

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

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

**1871 BERKELEY EVENTS INC., 1175484 ONTARIO INC., 111 KING STREET
EAST INC., 504 JARVIS INC. and SOUTHLINE HOLDINGS INC.**

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**

AFFIDAVIT OF KATHRYN FURFARO
(sworn March 6, 2023)

I, **KATHRYN FURFARO**, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am a Manager in the Financial Restructuring Group of The Toronto-Dominion Bank (“**TD**”), and as such have knowledge of the matters to which I hereinafter depose. To the extent that I do not have direct first-hand knowledge of particular facts or events, I have obtained that information from others and/or from my review of the documentation attached as exhibits, and have indicated the source of that information in my Affidavit. I verily believe the facts hereinafter deposed to are true and correct.

2. I swear this Affidavit to reply to the Responding Affidavit of Douglas Wheler affirmed March 1, 2023.

TD has worked co-operatively with the Debtors

3. TD has supported the Debtors' proposed efforts vis-à-vis the Adjacent Property (as that term is defined in the Responding Affidavit). On September 1, 2022, TD authorized the registration of a postponement of its Security in favour of the section 37 agreement referred to in the Responding Affidavit. A copy of the s. 37 agreement, the postponement of interest executed by TD and the relevant correspondence are collectively attached as **Exhibit "A"**.

4. A parcel register for PIN 21091-0082 (LT), current as of March 6, 2023, indicates that neither the postponement of interest nor the s. 37 Agreement has been registered on title. A copy of the parcel register is attached as **Exhibit "B"**.

5. Since issuing its demands and notices of intention to enforce security on October 27, 2022, copies of which are attached as Exhibit "C", and up until the commencement of this application on February 7, 2023, TD attempted to negotiate a satisfactory go-forward plan with the Debtors, but these efforts were not successful. Although the Debtors have failed to respond to requests to produce information relating to their business operations and obligations, TD has been patient with these Debtors, recognizing that the real property that formed part of its Security vis-à-vis the Debtors had an acceptable liquidation value. However, TD has no obligation to continue to forbear or to provide banking services while its Security continues to deteriorate.

6. In the circumstances, the Debtors have effectively had the benefit of a free forbearance period for the last four months. Despite that, their purported plan for repayment lacks any concrete milestones or commitments. Meanwhile, the defaults persist.

TD had no obligation to release the term deposit to fund CRA's garnishment

7. Mr. Wheler asserts that TD acted improperly by failing to release the Term Deposit (as defined in the Responding Affidavit) to satisfy a CRA Requirement to Pay.

8. As at the date that Mr. Wheler requested that TD release the Term Deposit (October 25, 2022), the Debtors were in default and TD had issued demands.

9. The Term Deposit forms part of the Security. TD is holding the Term Deposit pursuant to the Credit Agreement and an assignment of term deposits and credit balances dated August 26, 2019, a copy of which is attached hereto as **Exhibit "D"**. TD had no obligation to release the funds to pay the CRA Requirement to Pay, nor should the Debtors have had any expectation that CRA would do so.

TD's Security continues to deteriorate

10. As set out in the demand letters issued to the Debtors, there have been several defaults under the Credit Agreements, which defaults persist. The Debtors have ceased use of their operating bank accounts maintained at TD and diverted funds subject to TD's Security to other financial institutions. There has been no deposit activity in the TD bank accounts since October 3, 2022. I attach as **Exhibit "E"** the deposit account transaction history for each of the following bank accounts maintained at TD:

- (a) Account No. 5324928-1968 in the name of 1871 Berkeley Events Inc.;
- (b) Account No. 5355459-1968 in the name of 1871 Berkeley Events Inc.;
- (c) Account No. 5324936-1968 in the name of 1175484 Ontario Inc.;
- (d) Account No. 5362099-1968 in the name of 1175484 Ontario Inc.; and
- (e) Account No. 5332343-1968 in the name of 111 King Street East Inc.

11. The lack of deposit activity is particularly concerning in light of Mr. Wheler's statement in his Responding Affidavit that they have over 105 events booked.

12. Notwithstanding that TD holds security over the real property, TD's Security continues to deteriorate as a result of:

- (a) The Debtors engaging in "double banking" by maintaining an operating account at another financial institution and diverting TD's collateral. In an email dated November 2, 2022, a copy of which is attached as **Exhibit "F"**, the Debtors' counsel advised TD, "*Mr Wheler is still operating a non TD account for his business as until all amended filings are done CRA will not release any garnishees on 1871 Berkeley Events Inc*";
- (b) The continued accrual and non-payment of excess fees at a rate of \$250 per day and totaling \$71,000 as at February 3, 2023. A spreadsheet tracking these fees from October 2022 to February 3, 2023 is attached as **Exhibit "G"**;
- (c) The continued accrual and non-payment of priority payables to, among others, Canada Revenue Agency. As set out in counsel's email attached as Exhibit "F":

1175484 Ont Inc owes HST \$251,662 . [sic] HST \$1,693,245 this amount contains numerous arbitrary assessments and will be reduced substantially when returns are filed, current being worked on. Payroll \$ \$1,274,214 contains some arbitrary assessments but substantial amount outstanding. [emphasis added in bold]

13. In addition to the Requirements to Pay, the statement referred to in paragraph 12(c) constitutes the only information available to TD regarding the state of the Debtors' indebtedness to CRA. Despite requests, the Debtors have not provided any concrete evidence of the amounts owing to CRA, or the Debtors' efforts to resolve the Requirements to Pay.

14. This affidavit is made in support of the within application for the appointment of MSI as Receiver, and for no other improper purpose.

SWORN remotely by Kathryn Furfaro, stated as being in the City of Toronto, in Province of Ontario, before me on March 6, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

DocuSigned by:
Matilda Lici
7CE576E4AA3D4CA

Commissioner for Taking Affidavits
Matilda Lici

DocuSigned by:
Kathryn Furfaro
88431BAE44F14F2...

Kathryn Furfaro

This is Exhibit "A" of
the Affidavit of Kathryn Furfaro
Sworn before me this 6th day of March, 2023

DocuSigned by:
Matilda Lici
7CE576F4AA3D4CA...

A Commissioner, etc.
Matilda Lici

From: Michael Cappabianca
Sent: September 1, 2022 9:28 AM
To: Randy Lebow
CC: Avrom Brown; Kyle Plunkett
Subject: RE: Section 37 Agreement - 301-317 Queen Street East
Attachments: AD re postponement (TD).pdf(49718894.1).pdf

Hi Randy,

We appreciate your efforts, the executed version you provided is sufficient based on the correspondence below.

I confirm the TD postponement is hereby released from escrow – please send us a copy of the registered instrument, once complete.

Kind regards,
Mike

Michael Cappabianca

T 416.865.4639
E mcappabianca@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: Randy Lebow <RLebow@owenswright.com>
Sent: September 1, 2022 8:52 AM
To: Michael Cappabianca <mcappabianca@airdberlis.com>
Cc: Avrom Brown <abrown@GARFINKLE.com>; Kyle Plunkett <kplunkett@airdberlis.com>
Subject: FW: Section 37 Agreement - 301-317 Queen Street East

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Michael, please see attached and below. You can follow the thread. My inclination is to leave the agreement as is and have this matter completed as soon as we are able. In order to proceed, I will need your authority to now release the TD discharge from escrow. Please advise. Ran

Michael, please see attached and below. You can follow the thread. My inclination is to leave the agreement as is and have this matter completed as soon as we are able.

In order to proceed, I will need your authority to now release the TD discharge from escrow.

Please advise.

Randy Lebow

Thomson Reuters®
STAND-OUT LAWYER

Partner | Owens Wright LLP
Direct: 416.848.4707 | Fax: 416.486.3309 | Email: RLebow@owenswright.com
300-20 Holly St., Toronto, ON M4S 3B1 owenswright.com

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This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

From: Matthew Longo <Matthew.Longo@toronto.ca>
Sent: Wednesday, August 31, 2022 5:16 PM
To: Randy Lebow <RLebow@owenswright.com>
Cc: Alan Heisey <heisey@phmlaw.com>; Jacqui Wice <Jacqui.Wice@toronto.ca>; paul azzarello <paul416realestate@gmail.com>; Doug Wheler <dwheler@hotmail.com>
Subject: RE: Section 37 Agreement - 301-317 Queen Street East

Randy,

The execution was completed on Monday and the agreement is attached.

I don't know that slipsheeting is possible in a DocuSign executed document. The integrity of the PDF and the "DocuSignEnvelope ID" is (based on my limited understanding of the technology) what ensures the signatures are valid and it can be relied upon as a true copy of the agreement.
If you have some more experience with this please let me know.

That said, I acknowledge the word-order error.

We could recirculate a corrected version if that is your preference. I view the language (which is included to secure the City's interest and to its benefit) as remaining clear and not necessary for correction. Your call on how to proceed – I have some time tomorrow to work on the revised agreement or the registration.

Matt

Matthew Longo | Solicitor, City of Toronto Legal Services
Planning & Administrative Tribunal Law Section |
55 John Street, 26th Floor Metro Hall, M5V 3C6, Toronto
T: (416) 392-8109 | F: (416) 397-5624 | E: matthew.longo@toronto.ca

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From: Randy Lebow [<mailto:RLebow@owenswright.com>]
Sent: August 29, 2022 11:36 AM
To: Matthew Longo <Matthew.Longo@toronto.ca>
Cc: Alan Heisey <heisey@phmlaw.com>; Jacqui Wice <Jacqui.Wice@toronto.ca>; paul azzarello <paul416realestate@gmail.com>; Doug Wheler <dwheler@hotmail.com>
Subject: RE: Section 37 Agreement - 301-317 Queen Street East

Can we slip sheet page 5 once we have the agreement signed? Page 5 should read:

“...each Owner’s *respective fee simple* interest”

Randy Lebow
Partner | Owens Wright LLP
Direct: 416.848.4707

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

From: Matthew Longo <Matthew.Longo@toronto.ca>
Sent: Monday, August 29, 2022 9:52 AM
To: Randy Lebow <RLebow@owenswright.com>
Cc: Alan Heisey <heisey@phmlaw.com>; Jacqui Wice <Jacqui.Wice@toronto.ca>; paul azzarello

<paul416realestate@gmail.com>; Doug Wheler <dwheler@hotmail.com>

Subject: RE: Section 37 Agreement - 301-317 Queen Street East

Randy,

Your client has signed the agreement and it is with the CFO's office for final execution.

Do the two minor typos you highlighted introduce any ambiguity that would warrant pulling it back?

Not in my view.

- E. The Tribunal issued a final Decision in matter PL161267 on February 5, 2021 approving the **and** Zoning By-law Amendment Application but withheld its Order pending the satisfaction of several conditions, and on August 2, 2022 issued its final Order in the proceedings;
- 5.3 The Owners shall do such things and obtain such discharges, releases or postponements of any interest in or encumbrance of the Site as are required to ensure that this Agreement, once registered, shall have priority over any interest, other than each Owner's **fee respective simple** interest, and such encumbrances as may be accepted by the City Solicitor as permitted encumbrances.

Matt

Matthew Longo | Solicitor, City of Toronto Legal Services

Planning & Administrative Tribunal Law Section |

55 John Street, 26th Floor Metro Hall, M5V 3C6, Toronto

T: (416) 392-8109 | F: (416) 397-5624 | E: matthew.longo@toronto.ca

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From: Randy Lebow [<mailto:RLebow@owenswright.com>]

Sent: August 29, 2022 9:27 AM

To: Matthew Longo <Matthew.Longo@toronto.ca>

Cc: Alan Heisey <heisey@phmlaw.com>; Jacqui Wice <Jacqui.Wice@toronto.ca>; paul azzarello <paul416realestate@gmail.com>; Doug Wheler <dwheler@hotmail.com>

Subject: FW: Section 37 Agreement - 301-317 Queen Street East

Matthew, there are a few clerical items in the attached version you sent me (see yellow highlights) that need to be corrected. Can you please amend and recirculate for signing.

Randy Lebow

Thomson Reuters
STAND-OUT LAWYER

Partner | Owens Wright LLP

Direct: 416.848.4707 | Fax: 416.486.3309 | Email: RLebow@owenswright.com

300-20 Holly St., Toronto, ON M4S 3B1 owenswright.com

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ACKNOWLEDGMENT AND DIRECTION

TO: Owens, Wright LLP

AND TO: Any and all designees of the above

RE: Section 37 Agreement between the City of Toronto and James Gault Holdings Inc., 1606077 Ontario Inc. and 1175484 Ontario Inc. relating to the lands municipally known as 301-317 Queen Street East, Toronto, Ontario being the whole of PINs 21091-0080 (LT), 21091-0081 (LT), and 21091-0082 (LT) (collectively, the "**Property**")

AND RE: The Toronto-Dominion Bank postponement of Charge registered as Instrument No. AT4595583 and related Notices to the Notice of Section 37 Agreement

This will confirm that:

- The undersigned has reviewed the information set out in the draft document(s) attached and confirms that the information contained is accurate;
- You are authorized and directed to execute, deliver and register electronically on behalf of the undersigned the document(s) attached to this Acknowledgment and Direction as well as any other document(s) required to complete the transaction described above;
- You are authorized to amend the attached document(s) as required for the purposes of registration and you are authorized to amend or complete all documents in all other respects provided you have first discussed the amendments with (any of) the undersigned or the undersigned's solicitors;
- The effect of the electronic document(s) described in this Acknowledgment and Direction has been fully explained to the undersigned and the undersigned understands that the undersigned is a party to and bound by the terms and provisions of these electronic document(s) to the same extent as if it had signed these document(s);
- The undersigned is a party named in the electronic document(s) described in this Acknowledgment and Direction and the undersigned has not misrepresented its identity to you; and
- A copy of this Acknowledgement and Direction may be executed and delivered by fax and shall have the same legally binding effect as if it were an original.
- This document may be executed in one or more counterparts, by electronic transmission or otherwise, each of which shall be deemed to be an original and all executed counterparts taken together shall be deemed to constitute one and the same instrument.

This Acknowledgement and Direction may be released by you to Her Majesty the Queen in Right of Ontario as represented by The Director of Land Registration (the "Director") upon request of the Director in the event of any investigation regarding suspected fraudulent or unlawful activity or registration.

*(Remainder of page intentionally left blank
Signatures to follow on next page)*

DATED this 5 day of August, 2022

THE TORONTO-DOMINION BANK

Per: K. Furfaro
Name: Kathryn Furfaro
Title: Manager, Commercial Credit
Financial Restructuring Group

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

Properties

PIN 21091 - 0082 LT
Description PT LT 40 PL 7A TORONTO AS IN CA400212; T/W CA400212; TOGETHER WITH AN EASEMENT OVER LOTS 40-42 PLAN 7A TORONTO, EXCEPT CT47865, CA424766, CT118457, CT463889, CA400212 AS IN AT5769910; CITY OF TORONTO
Address 317 QUEEN ST E
TORONTO

Source Instruments

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
AT4595583	2017 06 13	Charge/Mortgage

Party From(s)

Name THE TORONTO-DOMINION BANK
Acting as a company
Address for Service 2 St. Clair Avenue East
Toronto, ON M4T 2V4

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 CITY OF TORONTO
Acting as a company
Address for Service Toronto City Hall
100 Queen Street West
Toronto ON M5H 2N2
Attention: City Clerk

Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number S.37 AGMT

This document relates to registration number(s) AT4595583, AT4595597, AT5104095, AT5308419, AT5518507

THIS AGREEMENT made this 26 day of August, 2022

BETWEEN

**JAMES GAULT HOLDINGS INC., 1606077 ONTARIO INC.,
and 1175484 ONTARIO INC.**

(collectively the "**Owners**")

OF THE FIRST PART

and

CITY OF TORONTO

(the "**City**")

OF THE SECOND PART

WHEREAS:

- A. The entities comprising the Owners are each the registered owner of certain lands and premises situated in the City of Toronto ("**City**"), in the Province of Ontario, that are collectively municipally known as 301-317 Queen Street East and more particularly described in Schedule A attached to this Agreement (hereinafter called the "**Site**");
- B. To permit the proposed re-development of the Site, the Owners submitted an application for a site-specific amendment to the City's Official Plan and the King-Parliament Secondary Plan (Application No. 16 161250 STE 28 OZ), (the "**Official Plan Amendment Application**"), attached as Schedule B to this Agreement;
- C. To permit the proposed re-development of the Site, the Owners submitted an application for a site-specific amendment to the City's Zoning By-law 569-2013 and the former Toronto Zoning By-law 438-86 in order to increase the permitted height and density (Application No. 16 161250 STE 28 OZ), (the "**Zoning Application**"), attached as Schedule C-1 and Schedule C-2 to this Agreement;
- D. City Council at its meeting of November 8, 2016 through City Council Decision Item TE19.7 refused the applications for the reasons outlined in the staff report under consideration. The Owners appealed the refusal to the Ontario Municipal Board which has subsequently been continued as the Local Planning Appeal Tribunal and the Ontario Land Tribunal (the "**Tribunal**" or "**OLT**");
- E. The Tribunal issued a final Decision in matter PL161267 on February 5, 2021 approving the and Zoning By-law Amendment Application but withheld its Order pending the satisfaction of several conditions, and on August 2, 2022 issued its final Order in the proceedings;
- F. Pursuant to Section 37(1) of the *Planning Act*, as it read the day before Section 1 of Schedule 17 to the *COVID-19 Economic Recovery Act, 2020* came into force, City Council has the power, in a by-law passed under Section 34 of the *Planning Act*, to authorize increases in the density or height of a development otherwise permitted by the applicable zoning, in return for the provision of such facilities, services and matters as are set out in such by-law;
- G. Subsection 37(2) of the *Planning Act*, as it read the day before Section 1 of Schedule 17 to the *COVID-19 Economic Recovery Act, 2020* came into force, requires that a by-law under subsection 37(1) may not be enacted unless the municipality has an official plan that contains provisions relating to the authorization of increases in height and density of development;

- H. The Official Plan contains provisions relating to the authorization of increases in height and density of development, as required by Section 37(2) of the *Planning Act*;
- I. Subsection 37(3) of the *Planning Act*, as it read the day before Section 1 of Schedule 17 to the *COVID-19 Economic Recovery Act, 2020* came into force, provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the density and/or height of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters;
- J. As a condition of the height and density permitted by the Amending By-law for the Site, the Owners have agreed and elected to provide certain facilities, services or matters as permitted by Section 37 of the *Planning Act* in respect of the Site and to enter into this Agreement as required by the Amending By-laws to secure such benefits; and
- K. Pursuant to Section 37(4) of the *Planning Act*, this Agreement may be registered against the Site and the City is entitled to enforce the provisions of this Agreement against the Owner and its successors and assigns, and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the Site.

