees that it will, at no expense to the Lender and regardless of default under or maturity of the Subordinate Security:

- (a) execute and register such postponements and partial discharges of its security as may be required to convey any part of the Property to bona fide purchasers of lots/units comprising the Property or to convey and/or grant easements over the project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender in respect of the project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided however, that any monies received by the Borrower or the Guarantor from such purchasers or governmental authorities in connection therewith shall be remitted to the Lender until the Prior Indebtedness is discharged; and
- (b) execute and register where applicable any and all plans and documents required to facilitate development of the project and to re-zone the project, if necessary, and to co-operate in all respects (but without requirement to expend funds) to facilitate such registration and re-zoning including, without limitation, the execution of agreements with any relevant governmental authorities or utilities which may be required for such registration or rezoning.

7. **Insurance Proceeds.** All insurance and expropriation proceeds received by the Subordinate Lender with respect to the Property shall be received and held by the Subordinate Lender in trust for the Lender and forthwith paid and delivered by the Subordinate Lender to the Lender, notwithstanding any provision to the contrary in the Subordinate Security or under applicable laws. All rights and entitlement of the Subordinate Lender to such proceeds are hereby postponed and subordinated to the rights of the Lender.

8. **Standstill.** The Subordinate Lender shall not take any Enforcement Action under or in respect of the Subordinate Security or the Subordinate Indebtedness with respect to all or any part of the Property or against the Borrower or Guarantor for a period of twenty-five (25) months after the date of this Agreement. Notwithstanding the foregoing, in the event that the Lender commences any Enforcement Action the Subordinate Lender shall be entitled, ninety (90) days after the Lender ceases to diligently pursue such Enforcement Action in the manner of a prudent lender, commence its own Enforcement Action under or in respect of the Subordinate Indebtedness or the Subordinate Security against the Borrower of the Guarantor. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Lender under or in respect of the Prior Security or Prior Indebtedness against the Borrower and the Guarantor or against all or any part of the Property. The Subordinate Lender acknowledges, agrees, covenants and confirms to and with the Lender that a default under the Subordinate Loan shall be considered and will constitute, a default under the Loan. For greater clarity, if the Lender seeks to appoint a receiver or a receiver manager, whether pursuant to the powers contained in the Prior Security or pursuant to a court order, the Subordinate Lender will not take any steps to oppose such appointment and will consent thereto. In this Section, “**Enforcement Action**” means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of Rents, taking possession or control of any property or undertaking, commencing, giving or making any demand for payment, any notice of intention to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, accelerating the principal payable under the Subordinate Security, or accepting a transfer of any property in lieu of foreclosure, or the registration of any lien against the Property, or the exercise of any other or rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

9. **Receivership.** Notwithstanding anything contained herein, (i) the Subordinate Lender will not appoint or seek the appointment of a separate receiver or receiver-manager if the Lender has appointed or had appointed a properly licensed receiver or receiver-manager, (ii) if a receiver or receiver-manager (which receiver or receiver-manager must be properly licensed) is appointed by, or as a result of an application by, the Subordinate Lender prior to the Lender appointing or having appointed a properly licensed receiver or receiver-manager then the Subordinate Lender will terminate or seek to terminate, as applicable, the appointment upon such appointed by, or as a result of an application by, the Lender of a properly licensed receiver or receiver-manager notwithstanding the order in which defaults may have occurred, and (iii) any receiver or receiver-manager to be appointed by, or as a result of an application by, the Subordinate Lender must be acceptable to the Lender in its sole discretion.

10. **Creditor Proceedings.** The parties hereto acknowledge and agree that the Lender and the Subordinate Lender have no commonality of interests between them such that (i) they ought not be classified in the same class in any restructuring proceeding; and (ii) the parties will take all reasonable steps to ensure they are not classified in the same class in any restructuring proceeding. If they are classified in the same class, the Subordinate Lender covenants and agrees to provide its proxy to vote its interests in any proceeding to the Lender. Upon the commencement of:

- (a) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement, proposal or similar proceedings under insolvency laws of or with respect to the Borrower or the Guarantor or their property or liabilities, in each case under insolvency laws;
- (b) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement or similar proceedings under the arrangement provisions of any applicable corporate law (in any case which involves the alteration, amendment, conversion, compromise, satisfaction or discharge of obligations of any or all creditors) of or with respect to the Borrower or the Guarantor or their property or liabilities;
- (c) any bankruptcy, insolvency, receivership, petition or assignment in bankruptcy, or assignment for the benefit of creditors under any insolvency laws of or with respect to the Borrower or the Guarantor;
- (d) any appointment of any receiver or receiver manager, whether pursuant to the power contained in the Subordinate Security or pursuant to a court order;
- (e) any marshaling of assets and liabilities of the Borrower or the Guarantor under any insolvency laws; or
- (f) any proceedings in relation to any of the foregoing;

whether any of the foregoing is voluntary or involuntary, partial or complete, and includes any such proceedings initiated or consented to by the Borrower or the Guarantor, the Subordinate Lender agrees not to take any action or vote in any way inconsistent with this agreement so as to contest (i) the validity or enforcement of any of the Prior Security, (ii) the priority of the Prior Security, and (iii) the rights of the Lender and duties of the Subordinate Lender. Unless the Prior Indebtedness is paid in full, the Subordinate Lender may not oppose, object to or vote against any plan of reorganization, plan of arrangement or any similar scheme of arrangement the terms of which are consistent with the rights of the Lender under this agreement.

11. **Assignment by Subordinate Lender.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Loan or the Subordinate Security to any person or persons (the “Assignee”) except with the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. If the Lender consents to any such sale, transfer, assignment or other disposition, such consent shall be conditional upon, among any other conditions that the Lender may impose, the Subordinate Lender causing each Assignee to enter into, concurrently with any such sale, transfer, assignment or other disposition, a subordination and standstill agreement with the Lender on the same terms and conditions as this agreement. The Lender may transfer or assign its interest in the Loan and this agreement without restriction and without prior notice to or the consent of the Subordinate Lender.

12. **Subordination Effective notwithstanding Registration Dates, etc.** The Prior Security shall have and be entitled to priority over the Subordinate Security in all respects and any mortgage, pledge, charge, assignment and any other security interest created by or pursuant to or granted for the obligations secured by the Subordinate Security to the full extent of the Prior Indebtedness from time to time, and the Subordinate Security shall in all respects rank subordinate and junior to the Prior Security. This priority shall be effective in all events and in all circumstances. Without limiting the generality of the foregoing, this priority shall be effective notwithstanding:

- (a) the respective dates of execution, delivery, attachment, registration, filing, perfection or enforcement of the Prior Security and the Subordinate Security;
- (b) the respective dates of any advances secured by the Prior Security or the Subordinate Security;
- (c) the respective dates of default under the Prior Security or the Subordinate Security;
- (d) any priority to which the Subordinate Security may otherwise be entitled by reason of the giving or failure to give any notice of the acquisition of any charge, lien or security interest, by reason of the failure to register or to register any renewal or by reason of any defect in any item constituting the Prior Security;
- (e) the provisions of the instruments creating the Prior Security and the Subordinate Security; and
- (f) any modification, extension, renewal, replacement, supplement or restatement of the Prior Security or the Prior Indebtedness.

13. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the Province in which the Lands are located and the laws of Canada applicable therein.

14. **Successors.** The acknowledgements and agreements contained in this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

15. **Counterpart.** This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.

16. **Electronic Execution of Agreement and Certain Other Documents.** The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this agreement and the transactions contemplated hereby shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada) and the *Electronic Commerce Act, 2000* (Ontario), or any other similar laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada.

17. **Further Assurances by the Borrower and Guarantor.** The Borrower and the Guarantor hereby acknowledge this agreement and the subordination of the priority of the Subordinate Security to the Prior Security to the same effect as if all monies secured or intended to be secured by the Prior Security were events prior to the creation and registration of the Subordinate Security and the advance of any monies secured by the Subordinate Security as have been or will be advanced; or the registration of any lien against the Property. The Borrower and Guarantor expressly agree to perform its obligations to the Lender and the Subordinate Lender and hold and deal with the Property in accordance with the priorities set out in this agreement and to execute any instruments giving effect to such subordination and postponement as may be required by the Lender from time to time for such purpose.

18. **No Rights Conferred on Borrower or Guarantor.** Nothing in this agreement will be construed as conferring any rights upon the Borrower, Guarantor or any other third party. The terms and conditions hereof are and will be for the sole and exclusive benefit of the Lender and the Subordinate Lender.


19. **Paramountcy.** This agreement constitutes the entire agreement between the parties and supersedes all prior proposals and agreements, whether oral or written. In the event of any conflict, omission, inconsistency, ambiguity or difference between the provisions of this agreement and the provisions of any of the Subordinate Security, the provisions of this agreement shall govern and be paramount to the extent necessary to resolve such conflict or inconsistency so long as this agreement is in force.

20. **Amendment of Agreement.** No supplement, modification, waiver or termination of this agreement shall be binding unless executed in writing by the Lender and the Subordinate Lender. The parties agree that the consent of the Borrower or the Guarantor shall not be required for any such supplement, modification, waiver or termination.

Signatures appear on following page

IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the date and year first written above.

KINGSETT MORTGAGE CORPORATION

Per: 
Tanya Lee (Apr 28, 2022 10:29 EDT)
Name:
Title:

Per: _____
Name:
Title:

1820277 ONTARIO LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

2402871 ONTARIO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Witness

JOHN VANDYK

IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the date and year first written above.

KINGSETT MORTGAGE CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

1820277 ONTARIO LIMITED

Per: _____
Name: RICHARD PLWE
Title: TRUSTEE

Per: _____
Name:
Title:

2402871 ONTARIO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Witness

JOHN VANDYK

IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the date and year first written above.

KINGSETT MORTGAGE CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

1820277 ONTARIO LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

2402871 ONTARIO INC.

Per: DocuSigned by:
Richard ma _____
Name:
Title:

Per: _____
Name:
Title:

DocuSigned by:
Bruce Milburn _____
7A305E2C83E2443...
Witness

DocuSigned by:
John Vandyk _____
81ED1B7C9369445...
JOHN VANDYK

SCHEDULE "A"**Lands****PIN 07617-0889 (LT)**

LOTS 159, 160 & 161 PLAN 164 EXCEPT PART LOTS 160 & 161 PLAN 164, PART 2 66R28185; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART LOTS 160 & 160 PLAN 164, PART 2 66R28185 AS IN AT4215394; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4264438; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4274323; SUBJECT TO AN EASEMENT AS IN AT3989173; CITY OF TORONTO

SCHEDULE "B"**Security of Subordinate Lender**

1. Demand Promissory Note in the principal amount of \$7,500,000.00 dated September 1, 2017 granted by the Borrower to and in favour of the Subordinate Lender.
2. Charge/Mortgage of Land in the principal amount of \$7,500,000.00 dated September 1, 2017 granted by the Borrower to and in favour of the Subordinate Lender and registered as Instrument No. AT4682199.
3. General Assignment of Rents dated September 1, 2017 granted by the Borrower to and in favour of the Subordinate Lender and registered as Instrument No. AT4682266.
4. General Security Agreement dated September 1, 2017 granted by the Borrower to and in favour of the Subordinate Lender.

TAB JJJ

THIS IS **EXHIBIT "JJJ"** REFERRED TO IN THE AFFIDAVIT
OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of June 3, 2022 between 1820277 Ontario Limited (the "**Lender**"), KingSett Mortgage Corporation (the "**Subordinate Lender**") and 2402871 Ontario Inc. (the "**Borrower**").

Whereas the Lender has made a loan (the "**Loan**") to the Borrower in the original principal sum of \$7,500,000.00 on the security of a second mortgage (the "**Mortgage**") of the lands and premises described in Schedule "A" hereto (the "**Lands**") and other property more particularly described in the Mortgage (collectively, the "**Property**"). All existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Lender from time to time pursuant to the Mortgage, including but not limited to the principal sum, all interest thereon, all future advances and all other amounts owing to the Lender thereunder from time to time, and including all reserves payable to the Lender relating to the Loan, including any protective disbursements necessary for the preservation of the Property (collectively, "**Cost Overruns**"), as defined herein called the "**Prior Indebtedness**". The Mortgage and all other additional or collateral security now or hereafter securing the Prior Indebtedness, including without limitation an assignment of all rents and leases from or relating to the Property and a general security agreement with respect to all equipment and other personal property of the Borrower located on, arising from, comprising or used in connection with the operation of the Property, are herein collectively called the "**Prior Security**".

And whereas the Subordinate Lender has made a loan or credit facility (the "**Subordinate Loan**") available to Vandyk-Uptowns Limited and 2366885 Ontario Inc. in the original principal sum of \$55,000,000.00 (the Subordinate Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Subordinate Lender thereunder from time to time are herein called the "**Subordinate Indebtedness**"), which is secured by security described in Schedule "B" attached hereto (such security, including all other additional or collateral security now or hereafter securing the Subordinate Indebtedness, is herein called the "**Subordinate Security**");

And whereas it is a condition of the Lender making any advance to the Borrower that the Subordinate Lender and Borrower execute and deliver this Subordination and Standstill agreement pursuant to which the Subordinate Security will at all times be postponed and subordinate to the Prior Security;

And whereas the Subordinate Lender has agreed to subordinate and postpone the Subordinate Loan and the Subordinate Security to and in favour of the Prior Indebtedness and the Prior Security. Reference herein to the Subordinate Indebtedness, Subordinate Security, Prior Indebtedness and Prior Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time.

And whereas the Subordinate Lender has made a prior ranking loan to the Borrower and the parties hereto have entered into a subordination and standstill agreement dated as of April 28, 2022 (the "**Prior Subordination and Standstill Agreement**") substantially the same in form and content as this Agreement concerning such prior ranking loan and the Loan.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

1. **Prior Subordination and Standstill Agreement.** The parties hereto hereby acknowledge and agree that so long as the Prior Subordination and Standstill Agreement remains in force and effect this Agreement and the terms and conditions set forth herein shall at all times be subject to the Prior Subordination and Standstill Agreement.
2. **Covenants, Representations and Warranties of Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security and covenants, represents and warrants to the Lender that (i) the Subordinate Indebtedness and the Subordinate Security are in good standing and the Borrower is not in default thereunder, (ii) it is the sole owner of the Subordinate Indebtedness and the Subordinate Security and has full power, authority and legal right to enter into this agreement, (iv) the total amount owing to the Subordinate Lender under the Subordinate Indebtedness is \$55,000,000.00 as of the date hereof, and (v) the Subordinate Indebtedness bears interest at the greater of: (A) the RBC Prime Rate plus 7.95% per annum; and (B) 11.15% per annum, calculated and payable monthly, not in advance, and is due and payable to the Subordinate Lender as follows: on demand, and (vi) it will not allow the principal amount of the Subordinate Loan to exceed \$55,000,000.00 without the Lender's prior written consent. Upon request by the Lender from time to time, the Subordinate Lender shall provide to the Lender copies of the Subordinate Security or a statement of the Subordinate Indebtedness then outstanding.
3. **Subordination and Postponement.** The Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness, which shall be a second priority lien and charge against the Property, to the Prior Security and the Prior Indebtedness and agrees with the Lender that the Prior Security shall be a first priority lien and charge against the Property for the full amount of the Prior Indebtedness plus interest and costs. No discharge, release or waiver by the Lender of any of the Prior Security against or in respect of the Property or any person or any amendment, renewal, extension, replacement, modification, supplement or restatement of any Prior Indebtedness and/or the Prior Security shall require notice to or the consent of Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender. The Subordinate Lender agrees to execute and deliver, upon request by the Lender, such further instruments and agreements as may be reasonably required by the Lender to confirm and give effect to the provisions of this agreement and to register and record or file notice of this agreement and/or this subordination and postponement of the Subordinate Security in any office of public record as the Lender may consider necessary or desirable from time to time.
4. **Amendment.** Nothing in this agreement, nor in the Subordinate Security or in any other arrangements or agreements between the Borrower, the Subordinate Lender or any other person; shall restrict, limit or otherwise prevent the Lender from taking any such action or making any other amendment, renewal, extension, replacement, modification, supplement or restatement of the Prior Indebtedness or the Prior Security without the consent of the Subordinate Lender and without otherwise affecting the subordination and postponement of the Subordinate Security and Subordinate Indebtedness hereby granted, provided that the Lender shall not increase the principal amount of the Mortgage being \$7,500,000.00 (exclusive of Cost Overruns) without the written consent of the Subordinate

Lender. The Subordinate Lender shall not amend, extend, renew, modify, replace, supplement or restate the Subordinate Indebtedness or the Subordinate Security without the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion.

5. **Notices from Subordinate Lender.** The Subordinate Lender shall give to the Lender, contemporaneously with the giving thereof to the Borrower, copies of any notices given by it to the Borrower under the Subordinate Loan, including without limitation any notices of defaults, breaches or events of default or of events that with the giving of notice or the passage of time and failure to cure, would result in a default, breach or event of default under the Subordinate Loan.

6. **Payments.** The Subordinate Lender agrees that, until the Prior Indebtedness is paid in full, (i) all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property shall not be applied to any payment on account of the Subordinate Indebtedness and (ii) it shall not accept any payment on account of the Subordinate Indebtedness whether of principal, interest, fees, costs, expenses or any other amounts, provided that notwithstanding the foregoing and as long as the Subordinate Lender has not received a written notice of default under the Loan and the Prior Security, the Subordinate Lender shall be entitled to receive interest payments pursuant to the Subordinate Loan and the Subordinate Lender's legal fees provided such payments come from sources outside of the Property, and if any such payments are received, such monies shall be received and held by the Subordinate Lender in trust for the Lender and the Subordinate Lender shall immediately pay all such monies to the Lender. The Lender and the Subordinate Lender shall provide reasonable cooperation to each other to ensure the provisions of this section are complied with.

7. **Free Partial Discharges and Postponements.** The Subordinate Lender covenants and agrees that it will, at no expense to the Lender and regardless of default under or maturity of the Subordinate Security:

- (a) execute and register such postponements and partial discharges of its security as may be required to convey any part of the Property to bona fide purchasers of lots/units comprising the Property or to convey and/or grant easements over the project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender in respect of the project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided however, that any monies received by the Borrower from such purchasers or governmental authorities in connection therewith shall be remitted to the Lender until the Prior Indebtedness is discharged; and
- (b) execute and register where applicable any and all plans and documents required to facilitate development of the project and to re-zone the project, if necessary, and to co-operate in all respects (but without requirement to expend funds) to facilitate such registration and re-zoning including, without limitation, the execution of agreements with any relevant governmental authorities or utilities which may be required for such registration or rezoning.

8. **Insurance Proceeds.** All insurance and expropriation proceeds received by the Subordinate Lender with respect to the Property shall be received and held by the Subordinate Lender in trust for the Lender and forthwith paid and delivered by the Subordinate Lender to the Lender, notwithstanding any provision to the contrary in the Subordinate Security or under applicable laws. All rights and entitlement of the Subordinate Lender to such proceeds are hereby postponed and subordinated to the rights of the Lender.

9. **Standstill.** The Subordinate Lender shall not take any Enforcement Action under or in respect of the Subordinate Security or the Subordinate Indebtedness with respect to all or any part of the Property or against the Borrower for a period of twenty-five (25) months after the date of this Agreement. Notwithstanding the foregoing, in the event that the Lender commences any Enforcement Action the Subordinate Lender shall be entitled, ninety (90) days after the Lender ceases to diligently pursue such Enforcement Action in the manner of a prudent lender, commence its own Enforcement Action under or in respect of the Subordinate Indebtedness or the Subordinate Security against the Borrower. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Lender under or in respect of the Prior Security or Prior Indebtedness against the Borrower or against all or any part of the Property. The Subordinate Lender acknowledges, agrees, covenants and confirms to and with the Lender that a default under the Subordinate Loan shall be considered and will constitute, a default under the Loan. For greater clarity, if the Lender seeks to appoint a receiver or a receiver manager, whether pursuant to the powers contained in the Prior Security or pursuant to a court order, the Subordinate Lender will not take any steps to oppose such appointment and will consent thereto. In this Section, “**Enforcement Action**” means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of Rents, taking possession or control of any property or undertaking, commencing, giving or making any demand for payment, any notice of intention to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, accelerating the principal payable under the Subordinate Security, or accepting a transfer of any property in lieu of foreclosure, or the registration of any lien against the Property, or the exercise of any other or rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

10. **Receivership.** Notwithstanding anything contained herein, (i) the Subordinate Lender will not appoint or seek the appointment of a separate receiver or receiver-manager if the Lender has appointed or had appointed a properly licensed receiver or receiver-manager, (ii) if a receiver or receiver-manager (which receiver or receiver-manager must be properly licensed) is appointed by, or as a result of an application by, the Subordinate Lender prior to the Lender appointing or having appointed a properly licensed receiver or receiver-manager then the Subordinate Lender will terminate or seek to terminate, as applicable, the appointment upon such appointed by, or as a result of an application by, the Lender of a properly licensed receiver or receiver-manager notwithstanding the order in which defaults may have occurred, and (iii) any receiver or receiver-manager to be appointed by, or as a result of an application by, the Subordinate Lender must be acceptable to the Lender in its sole discretion.

11. **Creditor Proceedings.** The parties hereto acknowledge and agree that the Lender and the Subordinate Lender have no commonality of interests between them such that (i) they ought not be classified in the same class in any restructuring proceeding; and (ii) the parties will take all reasonable steps to ensure they are not classified in the same class in any restructuring proceeding. If they are classified in the same class, the Subordinate Lender covenants and agrees to provide its proxy to vote its interests in any proceeding to the Lender. Upon the commencement of:

- (a) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement, proposal or similar proceedings under insolvency laws of or with respect to the Borrower or their property or liabilities, in each case under insolvency laws;
- (b) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement or similar proceedings under the arrangement provisions of any applicable corporate law (in any case which involves the alteration, amendment, conversion, compromise, satisfaction or discharge of obligations of any or all creditors) of or with respect to the Borrower or their property or liabilities;
- (c) any bankruptcy, insolvency, receivership, petition or assignment in bankruptcy, or assignment for the benefit of creditors under any insolvency laws of or with respect to the Borrower;
- (d) any appointment of any receiver or receiver manager, whether pursuant to the power contained in the Subordinate Security or pursuant to a court order;
- (e) any marshaling of assets and liabilities of the Borrower under any insolvency laws; or
- (f) any proceedings in relation to any of the foregoing;

whether any of the foregoing is voluntary or involuntary, partial or complete, and includes any such proceedings initiated or consented to by the Borrower, the Subordinate Lender agrees not to take any action or vote in any way inconsistent with this agreement so as to contest (i) the validity or enforcement of any of the Prior Security, (ii) the priority of the Prior Security, and (iii) the rights of the Lender and duties of the Subordinate Lender. Unless the Prior Indebtedness is paid in full, the Subordinate Lender may not oppose, object to or vote against any plan of reorganization, plan of arrangement or any similar scheme of arrangement the terms of which are consistent with the rights of the Lender under this agreement.

12. **Assignment by Subordinate Lender.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Loan or the Subordinate Security to any person or persons (the “Assignee”) except with the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. If the Lender consents to any such sale, transfer, assignment or other disposition, such consent shall be conditional upon, among any other conditions that the Lender may impose, the Subordinate Lender causing each Assignee to enter into, concurrently with any such sale, transfer, assignment or other disposition, a subordination and standstill agreement with the Lender on the same terms and conditions as this agreement. The Lender may transfer or assign its interest in the Loan and this agreement without restriction and without prior notice to or the consent of the Subordinate Lender.

13. **Subordination Effective notwithstanding Registration Dates, etc.** The Prior Security shall have and be entitled to priority over the Subordinate Security in all respects and any mortgage, pledge, charge, assignment and any other security interest created by or pursuant to or granted for the obligations secured by the Subordinate Security to the full extent of the Prior Indebtedness from time to time, and the Subordinate Security shall in all respects rank subordinate and junior to the Prior Security. This priority shall be effective in all events and in all circumstances. Without limiting the generality of the foregoing, this priority shall be effective notwithstanding:

- (a) the respective dates of execution, delivery, attachment, registration, filing, perfection or enforcement of the Prior Security and the Subordinate Security;
- (b) the respective dates of any advances secured by the Prior Security or the Subordinate Security;
- (c) the respective dates of default under the Prior Security or the Subordinate Security;
- (d) any priority to which the Subordinate Security may otherwise be entitled by reason of the giving or failure to give any notice of the acquisition of any charge, lien or security interest, by reason of the failure to register or to register any renewal or by reason of any defect in any item constituting the Prior Security;
- (e) the provisions of the instruments creating the Prior Security and the Subordinate Security; and
- (f) any modification, extension, renewal, replacement, supplement or restatement of the Prior Security or the Prior Indebtedness.

14. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the Province in which the Lands are located and the laws of Canada applicable therein.

15. **Successors.** The acknowledgements and agreements contained in this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

16. **Counterpart.** This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.

17. **Electronic Execution of Agreement and Certain Other Documents.** The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this agreement and the transactions contemplated hereby shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada) and the *Electronic Commerce Act, 2000* (Ontario), or any other similar laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada.

18. **Further Assurances by the Borrower.** The Borrower hereby acknowledge this agreement and the subordination of the priority of the Subordinate Security to the Prior Security to the same effect as if all monies secured or intended to be secured by the Prior Security were events prior to the creation and registration of the Subordinate Security and the advance of any monies secured by the Subordinate Security as have been or will be advanced; or the registration of any lien against the Property. The Borrower expressly agree to perform its obligations to the Lender and the Subordinate Lender and hold and deal with the Property in accordance with the priorities set out in this agreement and to execute any instruments giving effect to such subordination and postponement as may be required by the Lender from time to time for such purpose.

19. **No Rights Conferred on Borrower.** Nothing in this agreement will be construed as conferring any rights upon the Borrower or any other third party. The terms and conditions hereof are and will be for the sole and exclusive benefit of the Lender and the Subordinate Lender.


20. **Paramountcy.** This agreement constitutes the entire agreement between the parties and supersedes all prior proposals and agreements, whether oral or written. In the event of any conflict, omission, inconsistency, ambiguity or difference between the provisions of this agreement and the provisions of any of the Subordinate Security, the provisions of this agreement shall govern and be paramount to the extent necessary to resolve such conflict or inconsistency so long as this agreement is in force.

21. **Amendment of Agreement.** No supplement, modification, waiver or termination of this agreement shall be binding unless executed in writing by the Lender and the Subordinate Lender. The parties agree that the consent of the Borrower shall not be required for any such supplement, modification, waiver or termination.

Signatures appear on following page

IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the date and year first written above.

KINGSETT MORTGAGE CORPORATION

Per: 
Tanya Lee (Jun 2, 2022 12:21 EDT)
Name:
Title:

Per: _____
Name:
Title:

1820277 ONTARIO LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

2402871 ONTARIO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:


IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the date and year first written above.

KINGSETT MORTGAGE CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

1820277 ONTARIO LIMITED

Per:  _____
Name: *D. Gordon*
Title: *President*

Per: _____
Name:
Title:

2402871 ONTARIO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the date and year first written above.

KINGSETT MORTGAGE CORPORATION

Per: _____
Name:
Title:

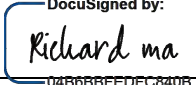
Per: _____
Name:
Title:

1820277 ONTARIO LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

2402871 ONTARIO INC.

Per:  _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE "A"**Lands****PIN 07617-0889 (LT)**

LOTS 159, 160 & 161 PLAN 164 EXCEPT PART LOTS 160 & 161 PLAN 164, PART 2 66R28185; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART LOTS 160 & 160 PLAN 164, PART 2 66R28185 AS IN AT4215394; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4264438; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4274323; SUBJECT TO AN EASEMENT AS IN AT3989173; CITY OF TORONTO

SCHEDULE "B"**Security of Subordinate Lender**

1. Charge/Mortgage of Land in the principal amount of \$68,750,000.00 granted by the Borrower to and in favour of the Subordinate Lender.
2. General Assignment of Rents granted by the Borrower to and in favour of the Subordinate Lender.

TAB KKK

THIS IS **EXHIBIT "KKK"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

PRIORITY AGREEMENT

THIS PRIORITY AGREEMENT dated the 5th day of ^{August}~~July~~, 2022.

BETWEEN:

WESTMOUNT GUARANTEE SERVICES INC. as Administrative Agent for the surety and/or sureties
(hereinafter called "Westmount")

AND:

DORR CAPITAL CORPORATION (hereinafter called the "Lender")

WHEREAS:

1. Vandyk-Lakeview-DXE-West Limited (hereinafter called the "Principal") pursuant to a commitment letter issued by the Lender dated November 5, 2021, as amended pursuant to an amendment letter dated November 25, 2021 (as it may be further amended from time to time, the "Commitment"), has executed and delivered certain security to the Lender, including, without limitation, a charge mortgage of land dated 10th day of December, 2021, in the principal amount of Forty Million Dollars (\$40,000,000.00) (the "Charge") registered in the Land Registry Office for the Land Titles Division of Peel on the 10th day of December, 2021, as Instrument No. PR3960399 against the lands described in Appendix "A" hereto (the "Property"). As additional security, the Lender registered a Notice of Assignment of Rents – General on the 10th day of December, 2021, as Instrument No. PR3960400 against the Property (collectively referred to herein as the "Real Property Security").
2. As further security for its obligations to the Lender, the Principal has granted a security interest in personal property pursuant to a registration under the PPSA registration system, being File No. 778522365, Registration No. 20211125 1336 1590 6003, registered November 25, 2021 (the "Personal Property Security"); (the Real Property Security and the Personal Property Security and all present and future security granted by the Principal to the Lender thereunder is collectively referred to herein as the "Lender Security").
3. The Principal has requested Westmount arrange to have issued a Bond to Tarion Warranty Corporation and/or condominium deposit insurance policies (the "Bonds and/or Policies") in connection with the Principal's proposed development of a condominium project (the "Project") on the Property.
4. The Principal has entered into a deposit trust agreement dated as of the 23rd day of February, 2022 (the "Deposit Trust Agreement") with Westmount and Schneider Ruggiero Spencer Milburn LLP (the "Escrow Agent") in connection with deposit monies received from time to time from purchasers of dwelling units in the Project and accrued interest thereon (the "Deposit Monies").
5. By a mortgage (the "Surety Mortgage") made between the Principal as mortgagor and Westmount as mortgagee which Surety Mortgage was registered on the 8th day of ^{August}~~July~~, 2022 in the Land Registry Office for the Land Titles Division of Peel as Instrument No. PR 4096774, the Principal did mortgage the Property to Westmount to secure payment of the sum of One Hundred Million Dollars (\$100,000,000.00) and interest as set out in the Surety Mortgage.
6. The Principal has additionally granted to Westmount, pursuant to the provisions of the Surety Mortgage and the Deposit Trust Agreement, security interests in certain of its personal property, including the Deposit Monies (all present and future security granted by the Principal to Westmount, including such

security pursuant to the Surety Mortgage and the Deposit Trust Agreement, hereinafter referred to as the "Surety Security").

7. The parties hereto wish to record their agreement as to the priorities of the Lender Security and the Surety Security.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) Westmount and the Lender agree as follows:

- (a) The Charge and all amounts secured thereby including all costs, charges and fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith but including advances made thereunder only to the extent of Forty Million Dollars (\$40,000,000.00), plus interest thereunder and secured thereby shall be an encumbrance upon the Property prior to the Surety Mortgage, and Westmount hereby postpones and subordinates all of its rights and interests under the Surety Mortgage to the Charge, to all amounts secured thereby (including all costs, charges, fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith) and all advances made thereunder to the extent noted above and to all interest accruing thereunder and secured thereby. In order to give effect to this postponement and subordination, Westmount releases to the Lender all of its rights and claims to priority with respect to the Surety Mortgage to the extent noted above.
- (b) Subject to the provisions of paragraph (a) above in respect of the Charge and the Surety Mortgage, the Surety Security shall at all times be postponed to and rank subordinate to the Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain in trust pursuant to the provisions of the Deposit Trust Agreement.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Lender Security or the Surety Security, the date of attachment or perfection of any security interest granted thereby, the date of any advance, the date of any default, or any other matter. Each of the parties hereto agrees that it shall not claim against the other the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out therein.
- (d) Westmount hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Principal except in respect of the Project, while any amounts under the Lender Security remains unpaid.
- (e) Westmount and the Lender consent to the granting of the security by the Principal referred to herein, and shall at all times and from time to time execute and deliver to the other all such further documents, agreements or other assurances as may be necessary to give effect to this agreement and to carry out the intent hereof.
- (f) Nothing herein shall affect the rights of Westmount, and the Lender respectively against the Principal. The provisions of this agreement shall enure to the benefit of and be binding upon the Lender, Westmount, the Surety and/or Sureties and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (g) Westmount hereby covenants, agrees and undertakes to and with the Lender to:

- i) execute and deliver any usual documentation required in connection with the development and registration of the Property as a Condominium; and
 - ii) deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold.
- (h) Westmount hereby agrees that, from and after the date hereof, to and until the date of repayment of the outstanding indebtedness secured under the Lender Security and the complete discharge thereof (which period of time is hereinafter referred to as the "Standstill Period"), it shall not take any steps to enforce the Surety Security with respect to all or any part of the Property or against the Principal without reasonable prior notice to the Lender, which notice shall specify the proposed enforcement action to be taken by Westmount. Westmount shall not challenge, contest or bring into question the validity or priority of the Lender Security or any enforcement action taken by the Lender under or in respect of the Lender Security against all or any part of the Property or against the Principal.

