

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

THE TORONTO-DOMINION BANK

Applicant

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

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## **APPLICATION RECORD OF THE APPLICANT**

**Returnable April 27, 2022**

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April 11, 2022

**HARRISON PENSA LLP**

Barristers & Solicitors  
450 Talbot Street  
London, ON N6A 5J6

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

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Lawyers for the Applicant,  
The Toronto-Dominion Bank

TO: SERVICE LIST

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# Tab 1





Electronically issued  
Délivré par voie électronique : 08-Apr-2022  
Hamilton

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE TORONTO-DOMINION BANK

Applicant

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

**NOTICE OF APPLICATION**

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

**TO THE RESPONDENTS:**

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

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

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

On April 27, 2022 at 10:00 a.m. or as soon after that time as the application can be heard by judicial teleconference via Zoom at Hamilton, Ontario. Zoom particulars to follow.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, 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 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

---

Registrar  
Superior Court of Justice  
45 Main Street East  
Hamilton, Ontario L8N 2B7

TO: Service List Attached

**SERVICE LIST**

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

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

Proposed Receiver

AND

TO: **FOGLER, RUBINOFF LLP**  
77 King Street West  
Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, Ontario M5K 1G8

**Attention: Scott R. Venton**  
Tel: 416-941-8870  
Fax: 416-941-8852  
Email: [sventon@foglers.com](mailto:sventon@foglers.com)

Solicitors for the Proposed Receiver

AND

TO: **2580363 ONTARIO INC.**  
56 Varley Crescent  
Brantford, ON N4R 7Z7

Respondent

AND

TO: **2580361 ONTARIO INC.**  
56 Varley Crescent  
Brantford, ON N4R 7Z7

21 Augusta Street  
Hamilton, ON L8N 1P6

Respondent

AND

TO: **JOHNNY MERCANTE**  
56 Varley Crescent  
Brantford, ON N4R 7Z7

AND

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

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

AND

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

AND

TO: **THE CITY OF HAMILTON**  
71 Main Street West  
Hamilton, Ontario L8P 4Y5

AND

TO: **OLYMPIA TRUST COMPANY**  
P.O. Box 2581  
STN Central,  
Calgary, Alberta T2P 1C8

AND

TO: **COMFORT CAPITAL INC.**  
1670 Bayview Avenue, Suite 400  
Toronto, Ontario M4G 3C2

AND

TO: **ALEX MAGIS**  
280 Southwood Drive  
Hamilton, Ontario L8T 4E8

## THE APPLICATION IS FOR:

The Applicant, The Toronto-Dominion Bank (the “**Bank**”), seeks the following relief:

1. An order (the “**Appointment Order**”) substantially in the form attached hereto as Schedule “A”, *inter alia*, appointing msi Spergel inc., as Receiver (“**Spergel**”, or the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondents, 2580363 Ontario Inc. (“**363 Ontario**”) and 2580361 Ontario Inc. (“**361 Ontario**” collectively with 363 Ontario, the “**Respondents**”), acquired for, or used in relation to a business or businesses carried on by the Respondents, including the Real Property (as defined below);
2. That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and,
3. Such further and other relief as to this Honourable Court may seem just.

## THE GROUNDS FOR THE APPLICATION ARE:

### The Respondents

1. The Respondents, 363 Ontario and 361 Ontario, are each companies incorporated pursuant to the laws of the Province of Ontario. 363 Ontario operated as a restaurant known as “Aout ‘n About” from premises owned by 361 Ontario, municipality known as 21 Augusta Street, Hamilton, Ontario, legally described as:
  - a) PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON (PIN 17170-0018 LT) (the “**Real Property**”).
2. Johnny Mercante (“**Mercante**”) is the sole principal of 363 Ontario and 361 Ontario.
3. The Respondents have cross-guaranteed each other’s liability to the Bank under the Financing (as defined below).
4. The Respondents did default under the terms of the Financing as follows:

- a) Failure to make payments on the Term Loan and the HASCAP Loan (both as defined below), as same have become due;
  - b) Arrears of property tax due and owing to the City of Hamilton in relation to the Real Property, in the sum of \$4,679.53 as at March 28, 2022 (the “**Property Tax Arrears**”); and
  - c) Charges registered on title to the Real Property, subsequent to the Mortgage (as defined below), in favour of Olympia Trust Company, Comfort Capital Inc. and Alex Magis (collectively, the “**Subsequent Charges**”).
- (4 (a) – (c) collectively, the “**Defaults**”)

### **The Charged Properties**

- 5. It does not appear that the restaurant known as “Aout ‘n About” is currently operating from the Property.
- 6. The Bank was advised that a conditional Agreement of Purchase and Sale was entered into in relation to the Real Property with a closing date of March 31, 2022. This transaction has not closed.
- 7. The Bank holds the first-priority Mortgage (as defined below) over the Real Property, subject to any priority charges created by the Property Tax Arrears.

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

#### **363 Ontario**

- 8. As of April 5, 2022, 363 Ontario was indebted to the Bank in the principal amount of \$267,246.02, plus accruing interest and the Bank’s continuing costs of enforcement (the “**363 Obligations**”), in respect of certain financing advanced to 363 Ontario pursuant to the terms of a Letter Agreement dated August 9, 2019 and amended by way of Amending Agreements dated March 23, 2020, October 7, 2020 and June 8, 2021 (collectively, the “**363 Letter Agreement**”).
- 9. 363 Ontario is also a guarantor of the 361 Obligations (as defined below).

10. The credit facilities established by the 363 Letter Agreement are the following:
- a) Facility # 1 – Operating Facility: with a credit limit of \$5,000, repayable on demand;
  - b) Facility # 2 – HASCAP Term Facility: in the amount of \$250,000 (the “**HASCAP Loan**”);  
and,
  - c) Facility # 3 – Business Visa: with a credit limit of \$10,000.
- (collectively, the “**363 Financing**”)
11. In addition to the 363 Financing, \$60,000 was advanced to 363 Ontario under the Canada Emergency Business Account, (loan offered by the Government of Canada), on which the amount of \$40,000 is owing.
12. The Bank holds, *inter alia*, the following security, as security for the 363 Financing:
- a) General Security Agreement from 363 Ontario dated August 21, 2019 (the “**363 GSA**”);
  - b) Guarantee from 361 Ontario dated August 21, 2019, for an unlimited amount with the following collateral security:
    - i. General Security Agreement from 361 Ontario dated August 21, 2019 (the “**361 GSA**”, collectively with the 363 GSA, the “**GSA’s**”); and
    - ii. Charge/Mortgage of Land from 361, in the principal sum of \$1,205,000, receipted as instrument number WE1375722 on August 22, 2019 (the “**Mortgage**”) over the Real Property, as governed by Standard Charge Terms 8520 (“**STC 8520**”).
- (collectively, the “**363 Security**”)

#### 361 Ontario

13. As of April 5, 2022, 361 Ontario was indebted to the Bank in the principal amount of \$1,150,671.42, plus accruing interest and the Bank’s continuing costs of enforcement (the “**361 Obligations**” and collectively with the 363 Obligations, the “**Obligations**”), in respect of certain financing advanced to 361 Ontario pursuant to the terms of a Letter Agreement dated August 9, 2019 (the “**361 Letter Agreement**”).

14. The credit facility established by the 361 Letter Agreement is the following:
- a) Facility # 1 – Term Facility: in the amount of \$1,200,000 (the “**Term Loan**”) (the “**361 Financing**” and collectively with the 363 Financing, the “**Financing**”).
15. The Bank holds, *inter alia*, the following security, as security for the 361 Financing:
- a) The 361 GSA;
- b) The 363 GSA;
- c) Guarantee from 363 Ontario dated August 21, 2019, for an unlimited amount; and
- d) The Mortgage over the Real Property, as governed by SCT 8520.
- (collectively, the “**361 Security**” and collectively with the 363 Security, the “**Security**”)

**The Bank’s Security Interest in The Personal Property of the Respondents**

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

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

18. The Bank’s interest in the Real Property is secured by the Mortgage, as governed by SCT 8520.
19. As noted above, the Subsequent Charges are also registered on title to the Real Property, and there are the Property Tax Arrears owing by 361 Ontario in relation to the Real Property.
20. Pursuant to SCT 8520, the Mortgage secures the Obligations.



### **Defaults, Default Letters and Demands**

21. The Respondents are insolvent, and have defaulted under the Financing, as set out above, which Defaults continue.
22. Certain of the Defaults were communicated to the Respondents by way of two Default Letters dated January 28, 2022, which requested that the specified defaults be cured and a response be provided by February 11, 2022 (collectively, the “**Default Letters**”).
23. The Respondents and Mercante failed to respond or cure the specified defaults, as set out in the Default Letters, by February 11, 2022.
24. As a result of the continuing Defaults, the Bank delivered to each of the Respondents a demand for payment, and a Notice of Intention to Enforce Security, pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), all dated February 18, 2022 (collectively, the “**Demands**”).
25. All statutory notice periods in relation to the Demands have expired, and the Respondents have failed to repay the Obligations due despite the Demands, which constitutes a further Default under the Financing.

### **Communications Regarding Sale of the Real Property**

26. On March 2, 2022, the Respondents through counsel, did advise the Bank that 361 Ontario had entered into an agreement to sell the Real Property with a tentative closing date of March 31, 2022, with a few conditions to be dealt with the week of March 2, 2022 (the “**Proposed Property Sale**”).
27. As a result of this information, the Bank did provide the Respondents with a period of day-to-day forbearance, at the Bank’s sole discretion.
28. Following several inquiries by the Bank, the Respondents failed to advise that all conditions to the Proposed Property Sale had been waived or provide evidence of a firm agreement, and on March 24, 2022, the Bank advised the Respondents that the Bank was terminating the day-to-day forbearance provided to the Respondents.

**The Rationale and Authority for the Appointment Order**

29. The terms of the Security authorize the Bank to appoint a Receiver over all personal property of the Respondents and over the Real Property, as a result of the Defaults.
30. The Obligations due, pursuant to the Demands, have not been paid. The Respondents are in Default of the Financing.
31. The Respondents are insolvent, and the Bank is unwilling to provide the Respondents with any further credit or forbearance.
32. It appears that 363 Ontario has currently ceased operations as a restaurant.
33. This cessation, or partial cessation, has, and will continue to negatively impact the Respondents' cash flow, and correspondingly, the Respondents' ability to service their debts. The appointment of a Receiver is necessary to (i) determine the actual state of the Respondents' businesses, and (ii) if necessary, to manage the Respondents' businesses until a sale of the Real Property can be arranged.
34. The Bank is unaware of the condition of the Real Property and whether it is being properly maintained. Absent the appointment of a Receiver, the state of the Real Property may degrade, which will negatively impact the value of the Bank's Security. The appointment of a Receiver is necessary to ensure that the Real Property is maintained until a sale can be arranged.
35. The Respondents have been unable to conclude the Proposed Property Sale, despite significant time in which to do so. The Appointment of a Receiver is necessary in order to conclude a sale of the Real Property and the Respondents' businesses, and to apply the proceeds of such sale to the Obligations.
36. The appointment of a Receiver will also be necessary to address payment or resolution of the Property Tax Arrears, and to settle any issues of priority as between the Bank's Security, and the Property Tax Arrears.
37. The Bank proposes that Spergel be appointed as Receiver, without security, over all of the assets, undertakings, and properties of the Respondents, including the Real Property.

38. Spergel has provided their consent to their appointment as Receiver (the “**Consent**”).
39. Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended.
40. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
41. Rule 3, 14, 38 and any other applicable Rule of the *Rules of Civil Procedure*.
42. Such further and other grounds as counsel may advise.

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

1. The Affidavit of Jill Lamothe, and the exhibits attached thereto;
2. The Consent; and,
3. Such further and other material as counsel may advise and this Honourable Court may permit.

April 7, 2022

**HARRISON PENZA LLP**

Barristers & Solicitors  
450 Talbot Street  
London, ON N6A 5J6

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

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

Lawyers for the Applicant,  
The Toronto-Dominion Bank

**Schedule “A-1” – Appointment Order (Clean)**

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE )  
 ) DAY OF APRIL, 2022

**THE TORONTO-DOMINION BANK**

Applicant

-and-

**2580363 ONTARIO INC. AND 2580361 ONTARIO INC.**

Respondents

**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 (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2580363 Ontario Inc. and 2580361 Ontario Inc. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including the real property described at Schedule "A" hereto and owned by 2580361 Ontario Inc. (the "Real Property"), was heard this day by judicial videoconference via Zoom at 45 Main Street East, Hamilton, Ontario.

ON READING the affidavit of Jill Lamothe sworn April 7, 2022 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Respondents as duly served

as appears from the affidavit of service of Lindsay Ferguson sworn , 2022 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 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 Debtors acquired for, or used in relation to a business carried on by the Debtors, including the Real Property, and also including all proceeds thereof (collectively, the "Property").

## **RECEIVER'S POWERS**

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

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

- (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 Debtors, or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 Debtors 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 Debtors, 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; 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 Debtors;



- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors 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 Debtors, and without interference from any other Person.

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

4. THIS COURT ORDERS that (i) the Debtors (ii) all of the Debtors' 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 Debtors, 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 DEBTORS OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors 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 Debtors 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 Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors 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 Debtors 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 Debtors 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 Debtors' 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 Debtors 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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under

sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## **RECEIVER'S ACCOUNTS**

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

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the 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 \$100,000 (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 "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

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

### **SERVICE AND NOTICE**

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

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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

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

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

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

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

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid



by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

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

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Justice, Ontario Superior Court of Justice

**SCHEDULE "A"**

**REAL PROPERTY**

PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY  
OF HAMILTON (PIN 17170-0018 LT)

## 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 2580363 Ontario Inc. and 2580361 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtors, including the Real Property (as defined in the Appointment Order), and including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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\_\_.

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

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

Name:

Title:

THE TORONTO-DOMINION BANK

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Applicant

Respondents

Court File No.

<b>ONTARIO SUPERIOR COURT OF JUSTICE</b>  Proceeding commenced at Hamilton, Ontario	
<b>ORDER</b>	
<b>HARRISON PENZA <sup>LLP</sup></b> Barristers and Solicitors 450 Talbot Street, P.O. Box 3237 London, Ontario N6A 4K3  <b>Timothy C. Hogan (LSO #36553S)</b> <b>Robert Danter (LSO #69806O)</b>  Tel: (519) 679-9660 Fax: (519) 667-3362 Email: <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a> <a href="mailto:rdanter@harrisonpensa.com">rdanter@harrisonpensa.com</a>  Solicitors for the Applicant, The Toronto-Dominion Bank	

**Schedule “A-2” – Appointment Order (Blacklined)**

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

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

ONTARIO  
SUPERIOR COURT OF JUSTICE

~~COMMERCIAL LIST~~

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~, THE #  
JUSTICE \_\_\_\_\_ )  
DAY OF ~~MONTH~~APRIL, ~~20YR~~2022

~~THE TORONTO-DOMINION BANK PLAINTIFF<sup>1</sup>~~

Plaintiff~~Applicant~~

~~-and--and-~~

~~2580363 ONTARIO INC. AND 2580361 ONTARIO INC. DEFENDANT~~

Defendant~~Respondents~~

ORDER  
(~~appointing~~ Appointing Receiver)

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>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 ~~[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

<sup>1</sup> ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

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

~~[DEBTOR'S/DEBTORS' NAME]~~2580363 Ontario Inc. and 2580361 Ontario Inc. (collectively, the "Debtor~~s~~") acquired for, or used in relation to a business carried on by the ~~Debtor, Debtors,~~ including the real property described at Schedule "A" hereto and owned by 2580361 Ontario Inc. (the "Real Property")~~-, and~~ -was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto45 Main Street East, Hamilton, Ontario.

ON READING the affidavit of Jill Lamothe~~[NAME]~~ sworn April 7, 2022~~[DATE]~~ and the Exhibits thereto and on hearing the submissions of counsel for the Applicant~~[NAMES]~~, and the Respondents~~no one appearing for [NAME] although as~~ duly served as appears from the affidavit of service of Lindsay ProvostFerguson~~[NAME]~~ sworn , 2022~~[DATE]~~ and on reading the consent of ~~msi Spergel inc.~~~~[RECEIVER'S NAME]~~ 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 is hereby abridged and validated,<sup>3</sup> so that this ~~motion~~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, ~~[RECEIVER'S NAME]~~msi Spergel inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the ~~Debtor, Debtors~~ acquired for, or used in relation to a business carried on by the ~~Debtor, Debtors,~~ including the Real Property, and also including all proceeds thereof (collectively, the "Property").

## RECEIVER'S POWERS

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

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



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

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

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the ~~Debtor~~Debtors, 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~~Debtors;

(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~~Debtors, or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Debtors, and to exercise all remedies of the ~~Debtor~~Debtors in collecting such monies, including, without limitation, to enforce any security held by the ~~Debtor~~Debtors;

(g) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Debtors;

~~(g)~~(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, Debtors~~ for any purpose pursuant to this Order;

~~(h)~~(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, Debtors~~, the Property, or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

~~(i)~~(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;

~~(j)~~(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 ~~\$50,000~~, provided that the aggregate consideration for all such transactions does not exceed ~~\$150,000~~; 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;

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

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

~~(k)~~(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;

~~(l)~~(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;

~~(m)~~(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

~~(n)~~(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;~~Debtors;

~~(o)~~(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Debtor;~~Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the ~~Debtor;~~Debtors;

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

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

~~(r)~~(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, Debtors~~, 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, Debtors~~ (ii) all of ~~its-the Debtors'~~ 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, Debtors~~, 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-DEBTORS~~ OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the ~~Debtor-Debtors~~ 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-Debtors~~ 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~~Debtors, 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~~Debtors to carry on any business which the ~~Debtor~~Debtors ~~is~~are not lawfully entitled to carry on, (ii) exempt the Receiver or the ~~Debtor~~Debtors 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~~Debtors 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~~Debtors 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~~Debtors 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~~Debtors' 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~~Debtors 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-Debtors~~ shall remain the employees of the ~~Debtor-Debtors~~ until such time as the Receiver, on the ~~Debtor's Debtors'~~ 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~~, Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

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

### **RECEIVER'S ACCOUNTS**

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



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

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 \$100,000 (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

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

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

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 "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

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

### SERVICE AND NOTICE

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

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 Debtors' creditors or other interested parties at their respective addresses as last shown on

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

## GENERAL

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

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

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

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

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

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

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Justice, Ontario Superior Court of Justice

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~~DOCSTOR: 1771742\8~~

**SCHEDULE "A"**

**REAL PROPERTY**

PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY  
OF HAMILTON (PIN 17170-0018 LT)

**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/DEBTORS' NAME}~~ of 2580363 Ontario Inc. and 2580361 Ontario Inc. acquired for, or used in relation to a business carried on by the ~~Debtor, Debtors, including the Real Property (as defined in the Appointment Order), and~~ including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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\_\_.

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

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

Name:

Title:

THE TORONTO-DOMINION BANK

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Applicant

Respondents

Court File No.

		<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b>  Proceeding commenced at Hamilton, Ontario
		<b>ORDER</b>
		<b>HARRISON PENZA</b> <sup>LLP</sup> Barristers and Solicitors 450 Talbot Street, P.O. Box 3237 London, Ontario N6A 4K3  <b>Timothy C. Hogan (LSO #36553S)</b> <b>Robert Danter (LSO #69806O)</b>  Tel: (519) 679-9660 Fax: (519) 667-3362 Email: <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a> <a href="mailto:rdanter@harrisonpensa.com">rdanter@harrisonpensa.com</a>  Solicitors for the Applicant, The Toronto-Dominion Bank



THE TORONTO-DOMINION BANK

Applicant

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

Court File No.

	<b>ONTARIO SUPERIOR COURT OF JUSTICE</b>  Proceeding commenced at Hamilton, Ontario
	<b>NOTICE OF APPLICATION</b>
	<b>HARRISON PENZA <sup>LLP</sup></b> Barristers and Solicitors 450 Talbot Street, P.O. Box 3237 London, Ontario N6A 4K3  <b>Timothy C. Hogan (LSO #36553S)</b> <b>Robert Danter (LSO #69806O)</b>  Tel: (519) 679-9660 Fax: (519) 667-3362 Email: <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a> <a href="mailto:rdanter@harrisonpensa.com">rdanter@harrisonpensa.com</a>  Solicitors for the Applicant, The Toronto-Dominion Bank

# Tab 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

THE TORONTO-DOMINION BANK

Applicant

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

**AFFIDAVIT OF JILL LAMOTHE**

(sworn April 7, 2022)

I, **JILL LAMOTHE**, of the City of Oakville, in the Province of Ontario, **MAKE  
OATH AND SAY:**

1. I am an Account Manager, Commercial Banking, with the Applicant, The Toronto-Dominion Bank (the “**Bank**”) and as such have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.

**The Respondents**

2. The Respondents, 2580363 Ontario Inc. (“**363 Ontario**”) and 2580361 Ontario Inc. (“**361 Ontario**” collectively with 363 Ontario, the “**Respondents**”), are each companies incorporated pursuant to the laws of the Province of Ontario. 363 Ontario operated as a restaurant known as “Aout ‘n About” from premises owned

by 361 Ontario, municipality known as 21 Augusta Street, Hamilton, Ontario, legally described as:

- a. PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON (PIN 17170-0018 LT) (the “**Real Property**”)

Attached hereto to this my affidavit and marked as **Exhibit “A”** is a true copy of the Corporate Profile of 363 Ontario. Attached hereto to this my affidavit and marked as **Exhibit “B”** is a true copy of the Corporate Profile of 361 Ontario.