NOW THEREFORE, in consideration of the sum of TWO DOLLARS (\$2.00) now paid by each of the parties to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties to this Agreement hereby covenant and agree as follows:

1. Definitions

- 1.1 In this Agreement, the following terms shall have the following meanings assigned hereto:
 - (a) **"Above-Grade Building Permit"** means a Building Permit issued by the City that permits the construction of a building or structure, or portion thereof, above-grade and for greater clarity does not include any shoring, piling, excavation or foundation permit (conditional or otherwise), or a demolition permit to demolish all or part of a building existing on the Site issued pursuant to Section 8 of the *Building Code Act, 1992*;
 - (b) **"Amending By-laws"** means the proposed zoning by-laws amending City of Toronto zoning by-law No. 569-2013, substantially in the form and having the content attached hereto as Schedule "B";
 - (c) **"Building Code"** means Ontario Regulation 332/12, as amended, superseded or replaced from time to time;
 - (d) **"Building Code Act, 1992"** means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, superseded or replaced from time to time;
 - (e) **"Building Construction Price Index"** means the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan Area, measuring change over time in the prices that contractors charge to construct non-residential buildings as reported quarterly by Statistics Canada in Building Construction Price Indexes Table: 18-10-0135-01, or its successor;
 - (f) **"Building Permit"** means a permit, issued pursuant to section 8 of the *Building Code Act 1992* to construct the Development or a portion thereof, and, unless otherwise specified, includes a conditional building permit, a permit for excavation or shoring, a foundation permit;
 - (g) **"Chief Building Official"** means the Chief Building Official and Executive Director, Toronto Building for the City, appointed pursuant to Section 3 of the *Building Code Act, 1992*, and shall include his or her designates;

- (h) “**Chief Engineer**” means the Chief Engineer and Executive Director Engineering and Construction Services, or his or her designates;
- (i) “**Chief Financial Officer and Treasurer**” means the Chief Financial Officer and Treasurer for the City and shall include his or her designates;
- (j) “**Chief Planner**” means the Chief Planner and Executive Director, City Planning Division and shall include his or her designates;
- (k) “**City**” means the City of Toronto;
- (l) “**City of Toronto Act, 2006**” means the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Schedule “A”, as amended, superseded or replaced from time to time;
- (m) “**City Solicitor**” means the City Solicitor for the City and shall include his or her designates;
- (n) “**Council**” or “**City Council**” means the Council of the City;
- (o) “**Construction Management Plan**” has the meaning set out in Section 7 of this Agreement;
- (p) “**Construction Price Index**” means the Non-Residential Construction Price Index for the Toronto Census Metropolitan Area”, reported quarterly by Statistics Canada in Building Construction Price Statistics Table 18-10-0135-01 or its successor;
- (q) “**COVID-19 Economic Recovery Act, 2020**” means the *COVID-19 Economic Recovery Act, 2020*, S.O. 2020, c. 18;
- (r) “**Development**” means the development of the Site in accordance with the Amending By-laws, Site Plan Approval and Site Plan Agreement for such lands pursuant to Section 114 of the *City of Toronto Act*, all to the satisfaction of the Chief Planner;
- (s) “**Development Charges**” means those charges under the City’s development charges bylaw passed from time to time, pursuant to the *Development Charges Act*;
- (t) “**Development Charges Act, 1997**” means the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended, re-enacted or substituted from time to time;
- (u) “**Development Review Process**” means the Site Plan Application and Site Plan Approval process as set out under section 114 of the *City of Toronto Act, 2006*;
- (v) “**Excise Tax Act**” means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended, re-enacted or substituted from time to time;
- (w) “**Final Confirmation Date**” has the meaning set out in Section 8.1(b) of this Agreement;
- (x) “**Final Disposition**” has the meaning set out in Section 8.1(a) of this Agreement;
- (y) “**Final Statement of Approval**” means written confirmation from the Chief Planner that all conditions required for the approval of plans and drawings provided by the Owners pursuant to the Development Review Process have been satisfied and said plans and drawings are approved, to the satisfaction of the Chief Planner;

- (z) “**Financial Security**” means a Letter of Credit, or a certified cheque, on such terms and for such amount as more specifically provided herein and in a form satisfactory to the Chief Financial Officer and Treasurer;
- (aa) “**Functional Servicing Report**” means the Functional Servicing & Stormwater Management Report, dated January 21, 2021, prepared by Counterpoint Engineering Inc., subject to modifications or revisions thereto which are satisfactory to the Chief Engineer;
- (bb) “**General Manager, Transportation**” means City’s General Manager, Transportation Services and shall include his or her designate;
- (cc) “**Land Titles Act**” means the *Land Titles Act*, R.S.O. 1990, c. L.5, as amended, re-enacted or substituted from time to time;
- (dd) “**Letter of Credit**” means an irrevocable unconditional standby letter of credit, in a form and from a Canadian Chartered Bank, satisfactory to the Financial Officer;
- (ee) “**Notice of Final Confirmation**” has the meaning set out in Section 8.7 of this Agreement;
- (ff) “**Notice of Termination**” has the meaning set out in Section 8.4(a) of this Agreement;
- (gg) “**Official Plan**” means the official plan of the City;
- (hh) “**Outside Date**” means the day that is three (3) years from the date of this Agreement;
- (ii) “**Owners**” means collectively, James Gault Holdings Inc., 1606077 Ontario Inc., and 1175484 Ontario Inc. and includes their respective successors in title to the Site and “**Owner**” means any one of them;
- (jj) “**Parties**” means the Owners and the City, and “**Party**” means either of them;
- (kk) “**Permitted Amendments**” has the meaning set out in Section 8.2;
- (ll) “**Permitted Encumbrances**” means such encumbrances, if any, as may be accepted by the City Solicitor, in his or her sole discretion, as permitted encumbrances to the registration of this Agreement;
- (mm) “**Planning Act**” means the *Planning Act*, R.S.O. 1990, c. P.13, as amended, superseded or replaced from time to time;
- (nn) “**Registry Act**” means the *Registry Act*, R.S.O. 1990, c. R.20, as amended, superseded or replaced from time to time;
- (oo) “**Site**” has the meaning given to it in Recital A;
- (pp) “**Site Plan Agreement**” means an agreement between the owners of the Site and the City as a condition of Site Plan Approval;
- (qq) “**Site Plan Approval**” means issuance of a Final Statement of Approval;
- (rr) “**Temporary Sales Centre**” means a building structure, facility or trailer on the Site used exclusively for the initial sale and/or initial leasing of dwellings units to be erected on the Site;
- (ss) “**Tier 1, Toronto Green Standard**” means the Tier 1 performance measures of the Toronto Green Standard, as adopted by City Council, applicable at the time a Site Plan Application is submitted to the City for each Building of the Development;

- (tt) **“Tier 2, Toronto Green Standard”** means the Tier 2 performance measures of the Toronto Green Standard, as adopted by City Council, applicable at the time a Site Plan Application is submitted to the City for each Building of the Development;
- (uu) **“Title Opinion for Registration of this Agreement”** means a title opinion for the purposes of registration of this Agreement deemed acceptable to the City Solicitor;
- (vv) **“Upward Indexing”** means the upward indexing of any payment, specified dollar amount or any amount to be secured by a Letter of Credit or other Financial Security referenced in this Agreement indexed upwardly in accordance with the Building Construction Price Index as set out in Section 9 of this Agreement; and
- (ww) **“Ward Councillor”** means the local councillor of the City ward within which the Site is located.

2. Schedules

- 2.1 The following Schedules form part of this Agreement:

- Schedule “A” - Legal Description of the Site
- Schedule “B” - Amending By-law to By-law 569-2013

3. Confirmation of Recitals

- 3.1 The Parties confirm and agree that the recitals at the commencement of this Agreement are true, both in substance and in fact.

4. Agreement to Proposed Amending By-laws

- 4.1 The Owners hereby consent and agree to the form and substance of the Amending By-law. The Owners have elected to provide the facilities, services and matters set out in the Zoning By-law Amendment included at Schedule “B” which are required in return for the increase in height and/or density of the Development on the Site and this Agreement is being entered into to secure the same.

5. Ownership and Registration of Agreement

- 5.1 The Owners warrant and represent that, at the date of execution of this Agreement, they are registered and beneficial owner in fee simple of their respective portion of the lands comprising the Site.
- 5.2 The Owners consent to and agree that, following execution, at its sole cost and expense, that this Agreement, or notice thereof, shall be registered against title to the Site by the City, or by the Owners if agreed to by the City to the satisfaction of the City Solicitor.
- 5.3 The Owners shall do such things and obtain such discharges, releases or postponements of any interest in or encumbrance of the Site as are required to ensure that this Agreement, once registered, shall have priority over any interest, other than each Owner’s fee respective simple interest, and such encumbrances as may be accepted by the City Solicitor as permitted encumbrances.
- 5.4 The Owners shall, at their sole expense, provide the City with a title opinion addressed to the City from their solicitors, being solicitors in good standing in the Province of Ontario, which opinion the Owners acknowledge and agree may be relied upon by the City, wherein such solicitor opines to the City that:

- (a) the Owners are registered owners in fee simple of their respective portion of the lands comprising the Site;
- (b) this Agreement, once registered on title to the Site, will have the priority over any interest other than each Owner's respective fee simple interest and such encumbrances as may be accepted by the City Solicitor as permitted encumbrances; and
- (c) with respect to any permitted encumbrance, that there are no liens, charges, mortgages or other security interests or options to purchase, leases or options to lease, or similar rights contained therein which could result in the exercise of rights and remedies by the holders thereof such that the City could not exercise its rights or enforce the provisions of this Agreement against the party or parties in possession or control of the Site.

COMMUNITY BENEFITS PURSUANT TO S. 37 OF THE PLANNING ACT

6. Financial Contributions to Public Facilities, Services or Matters

- 6.1 Prior to the issuance of the first Above-Grade Building Permit for the Site, the Owners shall provide a cash contribution to the City in the amount of ONE MILLION FIFTY THOUSAND DOLLARS (\$1,050,000.00) in Canadian funds (herein referred to as the "**Cash Contribution**"), to be allocated in the following matter for the following purposes:
 - (a) \$525,000.00 towards capital improvements for existing or new affordable housing within Ward 13.
 - (b) \$525,000.00 toward local streetscape, park and recreation centre improvements in Ward 13, including but not limited to Moss Park and John Innes Community Centre, in consultation with the local Councillor.
- 6.2 The Cash Contribution identified in Section 6.1 shall be paid in a form satisfactory to the City, and be subject to Upward Indexing calculated from the date of this agreement until the date payment is provided, in accordance with Section 9 of this Agreement.
- 6.3 In the event that the Cash Contribution identified in Section 6.1 have not been used for the intended purpose within three (3) years after the date the Amending By-laws come into full force and effect, the cash contribution may be re-directed for another purpose or purposes, at the discretion of the Chief Planner in consultation with the Ward Councillor, provided that the purpose or purposes are identified in the Official Plan and will benefit the community in the vicinity of the Site.

ADDITIONAL MATTERS

The following additional matters are secured in this Agreement as a legal convenience to support the Development but are not characterized as community benefits under section 37 of the *Planning Act*.

7. Site Plan Approval

- 7.1 The Owners shall construct and maintain the Development in accordance with Tier 1, Toronto Green Standard, and the Owners will be encouraged to achieve Tier 2, Toronto Green Standard, or higher, where appropriate.
- 7.2 The Owners acknowledge and agree that the garbage pickup location and site configuration relies on coordinated waste pickup with the property at 132 Berkeley St. (the "Concert Building"), and was determined to be appropriate by the City based on the draft report from BA Group dated September 25, 2020 and on file with the City, as well as the satisfaction of the following conditions which the Owners hereby agree to implement:

- (a) As a condition of site plan approval the Owner will install truck sensors in the laneway to the south of the site and warning lights within the Concert Building to warn vehicles when a garbage truck is present on site;
 - (b) As condition of site plan approval the Owners shall grant an easement to the Concert Building for the truck turnaround bay as depicted in the BA Group draft report dated September 25, 2020;
 - (c) The Owners acknowledge and agree that the vehicular access from Queen Street East will be right-in/right-out ("RIRO") only, and as a condition of site plan approval the Owners will be required to install signage, infrastructure, or take any measures to ensure that the RIRO is enforceable by the City and Toronto Police Services;
 - (d) The Owners agree to coordinate with the owner of the Concert Building to ensure that there will be no illegal parking in the private lane that would impede operation of waste pick-up. The City agrees to consider any requests made by the Owners and the owner of the Concert Building to assist with vehicle removal in accordance with the Municipal Code.
- 7.3 Where Section 7.2 relies on the Owners obtaining permission, consent, or modification to the Concert Building, the Owners shall be solely responsible for obtaining such consent from the owner of the Concert Building and maintaining the matters in 7.2 in perpetuity.
- 7.4 Prior to any Site Plan Approval on the Site the Owners acknowledge and agree that they shall provide an acceptable Conservation Plan and enter into a Heritage Easement Agreement with the City of Toronto in respect of the Berkeley Church located at 315-317 Queen Street East.

8. Completion & Unwinding

- 8.1 For the purposes of this Agreement:
- (a) **"Final Disposition"** means the final disposition of the Amending By-laws with all applicable appeal periods having lapsed with no appeals, referrals, applications, and/or applications to court having been launched or with any such appeals, referrals, applications, and/or applications to court having been finally determined by the entry of an order of the Local Planning Appeal Tribunal or court which finally disposes of the matter.
 - (b) **"Final Confirmation Date"** means:
 - (i) the second (2nd) business day, other than a Saturday, following the date of the Final Disposition if the Final Disposition is determined in favour of the Amending By-laws so that a Building Permit(s) would be issued by the Chief Building Official for the City permitting the construction of the Development as contemplated by the Amending By-laws to the heights and densities as permitted thereunder upon the Owners obtaining all requisite approvals, submitting the appropriate applications for a Building Permit(s), and paying the requisite application fees, or
 - (ii) in the event the Final Disposition would permit the delivery of a Notice of Termination under Section 8.6 of this Agreement, then the expiry of the period for such delivery if no Notice of Termination is delivered; or
 - (iii) such other date as the Parties may agree.
- 8.2 **"Permitted Amendments"** means any amendments made to the Amending By-laws prior to the first to occur of the Final Confirmation Date and the Outside Date unless a Party notifies the other Parties in writing within forty-five (45) days of the

date on which the said amendments are made or passed, that the said amendments are not acceptable, and

- 8.3 “**Outside Date**” means the day that is three (3) years from the date of this Agreement.

No Approval of Zoning By-law Amendments

- 8.4 If the Final Disposition does not result in the approval of the Amending By-laws as set out in Section 8.1(b)(i) of this Agreement but instead results in:

- (a) a rejection of the Amending By-laws or in substantial modifications or amendments to the Amending By-laws which are not Permitted Amendments, any Party finding the Final Disposition to be unacceptable shall have ninety (90) days from the date of the Final Disposition to deliver to the other Party a notice in writing terminating this Agreement (the “**Notice of Termination**”), or
- (b) a reduction in height or density not acceptable to the Owners, the Owners in its sole discretion, shall have ninety (90) days from the date of the Final Disposition to deliver to the City a Notice of Termination, and

provided that the Owners may not deliver the Notice of Termination if the Owners have obtained, or have applied for and could compel the issuance of, a Building Permit or have obtained a Heritage Permit for all or any part of the Site, excluding permits for repairs, maintenance and other usual and minor works acceptable to the Senior Manager, HPS.

Termination of Agreement

- 8.5 Unless the Parties otherwise agree, the termination of this Agreement shall occur on the expiry of ninety (90) days from the delivery of the Notice of Termination. Without fettering City Council in any way in the exercise of its discretionary powers, on or after the delivery of a Notice of Termination by any Party, City Council may repeal or amend the Amending By-laws with the object of restoring the City’s zoning by-law provisions applicable to the Site to the state they were in on the day immediately prior to the date of the passing of the Amending By-laws, and the Owners covenant and agree not to oppose or cause to be opposed, the repeal of the Amending By-laws. Upon or after the termination of this Agreement pursuant to this Section, the Owners, at their expense, may expunge registration of the agreements from title and the City, shall co-operate with requests of the Owners in such respect, including the execution of releases in suitable form for registration.