Notwithstanding anything contained herein, (i) Westmount will not appoint or seek the appointment of a separate receiver or receiver-manager if the Lender has appointed or had appointed a properly licensed receiver or receiver-manager, (ii) if a receiver or receiver-manager (which receiver or receiver-manager must be properly licensed) is appointed by, or as a result of an application by, Westmount prior to the Lender appointing or having appointed a properly licensed receiver or receiver-manager then Westmount will terminate or seek to terminate, as applicable, the appointment upon such appointed by, or as a result of an application by, the Lender of a properly licensed receiver or receiver-manager notwithstanding the order in which defaults may have occurred, and (iii) any receiver or receiver-manager to be appointed by, or as a result of an application by, Westmount must be acceptable to the Lender in its sole discretion.

- (i) This document may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original and all of which taken together shall be deemed to constitute one and the same document. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document.
- (j) This document shall be sufficient and effective in all respects if executed and delivered by facsimile or other electronic means (including in "pdf" format). A photocopied, faxed or emailed copy of this executed document may be relied upon by all of the parties thereto to the same extent as if it were an original executed version.
- (k) It is expressly acknowledged and agreed that the execution of this document may be made or manifested in an electronic format, and may be executed by way of an electronic signature (as such term is defined in the Electronic Commerce Act 2000, S.O. 2000 as amended), undertaken by or through a computer program or any other electronic means, as expressly provided or contemplated by (and in accordance with the provisions of) the Electronic Commerce Act 2000, S.O. 2000, as amended. If this document is executed by way of an electronic signature pursuant to the foregoing, it shall be deemed to be valid, binding and enforceable upon the party or parties so executing same electronically. If and when a party hereto executes this document by or through electronic signing platform, then such party or parties shall, upon the request of the other, be obliged to forthwith provide the other party hereto with a certificate of completion (or any similar certificate) produced or issued by the electronic signing platform which confirms, verifies and/or validates the electronic signature of the party or parties so executing same electronically, provided that the failure to provide such certificate shall not negate the validity and/or enforceability of this document by the parties hereto.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

WESTMOUNT GUARANTEE SERVICES INC.



Per: _____

Name: Marlon Brown

Title: Authorized Signing Officer

I/We have authority to bind the Corporation

DORR CAPITAL CORPORATION



Per: _____

Name: Brian Dorr

Title: President, CEO

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

APPENDIX "A"

Legal description of the Lands

Lots, 1, 2, 3, 22, 23 and 24, Plan H23; Except Part 1, 43R16245 and Part 1, 43R21276; City of Mississauga

TAB LLL

THIS IS **EXHIBIT "LLL"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of December 10, 2021 between DORR CAPITAL CORPORATION (the "**Lender**"), 2471867 ONTARIO LIMITED (the "**Subordinate Lender**") and VANDYK-LAKEVIEW-DXE WEST LIMITED (the "**Borrower**") and John Vandyk (the "**Guarantor**").

Whereas the Lender has made a loan (the "**Loan**") to the Borrower in the original principal sum of \$34,000,000 on the security of a first mortgage with a face amount of \$40,000,000 (the "**Mortgage**") of the lands and premises described in Schedule "A" hereto (the "**Lands**") and other property more particularly described in the Mortgage (collectively, the "**Property**") pursuant to a commitment letter entered into between the Borrower and the Lender dated November 5, 2021, as amended from time to time (the "**Commitment Letter**"). All existing and future indebtedness and other obligations and liabilities owing by the Borrower and the Guarantor to the Lender from time to time pursuant to the Commitment Letter, including but not limited to the principal sum, all interest thereon, all future advances and all other amounts owing to the Lender thereunder from time to time, and including all reserves payable to the Lender relating to the Loan and all Cost Overrun Advances, as defined herein called the "**Prior Indebtedness**". "**Cost Overrun Advances**" means any loan advances made by the Lender to the Borrower as the Lender, in its sole discretion deems necessary, to complete the proposed project to be constructed on the Property and any protective disbursements necessary for the preservation of the Property (collectively, "**Cost Overruns**") (which Cost Overruns are not available to be funded by the remaining undrawn portion of the Loan) and which Cost Overrun Advances are necessary in the event that the Borrower or the Guarantor does not advance necessary funds from its own resources to meet such Cost Overruns. The Mortgage and all other additional or collateral security now or hereafter securing the Prior Indebtedness, including without limitation an assignment of all rents and leases from or relating to the Property and a general security agreement with respect to all equipment and other personal property of the Borrower and the Guarantor located on, arising from, comprising or used in connection with the operation of the Property, are herein collectively called the "**Prior Security**".

And whereas the Subordinate Lender has made a loan or credit facility (the "**Subordinate Loan**") available to the Borrower in the original principal sum of \$3,300,000 (the Subordinate Loan and all existing and future indebtedness and other obligations and liabilities owing by the Borrower to the Subordinate Lender thereunder from time to time are herein called the "**Subordinate Indebtedness**"), which is secured by security described in Schedule "B" attached hereto (such security, including all other additional or collateral security now or hereafter securing the Subordinate Indebtedness, is herein called the "**Subordinate Security**");

And whereas it is a condition of the Lender making any advance to the Borrower that the Subordinate Lender and Borrower and the Guarantor execute and deliver this Subordination and Standstill agreement pursuant to which the Subordinate Security will at all times be postponed and subordinate to the Prior Security;

And whereas the Subordinate Lender has agreed to subordinate and postpone the Subordinate Loan and the Subordinate Security to and in favour of the Prior Indebtedness and the Prior Security. Reference herein to the Subordinate Indebtedness, Subordinate

Security, Prior Indebtedness and Prior Security includes all renewals, extensions, amendments, modifications, and restatements thereof or thereto from time to time.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

1. **Covenants, Representations and Warranties of Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security and covenants, represents and warrants to the Lender that (i) the Subordinate Indebtedness and the Subordinate Security are in good standing and the Borrower and the Guarantor are not in default thereunder, (ii) it holds no security of any kind against the Property other than the Subordinate Security, (iii) it is the sole owner of the Subordinate Indebtedness and the Subordinate Security and has full power, authority and legal right to enter into this agreement, (iv) the total amount owing to the Subordinate Lender under the Subordinate Indebtedness is \$3,300,000 as of the date hereof, and (v) the Subordinate Indebtedness bears interest at 7%, calculated monthly, not in advance, and is due and payable to the Subordinate Lender as follows: on demand, and (vi) it will not allow the principal amount of the Subordinate Loan to exceed \$3,300,000 without the Lender's prior written consent. Upon request by the Lender from time to time, the Subordinate Lender shall provide to the Lender copies of the Subordinate Security or a statement of the Subordinate Indebtedness then outstanding.
2. **Subordination and Postponement.** The Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness, which shall be a second priority lien and charge against the Property; to the Prior Security and the Prior Indebtedness and agrees with the Lender that the Prior Security shall be a first priority lien and charge against the Property for the full amount of the Prior Indebtedness plus interest and costs. No discharge, release or waiver by the Lender of any of the Prior Security against or in respect of the Property or any person or any amendment, renewal, extension, replacement, modification, supplement or restatement of any Prior Indebtedness and/or the Prior Security shall require notice to or the consent of Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender. The Subordinate Lender agrees to execute and deliver, upon request by the Lender, such further instruments and agreements as may be reasonably required by the Lender to confirm and give effect to the provisions of this agreement and to register and record or file notice of this agreement and/or this subordination and postponement of the Subordinate Security in any office of public record as the Lender may consider necessary or desirable from time to time.
3. **Amendment.** Nothing in this agreement, nor in the Subordinate Security or in any other arrangements or agreements between the Borrower, the Guarantor, the Subordinate Lender or any other person; shall restrict, limit or otherwise prevent the Lender from taking any such action or making any other amendment, renewal, extension, replacement, modification, supplement or restatement of the Prior Indebtedness or the Prior Security without the consent of the Subordinate Lender and without otherwise affecting the subordination and postponement of the Subordinate Security and Subordinate Indebtedness hereby granted. The Subordinate Lender shall not amend, extend, renew, modify, replace, supplement or restate the Subordinate Indebtedness or the Subordinate Security without the

prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion.

4. **Notices from Subordinate Lender.** The Subordinate Lender shall give to the Lender, contemporaneously with the giving thereof to the Borrower and the Guarantor, copies of any notices given by it to the Borrower and the Guarantor under the Subordinate Loan, including without limitation any notices of defaults, breaches or events of default or of events that with the giving of notice or the passage of time and failure to cure, would result in a default, breach or event of default under the Subordinate Loan.

5. **Payments.** The Subordinate Lender and Lender agree that provided: (a) sources of payment are outside of the Property; and (b) an event of default has not occurred and is continuing under the Prior Security or Loan, that payment of accrued interest and fees shall be permitted in accordance with the Subordinate Security as of the date of this Agreement. For greater clarity, until the Prior Indebtedness is paid in full: (i) all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property shall not be applied to any payment on account of the Subordinate Indebtedness at any time; and (ii) during any default under the Prior Security or Loan, it shall not accept any payment on account of the Subordinate Indebtedness whether of principal, interest, fees, costs, expenses or any other amounts from any source, and if any such payments are received, such monies shall be received and held by the Subordinate Lender in trust for the Lender and the Subordinate Lender shall immediately pay all such monies to the Lender. The Lender and the Subordinate Lender shall provide reasonable cooperation to each other to ensure the provisions of this section are complied with.

6. **Free Partial Discharges and Postponements.** The Subordinate Lender covenants and agrees that it will, at no expense to the Lender and regardless of default under or maturity of the Subordinate Security:

- (a) execute and register such postponements and partial discharges of its security as may be required to convey any part of the Property to bona fide purchasers of lots/units comprising the Property or to convey and/or grant easements over the project to any relevant governmental authority for walkways, utilities or for any other purposes as such governmental authorities may require, as part of the development process heretofore disclosed to the Lender in respect of the project as well as for any easements or rights-of-way in favour of abutting lands to provide access, egress and/or services to said abutting lands, provided however, that any monies received by the Borrower or the Guarantor from such purchasers or governmental authorities in connection therewith shall be remitted to the Lender until the Prior Indebtedness is discharged; and
- (b) execute and register where applicable any and all plans and documents required to facilitate development of the project and to re-zone the project, if necessary, and to co-operate in all respects (but without requirement to expend funds) to facilitate such registration and re-zoning including, without limitation, the execution of agreements with any relevant governmental authorities or utilities which may be required for such registration or rezoning.

In the event for any reason the Subordinate Lender does not complete and register, without payment of principal, interest or any other amounts, a partial discharge of the Subordinate Security upon completion of a sale of a lot/unit on the Property, then the Lender shall be entitled to and the Subordinate Lender hereby irrevocably authorizes and directs the Lender and its counsel to execute and register from time to time partial discharges of the Subordinate Security for each lot/unit of the Property upon completion of a sale of a lot/unit in order to validly and fully discharge any such lot/unit from the Subordinate Security without payment of any principal, interest or any other amounts to the Subordinate Lender, provided that all net proceeds from each sale are paid to the Lender to reduce the Loan. Upon the Prior Indebtedness being fully satisfied, this direction and authorization shall be of no further force and effect.

7. **Insurance Proceeds.** All insurance and expropriation proceeds received by the Subordinate Lender with respect to the Property shall be received and held by the Subordinate Lender in trust for the Lender and forthwith paid and delivered by the Subordinate Lender to the Lender, notwithstanding any provision to the contrary in the Subordinate Security or under applicable laws. All rights and entitlement of the Subordinate Lender to such proceeds are hereby postponed and subordinated to the rights of the Lender.

8. **Standstill.** The Subordinate Lender shall not take any Enforcement Action under or in respect of the Subordinate Security or the Subordinate Indebtedness with respect to all or any part of the Property or against the Borrower or Guarantor without reasonable prior notice to and the written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion; provided that, if the Lender fails to initiate any Enforcement Action within one hundred and twenty (120) days after the Lender's receipt of a notice of default under the Subordinate Loan, the Subordinate Lender may take Enforcement Action without the Lender's consent but on at least two (2) business days' prior written notice to the Lender, which notice shall specify the proposed Enforcement Action to be taken by the Subordinate Lender. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Lender under or in respect of the Prior Security or Prior Indebtedness against the Borrower and the Guarantor or against all or any part of the Property. The Subordinate Lender acknowledges, agrees, covenants and confirms to and with the Lender that a default under the Subordinate Loan shall be considered and will constitute, a default under the Loan. For greater clarity, if the Lender seeks to appoint a receiver or a receiver manager, whether pursuant to the powers contained in the Prior Security or pursuant to a court order, the Subordinate Lender will not take any steps to oppose such appointment and will consent thereto. In this Section, "**Enforcement Action**" means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager or other person having similar powers in respect of any person or property, attornment of Rents, taking possession or control of any property or undertaking, commencing, giving or making any demand for payment, any notice of intention to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, accelerating the principal payable under the Subordinate Security, or accepting a transfer of any property in lieu of foreclosure, or the registration of any lien against the Property, or the exercise of any other or rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

9. **Receivership.** Notwithstanding anything contained herein, (i) the Subordinate Lender will not appoint or seek the appointment of a separate receiver or receiver-manager if the Lender has appointed or had appointed a properly licensed receiver or receiver-manager, (ii) if a receiver or receiver-manager (which receiver or receiver-manager must be properly licensed) is appointed by, or as a result of an application by, the Subordinate Lender prior to the Lender appointing or having appointed a properly licensed receiver or receiver-manager then the Subordinate Lender will terminate or seek to terminate, as applicable, the appointment upon such appointed by, or as a result of an application by, the Lender of a properly licensed receiver or receiver-manager notwithstanding the order in which defaults may have occurred, and (iii) any receiver or receiver-manager to be appointed by, or as a result of an application by, the Subordinate Lender must be acceptable to the Lender in its sole discretion.

10. **Creditor Proceedings.** The parties hereto acknowledge and agree that the Lender and the Subordinate Lender have no commonality of interests between them such that (i) they ought not be classified in the same class in any restructuring proceeding; and (ii) the parties will take all reasonable steps to ensure they are not classified in the same class in any restructuring proceeding. If they are classified in the same class, the Subordinate Lender covenants and agrees to provide its proxy to vote its interests in any proceeding to the Lender. Upon the commencement of:

- (a) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement, proposal or similar proceedings under insolvency laws of or with respect to the Borrower or the Guarantor or their property or liabilities, in each case under insolvency laws;
- (b) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement or similar proceedings under the arrangement provisions of any applicable corporate law (in any case which involves the alteration, amendment, conversion, compromise, satisfaction or discharge of obligations of any or all creditors) of or with respect to the Borrower or the Guarantor or their property or liabilities;
- (c) any bankruptcy, insolvency, receivership, petition or assignment in bankruptcy, or assignment for the benefit of creditors under any insolvency laws of or with respect to the Borrower or the Guarantor;
- (d) any appointment of any receiver or receiver manager, whether pursuant to the power contained in the Subordinate Security or pursuant to a court order;
- (e) any marshaling of assets and liabilities of the Borrower or the Guarantor under any insolvency laws; or
- (f) any proceedings in relation to any of the foregoing;

whether any of the foregoing is voluntary or involuntary, partial or complete, and includes any such proceedings initiated or consented to by the Borrower or the Guarantor, the Subordinate Lender agrees not to take any action or vote in any way inconsistent with this agreement so as to contest (i) the validity or enforcement of any of the Prior Security, (ii) the priority of the Prior Security, and (iii) the rights of the Lender and duties of the Subordinate Lender. Unless the Prior Indebtedness is paid in full, the Subordinate Lender may not oppose, object to or vote against any plan of reorganization, plan of arrangement or any similar scheme of arrangement the terms of which are consistent with the rights of the Lender under this agreement.

11. **Assignment by Subordinate Lender.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Loan or the Subordinate Security to any person or persons (the “Assignee”) except with the prior written consent of the Lender, which consent may be given or withheld by the Lender in its sole and arbitrary discretion. If the Lender consents to any such sale, transfer, assignment or other disposition, such consent shall be conditional upon, among any other conditions that the Lender may impose, the Subordinate Lender causing each Assignee to enter into, concurrently with any such sale, transfer, assignment or other disposition, a subordination and standstill agreement with the Lender on the same terms and conditions as this agreement. The Lender may transfer or assign its interest in the Loan and this agreement without restriction and without prior notice to or the consent of the Subordinate Lender.

12. **Subordination Effective notwithstanding Registration Dates, etc.** The Prior Security shall have and be entitled to priority over the Subordinate Security in all respects and any mortgage, pledge, charge, assignment and any other security interest created by or pursuant to or granted for the obligations secured by the Subordinate Security to the full extent of the Prior Indebtedness from time to time, and the Subordinate Security shall in all respects rank subordinate and junior to the Prior Security. This priority shall be effective in all events and in all circumstances. Without limiting the generality of the foregoing, this priority shall be effective notwithstanding:

- (a) the respective dates of execution, delivery, attachment, registration, filing, perfection or enforcement of the Prior Security and the Subordinate Security;
- (b) the respective dates of any advances secured by the Prior Security or the Subordinate Security;
- (c) the respective dates of default under the Prior Security or the Subordinate Security;
- (d) any priority to which the Subordinate Security may otherwise be entitled by reason of the giving or failure to give any notice of the acquisition of any charge, lien or security interest, by reason of the failure to register or to register any renewal or by reason of any defect in any item constituting the Prior Security;
- (e) the provisions of the instruments creating the Prior Security and the Subordinate Security; and
- (f) any modification, extension, renewal, replacement, supplement or restatement of the Prior Security or the Prior Indebtedness.

13. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the Province in which the Lands are located and the laws of Canada applicable therein.

14. **Successors.** The acknowledgements and agreements contained in this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

15. **Counterpart.** This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.

16. **Registration of this Agreement.** The Subordinate Lender hereby irrevocably authorizes and directs the Lender and its solicitors, Blaney McMurtry LLP, to (a) electronically sign and register in the applicable Land Registry Office a postponement of the Subordinate Security, with a copy of this Agreement attached as a schedule thereto, and (b) electronically sign and register a financing change statement under the *Personal Property Security Act* (Ontario), postponing any registrations made under such Act by the Subordinate Lender with respect to the Subordinate Security to all registrations made under such Act by the Lender with respect to the Prior Security. The Subordinate Lender acknowledges that the effect of such electronic documents has been explained to it by its solicitors and the Subordinate Lender understands that it is and will be a party to and bound by the terms and provisions of same as if it had signed such documents. The Subordinate Lender acknowledges and agrees that the Lender's solicitors may rely on the foregoing irrevocable authorization and direction notwithstanding that the Lender's solicitors are not a party to this Agreement.

17. **Electronic Execution of Agreement and Certain Other Documents.** The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this agreement and the transactions contemplated hereby shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada) and the *Electronic Commerce Act, 2000* (Ontario), or any other similar laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada.

18. **Further Assurances by the Borrower and Guarantor.** The Borrower and the Guarantor hereby acknowledge this agreement and the subordination of the priority of the Subordinate Security to the Prior Security to the same effect as if all monies secured or intended to be secured by the Prior Security were events prior to the creation and registration of the Subordinate Security and the advance of any monies secured by the Subordinate Security as have been or will be advanced; or the registration of any lien against the Property. The Borrower and Guarantor expressly agree to perform its obligations to the Lender and the Subordinate Lender and hold and deal with the Property in accordance with the priorities set out in this agreement and to execute any instruments giving effect to such subordination and postponement as may be required by the Lender from time to time for such purpose.

19. **No Rights Conferred on Borrower or Guarantor.** Nothing in this agreement will be construed as conferring any rights upon the Borrower, Guarantor or any other third party. The terms and conditions hereof are and will be for the sole and exclusive benefit of the Lender and the Subordinate Lender.

20. **Paramountcy.** This agreement constitutes the entire agreement between the parties and supersedes all prior proposals and agreements, whether oral or written. In the event of any conflict, omission, inconsistency, ambiguity or difference between the provisions of this agreement and the provisions of any of the Subordinate Security, the provisions of this agreement shall govern and be paramount to the extent necessary to resolve such conflict or inconsistency so long as this agreement is in force.

21. **Amendment of Agreement.** No supplement, modification, waiver or termination of this agreement shall be binding unless executed in writing by the Lender and the Subordinate Lender. The parties agree that the consent of the Borrower or the Guarantor shall not be required for any such supplement, modification, waiver or termination.

Signatures appear on following page

IN WITNESS WHEREOF each of the parties have duly executed this agreement under seal.

DORR CAPITAL CORPORATION



Per: _____ c/s

Name: Brian Dorr

Title: President and CEO

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

2471867 ONTARIO LIMITED

Per: _____ c/s

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

VANDYK-LAKEVIEW-DXE WEST LIMITED



Per: _____ c/s

Name: Richard Ma

Title: CFO.

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

IN WITNESS WHEREOF each of the parties have duly executed this agreement under seal.

DORR CAPITAL CORPORATION

Per: _____ c/s

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

2471867 ONTARIO LIMITED

Per: _____ c/s

Name: *Ken Hall Ken Hall*

Title: *Treasurer*

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

VANDYK-LAKEVIEW-DXE WEST LIMITED

Per: _____ c/s

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation

SIGNED, SEALED and)
DELIVERED by John Vandyk in the)
presence of:)

_____)
Signature)

_____)
Print Name)

_____)
Address)
_____)
_____)
_____)

John Vandyk

_____)
John Vandyk)



SCHEDULE "A"

Lands

1345 Lakeshore Road East, Mississauga, Ontario

PIN: 13482-0071

LTS 1, 2, 3, 22, 23, 24, PL H23; EXCEPT PT 1 43R16245 & PT 1 43R21276;
MISSISSAUGA

SCHEDULE "B"**Security of Subordinate Lender**

Instrument No. PR3202432 registered September 15, 2017, being a Second Charge (by Postponement PR3609626 registered February 3, 2020) to and in favour of 2471867 Ontario Limited in the original principal amount of \$3,300,000. This Charge is further secured by Instrument No. PR3202539 registered September 15, 2020, being a Notice of Assignment General (Rents) also in favour of 2471867 Ontario Limited.

TAB MMMM

THIS IS **EXHIBIT "MMM"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

Court File No.
CV-22-00689146-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MOHAMMED TARIQ

Plaintiff

and

EXQUISITE BAY DEVELOPMENT INC., AHMED RAZA YOUSUF, MUHAMMAD YOUSUF, BAY MANAGEMENT INC., HARINDER TAKHAR, JAMES JOHN MURRAY, KIRAN MALHOTRA, BAY HOMES INC., BAY INTERNATIONAL INC., MOHAMMAD TAIYAB MANSOOR, BAY LAWRENCE INC., 2462686 ONTARIO INC., ELLA BOLTYANSKY, YURY BOLTYANSKY, 2213155 ONTARIO INC., MANEESH PRABHAKAR, MINT CAPITAL MIC INC., 2474229 ONTARIO INC., 2468924 ONTARIO INC., 2460741 ONTARIO INC., VANDYK PROPERTIES INCORPORATED, VANDYK PROPERTIES – THE RAVINE LIMITED, JOHN VANDYK, RICHARD MA, SHERMAN CHAN, KINGSETT MORTGAGE CORPORATION, MUHAMMAD IQBAL GHAURI, and ROOMANA GHAURI

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of

intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF’S CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff’s claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date

Issued by: _____
Local Registrar

Address of courthouse:
Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: EXQUISITE BAY DEVELOPMENT INC.
350 Burnhamthorpe Road, 215,
Mississauga, Ontario, L5G 3J1

AND TO: AHMED RAZA YOUSUF
1138 Woodington Lane,
Oakville, Ontario, L6H 7T9

5905 Bell Harbour Drive,
Mississauga, Ontario, L5M 5K8

AND TO: MUHAMMAD YOUSUF
350 Burnhamthorpe Road, 215,
Mississauga, Ontario, L5G 3J1
647-686-2973

5905 Bell Harbour Drive,
Mississauga, Ontario, L5M 5K8

AND TO: HARINDER TAKHAR
905-362-6400

AND TO: JAMES JOHN MURRAY
416-725-3335

AND TO: KIRAN MALHOTRA
416-948-0512

AND TO: BAY INTERNATIONAL INC.
350 Burnhamthorpe Road West, 215,
Mississauga, Ontario, L5B 3J1

2065 Finch Ave W,
North York, ON M3N 1W8

AND TO: BAY HOMES INC.
350 Burnhamthorpe Rd West, 215,
Mississauga, Ontario, L5B 3J1

AND TO: MOHAMMAD TAIYAB MANSOOR
647-390-8485

AND TO: BAY LAWRENCE INC.
350 Burnhamthorpe Road West, 215,
Mississauga, Ontario, L5B 3J1

2013 Lawrence Ave. W
Toronto, ON M9N 1H4

AND TO: 2462686 ONTARIO INC.
398 Ruth Avenue,
North York, ON M2M 2J2

AND TO: ELLA BOLTYANSKY
398 Ruth Avenue,
Toronto, Ontario, M2M 2J2

AND TO: YURY BOLTYANSKY
393 Ruth Avenue,
Toronto, Ontario, M2M 2J2

AND TO: 2213155 ONTARIO INC.
102 Bloor Street West, 806,
Toronto, Ontario, M5S 1M8

AND TO: MANEESH PRABHAKAR
5453 Heritage Hills Blvd,
Mississauga, Ontario, L5R 2H4

AND TO: 2474229 ONTARIO INC.
350 Burnhamthorpe Road West, 215,
Mississauga, Ontario, L5B 3J1

AND TO: 2468924 ONTARIO INC.
350 Burnhamthorpe Road West, 215,
Mississauga, Ontario, L5B 3J1

AND TO: 2460741 ONTARIO INC.
350 Burnhamthorpe Road West, 215,
Mississauga, Ontario, L5B 3J1

AND TO: VANDYK ~~PROPERTIES~~ - THE RAVINE LIMITED
1944 Fowler Drive,
Mississauga, Ontario, L5K 0A1

AND TO: JOHN VANDYK
1944 Fowler Drive,
Mississauga, Ontario, L5K 0A1

AND TO: RICHARD MA

AND TO: SHERMAN CHAN

AND TO: KINGSETT MORTGAGE CORPORATION
Scotia Plaza,
40 King Street West, Suite 3700
Toronto ON M5H 3Y2

AND TO: MUHAMMAD IQBAL GHAURI
6 Showboat Crescent,
Brampton, Ontario, L6V 4P9

AND TO: ROOMANA GHAURI
6 Showboat Crescent,
Brampton, Ontario, L6V 4P9

AND TO: MINT CAPITAL MIC INC.
Unit 104 268 Derry Road
West, Mississauga, Ontario,
L5W 0H6

AND TO: VANDYK PROPERTIES INC.
1944 Fowler Drive,

Mississauga, Ontario, L5K 0A1

AND TO:

BAY MANAGEMENT INC.
350 Burnhamthorpe Road, 215,
Mississauga, Ontario, L5G 3J1

CLAIM

1. **THE PLAINTIFF CLAIMS FROM THE DEFENDANTS OR EACH OF THEM:**

- (a) A Declaration that the transfer of the Property, defined below, from Exquisite Bay Development Inc. to Vandyk Properties, dated April 14, 2022, is a fraudulent conveyance pursuant to the *Fraudulent Conveyances Act*, and is void as against the plaintiff and ought to be set aside;
- (b) A Declaration that Vandyk Properties is not a *bona fide* purchaser of the Property (defined below);
- (c) An Order for specific performance requiring the Defendants, or any one of them, to transfer title to the Property (defined below) to the plaintiff, pursuant to the Agreement of Purchase and Sale (the “APS”) and Assignment Agreement with the plaintiff dated August 1, 2019, and May 28, 2021, respectively, and to fulfill all obligations pursuant to the terms of their Agreements;
- (d) A declaration that Exquisite Bay Development Inc.’s Agreement for Purchase and Sale with the plaintiff is valid and enforceable but for sections 12, 17, 21, 36, which are unconscionable and are void *ab initio* or voidable and ought to be struck from the Agreement of Purchase and Sale.
- (e) An interim, interlocutory and permanent injunction restraining the defendants from selling, transferring or encumbering the Property (defined below) or from dealing with the plaintiff’s deposit and Property pending this litigation;
- (f) A *Mareva* Order against Exquisite Bay, Bay Homes Inc., Bay International Inc., Bay Lawrence Inc., Ahmed Raza Yousuf and Muhammad Yousuf freezing their bank accounts and those of 2462686 ONTARIO INC., 2213155 ONTARIO INC.,

2474229 ONTARIO INC., 2468924 ONTARIO INC., 2460741 ONTARIO INC.

and an Order of no dealing be registered on the properties municipally known as

1138 Woodington Lane,
Oakville, Ontario
L6H 7T9

AND

5905 Bell Harbour Drive,
Mississauga, Ontario,
Canada, L5M 5K8

AND

2013 Lawrence Ave. W
Toronto, ON M9N 1H4 (PIN: 10324-0416 LT)

AND

2065 Finch Ave. West
North York, ON M3N 1W8 (PIN: 10284-0752 LT)

- (g) An Order requiring the defendants to disclose to the plaintiff the status of the project and the status of all pending and future sales, transfers or conveyances of the Property (defined below);
- (h) An Order that the Defendants provide an accounting of the plaintiff's and/or the plaintiff's Assignor's deposit and a full statement of account of the trust accounts wherein the deposits were provided;
- (i) An Order restraining the defendants from dissipating any of the proceeds of sale received from, and arising from the sale of the Property from Exquisite Bay Development Inc. to Vandyk Properties;

- (j) An Order permitting the tracing of funds received by the defendants, or on the defendants' behalf, directly or indirectly, relating to any completed, current and future sale, transfer, conveyance or encumbrance of the Property;
- (k) An Order that a Certificate of Pending Litigation be issued and registered on the Property over which the APS and Assignments were entered into, legally described as:
- Lot 15, PLAN 43M2113; CITY OF MISSISSAUGA,
bearing PIN number 13214-0885 (LT) (hereinafter "Property");
- (l) damages as against the Defendants jointly and severally in the amount of \$1,000,000.00 as a result of fraudulent misrepresentations, breach of honest performance of contract, breach of fair dealing, inducing breach of contract, breach of fiduciary duty, civil conspiracy and/or unjust enrichment;
- (m) Punitive damages against the defendants in the amount of \$1,000,000.00 for knowingly, recklessly, negligently or being wilfully blind regarding participating in the fraudulent conveyance, or being wilfully blind to its participation in the fraudulent conveyance and civil conspiracy, inducing breach of contract, and breach of fiduciary duty;
- (n) A declaration that the individual defendants are personally liable and the corporate defendants are liable for the damages incurred by the plaintiffs due to their breach in their duty of good faith and fair dealing, directing that a wrongful thing be done all while being the controlling minds of their respective corporations;
- (o) a Declaration that the Charges/Mortgages identified as Instrument Nos. PR4032438 and PR4032440 registered in favour of the defendant, Kingsett Mortgage Corporation, is/are void *ab initio*, and/or voidable, as against the Plaintiffs;

- (p) an Order directing the Registrar of the Land Titles Office to delete and discharge the charges/mortgages identified as Instrument Nos. PR4032438 and PR4032440 from title of the Property.
- (q) A Declaration that any judgment granted in this action survive bankruptcy pursuant to section 178 of the *Bankruptcy and Insolvency Act*;
- (r) payment of pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
- (s) post-judgment interest in accordance with section 129 the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended;
- (t) an order granting costs on a full indemnity basis of this action including all HST attributable to any award of costs be awarded in favour of the plaintiff; and
- (u) such further and other relief as counsel may advise and this Honourable Court deems just.

