

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

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondent

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

**APPLICATION RECORD
(Appointment of Receiver
returnable March 5, 2024)**

February 27, 2024

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)
Tel: (416) 218-1129
E-mail: harvey@chaitons.com

Laura Culleton (LSO No. 82428R)
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Lawyers for the Applicant

TO: SERVICE LIST

SERVICE LIST

<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton Tel: (416) 218-1129 Email: harvey@chaitons.com</p> <p>Laura Culleton Tel: (416) 218-1128 Email: laurac@chaitons.com</p> <p>Lawyers for Home Trust Company</p>	<p>VANDYK – BACKYARD HUMBERSIDE 1944 Fowler Drive, Mississauga, ON L5K 0A1</p> <p>Email: jvandyk@vandyk.com rma@vandyk.com</p>
<p>MSI SPERGEL INC. 120 Adelaide St. W., Toronto, ON M5H 1T1</p> <p>Trevor Pringle Email: tpringle@spergel.ca</p> <p>Proposed Receiver</p>	<p>KAY FAMILY INVESTMENTS INC. 304-2000 Sheppard Ave. W. Toronto ON M3N 1A2</p>
<p>2233651 ONTARIO LIMITED 939 Silverthorn Mill Ave. Mississauga, ON L5W 0G1</p>	<p>HALEEMAH MUHAMMAD 6880 Second Line West Mississauga, ON L5W1M9</p>
<p>LIVE PATROL INC. 2645 Skymark Avenue, Suite 205 Mississauga, ON L4W 4H2</p>	<p>AVIVA INSURANCE COMPANY OF CANADA 600 Cochrane Drive, Suite 205 Markham, ON L3R 5K3</p> <p>Nabila Majidzadeh Senior Counsel Email: nabila.majidzadeh1@aviva.com</p>
<p>CWB NATIONAL LEASING INC. 1525 Buffalo Place Winnipeg, MB R3T 1L9</p> <p>Jude Vermette Senior Legal Counsel</p>	<p>KUBOTA CANADA LTD. 5900 14th Ave. Markham, ON L3S 4K4</p> <p>Email: kcl_g.finance@kubota.com</p>

<p>Tel: 1 (204) 954-9027 Email: judge.vermette@cwbank.com</p>	
<p>MCAP FINANCIAL CORPORATION 200 King St. W., Suite 400 Toronto, ON M5H 3T4</p> <p>Mark Adams Tel: (416) 847-3505 Email: mark.adams@mcap.com Email: law@mcap.com</p>	<p>PEOPLES TRUST COMPANY 95 Wellington St. W., Suite 1310 Toronto, ON M5J 2N7</p>
<p>DEPARTMENT OF JUSTICE Tax Law Services Division 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p> <p>Lawyers for Canada Revenue Agency</p>	<p>HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Insolvency Unit 33 King Street West, 6th floor Oshawa, Ontario L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>

Email Service List:

harvey@chaitons.com; laurac@chaitons.com; jvandyk@vandyk.com; rma@vandyk.com; tpringle@spergel.ca; nabila.majidzadeh1@aviva.com; judge.vermette@cwbank.com; kcl_g.finance@kubota.com; mark.adams@mcap.com; law@mcap.com; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca;

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TAB 1



Court File No.

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

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondent

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

NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing

- In writing
- In person
- By telephone conference
- By video conference

on Tuesday March 5, 2024 at 10:30am.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of

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appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto, Ontario M5G 1R7

TO: **VANDYK – BACKYARD HUMBERSIDE LIMITED**
1944 Fowler Drive
Mississauga, Ontario L5K 0A1

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APPLICATION

1. The Applicant, Home Trust Company (the “**Lender**”), makes application for:
 - (a) if necessary, an order validating service of this Notice of Application and the Application Record in the manner effected, abridging the time for service thereof, and dispensing with service thereof on any party other than the parties served;
 - (b) an order appointing msi Spergel Inc. (“**Spergel**”) as receiver (“**Receiver**”) of the property, assets and undertaking of Vandyk – Backyard Humberside Limited (the “**Debtor**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3 (the “**BIA**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”); and
 - (c) such further and other relief as this Honourable Court may deem just.
2. The grounds for the application are:

The Debtor and the Property

- (a) The Debtor is an Ontario corporation with its head office located in Mississauga, Ontario. John Vandyk is the sole officer and director of the Debtor.
- (b) The Debtor is the owner of the property municipally known as 10 Neighbourhood Land, Toronto, Ontario (the “**Property**”).
- (c) The Property consists of Stone Gate Plaza, a two-storey concrete commercial building consisting of 31,821 sq ft. The building houses both retail and office space and has 29 underground parking stalls.

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Loan and Security

- (d) Pursuant to a commitment letter dated April 3, 2020, as amended by a renewal letter dated April 19, 2022 (the “**Renewal Letter**” and collectively the “**Commitment Letter**”), the Lender made available to the Debtor a non-revolving bridge loan in the principal amount of \$10.0 million (the “**Loan**”).
- (e) The Loan funds were to be used to refinance the existing first mortgage construction financing on the Property, provide equity repatriation and assist with financing costs.
- (f) The original maturity date for the Loan was May 1, 2022. It was extended to May 2, 2024 pursuant to the Renewal Letter.
- (g) The indebtedness of the Debtor to the Lender is secured by, among other things, a charge/mortgage registered against the Property in the principal amount of \$10.0 million (the “**Charge**”), and a general security agreement (the “**GSA**”, together with the Charge, the “**Security**”).
- (h) Under the Security, the Debtor has agreed that, upon the occurrence of an event of default, the Lender is permitted to seek the appointment of a receiver over the Debtor’s property.

Attempts to Sell the Property

- (i) Over the past five (5) months, the Debtor has tried and failed to sell the Property to repay the Lender.

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- (j) As a result of the Debtor's representations that a closing of an agreement of purchase and sale was imminent, the Lender did not take steps to enforce the Security until the closing date had been pushed back from October 19, 2023 to December 5, 2023 and finally December 15, 2023.

Default and Demand

- (k) The Debtor failed to make any Loan interest payments since September 1, 2023.
- (l) On January 8, 2024, the Lender demanded payment of the Loan from the Debtor in the amount of \$10,145,007.92 for principal and interest (excluding fees and legal costs). The Lender also delivered a notice of intention to enforce security under section 244 of the *BIA*.
- (m) The Lender has received no payments from the Debtor since demand was made.

Just and Convenient to Appoint a Receiver

- (n) The Loan has matured, and the Lender has demanded payment from the Debtor and delivered its *BIA* notice.
- (o) The Debtor has been unable to sell the property for the past five (5) months.
- (p) The Debtor has made no payments since demand was made, and has provided no evidence to demonstrate that it will be in a position to repay the Loan in the near future.

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- (q) The Property is subject to three subordinate mortgages with principal amounts totalling \$5.35 million. A construction lien of almost \$10,000 has also been registered against title to the Property.
- (r) It is in the best interests of the Lender and the Debtor's creditors generally, and is just and convenient, to appoint a Receiver to take control and realize on the Property.
- (s) Spergel has agreed to accept the appointment as Receiver.

Statutory and Other Grounds

- (t) Section 243 of the *BIA*, and Section 101 of the *CJA*.
 - (u) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
 - (v) Such further and other grounds as counsel may advise and this Honourable Court permits.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Sergiu Cosmin sworn February 6, 2024 and the exhibits thereto;
and
 - (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

- 7 -

February 20, 2024

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)

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Laura Culleton (LSO No. 82428R)

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Email: laurac@chaitons.com

Lawyers for the Applicant

HOME TRUST COMPANY
Applicant

-and-

VANDYK – BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No.

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)

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E-mail: harvey@chaitons.com

Laura Culleton (LSO No. 82428R)

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Email: laurac@chaitons.com

Lawyers for the Applicant

TAB 2

Court File No.

**ONTARIO
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AFFIDAVIT OF SERGIU COSMIN

(sworn February __6__, 2024)

I, **SERGIU COSMIN**, of the City of Barrie, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Director, Special Loans, of the Applicant, Home Trust Company (the “**Lender**”). The facts below are within my personal knowledge or determined from the face of the documents attached as exhibits and from information and advice provided to me by others. When matters are based upon information and advice received from others, I have identified the source of the information and advice and believe it to be true.

2. This affidavit is sworn in support of the application by the Lender for the appointment of msi Spergel Inc. (“**Spergel**”) as receiver (“**Receiver**”) of the property, assets and undertakings of the Respondent, Vandyk – Backyard Humberside Limited (the “**Debtor**”).

THE PARTIES

3. The Debtor is a corporation governed by the *Business Corporations Act* (Ontario) and has its registered office located in Mississauga, Ontario. The Debtor was incorporated on April 12, 2016. The sole listed officer and director of the Debtor is John Vandyk. A copy of the Corporate Profile report for the Debtor is attached as **Exhibit “A”** to this affidavit.

4. The Debtor is the owner of real property municipally known as 10 Neighbourhood Lane, Toronto, Ontario (the “**Real Property**”). A copy of the parcel register for the Real Property is attached as **Exhibit “B”** to this affidavit.

5. The Lender is a corporation that provides mortgages, credit cards, deposits and retail lending services to borrowers.

FINANCING FOR THE DEBTOR

6. Pursuant to a commitment letter dated April 3, 2020, as amended (the “**Commitment Letter**”), The Lender made available to the Debtor a non-revolving bridge loan in the principal amount of \$10.0 million to the Debtor (the “**Loan**”). Interest was to be paid monthly, on the first day of each month, in arrears. A copy of the Commitment Letter is attached as **Exhibit “C”** to this affidavit.

7. The Loan was granted to refinance the existing first mortgage construction financing on the Real Property, provide equity repatriation and assist with financing costs.

8. The term of the Loan initially was to mature on May 1, 2022. As discussed below, the term was extended to May 2, 2024.

Security

9. As security for the Loan, the Debtor granted, among other things, the following security documents in favour of the Lender (collectively, the “**Lender’s Security**”):

- (a) a Charge/Mortgage registered on title to the Real Property on April 28, 2020 in the principal amount of \$10.0 million as Instrument No. AT5416487 (the “**Lender’s Charge**”), a copy of which is attached as **Exhibit “D”** to this affidavit;
- (b) a Notice of Assignment of Rents – General registered on title to the Real Property on April 28, 2020 as Instrument No. AT5416488, a copy of which is attached as **Exhibit “E”** to this affidavit; and
- (c) a General Security Agreement dated April 17, 2020 (the “**GSA**”), a copy of which is attached as **Exhibit “F”** to this affidavit.

10. Pursuant to the terms of the Lender’s Charge and the GSA, failure by the Debtor to pay principal or interest when due is an event of default.

11. The Debtor has also agreed that, upon default, the Lender is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver.

OTHER CREDITORS

Real Property Charges

12. In addition to the Lender's Charge, the following charges/mortgages are also registered on title to the Real Property:

- (a) a \$2.0 million charge/mortgage in favour of Kay Family Investments Inc. ("**KFI**") registered against title to the Real Property on July 11, 2019 as Instrument No. AT5182926 (the "**KFI Charge**"), subordinated to the Lender's Charge pursuant to a Subordination and Standstill Agreement dated April 15, 2020 and registered as a postponement against title to the Real Property on April 28, 2020 as Instrument No. AT5416489, copies of which are attached as **Exhibit "G"** to this affidavit;
- (b) a \$2.20 million charge/mortgage in favour of 2233651 Ontario Limited ("**223 Ontario**") registered against title to the Real Property on October 11, 2019 as Instrument No. AT5261210 (the "**223 Ontario Charge**"), subordinated to the Lender's Charge pursuant to a Subordination and Standstill Agreement dated April 20, 2020 and registered as a postponement against title to the Real Property on April 28, 2020 as Instrument No. AT5416490, copies of which are attached as **Exhibit "H"** to this affidavit; and
- (c) a \$1.15 million charge/mortgage in favour of Haleemah Muhammad registered against title to the Real Property on August 21, 2023 as Instrument No. AT6402821 (the "**Haleemah Charge**"), a copy of which is attached as **Exhibit "I"** to this affidavit.

13. I am advised by Chaitons LLP (“**Chaitons**”), the Lender’s legal counsel, that, as a result of the postponements noted above, the charges against the Real Property are ranked as follows:

- (a) Lender’s Charge;
- (b) KFI Charge;
- (c) 223 Ontario Charge; and
- (d) Haleemmah Charge.

Construction Lien

14. On November 22, 2023, a construction lien in the amount of \$9,473.75 was registered by Live Patrol Inc. (“**Live Patrol**”) against title to the Real Property as Instrument No. AT6464046 (the “**Construction Lien**”). A copy of the Construction Lien is attached as **Exhibit “J”** to this affidavit.

15. In the Construction Lien, Live Patrol alleges that it supplied monitoring and related services to the Debtor from August 11, 2022 to October 31, 2023.

PPSA

16. I am advised by Chaitons that the following financing statements were registered against the Real Property under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) as of January 18, 2024.

- (a) Aviva Insurance Company of Canada registered a financing statement on April 26, 2016 in respect of “accounts” and “other” in connection with a Deposit Trust Agreement dated April 15, 2016 made between the Debtor and Aviva Insurance

Company of Canada with respect to the condominium project located at 144 Berry Road in the City of Toronto, Ontario;

- (b) the Lender registered a financing statement on April 28, 2020 in respect of “inventory”, “equipment”, “accounts” and “other” in connection with a security agreement and assignment of general rents related to 10 Neighbourhood Lane, Toronto, Ontario;
- (c) CWB National Leasing Inc. registered a financing statement on May 7, 2020 in respect of “equipment” in connection with all industrial equipment, garbage containers, organic containers, 3 stream tri sorter, T-20x compactor, recycling containers with related components of every nature or kind described in agreement number 2954213 between the Debtor and CWB National Leasing Inc.;
- (d) Kubota Canada Ltd. registered a financing statement on June 2, 2020 in respect of “equipment”, “other” and “motor vehicle included” in connection with 2020 Kubota #BX2380 KBUC1BHRCLGE38802;
- (e) MCAP Financial Corporation registered a financing statement on June 25, 2020 in respect of “accounts” and “other” in connection with a Subordination and Assignment regarding Vandyk – Backyard Kings Mill Limited debt and charge of beneficial interest in the property known as 15 Neighbourhood Lane, Etobicoke, Ontario; and
- (f) Peoples Trust Company registered a financing statement on July 13, 2023 in respect of “inventory”, “equipment”, “accounts” and “other” in connection with property

situate at or arising from the ownership, development, use or disposition of the lands municipally known as 25 Neighbourhood Lane, Toronto, Ontario as well as an assignment of accounts owing to the Debtor by Vandyk – Backyard Queensview Limited and an assignment of choses-in-action and other claims which the Debtor now or hereafter has against Vandyk – Backyard Queensview Limited and proceeds thereof.

A copy of the *PPSA* search result for the Debtor current as of January 18, 2024 is attached as **Exhibit “K”** to this affidavit.

ATTEMPTS TO SELL THE REAL PROPERTY

17. Over the past five (5) months, the Debtor has tried and failed to sell the Real Property to repay the Lender.

18. As a result of the Debtor’s representations that a closing of an agreement of purchase and sale was imminent, the Lender did not take steps to enforce the Security until the closing date had been pushed back from October 19, 2023 to December 5, 2023 and finally December 15, 2023.

DEMAND

19. As noted above, under the Commitment Letter, the Debtor is required to make interest payments to the Lender on the first day of each month.

20. The Debtor failed to make the interest payments that were due on September 1 and all subsequent interest payments. As a result, on January 8, 2024, the Lender demanded payment of the Debtor’s indebtedness in the amount of \$10,145,007.92 and delivered a notice of intention to

enforce security under section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). A copy of the demand letter and the 244 BIA Notice is attached as **Exhibit “L”** to this affidavit.

21. As of the date of the swearing of this affidavit, the Lender has received no payment from the Debtor since demand was made.

22. On January 10, 2024, I was advised by Schneider Ruggiero Spencer Millburn LLP, that the closing date for the purchase and sale of the Real Property was postponed to January 15, 2024. As of the date of the swearing of this affidavit, I have not been advised whether the purchase and sale transaction has been completed or postponed further.

JUST AND CONVENIENT TO APPOINT A RECEIVER

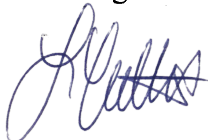
23. The Debtor owes in excess of \$10.0 million to the Lender. The Debtor has unsuccessfully attempted to sell the Real Property for over 5 months. The Debtor has provided no information to suggest that it will be in a position to repay the Loan in the near future, if ever.

24. In addition to the Lender’s Charge, the Real Property is subject to three subordinate mortgages with principal amounts totalling \$5.35 million. A construction lien of almost \$10,000 has also been registered against the Real Property.

25. In these circumstances, I believe it is in the best interests of the Lender and the Debtor's creditors generally that a receiver be appointed to take control over and realize on the Real Property and the Debtor's other property and assets.

SWORN BEFORE ME over
videoconference on this 6 day of
February, 2024. The affiant was located in the
City of Barrie and the commissioner was
located in the City of Toronto, both in the
Province of Ontario. This affidavit was
commissioned remotely in accordance O. Reg.
431/20, Administering Oath or Declaration
Remotely

26.



Laura Culleton

Commissioner for Taking Affidavits
(or as may be)



SERGIU COSMIN

**THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.



Profile Report

VANDYK - BACKYARD HUMBERSIDE LIMITED as of January 19, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	VANDYK - BACKYARD HUMBERSIDE LIMITED
Ontario Corporation Number (OCN)	1954046
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Amalgamation	April 12, 2016
Registered or Head Office Address	1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1

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

V. Quintanilla W.

Director/Registrar

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

Active Director(s)

Minimum Number of Directors	1
Maximum Number of Directors	10

Name	JOHN VANDYK
Address for Service	1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1
Resident Canadian	Yes
Date Began	April 12, 2016

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

V. Quintanilla W.

Director/Registrar

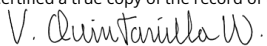
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Active Officer(s)

Name	JOHN VANDYK
Position	President
Address for Service	1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1
Date Began	April 12, 2016

Name	JOHN VANDYK
Position	Secretary
Address for Service	1944 Fowler Drive, Mississauga, Ontario, Canada, L5K 0A1
Date Began	April 12, 2016

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



Director/Registrar

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

Corporate Name History

Name

VANDYK - BACKYARD HUMBERSIDE LIMITED

Effective Date

April 12, 2016

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V. Quintanilla W.

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

Amalgamating Corporations

Corporation Name
Ontario Corporation Number

2384903 ONTARIO INC.
2384903

Corporation Name
Ontario Corporation Number

VANDYK - BACKYARD HUMBERSIDE LIMITED
2509400

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

V. Quintanilla W.

Director/Registrar

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

Active Business Names

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

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Director/Registrar

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Expired or Cancelled Business Names

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

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Document List

Filing Name	Effective Date
Annual Return - 2016 PAF: JASON N MARKOULIAKIS - OTHER	June 01, 2017
CIA - Initial Return PAF: BRUCE MILBURN - OTHER	April 19, 2016
BCA - Articles of Amalgamation	April 12, 2016

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

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V. Quintanilla W.

Director/Registrar

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**THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

LAND
REGISTRY
OFFICE #66

07500-0079 (LT)

PAGE 1 OF 4
PREPARED FOR DePinto1
ON 2024/01/31 AT 09:59:47

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

PROPERTY DESCRIPTION: PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2018/04/13.

ESTATE/QUALIFIER: FEE SIMPLE LT ABSOLUTE PLUS
RECENTLY: DIVISION FROM 07500-0078
PIN CREATION DATE: 2018/06/06

OWNERS' NAMES CAPACITY SHARE
VANDYK - BACKYARD HUMBERSIDE LIMITED

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2018/06/06 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
EB156894	1955/08/12	TRANSFER EASEMENT			TOWNSHIP OF ETOBICOKE	C
		REMARKS: SKETCH ATTACHED				
EB160013	1955/10/24	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB163037	1956/01/03	CERTIFICATE				C
EB177163	1956/11/19	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB181933	1957/04/04	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB186721	1957/07/29	BYLAW				C
EB188451	1957/09/06	AGREEMENT			TOWNSHIP OF ETOBICOKE	C
AT3907826	2015/06/09	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2384903 ONTARIO INC.	J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP	
		CORRECTIONS: PARTY TO NAME:HRJL REAL ESTATE INVESTMENT LP ADDED ON 2016/08/24 AT 15:45 BY GARRETT, TRACEY.				
AT3907827	2015/06/09	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** 2384903 ONTARIO INC.	J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP	

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: AT3907826 CORRECTIONS: PARTY TO NAME:HRJL REAL ESTATE INVESTMENT LP ADDED ON 2016/08/24 AT 15:45 BY GARRETT, TRACEY.						
AT4242867	2016/06/09	NOTICE	\$2	CITY OF TORONTO	2384903 ONTARIO INC.	C
AT4296558	2016/08/02	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED	MERIDIAN CREDIT UNION LIMITED	
AT4296559	2016/08/02	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED	MERIDIAN CREDIT UNION LIMITED	
REMARKS: RENTS AT4296558						
AT4296582	2016/08/02	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP	MERIDIAN CREDIT UNION LIMITED	
REMARKS: AT3907826 TO AT4296558						
66R28992	2016/10/28	PLAN REFERENCE				C
AT4478657	2017/02/02	NOTICE	\$2	CITY OF TORONTO		C
REMARKS: SITE PLAN AGT.; PTS 1,2,3,9,15,16,17,18,22 PLAN 66R28992						
66R29993	2018/04/13	PLAN REFERENCE				C
AT4865052	2018/05/16	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED	VANDYK-SHOPPES OF STONEGATE LIMITED	
AT4890751	2018/06/20	CHARGE		*** COMPLETELY DELETED *** VANDYK-SHOPPES OF STONEGATE LIMITED	FIRST COMMERCIAL BANK	
AT4890752	2018/06/20	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** VANDYK-SHOPPES OF STONEGATE LIMITED	FIRST COMMERCIAL BANK	
REMARKS: AT4890751.						
AT4890817	2018/06/20	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED VANDYK - BACKYARD KINGS MILL LIMITED VANDYK-SHOPPES OF STONEGATE LIMITED	KINGSETT MORTGAGE CORPORATION	
AT4890818	2018/06/20	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** VANDYK-BACKYARD HUMBERSIDE LIMITED VANDYK-BACKYARD QUEENSVIEW LIMITED	KINGSETT MORTGAGE CORPORATION	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
				VANDYK-BACKYARD KINGS MILL LIMITED VANDYK-SHOPPES OF STONEGATE LIMITED		
		REMARKS: AT4890817.				
AT4891678	2018/06/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP		
		REMARKS: AT3907826.				
AT4891705	2018/06/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED		
		REMARKS: AT4296558.				
AT5182926	2019/07/11	CHARGE	\$2,000,000	VANDYK-SHOPPES OF STONEGATE LIMITED	KAY FAMILY INVESTMENTS INC.	C
AT5182927	2019/07/11	NO ASSGN RENT GEN		VANDYK-SHOPPES OF STONEGATE LIMITED	KAY FAMILY INVESTMENTS INC.	C
		REMARKS: AT5182926.				
AT5183483	2019/07/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
		REMARKS: AT4890817.				
AT5200718	2019/07/31	LR'S ORDER		LAND REGISTRAR, TORONTO LAND REGISTRY OFFICE		C
		REMARKS: TO AMEND PIN TO ADD PART 9 66R2993 TO EASEMENT AT4478658				
AT5261210	2019/10/11	CHARGE	\$2,200,000	VANDYK-SHOPPES OF STONEGATE LIMITED	2233651 ONTARIO LIMITED	C
AT5347788	2020/01/22	NOTICE		CITY OF TORONTO		C
AT5347791	2020/01/22	TRANSFER REL&ABAND	\$2	VANDYK-SHOPPES OF STONEGATE LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865049. PARTIAL RELEASE AS TO PARTS 10, 13, 14 AND 28, 66R28992 AND PART 1, 66R30958				
AT5413469	2020/04/22	TRANSFER	\$2	VANDYK-SHOPPES OF STONEGATE LIMITED	VANDYK - BACKYARD HUMBERSIDE LIMITED	C
AT5416487	2020/04/28	CHARGE	\$10,000,000	VANDYK - BACKYARD HUMBERSIDE LIMITED	HOME TRUST COMPANY	C
AT5416488	2020/04/28	NO ASSGN RENT GEN		VANDYK-BACKYARD HUMBERSIDE LIMITED	HOME TRUST COMPANY	C
		REMARKS: AT5416487.				
AT5416489	2020/04/28	POSTPONEMENT		KAY FAMILY INVESTMENTS INC.	HOME TRUST COMPANY	C
		REMARKS: AT5182926, AT5182927 TO AT5416487				
AT5416490	2020/04/28	POSTPONEMENT		2233651 ONTARIO LIMITED	HOME TRUST COMPANY	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
		<i>REMARKS: AT5261210 TO AT5416487</i>				
AT5416491	2020/04/28	NOTICE	\$2	VANDYK-BACKYARD HUMBERSIDE LIMITED	KAY FAMILY INVESTMENTS INC.	C
		<i>REMARKS: AT5182926</i>				
AT5417187	2020/04/29	DISCH OF CHARGE		*** COMPLETELY DELETED *** FIRST COMMERCIAL BANK		
		<i>REMARKS: AT4890751.</i>				
AT5531340	2020/09/29	NOTICE	\$2	VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED VANDYK - BACKYARD KINGSMILL LIMITED		C
AT5531477	2020/09/29	TRANSFER REL&ABAND		VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD KINGS MILL LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED	VANDYK - BACKYARD HUMBERSIDE LIMITED	C
		<i>REMARKS: AT4865049.</i>				
AT5541513	2020/10/08	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** ATTARD PLUMBING LTD.		
AT5565862	2020/11/05	CERTIFICATE		*** COMPLETELY DELETED *** ATTARD PLUMBING LTD.		
		<i>REMARKS: CERTIFICATE OF ACTION</i>				
AT5715077	2021/04/26	APL DEL CONST LIEN		*** COMPLETELY DELETED *** ATTARD PLUMBING LTD.		
		<i>REMARKS: AT5541513. AT5565862</i>				
AT6094356	2022/05/31	NOTICE	\$2	VANDYK-BACKYARD HUMBERSIDE LIMITED	HOME TRUST COMPANY	C
		<i>REMARKS: AT5416487</i>				
AT6402821	2023/08/21	CHARGE	\$1,150,000	VANDYK - BACKYARD HUMBERSIDE LIMITED	MUHAMMAD, HALEEMAH	C
AT6454977	2023/11/06	RESTRICTION-LAND		VANDYK - BACKYARD HUMBERSIDE LIMITED		C
		<i>REMARKS: NO DEALINGS WITHOUT THE CONSENT OF DIVERSIFIED CAPITAL INC.</i>				
AT6464046	2023/11/22	CONSTRUCTION LIEN	\$9,473	LIVE PATROL INC.		C

**THIS IS EXHIBIT "C" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

April 3, 2020

Vandyk-Backyard Humberside Limited
1944 Fowler Dr, Mississauga, ON L5K 0A1

Attention: John Vandyk & Richard Ma

Dear Sirs:

RE: Non-revolving bridge loan financing in the amount of \$10,000,000 to be secured by a 1st mortgage on a 31,821 sf commercial building located at 10 Neighbourhood Lane, Toronto, Ontario (the "Subject Property").

We are pleased to advise that we have approved a 1st mortgage loan (the "Loan") to Vandyk-Shoppes of Stonegate Limited (the "Borrower"), which shall be secured by a \$10,000,000 first mortgage charge on the Subject Property, (the "Mortgage") on the terms described in this commitment letter (the "Commitment Letter"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower and Guarantor with respect to the Loan. The Loan has been approved subject to the following terms and conditions.

LOAN TERMS

- 1. Lender** Home Trust Company (the "Lender").
- 2. Borrower** Vandyk-Shoppes of Stonegate Limited (the "Borrower").
- 3. Guarantor** The unlimited guarantee of John Vandyk, Vandyk Holdings Incorporated, and Vandyk-Humberside Limited shall be provided for the full Loan Amount (as hereinafter defined) outstanding from time to time including interest arising therefrom and any other monies which may now or hereafter become due and owing (the "Guarantors").
- 4. Subject Property**

Civic Address: 10 Neighbourhood Lane, Toronto, Ontario

Site & Property Description: Stone Gate Plaza, a fully occupied two-storey concrete commercial building circa 2019 consisting of 31,821 SF located in Toronto, Ontario. The building houses retail and office space as well as 29 underground parking stalls ("Subject Property").
- 5. Purpose & Use** The Loan funds shall be used to refinance the existing first mortgage construction financing on the Property, provide equity repatriation, assist with financing costs, and shall at all times be used for this said purpose and for no other purpose, without the prior written consent of the Lender.
- 6. Expiry of Loan Offer** It is a condition of this Commitment Letter that if the Security (as hereinafter defined) is not registered and in place, and the Initial Advance (as hereinafter defined) has not occurred on or before **April 30, 2020**, the Lender shall no longer have any obligation to advance any funds to the Borrower pursuant to the terms of this Commitment Letter. All

other terms and conditions of this Commitment Letter shall remain in full force and effect.