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

3. Johnny Mercante (“**Mercante**”) is the sole principal of 363 Ontario and 361 Ontario.
4. The restaurant phone number from the website for “Aout ‘n About” ([www.aoutnabout.x10host.com](http://www.aoutnabout.x10host.com) – 905 525 7164) is out of service. The Facebook page for Aout ‘n About indicates that the restaurant has been closed since December 2020. A Google search for Aout ‘n About indicates that the restaurant is temporality closed.
5. The Respondents have cross-guaranteed each other’s liability to the Bank under the Financing (as defined below).
6. The Respondents did default under the terms of the Financing as follows:
  - a. Failure to make payments on the Term Loan and the HASCAP Loan (both as defined below) as same have become due;

- b. Arrears of property tax due and owing to the City of Hamilton in relation to the Real Property, in the sum of \$4,679.53 as at March 28, 2022 (the “**Property Tax Arrears**”). Attached hereto to this my affidavit and marked as **Exhibit “D”** is a true copy of the Property Tax Certificate from the City of Hamilton in relation to the Real Property dated March 28, 2022; and
- c. Charges registered on title to the Real Property subsequent to the Mortgage (as defined below) in favour of Olympia Trust Company, Comfort Capital Inc. and Alex Magis (collectively, the “**Subsequent Charges**”). Attached hereto to this my affidavit and marked collectively as **Exhibit “E”** are true copies of the Subsequent Charges registrations.
- (collectively, the “**Defaults**”)

### **The Charged Property**

7. The Bank was advised that a conditional Agreement of Purchase and Sale was entered into in relation to the Real Property with a tentative closing date of March 31, 2022. This transaction has not closed.
8. The Bank holds a first-priority charge over the Real Property, as evidenced by the Mortgage (as defined below), and subject to any priority charges created by the Property Tax Arrears.

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

#### **363 Ontario**

9. As of April 5, 2022, 363 Ontario was indebted to the Bank in the principal amount of \$267,246.02, plus accruing interest and the Bank’s continuing costs of

enforcement (the “**363 Obligations**”), in respect of certain financing advanced to 363 Ontario pursuant to the terms of a Letter Agreement dated August 9, 2019 and amended by way of Amending Agreements dated March 23, 2020, October 7, 2020 and June 8, 2021 (collectively, the “**363 Letter Agreement**”). Attached hereto to this my affidavit and marked as **Exhibit “F”** is a true copy of the 363 Letter Agreement.

10. The credit facilities established by the 363 Letter Agreement are:
  - a. Facility # 1 – Operating Facility: with a credit limit of \$5,000, repayable on demand, on which the sum of \$4,994.82 is owing as at April 5, 2022
  - b. Facility # 2 – HASCAP Term Facility: in the amount of \$250,000 (the “**HASCAP Loan**”), on which the sum of \$251,287.67 is owing as at April 5, 2022; and,
  - c. Facility # 3 – Business Visa: with a credit limit of \$10,000 on which the sum of \$10,963.53 is owing as at April 5, 2022.

(collectively, the “**363 Financing**”)
11. In addition to the 363 Financing, \$60,000 was advanced to 363 Ontario under the Canada Emergency Business Account, (loan offered by the Government of Canada), on which the amount of \$40,000 is owing.
12. The Bank holds, *inter alia*, the following security, as security for the 363 Financing:

- a. General Security Agreement from 363 Ontario dated August 21, 2019 (the “**363 GSA**”). Attached hereto to this my affidavit and marked as **Exhibit “G”** is a true copy of the 363 GSA;
- b. Collateral to the 361 Guarantee (as defined below) a General Security Agreement from 361 Ontario dated August 21, 2019 (the “**361 GSA**”, collectively with the 363 GSA, the “**GSA’s**”). Attached hereto to this my affidavit and marked as **Exhibit “H”** is a true copy of the 361 GSA;
- c. Guarantee from 361 Ontario dated August 21, 2019, for an unlimited amount (the “**361 Guarantee**”). Attached Attached hereto to this my affidavit and marked as **Exhibit “I”** is a true copy of the 361 Guarantee; and
- d. Collateral to the 361 Guarantee, the Charge/Mortgage of Land, in the principal sum of \$1,205,000, receipted as instrument number WE1375722 on August 22, 2019 (the “**Mortgage**”) over the Real Property, as governed by Standard Charge Terms 8520 (“**SCT 8520**”). Attached hereto to this my affidavit and marked as **Exhibit “J”** is a true copy of the Mortgage. Attached hereto to this my affidavit and marked as **Exhibit “K”** is a true copy of SCT 8520.

(collectively, the “**363 Security**”)

### 361 Ontario

- 13. As of April 5, 2022, 361 Ontario was indebted to the Bank in the amount of \$1,150,671.42, plus accruing interest and the Bank’s continuing costs of enforcement (the “**361 Obligations**” and collectively with the 363 Obligations, the

**“Obligations”**), in respect of certain financing advanced to 361 Ontario pursuant to the terms of a Letter Agreement dated August 9, 2019 (the **“361 Letter Agreement”**). Attached hereto to this my affidavit and marked as **Exhibit “L”** is a true copy of the 361 Letter Agreement.

14. The credit facility established by the 361 Letter Agreement is:
  - a. Facility # 1 – Term Facility: in the amount of \$1,200,000 on which the sum of \$1,150,671.42 is owing as at April 5, 2022 (the **“Term Loan”** and the **“361 Financing”** and collectively with the 363 Financing, the **“Financing”**).
15. The Bank holds, *inter alia*, the following security, as security for the 361 Financing:
  - a. The 361 GSA;
  - b. The 363 GSA;
  - c. Guarantee from 363 Ontario dated August 21, 2019, for an unlimited amount (the **“363 Guarantee”**). Attached Attached hereto to this my affidavit and marked as **Exhibit “M”** is a true copy of the 361 Guarantee; and
  - d. The Mortgage over the Real Property, as governed by SCT 8520(collectively, the **“361 Security”** and collectively with the 363 Security, the **“Security”**).



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

16. The Bank's interest in the Real Property is secured by the Mortgage, as governed by SCT 8520.
17. As noted above, the Subsequent Charges are also registered on title to the Real Property, and there are the Property Tax Arrears owing by 361 Ontario in relation to the Real Property.
18. SCT 8520 includes, *inter alia*, the following terms (emphasis added):

### **1. Definitions**

...

(g) Indebtedness means all monies and liabilities matured or not, whether present or future, direct or indirect, absolute or contingent, now or at any time hereafter owing or incurred, wheresoever or howsoever incurred from or by the Chargor [361 Ontario], as principal or surety, whether alone or jointly with any other person and in whatever name style or firm, whether otherwise secured or not and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor including, without limitation, advances upon overdrawn accounts or upon bills of exchange, promissory notes or other obligations discounted for the Chargor or otherwise, all bills of exchange, promissory notes and other obligations negotiable or otherwise representing money and liabilities, or any portion thereof, now or hereafter owing or incurred from or by the Chargor and all interest, damages and Costs, and all premiums of insurance upon the buildings, Fixtures and improvements now or hereafter brought or erected upon the said Property which may be paid by the Bank and Taxes.

### **2. Charge of Property**

The Chargor has, at the request of the Bank, agreed to give this Charge as a CONTINUING COLLATERAL SECURITY for payment to the Bank ON DEMAND of the Indebtedness, provided that such security be limited to the Principal Amount plus Costs with interest thereon at the Interest Rate. Interest at the Interest Rate is calculated and payable monthly, not in advance, before and after demand, default and judgment, with interest on overdue interest and on all other amounts charged to the Chargor hereunder at the Interest Rate. The Chargor:

- i. if the Property is a freehold property, hereby charges the Property to the Bank; or
- ii. if the Property is a leasehold interest, hereby charges and subleases the Property to the Bank for and during the unexpired residue of the term of the lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in the lease;

to secure the repayment of the Indebtedness and the performance of all of the obligations of the Chargor contained herein. The Chargor hereby releases to the Bank all its claims upon the Property until the Chargor has repaid the Indebtedness and performed all of the obligations of the Chargor in the manner provided by this Charge.

### **3. Covenants of the Chargor**

The Chargor hereby covenants with the Bank that:

(a) The Chargor will ON DEMAND pay the Indebtedness and observe all provisos, conditions and agreements contained herein;

(b) The Chargor has a good title in fee simple to the Property (unless the Chargor is a lessee of the Property), save and except prior registered encumbrances;

(c) The Chargor has the right to charge the Property to the Bank;

(d) On default, the Bank shall have quiet possession of the Property, free from all encumbrances, save as aforesaid;

(e) Covenant 1.vii, deemed to be included in this Charge by subsection 7(1) of the Land Registration Reform Act, 1984 is hereby expressly varied by providing that the Chargor will, before or after default, execute such further assurances of the Property and do such other acts, at the Chargor's expense, as may be reasonably required;

...

(h) This Charge shall be void UPON REPAYMENT of the Indebtedness upon demand; or without demand, UPON PERMANENT REPAYMENT of the Indebtedness, with written notice to such effect to the Bank. The Chargor releases to the Bank all the Chargor's claims upon the Property subject to this paragraph; and

(i) The Chargor agrees to assign to the Bank forthwith upon the request of the Bank as additional security for payment of the Indebtedness and the performance of the covenants herein contained, any present or future lease which may be granted by the Chargor as to the whole or any portion of the Property and agrees to deliver to the Bank executed copies of all such leases at the written request of the Bank. The Chargor covenants to perform and comply with all lessor's covenants contained in any leases assigned by the Chargor to the Bank. Notwithstanding the assignment or assignments of any lease or leases by the Chargor to the Bank, it is nevertheless declared and agreed that none of the rights or remedies of the Bank under this Charge shall be delayed or in any way hindered or prejudiced by such assignment or assignments or by any act of the Bank pursuant thereto.

19. Pursuant to SCT 8520, the Mortgage secures the Obligations.

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

20. The GSA's contain identical terms, and secure the following personal property of the Respondents:

### **1. SECURITY INTEREST**

*The Grantor [363 Ontario and/or 361 Ontario] hereby grants to the Bank a security interest in, and assigns (other than with respect to trademarks), mortgages, charges, and pledges (collectively, the "Security Interest") to the Bank, all property of the Grantor, including all present and after acquired personal property and all other property, assets and undertakings of any kind hereinafter described below, in which the Grantor has, or hereafter acquires, any right, title or interest, and accretions and accessions thereto (collectively called the "Collateral")...*

### **2. OBLIGATIONS SECURED**

*The Security interest secures payment and performance of all present and future obligations of the Grantor to the Bank, including all debts and liabilities, direct or indirect, absolute or contingent, matured or not, wheresoever or howsoever incurred, whether incurred before, at the time of or after the execution of this Agreement, whether the indebtedness and liability is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether arising from the dealings between the Bank and the Grantor or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Grantor, and in any currency, whether incurred by the Grantor alone or with another or others and whether as a principal or surety, including all interest thereon and all amounts owed by the Grantor under this Agreement for fees, costs and expenses and in respect of indemnities granted under this Agreement (collectively called the "Obligations").*

21. The Bank has registered Financing Statements as against each of the Respondents pursuant to the provisions of the *Personal Property Security Act* (Ontario) ("**PPSA**") to perfect its security interest in the personal property of the Respondents secured under the GSA's.
22. The Personal Property Security Registration System Search Results for the Respondents confirm that the Bank holds a perfected security interest in the personal property of the Respondents as secured by the GSA's, and there are no other registrations by secured creditors under the PPSA. Attached hereto to this my affidavit and marked as **Exhibit "N"** and **Exhibit "O"** are true copies of the

Personal Property Security Registration System Search Results for each 363 Ontario and 361 Ontario respectively, current to April 6, 2022.

**Defaults, Default Letters and Demands**

23. The Respondents are insolvent, and have defaulted under the Financing, as set out above, which Defaults continue.
24. Certain of the Defaults were communicated to the Respondents by way of two Default Letters dated January 28, 2022, which requested that the specified defaults be cured and a response be provided by February 11, 2022 (collectively, the “**Default Letters**”). Attached hereto to this my affidavit and marked as **Exhibit “P”**, are true copies of the Default Letters.
25. The Respondents and Mercante failed to acknowledge the Default Letters and on February 4, 2022 I emailed Mercante requesting that he confirm receipt of same. Attached hereto to this my affidavit and marked as **Exhibit “Q”**, is a true copy of the email from the Bank to Mercante dated February 4, 2022.
26. The Respondents and Mercante failed to respond or cure the specified defaults, as set out in the Default Letters, by February 11, 2022.
27. As a result of the continuing Defaults, the Bank delivered to each of the Respondents a demand for payment, and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), all dated February 18, 2022 (collectively, the “**Demands**”). Attached hereto to this my affidavit and marked as **Exhibit “R”** are true copies of the Demands and corresponding registered mail receipt.

28. All statutory notice periods in relation to the Demands have expired, and the Respondents have failed to repay the Obligations due despite the Demands, which constitutes a further Default under the Financing.

**Communications Regarding Sale of the Real Property**

29. On March 2, 2022, counsel for the Respondents, Gerry Falletta of Centennial Law Group, emailed the Bank to advise that 361 Ontario had entered into an agreement to sell the Real Property with a tentative closing date of March 31, 2022, with a few conditions to be dealt with the week of March 2, 2022 (the **“Proposed Property Sale”**). Attached hereto to this my affidavit and marked as **Exhibit “S”**, is a true copy of the email from Mr. Falletta dated March 2, 2022.
30. As a result of this information, the Bank did provide the Respondents with a period of day-to-day forbearance, at the Bank’s sole discretion. Attached hereto to this my affidavit and marked as **Exhibit “T”**, is a true copy of the email from counsel for the Bank dated March 2, 2022.
31. On March 7, 2022, counsel for the Bank followed with counsel for the Respondents by email inquiring if there was evidence that all conditions with the Proposed Property Sale had been waived and whether a final closing date had been set, with the Bank continuing to provide day-to-day forbearance, at the Bank’s sole discretion. Attached hereto to this my affidavit and marked as **Exhibit “U”**, is a true copy of the email from counsel for the Bank dated March 7, 2022.
32. On March 7, 2022, counsel for the Respondents emailed counsel to the Bank to advise that he believed the condition of financing remained outstanding and was

extended to March 15, 2022. Attached hereto to this my affidavit and marked collectively as **Exhibit "V"**, is a true copy of the email from Mr. Falletta dated March 7, 2022.

33. On March 8, 2022, counsel for the Bank emailed counsel for the Respondents inquiring if there was any evidence of a firm agreement in relation to the Proposed Property Sale. On March 8, 2022, counsel for the Respondents emailed counsel for the Bank advising that he was still waiting to hear back from his client. Attached hereto to this my affidavit and marked as **Exhibit "W"**, is a true copy of the emails from counsel dated March 8, 2022.
34. The Respondents failed to advise that all conditions to the Proposed Property Sale had been waived or provide evidence of a firm agreement.
35. As a result of the continuing Defaults and the failure to advise that all conditions to the Proposed Property Sale had been waived or provide evidence of a firm agreement, on March 24, 2022 counsel to the Bank emailed counsel for the Respondents advising that the Bank has terminated the day-to-day forbearance provided to the Respondents and would be seeking a court-appointed receiver. Attached hereto to this my affidavit and marked as **Exhibit "X"**, is a true copy of the email from counsel for the Bank dated March 24, 2022.
36. On March 24, 2022, counsel for the Respondents emailed counsel to the Bank to advise that he had not received any further information from his clients. Attached hereto to this my affidavit and marked collectively as **Exhibit "Y"**, is a true copy of the email from Mr. Falletta dated March 24, 2022.
37. The Proposed Property Sale has failed to close. The Respondents have failed to

repay the Obligations due despite the Demands, which constitutes a further default under the Financing.

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

38. The Obligations due pursuant to the Demands have not been paid. The ten (10) day period under section 244 of the *BIA* has expired.
39. The Bank is in a position to appoint a receiver over the assets and property of the Respondents as secured by the Bank's Security, pursuant to section 243 of the *BIA*.

### **The Charged Properties**

40. SCT 8520 grant the Bank the power to appoint a Receiver over the relevant Real Property as a result of the Defaults, and state, in part (emphasis added):

#### **8. Appointment of Receiver**

*If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to the Bank then the Bank may in writing, appoint any person, whether an officer or employee of the Bank or not, to be a receiver of the Property and the rents and profits derived therefrom, and may remove the receiver so appointed and appoint another in his stead. The term "receiver" as used in this Charge includes a receiver and manager. The following provisions shall apply to this paragraph:*

*(a) The receiver so appointed is conclusively the agent of the Chargor and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Bank shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct the payment thereof from proceeds collected;*

*(b) Nothing contained herein and nothing done by the Bank or by the receiver shall render the Bank a mortgagee in possession or responsible as such;*

*(c) All monies received by the receiver, after providing for payment and charges ranking prior to this Charge and for all applicable Costs shall be applied in or towards satisfaction of the remaining Indebtedness;*

*(d) The receiver so appointed shall have power to:*

*(i) take possession of the Property, collect rents and profits and realize upon additional or collateral security granted by the Chargor to the Bank and for that*

*purpose may take any proceedings, be they legal or otherwise, in the name of the Chargor or otherwise;*

*(ii) carry on or concur in carrying on the business which the Chargor is conducting on and from the Property and for that purpose may borrow money on the security of the Property in priority to this Charge; and*

*(iii) lease all or any portion of the Property and for this purpose execute contracts in the name of the Chargor which said contracts shall be binding upon the Chargor;*

*(e) The rights and powers conferred herein are supplemental to and not in substitution for any rights which the Bank may have from time to time.*

41. The Respondents are in Default of the Financing. The Bank is entitled to seek the appointment of a Receiver over the property of the Respondents, including the Real Property as a result thereof, and the terms of the Mortgage, as governed by SCT 8520, provide the Bank with the power to appoint a Receiver over the Real Property.

#### Personal Property

42. Paragraph 12 of the GSA's grant the Bank the right to appoint a Receiver over the personal property of each of the Respondents secured thereunder as a result of the Defaults, as follows:

#### **12. REMEDIES**

*(a) Upon the occurrence of an event of default that has not been cured or waived, the Bank, in addition to any right or remedy otherwise provided herein or by law or in equity, will have the rights and remedies set out below, which may be enforced successively or concurrently:*

*(xii) to appoint or reappoint by instrument in writing any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers or a receiver and manager of the Collateral and remove or replace any person or persons so appointed or apply to any court for the appointment of a receiver or receiver and manager (each hereinafter called a "Receiver").*

*(b) Any Receiver so appointed shall be deemed to be the agent of the Grantor and not the Bank, and the Grantor and not the Bank, shall be solely responsible for the Receiver's acts or defaults and for the Receiver's remuneration and expenses. The Bank shall not be in any way responsible for any misconduct,*



*negligence or failure to act on the part of any such Receiver, its servants, agents or employees.*

*(c) The Grantor agrees to pay all costs, charges and expenses incurred by the Bank or any Receiver appointed by the Bank, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting the Obligations, and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Bank or any Receiver appointed by the Bank, as permitted hereby, shall be a first charge on the Collateral and shall be secured hereby.*

- 43. The Respondents are in Default of the terms of the Financing, and the Obligations are due and payable in full.
- 44. The provisions of the Bank's Security provide the Bank with the power to appoint a Receiver over all of the personal property of the Respondents as secured by the GSA's.

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

- 45. The terms of the Security authorize the Bank to appoint a Receiver over all personal property of the Respondents, and of the Real Property, as a result of the Defaults.
- 46. The Obligations due pursuant to the Demands have not been paid. The Respondents are insolvent and are in Default of the Financing. The notice periods under the BIA have expired, and the Bank is unwilling to provide the Respondents with any further credit or forbearance.
- 47. The Bank is in a position to appoint a Receiver over the personal property of the Respondents and of the Real Property, as secured by the Mortgage, pursuant to section 243 of the BIA.

48. 363 Ontario has currently ceased operations as a restaurant.
49. This cessation or partial cessation has and will continue to negatively impact the Respondents' cash flow, and correspondingly, the Respondents' ability to service their debts, both to the Bank as senior secured creditor, as well as other creditors. The appointment of a Receiver is necessary to (i) determine the actual state of the Respondents' business, and (ii) if necessary, to manage the Respondents' business until a sale of the Real Property can be arranged.
50. The Bank is unaware of the condition of the Real Property and whether it is being properly maintained. Absent the appointment of a Receiver, the state of the Real Property may degrade, which will negatively impact the value of the Bank's Security. The appointment of a Receiver is necessary to ensure that the Real Property is maintained until a sale can be arranged.
51. The Respondents have been unable to conclude the Proposed Property Sale despite significant time in which to do so. The Appointment of a Receiver is necessary in order to conclude a sale of the Real Property and the Respondents' business, and to apply the proceeds of such sale to the Obligations.
52. The appointment of a Receiver will also be necessary to address payment or resolution of the Property Tax Arrears. Further, a Receiver is necessary to ensure that such amounts do not continue to increase, and to settle any issues of priority as between the Bank's Security and the Property Tax Arrears.
53. It is the Bank's position that the appointment of the Receiver is just and equitable and is necessary for the protection of the estate of the Respondents, and the interests of the Bank, as secured creditor, and other stakeholders.

54. The Bank proposes that msi Spergel inc. ("**Spergel**") be appointed as Receiver, without security, of the Real Property, as secured by the Mortgage, and over all personal property of the Respondents as secured by the GSA's.
55. Spergel has consented to act as Receiver should this Honourable Court so appoint it.
56. This affidavit is made in support of the within application for the appointment of Spergel as Receiver, without security, over all of the assets, undertakings, and properties of the Respondents, including the Real Property, and for no other improper purpose.

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

by Jill Lamothe of the City of Oakville in the Province of Ontario, before me at the City of London in the Province of Ontario, on April 7, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

  
\_\_\_\_\_  
Signature of Commissioner (or as may be)

  
\_\_\_\_\_  
JILL LAMOTHE

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

THE TORONTO-DOMINION BANK

Applicant

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

ATTACHED HERETO ARE EXHIBITS "A" TO "Y"  
AS REFERRED TO IN THE AFFIDAVIT OF JILL LAMOTHE,  
SWORN BEFORE ME BY VIDEO CONFERENCE ON APRIL 7, 2022.



