Court File No.: CV-24-00088153-0000

# ONTARIO SUPERIOR COURT OF JUSTICE

# **BETWEEN**

# HOME TRUST COMPANY

**Applicant** 

-and-

# 58 KING STREET EAST HAMILTON LTD. and 2238394 ONTARIO LTD.

Respondents

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

# APPLICATION RECORD - VOLUME II (Returnable January 21, 2025)

November 29, 2024

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#### SECURITY AGREEMENT

THIS AGREEMENT is made this 14th day of July, 2023.

BETWEEN:

HOME TRUST COMPANY 145 King Street West, Suite 2300 Toronto, Ontario M5II 1J8

(hereinafter called the "Secured Party")

OF THE FIRST PART,

- and -

58 KING STREET EAST HAMILTON LTD. 58 King Street East Hamilton, Ontario L8N 1A6

(hereinaster called the "Debtor")

OF THE SECOND PART,

#### 1.0 CONSIDERATION

(1) For valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the Debtor enters into this security agreement (the "Agreement") with the Secured Party.

### (2) Obligations Secured

The Security Interest (as hereinafter defined) is granted to the Secured Party by the Debtor as continuing security for the payment of all past, present and future indebtedness and for the payment and performance of all other present and future obligations of the Debtor to the Secured Party, whether direct or indirect, contingent or absolute (including obligations under this Agreement) (collectively the "Obligations").

#### 2.0 CREATION OF SECURITY INTEREST

- Party as and by way of a fixed and specific charge and as and by way of a floating charge, a security interest (the "Security Interest") in the present and future undertaking, property and assets of the Debtor and 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 and securities now owned or hereafter owned or acquired by or on behalf of the Debtor (including such as may be returned to or repossessed by the Debtor) and in all proceeds and renewals thereof, accretions thereto and substitutions therefor (hereinafter collectively called "Collateral"), including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of the Debtor:
  - (i) <u>Inventory</u> all goods now or hereafter comprising part of the inventory of the Debtor including but not limited to goods now or hereafter held for sale or lease or furnished or to be furnished under a contract of service or that are raw materials, work in process or materials used or consumed in a business or profession or finished goods, goods used for packing, materials used in the business of the Debtor not intended for sale and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;
  - (ii) Equipment all goods now or hereafter used or intended to be used in any business of the Debtor (and which are not inventory) including but not limited to fixtures, plant, tools, furniture, equipment, machinery, appliances, heating and cooling, plumbing, electrical, mechanical, all spare parts, accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating thereto, vehicles and other tangible personal property;
  - (iii) Accounts all accounts, debts, demands and choses in action which are now due, owing or accruing due or which may hereafter become due, owing or accruing due to the Debtor,

and all claims of any kind which the Debtor now has or may hereafter have including but not limited to claims against the Crown and claims under insurance policies and accounts receivable, and all contracts, security interests and other rights and benefits in respect thereof;

- (iv) <u>Chattel Paper</u> all chattel paper now or hereafter owned by the Debtor, all present and future agreements made between the Debtor as secured party and others which evidence back a monetary obligation and a security interest in or lease of specific goods;
- (v) <u>Documents of Title</u> all warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, now or hereafter owned by the Debtor;
- (vi) <u>Documents</u> with respect to the personal property described in subparagraphs (iii), (iv) and (v), all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (vii) Securities all present and future securities held by the Debtor, including shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Debtor in property or in an enterprise or which constitutes evidence of an obligation of the issuer; and including an uncertified security within the meaning of Part VI (investment securities) of the Business Corporations Act, (Ontario) and all substitutions therefor, and dividends and income derived therefrom;
- (viii) <u>Proceeds</u> all personal property in any form derived directly or indirectly, from any dealings with collateral or subject to the Security Interest or the proceeds therefrom, and including any payment representing indemnity or compensation for loss or damage thereto or the proceeds therefrom;
- (ix) <u>Intangibles</u> all goodwill, contract rights, patents, trademarks, licences copyrights and other industrial and/or other intellectual property and all other intangibles and other choses in action of the Debtor of every kind, whether owned or otherwise provided to the Debtor for its use at the present time or hereafter to become owned or otherwise provided to the Debtor for its use;
- (x) with respect to the personal property described in subparagraphs (i) to (ix) inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of the Debtor therein;
- (xi) with respect to the personal property described in subparagraphs (i) to (x) inclusive, personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged;
- (xii) Money all present and future monies of the Debtor (other than trust monies lawfully belonging to others) whether authorized or adopted by the Parliament of Canada or as part of its currency or any foreign government as part of its currency; and
- (xiii) all property described in any schedule now or hereafter annexed hereto.
- (2) The last day of the term of any lease, sublease or agreement therefor is specifically excepted from the Security Interest, but the Debtor agrees to stand in possession of such last day in trust for any person acquiring such interest of the Debtor. To the extent that the creation of the Security Interest would constitute a breach or cause the acceleration of any agreement, right, licence or permit to which the Debtor is a party, the Security Interest shall not attach thereto but the Debtor shall hold its interest therein in trust for the Secured Party and shall assign such agreement, right, licence or permit to the Secured Party forthwith upon obtaining the consent of the other party thereto.
- (3) The terms "goods", "chattel paper", "documents of title", "instruments", "intangibles", "securities", "proceeds", "inventory", "monies" and "accessions" whenever used herein shall be interpreted pursuant to their respective meanings when used in the *Personal Property Security Act of Ontario*, 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 the Debtor as that term is defined in the P.P.S.A., and 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 Agreement. Any reference herein to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof". In this Agreement "Collateral" shall include the proceeds thereof.

#### 3.0 DEALINGS WITH COLLATERAL

Until the occurrence of an Event of Default (as hereinafter defined) the Debtor may sell its inventory and collect its accounts in the ordinary course of business; provided that all accounts so collected shall be held by the Debtor as agent and in trust for the Secured Party and paid to the Secured Party immediately upon its request. The Debtor agrees to deposit all proceeds from the disposition of inventory into its ordinary operating general business bank account. The Secured Party shall have the right at any time and from time to time to confirm the existence and state of Collateral in any manner Secured Party may consider appropriate and the Debtor agrees to furnish all assistance and information and to perform all such acts as Secured Party may reasonably request in connection therewith and for such purpose to grant to Secured Party or its agents access during normal business hours to all places where Collateral may be located and to all premises occupied by the Debtor.

# 4.0 RECEIPT OF INCOME FROM AND INTEREST ON COLLATERAL

- (1) Until default, the Debtor shall have the right to receive any monies constituting income from or interest on Collateral and if Secured Party receives any such monies prior to default, Secured Party shall either credit the same to the account of the Debtor or pay the same promptly to the Debtor.
- (2) After default the Debtor will not request or receive any monies constituting income from, or interest on, Collateral and if the Debtor receives any such monies without any request by it, the Debtor will receive the same in trust for, and promptly pay the same to, Secured Party.

# 5.0 INCREASES, PROFITS, PAYMENTS OR DISTRIBUTIONS REGARDING COLLATERAL

- (1) With respect to collateral which is Securities, whether or not default has occurred, The Debtor authorizes Secured Party:
  - (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 paragraph 4 hereof and dealt with accordingly; and
  - (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.
- (2) If the Debtor receives any such increases or profits (other than money) or payments or distributions, the Debtor will receive the same in trust for and deliver the same promptly to Secured Party to be held by Secured Party as herein provided.

# 6.0 SECURITIES FORMING PART OF COLLATERAL

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

# 7.0 COLLECTION OF DEBTS FORMING PART OF COLLATERAL

Before or after default under this Agreement, Secured Party may notify all or any account debtors (as hereinafter defined) of the Security Interest and may also direct such account debtors to make all payments on Collateral to Secured Party. The Debtor acknowledges that any payments on or other proceeds of Collateral received by the Debtor from account debtors after default under this Agreement, whether before or after notification of the Security Interest to account debtors, shall be received and held by the Debtor in trust for the Secured Party and shall be turned over to the Secured Party upon request.

#### 8.0 REPRESENTATIONS AND WARRANTIES OF DEBTOR

The Debtor represents, warrants and acknowledges that the Secured Party is relying thereupon and so long as this Agreement remains in effect shall be deemed to continuously represent and warrant that:

- (1) The Collateral is or will be when Collateral is acquired genuine and beneficially owned by the Debtor free of all security interests, mortgages, liens, claims, charges, taxes, assessments or other encumbrances, pledges (hereinafter collectively called "encumbrances"), except for those Security Interests set out in Schedule "B" hereof;
- (2) Each account, 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 the Debtor to the Secured Party 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 debtor or account debtors, except for normal cash discounts where applicable;
- (3) The locations specified in Schedule "A" as to business operations and records of the Debtor are accurate and complete and, with respect to goods (including inventory) constituting Collateral, the locations specified in Schedule "A" are accurate and complete save for goods in transit to such locations and all fixtures or goods about to become fixtures which form part of the Collateral will be situate at one of such locations;
- (4) The Debtor has, or will have when Collateral is acquired, the capacity, authority and the right to create mortgages and charges of, and grant a security interest in the Collateral in favour of the Secured Party and generally perform its obligation under this Agreement;
- (5) This Agreement has been duly and properly authorized by all necessary action and constitutes a legal, valid and binding obligation of the Debtor; and
- (6) The Collateral does not include any goods which are used or acquired by the Debtor for use primarily for personal, family or household purposes.

## 9.0 COVENANTS OF DEBTOR

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

- (1) <u>Payment</u> To pay or satisfy all Obligations when due;
- (2) Encumbrances To defend the Collateral against the claims and demands of all other parties claiming the same or an interest therein; to keep the Collateral or any part thereof free from all encumbrances, except for the Security Interest; and except as otherwise provided herein, not to sell, exchange, transfer, assign, lease, or otherwise dispose of Collateral or any interest therein without the prior written consent of the Secured Party;
- (3) Notice to Secured Party: To notify the Secured Party promptly of:
  - (i) any significant change in the information contained herein or in the schedules hereto relating to the Debtor, the Debtor's business or Collateral;
  - (ii) the details of any significant acquisition of Collateral; the details of any claims or litigation of a material nature affecting the Debtor or Collateral;
  - (iii) any material loss of or damage to Collateral;
  - (iv) any default by any account Debtor in payment or other performance of the Debtor's obligations hereunder; and
  - (v) the return to or repossession by the Debtor of Collateral.
- (4) <u>Care of Collateral</u> To keep the Collateral in good order, condition and repair (reasonable wear and tear excepted) and not to use Collateral in violation of the provisions of this Agreement or any other agreement relating to Collateral or any policy insuring Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;

- (5) <u>Further Assurances</u> To do, execute, acknowledge and deliver such financing statements and further assignments, transfers, documents, acts, matters and things (including further schedules hereto) as may be reasonably requested by the Secured Party 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;
- (6) <u>Taxes and Charges</u> 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 the Debtor or Collateral as and when the same become due and payable, except for such taxes, rates, levies, assessments and other charges which are being contested in good faith by proper legal proceedings and with respect to which adequate reserves have been established and are being maintained;
- (7) <u>Insurance</u> To carry insurance from financially responsible insurance companies and to maintain such insurance against fire, theft, water damage, public liability, property damage, business interruption losses and all other related risks, with loss payable to the Secured Party, to cover the full insurable value of the Collateral as the Secured Party may reasonably require or, in the absence of such requirement, to the extent insured against by comparable corporations engaged in comparable businesses and owning or operating similar properties, and to deliver to the Secured Party copies of all policies, renewals and replacements within fifteen (15) days of their issue and delivery to the Debtor, and to cause the Secured Party to be named as loss payee on such policies;
- (8) <u>Accession</u> To prevent Collateral, except for inventory sold or leased as permitted hereby, from being or becoming an accession to other property not covered by this Agreement;
- (9) <u>Business Activities</u> To carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and the earnings, incomes, rents, issues and profits thereof and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning Collateral, and mark any and all such records and Collateral, at the Secured Party's request, so as to indicate the Security Interest;
- (10) **Deliveries** To deliver to the Secured Party 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 the Debtor regarding the Debtor's business, including aged lists of inventory and accounts;
  - (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 the Secured Party may reasonably request.
- (11) <u>Conformity</u> To duly observe and conform to all valid requirements of any governmental authority relative to any of the Collateral and all covenants, terms and conditions upon or under which the Collateral is held.
- (12) <u>Maintain Existence</u> The Debtor shall maintain its existence and shall not change its name or amalgamate or sell, exchange, assign or lease or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Secured Party except that until an event of default as described in paragraph 10.0 occurs, the Debtor may sell or lease inventory in the ordinary course of its business.
- (13) Payment of Expenses To pay all expenses, including solicitors' and receivers' fees and disbursements incurred by the Secured Party or its agents (including any receiver, as hereinafter defined) in connection with the preparation, perfection, preservation and enforcement of this Agreement; including but not limited to all expenses incurred by the Secured Party or such agents in dealing with other creditors of the Debtor in connection with the establishment and confirmation of the priority of the Security Interest, all of which expenses shall be payable forthwith upon demand and shall form part of the Obligations.

Upon failure by the Debtor to perform any of the covenants described in this paragraph, the Secured Party is authorized and has the option to take possession of the Collateral and, whether it has taken possession or not, to perform any of the agreements in any manner deemed proper by the Secured Party, without waiving any rights to enforce this Agreement. The reasonable expenses (including the cost of any insurance and payment of taxes or the charges and reasonable legal costs on a solicitor and client basis) incurred by the Secured Party in respect of the custody, preservation, use or operation of the Collateral shall be deemed advanced to the Debtor by the Secured Party, shall bear interest at the rate (the "Interest Rate") set forth in a Charge/Mortgage of Land of even date herewith and issued by the Debtor in favour of the Secured Party and shall be secured by this Agreement.

#### 10.0 EVENTS OF DEFAULT

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

- (1) The Debtor fails to satisfy or perform any of the Obligations when due;
- (2) The nonpayment when due, whether by acceleration or otherwise, of any principal or interest forming part of the indebtedness or the failure of the Debtor to observe or perform any obligation, covenant, term, provision or condition contained in this Agreement or any other agreement between the Debtor and the Secured Party and such failure has not been waived or cured within any applicable period of grace;
- (3) The bankruptcy or insolvency of the Debtor or any guarantor of the indebtedness; the filing against the Debtor or any guarantor of the indebtedness of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors by the Debtor or any guarantor of the indebtedness; the appointment of a receiver or trustee for the Debtor or any guarantor of the indebtedness or for any assets of the Debtor or any guarantor of the indebtedness; or the institution by or against the Debtor or any guarantor of the indebtedness of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act* or otherwise;
- (4) The institution by or against the Debtor or any guarantor of the indebtedness of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of the Debtor or any guarantor of the indebtedness;
- (5) If any encumbrance affecting the Collateral becomes enforceable against the Collateral;
- (6) If the Debtor or any guarantor of the indebtedness 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;
- (7) If any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or any guarantor of the indebtedness or if a distress or analogous process is levied upon the assets of the Debtor or any guarantor of the indebtedness or any part thereof;
- (8) If any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished by or on behalf of the Debtor pursuant to or in connection with this Agreement, or otherwise (including, without limitation, the representations and warranties contained herein) or as an inducement to the Secured Party to enter into this or any other agreement with the 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 becomes incorrect in any respect at any time or proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor; or if upon the date of execution of this 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 the Secured Party at or prior to the time of such execution; and
- (9) If the Secured Party, in good faith, believes and has commercially reasonable grounds to believe that the prospect of payment of any indebtedness or performance of the Obligations is or is about to be placed in jeopardy.

#### 11.0 ACCELERATION

The Secured Party, in its sole discretion, may declare all or any part of the 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.

### 12.0 REMEDIES

- (1) Upon default, if the Secured Party declares that the indebtedness shall become immediately due and payable in full, the Debtor and the Secured Party shall have, in addition to any other rights and remedies provided by law, the rights and remedies of a debtor and a secured party respectively under the P.P.S.A and this Agreement. The Secured Party may appoint or re-appoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Secured Party 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 stead. Any such receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor and not the Secured Party, and the Secured Party shall not be in any way be responsible for any misconduct, negligence, or nonfeasance on the part of any such receiver, his servants, agents or employees. Subject to the provisions of the instrument appointing him, 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 the Debtor and to sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of Collateral. To facilitate the foregoing powers, any such receiver may, to the exclusion of all others, including the Debtor, enter upon, use and occupy all premises owned or occupied by the 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 the Debtor's business or as security for loans or advances to enable him to carry on the Debtor's business or otherwise as such receiver shall in his discretion determine. Except as may be otherwise directed by the Secured Party, all monies received from time to time by such receiver in carrying out his appointment shall be received in trust for and paid over to the Secured Party. Every such receiver may, in the discretion of the Secured Party, be vested with all or any of the rights and powers of the Secured Party.
- (2) Upon default, the Secured Party may, either directly or through its agents or nominees, exercise all the powers and rights given to a receiver by virtue of the foregoing subparagraph (1).
- (3) The Secured Party 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, the Secured Party may sell, lease or otherwise dispose of Collateral in such manner, at such time or times and place or places, at public auction, by public tender or by private sale, for such consideration and upon such terms and conditions as to the Secured Party may seem reasonable.
- (4) The Secured Party shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of Collateral or to institute proceedings for such purposes. Furthermore, the Secured Party 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 the Secured Party's possession and shall not be liable or accountable for failure to do so.
- (5) The Debtor acknowledges that the Secured Party or any receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law and the Debtor agrees upon request from the Secured Party or any such receiver to assemble and deliver possession of Collateral at such place or places as directed.
- (6) The Debtor agrees to pay all costs, charges and expenses reasonably incurred by the Secured Party or any receiver appointed by it, whether directly or for services rendered (including legal costs on a solicitor and client basis and auditors' costs and receiver remuneration), in operating the Debtor's accounts, in preparing or enforcing this Agreement, taking 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 monies owing as a result of any borrowing by the Secured Party 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.
- (7) Unless the Collateral in question is perishable or unless the Secured Party believes on reasonable grounds that the Collateral in question will decline speedily in value, the Secured Party will give the Debtor such notice 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 *Personal Property Security Act*.

### 13.0 STANDARDS OF SALE

Without prejudice to the ability of the Secured Party to dispose of the Collateral in any manner which is commercially reasonable, the Debtor acknowledges that a disposition of Collateral by the Secured Party which takes place substantially in accordance with the following provisions shall be deemed to be commercially reasonable:

- (1) Collateral may be disposed of in whole or in part;
- (2) Collateral may be disposed of by public sale upon written notice to the Debtor following one advertisement in a newspaper having general circulation in the location of the Collateral to be sold at least seven (7) days prior to such sale;
- (3) Collateral may be disposed of by private sale after receipt by the Secured Party of two (2) written offers:
- (4) The purchaser or lessee of such Collateral may be a customer of the Secured Party; and
- (5) The disposition may be cash or credit or part cash or credit; and the Secured Party may establish a reserve in respect of all or any portion of the Collateral.

#### 14.0 DISPOSITION OF MONIES

Any proceeds of any disposition of any of the Collateral may be applied by the Secured Party to the payment of expenses incurred in connection with the retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral (including legal costs on a solicitor and client basis and any other reasonable expenses), and any balance of such proceeds may be applied by the Secured Party towards the payment of the indebtedness in such order of application as the Secured Party may from time to time effect. All such expenses and all amount's borrowed on the security of the Collateral under paragraph 12.0 hereof shall bear interest at the Interest Rate and shall be included as the indebtedness under this Agreement. If the disposition of the Collateral fails to satisfy the indebtedness and the expenses incurred by the Secured Party, the Debtor shall be liable to pay for any deficiency on demand.

## 15.0 MISCELLANEOUS

- (1) The Debtor hereby authorizes the Secured Party to file such financing 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 the Debtor's business is carried on and Collateral and records relating thereto are situate) as the Secured Party may deem appropriate to perfect and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest and the Debtor hereby irrevocably constitutes and appoints the Secured Party (or the president from time to time of the Secured Party) the true and lawful autorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient.
- (2) Upon the Debtor's failure to perform any of its duties hereunder, the Secured Party may, but shall not be obligated to, perform any or all of such duties, and the Debtor shall pay to the Secured Party, forthwith upon written demand therefor, an amount equal to the expense incurred by the Secured Party in so doing plus interest thereon from the date such expense is incurred until it is paid at the Interest Rate.
- (3) The Secured Party may grant extensions of time and other indulgences, take and give security, accept compositions, compromise, settle, grant releases and discharges and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with Collateral and other security as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize the Security Interest. Furthermore, the Secured Party may demand, collect and sue on Collateral in either the Debtor's or the Secured Party's name, at the Secured Party's option, and may endorse the Debtor's name on any and all cheques, commercial paper and any other instruments pertaining to or constituting Collateral.
- (4) No delay or omission by the Secured Party 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, the Secured Party may remedy any default by the 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 the Debtor. All rights and remedies of the Secured Party granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (5) The Debtor waives protest of any instrument constituting Collateral at any time held by the Secured Party on which the Debtor is in any way liable and, subject to subparagraph 15 (8) hereof, notice of any other action taken by the Secured Party.
- (6) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. In any action brought by an assignee of this Agreement and the Security Interest or any part thereof to enforce any rights hereunder, the Debtor shall not assert against the assignee any claim or defence which the Debtor now has or hereafter may have against the Secured Party.
- (7) Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this 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.
- (8) This Agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the laws of the Province of Ontario as the same may from time to time be in effect, including the *Personal Property Security Act*.
- (9) Subject to the requirements of subparagraph 15(7), any notice to the Debtor in connection with this Agreement shall be well and sufficiently given if sent by prepaid registered mail to or delivered to the Debtor at the address set out on page one hereof or to such other address as the Debtor may from time to time designate in writing to the Secured Party. Any notice to the Secured Party in connection with this Agreement shall be well and sufficiently given if sent by prepaid registered mail or delivered to the Secured Party at the address set out on page one or to such other address as the Secured Party may from time to time designate in writing to the Debtor. Any such notice shall be deemed to have been given if delivered, when delivered, and if mailed, on the fourth business day following that on which it was mailed. In the event of a known interruption of postal services, any notice required or contemplated herein shall be deemed to have been delivered to the Debtor only if delivered by hand to the Debtor at the address specified herein or pursuant hereto and to the Secured Party only if delivered by hand to the Secured Party at the address specified herein or pursuant hereto.
- (10) This Agreement and the Security Interest is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and is intended to be a continuing Agreement and shall remain in full force and effect until the indebtedness has been paid in full.
- (11) In this Agreement the term "successors" shall include (and without limiting its meaning) any corporation resulting from the amalgamation of one corporation with another corporation.
- (12) The headings used in this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.
- (13) 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.
- (14) In the event any provisions of this 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 Agreement shall remain in full force and effect.
- (15) The parties acknowledge that value has been given and the Security Interest created hereby is intended to attach when this Agreement is signed by the Debtor and the Debtor agrees that it is not the intention of the Secured Party or the Debtor to postpone the attachment of the Security Interest and accordingly, attachment, as defined in the P.P.S.A, will occur simultaneously upon the execution of this Agreement.
- (16) Time shall be of the essence of this Agreement.
- (17) If this Agreement has been executed by more than one the Debtor, the obligations of each the Debtor shall be joint and several.

- (18) This Agreement, including any schedules attached hereto, constitutes the entire agreement between the Debtor and the Secured Party relating to the subject matter hereof, and no amendment shall be effective unless made in writing. There are no representations, warranties or collateral agreements in effect between the Debtor and the Secured Party relating to the subject matter hereof; and possession of an executed copy of this Agreement by the Secured Party constitutes conclusive evidence that it was executed and delivered by the Debtor free of all conditions.
- (19) This Agreement and the Obligations may be assigned in whole or in part by the Secured Party to any person, firm or corporation without notice or consent of the Debtor. This Agreement may not be assigned by the Debtor without the prior written consent of the Secured Party.
- Notwithstanding any provision to the contrary contained in this agreement, in no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code, R.S.C. 1985, c. 46 as the same may be amended, replaced or re-enacted from time to time) payable under this agreement exceed the maximum amount of interest on the "credit advanced" (as defined in that section) under this agreement lawfully permitted under that section and, if any payment, collection or demand pursuant to this agreement in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand shall be deemed to have been made by mutual mistake of the Secured Party and the Debtor and the amount of such payment or collection shall be refunded to the Debtor. For purposes of this agreement, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term that the Loan is outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Secured Party will be conclusive for the purposes of such determination.
- (21) Nothing contained in this Agreement, including the execution of same and/or the filing of a financing statement(s) shall obligate the Secured Party to make any loan to or accommodation to the Debtor or to extend the time for payment or satisfaction of any Obligations.

## 16.0 ACKNOWLEDGEMENTS OF DEBTOR

The Debtor hereby acknowledges receipt of an executed copy of this Agreement and that the failure of the Secured Party to receive full payment or satisfaction of the indebtedness through its rights and remedies herein provided shall not in any way release the Debtor who covenants to pay or satisfy any deficiency.

**IN WITNESS WHEREOF** this Security Agreement has been signed, sealed and delivered on the date set out above.

Per:

58 KING STREET EAST HAMILTON LTD.

Name: Maciej Walicht Title: President

I have authority to bind the corporation.

# SCHEDULE "A"

# **Location of Business**

Part of Lot 11, Plan 1431 George Hamilton Survey, as in AB246041, City of Hamilton, Regional Municipality of Hamilton-Wentworth, Hamilton-Wentworth Land Registry (No. 62) and municipally known as: 58 King Street East, Hamilton, Ontario.

# **Location Of Records Relating To Collateral**

Part of Lot 11, Plan 1431 George Hamilton Survey, as in AB246041, City of Hamilton, Regional Municipality of Hamilton-Wentworth, Hamilton-Wentworth Land Registry (No. 62) and municipally known as: 58 King Street East, Hamilton, Ontario and/or the registered head office of the Debtor.

# **Location of Collateral**

All present and after acquired Collateral of the Debtor wheresoever situate.

# SCHEDULE "B"

# $\begin{array}{c} \textbf{PERSONAL PROPERTY SECURITY ACT} \\ \textbf{SUMMARY} \end{array}$

NIL.

#### SECURITY AGREEMENT

THIS AGREEMENT is made this 18th day of April, 2022.

BETWEEN:

HOME TRUST COMPANY 145 King Street West, Suite 2300 Toronto, Ontario M5H1J8

(hereinafter called the "Secured Party")

OF THE FIRST PART,

- and -

2238394 ONTARIO LTD. 31 John Street North Hamilton, Ontario L8R 1H2

(hereinafter called the "Debtor")

OF THE SECOND PART.

#### 1.0 CONSIDERATION

(1) For valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, the Debtor enters into this security agreement (the "Agreement") with the Secured Party.

## (2) Obligations Secured

The Security Interest (as hereinafter defined) is granted to the Secured Party by the Debtor as continuing security for the payment of all past, present and future indebtedness and for the payment and performance of all other present and future obligations of the Debtor to the Secured Party, whether direct or indirect, contingent or absolute (including obligations under this Agreement) (collectively the "Obligations").

# 2.0 CREATION OF SECURITY INTEREST

- (1) The Debtor grants, mortgages, charges, transfers, assigns, creates to and in favour of the Secured Party as and by way of a fixed and specific charge and as and by way of a floating charge, a security interest (the "Security Interest") in the present and future undertaking, property and assets of the Debtor and 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 and securities now owned or hereafter owned or acquired by or on behalf of the Debtor (including such as may be returned to or repossessed by the Debtor) and in all proceeds and renewals thereof, accretions thereto and substitutions therefor (hereinafter collectively called "Collateral"), including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of the Debtor:
  - (i) <u>Inventory</u> all goods now or hereafter comprising part of the inventory of the Debtor including but not limited to goods now or hereafter held for sale or lease or furnished or to be furnished under a contract of service or that are raw materials, work in process or materials used or consumed in a business or profession or finished goods, goods used for packing, materials used in the business of the Debtor not intended for sale and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;
  - (ii) Equipment all goods now or hereafter used or intended to be used in any business of the Debtor (and which are not inventory) including but not limited to fixtures, plant, tools, furniture, equipment, machinery, appliances, heating and cooling, plumbing, electrical, mechanical, all spare parts, accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating thereto, vehicles and other tangible personal property;

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- (iii) Accounts all accounts, debts, demands and choses in action which are now due, owing or accruing due or which may hereafter become due, owing or accruing due to the Debtor, and all claims of any kind which the Debtor now has or may hereafter have including but not limited to claims against the Crown and claims under insurance policies and accounts receivable, and all contracts, security interests and other rights and benefits in respect thereof;
- (iv) <u>Chattel Paper</u> all chattel paper now or hereafter owned by the Debtor, all present and future agreements made between the Debtor as secured party and others which evidence back a monetary obligation and a security interest in or lease of specific goods;
- (v) <u>Documents of Title</u> all warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, now or hereafter owned by the Debtor;
- (vi) <u>Documents</u> with respect to the personal property described in subparagraphs (iii), (iv) and (v), all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (vii) Securities all present and future securities held by the Debtor, including shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Debtor in property or in an enterprise or which constitutes evidence of an obligation of the issuer; and including an uncertified security within the meaning of Part VI (investment securities) of the Business Corporations Act, (Ontario) and all substitutions therefor, and dividends and income derived therefrom;
- (viii) <u>Proceeds</u> all personal property in any form derived directly or indirectly, from any dealings with collateral or subject to the Security Interest or the proceeds therefrom, and including any payment representing indemnity or compensation for loss or damage thereto or the proceeds therefrom;
- (ix) <u>Intangibles</u> all goodwill, contract rights, patents, trade marks, licences copyrights and other industrial and/or other intellectual property and all other intangibles and other choses in action of the Debtor of every kind, whether owned or otherwise provided to the Debtor for its use at the present time or hereafter to become owned or otherwise provided to the Debtor for its use;
- (x) with respect to the personal property described in subparagraphs (i) to (ix) inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of the Debtor therein;
- with respect to the personal property described in subparagraphs (i) to (x) inclusive, personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged;
- (xii) Money all present and future monies of the Debtor (other than trust monies lawfully belonging to others) whether authorized or adopted by the Parliament of Canada or as part of its currency or any foreign government as part of its currency; and
- (xiii) all property described in any schedule now or hereafter annexed hereto.
- (2) The last day of the term of any lease, sublease or agreement therefor is specifically excepted from the Security Interest, but the Debtor agrees to stand in possession of such last day in trust for any person acquiring such interest of the Debtor. To the extent that the creation of the Security Interest would constitute a breach or cause the acceleration of any agreement, right, licence or permit to which the Debtor is a party, the Security Interest shall not attach thereto but the Debtor shall hold its interest therein in trust for the Secured Party and shall assign such agreement, right, licence or permit to the Secured Party forthwith upon obtaining the consent of the other party thereto.
- (3) The terms "goods", "chattel paper", "documents of title", "instruments", "intangibles", "securities", "proceeds", "inventory", "monies" and "accessions" whenever used herein shall be interpreted pursuant to their respective meanings when used in the Personal Property Security Act of Ontario, 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 the Debtor as that term is defined in the P.P.S.A., and 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 Agreement. Any reference herein to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof". In this Agreement "Collateral" shall include the proceeds thereof.