- 7. Loan Amount** \$10,000,000
- 8. Term** 24 months plus 1 day commencing from the Interest Adjustment Date (as hereinafter defined).
- Renewal:** Any renewal of the Loan shall be at the sole and unfettered discretion of the Lender. The Borrower must request a Loan renewal, in writing, no less than 60 days prior to the maturity date of the Loan.
- 9. Interest Adjustment Date** Shall be the 1st day of the month immediately following the Initial Advance of funds, or such other date as shall be determined by the Lender.
- 10. Interest Rate** Interest shall be charged at the greater of:
- (a) 5.95% per annum (the "**Minimum Rate**"); and
 - (b) a variable rate per annum (in either case, both before and after maturity, default and judgment) equal to the rate established by the RBC from time to time as RBC's prime lending rate for Canadian Dollar Loans ("**Prime Rate**") plus 3.00%
- on the outstanding balance of the principal sum owing from time to time for the first 24 months of the Term, and 15.0% per annum thereafter. Interest shall be calculated daily and compounded and payable monthly. Overdue interest shall bear interest at the same rate as principal.
- Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower.
- All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's Solicitor (as hereinafter defined), whether or not such advance of the Loan is released to the Borrower or the Borrower(s) Solicitor (as hereinafter defined).
- 11. Amortization** Interest only.
- 12. Monthly Payments** Monthly mortgage payments (the "Monthly Payments") shall be computed in accordance with the Interest Rate and Amortization sections above and will be due and payable on the 1st day of each and every month following the Interest Adjustment Date.
- Monthly Payments shall be paid from the Borrower's own resources.
- 13. Commitment Fee** \$150,000 (1.50% of the loan amount with a 24-month term) is applicable. The Commitment Fee shall be deemed to be fully earned upon acceptance of this Commitment Letter, and payable on the earlier of the date of Initial Advance (as hereinafter defined) and the date of expiry of this Commitment Letter.

14. Broker's Fee

N/A

15. Deposit

A non-refundable deposit in the amount of \$35,000 is due and payable to the Lender (the "Deposit"). A cheque for the Deposit to "**Home Trust Company**" must be returned to the Lender along with a signed copy of this Commitment Letter.

The Deposit is non-refundable upon the acceptance of this Commitment Letter by the Borrower. The Deposit, less any expenses incurred during the due diligence process, shall be applied towards the Commitment Fee. The Lender shall not pay any interest to the Borrower on Deposit monies held.

16. Prepayment

The Borrower, not being in default of the Loan, may at any time after a minimum of **\$75,000** interest has been earned by the Lender and paid to the Lender and after the provision of no less than 30 days written notice, which notice must contain evidence, satisfactory to the Lender, of the source of funds to be used for repayment and must contain a date certain for the repayment ("Date Certain"), repay the whole of the obligations hereby secured hereunder to the Date Certain. Should the repayment be delayed past the Date Certain, a new minimum 30 day written notice must be provided as set out herein. If prepayment occurs prior to the Date Certain, interest must be paid to Date Certain. The Date Certain must be a business day that banks in the Province of Ontario are open for business.

17. Partial Discharges

There shall be no partial discharges permitted.

18. Additional Fee(s)

Administration Fee: There shall be an administration fee (the "Administration Fee") of **\$400** for each land title document, certificate, confirmation, returned cheque, settlement (other than a payout statement or balance confirmation issued to the Borrower), or similar document required to be issued or executed by the Lender at the Borrower request.

Inspection Fee: The Lender reserves the right to a site inspection of the Subject Property. There shall be an inspection fee (the "Inspection Fee") of **\$500** for each inspection of the Subject Property done by the Lender. The Inspection Fee shall be in addition to any out of pocket expenses associated with the inspection. The Lender may inspect the Subject Property from time to time and prior to any disbursement of funds.

19. Sources & Uses

Proforma Balance Sheet					
Uses		Sources		Revised	
Appraised Land Value	\$15,100,000	Total 1st Mortgage - bridge loan	\$10,000,000	65.5%	
Repay existing debt	\$8,666,741	HTC - 1st Priority	\$10,000,000	65.5%	
Appraisal Surplus	\$6,433,259				
Legal / closings	\$25,000	Borrower's Equity 1 (2nd mtg)	\$5,275,000	34.5%	
Interest Costs (24 months)	\$0	-Cash Equity to date	\$6,433,259	42.1%	
Commitment Fee (up front)	\$150,000	-(Equity Repatriation)	-\$1,158,259	-7.6%	
Total Uses	\$15,275,000	Total Sources	\$15,275,000	100%	

Note: Additional cash equity may be required to pay for legal & closing costs.

20. Security

The Loan shall be secured by the following security (collectively, the "Security"), all of which must be in form and content satisfactory to the Lender and its Solicitor (as hereinafter defined):

- a) A \$10,000,000 real property mortgage creating a charge in 1st priority over the Subject Property, which shall be cross-defaulted with all other loans, present and future, between the Lender and the Borrower or Guarantor, either individually or

- collectively, and with all other loans, present and future, between the Lender and entities owned or controlled by the principals of the Borrower or Guarantor.
- b) Mortgage terms to incorporate receiver clause and acceleration clause in the event of a sale of the subject property.
 - c) No subsequent mortgage encumbrance permitted without Lender's prior consent, except a 2nd and 3rd mortgage charge, each in the amount of no more than \$2,000,000 (total of \$4,000,000) registered in favour of Vandyk Group equity partners. Subsequent encumbrance to be acceptable to Lender and contain a Postponement and Priority Agreement, automatic postponement clause to all advances funding project.
 - d) Priority and Postponement Agreement from any party having a prior interest in the Project lands to future advances, shall be acceptable to the Lender and its Solicitor, and this mortgage is to contain inter alia, the following terms and conditions:
 - a. The mortgage must be pursuant to a Postponement and Priority Agreement and must contain a full and automatic postponement clause to present and future advances to the Lender as set out under "Purpose";
 - b. Interest payments shall be payable as long as the Lender's 1st mortgage remains in good standing.
 - c. Principal shall be payable only after the satisfaction of the repayment of all Lender debt, principal and interest.
 - d. The mortgage contains a standstill agreement preventing the Subordinated Mortgagee from taking any action including those triggered by default prior to subject Facility's repayment and cancellation.
 - e) A Guarantee and Postponement of Claim from the Guarantors for 100% of the loan amount.
 - f) Assignment of rents, leases, contracts, licenses and offers to purchase on the Subject Property, in 1st priority.
 - g) A general security agreement over all the site-specific present and after-acquired personal property of the Borrower related to the Subject Property in 1st priority over the Subject Property in 1st priority over the Subject Property (registered under PPSA).
 - h) An assignment of necessary insurance as further described under Conditions Precedents (reviewed by Independent Insurance Consultant). Policies to show Home Trust company as 1st mortgagee & as first loss payee and are to include Standard Mortgage Clause.
 - i) A full Lender's policy of title insurance underwritten by a company satisfactory to the Lender in its sole, unfettered and absolute discretion.
 - j) An Environmental hazardous substance indemnity from the Borrower and Guarantor on the Subject Property.
 - k) Legal opinion on Title (including all sub-searches) or Title Insurance to be provided.
 - l) A specific assignment of all the Borrower right, title and interest in, to and under, all material contracts affecting, or with respect to, the Subject Property and as required by the Lender, including without limitation all building and construction contracts, plans, permits, and insurance policies with respect to the Subject Property, with all necessary consents of the other parties thereto.

- m) Acknowledgement of the status and terms of any contracts affecting, or with respect to, the Subject Property, including without limitation, any pertaining to ownership, insurance, shared facilities, passageway agreements or other similar matters specifically, and without limitation, confirming the good standing of such contracts and the rights of the Lender under its Security.
- n) If registered title is held by a nominee or trustee, a beneficial owners agreement by which all beneficial owners charge their respective beneficial interests in the Subject Property in favour of the Lender and authorize the nominee or trustee to execute all documentation as required pursuant to the Commitment Letter and agree to be bound thereby as if they executed same themselves, provided that any recourse against the beneficial owners pursuant to any covenants contained in such documents shall at all times be limited to the specific obligations as herein or in their guarantees set out and required of them.
- o) If any part of the Subject Property is the object of a lease with the Provincial or Federal Crown as Tenant, the Borrower undertakes to deliver to the Lender, in form and content satisfactory to the Lender, an Absolute Assignment of Crown Debt (rents and other amounts due by the Crown under the lease) executed by the Borrower in favour of the Lender (the "Assignment"), and to deliver such Assignment to the Crown with an Acknowledgement from the Crown and any other documents as contemplated under the provisions of the applicable provincial or federal statutes and regulations.
- p) In the event that the Security comprises a leasehold interest or a condominium, then if required by the Lender, an insurance trust agreement to adequately protect the Lender's Security in the proceeds of insurance may be required.
- q) Such other security as the Lender or Lender's Solicitor (as hereinafter defined) may deem necessary, acting reasonably.
- r) A Solicitor's Letter of Opinion confirming the validity and enforceability of all the Lender's security.

**21. Conditions
Precedent to
the
Disbursement
of Funds**

The conditions precedent to the disbursement of the Initial Advance (as hereinafter defined) shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion for the Initial Advance and for any other advances (if applicable).

- a) Completion and registration of the Security, as required by the Lender. Title must be acceptable to the Lender and all Security documents must be registered, the Lender's Solicitor (as hereinafter defined) must provide a satisfactory report on registration of the Security, the Lender's Solicitor (as hereinafter defined) must confirm that no adverse filings concerning the Borrower have been registered in any department or agency of government which, in the Solicitor's (as hereinafter defined) opinion, could affect the security or priority of the Security, and all other terms and conditions of this Commitment Letter must be satisfied.
- b) Inspection of the Subject Property by the Lender.

The Lender's receipt and satisfactory review of the following materials:

- c) An appraisal report, no more than **twelve (12)** months old, valuing the Subject Property at no less than \$15,100,000 as-is, with a transmittal letter from the author of the report addressed to “Home Trust Company”.
- d) All required environmental reports for the Subject Property no more than **twelve (12)** months old and a transmittal letter from the author of the report(s) addressed to “Home Trust Company” and disclosing the amount of liability insurance that the author carries.
- e) Receipt of an architect’s certificate of completion and/or an engineer’s certificate together with an occupancy certificate for the Subject Property.
- f) A rent roll for the Subject Property, which has been signed as true and dated by the Borrower. The rent roll for the Subject Property must confirm base rental revenues net of HST of at least \$642,000 per annum.
- g) The Borrower’s bank statements for the past three (3) months.
- h) All leases, offers to lease for the Subject Property.
- i) Estoppels, and/or tenant acknowledgements for all tenants in the Subject Property. Estoppels and/or tenant acknowledgements must be addressed to “Home Trust Company”.
- j) Most recent 2-year historical operating statements for the Subject Property, the current year-to-date (if available) as well as the current year operating budget.
- k) Most recent Tenant recovery reconciliation statements (if available).
- l) Architectural drawings, site plans, cross sections, floor layouts and building plans showing the gross square footage of the Subject Property as well as delineating any unit divisions or strata lots within the Subject Property along with net square footage for each such sub-unit.
- m) Commitment letter(s) and/or loan agreement(s) for all subordinate mortgages. All subordinate mortgage terms and conditions must be satisfactory to the Lender’s Solicitor.
- n) At the Lender’s discretion, a priority and standstill agreement between the Lender and any subordinate mortgagees, in form and substance satisfactory to the Lender and Lender’s Solicitor in their unfettered discretion.
- o) Payout statement(s) for any loan(s) being discharged with the proceeds of this loan.
- p) Resumes / biographies for the Borrower, Guarantor and key members of the development team.
- q) An organizational chart and a copy of the current shareholder registry for the Borrower and any corporate Guarantors, signed and dated by the respective company’s authorized signatory.
- r) Certified financial statements from the Borrower and Guarantor for the past 2 fiscal years. If an individual then a personal net worth statement, on the Home Trust Form, dated no more than **four (4)** months prior, are required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. All Personal Net Worth Statements

must include the individuals' full name, full-time occupation, Social Insurance Number, Birth date and current address and other supporting evidence.

- s) Satisfactory results, in the Lender's sole discretion, of due diligence investigations conducted pursuant to the *Proceeds of Crime Money Laundering and Terrorist Financing Act (Canada)* and Regulations (collectively the "Act") thereunder including but not limited to the following:
- i. One piece of satisfactory identification for all *Borrower, Beneficial Owners/Guarantors/ Signing Officer(s)* (up to three Signing Officers, if borrowing under a corporate entity) prior to closing;
 - ii. If the Borrower is a corporate entity, the name and address of all individuals who own or control (directly or indirectly) 25% or more of that corporate entity or the assets being held by that corporate entity, together with confirmation/evidence of the accuracy of all such information;
 - iii. The Borrower's bank statements for the last three months and/or such other information as may be required to verify the source of equity funds;
 - iv. Satisfactory verification of employment, income and assets;
 - v. Third Party Declaration/Statement;
 - vi. Politically Exposed (Foreign and Domestic) Persons Declaration;
 - vii. Director's resolutions, certificates of officers and opinions of counsel to the Lender and Borrower, confirming corporate capacity and the due authorization, execution, delivery, enforceability and priority of Security, as may be required by the Lender; and
 - viii. Any other documentation that may be requested by the Lender in order to fulfill its obligations under the Act.
- t) Post-dated cheques to "**Home Trust Company**" for the Monthly Payments due from the Borrower for the full term of the Loan, or preauthorized payment form with specimen cheque for automatic deduction of the Monthly Payments due from the Borrower for the full Term.
- u) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Mortgage and the Borrower is registered in the appropriate monthly property tax payment program in the appropriate city, county or jurisdiction.
- v) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant (as hereinafter defined) which insurance shall include the coverage set out in Schedule A, or as otherwise required by the Lender in consultation with its Insurance Consultant (as hereinafter defined).
- w) Confirmation that the Borrower is in compliance with each of the terms and conditions of this Commitment Letter. In the case of any advance, all conditions precedent pertaining to the advance must be performed no less than five (5) business days prior to the scheduled date of the advance or the Lender shall be under no obligation to make the advance.
- x) A Bring Down Certificate, signed by the Borrower and Guarantor, confirming that all representations and warranties set out in the Commitment Letter are true at the time of closing.
- y) Such other materials and completion of such other reasonable requirements as may be deemed necessary by the Lender.

- 22. Ongoing Conditions:**
- z) Borrower and Guarantors to immediately fund any cost overruns or interest shortfalls. No advance permitted if construction liens or subsequent charges are registered on the property, except those as contemplated herein.
 - aa) No dividends, equity withdrawals or repayment of shareholder loans are to be made, except those contemplated herein, without written approval of Lender prior to cancellation of Loan.

23. Real Property Taxes All property tax payments, utilities and like amounts due and owing in relation to the Subject Property, or any other taxes charged against the Subject Property, shall be paid prior to or coincide with the Advance (as hereinafter defined). The Borrower shall make arrangements to have the taxes paid by monthly installments to the appropriate taxing authority in order to have them paid in full on their due date. The Borrower is to provide evidence of same to the Lender on a quarterly basis.

In the Event of a Default (as hereinafter defined) under the Mortgage Security, the Lender shall have the right to require the establishment of a tax reserve by way of monthly payments representing 1/12 of the estimated taxes payable. The Lender shall not be responsible for the payment of any tax arrears.

24. Statutory Declaration The Lender shall receive a satisfactory statutory declaration from an officer or director of the Borrower as to the representations and warranties of the Borrower, whether contained in this Commitment Letter or in any of the Security, including: accuracy of financial statements and that there has been no material adverse change in the Borrower financial conditions or operations as reflected in the financial statements used to evaluate this credit; satisfactory title to the Subject Property charged by the Mortgage; power and authority to execute and deliver documents; accuracy of documents delivered and representations made to the Lender; no pending adverse claims; no outstanding judgments; no defaults under other agreements relating to the Subject Property; preservation of assets; payment of all taxes; no other consents, approvals or authorizations necessary in connection with documentation; compliance of the Subject Property with all laws; no other charges against the Subject Property except permitted encumbrances; all necessary services available to the Subject Property; and such other matters as the Lender or its Solicitor (as hereinafter defined) may require.

25. Further Documents Notwithstanding anything contained in this Commitment Letter, the Lender may request other documents containing such other assurances, information and covenants as the Lender's Solicitor (as hereinafter defined) may require with regard to the Loan and Security.

26. Funding All fundings shall require **five (5)** business days' notice.

The Loan shall be funded in a single advance once all of the Lender's conditions have been satisfied and the Security is in place (the "Initial Advance").

The Lender shall record the principal amount of each advance of the Loan and the payment of principal, interest and fees and all other amounts becoming due to the Lender under this agreement. The Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower for the Loan to the Lender pursuant to this agreement.

All fees that are payable to the Lender and expenses that are incurred by the Lender during the due diligence process shall be deducted from the Initial Advance or the Deposit.

REPRESENTATIONS & WARRANTIES**27. The Borrower warrants and represents that:**

- a) **Description of Properties** **Subject Property:**
Civic Address: 10 Neighbourhood Lane, Toronto, Ontario
Site and Property Description: Fully occupied two-storey concrete commercial building circa 2019 consisting of 31,821 SF located in Toronto, Ontario. The building houses retail and office space as well as 29 underground parking stalls
- b) **Appraised Value** \$15,100,000. The Subject Property was appraised by Gus Dal Colle, AACI, P. App, PLE of Antec Appraisal Group with an effective date of December 27, 2019.
- c) **Ownership** At the time of the Initial Advance of the Loan, the legal owner of the Subject Property will be Vandyk-Shoppes of Stonegate Limited and the beneficial owner of the Subject Property is Vandyk-Backyard Humberside Limited, Vandyk Holdings Incorporated, which will in is owned 100% owned by John Vandyk.
- d) **Share Capital** The Borrower declares and represents that its authorized share of capital is as follows:
- | Number of Shares | Class | Shareholder's Name |
|------------------|-------|--------------------|
| | | |
| | | |
| | | |
- e) **Priority of Financing** The mortgages registered against the Subject Property as at the funding date will be as follows:
- | Rank | Lender | Amount |
|--------------------------|--|--------------|
| 1 st Position | Home Trust Company or its Nominee | \$10,000,000 |
| 2 nd Position | Vandyk Equity – (1 registration for the equity partners of the Vandyk Group) | \$2,000,000 |
| 3 rd Position | Vandyk Equity – (1 registration for the equity partners of the Vandyk Group) | \$2,000,000 |
| Total | | \$14,000,000 |
- f) **Repayment** This Loan will be repaid from the proceeds of any refinancing or sale of the Subject Property and/or other assets of the Borrower.
- g) **Financial** All financial information provided by the Borrower and Guarantor to the Lender, including but not limited to, financial information provided in respect of the values and other matters pertaining to the Subject Property is true and accurate and may be relied upon by the Lender in executing this Commitment Letter and making the Loan.
- h) **Legal Compliance** The Subject Property and the use and occupancy thereof, and revenues therefrom, are and shall be at the time of each disbursement, authorized and in accordance with all applicable legislation and there are, and shall be at the time of each disbursement, no work orders or liens outstanding against the Subject Property.

i) Hazardous Materials

The Borrower and Guarantor warrant and represent that to the best of their knowledge the Subject Property and existing prior uses comply and have at all times complied with all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance, and operation thereof (collectively, the “Environmental Laws”) and, without limiting the generality of the foregoing:

- (i) The Subject Property has never been used as a land fill site or to store hazardous substances either above or below ground, in storage tanks or otherwise;
- (ii) All hazardous substances used in connection with the business conducted on the Subject Property has at all times been received, handled, used, stored, treated, shipped and disposed of in strict compliance with all Environmental Laws;
- (iii) No hazardous substances have been released into the environment or deposited, discharged, placed or disposed of at, on or near the Subject Property as a result of the conduct of the business on the Subject Property; and
- (iv) No notices of any violation of any matters referred to above relating to the Subject Property or its use have been received by the Borrower and there are no directions, writs, injunctions, orders or judgments outstanding, no law suits, claims, proceedings, or investigations being instituted or filed.

For the purposes of this Commitment Letter, a hazardous substance includes but is not limited to contaminants, pollutants, dangerous substances, gasoline, oil, liquid wastes, industrial wastes, whole liquid wastes, toxic substances, hazardous wastes, hazardous materials and hazardous substances as defined in or pursuant to any applicable Environmental Laws. Further, the Borrower shall indemnify and save harmless the Lender from any loss or liability whatsoever arising from any violation whatsoever of any law, regulation, ordinance, judgment, appraisal or decision in connection with hazardous risks or environmental risks.

GENERAL CONDITIONS

- 28. Repayment of the Loan** The Loan shall be repayable on demand by the Lender following the occurrence of an Event of Default (as hereinafter defined) and shall in any event be repaid in full at the end of the Term. Any payment of any amount due to the Lender hereunder or in the Security documents must be received by the Lender at the Lender’s address by 3:00pm Eastern Standard Time on a business day, failing which such payment will be deemed to be received on the next business day.
- 29. Management** The Subject Property is to be managed at all times by a property manager satisfactory to the Lender, and on terms satisfactory to the Lender. A change in the property manager without the Lender’s approval shall constitute an Event of Default (as hereinafter defined).
- 30. Abandonment** In the event of abandonment of the Subject Property for a period in excess of fifteen (15) consecutive days, the Lender shall be entitled, after giving the Borrower written notice of any abandonment and provided the Borrower fails to rectify same within ten (10) days after such notice has been given, to forthwith withdraw and cancel its obligations hereunder and/or decline to advance further funds as the case may be and

in addition to declare any funds advanced to forthwith become due and payable plus interest, all at the Lender's option.

31. Liens

At all times, and in particular on each disbursement date, there shall have been full and complete compliance with all requirements of federal and provincial legislation which may give rise to a lien or other charge in priority to the Lender. The Lender may retain from any disbursement such amounts as it considers advisable to protect its interest from subordination under such legislation. The Borrower shall provide additional security, information and documentation as may be required by the Lender to preserve and ensure, in all respects, the absolute priority of the Mortgage over any rights of any existing or potential lien claimants. The Lender reserves the right to hold back additional amounts due to suppliers, contractors, government or other agencies, which may be due under the terms of any legislation giving rise to a claim of lien or other charge. Furthermore, the Lender shall have the right to make payments directly to suppliers, contractors, government or other agencies for the Borrower account as if advanced directly to the Borrower, as the Lender may deem necessary.

32. Environmental Concerns

At the time of any disbursement of the Loan, the Lender shall be satisfied that there are not in, on, under or about the Subject Property, or any part thereof, any contaminants, toxic, dangerous or hazardous substances (collectively, the "Dangerous Substances") including, without limitation, UFFI (Urea Formaldehyde Foam Insulation), asbestos fireproofing insulation, PCB's (Polychlorinated Biphenyl's) or radioactive materials and, to the best of the Borrower knowledge, neither the Subject Property, nor any adjacent lands, have ever been used as or for a waste disposal or coal gasification site, nor have they ever contained any underground storage tanks, and further, the use of the Subject Property has not involved, and will not involve, during the Term, the handling of Dangerous Substances or will such use result in any environmental damage. In addition to any liability imposed on the Borrower and Guarantor under any instrument evidencing or securing the Loan indebtedness, the Borrower and Guarantor shall be liable for any and all of the costs, expenses, damages or liabilities of the Lender, its Directors and Officers (including, without limitation, all reasonable legal fees) directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Subject Property of any hazardous or noxious substances and such liabilities shall survive foreclosure of the Security for the Loan and any other existing obligations of the Borrower and Guarantor to the Lender in respect of the Loan and any other exercise by the Lender of any remedies available to the Lender for any default of the Loan.

33. Restriction on Further Financing

The Borrower agrees not to enter into any further financing of the Subject Property and not to further encumber the Subject Property in any manner without the prior written approval of the Lender, which approval may be withheld in the Lender's sole discretion. The Borrower will provide evidence, satisfactory to the Lender, as to the source of the Borrower required equity in the Subject Property. The Borrower shall disclose to the Lender all existing or proposed financing related to the Subject Property or any Security used in connection therewith and shall not further pledge, charge or otherwise encumber its interest in the Subject Property, nor any of the Security used in connection with the Subject Property to any party other than the Lender, without the prior written consent of the Lender.

34. Sale

Except as provided in Partial Discharges section above, the Borrower shall not sell, assign, lease in its entirety or otherwise dispose of the legal ownership or title to the Subject Property, or its beneficial interest therein, or of the personal property related

thereto or which is necessary to the use and operation of the Subject Property, without the prior written consent of the Lender. The Borrower shall not make any changes to the authorized share capital or allocation or ownership thereof, which would result in a change of voting control or beneficial ownership thereof without the prior written consent of the Lender.

35. Proceedings The Borrower shall provide the Lender with evidence that it has taken all of the necessary corporate proceedings relating to the transactions contemplated herein.

36. Default At the time of the disbursement of any part of the Loan, no default shall have occurred and be continuing, nor any state of affairs or event shall be existing which, with the passage of time or the giving of notice or both, would constitute a default hereunder or in the instruments evidencing or securing the Loan or incidental thereto and neither the Borrower or Guarantor shall be deceased or insolvent or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation, reorganization, liquidation, winding-up, dissolution, receivership or material litigation or continuation under the laws of any other jurisdiction. Any default under the Security shall be deemed to be a default hereunder.

37. Costs & Expenses Whether or not the Loan is disbursed, and notwithstanding retention of the Commitment Fee by the Lender, all of the Lender's costs and expenses relating to the Loan, including legal costs and travel costs, in addition to any costs and expenses incurred by the Lender due to proceedings under the Bankruptcy and Insolvency Act relating to the Borrower, shall be borne in full by the Borrower. Such costs and expenses may be added to the then outstanding principal balance of the Mortgage and shall bear interest at the Interest Rate under the Mortgage. If requested by the Lender, the Borrower shall deposit with the Lender's Solicitor (as hereinafter defined) an amount equal to the estimated fees and expenses of the Lender's Solicitor (as hereinafter defined) prior to such Solicitor (as hereinafter defined) commencing preparation of the Security.

In the event of the occurrence of an Event of Default (as hereinafter defined), then the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of (and not to exceed) **\$5,000** for each month or part thereof for which the Borrower remains in default. This administration and management fee is intended to reimburse the Lender for time and trouble in the management and administration of the Security and the Subject Property. The said sum or sums are agreed to be a liquidated amount to cover the Lender's administration and management costs and are not intended nor shall be construed to be a penalty. All such sums payable to the Lender shall be a charge upon the Subject Property and shall bear interest at the Interest Rate until paid.

38. Further Assurances The Borrower and Guarantor shall, at the Lender's request, execute or deliver such further documentation and enter into such other agreements as are necessary for the securing of the Loan and the fulfilling of the terms contained herein, and deliver such financial information concerning the Borrower as the Lender may require, and satisfy the terms and conditions herein to permit the disbursement of the entire Loan Amount.

39. Financial Information Until the repayment of the Loan, the Borrower shall provide the Lender, within 120 days after the end of each fiscal year of the Borrower or more often if requested by the Lender, a detailed financial statement of the Borrower including a separate income and expense statement for the Subject Property, an operating statement and an

updated rent roll containing relevant lease terms for the Subject Property, all satisfactory to the Lender in form and content.

The financial statement is to be prepared by a chartered accountant licensed under the applicable legislation in the province where the Subject Property is located.

The Borrower and Guarantor authorize the Lender to obtain such financial information as the Lender may require. Specifically, the Borrower and Guarantor consent to the Lender obtaining credit reports from the appropriate credit reporting agencies and relying on these reports when making decisions regarding advances under this Loan.

- 40. Information Updates** Until the repayment of the Loan, the Borrower shall supply the Lender with such updated information relating to any of the condition precedent requirements as the Lender may request from time to time. Such information shall be provided to the Lender within 14 days from the date of the Lender's request.
- 41. Survival of Commitment** The terms, conditions, representations and warranties expressed herein shall continue in effect as long as any part of the Loan remains outstanding and shall bind the personal representatives, heirs, successors and assigns of the Lender and the Borrower, shall inure to the benefit of the successors and assigns of the Lender and the Borrower, and shall not merge on the execution or registration of the Security. In the event of conflict between this Commitment Letter and the Security delivered hereunder, the Lender shall determine which shall prevail.
- 42. Communication** All communications provided for hereunder shall be in writing, personally delivered or sent by prepaid first class mail or telecommunications, and if to the Lender addressed to the address above noted, to the attention of the President, and if to the Borrower to the address noted above. The date of receipt of any such communication shall be deemed to be the date of delivery, if delivered as aforesaid, or on the third business day following the date of mailing, as aforesaid. Any party hereto may change its address for service from time to time by notice in the manner herein provided. In the event of a postal disruption or an anticipated postal disruption, prepaid first-class mail will not be an acceptable means of communication.
- 43. Governing Law** This Commitment Letter shall be governed by and constituted in accordance with the laws of the province in which the Subject Property is situated.
- 44. Waivers** Except as otherwise expressly provided herein, this Commitment Letter cannot be waived, changed, amended, discharged or terminated other than by an agreement in writing signed by the party against whom enforcement of any waiver, change, amendment, discharge or termination is sought.
- 45. Other Agreements** This Commitment Letter, when accepted by the Borrower and Guarantor, will constitute the entire agreement and understanding between the parties hereto with respect to the Loan and supersedes all other prior agreements, understandings or commitments, oral or written. This Commitment Letter shall assume the accuracy of information previously supplied by the Borrower and will presuppose no material adverse change in the Borrower prior to any disbursement. Any approvals or consents required to be made or given by the Lender hereunder must be expressly given pursuant hereto and shall not be construed by the delivery or receipt of documents.
- 46. Time of the Essence** Time shall be of the essence in all respects herein.
- 47. Privacy Act Consent** With regard to any personal information that is provided during this application process, the Borrower and Guarantor consent to the collection, use, and disclosure of

that information for the following purposes: to understand their financial status in order to approve the Loan; to meet regulatory requirements; to enable the Lender to manage and enforce the credit facility; to verify their identities. The Lender may from time to time give this personal information to credit bureaus and other financial institutions. The Lender may also share this personal information with anyone who works with or for the Lender or any individual or group investing in the Loan, and any other potential sources of business, but only as needed for the provision and enforcement of the credit facility requested.