---

A Commissioner, etc.

# EXHIBIT “A”



Ministry of Government and  
Consumer Services

## Profile Report

2580363 ONTARIO INC. as of December 21, 2021

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2580363 ONTARIO INC.
Ontario Corporation Number (OCN)	2580363
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	June 01, 2017
Registered or Head Office Address	56 Varley Cres, Brantford, Ontario, Canada, N3R 7Z7

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

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 MERCANTE
Address for Service	56 Varley Crescent, Brantford, Ontario, Canada, N4R 7Z7
Resident Canadian	Yes
Date Began	June 01, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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**Active Officer(s)**

<b>Name</b>	John MERCANTE
<b>Position</b>	Secretary
<b>Address for Service</b>	56 Varley Crescent, Brantford, Ontario, Canada, N4R 7Z7
<b>Date Began</b>	June 01, 2017

<b>Name</b>	John MERCANTE
<b>Position</b>	President
<b>Address for Service</b>	56 Varley Crescent, Brantford, Ontario, Canada, N4R 7Z7
<b>Date Began</b>	June 01, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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### Corporate Name History

Name

2580363 ONTARIO INC.

Effective Date

June 01, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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**Active Business Names**

<b>Name</b>	AOUT'N ABOUT
<b>Business Identification Number (BIN)</b>	270616725
<b>Registration Date</b>	June 02, 2017
<b>Expiry Date</b>	June 01, 2022

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

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.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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## Document List

Filing Name	Effective Date
Annual Return - 2019 PAF: JOHN MERCANTE - DIRECTOR	September 20, 2020
Annual Return - 2018 PAF: JOHN MERCANTE - DIRECTOR	September 20, 2020
Annual Return - 2017 PAF: JOHN MERCANTE - DIRECTOR	September 20, 2020
CIA - Initial Return PAF: JASON WYNNE - OTHER	July 07, 2017
BCA - Articles of Incorporation	June 01, 2017

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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# EXHIBIT “B”



Ministry of Government and  
Consumer Services

## Profile Report

2580361 ONTARIO INC. as of December 21, 2021

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2580361 ONTARIO INC.
Ontario Corporation Number (OCN)	2580361
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	June 01, 2017
Registered or Head Office Address	56 Varley Cres, Brantford, Ontario, Canada, N3R 7Z7

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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**Active Director(s)**

Minimum Number of Directors	1
Maximum Number of Directors	10

Name	John MERCANTE
Address for Service	56 Varley Crescent, Brantford, Ontario, Canada, N4R 7Z7
Resident Canadian	Yes
Date Began	June 01, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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**Active Officer(s)**

<b>Name</b>	John MERCANTE
<b>Position</b>	Secretary
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<b>Date Began</b>	June 01, 2017

<b>Name</b>	John MERCANTE
<b>Position</b>	President
<b>Address for Service</b>	56 Varley Crescent, Brantford, Ontario, Canada, N4R 7Z7
<b>Date Began</b>	June 01, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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### Corporate Name History

Name

2580361 ONTARIO INC.

Effective Date

June 01, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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#### Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

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.

#### Expired or Cancelled Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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BCA - Articles of Incorporation	June 01, 2017

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*Barbara Duckitt*

Director/Registrar

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# EXHIBIT “C”

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

PROPERTY DESCRIPTION: PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

OWNERS' NAMES  
2580361 ONTARIO INC.

RECENTLY:  
RE-ENTRY FROM 17170-0246

CAPACITY SHARE  
ROWN

PIN CREATION DATE:  
2009/12/21

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2009/12/18 **					
**SUBJECT,	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70 (2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES: 2009/12/21 **					
CD474814	1988/09/13	AGREEMENT	*** COMPLETELY DELETED ***	*** DELETED AGAINST THIS PROPERTY *** 1419603 ONTARIO LIMITED	CITY OF HAMILTON	C
REMARKS: SKETCH ATTACHED.						
VM61097	1990/09/12	NOTICE				
VM271333	2007/01/03	TRANSFER			1704342 ONTARIO LIMITED	
REMARKS: PLANNING ACT STATEMENTS						
VM272578	2007/04/30	CHARGE	*** DELETED AGAINST THIS PROPERTY *** 1704342 ONTARIO LIMITED	*** DELETED AGAINST THIS PROPERTY *** 1704342 ONTARIO LIMITED	RECIPROCAL OPPORTUNITIES INCORPORATED	
VM272579	2007/04/30	ASSIGNMENT GENERAL			RECIPROCAL OPPORTUNITIES INCORPORATED	
90	REMARKS: RENTS	VM272578				
	2007/06/11	AGREEMENT			CITY OF HAMILTON	C
VM273002						

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.

17170-0018 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WE951402	2014/02/28	LIEN		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
WE963824	2014/05/15	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE		
WE1213548	2017/06/15	DISCH OF CHARGE		*** COMPLETELY DELETED *** RECIPROCAL OPPORTUNITIES INCORPORATED		
WE1241732	2017/10/05	APL (GENERAL)		*** COMPLETELY DELETED *** 1704342 ONTARIO LIMITED		
WE1241737	2017/10/05	TRANSFER	\$1,275,000	1704342 ONTARIO LIMITED	2580361 ONTARIO INC.	C
WE1241738	2017/10/05	CHARGE		*** COMPLETELY DELETED *** 2580361 ONTARIO INC.	FIRST SOURCE FINANCIAL MANAGEMENT INC.	
WE1241739	2017/10/05	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2580361 ONTARIO INC.	FIRST SOURCE FINANCIAL MANAGEMENT INC.	
WE1254883	2017/12/05	CHARGE		*** COMPLETELY DELETED *** 2580361 ONTARIO INC. MERCANTE, JOHN	SINGH, SWARANJEET	
WE1255175	2017/12/06	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** MERCANTE, JOHN 2580361 ONTARIO INC.	SINGH, SWARANJEET	
WE1266588	2018/02/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** SINGH, SWARANJEET		
WE1271851	2018/03/06	CHARGE		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

17170-0018 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WE1271852	2018/03/06	NO ASSGN RENT GEN		2580361 ONTARIO INC.	877534 ONTARIO LTD.	
				*** COMPLETELY DELETED *** 2580361 ONTARIO INC.	877534 ONTARIO LTD.	
WE1329875	2018/12/27	CHARGE		*** COMPLETELY DELETED *** 2580361 ONTARIO INC.	1015129 ONTARIO INC.	
WE1329876	2018/12/27	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2580361 ONTARIO INC.	1015129 ONTARIO INC.	
WE1329877	2018/12/27	CHARGE		*** COMPLETELY DELETED *** 2580361 ONTARIO INC.	2371733 ONTARIO INC.	
WE1329898	2018/12/28	DISCH OF CHARGE		*** COMPLETELY DELETED *** 877534 ONTARIO LTD.		
WE1329940	2018/12/28	DISCH OF CHARGE		*** COMPLETELY DELETED *** FIRST SOURCE FINANCIAL MANAGEMENT INC.		
WE1375722	2019/08/22	CHARGE	\$1,205,000	2580361 ONTARIO INC.	THE TORONTO-DOMINION BANK	C
WE1375723	2019/08/22	NO ASSGN RENT GEN		2580361 ONTARIO INC.	THE TORONTO-DOMINION BANK	C
WE1375785	2019/08/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** 1015129 ONTARIO INC.		
WE1375786	2019/08/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2371733 ONTARIO INC.		
WE1528225	2021/07/12	CHARGE	\$246,000	2580361 ONTARIO INC.	OLYMPIA TRUST COMPANY	C
WE1544032	2021/09/07	CHARGE	\$225,000	2580361 ONTARIO INC.	COMFORT CAPITAL INC.	C
WE1544033	2021/09/07	POSTPONEMENT		OLYMPIA TRUST COMPANY	COMFORT CAPITAL INC.	C

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

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



17170-0018 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WE1557214	2021/10/29	CHARGE	\$135,000	2580361 ONTARIO INC.	MAGIS, ALEX	C

# EXHIBIT “D”

TREASURERS CERTIFICATE OF OUTSTANDING REALTY TAXES  
AND CHARGES COLLECTIBLE AS SUCH

CERTIFIED AS AT **March 28, 2022**

ISSUED TO:       HARRISON PENSA  
450 TALBOT ST  
PO BOX 3237 STN B  
LONDON ON  
N6A 4K3

CERTIFICATE NO.                       **46191**

YOUR FILE NO.                         189982

ROLL NUMBER:               2518 020-143-57710-0000

ASSESSED VALUE:       384,000

ASSESSED OWNER: 2580361 ONTARIO INC

STREET ADDRESS: 21   AUGUSTA ST

LEGAL:                       PLAN 1431 PT LOT 130  
0.04AC   24.50FR 66.00D

STATEMENT OF TAX ARREARS

YEAR	LEVIED	PRINCIPAL OUTSTANDING	INTEREST OUTSTANDING	BALANCE
2021	9,727.99	4,414.77	264.76	4,679.53
2020	9,883.67	0.00	0.00	0.00
2019+	149,431.22	0.00	0.00	0.00
TOTAL ARREARS :				4,679.53

STATEMENT OF CURRENT TAXES

CURRENT LEVY	INSTALMENT DUE DATES AND AMOUNTS				OUTSTANDING AMOUNTS	
INTERIM	4,863.98	2022/02/28	2,432.00	2022/04/29	2,431.98	TAX 4,863.98
FINAL	0.00					ADJUSTMENTS 785.41
SUPP.	0.00					PENALTY 35.76
TOTAL	4,863.98					BALANCE 5,685.15
TOTAL BALANCE AS AT DATE OF CERTIFICATION:						10,364.68
Total Balance includes any instalments that may not yet be due.						

The current penalty charge is 1.25%. Penalty will be charged on the unpaid taxes on the first day of default.  
The current interest charge is 1.25% per month or 15.00% per year. Interest for each month or fraction thereof, will be added on the first day of each calendar month to all taxes past due, until the taxes are paid.  
I hereby certify that, subject to the qualifications noted below, the above statements respectively show:  
1. All arrears or taxes returned to this office and due and owing against the above lands; and  
2. The current amount of taxes on real property and whether any or all of the taxes have been paid as at the date of certification in connection with the above lands, and that no part of the said land has been sold for taxes under part XI of the Municipal Act,2001 and whether the interim and / or final taxes for the City of Hamilton have been levied for the current year.

Mike Zegarac, Treasurer

LOCAL IMPROVEMENTS ASSESSED TO THIS PROPERTY TO DATE INCLUDE:

BYLAW / ADJ.	DESCRIPTION	AMOUNT	EXPIRY

1. This certificate has been prepared in accordance with the provisions of Section 352 of the Municipal Act R.S.O. 2001 c25. This certificate reflects only those charges added to the Tax Collector's Roll up to the day of certification.  
2. The total taxes shown may include additions to the Tax Collector's Roll as authorized by statue. Adjustment of this nature not applied to the Collector's Roll as at date of certification may be added subsequently without further notice.  
3. Municipal Act projects may be petitioned for and/or undertaken in the future. If you have inquiries regarding these changes, please contact developmentofficer@hamilton.ca  
4. The information on this certificate is based on payments tendered being honoured by the bank upon which they are drawn.  
5. This certificate is subject to additional taxes or adjustments to taxes which may be levied pursuant to the provisions of the Municipal Act, the Assessment Act, or any other applicable legislation. Examples include adjustments due to apportionment of the base roll number's taxes and / or additional taxes for new developments or new buildings.  
6. The tax bill and / or a copy of this certificate should be given to the new owners on or before closing so that tax installments may be paid by the due dates to avoid late penalty charges being added. (This certificate should be printed on legal form).

# EXHIBIT “E”

Properties				
PIN	17170 - 0018	LT	Interest/Estate	Fee Simple
Description	PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON			
Address	21 AUGUSTA STREET HAMILTON			

Chargor(s)	
The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.	
Name	2580361 ONTARIO INC.
Address for Service	3 - 35 Stone Church Road, Ancaster, Ontario, L9K 1S4
I, John Mercante, 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	OLYMPIA TRUST COMPANY	
Address for Service	P.O. Box 2581, STN Central, Calgary, Alberta, T2P 1C8	

Provisions			
Principal	\$246,000.00	Currency	CDN
Calculation Period	Monthly		
Balance Due Date	2022/06/23		
Interest Rate	12.5% per annum		
Payments	\$2,562.00		
Interest Adjustment Date	2021 06 23		
Payment Date	23rd of each month		
First Payment Date	2021 07 23		
Last Payment Date	2022 06 23		
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor	John Mercante		

Additional Provisions	
Olympia Trust Company holds this Charge for Plan No. 258354 and 258456	
This Charge is not a first Charge on this Property. The Chargor shall not increase the principal amount owing under any prior charge without the consent of the Chargee. Such consent may be withheld for any reason. A default by the Chargor on any prior charge shall constitute a default of this Charge, and the Chargee may exercise any or all remedies to which it is entitled under this Charge or at law in the event of default.	

The Chargor, when not in default, shall have the privilege of prepaying the monies secured by this charge in part or in full at any time without interest or penalty.

The Chargor agrees that should this Charge not be discharged on the "Balance Due Date", or if the Chargor fails to renew/extend this Charge on or before the "Balance Due Date" or to have paid the applicable renewal/extension fees, or if the Chargees commence an action due under any default of the Charge, that the Chargees, in addition to all the revenues available, at their option shall be entitled to charge an additional amount equal to the payment of three months interest on the principal then outstanding.

The Chargor agrees that it shall be a default of this Charge if the Chargor is at any time found to be operating an illegal activity on the subject property, and that such default shall cause this Charge, at the option of the Chargees, to become immediately due and payable. The operation of an illegal activity shall include, but not be limited to, the use of the subject property as an unlicensed cannabis dispensary or the production of cannabis plants over and above the lawful amount of such plants which may be grown on the subject property as determined from time to time by law, municipal by-law, or any condominium declaration or rules, as the case may be.

Signed By				
Linda Jeanne Todd	231 Wilson Street East, Unit B Ancaster L9G 2B8	acting for Chargor(s)	Signed	2021 07 12
Tel	905-648-1851			

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

Fax 905-648-1715

Statutory Registration Fee	\$65.30
Total Paid	\$65.30

Chargor Client File Number : VRAN199

Properties

PIN	17170 - 0018    LT	Interest/Estate	Fee Simple
Description	PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON		
Address	21 AUGUSTA STREET HAMILTON		

Chargor(s)

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

Name

2580361 ONTARIO INC.

Address for Service

21 Augusta St, Hamilton, Ontario, L8N 1P6

I, John Mercante (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	COMFORT CAPITAL INC.
Address for Service	1670 Bayview Avenue, Suite 400, Toronto, Ontario M4G 3C2

Provisions

Principal	\$225,000.00	Currency	CDN
Calculation Period	Monthly, not in advance		
Balance Due Date	2022/09/01		
Interest Rate	12.50 % per annum		
Payments	\$2,343.75		
Interest Adjustment Date	2021 09 01		
Payment Date	first day of each month		
First Payment Date	2021 10 01		
Last Payment Date	2022 09 01		
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor	John Mercante and Dennis Vranich		

Additional Provisions

See Schedules

Signed By

Deborah Rachel Galinsky	402-300 John St. Thornhill L3T 5W4	acting for Chargor(s)	Signed	2021 08 25
-------------------------	------------------------------------------	--------------------------	--------	------------

Tel        905-886-3110

Fax        905-886-0989

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

Submitted By

RUBINOFF LAW	402-300 John St. Thornhill L3T 5W4	2021 09 07
--------------	------------------------------------------	------------

Tel        905-886-3110

Fax        905-886-0989

Fees/Taxes/Payment

Statutory Registration Fee	\$65.30
Total Paid	\$65.30

**File Number**

Chargor Client File Number :                    2021-674

Chargee Client File Number :                    2021-674



Properties				
PIN	17170 - 0018	LT	Interest/Estate	Fee Simple
Description	PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W VM271333; CITY OF HAMILTON			
Address	21 AUGUSTA STREET HAMILTON			

Chargor(s)	
The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.	
Name	2580361 ONTARIO INC.
Address for Service	21 Augusta Street, Hamilton, Ontario, L8N 1P6
I, John Mercante, have the authority to bind the corporation.	
This document is not authorized under Power of Attorney by this party.	

Chargee(s)	Capacity	Share
Name	MAGIS, ALEX	
Address for Service	280 Southwood Drive, Hamilton, Ontario, L8T 4E8	

Statements
Schedule: See Schedules

Provisions			
Principal	\$135,000.00	Currency	CDN
Calculation Period	see schedule		
Balance Due Date	October 30th, 2020		
Interest Rate	see schedule		
Payments			
Interest Adjustment Date			
Payment Date			
First Payment Date			
Last Payment Date			
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor	John Mercante		

Additional Provisions
see schedule attached

Signed By				
Jerry Vincent Ingrassia		69 John St. South Hamilton L8N 2B9	acting for Chargor(s)	Signed 2021 10 29
Tel	905-522-7442			
Fax	905-522-7191			
I have the authority to sign and register the document on behalf of the Chargor(s).				

Submitted By		
JERRY V. INGRASSIA LAW OFFICE	69 John St. South Hamilton L8N 2B9	2021 10 29
Tel	905-522-7442	

**Submitted By**

Fax        905-522-7191

**Fees/Taxes/Payment**

Statutory Registration Fee	\$65.30
Total Paid	\$65.30

**File Number**

Chargor Client File Number :	20-133JI
Chargee Client File Number :	20-133JI

# EXHIBIT “F”



## Commercial Banking

Hamilton Commercial Banking Centre  
100 King Street West, 4Th Floor  
Hamilton, ON  
L8P 1A2  
Telephone No.: (905) 528 6270  
Fax No.: (905) 529 5451

August 9, 2019

2580363 ONTARIO INC. (A)  
56 Varley Crescent  
Brantford, ON  
N4R 7Z7

Attention: Johnny Mercante

Dear Mr. Mercante,

We are pleased to offer the Borrower the following credit facilities (the "Facilities"), subject to the following terms and conditions.

### BORROWER

2580363 ONTARIO INC. (the "Borrower")

### LENDER

The Toronto-Dominion Bank (the "Bank"), through its Commercial Banking Centre located in Hamilton, ON.

### CREDIT LIMIT

- 1) CAD \$5,000

### TYPE OF CREDIT AND BORROWING OPTIONS

- 1) Operating Loan available at the Borrower's option by way of:
  - Prime Rate Based Loans in CAD\$ ("Prime Based Loans")

### PURPOSE

- 1) To finance working capital

### TENOR

- 1) Uncommitted

**CONTRACTUAL  
TERM**

- 1) No term

**INTEREST RATES  
AND FEES**

Advances shall bear interest and fees as follows:

- 1) **Operating Loan:**
  - Prime Based Loans: Prime Rate + 1.500% per annum

For all Facilities, interest payments will be made in accordance with Schedule "A" attached hereto unless otherwise stated in this Letter or in the Rate and Payment Terms Notice applicable for a particular drawdown. Information on interest rate and fee definitions, interest rate calculations and payment is set out in the Schedule "A" attached hereto.

**ADMINISTRATION  
FEE**

CAD\$10 per month.

**EXCESS MONITORING FEE**

The Borrower may, at the Bank's discretion, be charged an Excess Monitoring Fee of \$250.00, payable in the currency of the Facility, each time that the Credit Limit of a Facility is exceeded. Any extension of credit above the Credit Limit will be at the Bank's sole and absolute discretion.

**LATE REPORTING FEE**

CAD\$ 150 per occurrence.

If any required reporting is not received within the agreed upon timeframe the Late Reporting Fee will be levied. The Late Reporting Fee does not imply waiver of compliance with any reporting requirement.

**DRAWDOWN**

**Assigned Description  
Facilities**

- 1) On a revolving basis, upon satisfaction of Disbursement Conditions.

**OVERDRAFTS**

The Borrower will have access to Prime Based Loans under the Operating Loan via overdraft from Account Number 5234636 at Branch 346 (the "Account") up to the Credit Limit.

**REPAYMENT AND  
REDUCTION OF  
AMOUNT OF CREDIT  
FACILITY**

**Assigned Description  
Facilities**

- 1) On demand. If the Bank demands repayment, the Borrower will pay to the Bank all amounts outstanding under the Operating Loan, including without limitation, the amount of all unmatured B/As and LIBOR Loans and the amount of all drawn and undrawn L/Gs and L/Cs. All costs to the Bank and all loss suffered by the Bank in re-employing the amounts so repaid will be paid by the Borrower.

**SECURITY**

The following security shall be provided, shall, unless otherwise indicated, support all present and future indebtedness and liability of the Borrower and the grantor of the security to the Bank including without limitation indebtedness and liability under guarantees, foreign exchange contracts, cash management products, and derivative contracts, shall be registered in first position, and shall be on the Bank's standard form, supported by resolutions and solicitor's opinion, all acceptable to the Bank.

- a) General Security Agreement ("GSA") representing a First charge on all the Borrower's present and after acquired personal property – To Be Obtained.
- b) Guarantee of Advances – To Be Obtained.
  - Unlimited
  - Executed by 2580361 ONTARIO INC. (the "Guarantor")
- c) General Security Agreement ("GSA") representing a First charge on all the Borrower's present and after acquired personal property 2580361 ONTARIO INC. – To Be Obtained.
- d) Continuing Collateral Mortgage, representing a First charge, on real property located at 21 Augusta Street, Hamilton, Ontario in the principal amount of CAD \$1,205,000, beneficially owned by and registered in the name of 2580361 ONTARIO INC. – To Be Obtained.
- e) Assignment of Fire Insurance of 2580361 ONTARIO INC. – To Be Obtained.
- f) Guarantee of Advances – To Be Obtained
  - Unlimited
  - Executed by JOHNNY MERCANTE (the "Guarantor")
- g) General Assignment of Rents and Leases representing a First charge – To Be Obtained.
- h) Postponement and Assignment of Creditor's Claim executed by 2580361 ONTARIO INC. Postponement of all present and future indebtedness from Shareholders – To Be Obtained.
- i) Assignment of Fire Insurance of 2580363 ONTARIO INC – To Be Obtained.