THE PARTIES:

2. The plaintiff, Mohammed Tariq, is an individual residing in Mississauga, Ontario.
3. The defendants, Mr. Mohammad Iqbal Ghauri and Mrs. Roomana Gauri are individuals residing in Mississauga, Ontario and are husband and wife. They are friends with the plaintiff, Mohammed Tariq, and they assigned all rights and entitlements of the Property to the plaintiff.
4. The corporate defendant, Exquisite Bay Development Inc. (hereinafter “Exquisite Bay”), is a business incorporated pursuant to the provincial laws of Ontario, with its registered head office as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1. Exquisite Bay

has several related corporations who are also named as corporate defendants in this litigation, being Bay Homes Inc., Bay International Inc., Bay Management Inc., and several Ontario Corporations, being 2474229 ONTARIO INC., 2468924 ONTARIO INC., 2460741 ONTARIO INC., who were involved in the subject fraudulent transaction.

5. The defendant, Ahmed Raza Yousuf (hereinafter “Ahmed”) is an individual and one of the directors of Exquisite Bay and the director of the corporate defendants, **Bay Homes Inc., Bay International Inc., Bay Lawrence Inc., Bay Management Inc., 2474229 ONTARIO INC., 2468924 ONTARIO INC., and 2460741 ONTARIO INC.** At all material times hereto was the directing mind, owner, officer and director of Exquisite Bay and the above-named corporations.
6. The defendant, Muhammad Yousuf (hereinafter “Muhammad”) is an individual and one of the directors of Exquisite Bay.
7. The defendant, Harinder Takhar, is an individual and at all material times hereto was a directing mind, owner, officer, director and/or key employee of Exquisite Bay.
8. The defendant, James John Murray, is an individual and at all material times hereto was a directing mind, owner, officer, director and/or key employee of Exquisite Bay.
9. The defendant, Kiran Malhotra is an individual and at all material times hereto was a directing mind, owner, officer, director and/or key employee of Exquisite Bay.
10. The defendant, Bay Homes Inc., is a business incorporated under the laws of Ontario. Ahmed Raza Yousuf is its director.
11. The defendant, Mohammad Taiyab Mansoor, is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Bay Homes Inc.

12. The defendant, Bay International Inc. is a business incorporated under the laws of Ontario. Ahmed Raza Yousuf is its director.
13. The defendant, Bay Lawrence Inc., is a business incorporated under the laws of Ontario. It is a related corporation to Bay Homes Inc., Bay International Inc., and Exquisite Bay. The defendant, Ahmed Yousuf is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Bay Lawrence Inc.
14. The defendant, Bay Management Inc., is a business incorporated under the laws of Ontario on November 27, 2013. It is a related corporation to Bay Homes Inc., Bay International Inc., and Exquisite Bay. The defendant, Ahmed Yousuf is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Bay Management Inc. Bay Management Inc. was hired by Exquisite Bay Development Inc., to manage to development project and was paid an amount of \$10,000.00 per month plus tax out of the Plaintiffs' deposits.
15. The defendant, Vandyk ~~Properties~~ – the Ravine Limited (hereinafter “Vandyk”) is a business incorporated under the laws of Ontario on March 16, 2022.
16. The defendant, Vandyk Properties Incorporated, is a business incorporated under the laws of Ontario, on November 7, 2000.
17. The defendant, John Vandyk is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Vandyk – The Ravine Limited and Vandyk Properties Incorporated.
18. The defendant, Richard Ma, is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Vandyk – The Ravine Limited and Vandyk Properties Incorporated.
19. The defendant, Sherman Chan, is an individual and at all material times hereto was the

- director, officer, shareholder, and/or key employee of Vandyk – The Ravine Limited.
20. 2462686 ONTARIO INC. is a business incorporated under the laws of Ontario. Ella Boltyansky and Yury Boltyansky, both individuals and named as defendants in this action, at all material times hereto were the directors, officers, shareholders, and/or key employee of 2462686 ONTARIO INC.. This corporation provided held a charge on the Property for 2 days, from April 12 to April 14, 2022, assisting Exquisite Bay in deceitful business practices.
21. The defendant, 2213155 ONTARIO INC. is a business incorporated under the laws of Ontario. Maneesh Prabhakar, an individual and named as a defendant in this action, at all material times hereto was the director, officer, shareholder, and/or key employee of 2213155 Ontario Inc.. This corporation provided held a charge on the Property for 2 days, from April 12 to April 14, 2022, assisting Exquisite Bay in deceitful business practices.
22. The defendant, Mint Capital MIC Inc., is a business incorporated under the law of Ontario on December 19, 2017. Mint Capital MIC Inc. was repaid their mortgage loan to Ahmed Yousuf using Plaintiffs' funds held by Exquisite Bay Development Inc. in the amount of approximately \$510,319.39.
23. The defendant, Kingsett Mortgage Corporation (“Kingsett”), is a corporation pursuant to the laws of Canada, and registered Charges/Mortgages in the amounts of \$18,000,000.00 and \$37,000,000.00 on the Property on April 14, 2022.

BACKGROUND INFORMATION:

24. In or about 2019, the defendant, Exquisite Bay, had marketed to the public and the plaintiff that it was designing, developing and constructing single detached family homes in a community that would be named Longview Estates, once completed (the “Project”).
25. The Project marketed to purchasers that it would be in a prime, family-friendly location in

busy Mississauga, located south of Derry Road West, between McLaughlin Road and Hurontario Street, with convenient access to stores, restaurants, and green areas.

26. At all material times, Exquisite Bay represented to the public and the plaintiff that it owned the Project and the land upon which the new homes would be built, and that the Project would be completed.

Agreement of Purchase and Sale : Lot 15

27. On August 1, 2019, Mr. Mohammad Iqbal Ghauri together with his wife, Roomana Ghauri entered into an Agreement for Purchase and Sale (the “APS”) with Exquisite Bay for a single detached home at Longview Estates, for the purchase of Lot 15, Elevation B.
28. Pursuant to the APS, the Property was purchased for one million three hundred four forty-nine thousand, nine hundred dollars (\$1,349,900.00 CAD).
29. Further material terms in the APS include but are not limited to:
30. Mr. and Mrs. Ghauri would provide a series of deposits on an ongoing basis as follows at Schedule X1 thereto (collectively the “Deposit”):
 - (a) \$30,000 upon signing the APS;
 - (b) \$10,000 30 days thereafter;
 - (c) \$10,000 within 60 days thereafter;
 - (d) \$10,000 within 90 days thereafter;
 - (e) \$10,000 within 120 days thereafter;
 - (f) \$10,000 within 150 days thereafter;
 - (g) \$10,000 within 180 days thereafter;
 - (h) \$10,000 within 210 days thereafter;
31. The balance of the Purchase Price of the would be paid by purchasers on the closing date as defined in the APS and Tarion Addendums thereto.

32. Exquisite Bay was required to construct a dwelling and obtain all necessary building permits to construct the home as specified in Schedule C and C-1 of the APS.
33. Exquisite Bay was required to complete the construction within the closing dates as set out in the Tarion Addendum and Statement of Critical Dates, being as followed:
 - (a) First Tentative Closing Date: July, 16, 2020;
 - (b) Second Tentative Closing Date: November 13, 2020;
 - (c) Firm Closing Date: March 15, 2021;
 - (d) Outside Closing Date: November 15, 2021;
 - (e) Purchaser's Termination Period: December 15, 2021;
34. Upon completion, the purchasers would obtain clear title and possession to the Property known legally as Lot 15, PLAN 43M2113; City of Mississauga.
35. Exquisite Bay was required to transfer title of the Property upon payment of the Purchase Price, once the Property was substantially completed and ready for occupancy.
36. The Ontario New Homes Warranties Plan Act ("ONHWPA") warranted the construction and performance of the APS, as well as providing Delayed Occupancy Warranty, Deposit Protection, and other warranties as set out in the ONHWPA.

Assignment of Agreement of Purchase and Sale

37. On May 28, 2021, Mr. Mohammad Iqbal Ghauri together with his wife, Roomana Ghauri (collectively, hereinafter "the Assignors") assigned the Property to the Plaintiff, Mr. Mohammed Tariq, the "Assignee", via an Assignment of Purchase and Sale Agreement (hereinafter "Assignment Agreement").
38. The Assignors and the plaintiff Assignee (Mr. Tariq) are close family friends.
39. Originally, the Assignors wanted to purchase the property for themselves to reside in,

however, the Assignors changed their minds sometime in 2020 due to the high cost of the Property. The Assignors reached out to Mr. Tariq for him to buy the property with them sometime in early 2020. Ultimately, the Assignors decided to assign the Property outright to Mr. Tariq.

40. The Assignment was consented to by Exquisite Bay and was executed by Ahmed Yousuf, the Director of Exquisite Bay.
41. The Assignors paid \$7,500.00 to Exquisite Bay for the Vendor's assignment fee and \$847.50 to Himelfarb Proszanski representing the Vendor's legal fees to prepare the Assignment Agreement.
42. Per the Assignment Agreement, the Assignors agreed to assign all of its right, title and interest in and to the Purchase Agreement, executed August 1, 2019, to the Assignee.
43. Further material terms to the Assignment Agreement included but are not limited to:
 - (a) the Assignee agrees to comply and observe all the terms, covenants, agreements, and conditions contained in the Purchase Agreement.
 - (b) The Assignor warrants and represents the Purchase Agreement is in good standing
 - (c) The Assignor hereby irrevocably grants, assigns and conveys unto the Assignee all of the Assignor's right, title, and interest in, under and to the Purchase Agreement which, without limiting the generality of the foregoing, includes all:
 - (d) Rights to the deposits paid to date thereunder;
 - (e) Rights to any amounts paid for extras thereunder;
 - (f) Benefits to any and all credits described therein; and
 - (g) The right to purchase the Unit;
 - (h) The Assignee covenants and agrees to comply with and observe all the terms, covenants, agreements, and conditions contained in the Purchase Agreement [...].

Despite any such assignment, the Assignor shall remain liable to the Vendor for its obligations under this Agreement jointly and severally with the Assignee [...].

- (i) The Assignor and Assignee acknowledge and agree that from the date that the Vendor executes the consent below, all notices, demands, etc. under the Purchase Agreement shall be delivered in accordance with the Purchase Agreement to the Assignee or his solicitor [...];

44. The Assignors and the Assignee entered into a separate agreement regarding the financial consideration between them for the Property and its assignment in or about 2020.
45. Due to the Assignors' and Mr. Tariq's close relationship and since the Assignors had already provided all post-dated cheques for the deposit to Exquisite Bay, the Assignors and Mr. Tariq agreed that Mr. Tariq would provide funds directly to the Assignors, via cheques, so that the Assignors' cheques could still be utilized and there would be sufficient funds in the Assignors' bank account to cover the deposit amounts whenever Exquisite Bay would cash the Assignors cheques.
46. In total, Mr. Tariq paid the Assignors \$275,000.00 CAD. \$150,000.00 was for the deposit on the Property, and \$115,000.00 as the Assignment fee.
47. Mr. Tariq intended on moving into the Property with his family. He and his family were very much looking forward to moving in and setting down roots in the Property.

OVERVIEW: FRAUDULENT MISREPRESENTATION & DECEPTIVE BUSINESS PRACTICES

48. At all material times, Exquisite Bay communicated with the purchasers advising of updates with respect to the project, and at all times represented and acted in a manner consistent with an intention to complete the Project.
49. Notwithstanding the above updates from Exquisite Bay to the purchasers, beginning in the

summer of 2020, Exquisite Bay began advising purchasers that the Project was delayed due to Covid-19, but represented and acted in a manner that led the purchasers to believe Exquisite Bay was intending to finish the Project.

50. Exquisite Bay was not able to provide occupancy by the Outside Closing Date set out in the APS, which was November 15, 2021. Notwithstanding that fact, however, Exquisite Bay continued to communicate with the purchasers advising that it was planning to proceed.
51. Although Exquisite Bay was making reassuring representations to the purchasers of the Project's status, Exquisite Bay never intended on carrying out the Project to completion; Exquisite Bay did not take genuine steps to complete the project. By Exquisite Bay's own admission in its defence against another action commenced by a different set of plaintiffs in the Sur et al v. Exquisite Bay claim, at paragraph 35, the land is vacant, even 4 years after commencing the sale of lots. This further goes to demonstrate there was no intention to complete the Project and further supports the notion Exquisite Bay acted deceitfully, stealing innocent buyers' funds and fraudulently transferring the Property to Vandyk.
52. Exquisite Bay failed to take out necessary approvals, permits and authorizations with the municipalities and province.
53. Exquisite Bay also failed to ensure its license and registration with Tarion and/or the Home Construction Regulation Authority ("HCRA") was in good standing, which is required to provide Tarion warranty, and to legally construct a new residential property in Ontario. It is telling that on March 12, 2021, Exquisite Bay's Licence with the HCRA was refused, yet Exquisite Bay did not take steps to restore this licence, nor did it inform any purchasers of its refused licence status. Even Exquisite Bay's related corporation, Bay Homes Inc.'s, (which is listed as part of Exquisite Bay's umbrella group with the HCRA), licence had expired on March 6, 2020. Again, this status was not disclosed to any of the buyers of the

Project, nor were steps taken by Exquisite Bay nor Bay Homes Inc. to restore their respective licences.

54. The failure of Exquisite Bay and its associated corporations to restore their Tarion and HCRA licences further reflects these corporations' and directors' ill-intent while also frustrating and complicating the plaintiff and purchasers' remedy for Tarion deposit insurance relief through Tarion.

Breach of honest performance of contract, breach of duty of fair dealing, to act in good faith and in accordance with reasonable commercial standards

55. Instead of carrying out a genuine intention to perform its obligations under the APS, Exquisite Bay began soliciting a purchaser of the Project lands sometime in 2021. This fact was also not disclosed to the purchasers at any material time.
56. Subsequently, and on a date unknown to the plaintiff, Exquisite Bay entered into an agreement to sell the Property, and all other lots associated with the Project to the corporate Defendant, Vandyk Properties (the "Vandyk Sale Agreement").
57. The specific terms and conditions of the Vandyk Sale Agreement are unknown to the plaintiff.
58. The Vandyk Sale Agreement was later completed, without any disclosure to the plaintiff, and while the Plaintiff's APS remained valid and in force on April 14, 2022.
59. In late April, the Plaintiff received an unsolicited letter dated April 11, 2022, from Exquisite Bay advising that it was terminating the APS in relation to Longview Ravine Estates, by relying on section 36 of the APS, which stated that Exquisite Bay could terminate the APS and retain the Deposits if the Plaintiff failed to provide a mortgage commitment letter from a Charter 1 Bank.

Section 36 of the APS (in Schedule A) reads:

"... the Purchaser shall deliver to the Vendor, within 10 days of acceptance of

this Agreement by the Vendor and thereafter within 14 days of demand from the Vendor or any agent thereof, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Closing Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement and a mortgage commitment from one of the Schedule "1" chartered banks in Canada with respect to this transaction of purchase and sale, all of the foregoing to be satisfactory to the Vendor in its sole, absolute and unfettered discretion. Any failure by the Purchaser to comply with the provisions of this paragraph shall constitute a default by the Purchaser, pursuant to which the Vendor shall have the right to terminate this Agreement and take forfeiture of the Purchaser's deposit in accordance with the provisions of this Agreement..."

60. Exquisite Bay did not raise any issues with the purchasers' mortgage commitment letters, nor did it challenge the validity of their APS prior to this "April 11, 2022" correspondence.
61. Throughout the years, Exquisite Bay continued to receive and cash the plaintiff's monthly deposit payments.
62. Furthermore, the purported "termination letter" was received by regular mail, but was dated April 11, 2022, a mere three (3) days prior to the transfer of the Property to Vandyk Properties which occurred April 14, 2022. The letter was signed by Ahmed Yousuf on behalf of Exquisite Bay, and the letterhead belonged to the corporation called Bay Homes.
63. At no time prior to receiving this letter, did Exquisite Bay advise it was planning to sell the Property to Vandyk Properties, or that it was going to unilaterally terminate the APS.
64. Nevertheless, if Exquisite Bay was genuinely concerned about the financial disclosure already provided by the Assignors and/or the Plaintiff, it could have demanded the required

documents from the Plaintiff and the Plaintiff could have provided the same well within 14 days of the demand for documents, which was stipulated in section 36 of the APS.

65. Given the fact that the value of the Property appreciated a significant amount since the purchase date of August 1, 2019, it is clear to the Plaintiff that Exquisite Bay intentionally sold the Property to Vandyk Properties in a premeditated and concerted effort to make higher profits from the Property.
66. The unilateral and unreasonable “termination” of the APS by Exquisite Bay and its directors and taking forfeiture of the plaintiff’s deposit funds was deceitful, illegal, a breach of honest performance of contract, a breach of the duty of fair dealing, and a breach in the duty to act in good faith in accordance with reasonable commercial standards.

Fraudulent conveyance to Vandyk Properties

67. The Plaintiff states that Exquisite Bay made multiple dishonest and fraudulent representations that it was intending to complete construction of the Project, while it in fact had no intention to do so. Exquisite Bay was taking steps to sell the Property, without disclosing same to the Plaintiff and the Assignors. Based on such misconduct, the equities weigh in favour of granting the equitable relief of Specific Performance.
68. Further to the above, the Plaintiff states that Exquisite Bay’s sale to Vandyk Properties was a fraudulent transaction pursuant to the *Fraudulent Conveyances Act*, RSO 1990 Chapter F. 29 (“FCA”).
69. The sale to Vandyk Properties was a conveyance of real property executed with the intent to defraud and deceive the Plaintiff and is void as against the Plaintiff’s interests in the lands.
70. The sale to Vandyk Properties was also a conveyance made with the intent to defeat, hinder, delay or defraud the Plaintiff’s just and lawful action against Exquisite Bay for its breach of contract under the APS.

Concerted Effort by the Corporate Defendants, and its Directors and Kingsett Mortgage Corporation is collusion

71. It seems that Vandyk did not complete its own due diligence of third-party interests or was reckless, negligent, and willfully blind due to a lucrative deal. Alternatively, Exquisite Bay did not disclose the existence of buyers' APS and interest of the multiple parties in the lands. This points to the fact that the transaction was a result of conspiracy and was a collusive transaction hence fraudulent in order to deprive victims.
72. The Parcel Register Search for the Property reveals the timeline and concerted efforts of the defendants.
73. On **June 26, 2020**, Kingsett Mortgage Corporation (hereinafter "Kingsett") provided mortgages to Exquisite Bay, which is identified by the instrument number PR3667703 and PR3667705.
74. On **April 8, 2022**, 2462686 Ontario Inc. provided funding to Exquisite Bay bearing instrument number PR4029245. The Director of 2462686 Ontario Inc. is Ella Boltyanski and Yury Boltyanski is the signing officer of the same. The principal charge was in the amount of \$630,000.00.
75. On **April 12, 2022**, the day after Exquisite Bay purportedly sent the "termination" letter to buyers, the following occurred:
 - (a) 2213155 Ontario Inc. provided funding to Exquisite Bay. The charge bears instrument number PR4030578. The Director of 2213155 Ontario Inc. is Maneesh Prabhakar. The principal charge was in the amount of \$503,946.00.
 - (b) Three (3) corporations, 2474229 Ontario Inc., 2468924 Ontario Inc., and 2460741 Ontario Inc. provided funding to Exquisite Bay which is identified by instrument number PR4030579. The Director of all three corporations is Ahmed Yousuf. The

principal charge was in the amount of \$7,204,983.00.

(c) Bay International Inc. provided funding to Exquisite Bay which is identified by instrument number PR4030580. Ahmed Yousuf is Bay International Inc.'s director.

The principal charge was in the amount of \$7,036,892.00.

76. Two (2) days later, on **April 14, 2022**, all of the charges held by the 5 corporations listed above were completely discharged.

(a) Furthermore on April 14, 2022, EXQUISITE BAY DEVELOPMENT INC. transferred title to VANDYK – THE RAVINE LIMITED for the amount of \$926,830.00. The transfer bears registration number PR4032378.

(b) Kingsett Mortgage Corporation provided funding to VANDYK – THE RAVINE LIMITED in two (2) separate charges, one being in the amount of \$18,000,000 (registration number PR4032438) and the other being in the amount of \$37,000,000 (registration number PR4032440).

(c) On the same day, the charges are all discharged.

77. On or about April 18, 2022, MINT CAPITAL MIC INC. received funds stemming from the plaintiffs' deposits for a discharge of a mortgage. This transaction was not registered on the subject property's parcel register. Mint Capital Mic Inc., being the recipient of defrauded funds are liable to return the defrauded funds under the doctrine of knowing receipt as they received the funds for their own benefit, has actual or constructive knowledge of facts which would put a reasonable person on inquiry, but failed to inquire as to the possible fraudulent misappropriation of the funds.

78. On June 16, 2022, Kingsett again provides funds to Vandyk in the amount of \$68,750,000 (registration number PR4070590).

79. The Plaintiffs state that Kingsett's original mortgages were for the construction financing of

the Longview Estates Project by Exquisite Bay, and that Kingsett was well aware of the plaintiff's executed APS and those of other purchasers for other lots.

80. Despite knowing of the pending APS, Kingsett failed to take reasonable steps to ensure, or was reckless, negligent, or wilfully blind to the fact that the Plaintiff's APS still valid and pending at the time its charges were registered on April 14, 2022.
81. The Plaintiff further states that Kingsett was, or ought to have been aware that Exquisite misled the Plaintiff into thinking the Project was going to be completed.
82. The Plaintiff states that Vandyk obtained title to the Property through a fraudulent conveyance, and therefore was not the owner of the Property at the time Kingsett registered its charges/mortgages on April 14, 2022. Pursuant to s.68(1) of the *Land Titles Act*, Vandyk was not entitled to transfer or charge the Property in favour of Kingsett.
83. Furthermore, the Plaintiff relies upon section 5 of the *Fraudulent Conveyances Act*, which holds that any conveyance of real property made with the intent to defraud and deceive a purchaser shall be deemed to be void as against that person and the person's assigns who have purchased for money or other good consideration. Therefore, the charges/mortgages identified as Instrument Nos. PR4032438 and PR4032440 are void *ab initio*, and/or voidable and ought to be discharged and deleted from title to the Property.
84. It appears the mortgagee was part and parcel of the fraudulent transaction as the discharges and charges of larger amounts without actual payment of or proof of a money trail reflects that all the corporate defendants and their directors were in cahoots. This includes the four (4) numbered companies that held mortgages on the property for 2 days. The real estate counsels' and mortgagee's trust ledgers will have to be examined by financial auditors.
85. The corporate defendants are merely shell corporations and/or have conspired with one another to defraud the plaintiff and the corporate veil must be pierced as the individual directors should be held personally liable.

Individual Defendants, motivated by profit, are also liable for fraudulent misrepresentation and breaches of honest performance of contract and fair dealing

86. The Plaintiff further states that Exquisite Bay, and its principals, the defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, Mohammad Taiyab Mansoor and Kiran Malhotra have made fraudulent misrepresentations and breached the implied duty to honest contractual performance.
87. In particular, Exquisite Bay, Ahmed Raza Yousuf and Muhammad Yousuf and the other directors used dishonest and deceptive practices to obtain and benefit from the Plaintiff's Deposit funds over the course of 2 years, without a genuine intention to complete the Project, contrary to the duty of fair dealing.
88. The Directors had directed wrongful things to be done by stating misrepresentations be made and by engaging in the fraudulent conveyance to Vandyk Properties.
89. Furthermore, Bay Homes Inc., Bay Management Inc., and Bay International Inc. are associated umbrella companies with Exquisite Bay, and involve some of the same directors. Therefore, Bay Homes Inc., and Bay Homes International Inc. and its directors, mainly Ahmed and Muhammad Yousuf are also liable for fraudulent misrepresentations and breaches of the duty of honest performance of contract and fair dealing.
90. Exquisite Bay, Bay Homes Inc., Bay International Inc., Bay Management Inc. and its Directors made repeated and dishonest representations to the purchasers that it was not going to complete the Project. Such representations were made knowing them to be untrue and to induce the purchasers into making continued deposit payments. The defendants failed to keep such deposit funds in a trust account. The intention of the defendants was to keep the purchasers' deposits, abandoning the Project and selling the Property for further profits deviously, behind the buyers' back.
91. The defendants made ongoing and repeated fraudulent misrepresentations, to conceal the

sale to Vandyk Properties, and to hinder and delay the Plaintiffs' ability to pursue their interests in the Property.

92. The Defendants Vandyk Properties, their Directors and Kingsett Mortgage Corporation knowingly were party to a fraudulent transaction or were reckless, negligent or wilfully blind to the facts of this transaction, specifically that APSs were already signed and deposits were already collected from *bona fide* purchasers. The corporate defendants and their directors colluded and acted in concert with their primary objective being to make more profit.
93. The same Property that was sold in August 2019 for approximately \$1.3 million dollars CAD, is now being sold for \$2.4 million CAD, a full million dollars more profit per lot is what the defendants stand to gain.

Breaches under the Assignments and Preferences Act; breaches of fiduciary duty to corporation as a director and inducing breach of contract

94. The Defendants Vandyk Properties, Vandyk – the Ravine Limited, their Directors and Kingsett Mortgage Corporation are also liable for the tort of inducing breach of contract, as they had knowledge of the contract between Exquisite Bay Development Inc. and the Plaintiffs, they intended to procure a breach of that contract; the defendants' conduct caused Exquisite Bay Development to breach the contract; and the Plaintiffs suffered damages as a result. On at least two occasions, Vandyk Directors, John Vandyk, Richard Ma and Sherman Chan met with Ahmed Yousuf and discussed the Plaintiffs situation regarding their deposits. Kingsett Mortgage Corporation pressured Exquisite Bay into selling the property and informed Vandyk of the fact of an impending sale before the listing for sale was announced, rather than having the project go into receivership due to Exquisite Bay's apparent insolvency. This arrangement was most convenient for Kingsett Mortgage Corporation as it preferred their own interests to make more profits by being on both sides of the deal, providing mortgage for both Exquisite Bay Development and Vandyk.

95. Any payment by a person or entity who is insolvent or near insolvent, with the intent on giving a preference to one creditor over others is void under the *Assignments and Preferences Act* RSO 1990, c A.33.
96. Exquisite Bay Development Inc. entered into loan agreement and shareholder agreement with Harinder Takhar, through his corporation, Chalmers Group Inc., and Kiran Malhotra, through her corporation, 1218939 Ontario Inc., on or about July 10, 2018.
97. Harinder Takhar and Kiran Malhotra were appointed as directors/vice-presidents of Exquisite Bay Development Inc. James John Murray was also appointed as a director. Harinder Takhar signed the loan agreement on behalf of Exquisite Bay Development Inc., as a signing officer of Exquisite Bay Development Inc.
98. Upon being appointed directors of Exquisite Bay Development Inc., Harinder Takhar, Kiran Malhotra and James John Murray owed fiduciary duties to Exquisite Bay to act in its best interests.
99. The loan to Exquisite Bay Development from Harinder Takhar and Kiran Malhotra was in the amount of \$6,500,000.00 CAD.
100. The shareholder agreement dated July 10, 2018, provided that Bay International Inc. held 400 common shares, Exquisite Bay Development Inc. held 100 shares, Chalmers Group Inc. held 250 common shares and 1218939 Ontario Inc. held 250 common shares. Harinder Takhar and Kiran Malhotra through their corporations were 50% shareholders of Exquisite Bay Development Inc.
101. After discovering that Exquisite Bay was facing financial concerns, on June 1, 2021, Harinder Takhar sent a notice to Exquisite Bay Development Inc. demanding the repayment of the loan from Exquisite Bay Development Inc. by June 30, 2021 as he became concerned the 2018 loan would not be repaid.
102. On August 4, 2021, Harinder Takhar, Kiran Malhotra, through their other respective

- corporations, Chalmers Group Inc., and 1218939 Ontario Inc., entered into a settlement and termination agreement with Exquisite Bay Development Inc.
103. The amount owing to Harinder Takhar and Kiran Malhotra from their loan of \$6.5 million to Exquisite Bay Development Inc., was \$10,341,982.81; they were repaid through their respective corporations, by an acquisition of the block 46 of the Exquisite Bay Development Inc. project, which they valued at \$3,140,000.00. The property was legally described as Part of Lot 10 Concession I west of Hurontario Street, being described as Block 46 on draft plan of subdivision dated November 30, 2020. This amount was “off-set” from the \$10,341,982.81 owing. The remaining balance of \$7,201,982.81 owed to them was paid by Exquisite Bay Development Inc. and/or Ahmed Yousuf on August 20, 2021.
104. On August 20, 2021, Harinder Takhar and Kiran Malhotra transferred their shares to Exquisite Bay Development Inc.
105. In inducing a loan repayment from Exquisite Bay Development Inc., knowing that the corporation was insolvent, Harinder Takhar, Kiran Malhotra, Ahmed Yousuf, Exquisite Bay Development Inc., and the other related corporations controlled by Ahmed Yousuf preferred the creditor interests of Harinder Takhar and Kiran Malhotra over that of the Plaintiffs interests. This act also was a breach of each of these directors’ fiduciary duties to Exquisite Bay Development Inc., of which Harinder Takhar and Kiran Malhotra were also directors and shareholders.
106. All the while, Bay Management Inc., who is another corporate entity owned by Ahmed Yousuf, was retained to “manage” the project and was being paid \$10,000.00 plus tax per month for his services, from the plaintiffs funds, knowing that Exquisite Bay was having extreme financial troubles. This is another instance where the interests of a director Ahmed Yousuf and a corporation controlled by him were preferred over the interests of the plaintiffs. They continued to siphon money for their own benefit to the detriment of the plaintiffs.

107. Harinder Takhar and Kiran Malhotra, were directors of Exquisite Bay Development Inc. from July 10, 2018 until their resignation on August 20, 2021, while each being directors of their respective corporations Chalmers Group Inc., and 1218939 Ontario Limited. They were also 50% shareholders of Exquisite Bay Development through their corporations.

UNJUST ENRICHMENT

108. Further or in the alternative to the above, the plaintiff states that the defendants have become unjustly enriched by illegally terminating the APS; the plaintiff has a constructive trust in the Property.
109. The defendants have made profits from not just the plaintiff's deposited funds, but from all of the purchasers' funds deposits on the Project, hence co-mingled all purchasers' funds to make profits. As such, the purchasers are also entitled to those profits.
110. The defendants have received the benefit of the plaintiff's deposit funds without completing the construction of the Property, but instead, illegally terminated the APS and fraudulently sold the land on which the Property was to be built to make further profit as the housing market prices increased. The defendants have been unjustly enriched at the expense and detriment of the plaintiffs and there is no justifiable reason in law for the defendants to have benefitted and for the plaintiff to have incurred such loss. The plaintiff relies upon the doctrine of *unjust enrichment* as relief.

SOCIETAL IMPORTANCE OF THE ISSUES IN THIS CLAIM:

Principle of free will in contract is eliminated

111. The issues outlined in this claim are of the utmost importance for not only the plaintiff, but for other buyers of any residential real estate project.
112. The demand in the Greater Toronto Area's housing market has experienced unprecedented highs and many buyers are priced out of the market or have extreme difficulty in purchasing

real property.

113. When there is finally an opportunity for buyers to purchase pre-construction homes through a builder, there is tremendous amounts of pressure for buyers to quickly provide deposits to the builders and sign an APS, often without legal advice (for fear of missing the short window of opportunity) to obtain property. Such pressure is tantamount to duress, coercion or compulsion and effectively eliminates the essential requirement of ‘free will’ in a valid and enforceable contract. The power imbalance in these types of APSs is significant and has enabled developer vendors and their associates to act with impunity and total disregard for purchasers’ well-being and hard-earned funds.
114. The unconscionable and deceptive actions of the defendant builders, property developers, mortgage corporations, and their directors should be heavily scrutinized as it affects a great number of people in our society. With buyers’ potential life savings being taken from them, buyers are less likely and hard-pressed to enforce their right and entitlement with respect to their transactions.
115. Overall, the plaintiff states that the APS entered into by the plaintiff and Exquisite Bay is valid and enforceable, notwithstanding the Property being fraudulently sold to Vandyk Properties, but for certain unconscionable provisions in the APS, which ought to be struck, namely 12, 17, 21, and 36.

RELIEF SOUGHT:

Interim Injunctive Relief

116. The plaintiff seeks an interim and/or interlocutory injunction to restrain the Defendants, their agents, employees, assigns, or anyone having notice of the relief granted, from dissipating, encumbering, transferring or otherwise encroaching or dealing with the Plaintiffs’

Deposit, the proceeds of sale of the Property, or selling the Property (Lot 15) until the outcome of trial of this action;

117. The plaintiff seeks that the Defendants make a security deposit of \$275,000.00 with the Court pending the resolution of this matter and that the bank accounts of Exquisite Bay, Bay Homes Inc., Bay Management Inc., Bay International Inc., 2474229 Ontario Inc., 2468924 Ontario Inc., and 2460741 Ontario Inc. be frozen pending the resolution of this matter.

