

Court File No. CV-23-00082432-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ROYAL BANK OF CANADA

Applicant

-and-

1434399 ONTARIO INC.

Respondent

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**APPLICATION RECORD OF THE APPLICANT**

Returnable August 16, 2023

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August 4, 2023

**HARRISON PENZA LLP**

Barristers & Solicitors

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London, ON N6A 5R2

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Lawyers for the Applicant,

Royal Bank of Canada

TO: SERVICE LIST

**SERVICE LIST**

TO: **1434399 ONTARIO INC.**  
14 James St.  
St. Catharines, ON L2R 5B8

AND

TO: **MSI SPERGEL INC.**  
505 Consumers Road, Suite 200  
Toronto, Ontario M2J 4V8

**Attention: Mukul Manchanda**  
Tel: (416) 498-4314  
Fax: (416) 498-4314  
Email: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

Proposed Receiver

AND

TO: **MINDEN GROSS LLP**  
145 King Street West, Suite 2200  
Toronto, ON M5H 4G2

**RACHEL MOSES**  
Tel: (416) 369-4115  
Fax: (416) 864-9223  
Email: [rmoses@mindengross.com](mailto:rmoses@mindengross.com)

Lawyers for Proposed Receiver,  
msi Spergel inc.

AND

TO: **JOHN R. FULTON**  
372 Buffalo Road  
Fort Erie, ON L2A 5G4

Guarantor

AND

TO: **CANADA REVENUE AGENCY**  
c/o Department of Justice  
Ontario Regional Office  
120 Adelaide St. W., Suite 400  
Toronto, ON M5H 1T1

**Attention: Rakhee Bhandari**  
Tel: 416-952-8563  
Email: [rakhee.bhandari@justice.gc.ca](mailto:rakhee.bhandari@justice.gc.ca)

AND

TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO AS REPRESENTED BY  
THE MINISTRY OF FINANCE**  
Revenue Collections Branch – Insolvency Unit  
33 King Street W., P.O. Box 627  
Oshawa, ON L1H 8H5  
Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

AND

TO: **TOYOTA CREDIT CANADA INC.**  
80 Micro Court  
Markham, ON L3R 9Z5

AND

TO: **CITY OF ST. CATHARINES**  
50 Church St. PO Box 3012  
St. Catharines, ON L2R 7C2

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# Tab 1



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ROYAL BANK OF CANADA

Applicant

-and-

1434399 ONTARIO INC.

Respondent

**NOTICE OF APPLICATION**

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

**TO THE RESPONDENT:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing:

- In person
- By telephone conference
- By video conference

at the following location:

On Wednesday, August 16, 2023, at 10:00 a.m. or as soon after that time as the application can be heard by judicial teleconference via Zoom at Hamilton, Ontario. Zoom particulars to follow.

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

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

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

Date:

Issued by \_\_\_\_\_

Registrar  
Superior Court of Justice  
45 Main St. E.  
Hamilton, Ontario L8N 2B7

TO: Service List Attached



**SERVICE LIST**

TO: **1434399 ONTARIO INC.**  
14 James St.  
St. Catharines, ON L2R 5B8

AND

TO: **MSI SPERGEL INC.**  
505 Consumers Road, Suite 200  
Toronto, Ontario M2J 4V8

**Attention: Mukul Manchanda**  
Tel: (416) 498-4314  
Fax: (416) 498-4314  
Email: [mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca)

Proposed Receiver

AND

TO: **MINDEN GROSS LLP**  
145 King Street West, Suite 2200  
Toronto, ON M5H 4G2

**RACHEL MOSES**  
Tel: (416) 369-4115  
Fax: (416) 864-9223  
Email: [rmoses@mindengross.com](mailto:rmoses@mindengross.com)

Lawyers for Proposed Receiver,  
msi Spergel inc.

AND

TO: **JOHN R. FULTON**  
372 Buffalo Road  
Fort Erie, ON L2A 5G4

Guarantor

AND

TO: **CANADA REVENUE AGENCY**  
c/o Department of Justice  
Ontario Regional Office  
120 Adelaide St. W., Suite 400  
Toronto, ON M5H 1T1

**Attention: Rakhee Bhandari**  
Tel: 416-952-8563  
Email: [rakhee.bhandari@justice.gc.ca](mailto:rakhee.bhandari@justice.gc.ca)

AND

TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO AS REPRESENTED BY  
THE MINISTRY OF FINANCE**  
Revenue Collections Branch – Insolvency Unit  
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TO: **TOYOTA CREDIT CANADA INC.**  
80 Micro Court  
Markham, ON L3R 9Z5

AND

TO: **CITY OF ST. CATHARINES**  
50 Church St. PO Box 3012  
St. Catharines, ON L2R 7C2

## THE APPLICATION IS FOR:

The Applicant, Royal Bank of Canada (the “**Bank**”), seeks the following relief:

1. An order (the “**Appointment Order**”) substantially in the form attached hereto as Schedule “A”, *inter alia*, appointing msi Spergel inc., as Receiver (“**Spergel**”, or the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent, 1434399 Ontario Inc. (the “**Debtor**”), acquired for, or used in relation to a business or businesses carried on by the Debtor, including the Real Property (as defined below);
2. That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and,
3. Such further and other relief as to this Honourable Court may seem just.

## THE GROUNDS FOR THE APPLICATION ARE:

### The Debtor

1. The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario, with its registered office located in St. Catharines, Ontario, which operated a fitness gym known as “Fulton Fitness” from the Real Property, owned by the Debtor.
2. John R. Fulton (“**Fulton**”) is the sole principal of the Debtor and is a guarantor of the obligations owing by the Debtor to the Bank.
3. A Google search for “Fulton Fitness” indicates that gym is permanently closed.

### The Financing and the Bank’s Security

4. As of June 13, 2023, the Debtor was indebted to the Bank in the amount of \$1,340,847.17, plus accruing interest and the Bank’s continuing costs of enforcement, including legal costs and professional costs (the “**Indebtedness**”) in respect of financing advanced to the Debtor pursuant to the terms of a Credit Agreement dated January 24, 2020 (the “**Letter**”

**Agreement”**) and a Letter Agreement dated December 14, 2021 (the “**HASCAP Agreement”**).

5. The credit facilities established by the Letter Agreement are:

- a. Term Loan: in the sum of \$1,200,000.00;
- b. Revolving Demand Facility: in the sum of \$10,000.00, available by way of overdraft;
- c. Credit Card Facility: with a credit limit of \$20,000.00.

6. The credit facility established by the HASCAP Agreement is:

- a. Term Loan: in the sum of \$100,000.00

(5 (a) – (c) and 6 (a) collectively, the “**Financing**”).

7. In addition to the Financing, \$60,000.00 was advanced to the Debtor under the Canada Emergency Business Account, (loan offered by the Government of Canada), on which the amount of \$60,000.00 is owing.

8. The terms of the Financing require the Debtor to, *inter alia*, make all payments as same become due and to keep all payments of tax current.

9. The Bank holds, *inter alia*, the following as security for the Financing:

- a. General Security Agreement from the Debtor dated January 28, 2020 (the “**GSA**”);
- b. Guarantee and Postponement of Claim from Fulton dated January 28, 2020, limited to the amount of \$1,200,000 (the “**Guarantee**”); and
- c. Charge/Mortgage of Land from the Debtor, in the principal sum of \$1,200,000.00, receipted as instrument number NR534531 on February 12, 2020 (the “**Mortgage**”),

as governed by Standard Charge Terms 20015 (“**STC 20015**”), over the real property municipally known as 14 James Street, St. Catharines, Ontario, legally described as:

- i. LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT)  
(the “**Real Property**”)

(9 (a) – (c) collectively, the “**Security**”, or the “**Bank’s Security**”).

### **The Bank’s Security Interest in the Debtor’s Personal Property**

10. The Bank has registered Financing Statements against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) (the “**PPSA**”) to perfect its security interest in the property of the Debtor secured under the GSA.
11. The Personal Property Security Registration System Search Results for the Debtor confirm that the Bank has a perfected security interest in the personal property of the Debtor.

### **The Bank’s Security Interest in the Real Property**

12. The Bank’s interest in the Real Property is secured by the Mortgage, as governed by SCT 20015.
13. Pursuant to SCT 20015, the Mortgage secures the Indebtedness.

### **Defaults, Demands and Communications**

14. The Debtor defaulted under the terms of the Financing as a result of, *inter alia*:
  - a. failing to make payments on the Financing to the Bank as they became due; and,
  - b. arrears of property tax due and owing to the City of St. Catharines in relation to the Real Property (the “**Property Tax Arrears**”)

(14 (a) – (b) collectively, the “**Defaults**”).

15. As a result of the Defaults, the Bank did deliver to the Debtor a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), each dated April 24, 2023. The Bank also delivered a demand to Fulton as the guarantor of the Debtor, also dated April 24, 2023.
16. Fulton informed the Bank that the Debtor would be listing the Real Property for sale to pay the Indebtedness.
17. In order to provide the Debtor time to complete a sale of the Real Property, the Bank proposed to the Debtor and Fulton a forbearance agreement (the “**Proposed Forbearance Agreement**”).
18. The Debtor failed or refused to enter into the Proposed Forbearance Agreement.
19. The Debtor has not provided any evidence that a sale of the Real Property is imminent.
20. The Bank did deliver to the Debtor a second demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *BIA*, each dated June 20, 2023. The Bank also delivered a second demand to Fulton as the guarantor of the Debtor, also dated June 20, 2023 (collectively, the “**Second Demands**”). The time period under the Second Demands has expired.
21. The Debtor and Fulton have failed to repay the Indebtedness due, despite the Second Demands.

### **The Appointment of a Receiver**

22. The Indebtedness due pursuant to the Second Demands have not been paid. The ten (10) day period under section 244 of the *BIA* has expired. The Bank is in a position to

appoint a receiver over the assets and property of the Debtor, including the Real Property, pursuant to section 243 of the *BIA*.

23. The provisions of the Bank's Security provide the Bank with the power to appoint a Receiver over all of the personal property of the Debtor as secured by the GSA and Mortgage.

### **The Bank's Position**

24. The Debtor is in default of the Financing, and the Defaults continue. No further credit nor banking services are available to the Debtor.
25. The Second Demands have expired, and the Bank is in a position to seek the order appointing the Receiver, pursuant to the provisions of the GSA and the SCT 20015.
26. The Appointment of a Receiver is necessary in order to conclude a sale of the Real Property and the Debtor's business, and to apply the proceeds of such sale to the Indebtedness.
27. It appears that the Debtor has currently ceased operations as a fitness gym, and the Debtor has been unable to complete a sale of the Real Property, despite being provided significant time in which to do so.
28. This cessation, or partial cessation, has, and will continue to negatively impact the Debtor's cash flow, and correspondingly, the Debtor's ability to service its debts. The appointment of a Receiver is necessary to (i) determine the actual state of the Debtor's business, and (ii) if necessary, to manage the Debtor's businesses until a sale of the Real Property can be arranged.

29. The Bank is unaware of the condition of the Real Property and whether it is being properly maintained. Absent the appointment of a Receiver, the state of the Real Property may degrade, which will negatively impact the value of the Bank's Security. The appointment of a Receiver is necessary to ensure that the Real Property is maintained until a sale can be arranged.
30. The appointment of a Receiver will also be necessary to address payment or resolution of the Property Tax Arrears, and to settle any issues of priority as between the Bank's Security, and the Property Tax Arrears.
31. It is the Bank's position that the appointment of the Receiver is just and equitable and is necessary for the protection of the estate of the Debtor, and the interests of the Bank, as secured creditor, and other stakeholders.
32. The Bank proposes that Spergel be appointed as Receiver, without security, over all of the assets, undertakings, and properties of the Debtor, including the Real Property.
33. Spergel has consented to act as Receiver should this Honourable Court so appoint it.
34. Section 243 of the *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, as amended*.
35. Section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43, as amended*.
36. Rule 3, 14, 38 and any other applicable Rule of the *Rules of Civil Procedure*.
37. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

1. The Notice of Application and all Schedules thereto;



2. The Affidavit of Jason Gagnon, sworn July 31, 2023, and all Exhibits thereto;
3. The Consent of the Receiver; and,
4. Such further and other material as counsel may advise and this Honourable Court may permit.

August 2, 2023

**HARRISON PENZA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, ON N6A 5R2

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

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[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Lawyers for the Applicant,  
Royal Bank of Canada

**Schedule "A-1" – Appointment Order (Clean)**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

DAY, THE

)

JUSTICE

)

DAY OF

**ROYAL BANK OF CANADA**

Applicant

- and -

**1434399 ONTARIO INC.**

Respondent

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 1434399 Ontario Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including the real property described at Schedule "A" hereto and owned by the Debtor (the "Real Property") was heard this day by judicial videoconference via Zoom, at 45 Main St. E., Hamilton, Ontario.

ON READING the affidavit of Jason Gagnon sworn July 31, 2023 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, no one else appearing, although duly served as appears from the affidavit of service of Isabelle Stacey sworn and on reading the consent of msi Spergel inc. to act as the Receiver.

## SERVICE

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

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including the Real Property, and also including all proceeds thereof (the "Property").

## RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$10,000.00, provided that the aggregate consideration for all such transactions does not exceed \$50,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing,

the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

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

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

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

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### NO PROCEEDINGS AGAINST THE RECEIVER

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



### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

### **NO INTERFERENCE WITH THE RECEIVER**

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

### **CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers,

facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

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

### **EMPLOYEES**

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

### **PIPEDA**

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and

limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## **RECEIVER'S ACCOUNTS**

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

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

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

## **FUNDING OF THE RECEIVERSHIP**

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in

favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

#### **SERVICE AND NOTICE**

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL “.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the

records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

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

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

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

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

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

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Justice, Ontario Superior Court of Justice

**SCHEDULE "A"**

**REAL PROPERTY**

LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT)



## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

35. THIS IS TO CERTIFY that msi Spergel inc., the receiver (the "Receiver") of the assets, undertakings and properties of 1434399 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtor, including the Real Property (as defined in the Order), and including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

36. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

37. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

38. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

39. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

40. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

41. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

msi Spergel Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

Royal Bank of Canada

Applicant

-and-

1434399 ONTARIO INC.

Respondent

Court File No. CV-

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON, ONTARIO

**APPOINTMENT ORDER**

**HARRISON PENZA** <sup>LLP</sup>  
Barristers and Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Solicitors for the Applicant,  
Royal Bank of Canada

**Schedule "A-2" – Appointment Order (Blacklined)**

Revised: January 21, 2014  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. \_\_\_\_\_

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

THE HONOURABLE \_\_\_\_\_ ) WEEKDAYDAY, THE #  
JUSTICE \_\_\_\_\_ )  
DAY OF MONTH, 20YR

**PLAINTIFF<sup>+</sup>ROYAL BANK OF CANADA**

PlaintiffApplicant

- and -

**DEFENDANT<sup>1</sup>1434399 ONTARIO INC.**

DefendantRespondent

**ORDER**  
(~~appointing~~ Appointing Receiver)

THIS MOTIONAPPLICATION made by the PlaintiffApplicant<sup>2</sup> for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing [RECEIVER'S NAME]msi Spergel inc. as receiver ~~{and manager}~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME]1434399 Ontario Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including the real property described at Schedule "A" hereto and owned by the

<sup>+</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

<sup>2</sup>Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

Debtor (the "Real Property") was heard this day by judicial videoconference via Zoom, at ~~330 University Avenue, Toronto~~ 45 Main St. E.59 Church Street, HamiltonSt. Catharines, Ontario.

ON READING the affidavit of ~~[NAME]~~ Jason Gagnon sworn ~~[DATE]~~ July 31, 2023 -and the Exhibits thereto, and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicant, no one ~~appearing for [NAME]~~ althoughelse appearing, although duly served as appears from the affidavit of service of ~~[NAME]~~ Isabelle StaceyLindsay Ferguson sworn ~~[DATE]~~ -and on reading the consent of ~~[RECEIVER'S NAME]~~ msi Spergel inc. to act as the Receiver,

#### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of MotionApplication and the MotionApplication Record is hereby abridged and validated<sup>3</sup> so that this motionApplication is properly returnable today and hereby dispenses with further service thereof.

#### APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ msi Spergel inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including the Real Property, and also including all proceeds thereof (the "Property").

#### RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

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<sup>3</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$10,000.00, provided that the aggregate consideration for all such transactions does not exceed \$50,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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~~<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~



and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, for section 31 of the Ontario *Mortgages Act*, as the case may be,<sup>5</sup> shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

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

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~~<sup>5</sup> If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

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

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

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

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give

unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. ~~THIS COURT~~THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### NO PROCEEDINGS AGAINST THE RECEIVER

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

#### NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

### **NO INTERFERENCE WITH THE RECEIVER**

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

### **CONTINUATION OF SERVICES**

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

## **RECEIVER TO HOLD FUNDS**

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

## **EMPLOYEES**

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

## **PIPEDA**

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

identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, [including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19](#), save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver

shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

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

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

#### FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in

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<sup>6</sup>Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

### **SERVICE AND NOTICE**

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '[@](#)'.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the



records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

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

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

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

32. THIS COURT ORDERS that the [PlaintiffApplicant](#) shall have its costs of this ~~motion~~[Application](#), up to and including entry and service of this Order, provided for by the terms of the [PlaintiffApplicant](#)'s security or, if not so provided by the [PlaintiffApplicant](#)'s security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

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

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Justice, Ontario Superior Court of Justice

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[DOCSTOR: 17717428](#)

**SCHEDULE "A"**

**REAL PROPERTY**

LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT)

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

34-35. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~msi Spergel inc., the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~of 1434399 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtor, including the Real Property (as defined in the Order), and including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (~~Commercial List~~)(the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

35-36. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

36-37. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

37-38. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

38-39. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

39.40. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

40.41. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME]~~ msi Spergel Inc., solely  
in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

Royal Bank of Canada

Applicant

-and-

1434399 ONTARIO INC.

Respondent

Court File No. CV-

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON, ONTARIO

**APPOINTMENT ORDER**

**HARRISON PENZA** <sup>LLP</sup>  
Barristers and Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**  
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Solicitors for the Applicant,  
Royal Bank of Canada

ROYAL BANK OF CANADA

1434399 ONTARIO INC.

v.

Applicant

Respondent

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON, ONTARIO

**NOTICE OF APPLICATION**

**HARRISON PENZA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
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Lawyers for the Applicant,  
Royal Bank of Canada

# Tab 2



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ROYAL BANK OF CANADA

Applicant

-and-

1434399 ONTARIO INC.

Respondent

**AFFIDAVIT OF JASON GAGNON**

(Sworn July 31, 2023)

I, **JASON GAGNON**, of the City of Toronto, in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am a Senior Manager, Special Loans, with the Applicant, Royal Bank of Canada (the "**Bank**"), and as such have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.

**The Debtor**

2. The Respondent, 1434399 Ontario Inc. (the "**Debtor**"), is a company incorporated pursuant to the laws of the Province of Ontario, with its registered office located in the City of St. Catharines, Ontario. Attached hereto and marked as **Exhibit "A"** is a true copy of the corporate profile search results for the Debtor.
3. The Debtor operated a fitness gym, known as "Fulton Fitness", from owned real property, municipally known as 14 James Street, St. Catharines, Ontario, legally described as:

- i. LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT) (the “**Real Property**”)

Attached hereto to this my affidavit and marked as **Exhibit “B”** is a true copy of the parcel registry search results for the Real Property.

4. John R. Fulton (“**Fulton**”) is the sole principal of the Debtor, and is a guarantor of the obligations owing by the Debtor to the Bank.
5. A Google search for “Fulton Fitness” indicates that gym is permanently closed.
6. The Debtor defaulted under the terms of the Financing, as defined below, as a result of the following:
  - a. failing to make payments as they became due; and,
  - b. arrears of property tax due and owing to the City of St. Catharines in relation to the Real Property totaling \$17,827.54 as at April 2, 2023 (the “**Property Tax Arrears**”), and with additional instalments totaling \$9,875.34 which were due on February 28, 2023 and April 28, 2023. Attached hereto and marked as **Exhibit “C”** is a true copy of the tax certificate for the Real Property dated April 2, 2023(collectively, the “**Defaults**”).
7. The Bank is unwilling to provide the Debtor with any further credit or forbearance.

#### **The Financing and The Bank’s Security**

8. As of June 13, 2023, the Debtor was indebted to the Bank in the amount of \$1,340,847.17, plus the costs of enforcement, including legal and professional costs, and interest (the “**Obligations**”), in respect of certain financing advanced to the Debtor pursuant to the terms of a Credit Agreement dated January 24, 2020 (the “**Letter Agreement**”) and a Letter Agreement dated December 14, 2021 (the “**HASCAP Agreement**”). Attached hereto and marked as **Exhibit “D”** and **Exhibit “E”** is a true copy of the Letter Agreement and HASCAP Agreement respectively.

9. The credit facilities established by the Letter Agreement are:
- a. Term Loan: in the sum of \$1,200,000.00, upon which the sum of \$1,149,069.07 was owing as at June 13, 2023;
  - b. Revolving Demand Facility: in the sum of \$10,000.00, available by way of overdraft, upon which the sum of \$7,083.71 was owing as at June 13, 2023; and
  - c. Credit Card Facility: with a credit limit of \$20,000.00, upon which the sum of \$26,862.54 was owing as at June 13, 2023.
10. The credit facility established by the HASCAP Agreement is:
- a. Term Loan: in the sum of \$100,000.00, upon which the sum of \$97,831.85 was owing as at June 13, 2023
- (9. – 10. collectively, the “**Financing**”).
11. In addition to the Financing, \$60,000.00 was advanced to the Debtor under the Canada Emergency Business Account, (loan offered by the Government of Canada), on which the amount of \$60,000.00 is owing.
12. The terms and conditions of each of the Letter Agreement and the HASCAP Agreement required the Debtor to (i) pay all amounts owing to the Bank thereunder when due, and (ii) pay all material taxes or potential prior-ranking claims which may take priority over the Obligations.
13. As consideration for the Financing, the Bank requested and did receive the following as security for the Financing:
- a. General Security Agreement from the Debtor dated January 28, 2020 (the “**GSA**”). Attached hereto and marked as **Exhibit “F”** is a true copy of the GSA;
  - b. Guarantee and Postponement of Claim from Fulton dated January 28, 2020, limited to the amount of \$1,200,000 (the “**Guarantee**”). Attached hereto and marked as **Exhibit “G”** is a true copy of the Guarantee; and

- c. First position Charge/Mortgage, in the principal sum of \$1,200,000.00, receipted as instrument number NR534531 on February 12, 2020 over the Property (the "Mortgage"), as governed by Standard Charge Terms No. 200015 (the "Standard Charge Terms"). Attached hereto to this my affidavit and marked as Exhibit "H" is a true copy of the Mortgage. Attached hereto to this my affidavit and marked as Exhibit "I" is a true copy of the Standard Charge Terms.

**The Bank's Security Interest in the Personal Property of the Debtor**

14. The GSA secures the following personal property of the Debtor:

**1. SECURITY INTEREST**

*(a) For value received, the undersigned ("Debtor"), hereby grants to ROYAL BANK OF CANADA ("RBC"), a security interest (the "Security Interest") in the undertaking of Debtor and in all of Debtor's present and after acquired personal property including, without limitation, in all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles, Money and Securities and all other Investment Property now owned or hereafter owned or acquired by or on behalf of Debtor (including such as may be returned to or repossessed by Debtor) and in all proceeds and renewals thereof, accretions thereto and substitutions therefore (hereinafter collectively called "Collateral"); and including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of Debtor:*

- i. all inventory of whatever kind and wherever situate;*
- ii. all equipment (other than Inventory) of whatever kind and wherever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind;*
- iii. all Accounts and book debts and generally all debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by Debtor ("Debts");*
- iv. all lists, records and files relating to Debtor's customers, clients and patients;*

- v. *all deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;*
- vi. *all contractual rights and insurance claims;*
- vii. *all patents, industrial designs, trade-marks, trade secrets and know-how including without limitation environmental technology and biotechnology, confidential information, trade-names, goodwill, copyrights, personality rights, plant breeders' rights, integrated circuit topographies, software and all other forms of intellectual and industrial property, and any registrations and applications for registration of any of the foregoing (collectively "Intellectual Property");*
- viii. *all property described in Schedule "C" or any schedule now or hereafter annexed hereto...*

## **2. INDEBTEDNESS SECURED**

*The Security Interest granted hereby secures payment and performance of any and all obligations, indebtedness and liability of Debtor to RBC (including interest thereon) present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether Debtor be bound alone or with another or others and whether as principal or surety (hereinafter collectively called the "Indebtedness"). If the Security Interest in the Collateral is not sufficient, in the event of default, to satisfy all Indebtedness of the Debtor, the Debtor acknowledges and agrees that Debtor shall continue to be liable for any Indebtedness remaining outstanding and RBC shall be entitled to pursue full payment thereof.*

- 15. The Bank has registered a Financing Statement as against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) (the "**PPSA**") to perfect its security interest in the personal property of the Debtor secured under the GSA.
- 16. The Personal Property Security Registration System Search Results for the Debtor confirms that the Bank holds a perfected security interest in the personal property of the Debtor as secured by the GSA. Attached hereto and marked as **Exhibit "J"** is a true copy of the Personal Property Security Registration System

Search Results for the Debtor, current to March 29, 2023.

**The Bank's Security Interest in the Real Property**

17. The Bank's interest in the Real Property is secured by the Mortgage, as governed by the Standard Charge Terms, and the Mortgage is a first charge upon the Real Property.
18. The Standard Charge Terms include, *inter alia*, the following terms (emphasis added):

**2. COLLATERAL SECURITY**

The Chargor [the Debtor] has at the request of the Chargee [the Bank] agreed to give the Charge as a continuing collateral security for payment and satisfaction to the Chargee of all obligations, debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, at any time owing by the Chargor to the Chargee incurred or arising either before or after the delivery for registration of the Charge and whether incurred by or arising from agreement or dealings between the Chargor and the Chargee or from any agreement or dealings with any third party by which the Chargee may be or become in any manner whatsoever a creditor of the Chargor or however otherwise incurred or arising anywhere within or outside Canada and whether the Chargor be bound alone or with another or others and whether as principal or surety and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again (such obligations, debts and liabilities being herein called the "Liabilities"). It is agreed by the Chargor and the Chargee that the Charge at any one time will secure only that portion of the aggregate principal component of the Liabilities outstanding at such time which does not exceed the sum set out in the Computer Field in the Charge entitled "Principal" (herein called the "Principal Amount"), together with any interest or compound interest accrued on the portion of the Principal Amount outstanding at such time at the Charge Rate, as hereinafter defined, plus such costs and expenses to which the Chargee is entitled pursuant to the Charge.

**3. COVENANTS REGARDING LIABILITIES**

*The Chargor and the Chargee agree as follows: (a) That the Chargor covenants to pay to the Chargee each and every amount, indebtedness, liability and obligation forming part of the Liabilities in the manner agreed*

*to in respect of such amount, indebtedness, liability or obligation. (b) That no part of the Liabilities existing at the date of the Charge or incurred or arising thereafter, shall be deemed to be unsecured by the Charge. (c) That the Charge is and shall be a continuing collateral security to the Chargee for the amount of the Liabilities and interest and costs as provided in the Charge and shall be deemed to be taken as security for the ultimate balance of the Liabilities; and the Charge shall not, nor shall anything therein contained operate so as to create any merger or discharge of any debt owing to the Chargee or of any lien, bond, promissory note, bill of exchange or other security held by the Chargee either before or after registration of the Charge from the Chargor or from any other person or persons and the Charge shall not in any way prejudicially affect any security held either before or after the registration of the Charge by the Chargee for the Liabilities or any part thereof, or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Chargee for or on account of the Liabilities or any part or parts thereof, nor shall the remedies of the Chargee in respect thereof be prejudiced or delayed in any manner whatsoever by the taking of the Charge.*

#### 9. COVENANTS IN LIEU OF STATUTORY COVENANTS

*The Chargor does hereby covenant, promise and agree to and with the Chargee as follows: (a) To Pay and Observe Covenants That the Chargor shall pay or cause to be paid to the Chargee, without deduction or abatement, the Principal Amount secured by the Charge with interest at the Charge Rate at the times and in the manner limited for payment thereof in the Charge, and shall do, observe, perform, fulfil and keep all the provisions, covenants, agreements and stipulations particularly set forth in the Charge, and, without limitation, shall pay any taxes, rates, levies, charges or assessments including, without limitation, utility charges, upon the Charged Premises or in respect thereof, no matter by whom or by what authority imposed, which the Chargee has paid or has been rendered liable to pay and shall also pay all other sums as the Chargee may be entitled to under the Charge.*

19. Pursuant to the Standard Charge Terms, the Mortgage secures the Obligations.

#### **Defaults and the Demands**

20. The Debtor is insolvent, and has defaulted under the Financing, as set out above.

21. As a result of the Defaults, the Bank did deliver a demand for payment and a Notice of Intention to Enforce Security to the Debtor, both dated April 24, 2023, pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"). The Bank also delivered a demand to Fulton as the guarantor of the Debtor, also dated April 24, 2023 (collectively, the "**First Demands**"). Attached hereto and marked as **Exhibit "K"** is a true copy of the First Demands with the corresponding registered mail receipt.
22. Fulton informed the Bank that the Debtor had listed the Real Property for sale to pay the Obligations.
23. On May 3, 2023, the Bank offered the Debtor a Forbearance Agreement, to provide the Debtor time to complete a sale of the Real Property (the "**Proposed Forbearance Agreement**"). Attached hereto and marked as **Exhibit "L"** is a true copy of the Proposed Forbearance Agreement.
24. The Proposed Forbearance Agreement provided the Debtor until August 31, 2023 to complete the sale of the Real Property and pay the Obligations, and was open for acceptance until May 10, 2023.
25. On May 3, 2023, the Bank provided the Proposed Forbearance Agreement to the Debtor by way of email. On May 24, 2023, the Bank followed up with the Debtor for a signed copy of the Proposed Forbearance Agreement. Attached hereto and marked as **Exhibit "M"** is a true copy of the e-mails from the Bank.
26. On May 25, 2023, Fulton advised the Bank that he was having a lawyer review the Proposed Forbearance Agreement and would be signing same shortly. Attached hereto and marked as **Exhibit "N"** is a true copy of the e-mail from Fulton.
27. On May 29, 2023, the Bank again followed up with the Debtor for an update and advised that a response was required by no later than May 31, 2023, and Fulton confirmed that he would meet the deadline. Attached hereto and marked as **Exhibit "O"** is a true copy of the e-mails from the Bank and Fulton.
28. On May 31, 2023, Fulton advised the Bank that he needed a few more days as he had started an action against the "city and developer". Attached hereto and



marked as **Exhibit "P"** is a true copy of the e-mail from Fulton.

29. On May 31, 2023, counsel for the Bank emailed the Debtor advising that the Bank had been forbearing on a day-to-day basis and that the Bank required a signed copy of the Proposed Forbearance Agreement by no later than Friday, June 2, 2023, and Fulton responded that he would complete same. Attached hereto and marked as **Exhibit "Q"** is a true copy of the e-mails from May 31, 2023.
30. The Debtor has failed or refused to provide the Bank a signed copy of the Proposed Forbearance Agreement.
31. The Bank did deliver a further demand for payment and a Notice of Intention to Enforce Security to the Debtor, both dated June 20, 2023, pursuant to section 244(1) of the *BIA*. The Bank also delivered a further demand to Fulton as the guarantor of the Debtor, also dated June 20, 2023 (collectively, the "**Second Demands**"). Attached hereto and marked as **Exhibit "R"** is a true copy of the Second Demands with the corresponding registered mail receipt.
32. All statutory notice periods in relation to the Demands and the Second Demands have expired, and the Debtor and Fulton have failed to repay the Obligations due, despite the Demands and the Second Demands.
33. The Debtor has not provided any evidence that a sale of the Real Property is imminent.

#### **The Appointment of a Receiver**

34. The Obligations due pursuant to the Second Demands have not been paid. The Debtor is in default of the Financing.
35. The ten (10) day period under section 244(1) of the *BIA* has expired. The Bank is in a position to appoint a Receiver over the property of the Debtor as secured pursuant to the Security, pursuant to section 243 of the *BIA*.

Personal Property

36. Paragraph 13(a) of the GSA grants the Bank the right to appoint a Receiver over all personal property of the Debtor, secured thereunder, as a result of the Defaults, as follows:

*REMEDIES*

*(a) Upon default, RBC may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of RBC or not, to be a receiver or receivers (hereinafter called a "Receiver", which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his/her stead. Any such Receiver shall, so far as concerns responsibility for his/her acts, be deemed the agent of Debtor and not RBC, and RBC shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver, his/her servants, agents or employees. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of Collateral, to preserve Collateral or its value, to carry on or concur in carrying on all of any part of the business of Debtor and to sell, lease, license or otherwise dispose of or concur in selling, leasing licensing or otherwise disposing of Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including Debtor, enter upon, use and occupy all premises owned or occupied by Debtor wherein Collateral may situate, maintain Collateral upon such premises, borrow money on a secured or unsecured basis and use Collateral directly in carrying on Debtor's business or as security for loans or advances to enable the Receiver to carry on Debtor's business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by RBC, all Money received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to RBC. Every such Receiver may, in the discretion of RBC, be vested with all or any of the rights and powers of RBC.*

37. The Debtor is in default of the terms of the Financing and the Obligations are due and payable in full.
38. The provisions of the Bank's Security provide the Bank with the power to appoint a Receiver over all personal property of the Debtor as secured by the GSA.

### The Real Property

39. The Standard Charge Terms grant the Bank the power to appoint a Receiver over the Real Property as a result of the Defaults, and state, in part:

#### **42. RECEIVERSHIP**

*Notwithstanding anything contained in the Charge, it is declared and agreed that at any time and from time to time when there shall be default under the provisions of the Charge, the Chargee may, at such time and from time to time and with or without entry into possession of the Charged Premises, or any part thereof, by instrument in writing appoint any person, whether an officer or officers or an employee or employees of the Chargee or not, to be a receiver (which term as used herein includes a receiver manager and also includes the plural as well as the singular) of the Charges Premises, or any part thereof, and of the rents and profits thereof, and with or without security..*

40. The Debtor is in Default of the Financing, and the loans advanced thereunder are due and payable in full. The Bank is entitled to seek the appointment of a Receiver over the property of the Debtor, including the Real Property as a result thereof, and the terms of the Mortgage, as governed by the Standard Charge Terms, provide the Bank with the power to appoint a Receiver over the Real Property.

### The Bank's Position

41. The Debtor is in default of the Financing, which Defaults continue. The terms of the Security authorize the Bank to appoint a Receiver over all property of the Debtor, including the Real Property, as a result of the Defaults.
42. The Obligations due pursuant to the Demands and the Second Demands have not been paid. All notice periods under the BIA have expired, and the Bank is unwilling to provide the Debtor with any further credit or with any forbearance.
43. The Bank is in a position to seek the Order Appointing the Receiver over the personal property of the Debtor and the Real Property, pursuant to the provisions of the GSA and the Mortgage, respectively.

44. The Appointment of a Receiver is necessary in order to conclude a sale of the Real Property and the Debtor's business, and to apply the proceeds of such sale to the Obligations.
45. The Debtor has currently ceased operations as a fitness gym. The Debtor has been unable to complete a sale of the Real Property, and has not advised of any imminent sale, despite significant time in which to do so.
46. This cessation has and will continue to negatively impact the Debtor's cash flow, and correspondingly, the Debtor's ability to service its debts, both to the Bank as senior secured creditor, as well as any other creditors. The appointment of a Receiver is necessary to (i) determine the actual state of the Debtor's business, and (ii) if necessary, to manage the Debtor's business until a sale of the Real Property can be arranged.
47. The Bank is unaware whether the Real Property is being properly maintained. Absent the appointment of a Receiver, the state of the Real Property may degrade, which will negatively impact the value of the Bank's Security. The appointment of a Receiver is necessary to ensure that the Real Property is maintained until a sale can be arranged.
48. The appointment of a Receiver will also be necessary to address payment or resolution of the Property Tax Arrears. Further, a Receiver is necessary to ensure that such amounts do not continue to increase, and to settle any issues of priority as between the Bank's Security and the Property Tax Arrears.
49. It is the Bank's position that the appointment of the Receiver is just and equitable and is necessary for the protection of the estate of the Debtor, and the interests of the Bank, as a secured creditor, and other stakeholders.
50. The Bank proposes that msi Spergel inc. ("**Spergel**") be appointed as Receiver, without security, of the Real Property, as secured by the Mortgage, and over all personal property of the Debtor, as secured by the GSA.
51. Spergel has consented to act as Receiver should this Honourable Court so appoint it.