All persons and entities required to provide a guarantee shall be referred to in this Agreement individually as a "Surety" and/or "Guarantor" and collectively as the "Guarantors";

All of the above security and guarantees shall be referred to collectively in this Agreement as "Bank Security".

## **DISBURSEMENT CONDITIONS**

The obligation of the Bank to permit any drawdown hereunder is subject to the Standard Disbursement Conditions contained in Schedule "A" and the following additional drawdown conditions:

Delivery to the Bank of the following, all of which must be satisfactory to the Bank:

<b>Assigned Facilities</b>	<b>Description</b>
--------------------------------	--------------------

- |      |                                                                                                                                                            |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All) | Acceptance or waiver of Business Credit Life Insurance for the Guarantor.                                                                                  |
| All) | Reliance / Transmittal Letter addressed to the Bank for the Appraisal Report May 31, 2019 on the property located at 21 Augusta Street, Hamilton, Ontario. |
| All) | The Bank to complete a satisfactory Property Inspection and Site Visit for the property located at 21 Augusta Street, Hamilton, ON.                        |
| All) | Receipt and satisfactory review of Personal Net Worth Statement.                                                                                           |
| All) | All security to be on hand and in good order (or funded in escrow).                                                                                        |

## **REPRESENTATIONS AND WARRANTIES**

All representations and warranties shall be deemed to be continually repeated so long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect. The Borrower makes the Standard Representations and Warranties set out in Schedule "A".

## **POSITIVE COVENANTS**

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Positive Covenants set out in Schedule "A".

### **Reporting Covenants:**

<b>Assigned Facilities</b>	<b>Description</b>
--------------------------------	--------------------

- |      |                                                                                                                                                                                                          |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All) | Annual Notice to Reader Financial Statements of 2580361 Ontario Inc. within 120 days of fiscal year end.                                                                                                 |
| All) | Annual Notice to Reader Financial Statements of 2580363 Ontario Inc. within 120 days of fiscal year end.                                                                                                 |
| All) | Provide confirmation to the Bank on an annual basis that taxes are current for the property located at 21 Augusta Street, Hamilton, Ontario. Such confirmation to be in a format acceptable to the Bank. |
| All) | Delivery of a Personal Financial Statement and Privacy Agreement from the Guarantor(s) and such supporting documentation as the Bank may reasonably request.                                             |

## NEGATIVE COVENANTS

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Negative Covenants set out in Schedule "A" and in addition:

Assigned Facilities	Description
------------------------	-------------

All)	The Borrower will not further encumber the property located at 21 Augusta Street, Hamilton, ON without the written consent of the Bank.
------	-----------------------------------------------------------------------------------------------------------------------------------------

## PERMITTED LIENS

Permitted Liens as referred to in Schedule "A" are:

Assigned Facilities	Description
------------------------	-------------

All)	Purchase Money Security Interests in equipment which Purchase Money Security Interests exist on the date of this Agreement ("Existing PMSIs") which are known to the Bank and all future Purchase Money Security Interests on equipment acquired to replace the equipment under Existing PMSIs, provided that the cost of such replacement equipment may not exceed the cost of the equipment subject to the Existing PMSI by more than 10%
------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## FINANCIAL COVENANTS

The Borrower agrees at all times, on a Combined\* basis to maintain a Debt Service Coverage ratio (DSC) of not less than 120% at all times.

The DSC is calculated as follows:

$$\frac{(\text{Earnings before Interest, Taxes, Depreciation and Amortization} - \text{Unfinanced Capital Expenditures}^{**} - \text{Distributions}^{***})}{(\text{Principal} + \text{Interest})}$$

\* Combined is defined as 2580363 Ontario Inc. and 2580361 Ontario Inc.

\*\* Unfinanced Capital expenditures is defined as total capital expenditures less proceeds on disposal of assets, less new funds advanced

\*\*\* Distributions include but are not limited to Dividends or any outflow of shareholders or related party loans.

## EVENTS OF DEFAULT

The Bank may accelerate the payment of principal and interest under any committed credit facility hereunder and cancel any undrawn portion of any committed credit facility hereunder, at any time after the occurrence of any one of the Standard Events of Default contained in Schedule "A" attached hereto.



**ANCILLARY  
FACILITIES**

As at the date of this Agreement, the following uncommitted ancillary products are made available. These products may be subject to other agreements.

- 1) TD Visa Business card (or cards)

**AVAILABILITY OF  
OPERATING LOAN**

The Operating Loan is uncommitted, made available at the Bank's discretion, and is not automatically available upon satisfaction of the terms and conditions, conditions precedent, or financial tests set out herein.

The occurrence of an Event of Default is not a precondition to the Bank's right to accelerate repayment and cancel the availability of the Operating Loan.


**SCHEDULE "A" -  
STANDARD TERMS  
AND CONDITIONS**


Schedule "A" sets out the Standard Terms and Conditions ("Standard Terms and Conditions") which apply to these credit facilities. The Standard Terms and Conditions, including the defined terms set out therein, form part of this Agreement, unless this letter states specifically that one or more of the Standard Terms and Conditions do not apply or are modified.

We trust you will find these facilities helpful in meeting your ongoing financing requirements. We ask that if you wish to accept this offer of financing (which includes the Standard Terms and Conditions), please do so by signing and returning the attached duplicate copy of this letter to the undersigned. This offer will expire if not accepted in writing and received by the Bank on or before August 31, 2019.

Yours truly,

THE TORONTO-DOMINION BANK

  
Melissa Pulcins  
Account Manager

  
Greg Neven  
Manager Commercial Sales

**TO THE TORONTO-DOMINION BANK:**

2580363 ONTARIO INC. hereby accepts the foregoing offer this \_\_\_\_\_ day of \_\_\_\_\_, 2019. The Borrower confirms that, except as may be set out above, the credit facility(ies) detailed herein shall not be used by or on behalf of any third party.

Signature

Print Name & Position

**cc. Guarantor(s)**

The Bank is providing the guarantor(s) with a copy of this letter as a courtesy only. The delivery of a copy of this letter does not create any obligation of the Bank to provide the guarantor(s) with notice of any changes to the credit facilities, including without limitation, changes to the terms and conditions, increases or decreases in the amount of the credit facilities, the establishment of new credit facilities or otherwise. The Bank may, or may not, at its option, provide the guarantor(s) with such information, provided that the Bank will provide such information upon the written request of the guarantor.

**SCHEDULE A**  
**STANDARD TERMS AND CONDITIONS**

**1. INTEREST RATE DEFINITIONS**

Prime Rate means the rate of interest per annum (based on a 365 day year) established and reported by the Bank to the Bank of Canada from time to time as the reference rate of interest for determination of interest rates that the Bank charges to customers of varying degrees of creditworthiness in Canada for Canadian dollar loans made by it in Canada.

The Stamping Fee rate per annum for CAD B/As is based on a 365 day year and the Stamping Fee is calculated on the Face Amount of each B/A presented to the Bank for acceptance. The Stamping Fee rate per annum for USD B/As is based on a 360 day year and the Stamping Fee is calculated on the Face Amount of each B/A presented to the Bank for acceptance.

CDOR means, for any day, the annual rate for B/As denominated in Canadian Dollars for a specified term that appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Toronto time) on such day (or, if such day is not a Business Day, then on the immediately preceding Business Day).

LIBOR means the rate of interest per annum (based on a 360 day year) as determined by the Bank (rounded upwards, if necessary to the nearest whole multiple of 1/16th of 1%) at which the Bank may make available United States dollars which are obtained by the Bank in the Interbank Euro Currency Market, London, England at approximately 11:00 a.m. (Toronto time) on the second Business Day before the first day of, and in an amount similar to, and for the period similar to the interest period of, such advance.

USBR means the rate of interest per annum (based on a 365 day year) established by the Bank from time to time as the reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of creditworthiness for US dollar loans made by it in Canada.

If Prime Rate, CDOR, LIBOR, USBR or any other applicable base rate is less than zero, such base rate shall be deemed to be zero for purposes of this Agreement.

Any interest rate based on a period less than a year expressed as an annual rate for the purposes of the Interest Act (Canada) is equivalent to such determined rate multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the period upon which it was based.

**2. INTEREST CALCULATION AND PAYMENT**

Interest on Prime Based Loans and USBR Loans is calculated daily (including February 29 in a leap year) and payable monthly in arrears based on the number of days the subject loan is outstanding unless otherwise provided in the Rate and Payment Terms Notice. Interest is charged on February 29 in a leap year.

The Stamping Fee is calculated based on the amount and the term of the B/A and is payable upon acceptance by the Bank of the B/A. The net proceeds received by the Borrower on a B/A advance will be equal to the Face Amount of the B/A discounted at the Bank's then prevailing B/A discount rate for CAD B/As or USD B/As as the case may be, for the specified term of the B/A less the B/A Stamping Fee. If the B/A discount rate (or the rate used to determine the B/A discount rate) is less than zero, it shall instead be deemed to be zero for purposes of this Agreement.

Interest on LIBOR Loans and CDOR Loans is calculated and payable on the earlier of contract maturity or quarterly in arrears, for the number of days in the LIBOR or CDOR interest period, as applicable.

L/C and L/G fees are payable at the time set out in the Letter of Credit Indemnity Agreement applicable to the issued L/C or L/G.

2580363 ONTARIO INC.

b.p. 2512



Hamilton Commercial Banking Centre  
100 King Street West, 4<sup>th</sup> Floor  
Hamilton, ON  
L8P 1A2  
Telephone No.: (905) 528 6270  
Fax No.: (905) 529 5451

March 23, 2020

2580363 ONTARIO INC.  
56 Varley Crescent  
Brantford, ON  
N4R 7Z7

Attention: Johnny Mercante

Dear Mr. Mercante,

The following amending agreement (the "Amending Agreement") amends the terms and conditions of the credit facilities (the "Facilities") provided to the Borrower pursuant to the Agreement dated August 9, 2019.

**BORROWER**

2580363 ONTARIO INC. (the "Borrower")

**LENDER**

The Toronto-Dominion Bank(the "Bank"), through its Hamilton branch, in Hamilton, ON.

**CREDIT LIMIT**

- 1) CAD \$5,000, temporarily increasing to CAD \$20,000 for the period of March 23, 2020 until September 23, 2020.

**AVAILABILITY OF  
OPERATING LOAN**

The Operating Loan is uncommitted, made available at the Bank's discretion, and is not automatically available upon satisfaction of the terms and conditions, conditions precedent, or financial tests set out herein.

The occurrence of an Event of Default is not a precondition to the Bank's right to accelerate repayment and cancel the availability of the Operating Loan.

**SCHEDULE "A" -  
STANDARD TERMS  
AND CONDITIONS**

Schedule "A" sets out the Standard Terms and Conditions ("Standard Terms and Conditions") which apply to these credit facilities. The Standard Terms and Conditions, including the defined terms set out therein, form part of this Agreement, unless this letter states specifically that one or more of the Standard Terms and Conditions do not apply or are modified.

Unless otherwise stated, the amendments outlined above are in addition to the Terms and Conditions of the existing Agreement. All other terms and conditions remain unchanged.

We ask that the Borrower sign and return the attached duplicate copy of this Amending Agreement to the Bank on or before March 23, 2020 which is the date the amendments will come into force (the "Effective Date").

Notwithstanding the foregoing, the Borrower's continued use of the Credit Facilities or failure to repay the Credit Facilities in full after the Effective Date constitutes the Borrower's acknowledgement and acceptance of this Amending Agreement

**ACCURACY OF  
INFORMATION**

The Borrower hereby represents and warrants that all information that it has provided to the Bank is accurate and complete respecting, where applicable:

- (i) the names of the Borrower's directors and the names and addresses of the Borrower's beneficial owners;
- (ii) the names and addresses of the Borrower's trustees, known beneficiaries and/or settlors; and
- (iii) the Borrower's ownership, control and structure.

The Borrower will provide, or cause to be provided, such updated information and/or additional supporting information as the Bank may require from time to time with respect to any or all the matters in the Borrower's foregoing representation and warranty.

Yours truly,

**THE TORONTO-DOMINION BANK**



Melissa Pulcins  
Account Manager



Jason Pottie  
Manager Commercial Services

**TO THE TORONTO-DOMINION BANK:**

2580363 ONTARIO INC. hereby accepts the foregoing offer this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_. The Borrower confirms that, except as may be set out above, the credit facility(ies) detailed herein shall not be used by or on behalf of any third party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Position

2512.

0346-2580363 ONTARIO INC



Hamilton Commercial Banking Centre  
100 King Street West, 4<sup>th</sup> Floor  
Hamilton, ON  
L8P 1A2  
Telephone No.: (905) 528 6270  
Fax No.: (905) 529 5451

October 7, 2020

2580363 ONTARIO INC.  
56 Varley Crescent  
Brantford, ON  
N4R 7Z7

Attention: John Mercante

Dear Mr. Mercante,

The following amending agreement (the "Amending Agreement") amends the terms and conditions of the credit facilities (the "Facilities") provided to the Borrower pursuant to the Agreement dated August 9, 2019.

**BORROWER**

2580363 ONTARIO INC. (the "Borrower")

**LENDER**

The Toronto-Dominion Bank(the "Bank"), through its Hamilton branch, in Hamilton, ON.

**CREDIT LIMIT**

- 1) CAD \$5,000, temporarily increasing to CAD \$20,000 for the period of March 23, 2020 until October 31, 2020.

**AVAILABILITY OF  
OPERATING LOAN**

The Operating Loan is uncommitted, made available at the Bank's discretion, and is not automatically available upon satisfaction of the terms and conditions, conditions precedent, or financial tests set out herein.

The occurrence of an Event of Default is not a precondition to the Bank's right to accelerate repayment and cancel the availability of the Operating Loan.

**SCHEDULE "A" -  
STANDARD TERMS  
AND CONDITIONS**

Schedule "A" sets out the Standard Terms and Conditions ("Standard Terms and Conditions") which apply to these credit facilities. The Standard Terms and Conditions, including the defined terms set out therein, form part of this Agreement, unless this letter states specifically that one or more of the Standard Terms and Conditions do not apply or are modified.

Unless otherwise stated, the amendments outlined above are in addition to the Terms and Conditions of the existing Agreement. All other terms and conditions remain unchanged.

We ask that the Borrower sign and return the attached duplicate copy of this Amending Agreement to the Bank on or before March 23, 2020 which is the date the amendments will come into force (the "Effective Date").

Notwithstanding the foregoing, the Borrower's continued use of the Credit Facilities or failure to repay the Credit Facilities in full after the Effective Date constitutes the Borrower's acknowledgement and acceptance of this Amending Agreement

**ACCURACY OF  
INFORMATION**

The Borrower hereby represents and warrants that all information that it has provided to the Bank is accurate and complete respecting, where applicable:

- (i) the names of the Borrower's directors and the names and addresses of the Borrower's beneficial owners;
- (ii) the names and addresses of the Borrower's trustees, known beneficiaries and/or settlors; and
- (iii) the Borrower's ownership, control and structure.

The Borrower will provide, or cause to be provided, such updated information and/or additional supporting information as the Bank may require from time to time with respect to any or all the matters in the Borrower's foregoing representation and warranty.

Yours truly,

**THE TORONTO-DOMINION BANK**

*Andrea DeLuca*

---

Andrea DeLuca  
Account Manager

*Stephanie Somerville*

---

Stephanie Somerville  
Manager Commercial Services



**TO THE TORONTO-DOMINION BANK:**

2580363 ONTARIO INC. hereby accepts the foregoing offer this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_. The Borrower confirms that, except as may be set out above, the credit facility(ies) detailed herein shall not be used by or on behalf of any third party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Position



Hamilton Commercial Banking Centre  
100 King Street West, 4<sup>th</sup> Floor  
Hamilton, ON  
L8P 1A2  
Telephone No.: (905) 528 6270  
Fax No.: (905) 529 5451

June 8, 2021

2580363 ONTARIO INC.  
56 Varley Crescent  
Brantford, ON  
N4R 7Z7

Attention: Johnny Mercante

Dear Mr. Mercante,

The following amending agreement (the "Amending Agreement") amends the terms and conditions of the credit facilities (the "Facilities") provided to the Borrower pursuant to the Agreement dated August 9, 2019 and the subsequent Amending Agreement dated March 23, 2020.

**BORROWER**

2580363 ONTARIO INC. (the "Borrower")

**LENDER**

**The Toronto-Dominion Bank** (the "Bank"), through its Commercial Banking Centre in Hamilton, ON.

**CREDIT LIMIT**

2) CAD\$250,000

**TYPE OF CREDIT  
AND BORROWING  
OPTIONS**

2) **HASCAP Term Loan (Single Draw)** available at the Borrower's option by way of:  
- Fixed Rate Term Loan in CAD\$

**PURPOSE**

2) To finance day-to-day business operating costs.

## **TENOR**

- 2) Committed

## **CONTRACTUAL TERM**

- 2) The Contractual Term Maturity Date shall be 10 years from the date of drawdown

## **RATE TERM (FIXED RATE TERM LOAN)**

- 2) The Rate Term Maturity Date shall be 10 years from the date of drawdown

## **AMORTIZATION**

- 2) 10 years from the date of drawdown

## **INTEREST RATES AND FEES**

Advances shall bear interest and fees as follows:

- 2) **Committed Reducing Term Facility:**  
- Fixed Rate Term Loans: 4.000% per annum.  
No fees described hereunder shall apply to this facility at any time.

For all Facilities, interest payments will be made in accordance with Schedule "A" unless otherwise stated in this Letter or in the Rate and Payment Terms Notice applicable for a particular drawdown. Information on interest rate and fee definitions, interest rate calculations and payment is set out in the Schedule "A".

## **DRAWDOWN**

<b>Assigned Facilities</b>	<b>Description</b>
--------------------------------	--------------------

- |    |                                                                                                                               |
|----|-------------------------------------------------------------------------------------------------------------------------------|
| 2) | One-time drawdown to occur upon acceptance of this Agreement by the Borrower and satisfaction of the disbursement conditions. |
|----|-------------------------------------------------------------------------------------------------------------------------------|

Drawdown must occur within 30 days of acceptance of this Agreement by the Borrower. If drawdown is not completed within 30 days, the amount not drawn is cancelled.

Amounts repaid may not be redrawn.

## **REPAYMENT AND**

**REDUCTION OF  
AMOUNT OF CREDIT  
FACILITY**

<b>Assigned Facilities</b>	<b>Description</b>
--------------------------------	--------------------

- |    |                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2) | All amounts outstanding will be repaid on or before the Contractual Term Maturity Date.<br>For the first 12-months from the date of drawdown (the "Moratorium"), the Borrower is required to pay interest only payments on a monthly basis.<br>Following the Moratorium, the drawdown will be repaid in equal monthly blended payments of approximately \$2,760.00.<br>Any amounts repaid may not be reborrowed. |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**PREPAYMENT**

<b>Assigned Facilities</b>	<b>Description</b>
--------------------------------	--------------------

- |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2) | The Borrower may, provided that an Event of Default has not occurred, prepay all or any part of the principal then outstanding under a Fixed Rate Term Loan upon payment of all interest accrued to the date of prepayment and an amount equal to the Interest Rate Differential, being the amount by which:<br>a. the total amount of interest on the amount of the prepayment using the interest rate applicable to this facility the Fixed Rate Term Loan being prepaid calculated for the period of time from the prepayment date until the Rate Term Maturity Date for the Fixed Rate Term Loan being prepaid (the "Remaining Term"), exceeds<br>b. the total amount of interest on the amount of the prepayment using the interest rate applicable to a fixed rate term loan that the Bank would make to a borrower for a comparable facility on the prepayment date, calculated for the Remaining Term. |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

To be certain, Section 4 of Schedule "A" hereunder does not apply to this facility.

**SECURITY**

The following security shall be provided, shall, unless otherwise indicated, support all present and future indebtedness and liability of the Borrower and the grantor of the security to the Bank including without limitation indebtedness and liability under guarantees, foreign exchange contracts, cash management products, and derivative contracts, shall be registered in first position, and shall be on the Bank's standard form, supported by resolutions and solicitor's opinion, all acceptable to the Bank.

- j) HASCAP Guarantee granted by the Business Development Bank of Canada to the Bank.

All persons and entities required to provide a guarantee shall be referred to in this Agreement individually as a "Surety" and/or "Guarantor" and collectively as the "Guarantors";

All of the above security and guarantees shall be referred to collectively in this Agreement as "Bank Security".

**DISBURSEMENT  
CONDITIONS**

The obligation of the Bank to permit any drawdown hereunder is subject to the Standard Disbursement Conditions contained in Schedule "A" and the following additional drawdown conditions:

Delivery to the Bank of the following, all of which must be satisfactory to the Bank:

<b>Assigned Facilities</b>	<b>Description</b>
2)	Signed Letter Agreement and security and guarantees, each as required, to be on hand and in order. BDC HASCAP Guarantee Online ID Form Confirmation. HASCAP Eligible Borrower's Representations and Warranties. Signed Waivers from the Guarantor(s), as required. Calculation of the Borrower Group's maximum HASCAP loan exposure with TD.

#### **REPRESENTATIONS AND WARRANTIES**

All representations and warranties shall be deemed to be continually repeated so long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect. The Borrower makes the Standard Representations and Warranties set out in Schedule "A", and in addition, represents and warrants that:

<b>Assigned Facilities</b>	<b>Description</b>
2)	In addition to the representations, warranties and covenants set out in the Agreement, the Borrower agrees to all the representations, warranties and covenants set out in the HASCAP Borrower's Representations and Warranties form.