Certificate of Pending Litigation

118. The plaintiff seeks leave to issue and register a Certificate of Pending Litigation against the title to the Property for Lot 15, to be maintained until the resolution of this matter after trial.

Declaration that section 12, 17, 21 and 36 of the APS is void ab initio or voidable

119. The Plaintiff states that sections 12, 17, 21 and 36 of Schedule “A” of the APS is void *ab initio*, or alternatively, voidable in law for being unconscionable and is an exclusion clause that defeats the intent of the overall purpose of the APS.
120. The Plaintiff seeks a declaration that sections 12, 17, 21 and 36 be struck from the APS.
121. The Assignors, on August 19, 2019, had already provided Exquisite Bay with post-dated cheques to make further deposit payments in accordance with the APS. These deposit funds were those of the Plaintiff who provided said funds to the Assignors via personal cheques and shall be to the credit of the Plaintiff. It is unconscionable for Exquisite Bay, Bay Homes Inc., Bay Management Inc., Bay International Inc., and its Directors to terminate the APS via an unlawful “termination letter” received by the plaintiff in late April 2022, by relying on section 36. At no point prior to this letter did these defendants have, or raise a genuine concern regarding the terms contained therein. An excerpt of section 36 of the APS is found in this statement of claim at paragraph 56.

122. **Section 12 of the APS reads:**

Contract

The deposit monies are expressly deemed to be deposit monies only, and not partial payment. Default in payment of any amount payable pursuant to this Agreement on the date or within the time specified shall constitute substantial default hereunder, and the Vendor shall have the right to terminate this Agreement and forfeit all deposit monies in full as liquidated damages and not as a penalty [...] In the event there is a conflict between any term(s) in the Agreement, the Vendor shall determine which conflicting term(s) prevail(s)...

123. Section 17 of the APS reads:

Agreement not to be registered

The Purchaser acknowledges this Agreement confers a personal right only and not any interest in the Property and that the registration against title of any notice or caution or other reference to this Agreement or his or her interest is likely to cause inconvenience and prejudice or irreparable harm to the Vendor and other purchasers of dwelling within the Subdivision. If any such registration occurs, the Vendor may terminate this Agreement forthwith and take full forfeiture of the Purchaser's deposits as liquidated damages and not as a penalty. Further the Purchaser hereby irrevocably consents to a court order removing such registration and agrees to pay all Vendor's costs and expenses in obtaining such court order including, but not limited to, fees of its solicitors on a full indemnity basis together with any Applicable taxes thereon. Additionally, the Purchaser hereby irrevocably nominates, constitutes and appoints the Vendor or any of its authorized signing officers to be and act as his lawful attorney in the Purchaser's name, place and stead, without liability or claim, for the purpose of removing any such registration from title.

124. Section 21 of the APS reads:

Waiver

No provision of this Agreement may be waived by either party except in writing. The waiver of any provisions hereunder shall not affect the right of either party to enforce all other provisions not so waived.

The Purchaser acknowledges and agrees that in the event that the Vendor has entered this Agreement as a trustee or agent for and on behalf of an undisclosed beneficiary or principal, whether or not so stated herein, there shall be no liability on such undisclosed beneficiary or principal and the only recourse or remedy that the Purchaser shall have on default by the Vendor herein is against the Vendor and the Property, the Purchaser hereby waiving any rights of recovery or recourse against such beneficiary or principal whether in law, equity or otherwise.

125. The above terms are unconscionable and is unreasonably favourable to the builder. These terms should not be relied upon as a technicality to terminate the APS.

Estoppel

126. In the event that sections 12, 17, 21 and 36 are not struck from the APS, the Plaintiffs claim that Exquisite Bay be estopped from relying on it.
127. At no time from August 1, 2019, to the date of the “termination letter” did Exquisite Bay raise any issues or objections regarding the mortgage commitment letter or financial information provided by the Assignors and/or the plaintiff. Additionally, Exquisite Bay did not make any demands requiring additional financial information or disclosure from the Assignors or Plaintiff at any time. The defendants maybe declared, waived, acquiesced, relinquished the requirement and/or deemed the purchasers have fulfilled the requirement of the APS.

Specific performance

128. Further to the aforementioned, the Plaintiff is entitled to the remedy of Specific Performance, for the following reasons:

- (a) the Property is unique given the timing and the advantageous terms of the APS in terms of the volatility in the Mississauga residential real estate market due to Covid-19;. The value of the Property had increased substantially in value since the buyers had paid their deposit.
- (b) damages are inadequate as a remedy, as Exquisite Bay has sold the Property to Vandyk, without previously disclosing to the Plaintiff;
- (c) the dishonest behavior of the Defendants justifies the equitable remedy of Specific Performance in favour of the Plaintiff;
- (d) The Plaintiff states that it will be extremely difficult, if not impossible, to locate a similar Property within Mississauga and the surrounding area, for similar pricing as what was secured in 2019 when the APS was entered into with Exquisite Bay;
- (e) Furthermore, the Plaintiff's funds provided to Exquisite Bay is now unavailable to the Plaintiff, leaving him with no funds to buy a similar desired replacement Property;
- (f) Given that the Plaintiff genuinely wanted to move into the Property with his growing family, keeping in mind the central location of the Project, the desirability of the neighbourhood, vicinity of schools, hospitals, amenities of life and social interaction within the community, an award for damages against Exquisite Bay and the defendants is not satisfactory.
- (g) Exquisite Bay and its directors were knowingly and willingly conducting deceptive business practices and transferred title to the Property, immediately after illegally terminating the APS and informing the Plaintiff they would not return the Plaintiff's Deposit.

(h) For the foregoing, specific performance is the more just and appropriate remedy than monetary damages and should be awarded.

Damages

129. The plaintiff has paid the amount of \$275,000.00 toward the Property. As a result of the defendants' breaches, the plaintiff has lost the opportunity to invest his \$275,000.00 in other real properties or other investments that would have given him his return of investment. The plaintiff has lost the opportunity to benefit from the rise of the residential real estate market.
130. Additionally, the plaintiff has lost the enjoyment of the Property, and the future benefit of the appreciation in value of the Property.
131. Furthermore, the plaintiff has suffered distress, anxiety as a result of the defendants deceptive conduct as the conduct.
132. Therefore, the plaintiffs claim \$1,000,000.00 a result of the defendants' fraudulent misrepresentation, breach of contract, breach of honest performance of contract, and civil conspiracy.

Punitive damages

133. For the foregoing bad faith, fraudulent and deceptive conduct of the corporate defendants and their directors, the plaintiff is entitled to exemplary and punitive damages jointly and severally in the amount of \$1,000,000.00.
134. The directors of the corporate defendants being Exquisite Bay, Bay Homes Inc., Bay International Inc., Bay Management Inc., 2213155 ONTARIO INC., 2474229 ONTARIO INC., 2468924 ONTARIO INC., and 2460741 ONTARIO INC., being Ahmed Raza Yousuf, Muhammad Yousef, directed a wrongful thing to be done and/or conducted the illegal act of terminating APS and sending notice of the same, late so as to preclude the plaintiff and other

purchasers from preserving their interest in the Property before the closing date of the sale of the Property to Vandyk Properties.

135. Vandyk Properties, Kingsett and their respective directors also acted in concert with Exquisite Bay and its directors to facilitate the transfer of title from Exquisite Bay to Vandyk Properties, and were reckless, negligent, or wilfully blind to the pending and valid APSs executed for the Project between buyers and Exquisite Bay.

Judgments to Survive Bankruptcy:

136. The Plaintiff seeks that any remedy or judgment obtained in this proceeding ought to survive bankruptcy pursuant to section 178 of the *Bankruptcy Act*, as it relates to the Defendants' false and misleading representations.

ORDERS SOUGHT:

137. THE PLAINTIFF CLAIMS FROM THE DEFENDANTS OR EACH OF THEM:

- (a) A Declaration that the transfer of the Property, defined below, from Exquisite Bay Development Inc. to Vandyk Properties, dated April 14, 2022, is a fraudulent conveyance pursuant to the *Fraudulent Conveyances Act*, and is void as against the plaintiff and ought to be set aside;
- (b) A Declaration that Vandyk Properties is not a *bona fide* purchaser of the Property (defined below);
- (c) An Order for specific performance requiring the Defendants, or any one of them, to transfer title to the Property (defined below) to the plaintiff, pursuant to the Agreement of Purchase and Sale (the "APS") and Assignment Agreement with the plaintiff dated August 1, 2019, and May 28, 2021, respectively, and to fulfill all obligations pursuant to the terms of their Agreements;
- (d) A declaration that Exquisite Bay Development Inc.'s Agreement for Purchase and

Sale with the plaintiff is valid and enforceable but for sections 12, 17, 21, 36, which are unconscionable and are void *ab initio* or voidable and ought to be struck from the Agreement of Purchase and Sale.

- (e) An interim, interlocutory and permanent injunction restraining the defendants from selling, transferring or encumbering the Property (defined below) or from dealing with the plaintiff's deposit and Property pending this litigation;
- (f) A *Mareva* Order against Exquisite Bay, Bay Homes Inc., Bay International Inc., Bay Lawrence Inc., Ahmed Raza Yousuf and Muhammad Yousuf freezing their bank accounts and those of 2462686 ONTARIO INC., 2213155 ONTARIO INC., 2474229 ONTARIO INC., 2468924 ONTARIO INC., 2460741 ONTARIO INC. and an Order of no dealing be registered on the properties municipally known as

1138 Woodington Lane,
Oakville, Ontario
L6H 7T9

AND

5905 Bell Harbour Drive,
Mississauga, Ontario,
Canada, L5M 5K8

AND

2013 Lawrence Ave. W
Toronto, ON M9N 1H4 (PIN: 10324-0416 LT)

AND

2065 Finch Ave. West
North York, ON M3N 1W8 (PIN: 10284-0752 LT)

- (g) An Order requiring the defendants to disclose to the plaintiff the status of the project and the status of all pending and future sales, transfers or conveyances of the Property (defined below);

- (h) An Order that the Defendants provide an accounting of the plaintiff's and/or the plaintiff's Assignor's deposit and a full statement of account of the trust accounts wherein the deposits were provided;
- (i) An Order restraining the defendants from dissipating any of the proceeds of sale received from, and arising from the sale of the Property from Exquisite Bay Development Inc. to Vandyk Properties;
- (j) An Order permitting the tracing of funds received by the defendants, or on the defendants' behalf, directly or indirectly, relating to any completed, current and future sale, transfer, conveyance or encumbrance of the Property;
- (k) An Order that a Certificate of Pending Litigation be issued and registered on the Property over which the APS and Assignments were entered into, legally described as:

Lot 15, PLAN 43M2113; CITY OF MISSISSAUGA,
bearing PIN number 13214-0885 (LT) (hereinafter "Property");
- (l) damages as against the Defendants jointly and severally in the amount of \$1,000,000.00 as a result of fraudulent misrepresentations, breach of honest performance of contract, breach of fair dealing, civil conspiracy and/or unjust enrichment;
- (m) Punitive damages against the defendants in the amount of \$1,000,000.00 for knowingly, recklessly, negligently or being willy blind regarding participating in the fraudulent conveyance, or being wilfully blind to its participation in the fraudulent conveyance and civil conspiracy;
- (n) A declaration that the individual defendants are personally liable and the corporate defendants are liable for the damages incurred by the plaintiffs due to their breach

- in their duty of good faith and fair dealing, directing that a wrongful thing be done all while being the controlling minds of their respective corporations;
- (o) a Declaration that the Charges/Mortgages identified as Instrument Nos. PR4032438 and PR4032440 registered in favour of the defendant, Kingsett Mortgage Corporation, is/are void *ab initio*, and/or voidable, as against the Plaintiffs;
 - (p) an Order directing the Registrar of the Land Titles Office to delete and discharge the charges/mortgages identified as Instrument Nos. PR4032438 and PR4032440 from title of the Property.
 - (q) A Declaration that any judgment granted in this action survive bankruptcy pursuant to section 178 of the *Bankruptcy and Insolvency Act*;
 - (r) payment of pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - (s) post-judgment interest in accordance with section 129 the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended;
 - (t) an order granting costs on a full indemnity basis of this action including all HST attributable to any award of costs be awarded in favour of the plaintiff; and
 - (u) such further and other relief as counsel may advise and this Honourable Court deems just.

LEGISLATION

138. The plaintiff relies on the following statutes:

- (a) *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, R.R.O. 1990, Reg. 194: *Rules of Civil Procedure*, as amended, Rule 5.01
- (b) *Fraudulent Conveyances Act*, R.S.O. 1990, CHAPTER F.29. s. 5;
- (c) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 178;

- (d) *Land Titles Act*, R.S.O. 1990, c. L.5, s. 68.1;
- (e) *Assignments and Preferences Act*, RSO 1990, c A.33; s. 4 and 5, and
- (f) other statutes as counsel may advise and is applicable.

October 24, 2022

Amended June 8, 2023

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Angela Valencia (LSO: 78518D)
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Tariq
Plaintiff

- and -

Exquisite Bay Development Inc. et al
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AMENDED STATEMENT OF CLAIM

KAYANI LAW FIRM
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Lawyers for the Plaintiff
Mohammed Tariq

TAB NNNN

THIS IS **EXHIBIT "NNN"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

AMENDED THIS 10 July 2023 PURSUANT TO MODIFICATION CONFORMÉMENT À
RÈGLE/LA RÈGLE 26.02 (e)
THE ORDER OF Justice Centre L'ORDONNANCE DU 7 July 2023
DATED / FAIT LE

Court File No.: CV-22-00686376-0000

REGISTRAR SUPERIOR COURT OF JUSTICE GREFIER COURTE SUPÉRIEURE DE JUSTICE ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

EMADUDDIN CHOWDHURY, REFAYAT TAHSINA ALAM, SUHAIL SYED, RIZWANA BANU, MOHAMED AFTAB PASHA, RANBIR SINGH CHEEMA, LAKHVIR KAUR CHEEMA, JASKARANDEEP SINGH LUDDU, RUPINDER KAUR JASWAL, HARDEEP SINGH KHOSA, MANJIT KAUR KHOSA, JAWED YUSUF, RANJIT SINGH TOOR, SUKHWINDER KAUR TOOR, BALWINDER SINGH TOOR, HARPINDER KAUR TOOR, AJINDER SINGH SANDHU, MANJOT SINGH SANDHU, DAVID PREDOVICH, KERRESE PREDOVICH, USMAN SHARIF, 2784612 ONTARIO INC., and 2784162 ONTARIO INC.
Plaintiffs

-and-

EXQUISITE BAY DEVELOPMENT INC., BAY HOMES INC., BAY INTERNATIONAL INC., BAY MANAGEMENT INC. 2474229 ONTARIO INC., 2468924 ONTARIO INC., 2460741 ONTARIO INC., BAY LAWRENCE INC., AHMED RAZA YOUSUF, MUHAMMAD YOUSUF, HARINDER TAKHAR, JAMES JOHN MURRAY, KIRAN MALHOTRA, MOHAMMAD TAIYAB MANSOOR, VANDYK – THE RAVINE LIMITED, VANDYK PROPERTIES INCORPORATED, JOHN VANDYK, RICHARD MA, SHERMAN CHAN, 2462686 ONTARIO INC., ELLA BOLTYANSKY, YURI BOLTYANSKY, KINGSETT MORTGAGE CORPORATION, MANEESH PRABHAKAR, 2213155 ONTARIO INC., MINT CAPITAL MIC INC. and JOHN DOE CORPORATION
Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date	Issued by
	Local registrar
	Address of Superior Court of Justice
	court office 330 University Avenue, 9 th Fl
	Toronto, ON M5G 1R7

TO: **ROBINS APPLEBY LLP**
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Toronto, ON M5H 1T1

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Bay International Inc., Bay Homes Inc.,
2474229 Ontario Inc., 2468924 Ontario Inc., and
2460741 Ontario Inc.

AND TO: **BAY LAWRENCE INC.**
215-350 Burnhamthorpe Road West

Mississauga, ON L5B 3J1

AND TO **BAY MANAGEMENT INC.**
215-350 Burnhamthorpe Road West
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AND TO: **DAVIS WEBB LLP**
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Richard Ma and Sherman Chan.

AND TO: **VANDYK PROPERTIES INCORPORATED**
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Mississauga, ON L5K 0A1

AND TO: **2462686 ONTARIO INC.**
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Toronto, ON M2M 2J2

AND TO: **ELLA BOLTYANSKY**
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AND TO: **YURI BOLTYANSKY**
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AND TO **BENNETT JONES LLP**
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Lawyers for the Defendant,
KingSett Mortgage Corporation

AND TO **MINT CAPITAL MIC INC.**
104-268 Derry Road West
Mississauga, ON L5W 0H6

RELIEF**Emaduddin Chowdhury and Refayat Tahsina Alam**

1. The Plaintiffs, Emaduddin Chowdhury and Refayat Tahsina Alam, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that they were not in breach of the purchase agreement for LOT 18 (defined below);
- ii. in the alternative to the relief claimed under paragraph 1(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 18 (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc., was in breach of its fiduciary duty to them;
- iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 18 (defined below) are void *ab initio*, or are voidable;
- v. damages for breach of contract in the amount of \$1,000,000.00.

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;

- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf, liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, and interference with economic relations;

(d) The Plaintiffs' claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and

that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“OBCA”);

- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 1(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“APA”) section 4;
- v. in the alternative to 1(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations.
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00.

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

i. aggravated damages in the amount of \$200,000.00.

Suhail Syed and Rizwana Banu

2. The Plaintiffs, Suhail Syed and Rizwana Banu, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

i. a declaration that they were not in breach of the purchase agreement for LOT 35 (defined below);

ii. in the alternative to the relief claimed under paragraph 2(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 35 (defined below) pursuant to the doctrine of promissory estoppel;

iii. a declaration that the Defendant, Exquisite Bay Development Inc., was in breach of its fiduciary duty to them;

iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 35 (defined below) are void *ab initio*, or are voidable;

v. damages for breach of contract in the amount of \$1,000,000.00.

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf liable for the actions of Exquisite Bay Developments Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, and interference with economic relations.

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the Business Corporation Act, RSO 1990, c. B.16, as amended (“OBCA”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 2(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the Assignment and Preferences Act (“APA”) section 4;
- v. in the alternative to 2(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;

ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

i. Unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

i. aggravated damages in the amount of \$200,000.00;

Mohamed Aftab Pasha

3. The Plaintiff, Mohamed Aftab Pasha, claims against:

(a) the Defendant, Exquisite Bay Development Inc.:

- i. a declaration that he was not in breach of the LOT 33 Agreement (defined below);
- ii. in the alternative to the relief claimed under paragraph 3(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the LOT 33 Agreement (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc., was in breach of its fiduciary duty to him;
- iv. a declaration that Sections 12, 17, 21 and 36 of the LOT 33 Agreement (defined below) are void *ab initio*, or are voidable;

v. damages for breach of contract in the amount of \$1,000,000.00;

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;

- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, and interference with economic relation.

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“OBCA”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 3(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“APA”) section 4;
- v. in the alternative to 3(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations.
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

- i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

- i. aggravated damages in the amount of \$100,000.00;

Ranbir Singh Cheema and Lakhvir Kaur Cheema

4. The Plaintiffs, Ranbir Singh Cheema and Lakhvir Kaur Cheema, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that they were not in breach of the purchase agreement for LOT 19 (defined below);
- ii. in the alternative to the relief claimed under paragraph 4(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 19 (defined below) pursuant to the doctrine of promissory estoppel;

- iii. a declaration that Exquisite Bay Development Inc., was in breach of its fiduciary duty to them;
- iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 19 (defined below) are void *ab initio*, or are voidable;
- v. damages for breach of contract in the amount of \$1,000,000.00.

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf, liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;

- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, and inducing breach of contract, interference with economic relations;

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“**OBCA**”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 4(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the Assignment and Preferences Act (“**APA**”) section 4;

- v. in the alternative to 4(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

- i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

- i. aggravated damages in the amount of \$200,000.00;

Jaskarandeep Singh Luddu and Rupinder Kaur Jaswal

5. The Plaintiffs, Jaskarandeep Singh Luddu and Rupinder Kaur Jaswal, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that they were not in breach of the purchase agreement for LOT 31 (defined below);

- ii. in the alternative to the relief claimed under paragraph 5(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 31 (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc., was in breach of its fiduciary duty to them;
- iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 31 (defined below) are void *ab initio*, or are voidable;
- v. damages for breach of contract in the amount of \$1,000,000.00.

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc. for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, interference with economic relations;

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“**OBCA**”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the **OBCA**;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly

and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;

- iv. in the alternative to 5(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“APA”) section 4;
- v. in the alternative to 5(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

- i. Unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

- i. aggravated damages in the amount of \$200,000.00;

Hardeep Singh Khosa and Manjit Kaur Khosa

6. The Plaintiffs, Hardeep Singh Khosa and Manjit Kaur Khosa, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that they were not in breach of the purchase agreement for LOT 28 (defined below);
- ii. in the alternative to the relief claimed under paragraph 6(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 28 (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc., was in breach of its fiduciary duty to them;
- iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 28 (defined below) are void *ab initio*, or are voidable;
- v. damages for breach of contract in the amount of \$1,000,000.00.

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;

- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf, liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy (defined below), inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, and interference with economic relations;

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“**OBCA**”);

- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 6(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“APA”) section 4;
- v. in the alternative to 6(d)(iii) above, and an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

- i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

- i. aggravated damages in the amount of \$200,000.00;

Jawed Yusuf

7. The Plaintiff, Jawed Yusuf, claims against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that he was not in breach of the purchase agreement for LOT 27 (defined below);
- ii. in the alternative to the relief claimed under paragraph 7(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 27 (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc., was in breach of its fiduciary duty to him;
- iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 27 (defined below) are void *ab initio*, or are voidable;
- v. damages for breach of contract in the amount of \$1,000,000.00.

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;

- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf, liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, and interference with economic relations;

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and

that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“OBCA”);

- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 7(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“APA”) section 4;
- v. in the alternative to 7(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

i. aggravated damages in the amount of \$100,000.00;

Ranjit Singh Toor, Sukhwinder Kaur Toor, Balwinder Singh Toor and Harpinder Kaur Toor

8. The Plaintiffs, Ranjit Singh Toor, Sukhwinder Kaur Toor, Balwinder Singh Toor and Harpinder Kaur Toor, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

i. a declaration that they were not in breach of the purchase agreement for LOT 21 (defined below);

ii. in the alternative to the relief claimed under paragraph 8(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 21 (defined below) pursuant to the doctrine of promissory estoppel;

iii. a declaration that Exquisite Bay Development Inc., was in breach of its fiduciary duty to them;

iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 21 (defined below) are void *ab initio*, or are voidable;

v. damages for breach of contract in the amount of \$1,000,000.00.

(b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
- ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf, liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.

(c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their

participation in the conspiracy, inducing breach of contract, and interference with economic relations;

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“**OBCA**”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 8(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“**APA**”) section 4;
- v. in the alternative to 8(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00

(f) The Defendants, Manceesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

- i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

- i. aggravated damages in the amount of \$400,000.00;

Ajinder Singh Sandhu and Manjot Singh Sandhu

9. The Plaintiffs, Ajinder Singh Sandhu and Manjot Singh Sandhu, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that they are not in breach of the purchase agreement for LOT 32 (defined below);
- ii. in the alternative to the relief claimed under paragraph 9(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 32 (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc. was in breach of its fiduciary duty to them;

- iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 32 (defined below) are void *ab initio*, or are voidable;
 - v. damages for breach of contract in the amount of \$1,000,000.00.
- (b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:
- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
 - ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$200,000.00;
 - iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf, liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.
- (c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:
- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, AND interference with economic relations;

- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, and interference with economic relations;

(d) The Plaintiffs claim against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“**OBCA**”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiffs in the amount of \$1,000,000.00;
- iv. in the alternative to 9(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“**APA**”) section 4;

- v. in the alternative to 9(d)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;
- ii. Damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

- i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

- i. Aggravated damages in the amount of \$200,000.00;

David Predovich and Kerrese Predovich

10. The Plaintiffs, David Predovich and Kerrese Predovich, claim against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. damages for breach of contract in the amount of \$1,000,000.00;
- ii. a declaration that they were not in breach of the purchase agreement for LOT 40 (defined below);

- iii. in the alternative to the relief claimed under paragraph 10(a)(i) above, that Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 40 (defined below) pursuant to the doctrine of promissory estoppel;
 - iv. a declaration that the Defendant, Exquisite Bay Development Inc., was in breach of their fiduciary duty to them;
 - v. A declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 40 (defined below) are void *ab initio*, or are voidable;
- (b) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:
- i. special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$500,000.00;
 - ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$500,000.00;
 - iii. an order piercing the corporate veil and holding Ahmad Raza Yousuf, liable for the actions of Exquisite Bay Development Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.
- (c) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly or severally:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations.
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$200,000.00;
- iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, and inducing breach of contract, interference with economic relations.

(d) The Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“**OBCA**”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiff in the amount of \$1,000,000.00;

- iv. in the alternative to 10(d)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“APA”) section 4;
- v. in the alternative to 10(d)(iii) above, an order for payment against the Defendants, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(e) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations.
- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$150,000.00.

(f) The Defendants, Maneesh Prabhakar, 2213155 Ontario Inc., and Mint Capital Mic Inc.:

- i. unjust enrichment in an amount to be determined prior to trial;

(g) The Exquisite Defendants jointly and/or severally:

- i. aggravated damages in the amount of \$50,000.00.

2784612 Ontario Inc., 2784162 and Usman Sharif

11. The Plaintiff, 2784612 Ontario Inc. claims against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that 2784612 Ontario Inc. was not in breach of the purchase agreement for LOT 4L (defined below);
- ii. in the alternative to the relief claimed under paragraph 11(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 4L (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc., was in breach of their fiduciary duty to 2784612 Ontario Inc.;
- iv. a declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 4L (defined below) are void *ab initio*, or are voidable;
- v. damages for breach of contract in the amount of \$500,000.00.

12. The Plaintiff, 2784162 Ontario Inc. claims against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. a declaration that 2784162 Ontario Inc. was not in breach of the purchase agreement for LOT 4R (defined below);
- ii. in the alternative to the relief claimed under paragraph 12(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the purchase agreement for LOT 4R (defined below) pursuant to the doctrine of promissory estoppel;
- iii. a declaration that Exquisite Bay Development Inc., was in breach of their fiduciary duty to 2784162 Ontario Inc.;

- iv. A declaration that Sections 12, 17, 21 and 36 of the purchase agreement for LOT 4R (defined below) are void *ab initio*, or are voidable;
- v. damages for breach of contract in the amount of \$500,000.00.

13. The Plaintiff, Usman Sharif, claims against:

(a) The Defendant, Exquisite Bay Development Inc.:

- i. damages for breach of contract in the amount of \$1,000,000.00;
- ii. a declaration that Usman Sharif was not in breach of the LOT 26 Agreement (defined below);
- iii. in the alternative to the relief claimed under paragraph 13(a)(i) above, Exquisite Bay Developments Inc. is barred from terminating the LOT 26 Agreement (defined below) pursuant to the doctrine of promissory estoppel;
- iv. a declaration that Exquisite Bay Development Inc., was in breach of their fiduciary duty to Usman Sharif;
- v. a declaration that Sections 12, 17, 21 and 36 of the LOT 26 Agreement (defined below) are void *ab initio*, or are voidable;

14. The Plaintiffs, 2784612 Ontario Inc., 2784162 Ontario Inc. and Usman Sharif claim against:

(a) The Defendants, Exquisite Bay Development Inc., Bay Homes Inc., and Ahmed Raza Yousuf, jointly and severally:

- i. Special, punitive and exemplary damages for the intentional tort of fraudulent misrepresentation and/or equitable fraud in the amount of \$200,000.00;
 - ii. damages for unjust enrichment, false misrepresentation, conspiracy, inducing breach of contract, interference with economic relations and breach of honest performance of a contract in the amount of \$1,000,000.00;
 - iii. an order piercing the corporate veil and holding Ahmed Raza Yousuf, liable for the actions of Exquisite Bay Developments Inc., and Bay Homes Inc., for his participation in the false misrepresentations, conspiracy, inducing breach of contract, interference with economic relations, and breach of honest performance of a contract.
- (b) The Defendants, Vandyk – The Ravine Limited, Vandyk Properties Incorporated, John Vandyk, Richard Ma and Sherman Chan, jointly and severally:
- i. Punitive damages in the amount of \$400,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations,
 - ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations;
 - iii. an order piercing the corporate veil and holding John Vandyk, Richard Ma and Sherman Chan jointly and severally liable for the actions of Vandyk – The Ravine Limited and/or Vandyk Properties Incorporated for their participation in the conspiracy, inducing breach of contract, and interference with economic relations;

(c) The Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra:

- i. a declaration that they have acted in a manner that is oppressive, prejudicial to and/or unfairly disregards the interests of the Plaintiffs and that such acts are contrary to section 248 of the *Business Corporation Act*, RSO 1990, c. B.16, as amended (“**OBCA**”);
- ii. a declaration that the Plaintiffs are complainants within the meaning of section 245 of the OBCA;
- iii. a declaration that by reason of the oppressive, prejudicial and/or unfair conduct of the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, they are jointly and severally liable for the damages of the Plaintiff in the amount of \$1,000,000.00;
- iv. in the alternative to 14(c)(iii) above, a declaration that the Chalmers Inc. and 1218939 Ontario Inc. loan repayment on or about August 20, 2021, is void under the *Assignment and Preferences Act* (“**APA**”) section 4;
- v. in the alternative to 14(c)(iii) above, an order for payment against the Defendants, Ahmed Raza Yousuf, Muhammad Yousuf, Harinder Takhar, James John Murray, and Kiran Malhotra, in the amount of \$1,000,000.00.

(d) The Defendant, Kingsett Mortgage Corporation:

- i. punitive damages in the amount of \$200,000.00 for its participation in the conspiracy, inducing breach of contract, and interference with economic relations;

- ii. damages for unjust enrichment, conspiracy, inducing breach of contract and interference with economic relations in the amount of \$390,000.00.

(e) The Exquisite Defendants:

- i. Aggravated damages in the amount of \$100,000.00;

All the Plaintiffs

15. All the Plaintiffs claim against all the Defendants:

- (a) an order for an accounting of the proceeds and/or revenue generated by the sale of the LOTS;
- (b) a Mareva injunction against Exquisite Bay Development Inc., Bay Homes Inc., Bay International Inc., Bay Management Inc., Bay Lawrence, 2462686 Ontario Inc., 2474229 Ontario Inc., 2468924 Ontario Inc., Ella Boltyansky, Yuri Boltyansky, and 2460741 Ontario Inc., Ahmed Raza Yousuf and Muhammad Yousuf freezing their bank accounts;
- (c) An Order entitling the Plaintiffs to an equitable tracing of all monies of the Plaintiffs into the assets, property, and interests of the Defendants, and judgment against the Defendants or any other persons who have received directly or indirectly said monies;
- (d) A declaration that any judgment in this action survive bankruptcy pursuant to section 178 of the *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3*;
- (e) Prejudgment interest on all amounts found to be due and owing to the Plaintiffs pursuant to section 128 of the *Courts of Justice Act, R.S.O. 1990, c. C. 43, as amended*;

- (f) Post-judgment interest on all amounts found to be due and owing to the Plaintiffs pursuant to section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended
- (g) Cost on a substantial indemnity basis including applicable taxes thereon; and
- (h) Such further and other relief as counsel may advise, and as this Honourable Court deems just.

PARTIES

The Plaintiffs

16. The Plaintiffs, Emaduddin Chowdhury (hereinafter referred to as “**Mr. Chowdhury**”) and Refayat Tahsina Alam (hereinafter referred to as “**Ms. Alam**”), are a married couple residing together in the City of Mississauga, in the Province of Ontario.

17. The Plaintiffs, Suhail Syed (hereinafter referred to as “**Mr. Syed**”) and Rizwana Banu (hereinafter referred to as “**Ms. Banu**”), are a married couple residing together in the City of Mississauga, Ontario.

18. The Plaintiff, Mohamed Aftab Pasha (hereinafter referred to as “**Mr. Pasha**”), is an individual residing in the City of Mississauga, Ontario.