48. Assignment, Sale or Syndication

Neither this Commitment Letter, nor any of the Loan proceeds, may be assigned by the Borrower, but this Commitment Letter and attendant Security may be assigned by the Lender without the consent of the Borrower. The Loan terms, representations and warranties herein contained shall inure to the benefit of each assignee of the Lender. The Lender shall have the right to assign, sell, syndicate or transfer all or any portion of the Loan, and as part of any such transaction, the Lender is hereby authorized to provide to prospective participants in such transactions all information received by the Lender regarding the Borrower and the Subject Property. This information will be held in strict confidence between the Lender and any prospective participant in the Loan.

49. Interpretation

- a) The headings of all provisions herein are inserted as a matter of convenience only and not to define the intent of this document. The necessary grammatical changes required to apply to the parties hereto shall be assumed as though expressed.
- b) "Business Day" means a day of the week, other than Saturday, Sunday or any other day which is a statutory or a municipal holiday in the municipality in which the Subject Property is situated.
- c) "Event of Default" shall mean the breach of any of the terms, conditions, representations or warranties contained in this Commitment Letter, as it pertains to both the Borrower and Guarantor.
- d) "Lender" shall mean Home Trust Company or its nominee.
- e) "Person" includes any individual, partnership, joint venture, trust, unincorporated organization or any other association, corporation and government or any department or agency thereof.
- f) The words "hereto", "herein", "hereunder", "hereby", "Commitment Letter", "this agreement", and similar expressions used in this Commitment Letter, including the schedules attached hereto, mean or refer to this Commitment Letter and not to any particular provision, section or paragraph or other portion of this Commitment Letter and include any instrument supplemental or ancillary hereto.
- g) The word "satisfactory" shall mean acceptable to the Lender in its absolute, sole and unfettered discretion.

50. Advance

Notwithstanding anything contained in this Commitment Letter, the advance of the Loan or any part thereof is subject to the Lender's sole, absolute, unfettered and unqualified discretion not to advance notwithstanding any and all steps taken by you or your legal counsel, including, without limitation, the registration of Security documents.

**51. Counterparts,
Facsimile &
Electronic
Transmission**

This agreement may be executed in any number of counterparts and by facsimile, electronic transmission or .pdf copy, each of which when so executed is deemed to be an original and all of which together shall constitute one and the same agreement.

**52. Professional
Advisors**

- a) **Solicitor:** The title report, Security and all other documents relating to this financing and the processing of all legal steps with respect to advances of funds shall be prepared and carried out by David Markowitz of the law firm of SR Law, located at 1000-120 Adelaide Street West, in the City of Toronto, Province of Ontario (Telephone: 416-363-2215).
- b) **Insurance Consultant:** All insurance and bonding matters shall be reviewed and approved at the cost of the Borrower by ProInCon Ltd. or Intech Risk Management.

The Lender reserves the right to appoint such other Solicitor, Project Monitor, Insurance Consultant or Environmental Consultant from time to time without the consent of the Borrower.

ACCEPTANCE

This Commitment Letter shall not become effective until the Borrower, Guarantor and Lender have signed it and **a copy is returned to the Lender's office by no later than 12:00 noon Eastern Standard Time on April 6th, 2020.** The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Commitment Letter and authorize Home Trust Company to instruct its Solicitor to prepare the Security documentation. The Borrower and Guarantor further acknowledge that the Commitment Fee set forth herein is a reasonable estimate of the cost incurred in granting the Loan and of holding monies available to fund same, and that the Commitment Fee shall be forfeited and payable to Home Trust Company as liquidated damages, and not as a penalty, if the Initial Advance under the Loan is not taken down within the time limit herein. This Commitment Letter and any fees earned as a result of this Commitment Letter, together with any expenses or costs incurred by Home Trust Company including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Home Trust Company may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Home Trust Company all its estate and interest in the said Subject Property and Security. This Commitment Letter supersedes all previous correspondence between the parties hereto.

Please set out below the name and phone number (including area code) of the solicitor representing you:

Lawyer	<u>Mike Weir</u> (PLEASE PRINT)
Firm	<u>Weir Nakon</u> (PLEASE PRINT)
Phone Number	<u>905-279-7930 ext222</u> (PLEASE PRINT)

Please set out below the name and phone number (including area code) of the insurance agent representing you:

Insurance Agent	<u>Robert Ciccolini</u> (PLEASE PRINT)
Firm	<u>Masters Insurance</u> (PLEASE PRINT)
Phone Number	<u>905-738-4164</u> (PLEASE PRINT)

Yours very truly,
HOME TRUST COMPANY

James Pelletier

James Pelletier
SVP, Commercial Real Estate Lending

Christa Huebner

Christa Huebner
Director, Commercial Real Estate Lending

We hereby agree to the terms and conditions contained in this Commitment Letter and agree to be bound by the terms hereof.

Dated at the CITY of MISSISSAUGA in the Province of ONTARIO this 6th day of APRIL, 2020.

BORROWER:


Vandyk-Shoppes of Stonegate Limited

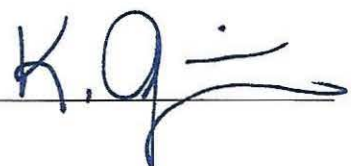

Per: JOHN C. VANDYK
Title: PRESIDENT + CEO

I/We have the authority to bind the Corporation.

GUARANTORS:

John Vandyk


Per: _____
Title: N/A

Witness: 

Vandyk Holdings Incorporated


Per: JOHN C. VANDYK
Title: PRESIDENT + CEO

Witness: 

I/We have the authority to bind the Corporation.

Vandyk-Humberside Limited


Per: JOHN C. VANDYK
Title: PRESIDENT + CEO

Witness: 

I/We have the authority to bind the Corporation.

SCHEDULE 'A'

INSURANCE

The Borrower shall obtain and maintain during the Term the following insurance coverage with respect to the Subject Property and the property related thereto or used for its operation, which insurance shall be reviewed by the Lender's Insurance Consultant as set out in the Commitment Letter, prior to any advance of funds.

1. Upon substantial completion of the Subject Property

- (i) **Fire Insurance:** A fire insurance policy with extended coverage for all other risks and perils for an amount equal to one hundred percent (100%) of the gross replacement cost for the building erected on the Subject Property, without deduction for foundation and footings; said policy shall inter alia provide for replacement cost endorsement, deletion from the policy of any provision requiring reconstruction on same or adjacent sites, coverage of direct and indirect damage resulting from leakage of fire protection equipment, an endorsement to the effect that the policy will cover any additional costs of reconstruction as a result of enforcement of current building by-laws and regulations, and loss to be payable to the Lender as a first-ranking mortgage creditor on the Subject Property in accordance with the IBC 3000 mortgage clause approved by the Insurance Bureau of Canada including, without limitation, that such policy will not be cancelled, terminated or permitted to expire unless the Lender shall first receive a thirty (30) days prior written notice of the same. Such policy of insurance shall not contain a percentage co-insurance endorsement other than a one hundred percent (100%) stated amount co-insurance endorsement.
- (ii) **Boiler and Machinery Insurance:** A broad form boiler insurance policy with coverage on all electrical and mechanical equipment, as well as all pressure vessels; such policy shall contain a rider with the standard mortgage clause approved by the Canadian Boiler and Machinery Underwriters' Association, with proceeds payable to the Lender as first-ranking mortgage creditor on the Subject Property and such policy shall provide inter alia for the same terms and conditions as set out in paragraph 1(i) above.
- (iii) **Liability Insurance:** A general liability insurance policy covering corporeal and material damages in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence. The Policy shall include limited pollution coverage.
- (iv) **Rental Insurance:** A rental income insurance policy for a period of indemnity of, at minimum, twenty-four (24) months for an amount equal to, at minimum, one hundred per cent (100%) of the actual or projected gross annual rents (or the net rents plus the amount of the operating expenses from the Subject Property).

2. For Properties Under Construction

- (i) **All Risks Builders Course of Construction including flood and earthquake on:**
 - a. One hundred percent (100%) of the estimated final construction cost of the Subject Property, including reasonable soft costs;
 - b. One hundred percent (100%) of the anticipated annual rents (assuming full occupancy) written on a delayed income basis.
 - c. The policy shall allow for partial or full occupancy. All other terms and conditions shall apply as if there were a fire with extended coverage policy in force as described above in paragraph 1(i).
- (ii) The liability coverage as described more fully in paragraph 1(iii) above. However, if the construction cost is in excess of Ten Million Dollars (\$10,000,000), then a wrap-up liability is

required with a limit of not less than Ten Million Dollars (\$10,000,000) and must include all contractors, subcontractors and trades.

- (iii) Engineers' errors and omission insurance for at least Five Hundred Thousand Dollars (\$500,000) or such greater amount as the Lender may reasonably require.

3. Additional Insurance

In addition to any of the forgoing, the Lender shall be entitled to request that the Borrower obtain any other insurance coverage it deems necessary, useful or appropriate.

The provisions relating to cancellation of the insurance policies or alteration clauses in the policies, including the mortgage clause, shall provide that a prior written notice of not less than thirty (30) days must, in such event, be given to the Lender.

All proceeds of insurance from insurance policies maintained, other than liability insurance, shall be paid to the Lender and at the option of the Lender may either be applied on account of the Loan, whether or not the same may be due and payable, and interest thereon and any other sums payable in respect thereof, or held by it as part of the Lender's Security and, so long as the Borrower is not in default, may be subject to withdrawal by the Borrower in instalments on a cost-to-complete basis, as the repair or replacement progresses, subject to the Lender's receipt of appropriate certificates, opinions and other documents as required by it and Lender's Solicitor.

If the Lender's Security is by way of a leasehold mortgage, then notwithstanding the provisions of the immediately preceding paragraph, but provided that the Lender, its Insurance Consultant and its Solicitor are satisfied that the proceeds of insurance shall be applied to rebuilding and are otherwise completely satisfied with the provisions of all arrangements made with the ground lessor and an insurance trustee in respect thereof, the proceeds payable under the policies referred to above, other than liability insurance may be payable to the insurance trustee under and in accordance with an insurance trust agreement, satisfactory to the Lender, its Insurance Consultant and its Solicitor.

The Borrower shall provide to the Lender such evidence as the Lender may request that all of the above required insurance is in place prior to any advance of the Loan being made.

All required insurance policies shall be forwarded to the Lender's Insurance Consultant for verification and approval, at the expense of the Borrower, prior to the disbursement of the Initial Advance of the Loan.

**THIS IS EXHIBIT “D” TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

Properties

PIN 07500 - 0079 LT **Interest/Estate** Fee Simple

Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

Address TORONTO

PIN 07500 - 0084 LT **Interest/Estate** Fee Simple

Description PART OF BLOCKS A & B, REGISTERED PLAN 5261, DESIGNATED AS PARTS 2, 3, 11, 12, 66R28992 EXCEPT PART 1, 66R30958; S/T EASEMENT IN FAVOUR OF PARTS 1, 4 TO 8, 16 & 18, 66R28992 AS IN AT4865049; T/W EASEMENT OVER PTS 1, 4 TO 8, 16 & 18, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PARTS 7, 8, 9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PARTS 11, 14 & 28, 66R28992 AS IN EB127141; SUBJECT TO AN EASEMENT AS IN AT4907631; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, 66R28992 AS IN AT5347798; TOGETHER WITH AN EASEMENT OVER PARTS 10, 13, 14 AND 28, 66R28992 AND PART 1, 66R30958 AS IN AT5347789; CITY OF TORONTO

Address TORONTO

Chargor(s)

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

Name VANDYK - BACKYARD HUMBERSIDE LIMITED

Address for Service 1944 Fowler Drive
Mississauga ON L4K 0A1

I, Richard Ma, A.S.O., have the authority to bind the corporation.

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

Chargee(s)**Capacity****Share**

Name HOME TRUST COMPANY

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

Provisions

Principal \$10,000,000.00 **Currency** CDN

Calculation Period calculated daily and compounded and payable monthly

Balance Due Date 2022/05/02

Interest Rate 5.95% per annum

Payments \$50,534.25

Interest Adjustment Date 2020 05 01

Payment Date Interest only, the 1st day of each month

First Payment Date 2020 06 01

Last Payment Date 2022 05 01

Standard Charge Terms 201902

Insurance Amount Full insurable value

Guarantor

Additional Provisions

The term of this Charge is 24 months plus one day; after 24 months the interest rate shall increase to 15% per annum; the Chargor has the option to pay out the Charge upon the date that is 24 months from the date of the advance under this Charge.

Signed By

Christa-Lee Ann Callahan

1000-120 Adelaide St. W.
Toronto
M5H 3V1acting for
Chargor(s)

Signed 2020 04 27

Signed By

Tel 416-363-2211

Fax 416-363-0645

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

Submitted By

Schneider Ruggiero Spencer Milburn LLP

1000-120 Adelaide St. W.

2020 04 28

Toronto

M5H 3V1

Tel 416-363-2211

Fax 416-363-0645

Fees/Taxes/Payment

Statutory Registration Fee \$65.05

Total Paid \$65.05

File Number

Chargee Client File Number : 41776/BM

**STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE**

Filing No. 201902 Cote

Filing Date FEB 20 2019 Date de Dépôt

Page 1 of 34 Pages

Land Registration Reform Act

Filing No.

filed by – Home Trust Company

J. Lem
DIRECTOR OF TITLE
DIRECTRICE DES DROITS IMMOBILIERS

SET OF STANDARD CHARGE TERMS

The following set of STANDARD CHARGE TERMS shall be deemed to be included in every Charge/Mortgage in which the set is referred to by its filing number, as provided in section 9 of the above Act.

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1. DEFINITIONS/TERMS YOU NEED TO KNOW

The following are used with particular meanings in this set of standard charge terms:

- (a) **additional advance** has the meaning given to it in section 14 below.
- (b) **adjustable rate loan** means a fixed loan advanced by us with an adjustable rate of interest secured by the mortgage.
- (c) **administrator** means CMHC in its capacity as administrator of a financing of mortgage loans originated by us which may include all or any part of the indebtedness.
- (d) **agreements** means all of the contracts, agreements, promissory notes, bills of exchange, notices or other documents which evidence, govern or relate to the indebtedness including, without limitation, the cardholder agreement, the commitment, the cost of borrowing statement and all supplements, amendments, renewals, substitutions and replacements of them.
- (e) **balance due date** or **maturity date** means the date set out in the registered mortgage or in an amending agreement on which indebtedness is due and payable in full.
- (f) **cardholder agreement** means the agreement that sets out the terms and conditions of your credit card account.
- (g) **CMHC** means Canada Mortgage and Housing Corporation and its successors and assigns.
- (h) **commitment** means the commitment letter or renewal offer setting out the terms of the mortgage financing to which both you and we agreed which includes a mortgage loan with or without a credit card account.
- (i) **cost of borrowing disclosure** means the mandatory statement setting out the information required by law to be given to you as it relates to the fixed loan and includes the disclosure information sent to you in the event the mortgage is renewed with us.
- (j) **credit card account** means your revolving account and line of credit with us.
- (k) **default** means you have not kept a promise under the mortgage.
- (l) **fixed loan** means a term loan, that you have agreed in writing will be secured by the mortgage, advanced by us in a specific amount that is repaid in regular payments over a set period of time. A fixed loan may be a fixed rate loan or an adjustable rate loan.
- (m) **fixed rate loan** means a fixed loan advanced by us with a fixed rate of interest secured by the mortgage.
- (n) **guarantor** means each person who signs the mortgage or an agreement relating to the mortgage as a guarantor or covenantor. This is a person who also agrees to keep your promises under the mortgage.
- (o) **improvement** means any construction or installation on the property or any alteration, addition or repair to any building or structure on the property.

- (p) **indebtedness** means all debts and liabilities, present and future, absolute and contingent, matured or not, at any time owing by you to us, in respect of one or more loans evidenced by one or more agreements. Indebtedness also includes any fees, expenses and other amounts owing to us from time to time pursuant to the mortgage which we may charge or which we may incur in respect of the indebtedness. Other amounts may include our administration and processing fees and the expenses of enforcing our rights as well as paying off any prior charges against the property in respect of such indebtedness. Indebtedness also includes, without limitation, all interest and compound interest accrued on all the foregoing amounts.
- (q) **initial loan** means the fixed loan, if any, we advance on or about the time the mortgage is made and described in the registered mortgage or in an agreement which may, for certainty, include a renewal agreement.
- (r) **information access person** has the meaning given to it in section 15 below.
- (s) **insured loan** means any loan(s) that is/are insured by a mortgage insurer.
- (t) **interest adjustment date** is the date identified as the interest adjustment date in the registered mortgage or in an agreement evidencing a part of the indebtedness. This is the date the term starts.
- (u) **interest rate** is the interest rate or interest rates identified as the interest rate on the registered mortgage and/or in any agreements.
- (v) **loan** means any advance under an agreement and, if under an agreement more than one loan is advanced, each advance is a separate and distinct loan, including the replacement, refinancing or re-advancing of each such loan.
- (w) **mortgage** means the commitment and/or cost of borrowing disclosure, the registered mortgage, this set of standard charge terms, any agreement between you and us or document from us setting out the terms of a loan, any schedules that are attached to the registered mortgage and any renewals or amendments. It is described in more detail in section 2 below.
- (x) **mortgage insurer** means CMHC, Genworth Financial Insurance Company Canada, Canada Guaranty Mortgage Insurance Company or any other company that insures the payment of mortgages to mortgage lenders.
- (y) **pooling program** means a financing or an insurance program by a mortgage insurer and/or the administrator.
- (z) **principal amount** is the amount of money identified as the principal amount in the registered mortgage. If you have a credit card account, the principal amount will include the credit limit available to you from time to time.
- (aa) **promise** means each item you agree to do and each statement you confirm and certify under the mortgage.
- (bb) **property** means the land described on the registered mortgage. It includes all buildings, structures and improvements on the land now or added later, as well as anything attached now or later to the land or to any building or structure on the land. It also includes any improvements, substitutions, additions or alterations made to any building, structure or the land. If you lease the property, the property means the lease, except for the last day of the term of the lease, and any other interest, right, option or benefit set out in the lease. If the property is a condominium unit or strata lot, the property includes your interest in the common

elements and any other interest that you may have in the assets of the condominium or strata corporation. Any references to the property mean all or any part of the property.

- (cc) **registered mortgage** means the form of charge or mortgage which references, or appends, this set of standard terms by its filing number or is incorporated therein, and which you sign and is the part of the mortgage or notice of mortgage that is or will be registered against the title to the property or, where the property is under the electronic registration system, will be signed and registered electronically against title to the property. It also includes any changes which may be made by an agreement amending or renewing any part of the registered mortgage.
- (dd) **standard charge terms** means this set of standard charge terms and, where applicable, the set of standard charge terms, standard mortgage terms or optional covenants incorporated into the registered mortgage, directly or as a schedule thereto, by reference to their filing number or the set of additional mortgage terms appended to the registered mortgage. It also includes any changes which may be made by an agreement amending or renewing any part of the registered mortgage.
- (ee) **taxes** means all taxes, including those charges which are deemed by law to be taxes, assessments and levies of any kind and includes any interest and penalties. Examples of taxes include property taxes, local improvement assessments, school taxes, development charges and utilities. Taxes may also include penalties or costs associated with a cleanup following a fire, explosion or other destruction or damage.
- (ff) **term** means a time period commencing on the interest adjustment date and ending on the balance due date or maturity date set out in the mortgage or in a renewal or in an amendment of the mortgage.
- (gg) **we, us, and our** mean the mortgagee or chargee described in the registered mortgage.
- (hh) **you and your** mean each person, corporation and other entity who has signed the mortgage as a chargor, mortgagor or borrower, including the heirs, executors, successors, assigns, and personal and legal representatives of each person, corporation and other entity.

2. WHAT THE MORTGAGE DOES

2.1 The mortgage is our security on the property

- (a) By signing the registered mortgage, you mortgage and charge your entire interest in the property to us. If you are a tenant or a lessee of the property, you charge and sublease your entire interest in the property to us for the entire term of the lease (except the last day), including any renewals and any option or right of first refusal to purchase.
- (b) In return, we make a loan or extend credit to you as may be advanced to you from time to time. Your interest in the property is security to us for payment of all your indebtedness from time to time owing up to the principal amount and your performance of all your obligations under the mortgage and agreements.

2.2 The mortgage secures your indebtedness to us

- (a) The mortgage secures a current or running account. The mortgage is not satisfied or discharged by any intermediate payment of all or part of the indebtedness but remains a continuing security for payment of all other and additional indebtedness

you may incur. The mortgage is not released or reduced by any change in the amount, nature or form of any indebtedness or any renewal, extension, amendment or replacement of any agreements. The mortgage will not cease to operate and will not be extinguished except as provided in subparagraph (b) below.

- (b) After you have paid us the indebtedness then outstanding and done everything you have promised to do in the mortgage and the agreements and you notify us in writing that such payment is in final and permanent payout of all your obligations under the mortgage and the agreements, we will sign a discharge. You will give us a reasonable time after payment in which to prepare and issue the discharge. You will pay our usual administration and processing fee for preparing, reviewing and signing any such documents and all legal and other expenses, if applicable and permitted by law. You will pay us these fees whether the discharge or assignment is prepared by your lawyer, by our lawyers or by us. If electronic registration is available for the property and we elect to register, or arrange to register the discharge or assignment, you also agree to pay us the registration fee.

2.3 Who is bound by the mortgage

- (a) The obligations under the mortgage and each agreement are the responsibility of each person, corporation and other entity who signed it. Where one or more other persons, corporations or other entities have also signed the mortgage or an agreement, each borrower, guarantor or covenantor is responsible for satisfying all obligations in the mortgage and agreements, including payment in full of all indebtedness.
- (b) Your legal and personal representatives and anyone else to whom the property is transferred must also meet the obligations in the mortgage and agreements.
- (c) Our successors and anyone to whom we transfer the mortgage and agreements are also bound by it.

2.4 Changing the mortgage – renewals and amendments including automatic renewals

- (a) We may, at our option and by agreement with you in writing, change any part of the mortgage and agreements. This change could include renewing or amending the initial loan or increasing the principal amount or other term of the mortgage or agreement.
- (b) The initial loan may also be automatically renewed where, before the balance due date or maturity date, we send to you a notice offering to renew the outstanding indebtedness at certain rates and terms and you do not respond in writing accepting one of the renewal terms offered, or you do not pay the indebtedness in full or you have not made other arrangements for payment or extension with us on or before the balance due date or maturity date. In that circumstance, you agree the initial loan will be renewed into an open fixed rate loan at our then prevailing rate for such loan product which will be described in more detail in the renewal notice we send you. We may in the same way automatically renew any other fixed term loan you may have with us.
- (c) We do not have to register any such agreement with you on the title to the property to retain our rights under the mortgage and agreements against you or any other person including our priority over any other mortgage.
- (d) If we make a new agreement with another borrower or person, corporation or entity who is obligated to pay the initial loan or any other part of the indebtedness,

you will not be released from your obligations under the mortgage or agreement, even if you do not sign or are not advised of the new agreement.

- (e) You do not have a right to renew the initial loan. Renewal of the initial loan and any of the fixed term loan is at our discretion.

3. CREDIT CARD ACCOUNTS

This section applies, in addition to the other terms and conditions contained in this set of standard charge terms, if you have one or more credit card accounts with us or if you have guaranteed one or more credit card accounts to us.

3.1 The mortgage secures your indebtedness to us

The initial credit limit on your credit card account is the amount we disclose to you at the time the credit card account is opened. Your credit limit may be increased by us, with your consent, from time to time. We may decrease your credit limit at any time, in our sole discretion. The mortgage secures the balance outstanding from time to time on each credit card account.

3.2 Interest

The interest rate payable by you is the rate established by us from time to time, calculated on the outstanding daily balance, payable monthly. The interest rate will be shown on each monthly statement you receive.

3.3 Payments

Each credit card account is payable in accordance with the terms of the cardholder agreement. Each credit card account is open to payment in full or in part at any time or times.

3.4 Promise to Pay

You agree to pay the balance outstanding from time to time on the credit card account in accordance with the terms of the cardholder agreement.

4. INTEREST

4.1 Interest for fixed rate loans

- (a) If the interest rate of the initial loan or other fixed loan is a fixed rate, the interest rate payable by you is the rate shown on the registered mortgage or agreement governing the initial loan. The interest rate payable on other indebtedness with a fixed rate of interest is that set out in the agreement relating to that part of the indebtedness.
- (b) Interest is payable at the frequency shown on the registered mortgage or in the agreement evidencing that part of the indebtedness and unless otherwise provided, is calculated semi-annually, not in advance.
- (c) Interest is secured and is payable on the indebtedness at the interest rate (or other rate if prescribed by law) until each and every part of the indebtedness has been paid in full, both before and after the balance due date or maturity date, before and after default, and before and after we obtain any court judgment against you.

4.2 Interest for adjustable rate loans

- (a) If the interest rate on the registered mortgage refers to the prime rate, you have an adjustable rate loan. The interest rate of the initial loan or other fixed loan payable by you is the prime rate plus or minus the number of percentage points, if any,

shown on the registered mortgage. The interest rate payable on other indebtedness with an adjustable rate of interest is that set out in the agreement relating to that part of the indebtedness.

- (b) Whenever there is a change in the prime rate, the interest rate will be adjusted on the first day of the next month (every date on which such adjustment is made is referred to in this set of standard charge terms as an "adjustment date"). On each adjustment date, the interest rate for the month will be adjusted and set to the prime rate then in effect plus or minus the number of percentage points, if any, as shown on the registered mortgage or in the agreement. Within a reasonable time after each adjustment date we may mail to you, at your last known mailing address according to our records, a notice of the changed interest rate, any change to the payment amount and its effective date. The interest rate and payment amount will vary in accordance with this section even if we fail to send this notice or you fail to receive it.
- (c) The prime rate is the prime rate as set out in or referred to in the commitment and/or cost of borrowing disclosure.
- (d) You can always find the prime rate then in effect and the current interest rate on the loan by contacting us. If there is a need to prove the interest rate, you agree that any certificate in writing we issue setting out the prime rate and the interest rate then in effect will be considered as conclusive evidence of the interest rate in effect at that time.
- (e) Interest is payable at the frequency shown on the registered mortgage or in the agreement evidencing that part of the indebtedness and unless otherwise provided, is calculated daily, not in advance.

4.3 **Interest on amounts advanced before the interest adjustment date**

Interest on advances before the interest adjustment date of the initial loan and any other fixed loan will be calculated at the interest rate set out in the registered mortgage or in the agreement evidencing that part of the indebtedness and at our option will be deducted from any part of the principal amount we advance or paid by you to us or debited by us to your bank account monthly with the final payment on the interest adjustment date.

4.4 **Compound interest**

If you do not make the regular payment or any other payment when required by the mortgage or agreement, we will charge interest (referred to as "compound interest") on all overdue amounts, including unpaid interest. Compound interest is payable both before and after the balance due date or maturity date, before and after default, and before and after any court judgment we obtain against you. If we demand it, you must pay us this compound interest immediately. Compound interest is calculated at the same interest rate as payable on that part of the indebtedness.

5. **YOUR REGULAR MORTGAGE PAYMENTS**

5.1 **Currency and place of payment**

You will pay the indebtedness to us in Canadian dollars at the address shown on the registered mortgage as provided in sections 3.3 and 5.5, or as you may be notified in writing.

5.2 **Regular payments**

- (a) The amount of your regular payments, which include principal and interest, are as follows:

- (i) For an initial loan (if there is one) that is a fixed rate loan, the amount of each regular payment is as shown in the registered mortgage or agreement governing the initial loan.
- (ii) For an initial loan (if there is one) that is an adjustable rate loan, the amount shown on the registered mortgage or the agreement for the loan is the payment that is required to be made based on the interest rate in effect at the time the mortgage is made.

Your regular payment amount will change with each adjustment in the interest rate to an amount sufficient to pay all interest that will accrue up to and including the next payment date, plus the amount of principal we determine is required to be paid to maintain the amortization of the adjustable rate loan, as adjusted for any prepayments you may have made. This amount will be your new regular payment amount until the next adjustment in the interest rate at which time the payment amount will again be changed in the manner described above.

- (iii) For all other indebtedness, the amount (or how the amount will be determined) of each regular payment will be set out in the agreement evidencing that part of the indebtedness.
- (b) You must pay these regular payment amounts on the dates as set out in the registered mortgage, or in the agreement relating to that part of the indebtedness or any agreement amending the mortgage or agreement, starting with the first payment date up to and including the balance due date or maturity date. The date for your regular payments for all adjustable rate loans must be the first day of the month.
- (c) Amounts payable on account of taxes and insurance with your regular payment amount will at all times be payable at the same frequency and calculated in the same manner as your regular payments.

5.3 **Changing the frequency of your regular payments**

- (a) At your request we may permit you to change the frequency of your regular payments on any fixed rate loan secured by the mortgage, to weekly, bi-weekly, semi-monthly or monthly (provided such frequency of regular payments is then currently offered by us).
- (b) On a change of payment frequency or change of regular payment date for a fixed rate loan, an interest adjustment amount may be payable and we may charge an administration and processing fee. Such amounts are immediately payable or may, at our option, be added to the indebtedness and bear interest at the interest rate.
- (c) In addition to any other remedy we might have under the mortgage or agreement, if you have a fixed rate loan and have changed your payment frequency to weekly, bi-weekly or semi-monthly and you are in default of payment of an amount which exceeds two weekly payments, or one bi-weekly or semi-monthly payment as applicable, your payment frequency will, at our option without prior notice to you, revert to the monthly payment frequency. Any interest adjustment amount will be immediately payable or, at our option, added to the indebtedness and bear interest at the interest rate.
- (d) Amounts payable on account of taxes and insurance with your regular payment amount will at all times be payable at the same frequency and calculated in the same manner as your regular payments.