#### **POSITIVE COVENANTS**

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Positive Covenants set out in Schedule "A" and in addition will:

<b>Assigned Facilities</b>	<b>Description</b>
2)	The Borrower will provide, and consent to the Bank providing to, Business Development of Canada ("BDC") and the Government of Canada or its agents, all information and documents relating to the Borrower or its guarantors, confidential or otherwise, including, without limitation, credit information, financial statements (audited and unaudited), payment history, business plans, business history, business organization and copies of and other information relating to any of the credit facilities or other services or products provided by the Bank to the Borrower. The Borrower acknowledges and agrees that BDC and the Government of Canada or its agents may contact the Borrower to request, and the Borrower will provide, additional information and reporting as BDC and the Government of Canada or its agents deem reasonably necessary with respect to the HASCAP Term Loan

#### **NEGATIVE COVENANTS**

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Negative Covenants set out in Schedule "A". In addition the Borrower will

not and will ensure that its subsidiaries and each of the Guarantors will not:

<b>Assigned Facilities</b>	<b>Description</b>
----------------------------	--------------------

- |    |                                                                                                                                                                                                                                                                                                                                                                                     |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2) | No distributions are permitted within the first 12 months of the HASCAP loan unless (a) the distribution is made between the Borrower and guarantors or between guarantors; or (b) the distribution is made in-lieu of salary to shareholders involved directly in the Borrower's operations up to the lesser of (i) historical in-lieu of salary distributions; or (ii) \$200,000. |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**EVENTS OF  
DEFAULT**

The Bank may accelerate the payment of principal and interest under any committed credit facility hereunder and cancel any undrawn portion of any committed credit facility hereunder, at any time after the occurrence of any one of the Standard Events of Default contained in Schedule "A" attached hereto and after any one of the following additional Events of Default:

<b>Assigned Facilities</b>	<b>Description</b>
----------------------------	--------------------

- |    |                                                                                                                                                                                                                                                                                      |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2) | The Borrower fails to comply with any of the provisions of the HASCAP Eligible Borrower's Representations and Warranties provided by the Borrower to the Bank and the Business Development Bank of Canada ("BDC") (the "HASCAP Eligible Borrower's Representations and Warranties"). |
| 2) | The Borrower makes a false or misleading representation or warranty to the Bank or BDC, including any representation or warranty made by the Borrower in the HASCAP Eligible Borrower's Representations and Warranties.                                                              |

**SCHEDULE "A" -  
STANDARD TERMS  
AND CONDITIONS**

Schedule "A" sets out the Standard Terms and Conditions ("Standard Terms and Conditions") which apply to these credit facilities. The Standard Terms and Conditions, including the defined terms set out therein, form part of this Agreement, unless this letter states specifically that one or more of the Standard Terms and Conditions do not apply or are modified.

**AMENDMENTS TO  
SCHEDULE "A"  
TERMS AND  
CONDITIONS**

Unless otherwise stated, the amendments outlined above are in addition to the Terms and Conditions of the existing Agreement. All other terms and conditions remain unchanged.

We ask that the Borrower acknowledges agreement to these amendments by signing and returning the attached duplicate copy of this Amending Agreement to the undersigned on or before **July 31, 2021**

**ACCURACY OF  
INFORMATION**

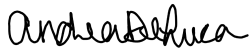
The Borrower hereby represents and warrants that all information that it has provided to the Bank is accurate and complete respecting, where applicable:

- (i) the names of the Borrower's directors and the names and addresses of the Borrower's beneficial owners;
- (ii) the names and addresses of the Borrower's trustees, known beneficiaries and/or settlors; and
- (iii) the Borrower's ownership, control and structure.

The Borrower will provide, or cause to be provided, such updated information and/or additional supporting information as the Bank may require from time to time with respect to any or all the matters in the Borrower's foregoing representation and warranty.

Yours truly,

**THE TORONTO-DOMINION BANK**



---

Andrea DeLuca  
Account Manager



---

Stephanie Somerville  
Manager of Commercial Services

**Borrower Acknowledgement Section.**

**TO THE TORONTO-DOMINION BANK:**

2580363 ONTARIO INC., and 2580361 ONTARIO INC. hereby accepts the foregoing offer this 11 day of June, 2021. The Borrower confirms that, except as may be set out above, the credit facility(ies) detailed herein shall not be used by or on behalf of any third party.

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

John Mercante Owner  
Print Name & Position

John Mercante  
Print Name & Position



# EXHIBIT “G”



TO: The Toronto-Dominion Bank (the "Bank")

Branch of the Bank: #2512, 100 King Street West, Hamilton, Ontario, L8P 4W9

Granted By: 2580363 Ontario Inc.

(the "Grantor")

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor agrees with the Bank as follows:

## 1. Security Interest

The Grantor hereby grants to the Bank a security interest in, and assigns (other than with respect to trade-marks), mortgages, charges and pledges (collectively, the "Security Interest") to the Bank, all property of the Grantor, including all present and after acquired personal property and all other property, assets and undertaking of the kind hereinafter described below, in which the Grantor now has, or hereafter acquires, any right, title or interest, and accretions and accessions thereto (collectively called the "Collateral"):

- (a) **Intangibles.** All intangible property not otherwise described in this Section 1, including all contractual rights and insurance claims, options, permits, licences, quotas, subsidies, franchises, orders, judgments, patents, trademarks, trade names, trade secrets and know-how, inventions, goodwill, copyrights and other intellectual property of the Grantor, including any right or licence to use intellectual property belonging to a third party together with any specified collateral described in Schedule "A" hereto (collectively called "Intangibles");
- (b) **Chattel Paper and Documents of Title.** All chattel paper and all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (c) **Deposits and Credit Balances.** All monies and credit balances, including interest due thereon, which are now or may hereafter from time to time be on deposit with or standing to the credit of the Grantor with the Bank or any other bank, financial institution or other Person;
- (d) **Books and Records.** All deeds, documents, writings, papers, books of account and other books and records in any form, electronic or otherwise, relating to or evidencing any of the Collateral;
- (e) **Accounts and Book Debts.** All debts, accounts, claims and choses in action for moneys now due or owing or accruing due or which may hereafter become due or owing to the Grantor, including claims against the Crown in right of Canada or of any province, moneys which may become payable under any policy of insurance (collectively called "Accounts and Book Debts"), together with all contracts, securities, bills, notes, lien notes, judgments, mortgages, letters of credit and advices of credit, and all other rights, benefits and documents which are now or which may be taken, vested in or held by the Grantor in respect of or as security for the Accounts and Book Debts or any part thereof, and the full benefit and advantage thereof and all rights of actions, claims or demands which the Grantor now has or may hereafter have in respect of the foregoing;
- (f) **Equipment.** All tools, machinery, apparatus, equipment, vehicles, furniture, plants, fixtures, and other tangible personal property, other than Inventory, wherever situate, including the assets, if any, described in Schedule "A" hereto (collectively called "Equipment");
- (g) **Inventory.** All goods forming the inventory of the Grantor, of whatever kind and wherever located, whether raw material, work in process or finished goods held for sale, lease or resale, or furnished or to be furnished under contracts for service or used or consumed in the business of the Grantor, goods used in or procured for packing or packaging, timber cut or to be cut, oil, gas and minerals extracted or to be extracted, all livestock and the young thereof after conception and all crops which become such within one year after the date of execution of this Agreement (collectively called "Inventory");
- (h) **Instruments.** All bills, notes, cheques, letters of credit and other instruments, whether negotiable or not (collectively called "Instruments");
- (i) **Securities.** All shares, stocks, warrants, options, bonds, debentures, debenture stock and all other securities and investment property of any kind and all instruments, whether negotiable or non-negotiable, and interest thereon and dividends, whether in shares, money or property, received or receivable upon or in respect of any securities and other investment property and all money or other property paid or payable on account of any return on, or repayment of, capital in respect of any securities or otherwise distributed or distributable in respect thereof or that will in any way be charged to, or be payable out of or in respect of, the capital of the issuer of the securities (collectively called "Securities");
- (j) **Real Property.** All real and immovable property, both freehold and leasehold, together with all buildings and fixtures (collectively called "Real Property"), and all rights under any lease or agreement relating to Real Property;

- (k) **Proceeds.** All proceeds of the property described above, including any property in any form derived directly or indirectly from any use or dealing with the property described above or the proceeds therefrom or that indemnifies or compensates for damage or loss to such property or the proceeds therefrom, including the money held in banks, financial institutions or any other Person (collectively called "Proceeds");

provided that (i) the Security Interest does not and will not extend to, and the Collateral will not include, any agreement, lease, right, franchise, licence or permit (the "contractual rights") to which the Grantor is a party or of which the Grantor has the benefit, to the extent that the Security Interest would permit any person to terminate the contractual rights unless the consent of one or more Persons has been obtained and until such consent has been obtained, which the Grantor agrees it will use commercially reasonable efforts to obtain if requested by the Bank, the Grantor agrees to hold its interest therein in trust for the Bank, and notwithstanding the foregoing, contractual rights shall not include any account or chattel paper; and (ii) with respect to Real Property, (A) the Security Interest granted hereby is constituted by way of a floating charge, but will become a fixed charge upon the earlier of the Obligations becoming immediately payable, and the occurrence of any other event that by operation of law would result in such floating charge becoming a fixed charge; and (B) the assignment, mortgage and charge granted hereby will not extend to the last day of the term of any lease or agreement relating to Real Property, but the Grantor will hold such last day in trust for the Bank and, upon the enforcement by the Bank of its Security Interest, will assign such last day as directed by the Bank.

## **2. Obligations Secured**

The Security Interest secures the payment and performance of all present and future obligations of the Grantor to the Bank, including all debts and liabilities, direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred, whether incurred before, at the time of, or after the execution of this Agreement, whether the indebtedness and liability is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether arising from dealings between the Bank and the Grantor or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Grantor, and in any currency, whether incurred by the Grantor alone or with another or others and whether as a principal or surety, including all interest thereon and all amounts owed by the Grantor under this Agreement for fees, costs and expenses and in respect of indemnities granted under this Agreement (collectively called the "Obligations").

## **3. Definitions**

- (a) Any word or term that is not otherwise defined in this Agreement shall have the meaning given to it in the *Personal Property Security Act* of the province in which the Branch of the Bank is located, as amended from time to time, and being referred to in this Agreement as the "PPSA". Any reference herein to "Collateral" shall, unless the context requires otherwise, be deemed to be a reference to "Collateral or any part thereof".

- (b) The following terms shall have the respective meanings set out below:

*"Branch of the Bank"* means the branch of the Bank located at the address specified above.

*"Business Day"* means any day other than a Saturday, Sunday or statutory holiday in the province in which the Branch of the Bank is located.

*"Control Agreement"* means:

- (a) with respect to any uncertificated security, an agreement between the issuer of such uncertificated security and any Person whereby such issuer agrees to comply with instructions that are originated by such Person in respect of such uncertificated security, without the further consent of the Grantor; and
- (b) with respect to any securities account or security entitlement, an agreement between the securities intermediary which maintains the particular securities account to which security entitlements included in the Collateral relate and any Person whereby such securities intermediary agrees to comply with any entitlement orders with respect to such securities accounts or security entitlements that are originated by such Person, without the further consent of the Grantor.

*"Person"* means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, co-operative, estate, government, government agency, regulatory authority, trust, or any entity of any nature.

## **4. Representations & Warranties**

The Grantor hereby represents and warrants with the Bank and so long as this Agreement remains in effect shall be deemed to continuously represent and warrant that:

- (a) **Location of Head Office.** The address of the Grantor's chief executive office and the office where it keeps its records respecting the Accounts and Book Debts (the "Head Office") is set out below the name of the Grantor on the signature page of this Agreement;

- (b) **Location of Collateral.** The Collateral which is goods is or will be located at the address set out on the signature page of this Agreement or at the locations specified in Schedule "A" hereto or such other locations as have been agreed to by the Bank in writing, except for (i) goods in transit to such locations and (ii) Inventory on lease or consignment, but including all fixtures, crops, oil, gas or other minerals to be extracted and all timber to be cut which forms part of the Collateral;
- (c) **Collateral Free and Clear.** The Collateral (other than Real Property) is the sole property of the Grantor free and clear of all security interests, liens, charges, mortgages, hypothecs, leases, licenses, infringements by third parties, encumbrances, statutory liens or trusts, other adverse claims or interests, or any rights of others, except for those security interests which are expressly approved by the Bank in writing prior to their creation or assumption;
- (d) **Amount of Accounts.** Each Account and Book 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 Grantor to the Bank from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount unconditionally owing by such Account Debtor or Account Debtors, and no Account Debtor will have any defence, set-off, claim or counterclaim against the Grantor which can be asserted against the Bank, whether in any proceeding to enforce Collateral or otherwise;
- (e) **Status and Binding Obligation.** The Grantor (i) if a corporation or company, has been duly incorporated, amalgamated or continued, as the case may be, and is validly existing as a corporation or company, as the case may be, under the laws of its jurisdiction of incorporation, amalgamation or continuance, as the case may be, (ii) if not a corporation or company, has been duly created or established as a partnership, limited partnership or other entity and validly exists under the laws of the jurisdiction in which it has been created or established, and (iii) is duly qualified to carry on business and own property in each jurisdiction where it carries on business or where any of its property is located. The Grantor has adequate power, capacity and authority to carry on its business, own property, borrow monies and enter into agreements therefor, execute and deliver this Agreement, and perform its obligations under this Agreement, which Agreement constitutes a legally valid and binding obligation of the Grantor enforceable in accordance with its terms. The making of this Agreement will not result in the breach of, constitute a default under, contravene any provision of, or result in the creation of, any lien, charge, security interest, encumbrance or any other rights of others upon any property of the Grantor pursuant to any agreement, indenture or other instrument to which the Grantor is a party or by which the Grantor or any of its property may be bound or affected; and
- (f) **Intellectual Property.** All intellectual property applications and registrations are valid, subsisting, unexpired, enforceable, in good standing and have not been abandoned and the Grantor is the owner of the applications and registrations.

## 5. Covenants

The Grantor covenants and agrees with the Bank that:

- (a) **Place of Business and Location of Collateral.** The Grantor shall not change its name or the location of its Head Office, amalgamate with any other Person, or move any of the Collateral from the address set out on the signature page of this Agreement or the locations specified in Schedule "A" hereto other than in accordance with clause 5(g), without the prior written consent of the Bank;
- (b) **Notification.** The Grantor shall notify the Bank promptly of: (i) any change in the information contained herein or in Schedule "A" hereto relating to the Grantor, the Grantor's business or Collateral; (ii) the details of any significant acquisition of Collateral; (iii) the details of any claims or litigation affecting the Grantor or the Collateral and will furnish the Bank with copies of the details of such claims or litigation; (iv) any loss or damage to Collateral or any material adverse change in the value of Collateral; and (v) any default by any Account Debtor in payment or other performance of its obligations with respect to Collateral;
- (c) **Performance of Obligations.** The Grantor shall observe and perform all its obligations under all material leases, licenses, undertakings and agreements to which it is a party, obtain and preserve its rights, powers, licences, privileges, franchises and goodwill thereunder, and comply with all applicable laws, by-laws, rules, regulations and ordinances in a proper and efficient manner so as to preserve and protect the Collateral and the business and undertaking of the Grantor in all material respects. The Grantor shall also pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the Collateral and other charges or any part thereof as and when the same become due and payable, and shall provide to the Bank, when requested, the receipts and vouchers evidencing payment;
- (d) **Limitations on Discounts, Extensions of Accounts and Compromises.** The Grantor shall not grant any extension of time for payment of any Accounts or Book Debts, or compromise, compound or settle any Accounts or Book Debts for less than the full amount, or release, wholly or partially, any Person liable for the payment of any Accounts or Book Debts, or allow any credit or discount of any Account or Book Debt, other than in the ordinary course of business of the Grantor and consistent with industry practices;

- (e) **Payment of Fees and Expenses.** The Grantor will pay the Bank on demand all costs, fees and expenses (including legal fees on a solicitor and his own client basis) incurred by the Bank in the preparation, execution, registration and perfection of this Agreement and the carrying out of any of the provisions of this Agreement, including, protecting and preserving the Security Interest and enforcing by legal process or otherwise the remedies provided herein. All such costs and expenses payable by the Grantor to the Bank shall bear interest from time to time at the highest interest rate then applicable to any of the Obligations, calculated and compounded monthly, and shall be added to and form part of the Obligations secured hereunder;
- (f) **Maintenance and Protection of Collateral/No Fixtures.** The Grantor shall care for, protect and preserve the Collateral and not permit its value to be impaired and will not permit the Collateral to be affixed to real or personal property so as to become a fixture or accession without the prior written consent of the Bank. The Grantor shall keep the Collateral in good order, condition and repair and shall not use the Collateral in violation of the provisions of this Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance. The Grantor will keep all licences, permits, agreements, registrations and applications relating to intellectual property used by Grantor in its business in good standing, unless otherwise agreed to in writing by the Bank. The Grantor shall apply to register all existing and future copyrights, trade-marks, patents, integrated circuit topographies and industrial designs whenever it is commercially reasonable to do so. The Grantor shall defend title to the Collateral against all claims and demands of all other Persons claiming the same or an interest therein and shall diligently initiate and prosecute legal action against every Person who infringes upon the Grantor's rights in intellectual property;
- (g) **Dealing with Collateral.** (i) The Grantor will not sell, lease, transfer, assign, deliver or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Bank, except that the Grantor may, until an event of default as hereinafter provided occurs, deal with any Inventory or Real Property (other than fixtures financed by the Bank and any replacements or substitutions therefor) in the ordinary course of business so that the purchaser thereof takes title thereto free and clear of the Security Interest; (ii) All Proceeds shall continue to be subject to the Security Interest, granted hereby and all money received by the Grantor as Proceeds, other than from the sale of Inventory, shall be received as trustee for the Bank and shall be held separate and apart from other money of the Grantor, and shall be paid over to the Bank upon request; (iii) All money collected or received by the Bank in respect of the Collateral may be applied on account of such parts of the Obligations as the Bank in its sole discretion determines, or may be held unappropriated in a collateral account, or in the discretion of the Bank may be released to the Grantor, all without prejudice to the Bank's rights against the Grantor; (iv) Before an event of default occurs hereunder, the Bank may give notice of this Agreement and the Security Interest to any Account Debtor who is obligated to the Grantor under any of the Accounts and Book Debts and, after the occurrence of an event of default hereunder, may give notice to any such Account Debtor to make all further payments to the Bank, and any payment or other Proceeds received by the Grantor from an Account Debtor after an event of default whether before or after any notice is given by the Bank, shall be held by the Grantor in trust for the Bank and paid over to the Bank on request. The Bank 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 Bank may consider appropriate and the Grantor agrees to furnish all assistance and information and to perform all such acts as the Bank may reasonably request in connection therewith and for such purpose to grant to the Bank or its agents access to all places where Collateral may be located and to all premises occupied by the Grantor;
- (h) **Maintenance of Records.** The Grantor will keep proper books of account in accordance with sound accounting practice and mark any and all such records and the Collateral at the Bank's request so as to indicate the Security Interest. The Grantor shall furnish to the Bank such financial information and statements and such information and statements relating to the Collateral as the Bank may from time to time require and shall permit the Bank or its agents at any time at the expense of the Grantor to examine the books of account and other financial records and reports relating to the Collateral and to make copies thereof and take extracts therefrom and to make inquiries of third parties for the purpose of verification of such information. The Grantor authorizes any Person holding any Books and Records to make them available, in a readable form, upon the request of the Bank. The Grantor will deliver to the Bank any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to Collateral;
- (i) **Negative Pledge.** The Grantor will not create, incur, assume or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, hypothec, encumbrance or statutory lien or trust (including any conditional sale, or other title retention agreement or finance lease) of any nature, on any of the Collateral (other than Real Property, but not including any fixtures financed by the Bank and any replacements or substitutions therefor) without the express prior written consent of the Bank;
- (j) **Insurance.** The Grantor will keep the Collateral insured under policies with such coverage, for such amounts and with such insurers as are satisfactory to the Bank from time to time, with loss thereunder, payable to the Bank and shall furnish the Bank with a copy of any policy of insurance, certificate of insurance or other evidence satisfactory to the Bank that such insurance coverage is in effect;
- (k) **Further Assurances.** The Grantor will from time to time forthwith, at the expense of the Grantor, duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Bank may request for the purpose of obtaining or preserving the benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Collateral) and for the purpose of correcting any deficiencies or clerical errors in this Agreement; and

- (l) **Landlord Agreement.** The Grantor will, at the request of the Bank, obtain a written agreement from each landlord of premises where any of the Collateral is located, in favour of the Bank and in form and substance satisfactory to the Bank, whereby such landlord agrees to give notice to the Bank of any default by the Grantor under the lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord and acknowledges the Security Interest created by this Agreement and the right of the Bank to enforce the Security Interest created by this Agreement in priority to any claim of such landlord, including the right of the landlord to distrain on the Collateral for arrears of rent.

## **6. Survival of Representations and Warranties and Covenants**

All agreements, representations, warranties and covenants made by the Grantor in this Agreement are material, will be considered to have been relied on by the Bank and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Bank and any disposition or payment of the Obligations until the indefeasible repayment and performance in full of the Obligations.

## **7. Performance of Covenants by The Bank**

- (a) The Bank may, in its sole discretion and upon notice to the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform including any covenant the performance of which requires the payment of money, provided that the Bank will not be obligated to perform such covenant on behalf of the Grantor. The performance by the Bank of any such covenant shall not oblige the Bank to continue to perform any such covenant or other covenants nor relieve the Grantor from any default or derogate from the rights and remedies of the Bank under this Agreement. The Grantor agrees to indemnify and to reimburse the Bank for all costs and expenses incurred by the Bank in connection with the performance by it of any such covenant, and all such costs and expenses shall be payable by the Grantor to the Bank on demand, shall bear interest at the highest rate per annum applicable to any of the Obligations, calculated and compounded monthly, and shall be added to and form part of the Obligations.
- (b) In holding any Collateral, the Bank and any agent or nominee on its behalf is only bound to exercise the same degree of care as it would exercise with respect to similar property of its own or of similar value held in the same or similar location. The Bank and any agent or nominee on its behalf will be deemed to have exercised reasonable care with respect to the custody and preservation of the Collateral if it takes such action for that purpose as the Grantor reasonably requests in writing, but failure of the Bank or its nominees to comply with any such request will not of itself be deemed a failure to exercise reasonable care.