### 3.0 DEALINGS WITH COLLATERAL

Until the occurrence of an Event of Default (as hereinafter defined) the Debtor may sell its inventory and collect its accounts in the ordinary course of business; provided that all accounts so collected shall be held by the Debtor as agent and in trust for the Secured Party and paid to the Secured Party immediately upon its request. The Debtor agrees to deposit all proceeds from the disposition of inventory into its ordinary operating general business bank account. The Secured Party shall have the right at any time and from time to time to confirm the existence and state of Collateral in any manner Secured Party may consider appropriate and the Debtor agrees to furnish all assistance and information and to perform all such acts as Secured Party may reasonably request in connection therewith and for such purpose to grant to Secured Party or its agents access during normal business hours to all places where Collateral may be located and to all premises occupied by the Debtor.

#### 4.0 RECEIPT OF INCOME FROM AND INTEREST ON COLLATERAL

- (1) Until default, the Debtor shall have the right to receive any monies constituting income from or interest on Collateral and if Secured Party receives any such monies prior to default, Secured Party shall either credit the same to the account of the Debtor or pay the same promptly to the Debtor.
- (2) After default the Debtor will not request or receive any monies constituting income from, or interest on, Collateral and if the Debtor receives any such monies without any request by it, the Debtor will receive the same in trust for, and promptly pay the same to, Secured Party.

# 5.0 INCREASES, PROFITS, PAYMENTS OR DISTRIBUTIONS REGARDING COLLATERAL

- (1) With respect to collateral which is Securities, whether or not default has occurred, The Debtor authorizes Secured Party:
  - 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 paragraph 4 hereof and dealt with accordingly; and
  - (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.
- (2) If the Debtor receives any such increases or profits (other than money) or payments or distributions, the Debtor will receive the same in trust for and deliver the same promptly to Secured Party to be held by Secured Party as herein provided.

#### 6.0 SECURITIES FORMING PART OF COLLATERAL

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

# 7.0 COLLECTION OF DEBTS FORMING PART OF COLLATERAL

Before or after default under this Agreement, Secured Party may notify all or any account debtors (as hereinafter defined) of the Security Interest and may also direct such account debtors to make

all payments on Collateral to Secured Party. The Debtor acknowledges that any payments on or other proceeds of Collateral received by the Debtor from account debtors after default under this Agreement, whether before or after notification of the Security Interest to account debtors, shall be received and held by the Debtor in trust for the Secured Party and shall be turned over to the Secured Party upon request.

# 8.0 REPRESENTATIONS AND WARRANTIES OF DEBTOR

The Debtor represents, warrants and acknowledges that the Secured Party is relying thereupon and so long as this Agreement remains in effect shall be deemed to continuously represent and warrant that:

- (1) The Collateral is or will be when Collateral is acquired genuine and beneficially owned by the Debtor free of all security interests, mortgages, liens, claims, charges, taxes, assessments or other encumbrances, pledges (hereinafter collectively called "encumbrances"), except for those Security Interests set out in Schedule "B" hereof;
- (2) Each account, 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 the Debtor to the Secured Party 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 debtor or account debtors, except for normal cash discounts where applicable;
- (3) The locations specified in Schedule "A" as to business operations and records of the Debtor are accurate and complete and, with respect to goods (including inventory) constituting Collateral, the locations specified in Schedule "A" are accurate and complete save for goods in transit to such locations and all fixtures or goods about to become fixtures which form part of the Collateral will be situate at one of such locations;
- (4) The Debtor has, or will have when Collateral is acquired, the capacity, authority and the right to create mortgages and charges of, and grant a security interest in the Collateral in favour of the Secured Party and generally perform its obligation under this Agreement;
- (5) This Agreement has been duly and properly authorized by all necessary action and constitutes a legal, valid and binding obligation of the Debtor; and
- (6) The Collateral does not include any goods which are used or acquired by the Debtor for use primarily for personal, family or household purposes.

## 9.0 COVENANTS OF DEBTOR

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

- (1) Payment To pay or satisfy all Obligations when due;
- (2) Encumbrances To defend the Collateral against the claims and demands of all other parties claiming the same or an interest therein; to keep the Collateral or any part thereof free from all encumbrances, except for the Security Interest; and except as otherwise provided herein, not to sell, exchange, transfer, assign, lease, or otherwise dispose of Collateral or any interest therein without the prior written consent of the Secured Party;
- (3) Notice to Secured Party: To notify the Secured Party promptly of:
  - any significant change in the information contained herein or in the schedules hereto relating to the Debtor, the Debtor's business or Collateral;
  - the details of any significant acquisition of Collateral; the details of any claims or litigation of a material nature affecting the Debtor or Collateral;
  - (iii) any material loss of or damage to Collateral;
  - (iv) any default by any account debtor in payment or other performance of obligations hereunder; and
  - (v) the return to or repossession by the Debtor of Collateral.



- (4) <u>Care of Collateral</u> To keep the Collateral in good order, condition and repair (reasonable wear and tear excepted) and not to use Collateral in violation of the provisions of this Agreement or any other agreement relating to Collateral or any policy insuring Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- (5) <u>Further Assurances</u> To do, execute, acknowledge and deliver such financing statements and further assignments, transfers, documents, acts, matters and things (including further schedules hereto) as may be reasonably requested by the Secured Party 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;
- (6) Taxes and Charges 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 the Debtor or Collateral as and when the same become due and payable, except for such taxes, rates, levies, assessments and other charges which are being contested in good faith by proper legal proceedings and with respect to which adequate reserves have been established and are being maintained;
- (7) Insurance To carry insurance from financially responsible insurance companies and to maintain such insurance against fire, theft, water damage, public liability, property damage, business interruption losses and all other related risks, with loss payable to the Secured Party, to cover the full insurable value of the Collateral as the Secured Party may reasonably require or, in the absence of such requirement, to the extent insured against by comparable corporations engaged in comparable businesses and owning or operating similar properties, and to deliver to the Secured Party copies of all policies, renewals and replacements within fifteen (15) days of their issue and delivery to the Debtor, and to cause the Secured Party to be named as loss payee on such policies;
- (8) <u>Accession</u> To prevent Collateral, except for inventory sold or leased as permitted hereby, from being or becoming an accession to other property not covered by this Agreement;
- (9) Business Activities To carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and the earnings, incomes, rents, issues and profits thereof and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning Collateral, and mark any and all such records and Collateral, at the Secured Party's request, so as to indicate the Security Interest;
- (10) <u>Deliveries</u> To deliver to the Secured Party from time to time promptly upon request:
  - Any documents of title, instruments, securities and chattel paper constituting, representing or relating to Collateral;
  - 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 the Debtor regarding the Debtor's business, including aged lists of inventory and accounts;
  - (iv) all policies and certificates of insurance relating to Collateral; and
  - such information concerning Collateral, the Debtor and Debtor's business and affairs as the Secured Party may reasonably request.
- (11) <u>Conformity</u> To duly observe and conform to all valid requirements of any governmental authority relative to any of the Collateral and all covenants, terms and conditions upon or under which the Collateral is held.
- (12) Maintain Existence The Debtor shall maintain its existence and shall not change its name or amalgamate or sell, exchange, assign or lease or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Secured Party except that until an event of default as described in paragraph 10.0 occurs, the Debtor may sell or lease inventory in the ordinary course of its business.
- (13) Payment of Expenses To pay all expenses, including solicitors' and receivers' fees and disbursements incurred by the Secured Party or its agents (including any receiver, as hereinafter defined) in connection with the preparation, perfection, preservation and enforcement of this



Agreement; including but not limited to all expenses incurred by the Secured Party or such agents in dealing with other creditors of the Debtor in connection with the establishment and confirmation of the priority of the Security Interest, all of which expenses shall be payable forthwith upon demand and shall form part of the Obligations.

Upon failure by the Debtor to perform any of the covenants described in this paragraph, the Secured Party is authorized and has the option to take possession of the Collateral and, whether it has taken possession or not, to perform any of the agreements in any manner deemed proper by the Secured Party, without waiving any rights to enforce this Agreement. The reasonable expenses (including the cost of any insurance and payment of taxes or the charges and reasonable legal costs on a solicitor and client basis) incurred by the Secured Party in respect of the custody, preservation, use or operation of the Collateral shall be deemed advanced to the Debtor by the Secured Party, shall bear interest at the rate (the "Interest Rate") set forth in a Charge/Mortgage of Land of even date herewith and issued by the Debtor in favour of the Secured Party and shall be secured by this Agreement.

## 10.0 EVENTS OF DEFAULT

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

- The Debtor fails to satisfy or perform any of the Obligations when due;
- (2) The nonpayment when due, whether by acceleration or otherwise, of any principal or interest forming part of the indebtedness or the failure of the Debtor to observe or perform any obligation, covenant, term, provision or condition contained in this Agreement or any other agreement between the Debtor and the Secured Party and such failure has not been waived or cured within any applicable period of grace;
- (3) The bankruptcy or insolvency of the Debtor or any guarantor of the indebtedness; the filing against the Debtor or any guarantor of the indebtedness of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors by the Debtor or any guarantor of the indebtedness; the appointment of a receiver or trustee for the Debtor or any guarantor of the indebtedness or for any assets of the Debtor or any guarantor of the indebtedness; or the institution by or against the Debtor or any guarantor of the indebtedness of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;
- (4) The institution by or against the Debtor or any guarantor of the indebtedness of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of the Debtor or any guarantor of the indebtedness;
- (5) If any encumbrance affecting the Collateral becomes enforceable against the Collateral;
- (6) If the Debtor or any guarantor of the indebtedness 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;
- (7) If any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or any guarantor of the indebtedness or if a distress or analogous process is levied upon the assets of the Debtor or any guarantor of the indebtedness or any part thereof;
- (8) If any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished by or on behalf of the Debtor pursuant to or in connection with this Agreement, or otherwise (including, without limitation, the representations and warranties contained herein) or as an inducement to the Secured Party to enter into this or any other agreement with the 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 becomes incorrect in any respect at any time or proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor; or if upon the date of execution of this 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 the Secured Party at or prior to the time of such execution; and



(9) If the Secured Party, in good faith, believes and has commercially reasonable grounds to believe that the prospect of payment of any indebtedness or performance of the Obligations is or is about to be placed in jeopardy.

#### 11.0 ACCELERATION

The Secured Party, in its sole discretion, may declare all or any part of the 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.

#### 12.0 REMEDIES

- (1)Upon default, if the Secured Party declares that the indebtedness shall become immediately due and payable in full, the Debtor and the Secured Party shall have, in addition to any other rights and remedies provided by law, the rights and remedies of a debtor and a secured party respectively under the P.P.S.A and this Agreement. The Secured Party may appoint or re-appoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Secured Party 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 stead. Any such receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor and not the Secured Party, and the Secured Party shall not be in any way be responsible for any misconduct, negligence, or nonfeasance on the part of any such receiver, his servants, agents or employees. Subject to the provisions of the instrument appointing him, 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 the Debtor and to sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of Collateral. To facilitate the foregoing powers, any such receiver may, to the exclusion of all others, including the Debtor, enter upon, use and occupy all premises owned or occupied by the 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 the Debtor's business or as security for loans or advances to enable him to carry on the Debtor's business or otherwise as such receiver shall in his discretion determine. Except as may be otherwise directed by the Secured Party, all monies received from time to time by such receiver in carrying out his appointment shall be received in trust for and paid over to the Secured Party. Every such receiver may, in the discretion of the Secured Party, be vested with all or any of the rights and powers of the Secured Party.
- (2) Upon default, the Secured Party may, either directly or through its agents or nominees, exercise all the powers and rights given to a receiver by virtue of the foregoing subparagraph (1).
- (3) The Secured Party 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, the Secured Party may sell, lease or otherwise dispose of Collateral in such manner, at such time or times and place or places, at public auction, by public tender or by private sale, for such consideration and upon such terms and conditions as to the Secured Party may seem reasonable.
- (4) The Secured Party shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of Collateral or to institute proceedings for such purposes. Furthermore, the Secured Party 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 the Secured Party's possession and shall not be liable or accountable for failure to do so.
- (5) The Debtor acknowledges that the Secured Party or any receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law and the Debtor agrees upon request from the Secured Party or any such receiver to assemble and deliver possession of Collateral at such place or places as directed.
- (6) The Debtor agrees to pay all costs, charges and expenses reasonably incurred by the Secured Party or any receiver appointed by it, whether directly or for services rendered (including legal costs on a solicitor and client basis and auditors' costs and receiver remuneration), in operating the Debtor's accounts, in preparing or enforcing this Agreement, taking 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 monies owing as a result

of any borrowing by the Secured Party 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.

(7) Unless the Collateral in question is perishable or unless the Secured Party believes on reasonable grounds that the Collateral in question will decline speedily in value, the Secured Party will give the Debtor such notice 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 Personal Property Security Act.

#### 13.0 STANDARDS OF SALE

Without prejudice to the ability of the Secured Party to dispose of the Collateral in any manner which is commercially reasonable, the Debtor acknowledges that a disposition of Collateral by the Secured Party which takes place substantially in accordance with the following provisions shall be deemed to be commercially reasonable:

- (1) Collateral may be disposed of in whole or in part;
- (2) Collateral may be disposed of by public sale upon written notice to the Debtor following one advertisement in a newspaper having general circulation in the location of the Collateral to be sold at least seven (7) days prior to such sale;
- (3) Collateral may be disposed of by private sale after receipt by the Secured Party of two (2) written offers;
- (4) The purchaser or lessee of such Collateral may be a customer of the Secured Party; and
- (5) The disposition may be cash or credit or part cash or credit; and the Secured Party may establish a reserve in respect of all or any portion of the Collateral.

#### 14.0 DISPOSITION OF MONIES

Any proceeds of any disposition of any of the Collateral may be applied by the Secured Party to the payment of expenses incurred in connection with the retaking, holding, repairing, processing, preparing for disposition and disposing of the Collateral (including legal costs on a solicitor and client basis and any other reasonable expenses), and any balance of such proceeds may be applied by the Secured Party towards the payment of the indebtedness in such order of application as the Secured Party may from time to time effect. All such expenses and all amount's borrowed on the security of the Collateral under paragraph 12.0 hereof shall bear interest at the Interest Rate and shall be included as the indebtedness under this Agreement. If the disposition of the Collateral fails to satisfy the indebtedness and the expenses incurred by the Secured Party, the Debtor shall be liable to pay for any deficiency on demand.

#### 15.0 MISCELLANEOUS

- (1) The Debtor hereby authorizes the Secured Party to file such financing 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 the Debtor's business is carried on and Collateral and records relating thereto are situate) as the Secured Party may deem appropriate to perfect and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest and the Debtor hereby irrevocably constitutes and appoints the Secured Party (or the president from time to time of the Secured Party) the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient.
- (2) Upon the Debtor's failure to perform any of its duties hereunder, the Secured Party may, but shall not be obligated to, perform any or all of such duties, and the Debtor shall pay to the Secured Party, forthwith upon written demand therefor, an amount equal to the expense incurred by the Secured Party in so doing plus interest thereon from the date such expense is incurred until it is paid at the Interest Rate.
- (3) The Secured Party may grant extensions of time and other indulgences, take and give security, accept compositions, compromise, settle, grant releases and discharges and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with Collateral and other security as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's



right to hold and realize the Security Interest. Furthermore, the Secured Party may demand, collect and sue on Collateral in either the Debtor's or the Secured Party's name, at the Secured Party's option, and may endorse the Debtor's name on any and all cheques, commercial paper and any other instruments pertaining to or constituting Collateral.

- (4) No delay or omission by the Secured Party 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, the Secured Party may remedy any default by the 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 the Debtor. All rights and remedies of the Secured Party granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (5) The Debtor waives protest of any instrument constituting Collateral at any time held by the Secured Party on which the Debtor is in any way liable and, subject to subparagraph 15 (8) hereof, notice of any other action taken by the Secured Party.
- (6) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. In any action brought by an assignee of this Agreement and the Security Interest or any part thereof to enforce any rights hereunder, the Debtor shall not assert against the assignee any claim or defence which the Debtor now has or hereafter may have against the Secured Party.
- (7) Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this 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.
- (8) This Agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the laws of the Province of Ontario as the same may from time to time be in effect, including the Personal Property Security Act.
- (9) Subject to the requirements of subparagraph 15(7), any notice to the Debtor in connection with this Agreement shall be well and sufficiently given if sent by prepaid registered mail to or delivered to the Debtor at the address set out on page one hereof or to such other address as the Debtor may from time to time designate in writing to the Secured Party. Any notice to the Secured Party in connection with this Agreement shall be well and sufficiently given if sent by prepaid registered mail or delivered to the Secured Party at the address set out on page one or to such other address as the Secured Party may from time to time designate in writing to the Debtor. Any such notice shall be deemed to have been given if delivered, when delivered, and if mailed, on the fourth business day following that on which it was mailed. In the event of a known interruption of postal services, any notice required or contemplated herein shall be deemed to have been delivered to the Debtor only if delivered by hand to the Debtor at the address specified herein or pursuant hereto and to the Secured Party only if delivered by hand to the Secured Party at the address specified herein or pursuant hereto.
- (10) This Agreement and the Security Interest is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and is intended to be a continuing Agreement and shall remain in full force and effect until the indebtedness has been paid in full.
- (11) In this Agreement the term "successors" shall include (and without limiting its meaning) any corporation resulting from the amalgamation of one corporation with another corporation.
- (12) The headings used in this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.
- (13) 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.
- (14) In the event any provisions of this 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 Agreement shall remain in full force and effect.

- (15) The parties acknowledge that value has been given and the Security Interest created hereby is intended to attach when this Agreement is signed by the Debtor and the Debtor agrees that it is not the intention of the Secured Party or the Debtor to postpone the attachment of the Security Interest and accordingly, attachment, as defined in the P.P.S.A, will occur simultaneously upon the execution of this Agreement.
- (16) Time shall be of the essence of this Agreement.
- (17) If this Agreement has been executed by more than one the Debtor, the obligations of each the Debtor shall be joint and several.
- (18) This Agreement, including any schedules attached hereto, constitutes the entire agreement between the Debtor and the Secured Party relating to the subject matter hereof, and no amendment shall be effective unless made in writing. There are no representations, warranties or collateral agreements in effect between the Debtor and the Secured Party relating to the subject matter hereof; and possession of an executed copy of this Agreement by the Secured Party constitutes conclusive evidence that it was executed and delivered by the Debtor free of all conditions.
- (19) This Agreement and the Obligations may be assigned in whole or in part by the Secured Party to any person, firm or corporation without notice or consent of the Debtor. This Agreement may not be assigned by the Debtor without the prior written consent of the Secured Party.
- (20) Notwithstanding any provision to the contrary contained in this agreement, in no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code, R.S.C. 1985, c. 46 as the same may be amended, replaced or re-enacted from time to time) payable under this agreement exceed the maximum amount of interest on the "credit advanced" (as defined in that section) under this agreement lawfully permitted under that section and, if any payment, collection or demand pursuant to this agreement in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand shall be deemed to have been made by mutual mistake of the Secured Party and the Debtor and the amount of such payment or collection shall be refunded to the Debtor. For purposes of this agreement, the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles over the term that the Loan is outstanding on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Secured Party will be conclusive for the purposes of such determination.
- (21) Nothing contained in this Agreement, including the execution of same and/or the filing of a financing statement(s) shall obligate the Secured Party to make any loan to or accommodation to the Debtor or to extend the time for payment or satisfaction of any Obligations.

# 16.0 ACKNOWLEDGEMENTS OF DEBTOR

The Debtor hereby acknowledges receipt of an executed copy of this Agreement and that the failure of the Secured Party to receive full payment or satisfaction of the indebtedness through its rights and remedies herein provided shall not in any way release the Debtor who covenants to pay or satisfy any deficiency.

IN WITNESS WHEREOF this Security Agreement has been signed, sealed and delivered on the date set out above.

2238394 ONTARIO LTD.

Name: Maciek Walicht

Title: President

I have authority to bind the corporation.

# SCHEDULE "A"

# **Location of Business**

Part of Lots 39 and 40
Nathaniel Hughson Survey
(Unregistered), North Side
King William Street between
Hughson Street and John
Street, as in VM215716, City
of Hamilton, Province of
Ontario, Hamilton-Wentworth
Land Registry (No. 62), and
mmunicipally known as:
31 John Street North,
Hamilton, Ontario.

# Location Of Records Relating To Collateral

Part of Lots 39 and 40
Nathaniel Hughson Survey
(Unregistered), North Side
King William Street between
Hughson Street and John
Street, as in VM215716, City
of Hamilton, Province of
Ontario, Hamilton-Wentworth
Land Registry (No. 62), and
municipally known as:
31 John Street North,
Hamilton, Ontario and/or
the registered head office
of the Debtor.

# Location of Collateral

All present and after acquired Collateral of the Debtor wherever situate.

My.

# SCHEDULE "B"

# PERSONAL PROPERTY SECURITY ACT SUMMARY

NIL.

This is Exhibit "F" referred to in the Affidavit of Sergiu Cosmin sworn before me this  $18^{\rm th}$  day of November, 2024

Commissioner for Taking Affidavits

# CONSENT RE: ELECTRONIC REGISTRATION OF GUARANTEE

TO: Home Trust Company

AND TO: Garfinkle Biderman LLP, their solicitors herein

RE: 58 King Street East Hamilton Ltd. first mortgage to Home Trust Company

Maciej Walicht (the "Guarantor") 58 King Street East, Hamilton, Ontario Loan Number: 10653788 (the "Charge")

File No: 11722-135

In consideration of Home Trust Company having made a loan to 58 King Street East Hamilton Ltd. (the "Chargor"), I hereby confirm that:

- I have reviewed the information set out in: (i) this Consent; (ii) the Charge in the form annexed hereto; (iii) the Standard Charge Terms referred to in the Charge; and, (iv) the Schedule(s), if any, being incorporated in the Charge, all of which forms part of the Charge (collectively the "Documents") and I agree to be bound by the terms and conditions of the Documents.
- 2. I hereby jointly and severally (together, if more than one person has executed this document, and with the Borrower in any event), agree with Home Trust Company, as principal debtor and not as surety, to pay Home Trust Company the loan amount as and when required by the Charge and to observe and perform all other obligations of the Chargor under the Charge. Home Trust Company may at any time and from time to time without the consent of or notice to the Guarantor give any extension of time for payment (including renewals), deal with any additional security, give releases or discharges, vary, increase or decrease the interest rate, amend the terms of the Charge and generally deal with all matters affecting the Charge and the obligations of the Chargor without in any way affecting the guarantee or the obligations of the Guarantor. I acknowledge that Home Trust Company may require payment from the Guarantor before it attempts to obtain a payment from the Chargor, and all obligations of the Guarantor shall also be those of the Guarantor's successors or personal representatives, and will not be altered by the bankruptcy of the Chargor, the Guarantor, or any other party to the Charge.

Should any provision of the preceding paragraph not be in accordance with the Charge or the Standard Charge Terms incorporated into the Charge (collectively referred to as the "Charge"), the terms of the Charge will prevail.

- You, your agent or employee are authorized and directed to sign, deliver and/or register electronically on my behalf the Documents to evidence my guarantee as contemplated.
- 4. The effect of the electronic Documents have been fully explained to me and I understand that I am party to and bound by the terms and provisions of these electronic Documents to the same extent as if I had signed each of these Documents; and
- I am in fact the party named in the electronic Documents and I have not misrepresented my identity to you.

DATED at Toronto, this 1st day of August, 2023.

SIGNED, SEALED & DELIVERED

In the presence of:

Witness: Puncet Jatana

Maciei Walicht

# CONSENT RE: ELECTRONIC REGISTRATION OF GUARANTEE

TO:

Home Trust Company

AND TO:

Garfinkle Biderman LLP, their solicitors herein

RE:

2238394 Ontario Ltd. first mortgage to Home Trust Company

Maciek Walicht (the "Guarantor")
31 John Street North, Hamilton, Ontario
Loan Number: 10608539 (the "Charge")

File No: 11722-116

In consideration of Home Trust Company having made a loan to 2238394 Ontario Ltd. (the "Chargor"), I hereby confirm that:

- I have reviewed the information set out in: (i) this Consent; (ii) the Charge in the form annexed hereto; (iii) the Standard Charge Terms referred to in the Charge; and, (iv) the Schedule(s), if any, being incorporated in the Charge, all of which forms part of the Charge (collectively the "Documents") and I agree to be bound by the terms and conditions of the Documents.
- 2. I hereby jointly and severally (together, if more than one person has executed this document, and with the Borrower in any event), agree with Home Trust Company, as principal debtor and not as surety, to pay Home Trust Company the loan amount as and when required by the Charge and to observe and perform all other obligations of the Charger under the Charge. Home Trust Company may at any time and from time to time without the consent of or notice to the Guarantor give any extension of time for payment (including renewals), deal with any additional security, give releases or discharges, vary, increase or decrease the interest rate, amend the terms of the Charge and generally deal with all matters affecting the Charge and the obligations of the Charge without in any way affecting the guarantee or the obligations of the Guarantor. I acknowledge that Home Trust Company may require payment from the Guarantor before it attempts to obtain a payment from the Charger, and all obligations of the Guarantor shall also be those of the Guarantor's successors or personal representatives, and will not be altered by the bankruptcy of the Charger, the Guarantor, or any other party to the Charge.

Should any provision of the preceding paragraph not be in accordance with the Charge or the Standard Charge Terms incorporated into the Charge (collectively referred to as the "Charge"), the terms of the Charge will prevail.

- You, your agent or employee are authorized and directed to sign, deliver and/or register electronically on my behalf the Documents to evidence my guarantee as contemplated.
- 4. The effect of the electronic Documents have been fully explained to me and I understand that I am party to and bound by the terms and provisions of these electronic Documents to the same extent as if I had signed each of these Documents; and
- 5. I am in fact the party named in the electronic Documents and I have not misrepresented my identity to you.

DATED at Hamilton, this 9th day of May, 2022.

SIGNED, SEALED & DELIVERED

In the presence of:

Witness: Patrick Mc Ilhone

Maciek Walich

LRO # 62 Charge/Mortgage

in preparation on 2022 05 08 at 18:23

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

Properties

PIN

17187 - 0015 LT

Interest/Estate Fee Simple

Description

PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN 8T AS IN VW215718; CITY OF HAMILTON

Address

31 JOHN ST N HAMILTON

# Chargor(a)

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

Name

2238394 ONTARIO LTD.

Acting as a company

Address for Senice

31 John Street North

Hamilton, Ontario

L8R1H2

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

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

Charges(s)

Capacity

Share

Namo

HOME TRUST COMPANY

Address for Service

Acting as a company 145 King Streat West Suite 2300

Toronto, Onterio

Provisions

Principal

\$3,800,000.00

Currency

CDN

Calculation Period Balanca Due Data

2023/06/01

Interest Rate

6.49% per annum

Semi-Annually, not in advance

Payments

\$25,430.27

Interest Adjustment Date Payment Date 2022 06 01 first day of each month

First Payment Date

2022 07 01

Last Payment Date

2023 06 01

Standard Charge Terms

201902

Insurance Amount

See standard charge terms

Guarantor

Madek Wallcht

## Additional Provisions

Maclek Waltorn is a Guarantor under this Charge. His address for service is: 3403 Loyalist Drive, Mississauga, Ontario L5LAY1.

File Number

Chargor Client File Number:

11722-118

Chargee Client File Number :

MORTGAGE NO.: 10608539

NW

This is Exhibit "G" referred to in the Affidavit of Sergiu Cosmin sworn before me this  $18^{\rm th}$  day of November, 2024

Commissioner for Taking Affidavits

#### PROVINCE OF ONTARIO MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM ENQUIRY RESPONSE

CERTIFICATE

REPORT : PSSR060 PAGE : 1 2991)

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

TYPE OF SEARCH

RUN NUMBER: 309

RUN DATE : 2024/11/04

ID: 20241104104433.19

: BUSINESS DEBTOR

SEARCH CONDUCTED ON : 58 KING STREET EAST HAMILTON LTD.

FILE CURRENCY

: 03NOV 2024

ENQUIRY NUMBER 20241104104433.19 CONTAINS

PAGE(S), 1 FAMILY (IES).

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

AIRD & BERLIS LLP ATTN: ELLI SHAHRAMI HOLD FOR PICKUP TORONTO ON M5J2T9

CERTIFIED BY/CERTIFIÉES PAR REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÜRETÉS MOBILIÈRES

(crfj6 05/2022)



REPORT : PSSR060

2

2992)

PAGE

#### PROVINCE OF ONTARIO MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM ENQUIRY RESPONSE

NUMBER.

CERTIFICATE

TYPE OF SEARCH BUSINESS DEBTOR SEARCH CONDUCTED ON: 58 KING STREET EAST HAMILTON LTD.

FILE CURRENCY 2 03NOV 2024

RUN NUMBER: 309

RUN DATE: 2024/11/04

ID: 20241104104433.19

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN FILE NUMBER 795252708 00 FAGE TOTAL CAUTION MOTOR VEHICLE REGISTRATION REGISTERED NO. OF PAGES SCHEDULE 01 001 20230714 0801 1793 3716 DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME 02 DEBTOR

03 NAME BUSINESS NAME 58 KING STREET EAST HAMILTON LTD. 04

58 KING STREET EAST ADDRESS HAMILTON

DATE OF BIRTH FIRST GIVEN NAME SURNAME INITIAL DEBTOR

ONTARIO CORPORATION NO. 07 ADDRESS

08 SECURED PARTY / HOME TRUST COMPANY LIEN CLAIMANT

BUSINESS NAME

09 ADDRESS 145 KING STREET WEST, SUITE 2300 TORONTO

UNDER

P PPSA

ON M5H1J8

ONTARTO CORPORATION NO. 002733125

ON

L8N1A6

REGISTRATION

PERIOD

COLLATERAL CLASSIFICATION

CONSUMER MOTOR VEHICLE AMOUND DATE OF NO FIXED GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED. MATURITY OR MATURITY DATE  $\mathbf{x}$ 

YEAR MAKE 11 MOTOR

MODEL

V.I.N.