Notice of Termination

- 8.6 If the Final Confirmation Date has not occurred by the Outside Date, then unless such date has been extended by consent in writing of all of the Parties, a Notice of Termination may be given by any Party to the other Parties within ninety (90) days of the Outside Date, provided that all of the termination provisions of Sections 8.4 and 8.5 of this Agreement shall apply *mutatis mutandis*; provided that the rights conferred by this section 8.6 shall not accrue where a hearing that would result in a Final Disposition has been completed but a Final Disposition has yet to issue.

Notice of Final Confirmation

- 8.7 Any Party may, at any time after it believes the Final Confirmation Date has occurred, deliver to the other Parties a written notice (the “**Notice of Final Confirmation**”), which shall:
- (a) identify the date that the Party asserts is the Final Confirmation Date, and
 - (b) provide a short explanation of the facts supporting that assertion.

Confirmation on Acceptance of Final Confirmation Date

- 8.8 The Party to whom the Notice of Final Confirmation has been delivered shall, within forty-five (45) days of such delivery, deliver to the other Parties:
- (a) a written notice confirming its acceptance that the Final Confirmation Date has occurred, or
 - (b) a written notice disputing that the Final Confirmation Date has occurred, together with an explanation of the facts supporting its dispute.

No Acceptance of Final Confirmation Date

- 8.9 In the event that a Party to whom the Notice of Final Confirmation has been delivered provides neither the written confirmation nor the written notice of dispute contemplated by Section 8.8 of this Agreement, within forty-five (45) days, that Party shall be deemed to have accepted that the Final Confirmation Date has occurred as set out in the Notice of Final Confirmation.

Acknowledgment of Final Confirmation Date

- 8.10 The Parties agree that, upon the occurrence of the Final Confirmation Date, and at the written request of any of the Parties, each Party shall execute in registrable form an acknowledgement that the Final Confirmation Date has occurred and such acknowledgement shall be registered on title to the Site at the Owners' expense.

9. Upwards Indexing

- 9.1 The amounts of payments to be made to the City, the amounts of the Letters of Credit or certified cheques to be provided to the City, and references to specified dollar amounts in this Agreement shall, where indicated, be increased by Upwards Indexing in accordance with the applicable Building Construction Price Index, calculated from the date that this Agreement is executed by the Parties. In the case of multiple financial payments being required to be paid to the City over time, the amount of each such payment shall be increased up to the date of each such payment to the City, and if a Letter of Credit or certified cheque is to be provided and where it is indicated that the amount of such Letter of Credit or certified cheque is subject to Upwards Indexing, the amounts of each such Letter of Credit or certified cheque shall be increased up to the date of provision of such Letter of Credit or certified cheque to the City.
- 9.2 If the amount secured by a Letter of Credit or a certified cheque is subject to Upwards Indexing then the Owners agree to provide the City with either an amended Letter of Credit for the total indexed amount or with a supplementary Letter(s) of Credit or certified cheques(s) for any difference between the face value of the original Letter of Credit or certified cheque provided to the City and the Upwardly Indexed amount then outstanding and owing to the City. The supplementary Letter of Credit or certified cheque will be provided to the City within twenty (20) days following the issuance of a written demand for payment sent to the Owner by a City official. Any provisions related to the release of the original Letter(s) of Credit or certified cheque(s) to the Owners shall apply mutatis mutandis to any replacement or supplementary Letter(s) of Credit or certified cheque(s) provided.
- 9.3 The Owners acknowledge and agree the Financial Security received by the City in the form of a certified cheque will be placed in a non-interest bearing account.

10. Taxes

- 10.1 The Owners acknowledge and agree to pay, and fully indemnify the City in respect of any taxes, including the Excise Tax Act (harmonized sales tax) and/or registration fees, associated with the benefit to the City of any facility, service, matter or thing referenced in this Agreement to be provided by the Owners and provided to the City for the benefit of the City by the Owners, provided,

- (a) such indemnity shall be net of any rebate available to the City; and
- (b) the Owners may defend against the imposition of such taxes in the name of the City provided that the Owners may, in such event, elect to pay and satisfy any such claim for taxes and in such event the City shall inform the Owners fully of such claim for taxes and shall offer the Owners every co-operation in the defence of said claim for taxes

11. Development Charges and Park Levy

- 11.1 The City and the Owners acknowledge and agree that none of the facilities, services and matters to be provided to the City pursuant to this Agreement constitute Development Charges or services to which Development Charges are applicable nor do they qualify as a Development Charge credit under the Development Charges By-law.
- 11.2 The Owners agree to pay applicable Development Charges with respect to water, sanitary sewers, roads and storm water management services in accordance with the current Development Charges By-law.
- 11.3 The Owners agree to ensure that the persons who first purchase all or any part of the Site are informed at the time of transfer, of all the Development Charges related to the Development.
- 11.4 Any outstanding balance respecting a Development Charge as calculated is to be paid in full on the date a Building Permit is issued in relation to a building or structure on land to which a Development Charge applies and shall be calculated at the rate in effect on the date the Building Permit is issued in accordance with the Development Charges By-law.
- 11.5 None of the facilities, services and matters to be provided by the Owners pursuant this Agreement shall constitute a parks levy payment, nor a park land conveyance pursuant to section 42 of the *Planning Act*.
- 11.6 Any payments, conveyances or contributions made to the City pursuant to this Agreement are separate and distinct from any other payment the Owners may be liable for pursuant to the *Planning Act*, or other applicable legislation, including but not limited to the aforesaid Development Charges or park levy payments pursuant to section 42 of the *Planning Act*, as and the *Development Charges Act, 1997*. The Owners further acknowledge that the Owners may be required to make such other payments or pay such other charges as may be applicable in addition to the contributions made pursuant to this Agreement.

12. Fair Wage Policy and Labour Trades Contractual Obligations in the Construction Industry

- 12.1 The Owners shall adhere to and comply with any collective agreements to which the City is bound or becomes bound in the construction industry, as defined under the Labour Relations Act, with respect to any work performed for the City or any work performed on City lands.
- 12.2 The Owners shall adhere to and comply with both the City's "Fair Wage Policy" and "Labour Trades Contractual Obligations in the Construction Industry requirements (the "**FW and LTCO Requirements**)", as same may be amended, throughout any demolition and until completion of all demolition and construction work pursuant to this Agreement, and shall provide such evidence of compliance as the City may reasonably request from time to time.
- 12.3 The Owners acknowledge that the City has no discretion in setting wage rates and is required to use union labour for certain trades performing work on behalf of the City. The City's Fair Wage Offices renders decisions as the definition of "work" and the application of the FW and LTCO Requirements with respect to all projects. The Owners shall contact the City's Fair Wage Office prior to commencement of any construction or demolition work, to obtain copies of the most current FW and LTCO

Requirements and applicable information for the purpose of pre-qualifying proposed contractors, as determined by and in accordance with the then current usual practices of the City's FW and LTCO Requirements.

- 12.4 The Owners indemnify the City with respect to any costs, damages, loses, and awards that may be incurred by it as a result of a breach by the Owner of this Section, including, without limitation, any losses, damages, negotiated settlement resulting in payment, or award resulting from a grievance filed against the City for any of the collective agreements to which the City is bound in the construction industry. The Owner shall pay any such amount(s), incurred by the City, within fifteen (15) calendar days of written demand therefor from the City.
- 12.5 The City shall be permitted to attend the mediation or hearing of a grievance subject to any order to the contrary by the arbitrator or Vice Chair of the Ontario Labour Relations Board hearing the grievance referral.

13. Building Official May Refrain From Issuance of Building Permit

- 13.1 The Owners acknowledge and agree that despite the *Building Code Act, 1992* or any other statute of the Province of Ontario, the Chief Building Official shall not issue, or be required to issue, nor shall the Owners demand or be entitled to receive, any Building Permit while the Owners are in default of their obligations under this Agreement.
- 13.2 The Owners acknowledge and agree that the provisions of this Section 13 may be pleaded by the City as an estoppel against a plaintiff/defendant by counterclaim in any proceedings of any nature or kind whatsoever against the Chief Building Official or the City or any of its employees or officials, as a result of the non-issuance or revocation of a Building Permit.
- 13.3 The Owners agree that wherever the provisions of this Agreement permit the City to refuse to process or issue a Building Permit such provisions shall apply equally to the Chief Building Official.

14. Notices

- 14.1 Any notices required or desired to be given to either of the Parties hereto in connection with this Agreement or arising here from, shall be in writing and delivered to the intended Party at the following addresses:

To the Owners:

James Gault Holdings Inc.
301 Queen Street East
Toronto, ON M5A 1S7

Attention: Douglas Wheler
Email: dwheler@hotmail.com

1606077 Ontario Inc.
303-311 Queen Street East
Toronto, ON M5A 1S7

Attention: Douglas Wheler
Email: dwheler@hotmail.com (mailing address)

1175484 Ontario Inc.
317 Queen Street East
Toronto, ON M5A 1S7

Attention: Douglas Wheler
Email: dwheler@hotmail.com

With a copy to:

Owens Wright LLP
300-20 Holly Street
Toronto, ON M4S 3B1

Attention: Randy H. Lebow
Email: rlebow@owenswright.com

To the City:

City of Toronto
c/o City Clerk
100 Queen Street West
13th Floor, West Tower, City Hall
Toronto, ON M5H 2N2

Facsimile: (416) 392-6990

With a copy to:

City of Toronto, Legal Services Division
55 John Street
26th Floor, Metro Hall
Toronto, ON M5V 3C6

Attention: City Solicitor
Facsimile: (416) 397-5624

- 14.2 Notice given pursuant to Section 14.1 will be given by personally delivery, prepaid registered mail, by facsimile transmission or by email transmission. Notice will be deemed to have been received by a Party on the date of personal delivery and email transmission, on the third day after its mailing by prepaid registered mail or on the next business day (excluding Saturdays, Sundays and statutory holidays) following the date of facsimile transmission (provided confirmation of transmission is produced at the time of such transmission to the intended party).

- 14.3 Either Party may by written notice sent to the other Party hereto, in accordance with the foregoing provisions, change the address, email address or facsimile number to which its notices are to be delivered or transmitted, as the case may be.
- 14.4 In the event of any interruption in the postal service, notice shall be given to any Party at its respective address as set out herein by personal delivery, email transmission or facsimile transmission in the manner as set out herein.

15. Intention of the Parties

- 15.1 Notwithstanding any other provisions of this Agreement, the Parties hereto agree with each other that none of the provisions of this Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter either the City Council which authorized the execution of this Agreement or any of its successors in the exercise of any of City Council's discretionary powers. Without limiting the generality of the foregoing, such discretionary powers include the power to pass, amend or repeal by-laws; to adopt, amend or rescind official plan amendments; or any discretionary power that the City has under law to approve or withhold approval to permit any demolition, relocation, construction, alteration, remodeling or any other things or act which may materially affect any building, structure or part thereof that is the subject of this Agreement; to impose conditions on any approval to permit any demolition or any building on the Site and to approve or refuse to grant Site Plan Approval and any conditions thereto and to approve or withhold approval to permit the conversion to condominium of any rental unit on the Site, and to impose conditions on any approval respecting condominium conversion.
- 15.2 The Parties acknowledge and agree that nothing herein shall be construed as purporting to limit the authority of the OLT to make amendments to the Amending By-laws affecting the Site on appeal.

16. Enurement

- 16.1 The Parties hereto agree that the covenants, easements, restrictions, rights, duties, provisos, conditions and obligations herein contained shall enure to the benefit of and be binding upon the City and its successors and assigns.
- 16.2 The Owners agree that the covenants, easements, restrictions, rights, duties, provisos, conditions and obligations herein contained, as they apply to the Owners, shall run with the Site and shall enure to the benefit of and be binding upon the Owner and its successors and assigns, including a future condominium corporation and including all subsequent owners of all or any portion of the Site on a joint and several basis.
- 16.3 Notwithstanding anything in this Agreement to the contrary, in the event the City acquires any part of the Site for any municipal purpose, including but not limited to road widenings, the City shall not be bound by this Agreement as an Owner, nor as a successor or assign of an Owner.
- 16.4 The Owners agree that any document relating to the conveyance of any of the lands included in the Site shall not contain any provision that the person or corporation acquiring the lands is not required to comply with the terms and provision of this Agreement, or that is contrary to the provisions hereof.

17. Jurisdiction to Enter into this Agreement

- 17.1 This Agreement is entered into pursuant to subsection 37(3) of the *Planning Act*, as it read on the day before Section 1 of Schedule 17 to the *COVID-19 Economic Recovery Act, 2020* came into force. If this Agreement is determined by a Court to be illegal or beyond the power and jurisdiction of the City, and appeals from such decision have been exhausted, the Owners and the City agree that the Amending By-laws may be repealed by the City, and the Owners covenant and agree not to oppose or question or cause to be opposed or questioned, the repeal thereof.

- 17.2 Notwithstanding Section 17.1, if any individual provision(s) of this Agreement is or are determined by a Court to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby, such provision shall be severed from this Agreement if the Owners and the City agree, and the remainder of the Agreement shall continue in full force and effect, mutatis mutandis; and in such case, the Owners and the City agree to negotiate in good faith to amend this Agreement in order to implement the intentions as set out herein. If the Owners and the City cannot agree that such provision or provisions shall be severed, the City may repeal the Amending By-laws and the provisions of Section 17.1 shall apply to such repeal.
- 17.3 It is agreed and acknowledged by the parties hereto that each is satisfied as to the jurisdiction of the City to pass the Amending By-laws and each party hereto is satisfied as to the jurisdiction of the other to enter into this Agreement. The Owners therefore covenant and agree that it shall not question the jurisdiction of the City to enter into this Agreement, nor question the legality of any portion thereof, and likewise the City agrees it shall not question the jurisdiction of the Owners to enter into this Agreement nor question the legality of any portion hereof. The parties hereto, their successors, assigns, lessees and sub-lessees are and shall be estopped from contending otherwise in any proceeding before a Court.
- 17.4 Wherever there is in this Agreement a reference to certain acts being performed or events occurring prior to the issuance of a Building Permit or Demolition Permit for all or any part of the Site then with respect to any refusal by the Chief Building Official to issue a Building Permit or Demolition Permit as a result of the non-performance of such acts or non-occurrence of such events, the Owners agree that they shall not commence any proceedings of any nature or kind whatsoever against the Chief Building Official, the City or any of its employees or officials, for the issuance of such Building Permit or Demolition Permit and that this may be pleaded by the City as an estoppel against the Owner in any such proceedings taken by the Owners. This shall not, however, be interpreted as preventing proceedings for an interpretation by the Courts as to whether or not the requirements of this Agreement with respect to the performance of such acts or the occurrence of such events have been met.

18. Future Modifications to this Agreement

- 18.1 No waiver or modification of the terms of this Agreement shall be valid unless in writing and signed by the City.
- 18.2 This Agreement may be amended from time to time without the consent or agreement of the owners of any units located within any condominium corporation registered against any or all of the Site and the Owner agrees that any such amendment shall not relieve or release any such owner of a condominium unit from the provisions of this Agreement.
- 18.3 The Parties acknowledge that it is possible that the City and subsequent owners may wish to modify this Agreement insofar as it relates to a component of the Site without the consent of each of the other owners of the remainder of the Site or portions thereof and to that end the Owners agree that this Agreement may be amended by the City and a subsequent owner in respect of any one component of the Site without the consent or agreement of the owner of any other component of the Site.

19. Force Majeure

- 19.1 Notwithstanding anything in this Agreement to the contrary, and subject to Section 19.2, if the Owners or the City is *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, fire, hurricane, tornado, flood, explosion or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then

performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled, without being in breach of this agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.

- 19.2 Nothing in Section 19.1 shall operate to excuse the Owners from prompt payment of all sums required to be paid to the City pursuant to the terms of this Agreement and prompt provision of any Financial Security required to be provided to the City pursuant to the terms of this Agreement.

20. Enforcement

- 20.1 The Owners agree that the facilities, works and matters required by this Agreement shall be provided and maintained by the Owners at their sole risk and expense and to the satisfaction of the City. In addition, the Owners agree that upon failure by it to do any act that is required by this Agreement, the City may, in addition to any other remedy under this Agreement, enter upon the Site if necessary and do the said act at the Owners' expense and collect the cost in like manner as municipal taxes as provided for in section 386 of the *City of Toronto Act, 2006*.
- 20.2 No remedy herein conferred upon or reserved to the City shall exclude any other remedy, but each remedy shall be cumulative and in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute.
- 20.3 The Owners agree that wherever the provisions of this Agreement permit the City to refuse to process a Building Permit or Demolition Permit such provisions shall apply equally to the City's Chief Building Official.
- 20.4 The Owners acknowledge and agrees that the provisions of this Section may be pleaded by the City as an estoppel against a plaintiff/defendant by counterclaim in any proceedings of any nature or kind whatsoever against the Chief Building Official or the city or any of its employees or officials, as a result of the non-issue or revocation of a Building Permit or a Demolition Permit.
- 20.5 The failure of the City at any time to require performance by the Owners of any obligation under this Agreement shall not constitute a waiver by the City to require full and complete performance of such obligation, or any other obligation of the Owners under this Agreement, and shall in no way affect the City's rights thereafter to enforce such obligation, nor shall any such failure or decision be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.