52. This affidavit is made in support of the within application for the appointment of Spergel as Receiver, without security, over all of the accounts and inventory of the Debtor, and for no other improper purpose.

**Sworn or Affirmed before me:**  in person OR  by video conference

by Jason Gagnon of the City of Toronto in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on July 31 2023.

Commissioner for Taking Affidavits (*or as may be*)

  
\_\_\_\_\_  
Signature of Commissioner

  
\_\_\_\_\_  
JASON GAGNON

DIANE MANON MARTELLA, Notary Public,  
City of Toronto, Limited to  
the attestation of instruments and  
the taking of the affidavits for  
Royal Bank of Canada  
Expires October 28, 2025

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ROYAL BANK OF CANADA

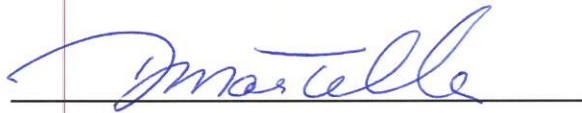
Applicant

-and-

1434399 ONTARIO INC.

Respondent

ATTACHED HERETO ARE EXHIBITS "A" TO "R"  
AS REFERRED TO IN THE AFFIDAVIT OF JASON GAGNON,  
SWORN BEFORE ME BY VIDEOCONFERENCE JULY 31, 2023.



A Commissioner, etc.

DIANE MANON MARTELLA, Notary Public,  
City of Toronto, Limited to  
the attestation of instruments and  
the taking of the affidavits for  
Royal Bank of Canada  
Expires October 28, 2025

# EXHIBIT "A"



## Profile Report

1434399 ONTARIO INC. as of March 30, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	1434399 ONTARIO INC.
Ontario Corporation Number (OCN)	1434399
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	November 28, 2000
Registered or Head Office Address	14 James St, St Catharines, Ontario, Canada, L2R 5B8

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

*V. Quintanilla W.*

Director/Registrar

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



**Active Director(s)**

Minimum Number of Directors 1  
Maximum Number of Directors 10

**Name** JOHN ROLAND FULTON  
**Address for Service** 14 James Street, St Catharines, Ontario, Canada, L2R 5B8  
**Resident Canadian** Yes  
**Date Began** November 28, 2000

**Name** JOHN ROLANO FULTON  
**Address for Service** 9 College St, Box 818, Fonthill, Ontario, Canada, L0S 1E0  
**Resident Canadian** Yes  
**Date Began** November 28, 2000

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

*V. Quintanilla W.*

Director/Registrar

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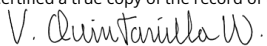
**Active Officer(s)**

**Name** JOHN ROLAND FULTON  
**Position** President  
**Address for Service** 14 James Street, St Catharines, Ontario, Canada, L2R 5B8  
**Date Began** November 28, 2000

**Name** JOHN ROLAND FULTON  
**Position** Secretary  
**Address for Service** 14 James Street, St Catharines, Ontario, Canada, L2R 5B8  
**Date Began** November 28, 2000

**Name** JOHN ROLAND FULTON  
**Position** Treasurer  
**Address for Service** 14 James Street, St Catharines, Ontario, Canada, L2R 5B8  
**Date Began** November 28, 2000

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



Director/Registrar

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**Corporate Name History**

**Name**

1434399 ONTARIO INC.

**Effective Date**

November 28, 2000

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*V. Quintanilla W.*

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

### Active Business Names

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

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*V. Quintanilla W.*

Director/Registrar

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**Expired or Cancelled Business Names**

<b>Name</b>	HUSTLEMEDIA
<b>Business Identification Number (BIN)</b>	240093062
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	January 28, 2014
<b>Expired Date</b>	January 27, 2019
<b>Name</b>	FULTON FITNESS DOWNTOWN HEALTH CLUB OPEN 24 HOURS
<b>Business Identification Number (BIN)</b>	230443947
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	April 29, 2013
<b>Expired Date</b>	April 28, 2018
<b>Name</b>	RETROFIT
<b>Business Identification Number (BIN)</b>	240092916
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	January 28, 2014
<b>Expired Date</b>	January 27, 2019
<b>Name</b>	DOWNTOWN HEALTH CLUB FOR WOMEN OPEN 24 HOURS
<b>Business Identification Number (BIN)</b>	230444119
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	April 29, 2013
<b>Expired Date</b>	April 28, 2018
<b>Name</b>	FULTON 24 HOUR FITNESS CENTRES
<b>Business Identification Number (BIN)</b>	140138306
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	February 05, 2004
<b>Expired Date</b>	February 04, 2009
<b>Name</b>	SNOOZULEWZ
<b>Business Identification Number (BIN)</b>	131353054
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	December 10, 2003
<b>Expired Date</b>	December 09, 2008

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

*V. Quintanilla W.*

Director/Registrar

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## Document List

Filing Name	Effective Date
Annual Return - 2018 PAF: JOHN FULTON - DIRECTOR	May 19, 2019
Annual Return - 2017 PAF: JOHN FULTON - DIRECTOR	September 23, 2018
Annual Return - 2016 PAF: JOHN FULTON - DIRECTOR	September 09, 2018
Annual Return - 2011 PAF: JOHN FULTON - DIRECTOR	May 22, 2016
Annual Return - 2015 PAF: JOHN FULTON - DIRECTOR	May 22, 2016
Annual Return - 2014 PAF: JOHN FULTON - DIRECTOR	May 22, 2016
Annual Return - 2013 PAF: JOHN FULTON - DIRECTOR	May 22, 2016
Annual Return - 2012 PAF: JOHN FULTON - DIRECTOR	May 22, 2016
Annual Return - 2010 PAF: JOHN FULTON - DIRECTOR	April 02, 2016
Annual Return - 2011 PAF: JOHN FULTON - DIRECTOR	April 02, 2016
Annual Return - 2009 PAF: JOHN FULTON - DIRECTOR	March 19, 2016
Annual Return - 2008 PAF: JOHN FULTON - DIRECTOR	August 22, 2009
CIA - Notice of Change PAF: A. J. MASCARIN - OTHER	August 21, 2009

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

*V. Quintanilla W.*

Director/Registrar

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Annual Return - 2006 PAF: JOHN FULTON - DIRECTOR	December 13, 2008
Annual Return - 2007 PAF: JOHN FULTON - DIRECTOR	December 13, 2008
Annual Return - 2005 PAF: JOHN FULTON - DIRECTOR	June 24, 2006
Annual Return - 2004 PAF: JOHN FULTON - DIRECTOR	May 13, 2006
Annual Return - 2003 PAF: JOHN FULTON - DIRECTOR	October 12, 2005
Annual Return - 2003 PAF: JOHN FULTON - DIRECTOR	November 22, 2004
Annual Return - 2003 PAF: JOHN FULTON - DIRECTOR	November 22, 2004
Annual Return - 2003 PAF: JOHN FULTON - DIRECTOR	November 22, 2004
CIA - Initial Return PAF: D. JAMES JACOBI - OTHER	January 31, 2001
BCA - Articles of Incorporation	November 28, 2000

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

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

*V. Quintanilla W.*

Director/Registrar

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# EXHIBIT “B”



PROPERTY DESCRIPTION: LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
RE-ENTRY FROM 46219-0275

PIN CREATION DATE:  
2003/08/25

OWNERS' NAMES  
1434399 ONTARIO INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/08/22 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/08/25 **						
RO440642	1981/12/30	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	COY BROS. (ST. CATHARINES) INC.	
RO493091	1985/03/04	NOTICE REMARKS: ZONING REGULATIONS				C
RO654967	1992/09/24	CHARGE		*** COMPLETELY DELETED ***	NIAGARA CREDIT UNION LTD.	
RO654968	1992/09/24	ASSIGNMENT GENERAL REMARKS: RO654967		*** COMPLETELY DELETED ***		
NR6460	2003/10/03	APL CH NAME OWNER		*** COMPLETELY DELETED *** COY BROS. (ST. CATHARINES) INC.	COY BROS. ST. CATHARINES INC.	
NR6461	2003/10/03	DISCH OF CHARGE		*** COMPLETELY DELETED *** NIAGARA CREDIT UNION LTD.		
REMARKS: RE: RO654967						

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.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
NR6462	2003/10/03	TRANSFER	\$250,000	COY BROS. ST. CATHARINES INC.	1434399 ONTARIO INC.	C
NR6463	2003/10/03	CHARGE		*** COMPLETELY DELETED *** 1434399 ONTARIO INC.	COY BROS. ST. CATHARINES INC.	
NR215904	2009/08/06	CHARGE		*** COMPLETELY DELETED *** 1434399 ONTARIO INC.	ROYAL BANK OF CANADA	
NR215905	2009/08/06	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 1434399 ONTARIO INC.	ROYAL BANK OF CANADA	
		REMARKS: NR215904				
NR215929	2009/08/06	DISCH OF CHARGE		*** COMPLETELY DELETED *** COY BROS. ST. CATHARINES INC.		
		REMARKS: RE: NR6463				
NR404745	2016/02/05	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
		REMARKS: TAX LIEN				
NR428287	2016/10/21	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
NR436847	2017/01/20	CHARGE		*** COMPLETELY DELETED *** 1434399 ONTARIO INC.	HOME TRUST COMPANY	
NR438837	2017/02/10	NOTICE		*** COMPLETELY DELETED *** HOME TRUST COMPANY	1434399 ONTARIO INC.	
		REMARKS: NR436847				
NR441950	2017/03/21	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
		REMARKS: NR404745.				
NR441951	2017/03/21	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
		REMARKS: NR428287.				

LAND  
REGISTRY  
OFFICE #30

46219-0114 (LT)

PREPARED FOR Lisaandr  
ON 2023/03/30 AT 10:49:21

\* 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
NR506702	2019/03/25	CHARGE		*** COMPLETELY DELETED *** 1434399 ONTARIO INC.	THE TORONTO-DOMINION BANK	
NR506703	2019/03/25	NO ASSGN RENT GEN <i>REMARKS: NR506702</i>		*** COMPLETELY DELETED *** 1434399 ONTARIO INC.	THE TORONTO-DOMINION BANK	
NR507560	2019/04/04	DISCH OF CHARGE <i>REMARKS: NR436847.</i>		*** COMPLETELY DELETED *** HOME TRUST COMPANY		
NR507711	2019/04/05	DISCH OF CHARGE <i>REMARKS: NR215904.</i>		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
NR534531	2020/02/12	CHARGE	\$1,200,000	1434399 ONTARIO INC.	ROYAL BANK OF CANADA	C
NR541094	2020/04/30	DISCH OF CHARGE <i>REMARKS: NR506702.</i>		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		

# EXHIBIT “C”

# CERTIFICATE OF THE TREASURER



Certificate No. **I10527**  
 Date of Certificate **April 2, 2023**

50 Church St PO Box 3012  
 St. Catharines On L2R7C2  
 Email: taxes@stcatharines.ca  
 Telephone: (905) 688-5600  
 Fax: (905) 688-4077

ISSUED TO **Cathy Coleiro**  
**ccoleiro@harrisonpensa.com**

REFERENCE **196236**  
 ROLL NUMBER **2629.040.002.07800.0000**  
 ASSESSED OWNER  
**1434399 ONTARIO INC**

**PROPERTY DESCRIPTION**

**14 JAMES ST ST CATHARINES**  
**CP 2 LOT 464 LOT 450**  
**13292.00SF 36.50FR 250.90D**

PENALTY/INTEREST OF **1.250 %**  
**HAS BEEN CALCULATED AS OF THE DATE THIS CERTIFICATE IS ISSUED**

**TAX ARREARS**  
 Statement showing arrears of taxes on the above lands.

YEAR	TAXES LEVIED	TAXES OUTSTANDING	INTEREST	ARREARS OUTSTANDING
2022	20,535.47	16,122.95	1,704.59	17,827.54
2021	20,129.22	0.00	0.00	0.00
2020+	201,770.16	0.00	0.00	0.00

**STATEMENT OF CURRENT TAXES**

CURRENT LEVY	INSTALMENT DUE DATES AND AMOUNTS				CURRENT OUTSTANDING		
INTERIM	9,442.84	2023/02/28	4,721.84	2023/04/28	4,721.00	TAX	9,442.84
FINAL	0.00					OTHER CHARGES	373.48
SUPP/ADJ	0.00					PENALTY	59.02
TOTAL	9,442.84					TOTAL CURRENT	9,875.34

**TOTAL OUTSTANDING 27,702.88**

I hereby certify that the above statement shows all arrears of taxes against the above lands.

\_\_\_\_\_  
 For The City Treasurer

**LOCAL IMPROVEMENTS ASSESSED TO THIS PROPERTY TO DATE INCLUDE**

CODE	DESCRIPTION	AMOUNT	EXPIRY

This statement is issued pursuant to Section 352 of the Municipal Act and is intended to show only the taxes levied for the current year and any unpaid taxes. After the date of this Certificate, the information shown may be affected by:

1. This tax certificate reflects only those charges added to the Tax Roll up to the certificate date and the Municipality will not be responsible for any damage, how so ever caused.
2. The information on this certificate is based on cheques tendered being honored by the bank upon which they are drawn.
3. Properties registered for Tax sale must be paid via certificated cheque or bank draft in full. Please contact the Tax department for more information.
4. Any credit balance appearing on this certificate is not verified. No adjustment will be made unless the credit balance is acknowledged as an overpayment.
5. This certificate does not include proposed Local Improvements for which construction has not been commenced or those which have been constructed but not levied.
6. This certificate will not include arrears charges for water and sewage utilities added to the tax roll subsequent to this notice. Water and Sewer Arrears Certificates for possible charges not shown may be obtained by contacting the City of St. Catharines at 905-688-5600.
7. This certificate may not include any direct services to the property not added to the tax roll at the date of certification for services such as work orders involving weed cutting, property standards charges, and snow or ice removal charges etc.
8. The total taxes may include additions to the Tax Roll as authorized by Provincial Legislation.
9. This certificate is subject to additional taxes, which may be levied pursuant to the provisions of Section 33 and 34 of the Assessment Act R.S.O. 1990 c.A.31.
10. This certificate is subject to adjustments of taxes pursuant to the provision of Section 40 of the Assessment Act R.S.O. 1990 and Sections 354, 357, 358, 361, 362, 363, 364, and 365 of the Municipal Act 2001.
11. Any parcel showing two years in arrears may be in the Tax Sale Registration process, therefore payment may be required in full by certified cheque. Please contact Collections for further details and pending charges.
12. This certificate may not represent all taxes levied against an individual P.I.N., as there may be multiple roll numbers assigned to an individual Property Identification Number registered on title at the Land Registry Office.
13. Pursuant to Section 347 (1) of the Municipal Act, any payment received shall be applied against late payment charges, with the charges imposed earlier being discharged before charges imposed later. The payment then shall be applied against the taxes imposed with the earlier being discharged first.
14. This certificate is subject to apportionments which may be made pursuant to Section 356 of the Municipal Act, 2001.
15. If you have reason to believe that the tax certificate is not correct, please contact the Tax Department 905-688-5600.Revenue-Tax Section

# EXHIBIT “D”

## ROYAL BANK OF CANADA CREDIT AGREEMENT

DATE: January 24, 2020

<b>BORROWER:</b> 1434399 ONTARIO INC.	<b>SRF:</b> 839860848
<b>ADDRESS (Street, City/Town, Province, Postal Code)</b> 14 JAMES STREET ST CATHARINES, ON L2R 5B8	

Royal Bank of Canada (the "Bank") hereby confirms to the undersigned (the "Borrower") the following credit facilities (the "Credit Facilities"), banking services and other products subject to the terms and conditions set forth below and in the standard terms provided herewith (collectively the "Agreement"). The Credit Facilities are made available at the sole discretion of the Bank and the Bank may cancel or restrict availability of any unutilized portion of these facilities at any time and from time to time without notice.

**CREDIT FACILITIES**

**Facility #1 Fixed rate term loan (non-revolving) in the amount of \$1,200,000.00.** Repayable by consecutive monthly blended payments, to be determined at drawdown, including interest, based on a 300 month amortization. First blended payment is due 30 days from drawdown. This loan has a 60 month term and all outstanding principal and interest is payable in full at the end of the term. Interest rate, to be determined at drawdown. Amount eligible for prepayment is NIL.

The specific repayment terms for Borrowings under this facility will be agreed to between the Borrower and the Bank at the time of drawdown by way of a Borrowing Request substantially in the form of Schedule "A" attached hereto, provided by the Borrower and accepted by the Bank.

**Facility #2 Revolving demand facility in the amount of \$10,000.00, available by way of Overdraft.** Interest rate: RBP + 5.00% per annum. Interest payable monthly, in arrears, on the same day each month as determined by the Bank.

**OTHER FACILITIES**

The Credit Facilities are in addition to the following facilities (the "Other Facilities"). The Other Facilities will be governed by this Agreement and separate agreements between the Borrower and the Bank. In the event of a conflict between this Agreement and any such separate agreement, the terms of the separate agreement will govern.

- a) Credit Card to a maximum amount of \$20,000.00.

**SECURITY**

Security for the Borrowing and all other obligations of the Borrower to the Bank, including without limitation, any amounts outstanding under any Leases, if applicable, (collectively, the "Security"), shall include:

- a) General security agreement on the Bank's form 924 signed by 1434399 Ontario Inc. constituting a first ranking security interest in all personal property of 1434399 Ontario Inc., held in support of Facility #1;
- b) Collateral mortgage in the amount of \$1,200,000.00 signed by 1434399 Ontario Inc. constituting a first fixed charge on the lands and improvements located at 14 James Street City of St. Catharines Ontario, held in support of Facility #1;
- c) Guarantee and postponement of claim on the Bank's form 812 in the amount of \$1,200,000.00 signed by John R Fulton, held in support of Facility #1;
- d) Postponement and assignment of claim on the Bank's form 918 signed by John R Fulton.

**FEES**

Facility #1 arrangement fee of \$1,000.00 payable upon acceptance of this Agreement or as agreed upon between the Borrower and the Bank.

\* Registered trademark of Royal Bank of Canada.



**Renewal Fee:**

If the Bank renews or extends any term facility or term loan beyond its maturity date, an additional renewal fee may be payable in connection with any such renewal in such amount as the Bank may determine and notify the Borrower.

**REPORTING REQUIREMENTS**

The Borrower will provide to the Bank:

- a) annual notice to reader financial statements for the Borrower, within 150 days of each fiscal year end;
- b) such other financial and operating statements and reports as and when the Bank may reasonably require.

**OTHER INFORMATION/REQUIREMENTS**

- a) In no event will the Credit Facilities or any part thereof Facility #1 be available unless the Bank has received:
  - i) an environmental questionnaire in respect of the Borrower and/or site checklist(s) in respect of all applicable real property on which the Borrower has granted Security to the Bank, on the Bank's standard form(s) and containing findings acceptable to the Bank;
  - ii) a reliance letter from C. Esposito & Associates Limited in respect of the appraisal for the property located at 14 James Street, City of St. Catharines Ontario, dated February 8, 2019 confirming the Bank may rely on such appraisal;
  - iii) a satisfactory visit and inspection of the Borrower's premises, properties and assets, including any equipment financed, has been completed by the Bank, or its representatives;

**BUSINESS LOAN INSURANCE PLAN**

The Borrower hereby acknowledges that the Bank has offered it group creditor insurance coverage on the Borrowings under the Business Loan Insurance Plan and the Borrower hereby acknowledges that it is the Borrower's responsibility to apply for any new or increased insurance amount for the Borrowings that may be eligible.

If the Borrower decides to apply for insurance on the Borrowings, the application will be made via the Bank's Business Loan Insurance Plan application (form 3460 ENG or 53460 FRE). If the Borrower has existing uninsured Borrowings and decides not to apply for Business Loan Insurance Plan coverage on any new Borrowings, it hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for Business Loan Insurance Plan coverage on all such Borrowings, and that all such Borrowings are not insured under the Policy as at the date of acceptance of this Agreement.

If the Borrower has Business Loan Insurance Plan coverage on previously approved Borrowings, such coverage will be applied automatically to all new Borrowings eligible for Business Loan Insurance Plan coverage that share the same loan account number, up to the approved amount of Business Loan Insurance Plan coverage. This Agreement cannot be used to waive coverage on new Borrowings eligible for Business Loan Insurance Plan coverage if Business Loan Insurance Plan coverage is in effect on the Borrower's existing Borrowings. If the Borrower does not want Business Loan Insurance Plan coverage to apply to any new Borrowings, a different loan account number will need to be set up and all uninsured loans attached to it.

If the Borrower has existing Borrowings to which Business Loan Insurance Plan coverage applies, and any new Borrowings would exceed the approved amount of Business Loan Insurance Plan coverage already in place, the Borrower must apply for additional Business Loan Insurance Plan coverage (if eligible) in order for Business Loan Insurance Plan coverage to apply to any new Borrowings. If the Borrower decides not to apply for additional Business Loan Insurance Plan coverage in respect of any new Borrowings (if eligible), the Borrower hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for additional Business Loan Insurance Plan coverage on such new Borrowings and that such new Borrowings are not insured under the Policy as at the date the Borrower executes this Agreement.

If there are any discrepancies between the insurance information in this Agreement and the Business Loan Insurance Plan documents regarding the Borrowings, the Business Loan Insurance Plan documents govern.

Business Loan Insurance Plan premiums (plus applicable taxes), will be taken as a separate payment, directly from the bank account associated with the loan, at the same frequency and schedule as your regular loan payments, where applicable. As premiums are based on the outstanding loan balance and the insured person's age at the time the premiums are due, the cost of Business Loan Insurance Plan coverage may increase during the term of the loan. The premium calculation is set out in the Business Loan Insurance Plan terms and conditions provided to the Borrower at the

\* Registered trademark of Royal Bank of Canada.

time the application for Business Loan Insurance Plan coverage was completed. Refer to the terms and conditions (form 3460 ENG or 53460 FRE) for further explanation and disclosure.

**STANDARD TERMS**

The following standard terms have been provided to the Borrower:

- Form 472 (07/2019) Royal Bank of Canada Credit Agreement - Standard Terms
- Form 473 (02/2019) Royal Bank of Canada Credit Agreement - Margined Accounts Standard Terms
- Form 473A (10/2017) Royal Bank of Canada Credit Agreement - RBC Covarity Terms and Conditions
- Form 473B (02/2019) Royal Bank of Canada Credit Agreement - Margined Accounts Standard Terms

**ACCEPTANCE**

This Agreement is open for acceptance until February 23, 2020, after which date it will be null and void, unless extended by the Bank in its sole discretion.

**ROYAL BANK OF CANADA**



Per: \_\_\_\_\_  
Title: Vice President

**RBC Contact: ELENA MARCHUK**

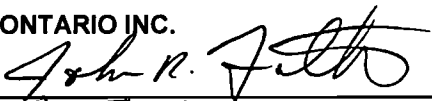
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**CONFIRMATION & ACCEPTANCE**

The Borrower (i) confirms that it has received a copy of the Royal Bank of Canada Credit Agreement Standard Terms, Form 472, as well as all other standard terms which are hereinabove shown as having been delivered to the Borrower, all of which are incorporated in and form an integral part of this Agreement; and (ii) accepts and agrees to be bound by the terms and conditions of this Agreement including all terms and conditions contained in such standard terms.

Confirmed, accepted and agreed this 28th day of January, 2020.

**1434399 ONTARIO INC.**

Per:   
Name: John R. Felton  
Title: President

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Borrower

**Attachments:**

- Schedule – Borrowing Request

\* Registered trademark of Royal Bank of Canada.

**ROYAL BANK OF CANADA CREDIT AGREEMENT – SCHEDULE “A”  
BORROWING REQUEST STANDARD FORM**

In support of the Royal Bank of Canada Credit Agreement dated January 24, 2020 the Borrower hereby requests the following be established under Facility # 1:

Date of Borrowing	<i>January 28th, 2020</i>		
Amount of Borrowing:	\$ <i>1,200,000.00</i>		
Amortization (in months):	<i>300</i>		
Selected Term: (Borrowing repayable in full on the last day of the Term)	<i>5yr (60 months)</i>		
Payment Amount:	\$ <i>5,986.42</i>		
Payment Frequency:	weekly <input type="checkbox"/>	bi-weekly <input type="checkbox"/>	
	semi-monthly <input type="checkbox"/>	monthly <input checked="" type="checkbox"/>	
	quarterly <input type="checkbox"/>	semi-annual <input type="checkbox"/>	annual <input type="checkbox"/>
Selected Interest Rate (per annum):	<i>3.47</i> % <input checked="" type="checkbox"/>	RBP +	% <input type="checkbox"/>
Selected Payment Type:	Blended (Principal and Interest) <input checked="" type="checkbox"/>  If variable interest rate selected with blended payments, the payment amount is subject to annual adjustment to ensure amortization	Principal plus Interest <input type="checkbox"/>	
First Payment Due Date:	<i>February 28th, 2020</i>		
Amount Eligible for Prepayment of FRT Loan:	0% <input checked="" type="checkbox"/>	10% <input type="checkbox"/>	

Dated this 28th day of January, 2020.

1434399 ONTARIO INC.

Per: *John R. Fulton*  
 Name: *John R. Fulton*  
 Title: *President*

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

I/We have the authority to bind the Borrower

SRF# 839860848

The following set of standard terms is deemed to be included in and forms an integral part of the Royal Bank of Canada Loan Agreement which refers to standard terms with this document version date, receipt of which has been duly acknowledged by the Borrower. Terms defined elsewhere in this Agreement and not otherwise defined below have the meaning given to such terms as so defined. The Borrower agrees and if the Borrower is comprised of more than one Person, such Persons jointly and severally agree, or in Quebec solidarily agree, with the Bank as follows:

#### GENERAL

This Agreement amends and restates, without novation, any existing credit or loan agreement between the Borrower and the Bank and any amendments thereto, (other than existing agreements for Other Facilities). Any credit facility existing under any such credit or loan agreement which is secured by security under section 427 of the *Bank Act* (Canada) (or any successor to such provision) is deemed to be continued and renewed, without novation, under the Credit Facilities. Any amount owing by the Borrower to the Bank under any such credit or loan agreement is deemed to be a Borrowing under this Agreement. This Agreement is in addition to, and not in replacement of, agreements for Other Facilities. Any and all Security that has been delivered to the Bank and which is included as Security in this Agreement shall remain in full force and effect, is expressly reserved by the Bank and shall apply in respect of all obligations of the Borrower under the Credit Facilities. The Bank expressly reserves all Security granted to the Bank by the Borrower to secure the Borrower's existing debt towards the Bank, should the execution of this Agreement effect a novation of said debt. Unless otherwise provided, all dollar amounts are in Canadian currency.

#### CONDITIONS PRECEDENT

In no event will the Credit Facilities or any part thereof be available unless the Bank has received:

- a) a duly executed copy of this Agreement;
- b) the Security provided for herein, in form and substance, and executed and registered to the satisfaction of the Bank;
- c) such financial and other information or documents relating to the Borrower or any Guarantor if applicable as the Bank may reasonably require; and
- d) such other authorizations, approvals, opinions and documentation as the Bank may reasonably require.

#### AVAILABILITY

**Revolving facilities:** The Borrower may borrow, convert, repay and reborrow up to the amount of each revolving facility (subject to Margin where applicable) provided each facility is made available at the sole discretion of the Bank and the Bank may cancel or restrict the availability of any unutilized portion at any time and from time to time without notice.

**Non-revolving facilities:** The Borrower may borrow up to the amount of each non-revolving facility provided these facilities are made available at the sole discretion of the Bank and the Bank may cancel or restrict availability of any unutilized portion of these facilities at any time and from time to time without notice.

#### LOAN REVOLVEMENT

If the Credit Facilities include a revolving demand facility by way of RBP and/or RBUSBR based loans, the Borrower shall establish a current account in Canadian currency, and, where RBUSBR based loans are made available, in US currency (each a "General Account") for the conduct of the Borrower's day-to-day banking business. The Borrower authorizes the Bank daily or otherwise as and when determined by the Bank to ascertain the balance of any General Account and:

- a) if such position is a debit balance the Bank may, subject to the revolving increment amount and minimum retained balance specified in this Agreement, make available a Borrowing by way of RBP Loans, or RBUSBR Loans as applicable, under this facility;
- b) where the facility is indicated to be Bank revolved, if such position is a credit balance, the Bank may, subject to the revolving increment amount and minimum retained balance specified in this Agreement, apply the amount of such credit balance or any part as a repayment of any Borrowings outstanding by way of RBP Loans, or RBUSBR Loans as applicable, under this facility;
- c) where this facility is indicated to be Borrower revolved, if such position is a credit balance, the Bank will apply repayments on such facility only if so advised and directed by the Borrower;
- d) Overdrafts and Bank revolved facilities by way of RBP Loans, or RBUSBR Loans, are not available on the same General Account.

#### REPAYMENT

- a) Amounts outstanding under the Credit Facilities, together with interest, shall become due in the manner and at the rates and times specified in or pursuant to this Agreement and shall be paid in the currency of the Borrowing. Amounts due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day.
- b) Unless the Bank otherwise agrees, any payment hereunder must be made in money which is legal tender at the time of payment.
- c) In the case of a demand facility of any kind, the Borrower shall repay all principal sums outstanding under such facility upon demand including, without limitation, an amount equal to the face amount of all LCs and LGs, if applicable, which are unmatured or unexpired, which amount shall be held by the Bank as security for the Borrower's obligations to the Bank in respect of such Borrowings.
- d) Where any Borrowings are repayable by scheduled blended payments of principal and interest, such payments shall be applied, firstly, to interest due, and the balance, if any, shall be applied to principal outstanding with any balance of such Borrowings being due and payable as and when specified in this Agreement. If any such payment is insufficient to pay all interest then due, the unpaid balance of such interest will be added to such Borrowing, will bear interest at the same rate, and will be payable on demand or on the date specified herein, as the case may be.
- e) Borrowings repayable by way of scheduled payments of principal plus interest shall be so repaid with any balance of such Borrowings being due and payable as and when specified in this Agreement.
- f) For any Borrowings that are repayable by scheduled payments, if the scheduled payment date is changed then the maturity date of the applicable Borrowings shall automatically be amended accordingly.
- g) Without limiting the right of the Bank to terminate or demand payment of or to cancel or restrict availability of any unused portion of any revolving demand tender loan facility, Borrowings by way of tender loans shall be repaid (i) if the tender is not accepted, by returning the relevant draft, or certified cheque, if applicable, to the Bank for cancellation or (ii) if the tender is accepted, by returning the relevant draft, or certified cheque, if applicable, once letters of guarantee or performance bonds are arranged. In the event such draft, or certified cheque, if applicable, is presented for payment, the amount of the draft, or certified cheque, if applicable, will be converted to an RBP based loan with an interest rate of RBP plus 5% per annum.
- h) Should the Bank demand immediate repayment in full of any amounts outstanding under any term facility due to an Event of Default, the Borrower shall immediately repay all principal sums outstanding under such facility and all other obligations in connection with any such term facility.
- i) Except for Borrowings secured by a mortgage, any amount that is not paid when due hereunder shall bear interest until paid at the rate of RBP plus 5% per annum or the highest premium indicated for any of the Borrower's facilities when in excess of 5%, or, in the case of an amount in US currency if applicable, RBUSBR plus 5% per annum or the highest premium indicated for any of the Borrower's facilities when in excess of 5%. Such interest on overdue amounts shall be computed daily, compounded monthly and shall be payable both before and after any or all of default, maturity, demand

and judgement. For Borrowings secured by a mortgage, any amount that is not paid when due hereunder shall bear interest until paid at the same rate as the interest rate applicable to the principal amount of the Borrowings as specified in this Agreement.

- j) In the case of any reducing term loan and/or reducing term facility (“Reducing Term Loan/Facility”), provided that nothing contained in this paragraph shall confer any right of renewal or extension upon the Borrower, the Borrower and the Bank agree that, at the Bank’s option, the Bank may provide a letter (“Renewal Letter”) to the Borrower setting out the terms upon which the Bank is prepared to extend the Reducing Term Loan/Facility. In the event that the Bank provides a Renewal Letter to the Borrower and the Reducing Term Loan/Facility is not repaid on or before the maturity date of the applicable Reducing Term Loan/Facility, then at the Bank’s option the Reducing Term Loan/Facility shall be automatically renewed on the terms set out in the Renewal Letter and the terms of this Agreement shall be amended accordingly.

#### PREPAYMENT

Where Borrowings under any term facility are by way of RBP and/or RBUSBR based loans, the Borrower may prepay such Borrowings in whole or in part at any time without fee or premium.

Where Borrowings under any term facility are at a fixed interest rate, provided an Event of Default shall not have occurred and be continuing, the Borrower may prepay such Borrowings on a non-cumulative basis up to the percentage indicated in this Agreement of the outstanding principal balance on the day of prepayment, without fee or premium, once per year during the 12 month period from each anniversary date of the Borrowing. Any prepayment of the Borrowing prior to the maturity date, in whole or in part (in excess of any prepayment explicitly permitted in this Agreement), requires an amendment of the terms of this Agreement. An amendment to permit such a prepayment requires the Bank’s prior written consent. The Bank may provide its consent to an amendment to permit a prepayment upon satisfaction by the Borrower of any conditions the Bank may reasonably impose, including, without limitation, the Borrower’s agreement to pay the Prepayment Fee as defined below.

The Prepayment Fee will be calculated by the Bank as the sum of:

- a) the greater of:
- (i) the amount equal to three (3) months’ interest payable on the amount of the fixed rate term facility Borrowing being prepaid, calculated at the interest rate applicable to the fixed rate term facility Borrowing on the date of prepayment; and
  - (ii) the present value of the cash flow associated with the difference between the Bank’s original cost of funds for the fixed rate term facility Borrowing and the current cost of funds for a fixed rate term loan with a term substantially similar to the remaining term and an amortization period substantially similar to the remaining amortization period of the fixed rate term facility Borrowing, each as determined by the Bank on the date of such prepayment;

plus:

- b) Foregone margin over the remainder of the term of the fixed rate term facility Borrowing. Foregone margin is defined as the present value of the difference between the Bank’s original cost of funds for the fixed rate term facility Borrowing and the interest that would have been charged to the Borrower over the remaining term of the fixed rate term facility Borrowing;

plus:

- c) a processing fee.

The Prepayment Fee shall also be payable by the Borrower in the event the Bank demands repayment of the outstanding fixed rate term facility Borrowing on the occurrence of an Event of Default. The Borrower’s obligation to pay the Prepayment Fee will be in addition to any other amounts then owing by the Borrower to the Bank, will form part of the Borrowings outstanding and will be secured by the Security described herein.

The prepayment of any Borrowings under a term facility will be made in the reverse order of maturity.

#### EVIDENCE OF INDEBTEDNESS

The Bank shall maintain accounts and records (the “Accounts”) evidencing the Borrowings made available to the Borrower by the Bank under this Agreement. The Bank shall record the principal amount of such Borrowings, the payment of principal and interest on account of the Borrowings, and all other amounts becoming due to the Bank under this Agreement. The Accounts constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Bank pursuant to this Agreement. The Borrower authorizes and directs the Bank to automatically debit, by mechanical, electronic or manual means, any bank account of the Borrower for all amounts payable under this Agreement, including, but not limited to, the repayment of principal and the payment of interest, fees and all charges for the keeping of such bank accounts.