- (e) Payment frequency changes are not permitted on interest only payments.

5.4 Payment of indebtedness on the balance due date or maturity date

You must pay any outstanding balance of the initial loan on the balance due date or maturity date shown on the registered mortgage or the agreement governing the initial loan and for each other part of the indebtedness on the balance due date or maturity date set out in the agreement relating to that part of the indebtedness or any agreement amending the mortgage or agreement.

5.5 Method for payment

We will require your personal banking information if you are a natural person and we will require your business banking information if you are not a natural person. Each regular payment must be made from an account in your name. You must maintain a bank account with a bank, trust company or credit union in Canada and provide authorization in a form satisfactory to us to automatically debit each regular payment and any other payments when due. You must make sure that the account always contains sufficient funds to make each payment. If you do not maintain sufficient funds in the account, or if you cancel the authorization to debit payments, or if you close the account, we may declare you to be in default on your mortgage and agreements.

5.6 How we apply your payments

If the initial loan is in good standing, we will apply the amount we receive from you on each regular payment date in the following order:

- (a) to pay life insurance premiums on the mortgage or other optional products or services you select (if applicable);
- (b) to bring into good standing any accounts related to the mortgage in which we hold funds for payment to others or from which amounts are debited, including tax accounts (if applicable);
- (c) to pay interest accrued for the payment period;
- (d) to reduce the principal amount; and
- (e) to pay applicable administration and processing fees.

However, if you do not meet one or more of your obligations under the mortgage or an agreement, we may apply any payments or any other money we receive on such part of the indebtedness as we choose and in whatever order we choose.

6. WHEN AND HOW THE INITIAL LOAN AND OTHER FIXED LOANS CAN BE PAID OFF EARLIER

6.1 Closed loans

The initial loan and, unless otherwise expressly provided in the agreement, each other fixed loan and each renewal of the initial or other fixed loan is closed for the term of the loan with earlier payment permitted only as set out in this section.

6.2 Prepayment privileges

You may prepay part of the principal amount before the maturity date only in accordance with the prepayment privileges described in the commitment and/or cost of borrowing disclosure. Prepayment of amounts more than the amounts described in the commitment and/or cost of borrowing disclosure may result in prepayment charges.

6.3 When and how you may prepay your mortgage in full with a prepayment charge.

You may prepay the initial loan or any other loan only upon the closing of a *bona fide* arms-length sale of the property in the open market and payment of the prepayment charge set out below in section 6.4 or 6.5, as applicable. If the initial loan or any other fixed loan is for a term of more than three years, you may also at any time after the third year of the term, prepay the loan in full but only with payment of the prepayment charge set out below in section 6.4 or 6.5, as applicable.

To pay in full you must ask us to provide you with a statement of the required payment amount. You can specify the date you want to make the prepayment. That date cannot be more than 15 days after the date you ask us to prepare the mortgage statement. The date you choose is called the prepayment or payout date, the date you ask us to prepare the statement is called the statement preparation date, and the period beginning with the statement preparation date and ending 15 days later is called the statement period.

All payments on the loan must be made as they become due during the statement period. No partial payments may be made during the statement period. The mortgage statement cannot be used for prepayment after expiry of the statement period.

6.4 Prepayment charge for a fixed rate loan

If you have a fixed rate loan, the prepayment charge to pay out the indebtedness in full early or before the balance due date or maturity date is the amount (as determined by us) that is the greater of:

- (a) three months' interest at the interest rate of the initial loan or other fixed loan, calculated on the amount of indebtedness being prepaid; or,
- (b) the amount described in the commitment and/or cost of borrowing disclosure.

6.5 Prepayment charge for an adjustable rate loan

If you have an adjustable rate loan, the prepayment charge to pay out the amount owing under the initial loan or other fixed loan in full early or before the balance due date or maturity date is three months' interest calculated on the amount being prepaid at the interest rate as set out in or referred to in the commitment and/or cost of borrowing disclosure.

6.6 Prepayments generally

In order to qualify for any of the early payment options set out in sections 6.2 and 6.3, you must have met all your obligations under the mortgage and agreements. For these early payment options, a year means the 12 month period that starts on the interest adjustment date and on each anniversary of the interest adjustment date.

After each partial prepayment is made, you must continue to make your regular payments.

The privilege for a partial prepayment, if permitted, without a prepayment charge that is unused or that is made within 30 days of the statement preparation date will not reduce the prepayment charge payable on prepayment in full.

7. CONVERTING YOUR MORTGAGE

7.1 Converting your adjustable rate loan

If you have an adjustable rate loan, you have the option to convert the interest rate from an adjustable rate to a fixed rate for a term equal to or greater than the remaining term of your adjustable rate loan. A request to convert the mortgage loan must be sent to us in writing. A

request to convert may be refused if you are or have been in default in payment or otherwise under the mortgage or an agreement. If your request is accepted, the conversion will take effect on the next payment date, but if we receive your request less than five business days prior to the payment date, the conversion may take effect on the next following payment date. The fixed interest rate will be our posted rate for the same type of mortgage product you are converting for the term you have chosen on the date the written request for conversion is received and approved by us. You must sign our conversion agreement and pay our then current administration and processing fee for converting the loan.

8. ASSUMPTION OF THE MORTGAGE IF THE PROPERTY IS SOLD

- (a) If you transfer title, or agree to transfer title, to the property to anyone without first obtaining our written approval, we may require you to pay the indebtedness together with the applicable prepayment charge immediately in full, if permitted by law. If we accept any payment from any person who we have not first approved in writing, this does not mean that we have granted our prior written approval or that we have given up our right to require you to pay the indebtedness immediately in full.
- (b) You agree to give us sufficient information to enable us to decide whether we should give our written approval of your transfer of title to the property. We will not unreasonably withhold our approval.
- (c) If you exercise this privilege, there may be an administration and processing fee. You must pay us these fees immediately, whether or not the assumption is approved.
- (d) We release you from your obligations under the mortgage and to pay the indebtedness, and, if applicable, we release any guarantors from their guarantee of the mortgage, if: (i) we give our written approval to you to transfer title to the property, (ii) the transfer is to a person or persons other than yourself so that you will not retain any ownership interest in the property after the transfer of title takes place; (iii) the person or persons to whom you transfer the property and any guarantor we request enter into an agreement to pay the amounts secured by the mortgage and to perform the obligations in the mortgage and agreements; and (iv) you provide us with proof of registration of a transfer/deed of land to the approved person or persons.
- (e) If you are not the original borrower, you agree to be bound by all obligations of the original borrower under the mortgage and agreements.

9. YOUR PROMISES AND OBLIGATIONS

9.1 Payments

- (a) You agree to pay the initial loan, if any, and all other indebtedness as required by the mortgage or the agreement relating to the indebtedness and to meet all of your other obligations under the mortgage and agreements. Should you make any claim against us or any third party for any matter relating to the mortgage or an agreement or life insurance or other insurance for payment of all or any part of the indebtedness, you will make such claim without abatement or set-off or otherwise diminishing your obligation to make all payments as they become due.
- (b) You agree to pay us all of our costs, including any legal fees and expenses, for investigating the title to the property and preparing the mortgage and each agreement and registering the mortgage. You must pay these amounts to us immediately.

9.2 The property and the mortgage

- (a) You certify that you have the right to give us this mortgage.
- (b) Unless you are a tenant of the property and section 9.3 applies, you certify that you are the lawful and/or registered owner of the property.
- (c) You certify that there are no encumbrances or limitations affecting title to the property (such as other mortgages, or construction, mechanics' or builders' liens), except those that we have agreed to in the commitment or other document in writing and except building and zoning by-laws that you have complied with.
- (d) You agree that, at your expense, you will sign any other document or do what is necessary, in our opinion, to make sure that all of your interest in the property has been completely charged to us so that our loan to you and other indebtedness you incur, are adequately secured.
- (e) You agree that you will take any necessary action to protect your title to the property and will not interfere in any way with our interest in the property.
- (f) You agree that the mortgage is intended to be, and to be effective as, a deed.

9.3 Properties which you lease from others

If you are a tenant or a lessee of the property, you certify all of the following to us, and you agree that:

- (a) The property is leased to you under a valid lease, you have given us a complete copy of that lease, and you have good and/or registered leasehold title to the property.
- (b) All rents and other amounts payable under the lease have been paid up to the date you sign the mortgage.
- (c) You have met all of your obligations under the lease up to the date you sign the mortgage.
- (d) Your landlord has agreed that you may mortgage your interest in the property to us. If we ask you to, you will provide us with evidence (in writing and satisfactory to us) that you have this consent, or that you have the right to mortgage your interest in the property without the consent of your landlord or the person who leases the property to you.
- (e) There are no liens or limitations on your interest in the lease except those identified in the lease, or registered against the title to the property, or contained in building and zoning by-laws.
- (f) You and your landlord have complied with all restrictions registered against the title to the property, and with all building and zoning by-laws.
- (g) You will pay all rents and all other payments required by the lease when they are due.
- (h) You will meet all of your other obligations under the lease.
- (i) You will not surrender your lease or cause the lease to be terminated.
- (j) You will not make any change in the lease without first obtaining our written consent.

- (k) You will give us a copy of any notice, demand or request that you receive relating to the lease. You must give this to us immediately after you receive it.
- (l) You will protect and indemnify us from all actions, claims, costs and demands if you default on the lease.
- (m) You will hold the last day of the term of the lease of the property, or the last day of any renewal term of the lease, in trust for us. You will only deal with the last day of the term or renewal term of the lease of the property in the way that we require. You will have the same rights and obligations with respect to the last day of the term or renewal term of the lease as you already have under the rest of the mortgage and under the law. We may remove you or any other person as trustee of this trust, and we may appoint a new trustee.
- (n) At our request, you will transfer to us the last day of the term of the lease, or the last day of any renewal term of the lease. You must pay all expenses related to this transfer.
- (o) If you refuse or neglect to renew your lease or pay the fees, costs, charges and expenses associated with such renewal then we may, at our discretion, effect such renewal in our own name or otherwise or make such payments and all costs, charges, expenses or payments in connection with such renewal will be added to the indebtedness secured by the mortgage and will bear interest at the interest rate.
- (p) If we enforce our rights under the mortgage or an agreement, including selling your interest in the property under power of sale, then you will hold the last day of the term of the lease, or the last day of any renewal term of the lease, in trust for any person to whom we sell your interest in the property, including that person's legal and personal representatives and successors.
- (q) You appoint us as your attorney so that we may assign the lease and the last day of the term of the lease, or the last day of any renewal term of the lease, on your behalf and in your name. You also appoint us as your attorney so that we may transfer your interest in the property as required to enforce any of our rights under the mortgage or an agreement, including our right to sell the property under power of sale.

9.4 No other mortgages without consent

You will not make another mortgage on the property or otherwise encumber the property and not use the property as security for any other debt without our prior written approval.

9.5 Owner-occupied properties

If we approve the mortgage for occupancy of the property by you and your family as your residence, you certify that no part of the property is rented or occupied by a tenant. You also agree not to rent or lease any part of the property, or enter into a tenancy agreement of any part of the property, or renew any lease (unless the renewal is provided for in a lease we have already approved), without first getting our written approval. We are under no obligation to approve your request to rent, lease, or enter into a tenancy agreement for any part of the property, or to approve the renewal of a lease on the property.

9.6 Rental properties and assignment of rents

- (a) If the property is a rental property, you must obtain our consent to any rental or any renewal.

- (b) You transfer and assign to us all leases, lease agreements and any renewals, all rents payable under these leases and agreements, and all rights under the leases, lease agreements and renewals that affect the property.
- (c) You mortgage, charge and grant to us a security interest in all of your right, title and interest in and to the fixtures, equipment and other movable property or chattels relating to the rental property.
- (d) Upon our request:
 - (i) You will obtain and provide for estoppel certificates, or an equivalent document, from tenants (i.e. written statements from the tenants certifying, among other things, the terms of the lease and any promises made to them about the lease).
 - (ii) You will execute and deliver any further agreements and documents and provide any further assurances as may be reasonably required by us to give effect to this section.
 - (iii) You will pay all of our expenses related to the assignments and additional security, including legal fees and registration costs.
- (e) If you do not meet one or more of the obligations set out in this section, or if one or more of the certifications you made to us related to leasing or renting out the property is not true, then we may require you to pay the indebtedness immediately and in full. If we do this, we may pay any tenants any amounts necessary to obtain their cooperation in showing and selling the property and to obtain possession of the property from the tenant. These payments will be a cost of enforcing our security, and they will be added to the indebtedness and bear interest at the interest rate. You also appoint us as your attorney and agent to enforce the terms of any lease or agreement you entered into, and to cancel or terminate any lease or agreement.
- (f) We are not obligated to collect any rent or income from the property nor to comply with any part of a lease or agreement related to the property. Furthermore, nothing we do under this section 9.6 will be considered as us taking possession of the property.
- (g) If you are not meeting one or more of your obligations under the mortgage and you lease or sublease any part of the property without our written approval, you will be considered to have done this to discourage us from taking possession of the property and/or be considered to have done this to adversely affect the value of our interest in the property.

9.7 Property taxes

- (a) You will ensure property taxes are always paid on time. Where available, you will enroll in a local Tax Instalment Payment Program which includes preauthorized debit of tax instalments to your account. You must then each calendar year, after the last tax payment has been made, provide to us receipted tax bills or other satisfactory proof of payment of property taxes. This is your obligation with regard to payment of taxes on the property unless we choose to pay taxes as set out in parts (b) and (c) of this section below.
- (b) On or before the interest adjustment date, we may withhold from any advance secured by the mortgage or require you to pay out of any advance of the mortgage any amount we feel necessary to pay current or anticipated future taxes.

- (c) We may at any time on notice to you require that you pay to us on each regular payment date a tax instalment in an amount based on the estimated annual taxes (as determined by us) sufficient for us to pay the taxes for the ensuing year. In the event we require such tax instalments:
- (i) You will pay the instalment on account of taxes on each regular payment date for the initial loan or other fixed loan.
 - (ii) If the taxes on the property are more than our estimate, or if for any other reason the amount you have paid to us for taxes is less than the amount we have paid for taxes on the property, you will pay us interest at the interest rate on the difference and will immediately pay us the difference when we ask you to.
 - (iii) You will send us all tax bills and other notices or communications related to taxes as soon as you receive them. If you do not, you must repay to us the cost of obtaining these notices.
 - (iv) If you want to take advantage of any discount or avoid any penalty or interest in connection with the payment of taxes, you must pay us the appropriate amount in addition to the instalments we calculate.
 - (v) We do not have to hold any money you send to us to pay property taxes in trust for you and we do not have to pay you interest on the money you send us to pay property taxes. We do not have to pay property taxes more than once a year.
 - (vi) If you do not meet any one or more of your obligations under the mortgage, we may apply any money that we have received for property taxes to any part of the indebtedness.
 - (vii) You will pay to us an administration fee and any costs we incur in collecting money for and paying the property taxes, including amounts charged by the taxing authority for providing information about the property taxes, for sending us the property tax invoices or for accepting property tax payments from us on your behalf. We may add these amounts to your tax account or other indebtedness which will bear interest at the interest rate.
- (d) In the event that any amount estimated by us to make any tax payments pursuant to this section in any calendar year exceeds the taxes actually charged for that calendar year, the remaining amount may be retained by us on account of any pre-estimate of taxes for the following calendar year.

9.8 Insurance (this section does not apply if the property is a residential condominium unit or strata lot)

- (a) You must insure and keep insured all buildings, structures, fixtures and improvements on the property for not less than full replacement value in Canadian dollars. You must keep this insurance coverage in place at all times until the indebtedness has been fully paid and the mortgage discharged. Your insurance must include coverage for loss or damage caused by fire with extended perils coverage. At any time, we may require that you also obtain coverage for additional perils, risks or events. If a steam boiler, pressure vessel, oil or gas burner, coal blower, stoker or sprinkler system or any other comparable equipment is operated on the property, then you must also have insurance coverage for loss or damage caused to the equipment, or by the equipment, or by the explosion of the equipment.

- (b) All insurance policies must be carried with a company that is satisfactory to us, show us as loss payee and mortgagee as our interest appears, contain mortgage clauses approved by the Insurance Bureau of Canada, or by us, confirming that any loss proceeds will be paid first to us, and give us the first right to receive and to have a lien on the insurance proceeds.
- (c) You must comply with all of the terms of each insurance policy required by us and all requirements of the insurer of each policy. You will not by any action or omission invalidate any policy required to be maintained hereunder or materially increase the premiums on any such policy above the normal premium charged by the insurer.
- (d) You must provide us with evidence of insurance that satisfies the requirements set out in this section 9.8. You must also immediately inform us of any changes in your insurance including any change in insurance company or policy including any change in the amount or perils covered by your insurance and any notice of pending cancellation or cancellation of insurance. At least 15 days before any insurance policy expires, you must provide us with evidence that you have renewed or replaced the policy and paid all premiums.
- (e) If we ask you to, you must provide us with certified copies of all insurance policies.
- (f) If you do not arrange for insurance or if you do not pay the premium for any insurance policy, we may arrange for insurance and pay the premium. However, we are not obligated to do this. Any insurance arranged by us may not cover the full replacement value of the property. If we pay any insurance premium or other amount of money for insurance on your behalf, you must repay us immediately. Alternatively, we may charge you directly an amount we determine is sufficient for protection of our interest in the property. In addition, you agree to pay to us an administration fee and any costs we incur in collecting money for and paying your insurance premiums. We may add these amounts to your indebtedness.
- (g) If any loss or damage occurs, you must immediately notify us and do everything necessary to enable us to obtain the insurance money payable to us under the mortgage. You must pay all expenses related to this. If we produce the mortgage, that will be sufficient authority for the insurance company to pay us any insurance money that is payable because of a loss. By signing this mortgage, you authorize and direct the insurance company to do so without your further signature or consent. We have the right to decide how to use the insurance money. For example, we may use part or all of the insurance money to repair or rebuild the property, reduce any part of the indebtedness, whether it is due or not, including paying any prepayment charges that are payable, or pay you.
- (h) To ensure that we may so apply such insurance monies in the manner herein contemplated, you assign and release to us all of your rights to receive the insurance moneys and, where your property is located in British Columbia, you expressly waive all of your rights and benefits under the *Insurance Act* (British Columbia) as amended or replaced from time to time, and, where your property is located in British Columbia or Alberta, you expressly waive all of your rights and benefits under the *Fire Prevention (Metropolis) Act 1774* as amended or replaced from time to time.

9.9 If the property is a condominium or strata lot

If the property is a condominium unit or strata lot you must also comply with this section in addition to all other provisions of the mortgage. In this section, condominium also means strata,

condominium unit also means strata lot and condominium corporation also means strata corporation.

In this section, *Condominium Act, Condominium Property Act, Strata Property Act* or similar legislation governing a condominium or strata property in the province or territory in which the property is located, is called the Act. Expressions used below which are the same as those in the Act have the same meaning as those in the Act, except that the expression condominium property has the same meaning as the word property in the Act.

(a) **Compliance with the Act**

You will comply with all of the requirements of the Act and the declaration, by-laws and rules and regulations of the condominium corporation as they exist from time to time.

(b) **Payment of common expenses and other amounts**

You must pay common expenses and any other amounts charged by the condominium corporation on or before they become due. If we ask, you must give us proof that you have paid all of these amounts.

(c) **Notices and demands**

You will forward to us copies of all communications of the condominium corporation related to your condominium unit or the common elements, including notices, assessments, claims or demands for payment, rules or regulations, and requests or demands of us to consent to any matter. You must ensure that we receive these communications at least five days before any claim or demand is payable or, in the case of other communications, within five days of the date you receive them.

(d) **Voting rights**

(i) You authorize us, in your name and on your behalf, and whether or not you are in default, to exercise your right to vote at any meeting of the condominium corporation, and to consent to any matter relevant to the management, sale or other dealings with the property or assets of the condominium corporation or the termination of the application of the Act to the condominium property or to the property. If the property is located in Nova Scotia, New Brunswick or Newfoundland and Labrador, we may only exercise your right to vote if we are mortgagee in possession of the property.

(ii) We may decide not to use our rights to vote or consent. If we decide not to use these rights, we may notify the condominium corporation, in which case you may vote or consent yourself. Our decision not to vote or consent can be for a limited time or for a particular meeting or matter. When we do vote or consent for you, we do not become a mortgagee in possession, nor are we responsible to protect your interests nor for the way we vote or consent. We are also not responsible if we do not vote or consent.

(e) **Insurance**

In addition to the insurance held by the condominium corporation, you must insure all improvements which at any time have been made to the property against

- (i) loss or damage by fire, and
- (ii) additional risks as we may require.

The insurance company or companies must be approved by us. You and the condominium corporation assign and transfer the policy or policies of insurance and any payments under them to us. If we ask for them, you must give us certified copies of every insurance policy. If you or the condominium corporation fail to keep the buildings and improvements insured or do not provide us with evidence of renewal at least 15 days before the termination of any insurance we may (but are not obligated to) obtain insurance for the buildings or improvements. If any loss or damage occurs, you will immediately, at your expense, do everything necessary to enable us to obtain the insurance money. We may use all or any part of the proceeds, as permitted by law, to repair the damage, pay you or reduce any part of the indebtedness whether or not it is due, including paying any prepayment charges that result.

The obligation to insure may be performed by the condominium corporation and the proceeds of insurance may be payable in accordance with the declaration and by-laws of the condominium corporation.

You promise that, in the event of loss or damage, you will fully comply with the terms of all insurance policies and with the insurance provisions of the declaration and by-laws and that, as a member of the condominium corporation, you will insist that the condominium corporation comply with these terms.

9.10 Building mortgage

If a part of the indebtedness is used to finance an improvement (which includes any construction or installation on the property or any alteration, addition or repair to any building or structure on the property), you must comply with these requirements:

- (a) You must make the improvement only according to plans and specifications that we have previously approved.
- (b) You must complete the improvement as quickly as possible.
- (c) You must meet all government requirements and building and zoning standards and by-laws that apply to the property. If requested, you will provide us, at your expense, with proof that you have met all government requirements and building standards that apply to the property.
- (d) You must make timely payment for all expenses associated with the improvement and provide us with proof that you have paid all money that is owed in connection with the improvement.
- (e) We may make advances to you based on progress in completing the improvement or upon its completion as determined by us, in our sole discretion, through site inspections. We may also make advances to you based on the occupancy or the leasing of the building on the property.
- (f) We may hold back money from any advances until we are satisfied that all obligations under the *Construction Act*, *Builders Lien Act*, *Mechanics' Lien Act* or similar legislation regarding payment for contractors and suppliers applicable in the province or territory where the property is located are met. You authorize us to give information about the mortgage to anyone who claims a construction, mechanics' or builders' lien on the property.
- (g) We may obtain an order removing any construction, mechanics' or builders' lien, and may provide financial guarantees or other security to obtain such an order. You must immediately pay all of our expenses for obtaining this order, including any charges for providing financial guarantees or other security.

- (h) Prior to commencing the improvement you must provide a real estate appraiser and/or home inspector approved by us access to your property for the purpose of completing an appraisal in form and substance satisfactory to us.
- (i) You must obtain and provide evidence of valid title insurance from a title insurer approved by us and/or survey of your property, in each case, in form and substance satisfactory to us.

9.11 Repairs

- (a) You must keep the property in good condition and in a good state of repair. You must carry out all necessary repairs and you must not do anything, or let anyone else do anything, that lowers the value of the property.
- (b) You must also comply with every present and future law, by-law, ordinance, regulation and order that affects the condition, repair, use or occupation of the property.
- (c) If you do not keep the property in good condition and a good state of repair or if you do not carry out all necessary repairs, or if you do anything, or you allow anything to happen, that lowers the value of the property, or if you do not comply with all present and future laws, by-laws, ordinances, regulations and orders that affect the condition, repair, use or occupation of the property, we can make any repairs we think are necessary.
- (d) You authorize us or any mortgage insurer to enter the property at all reasonable times to inspect and repair the property. By entering the property to inspect it or do repairs, we and any mortgage insurer do not become a mortgagee in possession of the property.
- (e) You are responsible for the costs of any repairs and any inspections done by us or on our behalf. You must pay us these costs immediately.

9.12 Demolitions and alterations

You will not to demolish any building or structure, or part of any building or structure, on the property without first obtaining our written approval. You also agree not to make any substantial alterations, additions or improvements to the property (referred to collectively in this section as "alterations") without first obtaining our written approval of your proposed plans. If we agree to let you make alterations, the following conditions apply:

- (a) The alterations must be completed as quickly as is reasonably possible.
- (b) The alterations must meet all government requirements and building and zoning standards and by-laws and other standards that apply to the property. If we ask you to, you will give us proof that the alterations meet all government requirements and building standards.
- (c) You will pay all costs associated with the alterations, and you will provide us with proof that all amounts that are owed for the alterations have been paid.
- (d) You must retain all required holdbacks.
- (e) We may obtain an order removing any construction, mechanics' or builders' lien and may provide financial guarantees or other security to obtain this order. If we obtain an order, you must pay to us immediately all of our charges, costs and expenses related to obtaining it.

9.13 **Hazardous and illegal substances**

- (a) You certify that you have made reasonable investigations and enquiries and that, to the best of your knowledge, no part of the property or any land next to the property is, or has been, or will be, used to manufacture, refine, handle, treat, store, dispose of or in any other way deal with any substances, except as allowed by laws, regulations and orders; *provided* that any growing, manufacturing, refining, handling, treating, storing or disposition of marijuana on the property is strictly prohibited whether permitted by law or otherwise. You also certify that you have made reasonable investigations and enquiries and that, to the best of your knowledge, no part of the property contains, nor has it ever contained, nor will it contain in the future, any underground or aboveground storage tanks, any hazardous, illegal substance or any substance in a quantity or concentration greater than that permitted by law or greater than the concentration specified in provincial laws which apply to the specific permitted use being made of the property, including without limitation, any quantity or concentration that may negatively alter the value of the property or negatively affect the marketability of the property.
- (b) You certify that if there is an underground or aboveground storage tank on the property it, and the operation of such a tank, is in full compliance with all laws, regulations, by-laws, orders and other legally binding requirements relating to underground and aboveground storage tanks, the protection of the environment, hazardous materials or public health and safety.
- (c) You certify that you have made reasonable investigations and enquiries and that, to the best of your knowledge, you are not aware of any environmental condition affecting any of the property which would constitute a material breach of any environmental laws or which would negatively alter the value of the property.
- (d) The property may not be used to grow, manufacture, refine, handle, treat, store, dispose of or in any other way deal with any hazardous material or illegal substances or marijuana (whether legal or not), as allowed by laws, regulations and orders, unless you have first notified us in writing that you intend to do so, and you have received our written approval.
- (e) We may require you to obtain a Phase I and/or a Phase II environmental site assessment, satisfactory to us at our sole discretion, of all or any part of the property. However, we do not have to do so. If we do, you are responsible for all of the costs associated with conducting any environmental site assessment. Any environmental site assessment will not relieve you from your obligations under the mortgage. We can require as many environmental site assessments as we think necessary.
- (f) If hazardous or illegal substances, or any substance in a quantity or concentration greater than that permitted by law or greater than the concentration specified in provincial laws which apply to the specific permitted use being made of the property, including without limitation, any quantity or concentration that may negatively alter the value of the property or negatively affect the marketability of the property are found on the property, regardless of the source or cause, we may require you to immediately carry out all work required to remove such hazardous materials, illegal substances or other substances from the property and repair the damage to the property. The plans and proposals for doing the work and repairs must be prepared in consultation with us and must be approved, in writing, by us in advance. When the work is completed, you must provide us with confirmation in writing that the work is completed. This confirmation must be in a form acceptable to us. You are responsible for all of the costs associated with this work, including providing evidence that the work has been completed.

- (g) If you fail to meet one or more of your obligations under this section, we may do all or any part of the work we feel is necessary. However, we are not obligated to do so. You must reimburse us for all of the costs associated with this if we do so. If you do not do so, these costs will be added to the mortgage and bear interest at the interest rate.
- (h) In all cases, you will protect and indemnify us against all actions, claims, lawsuits, costs or other demands relating to hazardous substances, illegal substances or any substance in a quantity or concentration greater than that permitted by law or greater than the concentration specified in provincial laws which apply to the specific permitted use being made of the property, including without limitation, any quantity or concentration that may negatively alter the value of the property or negatively affect the marketability of the property which are found on the property, and any breach of your obligations under this section.

9.14 Property inspection, testing and investigation

- (a) We, or our agents, may enter and inspect the property and conduct any environmental testing, site assessment, investigation or study that we consider necessary. You are responsible for the costs of this testing, assessment, investigation or study, including interest at the interest rate. You must pay us these costs, including interest, immediately.
- (b) If your mortgage has mortgage insurance, the mortgage insurer or its agents, may enter and inspect the property and conduct any environmental testing, site assessment, investigation or study that they consider necessary. You are responsible for the costs of any testing, assessment, investigation or study, including interest at the interest rate. You must pay us or the mortgage insurer these costs, including interest, immediately.
- (c) If we or the mortgage insurer enforce our rights under this section, we, the mortgage insurer or our respective agents will not be considered to have taken possession, management or control of the property.