12 VEHICLE

05

06

10

17

NAME

13 GENERAL 14 COLLATERAL 15 DESCRIPTION

(1) GENERAL SECURITY AGREEMENT RELATING TO ALL PRESENT AND AFTER

ACQUIRED PERSONAL PROPERTY OF THE DEBTOR WHEREVER SITUATE (2) GENERAL ASSIGNMENT OF RENTS AND LEASES AS SAME RELATES TO 58 KING

GARFINKLE, BIDERMAN LLP (LMK/CS 11722-125)

REGISTERING 16 AGENT

ADDRESS 1 ADELAIDE ST. EAST, SUITE 801

TORONTO

ON M5C2V9

3

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED . . .

CERTIFIED BY/CERTIFIÉES PAR

REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)



REPORT : PSSR060

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29931

PROVINCE OF ONTARIO
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM

ENQUIRY RESPONSE

TYPE OF SEARCH BUSINESS DEBTOR

SEARCH CONDUCTED ON: 58 KING STREET EAST HAMILTON LTD.

FILE CURRENCY : 03NOV 2024

RUN NUMBER: 309

RUN DATE: 2024/11/04

TD : 20241104104433.19

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

CERTIFIED BY/CERTIFIÉES PAR

V

REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÊS MOBILIÈRES

(crj1fv 05/2022)



REPORT : PSSR060

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#### PROVINCE OF ONTARIO

MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM

ENQUIRY RESPONSE CERTIFICATE

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON: 58 KING STREET EAST HAMILTON LTD.

FILE CURRENCY 1 03NOV 2024

RUN NUMBER: 309

RUN DATE : 2024/11/04

ID: 20241104104433.19

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

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(cri2fv 05/2022)



PROVINCE OF ONTARIO

MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM

ENOUIRY RESPONSE

CERTIFICATE

PAGE

REPORT : PSSR060

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2995)

TYPE OF SEARCH

RUN NUMBER: 309

RUN DATE : 2024/11/04

ID: 20241104104433.19

: BUSINESS DEBTOR

SEARCH CONDUCTED ON: 58 KING STREET EAST HAMILTON LTD.

FILE CURRENCY

: 03NOV 2024

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER

REGISTRATION NUMBER

REGISTRATION NUMBER

REGISTRATION NUMBER

REGISTRATION NUMBER

795252708

20230714 0801 1793 3716

20240326 1725 1793 5913

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

CERTIFIED BY/CERTIFIÉES PAR REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

(crfj6 05/2022)



#### PROVINCE OF ONTARIO MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM ENQUIRY RESPONSE

CERTIFICATE

REPORT : PSSR060 PAGE :

2996)

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

TYPE OF SEARCH

RUN NUMBER: 309

RUN DATE : 2024/11/04

ID: 20241104192509.12

: BUSINESS DEBTOR

SEARCH CONDUCTED ON : 2238394 ONTARIO LTD.

FILE CURRENCY

: 03NOV 2024

ENQUIRY NUMBER 20241104192509.12 CONTAINS PAGE(S), 1 FAMILY (IES).

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

AIRD & BERLIS LLP ATTN: ELLI SHAHRAMI HOLD FOR PICKUP TORONTO ON M5J2T9

CERTIFIED BY/CERTIFIÉES PAR REGISTRAR OF

PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÚRETÉS MOBILIÈRES

(crfj6 05/2022)



REPORT : PSSR060

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PAGE

#### PROVINCE OF ONTARIO

MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM

> ENOUTRY RESPONSE CERTIFICATE

RUN DATE : 2024/11/04 TD : 20241104192509.12

RIIN NUMBER: 309

TYPE OF SEARCH BUSINESS DEBTOR

SEARCH CONDUCTED ON : 2238394 ONTARTO LTD. ETLE CURRENCY 03NOV 2024 FINANCING STATEMENT / CLAIM FOR LITEN FILE NUMBER 0.0 782063919 CAUTTON PAGE TOTAL MOTOR VEHICLE REGISTRATION PILING NO. OF PAGES SCHEDULE MIMBER 001 01 20220419 0807 1793 6133 DATE OF BIRTH FIRST GIVEN NAME TNTTTAT. SURNAME 02 DEBTOR 03 NAME BUSTNESS NAME 2238394 ONTARIO LTD. 04 ADDRESS 31 JOHN STREET NORTH HAMILTON DATE OF BIRTH FIRST GIVEN NAME INTTTAL SURNAME 05 DEBTOR 06 NAME BUSINESS NAME 07 ADDRESS

ONTARIO CORPORATION NO.

08 SECURED PARTY / HOME TRUST COMPANY LIEN CHAIMANT

09 145 KING STREET WEST, SUITE 2300 ADDRESS TORONTO ON M5H1J8

COLLATERAL CLASSIFICATION

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

MODEL YEAR MAKE V.I.N. MOTOR 11

12 VEHICLE

10

17

13 GENERAL (1) GENERAL SECURITY AGREEMENT RELATING TO ALL PRESENT AND AFTER 14 COLLATERAL AQUIRED PERSONAL PORPERTY OF THE DEBTOR WHEREVER SITUATE AND (2) 15 DESCRIPTION

GENERAL ASSIGNMENT OF RENTS AND LEASES AS SAME RELATES TO 31 JOHN

REGISTERING 16 GARFINKLE, BIDERMAN LLP (LMK/CS 11722-116 AGENT

1 ADELAIDE ST. EAST, SUITE 801 M5C2V9 ADDRESS TORONTO ON

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

CONTINUED...

REGISTERED

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P PPSA

REGISTRATION

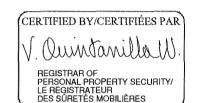
PERTOD

ONTARTO CORPORATION NO. 002238394

T.8R1H2

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ON



(cri1fy 05/2022)



RUN NUMBER: 309 RUN DATE : 2024/11/04 ID: 20241104192509.12

#### PROVINCE OF ONTARIO MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM ENQUIRY RESPONSE

REPORT : PSSR060 PAGE 3 2998)

CERTIFICATE

TYPE OF SEARCH : BUSINESS DEBTOR SEARCH CONDUCTED ON : 2238394 ONTARIO LTD. FILE CURRENCY 2 03NOV 2024

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

PITE NIMBED

DESCRIPTION

REGISTERING

AGENT

16

17

00	782063919	*			
01	CAUTION PAGE TOT FILING NO. OF PAG 002 2			GISTRATION R NUMBER 119 0807 1793 6133	REGISTERED REGISTRATION UNDER PERTOD
02	DATE OF BERTH	FIRST GIVEN NAME	INITTAL	SURNAME	
03 04	NAME BUSINESS NAME ADDRESS				ONTARIO CORPORATION NO.
05 06	DATE OF BIRTH DEBTOR NAME BUSINESS NAME	PERST GIVEN NAME	INTTAL	SURNAME	
07	ADDRESS				ONTARIO CORPORATION NO.
08 09	SECURED PARTY / LIEN CLAIMANT "ADDRESS"				
10	COLLATERAL CLASSIFICATION  CONSUMER  GOODS INVENTORY BOT	P TIPMENT ACCOUNTS OTHER	10TOR VEHICLE INCLUDED	E AMOUNT DATE O MATURI	F NO FIXED TY OR MATURITY DATE
11 12	YEAR MAKE MOTOR VEHICLE	MODEL		V.I.N.	
13 14	GENERAL STREET NORTH,	HAMILTON, ONTARIO.			

ADDRESS

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

CONTINUED...

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CERTIFIED BY/CERTIFIÉES PAR

REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)



REPORT : PSSR060

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CONTINUED...

PROVINCE OF ONTARIO MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM

ENQUIRY RESPONSE

RUN NUMBER: 309 RUN DATE: 2024/11/04 ID: 20241104192509.12

CERTIFICATE

TYPE OF SEARCH : BUSINESS DEBTOR SEARCH CONDUCTED ON : 2238394 ONTARIO LTD. FILE CURRENCY # 03NOV 2024

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED NO. OF PAGES 001 1 FILING SCHEDULE NUMBER UNDER 01 20240326 1724 1793 5912 RECORD FILE NUMBER 782063919 REFERENCED RENEWAL CORRECT PAGE AMENDED NO SPECIFIC PAGE AMENDED CHANGE REQUIRED YEARS PERIOD 22 A AMENDMENT FIRST GIVEN NAME INTTIAL SURNAME 23 REFERENCE 24 DEBTOR/ BUSINESS NAME 2238394 ONTARIO LTD. TRANSFEROR 25 OTHER CHANGE 26 REASON/ AMENDED TO REMOVE THE GENERAL COLLATERAL DESCRIPTION FROM 27 DESCRIPTION REGISTRATION NO. 20220419 0807 1793 6133 28 SURNAME 02, DATE OF BIRTH FIRST GIVEN NAME TATTIAL 05 DEBTOR/ 03/ TRANSFEREE BUSINESS NAME 06 ONTARIO CORPORATION NO. 04/07 ADDRESS 29 ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNEE 80 09 ADDRESS COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE DATE OF GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED AMOUNT MATURITY OR MATURITY DATE 10 MODEL 11 MOTOR 12 VEHICLE 13 GENERAL 14 COLLATERAL 15 DESCRIPTION REGISTERING AGENT OR 16 AIRD & BERLIS LLP 17 SECURED PARTY/ ADDRESS 181 BAY STREET, SUITE 1800, BOX# 754 TORONTO ON M5J2T9 LIEN CLAIMANT \*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CERTIFIED BY/CERTIFIÉES PAR REGISTRAR OF PERSONAL PROPERTY SECURITY/ LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

(crj2fv 05/2022)



REPORT : PSSR060

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PAGE:

REGISTRATION NUMBER

PROVINCE OF ONTARIO MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM

REGISTRATION NUMBER

ENQUIRY RESPONSE CERTIFICATE

FILE CURRENCY : 03NOV 2024

SEARCH CONDUCTED ON: 2238394 ONTARIO LTD.

RUN NUMBER: 309

TYPE OF SEARCH

FILE NUMBER

782063919

RUN DATE : 2024/11/04

ID: 20241104192509.12

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

REGISTRATION NUMBER

20240326 1724 1793 5912

: BUSINESS DEBTOR

REGISTRATION NUMBER

20220419 0807 1793 6133

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



(crfj6 05/2022)



This is Exhibit "H" referred to in the Affidavit of Sergiu Cosmin sworn before me this  $18^{\rm th}$  day of November, 2024

Commissioner for Taking Affidavits

at 16:19

Page 1 of 6

LRO # 62 Charge/Mortgage

Registered as WE1693567 on 2023 08 16

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

**Properties** 

PIN 17167 - 0087 LT Interest/Estate Fee Simple

Description PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN

VM271941; CITY OF HAMILTON

Address 58 KING STREET EAST

**HAMILTON** 

## 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 58 KING STREET EAST HAMILTON LTD.

Address for Service 58 King Street East

Hamilton, Ontario

L8N 1A9

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

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

Chargee(s)		Capacity	Share
Name	TRUMENCAS LTD	Tenants In Common	\$425,000.00
Address for Service	2206-20 Barrel Yards Blvd. Waterloo, Ontario N2L 0C3		
Name	BARGIS, GEORGE	Tenants In Common	\$360,000.00
Address for Service	4 Abbitt Crescent Georgetown, Ontario L7G 4S4		
Name	ORTEPI, CAESAR	Tenants In Common	\$100,000.00
Address for Service	41 Mapleton Mills Drive Schomberg, Ontario L0G 1T0		
Name	BARGIS, ALEXANDER XAVIER	Tenants In Common	\$15,000.00
Address for Service	4 Abbitt Crescent Georgetown, Ontario L7G 4S4		
Name	НОТАК, ТАНМІМА	Tenants In Common	\$75,000.00
Address for Service	6074 Highway 9 Caledon, Ontario L7K 0A8		
Name	SODHI, JASVIR	Tenants In Common	\$75,000.00
Address for Service	12540 Sixth Line Limehouse, Ontario L0P 1H0		
Name	2198880 ONTARIO LIMITED	Tenants In Common	\$200,000.00
Address for Service	3130 Galbraith Drive Mississauga, Ontario L5L 3Y9		

### Statements

Schedule: See Schedules

## **Provisions**

Principal \$1,250,000.00 Currency CDN

Calculation Period Monthly
Balance Due Date 2024/08/11
Interest Rate 21.0% per annum
Payments \$65,625.00

Interest Adjustment Date 2023 08 11

Payment Date every three months on the 11th day

First Payment Date 2023 11 11

Registered as WE1693567 on 2023 08 16 at 16:19

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

yyyy mm dd Page 2 of 6

## **Provisions**

Last Payment Date 2024 08 11 Standard Charge Terms 200033

Insurance Amount Full insurable value
Guarantor Walicht, Maciek

## Signed By

Lawrence Paul Shenton 4950 Yonge Street, Suite 2200 acting for First 2023 08 16

Toronto Chargor(s) Signed M2N 6K1

Tel 647-725-2530

Fax 647-725-2531

Lawrence Paul Shenton 4950 Yonge Street, Suite 2200 acting for Last 2023 08 24

Toronto Chargor(s) Signed

M2N 6K1

Tel 647-725-2530 Fax 647-725-2531

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

## Submitted By

SHENTON SAKINOFSKY LLP 4950 Yonge Street, Suite 2200 2023 08 25

Toronto M2N 6K1

Tel 647-725-2530 Fax 647-725-2531

## Fees/Taxes/Payment

Statutory Registration Fee \$69.00 Total Paid \$69.00

## File Number

Chargee Client File Number: 23148B

# **MORTGAGE COMMITMENT**

Trumencas Ltd. Date: May 25, 2023

Re: *Second Mortgage* — 58 King Street East, Hamilton, ON L8N 1A9

Thank you for choosing us to fulfill your mortgage financing requirements. We are pleased to advise you that your mortgage loan has been approved, based on the following terms and conditions:

Wortgage Loan Details:	
Applicant(s)	58 King Street East Hamilton Ltd.
Guarantor(s)	
Personal Guarantee	Maciek Walicht
Mortgagee/Lender	Trumencas Ltd
Priority of Mortgage	Second Mortgage
Loan Amount	\$1,250,000.00
Legal Fees not including disbursements	TBA
Broker Fee	2%
Inspection Fees	N/A
Interest rate	21%
Term	1 year
Amortization	N/A
Interest Adjustment Date	February 17, 2023
Interest Adjustment	N/A
First Payment Date(quarterly payments)	August 17, 2023
Maturity Date/Last Payment Date	February 17, 2024
Quarterly Payment	\$ 65,625.00
Closing Date	June 15, 2023
<b>Property:</b> Address: See above	
Legal Description:	

Purpose of Loan: Second Mortgage

**Borrower's Lawyer:** 

Retainer: You are to provide a non-refundable commitment fee on or before acceptance of this mortgage offer of \$1,500.00 by Certified Cheque only, payable to "Shenton Sakinofsky LLP, in trust" and These fees are deemed earned if the transaction is not complete for any reason other than Lender's default. If transaction closes, you will receive credit for this fee.

Lawyer Acting for Lender: Shenton Sakinofsky LLP...attention Julian Sakinofsky

Address: 4950 Yonge Street, Suite 2200, Toronto, ON M2N 6K1

Telephone /Fax Number: 647-725-2530 / 647-725-2531

ми ДМ Initial \_\_\_\_\_ We will be instructing the Lender's lawyer directly and requesting the completion of our standard Solicitor's Report and Opinion. Although he will be acting on our behalf to ensure all details of the mortgage transaction are carried out properly, the lawyer will not necessarily be unable to act for you. Please contact the lawyer directly, if you have any questions in this regard.

The Mortgagors shall pay the Lender's lawyer's legal account in respect of this mortgage transaction in full.

#### **Preconditions to Funding:**

Funding of the mortgage loan on the closing date is conditional upon the following preconditions having been met by the borrower. This list is not exhaustive and is subject to review by the Lender's lawyer. If any of the preconditions are not met, the Lender reserves the right to not fund the mortgage.

- 1. The Lender's lawyer must be satisfied that you have good marketable title to the Property. A survey satisfactorily showing building locations or a surveyor's plot plan must be provided. In alternate, title insurance will be obtained at the borrower's expense from an insurer chosen by or acceptable to the lender.
- 2. Confirmation from the Municipality of compliance with zoning bylaws and planning regulations.
- 3. Confirmation there are no outstanding Municipal deficiency notices or work orders for the Property.
- **4.** A Tax Certificate showing that there are no outstanding property taxes owed in relation to the Property. Outstanding taxes will be brought up to date.
- 5. Satisfactory evidence of Fire Insurance with a company satisfactory to us for at least the full insurable value of the Property and not less than the Total Loan Amount. You must present a certified copy of the insurance policy to our lawyer with loss payable Secondly to the Lender. Lawyer will mail insurance binder to noted Address of Investor(s).
- **6.** A NEW Property Appraisal is to be ordered and completed by an appraiser of the Lenders choosing and showing an as-is value not less than \$5,890,000.00.
- 7. Current interior photographs are to be provided for each floor.
- 8. Appraisal Reports must be made out to Trumencas Ltd.
- 9. Fully executed mortgage commitment from the First Mortgagee on 58 King Street East, Hamilton, ON L8N 1A9 stating;
  - a) the total mortgage registration does not exceed \$3,400,000.00
  - b) the mortgage is not transferable or assumable.
  - a) the mortgagee is registered as per Investor(s).
  - b) the mortgage to be in good standing and not in arrears.
- **10.** Post-dated cheques for the term of the mortgage as directed by the Lender/Investors. Payments are to be calculated monthly but will be made quarterly.
- 11. Subject to inspection and Client interview by Lender's Agent at which point rate and fees may change.
- 12. Proper Application and Credit Bureau Required.
- **13.** Such further conditions as the Lender's lawyer deems necessary.
- 14. You acknowledge that the lender may assign this commitment or the mortgage to a third party and may receive a fee in connection with such assignment. Lender may also receive a fee in connection with the servicing of this loan. The Lender is not acting as your agent or otherwise in any fiduciary capacity in relation to you in connection with the loan described herein.

#### **Additional Mortgage Terms**

The following terms are to be incorporated into the Charge/Mortgage to be registered on title to the Property:

- a) The mortgage is FULLY OPEN with a TWO (2) months' interest bonus if the applicants choose to pay out said Mortgage before the Maturity date of February 17, 2024.
- b) The mortgagee or their agent will be entitled to a management fee up to 5% of the total mortgage principal, plus HST, which amount is deemed not to be a penalty, in the event that the lender or their agent attempt to take, or take possession of the subject property as a result of default under the mortgage. This includes Power of Sale Procedure.
- c) In the event of default herein, Trumencas Ltd. or their assignee will be appointed as the Chargee's Manager, at the Chargee's discretion and will be entitled to a fee of \$250.00 per hour for its services and such fee will be charge to the Chargor' account, and added to the amount owning under the Charge.
- d) In the event that any of the said post-dated cheques are not honored when presented for payment to the Bank or Trust Company on which they are drawn, the mortgager shall pay the mortgagee for each such cheque the sum of \$450.00 as a liquidated amount to cover the mortgagee's administrative costs and not as a penalty and such sum shall be charged upon the lands and shall bear interest at the rate hereinbefore stated.

MW	AM
Initial	

- e) The Chargor shall provide the Chargee, on an annual basis with satisfactory evidence that the property and all buildings and structures thereon are insured for loss or damage by or from fire with extended perils, risks or events as the Chargee may at any time require, with full insurable value and showing 4<sup>th</sup> mortgage loss payable to the Chargee.
- f) The Chargor shall provide the Chargee, on semi-annual basis with satisfactory evidence that all property taxes have been paid all properties.
- g) In the event of a bona fide sale of the property, all monies outstanding shall become due and payable and prepayment penalties will apply as per Mortgage/Charge.
- h) Standard Charge Terms apply and are to be incorporated by reference into this charge or mortgage.
- i) Upon the balance due date of the principal and interest secured hereunder or any renewal thereof, the mortgagor shall be deemed to have requested the mortgagee's solicitor to prepare the discharge documents, including where applicable, the electronic registration of the discharge for this Charge and shall pay the standard discharge fee & HST charged by our solicitor.
- j) Mortgage will automatically renew into a 1 year term unless Lender has been notified in writing 30 days prior to renewal. All renewal and other fees will be due on renewal with all the conditions staying the same unless otherwise noted in writing. Lender has option to change rates and or collateral depending on Market conditions or if any defaults occurred. Admin Fees will apply on Default. \*No renewal fees will be charged on renewal.
- k) Any interest arrears will also be subject to interest at the rate provided in Mortgage.
- I) If mortgage is not paid out on Maturity, a Forbearance fee equal to three (3) months' payments will apply, unless otherwise agreed upon by both parties in writing. This fee is only due if the mortgage is not paid out within 20 days of maturity.
- m) Equitable Charge: The Borrower(s), on executing this commitment letter, hereby grants the Lender an equitable charge on the Borrowers' property(s) at **58 King Street East, Hamilton**, being the property(s) which is/are to be given as security for this loan and as security for the Lender's fees, commissions, legal fees, disbursements and taxes, with the Lender having the right to file a caveat against said property evidencing said right. The Borrower(s) hereby irrevocable appoints the Lender as the Borrower(s) lawful attorney for the purpose of executing any documents on the Borrower(s) behalf and for registration of a charge/mortgage or other encumbrance against the Borrower(s) property, as security for the repayment of the Lender's fees, commissions, legal fees and taxes.
- n) A PPSA is to be prepared, signed and not registered unless the borrower defaults on the mortgage for a period of 30 continuous days or more.
- o) NSF/Late payment Fee will apply to each cheque per Lender/Investor and client(s) understand and are aware that there is more than one Lender/Investor in this mortgage.

<u>Service Fee:</u> In the event that the Chargee/Mortgagee is required or deems it advisable to make any payment in order to protect his/her security position including but not limited to realty taxes, insurance premiums, condominium common expenses, principle interest or costs under a prior mortgage it is agreed that such payment shall bear interest at eighteen(21%) percent per annum, calculated and compounded monthly and that there shall be an administration fee of not less than \$250.00 for making each such payments.

#### **Assignment of Commitment by Borrower**

This mortgage commitment shall not be assigned without the prior written consent of our company. In the event that such assignment has taken place without the above prior written consent, we will have the right to terminate this mortgage commitment, in which case the mortgagors shall continue to be liable to pay for the lender's fee in full and for the legal account rendered to us by our solicitor. Same applies if borrower decides to walk away from the committed mortgage.

Assignment of Commitment by Lender: This Commitment, the mortgage and all related ancillary security may be assigned by the Lender to another person or corporation without notice to the Borrower(s) / Guarantor(s) prior to or after funding. The Borrower(s) / Guarantor(s) agree that within five (5) days of notification, the Borrower(s) / Guarantor(s) agree to execute any confirmation as required by the new lender, assign the insurance to the new lender and provide an executed pre-authorized payment form or provide post-dated cheques for payment to the new lender. You acknowledge that the lender may assign this commitment or the mortgage to a third party and may receive a fee in connection with such assignment. Lender may also receive a fee in connection with the servicing of this loan. The Lender is not acting as your agent or otherwise in any fiduciary capacity in relation to you in connection with the loan described herein.

#### **Administration and Servicing Fees:**

1. Statement Fee	\$450.00
2.Demand Letter	\$875.00
3.Mortgage Discharge Administration Fee	\$550.00
4. Insurance cancellation, premium payment or non-compliance	\$450.00
5. Renewal Fee	N/A
6. NSF/Late Payment Fee	\$250.00
7. Default Proceedings	\$990.00
8. Maintenance for security of property in our possession	\$150.00 per day

This clause is also deemed to be proper notice to any subsequent charge or lien holder of the above-noted fees in the event of the Chargor's default. The Chargor acknowledges having received and explained to it all of the possible fees and charges set forth in this Charge which would be in addition to principal and interest due hereunder. The Chargor acknowledges and agrees that the fees and charges are reasonable and reflect a reasonable pre-estimate of the Chargee's actual costs with respect to each of such charges and fees. The Chargor further acknowledges and agrees that all of the foregoing charges set out as PROVIDED that in the event of non-payment of the foregoing administration fees, the amount due shall be added to the principal balance outstanding.

#### **Expiry Date/Commitment Acceptance Date**

This offer is open for acceptance until May 30, 2023 by executing the copy hereof and returning it to us. Please <u>initial all pages</u> of the mortgage commitment.

Applicant/Mortgagor
(58 King Street East Hamilton Ltd.)
A.S.O. Maciek Walicht

Personal Guarantor (Maciek Walicht)

Initial
---------

at 16:19

yyyy mm dd Page 1 of 5

## **Properties**

PIN 17167 - 0087 LT

Description PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN

VM271941; CITY OF HAMILTON

Address 58 KING STREET EAST

**HAMILTON** 

## Applicant(s)

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

Name 58 KING STREET EAST HAMILTON LTD.

Address for Service 58 King Street East

Hamilton, Ontario

L8N 1A9

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

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

Party To(s)		Capacity	Share
Name	TRUMENCAS LTD.	Tenants In Common	\$375,000.00
Address for Service	2206-20 Barrel Yards Blvd. Waterloo, Ontario N2L 0C3		
Name	BARGIS, GEORGE	Tenants In Common	\$360,000.00
Address for Service	4 Abbitt Crescent Georgetown, Ontario L7G 4S4		
Name	ORTEPI CAESAR	Tenants In Common	\$100,000.00
Address for Service	41 Mapleton Mills Drive Schomberg, Ontario L0G 1T0		
Name	BARGIS, ALEXANDER XAVIER	Tenants In Common	\$15,000.00
Address for Service	4 Abbitt Crescent Georgetown, Ontario L7G 4S4		
Name	НОТАК, ТАНМІМА	Tenants In Common	\$75,000.00
Address for Service	6074 Highway 9 Caledon, Ontario L7K 0A8		
Name	SODHI, JASVIR	Tenants In Common	\$75,000.00
Address for Service	12540 Sixth Line Limehouse, Ontario L0P 1H0		
Name	2198880 ONTARIO LIMITED	Tenants In Common	\$200,000.00
Address for Service	3130 Galbraith Drive Mississauga, Ontario L5L 3Y9		

### Statements

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

This notice may be deleted by the Land Registrar when the registered instrument, WE1693567 registered on 2023/08/16 to which this notice relates is deleted

Schedule: See Schedules

## Signed By

Lawrence Paul Shenton 4950 Yonge Street, Suite 2200 acting for Signed 2023 08 16

Toronto Applicant(s)

M2N 6K1

Tel 647-725-2530 Fax 647-725-2531

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

LRO # 62 Notice Of Assignment Of Rents-General

**Registered as WE1693568** on 2023 08 16 at 16:19

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

yyyy mm dd Page 2 of 5

Signed By

Lawrence Paul Shenton 4950 Yonge Street, Suite 2200 acting for Signed 2023 08 16

Toronto Party To(s)

M2N 6K1

Tel 647-725-2530 Fax 647-725-2531

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

Submitted By

SHENTON SAKINOFSKY LLP 4950 Yonge Street, Suite 2200 2023 08 16

Toronto M2N 6K1

Tel 647-725-2530 Fax 647-725-2531

Fees/Taxes/Payment

Statutory Registration Fee \$69.00 Total Paid \$69.00

File Number

Party To Client File Number: 23148B

Instrument Statement, 61 Page 3 of 5

#### GENERAL ASSIGNMENT OF RENTALS

- 1. As a security for the payment of all obligations, indebtedness and liability of the Assignor to the Assignee under an indenture of mortgage or charge and any amendments thereto and extensions thereof (the "Mortgage") given by the Assignor to the Assignee on those lands and premises described in Schedule "A" (the "Lands") whether such obligation, indebtedness or liabilities are incurred prior to, at the time of or subsequent to the execution of this Assignment, the Assignor hereby grants, assigns and transfers to the Assignee:
- a. All leases, licenses and other agreements permitting the occupation or use of the Lands or any part thereof, whether in existence at the date of this Assignment or hereafter, and all renewals thereof (all of which leases, licenses and other agreements are hereinafter referred to as "Leases") and any guarantee of all or any of the obligations under any of the Leases; and,
- b. All rentals, income, receipts, profits and other moneys payable to the Assignor under the Leases including, without limiting the generality of the foregoing, all rentals, income, subsidies or payments received from any and all competent governmental authorities (all of which rentals, income receipts, profits and other moneys are hereinafter referred to as "Rentals").
- 2. In the event of default under the Mortgage or herein, the Assignee may at its option enter upon the Lands and collect in the name of the assignor or in its own name as Assignee, the rentals accrued but unpaid and in arrears at the date of such default, as well as the Rentals thereafter accruing and becoming payable during the period of default. The Assignor shall from time to time forthwith on the Assignee's request, do, make and execute all notices and directions to tenants directing the payment of rentals to the Assignee and other documents, acts, matters and things, as may be required by the Assignee in order to collect Rentals or otherwise give effect to these presents, and the Assignor hereby constitutes and appoints the President of the Assignee, or any receiver appointed by the Court or the Assignee as hereinafter set out, the true and lawful Attorney of the Assignor irrevocably with full power of substitution to do, make and execute all such notices, directions, documents, acts, matters or things with the right to use the name of the Assignor whenever and wherever it may be deemed necessary or expedient.
- 3. The Assignor shall from time to time forthwith on request furnish to the Assignee in writing all books and information requested relating to Rentals and the Assignee shall be entitled from time to time to have access to the Lands and/or other premises occupied by the Assignor in order to inspect such books or information.
- 4. The Assignee may, in addition to any other rights, appoint by instrument in writing a receiver or receiver-manager in connection with the Rentals and remove or replace such receiver or receiver-manager from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of such receiver or receiver-manager. Where the Assignee is hereinafter in this Assignment referred to, the term shall, where the context permits, include any receiver or receiver-manager so appointed and the officers, employees, servants or agents of such receiver or receiver-manager.
- 5. The Assignee may at its option take over and assume the management, operation and maintenance of the Lands and perform all acts necessary and proper with respect to such management, operation and maintenance and expend such sums out of the income of the Lands as may be needful in connection therewith, in such manner and to the same extent as the Assignor, including the right to effect new leases, cancel or surrender existing leases, alter or amend the terms of existing leases, renew existing leases or make concessions to tenants and the Assignor hereby releases all claims against the Assignee arising out of such management, operation and maintenance, save and except the liability of the Assignee to account.
- 6. The Assignor represents and warrants to and covenants and agrees with the Assignee that:
- (i)all leases are valid, enforceable and in full for and effect;(ii)The Assignor has not done and will not do or omit to do any act having the effect of terminating, cancelling or accepting surrender of any of the leases, or of waiving,

releasing, reducing or abating any rights or remedies of the Assignor, or obligations of any other party thereunder or in connection therewith without the prior written consent of the Assignee;

(iii)none of such rights, remedies and obligations are or will be affected by any other agreement, document or understanding or by any reduction, abatement, defence, set-off or counterclaim;

(iv)none of the lease or the Assignor's rights thereunder (including the right to receive the rentals) have been or will be amended, assigned, encumbered, discounted or anticipated;

(v)none of the rentals have been or will be paid prior to the due date for payment thereof;

(vi)the Assignor will observe and perform all of its obligations under the leases;
(vii)there has been no default under any of the leases by any of the parties
thereto;

(viii) there is not any outstanding dispute under any of the leases by any of the parties thereto; and

(ix)neither the assignor nor any previous owner of the Lands has executed any prior assignment of the leases or the rentals.