#### CALCULATION AND PAYMENT OF INTEREST AND FEES

- a) The Borrower shall pay interest on each Overdraft, RBP and/or RBUSBR based loan monthly in arrears on the same day of each month as determined by the Bank. Such interest will be calculated monthly and will accrue daily on the basis of the actual number of days elapsed and a year of 365 days.
- b) The Borrower shall pay interest on each fixed and/or variable rate term facility in arrears at the applicable rate on such date as agreed upon between the Bank and the Borrower. Such interest will be calculated monthly and will accrue daily on the basis of the actual number of days elapsed and a year of 365 days.
- c) The Borrower shall pay an LC fee on the date of issuance of any LC calculated on the face amount of the LC issued, based upon the number of days in the term and a year of 365 days. If applicable, fees for LCs issued in US currency shall be paid in US currency.
- d) The Borrower shall pay LG fees in advance on a quarterly basis calculated on the face amount of the LG issued and based on the number of days in the upcoming quarter or remaining term thereof and a year of 365 days. LG fees are non-refundable. If applicable, fees for LGs issued in US currency shall be paid in US currency.
- e) Amounts payable by the Borrower hereunder shall be paid at such place as the Bank may advise from time to time in the applicable currency. Amounts due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day. Interest and fees payable under this Agreement are payable both before and after any or all of default, maturity, demand and judgement.
- f) The Borrower shall not be obligated to pay any interest, fees or costs under or in connection with this Agreement in excess of what is permitted by Applicable Law.

- g) The annual rates of interest or fees to which the rates calculated in accordance with this Agreement are equivalent, are the rates so calculated multiplied by the actual number of days in the calendar year in which such calculation is made and divided by 365.

#### FEES, COSTS AND EXPENSES

The Borrower agrees to pay the Bank all fees stipulated in this Agreement and all fees charged by the Bank relating to the documentation or registration of this Agreement and the Security. In addition, the Borrower agrees to pay all fees (including legal fees), costs and expenses incurred by the Bank in connection with the preparation, negotiation, documentation and registration of this Agreement and any Security and the administration, operation, termination, enforcement or protection of its rights in connection with this Agreement and the Security. The Borrower shall indemnify and hold the Bank harmless against any loss, cost or expense incurred by the Bank if any facility under the Credit Facilities is repaid or prepaid other than on its Maturity Date. The determination by the Bank of such loss, cost or expense shall be conclusive and binding for all purposes and shall include, without limitation, any loss incurred by the Bank in liquidating or redeploying deposits acquired to make or maintain any facility.

#### GENERAL COVENANTS

Without affecting or limiting the right of the Bank to terminate or demand payment of, or cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, the Borrower covenants and agrees with the Bank that the Borrower:

- a) will pay all sums of money when due under the terms of this Agreement;
- b) will immediately advise the Bank of any event which constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of this Agreement or any Security or an Event of Default;
- c) will file all material tax returns which are or will be required to be filed by it, pay or make provision for payment of all material taxes (including interest and penalties) and Potential Prior-Ranking Claims, which are or will become due and payable and provide adequate reserves for the payment of any tax, the payment of which is being contested;
- d) will give the Bank 30 days prior notice in writing of any intended change in its ownership structure or composition and will not make or facilitate any such changes without the prior written consent of the Bank;
- e) will comply with all Applicable Laws, including, without limitation, all Environmental and Health and Safety Laws;
- f) will immediately advise the Bank of any action requests or violation notices received concerning the Borrower and hold the Bank harmless from and against any losses, costs or expenses which the Bank may suffer or incur for any environment related liabilities existent now or in the future with respect to the Borrower;
- g) will deliver to the Bank such financial and other information as the Bank may reasonably request from time to time, including, but not limited to, the reports and other information set out under this Agreement;
- h) will immediately advise the Bank of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations in accordance with the terms of this Agreement;
- i) will keep its assets fully insured against such perils and in such manner as would be customarily insured by Persons carrying on a similar business or owning similar assets and, in addition, for any buildings located in areas prone to flood and/or earthquake, will insure and keep fully insured such buildings against such perils;
- j) except for Permitted Encumbrances, will not, without the prior written consent of the Bank, grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of its properties, assets or other rights;
- k) will not, without the prior written consent of the Bank, sell, transfer, convey, lease or otherwise dispose of any of its properties or assets other than in the ordinary course of business and on commercially reasonable terms;
- l) will not, without the prior written consent of the Bank, guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations by any other Person, except as may be provided for herein;
- m) will not, without the prior written consent of the Bank, merge, amalgamate, or otherwise enter into any other form of combination with any other Person;
- n) will permit the Bank or its representatives, from time to time, i) to visit and inspect the Borrower's premises, properties and assets and examine and obtain copies of the Borrower's records or other information, ii) to collect information from any person regarding any Potential Prior-Ranking Claims and iii) to discuss the Borrower's affairs with the auditors, counsel and other professional advisers of the Borrower. The Borrower hereby authorizes and directs any such third party to provide to the Bank or its representatives all such information, records or documentation requested by the Bank; and
- o) will not use the proceeds of any Credit Facility for the benefit or on behalf of any Person other than the Borrower.

#### GENERAL INDEMNITY

The Borrower hereby agrees to indemnify and hold the Bank and its directors, officers, employees and agents harmless from and against any and all claims, suits, actions, demands, debts, damages, costs, losses, obligations, judgements, charges, expenses and liabilities of any nature which are suffered, incurred or sustained by, imposed on or asserted against any such Person as a result of, in connection with or arising out of i) any breach of any term or condition of this Agreement or any Security or any other agreement delivered to the Bank by the Borrower or any Guarantor if applicable or any Event of Default, ii) the Bank acting upon instructions given or agreements made by electronic transmission of any type, iii) the presence of Contaminants at, on or under or the discharge or likely discharge of Contaminants from, any properties now or previously used by the Borrower and iv) the breach of or non compliance with any Applicable Law by the Borrower or any Guarantor.

#### AMENDMENTS AND WAIVERS

Save and except for any waiver or extension of the deadline for acceptance of this Agreement at the Bank's sole discretion, which may be communicated in writing, verbally, or by conduct, no amendment or waiver of any provision of this Agreement will be effective unless it is in writing, signed by the Borrower and the Bank. No failure or delay, on the part of the Bank, in exercising any right or power hereunder or under any Security or any other agreement delivered to the Bank shall operate as a waiver thereof. Each Guarantor, if applicable, agrees that the amendment or waiver of any provision of this Agreement (other than agreements, covenants or representations expressly made by any Guarantor herein, if any) may be made without and does not require the consent or agreement of, or notice to, any Guarantor.

#### SUCCESSORS AND ASSIGNS

This Agreement shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. The Borrower shall not be entitled to assign or transfer any rights or obligations hereunder, without the consent in writing of the Bank.

#### GAAP

Unless otherwise provided, all accounting terms used in this Agreement shall be interpreted in accordance with Canadian Generally Accepted Accounting Principles, as appropriate, for publicly accountable enterprises, private enterprises, not-for-profit organizations, pension plans and in accordance, as appropriate, with Public Sector Accounting Standards for government organizations in effect from time to time, applied on a consistent basis from period

to period. All financial statements and/or reports shall be prepared using one of the above bases of presentation, as appropriate. Except for the transition of accounting standards in Canada, any change in accounting principles or the application of accounting principles is only permitted with the prior written consent of the Bank.

**SEVERABILITY:**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement and such invalid provision shall be deemed to be severable.

**DEFAULT BY LAPSE OF TIME**

The mere lapse of time fixed for performing an obligation shall have the effect of putting the Borrower in default thereof.

**SET-OFF**

The Bank is authorized (but not obligated), at any time and without notice, to apply any credit balance (whether or not then due) in any account in the name of the Borrower, or to which the Borrower is beneficially entitled (in any currency) at any branch or agency of the Bank in or towards satisfaction of the indebtedness of the Borrower due to the Bank under the Credit Facilities and the other obligations of the Borrower under this Agreement. For that purpose, the Bank is irrevocably authorized to use all or any part of any such credit balance to buy such other currencies as may be necessary to effect such application.

**CONSENT OF DISCLOSURE**

The Borrower hereby grants permission to any Person having information in such Person's possession relating to any Potential Prior-Ranking Claim, to release such information to the Bank (upon its written request), solely for the purpose of assisting the Bank to evaluate the financial condition of the Borrower.

**JOINT AND SEVERAL / SOLIDARY**

Where more than one Person is liable as Borrower, for any obligation under this Agreement, then the liability of each such Person for such obligation is joint and several (in Quebec, solidary) with each other such Person.

**EVENTS OF DEFAULT**

Without affecting or limiting the right of the Bank to terminate or demand payment of, or to cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, each of the following shall constitute an "Event of Default" which shall entitle the Bank, in its sole discretion, to cancel any Credit Facilities, demand immediate repayment in full of any amounts outstanding under any term facility, together with outstanding accrued interest and any other indebtedness under or with respect to any term facility, and to realize on all or any portion of any Security:

- a) failure of the Borrower to pay any principal, interest or other amount when due pursuant to this Agreement;
- b) failure of the Borrower, or any Guarantor if applicable, to observe any covenant, term or condition or provision contained in this Agreement, the Security or any other agreement delivered to the Bank or in any documentation relating hereto or thereto;
- c) the Borrower, or any Guarantor if applicable, is unable to pay its debts as such debts become due, or is, or is adjudged or declared to be, or admits to being, bankrupt or insolvent;
- d) if any proceeding is taken to effect a compromise or arrangement with the creditors of the Borrower, or any Guarantor if applicable, or to have the Borrower, or any Guarantor if applicable, declared bankrupt or wound up, or to have a receiver appointed for any part of the assets or operations of the Borrower, or any Guarantor if applicable, or if any encumbrancer takes possession of any part thereof;
- e) if in the opinion of the Bank there is a material adverse change in the financial condition, ownership structure or composition or operation of the Borrower, or any Guarantor if applicable;
- f) if any representation or warranty made by the Borrower in any document relating hereto or under any Security shall be false in any material respect; or
- g) if the Borrower, or any Guarantor if applicable, defaults in the payment of any other indebtedness, whether owing to the Bank or to any other Person, or defaults in the performance or observance of any agreement in respect of such indebtedness where, as a result of such default, the maturity of such indebtedness is or may be accelerated.

**LETTERS OF CREDIT AND/OR LETTERS OF GUARANTEE**

Borrowings made by way of LCs and/or LGs will be subject to the following terms and conditions:

- a) each LC and/or LG shall expire on a Business Day and shall have a term of not more than 365 days;
- b) at least 2 Business Days prior to the issue of an LC and/or LG, the Borrower shall execute a duly authorized application with respect to such LC and/or LG and each LC and/or LG shall be governed by the terms and conditions of the relevant application for such contract. If there is any inconsistency at any time between the terms of this Agreement and the terms of the application for LC and/or LG, the terms of the application for the LC and/or LG shall govern; and
- c) an LC and/or LG may not be revoked prior to its expiry date unless the consent of the beneficiary of the LC and/or LG has been obtained.
- d) LC and/or LG fees and drawings will be charged to the Borrower's accounts.

**FEF CONTRACTS**

Bank makes no formal commitment herein to enter into any FEF Contract and the Bank may, at any time and at all times, in its sole and absolute discretion, accept or reject any request by the Borrower to enter into a FEF Contract. Should the Bank make FEF Contracts available to the Borrower, the Borrower agrees, with the Bank as follows:

- a) the Borrower shall promptly issue or countersign and return a confirmation or acknowledgement of the terms of each such FEF Contract as required by the Bank;
- b) the Borrower shall, if required by the Bank, promptly enter into a Foreign Exchange and Options Master Agreement or such other agreement in form and substance satisfactory to the Bank to govern the FEF Contract(s);
- c) in the event of demand for payment under the Agreement, the Bank may terminate all or any FEF Contracts. If the agreement governing any FEF Contract does not contain provisions governing termination, any such termination shall be effected in accordance with customary market practice. The Bank's determination of amounts owing under any terminated FEF Contract shall be conclusive in the absence of manifest error. The Bank shall apply any amount owing by the Bank to the Borrower on termination of any FEF Contract against the Borrower's obligations to the Bank under the Agreement and any amount owing to the Bank by the Borrower on such termination shall be added to the Borrower's obligations to the Bank under the Agreement and secured by the Security;

- d) the Borrower shall pay all required fees in connection with any FEF Contracts and indemnify and hold the Bank harmless against any loss, cost or expense incurred by the Bank in relation to any FEF Contract;
- e) any rights of the Bank herein in respect of any FEF Contract are in addition to and not in limitation of or substitution for any rights of the Bank under any agreement governing such FEF Contract. In the event that there is any inconsistency at any time between the terms hereof and any agreement governing such FEF Contract, the terms of such agreement shall prevail;
- f) in addition to any security which may be held at any time in respect of any FEF Contract, upon request by the Bank from time to time, the Borrower will deliver to the Bank such security as is acceptable to the Bank as continuing collateral security for the Borrower's obligations to the Bank in respect of FEF Contracts; and
- g) the Borrower will enter each FEF Contract as principal, and only for purposes of hedging currency risk arising in the ordinary course of the Borrower's business and not for purposes of speculation. The Borrower understands and hereby acknowledges the risks associated with each FEF Contract.

#### EXCHANGE RATE FLUCTUATIONS

If, for any reason, the amount of Borrowings and/or Leases if applicable, outstanding under any facility in a currency other than Canadian currency, when converted to the Equivalent Amount in Canadian currency, exceeds the amount available under such facility, the Borrower shall immediately repay such excess or shall secure such excess to the satisfaction of the Bank.

#### LANGUAGE

The parties hereto have expressly requested that this Agreement and all related documents, including notices, be drawn up in the English language. Les parties ont expressément demandé que la présente convention et tous les documents y afférents, y compris les avis, soient rédigés en langue anglaise.

#### WHOLE AGREEMENT

This Agreement and any documents or instruments referred to in, or delivered pursuant to, or in connection with, this Agreement constitute the whole and entire agreement between the Borrower and the Bank with respect to the Credit Facilities.

#### GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province in which the branch of the Bank, which is the Borrower's branch of account, is located, and the laws of Canada applicable therein, as the same may from time to time be in effect. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.

#### NOTICES

Any notice or demand to be given by the Bank shall be given in writing by way of a letter addressed to the Borrower. If the letter is sent by telecopier, it shall be deemed received on the date of transmission, provided such transmission is sent prior to 5:00 p.m. on a day on which the Borrower's business is open for normal business, and otherwise on the next such day. If the letter is sent by ordinary mail to the address of the Borrower, it shall be deemed received on the date falling five (5) days following the date of the letter, unless the letter is hand-delivered to the Borrower, in which case the letter shall be deemed to be received on the date of delivery. The Borrower must advise the Bank at once about any changes in the Borrower's address.

#### COUNTERPART EXECUTION

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

#### ELECTRONIC MAIL AND FAX TRANSMISSION

The Bank is entitled to rely on any agreement, document or instrument provided to the Bank by the Borrower or any Guarantor as applicable, by way of electronic mail or fax transmission as though it were an original document. The Bank is further entitled to assume that any communication from the Borrower received by electronic mail or fax transmission is a reliable communication from the Borrower.

#### ELECTRONIC IMAGING

The parties hereto agree that, at any time, the Bank may convert paper records of this Agreement and all other documentation delivered to the Bank (each, a "Paper Record") into electronic images (each, an "Electronic Image") as part of the Bank's normal business practices. The parties agree that each such Electronic Image shall be considered as an authoritative copy of the Paper Record and shall be legally binding on the parties and admissible in any legal, administrative or other proceeding as conclusive evidence of the contents of such document in the same manner as the original Paper Record.

#### CONFIDENTIALITY

This Agreement and all of its terms are confidential ("**Confidential Information**"). The Borrower shall keep the Confidential Information confidential and will not disclose the Confidential Information, or any part thereof, to any Person. Without limiting the generality of the foregoing, the Borrower shall not issue any press release or make any other public announcement or filing with respect to the Confidential Information without the Bank's prior written consent.

#### DEFINITIONS

For the purpose of this Agreement, if applicable, the following terms and phrases shall have the following meanings:

"**Applicable Laws**" means, with respect to any Person, property, transaction or event, all present or future applicable laws, statutes, regulations, rules, policies, guidelines, rulings, interpretations, directives (whether or not having the force of law), orders, codes, treaties, conventions, judgements, awards, determinations and decrees of any governmental, quasi-governmental, regulatory, fiscal or monetary body or agency or court of competent jurisdiction in any applicable jurisdiction;

"**Borrowing**" means each use of a Credit Facility, excluding Leases, and all such usages outstanding at any time are "Borrowings";

"**Business Day**" means a day, excluding Saturday, Sunday and any other day which shall be a legal holiday in Canada or any Province thereof, or a day on which banking institutions are closed throughout Canada;

"**Business Loan Insurance Plan**" means the optional group creditor insurance coverage, underwritten by Sun Life Assurance Company of Canada, and offered in connection with eligible loan products offered by the Bank;



**"Capital Expenditures"** means, for any fiscal period, any amounts accrued or paid in respect of any purchase or other acquisition for value of capital assets and, for greater certainty, excludes amounts expended in respect of the normal repair and maintenance of capital assets utilized in the ordinary course of business;

**"Contaminant"** includes, without limitation, any pollutant, dangerous substance, liquid waste, industrial waste, hazardous material, hazardous substance or contaminant including any of the foregoing as defined in any Environmental and Health and Safety Law;

**"Corporate Distributions"** means any payments to any shareholder, director or officer, or to any associate or holder of subordinated debt, or to any shareholder, director or officer of any associate or holder of subordinated debt, including, without limitation, bonuses, dividends, interest, salaries or repayment of debt or making of loans to any such Person, but excluding salaries to officers or other employees in the ordinary course of business;

**"Current Assets"** means, at any time, those assets ordinarily realizable within one year from the date of determination or within the normal operating cycle, where such cycle is longer than a year;

**"Current Liabilities"** means, at any time, amounts payable within one year from the date of determination or within the normal operating cycle, where such cycle is longer than a year (the operating cycle must correspond with that used for current assets);

**"Current Ratio"** means the ratio of Current Assets to Current Liabilities;

**"Debt Service Coverage"** means, for any fiscal period, the ratio of EBITDA to the total of Interest Expense and scheduled principal payments in respect of Funded Debt;

**"EBITDA"** means, for any fiscal period, net income from continuing operations (excluding extraordinary gains or losses) plus, to the extent deducted in determining net income, Interest Expense and income taxes accrued during, and depreciation, depletion and amortization expenses deducted for, the period;

**"Environmental Activity"** means any activity, event or circumstance in respect of a Contaminant, including, without limitation, its storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation, or its Release into the natural environment, including movement through or in the air, soil, surface water or groundwater;

**"Environmental and Health and Safety Laws"** means all Applicable Laws relating to the environment or occupational health and safety, or any Environmental Activity;

**"Equivalent Amount"** means, with respect to an amount of any currency, the amount of any other currency required to purchase that amount of the first mentioned currency through the Bank in Toronto, in accordance with normal banking procedures;

**"Equity"** means the total of share capital (excluding preferred shares redeemable within one year) contributed surplus and retained earnings plus Postponed Debt;

**"Financial Assistance"** means any form of direct or indirect financial assistance of any other Person by means of a loan, guarantee or otherwise or any obligations (contingent or otherwise) intended to enable another Person to incur or pay any debt or comply with any agreements related thereto or to otherwise assure or protect creditors of another Person against loss in respect of debt or any other obligations of such other Person;

**"Fixed Charge Coverage"** means, for any fiscal period, the ratio of EBITDA plus payments under operating leases less cash income taxes, Corporate Distributions and Unfunded Capital Expenditures to Fixed Charges;

**"Fixed Charges"** means, for any fiscal period, the total of Interest Expense, scheduled principal payments in respect of Funded Debt and payments under operating leases;

**"Foreign Exchange Forward Contract" or "FEF Contract"** means a currency exchange transaction or agreement or any option with respect to any such transaction now existing or hereafter entered into between the Borrower and the Bank.

**"Funded Debt"** means, at any time for the fiscal period then ended, all obligations for borrowed money which bears interest or to which interest is imputed plus, without duplication, all obligations for the deferred payment of the purchase of property, all capital lease obligations and all indebtedness secured by purchase money security interests, but excluding Postponed Debt;

**"Guarantor"** means any Person who has guaranteed the obligations of the Borrower under this Agreement;

**"Lease"** means an advance of credit by the Bank to the Borrower by way of a Master Lease Agreement, Master Leasing Agreement, Leasing Schedule, Equipment Lease, Conditional Sales Contract, or pursuant to an Interim Funding Agreement or an Agency Agreement, in each case issued to the Borrower;

**"Interest Expense"** means, for any fiscal period, the aggregate cost of advances of credit outstanding during that period including, without limitation, interest charges, capitalized interest, the interest component of capital leases, fees payable in respect of letters of credit and letters of guarantee and discounts incurred and fees payable in respect of bankers' acceptances.

**"Investment"** means the acquisition (whether for cash, property, services, securities or otherwise) of shares, bonds, notes, debentures, partnership or other property interests or other securities of any other Person or any agreement to make any such acquisition;

**"Letter of Credit" or "LC"** means a documentary credit issued by the Bank on behalf of the Borrower for the purpose of paying suppliers of goods;

**"Letter of Guarantee" or "LG"** means a documentary credit issued by the Bank on behalf of the Borrower for the purpose of providing security to a third party that the Borrower or a person designated by the Borrower will perform a contractual obligation owed to such third party;

**"Margin"** or **"Margined"** means that the availability of Borrowings under the credit facilities will be based on the Borrower's level of accounts receivable, inventory and Potential Prior Ranking Claims as determined by reference to regular reports provided to the Bank by the Borrower;

**"Overdraft"** means advances of credit by way of debit balances in the Borrower's current account;

**"Permitted Encumbrances"** means, in respect of the Borrower:

- a) liens arising by operation of law for amounts not yet due or delinquent, minor encumbrances on real property such as easements and rights of way which do not materially detract from the value of such property, and security given to municipalities and similar public authorities when required by such authorities in connection with the operations of the Borrower in the ordinary course of business; and
- b) Security granted in favour of the Bank;

**"Person"** includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof including Canada Revenue Agency, and any other incorporated or unincorporated entity;

**"Policy"** means the Business Loan Insurance Plan policy 5100, issued by Sun Life Assurance Company of Canada to the Bank;

**"Postponed Debt"** means indebtedness that is fully postponed and subordinated, both as to principal and interest, on terms satisfactory to the Bank, to the obligations owing to the Bank hereunder;

**"Potential Prior-Ranking Claims"** means all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim by the Bank for repayment of any amounts owing under this Agreement;

**"RBP"** and **"Royal Bank Prime"** each means the annual rate of interest announced by the Bank from time to time as being a reference rate then in effect for determining interest rates on commercial loans made in Canadian currency in Canada;

**"RBUSBR"** and **"Royal Bank US Base Rate"** each means the annual rate of interest announced by the Bank from time to time as a reference rate then in effect for determining interest rates on commercial loans made in US currency in Canada;

**"Release"** includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place and exhaust, and when used as a noun has a similar meaning;

**"Tangible Net Worth"** means the total of Equity less intangibles, deferred charges, leasehold improvements, deferred tax credits and unsecured advances to related parties. For the purpose hereof, intangibles are assets lacking physical substance;

**"Total Liabilities"** means all liabilities exclusive of deferred tax liabilities and Postponed Debt;

**"Unfunded Capital Expenditures"** means Capital Expenditures not funded by either bank debt or equity proceeds.

**"US"** means United States of America.

# EXHIBIT "E"



Royal Bank of Canada  
Commercial Financial Services  
2<sup>nd</sup> Floor, 2 Bloor Street E  
Toronto, Ontario  
M4W 1A8

December 14, 2021

**Private and Confidential**

**1434399 ONTARIO INC.**  
14 James Street  
St Catharines, Ontario  
L2R 5B8

ROYAL BANK OF CANADA (the "Bank") hereby offers the credit facilities described below (the "Credit Facilities") subject to the terms and conditions set forth below and in the attached Terms & Conditions and Schedules (collectively the "Agreement"). Any and all security that has been delivered to the Bank and is set forth as Security below, shall remain in full force and effect, is expressly reserved by the Bank and, unless expressly indicated otherwise, shall apply in respect of all obligations of the Borrower under the Credit Facilities. This Agreement is in addition to our agreement dated January 24, 2020, as amended, superseded, restated or replaced from time to time. Unless otherwise provided, all dollar amounts are in Canadian currency.

The Bank reserves all of its rights and remedies at any time and from time to time in connection with any or all breaches, defaults or Events of Default now existing or hereafter arising under this Agreement or any other agreement delivered to the Bank, and whether known or unknown, and this Agreement shall not be construed as a waiver of any such breach, default or Event of Default.

**BORROWER:** 1434399 Ontario Inc. (the "Borrower")

**CREDIT FACILITIES**

**Facility #1:** \$100,000.00 non-revolving term facility by way of:

a) Fixed Rate Term Loans ("FRT Loans") Interest rate (per annum): 4.00%

**AVAILABILITY**

This term facility is made possible under Business Development Bank of Canada's ("BDC") Highly Affected Sectors Credit Availability Program ("HASCAP") and is subject to the terms and conditions set forth herein and in Schedule "N" attached hereto. Hereafter, this facility may be referred to as the "BDC HASCAP Facility".

The Borrower may borrow up to the amount of this term facility provided this facility is made available at the sole discretion of the Bank and the Bank may cancel or restrict availability of any unutilized portion of this facility at any time from time to time without notice.

Notwithstanding the foregoing and without limiting the Bank's right to cancel or restrict availability under this facility at any time, if the Borrower does not borrow under this facility on or before March 31, 2022, the Bank may, at its sole discretion, cancel this facility and the Bank will be under no obligation to advance any funds hereunder.

° Registered Trademark of Royal Bank of Canada

**REPAYMENT**

The Borrower shall pay interest payments commencing one month from drawdown and thereafter on the same day of the month for the next eleven months. The Borrower shall thereafter repay Borrowings under this facility as follows:

Payment Amount:	\$925.93	Payment Frequency:	Monthly
Payment Type:	Principal Plus Interest	Payment date:	13 months from drawdown
Repayable in full on:	The last day of a 10 year term from drawdown Insert date	Original Amortization (months)	120

The Bank may, at its discretion, adjust payments periodically, if necessary, to ensure payment in full of all Borrowings under this facility within the stated amortization period.

**SECURITY**

Without limiting any other security held by the Bank with respect to any credit facility provided by the Bank to the Borrower from time to time, Security for the Borrowings (collectively, the "Security"), shall include:

- a) BDC's Eligible Borrower's Representations and Warranties on the Bank's and BDC's standard form held in support of the BDC HASCAP Facility (the "Borrower's Representations and Warranties");
- b) General security agreement on the Bank's form 924 signed by the Borrower constituting a first ranking security interest in all personal property of the Borrower;
- c) Postponement and assignment of claim on the Bank's form 918 signed by John R. Fulton.

If any guarantee and postponement of claim or suretyship and subordination of claims described above is a joint and several guarantee among one or more individual Persons and other non-individual Person(s), then, as set out in the Joint and Several paragraph in the Terms and Conditions below, the liability of each such non-individual Person for any BDC HASCAP Facility is joint and several (in Quebec, solidarity) with each other such non-individual Person party to such guarantee (if any). For purposes of greater certainty, an individual Person shall not be liable as Guarantor for obligations owing under any BDC HASCAP Facility.

**REPORTING REQUIREMENTS**

The Borrower will provide the following to the Bank:

- a) such financial and operating statements and reports as and when the Bank may reasonably require.

**CONDITIONS PRECEDENT**

In no event will the Credit Facilities or any part thereof be available unless the Bank has received:

- a) a duly executed copy of this Agreement;
  - b) the Security provided for herein, registered, as required, to the satisfaction of the Bank;
  - c) such financial and other information or documents relating to the Borrower or any Guarantor if applicable as the Bank may reasonably require;
  - d) all terms and conditions of the HASCAP have been fulfilled to the satisfaction of the Bank;
- and

- e) such other authorizations, approvals, opinions and documentation as the Bank may reasonably require.

Additionally:

- f) all documentation to be received by the Bank shall be in form and substance satisfactory to the Bank.

#### **BUSINESS LOAN INSURANCE PLAN**

The Borrower hereby acknowledges that the Bank has offered it group creditor insurance coverage on the Borrowings under the Business Loan Insurance Plan and the Borrower hereby acknowledges that it is the Borrower's responsibility to apply for any new or increased insurance amount for the Borrowings that may be eligible.

If the Borrower decides to apply for insurance on the Borrowings, the application will be made via the Bank's Business Loan Insurance Plan application (form 3460 ENG or 53460 FRE). If the Borrower has existing uninsured Borrowings and decides not to apply for Business Loan Insurance Plan coverage on any new Borrowings, it hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for Business Loan Insurance Plan coverage on all such Borrowings, and that all such Borrowings are not insured under the Policy as at the date of acceptance of this Agreement.

If the Borrower has Business Loan Insurance Plan coverage on previously approved Borrowings, such coverage will be applied automatically to all new Borrowings eligible for Business Loan Insurance Plan coverage that share the same loan account number, up to the approved amount of Business Loan Insurance Plan coverage. This Agreement cannot be used to waive coverage on new Borrowings eligible for Business Loan Insurance Plan coverage if Business Loan Insurance Plan coverage is in effect on the Borrower's existing Borrowings. If the Borrower does not want Business Loan Insurance Plan coverage to apply to any new Borrowings, a different loan account number will need to be set up and all uninsured loans attached to it.

If the Borrower has existing Borrowings to which Business Loan Insurance Plan coverage applies, and any new Borrowings would exceed the approved amount of Business Loan Insurance Plan coverage already in place, the Borrower must apply for additional Business Loan Insurance Plan coverage (if eligible) in order for Business Loan Insurance Plan coverage to apply to any new Borrowings. If the Borrower decides not to apply for additional Business Loan Insurance Plan coverage in respect of any new Borrowings (if eligible), the Borrower hereby acknowledges that the Bank may accept the Borrower's signature below as the Borrower's waiver of the Bank's offer to apply for additional Business Loan Insurance Plan coverage on such new Borrowings and that such new Borrowings are not insured under the Policy as at the date the Borrower executes this Agreement.

If there are any discrepancies between the insurance information in this Agreement and the Business Loan Insurance Plan documents regarding the Borrowings, the Business Loan Insurance Plan documents govern.

Business Loan Insurance Plan premiums (plus applicable taxes), will be taken as a separate payment, directly from the bank account associated with the loan, at the same frequency and schedule as your regular loan payments, where applicable. As premiums are based on the outstanding loan balance and the insured person's age at the time the premiums are due, the cost of Business Loan Insurance Plan coverage may increase during the term of the loan. The premium calculation is set out in the Business Loan Insurance Plan terms and conditions provided to the Borrower at the time the application for Business Loan Insurance Plan coverage was completed. Refer to the terms and conditions (form 3460 ENG or 53460 FRE) for further explanation and disclosure.

#### **GOVERNING LAW JURISDICTION**

Province of Ontario.



**ACCEPTANCE**

This Agreement is open for acceptance until January 13, 2022, after which date it will be null and void, unless extended by the Bank in its sole discretion.

**ROYAL BANK OF CANADA**



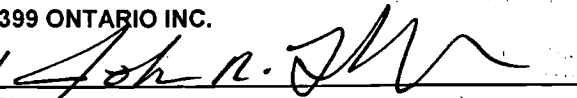
Per: \_\_\_\_\_  
Title: Vice President

**RBC Contact: Elena Marchuk**

/am

We acknowledge and accept the terms and conditions of this Agreement on this 14th day of December, 2021

**1434399 ONTARIO INC.**

Per:   
Name: John Fulton  
Title: President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have the authority to bind the Borrower

**Attachments:**

Terms and Conditions

**Schedules:**

- Definitions
- Calculation and Payment of Interest and Fees
- Additional Borrowing Conditions
- BDC HASCAP Terms and Conditions

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**TERMS AND CONDITIONS**

The Bank is requested by the Borrower to make the Credit Facilities available to the Borrower in the manner and at the rates and times specified in this Agreement. Terms defined elsewhere in this Agreement and not otherwise defined in the Terms and Conditions below or the Schedules attached hereto have the meaning given to such terms as so defined. In consideration of the Bank making the Credit Facilities available, the Borrower agrees, and if the Borrower is comprised of more than one Person, such Persons jointly and severally agree, or in Quebec solidarily agree, with the Bank as follows:

**REPAYMENT**

Amounts outstanding under the Credit Facilities, together with interest, shall become due in the manner and at the rates and times specified in this Agreement and shall be paid in the currency of the Borrowing. Unless the Bank otherwise agrees, any payment hereunder must be made in money which is legal tender at the time of payment. In the case of a demand facility of any kind, the Borrower shall repay all principal sums outstanding under such facility upon demand. Where any Borrowings are repayable by scheduled blended payments, such payments shall be applied, firstly, to interest due, and the balance, if any, shall be applied to principal outstanding. If any such payment is insufficient to pay all interest then due, the unpaid balance of such interest will be added to such Borrowing, will bear interest at the same rate, and will be payable on demand or on the date specified herein, as the case may be. Borrowings repayable by way of scheduled payments of principal and interest shall be so repaid with any balance of such Borrowings being due and payable as and when specified in this Agreement. The Borrower shall ensure that the maturities of instruments or contracts selected by the Borrower when making Borrowings will be such so as to enable the Borrower to meet its repayment obligations. For any Borrowings that are repayable by scheduled payments, if the scheduled payment date is changed then the Maturity Date of the applicable Borrowings shall automatically be amended accordingly.

In the case of any reducing term loan and/or reducing term facility ("**Reducing Term Loan/Facility**"), provided that nothing contained in this paragraph shall confer any right of renewal or extension upon the Borrower, the Borrower and the Bank agree that, at the Bank's option, the Bank may provide a letter ("**Renewal Letter**") to the Borrower setting out the terms upon which the Bank is prepared to extend the Reducing Term Loan/Facility. In the event that the Bank provides a Renewal Letter to the Borrower and the Reducing Term Loan/Facility is not repaid on or before the Maturity Date of the applicable Reducing Term Loan/Facility, then at the Bank's option the Reducing Term Loan/Facility shall be automatically renewed on the terms set out in the Renewal Letter and the terms of this Agreement shall be amended accordingly.

**PREPAYMENT**

The Borrower may prepay Borrowings under the BDC HASCAP Facility by way of FRT Loans prior to the Maturity Date, in whole or in part, subject to the following conditions: (i) the Bank provides its prior written consent to such prepayment, (ii) the Borrower agrees to pay the Prepayment Fee as defined below, (iii) in the case of a partial prepayment, an amendment is made to the terms of this Agreement to reflect such prepayment, and (iv) such other conditions as the Bank may reasonably impose.

The Prepayment Fee will be calculated by the Bank as the greater of:

- (i) the amount equal to 3 months' interest payable on the amount of the FRT Loan Borrowings being prepaid, calculated at the interest rate applicable to the FRT Loan Borrowings on the date of prepayment; and
- (ii) the present value of the cash flow associated with the difference between the Bank's original cost of funds for the FRT Loan and the current cost of funds for a loan with a term substantially similar to the remaining term of the FRT Loan and an amortization period substantially similar to the remaining amortization period of the FRT Loan, each as determined by the Bank on the date of such prepayment;



December 14, 2021

1434399 Ontario Inc.

The Prepayment Fee shall also be payable by the Borrower in the event that the Bank demands repayment of the outstanding principal of the FRT Loan on the occurrence of an Event of Default. The Borrower's obligation to pay the Prepayment Fee will be in addition to any other amounts then owing by the Borrower to the Bank, will form part of the loan amount and will be secured by the Security described herein.

The prepayment of any Borrowings under a term facility and/or any term loan will be made in the reverse order of maturity.

#### EVIDENCE OF INDEBTEDNESS

The Bank shall maintain accounts and records (the "Accounts") evidencing the Borrowings made available to the Borrower by the Bank under this Agreement. The Bank shall record the principal amount of such Borrowings, the payment of principal and interest on account of the Borrowings, and all other amounts becoming due to the Bank under this Agreement. The Accounts constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Bank pursuant to this Agreement. The Borrower authorizes and directs the Bank to automatically debit, by mechanical, electronic or manual means, any bank account of the Borrower for all amounts payable under this Agreement, including, but not limited to, the repayment of principal and the payment of interest, fees and all charges for the keeping of such bank accounts.