## **8. Securities, Investment Property**

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

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

The Grantor has not consented to and covenants that it will not consent to, the entering into of a Control Agreement by: (a) any issuer of any uncertificated securities included in or relating to the Collateral; or (b) any securities intermediary for any securities accounts or security entitlements included in or relating to the Collateral, other than, in either case, a Control Agreement to which the Bank is a party.

Promptly upon request from time to time by the Bank, the Grantor shall:

- (a) enter into and use reasonable commercial efforts to cause any securities intermediary for any securities accounts or securities entitlements included in or relating to the Collateral to enter into a Control Agreement with the Bank with respect to such securities accounts or securities entitlements as the Bank requires in form and substance satisfactory to the Bank; and
- (b) enter into and use reasonable commercial efforts to cause any issuer of any uncertificated securities included in or relating to the Collateral to enter into a Control Agreement with the Bank with respect to such uncertificated securities in form and substance satisfactory to the Bank.

## **9. Dealing with Security Interest**

The Bank may grant extensions of time and other indulgences, give up any of the Security Interest, abstain from perfecting any of the Security Interest, accept compositions, grant releases and discharges and waive rights against and otherwise deal with the Grantor, Account Debtors of the Grantor, sureties and others and with any of the Collateral and any other security as the Bank may see fit without prejudice to the liability of the Grantor or the Bank's right to hold and realize any of the Security Interest. The Bank shall not be accountable to the Grantor for the value of any of the Security Interest released except for any moneys actually received by the Bank.

## 10. Deposits and Credit Balances

Without limiting any other rights or remedies of the Bank, the Bank may, without notice to the Grantor or any other Person, any notice being expressly waived by the Grantor, set-off and apply all or any of the amounts standing to or for the credit of the Grantor at the Bank or any of the Bank's affiliates, in any currency, against and on account of all or any part of the Obligations, all as the Bank may see fit, whether or not the Obligations or the amounts standing to or for the credit of the Grantor are due and payable. The Bank is authorized and shall be entitled to make such debits, credits, correcting entries, and other entries to the Grantor's accounts and the Bank's records relating to the Grantor as the Bank regards as desirable in order to give effect to the Bank's rights hereunder and the Grantor agrees to be bound by such entries absent manifest error. When applying a deposit or other obligation in a different currency than the Obligations to the Obligations, the Bank will convert the deposit or other obligation to the currency of the Obligations using the rate of exchange for the conversion of such currency as determined by the Bank or its agents and the Bank or its agent may earn revenue on such conversion.

## 11. Events of Default

Obligations not payable on demand shall, at the option of the Bank, become immediately due and payable upon the occurrence of one or more of the following events (each, an "event of default"):

- (a) the Grantor fails to pay when due, whether by acceleration or otherwise, any of the Obligations;
- (b) the Grantor fails to perform any provision of this Agreement or of any other agreement to which the Grantor and the Bank are parties;
- (c) if any certificate, statement, representation, warranty, audit report or financial statement heretofore or hereafter furnished by or on behalf of the Grantor pursuant to or in connection with this Agreement, or as an inducement to the Bank to extend any credit to or to enter into this or any other agreement with the Grantor, is shown to have been false in any material respect or to have omitted any material fact; or if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty, audit report or financial statement, which change shall not have been disclosed to the Bank at or prior to the time of such execution;
- (d) the Grantor ceases or threatens to cease to carry on business, commits an act of bankruptcy, becomes insolvent, proceedings or other actions are taken by or against the Grantor under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or similar legislation whether in Canada or elsewhere, or the Grantor transfers all or substantially all of its assets to another Person;
- (e) a receiver, trustee, custodian or other similar official is appointed in respect of the Grantor or any of the Grantor's property;
- (f) the institution by or against the Grantor of any formal or informal proceeding for the dissolution or liquidation or settlement of claims against or winding up of affairs of the Grantor;
- (g) an encumbrancer takes possession of any of the Collateral or any process of execution or distress is levied or enforced upon or against any of the Collateral;
- (h) any indebtedness or liability of the Grantor, other than to the Bank, becomes due and payable, or capable of being declared due and payable, before the stated maturity thereof or any such indebtedness or liability shall not be paid at the maturity thereof or upon the expiration of any stated applicable grace period thereof, or the Grantor fails to make payment when due under any guarantee given by the Grantor;
- (i) if the Grantor is an individual, the Grantor dies or is found by a court to be incapable of managing his or her affairs;
- (j) an execution or any other process of any court shall become enforceable against the Grantor;
- (k) if the Grantor is a partnership, the death of a partner; or
- (l) any other event which causes the Bank, in good faith, to deem itself insecure;

and the Bank shall not be required to make any further advances or other extension of credit that constitutes an Obligation.

## 12. Remedies

- (a) Upon the occurrence of an event of default that has not been cured or waived, the Bank, in addition to any right or remedy otherwise provided herein or by law or in equity, will have the rights and remedies set out below, which may be enforced successively or concurrently:
  - (i) to take such steps as the Bank considers desirable to maintain, preserve or protect the Collateral or its value;

- (ii) to take possession of the Collateral and require the Grantor to assemble the Collateral and deliver or make the Collateral available to the Bank at such place as may be specified by the Bank, and the Bank will not be or be deemed to be a mortgagee in possession by virtue of any such actions;
  - (iii) to exercise and enforce all rights and remedies of the Grantor with respect to the Collateral, including collecting and realizing upon all Accounts and Book Debts;
  - (iv) to carry on or concur in carrying on all or any part of the business of the Grantor;
  - (v) for the maintenance, preservation or protection of the Collateral or for carrying on any of the business of the Grantor, to borrow money on the security of the Collateral, which security will rank in priority to the Security Interest, or on an unsecured basis;
  - (vi) to the exclusion of all others, including the Grantor, to enter upon, occupy and use all or any of the premises, buildings and plants owned or occupied by the Grantor and use all or any of the Collateral of the Grantor for such time as the Bank requires to facilitate the preservation and realization of the Collateral, free of charge, and the Bank will not be liable to the Grantor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;
  - (vii) to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of the Collateral upon such terms and conditions as the Bank may determine;
  - (viii) to dispose of any of the Collateral in the condition in which it was at the date possession of it was taken, or after any commercially reasonable repair, processing or preparation thereof for disposition;
  - (ix) if any part of the Collateral is perishable or will decline speedily in value, to sell or otherwise dispose of same without giving any notice of such disposition;
  - (x) to make any arrangement or compromise which the Bank shall think expedient in the interests of the Bank, including compromising any Accounts and Book Debts, and giving time for payment thereof with or without security;
  - (xi) to appoint a consultant or monitor, at the Grantor's expense, to evaluate the Grantor's business and the value of the Collateral, and to review the options available to the Bank; and
  - (xii) to appoint or reappoint by instrument in writing any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers or a receiver and manager of the Collateral and remove or replace any person or persons so appointed or apply to any court for the appointment of a receiver or receiver and manager (each hereinafter called a "Receiver").
- (b) Any Receiver so appointed shall be deemed to be the agent of the Grantor and not the Bank, and the Grantor and not the Bank, shall be solely responsible for the Receiver's acts or defaults and for the Receiver's remuneration and expenses. The Bank shall not be in any way responsible for any misconduct, negligence or failure to act on the part of any such Receiver, its servants, agents or employees.
- (c) The Grantor agrees to pay all costs, charges and expenses incurred by the Bank or any Receiver appointed by the Bank, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting the Obligations, and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Bank or any Receiver appointed by the Bank, as permitted hereby, shall be a first charge on the Collateral and shall be secured hereby.
- (d) The Bank will give the Grantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as may be required by the PPSA.
- (e) Upon default and receiving written demand from the Bank, the Grantor agrees to take such further action as may be necessary to evidence and effect an assignment or licensing of intellectual property to whomever the Bank directs, including to the Bank. The Grantor appoints any officer or employee of the Bank to be its attorney in accordance with applicable legislation with full power of substitution, to do on the Grantor's behalf anything that is required to assign, license or transfer, and to record any assignment, license 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.
- (f) The Grantor authorizes the Bank 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 any Collateral or identifying the locations at which the Collateral is located and correcting any clerical errors or deficiencies in this Agreement) as the Bank may deem appropriate to perfect on an ongoing basis and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest. The Grantor hereby irrevocably constitutes and appoints the Bank and any of its officers or employees from time to time as the true and lawful attorney of the Grantor, with full power of substitution, to do any of the foregoing in the name of the Grantor whenever and wherever it may be deemed necessary or



expedient. This power of attorney, which is coupled with an interest, is irrevocable until the release or discharge of the Security Interest.

If the disposition of the Collateral fails to satisfy the Obligations secured by this Agreement including the expenses incurred by the Bank in connection with the preservation and realization of the Collateral as described above, the Grantor shall be liable to pay any deficiency to the Bank forthwith on demand.

### 13. Environmental License and Indemnity

The Grantor hereby grants to the Bank and its officers, employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter any Real Property to conduct investigations, inspections, audits, testing and monitoring with respect to any contaminants or hazardous substances and to remove and analyze samples of any contaminants or hazardous substances at the cost and expense of the Grantor (which cost and expense will form part of the Obligations and will be payable immediately on demand and secured hereby). The Grantor hereby indemnifies and will indemnify the Bank and agrees to hold the Bank harmless against and from all losses, fines, penalties, costs, damages and expenses which the Bank may sustain, incur or be held to be or for which it may become liable, at any time whatsoever for or by reason of or arising from the past, present or future presence of or, clean-up, removal or disposal of any contaminants or hazardous substances from, on, under or adjacent to any Real Property owned by the Grantor or which may become owned or occupied by the Bank or as a result of the Bank's compliance with environmental laws or environmental orders relating thereto, including any clean-up, decommissioning, restoration or remediation of any Real Property owned or occupied by the Grantor or other affected or adjacent lands or property. This indemnification will survive the satisfaction, release or extinguishment of the Obligations created hereby

### 14. Miscellaneous

- (a) **Interpretation.** The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement (including any schedule now or hereafter annexed hereto) and not to any particular Section or other portion hereof. Unless otherwise specified, any reference herein to a Section or Schedule refers to the specified Section of or Schedule to this Agreement. In this Agreement: (i) words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa; (ii) the words "include", "includes" and "including" mean "include", "includes" or "including", in each case, "without limitation"; (iii) reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time; (iv) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and (v) whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next following Business Day.
- (b) **Successors and Assigns.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. In any action brought by an assignee of this Agreement and the Security Interest or any part thereof to enforce any rights hereunder, the Grantor shall not assert against the assignee any claim or defence which the Grantor now has or hereafter may have against the Bank.
- (c) **Amalgamation.** The Grantor 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 "Grantor" 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) in which any amalgamating company has any rights at the time of amalgamation and to any "Collateral" in which the amalgamated company thereafter has any rights, and (ii) shall secure the "Obligations" (as that term is herein defined) of each of the amalgamating companies and the amalgamated company to the Bank at the time of amalgamation and any "Obligations" of the amalgamated company to the Bank thereafter arising.
- (d) **Joint and Several.** If there is more than one Grantor named herein, the term "Grantor" shall mean all and each of them, their obligations under this Agreement shall be joint and several, the Obligations shall include those of all or any one of them and no Grantor shall have the right of subrogation, exoneration, reimbursement or indemnity whatsoever and no right of recourse to the Collateral for the Obligations hereunder unless and until all of the Obligations have been paid or performed in full, notwithstanding any change for any cause or in any manner whatsoever in the composition of or membership of any firm or company which is a party hereto.
- (e) **Attachment of Security Interest.** The Grantor acknowledges that value has been given and that the Security Interest granted hereby will attach when the Grantor signs this Agreement and will attach to Collateral in which the Grantor subsequently acquires any rights, immediately upon the Grantor acquiring such rights. The parties do not intend to postpone the attachment of any Security Interest created by this Agreement.

- (f) **No Obligation to Advance.** Neither the execution of this Agreement nor any advance of funds shall oblige the Bank to advance any funds or any additional funds or enter into any transaction or renew any note or extend any time for payment of any of the Obligations of the Grantor to the Bank.
- (g) **Information.** The Bank may provide any financial and other information it has about the Grantor, the Security Interest and the Collateral to any one acquiring or who may acquire an interest in the Security Interest or the Collateral from the Bank or anyone acting on behalf of the Bank.
- (h) **Assignment.** The Bank may assign or transfer any of its rights under this Agreement without the consent of the Grantor. The Grantor may not assign its obligations under this Agreement without the prior written consent of the Bank.
- (i) **Amendment.** Subject to Section 12(f) of this Agreement, no amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No course of conduct by the Bank will be deemed to result in an amendment of this Agreement.
- (j) **Term.** This Agreement shall be a continuing agreement in every respect for the payment of the Obligations and it shall remain in full force and effect until all of the Obligations shall be indefeasibly paid in full or discharged by the Bank and until the Bank shall no longer have any commitment to the Grantor or any other Person, the fulfillment of which, might result in the creation of Obligations of the Grantor.
- (k) **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions of this Agreement.
- (l) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the jurisdiction where the Branch of the Bank is located.
- (m) **Waiver by the Bank.** No delay or omission by the Bank in exercising any right or remedy hereunder or with respect to any Obligations 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 of any other right or remedy. Furthermore, the Bank may remedy any default by the Grantor hereunder or with respect to any Obligations in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Grantor. No course of conduct of the Bank will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement or the Bank's rights hereunder. All rights and remedies of the Bank granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (n) **Waiver by the Grantor.** The Grantor waives protest of any Instrument constituting Collateral at any time held by the Bank on which the Grantor is in any way liable and, subject to clause 12(d) hereof, notice of any other action taken by the Bank.
- (o) **Non-Substitution.** The Security Interest is in addition to and not in substitution for any other security now or hereafter held by the Bank.
- (p) **Entire Agreement.** This Agreement including any schedule now or hereafter annexed hereto, constitutes the entire agreement between the Grantor and the Bank with respect to the subject matter hereof. There are no representations, warranties, terms and conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth in this Agreement.
- (q) **Acknowledgment.** The Grantor acknowledges receipt of a fully executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.
- (r) **Execution.** The Grantor agrees that this Agreement may be executed electronically and in counterparts.

IN WITNESS WHEREOF the Grantor has executed this Agreement this 21<sup>st</sup> day of August, 2019.

2580363 Ontario Inc.

Per:   
(authorized signature)

Per: \_\_\_\_\_  
(authorized signature)

Signature: \_\_\_\_\_

\_\_\_\_\_  
Witness as to execution

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

**SCHEDULE "A"**  
**DESCRIPTION OF EQUIPMENT/SERIAL NUMBERED GOODS**

<b>QUANTITY</b>	<b>DESCRIPTION</b>	<b>SERIAL NUMBER</b>
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**LOCATION OF COLLATERAL**

The Collateral is now and will hereafter be located at the following address(es) (include Street/Town/City and Province):

21 Augusta Street, Hamilton, Ontario, L8N 1P6

**SPECIFIED COLLATERAL (Ontario only)**

Quota/Licence No. \_\_\_\_\_ issued by \_\_\_\_\_ (including any successor marketing board or licencing authority in respect of marketing or setting prices for the same commodity, their successors and assigns, in each case called the "Board") and proceeds therefrom.

**Additional Covenants of Customer Applicable to Above Collateral:**

1. By executing this Agreement, Grantor has granted an assignment to the Bank of any and all rights of the Grantor in and to the above quota/licence, any amendments, substitutions, additions or supplements thereto, and any proceeds thereof.
2. Grantor agrees to maintain all of the above quota/licence rights in good standing and to comply with all of the rules, regulations and orders of the Board issuing such quota/licence.
3. Grantor agrees not to apply to the Board for the transfer of the above quota/licence, in whole or in part, without the prior written consent of the Bank.
4. The security and/or rights hereby granted shall extend to and include all present and future acquired quota/licence rights issued by the Board to the Grantor, whether issued under the above quota/licence number of under any other such number.

RESOLUTION AUTHORIZING EXECUTION OF GENERAL SECURITY AGREEMENT

"RESOLVED THAT:

- (a) The President and the N/A are hereby authorized for and on behalf of the Corporation to execute and deliver to The Toronto-Dominion Bank a General Security Agreement substantially in the form of the General Security Agreement (attached hereto and initialled by the Secretary for identification) presented to the directors, with such alterations, amendments, deletions or additions as may be approved by the persons executing the same and their execution shall be conclusive evidence of such approval and that the General Security Agreement so executed is the General Security Agreement authorized by this Resolution.
- (b) Any officer or director be and is hereby authorized to execute and deliver on behalf of the Corporation all such other documents and writings and to do such other acts and things as may be necessary or desirable for fulfilling the Corporation's obligations under the General Security Agreement."

**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of a Resolution duly passed by the Directors of 2580363 Ontario Inc.

on the 21<sup>st</sup> day of August, 2019 and that the said Resolution is now in full force and effect.

Secretary

C/S

# EXHIBIT “H”



TO: The Toronto-Dominion Bank (the "Bank")

Branch of the Bank: #2512, 100 King Street West, Hamilton, Ontario, L8P 4W9

Granted By: 2580361 Ontario Inc.

(the "Grantor")

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor agrees with the Bank as follows:

## 1. Security Interest

The Grantor hereby grants to the Bank a security interest in, and assigns (other than with respect to trade-marks), mortgages, charges and pledges (collectively, the "Security Interest") to the Bank, all property of the Grantor, including all present and after acquired personal property and all other property, assets and undertaking of the kind hereinafter described below, in which the Grantor now has, or hereafter acquires, any right, title or interest, and accretions and accessions thereto (collectively called the "Collateral"):

- (a) **Intangibles.** All intangible property not otherwise described in this Section 1, including all contractual rights and insurance claims, options, permits, licences, quotas, subsidies, franchises, orders, judgments, patents, trademarks, trade names, trade secrets and know-how, inventions, goodwill, copyrights and other intellectual property of the Grantor, including any right or licence to use intellectual property belonging to a third party together with any specified collateral described in Schedule "A" hereto (collectively called "Intangibles");
- (b) **Chattel Paper and Documents of Title.** All chattel paper and all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (c) **Deposits and Credit Balances.** All monies and credit balances, including interest due thereon, which are now or may hereafter from time to time be on deposit with or standing to the credit of the Grantor with the Bank or any other bank, financial institution or other Person;
- (d) **Books and Records.** All deeds, documents, writings, papers, books of account and other books and records in any form, electronic or otherwise, relating to or evidencing any of the Collateral;
- (e) **Accounts and Book Debts.** All debts, accounts, claims and choses in action for moneys now due or owing or accruing due or which may hereafter become due or owing to the Grantor, including claims against the Crown in right of Canada or of any province, moneys which may become payable under any policy of insurance (collectively called "Accounts and Book Debts"), together with all contracts, securities, bills, notes, lien notes, judgments, mortgages, letters of credit and advices of credit, and all other rights, benefits and documents which are now or which may be taken, vested in or held by the Grantor in respect of or as security for the Accounts and Book Debts or any part thereof, and the full benefit and advantage thereof and all rights of actions, claims or demands which the Grantor now has or may hereafter have in respect of the foregoing;
- (f) **Equipment.** All tools, machinery, apparatus, equipment, vehicles, furniture, plants, fixtures, and other tangible personal property, other than Inventory, wherever situate, including the assets, if any, described in Schedule "A" hereto (collectively called "Equipment");
- (g) **Inventory.** All goods forming the inventory of the Grantor, of whatever kind and wherever located, whether raw material, work in process or finished goods held for sale, lease or resale, or furnished or to be furnished under contracts for service or used or consumed in the business of the Grantor, goods used in or procured for packing or packaging, timber cut or to be cut, oil, gas and minerals extracted or to be extracted, all livestock and the young thereof after conception and all crops which become such within one year after the date of execution of this Agreement (collectively called "Inventory");
- (h) **Instruments.** All bills, notes, cheques, letters of credit and other instruments, whether negotiable or not (collectively called "Instruments");
- (i) **Securities.** All shares, stocks, warrants, options, bonds, debentures, debenture stock and all other securities and investment property of any kind and all instruments, whether negotiable or non-negotiable, and interest thereon and dividends, whether in shares, money or property, received or receivable upon or in respect of any securities and other investment property and all money or other property paid or payable on account of any return on, or repayment of, capital in respect of any securities or otherwise distributed or distributable in respect thereof or that will in any way be charged to, or be payable out of or in respect of, the capital of the issuer of the securities (collectively called "Securities");
- (j) **Real Property.** All real and immovable property, both freehold and leasehold, together with all buildings and fixtures (collectively called "Real Property"), and all rights under any lease or agreement relating to Real Property;

- (k) **Proceeds.** All proceeds of the property described above, including any property in any form derived directly or indirectly from any use or dealing with the property described above or the proceeds therefrom or that indemnifies or compensates for damage or loss to such property or the proceeds therefrom, including the money held in banks, financial institutions or any other Person (collectively called "Proceeds");

provided that (i) the Security Interest does not and will not extend to, and the Collateral will not include, any agreement, lease, right, franchise, licence or permit (the "contractual rights") to which the Grantor is a party or of which the Grantor has the benefit, to the extent that the Security Interest would permit any person to terminate the contractual rights unless the consent of one or more Persons has been obtained and until such consent has been obtained, which the Grantor agrees it will use commercially reasonable efforts to obtain if requested by the Bank, the Grantor agrees to hold its interest therein in trust for the Bank, and notwithstanding the foregoing, contractual rights shall not include any account or chattel paper; and (ii) with respect to Real Property, (A) the Security Interest granted hereby is constituted by way of a floating charge, but will become a fixed charge upon the earlier of the Obligations becoming immediately payable, and the occurrence of any other event that by operation of law would result in such floating charge becoming a fixed charge; and (B) the assignment, mortgage and charge granted hereby will not extend to the last day of the term of any lease or agreement relating to Real Property, but the Grantor will hold such last day in trust for the Bank and, upon the enforcement by the Bank of its Security Interest, will assign such last day as directed by the Bank.