21. Insurance

- 21.1 The Owners agree to take out and thereafter maintain, at its expense, commercial general liability insurance acceptable as to form, limits and conditions to the City's Insurance and Risk Management Section for a limit of not less than \$10,000,000.00 per occurrence (such limit to be increased from time to time to reflect an amount which would be maintained by a prudent owner as determined by the City) covering possible damages, losses, claims and expenses for or in connection with any personal injury, death or property damage that might be incurred, until such time as the appropriate City official no longer requires the Owners to maintain such insurance.
- 21.2 Such liability insurance policy shall include the City as an additional insured and shall contain a cross-liability and severability of interest clause and include contractual liability coverage. Such liability insurance policy shall contain a clause providing that the insurer will not cancel or refuse to renew the said insurance without first giving the City thirty (30) days prior written notice thereof. The Owners shall supply the City with satisfactory evidence of such insurance upon request by the City, and a certificate of insurance shall be remitted to the Chief Planner within thirty (30) days of issuance and evidence of continuance shall be remitted to the

City at least thirty (30) days prior to the expiration of any insurance policy. The Owners shall provide the City with a copy of the insurance policy upon request.

22. Indemnification

- 22.1 The Owners will save, defend and keep harmless and fully indemnify the City and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the City, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the City, its elected officials, officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the fulfilment by the Owners of the obligations of the Owners under this Agreement including the default or breach by the Owners of its obligations under this Agreement or by reason of any negligence or wilful default of the Owners, its officers, employees, agents or persons acting under its direction in connection with the Owners' obligations hereunder. The Owners will pay to the City and to each such elected official, officer, employee or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the City or by any of its elected officials, officers, employees and agents in consequence of any such action, suit, claim, lien, execution or demand and any monies paid or payable by the City or any of its elected officials, officers, employees or agents in settlement of or in discharge or on account thereof. Such indemnity shall include, but not be limited to, any loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the City as a result of the environmental remediation in respect of the Site, or failure to perform the same, including any arising from or in any way connected with any contaminant left on or below the Site or created as a result of the development of the Site, or the construction of services. The Owners release the City and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which could be brought against or made upon the City its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the Owners by reason of, or on account of, or in consequence of the fulfilment of their respective obligations or exercise of their respective powers under this Agreement, provided, however, that such release shall not apply to any loss, costs, charges, damages, liens and expenses incurred by the Owners arising from the gross negligence and/or wilful misconduct of the City, its officers, employees, agents or persons for whom it is responsible in law. Any amounts owing to the City pursuant to the obligation of the Owners to indemnify the City pursuant to the terms of this Agreement may be collected by the City, in addition to any other remedies it may have, as taxes with all such amounts to be payable as directed by City Council pursuant to section 386 of the *City of Toronto Act, 2006*.
- 22.2 Notwithstanding anything hereinbefore or hereinafter provided to the contrary, the City acknowledges and agrees that the foregoing indemnity from the Owners shall not apply to any loss, costs, charges, damages and expenses arising from the gross negligence and/or wilful misconduct of the City and/or any persons under the City's jurisdiction.

Owners may Defend

- 22.3 If the City is made a party to any action, suit or proceeding in respect of a claim to which the Owners' obligations under the provisions of this Section extend, the Owners may defend such action, suit or proceedings in the name of the City, provided that the Owners may, in such event, elect to pay and satisfy any such claim, and in such event, the City shall inform the Owners fully of such claims and shall afford the Owners every reasonable co-operation in the defence of such action, suit or proceeding.

- 22.4 The obligations of the Owner to defend, indemnify and release the City under the provision of this Agreement shall survive any termination or release in whole or in part of this Agreement, anything in this Agreement to the contrary notwithstanding.

Owners to Protect Public

- 22.5 The Owners shall take all precautions necessary to protect the public against injury on the Site and other land external to the lands to be developed or serviced pursuant to the terms hereof and, when necessary, maintain illuminated danger signals at night and such other times and places as public safety may require.

23. Miscellaneous

City not to Incur Expenses

- 23.1 It is the intent of this Agreement except where stated otherwise that the City shall not incur any expenses for the development of the Site and every obligation of the Owners under this Agreement shall be deemed to include the words "at the Owners' expense", unless specifically stated otherwise.

Joint and Several Liability

- 23.2 By execution hereof, any entities constituting the Owners acknowledge and agree that they are jointly and severally liable for the obligations set out in this Agreement.

Headings

- 23.3 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.

City Official

- 23.4 Reference to a City official shall be deemed to include a reference to the City official who performs the duties of such referenced person from time to time. Further, whenever the provisions of this Agreement require an approval or consent of an officer of the City, in the event the City Council deems it appropriate, the approval or consent may be given by any other official of the City or may include the approval of City Council.

Reference to Legislation

- 23.5 Reference to any legislation (statutes, regulations, by-laws, etc.) in this Agreement includes an amendment, replacement, subsequent enactment or consolidation of such legislation.

Gender and Number

- 23.6 This Agreement shall be construed with all changes in number and gender as may be required by the context.

Time to be of Essence

- 23.7 Time shall be of the essence in this Agreement.

Failure is Not Waiver

- 23.8 The failure of the City at any time to require performance by the Owners of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall any such waiver be taken or held to be a waiver of the performance of the same or any other obligation hereunder at any later time.

Specific Performance

- 23.9 The Owners acknowledge that any breach of this Agreement by the Owners would not be adequately compensated by payment of damages and, accordingly, the

Owners admit that specific performance is an appropriate form of remedy in the event of default by the Owners.

Severability

23.10 If any covenant or provision of this Agreement, is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and all other provisions hereof shall continue in full force and effect.

23.11 Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable in order to effectively implement and carry out the true intent and meaning of this Agreement

Commencement of Agreement

23.12 This Agreement shall commence on the date of execution and delivery hereof by the Parties.

Further Acts and Assurances

23.13 The Parties covenant and agree that at all times and upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

Execution by Parties

23.14 This Agreement may be executed by the Parties in counterparts and when all Parties have executed at least as many counterparts as there are Parties, all of such counterparts shall be deemed to be originals and all such counterparts taken together shall constitute one and the same agreement.

23.15 This Agreement may be executed in counterpart and may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

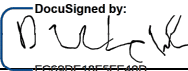
Governing Law

23.16 This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the Province of Ontario and of Canada applicable thereto, and the Parties submit to the jurisdiction of the courts of the Province of Ontario.

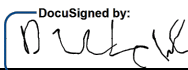
[signature page follows]

IN WITNESS WHEREOF the Parties have, as of the date first above written, hereunto caused their respective hands and corporate seals to be affixed as attested to by the hands of their proper signing officers duly authorized in that regard.

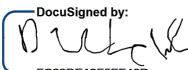
JAMES GAULT HOLDINGS INC.

Per: 
Name: Douglas Wheler
Title: President
I have authority to bind the corporation

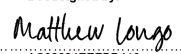
1606077 ONTARIO INC.

Per: 
Name: Douglas Wheler
Title: President
I have authority to bind the corporation

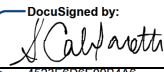
1175484 ONTARIO INC.

Per: 
Name: Douglas Wheler
Title: President
I have authority to bind the corporation

APPROVED AS TO FORM

DocuSigned by:

Matthew Longo
AC08694EEEBD416...
For Wendy Walberg, City Solicitor


CITY OF TORONTO

Per: 
Name: Heather Taylor
Title: Chief Financial Officer and Treasurer

DS

Authorized by Toronto City Council Agenda Item CC34.4 adopted by City Council at its meeting of June 8 and 9, 2021
DocuSigned by:

Marilyn M. Tull for
D94ACFB7E63145D...
City Clerk

Per: 
Name: John D. Elvide
Title: City Clerk
I/We have authority to bind the corporation

DocuSigned by:

Seal of the City
2A32EC7B2E154B4...

SCHEDULE "A"
LEGAL DESCRIPTION OF THE SITE

301 Queen Street East, Toronto, Ontario

PT LT 42 PL 7A TORONTO AS IN CA424766, S/T INTEREST IN CA424766;
TOGETHER WITH AN EASEMENT OVER LOTS 40-42 PLAN 7A TORONTO,
EXCEPT CT47865, CA424766, CT118457, CT463889, CA400212 AS IN AT5769910;
CITY OF TORONTO

PIN: 21091-0080 (LT)

Owner: James Gault Holdings Inc.

303-311 Queen Street East, Toronto, Ontario

PT LT 41-42 PL 7A TORONTO AS IN CT118457; TOGETHER WITH AN EASEMENT
OVER LOTS 40-42 PLAN 7A TORONTO, EXCEPT CT47865, CA424766, CT118457,
CT463889, CA400212 AS IN AT5769910; CITY OF TORONTO

PIN: 21091-0081 (LT)

Owner: 1606077 Ontario Inc.

317 Queen Street East, Toronto, Ontario

PT LT 40 PL 7A TORONTO AS IN CA400212; T/W CA400212; TOGETHER WITH AN
EASEMENT OVER LOTS 40-42 PLAN 7A TORONTO, EXCEPT CT47865, CA424766,
CT118457, CT463889, CA400212 AS IN AT5769910; CITY OF TORONTO

PIN: 21091-0082 (LT)

Owner: 1175484 Ontario Inc.

SCHEDULE "B"
AMENDING BY-LAW TO BY-LAW 569-2013

Authority: Ontario Land Tribunal Decision issued on February 25, 2021 and Ontario Land Tribunal Order issued on August 2, 2022 in Tribunal File PL161267

CITY OF TORONTO

BY-LAW [clerks to insert By-law number]-[Clerks to enter year]

To amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2022 as 301-317 Queen Street East

Whereas the Ontario Land Tribunal, in its Decision issued on February 25, 2021, and its Order issued on August 2, 2022 in file PL161267, in hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, ordered the amendment of Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2022 as 301-317 Queen Street East; and

Whereas pursuant to Section 36 of the *Planning Act*, as amended, a by-law passed under Section 34 of the *Planning Act*, may use a holding symbol "(H)" in conjunction with any use designation to specify the use that lands, buildings or structures may be put once Council removes the holding symbol "(H)" by amendment to the by-law; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the use of the holding symbol "(H)"; and

Whereas Section 37.1 of the Planning Act provides that Subsections 37(1) to (4) of the Planning Act as it read on the day before Section 1 of Schedule 17 to the COVID-19 Economic Recovery Act, 2020 came into force shall continue to apply to a by-law passed pursuant to the repealed Section 37(1) prior to the date that a municipality passes a community benefits charge By-law and this By-law was passed prior to that date; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the authorization of increases in height and density of development; and

Whereas pursuant to Section 37 of the *Planning Act*, a by-law under Section 34 of the *Planning Act*, may authorize increases in the height and density of development beyond those otherwise permitted by the by-law and that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law; and

Whereas subsection 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

Whereas the increase in height and density permitted beyond that otherwise permitted on the aforesaid lands by By-law 569-2013 as amended, is permitted in return for the provision of the facilities, services and matters set out in this By-law which is secured by one or more agreements between the owner of the land and the City of Toronto;

The Ontario Land Tribunal, by Order, amends By-law 569-2013 as follows:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law 569-2013, Chapter 800 Definitions.
3. Zoning By-law 569-2013, as amended, is further amended by amending the zone label on the Zoning By-law Map in Section 990.10 respecting the lands outlined by heavy black lines from a zone label of CR 4.5 (c2.0; r4.0) SS2 (x333) to a zone label of (H) CR 6.75 (c0.95; r5.8) SS2 (x782) as shown on Diagram 2

attached to this By-law.

4. Zoning By-law 569-2013, as amended, is further amended by adding Article 900.11.10 Exception Number 782 so that it reads:

(782) Exception CR 782

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections:

Site Specific Provisions:

- (A) On 301-317 Queen Street East, if the requirements in Section 6 and 7 and Schedule A of By-law [Clerks to supply by-law ##] are complied with, a **building** or **structure** may be constructed, used or enlarged in compliance with regulations (B) to (G) below;
- (B) Despite Regulations 40.5.40.10(1) and (2), the height of any **building** or **structure** is the distance between the Canadian geodetic Datum elevation of 84.71 metres and the elevation of the highest point of the **building** or **structure**;
- (C) Despite Regulations 40.10.40.10(3) and (7), the permitted maximum height of a **building** and **structure** is the number in metres following the letters "HT" and the permitted maximum **storeys** is the number following the letters "ST" in Diagram 3 of By-law [Clerks to supply by-law ##]; and
 - i. for the purpose of this exception, a mechanical penthouse is not a **storey**;
- (D) Despite Regulation 40.10.40.40(1), the permitted maximum **gross floor area** on the **lot** is 12,200 square metres, of which:
 - i. The permitted maximum **gross floor area** for residential uses is 10,600 square metres; and
 - ii. The required minimum **gross floor area** for non-residential uses is 900 square metres;
 - iii. The required minimum **gross floor area** of non-residential uses in the portion of the **building** labelled "existing heritage church" as shown on Diagram 3 of By-law [Clerks to insert By-law number] is 700 square metres.
- (E) Despite Regulations 40.5.40.60 (2)(B) and 40.10.40.60 (2)(B), 3(A), and 5(A), the following elements of a **building** or **structure** are permitted to encroach into the required minimum **building setbacks** as follows:
 - i. Architectural features, balustrades, cornices, eaves, landscape features, light fixtures, ornamental elements, ventilation shafts, and window sills to a maximum 0.9 metres.
 - ii. Stairs, stair enclosures, and wheel chair ramps, to a maximum of 1.8 metres.
- (F) Despite Regulations 40.5.40.10(5) functional elements, **structure** or parts of a **building** may cover more than 30% of the area of the roof measured horizontally.
- (G) Despite Regulation 200.5.10.1(1) and Table 200.5.10.1, **parking spaces** must be provided on the **lot** in accordance with the following:
 - i. **42 parking spaces** on a non-exclusive basis for both

residential and non-residential uses.

Prevailing By-laws and Prevailing Sections: (None Apply)

5. Despite any severance, partition, conveyance or division of the lands, the provisions of this By-law shall apply as if no severance, partition, conveyance or division occurred.

6. Holding Provisions
 - (A) The lands zoned with the "(H)" symbol delineated by heavy lines on Diagram 2 attached to and forming part of this By-law must not be used for any purpose other than those uses existing on the site as of the date of this By-law on the lands shown on Diagram 1 attached to this By-law until the "(H)" symbol has been removed.

 - (B) An amending By-law to remove the "(H)" shall be enacted by City Council when the following have been provided for to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services:
 - i. The Owner must provide an updated functional servicing report and revised hydrogeological report which is acceptable to the Executive Director and Chief Engineer, Engineering and Construction Services, and any required upgrades to services identified in the accepted report are addressed through a financially secured agreement.

7. Section 37 Requirements:
 - (A) Pursuant to Section 37 of the *Planning Act*, and subject to compliance with this By-law, the increase in height and density of the development is permitted beyond that otherwise permitted on the lands shown on Diagram 1 attached to this By-law in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule A attached to this By-law and which are secured by one or more agreements pursuant to Section 37(3) of the *Planning Act* that are in a form and registered on title to the lands, to the satisfaction of the City Solicitor;

 - (B) Where Schedule A attached to this by-law requires the owner to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of such permit shall be dependent on satisfaction of the same; and

 - (C) The owner shall not use, or permit the use of, a building or structure erected with an increase in height and density pursuant to this By-law unless all provisions of Schedule A are satisfied.

Ontario Land Tribunal Decision issued on February 25, 2021, and Ontario Land Tribunal Order issued on August 2, 2022 in Tribunal File PL161267.

SCHEDULE A
Section 37 Requirements

The facilities, services and matters set out below are required to be provided to the City at the owner's expense in return for the increase in height and density of the proposed development on the lands as shown in Diagram 1 in this By-law and secured in an agreement or agreements under Section 37(3) of the Planning Act whereby the owner agrees as follows:

1. Prior to the issuance of any building permit, the owner shall enter into an agreement and register same on title in priority to other charges to the land, to the satisfaction of the City Solicitor pursuant to Section 37 of the Planning Act as read on the day before Section 1 of Schedule 17 to the COVID-19 Economic Recovery Act, 2020 came into force to secure the community benefits below.

2. The agreement required above will secure the provision of a cash payment to the City in the amount of \$1,050,000, which shall be allocated as follows:
 - (A) \$525,000 toward capital improvements for existing or new affordable housing within Ward 13; and

 - (B) \$525,000 toward local streetscape, park and recreation centre improvements in Ward 13, including but not limited to Moss Park and John Innes Community Centre, in consultation with the local Councillor.

3. The Cash Contribution set out in Clause 2 shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table: 18-10-0135-01, or its successor, calculated from the date of this zoning by-law comes into full force and effect to the date of payment of the Cash Contribution by the owner to the City.

4. In the event the Cash Contribution in Clause 2 has not been used for the intended purpose within three (3) years of the By-law coming into full force and effect, the Cash Contribution may be redirected for another purpose(s), at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, provided that the purpose is identified in the Official Plan and will benefit the community in the vicinity.