#### GENERAL COVENANTS

Without affecting or limiting the right of the Bank to terminate or demand payment of, or cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, the Borrower covenants and agrees with the Bank that the Borrower:

- a) will pay all sums of money when due under the terms of this Agreement;
- b) will immediately advise the Bank of any event which constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of this Agreement or any Security or an Event of Default;
- c) will file all material tax returns which are or will be required to be filed by it, pay or make provision for payment of all material taxes (including interest and penalties) and Potential Prior-Ranking Claims, which are or will become due and payable and provide adequate reserves for the payment of any tax, the payment of which is being contested;
- d) will give the Bank 30 days prior notice in writing of any intended change in its ownership structure or composition and will not make or facilitate any such changes without the prior written consent of the Bank;
- e) will comply with all Applicable Laws, including, without limitation, all Environmental and Health and Safety Laws;
- f) will immediately advise the Bank of any action requests or violation notices received concerning the Borrower and hold the Bank harmless from and against any losses, costs or expenses which the Bank may suffer or incur for any environment related liabilities existent now or in the future with respect to the Borrower;
- g) will deliver to the Bank such financial and other information as the Bank may reasonably request from time to time, including, but not limited to, the reports and other information set out under Reporting Requirements;
- h) will immediately advise the Bank of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations in accordance with the terms of this Agreement;
- i) will keep its assets fully insured against such perils and in such manner as would be customarily insured by Persons carrying on a similar business or owning similar assets and, in addition, for any buildings located in areas prone to flood and/or earthquake, will insure and keep fully insured such buildings against such perils;
- j) except for Permitted Encumbrances, will not, without the prior written consent of the Bank, grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of its properties, assets or other rights;
- k) will not, without the prior written consent of the Bank, sell, transfer, convey, lease or otherwise dispose of any of its properties or assets other than in the ordinary course of business and on commercially reasonable terms;



- l) will not, without the prior written consent of the Bank, guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations by any other Person, except as may be provided for herein;
- m) will not, without the prior written consent of the Bank, merge, amalgamate, or otherwise enter into any other form of combination with any other Person;
- n) will permit the Bank or its representatives, from time to time, i) to visit and inspect the Borrower's premises, properties and assets and examine and obtain copies of the Borrower's records or other information, ii) to collect information from any entity regarding any Potential Prior-Ranking Claims and iii) to discuss the Borrower's affairs with the auditors, counsel and other professional advisers of the Borrower. The Borrower hereby authorizes and directs any such third party to provide to the Bank or its representatives all such information, records or documentation requested by the Bank; and
- o) will not use the proceeds of any Credit Facility for the benefit or on behalf of any Person other than the Borrower.

### **FEES, COSTS AND EXPENSES**

The Borrower agrees to pay the Bank all fees stipulated in this Agreement and all fees charged by the Bank relating to the documentation or registration of this Agreement and the Security. In addition, the Borrower agrees to pay all fees (including legal fees), costs and expenses incurred by the Bank in connection with the preparation, negotiation, documentation and registration of this Agreement and any Security and the administration, operation, termination, enforcement or protection of its rights in connection with this Agreement and the Security. The Borrower shall indemnify and hold the Bank harmless against any loss, cost or expense incurred by the Bank if any facility under the Credit Facilities is repaid or prepaid other than on its Maturity Date. The determination by the Bank of such loss, cost or expense shall be conclusive and binding for all purposes and shall include, without limitation, any loss incurred by the Bank in liquidating or redeploying deposits acquired to make or maintain any facility.

### **GENERAL INDEMNITY**

The Borrower hereby agrees to indemnify and hold the Bank and its directors, officers, employees and agents harmless from and against any and all claims, suits, actions, demands, debts, damages, costs, losses, obligations, judgements, charges, expenses and liabilities of any nature which are suffered, incurred or sustained by, imposed on or asserted against any such Person as a result of, in connection with or arising out of i) any breach of any term or condition of this Agreement or any Security or any other agreement delivered to the Bank by the Borrower or any Guarantor if applicable, or any Event of Default, ii) the Bank acting upon instructions given or agreements made by electronic transmission of any type, iii) the presence of Contaminants at, on or under or the discharge or likely discharge of Contaminants from, any properties now or previously used by the Borrower or any Guarantor and iv) the breach of or non compliance with any Applicable Law by the Borrower or any Guarantor.

### **AMENDMENTS AND WAIVERS**

Save and except for any waiver or extension of the deadline for acceptance of this Agreement at the Bank's sole discretion, which may be communicated in writing, verbally, or by conduct, no amendment or waiver of any provision of this Agreement will be effective unless it is in writing, signed by the Borrower and the Bank. No failure or delay, on the part of the Bank, in exercising any right or power hereunder or under any Security or any other agreement delivered to the Bank shall operate as a waiver thereof. Each Guarantor, if applicable, agrees that the amendment or waiver of any provision of this Agreement (other than agreements, covenants or representations expressly made by any Guarantor herein, if any) may be made without and does not require the consent or agreement of, or notice to, any Guarantor. Any amendments requested by the Borrower will require review and agreement by the Bank and its counsel. Costs related to this review will be for the Borrower's account.

### **SUCCESSORS AND ASSIGNS**

This Agreement shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. The Borrower shall not be entitled to assign or transfer any rights or obligations hereunder, without the consent in writing of the

Bank. The Bank may assign or transfer all or any part of its rights and obligations under this Agreement to any Person. The Bank may disclose to potential or actual assignees or transferees confidential information regarding the Borrower and any Guarantor if applicable, (including, any such information provided by the Borrower, and any Guarantor if applicable, to the Bank) and shall not be liable for any such disclosure.

**GAAP**

Unless otherwise provided, all accounting terms used in this Agreement shall be interpreted in accordance with Canadian Generally Accepted Accounting Principles, as appropriate, for publicly accountable enterprises, private enterprises, not-for-profit organizations, pension plans and in accordance, as appropriate, with Public Sector Accounting Standards for government organizations in effect from time to time, applied on a consistent basis from period to period. All financial statements and/or reports shall be prepared using one of the above bases of presentation, as appropriate. Except for the transition of accounting standards in Canada, any change in accounting principles or the application of accounting principles is only permitted with the prior written consent of the Bank.

**SEVERABILITY**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement and such invalid provision shall be deemed to be severable.

**GOVERNING LAW**

This Agreement shall be construed in accordance with and governed by the laws of the Province identified in the Governing Law Jurisdiction section of this Agreement and the laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of such Province and acknowledges the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.

**DEFAULT BY LAPSE OF TIME**

The mere lapse of time fixed for performing an obligation shall have the effect of putting the Borrower, or a Guarantor if applicable, in default thereof.

**SET-OFF**

The Bank is authorized (but not obligated), at any time and without notice, to apply any credit balance (whether or not then due) in any account in the name of the Borrower, or to which the Borrower is beneficially entitled (in any currency) at any branch or agency of the Bank in or towards satisfaction of the indebtedness of the Borrower due to the Bank under the Credit Facilities and the other obligations of the Borrower under this Agreement. For that purpose, the Bank is irrevocably authorized to use all or any part of any such credit balance to buy such other currencies as may be necessary to effect such application.

**NOTICES**

Any notice or demand to be given by the Bank shall be given in writing by way of a letter addressed to the Borrower. If the letter is sent by telecopier, it shall be deemed received on the date of transmission, provided such transmission is sent prior to 5:00 p.m. on a day on which the Borrower's business is open for normal business, and otherwise on the next such day. If the letter is sent by ordinary mail to the address of the Borrower, it shall be deemed received on the date falling five (5) days following the date of the letter, unless the letter is hand-delivered to the Borrower, in which case the letter shall be deemed to be received on the date of delivery. The Borrower must advise the Bank at once about any changes in the Borrower's address.

**CONSENT OF DISCLOSURE**

The Borrower hereby grants permission to any Person having information in such Person's possession relating to any Potential Prior-Ranking Claim, to release such information to the Bank (upon its written request), solely for the purpose of assisting the Bank to evaluate the financial condition of the Borrower.

**NON-MERGER**

The provisions of this Agreement shall not merge with any Security provided to the Bank, but shall continue in full force for the benefit of the parties hereto.

**JOINT AND SEVERAL**

Where more than one Person is liable as Borrower or Guarantor if applicable for any obligation under this Agreement, then the liability of each such Person for such obligation is joint and several (in Quebec, solidarily) with each other such Person. Notwithstanding the foregoing, where more than one Person is liable as Guarantor for any BDC HASCAP Facility hereunder, then the liability of each such Person for such obligation is joint and several (in Quebec, solidarily) with each other such Person other than individual Persons. For purposes of greater certainty, an individual Person shall not be liable as Guarantor for obligations owing under any BDC HASCAP Facility.

**COUNTERPART EXECUTION**

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

**ELECTRONIC MAIL AND FAX TRANSMISSION**

The Bank is entitled to rely on any agreement, document or instrument provided to the Bank by the Borrower or any Guarantor as applicable, by way of electronic mail or fax transmission as though it were an original document. The Bank is further entitled to assume that any communication from the Borrower received by electronic mail or fax transmission is a reliable communication from the Borrower.

**ELECTRONIC IMAGING**

The parties hereto agree that, at any time, the Bank may convert paper records of this Agreement and all other documentation delivered to the Bank (each, a "Paper Record") into electronic images (each, an "Electronic Image") as part of the Bank's normal business practices. The parties agree that each such Electronic Image shall be considered as an authoritative copy of the Paper Record and shall be legally binding on the parties and admissible in any legal, administrative or other proceeding as conclusive evidence of the contents of such document in the same manner as the original Paper Record.

**REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Bank that:

- a) if applicable, it is duly constituted, validly existing and duly registered or qualified to carry on business or its operations in all jurisdictions where the nature of its properties, assets, business or operations make such registration or qualification necessary or desirable;
- b) the execution, delivery and performance by it of this Agreement do not violate any Applicable Laws or agreements to which it is subject or by which it is bound, and where applicable, have been duly authorized by all necessary actions and do not violate its constating documents;
- c) no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, a breach of any covenant or other term or condition of this Agreement or any Security or any other agreement delivered to the Bank or an Event of Default;
- d) there is no claim, action, prosecution or other proceeding of any kind pending or threatened against it or any of its assets or properties before any court or administrative agency which relates to any non-compliance with any Environmental and Health and Safety Laws which, if adversely determined, might have a material adverse effect upon its financial condition or operations or its ability to perform its obligations under this Agreement or any Security, and there are no circumstances of which it is aware which might give rise to any such proceeding which it has not fully disclosed to the Bank; and
- e) it has good and marketable title to all of its properties and assets, free and clear of any encumbrances, other than as may be provided for herein.

Representations and warranties are deemed to be repeated as at the time of each Borrowing and/or the entering into each Lease, if applicable, hereunder.

**LANGUAGE**

The parties hereto have expressly requested that this Agreement and all related documents, including notices, be drawn up in the English language. Les parties ont expressément demandé que la présente convention et tous les documents y afférents, y compris les avis, soient rédigés en langue anglaise.

**WHOLE AGREEMENT**

This Agreement and any documents or instruments referred to in, or delivered pursuant to, or in connection with, this Agreement constitute the whole and entire agreement between the Borrower and the Bank with respect to the Credit Facilities.

**EXCHANGE RATE FLUCTUATIONS**

If, for any reason, the amount of Borrowings and/or Leases, if applicable, outstanding under any facility in a currency other than Canadian currency, when converted to the Equivalent Amount in Canadian currency, exceeds the amount available under such facility, the Borrower shall immediately repay such excess or shall secure such excess to the satisfaction of the Bank.

**JUDGEMENT CURRENCY**

If for the purpose of obtaining judgement in any court in any jurisdiction with respect to this Agreement, it is necessary to convert into the currency of such jurisdiction (the "Judgement Currency") any amount due hereunder in any currency other than the Judgement Currency, then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgement is given. For this purpose "rate of exchange" means the rate at which the Bank would, on the relevant date, be prepared to sell a similar amount of such currency in the Toronto foreign exchange market, against the Judgement Currency, in accordance with normal banking procedures.

In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which judgement is given and the date of payment of the amount due, the Borrower will, on the date of payment, pay such additional amounts as may be necessary to ensure that the amount paid on such date is the amount in the Judgement Currency which, when converted at the rate of exchange prevailing on the date of payment, is the amount then due under this Agreement in such other currency together with interest at RBP and expenses (including legal fees on a solicitor and client basis). Any additional amount due from the Borrower under this section will be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under or in respect of this Agreement.

**EVENTS OF DEFAULT**

Without affecting or limiting the right of the Bank to terminate or demand payment of, or to cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, each of the following shall constitute an "Event of Default" which shall entitle the Bank, in its sole discretion, to cancel any Credit Facilities, demand immediate repayment in full of any amounts outstanding under any term facility, together with outstanding accrued interest and any other indebtedness under or with respect to any term facility, and to realize on all or any portion of any Security:

- a) failure of the Borrower to pay any principal, interest or other amount when due pursuant to this Agreement;
- b) failure of the Borrower, or any Guarantor if applicable, to observe any covenant, term or condition contained in this Agreement, the Security, or any other agreement delivered to the Bank or in any documentation relating hereto or thereto (including, without limitation the Borrower's Representations and Warranties);
- c) the Borrower, or any Guarantor if applicable, is unable to pay its debts as such debts become due, or is, or is adjudged or declared to be, or admits to being, bankrupt or insolvent;
- d) if any proceeding is taken to effect a compromise or arrangement with the creditors of the Borrower, or any Guarantor if applicable, or to have the Borrower, or any Guarantor if applicable, declared bankrupt or wound up, or to have a receiver appointed for any part of the assets or operations of the Borrower, or any Guarantor if applicable, or if any encumbrancer takes possession of any part thereof;

- e) if in the opinion of the Bank there is a material adverse change in the financial condition, ownership or operation of the Borrower, or any Guarantor if applicable;
- f) if any representation or warranty made by the Borrower, or any Guarantor if applicable, under this Agreement or in any other document relating hereto (including, without limitation the Borrower's Representations and Warranties) or under any Security shall be false in any material respect; or
- g) if the Borrower, or any Guarantor if applicable, defaults in the payment of any other indebtedness, whether owing to the Bank or to any other Person, or defaults in the performance or observance of any agreement in respect of such indebtedness where, as a result of such default, the maturity of such indebtedness is or may be accelerated.

Should the Bank demand immediate repayment in full of any amounts outstanding under any term facility due to an Event of Default, the Borrower shall immediately repay all principal sums outstanding under such facility and all other obligations in connection with any such term facility.

#### **INCREASED COSTS**

If any change in Applicable Laws or the interpretation thereof after the date hereof (i) imposes or increases taxes on payments due to the Bank hereunder (other than taxes on the overall net income of the Bank), (ii) imposes or increases any reserve or other similar requirement or (iii) imposes or changes any other condition affecting the Credit Facilities, and the result of any of the foregoing results in any additional cost to the Bank of making available, continuing or maintaining any of the Credit Facilities hereunder (or maintaining any obligations to make any such Credit Facilities available hereunder) or results in any reduction in the amount of any sum received or receivable by the Bank in connection with this Agreement or the Credit Facilities made available hereunder, then from time to time, upon written request of the Bank, the Borrower shall promptly pay to the Bank, such additional amount or amounts as will compensate the Bank for any such additional costs incurred or reduction suffered.

#### **CONFIDENTIALITY**

This Agreement and all of its terms are confidential ("**Confidential Information**"). The Borrower shall keep the Confidential Information confidential and will not disclose the Confidential Information, or any part thereof, to any Person other than the Borrower's directors, officers, employees, agents, advisors, contractors, consultants and other representatives of the Borrower who need to know the Confidential Information for the purpose of this Agreement, who shall be informed of the confidential nature of the Confidential Information and who agree or are otherwise bound to treat the Confidential Information consistent with the terms of this Agreement. Without limiting the generality of the foregoing, the Borrower shall not issue any press release or make any other public announcement or filing with respect to the Confidential Information without the Bank's prior written consent.



## Schedule "A"

### DEFINITIONS

For the purpose of this Agreement, if applicable, the following terms and phrases shall have the following meanings:

**"Applicable Laws"** means, with respect to any Person, property, transaction or event, all present or future applicable laws, statutes, regulations, rules, policies, guidelines, rulings, interpretations, directives (whether or not having the force of law), orders, codes, treaties, conventions, judgements, awards, determinations and decrees of any governmental, quasi-governmental, regulatory, fiscal or monetary body or agency or court of competent jurisdiction in any applicable jurisdiction;

**"Borrowing"** means each use of a Credit Facility and all such usages outstanding at any time are **"Borrowings"**;

**"Business Day"** means a day, excluding Saturday, Sunday and any other day which shall be a legal holiday or a day on which banking institutions are closed throughout Canada;

**"Business Loan Insurance Plan"** means the optional group creditor insurance coverage, underwritten by Sun Life Assurance Company of Canada, and offered in connection with eligible loan products offered by the Bank;

**"Contaminant"** includes, without limitation, any pollutant, dangerous substance, liquid waste, industrial waste, hazardous material, hazardous substance or contaminant including any of the foregoing as defined in any Environmental and Health and Safety Law;

**"Environmental Activity"** means any activity, event or circumstance in respect of a Contaminant, including, without limitation, its storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation, or its Release into the natural environment, including movement through or in the air, soil, surface water or groundwater;

**"Environmental and Health and Safety Laws"** means all Applicable Laws relating to the environment or occupational health and safety, or any Environmental Activity;

**"Equivalent Amount"** means, with respect to an amount of any currency, the amount of any other currency required to purchase that amount of the first mentioned currency through the Bank in Toronto, in accordance with normal banking procedures;

**"Guarantor"** means any Person who has guaranteed the obligations of the Borrower under this Agreement;

**"Maturity Date"** means the date on which a facility is due and payable in full;

**"Permitted Encumbrances"** means, in respect of the Borrower:

- a) liens arising by operation of law for amounts not yet due or delinquent, minor encumbrances on real property such as easements and rights of way which do not materially detract from the value of such property, and security given to municipalities and similar public authorities when required by such authorities in connection with the operations of the Borrower in the ordinary course of business; and
- b) Security granted in favour of the Bank;

**"Person"** includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof, and any other incorporated or unincorporated entity;

**"Policy"** means the Business Loan Insurance Plan policy 5100, issued by Sun Life Assurance Company of Canada to the Bank;

**"Potential Prior-Ranking Claims"** means all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim by the Bank for repayment of any amounts owing under this Agreement;

**"RBP"** and **"Royal Bank Prime"** each means the annual rate of interest announced by the Bank from time to time as being a reference rate then in effect for determining interest rates on commercial loans made in Canadian currency in Canada; and

**"Release"** includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place and exhaust, and when used as a noun has a similar meaning.

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**Schedule "B"**

**CALCULATION AND PAYMENT OF INTEREST AND FEES**

**LIMIT ON INTEREST**

The Borrower shall not be obligated to pay any interest, fees or costs under or in connection with this Agreement in excess of what is permitted by Applicable Law. In no event shall the effective interest rate payable by the Borrower under any facility be less than zero.

**OVERDUE PAYMENTS**

Any amount that is not paid when due hereunder shall, unless interest is otherwise payable in respect thereof in accordance with the terms of this Agreement or the instrument or contract governing same, bear interest until paid at the rate of RBP plus 5% per annum or the highest premium indicated for any of the Borrower's facilities when in excess of 5%. Such interest on overdue amounts shall be computed daily, compounded monthly and shall be payable both before and after any or all of default, maturity date, demand and judgement.

**EQUIVALENT YEARLY RATES**

The annual rates of interest or fees to which the rates calculated in accordance with this Agreement are equivalent, are the rates so calculated multiplied by the actual number of days in the calendar year in which such calculation is made and divided by 365.

**TIME AND PLACE OF PAYMENT**

Amounts payable by the Borrower hereunder shall be paid at such place as the Bank may advise from time to time in the applicable currency. Amounts due on a day other than a Business Day shall be deemed to be due on the Business Day next following such day. Interest and fees payable under this Agreement are payable both before and after any or all of default, maturity date, demand and judgement.

**FRT LOANS**

The Borrower shall pay interest on each loan in arrears at the applicable rate on such date as agreed upon between the Bank and the Borrower. Such interest will be calculated monthly and will accrue daily on the basis of the actual number of days elapsed and a year of 365 days.

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**Schedule "D"**

**ADDITIONAL BORROWING CONDITIONS**

**FRT Loans:**

Borrowings made by way of FRT Loans will be subject to the following terms and conditions:

- a) each FRT Loan shall have a minimum term of one year;
- b) each FRT Loan shall be in an amount not less than \$10,000.00; and
- c) each FRT Loan shall have a term as outlined in the applicable repayment section of each corresponding credit facility, provided that the maturity date of any FRT Loan issued under any term facility shall not extend beyond the Maturity Date of the term facility.



## Schedule "N"

### BDC BUSINESS CREDIT AVAILABILITY PROGRAM

#### INTRODUCTION

The BDC HASCAP Facility is being provided to the Borrower under Business Development Bank of Canada's ("BDC") Highly Affected Sectors Credit Availability Program ("HASCAP"). HASCAP is intended to provide additional liquidity support to Canadian businesses that have been highly affected by and are facing economic hardship as a result of the COVID-19 pandemic by having BDC provide a guarantee (the "BDC Guarantee") in favour of the Bank against loan losses, provided the requirements of HASCAP have been met.

The Borrower acknowledges that the BDC Guarantee is subject to the Borrower meeting BDC's HASCAP mandate requirements regarding support for Canadian businesses, as that mandate is expressed from time to time.

#### BDC GUARANTEE FEE

The Borrower acknowledges that 1.00% of the 4.00% per annum interest rate payable under the BDC HASCAP Facility is a non-refundable guarantee fee charged by BDC for coverage under BDC HASCAP. The Borrower hereby authorizes and directs the Bank to collect such guarantee fee and remit it to BDC on the Borrower's behalf.

#### BDC CONDITIONS PRECEDENT

In addition to the conditions set forth in the Conditions Precedent section of this Agreement, the availability of any Borrowing under the BDC HASCAP Facility is conditional upon receipt of the following:

- a) the confirmation number issued by BDC on the Borrower's completion and submission of BDC's online electronic information form;
- b) the Borrower's signed Borrower's Representations and Warranties; and
- c) a signed Waiver from each Guarantor, present and future, if applicable.

The Borrower is required to access and to complete the above-mentioned forms electronically using a link on the BDC website.

In addition to the above conditions, no advance is available to the Borrower hereunder if a default or an event of default has occurred and is continuing under any of the Borrower's other credit facilities with the Bank, except as such default or event or default may be waived by the Bank in writing or otherwise remedied to the satisfaction of the Bank, acting reasonably.

The BDC conditions precedent above and the conditions set forth in the Conditions Precedent section of this Agreement (collectively, the "BDC HASCAP Facility Conditions Precedent") shall be satisfied on or before February 28, 2022 or such other date as the Bank may notify the Borrower in writing. If the BDC HASCAP Facility Conditions Precedent are not satisfied or waived by the Bank (in the Bank's sole discretion) on or before such date, the BDC HASCAP Facility shall automatically be cancelled and shall no longer be available to the Borrower.

#### USE OF BORROWINGS

Borrowings under the BDC HASCAP Facility shall only be used in accordance with the terms and conditions of the Borrower's Representations and Warranties.

**CONSENT AND ACKNOWLEDGEMENT**

The Borrower agrees to the following:

- a) it irrevocably authorizes the Bank and BDC to:
  - i. freely and fully communicate with each other and freely and fully share information, records, files and documentation related to the Borrower, the BDC HASCAP Facility and the BDC Guarantee including, without limitation, with respect to the Borrower's business, property, assets, customers, contracts, purchase orders, creditors, financial state, projections and prospects and the Bank's internal credit review of the Borrower (including, without limitation, risk ratings, key financial ratios, ratings, analysis of the Borrower's financial statements, assessment of technical capability, and relevant history of the Borrower), and
  - ii. retain copies of information or documents relating to any of the foregoing.
- b) it hereby remises, releases and forever discharges the Bank and BDC from all actions, causes of actions, suits, duties, accounts, bonds, covenants, claims and demands whatsoever, which any of the undersigned, may now or hereafter have against either or both of the Bank and BDC for or by reason of or in any way arising out of the release or sharing of information provided for in this consent and acknowledgement.
- c) it acknowledges that BDC has made no commitment to provide the BDC Guarantee and such decision remains in BDC's sole discretion and that the BDC Guarantee must be in form and on terms and conditions satisfactory to the Bank.



# EXHIBIT “F”



## Royal Bank of Canada General Security Agreement

**SRF:**  
839860848

**BRANCH ADDRESS:**  
2 BLOOR STE  
2ND FLR  
TORONTO, ON  
M4W 1A8

**BORROWER:**  
1434399 ONTARIO INC.

### 1. SECURITY INTEREST

a) For value received, the undersigned ("Debtor"), hereby grants to **ROYAL BANK OF CANADA** ("RBC"), a security interest (the "Security Interest") in the undertaking of Debtor and in all of Debtor's present and after acquired personal property including, without limitation, in all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles, Money and Securities and all other Investment Property now owned or hereafter owned or acquired by or on behalf of Debtor (including such as may be returned to or repossessed by Debtor) and in all proceeds and renewals thereof, accretions thereto and substitutions therefore (hereinafter collectively called "Collateral"), and including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of Debtor:

- i) all Inventory of whatever kind and wherever situate;
- ii) all equipment (other than Inventory) of whatever kind and wherever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind;
- iii) all Accounts and book debts and generally all debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by Debtor ("Debts");
- iv) all lists, records and files relating to Debtor's customers, clients and patients;
- v) all deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- vi) all contractual rights and insurance claims;
- vii) all patents, industrial designs, trade-marks, trade secrets and know-how including without limitation environmental technology and biotechnology, confidential information, trade-names, goodwill, copyrights, personality rights, plant breeders' rights, integrated circuit topographies, software and all other forms of intellectual and industrial property, and any registrations and applications for registration of any of the foregoing (collectively "Intellectual Property"); and
- viii) all property described in Schedule "C" or any schedule now or hereafter annexed hereto.

b) The Security Interest granted hereby shall not extend or apply to and Collateral shall not include the last day of the term of any lease or agreement therefor but upon the enforcement of the Security Interest, Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

c) The terms "Goods", "Chattel Paper", "Document of Title", "Instrument", "Intangible", "Security", "Investment Property", "proceeds", "Inventory", "accession", "Money", "Account", "financing statement" and "financing change statement" whenever used herein shall be interpreted pursuant to their respective meanings when used in The Personal Property Security Act of the province referred to in Clause 14(s), as amended from time to time, which Act, including amendments thereto and any Act substituted therefor and amendments thereto is herein referred to as the "P.P.S.A.". Provided always that the term "Goods" when used herein shall not include "consumer goods" of Debtor as that term is defined in the P.P.S.A., the term "Inventory" when used herein shall include livestock and the young thereof after conception and crops that become such within one year of execution of this Security Agreement and the term "Investment Property", if not defined in the P.P.S.A., shall be interpreted according to its meaning in the Personal Property Security Act (Ontario). Any reference herein to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof".

### 2. INDEBTEDNESS SECURED

The Security Interest granted hereby secures payment and performance of any and all obligations, indebtedness and liability of Debtor to RBC (including interest thereon) present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether Debtor be bound alone or with another or others and whether as principal or surety (hereinafter collectively called the "Indebtedness"). If the Security Interest in the Collateral is not sufficient, in the event of default, to satisfy all Indebtedness

of the Debtor, the Debtor acknowledges and agrees that Debtor shall continue to be liable for any Indebtedness remaining outstanding and RBC shall be entitled to pursue full payment thereof.

### 3. REPRESENTATIONS AND WARRANTIES OF DEBTOR

Debtor represents and warrants and so long as this Security Agreement remains in effect shall be deemed to continuously represent and warrant that:

- a) the Collateral is genuine and owned by Debtor free of all security interests, mortgages, liens, claims, charges, licenses, leases, infringements by third parties, encumbrances or other adverse claims or interests (hereinafter collectively called "Encumbrances"), save for the Security Interest and those Encumbrances shown on Schedule "A" or hereafter approved in writing by RBC, prior to their creation or assumption;
- b) all Intellectual Property applications and registrations are valid and in good standing and Debtor is the owner of the applications and registrations;
- c) each Debt, Chattel Paper and Instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by Debtor to RBC from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defence, set off, claim or counterclaim against Debtor which can be asserted against RBC, whether in any proceeding to enforce Collateral or otherwise;
- d) the locations specified in Schedule "B" as to business operations and records are accurate and complete and with respect to Goods (including Inventory) constituting Collateral, the locations specified in Schedule "B" are accurate and complete save for Goods in transit to such locations and Inventory on lease or consignment; and all fixtures or Goods about to become fixtures and all crops and all oil, gas or other minerals to be extracted and all timber to be cut which forms part of the Collateral will be situate at one of such locations; and
- e) the execution, delivery and performance of the obligations under this Security Agreement and the creation of any security interest in or assignment hereunder of Debtor's rights in the Collateral to RBC will not result in a breach of any agreement to which Debtor is a party.

### 4. COVENANTS OF THE DEBTOR

So long as this Security Agreement remains in effect Debtor covenants and agrees:

- a) to defend the Collateral against the claims and demands of all other parties claiming the same or an interest therein; to diligently initiate and prosecute legal action against all infringers of Debtor's rights in Intellectual Property; to take all reasonable action to keep the Collateral free from all Encumbrances, except for the Security Interest, licenses which are compulsory under federal or provincial legislation and those shown on Schedule "A" or hereafter approved in writing by RBC, prior to their creation or assumption, and not to sell, exchange, transfer, assign, lease, license or otherwise dispose of Collateral or any interest therein without the prior written consent of RBC; provided always that, until default, Debtor may, in the ordinary course of Debtor's business, sell or lease Inventory and, subject to Clause 7 hereof, use Money available to Debtor;
- b) to notify RBC promptly of:
  - i) any change in the information contained herein or in the Schedules hereto relating to Debtor, Debtor's business or Collateral,
  - ii) the details of any significant acquisition of Collateral,
  - iii) the details of any claims or litigation affecting Debtor or Collateral,
  - iv) any loss or damage to Collateral,
  - v) any default by any Account Debtor in payment or other performance of its obligations with respect to Collateral, and
  - vi) the return to or repossession by Debtor of Collateral;
- c) to keep Collateral in good order, condition and repair and not to use Collateral in violation of the provisions of this Security Agreement or any other agreement relating to Collateral or any policy insuring Collateral or any applicable statute, law, by-law, rule, regulation or ordinance; to keep all agreements, registrations and applications relating to Intellectual Property and intellectual property used by Debtor in its business in good standing and to renew all agreements and registrations as may be necessary or desirable to protect Intellectual Property, unless otherwise agreed in writing by RBC; to apply to register all existing and future copyrights, trademarks, patents, integrated circuit topographies and industrial designs whenever it is commercially reasonable to do so;
- d) to do, execute, acknowledge and deliver such financing statements, financing change statements and further assignments, transfers, documents, acts, matters and things (including further schedules hereto) as may be reasonably requested by RBC of or with respect to Collateral in order to give effect to these presents and to pay all costs for searches and filings in connection therewith;
- e) to pay all taxes, rates, levies, assessments and other charges of every nature which may be lawfully levied, assessed or imposed against or in respect of Debtor or Collateral as and when the same become due and payable;

f) to insure collateral in such amounts and against such risks as would customarily be insured by a prudent owner of similar Collateral and in such additional amounts and against such additional risks as RBC may from time to time direct, with loss payable to RBC and Debtor, as insureds, as their respective interests may appear, and to pay all premiums therefor and deliver copies of policies and evidence of renewal to RBC on request;

g) to prevent Collateral, save inventory sold or leased as permitted hereby, from being or becoming an accession to other property not covered by this Security Agreement;

h) to carry on and conduct the business of Debtor in a proper and efficient manner and so as to protect and preserve Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for Debtor's business as well as accurate and complete records concerning Collateral, and mark any and all such records and Collateral at RBC's request so as to indicate the Security Interest;

i) to deliver to RBC from time to time promptly upon request:

- i) any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to Collateral,
- ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to Collateral for the purpose of inspecting, auditing or copying the same,
- iii) all financial statements prepared by or for Debtor regarding Debtor's business,
- iv) all policies and certificates of insurance relating to Collateral, and
- v) such information concerning Collateral, the Debtor and Debtor's business and affairs as RBC may reasonably request.

## 5. USE AND VERIFICATION OF COLLATERAL

Subject to compliance with Debtor's covenants contained herein and Clause 7 hereof, Debtor may, until default, possess, operate, collect, use and enjoy and deal with Collateral in the ordinary course of Debtor's business in any manner not inconsistent with the provisions hereof, provided always that RBC shall have the right at any time and from time to time to verify the existence and state of the Collateral in any manner RBC may consider appropriate and Debtor agrees to furnish all assistance and information and to perform all such acts as RBC may reasonably request in connection therewith and for such purpose to grant to RBC or its agents access to all places where Collateral may be located and to all premises occupied by Debtor.

## 6. SECURITIES, INVESTMENT PROPERTY

If Collateral at any time includes Securities, Debtor authorizes RBC to transfer the same or any part thereof into its own name or that of its nominee(s) so that RBC or its nominee(s) may appear of record as the sole owner thereof; provided that, until default, RBC shall deliver promptly to Debtor all notices or other communications received by it or its nominee(s) as such registered owner and, upon demand and receipt of payment of any necessary expenses thereof, shall issue to Debtor or its order a proxy to vote and take all action with respect to such Securities. After default, Debtor waives all rights to receive any notices or communications received by RBC or its nominee(s) as such registered owner and agrees that no proxy issued by RBC to Debtor or its order as aforesaid shall thereafter be effective.

Where any Investment Property is held in or credited to an account that has been established with a securities intermediary, RBC may, at any time after default, give a notice of exclusive control to any such securities intermediary with respect to such Investment Property.

## 7. COLLECTION OF DEBTS

Before or after default under this Security Agreement, RBC may notify all or any Account Debtors of the Security Interest and may also direct such Account Debtors to make all payments on Collateral to RBC. Debtor acknowledges that any payments on or other proceeds of Collateral received by Debtor from Account Debtors, whether before or after notification of this Security Interest to Account Debtors and whether before or after default under this Security Agreement, shall be received and held by Debtor in trust for RBC and shall be turned over to RBC upon request.

## 8. INCOME FROM AND INTEREST ON COLLATERAL

a) Until default, Debtor reserves the right to receive any Money constituting income from or interest on Collateral and if RBC receives any such Money prior to default, RBC shall either credit the same against the Indebtedness or pay the same promptly to Debtor.

b) After default, Debtor will not request or receive any Money constituting income from or interest on Collateral and if Debtor receives any such Money without any request by it, Debtor will pay the same promptly to RBC.

## 9. INCREASES, PROFITS, PAYMENTS OR DISTRIBUTIONS

a) Whether or not default has occurred, Debtor authorizes RBC:

- i) to receive any increase in or profits on Collateral (other than Money) and to hold the same as part of Collateral. Money so received shall be treated as income for the purposes of Clause 8 hereof and dealt with accordingly;



- ii) to receive any payment or distribution upon redemption or retirement or upon dissolution and liquidation of the issuer of Collateral; to surrender such Collateral in exchange therefor and to hold any such payment or distribution as part of Collateral.

b) If Debtor receives any such increase or profits (other than Money) or payments or distributions, Debtor will deliver the same promptly to RBC to be held by RBC as herein provided

## 10. DISPOSITION OF MONEY

Subject to any applicable requirements of the P.P.S.A., all Money collected or received by RBC pursuant to or in exercise of any right it possesses with respect to Collateral shall be applied on account of Indebtedness in such manner as RBC deems best or, at the option of RBC, may be held unappropriated in a collateral account or released to Debtor, all without prejudice to the liability of Debtor or the rights of RBC hereunder, and any surplus shall be accounted for as required by law.

## 11. EVENTS OF DEFAULT

The happening of any of the following events or conditions shall constitute default hereunder which is herein referred to as "default":

- a) the nonpayment when due, whether by acceleration or otherwise, of any principal or interest forming part of Indebtedness or the failure of Debtor to observe or perform any obligation, covenant, term, provision or condition contained in this Security Agreement or any other agreement between Debtor and RBC;
- b) the death of or a declaration of incompetency by a court of competent jurisdiction with respect to Debtor, if an individual;
- c) the bankruptcy or insolvency of Debtor; the filing against Debtor of a petition in bankruptcy; the making of an assignment for the benefit of creditors by Debtor; the appointment of a receiver or trustee for Debtor or for any assets of Debtor or the institution by or against Debtor of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;
- d) the institution by or against Debtor of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of Debtor;
- e) if any Encumbrance affecting Collateral becomes enforceable against Collateral;
- f) if Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets without complying with applicable law or commits or threatens to commit an act of bankruptcy;
- g) if any execution, sequestration, extent or other process of any court becomes enforceable against Debtor or if distress or analogous process is levied upon the assets of Debtor or any part thereof;
- h) if any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished by or on behalf of Debtor pursuant to or in connection with this Security Agreement, or otherwise (including, without limitation, the representations and warranties contained herein) or as an inducement to RBC to extend any credit to or to enter into this or any other agreement with Debtor, proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or proves to have omitted any substantial contingent or unliquidated liability or claim against Debtor; or if upon the date of execution of this Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty or audit report, which change shall not have been disclosed to RBC at or prior to the time of such execution.