9.15 Illegal activities

You certify that no part of the property is or will be used for any illegal purpose, including as a brothel or a gaming house. You also certify that no part of the property is or will be used for the growing, manufacturing, refining, handling, treating, storing or disposition of marijuana or other hazardous, illegal or controlled substances.

9.16 Servicing Fees

You will pay to us, when due, our then current administration and processing fees for all aspects of the servicing and administration of the mortgage and agreements which may include, without limitation:

- (a) dealing with each stop payment request and arrangements to hold or process any payments other than on its due date by preauthorized debit and with any late or missed payment and for replacement of each cheque or other instrument not honoured when presented for payment, any preauthorized payment which does not clear as scheduled, or any payment in a form other than preauthorized payment;
- (b) preparing each assumption, arrears, reinstatement, discharge or other mortgage statement, and each amortization or revised amortization schedule whether provided to you, to your agents or solicitors or any other interested person;

- (c) setting up each loan in our loan account systems and periodically for processing, maintaining and upgrading systems, software licensing, document management and data storage and retention and related customer service;
- (d) processing each application to obtain our consent to approve a rental of the property, or to assume, transfer or assign the mortgage or our approval or consent for any other matter required by the mortgage whether or not approval or consent is provided or the matter is completed;
- (e) processing each payment frequency change, each payment date change, a skipped payment (if permitted by us), extension, renewal, conversion, restructuring or other amendment of the mortgage, the agreements, or amounts secured by the mortgage, whether or not completed;
- (f) considering a request for a postponement and dealing with the completion of documents relating to a postponement request;
- (g) investigating the status of any insurance, administering insurance cancellations, paying insurance premiums, dealing with insurance claims and otherwise attending to any circumstances resulting from non-compliance with insurance requirements under the mortgage;
- (h) providing a copy or duplicate of documents from our file or an amortization schedule, a payment history, tax account history, audit verification and other services of a clerical nature including retrieval, copying, transmissions and other charges;
- (i) investigating the status of realty tax payments and administering tax payments;
- (j) administering the account for collection and payment of taxes;
- (k) registering a financing statement or financing change statement or issuing or receiving any notice or information, security status or acknowledgement request and conducting any required searches;
- (l) registering electronically or otherwise or executing and delivering any discharge or assignment of the mortgage (notwithstanding that the discharge or assignment may have been prepared by you or other person on your behalf);
- (m) reinvesting the principal of your mortgage in the event the mortgage is repaid in full prior to the maturity date; or
- (n) generally, any matter connected with the administration of the mortgage, the agreements and the property including inquiring into compliance, dealing with or enforcing any obligation contained in the charge or agreements and including, without limitation, with respect to preparation and administration of legal actions and enforcements, taxes, condominium fees and matters, insurance, repair and construction, environmental matters, leases and other encumbrances and managing or selling the property.

We may add our fees to the indebtedness secured by the mortgage and we will charge you interest on these fees at the interest rate, from the date the fees are incurred. Our administrative and processing fees shall be the amounts established, disclosed and generally applied by us from time to time and may be ascertained upon inquiry to us. We have the right to change the fees we generally charge borrowers from time to time.

9.17 **Costs**

You agree to pay us all amounts we expend and costs we incur in any manner in connection with the mortgage and the agreements including, without limitation, expenses in relation to:

- (a) making the loan(s) or any other indebtedness secured by the mortgage and each amendment, extension or renewal thereof including preparation, execution and registration of the mortgage or notice of mortgage, the agreements and any other security, instrument and documents;
- (b) collecting payments under and enforcing and realizing the security of the mortgage and the agreements;
- (c) defending or otherwise dealing with any action or proceeding in which we by reason of the mortgage may be a party or otherwise interested including without limitation any construction, mechanics' or builders' lien or similar matter, any seizure or prosecution by police or other authority (including criminal or civil forfeiture proceedings), any foreclosure, sale (including all reasonable post-mortgage sale matters), strata proceedings, expropriation proceedings, redemption, assessment or other action or proceeding by any other encumbrancer or any certificate of pending litigation or other title matter; and
- (d) performing or complying with any of your obligations under this mortgage or the agreements including, without limitation, those relating to insurance, condominium, repair and construction, leases, taxes, prior encumbrances and environmental matters.

All legal costs and expenses incurred by us in dealing with compliance with any term, in enforcement of the mortgage and agreements, and because of third party proceedings of any kind involving the property shall be paid by you in full (including legal fees for court proceeding on a full indemnity or a solicitor and client basis). Any amounts not paid when due in full will be added to the indebtedness secured by the mortgage and we will charge you interest on these amounts at the interest rate, from the date the amounts were due.

9.18 **New home warranties**

If the property includes a newly or recently constructed house, you agree to meet all of the requirements to obtain and maintain the warranty in the new home warranty program applicable in the province or territory in which the property is located. You agree to provide to us copies of the New Home Warranty Certificate and Certificate of Possession or other applicable certificates. You assign us the right to receive and enforce all benefit of such warranty. You also agree to reimburse us for any costs that we incur in complying with the warranty program requirements, or enforcing your rights on your behalf if you fail to do so.

9.19 **Expropriation**

If your entire property is expropriated, the indebtedness will immediately become due and payable, together with loss of interest, including any prepayment charges. If only a part of the property is expropriated, the amount you are awarded for the partial expropriation will be paid to us and we will credit it to the indebtedness. If, in our opinion, the remainder of the property does not provide adequate security for the indebtedness, then the indebtedness or any part of the indebtedness as we determine, will immediately become due and payable, together with any loss of interest, including any prepayment charges. Where your property is located in Alberta, you acknowledge that you have been advised by legal counsel as to the meaning of section 49 of the *Expropriation Act* (Alberta) and that you waive any benefit that may be afforded to you by the provision of that section. You further covenant and agree that if any part of your property is taken for any public work under the *Municipal Government Act* (Alberta) or the *Public Works Act* (Alberta) or any similar statute or regulation, then all compensation payable to you (or

anyone claiming an interest under or through you) will be payable to us and you assign to us all such compensation.

9.20 Spousal information

You certify to us that all information that you give us about your marital status and the property when applying for the loan secured by the mortgage, and the statements made in the registered mortgage are true and accurate under the laws regarding spousal property rights in the province or territory in which the property is located. If any change in such status of the qualification of the property as family property under the laws regarding spousal property should change, you agree to inform us immediately of such changes in writing.

9.21 Withholding taxes

You agree that we must receive interest payments free and clear of any withholding tax. If you are or become a non-resident of Canada for income tax purposes, the country where you reside may charge you withholding tax on the interest portion of your payments to us. You are responsible for paying any withholding tax and providing to us receipts issued by the foreign tax authority as proof that you have paid withholding tax. If you do not pay the withholding tax and the foreign tax authority makes us pay it, you promise to pay the withholding tax amount to us when we ask for it. The amount will be added to the indebtedness and bear interest at the interest rate until paid. We have the right, but not the obligation, to collect and remit the withholding tax on your behalf. If we choose to do this, we will remit the withholding tax to the foreign tax authority from the interest we collect.

10. OUR RIGHTS AND REMEDIES

10.1 No obligation to make advances under the mortgage

We may, for any reason, decide not to advance you all or any part of the indebtedness, notwithstanding that you may be relying on a commitment we have issued, even if you have signed the mortgage, the mortgage or notice of mortgage has been registered or we have already given you some indebtedness. In this case, you will pay us, immediately when we demand, all of our costs and expenses including legal fees related to investigating title to the property and for registering the mortgage.

10.2 Releasing the property from the mortgage

- (a) We may release our interest in all or part of the property, whether or not we receive any value. We will be accountable to you only for money that we actually receive. If we release our interest in only part of the property, the remainder of the property will continue to secure the indebtedness and your obligations, and the obligations of any guarantor, under the mortgage will continue unchanged.
- (b) If the property is subdivided, each part of the property will secure payment of the indebtedness.

10.3 Certain actions we can take

- (a) We can, if we think it is necessary, pay off any encumbrances, claims or liens which have priority over the mortgage.
- (b) If you are a tenant or a lessee of the property, we can cure any defaults existing under your lease and you must immediately reimburse us for all payments and expenses that we incur in so doing. If you refuse or neglect to renew your lease when it gives you that right, we can do so. Every renewal will be subject to this mortgage.

- (c) If you do not meet one or more of your obligations under the mortgage, we can, but are not obliged to, perform those obligations. You must immediately reimburse us for all payments which we make and costs which we incur in taking these steps.
- (d) Any payments we make under the mortgage will be added to the indebtedness. We will charge you interest on these payments from the date we pay them at the interest rate.
- (e) If we have not received a solicitor's final report and certificate of title within 60 days of the final advance of funds under the mortgage, we are entitled to retain another solicitor of our choice to provide a final report and certificate of title. You will be responsible for all costs associated with so doing.

10.4 Default and acceleration of the indebtedness

All or any part or parts of the indebtedness will become payable immediately, at our option, if:

- (a) you default in making any regular payment, or any other payment you are obliged to make to us under the mortgage;
- (b) you fail to comply with any of your other obligations under the mortgage or under any agreement;
- (c) any lien is registered against the property or we receive written notice of any lien that is created as a result of unpaid property taxes, utilities, unpaid condominium or strata maintenance fees, judgments, construction, mechanics' or builders' liens or other similar encumbrances;
- (d) the property is abandoned or is not visibly and consistently occupied;
- (e) any buildings being erected or additions, alterations or improvements done on the property remain unfinished without work being done on them for 15 consecutive days;
- (f) the property is used for any illegal purpose; the growing, manufacturing, refining, handling, treating, storing or disposition of any illegal or controlled substances; the growing, manufacturing, refining, handling, treating, storing or disposition of marijuana (whether legal or not); or, is used for a business purpose without our consent;
- (g) any action is taken by you or anyone else that, in our discretion, lowers the value of the property;
- (h) you sell or otherwise dispose of the property or your interest in the mortgage to a person not approved in writing by us;
- (i) you are a corporation or other entity and there is a change of control to a person or persons not approved by us in writing or you have been dissolved or cancelled;
- (j) the property is subject to forfeiture or escheat to the crown;
- (k) there is another mortgage registered against the property and there is a failure to make payments under that mortgage;
- (l) we discover that any statement, certification, representation or agreement you have given or made to us in applying for the initial loan or for any other indebtedness, or in the mortgage is untrue or becomes untrue through the life of the mortgage;

- (m) the property includes a condominium unit or strata lot, a vote authorizes termination of the condominium or strata property or the sale of all or substantially all of the condominium corporation's or strata corporation's assets or its common elements or the condominium corporation or strata corporation fails to insure the unit or strata lot and common elements; or
- (n) a petition in bankruptcy is filed against you, you make a general assignment for the benefit of your creditors, you make a proposal to your creditors, a receiver or a similar person is placed or is threatened to be placed in control of your affairs or the property, or in our opinion, you become insolvent.

If the indebtedness so declared immediately payable is paid prior to the balance due date or maturity date, you agree to compensate us by payment of a prepayment charge equal to three months interest at the interest rate of the initial loan or other fixed loan then in effect. Where default continues to or is made after the balance due date or maturity date, the outstanding indebtedness may only be paid upon payment of three months interest on the indebtedness. You further agree that we may recover such prepayment charge from the proceeds of any sale of the property or other proceedings for enforcement of the mortgage or any other agreement.

10.5 Enforcing our rights

- (a) If any of the events set out in section 10.4 occurs, we may, with or without declaring the loan immediately payable, enforce our rights by taking certain actions, which include:
 - (i) *Sue you.* We may take any action that is necessary to recover payment of all or any part of the indebtedness and to make you perform any of your other obligations under the mortgage or agreements.
 - (ii) *Foreclosure or sale.* We may take court proceedings to foreclose your right, title and equity of redemption to the property. If we obtain a final order of foreclosure from the court, the property will belong to us. We may also ask the court to order the sale of the property under the court's supervision. If the amount we receive from the sale of the property is less than the indebtedness, you must pay us the difference.
 - (iii) *Lease the property or collect rents.* We may with or without entering on the property, lease the property without notice to you. If we think it is reasonable, we may cancel or amend any lease or enter into new leases without being responsible for any resulting loss. We may apply the money collected under or in connection with any lease, after paying all costs and expenses, to any part of the indebtedness. We will only be accountable for the money remaining after payment of all costs and expenses when we actually receive it. If the money remaining, after paying all costs and expenses, does not pay the indebtedness in full, you must pay us the difference.
 - (iv) *Power of sale.* We may, where permitted by law and on the minimum period of written notice to you required by law, sell the property or any part of the property. We may sell the property for cash or on credit, or partly for cash and partly on credit. We may sell the property by private sale or public auction and on whatever terms we can obtain, as permitted by law. If we think it is reasonable to do so, we may cancel or amend any contract of sale, or postpone any sale, without being responsible for any resulting loss. We may apply the money from any sale, after paying all costs and expenses, to reduce any part of the indebtedness. We will only be responsible for the money remaining after we pay all costs and expenses when we actually receive it. If the money remaining, after

paying all costs and expenses, does not pay the indebtedness in full, you must pay us the difference.

- (v) *Enter on the property.* We may enter the property at any time, without your permission, and make any necessary arrangements to inspect, collect rent, manage, repair or complete construction. We will not be considered to be a mortgagee in possession of the property unless we actually take possession of it. While in possession, we will only be accountable for money actually received. We may take possession of the property without any encumbrances or interference.
- (vi) *Appoint a receiver.* We can appoint, in writing, a receiver (which term includes a receiver and manager) to collect any income from the property. The receiver will be your agent, not ours, and you alone will be responsible for anything the receiver does or fails to do. We are not accountable for any money received by the receiver except for money that we actually receive. The receiver may use every available remedy or action that we have under the mortgage or any other agreement to collect the income from the property, take possession of part or all of the property, or to manage the property and keep it in good condition. From the income collected, the receiver will pay all rents, taxes, insurance premiums and other expenses required to keep the property in good condition; its own commission as receiver; all amounts required to keep any encumbrances ranking in priority to the mortgage in good standing; interest owing under the mortgage; and all or any part of the indebtedness, whether it is due or not.
- (vii) *Cure any defaults.* We can cure any defaults under the mortgage.
- (viii) *Automatic withdrawals.* We can discontinue automatic debits of the regular payments owing under the mortgage.
- (ix) *Other action.* We can take any other steps or proceedings against you that are permitted by the laws of the province or territory in which the property is located and the laws of Canada.

We have the right to take one or more of these actions at the same time or in any order we choose.

- (b) If any of the events in section 10.4 occurs, we may at our sole option, notwithstanding any other provision in the mortgage, determine whether such events are curable or not curable and, if we determine not curable (at our sole discretion) and notwithstanding any efforts or attempts by you to cure such events, we may enforce our rights in any manner as set out in the mortgage, as permitted by law.
- (c) If we take possession of the property to enforce our rights, you will not interfere with our possession or with the possession of the property by any receiver we appoint or with the possession of the property by any person we have leased or sold the property to. You will not make any claim against any person to whom the property has been leased or sold.
- (d) If we take possession of the property, any equipment (which is not part of the property) or furniture or household or personal belongings which remain on the property for a period of more than fifteen (15) days after we take possession of the property shall be deemed abandoned and we may remove, store, dispose of or otherwise deal with such abandoned goods in such manner as we see fit.

Removal, storage and other costs may be added to the indebtedness secured by the mortgage and will bear interest at the interest rate.

- (e) If you have rented the property without our written approval as required by section 9.5 of these standard charge terms, we will have the same rights and remedies as if you had tried to discourage us from taking possession of the property if you had defaulted under the mortgage or adversely affected the value of the property. We can pay any amount we think is needed to any tenant, to obtain the co-operation of the tenant in selling the property, showing the property and obtaining possession of the property or any part of the property from the tenant. You agree that any amount we pay to a tenant will be added to the amount of the indebtedness and bear interest at the interest rate.
- (f) You must pay all of our fees and expenses related to our enforcing our rights (including legal fees in any court proceedings on a solicitor and client or full indemnity basis). You must pay these amounts immediately when we ask for them. You must also pay all other costs we have to pay to protect our interests and to enforce any of our rights under the mortgage, as well as a reasonable allowance for the time and services of our employees.
- (g) If we delay enforcing any of our rights or give you or any other person an extension of time, the delay or extension will not affect any of our other rights under the mortgage. If we delay or give an extension, we may still require you to make all payments on time and meet your obligations under the mortgage; require payment of the indebtedness if you are in default; and require any other person who has obligations under the mortgage, including a guarantor, to meet those obligations.
- (h) In some cases, we may not enforce our rights on a particular default. However, by doing so, we are not forgiving any other existing default, or any other defaults in the future.
- (i) If we obtain a court order or judgment against you to enforce our rights, the judgment will not prevent us from pursuing our other remedies or rights to enforce your obligations under the mortgage.

10.6 **Doctrine of consolidation**

The doctrine of consolidation will apply to the mortgage and any other mortgage you have granted or will grant to us. This means that if you default under any of your mortgages to us then we can, as a condition of your repaying any mortgage, require that you repay all indebtedness.

10.7 **Insured Loan Priority**

Each loan that is an insured loan will, upon default pursuant to which we enforce our rights under section 10.5 in regard to such insured loan, have priority over any other loans and/or indebtedness secured by the mortgage as to payment, collection, enforcement and realization.

11. **GUARANTORS**

- (a) In return for us making the initial loan to you, allowing other indebtedness and other value given to you (who, in this section 11 is called the "borrower" and which includes the borrower's legal and personal representatives, successors and assigns), each person who signs the mortgage, or an agreement relating to the mortgage, as a guarantor or covenantor signs as a principal debtor and not as surety. In other words, each guarantor agrees to pay us the initial loan and other indebtedness to meet all other obligations of the borrower as and when required by the mortgage and agreements.

- (b) If there is more than one guarantor, the guarantors are responsible jointly and individually with each other and with the borrowers for meeting all obligations under the mortgage and agreements.
- (c) We may, at any time, do any of the following, without notifying any guarantor and without obtaining the consent of any guarantor: extend the time for payment, give a renewal, give an extension, deal with additional security, give a release or discharge, change the interest rate, change the terms of the initial loan and of other indebtedness or deal with any other matter affecting the mortgage, the indebtedness secured and the borrower's obligations. Doing any of these things will not in any way affect the guarantee or the obligations of any guarantor.
- (d) We may require payment from any guarantor before we attempt to obtain payment from the borrower. All obligations of any guarantor will also be obligations of the guarantor's heirs, executors, successors, assigns and personal and legal representatives. The obligations of a guarantor will not be affected by the bankruptcy of the borrower or any other guarantor.

12. MISCELLANEOUS

12.1 Date of mortgage

For the purpose of defining the date of the mortgage with respect to any statutory rights to prepayment only, the date of the mortgage will be deemed to be the interest adjustment date for the initial loan in the registered mortgage or other agreement or any agreement amending the registered mortgage.

12.2 Exclusion of statutory covenants

In the event that there is any inconsistency or conflict between the provisions contained in the mortgage and the covenants implied or incorporated into a mortgage by statute in the province or territory in which the property is located, the provisions of the mortgage shall have priority over and shall override such statutory covenants to the extent of the inconsistency or conflict.

12.3 *National Housing Act*

If the mortgage is an insured loan with CMHC as the mortgage insurer, it is made according to the *National Housing Act*.

12.4 Part of mortgage invalid

If any part of the mortgage is found to be illegal or unenforceable, the validity or enforceability of all other parts of the mortgage will not be affected.

12.5 Notice

You agree that all correspondence and notices forwarded to you by registered and regular mail to the property address and the most current address we have on file for you are deemed to have been received by you.

12.6 Headings

All section headings are for convenience of reference only and do not form part of the mortgage.

12.7 Governing law

The mortgage shall be governed by the laws of the province or territory in which the property is located and the laws of Canada applicable in the province or territory. Any reference in the

mortgage to an act or statute includes amendments and replacements to that legislation in force from time to time.

12.8 Important Notice for Mortgages in Manitoba

If the mortgage is on a property located in Manitoba, the following applies:

The *Mortgages Act* (Manitoba) provides that you can obtain free of charge from us a statement of the debt secured by the mortgage once every twelve months or as needed for pay off or sale.

12.9 Notice of Obligations under Mortgages in Alberta

If the mortgage is a high ratio mortgage on a property located in Alberta with insurance by a mortgage insurer, the following applies:

This mortgage is a high ratio mortgage to which sections 43(4.1) and (4.2) and 44(4.1) and (4.2) of the *Law of Property Act* (Alberta) apply. You and anyone who, expressly or impliedly, assumes this mortgage from you, could be sued for any obligations under this mortgage if there is a default by you or by a person who assumes this mortgage.

In this section 12.9, a high ratio mortgage means a mortgage of land given to secure a loan under which the maximum amount secured by the mortgage, together with the amount of any other existing encumbrance on or mortgage of the same land, exceeds 75% of the market value of the land at the time the mortgage is given.

12.10 Waiver of Saskatchewan Legislation

If you are a corporation and the mortgage is on a property located in Saskatchewan, you agree that *The Land Contracts (Actions) Act* (Saskatchewan) shall have no application to any action, as defined in that Act, with respect to your mortgage and you further agree that *The Limitation of Civil Rights Act* (Saskatchewan) shall have no application to your mortgage or any agreement or instrument renewing or extending or collateral to your mortgage or our rights, powers or remedies under the mortgage.

12.11 Further Assurances

You will execute and deliver any further agreements and documents and provide any further assurances as may be reasonably required by us to give effect to your mortgage.

13. RIGHT TO DEAL WITH ANY LOAN

We may, at our option, and without restriction, consent or notice to you (which includes, for certainty, any guarantor or any spouse signing your mortgage), (i) insure all or any part of the indebtedness, or any interest therein to any mortgage insurer at any time and from time to time, and (ii) sell, assign, syndicate, securitize or encumber your mortgage to one or more third party(ies), including a mortgage insurer and/or the administrator without notice to you (as set out in more detail in section 14 below). If we do so, you agree that your mortgage shall continue to secure all amounts owing under your mortgage. Once sold or assigned, your mortgage may be repurchased by us, whether or not it is in default.

14. SECURITIZATION/FINANCING

You acknowledge and agree that, with respect to any insured loan that is included by us in a pooling program, for as long as such insured loan is included in the pooling program:

- (a) any new or additional advances, increases to principal, or further borrowings beyond an initial advance or extensions of the term and including revolving loans,

lines of credit and re-advances (each an “**additional advance**” and, collectively, “**additional advances**”), on such terms as notified to you from time to time, are only permitted on the condition that each additional advance is a new loan, and the new loan made to you will be treated as a separate and distinct loan for all purposes including enforcement, and you covenant and agree to enter into such additional or new documentation or security requested by us in respect of any such additional advance;

- (b) any references or rights, in favour of us or otherwise, with respect to any consolidation of any security, mortgages, loans or property with respect to any insured loan under a pooling program are disclaimed by us as against the mortgage insurer and the administrator so long as the mortgage insurer and/or administrator have an interest in the insured loan; and
- (c) any references or rights, in favour of us or otherwise, with respect to any cross collateralization or cross default of any security, mortgages, loans or property, or the granting of property as security for more than one loan, or more than one loan being secured by a single property, in cases where not all of such loans secured by the mortgage are included in a pooling program, are disclaimed by us as against the mortgage insurer and the administrator and such references or rights will not be exercised by us with respect to any loans that are not included in a pooling program so long as the mortgage insurer and/or administrator have an interest in the insured loan;

but, for certainty and notwithstanding the foregoing, you acknowledge and agree that we are in no way waiving, disclaiming, discharging or releasing the security of the mortgage as against any persons, including you, any guarantor or any other person having or taking an interest in the property.

15. PRIVACY

In connection with the processing, approving, funding, servicing and administering, or any insurance, sale, securitization, assignment or financing of all or any part of the indebtedness, including any loan under an agreement, or any interest therein, we, a mortgage insurer, the administrator, any other person having an interest or proposing to acquire any interest in all or any part of the indebtedness and/or in the mortgage from time to time (including our and their respective agents, advisors, lawyers, accountants, consultants, appraisers, credit verification sources, credit rating agencies and any party retained to service the mortgage), or any other person in connection with any collection or enforcement proceedings taken under or in respect of all or any part of the indebtedness including any loan or any loan agreement (“**information access persons**”), may, as it may determine in its sole discretion, subject always to and in accordance with privacy laws:

- (a) collect, use and store information and materials (including confidential personal information) provided by you, any guarantor, your spouse, or obtained by or on behalf of, the relevant information access person, relating to the indebtedness, you, any guarantor, or the property (both before and after any new loan, any refinancing of a loan, an re-advances and any further advances on any loan and/or any default), without further notice to you, your spouse or any guarantor; and
- (b) transfer, assign, release, disclose, exchange or share such information and materials (including confidential personal information) to or with (i) any other information access persons; and (ii) any governmental authority having jurisdiction over it or any of its activities, and you, your spouse and any guarantor hereby irrevocably consent to the collection, use, storage, release, disclosure, exchange, sharing, transfer and assignment of all such information and materials (including, confidential personal information).

The foregoing is notwithstanding and in addition to the privacy notice and access to personal information provisions consented to in the commitment.

16. EQUIVALENT INTEREST RATES

If your interest rate is compounded, you may determine the equivalent interest rate calculated semi-annually not in advance by referring to the table below:

Nominal Monthly Rate	Compounded Semi-Annually	Nominal Monthly Rate	Compounded Semi-Annually	Nominal Monthly Rate	Compounded Semi-Annually
1.000	1.00250	6.000	6.09000	11.000	11.30250
1.125	1.12816	6.125	6.21879	11.125	11.43441
1.250	1.25391	6.250	6.34766	11.250	11.56641
1.375	1.37973	6.375	6.47660	11.375	11.69848
1.500	1.50563	6.500	6.60562	11.500	11.83063
1.625	1.63160	6.625	6.73473	11.625	11.96285
1.750	1.75766	6.750	6.86391	11.750	12.09516
1.875	1.88379	6.875	6.99316	11.875	12.22754
2.000	2.01000	7.000	7.12250	12.000	12.36000
2.125	2.13629	7.125	7.25191	12.125	12.49254
2.250	2.26266	7.250	7.38141	12.250	12.62516
2.375	2.38910	7.375	7.51098	12.375	12.75785
2.500	2.51563	7.500	7.64063	12.500	12.89063
2.625	2.64223	7.625	7.77035	12.625	13.02348
2.750	2.76891	7.750	7.90016	12.750	13.15641
2.875	2.89566	7.875	8.03004	12.875	13.28941
3.000	3.02250	8.000	8.16000	13.000	13.42250
3.125	3.14941	8.125	8.29004	13.125	13.55566
3.250	3.27641	8.250	8.42016	13.250	13.68891
3.375	3.40348	8.375	8.55035	13.375	13.82223
3.500	3.53063	8.500	8.68063	13.500	13.95563
3.625	3.65785	8.625	8.81098	13.625	14.08910
3.750	3.78516	8.750	8.94141	13.750	14.22266
3.875	3.91254	8.875	9.07191	13.875	14.35629
4.000	4.04000	9.000	9.20250	14.000	14.49000
4.125	4.16754	9.125	9.33316	14.125	14.62379
4.250	4.29516	9.250	9.46391	14.250	14.75766
4.375	4.42285	9.375	9.59473	14.375	14.89160
4.500	4.55062	9.500	9.72563	14.500	15.02563
4.625	4.67848	9.625	9.85660	14.625	15.15973
4.750	4.80641	9.750	9.98766	14.750	15.29391
4.875	4.93441	9.875	10.11879	14.875	15.42816
5.000	5.06250	10.000	10.25000	15.000	15.56250
5.125	5.19066	10.125	10.38129	15.125	15.69691
5.250	5.31891	10.250	10.51266	15.250	15.83141
5.375	5.44723	10.375	10.64410	15.375	15.96598
5.500	5.57563	10.500	10.77563	15.500	16.10063
5.625	5.70410	10.625	10.90723	15.625	16.23535
5.750	5.83266	10.750	11.03891	15.750	16.37016
5.875	5.96129	10.875	11.17066	15.875	16.50504

DATED the 17th day of January, 2019

HOME TRUST COMPANY

by its solicitors

Gowling WLG (Canada) LLP

Per:



Kirsty Strong

FILED: , 2019

**THIS IS EXHIBIT "E" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

Properties

PIN 07500 - 0079 LT
Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

Address TORONTO

PIN 07500 - 0084 LT
Description PART OF BLOCKS A & B, REGISTERED PLAN 5261, DESIGNATED AS PARTS 2, 3, 11, 12, 66R28992 EXCEPT PART 1, 66R30958; S/T EASEMENT IN FAVOUR OF PARTS 1, 4 TO 8, 16 & 18, 66R28992 AS IN AT4865049; T/W EASEMENT OVER PTS 1, 4 TO 8, 16 & 18, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PARTS 7, 8, 9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PARTS 11, 14 & 28, 66R28992 AS IN EB127141; SUBJECT TO AN EASEMENT AS IN AT4907631; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, 66R28992 AS IN AT5347798; TOGETHER WITH AN EASEMENT OVER PARTS 10, 13, 14 AND 28, 66R28992 AND PART 1, 66R30958 AS IN AT5347789; CITY OF TORONTO

Address TORONTO

Applicant(s)

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

Name VANDYK-BACKYARD HUMBERSIDE LIMITED
Address for Service 1944 Fowler Drive
 Mississauga ON L4K 0A1

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

Party To(s) *Capacity* *Share*

Name HOME TRUST COMPANY
Address for Service 145 King Street West
 Suite 2300
 Toronto ON M5H 1J8

Statements

The applicant applies for the entry of a notice of general assignment of rents.
 This notice may be deleted by the Land Registrar when the registered instrument, AT5416487 registered on 2020/04/28 to which this notice relates is deleted
 Schedule: See Schedules

Signed By

Christa-Lee Ann Callahan 1000-120 Adelaide St. W. acting for Signed 2020 04 27
 Toronto Applicant(s)
 M5H 3V1

Tel 416-363-2211
 Fax 416-363-0645

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

Christa-Lee Ann Callahan 1000-120 Adelaide St. W. acting for Signed 2020 04 27
 Toronto Party To(s)
 M5H 3V1

Tel 416-363-2211
 Fax 416-363-0645

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

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

Submitted By

Schneider Ruggiero Spencer Milburn LLP 1000-120 Adelaide St. W. 2020 04 28
Toronto
M5H 3V1

Tel 416-363-2211
Fax 416-363-0645

Fees/Taxes/Payment

Statutory Registration Fee \$65.05
Total Paid \$65.05

File Number

Party To Client File Number : 41776/BM

GENERAL ASSIGNMENT OF LEASES AND RENTS

TO: HOME TRUST COMPANY (the "**Chargee**")

FROM: VANDYK-BACKYARD HUMBERSIDE LIMITED (the "**Chargor**")

RE: Home Trust Company (the "**Lender**") loan to Vandyk-Backyard Humberside Limited (the "**Borrower**") to be secured against 10 Neighbourhood Lane, Toronto, Ontario (the "**Charged Premises**") as guaranteed by John Vandyk and Vandyk Holdings Incorporated (collectively, the "**Guarantors**") pursuant to a commitment letter dated April 3, 2020, as amended from time to time

1. RECITALS

1.1 Description of Underlying Obligation

The Chargee has or is about to extend a mortgage loan in the amount of \$10,000,000 (the "**Loan**") in favor of the Chargor pursuant to a Commitment Letter dated April 3, 2020, as amended from time to time (the "**Commitment Letter**") and the Chargee requires that the indebtedness of the Chargor pursuant to the Commitment Letter and under the Loan be further secured by a \$10,000,000 mortgage on the Charged Premises (the "**Charge**") and the presents hereinafter set out.