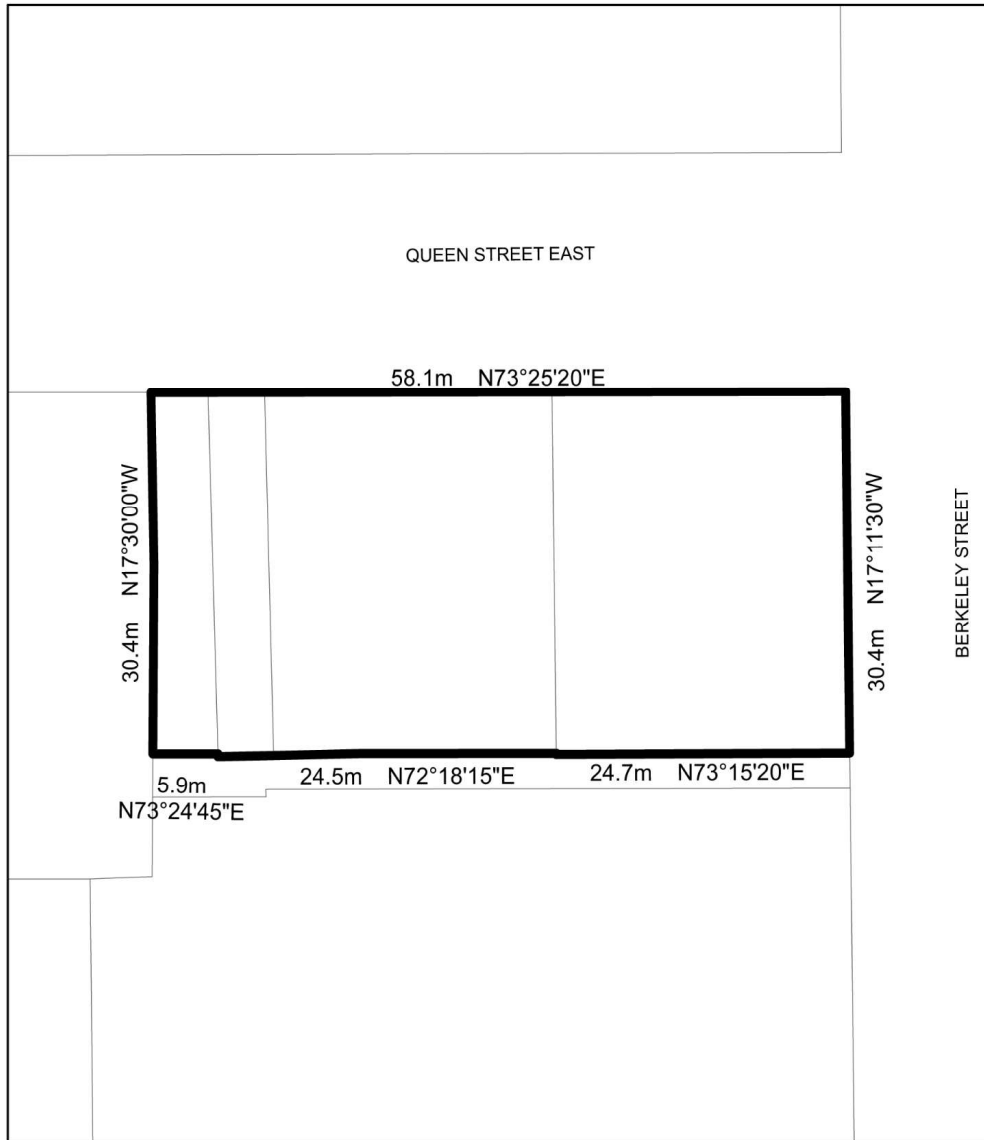
5. The following matters must also be secured in the section 37 agreement:
 - (A) The owner and the neighbouring property owner to the south ("Concert") will agree that as a condition of site plan approval the City will require the installation of truck sensors in the laneway and warning lights within the Concert building to warn vehicles when a garbage truck is present on site.

 - (B) The owner and Concert will agree that as a condition of site plan approval the owner shall grant an easement to Concert for the truck turnaround bay as depicted in the BA Group draft report dated September 25, 2020.

 - (C) The owner acknowledges and agrees that the vehicular access from Queen Street East will be right-in/right-out ("RIRO") only, and as a

condition of site plan approval the owner will be required to install signage, infrastructure, or take any measures to ensure that the RIRO is enforceable by the City and Toronto Police Services, all of which will be secured as a condition of site plan approval.

- (D) The owner and Concert will agree as a condition of site plan approval to take steps in cooperation with the adjoining landowner to ensure that there will be no illegal parking in the private lane that would impede operation of waste pick-up. The City will consider any requests made by the owner and Concert to assist with vehicle removal in accordance with the Municipal Code.
- (E) Prior to any site plan approval for the site the owner shall provide an acceptable Conservation Plan and enter into a Heritage Easement Agreement with the City of Toronto in the event no Section 37 funds are directed towards the church.

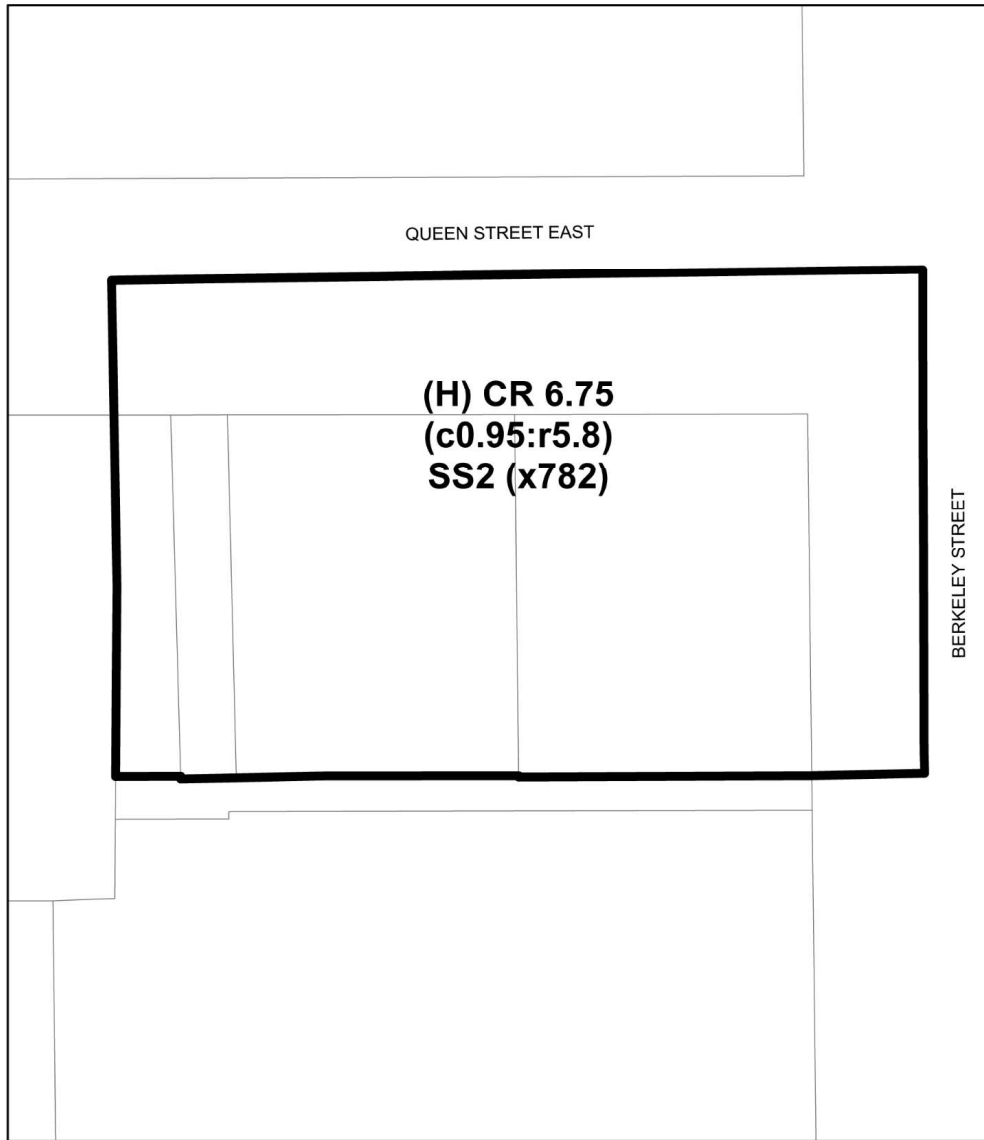


 **TORONTO**
Diagram 1

301-317 Queen Street East

File # 16 161250 STE 28 0Z

↑
City of Toronto By-law 569-2013
Not to Scale
07/28/2022



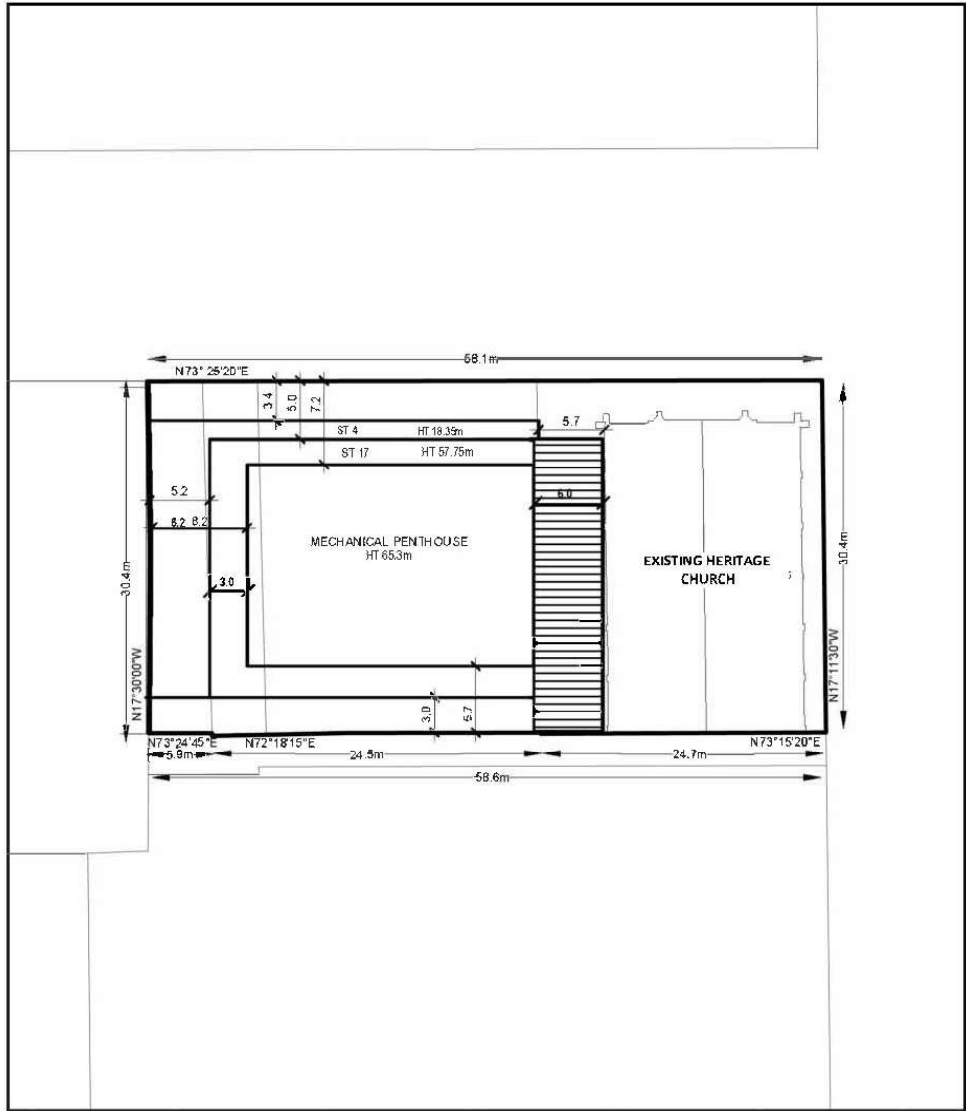
 **TORONTO**
Diagram 2

301-317 Queen Street East

File # 16 161250 STE 28 0Z



City of Toronto By-law 569-2013
Not to Scale
07/28/2022



 **TORONTO**
Diagram 3

301-317 Queen Street East

File # 16 161250 STE 28 02



No building shall be located within the hatched area to a minimum vertical height of 26.0 metres above grade



City of Toronto By-law 569-2013
Not to Scale
07/28/2022

This is Exhibit "B" of
the Affidavit of Kathryn Furfaro
Sworn before me this 6th day of March, 2023

DocuSigned by:

Matilda Lici

7CE576F4AA3D4CA...

A Commissioner, etc.

Matilda Lici

LAND
REGISTRY
OFFICE #66

21091-0082 (LT)

PAGE 1 OF 13
PREPARED FOR MCappabianca
ON 2023/03/06 AT 09:11:21

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

PROPERTY DESCRIPTION: PT LT 40 PL 7A TORONTO AS IN CA400212; T/W CA400212; TOGETHER WITH AN EASEMENT OVER LOTS 40-42 PLAN 7A TORONTO, EXCEPT CT47865, CA424766, CT118457, CT463889, CA400212 AS IN AT5769910; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

2003/07/28

OWNERS' NAMES

1175484 ONTARIO INC.

CAPACITY SHARE

BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/07/25 **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 2003/07/28 **</p>						
63BA1749	1980/06/17	PLAN BOUNDRIES ACT				C
REMARKS: CT417089						
CA400212	1996/04/19	TRANSFER	\$395,000		1175484 ONTARIO INC.	C
CA457044	1997/02/28	BYLAW				C
CA663459	2000/05/01	CHARGE		*** COMPLETELY DELETED ***		
ROMSPEN INVESTMENT CORPORATION						
CA663460	2000/05/01	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***		
REMARKS: ES41728, CA57772, CA400212 ; DELETED PER DISCHARGE AT488292 BY FIROZ B. 1ST.APR.,2005.						
CA685987	2000/08/31	CHARGE		*** COMPLETELY DELETED ***		
RENOVAY INVESTMENTS LTD.						
CA741366	2001/09/11	AGREEMENT		*** COMPLETELY DELETED ***		

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

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: AMENDS, CA685987				
CA804016	2003/07/17	AGR AM CH		*** COMPLETELY DELETED ***		
		REMARKS: CA685987, CA741366				
AT375699	2003/12/31	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	KARNCORP INC.	
AT485449	2004/05/14	APL (GENERAL)		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.		
		REMARKS: DELETE EXEC. NO. 02-003713				
AT488274	2004/05/17	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	THE EQUITABLE TRUST COMPANY	
AT488275	2004/05/17	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	THE EQUITABLE TRUST COMPANY	
		REMARKS: AT488274 RENTS				
AT488287	2004/05/17	POSTPONEMENT		*** COMPLETELY DELETED *** RENOVAY INVESTMENTS LTD.	THE EQUITABLE TRUST COMPANY	
		REMARKS: CA685987 TO AT488274				
AT488292	2004/05/17	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROMSPEN INVESTMENT CORPORATION		
		REMARKS: RE: CA663459				
AT488294	2004/05/17	DISCH OF CHARGE		*** COMPLETELY DELETED *** KARNCORP INC.		
		REMARKS: RE: AT375699				
AT515747	2004/06/15	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	LOUDON, CATHERINE	
AT592192	2004/08/31	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	CHIREX HOLDINGS LIMITED STORM, MARTIN	
AT594891	2004/09/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** RENOVAY INVESTMENTS LTD.		
		REMARKS: RE: CA685987				

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT594977	2004/09/01	POSTPONEMENT		*** COMPLETELY DELETED *** LOUDON, CATHERINE	CHIREX HOLDINGS LIMITED STORM, MARTIN	
	REMARKS: AT515747 TO AT592192					
AT770365	2005/04/06	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	ARAUJO, LUISA	
AT770640	2005/04/06	POSTPONEMENT		*** COMPLETELY DELETED *** LOUDON, CATHERINE	ARAUJO, LUISA	
	REMARKS: AT515747 TO AT770365					
AT923670	2005/09/16	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	ARAUJO, LUISA	
AT923690	2005/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** ARAUJO, LUISA		
	REMARKS: RE: AT770365					
AT923764	2005/09/16	POSTPONEMENT		*** COMPLETELY DELETED *** LOUDON, CATHERINE	ARAUJO, LUISA	
	REMARKS: AT515747 TO AT923670					
AT1024081	2005/12/30	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	ARAUJO, LUISA	
AT1024125	2005/12/30	POSTPONEMENT		*** COMPLETELY DELETED *** LOUDON, CATHERINE	ARAUJO, LUISA	
	REMARKS: AT515747 TO AT1024081					
AT1082863	2006/03/09	DISCH OF CHARGE		*** COMPLETELY DELETED *** ARAUJO, LUISA		
	REMARKS: RE: AT923670					
AT1156708	2006/06/02	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	ARAUJO, LUISA	
AT1217916	2006/08/02	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	ARAUJO, LUISA	
AT1277389	2006/10/10	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	ARAUJO, LUISA	

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				STORM, MARTIN		
AT1591130	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** LOUDON, CATHERINE		
AT1591170	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592261	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592263	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592264	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592265	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592266	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592267	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592268	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
AT1592269	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		

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LAND
REGISTRY
OFFICE #66

21091-0082 (LT)