## 12. ACCELERATION

RBC, in its sole discretion, may declare all or any part of Indebtedness which is not by its terms payable on demand to be immediately due and payable, without demand or notice of any kind, in the event of default, or if RBC considers itself insecure or that the Collateral is in jeopardy. The provisions of this clause are not intended in any way to affect any rights of RBC with respect to any Indebtedness which may now or hereafter be payable on demand.

## 13. REMEDIES

- a) Upon default, RBC may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of RBC or not, to be a receiver or receivers (hereinafter called a "Receiver", which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his/her stead. Any such Receiver shall, so far as concerns responsibility for his/her acts, be deemed the agent of Debtor and not RBC, and RBC shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver, his/her servants, agents or employees. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of Collateral, to preserve Collateral or its value, to carry on or concur in carrying on all or any part of the business of Debtor and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including Debtor, enter upon, use and occupy all premises owned or occupied by Debtor wherein Collateral may be situate, maintain Collateral upon such premises, borrow money on a secured or unsecured basis and use Collateral directly in carrying on Debtor's business or as security for loans or advances to enable the Receiver to carry on Debtor's business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by RBC, all Money received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to RBC. Every

such Receiver may, in the discretion of RBC, be vested with all or any of the rights and powers of RBC.

b) Upon default, RBC may, either directly or through its agents or nominees, exercise any or all of the powers and rights given to a Receiver by virtue of the foregoing sub-clause (a).

c) RBC may take possession of, collect, demand, sue on, enforce, recover and receive Collateral and give valid and binding receipts and discharges therefor and in respect thereof and, upon default, RBC may sell, license, lease or otherwise dispose of Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as to RBC may seem reasonable.

d) In addition to those rights granted herein and in any other agreement now or hereafter in effect between Debtor and RBC and in addition to any other rights RBC may have at law or in equity, RBC shall have, both before and after default, all rights and remedies of a secured party under the P.P.S.A. Provided always, that RBC shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease, license or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, RBC shall have no obligation to take any steps to preserve rights against prior parties to any Instrument or Chattel Paper whether Collateral or proceeds and whether or not in RBC's possession and shall not be liable or accountable for failure to do so.

e) Debtor acknowledges that RBC or any Receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law and Debtor agrees upon request from RBC or any such Receiver to assemble and deliver possession of Collateral at such place or places as directed.

f) Debtor agrees to be liable for and to pay all costs, charges and expenses reasonably incurred by RBC or any Receiver appointed by it, whether directly or for services rendered (including reasonable solicitors and auditors costs and other legal expenses and Receiver remuneration), in operating Debtor's accounts, in preparing or enforcing this Security Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting Indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by RBC or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of Collateral and shall be secured hereby.

g) RBC will give Debtor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as may be required by the P.P.S.A.

h) Upon default and receiving written demand from RBC, Debtor shall take such further action as may be necessary to evidence and effect an assignment or licensing of Intellectual Property to whomever RBC directs, including to RBC. Debtor appoints any officer or director or branch manager of RBC upon default to be its attorney in accordance with applicable legislation with full power of substitution and to do on Debtor's behalf anything that is required to assign, license or transfer, and to record any assignment, licence or transfer of the Collateral. This power of attorney, which is coupled with an interest, is irrevocable until the release or discharge of the Security Interest.

#### 14. MISCELLANEOUS

a) Debtor hereby authorizes RBC to file such financing statements, financing change statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying Collateral or any permitted Encumbrances affecting Collateral or identifying the locations at which Debtor's business is carried on and Collateral and records relating thereto are situate) as RBC may deem appropriate to perfect on an ongoing basis and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest and Debtor hereby irrevocably constitutes and appoints the Manager or Acting Manager from time to time of the herein mentioned branch of RBC the true and lawful attorney of Debtor, with full power of substitution, to do any of the foregoing in the name of Debtor whenever and wherever it may be deemed necessary or expedient.

b) Without limiting any other right of RBC, whenever Indebtedness is immediately due and payable or RBC has the right to declare Indebtedness to be immediately due and payable (whether or not it has so declared), RBC may, in its sole discretion, set off against Indebtedness any and all amounts then owed to Debtor by RBC in any capacity, whether or not due, and RBC shall be deemed to have exercised such right to set off immediately at the time of making its decision to do so even though any charge therefor is made or entered on RBC's records subsequent thereto.

c) Upon Debtor's failure to perform any of its duties hereunder, RBC may, but shall not be obligated to perform any or all of such duties, and Debtor shall pay to RBC, forthwith upon written demand therefor, an amount equal to the expense incurred by RBC in so doing plus interest thereon from the date such expense is incurred until it is paid at the rate of 15% per annum.

d) RBC may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with Debtor, debtors of Debtor, sureties and others and with Collateral and other security as RBC may see fit without prejudice to the liability of Debtor or RBC's right to hold and realize the Security Interest. Furthermore, RBC may demand, collect and sue on Collateral in either Debtor's or RBC's name, at RBC's option, and may endorse Debtor's name on any and all cheques, commercial paper, and any other Instruments pertaining to or constituting Collateral.

e) No delay or omission by RBC in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, RBC may remedy any default by Debtor hereunder or with respect

to any indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Debtor. All rights and remedies of RBC granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.

- f) Debtor waives protest of any Instrument constituting Collateral at any time held by RBC on which Debtor is in any way liable and, subject to Clause 13(g) hereof, notice of any other action taken by RBC.
- g) This Security Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. In any action brought by an assignee of this Security Agreement and the Security Interest or any part thereof to enforce any rights hereunder, Debtor shall not assert against the assignee any claim or defence which Debtor now has or hereafter may have against RBC. If more than one Debtor executes this Security Agreement the obligations of such Debtors hereunder shall be joint and several.
- h) RBC may provide any financial and other information it has about Debtor, the Security Interest and the Collateral to any one acquiring or who may acquire an interest in the Security Interest or the Collateral from the Bank or any one acting on behalf of the Bank.
- i) Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Security Agreement shall be made except by a written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.
- j) Subject to the requirements of Clauses 13(g) and 14(k) hereof, whenever either party hereto is required or entitled to notify or direct the other or to make a demand or request upon the other, such notice, direction, demand or request shall be in writing and shall be sufficiently given, in the case of RBC, if delivered to it or sent by prepaid registered mail addressed to it at its address herein set forth or as changed pursuant hereto, and, in the case of Debtor, if delivered to it or if sent by prepaid registered mail addressed to it at its last address known to RBC. Either party may notify the other pursuant hereto of any change in such party's principal address to be used for the purposes hereof.
- k) This Security Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by RBC and is intended to be a continuing Security Agreement and shall remain in full force and effect until the Manager or Acting Manager from time to time of the herein mentioned branch of RBC shall actually receive written notice of its discontinuance; and, notwithstanding such notice, shall remain in full force and effect thereafter until all Indebtedness contracted for or created before the receipt of such notice by RBC, and any extensions or renewals thereof (whether made before or after receipt of such notice) together with interest accruing thereon after such notice, shall be paid in full.
- l) The headings used in this Security Agreement are for convenience only and are not to be considered a part of this Security Agreement and do not in any way limit or amplify the terms and provisions of this Security Agreement.
- m) When the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.
- n) In the event any provisions of this Security Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms and provisions of this Security Agreement shall remain in full force and effect.
- o) Nothing herein contained shall in any way obligate RBC to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Indebtedness.
- p) The Security Interest created hereby is intended to attach when this Security Agreement is signed by Debtor and delivered to RBC.
- q) Debtor acknowledges and agrees that in the event it amalgamates with any other company or companies it is the intention of the parties hereto that the term "Debtor" when used herein shall apply to each of the amalgamating companies and to the amalgamated company, such that the Security Interest granted hereby:
- i) shall extend to "Collateral" (as that term is herein defined) owned by each of the amalgamating companies and the amalgamated company at the time of amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated company, and
  - ii) shall secure the "Indebtedness" (as that term is herein defined) of each of the amalgamating companies and the amalgamated company to RBC at the time of amalgamation and any "Indebtedness" of the amalgamated company to RBC thereafter arising. The Security Interest shall attach to "Collateral" owned by each company amalgamating with Debtor, and by the amalgamated company, at the time of the amalgamation, and shall attach to any "Collateral" thereafter owned or acquired by the amalgamated company when such becomes owned or is acquired.
- r) In the event that Debtor is a body corporate, it is hereby agreed that The Limitation of Civil Rights Act of the Province of Saskatchewan, or any provision thereof, shall have no application to this Security Agreement or any agreement or instrument renewing or extending or collateral to this Security Agreement. In the event that Debtor is an agricultural corporation within the meaning of The Saskatchewan Farm Security Act, Debtor agrees with RBC that all of Part IV (other than Section 46) of that Act shall not apply to Debtor.
- s) This Security Agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the

laws of the province in which the herein branch of RBC is located, as those laws may from time to time be in effect, except if such branch of RBC is located in Quebec then, this Security Agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**15. COPY OF AGREEMENT**

- a) Debtor hereby acknowledges receipt of a copy of this Security Agreement.
- b) Debtor waives Debtor's right to receive a copy of any financing statement or financing change statement registered by RBC or of any verification statement with respect to any financing statement or financing change statement registered by RBC. (Applies in all P.P.S.A. Provinces).

**16. Debtor represents and warrants that the following information is accurate:**

**BUSINESS DEBTOR**

NAME OF BUSINESS DEBTOR <b>1434399 ONTARIO INC.</b>			
ADDRESS OF BUSINESS DEBTOR <b>14 JAMES STREET</b>	CITY <b>ST CATHARINES</b>	PROVINCE <b>ON</b>	POSTAL CODE <b>L2R 5B8</b>

IN WITNESS WHEREOF executed this 28th day of January 2020.

1434399 ONTARIO INC.

*John N. Johnston*



\_\_\_\_\_



**SCHEDULE "A"**  
**(ENCUMBRANCES AFFECTING COLLATERAL)**

**SCHEDULE "B"**

**1. Locations of Debtor's Business Operations**

14 JAMES STREET

ST CATHARINES

ON

CA

L2R 5B8

**2. Locations of Records relating to Collateral (if different from 1. above)**

**3. Locations of Collateral (if different from 1. above)**

**SCHEDULE "C"**  
**(DESCRIPTION OF PROPERTY)**

# EXHIBIT "G"





## Royal Bank of Canada Guarantee and Postponement of Claim

**SRF:**  
839860848

**BRANCH ADDRESS:**  
2 BLOOR ST E  
2ND FLR  
TORONTO, ON  
M4W 1A8

**BORROWER:**  
1434399 ONTARIO INC.

**TO: ROYAL BANK OF CANADA**

FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, the undersigned and each of them (if more than one) hereby jointly and severally guarantee(s) payment on demand to Royal Bank of Canada (hereinafter called the "Bank") of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by **1434399 ONTARIO INC.** (hereinafter called the "Customer") to the Bank or remaining unpaid by the Customer to the Bank, heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealings between the Bank and the Customer or by or from any agreement or dealings with any third party by which the Bank may be or become in any manner whatsoever a creditor of the Customer or however otherwise incurred or arising anywhere within or outside the country where this guarantee is executed and whether the Customer be bound alone or with another or others and whether as principal or surety (such debts and liabilities being hereinafter called the "Liabilities"); the liability of the undersigned hereunder being limited to the sum of **\$1,200,000.00 One Million Two Hundred Thousand Dollars** together with interest thereon from the date of demand for payment at a rate equal to the **Prime Interest Rate of the Bank plus 5.000 Five percent per annum** as well after as before default and judgment.

AND THE UNDERSIGNED AND EACH OF THEM (IF MORE THAN ONE) HEREBY JOINTLY AND SEVERALLY AGREE(S) WITH THE BANK AS FOLLOWS:

- (1) The Bank may grant time, renewals, extensions, indulgences, releases and discharges to, take securities (which word as used herein includes securities taken by the Bank from the Customer and others, monies which the Customer has on deposit with the Bank, other assets of the Customer held by the Bank in safekeeping or otherwise, and other guarantees) from and give the same and any or all existing securities up to, abstain from taking securities from, or perfecting securities of, cease or refrain from giving credit or making loans or advances to, or change any term or condition applicable to the Liabilities, including without limitation, the rate of interest or maturity date, if any, or introduce new terms and conditions with regard to the Liabilities, or accept compositions from and otherwise deal with, the Customer and others and with all securities as the Bank may see fit, and may apply all moneys at any time received from the Customer or others or from securities upon such part of the Liabilities as the Bank deems best and change any such application in whole or in part from time to time as the Bank may see fit, the whole without in any way limiting or lessening the liability of the undersigned under this guarantee, and no loss of or in respect of any securities received by the Bank from the Customer or others, whether occasioned by the fault of the Bank or otherwise, shall in any way limit or lessen the liability of the undersigned under this guarantee.
- (2) This guarantee shall be a continuing guarantee and shall cover all the Liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the Bank.
- (3) The Bank shall not be bound to exhaust its recourse against the Customer or others or any securities it may at any time hold before being entitled to payment from the undersigned of the Liabilities. The undersigned renounce(s) to all benefits of discussion and division.
- (4) The undersigned or any of them may, by notice in writing delivered to the Manager of the branch or agency of the Bank receiving this instrument, with effect from and after the date that is 30 days following the date of receipt by the Bank of such notice, determine their or his/her liability under this guarantee in respect of Liabilities thereafter incurred or arising but not in respect of any Liabilities theretofore incurred or arising even though not then matured, provided, however, that notwithstanding receipt of any such notice the Bank may fulfil any requirements of the Customer based on agreements express or implied made prior to the receipt of such notice and any resulting Liabilities shall be covered by this guarantee; and provided further that in the event of the determination of this guarantee as to one or more of the undersigned it shall remain a continuing guarantee as to the other or others of the undersigned.
- (5) All indebtedness and liability, present and future, of the customer to the undersigned or any of them are hereby assigned to the Bank and postponed to the Liabilities, and all moneys received by the undersigned or any of them in respect thereof shall be received in trust for the Bank and forthwith upon receipt shall be paid over to the Bank, the whole without in any way limiting or lessening the liability of the undersigned under the foregoing guarantee; and this assignment and postponement is independent of the said guarantee and shall remain in full effect notwithstanding that the liability of the undersigned or any of them under the said guarantee may be extinct. The term "Liabilities", as previously defined, for purposes of the postponement feature provided by this agreement, and this section in particular, includes any funds advanced or held at the disposal of the Customer under any line(s) of credit.
- (6) This guarantee and agreement shall not be affected by the death or loss or diminution of capacity of the undersigned or any of them or by any change in the name of the Customer or in the membership of the Customer's firm through the death or retirement of

one or more partners or the introduction of one or more other partners or otherwise, or by the acquisition of the Customer's business by a corporation, or by any change whatsoever in the objects, capital structure or constitution of the Customer, or by the Customer's business being amalgamated with a corporation, but shall notwithstanding the happening of any such event continue to apply to all the Liabilities whether theretofore or thereafter incurred or arising and in this instrument the word "Customer" shall include every such firm and corporation.

(7) This guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money for the time being due or remaining unpaid to the Bank, and all dividends, compositions, proceeds of security valued and payments received by the Bank from the Customer or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of the undersigned to claim in reduction of the liability under this guarantee the benefit of any such dividends, compositions, proceeds or payments or any securities held by the Bank or proceeds thereof, and the undersigned shall have no right to be subrogated in any rights of the Bank until the Bank shall have received payment in full of the Liabilities.

(8) All monies, advances, renewals, credits and credit facilities in fact borrowed or obtained from the Bank shall be deemed to form part of the Liabilities, notwithstanding any lack or limitation of status or of power, incapacity or disability of the Customer or of the directors, partners or agents of the Customer, or that the Customer may not be a legal or suable entity, or any irregularity, defect or informality in the borrowing or obtaining of such monies, advances, renewals, credits or credit facilities, or any other reason, similar or not, the whole whether known to the Bank or not. Any sum which may not be recoverable from the undersigned on the footing of a guarantee, whether for the reasons set out in the previous sentence, or for any other reason, similar or not, shall be recoverable from the undersigned and each of them as sole or principal debtor in respect of that sum, and shall be paid to the Bank on demand with interest and accessories.

(9) This guarantee is in addition to and not in substitution for any other guarantee, by whomsoever given, at any time held by the Bank, and any present or future obligation to the Bank incurred or arising otherwise than under a guarantee, of the undersigned or any of them or of any other obligant, whether bound with or apart from the Customer; excepting any guarantee surrendered for cancellation on delivery of this instrument or confirmed in writing by the Bank to be cancelled.

(10) The undersigned and each of them shall be bound by any account settled between the Bank and the Customer, and if no such account has been so settled immediately before demand for payment under this guarantee any account stated by the Bank shall be accepted by the undersigned and each of them as conclusive evidence of the amount which at the date of the account so stated is due by the Customer to the Bank or remains unpaid by the Customer to the Bank.

(11) This guarantee and agreement shall be operative and binding upon every signatory thereof notwithstanding the non-execution thereof by any other proposed signatory or signatories, and possession of this instrument by the Bank shall be conclusive evidence against the undersigned and each of them that this instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any conditions precedent or subsequent had been complied with, unless at the time of receipt of this instrument by the Bank each signatory thereof obtains from the Manager of the branch or agency of the Bank receiving this instrument a letter setting out the terms and conditions under which this instrument was delivered and the conditions, if any, to be observed before it becomes effective.

(12) No suit based on this guarantee shall be instituted until demand for payment has been made, and demand for payment shall be deemed to have been effectually made upon any guarantor if and when an envelope containing such demand, addressed to such guarantor at the address of such guarantor last known to the Bank, is posted, postage prepaid, in the post office, and in the event of the death of any guarantor demand for payment addressed to any of such guarantor's heirs, executors, administrators or legal representatives at the address of the addressee last known to the Bank and posted as aforesaid shall be deemed to have been effectually made upon all of them. Moreover, when demand for payment has been made, the undersigned shall also be liable to the Bank for all legal costs (on a solicitor and own client basis) incurred by or on behalf of the Bank resulting from any action instituted on the basis of this guarantee. All payments hereunder shall be made to the Bank at a branch or agency of the Bank.

(13) This instrument covers all agreements between the parties hereto relative to this guarantee and assignment and postponement, and none of the parties shall be bound by any representation or promise made by any person relative thereto which is not embodied herein.

(14) This guarantee and agreement shall extend to and enure to the benefit of the Bank and its successors and assigns, and every reference herein to the undersigned or to each of them or to any of them, is a reference to and shall be construed as including the undersigned and the heirs, executors, administrators, legal representatives, successors and assigns of the undersigned or of each of them or of any of them, as the case may be, and upon all of whom this guarantee and agreement shall extend and be binding.

(15) Prime Interest Rate is the annual rate of interest announced from time to time by Royal Bank of Canada as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada.

(16) This Guarantee and Postponement of Claim shall be governed by and construed in accordance with the laws of the Province of Ontario ("Jurisdiction"). The undersigned irrevocably submits to the courts of the Jurisdiction in any action or proceeding arising out of or relating to this Guarantee and Postponement of Claim, and irrevocably agrees that all such actions and proceedings may be heard and determined in such courts, and irrevocably waives, to the fullest extent possible, the defense of an inconvenient forum. The undersigned agrees that a judgment or order in any such action or proceeding may be enforced in other jurisdictions in any manner provided by law. Provided, however, that the Bank may serve legal process in any manner permitted by law or may


bring an action or proceeding against the undersigned or the property or assets of the undersigned in the courts of any other jurisdiction:

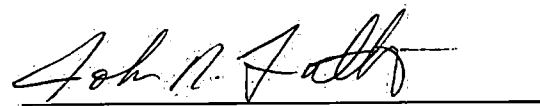
(Applicable in all P.P.S.A Provinces.)

(17) The Undersigned hereby acknowledges receipt of a copy of this agreement.

(18) The Undersigned hereby waives Undersigned's right to receive a copy of any Financing Statement or Financing Change Statement registered by the Bank.

EXECUTED this 28th day of January 2020

  
WITNESS

  
JOHN R FULTON

Insert the full name and address of guarantor (Undersigned above):

<u>Full name and address</u>
JOHN R.FULTON
372 BUFFALO ROAD, FORT ERIE, ON L2A 5G4

# EXHIBIT “H”

**Properties**

*PIN* 46219 - 0114 LT *Interest/Estate* Fee Simple  
*Description* LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES  
*Address* 14 JAMES STREET  
ST. CATHARINES

**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* 1434399 ONTARIO INC.  
*Address for Service* 14 JAMES STREET, ST. CATHARINES,  
ONTARIO L2R 5B8

I, JOHN R. FULTON, President, have the authority to bind the corporation.

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

**Chargee(s)**

*Capacity*

*Share*

*Name* ROYAL BANK OF CANADA  
*Address for Service* 36 YORK MILLS ROAD, 4TH FLOOR, TORONTO, ONTARIO  
M2P 0A4

**Provisions**

*Principal* \$1,200,000.00 *Currency* CDN  
*Calculation Period* MONTHLY  
*Balance Due Date* ON DEMAND  
*Interest Rate* ROYAL BANK PRIME RATE PLUS 5% PER ANNUM  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 20015  
*Insurance Amount* Full insurable value  
*Guarantor*

**Signed By**

John Paul Bannon 501-4080 Confederation Parkway acting for Signed 2020 02 12  
Mississauga Chargor(s)  
L5B 0G1

Tel 905-272-3412

Fax 905-272-0142

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

**Submitted By**

J. PAUL BANNON, BARRISTER & SOLICITOR 501-4080 Confederation Parkway 2020 02 12  
Mississauga  
L5B 0G1

Tel 905-272-3412

Fax 905-272-0142

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$65.05  
*Total Paid* \$65.05

2020-02-12 10:33:00 AM

# EXHIBIT "I"



CHARGE TERMS

LAND REGISTRATION REFORM ACT  
SET OF STANDARD CHARGE TERMS  
FOR ELECTRONIC DOCUMENTS  
(COLLATERAL CHARGES)

ROYAL BANK OF CANADA  
ROYAL TRUST CORPORATION OF CANADA

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CHARGE TERMS

## LAND REGISTRATION REFORM ACT

E FORM 964 (03/2003)

### SET OF STANDARD CHARGE TERMS FOR ELECTRONIC DOCUMENTS (COLLATERAL CHARGES)

ROYAL BANK OF CANADA  
ROYAL TRUST CORPORATION OF CANADA

Filed by:  
ROYAL BANK OF CANADA and  
ROYAL TRUST CORPORATION OF CANADA

Filing Date: June 28, 2001  
Filing Number: 20015

The following set of standard charge terms shall apply to electronic documents submitted for registration under Part III of the *Land Registration Reform Act*, R.S.O. 1990, c.L.4, as amended (the "Land Registration Reform Act") and shall be deemed to be included in every electronically registered charge in which this set of standard charge terms is referred to by its filing number, as provided in Section 9 of the Land Registration Reform Act.

Any charge in an electronic format of which this set of standard charge terms forms a part by reference to the above-noted filing number in such charge shall hereinafter be referred to as the "Charge". Whenever reference is made in this set of standard charge terms to the Charge it shall include this set of standard charge terms and all terms and provisions of this set of standard charge terms.

Any reference to the "Computer Field" in the Charge means a computer data entry field in a charge registered pursuant to Part III of the Land Registration Reform Act into which the terms and conditions of the Charge may be inserted.

#### 1. CHARGE

The chargor or chargors indicated in the Computer Field of the Charge entitled "Chargor" (the "Chargor") charges the lands and premises indicated in the Computer Field of the Charge entitled "Description" (the "Charged Premises") with the payment to the chargee indicated in the Computer Field of the Charge entitled "Chargee" (the "Chargee") of the principal and interest and all other monies secured by the Charge upon the terms as set out in the Charge.

#### 2. COLLATERAL SECURITY

The Chargor has at the request of the Chargee agreed to give the Charge as a continuing collateral security for payment and satisfaction to the Chargee of all obligations, debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, at any time owing by the Chargor to the Chargee incurred or arising either before or after the delivery for registration of the Charge and whether incurred by or arising from agreement or dealings between the Chargor and the Chargee or from any agreement or dealings with any third party by which the Chargee may be or become in any manner whatsoever a creditor of the Chargor or however otherwise incurred or arising anywhere within or outside Canada and whether the Chargor be bound alone or with another or others and whether as principal or surety and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again (such obligations, debts and liabilities being herein called the "Liabilities"). It is agreed by the Chargor and the Chargee that the Charge at any one time will secure only that portion of the aggregate principal component of the Liabilities outstanding at such time which does not exceed the sum set out in the Computer Field in the Charge entitled "Principal" (herein called the "Principal Amount"), together with any interest or compound interest accrued on the portion of the Principal Amount outstanding at such time at the Charge Rate, as hereinafter defined, plus such costs and expenses to which the Chargee is entitled pursuant to the Charge.

#### 3. COVENANTS REGARDING LIABILITIES

The Chargor and the Chargee agree as follows:

(a) That the Chargor covenants to pay to the Chargee each and every amount, indebtedness, liability and obligation forming part of the Liabilities in the manner agreed to in respect of such amount, indebtedness, liability or obligation.

(b) That no part of the Liabilities existing at the date of the Charge or incurred or arising thereafter, shall be deemed to be unsecured by the Charge.

(c) That the Charge is and shall be a continuing collateral security to the Chargee for the amount of the Liabilities and interest and costs as provided in the Charge and shall be deemed to be taken as security for the ultimate balance of the Liabilities; and the Charge shall not, nor shall anything therein contained operate so as to create any merger or discharge of any debt owing to the Chargee or of any lien, bond, promissory note, bill of exchange or other security held by the Chargee either before or after registration of the Charge from the Chargor or from any other person or persons and the Charge shall not in any way prejudicially affect any security held either before or after the registration of the Charge by the Chargee for the Liabilities or any part thereof, or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Chargee for or on account of the Liabilities or any part or parts thereof, nor shall the remedies of the Chargee in respect thereof be prejudiced or delayed in any manner whatsoever by the taking of the Charge.

(d) That any and all payments made in respect of the Liabilities and interest and the monies or other proceeds realized from the sale of any securities held therefor, including the Charge, may be applied and reapplied notwithstanding any previous application on such part or parts of such Liabilities or interest as the Chargee may see fit or may be held unappropriated in a separate collateral account for such time as the Chargee may see fit.

(e) That the Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities and guarantees from and give the same and any and all existing securities and guarantees up to, may abstain from taking securities or guarantees from or from perfecting securities or guarantees of, may accept compositions from and may otherwise deal with the Chargor and all other persons, securities and guarantees as the Chargee may see fit without prejudicing the rights of the Chargee under the Charge.



(f) That the taking of judgement in respect of the Liabilities or any instrument or instruments now or hereafter representing or evidencing the Liabilities or under any of the covenants in the Charge or in any such instrument contained or implied shall not operate as a merger of the Liabilities or such instrument, instruments or covenants, nor affect the Chargee's right to interest at the rate and times provided in the Charge, nor affect nor prejudice any rights or remedies given to the Chargee by the terms of the Charge.

#### 4. INTEREST

##### (a) VARIABLE INTEREST RATE

If the interest rate indicated in the Computer Field of the Charge entitled "Rate" is based upon the Prime Rate, as hereinafter defined, the rate of interest chargeable on the Principal Amount is a rate equal to the Prime Rate per annum as the same will vary from time to time, plus the number of percentage points per annum, if any, indicated in the Computer Field of the Charge entitled "Rate" (the "Variable Interest Rate") and shall be payable monthly, and calculated monthly, not in advance, as well after as before maturity of the Charge, and both before and after default and judgment until paid.

The Variable Interest Rate will vary automatically, without notice to the Chargor, each time there is a change in the Prime Rate. The Variable Interest Rate will always be the Prime Rate plus the number of percentage points per annum, if any, indicated in the Computer Field of the Charge entitled "Rate", payable monthly and calculated monthly, not in advance, as well after as before maturity of the Charge and both before and after default and judgment until paid.

"Prime Rate" means the annual rate of interest announced from time to time by the Chargee being a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada. In the event that it may be necessary at any time for the Chargee to prove the Prime Rate applicable as at any time or times, it is agreed that the certificate in writing of the Chargee setting forth the Prime Rate as at any time or times shall be deemed to be conclusive evidence as to the Prime Rate as set forth in the said certificate.

##### (b) FIXED INTEREST RATE

If the interest rate indicated in the Computer Field of the Charge entitled "Rate" is a specified annual percentage not based on the Prime Rate (the "Fixed Interest Rate"), the rate of interest chargeable on the Principal Amount is that Fixed Interest Rate per annum, payable monthly, and calculated monthly, as well after as before maturity of the Charge, and both before and after default and judgment until paid.

(c) For the purposes of the Charge the Fixed Interest Rate or the Variable Interest Rate, as the case may be, are hereinafter referred to as the "Charge Rate". Whenever reference is made to the Charge Rate it shall mean the rate of interest indicated in the Computer Field of the Charge entitled "Rate", and interest shall be calculated and payable as set out in the Charge.

#### 5. DEFEASANCE

The provisions relating to defeasance contained in subsection 6(2) of the Land Registration Reform Act, shall be and are hereby expressly excluded from the terms of the Charge.

Provided the Charge shall be void upon the Chargor paying on demand to the Chargee the ultimate balance of the Liabilities, such balance not to exceed the Principal Amount, and all promissory notes, bills of exchange and any other instruments whatsoever from time to time representing the Liabilities or any part thereof, together with interest thereon either: a) where the Charge provides for a Variable Interest Rate, at the Variable Interest Rate per annum, calculated and payable monthly as well after as before maturity, default and judgment, with interest on overdue interest at the Charge Rate; or b) where the Charge provides for a Fixed Interest Rate, at the Fixed Interest Rate per annum, calculated and payable monthly as well after as before maturity, default and judgment, with interest on overdue interest at the same rate as on the Principal Amount and all other amounts payable by the Chargor under the Charge and paying any taxes, rates, levies, charges or assessments upon the Charged Premises no matter by whom or what authority imposed and observing and performing all covenants, provisos and conditions contained in the Charge.

#### 6. COMPOUND INTEREST

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

#### 7. TAXES

With respect to municipal taxes, school taxes and local improvement rates (hereinafter referred to as "taxes") chargeable against the Charged Premises, it is mutually agreed between the parties to the Charge that:

(a) The Chargee may deduct from any advance of monies to the Chargor an amount sufficient to pay the taxes which have become or will become due and payable at the date of such advance and are unpaid at the date of such advance.

(b) The Chargor shall pay to the Chargee in monthly instalments on the dates on which instalments of principal and interest are payable under the Charge, sums sufficient to enable the Chargee to pay the whole amount of taxes on or before the due date for payment thereof or, if such amount is payable in instalments, on or before the due date for payment of the first instalment of taxes.

(c) Where the period between the date of the advance and the end of the calendar year is less than one year the Chargor shall pay to the Chargee in equal monthly instalments, during such period and during the next succeeding 12 months period, an amount estimated by the Chargee to be sufficient to pay, on or before the expiration of the said 12 months period, all taxes which shall become due and payable during the said two periods and during the balance of the year in which the said 12 months period expires; and the Chargor shall also pay to the Chargee on demand the amount, if any, by which the actual taxes exceed such estimated amount.

(d) Except as provided in the last preceding clause, the Chargor shall, in each and every month, pay to the Chargee one-twelfth of the amount (as estimated by the Chargee) of the taxes next becoming due and payable; and the Chargor shall also pay to the Chargee on demand the amount, if any, by which the said actual taxes exceed such estimated amount.

(e) The Chargee shall allow the Chargor interest on the average monthly balances standing in the Charge account from time to time to the credit of the Chargor for payment of taxes at a rate per annum, and at such times, as the Chargee may determine in its sole discretion; and the Chargor shall be charged interest at the Charge Rate, on the debit balance, if any, in the Charge account outstanding after payment of taxes by the Chargee, until such debit balance is fully repaid.

(f) The Chargor shall reimburse the Chargee, on demand, for any fees paid or charges incurred by the Chargee to a municipality or other tax authority from time to time in connection with the administration of the tax account, including any fees or charges for the obtaining of information or searches or certificates in respect thereof, or the payment of taxes in any manner and the Chargor authorizes the Chargee to deduct the amount of such fees or charges from the tax account.

The Chargee agrees to apply the foregoing deductions and payments to the taxes chargeable against the Charged Premises so long as the Chargor is not in default under any covenant, proviso or agreement contained in the Charge, but nothing contained in the Charge shall obligate the Chargee to apply such payments on account of taxes more often than yearly. Provided, however, that if, before any sum or sums so paid to the Chargee shall have been so applied, there shall be default by the Chargor in respect of any payment of principal or interest as provided in the Charge, the Chargee may apply such sum or sums in or towards payment of the principal and or interest in default. The Chargor further covenants and agrees to transmit to the Chargee the assessment notices, tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by the Chargor.

Notwithstanding the provisions set out in this section, the Chargee may elect not to require payment of taxes to it in which case the Chargor will pay all taxes as they fall due and will provide the Chargee with receipts confirming payment of same as the Chargee may require.

**8. DEEMED COVENANTS EXCLUDED**

The covenants deemed to be included in a charge by subsection 7(l) of the Land Registration Reform Act, shall be and are hereby expressly excluded from the terms of the Charge.

**9. COVENANTS IN LIEU OF STATUTORY COVENANTS**

The Chargor does hereby covenant, promise and agree to and with the Chargee as follows:

**(a) To Pay and Observe Covenants**

That the Chargor shall pay or cause to be paid to the Chargee, without deduction or abatement, the Principal Amount secured by the Charge with interest at the Charge Rate at the times and in the manner limited for payment thereof in the Charge, and shall do, observe, perform, fulfil and keep all the provisions, covenants, agreements and stipulations particularly set forth in the Charge, and, without limitation, shall pay any taxes, rates, levies, charges or assessments including, without limitation, utility charges, upon the Charged Premises or in respect thereof, no matter by whom or by what authority imposed, which the Chargee has paid or has been rendered liable to pay and shall also pay all other sums as the Chargee may be entitled to under the Charge.

**(b) For Good Title**

That the Chargor, at the time of delivery for registration of the Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible title in fee simple to the Charged Premises free of any trusts, reservations, limitations, provisos or conditions (except those contained in the original grant thereof from the Crown) or any other matter or thing to alter, charge, change, encumber or defeat the same.

**(c) Right to Charge**

That the Chargor has good right, full power and lawful and absolute authority to charge the Charged Premises with their appurtenances unto the Chargee in the manner set out in the Charge.

**(d) Quiet Possession on Default**

That from and after default in the payment of the Principal Amount, or the interest thereon, or any part thereof, or in the doing, observing, performing, fulfilling or keeping of one or more of the provisions, agreements or stipulations contained in the Charge, contrary to the true intent and meaning thereof, then in every such case, it shall be lawful for the Chargee, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the Charged Premises or the lands and premises intended to be charged by the Charge, with their appurtenances, without the let, suit, hindrance, interruption or denial of the Chargor, or any other person or persons whomsoever, free and clear of all arrears of taxes and assessments whatsoever due or payable upon or in respect of the Charged Premises or any part thereof and of and from all former conveyances, mortgages, charges, rights, annuities, debts, executions and recognizance and of any other charges or encumbrances whatsoever.

**(e) Further Assurances**

That from and after default shall happen to be made of or in the payment of the Principal Amount then outstanding, or the interest thereon, or any part of the Principal Amount or interest, as set forth in the Charge or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the Charge contrary to the true intent and meaning thereof, then and in every such case the Chargor, and all and every person or persons whatsoever having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the Charged Premises by, from, under or in trust for the Chargor, shall and will, from time to time, and at all times thereafter, make, do, suffer and execute, deliver, authorize and register or cause or procure to be made, done, suffered, executed, delivered, authorized and registered, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying, charging and assuring the Charged Premises unto the Chargee, as by the Chargee, or its solicitor shall or may be lawfully and reasonably devised, advised, or required.