- 7. The Assignor hereby covenants and warrants that a further assignment of leases or rentals shall be granted only in the event that the Assignor provides the Assignee with an acknowledgement from any subsequent creditor that this Assignment shall have full priority over any such further assignment.
- 8. Nothing herein contained shall have the effect of making the Assignee responsible for the collection of Rentals or any part thereof, or for the performance of any of the obligations or conditions under or in respect of the leases or any of them to be observed and preformed by the Assignor, or to take any action or enforce any remedy against any person with respect to any breach of any of the leases, and that the Assignee shall not by virtue of this assignment, or its receipt of the rentals or any part thereof, become or be deemed a mortgagee in possession. The Assignee shall be liable to account for only such moneys as shall actually come into its hands, less proper collection charges, provided that such moneys may be applied on account of any indebtedness of the Assignor to the Assignee.
- 9. The Assignor shall be entitled to collect and receive the rentals as they become due under the leases unless and until the Assignee give notice to any tenant, user, occupier, licensee or other party entitled to occupations or use of any part of the lands under any of the leases requiring that the rentals be paid to the Assignee, but nothing in this section 9 shall permit or authorize the Assignor to collect any of the rentals prior to their due date.
- 10. None of the rights or remedies of the Assignee under the Mortgage shall be delayed or in any way prejudiced by this Assignment. Notwithstanding any variation of the terms of the Mortgage or any extension of time for payment of the moneys secured by the Mortgage or any part thereof or any release of part or parts of the premises or any collateral security, the Leases and the Rentals hereby assigned shall continue as collateral security until all moneys secured by the Mortgage have been paid in full.
- 11. Save as otherwise agreed between the parties in writing, and save as hereinafter set out, this Assignment and the Mortgage collectively constitute the entire agreement between the parties as regards the assignment of Leases and Rentals and the rights and liabilities of the parties and there are no other representations, collateral agreements or conditions in respect of the Leases or Rentals. This Assignment is in additions to and not in substitution for any other agreement between the parties including, without limiting the generality of the foregoing, any agreement creating a security interest in the Leases or Rentals and whether heretofore or hereinafter made, and the terms of such agreement or agreements shall be deemed to be continued unless expressly provided to the contrary in writing and signed by the parties.
- 12. Any notice required to be given to the Assignor may be sent by prepaid registered mail at the Assignor's usual or last known place of business and if so sent, the notice shal be deemed to have been given on the third day following the day on which it was mailed.
- 13. If any term of this Assignment or the application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Assignment or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term of this Assignment shall be separately valid and enforceable to the fullest extent permitted by

law.

- 14. Any receiver or receiver-manager appointed out of this Assignment or by any court shall be deemed to be an agent or agents of the Assignor or the Assignor shall be solely responsible for his or its or their acts and for his or its or their remuneration and expenses and the Assignee shall not be in any way responsible for any misconduct or negligence on the part of any such receiver or receiver-manager.
- 15. In the event that all amounts receivable under the Mortgage are received in full, the Assignor shall be entitled, at its sole expense, to receive a discharge of this Assignment.
- 16. This Assignment shall be interpreted in accordance with the laws of the Province of Ontario.
- 17. This Assignment and everything contained herein shall extend to and bind and may be taken advantage of by the respective heirs, executors, administrators, successors and assigns, as the case may be, or each and every of the parties hereto and where there is more than one Assignor or there is a female party or a corporation, the provisions hereof shall be read with all grammatical changes thereby rendered necessary and where there is more than one Assignor all covenants shall be deemed to be joint and several.

LRO # 62 Charge/Mortgage

Registered as WE1707048 on 2023 10 30 at 15:19

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

yyyy mm dd Page 1 of 6

## **Properties**

PIN 17167 - 0087 LT Interest/Estate Fee Simple

Description PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN

VM271941; CITY OF HAMILTON

Address 58 KING STREET EAST

**HAMILTON** 

## 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 58 KING STREET EAST HAMILTON LTD.

Address for Service 58 King Street East

Hamilton, Ontario

L8N 1A6

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

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

Chargee(s) Capacity Share

Name 2681142 ONTARIO INC.

Address for Service 3341 Bloor Street West

PO Box 102 Toronto, Ontario M8X 1E9

### Statements

Schedule: See Schedules

## **Provisions**

Principal \$500,000.00 Currency CDN

Calculation Period

Balance Due Date 2024/04/30

Interest Rate 18%

Payments

Interest Adjustment Date

Payment Date
First Payment Date

Last Payment Date 2024 04 30 Standard Charge Terms 200033

Insurance Amount Full insurable value
Guarantor Maciek Walicht

## Signed By

Karmel Sakran 411 Guelph Line, P.O. Box 400 acting for Signed 2023 10 30

Burlington Chargor(s)

L7R 3Y3

Tel 905-639-1222 Fax 905-632-6977

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

### Submitted By

905-632-6977

Tel

Fax

GREEN GERMANN SAKRAN 411 Guelph Line, P.O. Box 400 2023 10 30

Burlington L7R 3Y3

L7F 905-639-1222 LRO # 62 Charge/Mortgage

Registered as WE1707048 on 2023 10 30 at 15:19

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

yyyy mm dd Page 2 of 6

Fees/Taxes/Payment

Statutory Registration Fee \$69.00 Total Paid \$69.00

File Number

Chargee Client File Number: 60021

# MORTGAGE COMMITMENT

2681142 ONTARIO INC. 3341 BLOOR ST WEST PO BOX 102 TORONTO, ONT M8X 1E9

Date: Oct 25 2023

Re: Third Mortgage - 58 King St East, Hamilton ON L8N 1A6

Thank you for choosing us to fulfill your mortgage financing requirements. We are pleased to advise you that your mortgage loan has been approved, based on the following terms and conditions:

#### **Mortgage Loan Details:**

Applicants/Guarantors	58 King Street East Hamilton Ltd. /Maciek Walicht
Mortgagee/Lender	
Priority of Mortgage	Third Mortgage
	\$500,000
Legal Fees not including disbursements	TBD
Commitment Fee\$17,500.0	0 (payable on loan payout <b>NOT</b> deducted from advance
Inspection Fees	N/A
Broker's Fee	
Interest rate	18.0%
Term	6 months fully open
Amortization	interest only
Interest Adjustment Date	N/A
Interest Adjustment	N/A
First Payment Date	interest due on final payout
	April 30 ,2024
Monthly Payment (Interest Only)	\$0.00
Closing Date	October 30, 2023

Initial advance will be \$400,000. However mortgage charge will be registered for \$500,000. Interest will accrue based on actual advanced amounts. Lender reserves the right to determine at their sole secretion if they will advance the additional funds.

**Property:** Address: 58 King Street East Hamilton ON L8N 1A6

Legal Description:.....

Purpose of Loan: Third mortgage temporary bridge loan

**Borrower's Lawyer: Patrick Mcilhone** 

Gowling WLG 905-639-1222 Vahn@ggslaw.ca

Retainer: N/A. Borrower to pay for Lender legal fees.

Lawyer Acting for Lender: Giovanni D' Amelio

Firm Name: GGS Law

Address:

Telephone /Fax Number: 905-639-1222 x 223/905-632-6977

vahn@gslaw.ca

We will be instructing the Lender's lawyer directly and requesting the completion of our standard Solicitor's Report and Opinion. Although he will be acting on our behalf to ensure all details of the mortgage transaction are carried out properly, the lawyer will not necessarily be unable to act for you. Please contact the lawyer directly, if you have any questions in this regard.

The Mortgagors shall pay the Lender's lawyer's legal account in respect of this mortgage transaction in full.

### **Preconditions to Funding:**

Funding of the mortgage loan on the closing date is conditional upon the following preconditions having been met by the borrower. This list is not exhaustive and is subject to review by the Lender's lawyer. If any of the preconditions are not met, the Lender reserves the right to not fund the mortgage.

- 1. The Lender's lawyer must be satisfied that you have good marketable title to the Property. A survey satisfactorily showing building locations or a surveyor's plot plan must be provided. In alternate, title insurance will be obtained at the borrower's expense from an insurer chosen by or acceptable to the lender.
- 2. Confirmation from the Municipality of compliance with zoning bylaws and planning regulations.
- **3.** Confirmation there are no outstanding Municipal deficiency notices or work orders for the Property.
- **4.** A Tax Certificate showing that there are no outstanding property taxes owed in relation to the Property. Outstanding taxes will be brought up to date.
- 5. Satisfactory evidence of Fire Insurance with a company satisfactory to us for at least the full insurable value of the Property and not less than the Total Loan Amount. You must present a certified copy of the insurance policy to our lawyer with loss payable thirdly to the Lender.
- **6.** Property Appraisal already provide to lender
- 7. Such further conditions as the Lender's lawyer deems necessary.
- **8.** Named insured to be put on at lender's discretion if not paid out within first 90 days
- 9. Title insurance to be withheld at lender's discretion unless not paid out within the first 90 days

### **Additional Mortgage Terms**

The following terms are to be incorporated in to the Charge/Mortgage to be registered on title to the Property:

- a) The mortgage is OPEN to prepayment at any time during the term
- b) The mortgagee or their agent will be entitled to a **management fee up to 5% of the total mortgage principal, plus HST,** which amount is deemed not to be a penalty, in the event that the lender or their agent attempt to take, or take possession of the subject property as a result of default under the mortgage. This includes Power of Sale Procedure.
- c) In the event that any of the said post-dated cheques are not honored when presented for payment to the Bank or Trust Company on which they are drawn, the mortgager shall pay the mortgagee for each such cheque the sum of \$250.00 as a liquidated amount to cover the mortgagee's administrative costs and not as a penalty and such sum shall be charged upon the lands and shall bear interest at the rate hereinbefore stated.
- d) The Chargor shall provide the Chargee, on an annual basis with satisfactory evidence that the property and all buildings and structures thereon are insured for loss or damage by or from fire with extended perils, risks or events as the Chargee may at any time require, with full insurable value and showing 2<sup>nd</sup> mortgage loss payable to the Chargee.
- e) In the event of a bona fide sale of the property, all monies outstanding become due and payable.
- f) Standard Charge Terms apply and are to be incorporated by reference into this charge or mortgage.
- g) Upon the balance due date of the principal and interest secured hereunder or any renewal thereof, the mortgagor shall be deemed to have requested the mortgagee's solicitor to prepare the discharge documents, including where applicable, the electronic registration of the discharge for this Charge and shall pay the standard discharge fee & HST charged by our solicitor.
- h) Mortgage will automatically renew unless Lender has been notified in writing 30 days prior to renewal. All renewal and other fees will be due on renewal with all the conditions staying the same unless otherwise noted in writing. Lender has option to change rates and or collateral depending on Market conditions or if any defaults occurred. Admin Fees will apply on Default.

#### **Assignment of Commitment**

This mortgage commitment shall not be assigned without the prior written consent of our company. In the event that such assignment has taken place without the above prior written consent, we will have the right to terminate this mortgage commitment, in which case the mortgagors shall continue to be liable to pay for the lender's fee in full and for the legal account rendered to us by our solicitor. Same applies if borrower decides to walk away from the committed mortgage.

### **Administration and Servicing Fees:**

1. Statement Fee	\$300.00
2.Demand Letter	\$875.00
3.Mortgage Discharge Statement	\$450.00
4. Insurance cancellation, premium payment or non-compliance	\$350.00
5.Renewal Fee (Lender and Broker)	\$0.00
6. NSF/Late Payment Fee	\$350.00

7. Default Proceedings

\$990.00

8. Maintenance for security of property in our possession

\$150.00 per day

## **Expiry Date/Commitment Acceptance Date**

This offer is open for acceptance until October 26, 2023 by executing the copy hereof and returning it to us. Please <u>initial all pages</u> of the mortgage commitment.

**2681142 Ontario Inc.** 

David Marcantonio	0		
Lender/Mortgagee			
All above noted mortgag	ge commitment terms	and conditions agreed to	and accepted this
_25Day	of _October	, 2023	

Applicant/Mortgagor 58 King Street East Hamilton Ltd.

Maciek Walicht

President

"I have authority to bind the corporation"

Guarantor: Maciek Walicht

LRO # 62 Charge/Mortgage

Registered as WE1728824 on 2024 03 26 at 11:13

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

yyyy mm dd Page 1 of 6

## **Properties**

PIN 17167 - 0087 LT Interest/Estate Fee Simple

Description PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN

VM271941; CITY OF HAMILTON

Address 58 KING STREET EAST

**HAMILTON** 

### 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 58 KING STREET EAST HAMILTON LTD.

Address for Service 58 King Street East

Hamilton ON L8N 1A6

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

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

Chargee(s) Capacity Share

Name KOMEILIAN, MEHDI Address for Service 17A Cosmo Road

Toronto ON M8X 1Z3

### Statements

Schedule: See Schedules

The text added or imported if any, is legible and relates to the parties in this document.

## **Provisions**

Principal \$440,000.00 Currency CDN

Calculation Period Monthly
Balance Due Date 2024/09/19

Interest Rate 20.00 % per annum

Payments \$7,333.33 Interest Adjustment Date 2024 03 19

Payment Date 19th day of each month

First Payment Date 2024 04 19
Last Payment Date 2024 09 19
Standard Charge Terms 200033

Insurance Amount Full insurable value

Guarantor

## Additional Provisions

This charge provides a collateral security for Charge Instrument WE1728822 registered against 31 John Street North, Hamilton, Ontario, on March 26, 2024.

## Signed By

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2024 03 26

A30 Chargor(s) Oakville

L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

## Submitted By

LRO # 62 Charge/Mortgage

Registered as WE1728824 on 2024 03 26 at 11:13

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

yyyy mm dd Page 2 of 6

## Submitted By

Tel 905-847-9979 Fax 866-201-2856

## Fees/Taxes/Payment

Statutory Registration Fee \$69.95 Total Paid \$69.95

# File Number

Chargee Client File Number: 3495-03-24

### ADDITIONAL PROVISIONS

This Schedule forms part of the charge/mortgage (hereinafter the charge/mortgage, all schedules thereto and any applicable standard form charge/mortgage or standard charge or mortgage terms are collectively called the "Mortgage") between the Chargor(s)/Mortgagor(s), the party or parties, if any, identified in the Mortgage as the spouse(s) of the Chargor(s)/Mortgagor(s), the party or parties, if any, identified in the Mortgage as Guarantor(s), the Chargee/Mortgagee. If there is any conflict between any provision of this Schedule and any other provision of the Mortgage, such provision of this Schedule shall prevail.

### 1. Repayment

The Chargor shall pay to the Chargee interest on all amounts advanced hereunder at the rate and terms as set out in the charge. The Chargor and Chargee agree that even though this charge outlines payments and interest due on the entire principal of \$440,000.00, interest shall only accrue and be calculated on the amount of the Principal actually advanced to the Chargor at any given time. Any fees, expenses and/or holdbacks associated with this loan shall count towards Principal advanced.

This is a closed mortgage that can be paid out, only with payment of interest owing to the end of the term.

### 2. Non-Transfer

In the event that the Chargor sells, conveys, transfers, assigns or exercises a power of appointment with respect to the lands charged to a purchaser, transferee or assignee, without first obtaining the consent in writing of the Mortgagee, the entire principal sum and interest hereby secured shall, at the option of the Chargee, immediately become due and payable.

## 3. <u>Administration Fees</u>

The Chargee shall charge a fee of \$300.00 for each occurrence of any of the following events: late payment, cheque dishonoured for any reason, failure to provide post-dated cheques, request for a Mortgage Statement. Such service fees will be added to the principal amount if not paid by the Chargor.

## 4. <u>Service Fee</u>

Should the Chargee take any proceedings as provided for in the within Charge by reason of the Charger's default, the Chargee shall be entitled to add to the Charge the Chargee's fees outlined in the Mortgage Commitment Agreement.

### 5. <u>Insurance and Insurance Renewal</u>

The Chargor shall keep insured the Mortgaged Premises (contents and liability) with reputable insurers in such amounts against loss or damage by fire and other causes or perils as the Chargee may reasonably require and the Chargor shall pay all premiums necessary for such purposes as the same shall become due. All policies of insurance issued in respect of the Mortgaged Premises and all proceeds thereof are hereby assigned to the Chargee as security for the Chargor's obligations hereunder. Each policy of insurance shall show the Chargee as loss payee, as its interest may appear, shall contain such mortgage clauses as the Chargee may require, shall be in terms satisfactory to the Chargee and, at the request of the Chargee, shall be delivered to and held by the Chargee subject to the rights of holders of any permitted encumbrances.

## 6. <u>Bankruptcy and Insolvency</u>

THE CHARGOR hereby waives and releases any right that it may have to receive from the Chargee notice of intention to enforce security pursuant to subsection

244(1) of the Bankruptcy and Insolvency Act (Canada). This waiver and release shall not be deemed or interpreted to be a prior consent to earlier enforcement of a security within the meaning of subsection 244(2.1) of the said Act.

THE CHARGOR hereby acknowledges and agrees that the security held by the Chargee is not all or substantially all of the inventory, accounts receivable or other property of the Chargor acquired for or used in relation to any business carried on by the Chargor. The Chargor hereby further acknowledges and agrees that notwithstanding any act of the Chargee, by way of appointment of any person or persons for the purposes of taking possession of the Lands as agent on behalf of the Chargor or otherwise, or by taking possession of the Lands itself, pursuant to any rights that the Chargee may have with respect thereto, shall not constitute the Chargee or any such person, as a receiver within the meaning of subsection 243(2) of the Bankruptcy and Insolvency Act (Canada), and that any and all requirements of Part XI of the said Act as it may pertain to obligations of receivers shall not be applicable to the Chargee with respect to the transaction pursuant to which this Charge has been given or enforcement of this Charge or any other security held by the Chargee. The Chargor hereby acknowledges and agrees that no action shall lie against the Chargee as a receiver and manager or otherwise for any loss or damage arising from non-compliance with any obligations of a receiver pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) whether or not the Chargee had reasonable grounds to believe that the Chargor was not insolvent.

AND THE CHARGOR further acknowledges and agrees that any and all Costs shall be entirely for the account of the Chargor. The Chargee shall be entitled to incur any such costs, including any costs of its personnel in administering any requirements of the said Act and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Chargee for the indebtedness owing to the Chargee in the same manner and in the same priority as the principal secured hereunder.

### 7. Tenancy

The Chargor shall provide to the Chargee full particulars regarding any tenancy with respect to the lands wherever a new tenant rents the charged lands, or any portion thereof.

## 8. <u>Covenants.</u>

The Chargor hereby declares, covenants and agrees that it:

- (a) As to Title is the sole legal and beneficial owner of the Charged Lands and owns the same free of all encumbrances other than the within Encumbrance and a first charge
- (b) Shall pay all costs and expenses (including legal fees and disbursements on a full indemnity basis) of Chargee incidental to or which in any way relates to this Charge or its enforcement including (i) the preparation, execution and filing of this Charge and any instruments postponing, discharging, amending, extending or supplemental to this Charge ("Chargee's Security"); (ii) perfecting and keeping perfected Chargee's Security; (iii) maintaining the intended priority of Chargee's Security on all or any part of the Charged Lands; (iv) taking, recovering or possessing the Charged Lands; (v) taking any actions or other proceedings to enforce the remedies provided herein or otherwise in relation to this Charge or the Charged Lands, or by reason of a default hereunder or the non-payment of the moneys hereby secured; (vi) taking proceedings, giving notices and giving responses required under any applicable law concerning or relating to the Chargee's Security, including compliance with the provisions of applicable bankruptcy, insolvency, personal property security and mortgage enforcement legislation; (vii) any inspections required to be made to the Charged Lands, or the review of any plans, specifications or other documentation which may require the approval or consent of Chargee; and (viii) obtaining the advice of counsel and other

- advisors in relation to the foregoing;
- (c) <u>To Pay Common Expenses and Taxes</u> shall pay all common expenses and assessments, taxes and assessments lawfully imposed upon the Charged Lands or any part thereof when the same become due and payable, and shall show to Chargee on request receipts for such payment;
- (d) No Other Liens shall not create, assume or suffer to exist any charge, lien, security interest or encumbrance upon any Charged Lands ranking or purporting to rank in priority to or pari passu with the security interest created hereunder; provided that no provision hereof shall be construed as a subordination or postponement of the security interest created hereunder to or in favour of any other charge, lien, security interest or encumbrance;
- (e) <u>Hold Proceeds of Unauthorized Sale in Trust</u> in the event the Charged Lands or any part thereof are sold or disposed of prior to the full discharge of this Charge by Chargee, in any manner not authorized by this Charge, shall hold all proceeds of such sale or disposition received by the Chargor as trustee for Chargee until the Chargor has been fully released from this Charge by Chargee;
- (f) <u>Inspection by Chargee</u> - shall allow any employees or third parties retained by Chargee at any reasonable time to enter the premises of the Chargor to inspect the Charged Lands, including without limitation the right to undertake soil, ground water, environmental or other tests, measurements or surveys in, on or below the Charged Lands, and to inspect the books and records of the Chargor and make extracts therefrom, and shall permit Chargee prompt access to such other persons as Chargee may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Charged Lands or the books and records of the Chargor, provided that any information so obtained shall be kept confidential, save as required by Chargee in exercising its rights hereunder or pursuant to any applicable law or court order. The Chargor shall pay all costs and expenses of third parties (including legal fees and disbursements on a full indemnity basis) retained by Chargee for purposes of inspection under this Section
- (g) <u>No Actions</u> has received no notice of and has no knowledge of any pending, potential or threatened litigation or claim for judicial or administrative action which would adversely affect the Charged Lands or their use or market value;
- 9. Extensions and Amendments. Any agreement for the extension of the time of payment of the moneys hereby secured or any part thereof made at, before or after maturity, and prior to the execution of a discharge or release of this Charge, or any agreement for altering the term, rate of interest (whether increased or decreased), the amount of the principal payments hereunder or any other covenant or condition hereof, need not be registered in any office of public record but shall be effectual and binding upon the Chargor and upon every subsequent mortgagee, chargee, encumbrancer or other person claiming an interest in the Mortgaged Premises or any part thereof when executed by the Chargor and delivered to Chargee.
- 10. For the purpose of this Charge/Mortgage, the terms "Charge", "Chargor" and "Chargee" shall also mean Mortgage, Mortgagor and Mortgagee.
- 11. Receipt. The Chargor hereby acknowledges receipt of a true copy of this Charge.
- 12. <u>Binding Effect, Governing Law and Headings.</u> These presents are binding upon the parties hereto and their respective successors and assigns. This Charge shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The division of this Charge into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge.

- 13. Other Charges. The Borrower must provide the Lender with written authorization allowing the Lender to inquire as to the status of any other charges and or mortgages affecting title, while this charge is still active. This includes any mortgages ahead or subsequent in priority to this charge.
- 14. The monthly payment owing under the Charge shall be discounted, each month, by any amount prepaid to the Chargee at the time of the mortgage advance.
- 15. The here is no automatic right of extension.
- 16. Any terms contained in the Mortgage Commitment Agreement shall form part of this Charge.
- 17. There is to be a lender fee of 10.00% to be deducted from the mortgage advance.

LRO # 62 Notice Of Assignment Of Rents-General

Registered as WE1728830 on 2024 03 26 at 11:22

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

Page 1 of 6 yyyy mm dd

### **Properties**

PIN 17167 - 0087

PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN Description

VM271941; CITY OF HAMILTON

**58 KING STREET EAST** Address

**HAMILTON** 

#### Applicant(s)

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

Name 58 KING STREET EAST HAMILTON LTD.

58 King Street East Address for Service

Hamilton ON L8N 1A6

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

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

Share Party To(s) Capacity

KOMEILIAN, MEHDI Address for Service 17A Cosmo Road

Toronto ON M8X 1Z3

### Statements

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

This notice may be deleted by the Land Registrar when the registered instrument, WE1728824 registered on 2024/03/26 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration number(s)WE1728824

#### Signed By

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2024 03 26

> A30 Applicant(s)

Oakville

L6M 2V6

Tel 905-847-9979 866-201-2856 Fax

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

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2024 03 26

> A30 Party To(s)

Oakville L6M 2V6

Tel 905-847-9979

Fax 866-201-2856

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

#### Submitted By

JOHN TAMINDZIC, BARRISTER & SOLICITOR 481 North Service Road W., Suite A30 2024 03 26

Oakville

L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

### Fees/Taxes/Payment

Statutory Registration Fee \$69.95 Total Paid \$69.95

#### File Number

Party To Client File Number: 3495-03-24

### **ASSIGNMENT OF RENTS**

THIS INDENTURE made this 26 day of March, 2024,

BETWEEN:

58 KING STREET EAST HAMILTON LTD.

hereinafter called the "Assignor"

OF THE FIRST PART,

and

MEHDI KOMEILIAN

hereinafter called the "Assignee"

OF THE SECOND PART.

WHEREAS, by a Mortgage dated the <u>26th day of March, 2024</u>, and registered in the Land Registry Office for the Land (Registry/Titles) Division of Wentworth (Hamilton) (No. 62) as instrument No. <u>WE1728824</u> the Assignor herein did grant and mortgage unto the Assignee herein the lands and premises more particularly described in Schedule "A" hereto annexed which Mortgage secures payment of the sum of FOUR HUNDRED AND FOURTY THOUSAND DOLLARS (\$440,000.00) and interest as therein mentioned and which Mortgage is hereinafter referred to as "the Mortgage". Whenever in this indenture reference is made to the Mortgage, it shall be deemed to include any renewals or extensions thereof and any Mortgage taken in substitution therefor either in whole or in part;

AND WHEREAS it is a condition of the lending of the monies secured or to be secured by the Mortgage, that the Assignor should assign to the Assignee, its successors and assigns, the rents reserved and payable and/or intended to be reserved and payable under, and all advantages and benefits to be derived from, leases of premises erected on the lands and premises more particularly described in Schedule "A" hereto (the "Leases") now or hereafter entered into by the Assignor as landlord with tenants thereof (Lessees) and including without limitation the specific leases referred to in Schedule "B" hereto annexed, as additional security for the payment of the money secured by the Mortgage, and for the performance of the covenants contained therein;

AND WHEREAS it is agreed that notwithstanding anything in this Indenture contained, the Assignee is not to be bound to advance the said mortgage monies or any unadvanced portion thereof;

NOW THEREFORE THIS INDENTURE WITNESSETH that the Assignor in consideration of the premises, the making of the said Mortgage, and the sum of One (\$1.00) Dollar now paid by the Assignee to the Assignor (the receipt whereof is hereby acknowledged), doth covenant and agree with the Assignee as follows:

- 1. The Assignor hereby irrevocably transfers, assigns, and sets over to the Assignee all rents reserved and payable under the Leases (including without limitation the specific leases referred to in Schedule "B" hereto annexed) and all benefits and advantages to be derived therefrom, to hold and receive the same unto the said Assignee, its successors and assigns.
- 2. The Assignor covenants and agrees with the Assignee that the Assignor will not, without the consent in writing of the Assignee, permit any prepayment of rents payable under any of the Leases that will result in more than two months' of such rents being prepaid under such Leases, or variation, cancellation or surrender of any of the Leases, or of the terms,

covenants, provisos or conditions thereof.

- 3. The Assignor covenants with the Assignee to perform and observe all the covenants, conditions and obligations binding upon it under the Leases.
- 4. The Assignor covenants and agrees irrevocably with the Assignee that the Assignee shall have the right to sue for payment and/or for enforcing anything in this Indenture herein contained in any or all of the following ways:
  - (a) in its own name;
  - (b) in the name of the Assignor, and
  - (c) in the names of both the Assignor and the Assignee jointly.
- 5. The Assignor agrees to assign any of the said Leases to the Assignee upon request should the Assignee deem such assignment advisable for the protection of its security, such assignment to be on a form to be prepared by the Assignee's solicitors in such case.
- 6. PROVIDED, however, that until notified to the contrary in writing the Lessees shall pay the rent reserved under the Leases, (but only to the extent that the same may be due and payable under the Leases) to the said Assignor and any notice to the contrary required by this proviso may be effectively given by sending the same by registered mail to any Lessee at its premises on the lands and premises described in Schedule "A" hereto or by delivering the same personally to any Lessee, or an officer of such Lessee.
- 7. The Assignor does hereby declare that any direction or request from the Assignee to pay the rents reserved to the Assignee shall be sufficient warrant and authority to the said Lessee to make such payments, and the payments of the said rentals to the Assignee shall be and operate as a discharge of the said rents to the said Lessee.
- 8. The Assignor covenants and agrees with the Assignee not to renew nor extend any of the Leases at rentals reserved and payable of lesser amounts than are now reserved and payable under such Leases unless compelled to do so as the result of an Arbitration Award, or with the consent of the Assignee.
- 9. The Assignee covenants and agrees with the Assignor to release this Assignment of Rents upon payment in full of the Mortgage in accordance with the terms thereof and that the Assignee will, at the request and cost of the Assignor, reassign any unmatured rents to the Assignor. In the absence of such a request the delivery to the Assignor of a discharge or cessation of the Mortgage shall operate as a release and reassignment of such rents.
- 10. The Assignor hereby covenants and agrees to and with the Assignee that this Assignment and everything herein contained shall be irrevocable without the consent of the Assignee.
- 11. PROVIDED that nothing in this Indenture contained shall be deemed to have the effect of making the Assignee responsible for the collection of the said rents or any part thereof or for the performance of any covenants, terms or conditions either by the Assignor or by the Lessees contained in any of the said Leases, and that the Assignee shall not by virtue of these presents be deemed a mortgagee in possession of the lands and premises described in Schedule "A" hereto and the Assignee shall not be liable to account for any monies other than those actually received by it by virtue of these presents.
- 12. IT IS AGREED that waiver of or failure to enforce at any time or from time to time any of the rights of the Assignee under or by virtue of this Indenture shall not prejudice the Assignee's rights in the event of the breach, default or other occasion for the exercise of such rights again occurring.
- 13. IT IS HEREBY DECLARED AND AGREED that these presents and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and each of their respective successors and assigns.
- IN WITNESS WHEREOF the Assignor has hereunto affixed its corporate seal under the hands of its proper signing officers duly authorized in that behalf.