PREPARED FOR MCappabianca
ON 2023/03/06 AT 09:11:21

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT1592270	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
		REMARKS: RE: AT1574886				
AT1592271	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
		REMARKS: RE: AT1574885				
AT1592272	2007/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
		REMARKS: RE: AT1574884				
AT1669801	2007/12/20	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	1746534 ONTARIO INC.	
AT1670485	2007/12/20	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE EQUITABLE TRUST COMPANY		
		REMARKS: RE: AT488274				
AT2279588	2010/01/15	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
AT2306652	2010/02/18	NO SEC INTEREST		*** COMPLETELY DELETED *** LEASEBANK CREDIT CORPORATION		
AT3273298	2013/04/10	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
AT3323897	2013/06/13	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	2376736 ONTARIO INC.	
AT3494257	2014/01/09	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
		REMARKS: AT3273298.				
AT3538270	2014/03/14	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
AT3544491	2014/03/25	APL COURT ORDER		*** COMPLETELY DELETED ***		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3691810	2014/09/18	TRANSFER OF CHARGE		ONTARIO SUPERIOR COURT OF JUSTICE *** COMPLETELY DELETED *** BUSINESS DEVELOPMENT BANK OF CANADA	BDO CANADA LIMITED MISIM INVESTMENTS LIMITED TAURO, LUCIANO 1220356 ONTARIO LIMITED TENENBAUM, LAWRENCE RALCAP INVESTMENTS CORPORATION SONE, SHAEI KAZDAN, RHONDA GABRETTA INVESTMENTS LIMITED CUNDARI, LUISA APPEL, AUBRIE APPEL, GAIL 768124 ONTARIO INC.	
REMARKS: AT1588424. AT1588424						
AT3691889	2014/09/18	NOTICE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	MISIM INVESTMENTS LIMITED TAURO, LUCIANO 1220356 ONTARIO LIMITED TENENBAUM, LAWRENCE RALCAP INVESTMENTS CORPORATION SONE, SHAEI KAZDAN, RHONDA GABRETTA INVESTMENTS LIMITED CUNDARI, LUISA APPEL, AUBRIE APPEL, GAIL 768124 ONTARIO INC.	
REMARKS: AT1588424//DELETED BY AT4016707 ON 2015/09/23 BY R. WARNER						
AT3691914	2014/09/18	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	A5 CAPITAL INC. 1220356 ONTARIO LIMITED 768124 ONTARIO INC.	
AT3692081	2014/09/18	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	MISIM INVESTMENTS LIMITED TAURO, LUCIANO 1220356 ONTARIO LIMITED RALCAP INVESTMENTS CORPORATION SONE, SHAEI	

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REGISTRY
OFFICE #66

21091-0082 (LT)

PREPARED FOR MCappabianca
ON 2023/03/06 AT 09:11:21

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
					APPEL, AUBRIE APPEL, AUBRIE KAZDAN, RHONDA GABRETTA INVESTMENTS LIMITED CUNDARI, LUISA TENENBAUM, LAWRENCE 768124 ONTARIO INC,	
AT3692155	2014/09/18	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	A5 CAPITAL INC. 1220356 ONTARIO LIMITED 768124 ONTARIO INC.	
AT3693275	2014/09/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2376736 ONTARIO INC.		
AT3693307	2014/09/19	POSTPONEMENT		*** COMPLETELY DELETED *** 1746534 ONTARIO INC.	A5 CAPITAL INC. 1220356 ONTARIO LIMITED 768124 ONTARIO INC.	
AT3693468	2014/09/19	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
AT3693505	2014/09/19	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
AT3700026	2014/09/29	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** 1746534 ONTARIO INC.	BATISTA, MANUEL	
AT3700034	2014/09/29	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	2376736 ONTARIO INC.	
AT3903799	2015/06/04	APL AMEND ORDER		*** COMPLETELY DELETED ***		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3960086	2015/07/28	LIEN		ONTARIO SUPERIOR COURT OF JUSTICE *** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE	1175484 ONTARIO INC. 1606077 ONTARIO INC. JAMES GAULT HOLDINGS INC.	
AT4003853	2015/09/09	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
				REMARKS: AT3960086.		
AT4016599	2015/09/23	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC.	KOREA EXCHANGE BANK OF CANADA	
AT4016673	2015/09/23	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 1175484 ONTARIO LTD.	KOREA EXCHANGE BANK OF CANADA	
				REMARKS: AT4016599.		
AT4016692	2015/09/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2376736 ONTARIO INC.		
				REMARKS: AT3700034.		
AT4016701	2015/09/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** BATISTA, MANUEL		
				REMARKS: AT1669801.		
AT4016707	2015/09/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** MISIM INVESTMENTS LIMITED TAURO, LUCIANO 1220356 ONTARIO LIMITED TENENBAUM, LAWRENCE RALCAP INVESTMENTS CORPORATION SONE, SHAEL KAZDAN, RHONDA GABRETTA INVESTMENTS LIMITED CUNDARI, LUISA APPEL, AUBRIE APPEL, GAIL 768124 ONTARIO INC.		
				REMARKS: AT1588424.		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4016775	2015/09/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** A5 CAPITAL INC. 1220356 ONTARIO LIMITED 768124 ONTARIO INC.		
	REMARKS: AT3691914.					
AT4031195	2015/10/07	CHARGE		*** COMPLETELY DELETED *** JAMES GAULT HOLDINGS INC. 1606077 ONTARIO INC. 1175484 ONTARIO INC. 185 GERRARD STREET EAST HOLDINGS INC.	USHJO ENTERPRISES LIMITED MISIM INVESTMENTS LIMITED TAURO, LUCIANO TENENBAUM FAMILY TRUST 768124 ONTARIO INC. RALCAP INVESTMENTS CORPORATION 1220356 ONTARIO LIMITED KAZDAN, RHONDA 2180373 ONTARIO INC. GABRETTA INVESTMENTS INC. C.H.B.P.INVESTMENTS INC. CUNDARI, LUISA SONE, LAWRENCE APPEL, AUBRIE APPEL, GAIL	
AT4031222	2015/10/07	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** JAMES GAULT HOLDINGS INC 1606077 ONTARIO INC. 1175484 ONTARIO INC 185 GERRARD STREET EAST HOLDINGS INC.	USHJO ENTERPRISES LIMITED MISIM INVESTMENTS LIMITED TAURO, LUCIANO TENENBAUM FAMILY TRUST 768124 ONTARIO INC. RALCAP INVESTMENTS CORPORATION 1220356 ONTARIO LIMITED KAZDAN, RHONDA 2180373 ONTARIO INC. GABRETTA INVESTMENTS INC. C.H.B.P. INVESTMENTS INC. CUNDARI, LUISA SONE, LAWRENCE APPEL, AUBRIE APPEL, GAIL	
	REMARKS: AT4031195.					
AT4049080	2015/10/28	CHARGE		*** COMPLETELY DELETED *** JAMES GAULT HOLDINGS INC.	LOUDON, CATHERINE	

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AT4049083	2015/10/28	CHARGE		1606077 ONTARIO INC. 1175484 ONTARIO INC. *** COMPLETELY DELETED *** JAMES GAULT HOLDINGS INC. 1606077 ONTARIO INC. 1175484 ONTARIO INC.	2376736 ONTARIO INC.	
AT4261938	2016/06/29	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** USHJO ENTERPRISES LIMITED	2294565 ONTARIO INC.,	
		REMARKS: AT4031195.				
AT4594232	2017/06/09	DISCHARGE INTEREST		*** COMPLETELY DELETED *** LEASEBANK CREDIT CORPORATION		
		REMARKS: AT2306652.				
AT4595583	2017/06/13	CHARGE	\$8,000,000	1175484 ONTARIO INC.	THE TORONTO-DOMINION BANK	C
AT4595597	2017/06/13	NO ASSGN RENT GEN		1175484 ONTARIO INC.	THE TORONTO-DOMINION BANK	C
		REMARKS: AT4595583.				
AT4602062	2017/06/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** MISIM INVESTMENTS LIMITED TAURO, LUCIANO TENENBAUM FAMILY TRUST 768124 ONTARIO INC. RALCAP INVESTMENTS CORPORATION 1220356 ONTARIO LIMITED KAZDAN, RHONDA 2180373 ONTARIO INC. GABRETTA INVESTMENTS INC. C.H.B.P.INVESTMENTS INC. CUNDARI, LUISA SONE, LAWRENCE APPEL, AUBRIE APPEL, GAIL 2294565 ONTARIO INC.		
		REMARKS: AT4031195.				
AT4602063	2017/06/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** LOUDON, CATHERINE		
		REMARKS: AT4049080.				

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT4602064	2017/06/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2376736 ONTARIO INC.		
		REMARKS: AT4049083.				
AT4888729	2018/06/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** KOREA EXCHANGE BANK OF CANADA		
		REMARKS: AT4016599.				
AT5104095	2019/03/29	NOTICE		1175484 ONTARIO INC.	THE TORONTO-DOMINION BANK	C
		REMARKS: AT4595583				
AT5308419	2019/11/29	NOTICE		1175484 ONTARIO INC.	THE TORONTO-DOMINION BANK	C
		REMARKS: AT4595583				
AT5518507	2020/09/14	NOTICE		1175484 ONTARIO INC.	THE TORONTO-DOMINION BANK	C
		REMARKS: AT4595583				
AT5696379	2021/04/01	CHARGE		*** COMPLETELY DELETED *** 1175484 ONTARIO INC. 1606077 ONTARIO INC. JAMES GAULT HOLDINGS INC.	2294565 ONTARIO INC.	
		REMARKS: THIS DOCUMENT WAS RE-INSTATED ON 2022/06/21 AT 12:38 BY HURL, JEFF.				
AT5696380	2021/04/01	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 1175484 ONTARIO INC. 1606077 ONTARIO INC. JAMES GAULT HOLDINGS INC.	2294565 ONTARIO INC.	
		REMARKS: AT5696379. THIS DOCUMENT WAS RE-INSTATED ON 2022/06/21 AT 12:38 BY HURL, JEFF.				
AT5728894	2021/05/06	NOTICE		*** COMPLETELY DELETED *** JAMES GAULT HOLDINGS INC. 1606077 ONTARIO INC. 1175484 ONTARIO INC.	2294565 ONTARIO INC.	
		REMARKS: AT5696379 THIS DOCUMENT WAS RE-INSTATED ON 2022/06/21 AT 12:41 BY HURL, JEFF.				
AT5728895	2021/05/06	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** 2294565 ONTARIO INC.	2294565 ONTARIO INC. USHJO ENTERPRISES LTD. DANCHI CORP. BLACK TUSK CORPORATION	
		REMARKS: AT5696379. THIS DOCUMENT WAS RE-INSTATED ON 2022/06/21 AT 12:42 BY HURL, JEFF.				
AT5769910	2021/06/16	APL AMEND ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	JAMES GAULT HOLDINGS INC.	C

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
					1606077 ONTARIO INC. 1175484 ONTARIO INC.	
AT5973736	2022/01/28	LIEN		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		C
AT6017041	2022/03/15	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
AT6101110	2022/06/07	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2294565 ONTARIO INC. USHJO ENTERPRISES LTD. DANCHI CORP. BLACK TUSK CORPORATION		
AT6149598	2022/08/04	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE		
66R32838	2022/08/12	PLAN REFERENCE				C

This is Exhibit "C" of
the Affidavit of Kathryn Furfaro
Sworn before me this 6th day of March, 2023

DocuSigned by:
Matilda Lici
7CE576F4AA3D4CA...

A Commissioner, etc.
Matilda Lici

October 27, 2022

DELIVERED VIA COURIER AND EMAIL (dwheler@hotmail.com)

1175484 Ontario Inc.
 317 Queen St. East
 Toronto, ON M5A 1S7

1871 Berkeley Events Inc.
 315 Queen St. East
 Toronto, ON M5A 1S7

Attn: Mr. Douglas James Wheler

Dear Mr. Wheler:

Re: Indebtedness and liabilities of 1175484 Ontario Inc. and 1871 Berkeley Events Inc. (the “Debtors” or “you”) to The Toronto-Dominion Bank (“TD” or the “Lender”), as guaranteed by Douglas James Wheler and cross-guaranteed by each of the Debtors

We are the lawyers for TD in connection with its lending arrangements with the Debtors.

The Debtors are indebted to TD with respect to certain credit facilities (collectively, the “**Credit Facilities**”) made available by TD to the Debtors pursuant to and under the terms of a letter credit agreement dated April 17, 2017, as amended by amending agreements dated March 26, 2019 and April 28, 2020, respectively (the “**Credit Agreement**”).

The following amounts are owing by the Debtors to TD for principal and interest pursuant to the Credit Agreement as of October 25, 2022:

Borrower	Loan Account No.	Outstanding Balance	Uncollected Interest	Interest to Close	Total
1871 Berkeley Events Inc.	9324928-01	\$999,166.74	\$15,156.57	\$1,412.52	\$1,015,735.83
1175484 Ontario Inc.	9324936-07	\$6,578,351.34	-	\$52,275.37	\$6,630,626.71
					\$7,646,362.54 ¹

¹ This amount does not include any accruing interest from and after October 25, 2022, or costs and expenses (including any legal and other professional fees) incurred by TD.

Certain of the Credit Facilities are repayable on demand. One or more Events of Default have occurred under the Credit Agreement, including, without limitation:

- a) the Debtors failing to pay the scheduled amounts of principal, interest and fees on the date when they become due;
- b) the Debtors operating in excess of the authorized credit limits set out in the Credit Agreement, and incurring obligations and/or making payments from their operating account with TD in excess of deposits;
- c) the Debtors maintaining an operating account at another financial institution and diverting TD's collateral;
- d) the Debtors failing to keep current their priority payables, including source deduction arrears owing by the Debtors to Canada Revenue Agency; and
- e) the occurrence of a material adverse change in the business and prospects of the Debtors.

Accordingly, on behalf of TD, we hereby make formal demand for payment of \$7,646,362.54 together with accruing interest and any and all costs and expenses (including, without limitation, any additional legal and other professional fees) incurred by TD (collectively, the "**Indebtedness**"). Payment is required to be made immediately. Interest continues to accrue on the Indebtedness at the rates established by the Credit Agreement and any other agreement, as applicable.

The Indebtedness and other obligations of the Debtors in connection with the Credit Facilities under the Credit Agreement are joint and several, and are guaranteed by Douglas Wheler.

The Indebtedness and other obligations of each of the Debtors in connection with the Credit Facilities under the Credit Agreement are secured by, among other things:

- a) general security agreements dated June 20, 2017, which grant TD, amongst other things, a security interest in any of and all of the property, assets and undertakings of each of 1871 Berkeley Events Inc. and 1175484 Ontario Inc.; and
- b) in the case of 1175484 Ontario Inc., a collateral charge/mortgage granted by 1175484 Ontario Inc. in the amount of \$9,900,000.00 in respect of the real property known municipally as 317 Queen St. East, Toronto, Ontario, which was registered on title as instrument no. AT5518507 (the "**Real Property**").

If payment of the Indebtedness is not received immediately, TD shall take whatever steps it 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 each of the Debtors and/or the Real Property or any other proceedings that are necessary, in which case, TD will also seek all costs it incurs in doing so.

On behalf of TD, we also enclose a Notice of Intention to Enforce Security for each of the Debtors delivered pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA Notice**”). TD 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

A handwritten signature in black ink, appearing to read 'Kyle Plunkett', with a stylized flourish at the end.

Kyle Plunkett-
e.c. Client
Matilda Lici

AIRD BERLIS

NOTICE OF INTENTION TO ENFORCE SECURITY
(Bankruptcy and Insolvency Act, Subsection 244(1))
DELIVERED BY COURIER AND EMAIL

To: **1175484 Ontario Inc.**
317 Queen St. East
Toronto, ON M5A 1S7
Insolvent company / person

TAKE NOTICE that:

1. The Toronto-Dominion Bank (“**TD**”), a secured creditor, intends to enforce its security on the property, assets and undertakings of 1175484 Ontario Inc. (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) general security agreements dated June 20, 2017, which grants TD, amongst other things, a security interest in any of and all of the property, assets and undertakings of 1175484 Ontario Inc.; and
 - (b) in the case of 1175484 Ontario Inc., a collateral charge/mortgage granted by 1175484 Ontario Inc. in the amount of \$9,900,000.00 in respect of the real property known municipally as 317 Queen St. East, Toronto, Ontario, which was registered on title as instrument no. AT5518507.
3. As of October 25, 2022, the total amount of indebtedness secured by the Security is **\$7,646,362.54** in principal and interest, plus accruing interest and recovery costs of TD (including, without limitation, TD’s legal and other professional fees).
4. TD 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 27th day of October 2022.

THE TORONTO-DOMINION BANK
by its lawyers, **Aird & Berlis LLP**

Per:



Kyle Plunkett

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.

AIRD BERLIS

NOTICE OF INTENTION TO ENFORCE SECURITY
(Bankruptcy and Insolvency Act, Subsection 244(1))
DELIVERED BY COURIER AND EMAIL

To: **1871 Berkeley Events Inc.**
315 Queen St. East
Toronto, ON M5A 1S7
Insolvent company / person

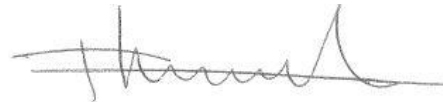
TAKE NOTICE that:

5. The Toronto-Dominion Bank (“**TD**”), a secured creditor, intends to enforce its security on the property, assets and undertakings of 1871 Berkeley Events Inc. (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.
6. The security that is to be enforced (the “**Security**”) is in the form of, *inter alia*, a general security agreement dated June 20, 2017, which grants TD, amongst other things, a security interest in any of and all of the property, assets and undertakings of 1871 Berkeley Events Inc.
7. As of October 25, 2022, the total amount of indebtedness secured by the Security is **\$7,646,362.54** in principal and interest, plus accruing interest and recovery costs of TD (including, without limitation, TD’s legal and other professional fees).
8. TD 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 27th day of October 2022.

THE TORONTO-DOMINION BANK
by its lawyers, **Aird & Berlis LLP**

Per:



Kyle Plunkett

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.

50722861.3

Kyle Plunkett
Direct: 416.865.3406
E-mail: kplunkett@airdberlis.com

October 27, 2022

DELIVERED VIA COURIER MAIL AND EMAIL

Douglas James Wheler
315 Queen Street East
Toronto, Ontario, M5A 1S7

Dear Mr. Wheler:

Re: Indebtedness and liabilities of 1175484 Ontario Inc. and 1871 Berkeley Events Inc. (the “Debtors”) to The Toronto-Dominion Bank (“TD” or the “Lender”), as guaranteed by Douglas James Wheler and cross-guaranteed by each of the Debtors

We are the lawyers for TD in connection with its lending arrangements with the Debtors.