19. The Plaintiffs, Ranbir Singh Cheema (hereinafter referred to as “**Mr. Cheema**”) and Lakhvir Kaur Cheema (hereinafter referred to as “**Mrs. Cheema**”) are a married couple residing together in the City of Mississauga, in the Province of Ontario (hereinafter collectively referred to as “**Mr. and Mrs. Cheema**”).

20. The Plaintiffs, Jaskarandeep Singh Luddu (hereinafter referred to as “**Mr. Luddu**”) and Rupinder Kaur Jaswal (hereinafter referred to as “**Ms. Jaswal**”), are a married couple residing together in the City of Mississauga, in the Province of Ontario.

21. The Plaintiffs, Hardeep Singh Khosa (hereinafter referred to as “**Mr. Khosa**”) and Manjit Kaur Khosa (hereinafter referred to as “**Mrs. Khosa**”), are a married couple residing together in the City of Mississauga, in the Province of Ontario (hereinafter collectively referred to as “**Mr. and Mrs. Khosa**”).

22. The Plaintiff, Jawed Yusuf (hereinafter referred to as “**Mr. Yusuf**”), is an individual residing in the City of Milton, in the Province of Ontario.

23. The Plaintiffs, Ranjit Singh Toor and Sukhwinder Kaur Toor, are a married couple residing together.

24. The Plaintiffs, Balwinder Singh Toor and Harpinder Kaur Toor, are a married couple residing together.

25. The Plaintiffs, Ranjit Singh Toor, Sukhwinder Kaur Toor, Balwinder Singh Toor and Harpinder Kaur Toor (hereinafter collectively referred to as the “**Toors**”) all reside together in the City of Mississauga, in the Province of Ontario.

26. The Plaintiff, Ajinder Singh Sandhu (hereinafter referred to as “**Ajinder**”), is an individual residing in Naperville, Illinois in the United States of America.

27. The Plaintiff, Manjot Singh Sandhu (hereinafter referred to as “**Manjot**”) is an individual residing in Mississauga, Ontario in the Province of Ontario.

28. Ajinder and Manjot are brothers.

29. The Plaintiffs, David Predovich (hereinafter referred to as “**Mr. Predovich**”), and Kerrese Predovich (hereinafter referred to as “**Mrs. Predovich**”), are a married couple residing together in Mississauga, Ontario.

30. The Plaintiff, 2784612 Ontario Inc. (hereinafter referred to as “**2784612**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered at 1008 Bennett Boulevard, Milton, Ontario.

31. The Plaintiff, 2784162 Ontario Inc. (hereinafter referred to as “**2784162**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered at 1008 Bennett Boulevard, Milton, ON L9T 5S4.

32. The Plaintiff, Usman Sharif (hereinafter referred to as “**Mr. Sharif**”), is an individual residing in Milton, Ontario. Mr. Sharif is the owner and sole director of 2784612 and 2784162.

33. The Plaintiffs, 2784612, 2784162 and Mr. Sharif are hereinafter collectively referred to as the “**Sharif Plaintiffs**”.

34. All of the above Plaintiffs are collectively referred to as the “**Plaintiffs**”.

The Corporate Defendants

35. The Defendant, Exquisite Bay Development Inc. (hereinafter referred to as “**Exquisite Bay**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

36. Exquisite Bay was initially licensed by the Home Construction Regulatory Authority (“**HCRA**”) on November 12, 2018, with license number 47326. Exquisite Bay’s license status was last updated on March 12, 2021, and its status remains as “**Refused**”.

37. Exquisite is an affiliated, and/or subsidiary, and/or parent corporation to Bay Homes Inc., Bay International Inc., Bay Lawrence Inc., 2474229 Ontario Inc., 2468924 Ontario Inc., and 2460741 Ontario Inc.

38. The Defendant, Bay Homes Inc. (hereinafter referred to as “**Bay Homes**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

39. Bay Homes was initially licensed by the HCRA on March 5, 2015, with license number 44228. Bay Homes’ license status was last updated on March 6, 2020, and its status remains as “Expired”.

40. Bay Homes is an affiliate, subsidiary and/or sister corporation to Exquisite Bay and has received a payout from the proceeds of sale of the Fraudulent Conveyance set out herein.

41. The Defendant, Bay International Inc., (hereinafter referred to as “**Bay International**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

42. Bay International is an affiliate, subsidiary and/or sister corporation to Exquisite Bay and has received a payout from the proceeds of sale of the Fraudulent Conveyance set out herein.

43. The Defendant, Bay Management Inc., (hereinafter referred to as “**Bay Management**”) is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

44. The Defendant, 2474229 Ontario Inc. (hereinafter referred to as “**2474229 Ontario**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

45. 2474229 Ontario held a charge/mortgage on the Properties for two days, from April 12, 2022, to April 14, 2022, and received proceeds of the Fraudulent Conveyance. It is a sham, façade, and alter ego corporation used by Ahmed Raza Yousuf to carry out the fraud and conspiracy particularized herein.

46. The Defendant, 2468924 Ontario Inc. (hereinafter referred to as “**2468924 Ontario**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

47. 2468924 Ontario held a charge/mortgage on the Properties for two days, from April 12, 2022, to April 14, 2022, and received proceeds of the Fraudulent Conveyance. It is a sham, façade, and alter ego corporation used by Ahmed Raza Yousuf to carry out the fraud and conspiracy particularized herein.

48. The Defendant, 2460741 Ontario Inc. (hereinafter referred to as “**2460741**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

49. 2460741 Ontario held a charge/mortgage on the Properties for two days, from April 12, 2022, to April 14, 2022, and received proceeds of the Fraudulent Conveyance. It is a sham, façade, and alter ego corporation used by Ahmed Raza Yousuf to carry out the fraud and conspiracy particularized herein

50. The Defendant, Bay Lawrence Inc. (hereinafter referred to as “**Bay Lawrence**”), is a business incorporated pursuant to the Provincial laws of Ontario with its head office registered as 215-350 Burnhamthorpe Road West, Mississauga, ON L5B 3J1.

51. The Defendant, Vandyk – The Ravine Limited (hereinafter referred to as “**Vandyk**”), is a business incorporated pursuant to the Provincial laws of Ontario with its office registered as 1944 Fowler Drive, Mississauga, ON L5K 0A1. Vandyk was incorporated on March 16, 2022, for the purposes of purchasing *inter alia* the Properties.

52. The Defendant, Vandyk Properties Incorporated (hereinafter referred to “**Vandyk Properties**”), is a business incorporated pursuant to the Provincial laws of Ontario with its office registered as 1944 Fowler Drive, Mississauga, ON L5K 0A1.

53. The Defendant, 2462486 Ontario Inc. (hereinafter referred to as “**2462486 Ontario**”), is a business incorporated under the Provincial laws of Ontario with its head office registered at 298 Ruth Avenue, Toronto, Ontario M2M 2J2.

54. 2462486 Ontario held a charge/mortgage on the Properties from April 8, 2022, to April 14, 2022, and received proceeds of the Fraudulent Conveyance. It is a sham, façade, and alter ego corporation used by Exquisite Defendants, or any one of them, to carry out the fraud and conspiracy particularized herein.

55. The Defendant, Kingsett Mortgage Corporation (hereinafter referred to as “**Kingsett**”), is a corporation pursuant to the laws of Canada with its head office located at Scotia Plaza, 40 King Street West, Suite 3700, Toronto, ON M5H 3Y2.

56. Kingsett registered a charge/mortgage on the Properties in the amounts of \$18,000,000.00 and \$37,000,000.00 on April 14, 2022.

57. The Defendant, Mint Capital MIC, Inc. (hereinafter referred to as “**Mint**”), is a business incorporated pursuant to the laws of Ontario with its head office registered as 104-268 Derry Road, Mississauga, ON L5W 0H6.

58. The Defendant, John Doe Corporation, is a corporation owned in common, related to, or affiliated to all or some of the Exquisite Defendants, and was used as a shell, façade, and/or is a sham corporation used by the Exquisite Defendants to assist in the fraud and/or conspiracy set out herein.

The Individual Defendants

59. The Defendant, Ahmed Raza Yousuf (hereinafter referred to as “**Ahmed**”), is an individual and one of the directors of Exquisite Bay as well as a directing mind, officer, shareholder and/or key employee of Exquisite Bay. Ahmed is also the directing mind, sole director, officer, shareholder and/or key employee of Bay Homes, Bay Management, Bay International, 2474229 Ontario, 2468924 Ontario and 2460741 Ontario.

60. The Defendant, Muhammad Yousuf (hereinafter referred to as “**Muhammad**”), is an individual and one of the directors of Exquisite Bay.

61. The Defendant, Harinder Takhar (hereinafter referred to as “**Mr. Takhar**”), is an individual and at all material times hereto was a directing mind, owner, officer, director and/or key employee of Exquisite Bay. Mr. Takhar is also a director and shareholder of Chalmers Group Inc.

62. The Defendant, James John Murray (hereinafter referred to as “**Mr. Murray**”), is an individual and at all material times hereto was a directing mind, owner, officer, director and/or key employee of Exquisite Bay.

63. The Defendant, Kiran Malhotra (hereinafter referred to as “**Mr. Malhotra**”), is an individual and at all material times hereto was a directing mind, owner, officer, director and/or key employee of Exquisite Bay. Ms. Malhotra is also a director and shareholder of 1218939 Ontario Limited.

64. The Defendant, Mohammad Taiyab Mansoor (hereinafter referred to as “**Mr. Mansoor**”), is an individual and at all material times was a director, officer, shareholder and/or key employee of Bay Homes.

65. The Defendant, John Vandyk (hereinafter referred to as “**Mr. Vandyk**”), is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Vandyk and Vandyk Properties.

66. The Defendant, Richard Ma (hereinafter referred to as “**Mr. Ma**”), is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Vandyk.

67. The Defendant, Sherman Chan (hereinafter referred to as “**Mr. Chan**”), is an individual and at all material times hereto was the director, officer, shareholder, and/or key employee of Vandyk.

68. The Defendant, Ella Boltyansky (hereinafter referred to as “**Ms. Boltyansky**”), is an individual and at all material times hereto a director, officer, shareholder, and/or key employee of 2462486 Ontario.

69. The Defendant, Yuri Boltyansky (hereinafter referred to as “**Mr. Boltyansky**”), is an individual and at all material times hereto an officer, shareholder, and/or key employee of 2462486 Ontario.

70. The Defendants, Exquisite Bay, Bay Homes, Bay International, 2474229 Ontario, 2468924 Ontario, 2460741 Ontario, Bay Lawrence, Ahmed, Muhammad, Mr. Takhar, Mr. Murray, Mr. Malhotra, Mr. Mansoor, 2462686 Ontario, Ms. Boltyansky, and Mr. Boltyansky, shall, when necessary, be referred to as the “**Exquisite Defendants**” herein.

71. The Defendants, Vandyk, Vandyk Properties, Mr. Vandyk, Mr. Ma and Mr. Chan, shall when necessary, be referred to as the “**Vandyk Defendants**” herein.

OVERVIEW

72. This matter concerns a development project titled Longview Ravine Estates which would see the construction of detached homes in the range of 2,587 – 3,948 square feet, located along Fletcher’s Creek at about the intersection of McLaughlin Road and Derry Road West in Mississauga, Ontario (the “**Development**”). The developer of this project is advertised to be Bay Homes and Exquisite Bay. The Development includes 45 lots that were planned for development on Longview Ravine Estates.

73. The Plaintiffs are all purchasers of pre-construction single-family homes within the Development.

74. The Development was marketed to the Plaintiffs as being in a key location within Mississauga, in a family-friendly location, minutes from shops, restaurants and green spaces, and including an in-law suite with a separate entrance.

75. At all material times, Exquisite Bay represented to the Plaintiffs that it was the owner of the Development and the lands upon which they were situated, and that the Development would be completed diligently. Subsequently and at the same time, Bay Homes was often cited as being involved and related to the Development, and employees of Exquisite would communicate with the Plaintiffs, using Bay Homes emails. The Development was also advertised on the Bay Homes website.

SUHAIL SYED and RIZWANA BANU – LOT 35

Agreement of Purchase and Sale

76. On November 18, 2018, Mr. Syed and Ms. Banu executed an Agreement of Purchase and Sale (referred to as the “**LOT 35 Agreement**”) with Exquisite Bay for the purchase of LOT 35 which was to be a pre-construction home for the purchase price of \$1,900,000.00 (referred to as the “**LOT 35 Purchase Price**”). The LOT 35 Agreement stated that Mr. Syed and Ms. Banu purchased the “Derry” model home with elevation “B” to be constructed on LOT 35.

77. The LOT 35 Agreement, as amended, stated that Mr. Syed and Ms. Banu were required to pay a deposit of \$150,000.00 via four post-dated cheques to be provided to Exquisite Bay upon execution of the Lot 35 Agreement (referred to as the “**LOT 35 Deposit**”) and payable as follows:

- (a) \$30,000.00 payable to Exquisite Bay Development Inc., upon signing the LOT 35 Agreement;
- (b) \$30,000.00 payable to Exquisite Bay Development Inc., thirty (30) days thereafter;

(c) \$40,000.00 payable to Exquisite Bay Development Inc., one hundred and twenty (120) days thereafter; and

(d) \$50,000.00 payable to Himelfarb Proszanski, in trust, three hundred and sixty five (365) days thereafter.

78. Mr. Syed and Ms. Banu paid the LOT 35 Deposit in accordance with the Lot 35 Agreement and all the cheques provided to Exquisite Bay have been deposited.

Background

79. Mr. Syed and Ms. Banu were introduced to Ahmed by their realtor, Hamza A. Juma (hereinafter referred to as “**Mr. Juma**”) in or about November 2018. At that time, Mr. Syed and Ms. Banu had known Mr. Juma for almost five years and had worked with him to purchase and sell several residential properties.

80. Mr. Syed and Ms. Banu explained to Mr. Juma that they needed a larger home for their family. Mr. Syed and Ms. Banu have three minor sons that live with them, and Mr. Syed’s parents were moving to Canada from India and would be residing with Mr. Syed and Ms. Banu in the new home. This was explained to Mr. Juma by Mr. Syed and Ms. Banu.

81. Mr. Juma advised Mr. Syed and Ms. Banu that it would be much better to buy a pre-construction home as it is less likely to have any pre-existing issues. Mr. Juma then told Mr. Syed and Ms. Banu about the Development. He told Mr. Syed and Ms. Banu that he knew the owner of the Development, Ahmed, really well because they were childhood friends and their families were very close. Mr. Juma also told Mr. Syed and Ms. Banu that his father-in-law, who is also in the real estate and development business, also knows Ahmed and his family really well. Mr. Juma assured Mr. Syed and Ms. Banu that if anything were to go wrong both Mr. Juma and his father-in-law would be there to intervene on their behalf and resolve any issues.

82. Based on Mr. Juma's advice and Mr. Syed and Ms. Banu's longstanding relationship with him, they did not question the credibility of Ahmed or the Development and agreed to purchase a lot from the Development.

83. Mr. Syed and Ms. Banu were advised by Ahmed that no mortgage commitment letter was required due to Mr. Juma's relationship with Ahmed.

84. On January 6, 2020, Ms. Banu received a letter from Ahmed, on behalf of Bay Homes and Exquisite Bay, advising that the closing date had been extended to September 25, 2020. The letter did not provide a reason for the delay.

85. On April 08, 2020, Ms. Banu received a notice from Exquisite Bay and Bay Homes advising that due to "*unavoidable delay*" the closing and other critical dates will be extended. No new dates were provided at that time.

86. On August 18, 2020, Ms. Banu received a letter from Bay Homes advising that construction had recommenced and they would "*start to see construction activity in the next few weeks.*" No new closing and other critical dates were provided.

87. On April 6, 2021, Ms. Banu received a letter from Ahmed on behalf of Bay Homes and Exquisite Bay, advising that the closing date had been extended to September 14, 2021. The letter did not provide a reason for the delay. In fact, this was a second extension.

88. On September 13, 2021, Ms. Banu received an email from Bay Homes' Office Admin, Jeet Singh (hereinafter referred to as "**Jeet**"), advising that the MPLAN had been approved and the building permits had been filed with the city.

89. On November 5, 2021, Ms. Banu sent an email to Jeet requesting an update regarding the progress of the building permits and the Development. Ms. Banu also asked about the closing date as she was previously advised by Bay Homes that it would be September 14, 2021, and that date had passed.

90. On November 9, 2021, Mr. Syed and Ms. Banu received a letter from Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

- (a) Bay Homes would be moving forward to start the construction.
- (b) Bay Homes had “*successfully completed servicing of the development...*”
- (c) The delays experienced by Bay Homes were caused by “*supply chain issues and a back log at the Region of Peel.*”
- (d) Bay Homes was in “*the process of obtaining Building Permits*”... and was “*expecting to have these Permits by the end of next month.*”
- (e) Bay Homes would be reaching out to them to book their home décor appointments.

91. On January 4, 2022, Ms. Banu received an email from Jeet advising that they were still waiting on building permits and that is why their home décor appointment had not been scheduled.

92. On January 24, 2022, Jeet sent an email to Ms. Banu advising that the legal address for LOT 35 would be 6725 Longview Place.

93. In late April, 2022, Mr. Syed and Ms. Banu received a letter from Exquisite Bay dated April 11, 2022, (the “**LOT 35 Termination Letter**”) alleging that Mr. Syed and Ms. Banu were in breach of section 36 of the LOT 35 Agreement.

94. The LOT 35 Termination Letter alleges that Mr. Syed and Ms. Banu had failed to provide a mortgage commitment letter from a Canadian Chartered Bank and were therefore in default of the LOT 35 Agreement. The LOT 35 Termination Letter further stated that Exquisite Bay had terminated the LOT 35 Agreement in accordance with section 36 of the LOT 35 Agreement.

95. The LOT 35 Termination Letter came as a surprise to Mr. Syed and Ms. Banu because no demand was ever made by Exquisite Bay or Bay Homes to provide a mortgage commitment

letter. If such a demand was made, Mr. Syed and Ms. Banu would have had no problem securing a mortgage commitment letter in accordance with section 36 of the LOT 35 Agreement.

96. Furthermore, Mr. Syed and Ms. Banu were told by Ahmed that no mortgage preapproval letter was required because of Ahmed's relationship with their real estate agent, Mr. Juma.

97. To the best knowledge of Mr. Syed and Ms. Banu, Exquisite was satisfied with the financial and personal information Mr. Syed and Ms. Banu provided evidencing their ability to pay the balance of the LOT 35 Purchase Price on the closing date.

98. To the best knowledge of Mr. Syed and Ms. Banu, the Development was still proceeding.

HARDEEP SINGH KHOSA and MANJIT KAUR KHOSA – LOT 28

Agreement of Purchase and Sale

99. On July 7, 2019, Mr. and Mrs. Khosa executed an Agreement of Purchase and Sale (referred to as the "**LOT 28 Agreement**") with Exquisite Bay for the purchase of LOT 28 which was to be a pre-construction home for the purchase price of \$1,229,900.00 (referred to as the "**LOT 28 Purchase Price**"). The LOT 28 Agreement stated that Mr. and Mrs. Khosa purchased the "Longview" model home with elevation "B" to be constructed on LOT 28.

100. The LOT 28 Agreement stated that Mr. and Mrs. Khosa were required to pay a deposit of \$150,000.00 (referred to as the "**LOT 28 Deposit**"). Mr. and Mrs. Khosa paid the LOT 28 Deposit in accordance with the Lot 28 Agreement via cheque made payable to Exquisite Bay Development Inc.

Background

101. On July 10, 2019, Mr. and Mrs. Khosa's real estate agent, Rishi Bhalla ("hereinafter referred to as "**Ms. Bhalla**"), provided Exquisite Bay's sales agent, Kuntal Khasnobish with a mortgage pre-approval letter from Iwillgetyoumortgage Services Ltd. The mortgage pre-approval letter was accepted by Exquisite Bay and no request was made for a mortgage approval letter from a different bank.

102. On August 7, 2020, Ms. Bhalla sent an email to Jeet requesting an update regarding the status of the Development. On August 10, 2020, Jeet sent an email to Ms. Bhalla, copying Mr. Khosa, advising that Exquisite Bay would be starting construction at the end of August 2020.

103. On September 28, 2020, Mr. and Mrs. Khosa received a letter from Bay Homes/Exquisite Bay advising that the unavoidable delay event had ended. In the letter Bay Homes/Exquisite Bay advised that the total ‘*Unavoidable Delay Period*’ caused by the COVID-19 pandemic was 352 days. The letter also provided the following new critical dates:

(a) April 26, 2021 – Revised First Tentative Closing date or
August 24, 2021 – Revised Second Tentative Closing Date or
December 22, 2021 – Firm Closing Date and;

(b) August 24, 2022 – Outside Closing Date

104. On April 6, 2021, Mr. and Mrs. Khosa received a letter from Ahmed on behalf of Bay Homes/Exquisite Bay, advising that the closing date had been extended to August 24, 2021. The letter did not provide a reason for the delay. In fact, this was a second extension, the delay.

105. On November 9, 2021, Mr. and Mrs. Khosa received a letter from Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

(a) Bay Homes would be moving forward to start the construction.

(b) Bay Homes had “*successfully completed servicing of the development...*”

(c) The delays experienced by Bay Homes were caused by “*supply chain issues and a back log at the Region of Peel.*”

(d) Bay Homes was in “*the process of obtaining Building Permits*”... and was “*expecting to have these Permits by the end of next month.*”

(e) Bay Homes would be reaching out to them to book their home décor appointments.

106. In late April, 2022, Mr. and Mrs. Khosa received a letter from Exquisite Bay dated April 11, 2022, (the “**LOT 28 Termination Letter**”) alleging that Mr. and Mrs. Khosa were in breach of section 36 of the LOT 28 Agreement.

107. The LOT 28 Termination Letter alleged that Mr. and Mrs. Khosa failed to provide a mortgage commitment from a Canadian Chartered Bank and were therefore in default of the LOT 28 Agreement. The LOT 28 Termination Letter further stated that Exquisite Bay had terminated the LOT 28 Agreement in accordance with section 36 of the LOT 28 Agreement.

108. The LOT 28 Termination Letter came as a surprise to Mr. and Mrs. Khosa because no demand was ever made by Exquisite Bay to provide a mortgage commitment letter.

109. Further, Ms. Bhalla had provided Exquisite Bay with a mortgage commitment letter on behalf of Mr. and Mrs. Khosa. At no time did Exquisite Bay ever raise any issues with Mr. and Mrs. Khosa’s mortgage commitment letter or challenge the validity of the LOT 28 Agreement.

110. To the best knowledge of Mr. and Mrs. Khosa Exquisite Bay was satisfied with the financial and personal information they provided evidencing their ability to pay the balance of the Purchase Price on the closing date.

111. In addition, Exquisite Bay continued to cash all of their cheques for the LOT 28 Deposit.

112. To the best knowledge of Mr. and Mrs. Khosa, the Development was still proceeding.

113. Further, Mr. and Mrs. Khosa received several communications from Exquisite Bay and Bay Homes, implying that the development of the Properties was progressing. At no time during that period were Mr. and Mrs. Khosa ever advised by Exquisite Bay or Bay Homes that they were in breach of section 36 of the LOT 28 Agreement.

Agreement of Purchase and Sale

114. On November 23, 2018, Mr. Pasha executed an Agreement of Purchase and Sale (referred to as the “**Lot 33 Agreement**”) with Exquisite Bay for the purchase of LOT 33 which was to be a pre-construction home for the purchase price of \$1,775,000.00 (referred to as the “**LOT 33 Purchase Price**”). The LOT 33 Agreement stated that Mr. Pasha purchased the “Heartland” model home with elevation “B” to be constructed on LOT 33.

115. The LOT 33 Agreement stated that Mr. Pasha was required to pay a deposit of \$150,000.00 (referred to as the “**LOT 33 Deposit**”). Mr. Pasha paid the LOT 33 Deposit and all the cheques provided to Exquisite Bay have been deposited.

Background

116. Mr. Pasha was introduced to Ahmed by his realtor, Mr. Juma in or about November 2018. At that time, Mr. Pasha had known Mr. Juma for almost three years and had worked with him to purchase and sell several residential properties.

117. Mr. Pasha told Mr. Juma that he was contemplating selling his then home and purchasing a larger home. Mr. Juma advised Mr. Pasha that it would be much better to buy a pre-construction home as it is less likely to have any pre-existing issues. Mr. Juma then told Mr. Pasha about the Development. He told Mr. Pasha that he knew the owner of the Development, Ahmed really well because they were childhood friends and their families were very close. Mr. Juma told Mr. Pasha that his father-in-law, who is also in the real estate and development business also knows Ahmed and his family really well. Mr. Juma assured Mr. Pasha that if anything were to go wrong both Mr. Juma and his father-in-law would be there to intervene on Mr. Pasha’s behalf and resolve any issues.

118. Mr. Pasha had suspicions about the Development but based on Mr. Juma’s advice and Mr. Pasha’s longstanding relationship with him, Mr. Pasha did not question the credibility of Ahmed or the Development and agreed to purchase LOT 31.

119. Subsequently, on April 08, 2020, Mr. Pasha received a notice from Exquisite Bay and Bay Homes advising that due to “*unavoidable delay*” the closing and other critical dates will be extended. No new dates were provided at that time.

120. On August 18, 2020, Mr. Pasha received an email from Jeet attaching a letter from Bay Homes advising that construction had recommenced and that he would “*start to see construction activity in the next few weeks.*” No new closing and other critical dates were provided.

121. On September 28, 2020, Mr. Pasha received a letter from Bay Homes advising that the unavoidable delay event had ended. In the letter, Bay Homes advised that the total “*Unavoidable Delay Period*” caused by the COVID-19 pandemic was 262 days. The letter also provided the following new critical dates:

(a) July 19, 2021 – Revised First Tentative Closing date or
November 16, 2021 – Revised Second Tentative Closing Date or
March 16, 2022 – Firm Closing Date and;

(b) November 16, 2022 – Outside Closing Date.

122. On March 8, 2021, at 6:04 pm, Mr. Pasha sent an email to Jeet asking him to confirm the status of the Project. Later that evening Mr. Pasha received an email from Jeet advising that the contractors were connecting the Longview Place to Derry Road and once that was completed the construction would start 30 days thereafter.

123. On March 9, 2021, Mr. Pasha’s partner, Hira, sent an email to Jeet requesting confirmation of the closing date. Later that day, Jeet sent an email to Hira advising that the builder and Mr. Pasha were protected by Tarion warranty and a few extensions can be obtained by the builder. No closing date was provided.

124. On March 31, 2021, Mr. Pasha received an email from Jeet asking him to send them the balance of the Deposit so that Exquisite Bay could send it to the lawyer. Later that day, Mr.

Pasha sent Jeet an email asking him to confirm whether the cheque should be made payable to Exquisite Bay or Exquisite's lawyers.

125. On November 9, 2021, Mr. Pasha received a letter from Ahmed on behalf of Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

- (a) Bay Homes would be moving forward to start the construction.
- (b) Bay Homes had "*successfully completed servicing of the development...*"
- (c) The delays experienced by Bay Homes were caused by "*supply chain issues and a back log at the Region of Peel.*"
- (d) Bay Homes was in "*the process of obtaining Building Permits*"... and was "*expecting to have these Permits by the end of next month.*"
- (e) Bay Homes would be reaching out to them to book their home décor appointments.

126. In late April, 2022, Mr. Pasha received a letter from Exquisite Bay dated April 11, 2022 (the "**LOT 33 Termination Letter**"), alleging that Mr. Pasha was in breach of section 36 of the LOT 33 Agreement.

127. The LOT 33 Termination Letter alleges that Mr. Pasha failed to provide a mortgage commitment letter from a Canadian Chartered Bank and was therefore in default of section 36 of the LOT 33 Agreement. The LOT 33 Termination Letter further stated that Exquisite Bay had terminated the LOT 33 Agreement in accordance with section 36 of the LOT 33 Agreement.

128. The LOT 33 Termination Letter came as a surprise to Mr. Pasha because no demand was ever made by Exquisite Bay to provide a mortgage commitment letter. If such a demand was made Mr. Pasha would have had no problem obtaining a mortgage commitment letter in accordance with section 36 of the LOT 33 Agreement.

129. To the best of Mr. Pasha's knowledge, Exquisite Bay was satisfied with the financial and personal information he provided evidencing his ability to pay the balance of the Purchase Price on the closing date.

130. In addition, Exquisite Bay continued to cash all of Mr. Pasha's Deposit cheques.

131. To the best knowledge of Mr. Pasha, the Development was still proceeding.

132. Further, Mr. Pasha received several communications from Exquisite Bay and Bay Homes, implying that the development of LOT 33 was progressing. At no time during that period was Mr. Pasha ever asked by Exquisite Bay or Bay Homes to provide a mortgage commitment letter. At no time prior to receiving the LOT 33 Termination Letter was Mr. Pasha ever advised by Exquisite Bay or Bay Homes that he was in breach of section 36 of the LOT 33 Agreement.

**RANJIT SINGH TOOR, SUKHWINDER K. TOOR, BALWINDER S. TOOR and
HARPINDER K. TOOR – LOT 21**

Agreement of Purchase and Sale

133. On July 8, 2019, the Toors executed an Agreement of Purchase and Sale (referred to as the "**LOT 21 Agreement**") with Exquisite Bay for the purchase of LOT 21 which was to be a pre-construction home for the purchase price of \$1,349,900.00 (referred to as the "**LOT 21 Purchase Price**"). The LOT 21 Agreement stated that the Toors purchased the "Longview" model home with elevation "B" to be constructed on LOT 21.

134. The LOT 21 Agreement, as amended, stated that the Toors were required to pay a deposit of \$150,000.00 via eleven post-dated cheques to be provided to Exquisite Bay upon execution of the Lot 21 Agreement (referred to as the "**LOT 21 Deposit**").

135. The Toors paid the LOT 21 Deposit in accordance with the Lot 21 Agreement and all the cheques provided to Exquisite Bay have been deposited.

Background

136. On or about July 2019, the Toors provided Exquisite Bay/Bay Homes with a mortgage approval letter from Mortgage Alliance. No demand was ever made by Exquisite Bay for a different mortgage approval letter.

137. On January 6, 2020, the Toors received a letter from Ahmed on behalf of Bay Homes/Exquisite Bay, advising that the closing date had been extended to August 14, 2020. The letter did not provide a reason for the delay.

138. On April 6, 2021, the Toors received a letter from Ahmed on behalf of Bay Homes/Exquisite Bay, advising that the closing date had been extended to August 04, 2021. The letter did not provide a reason for the delay.

139. On November 9, 2021, the Toors received a letter from Ahmed on behalf of Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

- (a) Bay Homes would be moving forward to start the construction.
- (b) Bay Homes had *“successfully completed servicing of the development...”*
- (c) The delays experienced by Bay Homes were caused by *“supply chain issues and a back log at the Region of Peel.”*
- (d) Bay Homes was in *“the process of obtaining Building Permits”...* and was *“expecting to have these Permits by the end of next month.”*
- (e) Bay Homes would be reaching out to them to book their home décor appointments.

140. On January 24, 2022, the Toors received an email from Jeet, advising that the legal address for LOT 21 would be 6809 Longview Place.

141. In late April, 2022, the Toors received a letter from Exquisite Bay dated April 11, 2022, (the **“LOT 21 Termination Letter”**) alleging that the Toors were in breach of section 36 of the LOT 21 Agreement.

142. The LOT 21 Termination Letter alleges that the Toors failed to provide a mortgage commitment from a Canadian Chartered Bank and were therefore in default of the LOT 21 Agreement. The LOT 21 Termination Letter further stated that Exquisite Bay had terminated the LOT 21 Agreement in accordance with section 36 of the LOT 21 Agreement.

143. The LOT 21 Termination Letter came as a surprise to the Toors because no demand was ever made by Exquisite Bay to provide a mortgage commitment letter. Furthermore, no demand was made by Exquisite Bay for the Toors to provide a different mortgage commitment letter to the one provided to Exquisite Bay in or about July 2019.

144. To the best knowledge of the Toors, Exquisite Bay was satisfied with the financial and personal information they provided evidencing their ability to pay the balance of the Purchase Price on the closing date.

145. To the best knowledge of the Toors, the Development was still proceeding.

146. Further, the Toors received several communications from Exquisite Bay/Bay Homes, implying that the development of LOT 21 was progressing. At no time during that period were the Toors ever advised by Exquisite Bay/Bay Homes that they were in breach of section 36 of the LOT 21 Agreement.

147. At no time from the date of signing the LOT 21 Agreement to the date of receiving the LOT 21 Termination Letter did Exquisite Bay raise any issues with the Toors' mortgage commitment letter or challenge the validity of the LOT 21 Agreement.