## 2. Obligations Secured

The Security Interest secures the payment and performance of all present and future obligations of the Grantor to the Bank, including all debts and liabilities, direct or indirect, absolute or contingent, matured or not, wherever and howsoever incurred, whether incurred before, at the time of, or after the execution of this Agreement, whether the indebtedness and liability is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether arising from dealings between the Bank and the Grantor or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Grantor, and in any currency, whether incurred by the Grantor alone or with another or others and whether as a principal or surety, including all interest thereon and all amounts owed by the Grantor under this Agreement for fees, costs and expenses and in respect of indemnities granted under this Agreement (collectively called the "Obligations").

## 3. Definitions

- (a) Any word or term that is not otherwise defined in this Agreement shall have the meaning given to it in the *Personal Property Security Act* of the province in which the Branch of the Bank is located, as amended from time to time, and being referred to in this Agreement as the "PPSA". Any reference herein to "Collateral" shall, unless the context requires otherwise, be deemed to be a reference to "Collateral or any part thereof".
- (b) The following terms shall have the respective meanings set out below:

*"Branch of the Bank"* means the branch of the Bank located at the address specified above.

*"Business Day"* means any day other than a Saturday, Sunday or statutory holiday in the province in which the Branch of the Bank is located.

*"Control Agreement"* means:

- (a) with respect to any uncertificated security, an agreement between the issuer of such uncertificated security and any Person whereby such issuer agrees to comply with instructions that are originated by such Person in respect of such uncertificated security, without the further consent of the Grantor; and
- (b) with respect to any securities account or security entitlement, an agreement between the securities intermediary which maintains the particular securities account to which security entitlements included in the Collateral relate and any Person whereby such securities intermediary agrees to comply with any entitlement orders with respect to such securities accounts or security entitlements that are originated by such Person, without the further consent of the Grantor.

*"Person"* means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, co-operative, estate, government, government agency, regulatory authority, trust, or any entity of any nature.

## 4. Representations & Warranties

The Grantor hereby represents and warrants with the Bank and so long as this Agreement remains in effect shall be deemed to continuously represent and warrant that:

- (a) **Location of Head Office.** The address of the Grantor's chief executive office and the office where it keeps its records respecting the Accounts and Book Debts (the "Head Office") is set out below the name of the Grantor on the signature page of this Agreement;



- (b) **Location of Collateral.** The Collateral which is goods is or will be located at the address set out on the signature page of this Agreement or at the locations specified in Schedule "A" hereto or such other locations as have been agreed to by the Bank in writing, except for (i) goods in transit to such locations and (ii) Inventory on lease or consignment, but including all fixtures, crops, oil, gas or other minerals to be extracted and all timber to be cut which forms part of the Collateral;
- (c) **Collateral Free and Clear.** The Collateral (other than Real Property) is the sole property of the Grantor free and clear of all security interests, liens, charges, mortgages, hypothecs, leases, licenses, infringements by third parties, encumbrances, statutory liens or trusts, other adverse claims or interests, or any rights of others, except for those security interests which are expressly approved by the Bank in writing prior to their creation or assumption;
- (d) **Amount of Accounts.** Each Account and Book 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 Grantor to the Bank from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount unconditionally owing by such Account Debtor or Account Debtors, and no Account Debtor will have any defence, set-off, claim or counterclaim against the Grantor which can be asserted against the Bank, whether in any proceeding to enforce Collateral or otherwise;
- (e) **Status and Binding Obligation.** The Grantor (i) if a corporation or company, has been duly incorporated, amalgamated or continued, as the case may be, and is validly existing as a corporation or company, as the case may be, under the laws of its jurisdiction of incorporation, amalgamation or continuance, as the case may be, (ii) if not a corporation or company, has been duly created or established as a partnership, limited partnership or other entity and validly exists under the laws of the jurisdiction in which it has been created or established, and (iii) is duly qualified to carry on business and own property in each jurisdiction where it carries on business or where any of its property is located. The Grantor has adequate power, capacity and authority to carry on its business, own property, borrow monies and enter into agreements therefor, execute and deliver this Agreement, and perform its obligations under this Agreement, which Agreement constitutes a legally valid and binding obligation of the Grantor enforceable in accordance with its terms. The making of this Agreement will not result in the breach of, constitute a default under, contravene any provision of, or result in the creation of, any lien, charge, security interest, encumbrance or any other rights of others upon any property of the Grantor pursuant to any agreement, indenture or other instrument to which the Grantor is a party or by which the Grantor or any of its property may be bound or affected; and
- (f) **Intellectual Property.** All intellectual property applications and registrations are valid, subsisting, unexpired, enforceable, in good standing and have not been abandoned and the Grantor is the owner of the applications and registrations.

## 5. Covenants

The Grantor covenants and agrees with the Bank that:

- (a) **Place of Business and Location of Collateral.** The Grantor shall not change its name or the location of its Head Office, amalgamate with any other Person, or move any of the Collateral from the address set out on the signature page of this Agreement or the locations specified in Schedule "A" hereto other than in accordance with clause 5(g), without the prior written consent of the Bank;
- (b) **Notification.** The Grantor shall notify the Bank promptly of: (i) any change in the information contained herein or in Schedule "A" hereto relating to the Grantor, the Grantor's business or Collateral; (ii) the details of any significant acquisition of Collateral; (iii) the details of any claims or litigation affecting the Grantor or the Collateral and will furnish the Bank with copies of the details of such claims or litigation; (iv) any loss or damage to Collateral or any material adverse change in the value of Collateral; and (v) any default by any Account Debtor in payment or other performance of its obligations with respect to Collateral;
- (c) **Performance of Obligations.** The Grantor shall observe and perform all its obligations under all material leases, licenses, undertakings and agreements to which it is a party, obtain and preserve its rights, powers, licences, privileges, franchises and goodwill thereunder, and comply with all applicable laws, by-laws, rules, regulations and ordinances in a proper and efficient manner so as to preserve and protect the Collateral and the business and undertaking of the Grantor in all material respects. The Grantor shall also pay all rents, taxes, rates, levies, assessments and government fees or dues levied, assessed or imposed in respect of the Collateral and other charges or any part thereof as and when the same become due and payable, and shall provide to the Bank, when requested, the receipts and vouchers evidencing payment;
- (d) **Limitations on Discounts, Extensions of Accounts and Compromises.** The Grantor shall not grant any extension of time for payment of any Accounts or Book Debts, or compromise, compound or settle any Accounts or Book Debts for less than the full amount, or release, wholly or partially, any Person liable for the payment of any Accounts or Book Debts, or allow any credit or discount of any Account or Book Debt, other than in the ordinary course of business of the Grantor and consistent with industry practices;

- (e) **Payment of Fees and Expenses.** The Grantor will pay the Bank on demand all costs, fees and expenses (including legal fees on a solicitor and his own client basis) incurred by the Bank in the preparation, execution, registration and perfection of this Agreement and the carrying out of any of the provisions of this Agreement, including, protecting and preserving the Security Interest and enforcing by legal process or otherwise the remedies provided herein. All such costs and expenses payable by the Grantor to the Bank shall bear interest from time to time at the highest interest rate then applicable to any of the Obligations, calculated and compounded monthly, and shall be added to and form part of the Obligations secured hereunder;
- (f) **Maintenance and Protection of Collateral/No Fixtures.** The Grantor shall care for, protect and preserve the Collateral and not permit its value to be impaired and will not permit the Collateral to be affixed to real or personal property so as to become a fixture or accession without the prior written consent of the Bank. The Grantor shall keep the Collateral in good order, condition and repair and shall not use the Collateral in violation of the provisions of this Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance. The Grantor will keep all licences, permits, agreements, registrations and applications relating to intellectual property used by Grantor in its business in good standing, unless otherwise agreed to in writing by the Bank. The Grantor shall apply to register all existing and future copyrights, trade-marks, patents, integrated circuit topographies and industrial designs whenever it is commercially reasonable to do so. The Grantor shall defend title to the Collateral against all claims and demands of all other Persons claiming the same or an interest therein and shall diligently initiate and prosecute legal action against every Person who infringes upon the Grantor's rights in intellectual property;
- (g) **Dealing with Collateral.** (i) The Grantor will not sell, lease, transfer, assign, deliver or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Bank, except that the Grantor may, until an event of default as hereinafter provided occurs, deal with any Inventory or Real Property (other than fixtures financed by the Bank and any replacements or substitutions therefor) in the ordinary course of business so that the purchaser thereof takes title thereto free and clear of the Security Interest; (ii) All Proceeds shall continue to be subject to the Security Interest, granted hereby and all money received by the Grantor as Proceeds, other than from the sale of Inventory, shall be received as trustee for the Bank and shall be held separate and apart from other money of the Grantor, and shall be paid over to the Bank upon request; (iii) All money collected or received by the Bank in respect of the Collateral may be applied on account of such parts of the Obligations as the Bank in its sole discretion determines, or may be held unappropriated in a collateral account, or in the discretion of the Bank may be released to the Grantor, all without prejudice to the Bank's rights against the Grantor; (iv) Before an event of default occurs hereunder, the Bank may give notice of this Agreement and the Security Interest to any Account Debtor who is obligated to the Grantor under any of the Accounts and Book Debts and, after the occurrence of an event of default hereunder, may give notice to any such Account Debtor to make all further payments to the Bank, and any payment or other Proceeds received by the Grantor from an Account Debtor after an event of default whether before or after any notice is given by the Bank, shall be held by the Grantor in trust for the Bank and paid over to the Bank on request. The Bank 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 Bank may consider appropriate and the Grantor agrees to furnish all assistance and information and to perform all such acts as the Bank may reasonably request in connection therewith and for such purpose to grant to the Bank or its agents access to all places where Collateral may be located and to all premises occupied by the Grantor;
- (h) **Maintenance of Records.** The Grantor will keep proper books of account in accordance with sound accounting practice and mark any and all such records and the Collateral at the Bank's request so as to indicate the Security Interest. The Grantor shall furnish to the Bank such financial information and statements and such information and statements relating to the Collateral as the Bank may from time to time require and shall permit the Bank or its agents at any time at the expense of the Grantor to examine the books of account and other financial records and reports relating to the Collateral and to make copies thereof and take extracts therefrom and to make inquiries of third parties for the purpose of verification of such information. The Grantor authorizes any Person holding any Books and Records to make them available, in a readable form, upon the request of the Bank. The Grantor will deliver to the Bank any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to Collateral;
- (i) **Negative Pledge.** The Grantor will not create, incur, assume or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, hypothec, encumbrance or statutory lien or trust (including any conditional sale, or other title retention agreement or finance lease) of any nature, on any of the Collateral (other than Real Property, but not including any fixtures financed by the Bank and any replacements or substitutions therefor) without the express prior written consent of the Bank;
- (j) **Insurance.** The Grantor will keep the Collateral insured under policies with such coverage, for such amounts and with such insurers as are satisfactory to the Bank from time to time, with loss thereunder, payable to the Bank and shall furnish the Bank with a copy of any policy of insurance, certificate of insurance or other evidence satisfactory to the Bank that such insurance coverage is in effect;
- (k) **Further Assurances.** The Grantor will from time to time forthwith, at the expense of the Grantor, duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Bank may request for the purpose of obtaining or preserving the benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Collateral) and for the purpose of correcting any deficiencies or clerical errors in this Agreement; and

- (l) **Landlord Agreement.** The Grantor will, at the request of the Bank, obtain a written agreement from each landlord of premises where any of the Collateral is located, in favour of the Bank and in form and substance satisfactory to the Bank, whereby such landlord agrees to give notice to the Bank of any default by the Grantor under the lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord and acknowledges the Security Interest created by this Agreement and the right of the Bank to enforce the Security Interest created by this Agreement in priority to any claim of such landlord, including the right of the landlord to distrain on the Collateral for arrears of rent.

## **6. Survival of Representations and Warranties and Covenants**

All agreements, representations, warranties and covenants made by the Grantor in this Agreement are material, will be considered to have been relied on by the Bank and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Bank and any disposition or payment of the Obligations until the indefeasible repayment and performance in full of the Obligations.

## **7. Performance of Covenants by The Bank**

- (a) The Bank may, in its sole discretion and upon notice to the Grantor, perform any covenant of the Grantor under this Agreement that the Grantor fails to perform including any covenant the performance of which requires the payment of money, provided that the Bank will not be obligated to perform such covenant on behalf of the Grantor. The performance by the Bank of any such covenant shall not oblige the Bank to continue to perform any such covenant or other covenants nor relieve the Grantor from any default or derogate from the rights and remedies of the Bank under this Agreement. The Grantor agrees to indemnify and to reimburse the Bank for all costs and expenses incurred by the Bank in connection with the performance by it of any such covenant, and all such costs and expenses shall be payable by the Grantor to the Bank on demand, shall bear interest at the highest rate per annum applicable to any of the Obligations, calculated and compounded monthly, and shall be added to and form part of the Obligations.
- (b) In holding any Collateral, the Bank and any agent or nominee on its behalf is only bound to exercise the same degree of care as it would exercise with respect to similar property of its own or of similar value held in the same or similar location. The Bank and any agent or nominee on its behalf will be deemed to have exercised reasonable care with respect to the custody and preservation of the Collateral if it takes such action for that purpose as the Grantor reasonably requests in writing, but failure of the Bank or its nominees to comply with any such request will not of itself be deemed a failure to exercise reasonable care.

## **8. Securities, Investment Property**

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

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

The Grantor has not consented to and covenants that it will not consent to, the entering into of a Control Agreement by: (a) any issuer of any uncertificated securities included in or relating to the Collateral; or (b) any securities intermediary for any securities accounts or security entitlements included in or relating to the Collateral, other than, in either case, a Control Agreement to which the Bank is a party.

Promptly upon request from time to time by the Bank, the Grantor shall:

- (a) enter into and use reasonable commercial efforts to cause any securities intermediary for any securities accounts or securities entitlements included in or relating to the Collateral to enter into a Control Agreement with the Bank with respect to such securities accounts or securities entitlements as the Bank requires in form and substance satisfactory to the Bank; and
- (b) enter into and use reasonable commercial efforts to cause any issuer of any uncertificated securities included in or relating to the Collateral to enter into a Control Agreement with the Bank with respect to such uncertificated securities in form and substance satisfactory to the Bank.

## **9. Dealing with Security Interest**

The Bank may grant extensions of time and other indulgences, give up any of the Security Interest, abstain from perfecting any of the Security Interest, accept compositions, grant releases and discharges and waive rights against and otherwise deal with the Grantor, Account Debtors of the Grantor, sureties and others and with any of the Collateral and any other security as the Bank may see fit without prejudice to the liability of the Grantor or the Bank's right to hold and realize any of the Security Interest. The Bank shall not be accountable to the Grantor for the value of any of the Security Interest released except for any moneys actually received by the Bank.

## 10. Deposits and Credit Balances

Without limiting any other rights or remedies of the Bank, the Bank may, without notice to the Grantor or any other Person, any notice being expressly waived by the Grantor, set-off and apply all or any of the amounts standing to or for the credit of the Grantor at the Bank or any of the Bank's affiliates, in any currency, against and on account of all or any part of the Obligations, all as the Bank may see fit, whether or not the Obligations or the amounts standing to or for the credit of the Grantor are due and payable. The Bank is authorized and shall be entitled to make such debits, credits, correcting entries, and other entries to the Grantor's accounts and the Bank's records relating to the Grantor as the Bank regards as desirable in order to give effect to the Bank's rights hereunder and the Grantor agrees to be bound by such entries absent manifest error. When applying a deposit or other obligation in a different currency than the Obligations to the Obligations, the Bank will convert the deposit or other obligation to the currency of the Obligations using the rate of exchange for the conversion of such currency as determined by the Bank or its agents and the Bank or its agent may earn revenue on such conversion.

## 11. Events of Default

Obligations not payable on demand shall, at the option of the Bank, become immediately due and payable upon the occurrence of one or more of the following events (each, an "event of default"):

- (a) the Grantor fails to pay when due, whether by acceleration or otherwise, any of the Obligations;
- (b) the Grantor fails to perform any provision of this Agreement or of any other agreement to which the Grantor and the Bank are parties;
- (c) if any certificate, statement, representation, warranty, audit report or financial statement heretofore or hereafter furnished by or on behalf of the Grantor pursuant to or in connection with this Agreement, or as an inducement to the Bank to extend any credit to or to enter into this or any other agreement with the Grantor, is shown to have been false in any material respect or to have omitted any material fact; or if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, representation, statement, warranty, audit report or financial statement, which change shall not have been disclosed to the Bank at or prior to the time of such execution;
- (d) the Grantor ceases or threatens to cease to carry on business, commits an act of bankruptcy, becomes insolvent, proceedings or other actions are taken by or against the Grantor under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or similar legislation whether in Canada or elsewhere, or the Grantor transfers all or substantially all of its assets to another Person;
- (e) a receiver, trustee, custodian or other similar official is appointed in respect of the Grantor or any of the Grantor's property;
- (f) the institution by or against the Grantor of any formal or informal proceeding for the dissolution or liquidation or settlement of claims against or winding up of affairs of the Grantor;
- (g) an encumbrancer takes possession of any of the Collateral or any process of execution or distress is levied or enforced upon or against any of the Collateral;
- (h) any indebtedness or liability of the Grantor, other than to the Bank, becomes due and payable, or capable of being declared due and payable, before the stated maturity thereof or any such indebtedness or liability shall not be paid at the maturity thereof or upon the expiration of any stated applicable grace period thereof, or the Grantor fails to make payment when due under any guarantee given by the Grantor;
- (i) if the Grantor is an individual, the Grantor dies or is found by a court to be incapable of managing his or her affairs;
- (j) an execution or any other process of any court shall become enforceable against the Grantor;
- (k) if the Grantor is a partnership, the death of a partner; or
- (l) any other event which causes the Bank, in good faith, to deem itself insecure;

and the Bank shall not be required to make any further advances or other extension of credit that constitutes an Obligation.

## 12. Remedies

- (a) Upon the occurrence of an event of default that has not been cured or waived, the Bank, in addition to any right or remedy otherwise provided herein or by law or in equity, will have the rights and remedies set out below, which may be enforced successively or concurrently:
  - (i) to take such steps as the Bank considers desirable to maintain, preserve or protect the Collateral or its value;

- (ii) to take possession of the Collateral and require the Grantor to assemble the Collateral and deliver or make the Collateral available to the Bank at such place as may be specified by the Bank, and the Bank will not be or be deemed to be a mortgagee in possession by virtue of any such actions;
  - (iii) to exercise and enforce all rights and remedies of the Grantor with respect to the Collateral, including collecting and realizing upon all Accounts and Book Debts;
  - (iv) to carry on or concur in carrying on all or any part of the business of the Grantor;
  - (v) for the maintenance, preservation or protection of the Collateral or for carrying on any of the business of the Grantor, to borrow money on the security of the Collateral, which security will rank in priority to the Security Interest, or on an unsecured basis;
  - (vi) to the exclusion of all others, including the Grantor, to enter upon, occupy and use all or any of the premises, buildings and plants owned or occupied by the Grantor and use all or any of the Collateral of the Grantor for such time as the Bank requires to facilitate the preservation and realization of the Collateral, free of charge, and the Bank will not be liable to the Grantor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions;
  - (vii) to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of the Collateral upon such terms and conditions as the Bank may determine;
  - (viii) to dispose of any of the Collateral in the condition in which it was at the date possession of it was taken, or after any commercially reasonable repair, processing or preparation thereof for disposition;
  - (ix) if any part of the Collateral is perishable or will decline speedily in value, to sell or otherwise dispose of same without giving any notice of such disposition;
  - (x) to make any arrangement or compromise which the Bank shall think expedient in the interests of the Bank, including compromising any Accounts and Book Debts, and giving time for payment thereof with or without security;
  - (xi) to appoint a consultant or monitor, at the Grantor's expense, to evaluate the Grantor's business and the value of the Collateral, and to review the options available to the Bank; and
  - (xii) to appoint or reappoint by instrument in writing any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers or a receiver and manager of the Collateral and remove or replace any person or persons so appointed or apply to any court for the appointment of a receiver or receiver and manager (each hereinafter called a "Receiver").
- (b) Any Receiver so appointed shall be deemed to be the agent of the Grantor and not the Bank, and the Grantor and not the Bank, shall be solely responsible for the Receiver's acts or defaults and for the Receiver's remuneration and expenses. The Bank shall not be in any way responsible for any misconduct, negligence or failure to act on the part of any such Receiver, its servants, agents or employees.
- (c) The Grantor agrees to pay all costs, charges and expenses incurred by the Bank or any Receiver appointed by the Bank, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting the Obligations, and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Bank or any Receiver appointed by the Bank, as permitted hereby, shall be a first charge on the Collateral and shall be secured hereby.
- (d) The Bank will give the Grantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as may be required by the PPSA.
- (e) Upon default and receiving written demand from the Bank, the Grantor agrees to take such further action as may be necessary to evidence and effect an assignment or licensing of intellectual property to whomever the Bank directs, including to the Bank. The Grantor appoints any officer or employee of the Bank to be its attorney in accordance with applicable legislation with full power of substitution, to do on the Grantor's behalf anything that is required to assign, license or transfer, and to record any assignment, license 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.
- (f) The Grantor authorizes the Bank 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 any Collateral or identifying the locations at which the Collateral is located and correcting any clerical errors or deficiencies in this Agreement) as the Bank may deem appropriate to perfect on an ongoing basis and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest. The Grantor hereby irrevocably constitutes and appoints the Bank and any of its officers or employees from time to time as the true and lawful attorney of the Grantor, with full power of substitution, to do any of the foregoing in the name of the Grantor whenever and wherever it may be deemed necessary or

expedient. This power of attorney, which is coupled with an interest, is irrevocable until the release or discharge of the Security Interest.