### SIGNED, SEALED AND DELIVERED

58 KING STREET EAST HAMILTON LTD. per:

DocuSigned by:

Macick Walicht

A49A7C63F977463...

MACIEK WALICHT

President

I have authority to bind the Corporation

### **SCHEDULE "A"**

**Description of Property** 

58 King Street East, Hamilton ON

PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN VM271941; CITY OF HAMILTON on PIN: 17167-0087 (in LRO #62).

### **SCHEDULE "B"**

LESSEE REGISTRATION NO.

LEASE DATE

EXPIRY DATE

(MM/DD/YYYY)

(MM/DD/YYYY)

LRO # 62 Charge/Mortgage

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

Registered as WE1752241 on 2024 08 08 at 11:55 yyyy mm dd Page 1 of 2

**Properties** 

PIN 17167 - 0087 Interest/Fstate Fee Simple LT

PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN Description

VM271941; CITY OF HAMILTON

**58 KING STREET EAST** Address

**HAMILTON** 

# 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.

58 KING STREET EAST HAMILTON LTD. Name

c/o 5700 - 100 King St. W. Address for Service

Toronto ON M5X 1C7

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

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

Chargee(s) Capacity Share

Name MAXNAT CAPITAL INC. Address for Service 45 Oxenden Crescent

Toronto ON M9C 4H5

#### Statements

The text added or imported if any, is legible and relates to the parties in this document.

### **Provisions**

Principal \$275,000.00 Currency CDN

Calculation Period Monthly

Balance Due Date ON DEMAND

Interest Rate 40.00 % per annum

\$9,166.67 **Payments** 

Interest Adjustment Date

Payment Date ON DEMAND

First Payment Date Last Payment Date

Standard Charge Terms 200033

Insurance Amount Full insurable value

Guarantor

### **Additional Provisions**

905-847-9979

This charge provides a collateral security for Charge Instrument \_ \_\_ registered against 188 and 190 Fruitland Road, Stoney Creek ON, on

#### Signed By

Tel

Jovica-John Tamindzic 481 North Service Road W., acting for Signed 2024 08 08 Suite A30 Chargor(s)

Oakville

L6M 2V6

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

#### Submitted By

LRO # 62 **Charge/Mortgage** 

**Registered as WE1752241** on 2024 08 08 at 11:55

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

yyyy mm dd Page 2 of 2

Submitted By

Tel 905-847-9979 Fax 866-201-2856

Fees/Taxes/Payment

Statutory Registration Fee \$69.95

Total Paid \$69.95

File Number

Chargee Client File Number : 3476-01-24

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

yyyy mm dd Page 1 of 6

### **Properties**

PIN 17167 - 0015 LT Interest/Estate Fee Simple

Description PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

#### 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 2238394 ONTARIO LTD.

Address for Service 100 King Street West, Suite 5700

Toronto ON M5X 1C7

I, Maciek Walicht, have the authority to bind the corporation.

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

Toronto ON M8X 1Z3

Chargee(s) Capacity Share

Name KOMEILIAN, MEHDI
Address for Service 17A Cosmo Road

#### **Provisions**

Principal \$900,000.00 Currency CDN

Calculation PeriodMonthlyBalance Due Date2021/09/10Interest Rate17.00 %Payments\$12,750.00Interest Adjustment Date2021 03 10

Payment Date 10th day of each month

First Payment Date 2021 04 10
Last Payment Date 2021 09 10
Standard Charge Terms 200033

Insurance Amount Full insurable value
Guarantor Maciek Walicht

### **Additional Provisions**

See Schedules

# Signed By

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2021 03 10

A30 Chargor(s)

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

#### Submitted By

JOHN TAMINDZIC, BARRISTER & SOLICITOR 481 North Service Road W., Suite A30

2021 03 10

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856 LRO # 62 Charge/Mortgage

Registered as WE1496588 on 2021 03 10 at 13:33

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

yyyy mm dd Page 2 of 6

Fees/Taxes/Payment

Statutory Registration Fee \$65.30 Total Paid \$65.30

File Number

Chargor Client File Number: 2860-02-21

#### **ADDITIONAL PROVISIONS**

This Schedule forms part of the charge/mortgage (hereinafter the charge/mortgage, all schedules thereto and any applicable standard form charge/mortgage or standard charge or mortgage terms are collectively called the "Mortgage") between the Chargor(s)/Mortgagor(s), the party or parties, if any, identified in the Mortgage as the spouse(s) of the Chargor(s)/Mortgagor(s), the party or parties, if any, identified in the Mortgage as Guarantor(s), the Chargee/Mortgagee. If there is any conflict between any provision of this Schedule and any other provision of the Mortgage, such provision of this Schedule shall prevail.

### 1. Repayment

The Chargor shall pay to the Chargee interest on all amounts advanced hereunder at the rate and terms as set out in the charge. The Chargor and Chargee agree that even though this charge outlines payments and interest due on the entire principal of \$900,000.00, interest shall only accrue and be calculated on the amount of the Principal actually advanced to the Chargor at any given time. Any fees, expenses and/or holdbacks associated with this loan shall count towards Principal advanced.

This is an open mortgage that can be paid out at any time, with no bonus or interest prepayment penalty.

#### 2. Non-Transfer

In the event that the Chargor sells, conveys, transfers, assigns or exercises a power of appointment with respect to the lands charged to a purchaser, transferee or assignee, without first obtaining the consent in writing of the Mortgagee, the entire principal sum and interest hereby secured shall, at the option of the Chargee, immediately become due and payable.

#### 3. <u>Administration Fees</u>

The Chargee shall charge a fee of \$250.00 for each occurrence of any of the following events: late payment, cheque dishonoured for any reason, failure to provide post-dated cheques, request for a Mortgage Statement. Such service fees will be added to the principal amount if not paid by the Chargor.

### 4. Service Fee

Should the Chargee take any proceedings as provided for in the within Charge by reason of the Charger's default, the Chargee shall be entitled to add to the Charge the Chargee's fees outlined in the Mortgage Commitment Agreement.

#### 5. <u>Insurance and Insurance Renewal</u>

The Chargor shall keep insured the Mortgaged Premises (contents and liability) with reputable insurers in such amounts against loss or damage by fire and other causes or perils as the Chargee may reasonably require and the Chargor shall pay all premiums necessary for such purposes as the same shall become due. All policies of insurance issued in respect of the Mortgaged Premises and all proceeds thereof are hereby assigned to the Chargee as security for the Chargor's obligations hereunder. Each policy of insurance shall show the Chargee as loss payee, as its interest may appear, shall contain such mortgage clauses as the Chargee may require, shall be in terms satisfactory to the Chargee and, at the request of the Chargee, shall be delivered to and held by the Chargee subject to the rights of holders of any permitted encumbrances.

### 6. <u>Bankruptcy and Insolvency</u>

THE CHARGOR hereby waives and releases any right that it may have to receive from the Chargee notice of intention to enforce security pursuant to subsection

244(1) of the Bankruptcy and Insolvency Act (Canada). This waiver and release shall not be deemed or interpreted to be a prior consent to earlier enforcement of a security within the meaning of subsection 244(2.1) of the said Act.

THE CHARGOR hereby acknowledges and agrees that the security held by the Chargee is not all or substantially all of the inventory, accounts receivable or other property of the Chargor acquired for or used in relation to any business carried on by the Chargor. The Chargor hereby further acknowledges and agrees that notwithstanding any act of the Chargee, by way of appointment of any person or persons for the purposes of taking possession of the Lands as agent on behalf of the Chargor or otherwise, or by taking possession of the Lands itself, pursuant to any rights that the Chargee may have with respect thereto, shall not constitute the Chargee or any such person, as a receiver within the meaning of subsection 243(2) of the Bankruptcy and Insolvency Act (Canada), and that any and all requirements of Part XI of the said Act as it may pertain to obligations of receivers shall not be applicable to the Chargee with respect to the transaction pursuant to which this Charge has been given or enforcement of this Charge or any other security held by the Chargee. The Chargor hereby acknowledges and agrees that no action shall lie against the Chargee as a receiver and manager or otherwise for any loss or damage arising from non-compliance with any obligations of a receiver pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) whether or not the Chargee had reasonable grounds to believe that the Chargor was not insolvent.

AND THE CHARGOR further acknowledges and agrees that any and all Costs shall be entirely for the account of the Chargor. The Chargee shall be entitled to incur any such costs, including any costs of its personnel in administering any requirements of the said Act and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Chargee for the indebtedness owing to the Chargee in the same manner and in the same priority as the principal secured hereunder.

#### 7. Tenancy

The Chargor shall provide to the Chargee full particulars regarding any tenancy with respect to the lands wherever a new tenant rents the charged lands, or any portion thereof.

### 8. <u>Covenants.</u>

The Chargor hereby declares, covenants and agrees that it:

- (a) As to Title is the sole legal and beneficial owner of the Charged Lands and owns the same free of all encumbrances other than the within Encumbrance and a first charge
- (b) Shall pay all costs and expenses (including legal fees and disbursements on a full indemnity basis) of Chargee incidental to or which in any way relates to this Charge or its enforcement including (i) the preparation, execution and filing of this Charge and any instruments postponing, discharging, amending, extending or supplemental to this Charge ("Chargee's Security"); (ii) perfecting and keeping perfected Chargee's Security; (iii) maintaining the intended priority of Chargee's Security on all or any part of the Charged Lands; (iv) taking, recovering or possessing the Charged Lands; (v) taking any actions or other proceedings to enforce the remedies provided herein or otherwise in relation to this Charge or the Charged Lands, or by reason of a default hereunder or the non-payment of the moneys hereby secured; (vi) taking proceedings, giving notices and giving responses required under any applicable law concerning or relating to the Chargee's Security, including compliance with the provisions of applicable bankruptcy, insolvency, personal property security and mortgage enforcement legislation; (vii) any inspections required to be made to the Charged Lands, or the review of any plans, specifications or other documentation which may require the approval or consent of Chargee; and (viii) obtaining the advice of counsel and other

- advisors in relation to the foregoing;
- (c) <u>To Pay Common Expenses and Taxes</u> shall pay all common expenses and assessments, taxes and assessments lawfully imposed upon the Charged Lands or any part thereof when the same become due and payable, and shall show to Chargee on request receipts for such payment;
- (d) No Other Liens shall not create, assume or suffer to exist any charge, lien, security interest or encumbrance upon any Charged Lands ranking or purporting to rank in priority to or pari passu with the security interest created hereunder; provided that no provision hereof shall be construed as a subordination or postponement of the security interest created hereunder to or in favour of any other charge, lien, security interest or encumbrance;
- (e) <u>Hold Proceeds of Unauthorized Sale in Trust</u> in the event the Charged Lands or any part thereof are sold or disposed of prior to the full discharge of this Charge by Chargee, in any manner not authorized by this Charge, shall hold all proceeds of such sale or disposition received by the Chargor as trustee for Chargee until the Chargor has been fully released from this Charge by Chargee;
- (f) <u>Inspection by Chargee</u> - shall allow any employees or third parties retained by Chargee at any reasonable time to enter the premises of the Chargor to inspect the Charged Lands, including without limitation the right to undertake soil, ground water, environmental or other tests, measurements or surveys in, on or below the Charged Lands, and to inspect the books and records of the Chargor and make extracts therefrom, and shall permit Chargee prompt access to such other persons as Chargee may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Charged Lands or the books and records of the Chargor, provided that any information so obtained shall be kept confidential, save as required by Chargee in exercising its rights hereunder or pursuant to any applicable law or court order. The Chargor shall pay all costs and expenses of third parties (including legal fees and disbursements on a full indemnity basis) retained by Chargee for purposes of inspection under this Section
- (g) <u>No Actions</u> has received no notice of and has no knowledge of any pending, potential or threatened litigation or claim for judicial or administrative action which would adversely affect the Charged Lands or their use or market value;
- 9. Extensions and Amendments. Any agreement for the extension of the time of payment of the moneys hereby secured or any part thereof made at, before or after maturity, and prior to the execution of a discharge or release of this Charge, or any agreement for altering the term, rate of interest (whether increased or decreased), the amount of the principal payments hereunder or any other covenant or condition hereof, need not be registered in any office of public record but shall be effectual and binding upon the Chargor and upon every subsequent mortgagee, chargee, encumbrancer or other person claiming an interest in the Mortgaged Premises or any part thereof when executed by the Chargor and delivered to Chargee.
- 10. For the purpose of this Charge/Mortgage, the terms "Charge", "Chargor" and "Chargee" shall also mean Mortgage, Mortgagor and Mortgagee.
- 11. Receipt. The Chargor hereby acknowledges receipt of a true copy of this Charge.
- 12. <u>Binding Effect, Governing Law and Headings.</u> These presents are binding upon the parties hereto and their respective successors and assigns. This Charge shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The division of this Charge into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge.

- 13. Other Charges. The Borrower must provide the Lender with written authorization allowing the Lender to inquire as to the status of any other charges and or mortgages affecting title, while this charge is still active. This includes any mortgages ahead or subsequent in priority to this charge.
- 14. The monthly payment owing under the Charge shall be discounted, each month, by any amount prepaid to the Chargee at the time of the mortgage advance.
- 15. Any terms contained in the Mortgage Commitment Agreement shall form part of this Charge.
- 16. There is no automatic right of extension.
- 17. The Chargor acknowledges and agrees that the services fees or administration fees and costs provided for herein are a genuine pre-estimate of the value of the services performed for same and are not a penalty or additional interest on the Loan secured by this Charge.

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

yyyy mm dd Page 1 of 6

#### **Properties**

PIN 17167 - 0015

PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL Description

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

### Applicant(s)

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

2238394 ONTARIO LTD. Name

Address for Service 100 King Street West, Suite 5700

Toronto ON M5X 1C7

I, Maciek Walicht, have the authority to bind the corporation.

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

Party To(s) Capacity Share

KOMEILIAN, MEHDI Name Address for Service 17A Cosmo Road Toronto ON M8X 1Z3

#### Statements

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

This notice may be deleted by the Land Registrar when the registered instrument, WE1496588 registered on 2021/03/10 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration number(s)WE1496588

#### Signed By

Tel

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2021 03 10

A30 Applicant(s)

Oakville L6M 2V6

905-847-9979 Fax 866-201-2856

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

2021 03 10 Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed

> A30 Party To(s)

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

### Submitted By

JOHN TAMINDZIC, BARRISTER & SOLICITOR 481 North Service Road W., Suite A30 2021 03 10

> Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

# Fees/Taxes/Payment

Statutory Registration Fee \$65.30 Total Paid \$65.30

#### File Number

Applicant Client File Number:

2860-02-21

#### **ASSIGNMENT OF RENTS**

THIS INDENTURE made this 10 day of March, 2021,

BETWEEN:

2238394 ONTARIO LTD..

hereinafter called the "Assignor"

OF THE FIRST PART.

and

MEHDI KOMEILIAN,

hereinafter called the "Assignee"

OF THE SECOND PART.

AND WHEREAS it is a condition of the lending of the monies secured or to be secured by the Mortgage, that the Assignor should assign to the Assignee, its successors and assigns, the rents reserved and payable and/or intended to be reserved and payable under, and all advantages and benefits to be derived from, leases of premises erected on the lands and premises more particularly described in Schedule "A" hereto (the "Leases") now or hereafter entered into by the Assignor as landlord with tenants thereof (Lessees) and including without limitation the specific leases referred to in Schedule "B" hereto annexed, as additional security for the payment of the money secured by the Mortgage, and for the performance of the covenants contained therein;

AND WHEREAS it is agreed that notwithstanding anything in this Indenture contained, the Assignee is not to be bound to advance the said mortgage monies or any unadvanced portion thereof;

NOW THEREFORE THIS INDENTURE WITNESSETH that the Assignor in consideration of the premises, the making of the said Mortgage, and the sum of One (\$1.00) Dollar now paid by the Assignee to the Assignor (the receipt whereof is hereby acknowledged), doth covenant and agree with the Assignee as follows:

- 1. The Assignor hereby irrevocably transfers, assigns, and sets over to the Assignee all rents reserved and payable under the Leases (Including without limitation the specific leases referred to in Schedule "B" hereto annexed) and all benefits and advantages to be derived therefrom, to hold and receive the same unto the said Assignee, its successors and assigns.
- 2. The Assignor covenants and agrees with the Assignee that the Assignor will not, without the consent in writing of the Assignee, permit any prepayment of rents payable under any of the Leases that will result in more than two months' of such rents being prepaid under such Leases, or variation, cancellation or surrender of any of the Leases, or of the terms, covenants, provisos or conditions thereof.

MIN

- 3. The Assignor covenants with the Assignee to perform and observe all the covenants, conditions and obligations binding upon it under the Leases.
- 4. The Assignor covenants and agrees irrevocably with the Assignee that the Assignee shall have the right to sue for payment and/or for enforcing anything in this Indenture herein contained in any or all of the following ways:
  - (a) in its own name;
  - (b) in the name of the Assignor, and
  - (c) in the names of both the Assignor and the Assignee jointly.
- 5. The Assignor agrees to assign any of the said Leases to the Assignee upon request should the Assignee deem such assignment advisable for the protection of its security, such assignment to be on a form to be prepared by the Assignee's solicitors in such case.
- 6. PROVIDED, however, that until notified to the contrary in writing the Lessees shall pay the rent reserved under the Leases, (but only to the extent that the same may be due and payable under the Leases) to the said Assignor and any notice to the contrary required by this proviso may be effectively given by sending the same by registered mail to any Lessee at its premises on the lands and premises described in Schedule "A" hereto or by delivering the same personally to any Lessee, or an officer of such Lessee.
- 7. The Assignor does hereby declare that any direction or request from the Assignee to pay the rents reserved to the Assignee shall be sufficient warrant and authority to the said Lessee to make such payments, and the payments of the said rentals to the Assignee shall be and operate as a discharge of the said rents to the said Lessee.
- 8. The Assignor covenants and agrees with the Assignee not to renew nor extend any of the Leases at rentals reserved and payable of lesser amounts than are now reserved and payable under such Leases unless compelled to do so as the result of an Arbitration Award, or with the consent of the Assignee.
- 9. The Assignee covenants and agrees with the Assignor to release this Assignment of Rents upon payment in full of the Mortgage in accordance with the terms thereof and that the Assignee will, at the request and cost of the Assignor, reassign any unmatured rents to the Assignor. In the absence of such a request the delivery to the Assignor of a discharge or cessation of the Mortgage shall operate as a release and reassignment of such rents.
- 10. The Assignor hereby covenants and agrees to and with the Assignee that this Assignment and everything herein contained shall be irrevocable without the consent of the Assignee.
- 11. PROVIDED that nothing in this Indenture contained shall be deemed to have the effect of making the Assignee responsible for the collection of the said rents or any part thereof or for the performance of any covenants, terms or conditions either by the Assignor or by the Lessees contained in any of the said Leases, and that the Assignee shall not by virtue of these presents be deemed a mortgagee in possession of the lands and premises described in Schedule "A" hereto and the Assignee shall not be liable to account for any monies other than those actually received by it by virtue of these presents.
- 12. IT IS AGREED that waiver of or failure to enforce at any time or from time to time any of the rights of the Assignee under or by virtue of this Indenture shall not prejudice the Assignee's rights in the event of the breach, default or other occasion for the exercise of such rights again occurring.
- 13. IT IS HEREBY DECLARED AND AGREED that these presents and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and each of their respective successors and assigns.

IN WITNESS WHEREOF the Assignor has hereunto affixed its corporate seal under the hands of its proper signing officers duly authorized in that behalf.

MW

# SIGNED, SEALED AND DELIVERED

2238394 ONTARIO LTD.

Per:

Name: Maciek Walicht

Title: President

I have authority to bind the Corporation

#### SCHEDULE "A"

#### Description of Property

#### 31 John Street North, Hamilton ON

PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST & JOHN ST AS IN VM215716; CITY OF HAMILTON on PIN: 17167-0015 (LRO #62 - Hamilton).

MW

### SCHEDULE "B"

LESSEE REGISTRATION NO.

LEASE DATE

**EXPIRY DATE** 

(MM/DD/YYYY)

(MM/DD/YYYY)

MW

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

yyyy mm dd Page 1 of 1

### **Properties**

PIN 17167 - 0015 LT

Description PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

#### Source Instruments

Registration No.DateType of InstrumentWE9683292014 06 06Charge/Mortgage

# Party From(s)

Name LIM, RYAN MICHAEL
Address for Service 16 Yonge Street

Suite 4004 Toronto, Ontario M5E 2A1

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

Name CHEN, XIAOHENG
Address for Service 16 Yonge Street

Suite 4004 Toronto, Ontario M5E 2A1

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

Party To(s) Capacity Share

Name KOMEILIAN, MEHDI
Address for Service 17A Cosmo Road

Toronto, Ontario M8X 1Z3

### Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number WE1496588 registered on 2021/03/10

This document relates to registration number(s)WE968329

#### Signed By

Jessica Lee Davidson 24 Yorkview Drive acting for Signed 2021 03 10

North York Party From(s) M2N 2S1

Tel 416-659-6603

Fax

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

# Submitted By

J L DAVIDSON LAW PROFESSIONAL CORPORATION 24 Yorkview Drive

2021 03 12

North York M2N 2S1

Tel 416-659-6603

Fax

#### Fees/Taxes/Payment

Statutory Registration Fee \$65.30 Total Paid \$65.30 LRO # 62 Notice

Registered as WE1605927 on 2022 05 13 at 16:54

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

yyyy mm dd Page 1 of 2

#### **Properties**

PIN 17167 - 0015 LT

Description PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

#### Consideration

Consideration \$1.00

#### Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name KOMEILIAN, MEHDI Address for Service 17A Cosmo Road

Toronto ON M8X 1Z3

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

Party To(s) Capacity Share

Name 2238394 ONTARIO LTD.

Address for Service 100 King Street West, Suite 5700

Toronto ON M5X 1C7

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

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

#### Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, WE1496588 registered on 2021/03/10 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration number(s)WE1496588

### Signed By

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2022 05 13

A30 Applicant(s)

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

### Submitted By

JOHN TAMINDZIC, BARRISTER & SOLICITOR 481 North Service Road W., Suite A30 2022 05 13

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

### Fees/Taxes/Payment

Statutory Registration Fee \$66.30 Total Paid \$66.30

# File Number

Applicant Client File Number : 2860-02-21
Party To Client File Number : H229428

#### **SCHEDULE**

#### WHEREAS:

 By a Charge/Mortgage registered in the Land Registry Office for the Region of Wentworth on the 10th day of March, 2021 as Instrument No. WE1496588,

2238394 ONTARIO LTD.

gave a Charge/Mortgage upon the lands described herein in favour of:

MEHDI KOMEILIAN

to secure the payment of the principal sum of:

Nine Hundred Thousand Dollars (\$900,000.00) ------

with interest as therein set out upon the terms therein mentioned.

2. The parties hereto signing as Chargor and Chargee have agreed to vary certain terms of the said Charge / Mortgage as hereinafter set out.

The said Charge/Mortgage is hereby amended from and including the 25th day of April, 2022, as follows:

- The Principal amount of the charge is to be amended Eight Hundred Thousand Dollars (\$800,000.00);
- 2. The maturity / renewal date of the charge is to be amended to April 29, 2024; and
- **3.** The Interest Rate is to be amended to 16% per annum calculated monthly, not in advance, and Payment amended to quarterly payments of \$32,000.00.

In all other respects the parties hereto confirm the terms and conditions contained in the aforesaid Charge/Mortgage.

PROVIDED that nothing herein contained shall create any merger or alter the rights of the Chargee against any subsequent encumbrancer or other person interested in the lands.

\*In construing this document, the words "Chargor", "Chargee" and "Guarantor" and all personal pronouns shall be read as the number and gender of the party or parties referred to herein requires and all necessary grammatical changes, as the context requires, shall be deemed to be made. The provisions of this document shall enure to and be binding upon the executors, administrators, successors and assigns of each party and all covenants, liabilities and obligations shall be joint and several.

DATED at Oakville this 13th day of May, 2022.

CHARGEE: CHARGOR:

2238394 ONTARIO LTD.
Per:

Man AF D52095 M39A473...

I have authority to bind the Corporation

DocuSigned by

I have authority to bind the Corporation

**GUARANTOR:** 

Maciek Walicht

LRO # 62 Postponement Of Interest

Registered as WE1605928 on 2022 05 13 at 16:54

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

Page 1 of 1 yyyy mm dd

### **Properties**

PIN 17167 - 0015

PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL Description

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

#### Source Instruments

Registration No. Date Type of Instrument WE1496588 2021 03 10 Charge/Mortgage

# Party From(s)

KOMEILIAN, MEHDI Name Address for Service 17A Cosmo Road Toronto ON M8X 1Z3

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

Party To(s) Share Capacity

HOME TRUST COMPANY

Address for Service 145 King Street West

> Suite 2300 Toronto, Ontario M5H1J8

#### Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number WE1605924 registered on 2022/05/13

# Signed By

Patrick Mark Mc Ilhone One Main Street West acting for Signed 2022 05 13 Party From(s)

Hamilton

L8P 4Z5

Tel 905-540-8208

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

#### Submitted By

G-WLG LP (A.K.A. GOWLINGS) One Main Street West 2022 05 13

Hamilton L8P 4Z5

Tel 905-540-8208 Fax 905-523-2518

### Fees/Taxes/Payment

Statutory Registration Fee \$66.30 Total Paid \$66.30

Registered as WE1605929 on 2022 05 13 at 16:54

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

Page 1 of 1 yyyy mm dd

### **Properties**

PIN 17167 - 0015

PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL Description

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

#### Source Instruments

Registration No. Date Type of Instrument

WE1496589 2021 03 10 Notice Of Assignment Of Rents-General

### Party From(s)

KOMEILIAN, MEHDI Name

Address for Service 17A Cosmo Road, Toronto, Ontario M8X

1Z3

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

Party To(s) Share Capacity

HOME TRUST COMPANY

145 King Street West, Suite 2300, Toronto, Ontario M5H 1J8 Address for Service

#### Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number WE1605924 registered on 2022/05/13

### Signed By

Patrick Mark Mc Ilhone 2022 05 13 One Main Street West acting for Signed

> Hamilton Party From(s)

L8P 4Z5

Tel 905-540-8208 905-523-2518 Fax

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

# Submitted By

G-WLG LP (A.K.A. GOWLINGS) One Main Street West 2022 05 13

Hamilton

L8P 4Z5

905-540-8208 Tel Fax 905-523-2518

### Fees/Taxes/Payment

Statutory Registration Fee \$66.30 Total Paid \$66.30

#### File Number

Party To Client File Number: H229428

Registered as WE1612994 on 2022 06 14 at 12:35

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

yyyy mm dd Page 1 of 2

#### **Properties**

PIN 17167 - 0015 LT

Description PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

#### Source Instruments

Registration No.DateType of InstrumentWE14965882021 03 10Charge/Mortgage

### Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name KOMEILIAN, MEHDI Address for Service 17A Cosmo Road

Toronto ON M8X 1Z3

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

Transferee(s) Capacity Share

Name OLYMPIA TRUST COMPANY 100 %

Address for Service 2200 - 125 9th Avenue SE

Calgary AB T2G 0P6

#### Statements

The chargee transfers the selected charge for \$800,000.00

Schedule: See Schedules

This document relates to registration number(s)WE1496589, WE1605927, WE1605928, and WE1605929

#### Signed By

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2022 06 14

A30 Transferor(s)

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2022 06 14

A30 Transferee(s)

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

#### Submitted By

JOHN TAMINDZIC, BARRISTER & SOLICITOR 481 North Service Road W., Suite A30

2022 06 14

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

### Fees/Taxes/Payment

Statutory Registration Fee \$66.30 Total Paid \$66.30

#### SCHEDULE TO TRANSFER OF CHARGE

Charge was registered as instrument no. **WE1496588** (the "Charge"), with associated Assignment of Rents **WE1496589**.

Charge was amended via Notice amending charge instrument WE1605927.