JASKARANDEEP SINGH LUDDU and RUPINDER KAUR JASWAL – LOT 31
Agreement of Purchase and Sale

148. On July 16, 2019, Mr. Luddu and Ms. Jaswal executed an Agreement of Purchase and Sale (referred to as the "**Lot 31 Agreement**") with Exquisite Bay for the purchase of LOT 31 which was to be a pre-construction home for the purchase price of \$1,229,900.00 (referred to as

the “**LOT 31 Purchase Price**”). The LOT 31 Agreement stated that Mr. Luddu and Ms. Jaswal purchased the “Longview” model home with elevation “A” to be constructed on LOT 31.

149. The LOT 31 Agreement stated that Mr. Luddu and Ms. Jaswal were to pay a deposit of \$150,000.00 via eleven post-dated cheques, made payable to Exquisite Bay Development Inc., and provided to Exquisite Bay upon execution of the LOT 31 Agreement (referred to as the “**LOT 31 Deposit**”).

150. Mr. Luddu and Ms. Jaswal paid the LOT 31 Deposit in accordance with the Lot 31 Agreement and all the cheques provided to Exquisite Bay have been deposited.

Background

151. On July 16, 2019, Mr. Luddu and Ms. Jaswal went to the Bay Homes walk-in showroom to inquire about the Development. Mr. Luddu and Ms. Jaswal were house hunting as it was their intention to sell their then home and purchase a larger home with an in-law suite. Whilst there, Mr. Luddu and Ms. Jaswal had a conversation with a Bay Homes/Exquisite Bay representative who was able to persuade the couple to purchase one of the lots in the Development.

152. Based on the representations made to Mr. Luddu and Ms. Jaswal, they executed the LOT 31 Agreement that same day with a representative of Exquisite Bay/Bay Homes called Kuntal Khasnobish.

153. On April 08, 2020, Mr. Luddu and Ms. Jaswal received a notice from Exquisite Bay/Bay Homes advising that due to “*unavoidable delay*” the closing and other critical dates will be extended. No new dates were provided at that time.

154. On September 28, 2020, Mr. Luddu and Ms. Jaswal received a letter from Bay Homes/Exquisite Bay advising that the unavoidable delay event had ended. In the letter Bay Homes/Exquisite Bay advised that the total ‘*Unavoidable Delay Period*’ caused by the COVID-19 pandemic was 352 days. The letter also provided the following new critical dates:

- (a) August 9, 2021 – Revised First Tentative Closing date or
December 7, 2021 – Revised Second Tentative Closing Date or
April 6, 2022 – Firm Closing Date and;
- (b) December 7, 2022 – Outside Closing Date

155. On November 9, 2021, Mr. Luddu and Ms. Jaswal received a letter from Ahmed on behalf of Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

- (a) Bay Homes would be moving forward to start the construction.
- (b) Bay Homes had “*successfully completed servicing of the development...*”
- (c) The delays experienced by Bay Homes were caused by “*supply chain issues and a back log at the Region of Peel.*”
- (d) Bay Homes was in “*the process of obtaining Building Permits*”... and was “*expecting to have these Permits by the end of next month.*”
- (e) Bay Homes would be reaching out to them to book their home décor appointments.

156. On January 24, 2022, Jeet sent an email to Mr. Luddu and Ms. Jaswal advising that the legal address for LOT 31 would be 6769 Longview Place.

157. In late April, 2022, Mr. Luddu and Ms. Jaswal received a letter from Ahmed on behalf of Exquisite Bay dated April 11, 2022, (the “**LOT 31 Termination Letter**”) alleging that Mr. Luddu and Ms. Jaswal were in breach of section 10(b) of the LOT 31 Agreement.

158. The LOT 31 Termination Letter alleged that Mr. Luddu and Ms. Jaswal had breached section 10(b) of the LOT 31 Agreement by “*advising others, through advertisement*” that LOT 31 “*is or may be available for sale, offer for sale, assignment, lease or rent.*”

159. The LOT 31 Termination Letter further stated that the LOT 31 Agreement was terminated pursuant to section 10 (b).

160. The LOT 31 Termination Letter came as a complete shock to Mr. Luddu and Ms. Jaswal. LOT 31 was purchased as a residential home for Mr. Luddu and Ms. Jaswal, their children and in-laws as they had outgrown their current home. Mr. Luddu and Ms. Jaswal had no intention of renting or selling LOT 31 as that would have defeated the purpose of purchasing LOT 31.

161. Mr. Luddu and Ms. Jaswal contacted the lawyers for Bay Homes/Exquisite Bay to enquire further about the LOT 31 Termination Letter. The lawyer provided them with a rental listing on Zillow which purported to be advertising the basement of LOT 31 for rent. The advert included pictures of a basement and information regarding the interior of the basement. It would have been impossible for Mr. Luddu and Ms. Jaswal to rent a basement, since LOT 31 was at the time, and remains, vacant land.

162. Before receiving the LOT 31 Termination Letter, Mr. Luddu and Ms. Jaswal contacted Jeet on several occasions to discuss the progress of the Development. Mr. Luddu and Ms. Jaswal were able to view the Development from their home and they were growing increasingly concerned every time they realized the Development had not commenced. However, every time they spoke with Jeet he kept reassuring them that everything was okay and they did not need to worry. Jeet also advised Mr. Luddu and Ms. Jaswal that Bay Homes/Exquisite Bay was just waiting on the City to provide the building permits and once the building permits were received the construction of the Development would commence.

163. After receiving the LOT 31 Termination Letter, Mr. Luddu and Ms. Jaswal received a telephone call from Jeet. During that telephone call, Jeet advised Mr. Luddu and Ms. Jaswal that they had breached the "*mortgage related clause*". Mr. Luddu and Ms. Jaswal were confused by this statement, and they advised Jeet that they had received the LOT 31 Termination Letter alleging that they were in breach of section 10 of the LOT 31 Agreement.

AJINDER SINGH SANDHU and MANJOT SINGH SANDHU – LOT 32

Agreement of Purchase and Sale

164. On July 20, 2019, Ajinder and Manjot executed an Agreement of Purchase and Sale (referred to as the "**Lot 32 Agreement**") with Exquisite Bay for the purchase of LOT 32 which

was to be a pre-construction home for the purchase price of \$1,514,900.00 (referred to as the “**LOT 32 Purchase Price**”). The LOT 32 Agreement stated that Ajinder and Manjot purchased the “Creek” model home with elevation “A” to be constructed on LOT 32.

165. The LOT 32 Agreement stated that Ajinder and Manjot were to pay a deposit of \$150,000.00 via eleven post-dated cheques, made payable to Exquisite Bay Development Inc., and provided to Exquisite Bay upon execution of the LOT 32 Agreement (referred to as the “**LOT 32 Deposit**”).

166. Ajinder and Manjot paid the LOT 32 Deposit in accordance with the LOT 32 Agreement and all the cheques provided to Exquisite Bay have been deposited.

Background

167. Ajinder and Manjot were advised by a sales representative for Exquisite Bay that no mortgage commitment letter was required from them as they were making a cash purchase.

168. On April 08, 2020, Ajinder and Manjot received a notice from Bay Homes advising that due to “*unavoidable delay*” the closing and other critical dates will be extended.

169. On September 28, 2020, Ajinder and Manjot received a letter from Bay Homes advising that the unavoidable delay event had ended. In the letter, Bay Homes advised that the total ‘*Unavoidable Delay Period*’ caused by the COVID-19 pandemic was 352 days. The letter also provided the following new critical dates:

- (a) August 9, 2021 – Revised First Tentative Closing date or
December 7, 2021 – Revised Second Tentative Closing Date or
April 6, 2022 – Firm Closing Date and;

- (b) December 7, 2022 – Revised Outside Closing Date.

170. On January 24, 2022, Ajinder and Manjot received an email from Jeet advising that the legal address for LOT 32 would be 6765 Longview Place.

171. Ajinder and Manjot did not receive any notification from Exquisite Bay/Bay Homes that the LOT 32 Agreement had been terminated. They were also unaware that LOT 32 and all the other Lots in the Development had been fraudulently transferred to Vandyk until they were advised by other victims of the Defendants.

JAWED YUSUF – LOT 27

Agreement of Purchase and Sale

172. On August 22, 2019, Mr. Yusuf executed an Agreement of Purchase and Sale (referred to as the “**Lot 27 Agreement**”) with Exquisite Bay for the purchase of LOT 27 which was to be a pre-construction home for the purchase price of \$1,494,900.00 (referred to as the “**LOT 27 Purchase Price**”). The LOT 27 Agreement stated that Mr. Yusuf purchased the “Ravine” model home with elevation “A” to be constructed on LOT 27.

173. The LOT 27 Agreement stated that Mr. Yusuf was to pay a deposit of \$150,000.00 (referred to as the “**LOT 27 Deposit**”). Mr. Yusuf paid \$100,000.00 in cash, towards to Deposit, on the signing of the Agreement. On February 14, 2020, Mr. Yusuf paid \$25,000.00 in cash towards the Deposit. On May 22, 2020, Mr. Yusuf paid the final instalment of \$25,000.00 in cash towards the Deposit.

Background

174. In or about August 2019, Mr. Yusuf met with Raza Yousuf (hereinafter referred to as “**Raza**”) and his brother, the Defendant, Ahmed about purchasing a lot from the Development.

175. Raza and Ahmed were introduced to Mr. Yusuf by Mr. Sharif, in or about August 2019. At that time, Mr. Yusuf was interested in selling his then home and purchasing a larger home.

176. On or about August 27, 2019, Mr. Yusuf met with Ahmed and Raza at Exquisite Bay’s office located at 215-350 Burnhamthorpe Road West, Mississauga. Whilst there, Raza handed

Mr. Yusuf a commitment letter purporting to be from TD Canada Trust and confirming that Mr. Yusuf had qualified for a residential mortgage loan with the Toronto-Dominion Bank in the amount of \$1,344,900.00. When Mr. Yusuf enquired about the commitment letter, Raza told him not to worry about it, it was just something Exquisite was required to do by its lenders.

177. About a week after signing the LOT 27 Agreement, Mr. Yusuf and Raza executed an Assignment Agreement. The Assignment Agreement stated that Mr. Yusuf would be able to assign the LOT 27 Agreement after ten months from the date of the LOT 27 Agreement was executed.

178. On February 13, 2020, Mr. Yusuf and Raza executed a Memorandum of Understanding confirming that:

“... Raza Yousuf operations manager at Bay Homes Inc. will provide finished basement without bathroom and kitchen for Lot Number 27 and with premium floor plan for Ravine Model that includes additional attached bathroom on the upper floor of the house.”

179. On April 08, 2020, Mr. Yusuf received a notice from Bay Homes advising that due to “*unavoidable delay*” the closing and other critical dates will be extended.

180. On May 08, 2020, Mr. Yusuf received a letter from Ahmed on behalf of Bay Homes advising that the closing date for LOT 27 had been extended to December 7, 2020. The letter further stated that Bay Homes expected “*the home to be ready for occupancy by this new date.*”

181. On August 18, 2020, Mr. Yusuf received a letter from Bay Homes advising that construction had recommenced, and they would “*start to see construction activity in the next few weeks.*” No new closing and other critical dates were provided.

182. On September 28, 2020, Mr. Yusuf received a letter from Bay Homes advising that the unavoidable delay event had ended. In the letter, Bay Homes advised that the total ‘*Unavoidable*

Delay Period” caused by the COVID-19 pandemic was 352 days. The letter also provided the following new critical dates:

(a) July 26, 2021 – Revised First Tentative Closing date or
November 23, 2021 – Revised Second Tentative Closing Date or
March 23, 2022 – Firm Closing Date and;

(b) November 23, 2022 – Outside Closing Date.

183. On April 22, 2021, Mr. Yusuf received a letter from Ahmed on behalf of Bay Homes advising that the closing date for LOT 27 had been extended to November 23, 2021. The letter further stated that Bay Homes expected *“the home to be ready for occupancy by this new date.”*

184. On November 9, 2021, Mr. Yusuf received a letter from Ahmed on behalf of Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

(a) Bay Homes would be moving forward to start the construction.

(b) Bay Homes had *“successfully completed servicing of the development...”*

(c) The delays experienced by Bay Homes were caused by *“supply chain issues and a back log at the Region of Peel.”*

(d) Bay Homes was in *“the process of obtaining Building Permits”...* and was *“expecting to have these Permits by the end of next month.”*

(e) Bay Homes would be reaching out to them to book their home décor appointments.

185. On January 24, 2022, Mr. Yusuf received an email from Jeet advising that the legal address for LOT 27 would be 6785 Longview Place.

186. On April 22, 2022, Mr. Yusuf and Mr. Sharif met with Ahmed to discuss the status of the Development. During that meeting, Ahmed advised Mr. Yusuf and Mr. Sharif:

- (a) that in January 2022, Kingsett asked him to inject additional capital in the amount of \$5,000,000.00;
- (b) that on February 2022, Kingsett asked him to inject an additional \$5,000,000.00;
- (c) that Kingsett gave him two months to secure the additional \$5,000,000.00 or Kingsett would take over the Development and either sell the lots or the land to another purchaser;
- (d) that he spoke with his legal advisors regarding whether he should try to raise the additional funding but the Agreements of Purchase and Sale did not give him the right to do that;
- (e) that Kingsett told him to cancel all the Agreements of Purchase and Sale since the property market has gone up and relaunch the Development at higher sale prices per lot;
- (f) that Kingsett threatened to appoint a Receiver;
- (g) that it was mutually agreed with Kingsett that he would terminate all the Agreements of Purchase and Sale and the deposits plus six percent compounded interest would be transferred into his lawyer's trust account;
- (h) that he did not notify the buyers of the issues he was having with funding because he was worried he would be sued by the buyers for the return of their deposits;
- (i) that he could terminate the Agreements of Purchase and Sale by using section 36 of the Agreements;
- (j) that they would be receiving their termination letters shortly;

- (k) that he wanted to speak with them before they received the termination letters;
- (l) that he did not profit from the arrangement with Kingsett;
- (m) that Kingsett had already made a deal with another developer to purchase the Development;
- (n) that he was at the mercy of Kingsett.

187. In late April, 2022, Mr. Yusuf received a letter from Exquisite Bay dated April 11, 2022, (the “**LOT 27 Termination Letter**”) alleging that Mr. Yusuf was in breach of section 36 of the LOT 27 Agreement.

188. The LOT 27 Termination Letter alleges that Mr. Yusuf failed to provide a mortgage commitment from a Canadian Chartered Bank and were therefore in default of section 36 of the LOT 27 Agreement. The LOT 27 Termination Letter further stated that Exquisite Bay had terminated the LOT 27 Agreement in accordance with section 36 of the LOT 27 Agreement.

189. The LOT 27 Termination Letter did not come as a surprise to Mr. Yusuf as he had already been told by Ahmed in the meeting on April 22, 2022, that he would be receiving a termination letter alleging that he was in breach of section 36 of the LOT 27 Agreement.

190. To the best knowledge of Mr. Yusuf, Exquisite Bay was satisfied with the financial and personal information he provided evidencing his ability to pay the balance of the Purchase Price on the closing date. Further, no demand was ever made by Exquisite Bay to Mr. Yusuf to provide a mortgage commitment letter.

191. The communications received from Exquisite Bay and Bay Homes falsely implied that they were in a position to legally proceed with the Development. Further, these communications were instrumental in pacifying Mr. Yusuf whilst the LOT 27 Fraudulent Conveyance was being planned, contemplated, or otherwise undertaken.

EMADUDDIN CHOWDHURY and REFAYAT TAHSINA ALAM – LOT 18**Agreement of Purchase and Sale**

192. On December 31, 2019, Mr. Chowdhury and Ms. Alam executed an Agreement of Purchase and Sale (referred to as the “**Lot 18 Agreement**”) with Exquisite Bay for the purchase of LOT 18 which was to be a pre-construction home for the purchase price of \$1,370,000.00 (referred to as the “**LOT 18 Purchase Price**”). The LOT 18 Agreement stated that Mr. Chowdhury and Ms. Alam purchased the “Ravine” model home with elevation “B” to be constructed on LOT 18.

193. On February 3, 2020, the Lot 18 Agreement was amended to change the model type from Ravine to Fletcher and the LOT 18 Purchase Price from \$1,370,000.00 to \$1,390,000.00.

194. The LOT 18 Agreement stated that Mr. Chowdhury and Ms. Alam were to pay a deposit of \$150,000.00 via eleven post-dated cheques, made payable to Exquisite Bay Development Inc., and provided to Exquisite Bay upon execution of the LOT 18 Agreement (referred to as the “**LOT 18 Deposit**”).

195. Mr. Chowdhury and Ms. Alam paid the LOT 18 Deposit in accordance with the Lot 18 Agreement and all the cheques provided to Exquisite Bay have been deposited.

Background

196. In or about December 2019, Mr. Chowdhury and Ms. Alam went to the Bay Homes walk-in showroom to inquire about the Development. Mr. Chowdhury and Ms. Alam was house hunting as it was their intention to sell their then home and purchase a larger home with a separate in-law suite. Mr. Chowdhury and Ms. Alam had two young children and Mr. Chowdhury’s mom living with them and they needed more space.

197. Before signing the LOT 18 Agreement, Mr. Chowdhury and Ms. Alam were told by Ahmed that no mortgage pre-approval letter was required from them because Mr. Chowdhury and Ms. Alam already owned a house where the mortgage was almost paid in full. Ahmed told

Mr. Chowdhury and Ms. Alam that that was sufficient evidence to show that Mr. Chowdhury and Ms. Alam would be able to pay the balance of the LOT 18 Purchase Price.

198. However, on May 13, 2020, Mr. Chowdhury received an email from Jeet requesting a mortgage pre-approval letter. Mr. Chowdhury and Ms. Alam were surprised by this request because they were told by Ahmed that no mortgage pre-approval letter would be necessary.

199. Following the receipt of the May 13, 2020, email from Jeet, Mr. Chowdhury contacted Ahmed directly to discuss the issue regarding the provision of a mortgage pre-approval letter as well as inquire about the status of the Development. During that discussion, Ahmed reiterated to Mr. Chowdhury that he did not need to provide a mortgage pre-approval letter and directed Mr. Chowdhury to ignore the email received from Jeet on May 13, 2020.

200. On July 31, 2020, Mr. Chowdhury sent an email to Jeet requesting an update regarding the status of the Development. On August 4, 2020, Mr. Chowdhury received an email from Jeet advising that construction "*will begin at the end of August.*"

201. On August 18, 2020, Mr. Chowdhury received an email from Jeet attaching a letter from Bay Homes advising that construction had recommenced, and they would "*start to see construction activity in the next few weeks.*" No new closing and other critical dates were provided.

202. On September 18, 2020, Mr. Chowdhury and Ms. Alam met with Ahmed to discuss the possibility of Ms. Alam's parents purchasing a lot from the Development. During that meeting Ahmed told, Mr. Chowdhury and Ms. Alam that the construction of the Development was delayed because of COVID-19 but things were still on track to complete LOT 18 by the date in the LOT 18 Agreement. Ahmed also told Mr. Chowdhury and Ms. Alam that they did not need to submit a mortgage pre-approval letter.

203. On September 24, 2020, Mr. Chowdhury sent an email to Jeet asking him to confirm whether he had received Mr. Chowdhury's tenth instalment cheque in the amount of \$10,000.00

and when that cheque would be deposited by Exquisite Bay. Mr. Chowdhury also asked Jeet to confirm whether he had received Mr. Chowdhury's eleventh and final instalment cheque in the amount of \$30,000.00. Later that day, Jeet sent an email to Mr. Chowdhury confirming that they would be depositing the cheque that same day.

204. In August 2021, Mr. Chowdhury and Ms. Alam had significant concerns about the Development. Particularly, they were concerned that:

- (a) No construction had taken place despite many promises from representatives of Bay Homes/Exquisite Bay that construction would be starting imminently;
- (b) Neither Exquisite Bay nor Bay Homes were licenced by the HCRA. Bay Homes licence had expired, and Exquisite Bay licence had been refused;
- (c) Mr. Chowdhury had a telephone conversation with Jeet in August 2022, in which he asked Jeet why the HCRA was showing that Exquisite Bay's licence had been refused and Bay Home's licence had expired. Jeet told Mr. Chowdhury that it was not an issue and the Development was still on track;
- (d) The City of Mississauga confirmed that Bay Homes/Exquisite Bay had not registered the subdivision agreement for the Development; and
- (e) Over the previous months, Mr. Chowdhury made numerous attempts at communicating with representatives of Bay Homes/Exquisite Bay. During that time, Mr. Chowdhury noticed that several administrative office and staff telephone numbers were no longer in service. Mr. Chowdhury also left messages on Ahmed's voicemail which was not returned.

205. On August 20, 2021, Mr. Chowdhury and Ms. Alam real estate lawyer sent an email to Exquisite Bay's lawyers setting out the concerns Mr. Chowdhury and Ms. Alam were having

regarding the Development. No response to this correspondence was received was ever received from Exquisite Bay's lawyers.

206. On November 9, 2021, Mr. Chowdhury received an email from Jeet attaching a letter from Ahmed on behalf of Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

- (a) Bay Homes would be moving forward to start the construction.
- (b) Bay Homes had "*successfully completed servicing of the development...*"
- (c) The delays experienced by Bay Homes were caused by "*supply chain issues and a back log at the Region of Peel.*"
- (d) Bay Homes was in "*the process of obtaining Building Permits*"... and was "*expecting to have these Permits by the end of next month.*"
- (e) Bay Homes would be reaching out to them to book their home décor appointments.

207. On December 7, 2021, Mr. Chowdhury sent an email to Jeet requesting an update regarding the progress of the Development. On December 16, 2021, Mr. Chowdhury received an email from Jeet advising that the individual lot addresses were in place, and they were just waiting on "*the building permits.*"

208. On January 24, 2022, Jeet sent an email to Mr. Chowdhury advising that the legal address for LOT 18 would be 6821 Longview Place. Later that day, Mr. Chowdhury sent an email to Jeet inquiring as to whether Exquisite Bay had received the building permits. Jeet sent Mr. Chowdhury an email advising that they were "*still waiting on them and as soon as I have more information I shall be sending out notification.*"

209. On February 14, 2022, Mr. Chowdhury sent another email to Jeet inquiring about the building permits. Jeet sent an email to Mr. Chowdhury advising that nothing had changed.

210. On March 10, 2022 and April 19, 2022, Mr. Chowdhury sent further emails to Jeet inquiring about the status of the building permits. These emails went unanswered.

211. In late April, 2022, Mr. Chowdhury and Ms. Alam received a letter from Exquisite Bay dated April 11, 2022, (the “**LOT 18 Termination Letter**”) alleging that Mr. Chowdhury and Ms. Alam were in breach of section 36 of the LOT 18 Agreement.

212. The LOT 18 Termination Letter alleges that Mr. Chowdhury and Ms. Alam failed to provide a mortgage commitment letter from a Canadian Chartered Bank and were therefore in default of section 36 of the LOT 18 Agreement. The LOT 18 Termination Letter further stated that Exquisite Bay had terminated the LOT 18 Agreement in accordance with section 36 of the LOT 18 Agreement.

213. The LOT 18 Termination Letter came as a surprise to Mr. Chowdhury and Ms. Alam because no demand was ever made by Exquisite Bay to provide a mortgage commitment letter. If such a demand was made, Mr. Chowdhury and Ms. Alam would have had no problem securing a mortgage commitment letter in accordance with section 36 of the LOT 18 Agreement.

214. Furthermore, Mr. Chowdhury and Ms. Alam were told by Ahmed that no mortgage committal letter was required because they already owned a house and that was sufficient evidence of their ability to pay the balance of the LOT 18 Purchase Price.

215. To the best knowledge of Mr. Chowdhury and Ms. Alam, Exquisite Bay was satisfied with the financial and personal information they had provided evidencing their ability to pay the balance of the LOT 18 Purchase Price on the closing date.

216. To the best knowledge of Mr. Chowdhury and Ms. Alam, the Development would be proceeding once the building permits had been obtained.

217. At no time prior to receiving the LOT 18 Termination Letter, during any of the communications from Ahmed, Exquisite Bay, Bay Homes or their representatives, did Exquisite

Bay advise that it was planning to sell LOT 18 to Vandyk and, or that it was going to unilaterally terminate the LOT 18 Agreement and claim a forfeit of the LOT 18 Deposit. Additionally, Exquisite Bay continued to cash the LOT 18 Deposit cheques.

218. In July 2022, Mr. Chowdhury and Ms. Alam sold their then home and purchased a larger home. Unfortunately, they were not able to find a home that met their requirements as well as LOT 18. The new home:

(a) cost more than LOT 18;

(b) had no separate in-law suite – LOT 18 had an in-law suite with a separate entrance. This was an important feature for Mr. Chowdhury and Ms. Alam.

(c) did not back onto the Ravine – both LOT 18 and their old home backed onto a Ravine. Mr. Chowdhury and Ms. Alam what to move somewhere with similar access to a backyard, privacy and nature.

219. Also, as a result of the decline in the property market, Mr. Chowdhury and Ms. Alam sold their previous home for much less than if they had sold it earlier.

RANBIR SINGH CHEEMA and LAKHVIR KAUR CHEEMA – LOT 19

Agreement of Purchase and Sale

220. On August 4, 2021, Mr. and Mrs. Cheema executed an Agreement of Purchase and Sale (referred to as the “**LOT 19 Agreement**”) with Exquisite Bay for the purchase of LOT 19 which was to be a pre-construction home for the purchase price of \$1,780,000.00 (referred to as the “**LOT 19 Purchase Price**”). The LOT 19 Agreement stated that Mr. and Mrs. Cheema purchased the “Creek” model home with elevation “A” to be constructed on LOT 19.

221. The LOT 19 Agreement stated that Mr. and Mrs. Cheema were required to pay a deposit of \$200,000.00 (referred to as the “**LOT 19 Deposit**”). Mr. and Mrs. Cheema provided

Exquisite Bay with a bank draft in the amount of \$200,000.00 at the same time as executing the LOT 19 Agreement.

Background

222. In July 2021, Mr. and Mrs. Cheema received a telephone call from a representative for Exquisite Bay/Bay Homes called Samar Asif (hereinafter referred to as “**Ms. Asif**”). During that telephone call, Ms. Asif explained the Development to them. At that time, Mr. and Mrs. Cheema were interested in purchasing a larger property as they had outgrown their semi-detached home.

223. On July 27, 2021, Mr. and Mrs. Cheema received a follow up email from Ms. Asif. The email provided information about LOT 19, including the size and price. Ms. Asif also stated in the email that the lot was “*an investors lot*” but she could “*pull it out because [she] work with the builder.*”

224. On August 4, 2021, Mr. and Mrs. Cheema met with Jeet at Bay Homes/Exquisite Bay’s office to enquire more about the Development. During that meeting, Jeet advised Mr. and Mrs. Cheema that LOT 19 was the last lot left in the Development. Jeet also advised Mr. and Mrs. Cheema that they did not have time to discuss the terms of the purchase agreement with a lawyer because by the time they did, the lot would be sold to someone else. Jeet further advised Mr. and Mrs. Cheema that if they paid the full deposit in one lump sum straightaway, Exquisite Bay would waive the requirement for them to provide a mortgage commitment letter. Mr. and Mrs. Cheema did not request a waiver of the requirement to providing a mortgage commitment letter, this was volunteered by Jeet.

225. Before leaving the office, Mr. and Mrs. Cheema signed the LOT 19 Agreement and provided Jeet with a bank draft for \$200,000.00, the full amount of the LOT 19 Deposit.

226. At no time during any of their discussions with representatives of Bay Homes/Exquisite Bay were Mr. and Mrs. Cheema ever advised that neither Bay Homes nor Exquisite Bay had a valid licence from HCRA. As stated early Exquisite Bay’s licence was refused on March 12, 2021 and Bay Homes’ licence expired on March 6, 2020.

227. On August 12, 2021, Mr. and Mrs. Cheema received an email from Jeet attaching a copy of the LOT 19 Agreement signed by Exquisite Bay. The email did not mention anything about a mortgage commitment letter, instead it congratulated the couple on their new home purchase.

228. On November 9, 2021, Mr. and Mrs. Cheema received a letter from Ahmed on behalf of Bay Homes addressed to Longview Ravine Estates Homeowners. The letter stated that:

- (a) Bay Homes would be moving forward to start the construction.
- (b) Bay Homes had “*successfully completed servicing of the development...*”
- (c) The delays experienced by Bay Homes were caused by “*supply chain issues and a back log at the Region of Peel.*”
- (d) Bay Homes was in “*the process of obtaining Building Permits*”... and was “*expecting to have these Permits by the end of next month.*”
- (e) Bay Homes would be reaching out to them to book their home décor appointments.

229. On January 24, 2022, Jeet sent an email to Mr. and Mrs. Cheema advising that the legal address for LOT 19 would be 6817 Longview Place.

230. In late April, 2022, Mr. and Mrs. Cheema received a letter from Exquisite Bay dated April 11, 2022, (the “**LOT 19 Termination Letter**”) alleging that Mr. and Mrs. Cheema were in breach of section 36 of the LOT 19 Agreement.

231. The LOT 19 Termination Letter alleges that Mr. and Mrs. Cheema had failed to provide a mortgage commitment from a Canadian Chartered Bank and were therefore in default of section 36 of the LOT 19 Agreement. The LOT 19 Termination Letter further stated that Exquisite Bay had terminated the LOT 19 Agreement in accordance with section 36 of the LOT 19 Agreement.

232. The LOT 19 Termination Letter came as a surprise to Mr. and Mrs. Cheema because no demand was ever made by Exquisite Bay or Bay Homes to provide a mortgage commitment

letter. If such a demand was made, Mr. and Mrs. Cheema would have had no problem obtaining a mortgage commitment letter in accordance with section 36 of the LOT 19 Agreement. In fact, upon receiving the LOT 19 Termination Letter, Mr. Cheema contacted his financial advisor at CIBC. On April 25, 2022, Mr. Cheema received an email from his financial advisor providing him with a mortgage commitment pursuant to section 36 of the LOT 19 Agreement.

233. Furthermore, Mr. and Mrs. Cheema were advised by Jeet that no mortgage commitment letter was required if they paid the LOT 19 Deposit in full, which they did.

234. To the best knowledge of Mr. and Mrs. Cheema, Exquisite Bay was satisfied with the financial and personal information they provided evidencing their ability to pay the balance of the Purchase Price on the closing date.

235. To the best knowledge of Mr. and Mrs. Cheema, the Development was still proceeding.

DAVID PREDOVICH AND KERRESE PREDOVICH – LOT 40

Agreement of Purchase and Sale

236. On or about September 11, 2019, Mr. and Mrs. Predovich executed an Agreement of Purchase and Sale (the “**Lot 40 Agreement**”) with Exquisite Bay for the purchase of LOT 40 which was to be a pre-construction home for the purchase price of \$1,464,900.00 (the “**LOT 40 Purchase Price**”). The LOT 40 Agreement stated that Mr. and Mrs. Predovich purchased the “RAVINE” model home with elevation “B” to be constructed on LOT 40.

237. The LOT 40 Agreement stated that Mr. and Mrs. Predovich were to pay a deposit of \$150,000.00 via eleven post-dated cheques, made payable to Exquisite Bay Development Inc., and provided to Exquisite Bay upon execution of the LOT 40 Agreement (referred to as the “**LOT 40 Deposit**”).

238. Mr. and Mrs. Predovich paid the LOT 40 Deposit in accordance with the LOT 40 Agreement and all the cheques provided to Exquisite Bay have been deposited.

Background

239. On September 12, 2019, Mr. Predovich sent a text message to Ms. Kanwal Dhiraj, a sales representative for Exquisite Bay (hereinafter referred to as “**Kanwal**”), advising that the Mr. and Mrs. Predovich’s mortgage broker was preparing a mortgage commitment letter and wanted to know whether Exquisite Bay had a specific list of approved lenders.

240. Later, on September 12, 2019, Mr. Predovich received a text message from Kanwal advising that “*there was no specific list, so any lender would be fine.*”

241. On September 13, 2019, Mr. Predovich sent an email to Kanwal attaching a mortgage commitment letter from Clear Trust Mortgages (the “**Commitment Letter**”). In that email, Mr. Predovich asked Kanwal to confirm whether the Commitment Letter met Exquisite Bay’s criteria. Kanwal did not respond to this email.

242. On September 19, 2019, Mr. Predovich sent a text message to Kanwal again asking her to confirm whether the Commitment Letter complied with the requirements of Exquisite Bay. In response, Kanwal confirmed via text that the Commitment Letter complied with the requirements of Exquisite Bay.