The Debtors are indebted to TD with respect to certain credit facilities (collectively, the “**Credit Facilities**”) made available by TD to the Debtors pursuant to and under the terms of a letter credit agreement dated April 17, 2017, as amended by amending agreements dated March 26, 2019 and April 28, 2020, respectively (the “**Credit Agreement**”).

In your personal capacity, you became a guarantor of the obligations of each of the Debtors under an unlimited guarantee dated June 20, 2017 (the “**Guarantee**”).

The following amounts are owing by the Debtors to TD for principal and interest pursuant to the Credit Agreement as of October 25, 2022:

Borrower	Loan Account No.	Outstanding Balance	Uncollected Interest	Interest to Close	Total
1871 Berkeley Events Inc.	9324928-01	\$999,166.74	\$15,156.57	\$1,412.52	\$1,015,735.83
1175484 Ontario Inc.	9324936-07	\$6,578,351.34	-	\$52,275.37	\$6,630,626.71
					<hr/> \$7,646,362.54 ¹

¹ This amount does not include any accruing interest from and after October 25, 2022, or costs and expenses (including any legal and other professional fees) incurred by TD.

Certain of the Credit Facilities are repayable on demand. One or more Events of Default have occurred under the Credit Agreement, including, without limitation:

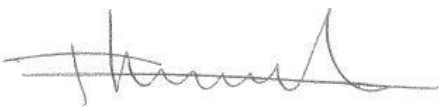
- a) the Debtors failing to pay the scheduled amounts of principal, interest and fees on the date when they become due;
- b) the Debtors operating in excess of the authorized credit limits set out in the Credit Agreement, and incurring obligations and/or making payments from their operating account with TD in excess of deposits;
- c) the Debtors maintaining an operating account at another financial institution and diverting TD's collateral;
- d) the Debtors failing to keep current their priority payables, including source deduction arrears owing by the Debtors to Canada Revenue Agency; and
- e) the occurrence of a material adverse change in the business and prospects of the Debtors.

Accordingly, on behalf of TD, we hereby make formal demand for payment of \$7,646,362.54 together with accruing interest and any and all costs and expenses (including, without limitation, any additional legal and other professional fees) incurred by TD (collectively, the "**Indebtedness**"). Payment is required to be made immediately. Interest continues to accrue on the Indebtedness at the rates established by the Credit Agreement and any other agreement, as applicable.

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

Yours truly,

AIRD & BERLIS LLP



Kyle Plunkett
c.c. Client
Matilda Lici
50723404.2

Kyle Plunkett
Direct: 416.865.3406
E-mail: kplunkett@airdberlis.com

October 27, 2022

DELIVERED VIA REGISTERED MAIL AND EMAIL

Douglas James Wheler
315 Queen Street East
Toronto, Ontario, M5A 1S7

Dear Mr. Wheler:

Re: Indebtedness and liabilities of 111 King Street East Inc., Southline Holdings Inc., 504 Jarvis Inc., 1871 Berkeley Events Inc. and 1175484 Ontario Inc. (the “Debtors” or “you”) to The Toronto-Dominion Bank (“TD” or the “Lender”), as guaranteed by Douglas James Wheler and cross-guaranteed by each of the Debtors

We are the lawyers for TD in connection with its lending arrangements with the Debtors.

The Debtors are indebted to TD with respect to certain credit facilities (collectively, the “**Credit Facilities**”) made available by TD to the Debtors pursuant to and under the terms of a letter credit agreement dated August 1, 2019, as amended by an amending agreement dated August 19, 2020 (the “**Credit Agreement**”).

In your personal capacity, you became a guarantor of the obligations of each of the Debtors under an unlimited guarantee dated June 20, 2017 and three guarantees dated August 26, 2019, respectively:

Party whose obligations are guaranteed	Type of Guarantee
1871 Berkeley Events Inc.	Unlimited
1175484 Ontario Inc.	Unlimited
Southline Holdings Inc.	\$77,500.00 (comprising 25% of the \$310,000 original principal amount of the Canadian Small Business Financing Loan advanced by TD) ¹

¹ This amount does not include any interest, costs and fees, for which the Guarantor is also responsible under the Guarantee.



Party whose obligations are guaranteed	Type of Guarantee
504 Jarvis Inc.	\$40,000.00 (comprising 25% of the \$160,000 original principal amount of the Canadian Small Business Financing Loan advanced by TD) ²
111 King Street East Inc.	\$42,500.00 (comprising 25% of the \$170,000 original principal amount of the Canadian Small Business Financing Loan advanced by TD) ³

The following amounts are owing by the Debtors to TD for principal and interest pursuant to the Credit Agreement as of October 25, 2022:

Borrower	Loan Account No.	Outstanding Balance	Uncollected Interest	Interest to Close	Total
1871 Berkeley Events Inc.	9324982-02	\$980,762.50	\$ -	\$12,897.69	\$993,660.19
504 Jarvis Inc.	9332335-01	\$93,082.25	\$2,432.66	\$21.55	\$95,536.46
Southline Holdings Inc.	9332408-01	\$180,346.99	\$4,713.25	\$41.75	\$185,101.99
111 King Street East Inc.	9332343-01	\$92,306.57	\$1,293.18	\$21.37	\$93,621.12
111 King Street East Inc.	9332343-02	\$250,000.00	\$ -	\$301.37	\$250,301.37
1175484 Ontario Inc.	9324936-04	\$900,072.85	\$ -	\$4,782.52	\$904,855.37
1175484 Ontario Inc.	9324936	\$243,998.62	\$ -	\$1,310.24	\$245,308.86
					\$2,768,385.36 ⁴

Certain of the Credit Facilities are repayable on demand. One or more Events of Default have occurred under the Credit Agreement, including, without limitation:

- a) the Debtors failing to pay the scheduled amounts of principal, interest and fees on the date when they become due;

² This amount does not include any interest, costs and fees, for which the Guarantor is also responsible under the Guarantee.

³ This amount does not include any interest, costs and fees, for which the Guarantor is also responsible under the Guarantee.

⁴ This amount does not include any accruing interest from and after October 25, 2022, or costs and expenses (including any legal and other professional fees) incurred by TD.


- b) the Debtors operating in excess of the authorized credit limits set out in the Credit Agreement, and incurring obligations and/or making payments from their operating account with TD in excess of deposits;
- c) the Debtors maintaining an operating account at another financial institution and diverting TD's collateral;
- d) the Debtors failing to keep current their priority payables, including source deduction arrears owing by the Debtors to Canada Revenue Agency; and
- e) the occurrence of a material adverse change in the business and prospects of the Debtors.

Accordingly, on behalf of TD, we hereby make formal demand for payment of **\$2,303,824.42** together with accruing interest and any and all costs and expenses (including, without limitation, any additional legal and other professional fees) incurred by TD (collectively, the "**Indebtedness**"). Payment is required to be made immediately. Interest continues to accrue on the Indebtedness at the rates established by the Credit Agreement and any other agreement, as applicable.

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

Yours truly,

AIRD & BERLIS LLP



Kyle Plunkett
c.c. Client
Matilda Lici
50723438.2

This is Exhibit "D" of
the Affidavit of Kathryn Furfaro
Sworn before me this 6th day of March, 2023

DocuSigned by:

Matilda Lici

7CE576F4AA3D4CA...

A Commissioner, etc.

Matilda Lici

Assignment of Term Deposits and Credit Balances

1968 Branch

To: The Toronto-Dominion Bank and its subsidiaries, (including TD Mortgage Corporation and TD Pacific Mortgage Corporation) ("TD")

In Consideration of advances heretofore, now or hereafter made to

the Undersigned and/or to 1871 BERKELEY EVENTS INC. (hereinafter called the Customer), the Undersigned hereby assigns, transfers and sets over to The Toronto-Dominion Bank (the "Bank") to the extent of

FLOATING Dollars

all monies which are now or may hereafter be from time to time at the credit of the Undersigned with TD at the

TRANSIT #1968 LOCATED AT 2 ST. CLAIR AVE. E., TORONTO Branch of the Bank,

Which monies shall include any amount and interest thereon due or accruing due to the undersigned pursuant to any term deposit instrument of TD, and TD is hereby authorized to hold such monies as a continuing collateral security for the payment of the present and future indebtedness and / or liability, direct or indirect, by way of guarantee or otherwise, and however arising, and any ultimate unpaid balance thereof, of the Undersigned and / or of the Customer to the Bank; and TD is hereby authorized to refuse to honour any cheques or orders for the payment of money which the Bank may consider would impair the value of this Assignment. The Undersigned further authorizes TD to charge against any monies herein assigned any indebtedness and / or liability hereby secured as the same may become due and payable.

It is understood that if TD permits the Undersigned to make withdrawals from any such monies at the credit of the Undersigned, such permission shall be without prejudice to the rights hereby conferred upon the Bank to hold such monies as security as aforesaid or to charge against the same any indebtedness and / or liability hereby secured and is not to be construed as a waiver by the Bank of such rights.

The Bank may grant extensions of time or any other indulgence, take and give up security, accept compositions, grant releases and discharges, and otherwise deal with the Customer and with other parties and securities as the Bank may see fit without prejudice to the indebtedness and / or liability of the Undersigned to the Bank or to the Bank's rights to hold or deal with the said monies herein assigned. The authority hereby given shall not be revoked by the death of the Undersigned and in the event of the death of the Undersigned you are hereby authorized to pay from the monies herein assigned the indebtedness and / or liability of the Undersigned and / or the Customer to the Bank whether such indebtedness and / or liability has become due and payable or not.

This assignment shall be binding upon the heirs, executors, administrators and assigns of the Undersigned. The Undersigned acknowledges receiving a copy of this assignment.

Dated at TORONTO this 26 day of AUGUST 20 19.

Company Name: 1871 BERKELEY EVENTS INC.

Signature Douglas Wheler

Signature

Title: President

Title:

I have authority to bind the Corporation

This is Exhibit "E" of
the Affidavit of Kathryn Furfaro
Sworn before me this 6th day of March, 2023

A Commissioner, etc.

DEPOSIT ACCOUNT HISTORY

BR #: 1968 ACCOUNT: 5324928 CA SHORTNAME: 1871 BERKELE
FROM: 10 / 01 / 2022 TO: 02 / 03 / 2023 ACCESS TO FUNDS AMT: N/A

FN DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
_ 10/03/2022	BELLSMARTHOME FEE	41.80 DR	
_ 10/03/2022	BELLSMARTHOME FEE	45.19 DR	
_ 10/03/2022	RTN FUNDS HELD	45.19 CR	
_ 10/03/2022	RTN FUNDS HELD	41.80 CR	304.06-
_ 10/04/2022	04321/8575715/04 TRM	361,726.41 CR	
_ 10/04/2022	04321/8575715/04 TRM	361,726.41 DR	
_ 10/04/2022	NSF RETURN FEE	48.00 DR	
_ 10/04/2022	NSF RETURN FEE	48.00 DR	400.06-
_ 10/07/2022	221004S3734000 WIRE	25,075.47 CR	
_ 10/07/2022	LEGAL DEMAND - PYMT	10,766.31 DR	
_ 10/07/2022	LEGAL DEMAND - PYMT	13,909.10 DR	0.00
_ 10/20/2022	BELLSMARTHOME FEE	22.60 DR	
_ 10/20/2022	BELLSMARTHOME FEE	22.60 DR	
_ 10/20/2022	BELLSMARTHOME FEE	41.80 DR	
_ 10/20/2022	BELLSMARTHOME FEE	45.19 DR	
_ 10/20/2022	RTN FUNDS HELD	22.60 CR	
_ 10/20/2022	RTN FUNDS HELD	45.19 CR	
_ 10/20/2022	RTN FUNDS HELD	41.80 CR	
_ 10/20/2022	RTN FUNDS HELD	22.60 CR	0.00
_ 10/21/2022	Service Charge	12.50 DR	
_ 10/21/2022	Service Charge	5.00 DR	
_ 10/21/2022	NSF RETURN FEE	48.00 DR	
_ 10/21/2022	NSF RETURN FEE	48.00 DR	
_ 10/21/2022	NSF RETURN FEE	48.00 DR	
_ 10/21/2022	NSF RETURN FEE	48.00 DR	
_ 10/21/2022	PAT Billing	2.00 DR	
_ 10/21/2022	EFT Billing	50.00 DR	
_ 10/21/2022	BRW Billing	105.00 DR	366.50-
_ 10/31/2022	OVERDRAFT INTEREST	3.53 DR	370.03-
_ 11/08/2022	04321/8575715/04 TRM	362,936.95 CR	
_ 11/08/2022	04321/8575715/04 TRM	362,936.95 DR	370.03-
_ 11/14/2022	BELLSMARTHOME FEE	144.64 DR	
_ 11/14/2022	RTN FUNDS HELD	144.64 CR	370.03-
_ 11/15/2022	NSF RETURN FEE	48.00 DR	418.03-
_ 11/21/2022	Service Charge	12.50 DR	
_ 11/21/2022	Service Charge	5.00 DR	
_ 11/21/2022	IWPN Billing	2.50 DR	
_ 11/21/2022	EFT Billing	50.00 DR	
_ 11/21/2022	BRW Billing	105.00 DR	593.03-
_ 11/30/2022	OVERDRAFT INTEREST	7.84 DR	600.87-

_	12/01/2022	BELLSMARTHOME FEE	45.19 DR	
_	12/01/2022	RTN FUNDS HELD	45.19 CR	600.87-
_	12/02/2022	NSF RETURN FEE	48.00 DR	648.87-
_	12/08/2022	04321/8575715/04 TRM	364,106.30 CR	
_	12/08/2022	04321/8575715/04 TRM	364,106.30 DR	648.87-
_	12/12/2022	Purefacts Finan MSP	15,289.54 CR	14,640.67
_	12/13/2022	LEGAL DEMAND - PYMT	14,640.67 DR	0.00
_	12/20/2022	BELLSMARTHOME FEE	22.60 DR	
_	12/20/2022	BELLSMARTHOME FEE	45.19 DR	
_	12/20/2022	RTN FUNDS HELD	45.19 CR	
_	12/20/2022	RTN FUNDS HELD	22.60 CR	0.00
_	12/21/2022	NSF RETURN FEE	48.00 DR	
_	12/21/2022	NSF RETURN FEE	48.00 DR	
_	12/21/2022	Service Charge	5.00 DR	
_	12/21/2022	Service Charge	6.25 DR	
_	12/21/2022	EFT Billing	50.00 DR	
_	12/21/2022	BRW Billing	105.00 DR	262.25-
_	12/30/2022	OVERDRAFT INTEREST	5.74 DR	267.99-
_	01/11/2023	04321/8575715/04 TRM	365,557.94 CR	
_	01/11/2023	04321/8575715/04 TRM	365,557.94 DR	267.99-
_	01/23/2023	Service Charge	5.00 DR	
_	01/23/2023	Service Charge	5.00 DR	
_	01/23/2023	Service Charge	10.00 DR	
_	01/23/2023	EFT Billing	50.00 DR	
_	01/23/2023	BRW Billing	105.00 DR	442.99-
_	01/31/2023	OVERDRAFT INTEREST	5.69 DR	448.68-
_	02/01/2023	Equitable Bank MTG	163,202.22 DR	
_	02/01/2023	RTN FUNDS HELD	163,202.22 CR	448.68-
_	02/02/2023	NSF RETURN FEE	48.00 DR	496.68-

DEPOSIT ACCOUNT HISTORY

BR #: 1968 ACCOUNT: 5355459 NCA SHORTNAME: 1871 BERKELE
FROM: 10 / 01 / 2022 TO: 02 / 03 / 2023 ACCESS TO FUNDS AMT: N/A

FN DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
_ 10/21/2022	Service Charge	5.00 DR	49.68
_ 11/21/2022	Service Charge	5.00 DR	44.68
_ 12/21/2022	Service Charge	5.00 DR	39.68
_ 01/23/2023	Service Charge	5.00 DR	34.68

DEPOSIT ACCOUNT HISTORY

BR #: 1968 ACCOUNT: 5324936 CA SHORTNAME: 1175484 ONTA
FROM: 10 / 01 / 2022 TO: 02 / 03 / 2023 ACCESS TO FUNDS AMT: N/A

FN DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
_ 10/03/2022	FIRST INSURANCE LOAN	3,662.46 DR	100,967.08-
_ 10/21/2022	Service Charge	6.25 DR	100,973.33-
_ 10/31/2022	OVERDRAFT INTEREST	1,796.64 DR	102,769.97-
_ 11/01/2022	FIRST INSURANCE LOAN	3,662.46 DR	
_ 11/01/2022	RTN FUNDS HELD	3,662.46 CR	102,769.97-
_ 11/02/2022	NSF RETURN FEE	48.00 DR	102,817.97-
_ 11/21/2022	Service Charge	6.25 DR	102,824.22-
_ 11/30/2022	OVERDRAFT INTEREST	1,774.67 DR	104,598.89-
_ 12/21/2022	Service Charge	6.25 DR	104,605.14-
_ 12/30/2022	OVERDRAFT INTEREST	1,865.63 DR	106,470.77-
_ 01/23/2023	Service Charge	5.00 DR	106,475.77-
_ 01/31/2023	OVERDRAFT INTEREST	1,899.00 DR	108,374.77-