This Transfer of Charge transfers a(n) **100.00** % interest in the Charge, representing a total aggregate monetary interest of **\$800,000.00**, in consideration for the payout of the following investors:

Account Type	<b>Account Number</b>	Principal	Proportionate Interest
RRSP	175436	\$ 627,202.28	78.4003 %
TFSA	190575	\$ 116,154.44	14.5193%
RRSP	190574	\$ 56,643.28	7.0804%
		\$ 800,000.00	100.00%

Upon registration of this transfer of charge, the Charge will be held as follows:

Olympia Trust Company, in trust

100.00%

Registered as WE1614335 on 2022 06 20 at 09:50

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

yyyy mm dd Page 1 of 6

## **Properties**

PIN 17167 - 0015 LT Interest/Estate Fee Simple

Description PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

## 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 2238394 ONTARIO LTD.

Address for Service

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

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

Chargee(s)		Capacity	Share
Name	TRUMENCAS LTD	Tenants In Common	25.0%
Address for Service	1131 Deerfield Drive Kingston, Ontario K7P 0A4		
Name	CERULLO, EKATERINA	Tenants In Common	25.0%
Address for Service	200 Trowers Road, Unit 3 Woodbridge, Ontario L4L 5Z7		
Name	STANLEY, AMANDA	Tenants In Common	25.0%
Address for Service	4 Abbitt Crescent Georgetown, Ontario L7G 4S4		
Name	OFFIDANI, MICHAEL	Tenants In Common	25.0%
Address for Service	20 Allison Court Georgetown, Ontario L7G 4S4		

#### Statements

Schedule: See Schedules

## **Provisions**

Principal \$800,000.00 Currency CDN

Calculation PeriodMonthlyBalance Due Date2023/06/07Interest Rate18.50%Payments\$12,333.33Interest Adjustment Date2022 06 07

Payment Date the 7th day of each month

First Payment Date 2022 07 07

Last Payment Date 2023 06 07

Standard Charge Terms 200033

Insurance Amount Full insurable value
Guarantor Walicht, Maciek

## Signed By

Julian Gershon Sakinofsky

4950 Yonge Street, Suite 2200 acting for Signed 2022 06 17

Toronto Chargor(s)

M2N 6K1

Tel 647-725-2530 Fax 647-725-2531

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

LRO # 62 Charge/Mortgage

**Registered as WE1614335** on 2022 06 20 at 09:50

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

yyyy mm dd Page 2 of 6

Submitted By

SHENTON SAKINOFSKY LLP 4950 Yonge Street, Suite 2200

2022 06 20

Toronto M2N 6K1

Tel 647-725-2530 Fax 647-725-2531

Fees/Taxes/Payment

Statutory Registration Fee

\$66.30

Total Paid \$66.30

## **MORTGAGE COMMITMENT**

Trumencas Ltd."in trust"

Date: April 13, 2022

Re: *Third Mortgage* — 31 John Street North, Hamilton, Ontario L8R 1H2

Thank you for choosing us to fulfill your mortgage financing requirements. We are pleased to advise you that your mortgage loan has been approved, based on the following terms and conditions:

<b>Mortgage Loan Details:</b>		
Applicants		2238394 Ontario Ltd
Personal Guarantee		Maciek Walicht
Mortgagee/Lender		Trumencas Ltd."in trust"
Priority of Mortgage		Third Mortgage
Loan Amount		\$800,000.00
Legal Fees not including disbu	rsements	TBA
		1.75%
Inspection Fees		N/A
Interest rate		18.50%
		1 year
		N/A
Interest Adjustment Date		N/A
Interest Adjustment		N/A
		May 25 <sup>th</sup> , 2022
Maturity Date/Last Payment D	ate	April 25 <sup>th</sup> , 2023
		\$12,333.33
		April 25 <sup>th</sup> , 2022
<b>Property:</b> Address:		1
Legal Description:		

Purpose of Loan: Third Mortgage

**Borrower's Lawyer:** 

Retainer: You are to provide a non-refundable commitment fee on or before acceptance of this mortgage offer of \$1,250.00 by Certified Cheque only, payable to Crothers Professional Corporation "in trust". These fees are deemed earned if the transaction is not complete for any reason other than Lender's default. If the transaction closes, you will receive a credit for this fee.

<u>Lawyer Acting for Lender:</u> Firm Name: Crothers Law......attention Terie Ford

Address: 141 Brunel Road, Suite 103, Mississauga, ON, L4Z 1X3

1h

Tel/Fax: 1-855-274-0199 / 1-877-274-0707

Initial \_\_\_\_\_

We will be instructing the Lender's lawyer directly and requesting the completion of our standard Solicitor's Report and Opinion. Although he will be acting on our behalf to ensure all details of the mortgage transaction are carried out properly, the lawyer will not necessarily be unable to act for you. Please contact the lawyer directly, if you have any questions in this regard.

The Mortgagors shall pay the Lender's lawyer's legal account in respect of this mortgage transaction in full.

#### **Preconditions to Funding:**

Funding of the mortgage loan on the closing date is conditional upon the following preconditions having been met by the borrower. This list is not exhaustive and is subject to review by the Lender's lawyer. If any of the preconditions are not met, the Lender reserves the right to not fund the mortgage.

- 1. The Lender's lawyer must be satisfied that you have good marketable title to the Property. A survey satisfactorily showing building locations or a surveyor's plot plan must be provided. In alternate, title insurance will be obtained at the borrower's expense from an insurer chosen by or acceptable to the lender.
- 2. Confirmation from the Municipality of compliance with zoning bylaws and planning regulations.
- 3. Confirmation there are no outstanding Municipal deficiency notices or work orders for the Property.
- **4.** A Tax Certificate showing that there are no outstanding property taxes owed in relation to the Property. Outstanding taxes will be brought up to date.
- 5. Satisfactory evidence of Fire Insurance with a company satisfactory to us for at least the full insurable value of the Property and not less than the Total Loan Amount. You must present a certified copy of the insurance policy to our lawyer with loss payable **Thirdly** to the Lender. Lawyer will mail insurance binder to **noted Address of Investor(s)**.
- **6.** A NEW Property Appraisal is to be ordered and completed by an appraiser of the Lenders choosing and showing an as-is value not less than \$6,620,000.00
- 7. Current interior photographs are to be provided for each floor.
- 8. Appraisal Reports must be made out to Trumencas Ltd. "in trust".
- 9. Statement from the First Mortgagee stating;
  - a) the mortgage is up to date and does not exceed \$3,800,000.00
  - b) the mortgage is not transferable or assumable.
  - a) the mortgagee is registered as per Investor(s).
  - b) the mortgage to be in good standing and not in arrears.
- **10.** Statement from the Second Mortgagee stating;
  - c) the mortgage is up to date and does not exceed \$800,000.00
  - d) the mortgage is not transferable or assumable.
  - c) the mortgagee is registered as per Investor(s).
  - d) the mortgage to be in good standing and not in arrears.
- **11.** Post-dated cheques for the term of the mortgage as directed by the Lender/Investors. Payments are to be calculated monthly but will be made quarterly.
- **12.** Subject to inspection and Client interview by Lender's Agent at which point rate and fees may change.
- 13. Proper Application and Credit Bureau Required.
- **14.** Such further conditions as the Lender's lawyer deems necessary.
- 15. You acknowledge that the lender may assign this commitment or the mortgage to a third party and may receive a fee in connection with such assignment. Lender may also receive a fee in connection with the servicing of this loan. The Lender is not acting as your agent or otherwise in any fiduciary capacity in relation to you in connection with the loan described herein.
- **16.** The 4<sup>th</sup> mortgage registered on 38 Simcoe Street South, Oshawa, ON in favour of Trumencas Ltd. "in trust" is to be paid out in full and discharged on or before closing.

	m w	
Mh.	Initial	

#### **Additional Mortgage Terms**

The following terms are to be incorporated into the Charge/Mortgage to be registered on title to the Property:

- a) The mortgage is OPEN for a ONE (1) YEAR period with a Bonus Fee equal to TWO (2) months' payments will apply if the applicants choose to pay out said Mortgage within the first SIX (6) months and no Bonus Fee upon 30 days written notice if paid out after the first SIX (6) before the Maturity date of April 25<sup>th</sup>, 2023.
- b) The borrower has a 30 day grace period after maturity to payout the balance in full with no penalties.
- c) The mortgagee or their agent will be entitled to a management fee up to 5% of the total mortgage principal, plus HST, which amount is deemed not to be a penalty, in the event that the lender or their agent attempt to take, or take possession of the subject property as a result of default under the mortgage. This includes Power of Sale Procedure.
- d) In the event of default herein, Trumencas Ltd. "in trust" or his assignee will be appointed as the Chargee's Manager, at the Chargee's discretion and will be entitled to a fee of \$250.00 per hour for its services and such fee will be charge to the Charger' account, and added to the amount owning under the Charge.
- e) In the event that any of the said post-dated cheques are not honored when presented for payment to the Bank or Trust Company on which they are drawn, the mortgagor shall pay the mortgagee for each such cheque the sum of \$450.00 as a liquidated amount to cover the mortgagee's administrative costs and not as a penalty and such sum shall be charged upon the lands and shall bear interest at the rate hereinbefore stated.
- f) The Chargor shall provide the Chargee, on an annual basis with satisfactory evidence that the property and all buildings and structures thereon are insured for loss or damage by or from fire with extended perils, risks or events as the Chargee may at any time require, with full insurable value and showing 3<sup>rd</sup> mortgage loss payable to the Chargee.
- g) The Chargor shall provide the Chargee, on semi-annual basis with satisfactory evidence that all property taxes have been paid all properties.
- h) In the event of a bona fide sale of the property, all monies outstanding shall become due and payable and prepayment penalties will apply as per Mortgage/Charge.
- i) Standard Charge Terms apply and are to be incorporated by reference into this charge or mortgage.
- i) Upon the balance due date of the principal and interest secured hereunder or any renewal thereof, the mortgagor shall be deemed to have requested the mortgagee's solicitor to prepare the discharge documents, including where applicable, the electronic registration of the discharge for this Charge and shall pay the standard discharge fee & HST charged by our solicitor.
- k) Mortgage will automatically renew into a 1 year term unless Lender has been notified in writing 30 days prior to renewal. All renewal and other fees will be due on renewal with all the conditions staying the same unless otherwise noted in writing. Lender has option to change rates and or collateral depending on Market conditions or if any defaults occurred. Admin Fees will apply on Default.
- Any interest arrears will also be subject to interest at the rate provided in Mortgage.
- m) If mortgage is not paid out on Maturity, a Forbearance fee equal to three (3) months' payments will apply, unless otherwise agreed upon by both parties in writing.
- n) Equitable Charge: The Borrower(s), on executing this commitment letter, hereby grants the Lender an equitable charge on the Borrowers' property(s) at **31 John Street North, Hamilton, Ontario L8R 1H2,** being the property(s) which is/are to be given as security for this loan and as security for the Lender's fees, commissions, legal fees, disbursements and taxes, with the Lender having the right to file a caveat against said property evidencing said right. The Borrower(s) hereby irrevocable appoints the Lender as the Borrower(s) lawful attorney for the purpose of executing any documents on the Borrower(s) behalf and for registration of a charge/mortgage or other encumbrance against the Borrower(s) property, as security for the repayment of the Lender's fees, commissions, legal fees and taxes.
- o) A PPSA is to be prepared, signed and not registered unless the borrower defaults on the mortgage for a period of 30 continuous days or more.
- p) NSF/Late payment Fee will apply to each cheque per Lender/Investor and client(s) understand and are aware that there is more than one Lender/Investor in this mortgage.

		MW
Mh.	Initial	

Initial

<u>Service Fee:</u> In the event that the Chargee/Mortgagee is required or deems it advisable to make any payment in order to protect his/her security position including but not limited to realty taxes, insurance premiums, condominium common expenses, principle interest or costs under a prior mortgage it is agreed that such payment shall bear interest at eighteen(18%) percent per annum, calculated and compounded monthly and that there shall be an administration fee of not less than \$250.00 for making each such payments.

#### **Assignment of Commitment by Borrower**

This mortgage commitment shall not be assigned without the prior written consent of our company. In the event that such assignment has taken place without the above prior written consent, we will have the right to terminate this mortgage commitment, in which case the mortgagors shall continue to be liable to pay for the lender's fee in full and for the legal account rendered to us by our solicitor. Same applies if borrower decides to walk away from the committed mortgage.

Assignment of Commitment by Lender: This Commitment, the mortgage and all related ancillary security may be assigned by the Lender to another person or corporation without notice to the Borrower(s) / Guarantor(s) prior to or after funding. The Borrower(s) / Guarantor(s) agree that within five (5) days of notification, the Borrower(s) / Guarantor(s) agree to execute any confirmation as required by the new lender, assign the insurance to the new lender and provide an executed pre-authorized payment form or provide post-dated cheques for payment to the new lender. You acknowledge that the lender may assign this commitment or the mortgage to a third party and may receive a fee in connection with such assignment. Lender may also receive a fee in connection with the servicing of this loan. The Lender is not acting as your agent or otherwise in any fiduciary capacity in relation to you in connection with the loan described herein.

#### **Administration and Servicing Fees:**

1. Statement Fee	\$450.00
2.Demand Letter	\$875.00
3. Mortgage Discharge Administration Fee	\$550.00
4. Insurance cancellation, premium payment or non-compliance	\$450.00
5. Renewal Fee	N/A
6. NSF/Late Payment Fee	\$250.00
7. Default Proceedings	\$990.00
8. Maintenance for security of property in our possession	\$150.00 per day

This clause is also deemed to be proper notice to any subsequent charge or lien holder of the above-noted fees in the event of the Chargor's default. The Chargor acknowledges having received and explained to it all of the possible fees and charges set forth in this Charge which would be in addition to principal and interest due hereunder. The Chargor acknowledges and agrees that the fees and charges are reasonable and reflect a reasonable pre-estimate of the Chargee's actual costs with respect to each of such charges and fees. The Chargor further acknowledges and agrees that all of the foregoing charges set out as PROVIDED that in the event of non- payment of the foregoing administration fees, the amount due shall be added to the principal balance outstanding.

#### **Expiry Date/Commitment Acceptance Date**

This offer is open for acceptance until April 18<sup>th</sup>, 2022 by executing the copy hereof and returning it to us. Please <u>initial all pages</u> of the mortgage commitment.

Trumencas Ltd. "in trust"	
Lender/Mortgagee	
All above noted mortgage commitment te	rms and conditions agreed to and accepted this
	Apr 20, 2022
Day of	, 2022
Mulalight	Mutaliets
Applicant/Mortgagor (2238394 Ontario Ltd.) A.S.O. Maciek Walicht	Personal Guarantor (Maciek Walicht)

LRO # 62 Charge/Mortgage

Registered as WE1728822 on 2024 03 26 at 11:09

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

yyyy mm dd Page 1 of 6

## **Properties**

PIN 17167 - 0015 LT Interest/Estate Fee Simple

Description PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

### 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 2238394 ONTARIO LTD.

Address for Service 31 John Street North

Hamilton ON L8R 1H2

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

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

Chargee(s) Capacity Share

Name KOMEILIAN, MEHDI
Address for Service 17A Cosmo Road
Toronto ON M8X 1Z3

#### Statements

Schedule: See Schedules

The text added or imported if any, is legible and relates to the parties in this document.

#### **Provisions**

Principal \$440,000.00 Currency CDN

Calculation Period Monthly
Balance Due Date 2024/09/19

Interest Rate 20.00 % per annum

Payments \$7,333.33 Interest Adjustment Date 2024 03 19

Payment Date 19th day of each month

First Payment Date 2024 04 19
Last Payment Date 2024 09 19
Standard Charge Terms 200033

Insurance Amount Full insurable value

Guarantor Maciek Walicht, 58 King Street East Hamilton Ltd.

## Signed By

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2024 03 26

A30 Chargor(s) Oakville

L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

## Submitted By

JOHN TAMINDZIC, BARRISTER & SOLICITOR 481 North Service Road W., Suite A30

2024 03 26

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856 LRO # 62 Charge/Mortgage

**Registered as WE1728822** on 2024 03 26 at 11:09

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

yyyy mm dd Page 2 of 6

Fees/Taxes/Payment

Statutory Registration Fee \$69.95 Total Paid \$69.95

File Number

Chargee Client File Number: 3495-03-24

#### ADDITIONAL PROVISIONS

This Schedule forms part of the charge/mortgage (hereinafter the charge/mortgage, all schedules thereto and any applicable standard form charge/mortgage or standard charge or mortgage terms are collectively called the "Mortgage") between the Chargor(s)/Mortgagor(s), the party or parties, if any, identified in the Mortgage as the spouse(s) of the Chargor(s)/Mortgagor(s), the party or parties, if any, identified in the Mortgage as Guarantor(s), the Chargee/Mortgagee. If there is any conflict between any provision of this Schedule and any other provision of the Mortgage, such provision of this Schedule shall prevail.

### 1. Repayment

The Chargor shall pay to the Chargee interest on all amounts advanced hereunder at the rate and terms as set out in the charge. The Chargor and Chargee agree that even though this charge outlines payments and interest due on the entire principal of \$440,000.00, interest shall only accrue and be calculated on the amount of the Principal actually advanced to the Chargor at any given time. Any fees, expenses and/or holdbacks associated with this loan shall count towards Principal advanced.

This is a closed mortgage that can be paid out, only with payment of interest owing to the end of the term.

#### 2. Non-Transfer

In the event that the Chargor sells, conveys, transfers, assigns or exercises a power of appointment with respect to the lands charged to a purchaser, transferee or assignee, without first obtaining the consent in writing of the Mortgagee, the entire principal sum and interest hereby secured shall, at the option of the Chargee, immediately become due and payable.

## 3. <u>Administration Fees</u>

The Chargee shall charge a fee of \$300.00 for each occurrence of any of the following events: late payment, cheque dishonoured for any reason, failure to provide post-dated cheques, request for a Mortgage Statement. Such service fees will be added to the principal amount if not paid by the Chargor.

## 4. <u>Service Fee</u>

Should the Chargee take any proceedings as provided for in the within Charge by reason of the Charger's default, the Chargee shall be entitled to add to the Charge the Chargee's fees outlined in the Mortgage Commitment Agreement.

## 5. <u>Insurance and Insurance Renewal</u>

The Chargor shall keep insured the Mortgaged Premises (contents and liability) with reputable insurers in such amounts against loss or damage by fire and other causes or perils as the Chargee may reasonably require and the Chargor shall pay all premiums necessary for such purposes as the same shall become due. All policies of insurance issued in respect of the Mortgaged Premises and all proceeds thereof are hereby assigned to the Chargee as security for the Chargor's obligations hereunder. Each policy of insurance shall show the Chargee as loss payee, as its interest may appear, shall contain such mortgage clauses as the Chargee may require, shall be in terms satisfactory to the Chargee and, at the request of the Chargee, shall be delivered to and held by the Chargee subject to the rights of holders of any permitted encumbrances.

## 6. <u>Bankruptcy and Insolvency</u>

THE CHARGOR hereby waives and releases any right that it may have to receive from the Chargee notice of intention to enforce security pursuant to subsection

244(1) of the Bankruptcy and Insolvency Act (Canada). This waiver and release shall not be deemed or interpreted to be a prior consent to earlier enforcement of a security within the meaning of subsection 244(2.1) of the said Act.

THE CHARGOR hereby acknowledges and agrees that the security held by the Chargee is not all or substantially all of the inventory, accounts receivable or other property of the Chargor acquired for or used in relation to any business carried on by the Chargor. The Chargor hereby further acknowledges and agrees that notwithstanding any act of the Chargee, by way of appointment of any person or persons for the purposes of taking possession of the Lands as agent on behalf of the Chargor or otherwise, or by taking possession of the Lands itself, pursuant to any rights that the Chargee may have with respect thereto, shall not constitute the Chargee or any such person, as a receiver within the meaning of subsection 243(2) of the Bankruptcy and Insolvency Act (Canada), and that any and all requirements of Part XI of the said Act as it may pertain to obligations of receivers shall not be applicable to the Chargee with respect to the transaction pursuant to which this Charge has been given or enforcement of this Charge or any other security held by the Chargee. The Chargor hereby acknowledges and agrees that no action shall lie against the Chargee as a receiver and manager or otherwise for any loss or damage arising from non-compliance with any obligations of a receiver pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) whether or not the Chargee had reasonable grounds to believe that the Chargor was not insolvent.

AND THE CHARGOR further acknowledges and agrees that any and all Costs shall be entirely for the account of the Chargor. The Chargee shall be entitled to incur any such costs, including any costs of its personnel in administering any requirements of the said Act and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Chargee for the indebtedness owing to the Chargee in the same manner and in the same priority as the principal secured hereunder.

#### 7. Tenancy

The Chargor shall provide to the Chargee full particulars regarding any tenancy with respect to the lands wherever a new tenant rents the charged lands, or any portion thereof.

## 8. <u>Covenants.</u>

The Chargor hereby declares, covenants and agrees that it:

- (a) As to Title is the sole legal and beneficial owner of the Charged Lands and owns the same free of all encumbrances other than the within Encumbrance and a first charge
- (b) Shall pay all costs and expenses (including legal fees and disbursements on a full indemnity basis) of Chargee incidental to or which in any way relates to this Charge or its enforcement including (i) the preparation, execution and filing of this Charge and any instruments postponing, discharging, amending, extending or supplemental to this Charge ("Chargee's Security"); (ii) perfecting and keeping perfected Chargee's Security; (iii) maintaining the intended priority of Chargee's Security on all or any part of the Charged Lands; (iv) taking, recovering or possessing the Charged Lands; (v) taking any actions or other proceedings to enforce the remedies provided herein or otherwise in relation to this Charge or the Charged Lands, or by reason of a default hereunder or the non-payment of the moneys hereby secured; (vi) taking proceedings, giving notices and giving responses required under any applicable law concerning or relating to the Chargee's Security, including compliance with the provisions of applicable bankruptcy, insolvency, personal property security and mortgage enforcement legislation; (vii) any inspections required to be made to the Charged Lands, or the review of any plans, specifications or other documentation which may require the approval or consent of Chargee; and (viii) obtaining the advice of counsel and other

- advisors in relation to the foregoing;
- (c) <u>To Pay Common Expenses and Taxes</u> shall pay all common expenses and assessments, taxes and assessments lawfully imposed upon the Charged Lands or any part thereof when the same become due and payable, and shall show to Chargee on request receipts for such payment;
- (d) No Other Liens shall not create, assume or suffer to exist any charge, lien, security interest or encumbrance upon any Charged Lands ranking or purporting to rank in priority to or pari passu with the security interest created hereunder; provided that no provision hereof shall be construed as a subordination or postponement of the security interest created hereunder to or in favour of any other charge, lien, security interest or encumbrance;
- (e) <u>Hold Proceeds of Unauthorized Sale in Trust</u> in the event the Charged Lands or any part thereof are sold or disposed of prior to the full discharge of this Charge by Chargee, in any manner not authorized by this Charge, shall hold all proceeds of such sale or disposition received by the Chargor as trustee for Chargee until the Chargor has been fully released from this Charge by Chargee;
- (f) <u>Inspection by Chargee</u> - shall allow any employees or third parties retained by Chargee at any reasonable time to enter the premises of the Chargor to inspect the Charged Lands, including without limitation the right to undertake soil, ground water, environmental or other tests, measurements or surveys in, on or below the Charged Lands, and to inspect the books and records of the Chargor and make extracts therefrom, and shall permit Chargee prompt access to such other persons as Chargee may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Charged Lands or the books and records of the Chargor, provided that any information so obtained shall be kept confidential, save as required by Chargee in exercising its rights hereunder or pursuant to any applicable law or court order. The Chargor shall pay all costs and expenses of third parties (including legal fees and disbursements on a full indemnity basis) retained by Chargee for purposes of inspection under this Section
- (g) <u>No Actions</u> has received no notice of and has no knowledge of any pending, potential or threatened litigation or claim for judicial or administrative action which would adversely affect the Charged Lands or their use or market value;
- 9. Extensions and Amendments. Any agreement for the extension of the time of payment of the moneys hereby secured or any part thereof made at, before or after maturity, and prior to the execution of a discharge or release of this Charge, or any agreement for altering the term, rate of interest (whether increased or decreased), the amount of the principal payments hereunder or any other covenant or condition hereof, need not be registered in any office of public record but shall be effectual and binding upon the Chargor and upon every subsequent mortgagee, chargee, encumbrancer or other person claiming an interest in the Mortgaged Premises or any part thereof when executed by the Chargor and delivered to Chargee.
- 10. For the purpose of this Charge/Mortgage, the terms "Charge", "Chargor" and "Chargee" shall also mean Mortgage, Mortgagor and Mortgagee.
- 11. Receipt. The Chargor hereby acknowledges receipt of a true copy of this Charge.
- 12. <u>Binding Effect, Governing Law and Headings.</u> These presents are binding upon the parties hereto and their respective successors and assigns. This Charge shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The division of this Charge into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge.

- 13. Other Charges. The Borrower must provide the Lender with written authorization allowing the Lender to inquire as to the status of any other charges and or mortgages affecting title, while this charge is still active. This includes any mortgages ahead or subsequent in priority to this charge.
- 14. The monthly payment owing under the Charge shall be discounted, each month, by any amount prepaid to the Chargee at the time of the mortgage advance.
- 15. The here is no automatic right of extension.
- 16. Any terms contained in the Mortgage Commitment Agreement shall form part of this Charge.
- 17. There is to be a lender fee of 10.00% to be deducted from the mortgage advance.

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

yyyy mm dd Page 1 of 6

#### **Properties**

PIN 17167 - 0015 LT

Description PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL

HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST &

JOHN ST AS IN VM215716; CITY OF HAMILTON

Address 31 JOHN ST N

**HAMILTON** 

## Applicant(s)

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

Name 2238394 ONTARIO LTD.

Address for Service

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

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

Party To(s) Capacity Share

Name KOMEILIAN, MEHDI
Address for Service 17A Cosmo Road
Toronto ON M8X 1Z3

#### Statements

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

This notice may be deleted by the Land Registrar when the registered instrument, WE1728822 registered on 2024/03/26 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration number(s)WE1728822

## Signed By

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2024 03 26

A30 Applicant(s)

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

Jovica-John Tamindzic 481 North Service Road W., Suite acting for Signed 2024 03 26

A30 Party To(s)

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

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

## Submitted By

JOHN TAMINDZIC, BARRISTER & SOLICITOR 481 North Service Road W., Suite A30 2024 03 26

Oakville L6M 2V6

Tel 905-847-9979 Fax 866-201-2856

### Fees/Taxes/Payment

Statutory Registration Fee \$69.95 Total Paid \$69.95

#### File Number

Party To Client File Number: 3495-03-24

## **ASSIGNMENT OF RENTS**

THIS INDENTURE made this <sup>26</sup> day of March, 2024,

BETWEEN:

2238394 ONTARIO LTD.

hereinafter called the "Assignor"

OF THE FIRST PART,

and

MEHDI KOMEILIAN

hereinafter called the "Assignee"

OF THE SECOND PART.

WHEREAS, by a Mortgage dated the \_\_26th day of March, 2024, \_\_and registered in the Land Registry Office for the Land (Registry/Titles) Division of Wentworth (Hamilton) (No. 62) as instrument No. \_\_WE1728822 \_\_\_\_\_\_\_ the Assignor herein did grant and mortgage unto the Assignee herein the lands and premises more particularly described in Schedule "A" hereto annexed which Mortgage secures payment of the sum of FOUR HUNDRED AND FOURTY THOUSAND DOLLARS (\$440,000.00) and interest as therein mentioned and which Mortgage is hereinafter referred to as "the Mortgage". Whenever in this indenture reference is made to the Mortgage, it shall be deemed to include any renewals or extensions thereof and any Mortgage taken in substitution therefor either in whole or in part;

AND WHEREAS it is a condition of the lending of the monies secured or to be secured by the Mortgage, that the Assignor should assign to the Assignee, its successors and assigns, the rents reserved and payable and/or intended to be reserved and payable under, and all advantages and benefits to be derived from, leases of premises erected on the lands and premises more particularly described in Schedule "A" hereto (the "Leases") now or hereafter entered into by the Assignor as landlord with tenants thereof (Lessees) and including without limitation the specific leases referred to in Schedule "B" hereto annexed, as additional security for the payment of the money secured by the Mortgage, and for the performance of the covenants contained therein;

AND WHEREAS it is agreed that notwithstanding anything in this Indenture contained, the Assignee is not to be bound to advance the said mortgage monies or any unadvanced portion thereof;

NOW THEREFORE THIS INDENTURE WITNESSETH that the Assignor in consideration of the premises, the making of the said Mortgage, and the sum of One (\$1.00) Dollar now paid by the Assignee to the Assignor (the receipt whereof is hereby acknowledged), doth covenant and agree with the Assignee as follows:

- 1. The Assignor hereby irrevocably transfers, assigns, and sets over to the Assignee all rents reserved and payable under the Leases (including without limitation the specific leases referred to in Schedule "B" hereto annexed) and all benefits and advantages to be derived therefrom, to hold and receive the same unto the said Assignee, its successors and assigns.
- 2. The Assignor covenants and agrees with the Assignee that the Assignor will not, without the consent in writing of the Assignee, permit any prepayment of rents payable under any of the Leases that will result in more than two months' of such rents being prepaid under such Leases, or variation, cancellation or surrender of any of the Leases, or of the terms,

covenants, provisos or conditions thereof.

- 3. The Assignor covenants with the Assignee to perform and observe all the covenants, conditions and obligations binding upon it under the Leases.
- 4. The Assignor covenants and agrees irrevocably with the Assignee that the Assignee shall have the right to sue for payment and/or for enforcing anything in this Indenture herein contained in any or all of the following ways:
  - (a) in its own name;
  - (b) in the name of the Assignor, and
  - (c) in the names of both the Assignor and the Assignee jointly.
- 5. The Assignor agrees to assign any of the said Leases to the Assignee upon request should the Assignee deem such assignment advisable for the protection of its security, such assignment to be on a form to be prepared by the Assignee's solicitors in such case.
- 6. PROVIDED, however, that until notified to the contrary in writing the Lessees shall pay the rent reserved under the Leases, (but only to the extent that the same may be due and payable under the Leases) to the said Assignor and any notice to the contrary required by this proviso may be effectively given by sending the same by registered mail to any Lessee at its premises on the lands and premises described in Schedule "A" hereto or by delivering the same personally to any Lessee, or an officer of such Lessee.
- 7. The Assignor does hereby declare that any direction or request from the Assignee to pay the rents reserved to the Assignee shall be sufficient warrant and authority to the said Lessee to make such payments, and the payments of the said rentals to the Assignee shall be and operate as a discharge of the said rents to the said Lessee.
- 8. The Assignor covenants and agrees with the Assignee not to renew nor extend any of the Leases at rentals reserved and payable of lesser amounts than are now reserved and payable under such Leases unless compelled to do so as the result of an Arbitration Award, or with the consent of the Assignee.
- 9. The Assignee covenants and agrees with the Assignor to release this Assignment of Rents upon payment in full of the Mortgage in accordance with the terms thereof and that the Assignee will, at the request and cost of the Assignor, reassign any unmatured rents to the Assignor. In the absence of such a request the delivery to the Assignor of a discharge or cessation of the Mortgage shall operate as a release and reassignment of such rents.
- 10. The Assignor hereby covenants and agrees to and with the Assignee that this Assignment and everything herein contained shall be irrevocable without the consent of the Assignee.
- 11. PROVIDED that nothing in this Indenture contained shall be deemed to have the effect of making the Assignee responsible for the collection of the said rents or any part thereof or for the performance of any covenants, terms or conditions either by the Assignor or by the Lessees contained in any of the said Leases, and that the Assignee shall not by virtue of these presents be deemed a mortgagee in possession of the lands and premises described in Schedule "A" hereto and the Assignee shall not be liable to account for any monies other than those actually received by it by virtue of these presents.
- 12. IT IS AGREED that waiver of or failure to enforce at any time or from time to time any of the rights of the Assignee under or by virtue of this Indenture shall not prejudice the Assignee's rights in the event of the breach, default or other occasion for the exercise of such rights again occurring.
- 13. IT IS HEREBY DECLARED AND AGREED that these presents and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and each of their respective successors and assigns.
- IN WITNESS WHEREOF the Assignor has hereunto affixed its corporate seal under the hands of its proper signing officers duly authorized in that behalf.