## (f) Done No Act to Encumber

That the Chargor has not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby the Charged Premises or the premises intended to be charged by the Charge, or any part thereof, are, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate, or otherwise howsoever.

## (g) Insurance

- i) That the Chargor will forthwith insure and during the continuance of the Charge keep insured in favour of the Chargee against loss or damage by fire, lightning, windstorm, hail, earthquake, explosion, impact, vandalism, malicious acts, civil disturbance or riot, smoke, falling objects and other risks, hazards and perils which the Chargee might require to the full extent of their replacement cost in lawful money of Canada, each and every building on the Charged Premises and which may hereafter be erected thereon, both during erection and thereafter, and all fixtures as hereinafter defined or referred to, and all other risks, hazards and perils of any nature or kind which the Chargee might require depending on the nature of the Charged Premises or the use thereof, with a company or companies approved by the Chargee and shall pay all premiums and sums of money necessary for such purpose as the same shall become due; each policy of insurance shall provide that loss, if any, shall be payable to the Chargee as its interest may appear, subject to a standard form of mortgage clause or other mortgage clause approved by the Chargee and the Chargor will forthwith assign, transfer and deliver over unto the Chargee the policy of insurance and receipts thereto appertaining; and if the Chargor shall neglect to keep the said buildings or any of them insured as aforesaid, or to deliver such policies and receipts or to produce to the Chargee at least fifteen days before the termination of any insurance, evidence of renewal thereof, the Chargee shall be entitled, but shall not be obliged, to insure the said buildings or any of them, and if the Chargee shall pay any premiums or sums of money for insurance for the Charged Premises or any part thereof the amount of such payment shall be added to the debt secured by the Charge and shall bear interest at the Charge Rate from the time of such payments and shall be payable at the time appointed for the next ensuing payment of interest on the said debt; and the Chargor shall forthwith on the happening of any loss or damage, furnish at the Chargor's own expense all necessary proofs and do all necessary acts to enable the Chargee to obtain payment of the insurance monies and the production of a printed copy of the Charge shall be sufficient authority for the said insurance company to pay any such loss to the Chargee, and the said insurance company is hereby directed thereupon to pay the same to the Chargee; and any insurance monies received may, at the option of the Chargee, be applied in rebuilding, reinstating or repairing the Charged Premises or be paid to the Chargor or any other person appearing by the registered title to be or to have been the owner of the Charged Premises or be applied or paid partly in one way and partly in another, or it may be applied, in the sole discretion of the Chargee, in whole or in part on account of the amounts secured by the Charge or any part thereof whether due or not then due.

- (ii) If the Charged Premises are part of a Condominium the insurance provisions set out in paragraph (a) above will not apply and the following will apply to the Charge:

That the Chargor or the Condominium Corporation or both of them will forthwith insure and during the continuance of the Charge keep insured in favour of the Chargee against loss or damage by fire, lightning, windstorm, hail, explosion, impact, vandalism, malicious acts, earthquake, civil disturbance or riot, smoke, falling objects and other risks, hazards and perils which the Chargee might require to the full extent of their replacement cost in lawful money of Canada, each and every building on the said land and which may hereafter be erected thereon, both during erection and thereafter and all fixtures as hereinafter defined or referred to and all other risks, hazards and perils of any nature or kind which the Chargee might require depending on the nature of the Charged Premises or the use thereof, with a company or companies approved by the Chargee; and the Chargor will forthwith assign, transfer and deliver unto the Chargee the policy or policies of insurance and receipts thereof appertaining and if the Chargor or Condominium Corporation or both of them shall neglect to keep the said buildings or any of them insured as aforesaid, or to deliver such policies and receipts or produce to the Chargee at least fifteen days before the termination of any insurance, evidence of renewal thereof the Chargee shall be entitled but shall not be obligated to insure the said buildings or any of them; and the Chargor or the Condominium Corporation or both of them shall forthwith on the happening of any loss or damage comply fully with the terms of the policies of insurance and, without limiting the generality of the obligation of the Chargor to observe and perform all the duties and obligations imposed on him by the Condominium Act, R.S.O 1990, c.C.26, as amended or replaced (the "Condominium Act") and by the Declaration and By-laws of the Condominium Corporation as hereinafter provided, shall comply with the insurance provisions of the Declaration; and the Chargor as a member of the Condominium Corporation shall seek the full compliance by the Condominium Corporation of the aforementioned covenants.

## 10. RELEASE

The Chargor has released, remised and forever quitted claim, and by these presents does release, remise, and forever quit claim unto the Chargee, all right, title, interest, claim and demand whatsoever of, in, unto and out of the Charged Premises and every part thereof, so as that the Chargor shall not or may not at any time hereafter have, claim, pretend to, challenge or demand the Charged Premises or any part thereof, in any manner howsoever, subject always to the proviso for defeasance.

**11. ENTRY AFTER DEFAULT AND POWER OF SALE**

Provided that the Chargee on default by the Chargor of payment of the portion of the Principal Amount then outstanding and interest or any part thereof required by the Charge or in the observing, performing, fulfilling or keeping of one or more of the covenants of the Chargor provided in the Charge may enter into possession of the Charged Premises or the lands and premises intended to be charged and take the rents, issues and profits and, whether in or out of possession, make such lease or leases as it shall think fit, and also on fifteen days' default as aforesaid and after giving at least thirty-five days' written notice to the persons and in the manner prescribed by Part III of the Mortgages Act, R.S.O. 1990, c. M.40, as amended (the "Mortgages Act"), may sell the Charged Premises or the lands and premises intended to be charged by the Charge or any part or parts thereof by public auction or private contract, or partly the one and partly the other, and may convey and assure the same when so sold to the purchaser or purchasers thereof as the purchaser shall direct and may do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid, and the Chargee shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid unless the same shall happen by reason of its wilful neglect or default. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable it is agreed that notice may be effectually given by leaving it with a grown-up person on the Charged Premises, if occupied, or by placing it on some portion of the Charged Premises, if unoccupied, or at the option of the Chargee, by mailing it by registered mail addressed to the Chargor at the Chargor's last known address and such notice shall be sufficient although not addressed to any person or persons by name or designation and notwithstanding that any person or persons to be affected thereby may be unknown, unascertained or under disability. It is hereby further agreed that the proceeds of sale under the Charge may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Charged Premises or by reason of non-payment or procuring payment of monies, secured hereby or otherwise, and that the Chargee may sell all or any part of the Charged Premises on such terms as to credit and otherwise as shall appear to it most advantageous and for such price as can reasonably be obtained therefor and may make any stipulation as to title or evidence or commencement of title or otherwise which it may deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the Charged Premises and resell without being answerable for loss occasioned thereby, and, in the case of a sale on credit, the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of said purposes may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease under the Charge; and that the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given in compliance with the Mortgages Act, or had been given improperly, but any person damaged by an unauthorized, improper, or irregular exercise of the power shall have his remedy against the person exercising the power in damages only. The Chargee may sell fixtures, machinery, crops and standing or fall-trees apart from the lands, and the purchaser as well as the Chargee shall have all necessary access for securing, cutting and removal. It is agreed between the parties to the Charge that nothing in this section contained shall prejudice or diminish any other rights and remedies and powers of the Chargee in the Charge contained or existing at law by virtue thereof.

And it is further agreed between the parties to the Charge that until such sale or sales shall be made as aforesaid, the Chargee shall and will stand possessed of the rents and profits of the Charged Premises in case it shall take possession of them on default as aforesaid and after such sale or sales shall stand possessed of the monies to arise and be produced from such sales, or which might arise from any insurance upon the Charged Premises or any part thereof upon trust firstly in payment of all the expenses incident to the sales, leases, conveyances, or attempted sales, leases or conveyances, secondly in payment of all costs, charges, damages and expenses of the Chargee relating to taxes, rents, insurance, repairs, utilities and any other amounts which the Chargee may have paid relating to the Charged Premises,

thirdly in discharge of all interest and costs then due in respect of the Charge, fourthly in discharge of the portion of the Principal Amount then outstanding secured by the Charge, fifthly in payment of any subsequent encumbrancers according to their priorities and the residue shall be paid to the Chargor as the Chargor may direct and shall also, in such event, at the request, cost and expense of the Chargor, transfer, release and assure unto the Chargor or to such person or persons as the Chargor shall direct and appoint, all such parts of the Charged Premises as shall remain unsold for the purposes aforesaid, discharged from all the Charge, but no person who shall be required to make or execute any such assurances shall be compelled for the making thereof to go or travel from his usual place of abode. Provided always, and it is hereby further declared and agreed by and between the parties to the Charge, that notwithstanding the power of sale and the other powers and provisions contained in the Charge, the Chargee shall have and be entitled to its right of foreclosure of the fee interest or equity of redemption of the Chargor in the Charged Premises as fully and effectually as it might have exercised and enjoyed the same in case the power of sale, and the other former provisos and trusts incident thereto had not been contained in the Charge.

**12. DISTRESS**

Provided that and it is further stipulated, provided and agreed by and between the parties to the Charge that the Chargee may distrain for arrears of interest against the Charged Premises or any part thereof and recover by way of rent reserved as in the case of a demise the arrears of interest and all costs and expenses incurred in such levy or distress and may also distrain for arrears of principal and monthly payments of taxes, if required, in the same manner as if the same were arrears of interest.

**13. PRINCIPAL DUE ON DEFAULT OF PERFORMANCE OF COVENANTS**

It is agreed by the Chargor and the Chargee that if any default shall occur in the performance of any covenant, proviso or agreement contained in the Charge or if any waste be committed or suffered on the Charged Premises, then, at the option of the Chargee, the principal amount secured by the Charge shall forthwith become due and payable subject to any relief afforded to the Chargor at law. The Chargee may, however, waive its right to call in the Principal Amount or any portion thereof then outstanding and shall not be therefore debarred from asserting and exercising its right to call in the principal amount upon the happening of any future default or breach.

**14. CHARGOR'S QUIET POSSESSION UNTIL DEFAULT**

Provided and it is agreed that until default in the payment of principal or interest secured by the Charge or intended so to be, or any part of either of the same, or in the performance of any of the provisions set forth in the Charge contrary to the true intent and meaning thereof, it shall be lawful for the Chargor peaceably and quietly to have, hold, use, occupy, possess and enjoy the Charged Premises, and receive and take the rents and profits thereof to the Chargor's own use and benefit, without let, suit, hindrance, interruption, or denial by the Chargee, or of or by any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for the Chargee.

**15. BUILDINGS, ADVANCES AND COST OF SEARCH**

It is the intention of the parties to the Charge that the building or buildings erected or to be erected on the Charged Premises form part of the security for the full amount of the monies secured by the Charge; and that all advances are to be made in such manner, at such times and in such amounts up to the full amount of said monies as the Chargee, in its sole discretion, may determine. The Chargor agrees that notwithstanding the Chargor's authorization of registration and the registration of the Charge or the advancement of any part of the monies, the Chargee is not bound to advance the monies or any unadvanced portion thereof and the advance of the monies and any part thereof from time to time shall be in the sole discretion of the Chargee, but nevertheless the Charge shall take effect forthwith upon the delivery for registration of the Charge and the expenses of the examination of the title and of the Charge and valuation are to be secured hereby, the same to be charged by the Charge upon the Charged Premises and shall be without demand thereof, payable forthwith with interest at the Charge Rate and in default the Chargee's power of sale hereby given, and all other remedies under the Charge or at law shall be exercisable.

**16. FIXTURES**

It is hereby mutually covenanted and agreed by and between the Chargor and the Chargee that all erections and improvements fixed or otherwise either on the date of delivery for registration of the Charge or thereafter put upon the Charged Premises, including but without limiting the generality of the foregoing, all fences, heating, piping, plumbing, arials, air conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration equipment, cleaning and drying equipment, window blinds, radiators and covers, fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, shutters and awnings, floor coverings, and all apparatus and equipment appurtenant thereto, and all farm machinery and improvements, fixed or otherwise and even though not attached to the lands otherwise than by their own weight, are and shall, in addition to other fixtures thereon, be and become fixtures and form part of the Charged Premises and shall be a portion of the security for the amounts secured by the Charge.

**17. PARTIAL RELEASE**

Provided that the Chargee may at all times release any part or parts of the Charged Premises or any other security or any surety for payment of all or any part of the monies secured by the Charge or may release the Chargor or any other person from any covenant or other liability to pay the said monies or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Chargee and without thereby releasing any other part of the Charged Premises, or any other securities or covenants contained in the Charge, it being especially agreed that notwithstanding any such release the Charged Premises, securities and covenants remaining unreleased shall stand charged with the whole of the monies secured by the Charge and all legal and other expenses incurred by the Chargee in connection with such release or releases.

**18. DEFAULT IN PRIOR CHARGES**

It is hereby agreed by and between the Chargor and the Chargee that should default be made by the Chargor in the observance or performance of any of the covenants, provisos, agreements or conditions contained in any mortgage, charge, lien or other encumbrance to which the Charge is subject or subordinate, then and in that event the monies secured by the Charge shall forthwith become due and be payable, at the option of the Chargee, and all the powers in and by the Charge conferred shall become exercisable, and the powers of sale contained in the Charge may be exercised as therein provided.

**19. LIENS AND CONSTRUCTION**

Provided also that upon the registration of any lien against the Charged Premises, or in the event of any buildings being erected thereon being allowed to remain unfinished or without any work being done on them for a period of ten (10) days, the portion of the Principal Amount then outstanding and interest and all other amounts secured by the Charge shall, at the option of the Chargee, forthwith become due and payable. In the event that a construction lien is registered against the Charged Premises, the Chargee shall have the right, but not the obligation to pay into court such amounts as may be required to remove the lien from title to the Charged Premises. Any amounts so paid by the Chargee, together with all expenses incurred by the Chargee in connection therewith, including all solicitor's charges or commissions, as between a solicitor and his client, shall be added to the debt secured by the Charge and shall bear interest at the Charge Rate and shall, with such interest, be a charge on the Charged Premises prior to all claims thereon subsequent to the Charge and shall be payable forthwith on demand.

**20. WASTE, VACANCY, REPAIR AND BUILDING COMPLETION**

The Chargor covenants and agrees with the Chargee that the Chargor will not permit waste to be committed or suffered on the Charged Premises and that the Chargor will maintain the buildings or other improvements on the Charged Premises in good order and repair to the satisfaction of the Chargee and will not permit or suffer them to become or remain vacant and the Chargee may, but shall not be obliged to, make such repairs, improvements and alterations as it may deem necessary or complete the construction or reconstruction of any building on the Charged Premises, and the cost of repair, construction or reconstruction shall be added to the debt secured by the Charge and shall bear interest at the Charge Rate and shall, with such interest, be a charge on the Charged Premises prior to all claims thereon subsequent to the Charge and shall be payable forthwith on demand.

**21. INSPECTION**

The Chargee, its agent, employees, and independent contractors may, at any time, enter upon the Charged Premises to fully inspect the Charged Premises and where deemed necessary and/or advisable by the Chargee, notwithstanding section 14 hereof, to conduct investigations including intrusive testing and sampling on the Charged Premises for the purpose of determining the presence of or the potential for environmental contamination and the reasonable cost of such inspection shall be added to the debt secured by the Charge and shall bear interest at the Charge Rate, and shall, with such interest, be a charge on the Charged Premises prior to all claims thereon subsequent to the Charge and shall be payable forthwith on demand.

**22. ALTERATIONS**

The Chargor covenants and agrees with the Chargee that the Chargor will not make or permit to be made any alterations or additions to the Charged Premises without the prior written consent of the Chargee.

**23. PROHIBITION AGAINST RENTAL**

If the Charged Premises are or are intended to be used as residential premises then the following provisions shall apply:

(a) The Chargor represents, warrants, covenants and agrees that no part of the Charged Premises are rented or occupied by a Tenant (as defined herein) and further covenants and agrees not to rent, lease, enter into a tenancy agreement or allow occupancy by a Tenant of the whole or any part of the Charged Premises (any of the aforesaid being hereinafter referred to as "Renting") without first obtaining the consent in writing of the Chargee which consent may be refused at the sole discretion of the Chargee; further the Chargor covenants and agrees not to enter into any negotiations with respect to Renting without the consent in writing of the Chargee, which consent may be refused, restricted or made conditional at the sole discretion of the Chargee; if a restricted or conditional consent to Renting or negotiations relating to Renting is given, the Chargor covenants and agrees to abide by such restrictions or conditions;

(b) The Renting of the whole or any part of the Charged Premises without the written consent of the Chargee shall be deemed to have been done with the object of discouraging the Chargee from taking possession of the Charged Premises on default or adversely affecting the value of the Chargee's interest in the Charged Premises within the meaning of Section 52(1) of the Mortgages Act.

(c) In the event that any of the covenants contained in this section shall be breached then, at the option of the Chargee, all monies hereby secured with accrued interest thereon shall forthwith become due and payable;

(d) If the whole or any part of the Charged Premises are rented to a Tenant with or without the consent of the Chargee, at such time as the Chargee is entitled to enforce its rights under the Charge by reason of default of the Chargor, the Chargee may, at its discretion, pay to any Tenant a sum of money, in such amount as it considers advisable, as consideration for obtaining the cooperation of such Tenant in selling the Charged Premises, showing the Charged Premises and obtaining possession from the Tenant or for any one or more of the above. It is recognized that the payment of such amount will be a cost of realization on this security and the amount so paid shall be added to the debt hereby secured and be a charge on the Charged Premises and shall bear interest at the Charge Rate and shall have priority over all encumbrances subsequent to the Charge and shall be payable forthwith by the Chargor to the Chargee; the Chargor appoints the Chargee to be its true and lawful attorney and agent to enforce all the terms of any tenancy agreement entered into by the Chargor with respect to all or any part of the Charged Premises and to cancel or terminate any such tenancy agreement and in this connection to make, sign and execute any and all documents in the name of the Chargor which it, as Chargee, may consider desirable;

(e) When used in this section Tenant shall have the meaning set out in Section 1 of the Tena Protection Act, 1997, S.O. 1997, c.24, as amended.

**24. NON-MERGER**

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

**25. RIGHTS ON DEFAULT**

And the Chargor covenants and agrees with the Chargee that in the event of default in the payment of any instalment of principal, interest or taxes secured by the Charge or any other monies payable under the Charge by the Chargor or on breach of any covenant, proviso or agreement contained in the Charge after all or any part of the monies secured by the Charge have been advanced, the Chargee may at such time or times as it may deem necessary and without the concurrence of any other person enter upon the Charged Premises and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the Charged Premises, or for inspecting, taking care of, leasing, collecting the rents of, and managing generally the Charged Premises, and for environmental remediation to bring the Charged Premises into compliance with recognized environmental standards, statutory or otherwise, as it may deem expedient, and all reasonable costs, charges and expenses including allowances for the time and service of any employee of the Chargee or other person appointed for the above purposes shall be forthwith payable by the Chargor to the Chargee, and shall be a charge upon the Charged Premises prior to all claims thereon subsequent to the Charge and shall bear interest at the Charge Rate until paid.

**26. OBLIGATIONS SURVIVE SALE**

Provided further that no sale or other dealing by the Chargor with the Charged Premises or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the monies secured by the Charge.

**27. DUE ON SALE**

Provided that in the event of the Chargor selling, conveying, transferring, or entering into any agreement of sale or transfer of the title of the Charged Premises then, at the option of the Chargee, all monies secured by the Charge shall forthwith become due and payable.

**28. PRIOR ENCUMBRANCES**

It is further stipulated, provided and agreed, that the Chargee may pay the amount of any encumbrance, lien or charge existing now or existing after the date of the Charge, or to arise or to be claimed upon the Charged Premises having priority over the Charge, including, without limitation, any taxes, utility charges or other rates on the Charged Premises, any construction lien, or any amounts payable to a Condominium Corporation, and may pay all costs, charges and expenses and all solicitor's charges or commissions, as between a solicitor and his client, which may be incurred in taking, recovering and keeping possession of the Charged Premises and generally in any proceedings or steps of any nature whatever properly taken in connection with or to realize upon this security, or in respect of the collection of any overdue interest, principal, insurance premiums or any other monies whatsoever payable by the Chargor under the Charge whether any action or any judicial proceedings to enforce such payments has been taken or not, and the amount so paid and insurance premiums for fire or other risks or hazards and any other monies paid under the Charge by the Chargee shall be added to the debt secured by the Charge and be a charge on the Charged Premises and shall bear interest at the Charge Rate, and shall be payable forthwith by the Chargor to the Chargee, and the non-payment of such amount shall be a default of payment within the meaning of those words in the paragraph dealing with power of sale and shall entitle the Chargee to exercise the power of sale and all other remedies hereby given. In the event of the Chargee paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the monies advanced on the security or otherwise, it shall be entitled to all the rights, equities and securities of the person or persons, company, corporation, or government so paid off, and is hereby authorized to retain any discharge thereof, without registration, for a longer period than six months if it thinks proper to do so.

**29. ONTARIO NEW HOME WARRANTIES PLAN ACT**

If the Chargee incurs any cost or expense of any nature or kind in any way arising from or relating to the Ontario New Home Warranties Plan Act, R.S.O. 1990, c.O.31, as amended (the "ONHWPA"), including, without any limitation whatsoever, any cost or expense relating to registration as a vendor under the ONHWPA or enrolling the Charged Premises or entering into any agreement or agreements relating to performance of warranty obligations or performing any warranty obligations, all such cost and expense shall be added to the debt hereby secured and be a charge on the Charged Premises in priority to all other encumbrances registered or arising subsequent to the Charge and shall bear interest at the Charge Rate and shall be payable forthwith by the Chargor to the Chargee.

**30. EXTENSIONS**

Provided that no extension of time given by the Chargee to the Chargor, or anyone claiming under the Chargor or any other dealing with the owner of the Charged Premises, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other person liable for the payment of the monies hereby secured.

**31. DISCHARGE**

The Chargee shall have a reasonable time after payment in full of the monies secured by the Charge within which to prepare and register a discharge or, if requested, and if required by law to do so, an assignment of the Charge, and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargee and all legal and other expenses for the preparation and registration of such discharge or assignment and any administrative charge or fee of the Chargee shall be borne by the Chargor.

**32. OTHER SECURITY**

The Charge is in addition to and not in substitution for any other security held by the Chargee including any promissory note or notes for all or any part of the monies secured under the Charge, and it is understood and agreed that the Chargee may pursue its remedies thereunder or under the Charge either concurrently or successively at its option. Any judgment or recovery under the Charge or under any other security held by the Chargee for the monies secured by the Charge shall not affect the right of the Chargee to realize upon this or any other such security.

Without limiting the generality of the foregoing, the Charge is in addition to, and not in substitution for, any other charges now or hereafter held by the Chargee over the Charged Premises as security for monies secured under the Charge or any other monies due to the Chargee.

It is understood and agreed that the aggregate of principal amounts secured by the Charge and any such other charges shall be the aggregate of the Principal Amount of the Charge and the principal amounts secured under any such other charges.

**33. PLACE OF PAYMENT AND WITHHOLDINGS FROM PAYMENTS**

(a) **Place of Payment.** Provided that all such payments secured by the Charge shall be made at the branch of the said Chargee designated in the Charge, or at such other place as the Chargee may designate in writing to the Chargor, in lawful money of Canada.

(b) **Withholdings from Payments.** If the Chargor is required by law to make any deduction or withholding from any sum payable by the Chargor to the Chargee under the Charge, then the sum payable by the Chargor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Chargee receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or been required to be made; and the Chargor shall pay the full amount to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and shall deliver to the Chargee within thirty days after the Chargor has made such payment to the applicable authority a receipt issued by such authority evidencing such payment.

(c) **Tax on Loan.** The Chargor shall pay to the Chargee, on demand, the amount of any income, corporate, withholding or similar taxes (other than the Chargee's income taxes) (the "Income Taxes") that may be imposed upon or in respect of the Principal Amount from time to time outstanding, together with interest thereon that the Chargee may be called upon to pay, together with interest from the date on which such Income Taxes are paid by the Chargee at the rate and compounded in the manner provided in the Charge

#### 34. SPOUSE'S CONSENT

The spouse of the Chargor so named in the Charge hereby consents to the transaction evidenced by the Charge and releases all interest in the Charged Premises to the extent necessary to give effect to the rights of the Chargee under the Charge, and agrees that the Chargee may, without further notice, deal with the Charged Premises and the debt created by the Charge as the Chargee may see fit.

#### 35. FAMILY LAW ACT

The Chargor covenants and agrees that:

(a) the Chargor or the owner from time to time of the Charged Premises will advise and keep advised the Chargee as to whether the Chargor or the owner from time to time is a spouse as defined in the Family Law Act, R.S.O. 1990, c. F.3, as amended (the "Family Law Act"), and if so, the name of the Chargor's spouse, and of any change in the Chargor's spousal status or in the status of the Charged Premises as a matrimonial home within the meaning of the Family Law Act, and

(b) forthwith on request the Chargor will furnish the Chargee with such evidence in connection with any of the matters referred to in clause (a) above as the Chargee may from time to time require, including, without limitation, the Chargor's and the Chargor's spouse's name, address and birth date and the Chargor's and the Chargor's spouse's authorization to the Registrar under the Vital Statistics Act, R.S.O. 1990, c.V.4, as amended, to provide the Chargee from time to time on request all information in its possession relative to any marriage, divorce or death of the Chargor or the Chargor's spouse, and on default the Principal Amount, interest and all other monies secured by the Charge shall, at the option of the Chargee, forthwith become due and payable.

#### 36. SEVERABILITY OF ANY INVALID PROVISIONS

It is agreed that in the event that at any time any provision of the Charge is illegal or invalid under or inconsistent with the provisions of any applicable statute or regulation thereunder or any other applicable law, or would by reason of the provisions of any such statute or regulation or other applicable law render the Chargee unable to collect the amount of any loss sustained by it as a result of making the advances secured by the Charge which it would otherwise be able to collect under such statute or regulation or other applicable law, then such provision shall not apply and shall be construed so as not to apply to the extent that it is so illegal, invalid or inconsistent or would so render the Chargee unable to collect the amount of any such loss.

#### 37. NO PREJUDICE FROM FAILURE TO ENFORCE RIGHTS

Provided that no failure to enforce at any time or from time to time any of the rights of the Chargee under the Charge shall prejudice such rights or any other rights of the Chargee; no performance or payment by the Chargee in respect of any breach or default under the Charge of the Chargor shall relieve the Chargor from any default thereunder; and no waiver at any time or from time to time of any such rights of the Chargee shall prejudice such rights in the event of any future default or breach.

#### 38. FARM LANDS

If the Charged Premises are farm lands, the Chargor will in each year during the currency of the Charge either put into crop or summer fallow in good, proper and husbandlike manner every portion of the Charged Premises which has been or may hereafter be brought under cultivation, and will keep the Charged Premises clean and free from all noxious weeds and generally see that the Charged Premises do not depreciate in any way.

#### 39. CHANGE OF CORPORATE CONTROL

Where the Chargor is a corporation the Chargor covenants and agrees that in the event that:

(a) the Chargor fails to supply to the Chargee, in a form satisfactory to the Chargee, such information relating to the ownership of its shares as the Chargee may from time to time require; or

(b) without the written consent of the Chargee first had and obtained,

(i) the Chargor issues or redeems any of its shares or transfers any of its shares,

(ii) there is a sale or sales of the shares of the Chargor which result in the transfer of the legal or beneficial interest of any of the shares of the Chargor, or

(iii) the Chargor amalgamates; merges or consolidates with any other corporation,

and the result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Chargor, then all monies secured by the Charge together with accrued interest thereon shall forthwith become due and payable at the option of the Chargee and the Chargee's powers of sale hereby given and all other remedies for enforcement shall be exercisable.



**40. COMPLIANCE WITH THE LAW AND ENVIRONMENTAL COMPLIANCE**

The Chargor hereby represents and warrants to the Chargee that:

- (a) there is not in, on or about the Charged Premises any product or substance or condition (including, without restriction, contaminants, wastes, moulds or hazardous or toxic materials), equipment or anything else which contravenes any statute, regulation, by-law, order, direction or equivalent relating to the protection of the environment or which is not being dealt with according to best recognized practices relating to the environment;
- (b) to the best of the knowledge of the Chargor, no circumstance has existed on the Charged Premises or exists or has existed on any land adjacent to the Charged Premises which constitutes or could reasonably constitute contravention of any statute, regulation, order, by-law, direction or equivalent relating to the protection of the environment;
- (c) no claim or notice of any action, investigation or proceeding of any kind has been threatened, made or issued or is pending relating to an environmental condition on the Charged Premises; and
- (d) the Charged Premises are being used in compliance with all statutes, regulations, orders, by-laws, directions and equivalent relating to the protection of the environment.

The Chargor hereby covenants and agrees with the Chargee as follows:

- (a) the Chargor shall give to the Chargee immediate notice of any material change in circumstances in respect of the Charged Premises or adjacent land which would cause any of the representations and warranties contained in the immediately preceding paragraphs (a) to (d) inclusive to become untrue; and
- (b) the Chargor shall not permit or create, and shall not allow anyone else to permit or create, any circumstance on the Charged Premises which would constitute or could reasonably constitute a contravention of any statute, regulation, order, by-law, direction or equivalent relating to the protection of the environment.

The Chargor further covenants and agrees with the Chargee at all times promptly to observe, perform, execute and comply with all applicable laws, rules, requirements, orders, directions, by-laws, ordinances, work orders, regulations and equivalent of every government authority dealing with zoning, use, occupancy, subdivision, parking, historical designations, fire, access, loading facilities, landscaped area, pollution of the environment, contaminants, wastes, hazardous or toxic materials, building construction, public health and safety, and all private covenants and restrictions affecting the Charged Premises or any portion thereof and the Chargor shall from time to time, upon request of the Chargee, provide to the Chargee evidence of such observance and compliance and pay immediately when due the cost of removal of any such contaminants, wastes and materials, and shall at its own expense make any and all improvements thereon or alterations to the Charged Premises structural or otherwise and shall take all such other action as may be required at any time by any such present or future law, rule, requirement, order, direction, by-law, ordinance, work order, regulation, covenant or equivalent; and the Chargor shall cause its tenants, agents and invitees to comply with all the foregoing at their own expense.

The Chargor shall indemnify and hold harmless the Chargee (and its directors, officers, employees and agents) from and against all loss, cost, damage or expenses (including, without limitation, legal fees and costs incurred in the investigation, defence and settlement of any claim) due to the Chargor's failure to comply with any of the covenants and agreements in this clause, or due to the presence of any contaminant, waste, mould or hazardous or toxic material referred to in this clause, as well as any lien or priority asserted with respect thereto, and this indemnity shall survive the discharge of the Charge or the release from the Charge of part or all of the Charged Premises.

**41. CONDOMINIUMS**

If the Charge is of a unit or units within a Condominium the following provisions shall apply:

- (a) The Chargor covenants and agrees at all times and from time to time to observe and perform all duties and obligations imposed on the Chargor by the Condominium Act and by the Declaration, the by-laws, and the rules as amended from time to time, of the Condominium Corporation, by virtue of the Chargor's ownership of the Charged Premises. Any breach of the said duties and obligations shall constitute a breach of covenant under the Charge.
- (b) Without limiting the generality of the foregoing, the Chargor covenants and agrees that the Chargor will pay promptly when due any contributions to common expenses required of the Chargor as an owner of the Charged Premises and in the event of default in doing so the Chargee, at its option, may pay the same and the amount so paid shall be added to the debt secured by the Charge and shall be a charge on the Charged Premises and shall bear interest at the Charge Rate from the time of such payments and shall be payable forthwith by the Chargor to the Chargee whether or not any payment in default has priority to the Charge or any part of the monies secured thereby.
- (c) The Chargor hereby irrevocably authorizes and empowers the Chargee to exercise the right of the Chargor as an owner of the Charged Premises to vote or to consent in all matters relating to the affairs of the Condominium Corporation provided that:
  - (i) the Chargee may at any time or from time to time give notice in writing to the Chargor and the said Condominium Corporation that the Chargee does not intend to exercise the said right to vote or consent and in that event until the Chargee revokes the said notice the Chargor may exercise the right to vote. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter;
  - (ii) the Chargee shall not by virtue of the assignment to the Chargee of the right to vote or consent be under any obligation to vote or consent or to protect the interests of the Chargor; and
  - (iii) the exercise of the right to vote or consent shall not constitute the Chargee a chargee in possession.
- (d) The Chargor covenants and agrees to advise the Condominium Corporation to send all notices to the Chargee and to notify the Chargee of any breaches by the Condominium Corporation that come to the attention of the Chargor in order that the Chargee is kept fully informed.

## 42. RECEIVERSHIP

Notwithstanding anything contained in the Charge, it is declared and agreed that at any time and from time to time when there shall be default under the provisions of the Charge, the Chargee may, at such time and from time to time and with or without entry into possession of the Charged Premises, or any part thereof, by instrument in writing appoint any person, whether an officer or officers or an employee or employees of the Chargee or not, to be a receiver (which term as used herein includes a receiver manager and also includes the plural as well as the singular) of the Charged Premises, or any part thereof, and of the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any receiver and appoint another in such receiver's 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, but no such appointment shall be revocable by the Chargor. Upon the appointment of any such receiver from time to time the following provisions shall apply:

(a) Every such receiver shall have unlimited access to the Charged Premises as agent and attorney for the Chargor (which right of access shall not be revocable by the Chargor) and shall have full power and unlimited authority (which power and authority shall not be revocable by the Chargor) to:

- (i) collect the rents and profits from tenancies whether created before or after these presents;
- (ii) rent any portion of the Charged Premises which may be or become vacant on such terms and conditions as the receiver considers advisable and enter into and execute leases, accept surrenders and terminate leases;
- (iii) complete the construction of any building or buildings or other erections or improvements on the Charged Premises left by the Chargor in an unfinished state or award the same to others to complete and purchase, repair and maintain any personal property including, without limitation, appliances and equipment, necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Chargor's materials, supplies, plans, tools, equipment (including appliances) and property of every kind and description; and
- (iv) manage, operate, repair, alter or extend the Charged Premises or any part thereof.

The Chargor undertakes to ratify and confirm whatever any such receiver may do in the Charged Premises.

(b) The Chargee may at its discretion vest the receiver with all or any of the rights and powers of the Chargee.

(c) The Chargee may fix the reasonable remuneration of the receiver who shall be entitled to deduct the same out of the revenue or the sale proceeds of the Charged Premises.

(d) Every such receiver shall be deemed to be the agent or attorney of the Chargor and, in no event, the agent of the Chargee and the Chargee shall not be responsible for the receiver's acts or omissions.

(e) The appointment of any such receiver by the Chargee shall not result in or create any liability or obligation on the part of the Chargee to the receiver or to the Chargor or to any other person and no appointment or removal of a receiver and no actions of a receiver shall constitute the Chargee a chargee in possession of the Charged Premises.

(f) No such receiver shall be liable to the Chargor to account for monies other than monies actually received by the receiver in respect of the Charged Premises, or any part thereof, and out of such monies so received every such receiver shall, in the following order, pay:

- (i) the remuneration of the receiver aforesaid;
- (ii) all costs and expenses of every nature and kind incurred by the receiver in connection with the exercise of the receiver's powers and authority hereby conferred;
- (iii) interest, principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to the Charge, including taxes;
- (iv) to the Chargee, all interest, principal and other monies due under the Charge to be paid in such order as the Chargee in its discretion shall determine;
- (v) and thereafter, every such receiver shall be accountable to the Chargor for any surplus.

The remuneration and expenses of the receiver shall be paid by the Chargor on demand and shall be a charge on the Charged Premises and shall bear interest from the date of demand at the Charge Rate

(g) Save as to claims for accounting under clause (f) of this paragraph, the Chargor hereby releases and discharges any 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 the Chargor by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of dishonesty or fraud.

(h) 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.

(i) The statutory declaration of an officer of the Chargee as to default under the provisions of the Charge and as to the due appointment of the receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with a receiver who is ostensibly exercising powers provided for in the Charge and such dealing shall be deemed, as regards such person, to be valid and effectual.

(j) The rights and powers conferred in and by the Charge in respect of the receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have.