2. GRANTING CLAUSES

2.1 To secure the Chargor's obligations to the Chargee and to assure performance of the agreements contained herein, the Charge, the Commitment Letter and in any other loan document, Chargor assigns to Chargee, Chargor's right, title and interest in:

- (a) All oral and written leases, offers to lease with, or other agreements for use or occupancy made to or agreed to by any person or entity (including without limitation of the foregoing, Chargor and Chargee under the powers granted herein), and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Charged Premises, whether such leases or other agreements have heretofore been made or as are in the future made or agreed to (such leases, offers to lease and other use or occupancy agreements being referred to as the "**Leases**");
- (b) The rents, issues and profits (collectively the "**Rents**") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Charged Premises;
- (c) All rights, powers, privileges, options and other benefits (collectively the "**Rights**") of Chargor under the Leases, including without limitation the following:
 - (i) The immediate and continuing right to receive and collect all Rents, income, revenues, insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as Rents or otherwise (except sums payable directly to any person other than the lessor thereunder);
 - (ii) The right to make all waivers and agreements, including waivers of obligations of lessees;
 - (iii) The right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;
 - (iv) The right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

- (v) The right to do any and all other things whatsoever which Chargor, as lessor, is or may become entitled to under the Leases;
- (vi) The right to exercise any option; and
- (d) Any and all guarantees (the "**Guarantees**") of any of the Leases, and the rights, powers, privileges and other benefits of the Chargor under the Guarantees;

and Chargor authorizes Chargee in the event of Chargor's Default hereunder:

- (e) To manage the Charged Premises and let and relet the Charged Premises, or any part thereof according to Chargee's own discretion;
- (f) To prosecute or defend any suits in connection with the Charged Premises in the name of either or both of Chargee or Chargor as it may consider desirable;
- (g) To enforce or take any other action in connection with the Leases in the name of either or both of Chargee or Chargor;
- (h) To make such repairs to the Charged Premises as Chargee may deem advisable; and
- (i) To do anything in or about the Charged Premises that Chargee may reasonably deem advisable and that the Chargor has the right or power to do.

3. **COVENANTS, REPRESENTATIONS AND WARRANTIES**

3.1 Power Coupled with Interest

This Assignment of Leases and Rents confers upon Chargee a power coupled with an interest and cannot be revoked by the Chargor.

3.2 Notice of Lessor's Default

Chargor shall cause notice to be given to Chargee of any material default by the lessor known to the lessor under any of the Leases promptly upon the occurrence of such default, but in all events in sufficient time to afford to Chargee an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

3.3 Chargee to be Creditor of Lessee

Chargee shall be and be deemed to be the creditor of each lessee in the Leases in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such lessee (without obligation on the part of the Chargee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein) and Chargor hereby assigns to Chargee any such money or award and any and all payments made or payable by lessees in lieu of rent with option to Chargee to apply any such money or award or payments received by Chargee in reduction of the indebtedness secured by or to be paid under the Charge. Chargor hereby appoints Chargee as its irrevocable attorney in fact to appear in any action and/or collect any such money, award or payment.

4. **DEFAULTS AND REMEDIES**

4.1 Defaults

A default under the Charge shall constitute a default ("**Default**") under this Assignment of Leases and Rents.

4.2 Exercise of the Assignment of Leases and Rents

- (a) Until Default shall have been made in payment of any sum as provided in the Charge, the Chargor shall be entitled to receive all Rents and other amounts payable under the Leases and Guarantees;

- (b) In the event of Default then in addition to the rights hereby assigned to the Chargee the Chargee may collect the Rents and/or manage the Charged Premises without regard to the adequacy of the security and without waiving such Default;
- (c) In the event Chargee elects to invoke any of its rights hereunder and thereafter, for any reason, relinquishes to the Chargor such rights, this Assignment of Leases and Rents shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Charge is paid in full, it being the intent of the parties that Chargee shall, from time to time upon the occurrence of any Default under this Assignment of Leases and Rents and/or the Charge, have all the rights granted hereby.

4.3 Nature of Remedies

No delay or omission on the part of Chargee in the exercise of any remedy for a Default shall operate as a waiver hereof. The remedies available to Chargee under this Assignment of Leases and Rents shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Charge. The said remedies shall be cumulative and concurrent and not alternative, may be pursued separately, successively or together against the Chargor, against the Charged Premises or any of them at sole discretion of Chargee and may be exercised as often as occasion therefrom shall arise.

4.4 Application of Rents

Chargee shall have the power to apply the Rents, in such order as Chargee may determine, to the payment of the indebtedness represented by the Charge and also toward the payment of any and all sums, monies, costs, charges and expenses incurred by Chargee in exercise of any of its rights under the Charge and all reasonable expenses for the care and management of the Charged Premises, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents and servants, which expenses may be reasonably necessary to exercise the powers granted to the Chargee hereunder. The receipt by Chargee of any Rents pursuant to this Assignment after a Default hereunder and the exercise of any remedies provided for in the Charge or hereunder shall not cure such Default or affect or prejudice the exercise of such remedies.

4.5 Limitation of Chargee's Obligations

Chargee's obligations as to any Rents actually collected shall be discharged by application of such Rents for any of the purposes described in this Assignment of Leases and Rents. Chargee shall not be liable for uncollected rents or for any claim for damages or set off arising out of the Chargee's management of the Charged Premises. Chargee shall not be liable to any lessee for the return of any security deposit made under any lease of any portion of the Charged Premises unless Chargee shall have received such security deposit from the lessor or such lessee. Chargee shall not by reason of this Assignment of Leases and Rents or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Chargee be responsible for any act committed by the lessor, or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Chargee a mortgagee in possession of the Charged Premises or any part thereof.

4.6 Reimbursement

Chargor shall reimburse, indemnify and hold harmless Chargee for and from any and all expenses, losses, damages and liabilities which Chargee may reasonably incur by reason of this Assignment, any of the Leases or expenses, losses, damages and liabilities incurred in exercising any of the rights granted in this Assignment.

4.7 Authorization to Lessees

Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Chargee upon written demand from Chargee stating that a Default has occurred under the Charge without inquiry as to whether any such Default has occurred or whether Chargee is rightfully entitled to such rent.

4.8 Discharge

At the time of delivery of a discharge of the Charge the Chargee shall also deliver a release and re-conveyance of this Assignment of Leases and Rents to the Chargor.

5. **MISCELLANEOUS**

5.1 Modification of Loan Terms

If the time of payment of all indebtedness secured under the Charge or any part thereof be extended at any time or times, if the Charge be renewed, modified or replaced or if any security for the Charge be released, Chargor and any other parties now or hereafter liable therefor or interested in the Charged Premises shall be held to consent to such extensions, renewals, modifications, replacements and releases and their liability and the lien hereof shall not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by the Chargee.

5.2 Successors and Assigns

This Assignment of Leases and Rents shall enure to the benefit of and be binding upon the successors and assigns of the Chargor and Chargee and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the Charged Premises.

5.3 No Merger

Notwithstanding the conveyance or transfer of title to any or all of the Charged Premises to any lessee under any of the Leases, the lessee's leasehold estate under such lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment.

5.4 Notices

Whenever Chargee or Chargor desires to give any notice to the other, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified mail, postage prepaid, addressed to the intended recipient at the last address theretofore specified by the addressee in a written notice given to sender. In case no other address has been so specified, notices hereunder shall be delivered or mailed to the following addresses:

Chargee:

145 King Street West
Suite 2300
Toronto ON M5H 1J8

Attention:

Chargor:

1944 Fowler Drive
Mississauga ON L5K 0A1

Any notice given in the manner specified herein shall be deemed to have been given on the day it is personally delivered or two business days after it is deposited in the mail.

5.5 Governing Law

This Assignment of Leases and Rents shall be governed by and construed in accordance with the law of the Province of Ontario.

5.6 Severability

If any term or provision contained in this Assignment of Leases and Rents or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment of Leases and Rents or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Assignment of Leases and Rents shall be valid and enforceable to the fullest extent permitted by law.

5.7 Captions

The captions preceding the text of the paragraphs or sub paragraphs of this Assignment of Leases and Rents are inserted only for convenience of reference and shall not constitute a part of this Assignment of Leases and Rents, nor shall they in any way affect its meaning, construction or effect.

**THIS IS EXHIBIT "F" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

GENERAL SECURITY AGREEMENT

TO: HOME TRUST COMPANY

FROM: VANDYK-BACKYARD HUMBERSIDE LIMITED

RE: Home Trust Company (the "**Lender**") loan to Vandyk-Backyard Humberside Limited (the "**Borrower**") to be secured against 10 Neighbourhood Lane, Toronto, Ontario (the "**Property**") as guaranteed by John Vandyk and Vandyk Holdings Incorporated (collectively, the "**Guarantors**") pursuant to a commitment letter dated April 3, 2020, as amended from time to time (the "**Commitment Letter**")

1. SECURITY INTEREST

- (a) For value received, the undersigned hereby grants to the Lender a security interest (the "**Security Interest**") in the undertaking of the Debtor, and in all of the Debtor's present and after acquired personal property including, without limitation, in all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles, Money and Securities now owned or hereafter owned or acquired by or on behalf of the Debtor (including such as may be returned to or repossessed by the Debtor) and in all proceeds and renewals thereof, accretions thereto and substitutions therefore and relating to the Property (hereinafter collectively called "**Collateral**"), and including, without limitation, all of the following, now owned or hereafter owned or acquired by or on behalf of the Debtor:
- (i) all inventory of whatever kind and wherever situate;
 - (ii) all equipment (other than Inventory) of whatever kind and wherever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind;
 - (iii) all Accounts and book debts and generally all debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (the "**Debts**");
 - (iv) all deeds, documents, writings, papers, books of account and other books relating to or being records of the Debts, Chattel Paper or Documents of Title by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
 - (v) all contractual rights and insurance claims;
 - (vi) all patents, industrial designs, trade-marks, trade secrets and know-how, including without limitation environmental technology and biotechnology, confidential information, trade-names, goodwill, copyrights, personality rights, plant breeders' rights, integrated circuit topographies, software and all other forms of intellectual and industrial property, and any registrations and applications for registration of any of the foregoing (collectively, "**Intellectual Property**"); and
 - (vii) without in any way limiting the foregoing, all cash and reserve accounts of the Debtor.
- (b) The Security Interest granted hereby shall not extend or apply to, and Collateral shall not include the last day of the term of any lease or agreement therefor, but upon the enforcement of the Security Interest, the Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.
- (c) The terms "Goods", "Chattel Paper", "Document of Title", "Instrument", "Intangible", "Security", "proceed", "Inventory", "accession", "Money", "Account", "financing statement" and "financing change statement" whenever used herein

shall be interpreted pursuant to their respective meanings when used in the Personal Property Security Act of the Province of Ontario, as amended from time to time, which Act, including amendments thereto and any Act substituted therefor and amendments thereto is herein referred to as the "P.P.S.A.". Provided always that the term "Goods" when used herein shall not include "consumer goods" of the Debtor as that term is defined in the P.P.S.A., and the term "Inventory" when used herein shall include livestock and the young thereof after conception and crops that become such within one year of execution of this Security Agreement. Any reference herein to "**Collateral**" shall, unless the context otherwise requires, be deemed a reference to "**Collateral or any part thereof**".

2. INDEBTEDNESS SECURED

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

3. REPRESENTATIONS AND WARRANTIES OF DEBTOR

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

- (a) the Collateral is genuine and owned by the Debtor free of all prior security interests, mortgages, liens, claims, charges, licences, leases, infringements by third parties, encumbrances or other adverse claims or interests (hereinafter collectively called "**Encumbrances**"), save for the Security Interest and those Encumbrances shown on Schedule A;
- (b) all Intellectual Property applications and registrations are valid and in good standing, and the Debtor is the owner of the applications and registrations;
- (c) each Debt, Chattel Paper and Instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "**Account Debtor**"), and the amount represented by the Debtor to the Lender from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defence, set off, claim or counterclaim against the Debtor which can be asserted against the Lender, whether in any proceeding to enforce Collateral or otherwise;
- (d) the locations specified in Schedule B are accurate and complete; and
- (e) the execution, delivery and performance of the obligations under this Security Agreement and the creation of any security interest in or assignment hereunder of the Debtor's rights in the Collateral to the Lender will not result in a breach of any agreement to which the Debtor is a party.

4. COVENANTS OF THE DEBTOR

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

- (a) to defend the Collateral against the claims and demands of all other parties claiming the same or an interest therein; to diligently initiate and prosecute legal action against all infringers of the Debtor's rights in Intellectual Property; to take all reasonable action to keep the Collateral free from all prior Encumbrances, except for the Security Interest, licences which are compulsory under federal or provincial legislation and those shown on Schedule A, and not to sell, exchange, transfer, assign, lease license or otherwise dispose of Collateral or any interest therein without the prior written consent of the Lender or as may be required by law or contract; provided always that, until default, Debtor may, in the ordinary

course of the Debtor's business, sell or lease inventory and, subject to Clause 7 hereof, use Money available to the Debtor;

- (b) to notify the Lender promptly of:
 - (i) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's business or Collateral;
 - (ii) the details of any significant acquisition of Collateral;
 - (iii) the details of any claims or litigation affecting the Debtor or Collateral, (iv) any loss or damage to Collateral;
 - (iv) any default by any Account Debtor in payment or other performance of his /her obligations with respect to Collateral; and
 - (v) the return to or repossession by the Debtor of Collateral.
- (c) to keep Collateral in good order, condition and repair and not to use Collateral in violations of the provisions of this Security Agreement or any other agreement relating to Collateral or any policy insuring Collateral or any applicable statute, law, by-law, rule, regulation or ordinance; to keep all agreements, registrations and applications relating to Intellectual Property and intellectual property used by the Debtor in its business in good standing and to renew all agreements and registrations as may be necessary or desirable to protect Intellectual Property, unless otherwise agreed in writing by the Lender; to apply to register all existing and future copyrights, trademarks, patents, integrated circuit topographies and industrial designs whenever it is commercially reasonable to do so;
- (d) to do, execute, acknowledge and deliver such financing statements, financing change statements and further assignment, transfers, documents, acts, matters and things (including further schedules hereto) as may be reasonably requested by the Lender of or with respect to Collateral all in order to give effect to these presents and to pay all costs for searches and filings in connection therewith;
- (e) to pay all taxes, rates, levies, assessments and other charges of every nature which may be lawfully levied, assessed or imposed against or in respect of the Debtor or Collateral as and when the same become due and payable;
- (f) to insure Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Lender shall reasonably direct, with loss payable to the Lender and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums therefor;
- (g) to prevent Collateral, save Inventory sold or leased as permitted hereby or intended to be affixed to real property, from being or becoming an accession to other property not covered by this Security Agreement;
- (h) to carry on and conduct the business of the Debtor in a proper and efficient manner, so as to protect and preserve Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning Collateral, and mark any and all such records and Collateral at the Lender's request so as to indicate the Security Interest;
- (i) to deliver to the Lender from time to time promptly upon request:
 - (i) any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to Collateral;
 - (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to Collateral for the purpose of inspecting, auditing or copying the same;
 - (iii) all financial statements prepared by or for the Debtor regarding the Debtor's business;
 - (iv) all policies and certificates of insurance relating to Collateral: and

- (v) such information concerning Collateral, the Debtor and the Debtor's business and affairs as the Lender may reasonably request.

5. USE AND VERIFICATION OF COLLATERAL

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

6. SECURITIES

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

7. COLLECTION OF DEBTS

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

8. INCOME FROM AND INTEREST ON COLLATERAL

- (a) Until default, Debtor reserves the right to receive any Money constituting income from or interest on Collateral, except as required by law or contract and if The Lender receives any such Money prior to default, The Lender shall either credit the same against the Indebtedness or pay the same promptly to Debtor.
- (b) After default the Debtor will not request or receive any Money constituting income from or interest on Collateral except as required by law or contract, and if the Debtor receives any such Money without any request by it, the Debtor will pay the same promptly to the Lender.

9. INCREASES, PROFITS, PAYMENTS OR DISTRIBUTIONS

- (a) Whether or not default has occurred, the Debtor authorizes the Lender:
 - (i) to receive any increase in or profits on Collateral (other than Money) and to hold the same as part of Collateral. Money so received shall be treated as income for the purposes of Clause 8 hereof and deal with accordingly;
 - (ii) to receive any payment or distribution upon redemption or retirement or upon dissolution and liquidation of the issuer of Collateral; to surrender such Collateral in exchange therefor and to hold any such payment or distribution as part of Collateral.
- (b) If the Debtor receives any such increase or profits (other than Money) or payments or distributions, the Debtor will deliver the same promptly to the Lender to be held by the Lender as herein provided.

10. DISPOSITION OF MONEY

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

11. EVENTS OF DEFAULT

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

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

12. ACCELERATION

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

13. REMEDIES

- (a) Upon default, the Lender may appoint or re-appoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of

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

- (b) Upon default, the Lender may, either directly or through its agents or nominees, exercise any or all of the powers and rights given to a Receiver by virtue of the foregoing sub-clause (a).
- (c) The Lender may take possession of, collect, demand, sue on, enforce, recover and receive Collateral and give valid and binding receipts and discharges therefor and in respect thereof and, upon default, the Lender may sell, license, lease or otherwise dispose of Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as to the Lender may seem reasonable.
- (d) In addition to those rights granted herein and in any other agreement now or hereafter in effect between Debtor and the Lender, and in addition to any other rights the Lender may have at law or in equity, the Lender shall have, both before and after default, all rights and remedies of a secured party under the P.P.S.A. Provided always, that the Lender shall not be liable or accountable for any failure to exercise its remedies, take possession of; collect, enforce, realize, sell, lease, license or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, the Lender shall have no obligation to take any steps to preserve rights against prior parties to any Instrument or Chattel Paper, whether Collateral or proceeds, and whether or not in the Lender's possession, and shall not be liable or accountable for failure to do so.
- (e) The Debtor acknowledges that the Lender or any Receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law, and Debtor agrees upon request from The Lender or any such Receiver to assemble and deliver possession of Collateral at such place or places as directed.
- (f) The Debtor agrees to be liable for and to pay all costs, charges and expenses reasonably incurred by the Lender or any Receiver appointed by it, whether directly or for services rendered (including reasonable solicitors and auditors costs and other legal expenses and Receiver remuneration), in operating Debtor's accounts, in preparing or enforcing this Security Agreement, taking and maintaining custody of; preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by The Lender or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of Collateral and shall be secured hereby.
- (g) The Lender will give the Debtor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as maybe required by the P.P.S.A..

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

14. MISCELLANEOUS

- (a) The Debtor hereby authorizes the Lender to file such financing statements, financing change statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying Collateral or any permitted Encumbrances affecting Collateral or identifying the locations at which the Debtor's business is carried on and Collateral and records relating thereto are situate) as the Lender may deem appropriate to perfect on any ongoing basis and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest, and the Debtor hereby irrevocably constitutes and appoints the Manager or Acting Manager from time to time of the herein-mentioned branch of the Lender the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient.
- (b) Without limiting any other right of the Lender, whenever Indebtedness is immediately due and payable or the Lender has the right to declare Indebtedness to be immediately due and payable (whether or not it has so declared), the Lender may, in its sole discretion, set off against Indebtedness any and all amounts then owned to the Debtor by the Lender in any capacity, whether or not due, and the Lender shall be deemed to have exercised such right to set off immediately at the time of making its decision to do so even though any charge therefor is made or entered on the Lender's records subsequent thereto.
- (c) Upon the Debtor's failure to perform any of its duties hereunder, the Lender may, but shall not be obligated to, perform any or all of such duties, and the Debtor shall pay to the Lender, forthwith upon written demand therefor, an amount equal to the expense incurred by the Lender in so doing plus interest thereon from the date such expense is incurred until it is paid at the rate accruing on the indebtedness, obligations and liabilities of the Debtor to the Lender.
- (d) The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with Collateral and other security as the Lender may see fit without prejudice to the liability of the Debtor or the Lender's right to hold and realize the Security Interest. Furthermore, the Lender may demand, collect and sue on Collateral in either the Debtor's or the Lender's name, at the Lender's option, and may endorse the Debtor's name on any and all cheques, commercial paper, and any other Instruments pertaining to or constituting Collateral.
- (e) No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the Lender may remedy any default by the Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Debtor. All rights and remedies of the Lender granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (f) The Debtor waives protest of any Instrument constituting Collateral at any time held by the Lender on which Debtor is in any way liable and, subject to Clause 13(g) hereof, notice of any other action taken by the Lender.
- (g) This Security Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. In any action brought by an assignee of this Security Agreement

and the Security Interest or any part thereof to enforce any rights hereunder, Debtor shall not assert against the assignee any claim or defence which Debtor now has or hereafter may have against the Lender. If more than one the Debtor executes this Security Agreement the obligations of such Debtors hereunder shall be joint and several.

- (h) Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Security Agreement shall be made except by a written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.
- (i) Subject to the requirements of Clauses 13(g) and 14(j) hereof, whenever either party hereto is required or entitled to notify or direct the other or to make a demand or request upon the other, such notice, direction, demand or request shall be in writing and shall be sufficiently given, in the case of the Lender, if delivered to it or sent by prepaid registered mail addressed to it at its address herein set forth or as changed pursuant hereto, and, in the case of the Debtor, if delivered to it or if sent by prepaid registered mail addressed to it at its last address known to the Lender. Either party may notify the other pursuant hereto of any change in such party's principal address to be used for the purposes hereof.
- (j) This Security Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by the Lender, and is intended to be a continuing Security Agreement, and shall remain in full force and effect until the Manager or Acting Manager from time to time of the herein-mentioned branch of the Lender shall actually receive written notice of its discontinuance; and, notwithstanding such notice, shall remain in full force and effect thereafter until all Indebtedness contracted for or created before the receipt of such notice by the Lender, and any extensions or renewals thereof (whether made before or after receipt of such notice) together with interest accruing thereon after such notice, shall be paid in full.
- (k) The headings used in this Security Agreement are for convenience only and are not to be considered a part of this Security Agreement and do not in any way limit or amplify the terms and provisions of this Security Agreement.
- (l) When the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with and grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.
- (m) In the event any provisions of this Security Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms and provisions of this Security Agreement shall remain in full force and effect.
- (n) Nothing herein contained shall in any way obligate the Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Indebtedness.
- (o) The Security Interest created hereby is intended to attach when this Security Agreement is signed by the Debtor and delivered to the Lender.
- (p) The Debtor acknowledges and agrees that in the event it amalgamates with any other company or companies it is the intention of the parties hereto that the term the "Debtor" when used herein shall apply to each of the amalgamating companies and to the amalgamated company, such that the Security Interest granted hereby:
 - (i) shall extend to "Collateral" (as that term is herein defined) owned by each of the amalgamating companies and the amalgamated company at the time of the amalgamation and to any "Collateral" thereafter owned or acquired by the amalgamated company, and
 - (ii) shall secure the "Indebtedness" (as that term is herein defined) of each of the amalgamating companies and the amalgamated company to the Lender at the time of amalgamation and any "Indebtedness" of the amalgamated company to the Lender thereafter arising. The Security Interest shall attach to "Collateral" owned by each company

amalgamating with the Debtor, and by the amalgamated company, at the time of the amalgamation, and shall attach to any "Collateral" thereafter owned or acquired by the amalgamated company when such becomes owned or is acquired.

- (q) This security agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the laws of the Province of Ontario, as the same may from time to time be in effect, including, where applicable, the P.P.S.A.

15. COPY OF AGREEMENT

The Debtor hereby acknowledges receipt of a copy of this Security Agreement.

DATED this 17 day of April, 2020.

VANDYK-BACKYARD HUMBERSIDE LIMITED

Per: _____

Name: Richard Ma

Title: A.S.O.

I have the authority to bind the corporation

SCHEDULE A

SCHEDULE B

1. Location of the Debtor's Business Operations:
1944 Fowler Drive, Mississauga, Ontario
2. Locations of Records relating to Collateral:
1944 Fowler Drive, Mississauga, Ontario
3. Locations of Collateral:
10 Neighbourhood Lane, Toronto, Ontario

K:\Clients H to N\Home Trust Company\Vandyk-Shoppes of Stonegate Ltd - 41776\Documents\General Security Agreement.docx

**THIS IS EXHIBIT "G" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

Properties

PIN 07500 - 0079 LT *Interest/Estate* Fee Simple

Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7 & 8, 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

Address 10 NEIGHBOURHOOD LANE
TORONTO

Chargor(s)

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

Name VANDYK-SHOPPES OF STONEGATE LIMITED
Address for Service 1944 Fowler Drive
Mississauga ON L5K 0A1

I, Richard Ma, A.S.O., have the authority to bind the corporation.

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

Chargee(s)*Capacity**Share*

Name KAY FAMILY INVESTMENTS INC.
Address for Service 304-2000 Sheppard Ave. W.
Toronto ON M3N 1A2

Statements

Schedule: See Schedules

Provisions

Principal \$2,000,000.00 *Currency* CDN

Calculation Period calculated daily and compounded monthly

Balance Due Date 2021/07/11

Interest Rate RBC Prime Rate + 6.05% per annum

Payments

Interest Adjustment Date 2019 07 11

Payment Date Interest only, on the 11th day of each month

First Payment Date 2019 08 11

Last Payment Date 2021 07 11

Standard Charge Terms 200033

Insurance Amount Full insurable value

Guarantor Vandyk Properties Incorporated, 1282555 Ontario Inc., Vandyk Holdings Incorporated and John Vandyk

Signed By

Paola Del Carmen Hoy 710-1290 Central Parkway W. acting for Signed 2019 07 11
Mississauga
L5C 4R3 Chargee(s)

Tel 905-279-7930

Fax 905-279-3421

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

Submitted By

WEIR NAKON 710-1290 Central Parkway W. 2019 07 11
Mississauga
L5C 4R3

Tel 905-279-7930

Fax 905-279-3421

Fees/Taxes/Payment

Statutory Registration Fee	\$64.40
Total Paid	\$64.40

File Number

Chargor Client File Number :	4155/BM
Chargee Client File Number :	MEW19-0329

SCHEDULE OF ADDITIONAL PROVISIONS

The term of this Charge is from July 11, 2019 to July 11, 2021, and is open for repayment after July 11, 2020, following 30 days' written notice given to the Chargee by the Chargor.

The following fees or any other fees, charges or costs, provided for herein, if not paid forthwith upon demand for payment being made, shall be added to and become part of the debt hereby secured and shall bear interest at the rate set forth in this Charge.

STATEMENT FEE

The Chargor shall pay for each mortgage statement requested by or on behalf of the Chargor and prepared by the Chargee, a service fee of \$250.00 plus applicable taxes.

INSURANCE FEE

In the event that a certified copy of all policies of insurance on the Charged Property have not been delivered to the Chargee within 14 days of either the cancellation of any policy of insurance, or any renewal thereof, or the Chargee requesting a copy of a policy of insurance, the Chargee shall be entitled to a service fee of \$150.00 plus applicable taxes for each written inquiry which the Chargee makes to the Chargor, to an insurer or to an insurance broker pertaining to such cancellation or renewal, or resulting from the Chargor's non-performance of the within covenant. In the event that the Chargee arranges any insurance coverage with respect to the said Charged Property, the Chargee in addition to the aforesaid service fee, shall be entitled to an additional service fee of \$250.00 plus applicable taxes for arranging any replacement insurance coverage.