## SIGNED, SEALED AND DELIVERED

2238394 ONTARIO LTD. per:

Docusigned by:

Macick Walicht

A49A7C63F977463...

MACIEK WALICHT

President

I have authority to bind the Corporation

#### **SCHEDULE "A"**

**Description of Property** 

31 John St. North, Hamilton ON

PT LT 39 NATHANIEL HUGHSON SURVEY (UNREGISTERED); PT LT 40 NATHANIEL HUGHSON SURVEY (UNREGISTERED) N/S KING WILLIAM ST BTN HUGHSON ST & JOHN ST AS IN VM215716; CITY OF HAMILTON on PIN: 17167-0015 (in LRO #62).

## **SCHEDULE "B"**

LESSEE REGISTRATION NO.

LEASE DATE

EXPIRY DATE

(MM/DD/YYYY)

(MM/DD/YYYY)

This is Exhibit "I" referred to in the Affidavit of Sergiu Cosmin sworn before me this 18<sup>th</sup> day of November, 2024

Commissioner for Taking Affidavits



# Sanjeev Mitra Direct: 416.865.3085 E-mail:smitra@airdberlis.com

March 20, 2024

## DELIVERED BY REGISTERED MAIL, REGULAR MAIL AND BY EMAIL

**58 King Street East Hamilton Ltd.** 58 King Street East

Hamilton, ON L8N 1A6

Attn: Maciek Walicht

Dear Sir:

Re: Indebtedness and liabilities of 58 King Street East Hamilton Ltd. (the "Debtor"

or "you") to Home Trust Company (the "Lender")

We are the lawyers for the Lender in connection with its lending arrangements with the Debtor.

The Debtor is indebted to the Lender with respect to certain credit facilities made available by the Lender to the Debtor pursuant to and under the terms of a mortgage loan commitment letter of approval dated July 7, 2023 (as amended, replaced, restated or supplemented from time to time, the "Commitment Letter").

The following amounts are owing by the Debtor to the Lender for principal and interest pursuant to the Commitment Letter as of March 15, 2024:

	Principal	\$3,387,395.19
	Interest	\$64,971.66
	(per diem: \$832.97)	
	Return payment fees	\$250.00
	Maintenance fees	\$271.20
	Tax administration fees	\$226.00
	Manual debit fee	\$95.00
Mortgage No. 10653788	Stop payment fees	\$190.00
	Information statement fee	\$100.00
	Property inspection fee	\$200.00
	Property management invoice	\$438.75
	Property inspection invoice	\$67.80
	Interest on arrears	\$694.53
	Pre-payment compensation	\$76,216.39
	Tax account balance	(\$1,273.46)
	Legal administration fee	\$1,295.00
	Total:	\$3,528,639.15

Events of default have occurred under the Commitment Letter, including, but not limited to, monetary defaults, none of which have been waived by the Lender.

Accordingly, on behalf of the Lender, we hereby make formal demand for payment of \$3,528,639.15 together with accruing interest and any and all costs and expenses (including, without limitation, any legal and other professional fees) incurred by the Lender (collectively, the "Indebtedness") pursuant to the Commitment Letter. Payment is required to be made immediately. Interest continues to accrue on the Indebtedness at the rates established by the Commitment Letter and any other agreement, as applicable.

The Indebtedness and other obligations of the Debtor in connection with the Commitment Letter are secured by, *inter alia*, a charge/mortgage of land dated August 3, 2023 from the Debtor, registration in respect of which has been effected in the Land Registry Office for the region of Hamilton-Wentworth (No. 62) and recorded as Instrument No. WE1691086 against the real property known municipally as 58 King Street East, Hamilton, Ontario, and legally described in PIN 17167-0087 (LT) and a security agreement between the Lender and the Debtor dated July 14, 2023.

If payment of the Indebtedness is not received immediately, the Lender shall take whatever steps its considers necessary or appropriate to collect and recover the amounts owing to it, including, without limitation, the appointment of an interim receiver, receiver, or receiver and manager of the Debtor or any other proceedings that are necessary, in which case, the Lender will also seek all costs it incurs in doing so.

On behalf of the Lender, we also enclose a Notice of Intention to Enforce Security, which is delivered pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA Notice**"). The Lender hereby reserves its rights to initiate proceedings within the ten (10) day period set out in the BIA Notice, if circumstances warrant such proceedings.

Yours truly,

AIRD & BERLIS LLP

Sanjeev Mitra e.c. Client

Michael Cappabianca



# NOTICE OF INTENTION TO ENFORCE SECURITY (Bankruptcy and Insolvency Act, Subsection 244(1))

DELIVERED BY COURIER AND EMAIL

To: 58 King Street East Hamilton Ltd.

58 King Street East Hamilton, ON L8N 1A6 Insolvent company / person

#### **TAKE NOTICE** that:

- 1. Home Trust Company (the "Lender"), a secured creditor, intend to enforce their security on the property, assets and undertakings of 58 King Street East Hamilton Ltd. (the "Debtor"), including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor.
- 2. The security that is to be enforced (the "**Security**") is in the form of, *inter alia*, a charge/mortgage of land dated August 3, 2023 from the Debtor, registration in respect of which has been effected in the Land Registry Office for the region of Hamilton-Wentworth (No. 62) and recorded as Instrument No. WE1691086 against the real property known municipally as 58 King Street East, Hamilton, Ontario, and legally described in PIN 17167-0087 (LT) and a security agreement between the Lender and the Debtor dated July 14, 2023.
- 3. As of March 15, 2024, the total amount of indebtedness secured by the Security is \$3,528,639.15 in principal and interest, plus accruing interest and costs of the Lender (including, without limitation, the Lender's legal and other professional fees).
- 4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 20th day of March, 2024.

ROYAL BANK OF CANADA by its lawyers, Aird & Berlis LLP

Per:

Sanjeev Mitra

Brookfield Place, Suite 1800 181 Bay Street, Toronto, ON M5J 2T9 Tel: 416-863-1500/Fax: 416-863-1515



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.





Sanjeev P. Mitra Direct: 416-865-3085 E-mail: smitra@airdberlis.com

March 21, 2024

#### **DELIVERED BY REGULAR AND REGISTERED MAIL**

Maciek Walicht 3403 Loyalist Drive

Mississauga, ON L5L 4Y1

Dear Sir:

Re: Indebtedness and liabilities of 58 King Street East Hamilton Ltd. (the "Debtor")

to Home Trust Company (the "Lender"), as guaranteed by Maciek Walicht (the

"Guarantor" or "you")

We are the lawyers for the Lender in connection with its lending arrangements with the Debtor.

The Debtor is indebted to the Lender with respect to certain credit facilities made available by the Lender to the Debtor pursuant to and under the terms of a mortgage loan commitment letter of approval dated July 7, 2023 (as amended, replaced, restated or supplemented from time to time, the "Commitment Letter").

The following amounts are owing by the Debtor to the Lender for principal and interest pursuant to the Commitment Letter as of March 15, 2024:

	Principal	\$3,387,395.19
	Interest	\$64,971.66
	(per diem: \$832.97)	
	Return payment fees	\$250.00
	Maintenance fees	\$271.20
	Tax administration fees	\$226.00
	Manual debit fee	\$95.00
Mortgage No. 10653788	Stop payment fees	\$190.00
	Information statement fee	\$100.00
	Property inspection fee	\$200.00
	Property management invoice	\$438.75
	Property inspection invoice	\$67.80
	Interest on arrears	\$694.53
	Pre-payment compensation	\$76,216.39
	Tax account balance	(\$1,273.46)
	Legal administration fee	\$1,295.00
Total:	·	\$3,528,639.15

March 21, 2024 Page 2

Events of default have occurred under the Commitment Letter, including, but not limited to, monetary defaults, none of which have been waived by the Lender.

You, the Guarantor, guaranteed the obligations of the Debtor to the Lender under the Credit Agreement pursuant to the written consent of electronic registration of guarantee dated August 1, 2023 (the "Guarantee").

Accordingly, on behalf of the Lender, and without in any way prejudicing the Lender from demanding any other amount properly owing to it, we hereby make formal demand on you, the Guarantor, for payment of \$3,528,639.15 together with accruing interest and any and all costs and expenses (including, without limitation, any legal and other professional fees) incurred by the Lender (collectively, the "Indebtedness") pursuant to the Guarantee. Payment is required to be made immediately. Interest continues to accrue on the Indebtedness at the rates established by the Commitment Letter, the Guarantee and any other agreement, as applicable.

If payment of the Indebtedness is not received immediately, the Lender shall take whatever steps its considers necessary or appropriate to collect and recover the amounts owing to it, including, without limitation, the commencement of civil legal proceedings against you personally, in which case, the Lender will also seek all costs it incurs in doing so.

Yours truly,

AIRD & BERLIS LLP

Sanjeev Mitra e.c. Client

Michael Cappabianca





# Sanjeev Mitra Direct: 416.865.3085 E-mail:smitra@airdberlis.com

March 20, 2024

## DELIVERED BY REGISTERED MAIL, REGULAR MAIL AND BY EMAIL

2238394 Ontario Ltd. 5700-100 King Street West Toronto, ON M5X 1C7

Attn: Maciek Walicht

Dear Sir:

Re: Indebtedness and liabilities of 2238394 Ontario Ltd. (the "Debtor" or "you") to

Home Trust Company (the "Lender")

We are the lawyers for the Lender in connection with its lending arrangements with the Debtor.

The Debtor is indebted to the Lender with respect to certain credit facilities made available by the Lender to the Debtor pursuant to and under the terms of a mortgage loan commitment letter of approval dated April 6, 2022 (as amended, replaced, restated or supplemented from time to time, the "Commitment Letter").

The following amounts are owing by the Debtor to the Lender for principal, interest, fees and outstanding property taxes pursuant to the Commitment Letter as of March 15, 2024:

	Principal	\$3,707,384.77
	Interest	\$64,955.25
	(per diem: \$866.07)	
	Return payment fees	\$250.00
	Maintenance fees	\$649.75
	Tax administration fees	\$649.75
	Manual debit fee	\$95.00
	Stop payment fees	\$190.00
Mortgage No. 10608539	Information statement fee	\$100.00
	Home insurance administration	\$360.00
	fees	
	Home insurance premium	\$813.90
	Appraisal fee	\$423.75
	Renewal fee	\$9,348.00
	Property inspection fee	\$200.00
	Property inspection invoice	\$67.80
	Interest on arrears	\$1,402.15
	Pre-payment compensation	n/a

Total	\$3,789,495.86
Legal administration fee	\$1,295.00
Tax account balance	\$1,310.74

Events of default have occurred under the Commitment Letter, including, but not limited to, monetary defaults, none of which have been waived by the Lender.

Accordingly, on behalf of the Lender, we hereby make formal demand for payment of \$3,789,495.86 together with accruing interest and any and all costs and expenses (including, without limitation, any legal and other professional fees) incurred by the Lender (collectively, the "Indebtedness") pursuant to the Commitment Letter. Payment is required to be made immediately. Interest continues to accrue on the Indebtedness at the rates established by the Commitment Letter and any other agreement, as applicable.

The Indebtedness and other obligations of the Debtor in connection with the Commitment Letter are secured by, *inter alia*, a charge/mortgage of land dated May 13, 2022 from the Debtor, registration in respect of which has been effected in the Land Registry Office for the region of Hamilton-Wentworth (No. 62) and recorded as Instrument No. WE1605924 against the real property known municipally as 31 John Street North, Hamilton, Ontario, and legally described in PIN 17167-0015 (LT) and a security agreement between the Debtor and the Lender dated April 18, 2022.

If payment of the Indebtedness is not received immediately, the Lender shall take whatever steps its considers necessary or appropriate to collect and recover the amounts owing to it, including, without limitation, the appointment of an interim receiver, receiver, or receiver and manager of the Debtor or any other proceedings that are necessary, in which case, the Lender will also seek all costs it incurs in doing so.

On behalf of the Lender, we also enclose a Notice of Intention to Enforce Security, which is delivered pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA Notice**"). The Lender hereby reserves its rights to initiate proceedings within the ten (10) day period set out in the BIA Notice, if circumstances warrant such proceedings.

Yours truly,

AIRD & BERLIS LLP

Sanjeev Mitra e.c. Client

Michael Cappabianca



## NOTICE OF INTENTION TO ENFORCE SECURITY (Bankruptcy and Insolvency Act, Subsection 244(1))

DELIVERED BY COURIER AND EMAIL

To: **2238394 Ontario Ltd.** 

5700-100 King Street West Toronto, ON M5X 1C7 Insolvent company / person

#### **TAKE NOTICE** that:

- 1. Home Trust Company (the "**Lender**"), a secured creditor, intend to enforce their security on the property, assets and undertakings of 2238394 Ontario Ltd. (the "**Debtor**"), including, without limiting the generality of the foregoing, all the equipment, accounts, proceeds, books and records, inventory, leaseholds and all other personal and real property of the Debtor.
- 2. The security that is to be enforced (the "**Security**") is in the form of, *inter alia*, a charge/mortgage of land dated May 13, 2022 from the Debtor, registration in respect of which has been effected in the Land Registry Office for the region of Hamilton-Wentworth (No. 62) and recorded as Instrument No. WE1605924 against the real property known municipally as 31 John Street North, Hamilton, Ontario, and legally described in PIN 17167-0015 (LT) and a security agreement between the Debtor and the Lender dated April 18, 2022.
- 3. As of March 15, 2024, the total amount of indebtedness secured by the Security is \$3,789,495.86 in principal and interest, plus accruing interest and costs of the Lender (including, without limitation, the Lender's legal and other professional fees).
- 4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the Debtor consents to an earlier enforcement.

**DATED** at Toronto this 20th day of March, 2024.

ROYAL BANK OF CANADA by its lawyers, Aird & Berlis LLP

. ...

Sanjeev Mitra

Brookfield Place, Suite 1800 181 Bay Street, Toronto, ON M5J 2T9 Tel: 416-863-1500/Fax: 416-863-1515



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.





Sanjeev P. Mitra Direct: 416-865-3085 E-mail: smitra@airdberlis.com

March 21, 2024

#### **DELIVERED BY REGULAR AND REGISTERED MAIL**

**Maciek Walicht** 

3403 Loyalist Drive Mississauga, ON L5L 4Y1

Dear Sir:

Re: Indebtedness and liabilities of 2238394 Ontario Ltd. (the "Debtor") to Home

Trust Company (the "Lender"), as guaranteed by Maciek Walicht (the

"Guarantor" or "you")

We are the lawyers for the Lender in connection with its lending arrangements with the Debtor.

The Debtor is indebted to the Lender with respect to certain credit facilities made available by the Lender to the Debtor pursuant to and under the terms of a mortgage loan commitment letter of approval dated April 6, 2022 (as amended, replaced, restated or supplemented from time to time, the "Commitment Letter").

The following amounts are owing by the Debtor to the Lender for principal and interest pursuant to the Commitment Letter as of March 15, 2024:

	Principal	\$3,707,384.77
	Interest	\$64,955.25
	(per diem: \$866.07)	
	Return payment fees	\$250.00
	Maintenance fees	\$649.75
	Tax administration fees	\$649.75
	Manual debit fee	\$95.00
	Stop payment fees	\$190.00
	Information statement fee	\$100.00
Mortgage No. 10608539	Home insurance administration	\$360.00
	fees	
	Home insurance premium	\$813.90
	Appraisal fee	\$423.75
	Renewal fee	\$9,348.00
	Property inspection fee	\$200.00
	Property inspection invoice	\$67.80
	Interest on arrears	\$1,402.15
	Pre-payment compensation	n/a
	Tax account balance	\$1,310.74
	Legal administration fee	\$1,295.00
Total:		\$3,789,495.86

March 21, 2024 Page 2

Events of default have occurred under the Commitment Letter, including, but not limited to, monetary defaults, none of which have been waived by the Lender.

You, the Guarantor, guaranteed the obligations of the Debtor to the Lender under the Credit Agreement pursuant to the written consent of electronic registration of guarantee dated May 9, 2022 (the "Guarantee").

Accordingly, on behalf of the Lender, and without in any way prejudicing the Lender from demanding any other amount properly owing to it, we hereby make formal demand on you, the Guarantor, for payment of \$3,789,495.86 together with accruing interest and any and all costs and expenses (including, without limitation, any legal and other professional fees) incurred by the Lender (collectively, the "Indebtedness") pursuant to the Guarantee. Payment is required to be made immediately. Interest continues to accrue on the Indebtedness at the rates established by the Commitment Letter, the Guarantee and any other agreement, as applicable.

If payment of the Indebtedness is not received immediately, the Lender shall take whatever steps its considers necessary or appropriate to collect and recover the amounts owing to it, including, without limitation, the commencement of civil legal proceedings against you personally, in which case, the Lender will also seek all costs it incurs in doing so.

Yours truly,

AIRD & BERLIS LLP

Sanjeev Mitra e.c. Client

Michael Cappabianca



This is Exhibit "J" referred to in the Affidavit of Sergiu Cosmin sworn before me this  $18^{\rm th}$  day of November, 2024

Commissioner for Taking Affidavits

From: Sanjeev Mitra <smitra@airdberlis.com>

Sent: Thursday, May 2, 2024 6:52 PM

To: Maciek Walicht < maciek@baystreetmortgage.ca>

Cc: Sanjeev Mitra <smitra@airdberlis.com>

Subject: RE: Loan # 10608539 - 31 John St N, Hamilton, ON - 2238394 Ontario Ltd.

Maciek, I provided your email to my client.

We did not hear from you by the sign back date in the draft forbearance agreement and still have no finalized forbearance agreement in place.

Assuming an agreement can be entered into, HTC may be prepared to extend the forbearance period assuming it receives satisfactory evidence that a payout will be concluded. HTC cannot commit to anything in terms of an extension at this stage based on the information below. It requires a definitive drop dead date for repayment. It is not prepared to wait for a refinancing as it is presently unclear whether the conditions necessary for same can or will be achieved. Our client afforded you additional time to arrange funds to make up the missed payments but we still have no arrangement in place or anything tangible to suggest that you will be in a position to do so.

My instructions are to issue notices of power of sale which will follow in due course. A forbearance agreement needs to be finalized if my client is to forbear at this stage.

We trust you will give this matter your immediate attention.

### Sanjeev Mitra, B.Sc., LL.B.

T 416.865.3085

E smitra@airdberlis.com

### Aird & Berlis LLP

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Maciek Walicht <maciek@baystreetmortgage.ca>

**Sent:** Wednesday, May 1, 2024 12:37 PM **To:** Sanjeev Mitra <smitra@airdberlis.com>

**Subject:** Re: Loan # 10608539 - 31 John St N, Hamilton, ON - 2238394 Ontario Ltd.

In terms of the dates, the issue I am having is I was trying to firm up final occupancy and opening dates. However, the city of HAmilton was hacked in February. They lost all access ot permits, date etc and everything is being done manually. This also includes the requested changes for 58 King East. I will not be able to obtain the final takeout financing until these occupancies are issued. That may run into September or October in a worst case scenario. I will see if I can word

the forbearance agreement to allow extension as long as mortgage s are klept up to date. I think it's easiest if I present my proposal then they can say yes or no.

I am also awaiting confirmation of funds to bring the arrears up to date and when that can be done by. I'm not trying to delay but the forbearance is very clear about what happens should I miss any deadlines.

Maciek Walicht
Principal Broker
Baystreet Mortgage Group Inc. Brokerage # 12902

First Canadian Place 100 King St. W. Suite 5700 Toronto, ON M5X 1C7

Off: (647) 558-0050 x. 101 Cell: (416) 566-2287 Fax: (647) 558-0050

maciek@baystreetmortgage.ca

On Apr 25, 2024, at 10:25 AM, Sanjeev Mitra <smitra@airdberlis.com> wrote:

Maciek, the sign back date for each of the forbearance agreements was yesterday.

Home Trust has provided the terms it will require in order to provide you with the additional time you have requested to repay the amounts owed to Home Trust.

Please let me know if the debtors are prepared to accept the forbearance terms.

You should be dealing with me on these two credit agreements.

**Thanks** 

Sanj

Sanjeev Mitra, B.Sc., LL.B.

T 416.865.3085

E smitra@airdberlis.com

### Aird & Berlis LLP

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Brent Szucs <Brent.Szucs@hometrust.ca>

Sent: Thursday, April 25, 2024 10:01 AM

To: Maciek Walicht <maciek@baystreetmortgage.ca>

Cc: Sanjeev Mitra <smitra@airdberlis.com>

**Subject:** RE: Loan # 10608539 - 31 John St N, Hamilton, ON - 2238394 Ontario Ltd.

Hi Maciek,

As previously mentioned, all communication must to done through counsel.

There will be no further communication from myself.

Cheers,

### **Brent Szucs**

Manager, Commercial Portfolio Management Home Trust Company

**T** 416-933-4906 | **M** 1-855-270-3630 | **E** Brent.Szucs@hometrust.ca 145 King St W, Suite 2300, Toronto, ON M5H 1J8 | www.hometrust.ca

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CONFIDENTIALITY NOTICE: This email is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately and delete it.

From: Maciek Walicht <maciek@baystreetmortgage.ca>

Sent: Thursday, April 25, 2024 9:49 AM

To: Brent Szucs <Brent.Szucs@hometrust.ca>

Subject: Re: Loan # 10608539 - 31 John St N, Hamilton, ON - 2238394 Ontario Ltd.

I understand. Is it possible just to meet with you in person at least before I get back to him?

It's important.

Maciek Walicht Principal Broker Baystreet Mortgage Group Inc. Brokerage #12902

First Canadian Place 100 King St. W. Suite 5700 Toronto, ON M5X 1C7

Off: (647) 558-0050 x. 101 Cell: (416) 566-2287 Fax: (647) 558-0050

maciek@baystreetmortgage.ca

On Apr 25, 2024, at 9:28 AM, Brent Szucs <Brent.Szucs@hometrust.ca> wrote:

Hi Maciek,

All communication should be through counsel.

### Sanj Mitra at Aird & Berlis

### smitra@airdberlis.com

Cheers,

### **Brent Szucs**

Manager, Commercial Portfolio Management Home Trust Company

**T** 416-933-4906 | **M** 1-855-270-3630 | **E** Brent.Szucs@hometrust.ca 145 King St W, Suite 2300, Toronto, ON M5H 1J8 | www.hometrust.ca

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CONFIDENTIALITY NOTICE: This email is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately and delete it.

From: Maciek Walicht < maciek@baystreetmortgage.ca>

Sent: Thursday, April 25, 2024 8:06 AM

To: Brent Szucs <Brent.Szucs@hometrust.ca>

Subject: Re: Loan # 10608539 - 31 John St N, Hamilton, ON - 2238394 Ontario Ltd.

Can we book a call for today please regarding both of my commercial loans with you either later today or tomorrow?

Maciek Walicht Principal Broker Baystreet Mortgage Group Inc. Brokerage # 12902

First Canadian Place 100 King St. W. Suite 5700 Toronto, ON M5X 1C7

Off: (647) 558-0050 x. 101 Cell: (416) 566-2287 Fax: (647) 558-0050

maciek@baystreetmortgage.ca

On Nov 21, 2023, at 2:56 PM, Brent Szucs < <a href="mailto:Brent.Szucs@hometrust.ca">Brent.Szucs@hometrust.ca</a> wrote:

Hi Maciek,

I'm auditing some of my files and noticed I didn't get the completed KYC form for you. Can you complete the KYC (guarantor) and send the completed version back?

Cheers,

### **Brent Szucs**

Manager, Commercial Portfolio Management Home Trust Company

**T** 416-933-4906 | **M** 1-855-270-3630 | **E** <u>Brent.Szucs@hometrust.ca</u> 145 King St W, Suite 2300, Toronto, ON M5H 1J8 | <u>www.hometrust.ca</u>

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CONFIDENTIALITY NOTICE: This email is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately and delete it.

This is Exhibit "K" referred to in the Affidavit of Sergiu Cosmin sworn before me this  $18^{\rm th}$  day of November, 2024

Commissioner for Taking Affidavits



Court File No.

## ONTARIO SUPERIOR COURT OF JUSTICE

### **HOME TRUST COMPANY**

Plaintiff

- and -

### 58 KING STREET EAST HAMILTON LTD. and MACIEK WALICHT

**Defendants** 

### STATEMENT OF CLAIM

### TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

\_

Date	Issued by		
		Local Registrar	
		55 Main St. E. Hamilton, Ontario L8P 1H4	

TO: **58 KING STREET EAST HAMILTON LTD.** 

58 King Street East Hamilton, ON L8N 1A6

AND TO: **MACIEK WALICHT** 3403 Loyalist Drive

Mississauga, ON L5L 4Y1

### **CLAIM**

- 1. The plaintiff, Home Trust Company ("**HTC**") claims as against the defendants, jointly and severally:
  - (a) as against the defendants, 58 King Street East Hamilton Ltd. (the "Borrower") and Maciek Walicht (the "Guarantor"), payment of the sum of \$3,573,614.54, on account of principal and all other amounts owing under a mortgage granted by the defendants to HTC (the "Mortgage") over the property located at 58 King Street East, Hamilton, Ontario and more particularly described in Schedule "A" attached hereto (the "Mortgaged Property"), which amount is as of May 6, 2024 and as will be further particularized prior to trial;
  - (b) orders granting:
    - (i) HTC possession of the Mortgaged Property and ordering the Borrower and Guarantor to deliver possession of the Mortgaged Property to HTC; and
    - (ii) leave of the Court to issue a writ of possession pursuant to Rules 60.03 and 60.10 of the *Rules of Civil* Procedure;
  - (c) prejudgment interest from May 6, 2024, or such other date as is just, and postjudgment interest, both at the rate of 9.00% per annum calculated and compounded half-yearly, not in advance (the "Contractual Interest Rate"), or alternatively, pursuant to the Courts of Justice Act, R.S.O. 1990, c. C. 43, as amended;
  - its costs of this action on a full indemnity basis, pursuant to the parties' agreement;and
  - (e) such further relief as is just.

### **The Parties**

- 2. HTC is a mortgage lender that carries on business in Ontario.
- 3. The Borrower is a corporation incorporated pursuant to the laws of the Province of Ontario.
- 4. The Guarantor is an individual who resides in Mississauga, Ontario. At all material times, the Guarantor was an officer and director of the Borrower.

### The Commitment Letter and the Mortgage

- 5. HTC entered into a mortgage loan commitment letter the Borrower dated July 7, 2023 (the "Commitment Letter"), pursuant to which HTC agreed to provide a loan to the Borrower in the principal amount of \$3,400,000 (the "Loan").
- 6. The Commitment Letter and the Mortgage provide that:
  - (a) the term of the loan is twenty-four (24) months (the "**Term**");
  - (b) interest at the Contractual Interest Rate on the outstanding principal is payable in equal monthly, blended payments of principal and interest in the sum of \$28,151.23 per month;
  - (c) at the end of the Term, the outstanding principal balance of the Loan, together with all accrued but unpaid interest thereon and all other amounts due and owing by the Borrower shall become immediately due and payable;
  - (d) upon the occurrence of a default event by the Borrower, the entire Loan becomes due and payable to HTC; and

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- (e) the Borrower agrees to indemnify HTC for all costs that HTC incurs in connection with any breach of the Borrower's covenants under the Commitment Letter and the Mortgage (including, without limitation, all legal and professional fees).
- On or about August 3, 2023, the Borrower granted the Mortgage to HTC, with HTC being first mortgagee over the Mortgaged Property. The Mortgage was registered on title to the Mortgaged Property on the same day as Instrument No. WE1691086. The registered charge incorporated "Standard Charge Terms" 201902.
- 8. The Mortgage secured the principal sum of \$3,400,000 advanced to the Borrower by HTC pursuant to the Commitment Letter.
- 9. The Loan was also secured by a general security agreement entered into between HTC and the Borrower on or about July 14, 2023, pursuant to which the Borrower granted HTC a secured interest in all of its personal property.

### The Guarantee

- 10. As a condition of, and in consideration for, the Loan being made to the Borrower, on or about August 1, 2023, the Guarantor guaranteed in writing all amounts due and owing under to the Loan to HTC by the Borrower (the "Guarantee").
- 11. As set out above, the Mortgage incorporated the Standard Charge Terms, which were incorporated by reference into the Guarantee and which provide, in part:
  - 11(a) In return for us making the initial loan to you, allowing other indebtedness and other value given to you (who, in this section 11 is called the "borrower" and which includes the borrower's legal and personal representatives, successors and assigns), each person who signs the mortgage, or an agreement relating to the mortgage, as a guarantor or covenantor signs as a principal debtor and not as surety. In other words, each guarantor agrees to pay us the initial loan and other indebtedness to meet all other obligations of the borrower as and when required by the mortgage and agreements...

J

11(d) We may require payment from any guarantor before we attempt to obtain payment from the borrower. All obligations of any guarantor will also be obligations of the guarantor's heirs, executors, successors, assigns and personal and legal representatives. The obligations of a guarantor will not be affected by the bankruptcy of the borrower or any other guarantor.

### **Default and Demand for Repayment**

- 12. The Borrower failed to make regular payments as they became due under the Commitment Letter and the Mortgage, which constituted a default event under the Commitment Letter and the Mortgage.
- 13. The Borrower also failed to pay property taxes for the Mortgaged Property, constituting a further default under the Commitment Letter and the Mortgage.
- 14. As a result of the Borrower's defaults, the amounts owing under the Commitment Letter and the Mortgage are due and payable in full.
- 15. By letters dated March 20, 2024 (collectively, the "**Demands**"), HTC notified each of the Borrower and the Guarantor that the Borrower was in default of its obligations under the Commitment Letter and the Mortgage, and made written demand on the Borrower and Guarantor in accordance with the terms of the Commitment Letter and the Mortgage, for payment of the principal amount of the Loan together with the accruing interest, legal costs and expenses incurred by HTC.
- 16. As of that date, the Borrower was indebted to HTC under the Commitment Letter for \$3,528,639.15.
- 17. On or about May 6, 2024, a notice sale under the Mortgage and a notice pursuant to Section 63(5) of the *Personal Property Security Act* (Ontario) ("**PPSA**") were sent to the Borrower, the Guarantor and all other lienholders on the Mortgaged Property.