**43. COMPLIANCE WITH THE LAW**

The Chargor covenants and agrees at all times to promptly observe, perform, execute and comply with all applicable laws, rules, requirements, orders, directions, by-laws, ordinances, work orders and regulations of every governmental authority and agency whether federal, provincial, municipal or otherwise, including, without limiting the generality of the foregoing, those dealing with zoning, use, occupancy, subdivision, parking, historical designations, fire, access, loading facilities, landscaped area, pollution of the environment, toxic materials or other environmental hazards, building construction, public health and safety, and all private covenants and restrictions affecting the Charged Premises or any portion thereof and the Chargor will from time to time, upon request of the Chargee, provide to the Chargee evidence of such observance and compliance, and will at its own expense make any and all improvements thereon or alterations to the Charged Premises structural or otherwise and will take all such other action as may be required at any time by any such present or future law, rule, requirement, order, direction, by-law, ordinance, work order or regulation.

**44. CHARGE EXPENSES**

The Chargor agrees to pay the reasonable and necessary costs, charges and expenses of and incidental to the Charge, and to any and all other documents required in connection therewith, and of any amendment or renewal thereof, and of anything done in connection with the enforcement of the security granted thereby or the procuring of the payment of any monies payable under the Charge, including, without limiting the generality of the foregoing, all solicitors' fees, on a solicitor and client basis, costs and expenses of examination of title, and the obtaining of the opinion of counsel for the Chargee thereon and all costs and expenses valuing the Charged Premises in connection with the foregoing and of anything done in connection with defending the validity or priority of the Charge as against third parties. The Chargor further agrees that such amounts shall be paid forthwith upon demand and until paid shall bear interest at the Charge Rate and shall be a charge on the Charged Premises secured by the Charge prior to all claims thereon subsequent to the Charge.

**45. INTERPRETATION**

And it is hereby agreed and declared that the expression "the Chargor" used in these standard charge terms and the Charge shall include the heirs, executors, personal representatives, administrators, successors and assigns of each and every Chargor and the expression "the Chargee" shall include the successors and assigns of the Chargee and (if the Charge affects a Condominium) the expression "Condominium Corporation" shall mean the Condominium Corporation referred to in the description and the expression "Declaration" shall mean the declaration registered in connection with the Condominium Corporation, and the words in the singular include the plural, and words in the plural include the singular, and words importing the masculine gender include the feminine and neuter genders where the context so requires, and that all covenants, liabilities, and obligations entered into or imposed under the Charge upon each Chargor shall be equally binding upon his, her, its or their respective heirs, personal representatives, executors, administrators,

successors, and assigns and that all such covenants, liabilities and obligations shall be joint and several, and that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargee shall be equally secured to and exercisable by its successors and assigns; and if the Chargor is comprised of more than one person, all covenants by the Chargor herein contained or implied are and are to be construed as both joint and several.

**46. PARAGRAPH HEADINGS**

The paragraph headings in these standard charge terms are inserted for convenience of reference only and are deemed not to form part of the Charge and are not to be considered in the construction or interpretation of the Charge or any part thereof.

**47. DATE OF CHARGE**

The Charge, unless otherwise specifically provided, shall be deemed to be dated as of the date of delivery for registration of the Charge.

**48. EFFECT OF DELIVERY**

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

**RECEIPT**

The Chargor(s) hereby acknowledges receipt of a true copy of the Charge and the foregoing Standard Charge Terms before signing the Charge.

DATED the 27 day of July 2009.

(Insert Name of Chargor(s))

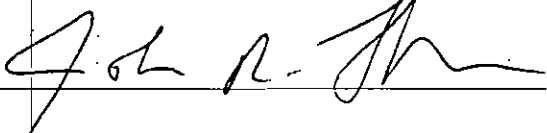
1434399 ONTARIO INC.

John A. [Signature]

The Guarantor(s) hereby acknowledges receipt of a true copy of the Charge and the foregoing Standard Charge Terms before signing the Charge.

DATED the 27 day of July, 2009.

(Insert Name of Guarantor (s))

JOHN R. FULTON  


# EXHIBIT “J”

## Enquiry Result

File Currency: 29MAR 2023



Show All Pages

All Pages ▾



**Note: All pages have been returned.**

Type of Search	Business Debtor								
Search Conducted On	1434399 ONTARIO INC.								
File Currency	29MAR 2023								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	759388113	1	2	1	2	17JAN 2024			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
759388113		001	1		20200117 1046 1532 8112	P PPSA	04		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	1434399 ONTARIO INC.								
	Address			City	Province	Postal Code			
	14 JAMES ST			ST CATHARINES	ON	L2R 5B8			
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Secured Party	Secured Party / Lien Claimant								
	TOYOTA CREDIT CANADA INC.								
	Address			City	Province	Postal Code			
	80 MICRO COURT			MARKHAM	ON	L3R 9Z5			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
	X		X		X	X		16JAN2024	
Motor Vehicle Description	Year	Make			Model	V.I.N.			
	2020	TOYOTA			TUNDRA 4X4	5TFAY5F1XLX902399			
General Collateral Description	General Collateral Description								

<b>Registering Agent</b>	<b>Registering Agent</b>			
	D + H LIMITED PARTNERSHIP			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	2 ROBERT SPECK PARKWAY, 15TH FLOOR	MISSISSAUGA	ON	L4Z 1H8

END OF FAMILY

<b>Type of Search</b>	Business Debtor						
<b>Search Conducted On</b>	1434399 ONTARIO INC.						
<b>File Currency</b>	29MAR 2023						
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>
	759578661	2	2	2	2	24JAN 2025	

**FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN**

<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>
759578661		01	001		20200124 1937 1531 9920	P PPSA	5

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>

<b>Business Debtor</b>	<b>Business Debtor Name</b>	<b>Ontario Corporation Number</b>		
	1434399 ONTARIO INC.			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	14 JAMES STREET	L2R5B8	ON	L2R 5B8

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>

<b>Business Debtor</b>	<b>Business Debtor Name</b>	<b>Ontario Corporation Number</b>		
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>

<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>			
	ROYAL BANK OF CANADA			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	36 YORK MILLS ROAD, 4TH FLOOR	TORONTO	ON	M2P 0A4

<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b>

<b>General Collateral Description</b>	<b>General Collateral Description</b>

<b>Registering Agent</b>	<b>Registering Agent</b>			
	CANADIAN SECURITIES REGISTRATION SYSTEMS			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	4126 NORLAND AVENUE	BURNABY	BC	V5G 3S8

LAST PAGE

**Note: All pages have been returned.**

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# EXHIBIT “K”

# Harrison Pensa

LAWYERS

**Timothy C. Hogan**  
Direct Line: (519)-661-6743  
thogan@harrisonpensa.com

Assistant: Cathy Coleiro  
Direct Line: (519) 850-5568  
ccoleiro@harrisonpensa.com

April 24, 2023

Via Registered & Regular Mail & Email - johnny@fulton.ca

1434399 Ontario Inc.  
14 James St.  
St. Catharines, ON L2R 5B8

Dear Sir,

**Re: Indebtedness to Royal Bank of Canada (the "Bank")  
Our File No. 196236**

We are the solicitors for the Bank with respect to loans provided to 1434399 Ontario Inc. (hereinafter the "Debtor").

According to the Bank's records, the Debtor is indebted to the Bank as at April 24, 2023, in the total sum of \$193,742.56 including all interest to April 24, 2023, plus all accruing interest, and plus the Bank's costs of enforcement on a solicitor and client basis (the "Indebtedness")<sup>1</sup>.

The Indebtedness is comprised of the following:

Overdraft (numbers subject to change)	\$9,409.92
HASCAP Non-Revolving Term Facility - 002 (numbers subject to change)	\$98,559.61 (\$10.86 per diem)
Canada Emergency Business Account Credit Agreement (2190)	\$60,000.00
Visa (ending 6223) (numbers subject to change)	\$25,773.03
<b>Total</b>	<b>\$193,742.56</b>

The Debtor is in default of certain agreements signed in favour of the Bank including, but not limited to, the following:

---

<sup>1</sup> Excluding the Term Loan (44254994-001) maturing January 25, 2025, for which the Debtor remains indebted as of April 24, 2023 in the sum of \$1,143,698.95. This Term Loan (44254994-001) continues to be secured by the security referenced herein.

Harrison Pensa LLP

130 Dufferin Avenue, Suite 1101, P.O. Box 3237, London, Ontario N6A 4K3 Phone: 519.679.9660 Fax: 519.667.3362  
harrisonpensa.com

1. Credit Agreement dated January 24, 2020;
2. Letter Agreement dated December 14, 2021;
3. General Security Agreement dated January 28, 2020;
4. Charge/Mortgage of Land in the principal sum of \$1,200,000 and receipted as instrument number NR534531 on February 12, 2020 over the Property, legally described as: LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT);
5. RBC Royal Bank Visa Business Card Agreement dated January 28, 2020.

On behalf of the Bank we hereby demand payment of the Indebtedness owing by the Debtor together with interest thereon and all costs to the date of payment, ten (10) days from the date of payment.

Failing payment within ten (10) days will result in the Bank taking such steps as it considers necessary or appropriate to recover payment of the Debtor's Indebtedness and to protect its interest.

We advise that no intermediate acts, negotiations, indulgences or any continuing credit or provision of banking services shall act as a waiver to the Bank's rights, or demand for payment as set out herein, unless so expressly stated in writing.

The Bank expressly reserves its rights to take such further steps to protect its interest at any time, without further notice to the Debtor, if the Bank becomes aware of any matter which may impair its security. In addition, the Bank reserves the right to restrict or cancel all facilities at any time with no further notice and to place all bank accounts on deposit only.

Finally, also find attached to this letter our client's Notice of Intention to Enforce Security as well as the relevant consent to immediate enforcement of the Bank's security. By signing this consent the Debtor waives the time period given by the Bank under this notice.

Yours truly,

HARRISON PENSA <sup>LLP</sup>



Timothy C. Hogan  
TCH/cc  
Enclosure  
c: John R. Fulton as guarantor

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Section 244(1) of the *Bankruptcy and Insolvency Act*)**

TO: 1434399 Ontario Inc., an insolvent person

**TAKE NOTICE THAT:**

1. Royal Bank of Canada, a secured creditor, intends to enforce its security on the property of the insolvent person described as:

All collateral of the insolvent person as described in the following security and the proceeds from the sale of said collateral:

1. General Security Agreement dated January 28, 2020;
2. Charge/Mortgage of Land in the principal sum of \$1,200,000 and receipted as instrument number NR534531 on February 12, 2020 over the Property, legally described as: LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT).

The property to which the security relates includes, but is not limited to, all accounts, book debts, inventory, equipment, and real property wherever located and all other collateral however described of the above-noted insolvent person and the proceeds thereof.

2. The security that is to be enforced is in the form of:

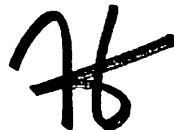
1. General Security Agreement dated January 28, 2020;
2. Charge/Mortgage of Land in the principal sum of \$1,200,000 and receipted as instrument number NR534531 on February 12, 2020 over the Property, legally described as: LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT).

3. The total amount of indebtedness secured by the security is \$133,742.56 (excluding the Canada Emergency Business Account and the Loan Term Loan (44254994-001) maturing January 25, 2025, for which the Debtor remains indebted and for which the security detailed hereunder continues to secure) as of April 24, 2023 plus interest as set out in the agreements, plus all costs of enforcement on a solicitor and client basis.

4. The secured creditor will not have the right to enforce its security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at London, Ontario this 24<sup>th</sup> day of April, 2023.

ROYAL BANK OF CANADA  
by its solicitors, Harrison Pensa LLP



Per: \_\_\_\_\_  
TIMOTHY C. HOGAN  
Harrison Pensa LLP  
130 Dufferin Avenue, Suite 1101  
PO Box 3237  
London, ON N6A 4K3  
(519) 661-6743

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

**CONSENT**  
**(s.244(2) of the *Bankruptcy and Insolvency Act*)**

THE UNDERSIGNED hereby acknowledges receipt of a copy of Royal Bank of Canada's demand dated April 24, 2023 and the Notice of Intention to Enforce Security dated April 24, 2023 pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* and hereby waives the 10 day period set out in the demand and notice and consents to the immediate enforcement of Royal Bank of Canada's security.

DATED at \_\_\_\_\_, Ontario this \_\_\_\_\_ day of April, 2023.

1434399 ONTARIO LTD.

Per: \_\_\_\_\_  
I have authority to bind the company

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John R. Fulton

# Harrison Pensa

LAWYERS

**Timothy C. Hogan**

Direct Line: 519-661-6743  
thogan@harrisonpensa.com

Assistant: Cathy Coleiro  
Direct Line: 519-850-5568  
ccoleiro@harrisonpensa.com

April 24, 2023

## Via Registered & Regular Mail

John R. Fulton  
372 Buffalo Road  
Fort Erie, ON L2A 5G4

Dear Sir,

**Re: Indebtedness of 1434399 Ontario Inc. to Royal Bank of Canada  
(the "Bank")  
Our File No. 196236**

We are the solicitors for the Bank with respect to 1434399 Ontario Inc. (the "**Debtor**").

According to the Bank's records, the Debtor is indebted to the Bank on an Overdraft and a Visa facility in the amount of \$35,182.95<sup>1</sup> as of April 24, 2023 together with interest thereon plus the Bank's costs of enforcement on a solicitor and client basis.

Pursuant to a guarantee executed by you dated January 28, 2020 and limited to the sum of \$1,200,000.00 (the "**Guarantee**"), you are liable to pay the sum of \$35,182.95 in relation to the Overdraft and a Visa facility with interest continuing to accrue until payment plus the Bank's legal fees on a solicitor and own client basis (the "**Indebtedness**").

The Debtor's obligations under the Term Loan (44254994-001) continue to be subject to the Guarantee, although no demand in relation to same is made hereunder.

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<sup>1</sup> Excluding the Canada Emergency Business Account Loan ("**CEBA**") of \$60,000, a HASCAP Non-Revolving Term Facility – 002 and a Term Loan (44254994-001) maturing December 26, 2022

Harrison Pensa LLP

On behalf of the Bank, we hereby demand payment of the Indebtedness together with interest thereon to the date of payment, within ten (10) days of the date of this letter.

Failing to make payment within ten (10) days will result in the Bank taking such steps as it considers necessary or appropriate to recover payment of the Indebtedness and to protect its interest.

We advise that no intermediate acts, negotiations or indulgences shall act as a waiver to the Bank's rights, or demand for payment as set out herein, unless so expressly stated in writing.

Yours truly,

HARRISON PENSA <sup>LLP</sup>

A handwritten signature in black ink, appearing to be 'TH' with a stylized flourish.

Timothy C. Hogan  
TCH/cc

**Security or Registered Receipt (Bulk)**

This receipt is necessary if enquiry is desired. Fragile and perishable articles are not indemnified against damage. Indemnity and fees information is available on request from your Postal Outlet.

**Réçépissé (en nombre) Sécurité ou Recommandé**

À produire en cas de réclamation. Aucune indemnité ne sera versée pour l'avarie d'un objet fragile ou périssable. Vous pouvez obtenir des renseignements sur les indemnités et les droits à votre installation postale.

**Sender / Expéditeur**  
HARRISON PENZA LLP  
130 Dufferin Ave., Suite 1101  
PO Box 3237  
London, ON N6A 4K3  
  
Date: April 24, 2023  
File: RBC/1434399 Ontario Inc./TCH/196236

**Sender Instructions**

Note: Bulk Receipt is to be completed for 3 or more items. Present mailings at any Postal Outlet.

- A Complete and remove customer receipt.
- B Remove paper backing from receipt.
- C Affix receipt to this form.
- D Remove bottom bar code and affix to "Trace Mail Data Capture Document"
- E Remove paper backing from label
- F Apply label to envelope

**Instructions pour l'expéditeur**

Avis: Réçépissé en nombre, pour 3 items et plus. Doit être complété avant de déposer à l'installation postale.

- A Ramassez et retirez le réçépissé du client.
- B Retirez la pellicule protectrice du réçépissé.
- C Collez le réçépissé sur cette formule.
- D Retirez le code à barres du bas et réposez sur le "Document de saisie des données" pour le courrier repérable.
- E Retirez la poëlle de l'étiquette.
- F Collez l'étiquette sur l'enveloppe



**REGISTERED DOMESTIC**  
CUSTOMER RECEIPT

**RECOMMANDÉ RÉGIME INTÉRIEUR**  
REÇU DU CLIENT



1434399 Ontario Inc.  
14 James St.  
St. Catharines, ON L2R 5B8



Declared Value / Valeur déclarée \$

33-086-584 (17-12)

(3)

(6)

(9)

(12)

(15)



**REGISTERED DOMESTIC**  
CUSTOMER RECEIPT

**RECOMMANDÉ RÉGIME INTÉRIEUR**  
REÇU DU CLIENT



John R. Fulton  
372 Buffalo Road  
Fort Erie, ON L2A 5G4



Declared Value / Valeur déclarée \$

33-086-584 (17-12)



**REGISTERED DOMESTIC**  
CUSTOMER RECEIPT

**RECOMMANDÉ RÉGIME INTÉRIEUR**  
REÇU DU CLIENT



John R. Fulton  
372 Buffalo Road  
Fort Erie, ON L2A 5G4



33-086-584 (17-12)



# EXHIBIT “L”

THIS AGREEMENT made as of the \_\_\_ day of May, 2023

BETWEEN:

**ROYAL BANK OF CANADA**  
20 King Street West, 2<sup>nd</sup> Floor,  
Toronto, ON, Canada, M5H 1C4

(hereinafter called the "Bank")

OF THE FIRST PART

-and-

**1434399 ONTARIO INC.**  
14 James St.  
St. Catharines, ON L2R 5B8

(hereinafter called the "Borrower")

OF THE SECOND PART

-and-

**JOHN R. FULTON**  
41 Woodstream Blvd.  
Fonthill, ON L0S 1E1

(hereinafter called the "Guarantor")

OF THE THIRD PART

## RECITALS

- A. The Bank has made a certain Credit Facilities available to the Borrower as more particularly described in this Agreement;
- B. The Borrower is the owner of the real property municipally known as 14 James Street, City of St. Catharines, Ontario, and legally described as:
  - a. LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT) (the "Real Property");
- C. The Borrower is in default of the terms of the Credit Facilities as a result of, *inter alia*:
  - a. Failing to make payments as they became due as follows:
    - i. Payments due under the Term Loan (as defined below) one hundred and twenty-three (123) days delinquent as at May 1, 2023;

- ii. The Visa facility (as defined at Schedule A hereto) greater than ninety (90) days delinquent as at May 1, 2023; and
  - iii. Payments due under the HASCAP Loan (as defined at Schedule A hereto) forty-two (42) days delinquent as at May 1, 2023;
- b. Tax arrears owing on the Real Property for the 2022 to the City of St. Catherines in the sum of \$17,827.54, which sum the Borrower disputes,  
  
(collectively, the “**Default**”);
- D. As a result of the Default, the Bank did issue a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) to the Borrower, both dated April 24, 2023, and a further demand for payment to the Guarantor, dated April 24, 2023 (collectively, the “**Demands**”);
- E. The Demands did not include the Term Loan (44254994-001) maturing January 25, 2025 (the “**Term Loan**”), for which the Debtor remains indebted as of April 24, 2023 in the sum of \$1,143,698.95. The Term Loan continues to be secured by the Bank Security;
- F. All applicable notice periods in the Demands have expired, and the Bank has been forbearing, providing credit and banking services on a day-to-day basis, in its sole discretion, since the expiry of same;
- G. The Borrower has advised the Bank that it intends to sell the Real Property, subject to the Bank’s Security;
- H. The Borrower and the Guarantor have requested that the Bank forbear from taking action on the Security (as defined in Schedule “B” to this Agreement) and the Bank, the Borrower and the Guarantor have agreed to enter into this Agreement for the purposes of allowing the Borrower additional time to pay the Indebtedness in full by the Termination Date.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RECITALS

The parties agree and acknowledge that the recitals contained herein are true.

2. DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

- a) **“Agreement”** or **“this Agreement”** means this Agreement;
- b) **“Credit Facilities”** means the Credit Facilities advanced to the Borrower by the Bank, as more particularly described in Schedule “A”;
- c) **“Priority Claims”** means deemed trusts and other claims ranking in priority to the Bank’s Security including, without limitation, charges under BIA, utilities, realty taxes, GST, HST, PST, employee remittances and Workers’ Compensation;
- d) **“Security”** or **“Bank’s Security”** means all security currently held by the Bank, together with such additional security, as may be granted by the Borrower or the Guarantor, in support of the repayment of the Indebtedness as more particularly set out in Schedule “B”;
- e) **“Termination Date”** is August 31, 2023;
- f) **“Without Consent”** means without the prior written consent of the Bank.

3. INDEBTEDNESS

- a) As of April 24, 2023, the Indebtedness owing to the Bank by the Borrower (not including the sum owing by the Borrower on the Term Loan) was **\$193,742.56** plus accrued interest, and all legal fees, and Bank fees, including the Prepayment Fee due with respect to the payment made under the Term Loan prior to January 25, 2025 under the terms of the Royal Bank of Canada Credit Agreement dated January 24, 2020 calculated as more particularly described in Schedule “C”;
- b) The above amounts at 3 (a), plus accrued interest thereon, all of the Bank’s legal fees on a solicitor and own client basis and other professional costs, and all other amounts properly payable pursuant to the Credit Facilities, the Security and this Agreement

including all banking fees, including the indebtedness owing on the Term Loan including the Prepayment Fee due with respect to the payment made under the Term Loan prior to January 25, 2025 under the terms of the Royal Bank of Canada Credit Agreement dated January 24, 2020 are in total referred to as the “**Indebtedness**”.

4. TERM OF AGREEMENT

- a) Subject to the terms of this Agreement, the Bank shall grant the Borrower the period of forbearance, to allow the Borrower time to sell the Real Property and pay the Indebtedness in full by the Termination Date.

5. ACKNOWLEDGEMENTS

The Borrower and the Guarantor hereby acknowledge and agree:

- a) That the Indebtedness as detailed herein is owing to the Bank by the Borrower, and is not disputed, and the Borrower makes no claim of set-off in any way against the Indebtedness;
- b) That the Letter Agreement (as defined in Schedule “A” hereto), is valid and binding on the Borrower and, where, applicable, the Guarantor;
- c) That the Credit Facilities and the Security, including the GSA, the Guarantee and the Mortgage (as defined in Schedules “A” and “B” to this Agreement), are valid and binding and shall continue to be enforceable in accordance with the terms thereof;
- d) That the Borrower, the Guarantor, their assigns, employees and any party able to claim through the same, each agree that they have no claim for set-off, counterclaim or damages to the present time on any basis whatsoever against the Bank, its officers, directors, employees, solicitors and agents in respect of this Agreement or in any dealings with the Borrower and Guarantor including, without limitation, any action taken by the Bank in dealing with the Credit Facilities, or with the administration of any accounts held with the Bank by the Borrower, and the Security and if there are any existing claims known or unknown, they are hereby expressly released and discharged by this Agreement;

- e) The Default is valid and the Bank was in a position to issue the Demands, and the time provided therein was reasonable. The Bank does not, by this Agreement, waive its rights, and the Indebtedness remains owing in full;
- f) The Bank may enforce its Security and pursue all remedies with respect to the Indebtedness as it may deem appropriate, and by the entering into of this Agreement, the Bank is not estopped from taking any steps it deems necessary in its sole and absolute discretion to enforce the Security and to terminate this Agreement;
- g) That to the date hereof, the Bank has acted in a commercially reasonable manner and the Borrower and, where applicable, the Guarantor are estopped from disputing same;
- h) Except as provided in this Agreement, the Bank (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action, that would constitute a waiver of its rights to enforce the Security and pursue its remedies in respect of the Indebtedness without notice; and,
- i) To the extent that the Bank accepts any payments or makes any advances of funds or credit available to the Borrower during the term of this Agreement, such payments accepted or advances of funds shall not constitute a waiver of the Default, any pre-existing default, maturity of loans, or any additional defaults of the Borrower or of the Bank's rights following the expiry of the Demands.

6. FORBEARANCE FEE AND REVIEW FEE

No forbearance fee shall be due in relation to this Agreement.

7. NON-MANAGERIAL RESPONSIBILITY

The Borrower acknowledges that the Bank shall not have control over any of the operations or affairs of the Borrower and shall not take part in the management of the Borrower's affairs, including the approval of any transactions except as hereinafter qualified. Without limiting the generality of the foregoing, neither the Bank nor its agents shall be entitled to approve or execute agreements, sign cheques, or otherwise sign on bank accounts or interfere with the efficient and proper day-to-day conduct of the business and affairs of the Borrower.

8. NO PROTECTION WITHOUT CONSENT

The Borrower covenants and agrees that it will not, Without Consent, make any filing or seek any protection (including a stay of proceedings) or seek any stay pursuant to the BIA, or otherwise at law or in equity (a "**Filing**"), and that any Filing made in respect of any of the Borrower and/or the Guarantor will contain the following provisions:

- i) the terms of this Agreement will continue to bind the parties to this Agreement;
- ii) the Bank will not be affected by any stay or other order in such proceedings;
- iii) the Bank will be an unaffected creditor in any plan or proposal unless the Bank consents to being treated otherwise;
- iv) the Borrower and Guarantor each irrevocably consent to the variation of any stay or order in such proceedings which would purport to affect the Bank; and
- v) the Borrower will not make or support any application which would have the effect of:
  - (1) creating any charge ranking in priority to the Security or in priority to any other rights of the Bank; or
  - (2) altering or varying the rights of the Bank under the terms of the Credit Facilities, the Security or this Agreement.

9. CONFLICT WITH THE CREDIT FACILITIES

In the event of a conflict between this Agreement and the Credit Facilities, this Agreement shall prevail, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of the Bank under the Credit Facilities or this Agreement other than as may be specifically contemplated herein. No statement, representation, warranty, undertaking or agreement is enforceable unless in writing signed by the party against who it is asserted or his or her authorized agent. In the event of a conflict between the terms and provisions of same and this Agreement, the terms and provisions of this Agreement shall govern.

10. COVENANTS OF THE BORROWER

The Borrower, and where applicable the Guarantor, agree and covenant that they shall, to the satisfaction of the Bank in its sole discretion:

- a) Maintain all the assets and equipment of the Borrower and the Guarantor in a good state of repair;

- b) The Borrower shall keep all Priority Claims current, and provide to the Bank the following:
- i) On execution of this Agreement and on August 1, 2023, evidence of all filings and remittances to the Canada Revenue Agency on account of HST (RT) and employee deductions at source (RP), including current statements of account and notices of assessment, all satisfactory to the Bank in its absolute discretion, and shall provide further evidence of same at the Bank's request;
  - ii) With regard to the remaining Priority Claims, as requested by the Bank  
  
(the "**Priority Claims Reporting**");
- c) Not declare or pay any payment to any person who does not deal with the Borrower at arm's length (as such term is defined in the *Income Tax Act (Canada)*) except for salaries, contracts, and repayment of loans presently in place;
- d) The Borrower shall maintain all fire, liability, and property insurance with respect to the assets forming the Bank's Security on terms and amounts satisfactory to the Bank, naming the Bank as Loss Payee and provide evidence of same as requested by the Bank;
- e) With the sole exception of the property taxes, the Borrower shall keep current all amounts owing in relation to the Real Property, and shall maintain all fire, liability, and property insurance with respect to the Real Property, naming the Bank as Loss Payee and provide evidence of same as requested by the Bank;
- f) The Borrower shall provide the Bank with the following reporting, and provide any additional reporting as requested by the Bank:
- i) On or before June 30, 2023, or as requested by the Bank, the Borrower shall provide the Bank with a written update on the status of any sale of the Real Property, including, but not limited to, status of all marketing and sale efforts, and any interest and offer(s) received; and,
  - ii) On or before July 31, 2023, a firm Agreement of Purchase and Sale in relation to the Real Property, with a closing date on or before August 31, 2023, and in a sum to pay



the Indebtedness in full, all satisfactory to the Bank in its absolute discretion, and detailing the sale amount

(the “**Additional Reporting**”);

- g) The Borrower and the Guarantor will reimburse the Bank for all expenses that the Bank has incurred or will incur arising out of its dealings with the Borrower, and with the preparation of this Agreement and in the protection, preservation and enforcement of the Security, including all legal fees of the Bank on a solicitor and own client basis, and all other fees in relation to the Borrower in general and this Agreement. The Borrower and the Guarantor specifically waive any and all rights they may have to assess any of the legal or agents’ fees previously paid or paid in the future by the Bank, or any agent, whether such right arises pursuant the *Solicitor’s Act* (Ontario) or any law or statute. In this regard, the Borrower and the Guarantor acknowledge and agree that they fully indemnify the Bank for all expenses detailed herein; and
- h) The Borrower shall pay the Indebtedness in full on or before the Termination Date.

11. AMENDMENTS TO THE CREDIT FACILITIES

The Priority Claims Reporting and the Additional Reporting shall be in addition to, and not in replacement of, any other reporting now or hereafter required by the Bank, including all reporting required pursuant to the Letter Agreement.

The Bank shall immediately terminate all credit under the Credit Facilities and all accounts of the Borrower with the Bank following an Event of Default under this Agreement.

12. BANK’S RIGHTS

It is understood and agreed that nothing contained in this Agreement and no negotiations, correspondence or discussions among the parties hereto, shall prejudice, affect or waive any of the Bank’s rights under the terms of the Credit Facilities or the Security, except as those rights may have been modified by this Agreement.

13. AFFIRMATION BY GUARANTOR

- a) The Guarantor hereby ratifies the covenants contained in the Guarantee provided, and hereby confirms to the Bank that the Guarantee (as defined in Schedule "B" to this Agreement) is and remains good, valid and binding upon and enforceable against him.
- b) It is further understood and agreed that nothing contained in this Agreement and no negotiations or discussions among the parties hereto shall prejudice the right of the Bank to pursue its remedies against the Guarantor except as those rights may have been modified in this Agreement.

14. EVENTS OF DEFAULT

The Borrower shall be in default of this Agreement upon the happening of any of the following Events of Default:

- a) The Borrower fails to make any payment due to the Bank under the Credit Facilities and/or this Agreement in a timely manner;
- b) The Borrower and Guarantor, or any of them, are in breach of any terms of this Agreement, or any further breach of the Credit Facilities or any other agreement with the Bank, including, without limitation, the Security;
- c) The Borrower fails to provide the Priority Claims Reporting or the Additional Reporting to the Bank as required by this Agreement, or any reporting required by the Letter Agreement, as the case may be;
- d) If, for any reason whatsoever, a creditor of the Borrower holding security in priority or subordinate to the Security commences to enforce its security, or if any creditor of the Borrower should obtain a judgment and/or a lien as against the Borrower or its property, including the Real Property;
- e) There is, in the opinion of the Bank, acting reasonably, a material deterioration in the Security or the ability of the Bank to maximize the recovery of the Indebtedness;
- f) The Borrower makes a Filing under the BIA;

- g) The Borrower is in breach of any of their material obligations to a third party, including the default of payment to such parties; and,
- h) The Borrower fails to pay the Indebtedness by the Termination Date.

15. ENFORCEMENT

The Bank may proceed to enforce its Security and to pursue the Borrower and the Guarantor for payment of the entire Indebtedness at any time and, accordingly, the Borrower and the Guarantor hereby consent to the Bank taking such steps as the Bank deems reasonably necessary, in its discretion, to collect the entire Indebtedness and enforce its Security and the terms of this Agreement, and to take all further necessary and lawful steps, and accordingly:

- i) The Borrower, and where applicable, the Guarantor, consent to the Bank taking such steps as the Bank deems reasonably necessary, in its discretion, to collect the Indebtedness and enforce its Security and the terms of this Agreement including, without limitation, the appointment of a receiver as against or over the property of the Borrower and the Guarantor;
- ii) The Borrower hereby consents to the appointment of any such receiver, in the form set out at Schedule "D" hereto (the "**Consent to Appointment**"), consenting to the immediate private or court appointment of an interim receiver, receiver or receiver and manager of all property of the Borrower, including the Real Property, which Consent to Appointment shall be held in escrow by the Bank's counsel, Harrison Pensa LLP, and used on an Event of Default, or following the Termination Date;
- iii) The Borrower and the Guarantor hereby consent to judgment in favour of the Bank for the Indebtedness owing on the date that the Bank acts on the Consent to Judgment, and possession of the Real Property (collectively, the "**Consent to Judgment**") as set out at Schedule "E" hereto, which shall be held in escrow by the Bank's counsel, Harrison Pensa LLP, and used on an Event of Default, or following the Termination Date; and
- iv) The Borrower hereby consents to the appointment of any such trustee in bankruptcy, in the form set out at Schedule "F" hereto (the "**Consent to Bankruptcy Order**"), consenting to an order adjudging the Borrower to be bankrupt, and appointing a

Trustee in Bankruptcy over all property of the Borrower, which Consent to Bankruptcy Order shall be held in escrow by the Bank's counsel, Harrison Pensa LLP, and used on an Event of Default, or following the Termination Date.

The Consent to Bankruptcy Order, the Consent to Judgment and the Consent to Appointment are valid and binding upon their provision by the Borrower and the Guarantor to the Bank, and not subject to any conditions precedent.

16. EXTENSION OF AGREEMENT OR PAYMENT IN FULL

The Bank, in its sole discretion, may extend the period of forbearance on terms acceptable to it.

17. PREVIOUS AGREEMENTS

This Agreement replaces all previous agreements between the Borrower and the Bank, save and except the Credit Facilities.

18. NON-WAIVER

No delay on the part of the Bank in exercising any remedy or any waiver of the rights given to it hereunder or any of the Bank's Security shall operate as a waiver thereof except if such waiver is specifically given in writing by the Bank, and no forbearance on the part of the Bank with respect to any event of default shall be deemed to be of any waiver by the Bank of that event of default or any other subsequent or similar event of default.

19. TIME OF THE ESSENCE

Time is of the essence in this Agreement, but a forbearance by the Bank in the strict application of this provision shall not operate as a continuing or subsequent forbearance.

20. CONFLICT

Except as explicitly amended by this Agreement, the terms and provisions of the Credit Facilities, and the Bank's Security shall remain in full force and effect and no statement, representation, warranty, undertaking or agreement is enforceable unless in writing signed by the party against who it is asserted or his or her authorized agent. In the event of a

conflict between the terms and provisions of same and this Agreement, the terms and provisions of this Agreement shall govern.

21. FURTHER ASSURANCES

The Borrower and the Guarantor shall from time to time and at all times hereafter, at every reasonable request of the Bank, make, do, execute and deliver, or cause to be made, done, executed and delivered, at the sole cost and expense of the Borrower, all such further acts, deeds and assurances and things as may be necessary or desirable in the opinion of the Bank for more effectually implementing the true intent and meaning of this Agreement.

22. NOTICE

Any notice, demand, approval, consent, waiver or other communication ("**Notice**") to be given by one party to another under this Agreement, shall be in writing and shall be sufficiently given if delivered personally, forwarded by registered mail or transmitted by facsimile transmission or e-mail to such party as follows:

In the case of the Borrower and the Guarantor:

To the addresses as provided in this Agreement.

In the case of the Bank to:

Royal Bank of Canada  
20 King Street West, 2<sup>nd</sup> Floor,  
Toronto, ON, Canada, M5H 1C4  
Attention: Jason Gagnon  
Via e-mail: [jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)

With a copy to:

Harrison Pensa <sup>LLP</sup>  
Barristers and Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2  
Attention: Tim Hogan  
Via e-mail: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

or to such other address, fax number or e-mail as may be designated by Notice given as aforesaid to the other party by the party to whom Notice is to be given. Any Notice delivered and received as aforesaid shall be deemed to have been given and received on the first

business day following the date of personal delivery, the forwarding by registered mail, e-mail or facsimile transmission, as the case may be.

23. SUCCESSORS AND ASSIGNS

The Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, administrators, executors or permitted assigns.

24. UNENFORCEABILITY

The invalidity, illegality or unenforceability, for any reason, of any term or provision of this Agreement, shall not in any manner invalidate any other term or provision hereof; the same shall be deemed to have been severed herefrom so that the validity, legality and enforceability of the remaining terms and provisions hereof shall not be affected, prejudiced or impaired thereby.

25. GOOD FAITH

It is acknowledged by the Borrower and Guarantor that this Agreement was prepared following good faith negotiations, by the Bank and the Borrower and the Guarantor.