DEPOSIT ACCOUNT HISTORY

BR #: 1968 ACCOUNT: 5362099 CA SHORTNAME: 1175484 ONTA
FROM: 10 / 01 / 2022 TO: 02 / 03 / 2023 ACCESS TO FUNDS AMT: N/A

FN DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
_ 10/31/2022	OVERDRAFT INTEREST	2.80 DR	159.97-
_ 11/30/2022	OVERDRAFT INTEREST	2.76 DR	162.73-
_ 12/30/2022	OVERDRAFT INTEREST	2.90 DR	165.63-
_ 01/31/2023	OVERDRAFT INTEREST	2.95 DR	168.58-

DEPOSIT ACCOUNT HISTORY

BR #: 1968 ACCOUNT: 5332343 CA SHORTNAME: 111 KING STR
FROM: 10 / 01 / 2022 TO: 02 / 03 / 2023 ACCESS TO FUNDS AMT: N/A

FN DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
_ 10/12/2022	Torex Gold Reso BPY	6,998.77 CR	12,110.14
_ 10/13/2022	CHQ#01058-3142170653	3,000.00 DR	
_ 10/13/2022	CHQ#01059-1145070918	3,000.00 DR	6,110.14
_ 10/14/2022	LN PYMT 933234302	767.12 DR	5,343.02
_ 10/24/2022	221024S6668500WIRE	19,280.15 CR	
_ 10/24/2022	CHQ#01061-3143335232	19,000.00 DR	5,623.17
_ 10/31/2022	PMAC AP AP	9,589.57 CR	15,212.74
_ 11/02/2022	CHQ#01062-2144416096	3,000.00 DR	12,212.74
_ 11/03/2022	CHQ#01063-3143693240	3,000.00 DR	9,212.74
_ 11/04/2022	CHQ#01064-3144114002	3,000.00 DR	6,212.74
_ 11/07/2022	CHQ#01065-1142298426	3,000.00 DR	3,212.74
_ 11/14/2022	LN PYMT 933234302	849.32 DR	2,363.42
_ 11/18/2022	GC 0202-TRANSFER	20,174.20 CR	22,537.62
_ 11/21/2022	Service Charge	6.25 DR	
_ 11/21/2022	CHQ#01070-0141368414	3,000.00 DR	
_ 11/21/2022	CHQ#01071-0141370883	3,000.00 DR	
_ 11/21/2022	CHQ#01069-4144795254	3,000.00 DR	13,531.37
_ 11/22/2022	CHQ#01073-0142036298	3,000.00 DR	
_ 11/22/2022	CHQ#01074-4140805236	3,000.00 DR	7,531.37
_ 12/21/2022	Service Charge	11.25 DR	7,520.12
_ 12/30/2022	CHQ#01066-2142748795	3,000.00 DR	
_ 12/30/2022	CHQ#01067-4145017692	3,000.00 DR	1,520.12
_ 01/23/2023	Service Charge	2.50 DR	1,517.62

This is Exhibit "F" of
the Affidavit of Kathryn Furfaro
Sworn before me this 6th day of March, 2023

DocuSigned by:
Matilda Lici
7CE576F4AA3D4CA...

A Commissioner, etc.
Matilda Lici

From: Alan Page
Sent: November 2, 2022 2:12 PM
To: Furfaro, Kathryn
CC: Beltrami, Eric P; Douglas Wheler
Subject: RE: Doug Wheler

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST
ATTENTION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ PAS DE PIÈCES JOINTES AUXQUELS VOUS NE FAITES PAS CONFIANCE

Hi Kathryn

Thank you for your response

1 We are sorry for not responding to your requests earlier but Mr Wheler was trying to raise funds through the sale of his interest in a Winery in Niagara Falls. The sale is still moving forward but did not close as it was supposed to last Friday.

2 Mr Wheler is currently trying to raise funds through the following means to deal with his TD debts

A The sale of his recently approved (zoning) condo project which is listed for sale with Colliers for \$33mil and has a mortgage of 20 mil- some interested party's but nothing formal yet

B The sale of his investment property in Rosedale, listed for 7.2 mil with a mortgage of 4.2 mil

C The sale of the previously mentioned Winery

D Scotiabank is working on a refinancing of the Church Street property with a means to raise 13-15 mill

E Two independent mortgage brokers are working on refinancing the Church property and have been for a number of months

3 In regards to CRA the following is outstanding

1175484 Ont Inc owes HST \$251,662 . Mr Wheler's other company 1606067 Ont Inc has the money but CRA will not allow its release until they assess the recently filed corporate tax return (Nil filing). This should happen in the next 30 to 45 days

1871 Berkeley Events Inc

HST \$1,693,245 this amount contains numerous arbitrary assessments and will be reduced substantially when returns are filed, current being worked on

Payroll \$ \$1,274,214 contains some arbitrary assessments but substantial amount outstanding

4 Mr Wheler is still operating a non TD account for his business as until all amended filings are done CRA will not release any garnishees on 1871 Berkeley Events Inc

Mr Wheler wishes to get TD into good standing but needs time to sell the above noted assets or raise financing on them and others he has . We would like to meet to discuss giving the bank additional security on other assets that when sold could bring the TD into good standing or making some type of interim payments with the funds he has.

Please advise us of your availability and we will make ourselves available

Schwartz Levitsky Feldman Inc
Alan Page
416-780-2206

From: Furfaro, Kathryn <Kathryn.Furfaro@td.com>
Sent: Tuesday, November 1, 2022 3:11 PM
To: Alan Page <alan.page@slf.ca>
Cc: Beltrami, Eric P <Eric.Beltrami@td.com>; Douglas Wheler <dwheler@hotmail.com>
Subject: RE: Doug Wheler

Hi Alan, hope all is well and thank you for your correspondence below.

The Bank continues to reserve its rights. As noted in our previous meeting and correspondence, amongst other matters, we continue to require evidence of the nature and amount of the priority payable arrears. Our view is that a meeting would be premature and unproductive due to non-receipt of the requested information.

Katie

Katie Furfaro | Manager, Commercial Credit | Financial Restructuring Group | **TD Bank Financial Group**
3140 Dufferin Street, Toronto ON M6A 2T1
613.716.8447 | kathryn.furfaro@td.com

Internal

From: Alan Page <alan.page@slf.ca>
Sent: Tuesday, November 1, 2022 2:07 PM
To: Furfaro, Kathryn <Kathryn.Furfaro@td.com>
Cc: Beltrami, Eric P <Eric.Beltrami@td.com>; Douglas Wheler <dwheler@hotmail.com>
Subject: Doug Wheler

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Hi Kathryn

Can we set up a meeting to discuss Doug's financial issues with TD and a possible short term resolution of additional security while he sells certain properties. We would like to meet this week if possible. Please advise us of your or Eric's availability

Schwartz Levitsky Feldman Inc
-Alan Page
-416-780-2206

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This is Exhibit "G" of
the Affidavit of Kathryn Furfaro
Sworn before me this 6th day of March, 2023

DocuSigned by:

Matilda Lici

7CE576F4AA3D4CA...

A Commissioner, etc.

Matilda Lici

	Deposit Acct	Deposit Acct	Op Line	Total
1871 Berkeley	19000	0	18250	37250
Southline	0	0	11000	11000
504 Jarvis	0	0	10500	10500
111 King	0	0	11500	11500
1175484	22500	17500	20250	60250
			71500	130500

		Date	Excess Fee
1871 Berkeley	***9428	03-Oct-22	250
		04-Oct-22	250
		21-Oct-22	250
		24-Oct-22	250
		25-Oct-22	250
		26-Oct-22	250
		27-Oct-22	250
		28-Oct-22	250
		31-Oct-22	250
		01-Nov-22	250
		02-Nov-22	250
		03-Nov-22	250
		04-Nov-22	250
		07-Nov-22	250
		08-Nov-22	250
		09-Nov-22	250
		10-Nov-22	250
		14-Nov-22	250
		15-Nov-22	250
		16-Nov-22	250
		17-Nov-22	250
		18-Nov-22	250
		21-Nov-22	250
		22-Nov-22	250
		23-Nov-22	250
		24-Nov-22	250
		25-Nov-22	250
		28-Nov-22	250
		29-Nov-22	250
		30-Nov-22	250
		01-Dec-22	250
		02-Dec-22	250
		05-Dec-22	250
		06-Dec-22	250
		07-Dec-22	250
		08-Dec-22	250
		09-Dec-22	250
		12-Dec-22	250
		13-Dec-22	250
		14-Dec-22	250
		15-Dec-22	250
		16-Dec-22	250
		19-Dec-22	250
		20-Dec-22	250
		21-Dec-22	250
		22-Dec-22	250
		23-Dec-22	250
		28-Dec-22	250
		29-Dec-22	250
		30-Dec-22	250
		03-Jan-23	250
		04-Jan-23	250
		05-Jan-23	250
		06-Jan-23	250
		09-Jan-23	250
		10-Jan-23	250
		11-Jan-23	250
		12-Jan-23	250

13-Jan-23	250
16-Jan-23	250
17-Jan-23	250
18-Jan-23	250
19-Jan-23	250
20-Jan-23	250
23-Jan-23	250
24-Jan-23	250
25-Jan-23	250
26-Jan-23	250
27-Jan-23	250
28-Jan-23	250
29-Jan-23	250
30-Jan-23	250
31-Jan-23	250
01-Feb-23	250
02-Feb-23	250
03-Feb-23	250
	19000

1871 Berkeley	Op Line	03-Oct-22	250
		04-Oct-22	250
		05-Oct-22	250
		06-Oct-22	250
		07-Oct-22	250
		11-Oct-22	250
		12-Oct-22	250
		13-Oct-22	250
		14-Oct-22	250
		17-Oct-22	250
		18-Oct-22	250
		19-Oct-22	250
		20-Oct-22	250
		21-Oct-22	250
		24-Oct-22	250
		25-Oct-22	250
		26-Oct-22	250
		27-Oct-22	250
		28-Oct-22	250
		31-Oct-22	250
		01-Nov-22	250
		02-Nov-22	250
		03-Nov-22	250
		04-Nov-22	250
		07-Nov-22	250
		08-Nov-22	250
		09-Nov-22	250
		18-Nov-22	250
		21-Nov-22	250
		22-Nov-22	250
		23-Nov-22	250
		24-Nov-22	250
		25-Nov-22	250
		28-Nov-22	250
		29-Nov-22	250
		30-Nov-22	250
		01-Dec-22	250
		02-Dec-22	250
		05-Dec-22	250

06-Dec-22	250
07-Dec-22	250
08-Dec-22	250
09-Dec-22	250
20-Dec-22	250
21-Dec-22	250
22-Dec-22	250
23-Dec-22	250
28-Dec-22	250
29-Dec-22	250
30-Dec-22	250
03-Jan-23	250
04-Jan-23	250
05-Jan-23	250
06-Jan-23	250
09-Jan-23	250
10-Jan-23	250
11-Jan-23	250
12-Jan-23	250
13-Jan-23	250
16-Jan-23	250
17-Jan-23	250
18-Jan-23	250
19-Jan-23	250
20-Jan-23	250
23-Jan-23	250
24-Jan-23	250
25-Jan-23	250
26-Jan-23	250
27-Jan-23	250
30-Jan-23	250
31-Jan-23	250
01-Feb-23	250
02-Feb-23	250
	18250

Southline	Op Line	Date	Excess Fee
		03-Oct-22	250
		04-Oct-22	250
		05-Oct-22	250
		06-Oct-22	250
		07-Oct-22	250
		11-Oct-22	250
		12-Oct-22	250
		13-Oct-22	250
		14-Oct-22	250
		17-Oct-22	250
		18-Oct-22	250
		19-Oct-22	250
		20-Oct-22	250
		21-Oct-22	250
		24-Oct-22	250
		25-Oct-22	250
		26-Oct-22	250
		27-Oct-22	250
		28-Oct-22	250
		31-Oct-22	250
		31-Oct-22	250
		01-Nov-22	250
		02-Nov-22	250
		03-Nov-22	250
		04-Nov-22	250
		07-Nov-22	250
		08-Nov-22	250
		09-Nov-22	250
		10-Nov-22	250
		14-Nov-22	250
		15-Nov-22	250
		16-Nov-22	250
		16-Nov-22	250
		17-Nov-22	250
		18-Nov-22	250
		21-Nov-22	250
		22-Nov-22	250
		23-Nov-22	250
		24-Nov-22	250
		25-Nov-22	250
		28-Nov-22	250
		29-Nov-22	250
		30-Nov-22	250
		01-Dec-22	250
			11000

504 Jarvis Op Line	Date	Excess Fee
	03-Oct-22	250
	04-Oct-22	250
	05-Oct-22	250
	06-Oct-22	250
	07-Oct-22	250
	11-Oct-22	250
	12-Oct-22	250
	13-Oct-22	250
	14-Oct-22	250
	17-Oct-22	250
	18-Oct-22	250
	19-Oct-22	250
	20-Oct-22	250
	21-Oct-22	250
	24-Oct-22	250
	25-Oct-22	250
	26-Oct-22	250
	27-Oct-22	250
	28-Oct-22	250
	31-Oct-22	250
	31-Oct-22	250
	01-Nov-22	250
	02-Nov-22	250
	04-Nov-22	250
	07-Nov-22	250
	08-Nov-22	250
	09-Nov-22	250
	10-Nov-22	250
	14-Nov-22	250
	15-Nov-22	250
	16-Nov-22	250
	17-Nov-22	250
	18-Nov-22	250
	21-Nov-22	250
	22-Nov-22	250
	23-Nov-22	250
	24-Nov-22	250
	25-Nov-22	250
	28-Nov-22	250
	29-Nov-22	250
	30-Nov-22	250
	01-Dec-22	250
		10500

111 King St	Op Line	Date	Excess Fee
		03-Oct-22	250
		04-Oct-22	250
		05-Oct-22	250
		06-Oct-22	250
		07-Oct-22	250
		11-Oct-22	250
		12-Oct-22	250
		13-Oct-22	250
		14-Oct-22	250
		17-Oct-22	250
		18-Oct-22	250
		19-Oct-22	250
		20-Oct-22	250
		21-Oct-22	250
		24-Oct-22	250
		25-Oct-22	250
		26-Oct-22	250
		27-Oct-22	250
		28-Oct-22	250
		31-Oct-22	250
		01-Nov-22	250
		01-Nov-22	250
		02-Nov-22	250
		03-Nov-22	250
		04-Nov-22	250
		07-Nov-22	250
		08-Nov-22	250
		09-Nov-22	250
		09-Nov-22	250
		10-Nov-22	250
		14-Nov-22	250
		15-Nov-22	250
		16-Nov-22	250
		17-Nov-22	250
		17-Nov-22	250
		18-Nov-22	250
		21-Nov-22	250
		22-Nov-22	250
		23-Nov-22	250
		24-Nov-22	250
		24-Nov-22	250
		25-Nov-22	250
		28-Nov-22	250
		29-Nov-22	250
		30-Nov-22	250
		01-Dec-22	250
			11500

1175484 Ontario	Op Line	Date	Fee
		03-Oct-22	250
		04-Oct-22	250
		05-Oct-22	250
		06-Oct-22	250
		07-Oct-22	250
		11-Oct-22	250
		12-Oct-22	250
		13-Oct-22	250
		14-Oct-22	250
		17-Oct-22	250
		18-Oct-22	250
		19-Oct-22	250
		20-Oct-22	250
		21-Oct-22	250
		24-Oct-22	250
		25-Oct-22	250
		26-Oct-22	250
		27-Oct-22	250
		28-Oct-22	250
		31-Oct-22	250
		01-Nov-22	250
		02-Nov-22	250
		03-Nov-22	250
		04-Nov-22	250
		07-Nov-22	250
		08-Nov-22	250
		09-Nov-22	250
		10-Nov-22	250
		14-Nov-22	250
		14-Nov-22	250
		15-Nov-22	250
		16-Nov-22	250
		17-Nov-22	250
		18-Nov-22	250
		21-Nov-22	250
		28-Nov-22	250
		29-Nov-22	250
		30-Nov-22	250
		01-Dec-22	250
		02-Dec-22	250
		05-Dec-22	250
		06-Dec-22	250
		07-Dec-22	250
		08-Dec-22	250
		09-Dec-22	250
		12-Dec-22	250
		13-Dec-22	250
		14-Dec-22	250
		15-Dec-22	250
		16-Dec-22	250
		19-Dec-22	250
		20-Dec-22	250
		21-Dec-22	250
		22-Dec-22	250
		23-Dec-22	250
		28-Dec-22	250
		29-Dec-22	250
		30-Dec-22	250

03-Jan-23	250
04-Jan-23	250
05-Jan-23	250
06-Jan-23	250
09-Jan-23	250
10-Jan-23	250
11-Jan-23	250
12-Jan-23	250
13-Jan-23	250
16-Jan-23	250
17-Jan-23	250
18-Jan-23	250
19-Jan-23	250
20-Jan-23	250
23-Jan-23	250
24-Jan-23	250
25-Jan-23	250
26-Jan-23	250
27-Jan-23	250
30-Jan-23	250
31-Jan-23	250
01-Feb-23	250
02-Feb-23	250
	20250

***4936	03-Oct-22	
	03-Feb-23	250
	90	22500

***2099	31-Oct-22	
	03-Feb-23	250
	70	17500

THE TORONTO-DOMINION BANK

and

1871 BERKELEY EVENTS INC.

Court File No: CV-23-00693494-00CL

ET AL.

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

**REPLY AFFIDAVIT OF KATHRYN
FURFARO**

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Lawyers for The Toronto-Dominion Bank