18. As of the May 6, 2024 notice of sale, the Borrower was indebted to HTC under the Commitment Letter for \$3,573,614.54, inclusive of the following amounts:

Principal balance as of January 1, 2024				\$ 3,387,395.19
Accrued interest to May 6, 2024	(	127 ) at	9.00%	\$ 105,787.19
Return payment fee				\$ 250.00
Maintenance fees				\$ 305.10
Tax administration fees				\$ 254.25
Manual debit fee				\$ 95.00
Stop payment fees				\$ 190.00
Information statement fee				\$ 100.00
Property inspection fee				\$ 200.00
Property management invoice				\$ 438.75
Property inspection invoice				\$ 67.80
Interest on arrears				\$ 1,816.33
Pre-payment compensation				\$ 76,216.39
Legal administration fee				\$ 1,295.00
Discharge administration fee:				\$ 395.00
Out of pocket/ E-registration fee:				\$ 82.00
Tax account balance				\$ (1,273.46)
Subtotal:				\$ 3,573,614.54

Less credits:

Total: \$ 3,573,614.54

Per diem: 832.97

- 19. Despite formal demand pursuant to the Commitment Letter and Mortgage, the Borrower and Guarantor have failed, refused or neglected to make any payment of the amounts owed to HTC to date.
- 20. Pursuant to section 10.5(a)(v) of the Standard Charge Terms, upon default, HTC is permitted to enter on the Mortgaged Property and take possession of it. Demands have been sent to both the Borrower and Guarantor and both are defendants to this action. HTC is entitled to a writ of possession under Rules 60.03 and 60.10.
- 21. This action is required to be tried in Hamilton, Ontario, pursuant to Rule 13.1.01(3).

Date: June 25, 2024 AIRD & BERLIS LLP

Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9 Electronically issued / Délivré par voie électronique : 25-Jun-2024 Hamilton Superior Court of Justice / Cour supérieure de justice

 $\textbf{Court File No./N} ^{\circ} \ \textbf{du dossier du greffe}: \ \text{CV-}24\text{-}00086155\text{-}0000$ 

~

Josh Suttner – LSO No. 75286M Email: <u>jsuttner@airdberlis.com</u>

Tel: 647-426-2820

Lawyers for the Plaintiff

### **SCHEDULE A**

PIN 17167-0087 (LT) in LAND REGISTRY OFFICE #62

PT LT 11 PL 1431 GEORGE HAMILTON SURVEY AS IN AB246041, T/W INTEREST IN VM271941; CITY OF HAMILTON

Electronically issued / Délivré par voie électronique : 25-Jun-2024 Hamilton Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-24-00086155-0000

**HOME TRUST COMPANY** 

Plaintiff

and 58 KING STREET EAST HAMILTON LTD. And MACIEK WALICHT
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Hamilton

### STATEMENT OF CLAIM

### AIRD & BERLIS LLP

Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9

Josh Suttner – LSO No. 75286M Email: jsuttner@airdberlis.com Tel: 647-426-2820

Lawyers for the Plaintiff

60750405.6

### FORM 18A

# Courts of Justice Act STATEMENT OF DEFENCE COURT FILE NO. CV-24-00086155-0000 ONTARIO SUPERIOR COURT OF JUSTICE

### HOME TRUST COMPANY (PLAINTIIF)

### AND

### 58 KING STREET EAST HAMILTON LTD. AND MACIEK WALICHT (DEFENDANTS)

### STATEMENT OF DEFENCE

- 1. The defendant admits the allegations contained in paragraphs ...... of the statement of claim.
- 2. The defendant denies the allegations contained in paragraphs 1a), 1)bi, 1)bii, 6d, 11a, 11d, 12, 13, 14, 16, 18, 19, 20, of the statement of claim.
- 3. The defendant has no knowledge in respect of the allegations contained in paragraphs ...................... of the statement of claim.
- 4. The amount owed should not include prepayment compensation of \$76,216.39. There should be no pre-payment compensation (1a)
- 5. We disagree with granting HTC possession and writ of possession. More time is required in order to allow completion of leasehold improvements and tenant completion of work, as well as soe additional Landlord work which has come up with the city. The value of the property will continue to increase as this work is completed. (1bi & bii)
- 6. The loan should not have become due in full. As reasonable remedy period should have been given. The loan has performed in good standing until January of 2024. At this point we requested a payment extension from January 1 to January 20<sup>th</sup>. The payment was made in full on January 19<sup>th</sup>. ON Feb 1 2024. We also requested a payment extension of the February 1<sup>st</sup> payment until Feb 20<sup>th</sup>. This was done verbally. No payment had come out on Feb 20<sup>th</sup>, so I called Home trust on Feb 20 at 2:23 pm to leave a message asking why payment had not been processed. ON February 21 at 8:41 am I followed up again. I believe this was when I was told the loan was considered in default and had gone to the lawyers, and there was nothing we could do. We would have to await until the lawyer reached out to us. This was a 7 minute call, so I believe this is when we were notified of this. We also had a previous repayment history with HomeTrust Since July of 2022 on a similar sized loan where no payments were missed up until these two occurrence of payment delay. During this time my father had a serious illness, but had what we thought a successful surgery. He was undergoing 2<sup>nd</sup> and 3<sup>rd</sup> round of Chemotherapy treatments in January and February as a preventative measure. I was assisting with the family business and his care at this point as well. My father passed unexpectedly on Feb 26<sup>th</sup>, after his most recentchemo treatment the week on February 20<sup>th</sup>. Two days later he was feeling unwell and considering going back to hospital on Friday the 23<sup>rd</sup>. We decided to wait until Monday to see if he felt better and he passed unexpectedly on February 26<sup>th</sup>. This was exactly the time period when Home Trust called the loan and would not accept further payments. This was over a past due payment of 20 days and also no payment was processed or attempted on the 20<sup>th</sup> of February.
- 7. We do not agree with a default judgment against the borrower and guarantor granted for the full amount of the mortgage. This is essentially assuming the property is valued at \$0. The appraisal, once property is open for business is over \$5.4 million, and likely would be higher. In addition issuing a default judgment against myself personally would prevent any sort of refinance possibilities on this or any other properties. The same applies if issued a default against the corporation. The personal default judgment would ruin nay attempts at refinancing my other properties and would result in major losses. We would be understanding if we were not able to come to a satisfactory and reasonable exit strategy for Home Trust, the property had to be sold sold, and there was a shortfall form sale. However in a controlled and orderly sale process the proceeds would be more than enough to satisfy Home Trust's mortgage in full, so there would not be any loss and no need to issue default judgments prior sale of property if no other refinancing options or solutions could be found.
- 8. The borrower was making regular payments up and until the January 1st payment delay as detailed in paragraph 6.
- 9. Home Trust was responsible for making property tax payments from the mortgage payments. In fact. Payment was made in 2024 by them.

- 10. We disagree with the amounts being due in full. We ask for a reasonable exit strategy, under the assumption there is no possibility to carry this mortgage to end of term if brought into good standing and maintained.
- 11. We disagree with the amount of \$3,528,639.15 as of March 20, 2024.
- 12. We disagree with the three month interest prepayment charge as detailed in point 18 of \$76,216.39 as of May 6 2024.
- 13. We were in discussion for a forbearance agreement but it was insisted as part of any forbearance we sign a default judgment both for the borrowed and Maciek Walicht personal for the full amount of the mortgage. This is not a reasonable or fair request and makes the assumption the property is worth \$0. We would agree that in a worst case scenario if property is required to be sold and a shortfall results from a fair and orderly sales process then we would work with home trust to cover any shortfall.
- 14. We do not agree that Home Trust has permission to enter and or take possession of the property. We will co-operate reasonably with a property inspection and if required appraisal evaluation(s) of the property once some further work has been completed.
- 15. We would like to work with Home Trust to come to a reasonable solution to ensure their debt is covered in full, but this will take time to have the property completed and open for business. We would also like to propose a payment schedule to ensure the mortgage amount is being paid as per the original agreement. We will be reaching out to Aird Bellis to work on a proposal hopefully prior to any trial date.

Aug 1, 2024

58 SIMCOE STREET SOUTH OSHAWA LTF. and MACIEK WALICHT

Phone: 416-566-2287 email maciek@baystreetmortgage.ca

Address: Suite 5700- - 100 King St West, Toronto, ON M5X 1C7

TO
AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street Suite 1800
Toronto, ON M5J 2T9

Josh Suttner – LSO NO. 75286M Email: <u>jsuttner@airdberlis.com</u> Telephone: 647-426-2820

Feb 20 223 pm Feb 21 8:41 am

RCP-E 18A (July 1, 2007)

From: Sanjeev Mitra < smitra@airdberlis.com > Sent: Thursday, October 31, 2024 3:01 PM

**To:** Maciek Walicht <<u>maciek@baystreetmortgage.ca</u>>; Josh Suttner <<u>jsuttner@airdberlis.com</u>> **Cc:** Lexie Misterski <<u>lmisterski@airdberlis.com</u>>; Sanjeev Mitra <<u>smitra@airdberlis.com</u>>

Subject: RE: Home Trust v. Walicht - Timetabling Summary Judgment Motion

Maciek this is not acceptable.

I will be seeking instructions to proceed with receiverships over both properties.

My client should have been paid out by now on at least one property based on your previous communications. We have heard nothing from you in that regard.

Addressing the concerns of my client are clearly not a priority for you. It is fine that you are trying to take advantage of a busy court system to drag things out but you cannot expect HTC to continue to sit silent while the debtors ignore their obligations.

You have had ample opportunity to address the demands made and have failed to secure refinancing.

We would suggest you engage counsel but that is and has always been up to you.

Sanjeev Mitra, B.Sc., LL.B.

Partner

T 416.865.3085

E smitra@airdberlis.com

### Aird & Berlis LLP

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Maciek Walicht < maciek@baystreetmortgage.ca>

**Sent:** Thursday, October 31, 2024 12:23 PM **To:** Josh Suttner < <u>isuttner@airdberlis.com</u>>

Cc: Sanjeev Mitra <<a href="mailto:smitra@airdberlis.com">smitra@airdberlis.com</a>>; Lexie Misterski <a href="mailto:smitra@airdberlis.com">smitra@airdberlis.com</a>>; Lexie Misterski <a href="mailto:smitra@airdberlis.com">smitra@airdberlis.com</a>>

Subject: Re: Home Trust v. Walicht - Timetabling Summary Judgment Motion

It's coming.

Maciek Walicht Principal Broker Baystreet Mortgage Group Inc. Brokerage #12902

First Canadian Place 100 King St. W. Suite 5700 Toronto, ON M5X 1C7

Off: (647) 558-0050 x. 101 Cell: (416) 566-2287 Fax: (647) 558-0050

maciek@baystreetmortgage.ca

On Oct 31, 2024, at 12:19 PM, Josh Suttner < <u>isuttner@airdberlis.com</u>> wrote:

Maciek,

Your response is (not surprisingly) overdue.

We'll push ahead.

### **Josh Suttner**

**Partner** 

T 647.426.2820

E jsuttner@airdberlis.com

### Aird & Berlis LLP

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Maciek Walicht <maciek@baystreetmortgage.ca>

Sent: October 29, 2024 5:13 PM

To: Josh Suttner < jsuttner@airdberlis.com > Cc: Sanjeev Mitra < smitra@airdberlis.com >

Subject: Re: Home Trust v. Walicht - Timetabling Summary Judgment Motion

Understood. I will be more responsive Going forward.

Maciek Walicht Principal Broker Baystreet Mortgage Group Inc. Brokerage #12902

First Canadian Place 100 King St. W. Suite 5700 Toronto, ON M5X 1C7

Off: (647) 558-0050 x. 101 Cell: (416) 566-2287 Fax: (647) 558-0050

maciek@baystreetmortgage.ca

On Oct 29, 2024, at 5:09 PM, Josh Suttner < jsuttner@airdberlis.com> wrote:

We look forward to hearing from you.

Even if you intend to respond regarding repayment or progress on the projects, we still expect you to respond with a proposed litigation timetable. We have heard nothing from you in recent months and we are at the point where the litigation must proceed in parallel to any other discussions.

### **Thanks**

### **Josh Suttner**

**Partner** 

T 647.426.2820

E jsuttner@airdberlis.com

### Aird & Berlis LLP

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Maciek Walicht <maciek@baystreetmortgage.ca>

Sent: October 29, 2024 5:06 PM

To: Josh Suttner < <u>isuttner@airdberlis.com</u>>
Cc: Sanjeev Mitra < smitra@airdberlis.com>

Subject: Re: Home Trust v. Walicht - Timetabling Summary Judgment Motion

Will get back to you by tomorrow.

Maciek Walicht Principal Broker Baystreet Mortgage Group Inc. Brokerage #12902

First Canadian Place 100 King St. W. Suite 5700 Toronto, ON M5X 1C7

Off: (647) 558-0050 x. 101 Cell: (416) 566-2287 Fax: (647) 558-0050

maciek@baystreetmortgage.ca

On Oct 29, 2024, at 5:03 PM, Josh Suttner < <u>isuttner@airdberlis.com</u>> wrote:

### Maciek

We've tried to engage you in scheduling discussions but received no substantive response.

We will proceed with preparing our record for summary judgment and schedule the hearing (and any other steps) on a timetable that works for us.

### Thanks

### **Josh Suttner**

Partner

T 647.426.2820

E jsuttner@airdberlis.com

### Aird & Berlis LLP

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

This is Exhibit "L" referred to in the Affidavit of Sergiu Cosmin sworn before me this  $18^{\rm th}$  day of November, 2024

Commissioner for Taking Affidavits

### TREASURERS CERTIFICATE OF OUTSTANDING REALTY TAXES

AND CHARGES COLLECTIBLE AS SUCH

CERTIFICATE NO. 51446 317872 YOUR FILE NO. **ROLL NUMBER:** 2518 020-151-50280-0000

736,000

CERTIFIED AS AT: November 6, 2024 ASSESSED VALUE:

ISSUED TO: AIRD & BERLIS ASSESSED OWNER: 58 KING ST E (HAMILTON) LTD

181 BAY ST SUITE 1800

STREET ADDRESS: 58 - KING ST E # 60 BROOKFIELD PLACE LEGAL: SURVEY GEORGE HAMILTON PT

TORONTO ON M5J 2T9

LOT 11 PLAN 1431

**IRREG** 

0.07AC 20.50FR 138.19D

### Taxes are paid by mortgage company HOME TRUST COMPANY

### STATEMENT OF TAX ARREARS

YEAR	LEVIED	PRINCIPAL OUTSTANDING	INTEREST OUTSTANDING	BALANCE
2023	25,058.22	0.00	0.00	0.00
2022	23,815.70	0.00	0.00	0.00
2021+	334,500.17	0.00	0.00	0.00
			TOTAL ARREAR	S: 0.00

### STATEMENT OF CURRENT TAXES

CURRE	NT LEVY	INSTAL	MENT DUE D	ATES AND AMO	DUNTS	OUTSTANDIN	G AMOUNTS
INTERIM	11,789.25	2024/02/29	5,895.00	2024/04/30	5,894.25	TAX	14,723.11
FINAL	14,721.48	2024/07/02	7,361.00	2024/09/30	7,360.48	ADJUSTMENTS	2,055.98
SUPP.	0.00					PENALTY	745.97
TOTAL	26,510.73					BALANCE	17,525.06
		ATE OF CERTIFICA instalments that m					17,525.06

The current penalty and interest rate is 1.25% per month or 15.00% per year. Penalties will be charged on unpaid taxes on the first day of default. Interest for each month or fraction thereof, will be added thereafter on the first day of each calendar month to all taxes past due until the taxes are paid.

I hereby certify that, subject to the qualifications noted below, the above statements respectively show:

- 1. All arrears or taxes returned to this office and due and owing against the above lands; and 2. The current amount of taxes on real property and whether any or all of the taxes have been paid as at the date of certification
- in connection with the above lands, and that no part of the said land has been sold for taxes under part XI of the Municipal Act, 2001 and whether the interim and / or final taxes for the City of Hamilton have been levied for the current year.

Mike Zegarac, Treasurer

### LOCAL IMPROVEMENTS ASSESSED TO THIS PROPERTY TO DATE INCLUDE:

BYLAW / ADJ.	DESCRIPTION	AMOUNT	EXPIRY

- 1. This certificate has been prepared in accordance with the provisions of Section 352 of the Municipal Act R.S.O. 2001 c25. This certificate reflects only those charges added to the Tax Collector's Roll up to the day of certification.

  2. The total taxes shown may include additions to the Tax Collector's Roll as authorized by statue. Adjustment of this nature not applied to the
- Collector's Roll as at date of certification may be added subsequently without further notice.
- 3. There could be additional recoverable Local Improvement/Municipal Act charges if the Farm Exemption is lost through a change in status of the land. Municipal Act projects may be petitioned for and/or undertaken in the future. If you have inquiries regarding these charges, please contact the Development Officer at (905) 546-2651.
- 4. The information on this certificate is based on payments tendered being honoured by the bank upon which they are drawn.
- 5. This certificate is subject to additional taxes or adjustments to taxes which may be levied pursuant to the provisions of the Municipal Act, the Assessment Act, or any other applicable legislation. Examples include adjustments due to apportionment of the base roll number's taxes and/or additional taxes for new developments or new buildings.
- 6. The tax bill and / or a copy of this certificate should be given to the new owners on or before closing so that tax installments may be paid by the due dates to avoid late penalty charges being added.

### TREASURERS CERTIFICATE OF OUTSTANDING REALTY TAXES

AND CHARGES COLLECTIBLE AS SUCH

CERTIFICATE NO. 51445 317873 YOUR FILE NO. **ROLL NUMBER:** 2518 020-153-58010-0000

CERTIFIED AS AT: November 6, 2024

ISSUED TO: AIRD & BERLIS

181 BAY ST SUITE 1800

BROOKFIELD PLACE

TORONTO ON

M5J 2T9

ASSESSED VALUE: 675,000 ASSESSED OWNER: 2238394 ONTARIO LTD

STREET ADDRESS: 31 JOHN ST N

LEGAL: SURVEY N HUGHSON PT LOTS 39

AND 40

0.09AC 35.12FR 107.08D

### Taxes are paid by mortgage company HOME TRUST COMPANY

### STATEMENT OF TAX ARREARS

YEAR	LEVIED	PRINCIPAL OUTSTANDING	INTEREST OUTSTANDING	BALANCE
2023	22,386.16	0.00	0.00	0.00
2022	21,287.32	0.00	0.00	0.00
2021+	347,397.10	0.00	0.00	0.00
			TOTAL ARREAR	S: 0.00

### STATEMENT OF CURRENT TAXES

CURREI	NT LEVY	INSTAL	MENT DUE DA	ATES AND AN	MOUNTS	OUTSTANDIN	IG AMOUNTS
INTERIM	10,375.73	2024/02/29	5,188.00	2024/04/30	5,187.73	TAX	15,129.69
FINAL	13,296.03	2024/07/02	6,648.00	2024/09/30	6,648.03	ADJUSTMENTS	1,722.13
SUPP.	0.00					PENALTY	819.84
TOTAL	23,671.76					BALANCE	17,671.66
		TE OF CERTIFICA		•			17,671.66

The current penalty and interest rate is 1.25% per month or 15.00% per year. Penalties will be charged on unpaid taxes on the first day of default. Interest for each month or fraction thereof, will be added thereafter on the first day of each calendar month to all taxes past due until the taxes are paid.

I hereby certify that, subject to the qualifications noted below, the above statements respectively show:

- 1. All arrears or taxes returned to this office and due and owing against the above lands; and 2. The current amount of taxes on real property and whether any or all of the taxes have been paid as at the date of certification
- in connection with the above lands, and that no part of the said land has been sold for taxes under part XI of the Municipal Act, 2001 and whether the interim and / or final taxes for the City of Hamilton have been levied for the current year.

Mike Zegarac, Treasurer

### LOCAL IMPROVEMENTS ASSESSED TO THIS PROPERTY TO DATE INCLUDE:

BYLAW / ADJ.	DESCRIPTION	AMOUNT	EXPIRY
27	Encr-HST incl	371.09	01/01/2100

- 1. This certificate has been prepared in accordance with the provisions of Section 352 of the Municipal Act R.S.O. 2001 c25. This certificate reflects only those charges added to the Tax Collector's Roll up to the day of certification.

  2. The total taxes shown may include additions to the Tax Collector's Roll as authorized by statue. Adjustment of this nature not applied to the
- Collector's Roll as at date of certification may be added subsequently without further notice.
- 3. There could be additional recoverable Local Improvement/Municipal Act charges if the Farm Exemption is lost through a change in status of the land. Municipal Act projects may be petitioned for and/or undertaken in the future. If you have inquiries regarding these charges, please contact the Development Officer at (905) 546-2651.
- 4. The information on this certificate is based on payments tendered being honoured by the bank upon which they are drawn.
- 5. This certificate is subject to additional taxes or adjustments to taxes which may be levied pursuant to the provisions of the Municipal Act, the Assessment Act, or any other applicable legislation. Examples include adjustments due to apportionment of the base roll number's taxes and/or additional taxes for new developments or new buildings.
- 6. The tax bill and / or a copy of this certificate should be given to the new owners on or before closing so that tax installments may be paid by the due dates to avoid late penalty charges being added.

This is Exhibit "M" referred to in the Affidavit of Sergiu Cosmin sworn before me this 18<sup>th</sup> day of November, 2024

Commissioner for Taking Affidavits

Court File No. CV-24-00088153-0000

## ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

### **HOME TRUST COMPANY**

Applicant

- and -

### 58 KING STREET EAST HAMILTON LTD. and 2238394 ONTARIO LTD.

Respondents

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

### CONSENT TO ACT AS RECEIVER

The undersigned, msi Spergel inc. ("Spergel"), hereby consents to the appointment of Spergel as receiver, without security, over all of the assets, undertakings and properties of 58 King Street East Hamilton Ltd. ("58 King") and 2238394 Ontario Ltd. ("223" and together with 58 King, the "Debtors") acquired for, or used in relation to businesses carried on by the Debtors and all proceeds thereof, including, without limitation, the real property municipally known as 58 King Street East, Hamilton, Ontario, and legally described by PIN 17167-0087 (LT), and the real property municipally known as 31 John Street North, Hamilton, Ontario, and legally described by PIN 17167-0015 (LT), all pursuant to the provisions of section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

Dated at Ametion this day of November, 2024.

MSI SPERGEL INC.

By:

Name: Trevor Pringle

Title:

Partner

I have authority to bind the Corporation.

### **HOME TRUST COMPANY**

- and - 58 KING STREET EAST HAMILTON LTD. and 2238394 ONTARIO LTD.

Applicant Respondents

Court File No. CV-24-00088153-0000

## ONTARIO SUPERIOR COURT OF JUSTICE

**Proceedings commenced at Hamilton** 

### **CONSENT TO ACT AS RECEIVER**

### AIRD & BERLIS LLP

Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9

### Sanjeev P.R. Mitra (LSO # 37934U)

Tel: (416) 865-3085 Fax: (416) 863-1515 Email: smitra@airdberlis.com

### Jeremy Nemers (LSO # 66410Q)

Tel: (416) 865-7724

Email: <u>inemers@airdberlis.com</u>

### Calvin Horsten (LSO # 90418I)

Tel: (416) 865-3077

Email: chorsten@airdberlis.com

Lawyers for Home Trust Company

### **HOME TRUST COMPANY**

**Applicant** 

- and -

58 KING STREET EAST HAMILTON LTD. and 2238394 ONTARIO LTD.

Respondents

Court File No. CV-24-00088153-0000

## ONTARIO SUPERIOR COURT OF JUSTICE

### **Proceedings commenced at Hamilton**

## AFFIDAVIT OF SERGIU COSMIN (sworn November 18, 2024)

### AIRD & BERLIS LLP

Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9

### Sanjeev P. R. Mitra (LSO # 37934U)

Tel: (416) 865-3085 Fax: (416) 863-1515

Email: smitra@airdberlis.com

### Jeremy Nemers (LSO # 66410Q)

Tel: (416) 865-7724 Fax: (416) 863-1515

Email: jnemers@airdberlis.com

### Calvin Horsten (LSO # 90418I)

Tel: (416) 865-3077 Fax: (416) 863-1515

Email: chorsten@airdberlis.com

Lawyers for Home Trust Company

## **TAB 5**

Court File No. CV-24-00088153-0000

## ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

### **HOME TRUST COMPANY**

**Applicant** 

- and -

### 58 KING STREET EAST HAMILTON LTD. and 2238394 ONTARIO LTD.

Respondents

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

### SERVICE LIST

(current as of November 28, 2024)

TO: AIRD & BERLIS LLP

Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9

Sanjeev P. R. Mitra

Tel: (416) 865-3085

Email: smitra@airdberlis.com

**Jeremy Nemers** 

Tel: (416) 865-7724

Email: jnemers@airdberlis.com

**Calvin Horsten** 

Tel: (416) 865-3077

Email: chorsten@airdberlis.com

Lawyers for the Applicant

AND TO: MSI SPERGEL INC.

200 Yorkland Boulevard, Suite 1100

Toronto ON M2J 5C1

Trevor Pringle

Email: tpringle@spergel.ca

Proposed Receiver

AND TO: 58 KING STREET EAST HAMILTON LTD.

58 King Street East

Hamilton, ON L8N 1A6

**Maciek Walicht** 

Tel: (416) 566-2287

Email: maciek@baystreetmortgage.ca

Respondent

AND TO: 2238394 ONTARIO LTD.

31 John Street North Hamilton, ON L8R 1H2

5700-100 King Street West Toronto, ON M5X 1C7

**Maciek Walicht** 

Tel: (416) 566-2287

Email: maciek@baystreetmortgage.ca

Respondent

AND TO: MACIEK WALICHT

3403 Loyalist Drive

Mississauga, ON L5L 4Y1

50 Front Street East, 501 Toronto, ON M5E 1T4

Tel: (416) 566-2287

Email: maciek@baystreetmortgage.ca

Guarantor

AND TO:	OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY
	151 Yonge Street 4th Floor
	Toronto ON M5C 2W7
	Tel: (416) 973-6441
	Email: osbservice-bsfservice@ised-isde.gc.ca
	Email. Ososcivice-osiscivice @iscu-isuc.ge.ca
AND TO:	DEPARTMENT OF JUSTICE CANADA
	Ontario Regional Office
	120 Adelaide Street West, Suite 400
	Toronto, ON M5H 1T1
	Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
AND TO:	HIS MAJESTY THE KING IN RIGHT OF CANADA
	as represented by Ministry of Finance
	Legal Services Branch
	Revenue Collections Branch – Insolvency Unit
	33 King Street West, P.O. Box 627
	Oshawa, ON L1H 8H5
	Email: insolvency.unit@ontario.ca

### Other Secured Creditors:

AND TO:	2198880 ONTARIO LIMITED
	3130 Galbraith Drive
	Mississauga, Ontario L5L 3Y9
AND TO:	2681142 ONTARIO INC.
	3341 Bloor Street West, PO Box 102
	Toronto, Ontario M8X 1E9
AND TO:	ALEXANDER XAVIER BARGIS
	4 Abbitt Crescent
	Georgetown, Ontario L7G 4S4
AND TO:	AMANDA STANLEY
	4 Abbitt Crescent
	Georgetown, ON L7G 4S4
AND TO:	CAESAR ORTEPI
	41 Mapleton Mills Drive
	Schomberg, Ontario L0G 1T0

200 Trowers Road, Unit 3 Woodbridge, ON L4L 5Z7  AND TO: GEORGE BARGIS 4 Abbitt Crescent Georgetown, Ontario L7G 4S4  AND TO: JASVIR SODHI 12540 Sixth Line Limehouse, Ontario L0P 1H0  AND TO: MAXNAT CAPITAL INC.
AND TO:  GEORGE BARGIS  4 Abbitt Crescent Georgetown, Ontario L7G 4S4  AND TO:  JASVIR SODHI 12540 Sixth Line Limehouse, Ontario L0P 1H0
4 Abbitt Crescent Georgetown, Ontario L7G 4S4  AND TO: JASVIR SODHI 12540 Sixth Line Limehouse, Ontario L0P 1H0
4 Abbitt Crescent Georgetown, Ontario L7G 4S4  AND TO: JASVIR SODHI 12540 Sixth Line Limehouse, Ontario L0P 1H0
Georgetown, Ontario L7G 4S4  AND TO: JASVIR SODHI 12540 Sixth Line Limehouse, Ontario L0P 1H0
AND TO: JASVIR SODHI 12540 Sixth Line Limehouse, Ontario L0P 1H0
12540 Sixth Line Limehouse, Ontario L0P 1H0
Limehouse, Ontario L0P 1H0
AND TO: MAXNAT CAPITAL INC.
45 Oxenden Crescent
Toronto, ON M9C 4H5
AND TO: MEHDI KOMEILIAN
17A Cosmo Road
Toronto, Ontario M8X 1Z3
AND TO: MICHAEL OFFIDANI
20 Allison Court
Georgetown, ON L7G 4S4
AND TO: OLYMPIA TRUST COMPANY
125 9 <sup>th</sup> Avenue SE, Suite 2200
Calgary, AB T2G 0P6
AND TO: TAHMIMA HOTAK
6074 Highway 9
Caledon, Ontario L7K 0A8
AND TO: TRUMENCAS LTD.
1131 Deerfield Drive
Kingston, ON K7P 0A4
AND TO: TRUMENCAS LTD.
2206-20 Barrel Yards Blvd.
Waterloo, Ontario N2L 0C3

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### **HOME TRUST COMPANY**

- and - 58 KING STREET EAST HAMILTON LTD. and 2238394 ONTARIO LTD.

Applicant Respondents

Court File No. CV-24-00088153-0000

## ONTARIO SUPERIOR COURT OF JUSTICE

**Proceedings commenced at Hamilton** 

### **NOTICE OF APPLICATION - VOLUME II**

(Returnable January 21, 2025)

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