243. Mr. and Mrs. Predovich are entitled to rely upon Kanwal’s confirmation that the Commitment Letter complied with Exquisite Bay’s requirements.

244. In a letter dated August 18, 2020, Bay Homes advised Mr. and Mrs. Predovich that they will “start to see construction activity in the next few weeks.” No such construction occurred in the stated timeline, or at any time thereafter.

245. On November 9, 2021, Ahmed signed a letter to “Longview Ravine Estates Homeowners” to announce the following:

- (a) They have successfully completed the servicing of the development after delays caused by supply chain issues and a backlog at the Region of Peel;

(b) They are now in the process of obtaining Building Permits and are expecting to have them by the end of the next month;

(c) Next month, being December 2021, they would be reaching out to book home décor appointments with customers.

246. On January 24, 2022, Jeet advised Mr. and Mrs. Predovich that the address for LOT 40 would be 6730 Longview Place.

247. In late April, 2022, Mr. and Mrs. Predovich received a letter from Exquisite Bay dated April 11, 2022, (the "**LOT 40 Termination Letter**") alleging that Mr. and Mrs. Predovich were in breach of section 36 of the LOT 40 Agreement.

248. The LOT 40 Termination Letter alleges that Mr. and Mrs. Predovich had failed to provide a mortgage commitment from a Canadian Chartered Bank and were therefore in default of the LOT 40 Agreement. The LOT 40 Termination Letter further stated that Exquisite Bay had terminated the LOT 40 Agreement in accordance with section 36 of the LOT Agreement.

249. The LOT 40 Termination Letter came as a surprise to Mr. and Mrs. Predovich because not only were they assured by Kanwal that the Commitment Letter had satisfied the criteria of Exquisite Bay, no demand was ever made by Exquisite Bay to provide a different mortgage commitment letter. To the best knowledge of Mr. and Mrs. Predovich, the Development was still proceeding.

250. To the best knowledge of Mr. and Mrs. Predovich Exquisite Bay was satisfied with the financial and personal information they provided evidencing their ability to pay the balance of the Purchase Price on the closing date.

251. Further, Mr. and Mrs. Predovich received several communications from Exquisite Bay and Bay Homes between August 2020 and January 2022, implying that the development of the

LOT 40 was progressing. At no time during that period were Mr. and Mrs. Predovich ever advised by Exquisite Bay or Bay Homes that they were in breach of section 36 of the LOT 40 Agreement.

USMAN SHARIF, 2784612 ONTARIO INC and 2784162 ONTARIO INC – LOT 26, LOT 4L and LOT 4R

Agreement of Purchase and Sale – Usman Sharif - Lot 26

252. On August 22, 2019, Mr. Sharif executed an Agreement of Purchase and Sale (referred to as the “**Lot 26 Agreement**”) with Exquisite Bay for the purchase of LOT 26 which was to be a pre-construction home for the purchase price of \$1,494,900.00 (referred to as the “**LOT 26 Purchase Price**”). The LOT 26 Agreement stated that Mr. Sharif purchased the “Ravine” model home with elevation “B” to be constructed on lot number 26.

253. The LOT 26 Agreement stated that Mr. Sharif was to pay a deposit of \$150,000.00 in four instalments via post-dated cheques to be provided to Exquisite Bay upon execution of the LOT 26 Agreement (referred to as the “**LOT 26 Deposit**”).

254. Mr. Sharif paid the LOT 26 Deposit in one cash lump sum of \$150,000.00. The cash was handed to Muhammad and Ahmed on August 22, 2019, at Exquisite Bay’s office in Mississauga.

Agreement of Purchase and Sale – 2784612 Ontario Inc – Lot 4L

255. On October 16, 2020, 2784612 executed an Agreement of Purchase and Sale (referred to as the “**LOT 4L Agreement**”) with Exquisite Bay for the purchase of LOT 4L which was to be a pre-construction home for the purchase price of \$1,075,000.00 (referred to as the “**LOT 4L Purchase Price**”). The LOT 4L Agreement stated that 2784612 purchased the “Meadowvale” model home with elevation “A1” to be constructed on lot number 4L (referred to as “**LOT 4L**”).

256. Schedule X1 of the Lot 4L Agreement required 2784612 to pay the complete deposit of \$120,000.00 within thirty (30) days of acceptance of the LOT 4L Agreement (referred to as the “**LOT 4L Deposit**”).

257. 2784612 has complied with Schedule X1 of the LOT 4L Agreement and has paid the LOT 4L Deposit via a cheque made payable to Exquisite Bay Development Inc. in the amount of \$120,000.00. The cheque was post-dated November 24, 2020, and handed to Ahmed on October 16, 2020, at Exquisite Bay's office in Mississauga.

Agreement of Purchase and Sale – 2784162 Ontario Inc. – Lot 4R

258. On October 16, 2020, 2784162 executed an Agreement of Purchase and Sale (referred to as the "**LOT 4R Agreement**") with Exquisite Bay for the purchase of LOT 4R which was to be a pre-construction home for the purchase price of \$1,060,000.00 (referred to as the "**LOT 4R Purchase Price**"). The LOT 4R Agreement stated that 2784162 purchased the "Meadowvale" model home with elevation "A2" to be constructed on lot number 4R (referred to as "**LOT 4R**").

259. Schedule X1 of the LOT 4R Agreement required 2784162 to pay the complete deposit of \$120,000.00 within thirty (30) days of acceptance of the LOT 4R Agreement (referred to as the "**LOT 4R Deposit**").

260. 2784162 has complied with Schedule X1 of the LOT 4R Agreement and has paid the LOT 4R Deposit via a cheque made payable to Exquisite Bay Development Inc. in the amount of \$120,000.00. The cheque was post-dated October 30, 2020, and handed to Ahmed on October 16, 2020, at Exquisite Bay's office in Mississauga.

Background

261. The LOT 26 Agreement, the LOT 4L Agreement and the LOT 4R Agreement are hereinafter collectively referred to as the "**Sharif Agreements**".

262. LOT 26, LOT 4L and LOT 4R are hereinafter collectively referred to as the "**Sharif Properties**".

263. The LOT 26 Deposit, LOT 4L Deposit and LOT 4R Deposit, are hereinafter referred to as the "**Sharif Deposits**".

264. On February 13, 2020, Mr. Sharif and Raza Yousuf executed a Memorandum of Understanding confirming that:

“... Raza Yousuf operations manager at Bay Homes Inc. will provide finished basement without bathroom and kitchen for Lot 26 and with premium floor plan for Ravine Model that includes additional attached bathroom on the upper floor of the house.”

265. On April 08, 2020, Mr. Sharif received a notice from Bay Homes advising that due to “*unavoidable delay*” the closing and other critical dates will be extended.

266. On May 08, 2020, Mr. Sharif received a letter from Bay Homes advising that the closing date for LOT 26 had been extended to November 20, 2020. The letter further stated that Bay Homes expected “*the home to be ready for occupancy by this new date.*”

267. On September 28, 2020, Mr. Sharif received a letter from Bay Homes advising that the unavoidable delay event had ended. In the letter, Bay Homes advised that the total ‘*Unavoidable Delay Period*’ caused by the COVID-19 pandemic was 352 days. The letter also provided the following new critical dates:

(a) July 9, 2021 – Revised First Tentative Closing date or
November 8, 2021 – Revised Second Tentative Closing Date or
March 8, 2022 – Firm Closing Date and;

(b) November 8, 2022 – Outside Closing Date.

268. On January 24, 2022, Jeet advised Mr. Sharif that the legal address for LOT 26 would be 6789 Longview Place.

269. On January 24, 2022, the office admin for Bay Homes advised 2784612 and 2784162 that the legal address for LOT 4L and LOT 4R would be 350 Waterhouse Crescent South and 352 Waterhouse Crescent South respectively.

270. On March 17, 2022, Mr. Sharif sent an email to Jeet requesting that they update the bedroom layout plan in the LOT 4R Agreement as a four-bedroom plan as it was not clear from the plan in the LOT 4R Agreement. That same day, the office admin for Bay Homes responded, "*noted with thanks.*"

271. On April 22, 2022, Mr. Sharif and Mr. Yusuf met with Ahmed to discuss the status of the Development. A summary of the discussion is set out in paragraph 186 above.

272. In late April, 2022, Mr. Sharif received letters from Exquisite Bay dated April 11, 2022, (the "**Sharif Termination Letters**") alleging that Mr. Sharif was in breach of section 36 of the Sharif Agreements.

273. The Sharif Termination Letters allege that Mr. Sharif failed to provide a mortgage commitment from a Canadian Chartered Bank and was therefore in default of section 36 of the Sharif Agreements. The Sharif Termination Letters further stated that Exquisite Bay had terminated the Sharif Agreements in accordance with section 36 of the Sharif Agreements.

274. The Sharif Termination Letters did not come as a surprise to Mr. Sharif as he had already been told by Ahmed in the meeting on April 22, 2022, that he would be receiving a termination letter alleging that he was in breach of section 36 of the Sharif Agreements.

275. To the best knowledge of Mr. Sharif, Exquisite Bay was satisfied with the financial and personal information he provided evidencing his ability to pay the balance of the Purchase Prices on the closing dates. Further, no demand was ever made by Exquisite Bay to Mr. Sharif to provide a mortgage commitment letter.

276. The communications received from Exquisite Bay and Bay Homes falsely implied that they were in a position to legally proceed with the Development. Further, these communications were instrumental in pacifying Mr. Sharif whilst the LOT 27 Fraudulent Conveyance was being planned, contemplated, or otherwise undertaken.

All The Plaintiffs

277. The Lot 35 Agreement, Lot 28 Agreement, Lot 33 Agreement, Lot 21 Agreement, Lot 31 Agreement, Lot 32 Agreement, Lot 27 Agreement, Lot 18 Agreement, Lot 19 Agreement, Lot 40 Agreement, and the Sharif Agreements are collectively referred to as the “**Agreements.**”

278. Lot 35, Lot 28, Lot 33, Lot 21, Lot 31, Lot 32, Lot 27, Lot 18, Lot 19, Lot 40 and the Sharif Lots are collectively referred to as the “**Properties.**”

279. Lot 35 Purchase Price, Lot 28 Purchase Price, Lot 33 Purchase Price, Lot 21 Purchase Price, Lot 31 Purchase Price, Lot 32 Purchase Price, Lot 27 Purchase Price, Lot 18 Purchase Price, Lot 19 Purchase Price, Lot 40 Purchase Price and the Sharif Purchase Price are collectively referred to as the “**Purchase Price.**”

280. The Lot 35 Deposit, Lot 28 Deposit, Lot 33 Deposit, Lot 21 Deposit, Lot 31 Deposit, Lot 32 Deposit, Lot 27 Deposit, Lot 18 Deposit, Lot 19 Deposit, Lot 40 Deposit and the Sharif Deposits are collectively referred to as the “**Deposits.**”

281. Lot 35 Termination Letter, Lot 28 Termination Letter, Lot 33 Termination Letter, Lot 21 Termination Letter, Lot 31 Termination Letter, Lot 32 Termination Letter, Lot 27 Termination Letter, Lot 18 Termination Letter, Lot 19 Termination Letter, Lot 40 Termination Letter and the Sharif Termination Letters are collectively referred to as the “**Termination Letters.**”

282. Pursuant to the Agreements, the Plaintiffs would pay the balance of the Purchase Price on the closing date, as defined in the Agreements and the Tarion Addendums and Statements of Critical Dates appended thereto.

283. Pursuant to the Agreements, Exquisite Bay was required to construct a dwelling and obtain all necessary building permits to construct the home as specified in Schedules C and C-1 of the Agreements.

284. Exquisite Bay was required to complete the construction within the closing dates as set out in the Tarion Addendum and Statement of Critical Dates. Upon completion, the Plaintiffs would obtain clear title and possession to their respective Lots.

285. Pursuant to the Agreements, Exquisite Bay was required to transfer title to Properties upon payment of the Purchase Price, and once the Properties were substantially completed and ready for occupancy.

BACKGROUND

All the Plaintiffs

286. The correspondences received by the Plaintiffs were sent to the Plaintiffs despite the fact that neither Bay Homes nor Exquisite Bay was licensed by the HCRA at the time they were sent. Accordingly, these correspondences constitute misrepresentation, as they falsely implied that Exquisite Bay or Bay Homes was in a position to legally proceed with the Development. Further, these correspondences were instrumental in pacifying the Plaintiffs while the Fraudulent Conveyance was being planned, contemplated, or otherwise undertaken. In essence, by fraudulently representing that the Agreements would be fulfilled, the Plaintiffs did not inquire further or take any actions to investigate Exquisite Bay.

287. Further, the Plaintiffs received several communications from Exquisite Bay and Bay Homes, implying that the development of the Properties was progressing. At no time during that period were the Plaintiffs ever advised by Exquisite Bay or Bay Homes that they were in breach of section 36 of the Agreements.

288. At no time from the date of signing the Agreements to the date of receiving the Termination Letters did Exquisite Bay raise any issues with the Plaintiffs regarding mortgage commitment letters or challenge the validity of any of the Agreements.

289. On April 14, 2022, a transfer was registered from Exquisite Bay to Vandyk on the title of the Properties as:

- (a) Instrument No. PR4032398 for the amount of \$926,830.00 (LOT 35)
- (b) Instrument No. PR4032391 for the amount of \$926,830.00 (LOT 28)
- (c) Instrument No. PR4032396 for the amount of \$926,830.00 (LOT 33)
- (d) Instrument No. PR4032384 for the amount of \$926,830.00 (LOT 21)
- (e) Instrument No. PR4032394 for the amount of \$926,830.00 (LOT 31)
- (f) Instrument No. PR4032395 for the amount of \$926,830.00 (LOT 32)
- (g) Instrument No. PR4032390 for the amount of \$926,830.00 (LOT 27)
- (h) Instrument No. PR4032381 for the amount of \$926,830.00 (LOT 18)
- (i) Instrument No. PR4032382 for the amount of \$926,830.00 (LOT 19)
- (j) Instrument No. PR4032403 for the amount of \$926,830.00 (LOT 40)
- (k) Instrument No. PR4032389 for the amount of \$926,830.00 (LOT 26)
- (l) Instrument No. PR4032367 for the amount of \$926,830.00 (LOT 4)

290. The Termination Letters were received by regular mail, but was dated April 11, 2022, just one (1) day prior to the April 12, 2022, closing, and only three (3) days prior to the registration of the transfer of the Properties to Vandyk on April 14, 2022.

291. At no time prior to receiving the Termination Letters, during any of the communications that the Plaintiffs had with Exquisite Bay, Bay Homes or their representatives, did Exquisite Bay advise it was planning to sell the Properties to Vandyk, or that it was going to unilaterally terminate the Agreements and claim a forfeit of the Deposits.

292. Furthermore, Exquisite Bay at no time demanded personal or financial information from the Plaintiffs in connection with their ability to pay, as set out in clause 36 of the Agreements.

LIABILITY AND DAMAGES

Fraudulent Misrepresentation, Conspiracy and Breach of Honest Performance of a Contract

293. The Plaintiffs state that Exquisite Bay, Bay Homes, and Ahmed have made fraudulent misrepresentations and breached the implied duty to honestly perform a contract in Canada. In particular, Exquisite Bay, Bay Homes, and Ahmed used dishonest and deceptive practices to obtain and benefit from the Deposits without a genuine intention to complete the Development.

294. Exquisite Bay, Bay Homes, and Ahmed made repeated and dishonest representations to the Plaintiffs that it was going to close the Development while knowing it was not truly going to be able to. Such representations were made knowing them to be untrue and to induce the Plaintiffs to pay deposits pursuant to the Agreements.

295. Exquisite Bay, Bay Homes, and Ahmed took the Deposits from the Plaintiffs, used the funds for their own benefit, and failed to keep the Deposits in a trust account, or use the funds to build on the Properties in accordance with the Agreements.

296. Exquisite Bay, Bay Homes, and Ahmed then terminated the Agreements on a provision in the Agreements, which they claim is based on whether the Plaintiffs' commitment letters came from the correct bank. However, such a remedy would have been available, if it was a genuine concern, as early as 10 days after executing the Agreements. Instead, however, Exquisite Bay,

Bay Homes, and Ahmed kept the Deposits and now seek to terminate and encroach upon the Deposits on the basis of a technicality that arose at the beginning of the Agreements.

297. The Defendant, Exquisite Bay, has refused to refund the Deposits.

298. Exquisite Bay, Bay Homes, and Ahmed have breached the implied principle of good faith and honest performance of a contract, by collecting deposits while having constructive knowledge that it intended to trigger a breach of the Agreements on the basis of a technicality. The Plaintiffs nonetheless affirm that it was never in breach of the Agreements.

299. Exquisite Bay, Bay Homes, and Ahmed made the ongoing and repeated fraudulent misrepresentations, to conceal the sale to Vandyk, and to hinder and delay the Plaintiffs' ability to pursue their interests in the Properties. As a result of the fraudulent misrepresentations, the Plaintiffs have incurred significant damages including the lost opportunities flowing from the Properties, enjoyment of the Properties, additional living expenses while the closings were delayed and other damages that will be particularized prior to trial.

300. The Plaintiffs further state that the Defendants, Vandyk, Mr. Vandyk, Mr. Ma and Mr. Chan knew of the Plaintiffs' legitimate interest in the Properties, and conspired and colluded with Exquisite Bay, Bay Homes, and Ahmed to defeat the Plaintiffs' interest in the Properties by taking title, in secrecy without providing any notice to the Plaintiffs. Such conduct has caused damages to the Plaintiffs in the form of lost opportunity, additional living expenses, and other damages that will be particularized prior to trial.

301. The Plaintiffs further state that the Exquisite Defendants conspired with the Vandyk Defendants and Kingsett to assist and carry out the Fraudulent Conveyance, by registering fraudulent mortgages on title, to encumber the Property, obtain a priority charge, and to assist in judgment proofing the Property just prior to the closing of the Fraudulent Conveyance. Such conduct was unlawful, in an effort to assist in the deceit and fraud, and to assist in causing harm to the Plaintiffs.

302. The Exquisite Defendants, the Vandyk Defendants and Kingsett (hereinafter the “**Conspiracy Defendants**”) had an agreement, whether verbal or written, and took concerted action pursuant to the agreement, the unlawful and/or lawful actions taken by the Conspiracy Defendants were directed at the Plaintiffs and intended to cause damage to the Plaintiffs. As a result of the Conspiracy, the Plaintiffs suffered damages.

Fraudulent Mortgages

303. The Plaintiffs state that on April 8, 2022, a mortgage was registered on title to the Properties by 2462686 Ontario, Ms. Boltyansky, and Mr. Boltyansky, identified as Instrument Number PR4029245 in the amount of \$630,000.00. The charge/mortgage was registered in collusion with the Exquisite Defendants, and their principals, to create a false charge and priority distribution of the proceeds of sale upon closing.

304. The Plaintiffs state that on April 12, 2022, a mortgage was registered on title to the Properties by 2213155 Ontario and Mr. Prabhakar, identified as Instrument Number PR4030578 in the amount of \$503,946.00. The charge/mortgage was registered just two days prior to the closing of the Vandyk Purchase Agreement and was registered in collusion with the Exquisite Defendants and their principals, to create a false charge and priority of the distribution of proceeds of sale upon closing.

305. The Plaintiffs state that on April 12, 2022, a mortgage was registered on title to the Properties by the Defendants, 2474229 Ontario, 2468924 Ontario, and 2460741 Ontario, identified as Instrument Number PR4030579 in the amount of \$7,204,983.00. The director of these corporations is the Defendant, Ahmed. The charge/mortgage was registered in collusion with the Exquisite Defendants and their principals, to create a false charge and priority of distribution of proceeds of sale upon closing.

306. The Plaintiffs state that on April 12, 2022, a mortgage was registered on title to the Properties by the Defendant, Bay International, identified as Instrument Number PR4030580 in the amount of \$7,036.892.00. The director of this corporation is the Defendant, Ahmed. The

charge/mortgage was registered in collusion with the Exquisite Defendants and their principals, to create a false charge and priority of distribution of proceeds of sale upon closing.

307. The Plaintiffs state that the mortgages were registered as part of the Defendants' conspiracy and intent to carry out the Fraudulent Conveyances, and to create a false mortgage and priority in order to defeat any potential claims by purchasers which could have been made, and in order to circumvent any potential executions as against the Exquisite Defendants.

308. The Plaintiffs state that as a result of the fraudulent mortgages, the Defendants, 2462686 Ontario, Ms. Boltyansky, Mr. Boltyansky, 2213155 Ontario, Mr. Prabhakar, 2474229 Ontario, 2468924 Ontario, 2460741 Ontario and/or Bay International have received the proceeds of the Fraudulent Conveyances, have acted in concert as part of the conspiracy to defraud the Plaintiffs, and have been unjustly enriched.

309. On or about April 21, 2022, the Defendant, Mint Capital received proceeds of the Fraudulent Conveyance for the discharge of a mortgage that was not registered against the Property or the Development. They have been unjustly enriched or in the alternative they have received an unjust preference.

310. The Defendant, Mint Capital, has knowingly or recklessly acted in concert as part of the conspiracy to defraud the Plaintiffs, and has been unjustly enriched.

Inducing Breach of Contract and interference with Economic Relations

311. The Plaintiffs claim as against the Vandyk Defendants and Kingsett for inducing Exquisite Bay into breaching the Agreement, the particulars of which include but are not limited

to:

- (a) Vandyk and Kingsett were fully aware of and were provided a copy of the Plaintiffs' valid and subsisting agreement of purchase and sale of the Property;

- (b) Vandyk and Kingsett induced, and persuaded Exquisite Bay to breach its contract with the Plaintiffs as a term of transferring the Property from Exquisite Bay to Vandyk;
- (c) Vandyk and Kingsett committed a wrongful interference of the Plaintiffs' contract with Exquisite Bay;
- (d) Vandyk and Kingsett has consequently caused considerable damages to the Plaintiffs for the lost opportunity and equity increased value of the Property.

312. The Plaintiffs further claim against the Vandyk Defendants and Kingsett as a result of the tort of interference with economic relations. In the foregoing regard, these Defendants:

- (a) intended to cause injury and/or harm to the Plaintiffs;
- (b) committed an illegal and/or unlawful act, by way of conspiracy and/or collusion with respect to the fraudulent transaction set out above;
- (c) caused damages to the Plaintiffs for the lost opportunity and equity increased value of the Properties.

Oppression, Preferential Payments and Assignment and Preference Act

313. Pursuant to a Loan Agreement dated July 10, 2018, the Chalmers Group Inc. and 1218939 Ontario Limited (collectively the "**Chalmers Group**") loaned \$6,500,000.00 to Exquisite Bay (the "**Chalmers Loan**").

314. On June 1, 2021, the Chalmers Group delivered a Notice of Payment to Exquisite Bay requesting full and final payment of the Chalmers Loan.

315. On August 4, 2021, the Chalmers Group and Exquisite Bay entered into a settlement agreement for \$10,341,982.81. It was a term of the settlement agreement that Exquisite Bay

would immediately pay the Chalmers Group \$7,201,982.81. This amount was paid on August 20, 2021.

316. On August 20, 2021, the same date as the repayment of the Chalmers Loan, Mr. Takhar and Mr. Malhotra resigned as directors of Exquisite Bay. Mr. Murray resigned as a director of Exquisite Bay on December 5, 2021.

317. The Defendants, Ahmed, Muhammad, Mr. Takhar, Mr. Murray and Mrs. Malhotra (the “**Exquisite Directors**”), made a conscious decision to repay the Chalmers Loan with the purpose of avoiding obligations to creditors, in particular the Plaintiffs. The misconduct of the Exquisite Directors was not foreseeable by the Plaintiffs as creditors, and they could not reasonably have protected themselves against such conduct.

318. As a result of the conduct of the Exquisite Directors, Exquisite Bay did not have the finance to complete the Development. The Exquisite Directors knew or should have known that by repaying the Chalmers Loan, the Development would have failed.

319. The repayment of the Chalmers Loan had the effect of giving the Chalmers Group and its shareholders, a preference over Exquisite Bay’s other creditors.

320. The Exquisite Directors did not have a right to repay the Chalmers Loan, to the benefit of the Chalmers Group shareholders, ahead of other creditors at a time when Exquisite Bay was insolvent.

321. As a director of Exquisite Bay and the Chalmers Group, the Defendants, Mr. Takhar, Mr. Murray and Mrs. Malhotra, did not deal at arms’ length and the effect of the repayment of the Chalmers Loan was to give the Chalmers Group and its shareholders a preference over other creditors.

322. Additionally, or in the alternative, the repayment of the Chalmers Loan was made while Exquisite Bay was insolvent or on the eve of insolvency, with the intent to defeat creditors, and

in particular the Plaintiffs. The Plaintiffs plead the Chalmers Loan repayment is void under APA section 4.

323. Additionally, or in the alternative, the repayment of the Chalmers Loan was made while Exquisite Bay was insolvent or on the eve of insolvency, with the intention of giving Chalmers and 1218939 an unjust preference. The Plaintiffs plead that the Chalmers Loan repayment is void under the APA, section 4.

324. The Exquisite Directors breached their fiduciary duties, duties of care, and duties of good faith and acted in a conflict of interest when they, *inter alia*, preferred their own interest over those of Exquisite Bay and its creditors.

Sections 12, 17, 21 and 36 of the Agreements

325. The Plaintiffs state that Sections 12, 17, 21 and 36 of the Agreements are *void ab initio*, or alternatively, voidable in law for being unconscionable and an exclusion clause that defeats the intent of the purpose of the Agreements.

326. The Plaintiffs seek a declaration that Sections 12, 17, 21 and 36 of the Agreement be struck from the Agreements.

327. The Plaintiffs further plead that Exquisite Bay is estopped from relying on Section 36 of the Agreements. At no time before the Termination Letters did Exquisite Bay raise any issues with the Commitment Letters. Further, some of the Plaintiffs were advised by representatives of Exquisite Bay that no mortgage commitment letter was required. Other Plaintiffs were told that their Commitment Letters were acceptable. In essence, if those Plaintiffs are in breach, which is denied, they were induced to do so by Exquisite Bay.

328. The Plaintiffs state, that in the event that Section 36 of the Agreement is not struck, Exquisite Bay is estopped from relying upon said provision in accordance with the doctrine of promissory estoppel.

Unjust Enrichment

329. The Plaintiffs advanced funds to Exquisite Bay and, consequently, were deprived of these funds. The Defendants, and parties unknown, received these funds, directly or indirectly, and realized a corresponding enrichment. There is no juristic reason for the enrichment of the Defendants or parties unknown, nor the corresponding deprivation sustained by the Plaintiffs.

330. The Plaintiffs are entitled to equitable tracing in order to recover these funds.

Kingsett Mortgage Corporation

331. By review of title to the Property, Kingsett provided financing to Exquisite Bay in the amount of \$15,000,000 on June 25, 2020, as identified by the charge/mortgage registered as Instrument No. PR3667703 and in the amount of \$30,625,000 as identified by the charge/mortgage registered as Instrument No. PR3667705.

332. Subsequently, and during the transfer of the Properties to Vandyk, the charge/mortgages were discharged, and replaced on April 14, 2022, by way of the charge/mortgage in the amount of \$18,000,000.00 identified as Instrument No. PR4032438, and the charge/mortgage in the amount of \$37,000,000.00 as identified as Instrument No. PR4032440.

333. The Plaintiffs state that Kingsett's original mortgages were for the construction financing of the Development, and that Kingsett was well aware of the Agreements, as well as the other lots. Kingsett was further aware or failed to take reasonable steps to ensure, that the Agreements were still valid and pending at the time its charges/mortgages were registered on April 14, 2022.

334. The Plaintiffs further state that Kingsett was, or ought to have been, aware of the fact that Exquisite Bay was intending to breach the Agreements by unilaterally terminating them in order effect the transfer to Vandyk. Further, Kingsett knew that if the Plaintiffs had found out the plan to sell the Development there was a risk litigation would ensue before the Fraudulent Conveyances could be completed. Moreover, Exquisite Bay continued to make fraudulent representations which were to the benefit of Kingsett.

Interim Relief

335. The Plaintiffs seek an interim and/or interlocutory injunction to restrain the Exquisite Defendants, their agents, employees, assigns, or anyone having notice of the relief granted, from dissipating, encumbering, transferring or otherwise encroaching or dealing with the Deposits, the Properties or the proceeds of sale of the Properties until the trial of this action.

All the Plaintiffs

336. As a result of the conduct of the Vandyk Defendants, the Exquisite Defendants and Kingsett, the Plaintiffs have:

- (a) lost the opportunity to invest the Deposits in other real properties or real estate developments that would have succeeded. Therefore, the Plaintiffs have lost the opportunity to take advantage of the rising real estate prices in Ontario and make a profit. Further, the Plaintiffs have lost the opportunity to invest the Deposits in any other way as they please in pursuit of a profit;
- (b) sustained a loss of enjoyment of the Properties;
- (c) been deprived of the benefit of any proceeds resulting from the appreciation of the Properties;
- (d) suffered aggravation, anxiety, and distress, at no fault of their own, for which they are entitled to aggravated damages.

337. As a result of the conduct of the Vandyk Defendants, the Exquisite Defendants and Kingsett, the Plaintiffs were unable to take any steps to mitigate their damages.

338. The actions taken by the Vandyk Defendants, the Exquisite Defendants and Kingsett as described above, were high-handed, malicious and worthy of censure. They acted callously, maliciously, furtively, and avariciously in engaging in the Fraudulent Conveyances with the

intent to deceive the Plaintiffs. They implemented the scheme through misrepresentations, cover-ups and bad faith, in total disregard of the Plaintiffs' rights, interests and entitlements. This Honourable Court has an interest in deterring such conduct by awarding special, punitive, and exemplary damages in an amount sufficiently large to deter and render such conduct unprofitable.

339. The negligence, recklessness, knowing participation, or wilful blindness of the Exquisite Defendants, the Vandyk Defendants and Kingsett in connection with the Fraudulent Conveyance warrants an award of special, punitive and exemplary damages. This Honourable Court has an interest in deterring purchasers, developers and lenders involved with real estate from knowingly assisting in or attempting to profit from fraudulent conveyances of this nature.

BANKRUPTCY

340. The Plaintiffs plead that any remedy or judgment obtained in this proceeding ought to survive bankruptcy pursuant to section 178 of the *Bankruptcy Act*, as it relates to the Defendants' false and misleading representations.

STATUTES

341. The Plaintiffs plead and rely upon the following statutes and regulations:

- (a) The *Courts of Justice Act*;
- (b) The *Bankruptcy and Insolvency Act*;
- (c) The *Land Titles Act*;
- (d) The *Rules of Civil Procedure*;
- (e) The *Assignments and Preference Act*;
- (f) The *Business Corporation Act*; and
- (g) Such further and other acts/or regulations as shall be advised.

JURISDICTION

342. The Plaintiffs respectfully propose that this action be tried in Toronto.

June 28, 2023

**SCOCCO LAW PROFESSIONAL
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Lawyers for the Plaintiffs

Chowdhury, et al.
Plaintiffs

and **Exquisite Bay Developments Inc., et al.**
Defendants

Court File No: CV-22-00686376-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

**FRESH AS AMENDED
STATEMENT OF CLAIM**

**SCOCCO LAW PROFESSIONAL
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Lawyers for the Plaintiffs

TAB 000

THIS IS **EXHIBIT "OOO"** REFERRED TO IN THE
AFFIDAVIT OF DANIEL POLLACK, SWORN BEFORE ME
THIS 7TH DAY OF NOVEMBER, 2023.

Joshua Foster

Joshua Foster

A Commissioner for taking Affidavits
(or as may be)

Court File No.: CV-22-00686376-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

EMADUDDIN CHOWDHURY, REFAYAT TAHSINA ALAM, SUHAIL SYED, RIZWANA BANU, MOHAMED AFTAB PASHA, RANBIR SINGH CHEEMA, LAKHVIR KAUR CHEEMA, JASKARANDEEP SINGH LUDDU, RUPINDER KAUR JASWAL, HARDEEP SINGH KHOSA, MANJIT KAUR KHOSA, JAWED YUSUF, RANJIT SINGH TOOR, SUKHWINDER KAUR TOOR, BALWINDER SINGH TOOR, HARPINDER KAUR TOOR, AJINDER SINGH SANDHU, MANJOT SINGH SANDHU, DAVID PREDOVICH, KERRESE PREDOVICH, USMAN SHARIF, 2784612 ONTARIO INC. and 2784162 ONTARIO INC.