26. PIPEDA

The Borrower and Guarantor hereby consent to the Bank's release of personal information in relation to the Credit Facilities, without notice to the Borrower and/or the Guarantor and at the Bank's absolute discretion, to any entity having an interest or potential interest in the collateral for its enforcement or collection purposes. The Borrower and Guarantor further agree and acknowledge that such release of personal information by the Bank is lawful and is permitted despite other avenues that may be available to any third party to obtain such personal information and that such release is not a violation of the provisions of the *Personal Information and Electronic Documents Act*, S.C. 2000, c.5, s.7 and is made with the knowledge and consent of the Borrower and Guarantor as is required under this legislation.

27. COUNTERPARTS and FACSIMILE COPIES

This Agreement or any amendment thereto may be executed in counterparts, and if so executed all counterparts when taken together shall comprise one and the same instrument,

and facsimile copies or portable document format (PDF) of signatures shall be treated as originals for all purposes.

28. LIMITATION PERIOD

The obligations of the Borrower and the Guarantor to the Bank are hereby acknowledged and shall be continued to be acknowledged through the term of this Agreement.

Commencing on the next business day following execution of this Agreement and continuing until the date the Credit Facilities have been permanently repaid and cancelled, the Bank, the Borrower and the Guarantor agree to toll and suspend the running of the applicable contractual time limitations on the commencement of proceedings, any demands for payment, claims or defences, statutes of limitation, laches or other doctrines related to the passage of time in relation to the Credit Facilities and the Security and any entitlements arising therefrom or any other related matters, or any time-related doctrine (the "**Tolling Agreement**"). The Bank, the Borrower and the Guarantor confirm that the Tolling Agreement is intended to be an agreement to suspend or extend the basic limitation period provided by section 4 of the *Limitations Act, 2002* (Ontario) (the "**Limitations Act**"), as well as the ultimate limitation period provided by section 15 of the Limitations Act in accordance with the provisions of section 22(3) and 22(4) of the Limitations Act, and is intended to be a "business agreement" in accordance with section 22(5) of the Limitations Act.

29. ACKNOWLEDGEMENT BY THE BORROWER

The Borrower hereby confirms and acknowledges that it has no adverse claims whatsoever against the Bank, its agents or professional advisors including, without limitation, their agents, employees consultants and solicitors (including claims for set-off, counterclaim or damages) with respect to its dealings with the Borrower.

30. ACCEPTANCE

This Agreement is open for acceptance until 5:00 pm on May 10, 2023. Should the Borrower and the Guarantor not accept this offer by the time indicated, the same shall become null and void and no longer binding on the Bank.

The Borrower covenants and agrees with the Bank that this Agreement is subject to the following conditions, which are for the exclusive benefit of the Bank and may be waived only by the Bank in writing. Each of the following conditions is to be completely fulfilled or

performed prior to this Agreement being a binding Agreement on the Bank, unless the Bank waives any of the conditions, and this Agreement shall then be at an end:

- The Bank’s receipt of a duly authorized and executed copy of this Agreement, the Consent to Appointment, the Consent to Bankruptcy Order and the Consent to Judgment; and,
- Evidence of the Borrower’s filings and remittances to the Canada Revenue Agency on account of HST (RT) and employee deductions at source (RP), including current statements of account and notices of assessment.

In witness whereof the parties hereto have executed this Agreement as of the day and year first above written.

**ROYAL BANK OF CANADA**

Per: \_\_\_\_\_

I have the authority to bind the Bank

**1434399 ONTARIO INC.**

Per: \_\_\_\_\_

I have the authority to bind the Corporation

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John R. Fulton

- Schedule “A” - Credit Facilities
- Schedule “B” – Security
- Schedule “C” – Indebtedness
- Schedule “D” – Consent to Appointment
- Schedule “E” – Consent to Judgment
- Schedule “F” – Consent to Bankruptcy Order



**SCHEDULE "A"**  
**CREDIT FACILITIES**

The following facilities were provided by the Bank, as evidenced by the Royal Bank of Canada Credit Agreement dated January 24, 2020:

1. Fixed Rate Term Loan (44254994-001): in the amount of \$1,200,000 (the Term Loan);
2. Revolving Demand Facility: in the amount of \$10,000; and
3. Credit Card Facility: to a maximum amount of \$20,000, as governed by the RBC Royal Bank Visa Business Card Agreement dated January 28, 2020 (the "**Visa**").

The following facility was provided by the Bank, as evidenced by the Letter Agreement dated December 14, 2021 (collectively, the "**Letter Agreement**"):

1. Non-Revolving Term Facility: in the amount of \$100,000 (the "**HASCAP Loan**").

Loan made under the Canada Emergency Business Account program.

**SCHEDULE "B"**  
**SECURITY**

As security for the Credit Facilities and for any monies advanced or to be advanced in the future by the Bank to the Borrower, and for all other present and future indebtedness, fees, expenses and other liabilities, direct or indirect, absolute or contingent due by the Borrower to the Bank, including the Bank's solicitor and own client legal fees in relation to the enforcement of the Security, and the preparation of this Agreement, the Borrower and the Guarantor, as the case may be, have granted to the Bank security over their assets consisting of the following:

1. General Security Agreement from the Borrower dated January 28, 2020 (the "**GSA**");
2. Guarantee and Postponement of Claim from the Guarantor dated January 28, 2020, limited to the amount of \$1,200,000 (the "**Guarantee**");
3. Postponement and Assignment of Claim dated January 28, 2020, provided by the Guarantor; and,
4. Charge/Mortgage of Land in the principal sum of \$1,200,000 over the Real Property (the "**Mortgage**").

**SCHEDULE "C"**  
**INDEBTEDNESS**

INDEBTEDNESS OF THE BORROWER AS AT APRIL 24, 2023<sup>1</sup>

Overdraft (numbers subject to change)	\$9,409.92
HASCAP Non-Revolving Term Facility - 002 (numbers subject to change)	\$98,559.61 (\$10.86 per diem)
Canada Emergency Business Account Credit Agreement (2190)	\$60,000.00
Visa (ending 6223) (numbers subject to change)	\$25,773.03
<b>Total</b>	<b>\$193,742.56</b>

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<sup>1</sup> Plus accruing interest and all continuing billed and unbilled legal fees. The Borrower remains indebted on Term Loan (44254994-001) maturing January 25, 2025,

**SCHEDULE "D"**  
**CONSENT TO APPOINTMENT**

Court File No.:

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

1434399 ONTARIO INC.

Respondent

**CONSENT**

The Respondent hereby consents to the appointment of a Receiver of the property of the Respondent under the terms of an Order substantially in the form attached at Schedule "D-1" hereto or to the private appointment of same.

The Respondent herein, by its solicitors or individually, hereby certify that the Order being consented to does not affect the rights of any parties under disability.

Dated at \_\_\_\_\_, Ontario this      day of May, 2023.

**1434399 ONTARIO INC.**

Per: \_\_\_\_\_

I have the authority to bind the Corporation

**SCHEDULE "D-1"**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE )  
) DAY OF , 20

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

1434399 ONTARIO INC.

Respondent

**ORDER  
(appointing Receiver)**

THIS Application, made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of the Respondent, 1434399 Ontario Inc. (hereinafter the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, and of the real property described at Schedule "A" hereto and owned by the Respondent (the "**Real Property**") was heard this day by judicial videoconference via Zoom at the Courthouse, 330 University Avenue, Toronto, Ontario;

ON READING the affidavit of \_\_\_\_\_ sworn \_\_\_\_\_ and the Exhibits thereto and on hearing the submissions of counsel for \_\_\_\_\_, no one appearing for \_\_\_\_\_ although duly served as appears from the affidavit of service of \_\_\_\_\_ sworn \_\_\_\_\_ and on reading the consent of \_\_\_\_\_ to act as the Receiver.

## **SERVICE**

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

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, \_\_\_\_\_ is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including the Real Property, and all proceeds thereof (collectively, the "**Property**").

## **RECEIVER'S POWERS**

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

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

whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$\_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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



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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

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

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

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

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance

with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

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

#### **RECEIVER TO HOLD FUNDS**

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

## **EMPLOYEES**

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

## **PIPEDA**

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

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to

report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

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

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

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

## **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$\_\_\_\_\_ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

## **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<@>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

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

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in Bankruptcy of the Debtor.

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

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

31. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

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Justice, Ontario Superior Court Of  
Justice, Commercial List



**SCHEDULE "A"**

**REAL PROPERTY**

LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT)

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that \_\_\_\_\_, the receiver (the "Receiver"), as appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, of the assets, undertakings and properties of 1434399 Ontario Inc. (collectively, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, and of the Real Property described at Schedule "A" to the Order (the "Property"), has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of the Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

**SCHEDULE "E"  
CONSENT TO JUDGMENT**

Court File No.:

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

-and-

1434399 ONTARIO INC. and JOHN R. FULTON

Defendants

**CONSENT**

The parties hereto, by their solicitors or individually, consent to a Judgment attached hereto as Schedule "E-1".

The parties herein, by their solicitors or individually, hereby certify that the Judgment being consented to does not affect the rights of any parties under disability.

**DATED AT**                      **this**      **day of May, 2023**

**HARRISON PENSA LLP**

Per: \_\_\_\_\_  
Solicitors for the Plaintiff

**DATED AT**                      **this**      **day of May, 2023**

**1434399 ONTARIO INC.**

Per: \_\_\_\_\_

I have the authority to bind the Corporation

**DATED AT**                      **this**    **day of May, 2023**

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Witness

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John R. Fulton

**SCHEDULE "E-1"**

Court File No.:

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

-and-

1434399 ONTARIO INC. and JOHN R. FULTON

Defendants

**JUDGMENT**

**THIS MOTION** for judgment, made by the Plaintiff was heard this day at the Court House, 59 Church Street, St. Catharines, Ontario:

**ON READING** the Notice of Motion and the consent, filed,

1. **THIS COURT ORDERS AND ADJUDGES** that the Defendant, 1434399 Ontario Inc., pay to the Plaintiff the sum of \$9,409.92 owing as of April 24, 2023, with interest on this sum from April 24, 2023 until payment thereof at the Plaintiff's prime rate of interest plus 5.00% per annum;
2. **THIS COURT ORDERS AND ADJUDGES** that the Defendant, 1434399 Ontario Inc., pay to the Plaintiff the sum of \$25,773.03 owing as of April 24, 2023, with interest on this sum from April 24, 2023 until payment thereof at the rate of interest of 19.99% per annum;
3. **THIS COURT ORDERS AND ADJUDGES** that the Defendant, 1434399 Ontario Inc., pay to the Plaintiff the sum of \$98,559.61 owing as of April 24, 2023, with interest on this sum from April 24, 2023 until payment thereof at the rate of interest of 4.00% per annum;

4. **THIS COURT ORDERS AND ADJUDGES** that the Defendant, 1434399 Ontario Inc., pay to the Plaintiff the sum of \$60,000.00 owing as of April 24, 2023, with interest on this sum from April 24, 2023 until payment thereof at the rate of 0.00% per annum until December 31, 2023, thereafter, at the rate of 5.00% per annum;
  
5. **THIS COURT ORDERS AND ADJUDGES** that the Defendant, John R. Fulton, pay to the Plaintiff the sum of \$35,182.95 owing as of April 24, 2023, with interest on this sum from April 24, 2023 until payment thereof at the Plaintiff's prime rate of interest plus 5.00% per annum;
  
6. **THIS COURT ORDERS AND ADJUDGES** that the Defendant, 1434399 Ontario Inc., deliver up to the Plaintiff possession of the real property legally described as:  
  
LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT)
  
7. **THIS COURT ORDERS AND ADJUDGES** that the Defendants pay costs of this action and motion on a full indemnity basis.

---

Justice, *Ontario* Superior Court of Justice





**SCHEDULE "F-1"**

**Court File No.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**MASTER** ) , **THE** **DAY**  
 )  
 ) **OF** , **2023**

**IN THE MATTER OF THE BANKRUPTCY OF  
1434399 ONTARIO INC.  
OF THE CITY OF ST. CATHARINES  
IN THE PROVINCE OF ONTARIO**

**BANKRUPTCY ORDER**

Upon reading the application of Royal Bank of Canada, a creditor, of the City of Toronto, in the Province of Ontario, filed, the Affidavit of Jason Gagnon sworn [ ], and the Consent of the parties, filed;

And upon hearing the counsel for the Applicant Creditor, no one else appearing although properly served;

And it appearing to the court that the following acts of bankruptcy have been committed:

a) 1434399 Ontario Inc. has ceased to meet its liabilities generally as they have become due.

1. **IT IS ORDERED** that the said 1434399 Ontario Inc., of the City of St. Catharines, is hereby adjudged bankrupt, and a Bankruptcy Order is hereby made against the said 1434399 Ontario Inc..
2. **IT IS FURTHER ORDERED** that [ ] be and is hereby appointed Trustee of the estate of the said bankrupt.
3. **IT IS FURTHER ORDERED** that the costs of the applicant shall be paid out of the estate of the bankrupt upon taxation thereof.

\_\_\_\_\_  
Associate Justice

# EXHIBIT "M"

St.Catharines  
Ontario  
L2R-5B8  
905.932.7873  
Keeping Niagara Fit Since 1982

---

**From:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Sent:** Monday, May 29, 2023 2:50:18 PM  
**To:** John R. Fulton <[johnny@fulton.ca](mailto:johnny@fulton.ca)>  
**Subject:** RE: 1434399 ONTARIO INC.

Hi John,

Any update on this? We require a response no later than May 31, 2023.

Thanks,

**Jason Gagnon, CFA** | Senior Manager, Special Loans & Advisory Services | **Royal Bank of Canada**  
20 King Street West, 2<sup>nd</sup> Floor, Toronto, ON M5H 1C4 | T: 647-328-6173 | E-mail: [jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)

---

**From:** John R. Fulton [<mailto:johnny@fulton.ca>]  
**Sent:** Thursday, May 25, 2023 10:44 AM  
**To:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Subject:** Re: 1434399 ONTARIO INC.

[External]/[Externe]

Hi Jason,  
Just having a lawyer look at this. Will sign back early next week if that's ok.  
Thanks  
John

John R. Fulton  
President  
Fulton Fitness  
14 James Street  
St.Catharines  
Ontario  
L2R-5B8  
905.932.7873  
Keeping Niagara Fit Since 1982

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**From:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Sent:** Wednesday, May 24, 2023 9:05:28 AM  
**To:** John R. Fulton <[johnny@fulton.ca](mailto:johnny@fulton.ca)>  
**Subject:** RE: 1434399 ONTARIO INC.

Hi John,

Following up on this. Can you please sign and return at your earliest.

If you have any questions about this, please let me know. We must receive a response shortly.

Thanks,

**Jason Gagnon, CFA** | Senior Manager, Special Loans & Advisory Services | **Royal Bank of Canada**  
20 King Street West, 2<sup>nd</sup> Floor, Toronto, ON M5H 1C4 | T: 647-328-6173 | E-mail: [jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)

---

**From:** Gagnon, Jason  
**Sent:** Wednesday, May 3, 2023 10:22 AM  
**To:** 'John R. Fulton' <[johnny@fulton.ca](mailto:johnny@fulton.ca)>  
**Subject:** RE: 1434399 ONTARIO INC.

Hi John,

As mentioned below, please find the previously discussed Forbearance Agreement attached.

Please let me know if you have any questions.

Thanks,

**Jason Gagnon, CFA** | Senior Manager, Special Loans & Advisory Services | **Royal Bank of Canada**  
20 King Street West, 2<sup>nd</sup> Floor, Toronto, ON M5H 1C4 | T: 647-328-6173 | E-mail: [jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)

---

**From:** Gagnon, Jason  
**Sent:** Monday, April 24, 2023 10:25 AM  
**To:** 'John R. Fulton' <[johnny@fulton.ca](mailto:johnny@fulton.ca)>  
**Subject:** RE: 1434399 ONTARIO INC.

Hi John,

Thanks for accommodating the site visit completed on April 18.

The Bank understands that you have listed the property for sale and it is going to take some time for the property to be marketed and sold. As such, the Bank is prepared to extend a reasonable amount of time to achieve this.

As discussed, the Bank would like to formalize an agreement for timelines on the sale and would contemplate extending until August 31, 2023 for the sale to be completed with the following terms:

- Within 60 days, the Bank is provided with an update on the marketing efforts and to see interest or offers from potential purchasers
- Within 90 days, the Bank is provided with a copy of a purchase and sale agreement
- If property is not sold by August 31, 2023 the Bank may consider further enforcement action
- Consent to Bankruptcy/Receivership
- Consent to judgment.

Please let me know if you have any questions.

Sincerely,

**Jason Gagnon, CFA** | Senior Manager, Special Loans & Advisory Services | **Royal Bank of Canada**  
20 King Street West, 2<sup>nd</sup> Floor, Toronto, ON M5H 1C4 | T: 647-328-6173 | E-mail: [jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)

# EXHIBIT “N”

St.Catharines  
Ontario  
L2R-5B8  
905.932.7873  
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---

**From:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Sent:** Monday, May 29, 2023 2:50:18 PM  
**To:** John R. Fulton <[johnny@fulton.ca](mailto:johnny@fulton.ca)>  
**Subject:** RE: 1434399 ONTARIO INC.

Hi John,

Any update on this? We require a response no later than May 31, 2023.

Thanks,

**Jason Gagnon, CFA** | Senior Manager, Special Loans & Advisory Services | **Royal Bank of Canada**  
20 King Street West, 2<sup>nd</sup> Floor, Toronto, ON M5H 1C4 | T: 647-328-6173 | E-mail: [jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)

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**Sent:** Thursday, May 25, 2023 10:44 AM  
**To:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Subject:** Re: 1434399 ONTARIO INC.

[External]/[Externe]

Hi Jason,  
Just having a lawyer look at this. Will sign back early next week if that's ok.  
Thanks  
John

John R. Fulton  
President  
Fulton Fitness  
14 James Street  
St.Catharines  
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**Subject:** RE: 1434399 ONTARIO INC.

Hi John,

Following up on this. Can you please sign and return at your earliest.

# EXHIBIT "O"

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately

---

**From:** John R. Fulton [<mailto:johnny@fulton.ca>]  
**Sent:** Wednesday, May 31, 2023 10:02 AM  
**To:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Subject:** Re: 1434399 ONTARIO INC.

[External]/[Externe]

Hi Jason,

I need a few more days on this. I started an action against the city and developer with a destruction of evidence and notice of liability letter. Was waiting for this story to break and results from a forensic engineer before filing a statement of claim. My insurer has determined that my building is within the zone of influence (57 Carlisle project) and is covering the damage.

Thanks  
John

<https://www.dropbox.com/s/7zth1611uyifrf1/Notice%20of%20Liability%20Re%2057%20Carlisle%20St%20Mach%202023%20.pdf?dl=0>

<https://www.therecord.com/nd/news/niagara-region/2023/05/29/tower-construction-threatens-to-crush-neighbouring-st-catharines-businesses.html>

John R. Fulton  
President  
Fulton Fitness  
14 James Street  
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Ontario  
L2R-5B8  
905.932.7873  
Keeping Niagara Fit Since 1982

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**Subject:** Re: 1434399 ONTARIO INC.

Hi Jason,  
I'll make sure I meet the deadline.  
Thanks for your patience.  
John

John R. Fulton  
President  
Fulton Fitness  
14 James Street



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**Sent:** Monday, May 29, 2023 2:50:18 PM  
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Thanks,

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20 King Street West, 2<sup>nd</sup> Floor, Toronto, ON M5H 1C4 | T: 647-328-6173 | E-mail: [jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)

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[External]/[Externe]

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Just having a lawyer look at this. Will sign back early next week if that's ok.  
Thanks  
John

John R. Fulton  
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Fulton Fitness  
14 James Street  
St.Catharines  
Ontario  
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**To:** John R. Fulton <[johnny@fulton.ca](mailto:johnny@fulton.ca)>  
**Subject:** RE: 1434399 ONTARIO INC.

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Following up on this. Can you please sign and return at your earliest.

# EXHIBIT “P”

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately

---

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**Sent:** Wednesday, May 31, 2023 10:02 AM  
**To:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Subject:** Re: 1434399 ONTARIO INC.

[External]/[Externe]

Hi Jason,

I need a few more days on this. I started an action against the city and developer with a destruction of evidence and notice of liability letter. Was waiting for this story to break and results from a forensic engineer before filing a statement of claim. My insurer has determined that my building is within the zone of influence (57 Carlisle project) and is covering the damage.

Thanks  
John

<https://www.dropbox.com/s/7zth1611uyifrl/Notice%20of%20Liability%20Re%2057%20Carlisle%20St%20Mach%202023%20.pdf?dl=0>

<https://www.therecord.com/nd/news/niagara-region/2023/05/29/tower-construction-threatens-to-crush-neighbouring-st-catharines-businesses.html>

John R. Fulton  
President  
Fulton Fitness  
14 James Street  
St.Catharines  
Ontario  
L2R-5B8  
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**To:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Subject:** Re: 1434399 ONTARIO INC.

Hi Jason,  
I'll make sure I meet the deadline.  
Thanks for your patience.  
John

John R. Fulton  
President  
Fulton Fitness  
14 James Street

# EXHIBIT “Q”

## Thomas Masterson

---

**From:** John R. Fulton <johnny@fulton.ca>  
**Sent:** Wednesday, May 31, 2023 3:47 PM  
**To:** Tim Hogan  
**Cc:** Gagnon, Jason  
**Subject:** Re: 1434399 ONTARIO INC.

You don't often get email from johnny@fulton.ca. [Learn why this is important](#)

[EXTERNAL EMAIL]

Thanks Tim, Jason will do.  
Have a good night.  
John

John R. Fulton  
President  
Fulton Fitness  
14 James Street  
St.Catharines  
Ontario  
L2R-5B8  
905.932.7873  
Keeping Niagara Fit Since 1982

---

**From:** Tim Hogan <thogan@harrisonpensa.com>  
**Sent:** Wednesday, May 31, 2023 3:41:10 PM  
**To:** John R. Fulton <johnny@fulton.ca>  
**Cc:** Gagnon, Jason <jason.gagnon@rbc.com>  
**Subject:** FW: 1434399 ONTARIO INC.

Mr. Fulton

We are counsel for RBC in this matter.

RBC has been forbearing day to day since demands in this matter expired and the Bank has been forbearing day to day

Please note that the attached agreement was open for acceptance to May 10, 2023.

Please be advised that the Bank requires that the attached agreement be signed and returned by no later than Friday June 2, 2023 at 4 pm.

The Bank continues to reserve all rights.

We look forward to hearing from you.

**Tim Hogan** | [HARRISON PENSA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel* 519-661-6743  
| *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com) Assistant | Cathy Coleiro | *tel* 519-850-5568 |  
[ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately

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**Sent:** Wednesday, May 31, 2023 10:02 AM  
**To:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Subject:** Re: 1434399 ONTARIO INC.

[External]/[Externe]

Hi Jason,

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Thanks  
John

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<https://www.therecord.com/nd/news/niagara-region/2023/05/29/tower-construction-threatens-to-crush-neighbouring-st-catharines-businesses.html>

John R. Fulton  
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**Sent:** Monday, May 29, 2023 4:01:47 PM  
**To:** Gagnon, Jason <[jason.gagnon@rbc.com](mailto:jason.gagnon@rbc.com)>  
**Subject:** Re: 1434399 ONTARIO INC.

Hi Jason,  
I'll make sure I meet the deadline.  
Thanks for your patience.  
John

John R. Fulton  
President  
Fulton Fitness  
14 James Street

# EXHIBIT “R”

# Harrison Pensa

LAWYERS

**Timothy C. Hogan**

Direct Line: (519)-661-6743  
thogan@harrisonpensa.com

Assistant: Aimee Newman  
Direct Line: (519) 850-5568  
anewman@harrisonpensa.com

June 20, 2023

Via Registered & Regular Mail & Email – [johnny@fulton.ca](mailto:johnny@fulton.ca)

1434399 Ontario Inc.  
14 James St.  
St. Catharines, ON L2R 5B8

Dear Sir,

**Re: Indebtedness of 1434399 Ontario Inc. to Royal Bank of Canada (the "Bank")  
Our File No. 196236**

We are the solicitors for the Bank with respect to loans provided to 1434399 Ontario Inc. (hereinafter the "**Debtor**").

According to the Bank's records, the Debtor is indebted to the Bank as at June 13, 2023, in the total sum of \$1,340,847.17 including all interest to June 13, plus all accruing interest, and plus the Bank's costs of enforcement on a solicitor and client basis (the "**Indebtedness**").

The Indebtedness is comprised of the following:

Fixed Rate Term Loan (Non-Revolving) (ending in 001)	\$1,149,069.07 (per diem \$107.40)
Overdraft (ending in 3557) (number subject to change)	\$7,083.71
HASCAP Non-Revolution Term Facility (ending in 002) (number subject to change)	\$97,831.85 (per diem \$10.65)
Canada Emergency Business Account Loan (ending in 2190) (" <b>CEBA</b> ")	\$60,000.00
Visa (ending 6223) (number subject to change)	\$26,862.54
<b>Total</b>	<b>\$1,340,847.17</b>

The Debtor is in default of certain agreements signed in favour of the Bank including, but not limited to, the following:

Harrison Pensa LLP



1. Credit Agreement dated January 24, 2020;
2. Letter Agreement dated December 14, 2021;
3. General Security Agreement dated January 28, 2020;
4. Charge/Mortgage of Land in the principal sum of \$1,200,000.00 and receipted as instrument number NR534531 on February 12, 2020, over the Property, legally described as: LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT); and,
5. RBC Royal Bank Visa Business Card Agreement dated January 28, 2020.

On behalf of the Bank we hereby demand payment of the Indebtedness owing by the Debtor together with interest thereon and all costs to the date of payment, ten (10) days from the date of payment.

Failing payment within ten (10) days will result in the Bank taking such steps as it considers necessary or appropriate to recover payment of the Debtor's Indebtedness and to protect its interest.

We advise that no intermediate acts, negotiations, indulgences or any continuing credit or provision of banking services shall act as a waiver to the Bank's rights, or demand for payment as set out herein, unless so expressly stated in writing.

The Bank expressly reserves its rights to take such further steps to protect its interest at any time, without further notice to the Debtor, if the Bank becomes aware of any matter which may impair its security. In addition, the Bank reserves the right to restrict or cancel all facilities at any time with no further notice and to place all bank accounts on deposit only.

Finally, also find attached to this letter our client's Notice of Intention to Enforce Security as well as the relevant consent to immediate enforcement of the Bank's security. By signing this consent, the Debtor waives the time period given by the Bank under this notice.

Yours truly,

HARRISON PENSA <sup>LLP</sup>

A handwritten signature in black ink, appearing to be 'TH' with a stylized flourish.

Timothy C. Hogan  
TCH/an  
Enclosure

cc: John R. Fulton as guarantor

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Section 244(1) of the *Bankruptcy and Insolvency Act*)**

TO: 1434399 Ontario Inc., an insolvent person

**TAKE NOTICE THAT:**

1. Royal Bank of Canada, a secured creditor, intends to enforce its security on the property of the insolvent person described as:

All collateral of the insolvent person as described in the following security and the proceeds from the sale of said collateral:

1. General Security Agreement dated January 28, 2020; and,
2. Charge/Mortgage of Land in the principal sum of \$1,200,000.00 and receipted as instrument number NR534531 on February 12, 2020, over the Property, legally described as: LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT).

The property to which the security relates includes, but is not limited to, all accounts, book debts, inventory, equipment, and real property wherever located and all other collateral however described of the above-noted insolvent person and the proceeds thereof.

2. The security that is to be enforced is in the form of:

1. General Security Agreement dated January 28, 2020; and,
2. Charge/Mortgage of Land in the principal sum of \$1,200,000.00 and receipted as instrument number NR534531 on February 12, 2020, over the Property, legally described as: LT 450, 464 CP PL 2 GRANTHAM; ST. CATHARINES (PIN 46219-0114 LT).

3. The total amount of indebtedness secured by the security is \$1,280,847.17 (excluding the Canada Emergency Business Account Loan) as of June 13, 2023, plus interest as set out in the agreements, plus all costs of enforcement on a solicitor and client basis.

4. The secured creditor will not have the right to enforce its security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at London, Ontario this 20<sup>th</sup> day of June, 2023.

ROYAL BANK OF CANADA  
by its solicitors, Harrison Pensa LLP



Per: \_\_\_\_\_  
TIMOTHY C. HOGAN  
Harrison Pensa LLP  
130 Dufferin Avenue, Suite 1101  
PO Box 3237  
London, ON N6A 4K3  
(519) 661-6743

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

**CONSENT**  
**(s.244(2) of the *Bankruptcy and Insolvency Act*)**

THE UNDERSIGNED hereby acknowledges receipt of a copy of Royal Bank of Canada's demand dated June 20, 2023 and the Notice of Intention to Enforce Security dated June 20, 2023 pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* and hereby waives the 10 day period set out in the demand and notice and consents to the immediate enforcement of Royal Bank of Canada's security.

DATED at \_\_\_\_\_, Ontario this \_\_\_\_\_ day of June, 2023.

**1434399 ONTARIO INC.**

Per: \_\_\_\_\_  
I have authority to bind the company

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John R. Fulton

# Harrison Pensa

LAWYERS

**Timothy C. Hogan**

Direct Line: 519-661-6743  
thogan@harrisonpensa.com

Assistant: Aimee Newman  
Direct Line: 519-850-5568  
anewman@harrisonpensa.com

June 20, 2023

**Via Registered & Regular Mail & Email – [johnny@fulton.ca](mailto:johnny@fulton.ca)**

John R. Fulton  
372 Buffalo Road  
Fort Erie, ON L2A 5G4

Dear Sir,

**Re: Indebtedness of 1434399 Ontario Inc. to Royal Bank of Canada (the “Bank”)  
Our File No. 196236**

We are the solicitors for the Bank with respect to the loans provided to 1434399 Ontario Inc. (hereinafter the “**Debtor**”).

According to the Bank’s records, the Debtor is indebted to the Bank in the amount of \$1,149,069.07<sup>1</sup> as of June 13, 2023, together with accruing interest thereon, and the Bank’s continuing costs of enforcement on a solicitor and client basis.

Pursuant to a guarantee executed by you on January 28, 2020 and limited to the sum of \$1,200,000.00 held in support of the Fixed Rate Term Loan (Non-Revolving) ending in 001, you are liable to pay the sum of \$1,149,069.07, with interest continuing to accrue until the payment plus the Bank’s legal fees on a solicitor and own client basis (the “**Indebtedness**”).

On behalf of the Bank, we hereby demand payment of the Indebtedness together with interest thereon to the date of payment, within ten (10) days of the date of this letter.

Failing to make payment within ten (10) days will result in the Bank taking such steps as it considers necessary or appropriate to recover payment of the Indebtedness and to protect its interest.

We advise that no intermediate acts, negotiations or indulgences shall act as a waiver to the Bank’s rights, or demand for payment as set out herein, unless so expressly stated in writing.

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<sup>1</sup>With respect to the Fixed Rate Term Loan (Non-Revolving) ending in 001, with other indebtedness outstanding on other facilities.

Harrison Pensa LLP

Yours truly,

HARRISON PENSA <sup>LLP</sup>

A handwritten signature in black ink, appearing to be 'TCH' with a stylized flourish.

Timothy C. Hogan  
TCH/an

7917554\_1

This receipt is necessary if enquiry is desired. Fragile and perishable articles are not indemnified against damage. Indemnity and fees information is available on request from your Postal Outlet.

À produire en cas de réclamation. Aucune indemnité ne sera versée pour l'avarie d'un objet fragile ou périssable. Vous pouvez obtenir des renseignements sur les indemnités et les droits à votre installation postale.

Sender Expéditeur

**Harrison Pensa**

130 Dufferin Avenue, Suite 1101  
London, ON N6A 5R2

Date: June 20, 2023

File: RBC/1434399 Ont. Inc./196236/TCH

**Sender Instructions**

Note: Bulk Receipt is to be completed for 3 or more items. Present mailings at any Postal Outlet.

- A Complete and remove customer receipt.
- B Remove paper backing from receipt.
- C Affix receipt to this form.
- D Remove bottom bar code and affix to "Trace Mail Data Capture Document"
- E Remove paper backing from label
- F Apply label to envelope

**Instructions pour l'expéditeur**

Avis: Récepissé en nombre, pour 3 items et plus. Doit être complété avant de déposer à l'installation postale.

- A Rempissez et retirez le récépissé du client.
- B Retirez la pellicule protectrice du récépissé.
- C Collez le récépissé sur cette formule.
- D Retirez le code à barres du bas et l'apposer sur le "Document de saisie des données" pour le courrier repérable.
- E Retirez la pellicule de l'étiquette.
- F Collez l'étiquette sur l'enveloppe

<p>(1)</p> <p><b>CANADA POST / POSTES CANADA</b></p> <p><b>REGISTERED DOMESTIC</b> CUSTOMER RECEIPT</p> <p>Destinataire</p> <p>1434399 Ontario Inc. 14 James St. St. Catharines, ON L2R 5B8</p> <p>FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON canadapost.ca / postescanada.ca 1 888 550-6333</p> <p>CPC Tracking Number / Numéro de suivi de la SCP RN 713 229 842 CA</p> <p>33-086-584 (17-12)</p>	<p>(2)</p> <p><b>RECOMMANDÉ RÉGIME INTÉRIEUR</b> REÇU DU CLIENT</p> <p>POSTES CANADA</p> <p>FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON canadapost.ca / postescanada.ca 1 888 550-6333</p> <p>CPC Tracking Number / Numéro de suivi de la SCP RN 713 229 842 CA</p>	<p>(3)</p>
<p>(4)</p> <p><b>CANADA POST / POSTES CANADA</b></p> <p><b>REGISTERED DOMESTIC</b> CUSTOMER RECEIPT</p> <p>John R. Fulton 372 Buffalo Road Fort Erie, ON L2A 5G4</p> <p>FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON canadapost.ca / postescanada.ca 1 888 550-6333</p> <p>CPC Tracking Number / Numéro de suivi de la SCP RN 713 227 965 CA</p> <p>Value déclarée</p> <p>33-086-584 (17-12)</p>	<p>(6)</p> <p><b>RECOMMANDÉ RÉGIME INTÉRIEUR</b> REÇU DU CLIENT</p> <p>POSTES CANADA</p> <p>FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON canadapost.ca / postescanada.ca 1 888 550-6333</p> <p>CPC Tracking Number / Numéro de suivi de la SCP RN 713 227 965 CA</p>	<p>(9)</p>
<p>(10)</p> <p><b>CANADA POST / POSTES CANADA</b></p> <p><b>REGISTERED DOMESTIC</b> CUSTOMER RECEIPT</p> <p>John R. Fulton 372 Buffalo Road Fort Erie, ON L2A 5G4</p> <p>FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON canadapost.ca / postescanada.ca 1 888 550-6333</p> <p>CPC Tracking Number / Numéro de suivi de la SCP RN 713 229 856 CA</p> <p>Value déclarée</p> <p>33-086-584 (17-12)</p>	<p>(11)</p> <p><b>RECOMMANDÉ RÉGIME INTÉRIEUR</b> REÇU DU CLIENT</p> <p>POSTES CANADA</p> <p>FOR DELIVERY CONFIRMATION / CONFIRMATION DE LA LIVRAISON canadapost.ca / postescanada.ca 1 888 550-6333</p> <p>CPC Tracking Number / Numéro de suivi de la SCP RN 713 229 856 CA</p>	<p>(12)</p> <p>(15)</p>

ROYAL BANK OF CANADA

-and-

1434399 ONTARIO INC.

Applicant

Respondent

Court File No. CV-23-00082432-0000

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON, ONTARIO

**AFFIDAVIT OF JASON GAGNON**

**HARRISON PENZA <sup>LLP</sup>**

Barristers and Solicitors

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Solicitors for the Applicant,  
Royal Bank of Canada

Royal Bank of Canada

-and-

1434399 ONTARIO INC.

Applicant

Respondent

Court File No. CV-23-00082432-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON, ONTARIO

**APPOINTMENT ORDER**

**HARRISON PENZA** <sup>LLP</sup>  
Barristers and Solicitors  
130 Dufferin Avenue, Suite 1101  
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Solicitors for the Applicant,  
Royal Bank of Canada