DISHONOURED CHEQUES FEE

In the event that any of the Chargor's cheques are not honoured when presented for payment to the bank or trust company on which they are drawn, the Chargor shall pay to the Chargee for each returned cheque a service fee of \$250.00 plus applicable taxes plus all bank charges as a liquidated amount to reimburse the chargee for its administrative costs with respect to the same. In the event that a cheque has not been honoured by the Chargor's bankers and is not forthwith replaced by the Chargor, the Chargee shall be entitled to a further service fee of \$100.00 plus applicable taxes for each written request made as a result of the Chargor not forthwith replacing a dishonoured cheque.

INSPECTION FEE

In the event that the Chargor requests an inspection of the Charged Property to be made by the Chargee or the Chargee conducts an inspection after an act of default by the Chargor, or to preserve the security, then the Chargee shall be entitled to an inspection fee of \$250.00 plus applicable taxes for each such inspection.

POWER OF SALE PROCEEDINGS

In the event that Chargee commences power of sale proceedings as a result of default by Chargor under this Charge, Chargor shall pay Chargee the sum of \$1,000.00 as liquidated damages (and not as a penalty) to reimburse Chargee for its administrative costs in connection therewith.

DISCHARGE

Any discharge of this Charge shall be prepared by the Chargee at the Chargor's expense within a reasonable time after payment of the principal sum secured herein, together with accrued interest thereon, together with all outstanding fees and charges. Any payments received after 1:00 p.m. shall be deemed to have been received on the following banking day.

CHARGOR WARRANTS CHARGE MONEY NOT TO FINANCE IMPROVEMENT

The Chargor warrants that the purpose of this Charge is not to finance an improvement on the herein described Charged Property. An improvement includes any alteration, addition or repair to any building on the herein described Charged Property or any construction, erection or installation on the Charged Property.

CHARGE DUE ON SALE OR FURTHER ENCUMBRANCE

In the event the Charger sells, transfers or assigns the Charged Property, or grants any further Charge or encumbrance thereon, then, at the option of the Chargee, all monies hereby secured shall forthwith become due and payable. Where the Charger is a corporation, the sale, transfer or any dealing with the shares of such corporation resulting in a change of control except pursuant to a testamentary will or the administration of an estate shall be deemed to be a sale or transfer.

RIGHT TO ACCELERATE PAYMENT

On the occurrence of any Event of Default under this Charge, all amounts secured by this Charge shall, at the option of the Chargee, immediately become due and payable together with all interest and other amounts secured by this Charge, plus interest thereon until payment is made in full.

In the event that the Charged Property or a substantial part thereof is expropriated by any government, government agency or government regulated entity, the Chargee shall, at its sole option, have the right to accelerate payment of the amounts secured by this Charge and all such amounts secured by this Charge shall immediately become due and payable together with all interest and other amounts secured by this Charge with interest at the Interest Rate thereon until payment is made in full.

CHARGE NOT PAID WHEN DUE

In the event the Charge is not repaid in full or renewed on or before the Balance Due Date, the Charger acknowledges and agrees that it shall be subject to and shall pay the Chargee's extension fee equal to three (3) months interest which amount shall become due and payable on the 5th day following the Balance Due Date. The receipt by the Chargee of such payment shall not obligate the Chargee to renew the Charge and the Charge shall thereafter become due and payable at any time upon notice of demand for payment in full.

OBLIGATION TO REPAIR AND RIGHT TO INSPECT

The Chargor covenants and agrees to keep the Charged Property in good condition and repair according to the nature and description thereof, and the Chargee and the Chargee's agents may, whenever the Chargee reasonably deems it necessary, enter on and in the Charged Property for the purpose of inspecting the same and to make any necessary repairs, including major repairs; provided that the Chargee shall first advise the Chargor in writing of such repairs to be undertaken five (5) business days prior to any repair being commenced.

The costs of such repairs and inspections shall be added to the debt secured by this Charge and shall be a Charge and lien on the Charged Property in priority to all other claims against the Charged Property subsequent to this Charge, and shall be payable forthwith, and shall bear interest at the Interest Rate set forth in this Charge until paid in full.

If the Chargor neglects to keep the Charged Property substantially in good condition and repair as aforesaid, or commits any act of waste, the determination of which the Chargee shall be the sole judge, acting reasonably, or allows any improvements on the Charged Property to remain unfinished or without any work being done thereon for thirty (30) days, all amounts secured by this Charge shall, at the option of the Chargee, immediately become due and payable and all powers conferred by this Charge shall become exercisable.

FIRE MARSHALS ACT (ONTARIO)

The Chargor warrants that the Charger and the Charged Property are and at all times during the term of the Charge will be in compliance with the provisions of Ontario Regulation 627/92 under the Fire Marshals Act (Ontario) as set forth by the Ontario Fire Code (OFC) Section 9.5 and all subsections thereof as amended from time to time, and any legislation or

regulations enacted or proclaimed in substitution thereof.

POSSESSION UPON DEFAULT

Upon default in payment of principal or interest under this Charge or non-performance of any of the terms and conditions herein, the Chargee may enter into and take possession of the Charged Property, free of all manner of former conveyances, mortgages, charges or encumbrances without let, suit, hindrance, interruption or denial of the Chargor or any other person or entity whatsoever.

PAYMENT OF OTHER CHARGES AND PERFORMANCE OF THEIR OBLIGATIONS BY THE CHARGEES

The Chargee may pay the amount owing on any encumbrance, lien or Charge now or hereafter existing or which may arise or be claimed against the Charged Property, and claiming priority over the within Charge, including any taxes or other rates on the said Charged Property, and the Chargee may further pay all costs, charges and expenses which may be incurred in taking, recovering and keeping possession of the Charged Property, and all solicitors' charges or commissions for or in respect of the collection of any overdue instalments or any other monies whatsoever payable by the Charger under the Charge, such costs to be as between solicitor and its own client, whether any action or other judicial proceeding to enforce such payment has been taken or not; and the amount so paid and the expenses of remedying a default or payment of insurance premiums for fire or other risks or hazards or for realty taxes, or for work on or repairs to the Charged Property or for utility charges, heating costs, collection costs and any other expenses, costs or any monies paid shall be added to the debt secured by the Charge shall be a Charge on the Charged Property and shall bear interest at the interest rate aforesaid and shall be payable forthwith by the Charger to the Chargee; and in the event of the Chargee paying any amount of money advanced on the security of the Charged Property, the Chargee shall be entitled to all the rights, equities and securities of the persons, entity or entities so paid and the Chargee is hereby authorized to retain any assignment or discharge thereof, without registration, for a longer period than six months if the Chargee deems it appropriate to do so. Furthermore, the Chargee may after any such payment declare that the entire amount secured by the Charge shall become forthwith due and payable and all powers conferred by this Charge shall then become exercisable.

ASSIGNMENT OF RENTS, LEASES, ETC.

To further secure the indebtedness secured hereunder, the Charger hereby assigns and transfers unto the Chargee all rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Charged Property or any part thereof (the "tenancies"), which may have been heretofore or may hereafter be made or agreed to, or which may be granted, it being the intention of the parties to establish an absolute transfer and assignment of all such rents, issues and profits under such tenancies and all the avails thereunder unto the Chargee.

The Charger further covenants and agrees to execute and deliver at the request of the Chargee all further assurances and assignments with respect to such tenancies as the Chargee shall from time to time request, and to do all other acts with respect to such tenancies as requested by the Chargee.

In the event that the Chargee collects any payments of rent as a result of the Charger's default, the Chargee shall be entitled to receive from such rent a management and servicing fee of five per cent (5%) of gross receipts received by the Chargee which the parties acknowledge is a just and equitable fee, and which shall be in addition to any charges or expenses incurred by the Chargee including fees and disbursements paid by the Chargee to a management company, real estate company or like person or entity retained by the Chargee to assist it to recover rents.

The Charger covenants and agrees that no rent has been or will be paid by any person in possession of any portion of the Charged Property in advance, and that no portion of the rents to accrue for any portion of the said Charged Property have been or will be waived, released, reduced, discounted or otherwise discharged or compromised by the Charger.

The Charger will not do or omit to do any act which results in a breach of any tenancy in or upon the Charged Property without the written consent of the Chargee.

The Charger agrees that all leases, offers to lease, or lettings of the Charged Property or any part thereof shall be bona fide and shall be at rates and on terms consistent with comparable space in the area of the Charged Property, and provided further that the Charger shall obtain the written consent of the Chargee prior to the execution of any lease, offer to lease, or any letting or tenancy agreement.

Any entry upon the Charged Property under the terms of this Charge shall not constitute the Chargee to be a Chargee in Possession in contemplation of law and the Chargee shall not become liable to account to the Charger or to credit the Charger with any monies on account of the Charge except those which shall come into its hands or into the hands of any agents appointed by it; and neither shall the Chargee be liable for failure to collect rents or revenues, it being agreed that the Chargee shall be under no obligation to take any action or proceeding or exercise any remedy for the collection or recovery of the rents and revenues, or any part thereof, and then only, subject to all appropriate deductions and payments made out of the rents and revenues received from the Charged Property as herein provided; nor shall the Chargee be liable to remedy any environmental contamination of the Charged Property or to indemnify any party on account of the need to remedy an environmental contamination.

The assignment is taken only as additional security and neither the taking of this assignment nor any act in pursuance thereof shall make the Chargee liable in any way, as landlord or otherwise, for the performance or any covenants, obligations or liabilities under any lease, agreement to lease, letting or tenancy agreement.

APPOINTMENT OF RECEIVER

Any time after default hereunder the Chargee may from time to time appoint by writing a Receiver of the Charged Property, with or without Bond, and may from time to time remove the said Receiver and appoint another in its stead, and any such Receiver appointed hereunder shall have the following powers:

(a) To take possession of the Charged Property and to collect revenues from the same and for such purpose to enter onto or into the Charged Property and for such purpose to do any act and take any proceedings in the name of the Chargor or otherwise as it shall deem necessary;

(b) To carry on or concur in carrying on the business of the Chargor, and to employ and discharge agents, workers, accountants and others upon such terms and with such salaries, wages or remuneration as it shall think proper, and to repair and keep in repair the Charged Property and to do any acts it deems appropriate for the carrying on of the business of the Chargor and the protection of the said Charged Property.

(c) To sell or lease or concur in the selling or the leasing of the Charged Property, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as seen fit by the Receiver and any such sale may be made from time to time as to the whole or any part of parts of the Charged Property; and the Receiver may make any stipulations as to matters of title or conveyance or the commencement of title or otherwise, as it shall deem proper; and it may buy or rescind or vary any contract for the sale of any part of the Charged Property and it may resell the same; and it may sell any of the Charged Property on such terms as to credit or part cash and part credit or otherwise as shall appear in its sole option to be most advantageous and at such prices as can reasonably be obtained therefor and in the event of a sale on credit neither it nor the Chargee shall be accountable for or charged with any monies until actually received by them;

(d) To make any arrangement or compromise which the Receiver may think expedient or otherwise in the interest of the Chargee and to consent to any modification or change in or omission from the provisions of this Charge and to exchange any part or parts of the Charged Property for any other property suitable for the purposes of the Chargee and upon such terms as may seem expedient and either with or without payment or exchange of money or with or without regard to the equality of the exchange or otherwise;

(e) To borrow money to carry on the business of the Chargor and to charge the whole or any part of the Charged Property in such amounts as the Receiver may from time to time deem necessary and in so doing the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the Charged Property in priority to this Charge;

(f) To execute and prosecute all suits, proceedings and actions which the Receiver in its discretion considers necessary for the protection of the Charged Property, to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suite, proceeding or action;

(g) To execute and deliver to the purchaser of any part or parts of the Charged Property, good and sufficient transfers for the same, the Receiver hereby being constituted the irrevocable attorney of the Chargor for the purpose of making such sale and executing such transfer, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Chargor, and all other persons claiming the said property or any part or parts thereof by, from, through or under the Chargor, and the proceeds of any such sale shall be distributed in the manner hereinafter provided.

And it is agreed that no purchaser at any sale purporting to be made in pursuance of the aforesaid power shall be bound or concerned to see or inquire into whether any default has been made or continues, or whether any notice has been given, or as to the necessity or expediency of any stipulations subject to which such sale shall have been made, or otherwise as to the propriety of such sale or to the regularity of its proceedings, or the effect of not giving a notice that default has been made or continues, or that any required notice was not given, or that the sale is otherwise unnecessary, or improper or irregular; and notwithstanding any impropriety or irregularity or notice, or failure to give notice or the failure to do any act, shall not effect the effectiveness or propriety of any sale to a purchaser and such sale shall be deemed to be within the power of the Receiver and the Chargee and shall be a valid sale and the remedy if any of the Chargor, or of any party claiming by or under it, in respect of any alleged impropriety or irregularity whatsoever in any such sale shall be in damages only against a party other than the Purchaser.

The net profits of the business of the Chargor or the sale of the same and the net proceeds of the sale of the Charged Property or any part thereof shall be applied by the Receiver subject to the claims of any creditors ranking in priority to this Charge:

(a) Firstly, in payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise by it of all or any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable by it:

(b) Secondly, in payment of all costs, charges and expenses payable hereunder;

(c) Thirdly, in payment to the Chargee of the principal sum owing hereunder;

(d) Fourthly, in payment to the Chargee of all interest and arrears of interest and any other fees, expenses and other monies remaining unpaid hereunder; and

(e) Fifthly, any surplus shall be paid to the Chargor; provided that in the event that any party claims a Charge against all or a portion of the surplus, the Receiver shall make such disposition of all or a portion of the surplus as the Receiver deems appropriate in the circumstances.

The Chargee shall not be liable to the Receiver for its remuneration, costs, charges or expenses, and the Receiver shall not be liable for any loss howsoever arising unless the same shall be caused by its own gross negligence or wilful default; and it shall, when so appointed, by notice in writing pursuant hereto, be deemed to be the agent of the Chargor and the Chargor shall be solely responsible for its acts and defaults and for its remuneration.

Provided that nothing shall obligate the Chargor or the Receiver to take possession, control or manage any property which may be or contain a pollutant or contaminant or cause or contribute to a discharge, release or deposit of a substance contrary to the Environmental Protection Act (Ontario), the regulations thereunder or any similar legislation. Provided further that the Receiver shall not be or deemed to be a successor employer of the Chargor or any employer in or

upon the Charged Property either under the Labour Relations Act (Ontario) or the Employment Standards Act (Ontario) or under any collateral agreement, or similar legislation or agreement.

POSTPONEMENT OF CLAIMS BY GUARANTOR

All indebtedness and liability, present and future, of the Chargor to the Guarantor is hereby assigned to the Chargee and postponed to the repayment of all the monies secured by the within Charge, and all monies received by Guarantor in respect thereof shall be received in trust for the Chargee, the whole without limiting or lessening the liabilities of the Guarantors under this guarantee, and this assignment and postponement is independent of the said guarantees and shall remain in full effect until repayment in full to the Chargee of the monies secured by the Charge notwithstanding that the liabilities of the Guarantors under the within guarantees may have been discharged or terminated. All Guarantors and the Chargor acknowledge the assignment to the Chargee as set forth herein provided that nothing shall impose upon the Chargee any obligation to do anything to realize on the assigned debts and claims or to ensure that those debts or claims do not become statute barred by the operation of law relating to limitation of actions or otherwise.

INSURANCE

The Chargor covenants and agrees, notwithstanding anything herein contained, that at all times during the Term of this Charge, the Chargor shall maintain the following insurance coverage on the Improvements and with respect to the Charged Property and where applicable, the business conducted by the Chargor on and in the Charged Property in accordance with requirements of the Lending Agreement, including:

- a) "All Risk" coverage with "By-laws" coverage in an amount satisfactory to the Chargee and including the endorsements for conflict, encumbrance, fire department service charges, immediate repairs, loss of control, debris removal, permission to enter and repair, release and subrogation, re-instatement of loss and unearned premium, waiver of terms and conditions and joint loss agreement;
- b) where the Charged Property is of a commercial or industrial nature, a comprehensive broad form boiler and machinery coverage on all electrical, mechanical and compression in an amount satisfactory to the Chargee;
- c) comprehensive public liability coverage for personal injury, death, property damage or loss in an amount of not less than \$1,000,000 for each occurrence, or such other amount as the Chargee may stipulate in writing from time to time, for each occurrence; and
- d) where a business is conducted at the Charged Property or there are tenants thereon, the insurance policy shall include business interruption or rental loss coverage on an insurable gross rents basis sufficient to cover 100% of the greater of the fair market value of the rents payable by the aforesaid business in a property comparable to the Charged Property or the actual gross annual rents payable for the Charged Property and, where the rents are on a fully net basis, on the equivalent gross rents for the same period.

The Chargee covenants with the Chargor to pay all insurance premiums for all insurance coverage when such premiums are due and payable.

The Charger covenants with the Chargee that all insurance policies shall:

- a) be endorsed to show the Chargee as a loss payee as the Chargee's interests may appear and such policies shall provide that any loss shall be payable to the Chargee as the Chargee's interest may appear;
- b) be with an insurer or insurers acceptable to the Chargee, acting reasonably, and each such policy shall be signed by the insurer or insurers, or agents or brokers authorized to sign on behalf of each insurer;
- c) be without co-insurance or have a stated or stipulated amount co-insurance clause for an amount equal to or less than the policy limit;
- d) grant permission of partial occupancy and stipulate that reconstruction shall not be limited to the same site;
- e) include a provision that the insurer shall give the Chargee a minimum

thirty (30) days written notice of any material alteration to or cancellation of the policy and a minimum ten (10) days advice as to the renewal of the policy prior to the renewal;

f) contain standard approved IBC "standard mortgagee" clauses in favour of the Chargee approved by the Chargee;

g) include a joint loss agreement with separate Boiler and Machinery coverage if the Charged Property is not a private residential dwelling; and

h) contain By-laws coverage satisfactory to the Chargee. Notwithstanding anything contained in the Lending Agreement or this Charge, the Chargor covenants and agrees with the Chargee to obtain and maintain such other form or forms of insurance, including environmental liability coverage, as the Chargee may deem prudent, acting reasonably, upon written request therefore made by the Chargee.

The Chargor covenants with the Chargee to, on written request made therefore, deliver to the Chargee, at the Charger's expense, a certificate, opinion or other satisfactory report prepared by a competent appraiser or independent insurance consultant selected by the Chargee as to the sufficiency or otherwise of any insurance coverage, and as to the type and amount thereof.

The Chargor agrees that any deviation from the requirements set forth in the Lending Agreement for insurance coverage must be approved by the Chargee in writing, such approval not being unreasonably withheld.

The Chargor covenants that the Chargor shall, forthwith on the written request of the Chargee, provide the Chargee with a certified copy of every insurance policy aforesaid, and on request, copies of any and all receipts of payment of insurance premiums therefore and the Chargor acknowledges and agrees that the Chargee shall have a lien on the proceeds of all the aforesaid insurance policies for all the amounts secured by this Charge.

The Chargor covenants that, forthwith on the happening of any loss or damage, the Chargor shall furnish to the Chargee, at the Charger's expense, all necessary information and proofs of loss and do all necessary acts to enable the Chargee to obtain payment of the insurance proceeds.

Any insurance proceeds received may, at the Chargee's option, be applied to rebuilding, reinstating or repairing the Charged Property or to be paid to the Charger or any other person appearing by the registered title to be the owner of the Charged Property or be applied or partly paid in one way and partly in another, or it may be applied, in the sole discretion of the Chargee, in whole or in part on account of the amounts secured by this Charge, whether due or not then due.

The Charger acknowledges and agrees that in the event that the Chargee takes out insurance coverage in respect of the Charged Property for the aforementioned specified risks, or any other risks the Chargee shall not be bound to insure the interest of any other person whatsoever, or to pay any insurance premium on any insurance policy, or be responsible for any loss arising out of any defect in any insurance policy or failure of any insurer to pay for any loss thereunder.

REALTY TAXES

Realty taxes shall mean and include all taxes, rates, levies and assessments of whatever nature or kind, including local improvement rates and any and all interest and penalties thereon.

Charger shall, upon demand, deliver to the Chargee proof in a form satisfactory to the Chargee that the realty taxes have been paid in full for the prior calendar year, and if the proof of same is not delivered to the Chargee within 14 days of demand for the same having been made, the Chargee may in addition to any other rights contained in the Charge, charge a service fee of \$200.00 to the Charger for each letter of demand mailed or delivered to the Charger by the Chargee or on its behalf, for proof of payment of realty taxes, and the same for each enquiry made to the appropriate municipal realty tax department, which amount is a liquidated amount to cover the Chargee's administrative charges, and is not a penalty.

The Chargee may, unless payment has otherwise been made, deduct from the Charge advances, the amount necessary to pay the current year's realty taxes and an amount which together with the monthly tax payments to be made to and including April of the following calendar year, will be sufficient to pay all the taxes for

the following calendar year.

No monies paid to the Chargee pursuant to the foregoing shall be held in trust for or bear interest to the credit of the Chargor.

In the event that the Chargor has not remitted realty tax instalments to the Chargee in an amount enabling the Chargee to maintain the realty taxes on the Charged Property in good standing, the Chargor shall at its own expense deliver to the Chargee on or before the 31st day of December in each year during the term of this Charge, or any renewal thereof, proof in a form satisfactory to the Charger, such as a certificate of realty tax payment or cancelled cheques, that the realty taxes for the said calendar year have been paid in full. In the event that such proof is not delivered to the Chargee as aforementioned the Chargor shall be entitled to a service fee of \$200.00 plus applicable taxes for each request to the Chargor for such proof that is made by the Chargee acting reasonably, and further the failure to provide the aforementioned evidence shall constitute an act of default entitling the Chargee to pursue all legal remedies and to exercise any powers conferred by this Charge.

The foregoing realty tax clause is in addition to and without prejudice to the other provisions of the within Charge in regard to realty taxes.

POST-DATED CHEQUES

The Chargor covenants and agrees to provide the Chargee with a series of 12 post-dated cheques payable at par at any office designated by the Chargee, at the commencement of the within Charge and pan each yearly anniversary thereafter during the term of the Charge.

BANKRUPTCY AND INSOLVENCY

The Charger hereby waives and releases any right that it may have to receive from the Chargee notice of intention to enforce security pursuant to subsection 244(1) of the Bankruptcy and Insolvency Act (Canada). This waiver and release shall not be deemed or interpreted to be a prior consent to earlier enforcement of a security within the meaning of subsection 244(2.1) of the said Act.

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

And the Charger further acknowledges and agrees that any and all costs as may be incurred from time to time by the Chargee in order to effect compliance or avoid any adverse ramifications of the Bankruptcy and Insolvency Act (Canada) shall be entirely for the account of the Charger. The Chargee shall be entitled to incur any such costs, including any costs of its personnel in administering any requirements of the said Act and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Chargee for the indebtedness owing to the Chargee in the same manner and in the same priority as the principal secured hereunder.

ACTS OF DEFAULT

The Charger covenants and agrees that notwithstanding any other provision in this Charge, the Chargee may deem this Charge to be in default in the event that the Charger does or becomes subject to any of the following which is deemed to be an Act of Default:

(a) fails to make a payment of a Monthly Installment on a Payment Date in accordance with the payment provisions of this Charge;

(b) permits any other amount which is secured by this Charge, or any Taxes, public utilities accounts or insurance premiums which are due and payable under this Charge, or otherwise due and payable by the Charger and not in dispute, to remain unpaid after the Chargee has made written demand for payment thereof;

(c) fails to insure the Charged Property in accordance with the Lending Agreement and this Charge;

(d) fails to observe or perform any covenant or agreement contained in this Charge;

(e) makes any warranty or representation to the Chargee which is untrue in any material respect;

(f) permits any lien, encumbrance or other claim capable of ranking in priority to this Charge to be recorded or registered against the Charged Property which is not removed or satisfied in full within thirty (30) days of such recording or registration;

(g) causes or permits any order to be made or any resolution to be passed or adopted, or any petition is filed for the winding-up of the Charger;

(h) becomes insolvent, commits an act of bankruptcy, or if a petition in bankruptcy is filed against the Chargor which is not being disputed in good faith by the Chargor, or a proposal made by the Chargor under the Bankruptcy and Insolvency Act is rejected by creditors;

(i) causes or permits a "stay order" to be issued pursuant to the Companies Creditors Arrangement Act which prohibits the Chargee from enforcing this Charge;

(j) is the subject of any execution, sequestration or any other judicial process, or any distress or similar process levied on the Charged Property or against the Chargee which is not, in good faith, being disputed by the Chargor;

(k) fails or refuses to comply with any term, condition or proviso of the Lending Agreement or any other security required pursuant to the Lending Agreement;

(l) has made any material misrepresentation to the Chargee in any environmental proviso contained in the Lending Agreement or if there is any hazardous material, or environmental contamination, which, in the opinion of the Chargee, may reduce the market value of the Charged Property;

(m) commits or permits the commission of an event of default under any other Charge against the Charged Property, or any other Charge, mortgage or collateral security given or granted by it to the Chargee pursuant to the terms and conditions of the Lending Agreement;

(n) sells, transfers or assigns title of the Charger, the result of which there is a change in control of the Chargor, without the prior written consent of the Chargee;

(o) sells, transfers or assigns any shares of the Charger, the result of which there is a change in control of the charger, without the prior written consent of the Chargee;

(p) permits or causes waste to the Charged Property or otherwise causes or permits, by any act or omission, the value of the Charged Property to decline;

(q) abandons the Charged Property or a substantial portion thereof, either physically or constructively, or otherwise leaves the Charged Property vacant for more than ten (10) days;

(r) fails to comply with all applicable building, zoning and other

municipal by-laws, statutory requirements and regulations (save and except for any such non-compliance which is, in good faith, contested by the Charger with the Municipality or other body having jurisdiction until the final disposition thereof against the Chargor);

(s) fails to comply with all applicable laws, regulations and by-laws which apply to the ownership, maintenance, repair, use and occupation of the Charged Property;

(t) commits or permits the commission of criminal activities on, in or under the Charged Property.

Every such event shall be an "Act of Default" entitling the Chargee to exercise its rights and remedies under this Charge and at law provided further that the above list is not intended to enumerate every possible Act of Default and does not include or exclude other Acts of Default stipulated elsewhere in this Charge.

The Chargee may waive any Act of Default in writing at any time after the occurrence of such Act of Default; provided that any such waiver shall apply only to the particular Act of Default and shall not operate as a general waiver or a waiver of any other or future default.

FINANCIAL STATEMENTS

Prior to the initial advance under the Loan and thereafter within the periods specified herein, the Borrower shall deliver or cause to be delivered to the Lender the following:

a) Within one hundred and twenty (120) days after the end of each fiscal year of the Borrower, the annual financial statements for its immediately preceding fiscal year including, without limitation, the balance sheet of the corporation as at its fiscal year end with comparative figures for prior years, statement of earnings, retained earnings and changes in financial position as at the fiscal year end with comparative figures for prior fiscal years, any supporting schedules and notes thereto and such other information and explanations as may be required by the Lender;

b) Within one hundred and twenty (120) days after the end of each fiscal year of each Guarantor which is a corporation, the annual financial statements for its immediately preceding fiscal year including, without limitation, the balance sheet of the corporation as at its fiscal year end with comparative figures for prior years, statement of earnings, retained earnings and changes in financial position as at the fiscal year end with comparative figures for prior fiscal years, any supporting schedules and notes thereto and such other information and explanations as may be required by the Lender;

c) With respect to each Guarantor who is an individual and within ninety (90) days after each anniversary date of the initial advance, and annual updated net worth statement of each such individual in such form and including such content and other information and explanations as may be required by the Lender.

All such operating and financial statements shall be prepared at the expense of the Borrower and in accordance with generally accepted accounting principles ("GAAP") applied on a consistent basis and by a duly qualified chartered accountant or certified public accountant which is acceptable to the Lender, and shall be submitted in review engagement form if so required by the Lender, and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the applicable Guarantor. For all financial periods beginning after January 1, 2016, the use of International Financial Reporting Standards ("IFRS") will be required for all Guarantors which are (a) Canadian public corporations (b) Canadian publicly accountable entities, and/or (c) entities constated or resident in a jurisdiction other than Canada for which IFRS standards are mandated by the accounting standards of such other jurisdiction.

POWER OF SALE

The Charger covenants and agrees that on the occurrence of an Act of Default hereunder, the Chargee may, on at least 35 days' notice given pursuant to this Charge and Part III of the Mortgages Act (Ontario) or any replacement thereof, enter on and in the Charged Property and rent, lease or sell the Charged

Property. Where the Mortgage Act (Ontario) requires an Act of Default to continue for at least 15 days prior to the commencement of legal proceedings, the Chargee shall not commence any such proceedings until the expiry of the said 15 day period. The whole or any part of the Charged Property may be sold by public auction or private contract, or partly one and partly the other; and the proceeds of any sale hereunder may be applied in payment of any reasonable costs, charges and expenses incurred by the Chargee in recovering or taking possession of the Charged Property, or by reason of nonpayment or procuring payment of amounts secured by this Charge. The Chargee may sell any of the Charged Property on such terms as to credit and otherwise as may appear to the Chargee most advantageous and in the case of a sale on credit, the Chargee shall be bound to pay the Chargor only such amounts as have actually been received from the purchaser after the payment of all claims of the Chargee.

In exercising the power of sale herein, the Chargee may execute all documents which may reasonably be required to complete the power of sale.

SECURITY INTEREST IN CHATTEL:

It is hereby mutually covenanted and agreed by and between the parties hereto that all chattels, equipment, installations, erections, structures and improvements, fixed or otherwise, now or hereafter put upon the said Charged Property and owned by the Chargor, including, but without limiting the generality of the foregoing, all drapes and curtains, lobby furniture, refrigerators, stoves, washers, dryers, heating equipment, air-conditioning and ventilation equipment, blinds, storm windows and doors, window screens, mirrors, shelving, railings, counters, cupboards, built-ins and the like, and all apparatus and equipment appurtenant thereto are and shall in addition to other fixtures be an accession to the freehold and a part of the realty as between the parties hereto, their heirs, executors, administrators, successors, legal representatives and assigns, and all entities claiming thereunder, and shall be a portion of the security for the indebtedness hereinbefore mentioned.