Plaintiffs

-and-

EXQUISITE BAY DEVELOPMENT INC., BAY HOMES INC.,
BAY INTERNATIONAL INC., BAY MANAGEMENT INC.
2474229 ONTARIO INC., 2468924 ONTARIO INC., 2460741 ONTARIO INC.,
BAY LAWRENCE INC., AHMED RAZA YOUSUF, MUHAMMAD YOUSUF, HARINDER
TAKHAR, JAMES JOHN MURRAY, KIRAN MALHOTRA,
MOHAMMAD TAIYAB MANSOOR, VANDYK – THE RAVINE LIMITED,
VANDYK PROPERTIES INCORPORATED, JOHN VANDYK, RICHARD MA,
SHERMAN CHAN, 2462686 ONTARIO INC., ELLA BOLTYANSKY, YURI
BOLTYANSKY, KINGSETT MORTGAGE CORPORATION, MANEESH PRABHAKAR,
2213155 ONTARIO INC., MINT CAPITAL MIC INC. and JOHN DOE CORPORATION

Defendants

STATEMENT OF DEFENCE

1. The defendant, KingSett Mortgage Corporation ("**KingSett**"), admits the allegations contained in paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 35, 38, 41, 43, 44, 46, 48, 50, 52, 53, 55, 56, 57, 60, 73, 76, 77, 99, 100 (1st sentence), 114, 115 (1st sentence), 133, 134, 148, 149, 164, 165, 172, 173 (1st sentence), 192, 193, 194, 220, 221 (1st sentence), 236, 237, 252, 253, 255, 256, 258, 259, 282, 283, 284, 285, 289, 331 and 332 of the fresh as amended statement of claim.

2. KingSett has no knowledge in respect of the allegations contained in paragraphs 28, 74, 75, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 95, 96, 97, 98, 100 (2nd sentence), 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 113, 115 (2nd sentence), 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 128, 129, 130, 131, 132, 135, 136, 137, 138, 139, 140, 143, 144, 145, 146, 147, 150, 151, 152, 153, 154, 155, 156, 160, 161, 162, 163, 166, 167, 168, 169, 170, 173 (2nd, 3rd, 4th sentences), 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 189, 190, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 213, 214, 215, 216, 217, 218, 221 (2nd sentence), 222, 223, 224, 225, 226, 227, 228, 229, 232, 233, 234, 235, 238, 239, 240, 241, 242, 243, 244, 245, 246, 249, 250, 251, 254, 257, 260, 264, 265, 266, 267, 268, 269, 270, 274, 275, 286, 287, 288, 290, 291, and 292 of the fresh as amended statement of claim.

3. KingSett denies the remaining allegations in the amended statement of claim. KingSett also denies that the plaintiffs are entitled to any of the relief sought in paragraphs 1(e), 2(e), 3(e), 4(e), 5(e), 6(e), 7(e), 8(e), 9(e), 10(e), 14(d) and 15 of the fresh as amended statement of claim, or at all.

4. Pursuant to the endorsement of Justice Centa dated May 23, 2023, KingSett defends this action without prejudice to it bringing a motion to strike the claim in accordance with the agreed-upon schedule set out therein.

5. The fresh as amended statement of claim should be dismissed as against KingSett, with costs on an appropriate scale. If applicable, the Court should order that costs payable to KingSett be paid from the Deposit (as defined at paragraph 280 of the fresh as amended statement of claim) currently held by the defendant, Exquisite Bay Development Inc. ("**Exquisite**").

Background

6. The action concerns Lot 4, Lot 18, Lot 19, Lot 21, Lot 26, Lot 27, Lot 28, Lot 31, Lot 32, Lot 33, Lot 35 and Lot 40 of Plan 43M2114; City of Mississauga (the "**Lots**"), in a subdivision located on the land municipally described as 320 Derry Road West, Mississauga, Ontario (the "**Property**").

The Parties

7. The plaintiff, Usman Sharif ("**Sharif**"), is an individual residing in Milton, Ontario. The plaintiffs, 2784612 Ontario Inc. and 2784162 Ontario Inc., are Ontario corporations of which Sharif is the owner and sole director. Each of Sharif, 2784612 Ontario Inc. and 2784162 Ontario Inc. executed an agreement of purchase and sale with respect to Lots 26 and 4, respectively.

8. The plaintiffs, David Predovich and Kerrese Predovich, are individuals residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 40.

9. The plaintiffs, Emaduddin Chowdhury and Refayat Tahsina Alam, are individuals residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 18.

10. The plaintiffs, Suhail Syed and Rizwana Banu, are individuals residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 35.

11. The plaintiff, Mohamed Aftab Pasha, is an individual residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 33.

12. The plaintiffs, Ranbir Singh Cheema and Lakhvir Kaur Cheema, are individuals residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 19.

13. The plaintiffs, Jaskarandeep Singh Luddu and Rupinder Kaur Jaswal, are individuals residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 31.
14. The plaintiffs, Hardeep Singh Khosa and Manjit Kaur Khosa, are individuals residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 28.
15. The plaintiff, Jawed Yusuf, is an individual residing in Milton, Ontario who executed an agreement of purchase and sale with respect to Lot 27.
16. The plaintiffs, Ranjit Singh Toor, Sukhwinder Kaur Toor, Balwinder Singh Toor and Harpinder Kaur Toor, are individuals residing in Mississauga, Ontario who executed an agreement of purchase and sale with respect to Lot 21.
17. The plaintiff, Ajinder Singh Sandhu, is an individual residing in Naperville, Illinois, United States of America who executed an agreement of purchase and sale with respect to Lot 32 with the plaintiff, Manjot Singh Sandhu, an individual residing in Mississauga, Ontario.
18. All of the above plaintiffs are collectively referred to as the "**Plaintiffs**".
19. KingSett is incorporated pursuant to the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended and is headquartered in Toronto, Ontario. KingSett is a commercial lender, offering construction and term financing across asset classes.
20. The defendant, Exquisite, is an Ontario corporation and was the vendor of a proposed development project located at the Property.

21. The defendants, Ahmed Raza Yousuf ("**Ahmed**") and Muhammad Yousuf (collectively, the "**Yousufs**"), are individuals resident in Toronto, Ontario. The Yousufs are directors of Exquisite.
22. Ahmed is the owner and sole director of the defendants, 247229 Ontario Inc., 2468924 Ontario Inc., and 2460741 Ontario Inc., all Ontario corporations affiliated with and/or subsidiaries of Exquisite.
23. The defendants, Bay Homes Inc., Bay International Inc., Bay Management Inc., and Bay Lawrence Inc., are Ontario corporations that are affiliates of, subsidiaries of and/or otherwise related to Exquisite.
24. The defendants, Harinder Takhar, James John Murray, and Kiran Malhotra, are individuals and former directors of Exquisite.
25. The defendant, Mohammed Taiyab Mansoor, is an individual and former employee of the defendant, Bay Homes Inc.
26. The defendant, Vandyk – The Ravine Limited (together with Vandyk Properties Incorporated, "**Vandyk**"), is an Ontario corporation carrying on a construction and residential development business. The defendant, Vandyk Properties Incorporated, is a related Ontario corporation.
27. The defendants, John Vandyk, Richard Ma, and Sherman Chan, are individuals and directors, officers and/or employees of Vandyk.

28. The defendant, 2462686 Ontario Inc., is an Ontario corporation of which the defendants, Ella Boltyansky and Yuri Boltyansky are directors and/or officers.

29. The defendant, 2213155 Ontario Inc., is an Ontario corporation of which the defendant, Maneesh Prabhakar, is the sole director and officer.

30. The defendant, John Doe Corporation, is a corporation owned in common, related to, or affiliated to some of the defendants.

31. The defendant, Mint Capital Inc., is an Ontario corporation.

The Agreements of Purchase and Sale

32. KingSett was not a party to the agreements of purchase and sale executed between Exquisite and the Plaintiffs.

33. KingSett has no involvement with any of the events concerning the agreements of purchase and sale and/or representations made related thereto described at paragraphs 74 to 292 of the fresh as amended statement of claim.

34. Paragraphs 282, 283, 284, and 285 of the fresh as amended statement of claim set out certain material terms of the agreement of purchase and sale, including that the plaintiffs would only obtain clear title and possession of the Lot when it was substantially completed and ready for occupancy, and the Plaintiffs had paid the total Purchase Price (as defined therein).

35. These conditions were never met and title was never transferred to the Plaintiffs, nor have they ever been in possession of the Lots.

36. KingSett has had and maintains priority on title of the Property through its registration of various instruments, as set out below.

KingSett Lends to Exquisite

37. During the winter of 2020, KingSett was engaged by Exquisite to provide funding for its development of the Property.

38. KingSett ultimately agreed to provide, among other things, two loans, for the purposes of providing construction financing and land servicing financing to Exquisite and executed two commitment letters with Exquisite, as borrower, and Ahmed and Bay International Inc., as guarantors, dated February 5, 2020, amended on April 28, 2020 and December 10, 2021 (the "**Exquisite Loans**").

39. Each of the Exquisite Loans was secured by a mortgage, registered against the Property on June 25, 2020:

- (a) Instrument No. PR3667703 being a charge/mortgage in the amount of \$15,000,000 to and in favour of KingSett; and
- (b) Instrument No. PR366705 being a charge/mortgage in the amount of \$30,625,000 to and in favour of KingSett.

40. The Exquisite Loans provided that:

- (a) Exquisite was required to maintain a minimum cash equity position of \$13,000,000 until repayment of the Loan (as defined therein);

- (b) The KingSett approved land servicing Project Budget was to be no greater than \$37,500,000 and the aggregate land servicing and construction Project Budget was to be no greater than \$56,258,844;
- (c) Glynn Group was appointed as KingSett's project monitor (the "**Project Monitor**") and was responsible for, among other things, confirming and monitoring Exquisite's minimum cash equity position, re-confirming the reasonableness of schedule, identifying any potential issues with completion, and making recommendations based on its reviews;
- (d) Any sale of the Project by Exquisite was subject to the prior written consent of KingSett; and
- (e) Exquisite consented to KingSett's appointment of a receiver or receiver manager in the event of a default by Exquisite.

41. In or around March 2020, the Project Monitor reported that Exquisite needed to inject equity into the project to meet the minimum requirement. At that time, Exquisite successfully raised the required equity.

Exquisite Defaults

42. On or about November 25, 2021, the Project Monitor prepared a Budget Update and Progress Report and reported updated cost projections for the land servicing Project Budget and the aggregate land servicing and construction Project Budget, recommending that KingSett satisfy itself with the Project profit projections prior to making any further advances.

43. As a result of this directive, there was a cost overrun of \$940,000 on the land servicing Project Budget and a projected cost overrun of \$9,362,276 on the aggregate land servicing and construction Project Budget.

44. Pursuant to the terms of the Exquisite Loans, Exquisite, as the borrower, was required to account for any cost overrun by injecting equity.

KingSett Exercises its Rights as Lender

45. In or around November 2021, Exquisite was unable to meet its obligations to KingSett as required under the Exquisite Loans, including with respect to its minimum cash equity requirements, as adjusted to account for cost overruns, and interest reserve requirements.

46. As such, Exquisite defaulted under the Exquisite Loans.

47. Exquisite elected to sell the Property in light of its default, rather than having KingSett enforce its contractual rights to appoint a receiver or receiver manager.

48. KingSett consented to Exquisite's election in accordance with the terms of the Exquisite Loans.

Exquisite Sells the Property

49. To facilitate a sale, Exquisite partnered with an independent, third party mortgage broker, Franc & Co., for the purposes of selecting a purchaser for the Property.

50. In or around December 2021, KingSett advised Vandyk that it was involved in a residential development project which may go up for sale in the New Year.

51. KingSett was not involved in any further discussions related to the sale transaction. Further, at the time of the contemplated sale, KingSett had not agreed to provide funding to the purchaser of the Property, including on any specific terms.

52. KingSett has no knowledge regarding certain purported misrepresentations alleged to have been made to the Plaintiffs by Exquisite leading up to and following the sale of the Property, including, without limitation, to conversations held with Sharif and Jawed Yusuf on or around April 22, 2022.

KingSett Lends to Vandyk

53. Following closing of the sale transaction, KingSett was engaged in negotiations with Franc & Co, about providing funding to Vandyk.

54. KingSett ultimately agreed to provide, among other things, two loans, for the purposes of providing construction financing and land servicing financing to Vandyk and executed two commitment letters with Vandyk, as borrower, and John Vandyk and Vandyk Properties Incorporated., as guarantors, dated March 11, 2022, as amended on April 26, 2022 (the "**Vandyk Loans**"). Each of the Vandyk Loans was secured by a mortgage.

55. On April 14, 2022, KingSett registered against the Property the following instruments from Vandyk in favour of KingSett:

- (a) Instrument No. PR4032438 being a charge/mortgage in the amount of \$18,000,000 to and in favour of KingSett; and

- (b) Instrument No. PR4032440 being a charge/mortgage in the amount of \$37,000,000 to and in favour of KingSett.

56. That same day, KingSett registered against the Property the following instruments from KingSett:

- (a) Instrument No. PR4032447 being a discharge of the charge identified as Instrument No. 3667703; and
- (b) Instrument No. PR4032448 being a discharge of the charge identified as Instrument No. PR3667705.

No Knowledge or Failure by KingSett

57. KingSett denies the Plaintiffs' allegations at paragraphs 311(a) and 333 of the fresh as amended statement of claim that the agreements of purchase and sale were valid and pending when KingSett registered its charge/mortgages on April 14, 2022. Accordingly, KingSett denies that it was aware of, or failed to take reasonable steps, to ensure that the Plaintiffs' agreements of purchase and sale were valid and binding.

58. KingSett also denies the Plaintiffs' allegation at paragraph 334 of the fresh as amended statement of claim that it was aware of, or ought to have been aware of, the fact that Exquisite was intending to breach the agreements of purchase and sale.

59. Further, contrary to paragraph 334 of the fresh as amended statement of claim, KingSett also denies that it knew how the Plaintiffs would have responded to the sale of the Property, nor is it possible that KingSett could have ever known this. KingSett also denies that any of the alleged

fraudulent representations were to the benefit of KingSett, and even if they were (which is not admitted, but expressly denied), KingSett had no knowledge of any of them.

No Conspiracy

60. The Plaintiffs' bald pleading of conspiracy is deficient and fails to disclose a reasonable cause of action for conspiracy. It should be struck.

61. In the alternative and in any event, KingSett did not conspire or act in concert with any other party as alleged in the fresh as amended statement of claim, or at all.

62. None of the actions taken by KingSett were for the purpose of harming the Plaintiffs.

No Inducement of Breach of Contract

63. The Plaintiffs' bald pleading of inducing breach of contract is deficient and fails to disclose a reasonable cause of action for inducing breach of contract. It should be struck.

64. In the alternative and in any event, KingSett did not induce Exquisite to breach the agreements of purchase and sale.

65. In the further alternative, KingSett did not act with a desire to cause a breach of the agreements of purchase and sale.

No Interference with Economic Relations

66. The Plaintiffs' pleading of interference with economic relations is deficient and fails to disclose a reasonable cause of action for interfering with economic relations. It should be struck.

67. In the alternative and in any event, the fresh as amended statement of claim fails to allege any conduct on the part of KingSett against a *third party* that would render it liable for interference with economic relations.

68. In the further alternative and in any event, KingSett did not engage in any conduct that would amount to an intentional interference.

No Unjust Enrichment

69. KingSett has not been unjustly enriched by its conduct.

70. There has been no corresponding deprivation to the Plaintiffs.

71. Even if KingSett was enriched and/or the Plaintiffs were correspondingly deprived, all of which is not admitted but expressly denied, there was a juristic reason for the enrichment or deprivation. Any enrichment for KingSett connected to the Property is as a result of its lending arrangements, which serve as the juristic reason that is fatal to the Plaintiffs' unjust enrichment claim.

No Damages

72. KingSett denies that the Plaintiffs have incurred losses or damages as alleged in the amended statement of claim, or at all. Even if the Plaintiffs did incur any losses or damages (which is denied):

- (a) any such losses or damages are excessive, exaggerated and/or too remote to be recoverable at law;

- (b) any such losses or damages were not caused by any act, omission, breach of duty, or breach of contract on the part of KingSett in fact or in law, but instead were caused by the acts, omissions or breaches of others including the Plaintiffs; and
- (c) the Plaintiffs have failed to take reasonable or any measures to reasonably mitigate their damages.

73. Contrary to paragraphs 338 and 339, KingSett did not act in a high-handed, malicious, reckless or callous manner. The Plaintiffs have no entitlement to special, punitive, aggravated and/or exemplary damages.

Further Grounds of Defence

74. Under the Consent Order of Justice Centa dated May 23, 2023, the Plaintiffs agreed to strike all claims, without leave to amend, made with respect to relief sought or interests claimed in the Development (as defined therein) itself, or the individual lots, including claims for Certificates of Pending Litigation, constructive trust, specific performance and any declaration that KingSett's mortgages on the Development or the lots are not valid or enforceable. To the extent the Plaintiffs are continuing to advance such claims, they are barred.

75. KingSett denies that any of the causes of action and claims asserted in the amended statement of claim are made out against it, either in fact or in law.

76. All of the allegations against KingSett are denied, and are without merit or support. Such allegations are frivolous and vexatious and should be dismissed with costs on a substantial indemnity scale. This action is at its heart a claim concerning agreements of purchase and sale and the rights of the parties *to* those agreements. The allegations of conspiracy, inducing breach of

contract, interference with economic relations, and/or unjust enrichment are unnecessary and inflammatory.

77. The defendant, KingSett, asks that this action be dismissed with costs.

June 30, 2023

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CHOWDHURY et al.
Plaintiffs

-and-

EXQUISITE BAY DEVELOPMENT INC. et al.
Defendants
Court File No. CV-22-00686376-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE

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ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MOHAMMED TARIQ

Plaintiff

- and -

EXQUISITE BAY DEVELOPMENT INC., AHMED RAZA YOUSUF, MUHAMMAD YOUSUF, BAY MANAGEMENT INC., HARINDER TAKHAR, JAMES JOHN MURRAY, KIRAN MALHOTRA, BAY HOMES INC., BAY INTERNATIONAL INC., MOHAMMAD TAIYAB MANSOOR, BAY LAWRENCE INC., 2462686 ONTARIO INC., ELLA BOLTYANSKY, YURY BOLTYANSKY, 2213155 ONTARIO INC., MANEESH PRABHAKAR, MINT CAPITAL MIC INC., 2474229 ONTARIO INC., 2468924 ONTARIO INC., 2460741 ONTARIO INC., VANDYK PROPERTIES INCORPORATED, VANDYK PROPERTIES – THE RAVINE LIMITED, JOHN VANDYK, RICHARD MA, SHERMAN CHAN, KINGSETT MORTGAGE CORPORATION, MUHAMMAD IQBAL GHAURI, and ROOMANA GHAURI

Defendants

STATEMENT OF DEFENCE

1. The defendant, KingSett Mortgage Corporation ("**KingSett**"), admits the allegations contained in paragraphs 2, 6, 10, 12, 15, 16, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 56, 73 (except June 26, 2020), and 76(b) of the amended statement of claim.

2. KingSett has no knowledge in respect of the allegations contained in paragraphs 24, 25, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 of the amended statement of claim.

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3. KingSett denies the remaining allegations in the amended statement of claim. KingSett also denies that the plaintiff is entitled to any of the relief sought in paragraph 1 of the amended statement of claim, or at all.

4. Pursuant to the endorsement of Justice Centa dated May 23, 2023, KingSett defends this action without prejudice to it bringing a motion to strike the claim in accordance with the agreed-upon schedule set out therein.

5. The amended statement of claim should be dismissed as against KingSett, with costs on an appropriate scale. If applicable, the Court should order that costs payable to KingSett be paid from the Deposit (as defined at paragraph 30 of the amended statement of claim) currently held by the defendant, Exquisite Bay Development Inc. ("**Exquisite**").

Background

6. The action concerns Lot 15 of Plan 43M2114; City of Mississauga (the "**Lot**"), in a subdivision located on the land municipally described as 320 Derry Road West, Mississauga, Ontario (the "**Property**").

The Parties

7. The plaintiff, Mohammed Tariq ("**Tariq**" or the "**Plaintiff**"), is an individual residing in Mississauga, Ontario who executed an assignment of purchase and sale agreement with respect to the Lot.

8. The defendants, Muhammad Iqbal Ghauri and Roomana Ghauri (collectively, the "**Ghauris**"), are individuals residing in Mississauga whom executed an agreement of purchase and

sale with Exquisite with respect to the Lot, and who subsequently assigned their rights and entitlements to Tariq.

9. KingSett is incorporated pursuant to the *Canada Business Corporations Act*, RSC 1985, c. C-44, as amended and is headquartered in Toronto, Ontario. KingSett is a commercial lender, offering construction and term financing across asset classes.

10. The defendant, Exquisite, is an Ontario corporation and was the vendor of a proposed development project located at the Property.

11. The defendants, Ahmed Raza Yousuf ("**Ahmed**") and Muhammad Yousuf (collectively, the "**Yousufs**"), are individuals resident in Toronto, Ontario. The Yousufs are directors of Exquisite.

12. Ahmed is the owner and sole director of the defendants, 247229 Ontario Inc., 2468924 Ontario Inc., and 2460741 Ontario Inc., all Ontario corporations affiliated with and/or subsidiaries of Exquisite.

13. The defendants, Bay Homes Inc., Bay International Inc., Bay Management Inc., and Bay Lawrence Inc., are Ontario corporations that are affiliates of, subsidiaries of and/or otherwise related to Exquisite.

14. The defendants, Harinder Takhar, James John Murray, and Kiran Malhotra, are individuals and former directors of Exquisite.

15. The defendant, Mohammed Taiyab Mansoor, is an individual and former employee of the defendant, Bay Homes Inc.

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16. The defendant, Vandyk – The Ravine Limited (together with Vandyk Properties Incorporated, "**Vandyk**"), is an Ontario corporation carrying on a construction and residential development business. The defendant, Vandyk Properties Incorporated, is a related Ontario corporation.

17. The defendants, John Vandyk, Richard Ma, and Sherman Chan, are individuals and directors, officers and/or employees of Vandyk.

18. The defendant, 2462686 Ontario Inc., is an Ontario corporation of which the defendants, Ella Boltyansky and Yuri Boltyansky, are directors and/or officers.

19. The defendant, 2213155 Ontario Inc., is an Ontario corporation of which the defendant, Maneesh Prabhakar, is the sole director and officer.

20. The defendant, John Doe Corporation, is a corporation owned in common, related to, or affiliated to some of the defendants.

21. The defendant, Mint Capital Inc., is an Ontario corporation.

The Agreements of Purchase and Sale

22. KingSett was not a party to the original agreement of purchase and sale executed between Exquisite and the Ghauris, nor was KingSett a party to the assignment of that agreement to the Plaintiff.

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23. KingSett has no involvement with any of the events concerning the agreements of purchase and sale and/or representations made related thereto described at paragraphs 24 to 66 of the amended statement of claim.

24. The amended statement of claim sets out certain material terms of the agreement of purchase and sale, including that the Plaintiff would only obtain clear title and possession of the Lot when it was substantially completed and ready for occupancy, and the Plaintiff had paid the total Purchase Price (as defined therein).

25. These conditions were never met and title was never transferred to the Plaintiff, nor have they ever been in possession of the Lots.

26. KingSett has had and maintains priority on title of the Property through its registration of various instruments, as set out below.

KingSett Lends to Exquisite

27. During the winter of 2020, KingSett was engaged by Exquisite to provide funding for its development of the Property.

28. KingSett ultimately agreed to provide, among other things, two loans, for the purposes of providing construction financing and land servicing financing to Exquisite and executed two commitment letters with Exquisite, as borrower, and Ahmed and Bay International Inc., as guarantors, dated February 5, 2020, amended on April 28, 2020 and December 10, 2021 (the "**Exquisite Loans**").

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29. Each of the Exquisite Loans was secured by a mortgage, registered against the Property on June 25, 2020:

- (a) Instrument No. PR3667703 being a charge/mortgage in the amount of \$15,000,000 to and in favour of KingSett; and
- (b) Instrument No. PR366705 being a charge/mortgage in the amount of \$30,625,000 to and in favour of KingSett.

30. The Exquisite Loans provided that:

- (a) Exquisite was required to maintain a minimum cash equity position of \$13,000,000 until repayment of the Loan (as defined therein);
- (b) The KingSett approved land servicing Project Budget was to be no greater than \$37,500,000 and the aggregate land servicing and construction Project Budget was to be no greater than \$56,258,844;
- (c) Glynn Group was appointed as KingSett's project monitor (the "**Project Monitor**") and was responsible for, among other things, confirming and monitoring Exquisite's minimum cash equity position, re-confirming the reasonableness of schedule, identifying any potential issues with completion, and making recommendations based on its reviews;
- (d) Any sale of the Project by Exquisite was subject to the prior written consent of KingSett; and

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- (e) Exquisite consented to KingSett's appointment of a receiver or receiver manager in the event of a default by Exquisite.

31. In or around March 2020, the Project Monitor reported that Exquisite needed to inject equity into the project to meet the minimum requirement. At that time, Exquisite successfully raised the required equity.

Exquisite Defaults

32. On or about November 25, 2021, the Project Monitor prepared its Budget Update and Progress Report and reported updated cost projections for the land servicing Project Budget and the aggregate land servicing and construction Project Budget, and recommended that KingSett satisfy itself with the Project profit projections prior to making any further advances.

33. As a result of this directive, there was a cost overrun of \$940,000 on the land servicing Project Budget and a projected cost overrun of \$9,362,276 on the aggregate land servicing and construction Project Budget.

34. Pursuant to the terms of the Exquisite Loans, Exquisite, as the borrower, was required to account for any cost overrun by injecting equity.

KingSett Exercises its Rights as Lender

35. In or around November 2021, Exquisite was unable to meet its obligations to KingSett as required under the Exquisite Loans, including with respect to its minimum cash equity requirements, as adjusted to account for cost overruns, and interest reserve requirements.

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36. As such, Exquisite defaulted under the Exquisite Loans.

37. Contrary to paragraph 94 of the amended statement of claim, KingSett did not "pressure" Exquisite to sell the Property. In light of its default, Exquisite elected to sell the Property, rather than having KingSett enforce its contractual rights to appoint a receiver or receiver manager.

38. KingSett consented to Exquisite's election in accordance with the terms of the Exquisite Loans. Contrary to paragraph 94 of the amended statement of claim, KingSett did allow Exquisite to sell the Property "to make more profits by being on both sides of the deal". At the time of the contemplated sale, KingSett had not agreed to provide funding to the purchaser of the Property, including on any specific terms.

Exquisite Sells the Property

39. To facilitate a sale, Exquisite partnered with an independent, third party mortgage broker, Franc & Co., for the purposes of selecting a purchaser for the Property.

40. In or around December 2021, KingSett advised Vandyk that it was involved in a residential development project that may go up for sale in the New Year.

41. KingSett was not involved in any further discussions related to the sale transaction.

42. Contrary to paragraph 81 of the amended statement of claim, KingSett has no knowledge regarding any purported communications made by Exquisite to allegedly mislead the Plaintiff.

KingSett Lends to Vandyk

43. Following closing of the sale transaction, KingSett was engaged in negotiations with Franc & Co, about providing funding to Vandyk.

44. KingSett ultimately agreed to provide, among other things, two loans, for the purposes of providing construction financing and land servicing financing to Vandyk and executed two commitment letters with Vandyk, as borrower, and John Vandyk and Vandyk Properties Incorporated., as guarantors, dated March 11, 2022 (the "**Vandyk Loans**"). Each of the Vandyk Loans was secured by a mortgage.

45. On April 14, 2022, KingSett registered against the Property the following instruments from Vandyk in favour of KingSett:

- (a) Instrument No. PR4032438 being a charge/mortgage in the amount of \$18,000,000 to and in favour of KingSett; and
- (b) Instrument No. PR4032440 being a charge/mortgage in the amount of \$37,000,000 to and in favour of KingSett.

46. That same day, KingSett registered against the Property the following instruments from KingSett:

- (a) Instrument No. PR4032447 being a discharge of the charge identified as Instrument No. 3667703; and

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- (b) Instrument No. PR4032448 being a discharge of the charge identified as Instrument No. PR3667705.

No Knowledge or Failure by KingSett

47. KingSett denies the Plaintiff's allegations that the agreements of purchase and sale were valid and pending when KingSett registered its charge/mortgages on April 14, 2022. Accordingly, KingSett denies that it was aware of, or failed to take reasonable steps, to ensure that the Plaintiff's agreement of purchase and sale were valid and binding.

48. KingSett denies the Plaintiff's allegation that it was aware of, or ought to have been aware of, alleged communications by Exquisite to the Plaintiff about plans to complete development of the Property.

No Conspiracy

49. The Plaintiff's bald pleading of conspiracy is deficient and fails to disclose a reasonable cause of action for conspiracy. It should be struck.

50. In the alternative and in any event, KingSett did not conspire or act in concert with any other party as alleged in the amended statement of claim, or at all.

51. None of the actions taken by KingSett were for the purpose of harming the Plaintiff.

No Inducement of Breach of Contract

52. The Plaintiff's bald pleading of inducing breach of contract is deficient and fails to disclose a reasonable cause of action for inducing breach of contract. It should be struck.

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53. In the alternative and in any event, KingSett did not induce Exquisite to breach the agreements of purchase and sale.

54. In the further alternative, KingSett did not act with a desire to cause a breach of the agreements of purchase and sale.

No Unjust Enrichment

55. KingSett has not been unjustly enriched by its conduct.

56. There has been no corresponding deprivation to the Plaintiff.

57. Even if KingSett was enriched and/or the Plaintiff were correspondingly deprived, all of which is not admitted but expressly denied, there was a juristic reason for the enrichment or deprivation. Any enrichment for KingSett connected to the Property is as a result of its lending arrangements, which serve as the juristic reason that is fatal to the Plaintiff's unjust enrichment claim.

No Damages

58. KingSett denies that the Plaintiff has incurred losses or damages as alleged in the amended statement of claim, or at all. Even if the Plaintiff did incur any losses or damages (which is denied):

- (a) any such losses or damages are excessive, exaggerated and/or too remote to be recoverable at law;

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- (b) any such losses or damages were not caused by any act, omission, breach of duty, or breach of contract on the part of KingSett in fact or in law, but instead were caused by the acts, omissions or breaches of others including the Plaintiff; and
- (c) the Plaintiff has failed to take reasonable or any measures to reasonably mitigate their damages.

59. Contrary to paragraphs 133 and 135, KingSett did not act in a bad faith, fraudulent, deceptive, reckless, negligent or wilfully blind manner. The Plaintiff has no entitlement to special, punitive, aggravated and/or exemplary damages.

Further Grounds of Defence

60. Under the Consent Order of Justice Centa dated May 23, 2023, the Plaintiff agreed to strike all claims, without leave to amend, made with respect to relief sought or interests claimed in the Development (as defined therein) itself, or the individual lots, including claims for Certificates of Pending Litigation, constructive trust, specific performance and any declaration that KingSett's mortgages on the Development or the lots are not valid or enforceable. To the extent the Plaintiffs are continuing to advance such claims, they are barred.

61. KingSett denies that any of the causes of action and claims asserted in the amended statement of claim are made out against it, either in fact or in law.

62. All of the allegations against KingSett are denied, and are without merit or support. Such allegations are frivolous and vexatious and should be dismissed with costs on a substantial indemnity scale. This action is at its heart a claim concerning agreements of purchase and sale and

-13-

the rights of the parties *to* those agreements. The allegations of conspiracy, inducing breach of contract, and/or unjust enrichment are unnecessary and inflammatory.

63. KingSett further denies that its actions were unconscionable or deceptive as alleged at paragraph 114 of the amended statement of claim.

64. KingSett acted at all times in accordance with the contractual rights afforded to it under its lending arrangements.

65. The defendant, KingSett, asks that this action be dismissed with costs.

June 30, 2023

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TARIQ
Plaintiff

-and-

EXQUISITE BAY DEVELOPMENT INC. et al.
Defendants

Court File No. CV-22-00689146-0000

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KingSett Mortgage Corporation

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**KINGSETT MORTGAGE CORPORATION
AND DORR CAPITAL CORPORATION**

and

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE
LIMITED, 2402871 ONTARIO INC., VANDYK – THE RAVINE
LIMITED AND VANDYK – LAKEVIEW-DXE-WEST LIMITED**

Applicants

Respondents

Court File No.: CV-23-00709180-00CL

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

Proceedings commenced in Toronto

**APPLICATION RECORD
Volume 4 of 5
(Returnable November 14, 2023)**

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