The Chargor covenants and agrees to execute and deliver to the Chargee, on demand, a security interest in all such chattels, furnishings, equipment, appliances and all other similar personal property owned now or in the future owned by the Chargor and situate in or about the herein described Charged Property. The form and content of such security interest shall be acceptable to the Chargee in its discretion. The Chargor agrees to pay all legal and other expenses incurred by the Chargee in connection with the preparation and registration of a financing statement under the Personal Property Security Act (Ontario) and all other documents relating to the security interest and any renewals thereof forthwith upon demand and such fees and expenses, together with interest thereon at the interest rate charged hereunder, shall be added to the principal sum secured by the within Charge.

SPOUSAL CLAUSE

The Chargor covenants that it or the owner from time to time of the said Charged Property that is not a corporation, will advise and keep advised the Chargee as to whether the Chargor or owner from time to time is a spouse as defined by Subsection 1 (1) of the Family Law Act (Ontario), and any successor legislation and, if so, the name of the spouse; and further will advise and keep advised the Chargee of any change in spousal status and will forthwith, upon request, furnish the Chargee with such evidence in connection with spousal status and the name of the spouse, as the Chargee may from time to time require or request.

INTEREST ONLY MONTHLY

In the event that the Charge provides for payment of interest only monthly, it is agreed that notwithstanding any reference to the interest rate being payable on a per annum basis, and notwithstanding any other provision herein contained, the parties hereto acknowledge that it is their intention and agreement that the interest rate shall at all times be payable, calculated and compounded monthly at a rate per annum equal to one-twelfth (1/12) of the yearly rate as hereinbefore stated, and the Chargee shall not be deemed to reinvest any monthly or other payments received hereunder.

FURTHER ASSURANCES

The Chargor shall execute such further assurances of the Charged Property and execute and deliver such collateral security and do such further acts as the Chargee may require to further perfect and secure this Charge and,

in the event of default, the Chargor shall execute and deliver such further assurances and do such further acts, at the Charger's expense, as may be required by the Chargee.

VALIDITY OF PROVISIONS

If any provision of this Charge is held to any extent invalid or unenforceable, such provision shall be deemed to be severed here from and the remainder of this Charge, other than a provision which is held invalid or unenforceable, will be unaffected.

INTERPRETATION

If any of the forms of words contained herein are also contained in Column One of Schedule "B" of the Short Form of Mortgages Act, R.S.O. 1990, and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the Short Form of Mortgages Act were still in full force and effect with respect to the Charged Property. The implied covenants deemed to be included in a Charge under Subsection 7(I) of the Land Registration Reform Act, 1984 shall be and are hereby expressly excluded from the terms of this Charge. The term "Charged Property" shall include all property secured by the Charge, including the lands and buildings and all improvements, erections and structures therein or thereon. The term "Charge" shall include a Mortgage or a Charge.

In the event of any conflict or inconsistency between the terms and conditions of this Charge and the provisions of Standard Charge Terms No. 200033, the terms and conditions of this Charge shall take priority and be applicable.

SEPARATOR PAGE

Properties

PIN 07500 - 0079 LT
Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO
Address TORONTO

Source Instruments

Registration No.	Date	Type of Instrument
AT5182926	2019 07 11	Charge/Mortgage

Party From(s)

Name KAY FAMILY INVESTMENTS INC.
Address for Service 304-2000 Sheppard Ave. W.
 Toronto ON M3N 1A2
 I, Rudolph Kovacs-Kay, Director, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Party To(s)**Capacity****Share**

Name	Capacity	Share
HOME TRUST COMPANY		
Address for Service 145 King Street West Suite 2300 Toronto ON M5H 1J8		

Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number AT5416487 registered on 2020/04/28

Schedule: The applicant postpones the rights under instrument AT5182927 to the rights under an instrument registered as number AT5416488

This document relates to registration number(s) AT5182926 and AT5182927

Signed By

Christa-Lee Ann Callahan	1000-120 Adelaide St. W. Toronto M5H 3V1	acting for Party From(s)	First Signed	2020 04 27
--------------------------	--	-----------------------------	-----------------	------------

Tel 416-363-2211

Fax 416-363-0645

Christa-Lee Ann Callahan	1000-120 Adelaide St. W. Toronto M5H 3V1	acting for Party From(s)	Last Signed	2020 05 05
--------------------------	--	-----------------------------	----------------	------------

Tel 416-363-2211

Fax 416-363-0645

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

Submitted By

Schneider Ruggiero Spencer Milburn LLP	1000-120 Adelaide St. W. Toronto M5H 3V1			2020 05 05
--	--	--	--	------------

Tel 416-363-2211

Fax 416-363-0645

Fees/Taxes/Payment

Statutory Registration Fee	\$65.05
Total Paid	\$65.05

File Number

Party From Client File Number : 41653/BM

**THIS IS EXHIBIT "H" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

Properties

PIN 07500 - 0079 LT *Interest/Estate* Fee Simple

Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

Address 10 NEIGHBOURHOOD LANE
TORONTO

Chargor(s)

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

Name VANDYK-SHOPPES OF STONEGATE LIMITED
Address for Service 1944 Fowler Drive, Mississauga, ON.
I, John Vandyk, President,, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name 2233651 ONTARIO LIMITED
Address for Service 939 Silverthorn Mill Ave,
Mississauga, ON.,
L5W 0G1

Provisions

Principal \$2,200,000.00 *Currency* Cdn\$

Calculation Period monthly not in advance

Balance Due Date 2020/03/11

Interest Rate 13.0%

Payments \$23,833.33

Interest Adjustment Date 2019 10 11

Payment Date monthly

First Payment Date 2019 11 11

Last Payment Date 2020 03 11

Standard Charge Terms 200033

Insurance Amount Full insurable value

Guarantor

Additional Provisions

Monthly payments are interest only payments.

Signed By

Muhammad Naveed Chaudhry 120 Watline Avenue, Unit # 7 acting for Signed 2019 10 11
Mississauga Chargor(s)
L4Z 2C1

Tel 905-502-7474
Fax 905-502-7040

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

Submitted By

MUHAMMAD N CHAUDHRY LAW OFFICE 120 Watline Avenue, Unit # 7 2019 10 11
Mississauga
L4Z 2C1

Tel 905-502-7474
Fax 905-502-7040

Fees/Taxes/Payment

Statutory Registration Fee	\$64.40
Total Paid	\$64.40

File Number

Chargee Client File Number : 19063

SEPARATOR PAGE

Properties

PIN 07500 - 0079 LT
Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049, AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO
Address TORONTO

Source Instruments

Registration No.	Date	Type of Instrument
AT5261210	2019 10 11	Charge/Mortgage

Party From(s)

Name 2233651 ONTARIO LIMITED
Address for Service 939 Silverthorn Mill Ave.
 Mississauga ON L5W 0G1
 I, Mohamed Usama Suliman, Director, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Party To(s)*Capacity**Share*

Name HOME TRUST COMPANY
Address for Service 145 King Street West
 Suite 2300
 Toronto ON M5H 1J8

Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number AT5416487 registered on 2020/04/28

This document relates to registration number(s)AT5261210

Signed By

Christa-Lee Ann Callahan	1000-120 Adelaide St. W. Toronto M5H 3V1	acting for Party From(s)	Signed	2020 04 27
Tel	416-363-2211			
Fax	416-363-0645			

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

Submitted By

Schneider Ruggiero Spencer Milburn LLP	1000-120 Adelaide St. W. Toronto M5H 3V1		2020 04 28
Tel	416-363-2211		
Fax	416-363-0645		

Fees/Taxes/Payment

Statutory Registration Fee	\$65.05
Total Paid	\$65.05

File Number

Party From Client File Number : 41653/BM

**THIS IS EXHIBIT "I" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

Properties

PIN 07500 - 0079 LT **Interest/Estate** Fee Simple

Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

Address TORONTO

Chargor(s)

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

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

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

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

Chargee(s)**Capacity****Share**

Name MUHAMMAD, HALEEMAH
Address for Service 6880 Second Line West
 Mississauga, ON, L5W 1M9

Provisions

Principal \$1,150,000.00 **Currency** CDN

Calculation Period

Balance Due Date 2023/11/30

Interest Rate

Payments

Interest Adjustment Date

Payment Date

First Payment Date

Last Payment Date

Standard Charge Terms 200033

Insurance Amount Full insurable value

Guarantor

Signed By

Jennifer Rebecca Labrecque 1370 Hurontario Street acting for Signed 2023 08 21
 Mississauga Chargor(s)
 L5G 3H4

Tel 905-990-0081

Fax 888-437-1252

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

Submitted By

JENNIFER LABRECQUE PROFESSIONAL CORPORATION 1370 Hurontario Street 2023 08 21
 Mississauga
 L5G 3H4

Tel 905-990-0081

Fax 888-437-1252

Fees/Taxes/Payment

Statutory Registration Fee \$69.00
Total Paid \$69.00

File Number

Chargor Client File Number : 45552/BM

Chargee Client File Number : 23-238

**THIS IS EXHIBIT "J" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

Properties

PIN 07500 - 0079 LT

Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

Address TORONTO

PIN 07500 - 0082 LT

Description PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO

Address TORONTO

Consideration

Consideration \$9,473.75

Claimant(s)

Name LIVE PATROL INC.

Address for Service 2645 Skymark Avenue, Suite 205
Mississauga, Ontario
L4W 4H2

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

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

Statements

Name and Address of Owner Vandyk - Backyard Kings Mill Limited, 1944 Fowler Drive Mississauga, Ontario, L5K 0A1 Name and address of person to whom lien claimant supplied services or materials Vandyk - Backyard Kings Mill Limited, 15 Neighbourhood Lane Etobicoke, Ontario, M9Y 0C4 Time within which services or materials were supplied from 2022/08/11 to 2023/10/31 Short description of services or materials that have been supplied Provision of monitoring and related services Contract price or subcontract price \$9,463.75 Amount claimed as owing in respect of services or materials that have been supplied \$9,463.75

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Amy Carmen Lok 295 The West Mall, 6th Floor acting for Signed 2023 11 22
Toronto Applicant(s)
M9C 4Z4

Tel 416-798-2722

Fax 416-767-2720

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

Submitted By

HARRIS + HARRIS LLP 295 The West Mall, 6th Floor 2023 11 22
Toronto
M9C 4Z4

Tel 416-798-2722

Fax 416-767-2720

Fees/Taxes/Payment

Statutory Registration Fee \$69.95

Total Paid \$69.95

File Number

Claimant Client File Number : 18463

**THIS IS EXHIBIT "K" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : Chaitons LLP (ADP) - Antoinette De Pinto
Reference : 85552
Docket : 85552
Search ID : 956790
Date Processed : 1/19/2024 2:01:03 PM
Report Type : PPSA Electronic Response
Search Conducted on : VANDYK - BACKYARD HUMBERSIDE LIMITED
Search Type : Business Debtor

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

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

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

RESPONSE CONTAINS: APPROXIMATELY 6 FAMILIES and 12 PAGES.

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

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 6 ENQUIRY PAGE : 1 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 715992219 EXPIRY DATE : 26APR 2026 STATUS :
01 CAUTION FILING : PAGE : 001 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20160426 0912 1862 4882 REG TYP: P PPSA REG PERIOD: 10
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK - BACKYARD HUMBERSIDE LIMITED
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
AVIVA INSURANCE COMPANY OF CANADA
09 ADDRESS : C/O 600 COCHRANE DRIVE, SUITE 205
CITY : MARKHAM PROV: ON POSTAL CODE: L3R 5K3
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 SECURITY INTEREST IN ALL DEPOSIT MONIES, TOGETHER WITH ALL INTEREST
14 EARNED OR ACCRUED THEREON, PURSUANT TO A DEPOSIT TRUST AGREEMENT
15 DATED APRIL 15, 2016 MADE BETWEEN THE DEBTOR AND THE SECURED PARTY
16 AGENT: SCHNEIDER RUGGIERO LLP (38498/BM/LS)
17 ADDRESS : 120 ADELAIDE STREET W., STE. 1000
CITY : TORONTO PROV: ONT POSTAL CODE: M5H 3V1

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 6 ENQUIRY PAGE : 2 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 715992219 EXPIRY DATE : 26APR 2026 STATUS :
01 CAUTION FILING : PAGE : 002 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20160426 0912 1862 4882 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 WITH RESPECT TO A CONDOMINIUM PROJECT LOCATED AT 144 BERRY ROAD, IN
14 THE CITY OF TORONTO, ONTARIO, AND KNOWN AS BACKYARD NEIGHBOURHOOD
15 CONDOS

16 AGENT:

17 ADDRESS :

CITY : PROV: POSTAL CODE:

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 6 ENQUIRY PAGE : 3 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 761628114 EXPIRY DATE : 28APR 2025 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20200428 1058 1862 3008 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK-BACKYARD HUMBERSIDE LIMITED
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L4K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
HOME TRUST COMPANY
09 ADDRESS : 145 KING STREET WEST, SUITE 2300
CITY : TORONTO PROV: ON POSTAL CODE: M5H 1J8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X
YEAR MAKE MODEL V.I.N.

11
12

GENERAL COLLATERAL DESCRIPTION

13 SECURITY AGREEMENT AND ASSIGNMENT OF RENTS RELATED TO 10
14 NEIGHBOURHOOD LANE, TORONTO, ONTARIO.

15

16 AGENT: SCHNEIDER RUGGIERO SPENCER MILBURN LLP (41776/BM)

17 ADDRESS : 1000-120 ADELAIDE STREET W.

CITY : TORONTO PROV: ON POSTAL CODE: M5H 3V1

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 6 ENQUIRY PAGE : 4 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 761778423 EXPIRY DATE : 07MAY 2026 STATUS :
01 CAUTION FILING : PAGE : 001 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20200507 1504 6005 0152 REG TYP: P PPSA REG PERIOD: 06
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK - BACKYARD HUMBERSIDE LIMITED
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
CWB NATIONAL LEASING INC.
09 ADDRESS : 1525 BUFFALO PLACE (2954213)
CITY : WINNIPEG PROV: MB POSTAL CODE: R3T 1L9
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 ALL INDUSTRIAL EQUIPMENT, GARBAGE CONTAINERS, ORGANIC CONTAINERS, 3
14 STREAM TRI SORTER, T-20X COMPACTOR, RECYCLING CONTAINERS WITH RELATED
15 COMPONENTS OF EVERY NATURE OR KIND DESCRIBED IN AGREEMENT NUMBER
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 6 ENQUIRY PAGE : 5 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 761778423 EXPIRY DATE : 07MAY 2026 STATUS :
01 CAUTION FILING : PAGE : 002 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20200507 1504 6005 0152 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 2954213, BETWEEN THE SECURED PARTY AND THE DEBTOR, AS AMENDED FROM
14 TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES,
15 SUBSTITUTIONS AND PROCEEDS OF ANY KIND DERIVED DIRECTLY OR INDIRECTLY
16 AGENT:

17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 6 ENQUIRY PAGE : 6 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 761778423 EXPIRY DATE : 07MAY 2026 STATUS :
01 CAUTION FILING : PAGE : 003 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20200507 1504 6005 0152 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 THEREFROM.
14
15
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 3 OF 6 ENQUIRY PAGE : 7 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE NUMBER 761778423

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 001 OF 1 MV SCHED: 20210812 1710 6005 4198

21 REFERENCE FILE NUMBER : 761778423

22 AMEND PAGE: NO PAGE: CHANGE: E TRANSFER REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: VANDYK - BACKYARD HUMBERSIDE LIMITED

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE: TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2805

OCN:

04/07 ADDRESS: 1 NEIGHBOURHOOD LANE

CITY: ETOBICOKE PROV: ON POSTAL CODE: M8Y 0A4

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10

11

12

13

14

15

16 NAME : CWB NATIONAL LEASING INC.

17 ADDRESS : 1525 BUFFALO PLACE (2954213)

CITY : WINNIPEG PROV : MB POSTAL CODE : R3T 1L9

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 6 ENQUIRY PAGE : 8 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 762316506 EXPIRY DATE : 02JUN 2026 STATUS :
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20200602 1002 1462 2397 REG TYP: P PPSA REG PERIOD: 6
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK - BACKYARD HUMBERSIDE LIMITED
OCN :
04 ADDRESS : 1944 FAULER DRIVER
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

KUBOTA CANADA LTD
09 ADDRESS : 5900 14TH AVE
CITY : MARKHAM PROV: ON POSTAL CODE: L3S4K4
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X 15851 X
YEAR MAKE MODEL V.I.N.
11 2020 KUBOTA #BX2380 KBUC1BHRCLGE38802
12

GENERAL COLLATERAL DESCRIPTION

13 2020 KUBOTA #BX2380 KBUC1BHRCLGE38802

14

15

16 AGENT: PPSA CANADA INC - (5156)

17 ADDRESS : 303-110 SHEPPARD AVE. E.

CITY : TORONTO PROV: ON POSTAL CODE: M2N6Y8

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 5 OF 6 ENQUIRY PAGE : 9 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 763058529 EXPIRY DATE : 25JUN 2025 STATUS :
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20200625 1407 1462 0775 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK - BACKYARD HUMBERSIDE LIMITED
OCN : 001954046
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
MCAP FINANCIAL CORPORATION
09 ADDRESS : 200 KING STREET WEST, SUITE 400
CITY : TORONTO PROV: ON POSTAL CODE: M5H3T4
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 SUBORDINATION AND ASSIGNMENT RE VANDYK - BACKYARD KINGS MILL LIMITED
14 DEBT AND CHARGE OF BENEFICIAL INTEREST IN THAT PROPERTY BEING 15
15 NEIGHBOURHOOD LANE, ETOBICOKE, ONTARIO
16 AGENT: GARFINKLE, BIDERMAN LLP (AWB-CJC - 9150-084)
17 ADDRESS : 1 ADELAIDE ST. EAST, SUITE 801
CITY : TORONTO PROV: ON POSTAL CODE: M5C2V9

END OF FAMILY

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 6 OF 6 ENQUIRY PAGE : 10 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 795231648 EXPIRY DATE : 13JUL 2033 STATUS :
01 CAUTION FILING : PAGE : 001 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20230713 1046 1275 1276 REG TYP: P PPSA REG PERIOD: 10
02 IND DOB : IND NAME:
03 BUS NAME: VANDYK-BACKYARD HUMBERSIDE LIMITED
OCN :
04 ADDRESS : 1944 FOWLER DRIVE
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5K 0A1
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
PEOPLES TRUST COMPANY
09 ADDRESS : 95 WELLINGTON STREET WEST, SUITE 1310
CITY : TORONTO PROV: ON POSTAL CODE: M5J 2N7
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 PROPERTY NOW OR HEREAFTER USED IN CONNECTION WITH, SITUATE AT, OR
14 ARISING FROM THE OWNERSHIP, DEVELOPMENT, USE OR DISPOSITION OF THE
15 LANDS MUNICIPALLY KNOWN AS 25 NEIGHBOURHOOD LANE, TORONTO, ONTARIO,
16 AGENT: GOLDMAN SLOAN NASH & HABER LLP (ATTN. CHERYL C.)
17 ADDRESS : 480 UNIVERSITY AVENUE, SUITE 1600
CITY : TORONTO PROV: ON POSTAL CODE: M5G 1V2

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 6 OF 6 ENQUIRY PAGE : 11 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 795231648 EXPIRY DATE : 13JUL 2033 STATUS :
01 CAUTION FILING : PAGE : 002 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20230713 1046 1275 1276 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 AS WELL AS AN ASSIGNMENT OF ACCOUNTS OWING TO THE DEBTOR BY
14 VANDYK-BACKYARD QUEENSVIEW LIMITED AND AN ASSIGNMENT OF
15 CHOSSES-IN-ACTION AND OTHER CLAIMS WHICH THE DEBTOR NOW OR HEREAFTER
16 AGENT:

17 ADDRESS :
CITY : PROV: POSTAL CODE:

CONTINUED

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

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: VANDYK - BACKYARD HUMBERSIDE LIMITED

FILE CURRENCY: January 18, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 6 OF 6 ENQUIRY PAGE : 12 OF 12

SEARCH : BD : VANDYK - BACKYARD HUMBERSIDE LIMITED

00 FILE NUMBER : 795231648 EXPIRY DATE : 13JUL 2033 STATUS :
01 CAUTION FILING : PAGE : 003 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20230713 1046 1275 1276 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:
OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12

GENERAL COLLATERAL DESCRIPTION

13 HAS AGAINST VANDYK-BACKYARD QUEENSVIEW LIMITED AND PROCEEDS THEREOF.

14

15

16 AGENT:

17 ADDRESS :

CITY : PROV: POSTAL CODE:

LAST SCREEN

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

**THIS IS EXHIBIT "L" TO
THE AFFIDAVIT OF SERGIU COSMIN
SWORN BEFORE ME THIS 6
DAY OF FEBRUARY, 2024**



A Commissioner etc.

PERSONAL & CONFIDENTIAL

January 8, 2024

VIA EMAIL TO ivandyk@vandyk.com and rma@vandyk.com
AND REGISTERED AND REGULAR MAIL

Vandyk-Backyard Humberside Limited
1944 Fowler Drive
Mississauga, ON L5K 0A1

Attention: John Vandyk and Richard Ma

Re: ***Indebtedness of Vandyk-Backyard Humberside Limited (the "Borrower") to Home Trust Company (the "Lender")***

Dear Sirs,

We are lawyers for the Lender. Pursuant to a commitment letter dated April 3, 2020, as amended. (collectively, the "**Commitment Letter**"), the Lender made available to the Borrower a non-revolving bridge loan in the principal amount of \$10,000,000 (the "**Loan**").

We are advised by the Lender that the Borrower is indebted to the Lender under the Commitment Letter in the amount of **\$10,145,007.92** inclusive of principal, interest and fees (excluding legal fees) as of January 4, 2024, calculated as follows:

Principal Balance as at August 1, 2023	\$10,000,000.00
Accrued interest to January 4, 2024	\$ 435,123.30
Outstanding Charges	\$ 9,884.62
Credit Balance	<u>\$ -300,000.00</u>
Total:	\$10,145,007.92

Per diem after January 4, 2024: \$2,786.89

E & O.E.

The Borrower's indebtedness to the Lender is secured by, *inter alia*, a Charge/Mortgage of Land in the principal amount of \$10,000,000 granted in favour of the Lender and registered on lands municipally known as 10 Neighbourhood Lane, Toronto, Ontario, M8Y 0C5, as Instrument No. AT5416487 on April 28, 2020 as amended by Agreement Amending Charge/Mortgage of Land dated May 1, 2022 and registered on May 31, 2022 as Instrument No. AT6094356, and a General Security Agreement dated April 17, 2020 granted by the Borrower in favour of the Lender (collectively, the "**Security**").

The Borrower defaulted on its obligations to the Lender under the Commitment Letter as a result of, among other things, its failure to make the required interest payments that were due to the Lender from and after September 1, 2023. As a result of such default, the Lender is entitled to declare all obligations under the Commitment Letter to be immediately due and payable.

On behalf of the Lender, we hereby demand payment of the Borrower's indebtedness to the Lender. Unless payment of the amount set out above, together with additional interest accrued and fees and costs (including legal costs) incurred to the date of payment are paid forthwith, the Lender shall take such steps

as it deems necessary to recover payment of the Borrower's indebtedness in full, without further demand upon or notice to you.

Enclosed please find the Lender's Notice of Intention to Enforce Security, which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Govern yourself accordingly.

Yours truly,
CHAITONS LLP



Harvey Chaiton
PARTNER
ENCL.

cc: Home Trust Company

NOTICE OF INTENTION TO ENFORCE A SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: **VANDYK-BACKYARD HUMBERSIDE LIMITED**, an insolvent person

Take notice that:

1. **Home Trust Company**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of Vandyk-Backyard Humberside Limited,
2. The security that is to be enforced is, *inter alia* (i) a Charge/Mortgage of Land registered on April 28, 2020, as Instrument No. AT5416487 as amended by Agreement Amending Charge/Mortgage of Land registered on May 31, 2022 as Instrument No. AT6094356 against title to the lands and premises municipally known as 10 Neighbourhood Lane, Toronto, Ontario, M8Y 0C5, (the "**Property**"); (ii) a Notice of Assignment of Rents-General registered on April 28, 2020 as Instrument No. AT5416488 against title to the Property; and (iii) a General Security Agreement dated April 17, 2020 (collectively, the "**Security**").
3. The total amount of indebtedness secured by the Security as at the close of business on January 8, 2024 is \$10,145,007.92 inclusive of principal, interest, and fees (excluding legal costs).
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 8th day of January, 2024.

HOME TRUST COMPANY,
by its lawyers, Chaitons LLP



Per: _____
Harvey Chaiton

HOME TRUST COMPANY
Applicant

-and-

VANDYK – BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF SERGIU COSMIN

(sworn February __6__, 2024)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)

Tel: (416) 218-1129

E-mail: harvey@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant

TAB 3

Court File No.

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

BETWEEN:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondent

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

CONSENT

MSI SPERGEL INC. (“Spergel”) hereby consents to act as Court-appointed receiver, without security, of all of the assets, undertakings and properties of the Respondent pursuant to subsection 243(1) of *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, in accordance with an order substantially in the form requested by the Applicant, or as such order may be amended in a manner satisfactory to Spergel.

DATED this 6th day of February, 2024

MSI SPERGEL INC.

By: 
Name: Trevor Pringle
Position: Partner

I have authority to bind the corporation

TAB 4

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

THE HONOURABLE) TUESDAY, THE 5th
JUSTICE OSBORNE) DAY OF MARCH 2024

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondent

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

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing msi Spergel Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Vandyk – Backyard Humberside Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, via videoconference.

ON READING the Affidavit of Sergiu Cosmin sworn February 6, 2024 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and the other parties listed on the Participation Information Sheet, no one else appearing for the parties listed on the service list although duly served as appears from the affidavits of service filed with the Court, and on reading the consent of msi Spergel Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

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

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

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

- (f) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

RETENTION OF LAWYERS

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.spergelcorporate.ca/engagements> .

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

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

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

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

SCHEDULE "A"

PIN: 07500-0079 (LT)

Property Description: PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Vandyk – Backyard Humberside Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 2024 (the "**Order**") made in an application having Court file number CV-24-_____-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the ____ day of _____, 202__.

MSI SPERGEL INC., solely in its capacity as Receiver of the Debtor, and not in its personal capacity

Per: _____

Name:

Title:

HOME TRUST COMPANY
Applicant

-and-

VANDYK – BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No.

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(appointing Receiver)**

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)

Tel: (416) 218-1129

E-mail: harvey@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant

TAB 5

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) ~~WEEKDAY~~TUESDAY, THE #5th
JUSTICE — OSBORNE) DAY OF ~~MONTH~~MARCH
20~~YR~~2024

B E T W E E N:

PLAINTIFF[†]

Plaintiff

HOME TRUST COMPANY

Applicant

- and -

DEFENDANT

Defendant

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondent

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

[†]~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

ORDER
(appointing Receiver)

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~²Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~msi Spergel Inc. as receiver ~~[and manager] (in such capacities,~~ (the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~Vandyk – Backyard Humberside Limited (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, ~~Ontario~~via videoconference.

ON READING the ~~affidavit~~Affidavit of ~~[NAME]~~Sergiu Cosmin sworn ~~[DATE]~~February 6, 2024 and the Exhibits thereto, and on hearing the submissions of counsel for ~~[NAMES]~~the Applicant and the other parties listed on the Participation Information Sheet, no one else appearing for ~~[NAME]~~the parties listed on the service list although duly served as appears from the ~~affidavit~~affidavits of service ~~of [NAME] sworn [DATE]~~filed with the Court, and on reading the consent of ~~[RECEIVER'S NAME]~~msi Spergel Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated³ so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

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

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~250,000, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

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

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the

credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

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

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

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

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ ~~_____~~ 250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

RETENTION OF LAWYERS

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. ~~25.~~ **THIS COURT ORDERS** that the E-Service ~~Protocol~~Guide of the Commercial List (the "~~Protocol~~Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph ~~21~~13 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders

that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~@~~: <https://www.spergelcorporate.ca/engagements>.

27. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

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

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

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

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

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

| 34. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

PIN: 07500-0079 (LT)

Property Description: PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

SCHEDULE "AB"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ msi Spergel Inc., the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of Vandyk – Backyard Humberside Limited (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, ~~20__~~ 2024 (the "Order") made in an ~~action~~ application having Court file number ~~___CLCV-24-~~ _____ -00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the ____ day of _____, ~~20~~202.

~~[RECEIVER'S NAME]~~ MSI SPERGEL INC.,
solely in its capacity as Receiver of the
~~Property~~Debtor, and not in its personal
capacity

Per: _____
Name:
Title:

HOME TRUST COMPANY
Applicant

-and-

VANDYK – BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(appointing Receiver)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

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Lawyers for the Applicant

Document comparison by Workshare Compare on Thursday, February 22, 2024 2:35:35 PM

Input:	
Document 1 ID	file://C:\Users\Antoinet\Desktop\receivership-order-EN.doc
Description	receivership-order-EN
Document 2 ID	file://C:\Users\Antoinet\Desktop\Receivership Order(11258369.3).doc
Description	Receivership Order(11258369.3)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	118
Deletions	90
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	208

HOME TRUST COMPANY
Applicant

-and-

VANDYK – BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No. CV-24-00715191-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

APPLICATION RECORD
(APPOINTMENT OF RECEIVER)

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