If the disposition of the Collateral fails to satisfy the Obligations secured by this Agreement including the expenses incurred by the Bank in connection with the preservation and realization of the Collateral as described above, the Grantor shall be liable to pay any deficiency to the Bank forthwith on demand.

### 13. Environmental License and Indemnity

The Grantor hereby grants to the Bank and its officers, employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter any Real Property to conduct investigations, inspections, audits, testing and monitoring with respect to any contaminants or hazardous substances and to remove and analyze samples of any contaminants or hazardous substances at the cost and expense of the Grantor (which cost and expense will form part of the Obligations and will be payable immediately on demand and secured hereby). The Grantor hereby indemnifies and will indemnify the Bank and agrees to hold the Bank harmless against and from all losses, fines, penalties, costs, damages and expenses which the Bank may sustain, incur or be held to be or for which it may become liable, at any time whatsoever for or by reason of or arising from the past, present or future presence of or, clean-up, removal or disposal of any contaminants or hazardous substances from, on, under or adjacent to any Real Property owned by the Grantor or which may become owned or occupied by the Bank or as a result of the Bank's compliance with environmental laws or environmental orders relating thereto, including any clean-up, decommissioning, restoration or remediation of any Real Property owned or occupied by the Grantor or other affected or adjacent lands or property. This indemnification will survive the satisfaction, release or extinguishment of the Obligations created hereby

### 14. Miscellaneous

- (a) **Interpretation.** The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement (including any schedule now or hereafter annexed hereto) and not to any particular Section or other portion hereof. Unless otherwise specified, any reference herein to a Section or Schedule refers to the specified Section of or Schedule to this Agreement. In this Agreement: (i) words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa; (ii) the words "include", "includes" and "including" mean "include", "includes" or "including", in each case, "without limitation"; (iii) reference to any agreement or other instrument in writing means such agreement or other instrument in writing as amended, modified, replaced or supplemented from time to time; (iv) unless otherwise indicated, time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and (v) whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next following Business Day.
- (b) **Successors and Assigns.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. In any action brought by an assignee of this Agreement and the Security Interest or any part thereof to enforce any rights hereunder, the Grantor shall not assert against the assignee any claim or defence which the Grantor now has or hereafter may have against the Bank.
- (c) **Amalgamation.** The Grantor 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 "Grantor" 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) in which any amalgamating company has any rights at the time of amalgamation and to any "Collateral" in which the amalgamated company thereafter has any rights, and (ii) shall secure the "Obligations" (as that term is herein defined) of each of the amalgamating companies and the amalgamated company to the Bank at the time of amalgamation and any "Obligations" of the amalgamated company to the Bank thereafter arising.
- (d) **Joint and Several.** If there is more than one Grantor named herein, the term "Grantor" shall mean all and each of them, their obligations under this Agreement shall be joint and several, the Obligations shall include those of all or any one of them and no Grantor shall have the right of subrogation, exoneration, reimbursement or indemnity whatsoever and no right of recourse to the Collateral for the Obligations hereunder unless and until all of the Obligations have been paid or performed in full, notwithstanding any change for any cause or in any manner whatsoever in the composition of or membership of any firm or company which is a party hereto.
- (e) **Attachment of Security Interest.** The Grantor acknowledges that value has been given and that the Security Interest granted hereby will attach when the Grantor signs this Agreement and will attach to Collateral in which the Grantor subsequently acquires any rights, immediately upon the Grantor acquiring such rights. The parties do not intend to postpone the attachment of any Security Interest created by this Agreement.

- (f) **No Obligation to Advance.** Neither the execution of this Agreement nor any advance of funds shall oblige the Bank to advance any funds or any additional funds or enter into any transaction or renew any note or extend any time for payment of any of the Obligations of the Grantor to the Bank.
- (g) **Information.** The Bank may provide any financial and other information it has about the Grantor, the Security Interest and the Collateral to any one acquiring or who may acquire an interest in the Security Interest or the Collateral from the Bank or anyone acting on behalf of the Bank.
- (h) **Assignment.** The Bank may assign or transfer any of its rights under this Agreement without the consent of the Grantor. The Grantor may not assign its obligations under this Agreement without the prior written consent of the Bank.
- (i) **Amendment.** Subject to Section 12(f) of this Agreement, no amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No course of conduct by the Bank will be deemed to result in an amendment of this Agreement.
- (j) **Term.** This Agreement shall be a continuing agreement in every respect for the payment of the Obligations and it shall remain in full force and effect until all of the Obligations shall be indefeasibly paid in full or discharged by the Bank and until the Bank shall no longer have any commitment to the Grantor or any other Person, the fulfillment of which, might result in the creation of Obligations of the Grantor.
- (k) **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions of this Agreement.
- (l) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the jurisdiction where the Branch of the Bank is located.
- (m) **Waiver by the Bank.** No delay or omission by the Bank in exercising any right or remedy hereunder or with respect to any Obligations 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 of any other right or remedy. Furthermore, the Bank may remedy any default by the Grantor hereunder or with respect to any Obligations in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Grantor. No course of conduct of the Bank will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement or the Bank's rights hereunder. All rights and remedies of the Bank granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (n) **Waiver by the Grantor.** The Grantor waives protest of any Instrument constituting Collateral at any time held by the Bank on which the Grantor is in any way liable and, subject to clause 12(d) hereof, notice of any other action taken by the Bank.
- (o) **Non-Substitution.** The Security Interest is in addition to and not in substitution for any other security now or hereafter held by the Bank.
- (p) **Entire Agreement.** This Agreement including any schedule now or hereafter annexed hereto, constitutes the entire agreement between the Grantor and the Bank with respect to the subject matter hereof. There are no representations, warranties, terms and conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth in this Agreement.
- (q) **Acknowledgment.** The Grantor acknowledges receipt of a fully executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.
- (r) **Execution.** The Grantor agrees that this Agreement may be executed electronically and in counterparts.

IN WITNESS WHEREOF the Grantor has executed this Agreement this 21<sup>st</sup> day of August, 2019.

2580361 Ontario Inc.

Per:   
(authorized signature)

Per: \_\_\_\_\_  
(authorized signature)

Signature: \_\_\_\_\_

\_\_\_\_\_  
Witness as to execution

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

[Address of Grantor]



**SCHEDULE "A"**  
**DESCRIPTION OF EQUIPMENT/SERIAL NUMBERED GOODS**

<b>QUANTITY</b>	<b>DESCRIPTION</b>	<b>SERIAL NUMBER</b>
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**LOCATION OF COLLATERAL**

The Collateral is now and will hereafter be located at the following address(es) (include Street/Town/City and Province):

21 Augusta Street, Hamilton, Ontario, L8N 1P6

**SPECIFIED COLLATERAL (Ontario only)**

Quota/Licence No. \_\_\_\_\_ issued by \_\_\_\_\_ (including any successor marketing board or licencing authority in respect of marketing or setting prices for the same commodity, their successors and assigns, in each case called the "Board") and proceeds therefrom.

**Additional Covenants of Customer Applicable to Above Collateral:**

1. By executing this Agreement, Grantor has granted an assignment to the Bank of any and all rights of the Grantor in and to the above quota/licence, any amendments, substitutions, additions or supplements thereto, and any proceeds thereof.
2. Grantor agrees to maintain all of the above quota/licence rights in good standing and to comply with all of the rules, regulations and orders of the Board issuing such quota/licence.
3. Grantor agrees not to apply to the Board for the transfer of the above quota/licence, in whole or in part, without the prior written consent of the Bank.
4. The security and/or rights hereby granted shall extend to and include all present and future acquired quota/licence rights issued by the Board to the Grantor, whether issued under the above quota/licence number or under any other such number.

RESOLUTION AUTHORIZING EXECUTION OF GENERAL SECURITY AGREEMENT

"RESOLVED THAT:

- (a) The President and the N/A are hereby authorized for and on behalf of the Corporation to execute and deliver to The Toronto-Dominion Bank a General Security Agreement substantially in the form of the General Security Agreement (attached hereto and initialled by the Secretary for identification) presented to the directors, with such alterations, amendments, deletions or additions as may be approved by the persons executing the same and their execution shall be conclusive evidence of such approval and that the General Security Agreement so executed is the General Security Agreement authorized by this Resolution.
- (b) Any officer or director be and is hereby authorized to execute and deliver on behalf of the Corporation all such other documents and writings and to do such other acts and things as may be necessary or desirable for fulfilling the Corporation's obligations under the General Security Agreement."

**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of a Resolution duly passed by the Directors of 2580361 Ontario Inc.

on the 21 day of August, 2019 and that the said Resolution is now in full force and effect.

  
Secretary

C/S

# EXHIBIT “I”



This **Guarantee** is made as of the 21<sup>st</sup> day of August, 2019.

Whereas the undersigned (each hereinafter referred to as the "Guarantor") has agreed to provide The Toronto-Dominion Bank (hereinafter referred to as the "Bank") with a guarantee of the Obligations (as hereinafter defined) of

2580363 Ontario Inc.

(the "Customer");

And whereas the Guarantor has agreed that if the guarantee herein is not enforceable, the Guarantor will indemnify the Bank or be liable as primary obligor.

**NOW THEREFORE**, in consideration of the Bank dealing with the Customer now or in the future and/or for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees with the Bank as follows:

**1. Obligations Guaranteed**

The Guarantor unconditionally and irrevocably guarantees payment of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred of the Customer to the Bank, whether arising from dealings between the Bank and the Customer or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Customer, in any currency, whether incurred by the Customer alone or jointly with another or others and whether as a indemnitor or surety, including interest thereon and all amounts owed by the Customer for fees, costs and expenses (collectively referred to as the "Obligations").

**2. Extent of Guarantor's Liability**

This is an unlimited Guarantee and the Guarantor ' s liability to the Bank under this Guarantee shall not be limited as to amount.

**3. Indemnity/Primary Obligation**

If (i) any Obligations are not duly paid by the Customer and are not recoverable under Section 1 for any reason, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Bank from and against all losses resulting from the failure of the Customer to pay such Obligations, and (ii) any Obligations are not duly paid by the Customer and are not recoverable under Section 1 or the Bank is not indemnified under clause (i) above of this Section 3, for any reason, such Obligations will, as a separate and distinct obligation, be paid by and recoverable from the Guarantor as primary obligor.

The liabilities of the Guarantor under Section 1 and each of clauses (i) and (ii) of this Section 3 are separate and distinct from each other, but the provisions of this Agreement shall apply to each of such liabilities unless the context otherwise requires.

**4. Nature of Guarantor's Liability**

The liability of the Guarantor under this Guarantee is continuing, absolute and unconditional and will not be affected by any act, omission, event or circumstance that might constitute a legal or equitable defence (any and all such legal and equitable defences are hereby expressly waived by the Guarantor) to or a discharge, limitation or reduction of the liability of the Guarantor hereunder, other than as a result of the indefeasible payment in full of the Obligations, including:

- (a) the unenforceability of any of the Obligations for any reason, including as a result of the act of any governmental authority;

- (b) any irregularity, fraud, illegality, defect or lack of authority or formality in incurring the Obligations, notwithstanding any inquiry that may or may not have been made by the Bank;
- (c) failure of the Bank to comply with or perform any agreements relating to the Obligations;
- (d) any discontinuance, renewal, extension, increase or reduction in the amount, or any other variance of any loans or credits now or hereafter made available to the Customer by the Bank or guaranteed by the Customer to the Bank or any other change to any of the terms or conditions of any of the Obligations (including, without limitation, respecting rates of interest, fees or charges, maturity dates), or any waiver by the Bank respecting any of the Obligations;
- (e) the taking of or the failure by the Bank to take a guarantee from any other person;
- (f) any release, compromise, settlement or any other dealing with any person, including any other Guarantor;
- (g) the reorganization of the Customer or its business (whether by amalgamation, merger, transfer, sale or otherwise); and in the case of an amalgamation or merger, the liability of the Guarantor shall apply to the Obligations of the resulting or continuing entity and the term "Customer" shall include such resulting or continuing entity;
- (h) the current financial condition of the Customer and any change in the Customer's financial condition;
- (i) any change in control or ownership of the Customer, or if the Customer is a general or limited partnership, any change in the membership of that partnership or other entity;
- (j) any change in the name, articles or other constating documents of the Customer, or its objects, business or capital structure;
- (k) the bankruptcy, winding-up, dissolution, liquidation or insolvency of the Customer or any proceedings being taken by or against the Customer with respect thereto, and any stay of or moratorium on proceedings by the Bank against the Customer as a result thereof;
- (l) a breach of any duty of the Bank (whether fiduciary or in negligence or otherwise) and whether owed to the Guarantor, the Customer or any other person;
- (m) any lack or limitation of power, capacity or legal status of the Customer, or, if the Customer is an individual, the death of the Customer;
- (n) the Customer's account being closed or the Bank ceasing to deal with the Customer;
- (o) any taking or failure to take any security by the Bank, any loss of or diminution in value of any security, the invalidity, unenforceability, subordination, postponement, release, discharge or substitution, in whole or in part, of any security, or the failure to perfect or maintain perfection or enforce any security; or
- (p) any failure or delay by the Bank in exercising any right or remedy respecting the Obligations or under any security or guarantee.

## **5. Continuing Guarantee**

The obligations of the Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Bank and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Bank. This Guarantee will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Bank as a result of the occurrence of any action or event, including the insolvency, bankruptcy or reorganization of the Customer or the Guarantor, all as though such payment had not been made.

## **6. Demand for Payment**

The Guarantor shall make payment to the Bank under this Guarantee immediately upon receipt of a written demand for payment from the Bank. If any Obligation is not paid by the Customer when due, the Bank may treat all Obligations as due and payable by the Customer and may demand immediate payment under this Guarantee of all or some of the Obligations whether such other Obligations would otherwise be due and payable by the Customer at such time or whether or not any demands, steps or proceedings have been made or taken by the Bank against the Customer or any other person respecting all or any of the Obligations. If any stay of or moratorium on proceedings by the Bank against the Customer is imposed in respect of any Obligation, the Bank may nevertheless demand immediate payment of such Obligation from the Guarantor as if such Obligation was due and payable by the Customer.

**7. Interest**

If the Guarantor does not make immediate payment in full of the Obligations when demand for payment has been made by the Bank, the Guarantor shall pay interest on any unpaid amount to the Bank at the highest rate of interest per annum that is charged on any Obligations for which payment has been demanded hereunder and which remain unpaid.

**8. State of Account**

The records of the Bank in respect of the Obligations will be prima facie evidence of the balance of the amount of the Obligations that are due and payable by the Customer to the Bank.

**9. Application of Moneys Received**

The Bank may, without notice and demand of any kind and at any time, apply any money received from the Guarantor, the Customer or any other person (including arising from any security that the Bank may from time to time hold) or any balance in any account of the Guarantor held at the Bank or any of the Bank's affiliates, to such part of the Obligations, whether due or to become due, as the Bank in its sole and absolute discretion considers appropriate, or may, in its sole and absolute discretion, refrain from applying any such money. The Bank may also revoke and alter any such application in whole or in part. If any amount that is to be applied is in a currency other than the currency of the Obligation to which such amount is to be applied, then the amount that is applied shall be converted from one currency to another using the rate of exchange for the conversion of such currency as determined by the Bank or its agents and the Bank or its agent may earn revenue on such conversion.

**10. No Set-off or Counterclaim**

The Guarantor will make all payments required to be made under this Guarantee without claiming or asserting any right of setoff or counterclaim that the Guarantor has or may have against the Customer or the Bank, all of which rights the Guarantor waives.

**11. Exhausting Recourse**

The Bank is not required to take any proceedings, exhaust its recourse against the Customer or any other Guarantor or person or under any security the Bank may from time to time hold, or take any other action, before being entitled to demand payment from the Guarantor under this Guarantee, and the Guarantor waives all benefits of discussion and division.

**12. No Representations**

There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth herein. The Bank will not be bound by any representations or promises made by Customer to the Guarantor and possession of this Guarantee by the Bank will be conclusive evidence against the Guarantor that this Guarantee was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with, and this Guarantee will be binding on each Guarantor who has signed this Guarantee notwithstanding the non-execution thereof by any proposed guarantor.

**13. Postponement and Assignment**

The Guarantor hereby postpones payment of all present and future debts and liabilities of the Customer to the Guarantor, and as security for payment of the Obligations, the Guarantor hereby assigns such debts and liabilities to the Bank and agrees that all moneys received from the Customer by or on behalf of the Guarantor shall be held in trust for the Bank and forthwith upon receipt paid over to the Bank, all without prejudice to and without in any way limiting or lessening the liability of the Guarantor to the Bank under this Guarantee. This assignment and postponement is independent of the guarantee, indemnity and primary obligor obligations contained in this Guarantee and will remain in full force and effect until, in the case of the assignment, the liability of the Guarantor under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Obligations are performed and indefeasibly paid in full.

**14. Subrogation**

The Guarantor will not be entitled to be subrogated to the rights of the Bank against the Customer, to be indemnified by the Customer or to claim contribution from any other Guarantor until the Guarantor makes indefeasible payment to the Bank of all amounts owing by the Guarantor to the Bank under this Guarantee and the Obligations are indefeasibly paid in full.

## **15. Bankruptcy of Customer**

Upon the bankruptcy or winding up or other distribution of assets of the Customer or of any surety or Guarantor for the Obligations, the Bank's rights shall not be affected by the Bank's failure to prove its claim and the Bank may prove such claim if and in any manner as it deems appropriate in its sole discretion. The Bank may value as it sees fit or refrain from valuing any security held by the Bank without in any way releasing, reducing or otherwise affecting the liability of the Guarantor to the Bank, and until all the Obligations of the Customer to the Bank have been indefeasibly paid in full, the Bank shall have the right to include in its claim the amount of all sums paid by the Guarantor to the Bank under this Guarantee and to prove and rank for and receive dividends in respect of such claim, any and all right to prove and rank for such sums paid by the Guarantor and to receive the full amount of all dividends in respect thereto being hereby assigned and transferred to the Bank.

## **16. Costs and Expenses**

The Guarantor agrees to pay all costs and expenses, including legal fees, of enforcing this Guarantee including the charges and expenses of the Bank's in-house lawyers. The Guarantor will pay all legal fees on a solicitor and own client basis.

## **17. Other Guarantees and Security**

The liability of the Guarantor under any other guarantee or guarantees given to the Bank in connection with the Obligations shall not be affected by this Guarantee, nor shall this Guarantee affect or be affected by the endorsement by the Guarantor of any note or notes of the Customer, the intention being that the liability of the Guarantor under such other guarantee or guarantees and this Guarantee, and under such other note or notes and this Guarantee, shall be cumulative. Nor shall the Bank be required to marshal in favour of the Guarantor other guarantees granted by other persons or any security, money or other property that the Bank may be entitled to receive or may have a claim upon.

## **18. Amendment and Waivers**

No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by the Guarantor and the Bank. No waiver by the Bank of any breach of any provision of this Guarantee will be effective or binding unless made in writing and signed by the Bank and, unless otherwise provided in the written waiver, will be limited to the specific breach waived. No delay in the exercise of any right or remedy by the Bank shall operate as a waiver thereof. No failure to exercise a right or remedy or partial exercise of a right or remedy by the Bank shall preclude other or further exercise thereof or the exercise of any other right or remedy by the Bank.

## **19. Discharge**

The Guarantor will not be released or discharged from its obligations hereunder except by a written release or discharge signed by the Bank.

## **20. General**

This Guarantee shall be binding on the successors of the Guarantor or, if the Guarantor is an individual, the heirs, executors, administrators and other legal representatives of the Guarantor, and shall enure to the benefit of the successors and assigns of the Bank.

If more than one Guarantor has signed this Guarantee, each Guarantor shall be jointly and severally liable under this Guarantee.

To the extent that any limitation period applies to any claim for payment hereunder of the Obligations or remedy for the enforcement of such payment, the Guarantor agrees that any such limitation period is excluded or waived, but if such exclusion and waiver is not permitted by applicable law, then any limitation period is extended to the maximum length permitted by applicable law.

Any notice or demand which the Bank may wish to give under this Guarantee may be personally served on the Guarantor or sent by ordinary mail or electronic mail to the last known address of the Guarantor. Any notice that is sent by ordinary mail shall be conclusively deemed to have been received on the fifth day following the day on which it is mailed. Any notice that is sent by electronic mail shall be conclusively deemed to have been received on the day it is sent.

If any provision of this Guarantee is determined by any court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions of this Guarantee.



This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Any word herein contained importing the singular number shall include the plural and any word importing a person shall include a corporation, partnership, firm and any other entity.

Subject to Section 17, this Guarantee constitutes the entire agreement between the Guarantor and the Bank with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto.

Each of the undersigned acknowledges receipt of a copy of this Guarantee.

2580361 Ontario Inc.

Per: \_\_\_\_\_  
(authorized signature) *Johnny Morcante*

*J.R.*  
←

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

Per: \_\_\_\_\_  
(authorized signature)

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

Per: \_\_\_\_\_  
(authorized signature)

[Name of Guarantor]

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

Per: \_\_\_\_\_  
(authorized signature)

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

Per: \_\_\_\_\_  
(authorized signature)

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

Per: \_\_\_\_\_  
(authorized signature)





I HEREBY CERTIFY THAT:

1. \_\_\_\_\_,  
the guarantor in the guarantee dated \_\_\_\_\_  
made between \_\_\_\_\_  
and The Toronto-Dominion Bank, which this certificate is attached to or noted on, appeared in person before me and acknowledged that  
he/she had executed the guarantee.
2. I satisfied myself by examination of the guarantor that he/she is aware of the contents of the guarantee and understands it.

CERTIFIED by \_\_\_\_\_  
Barrister and Solicitor at the \_\_\_\_\_ of \_\_\_\_\_,  
in the Province of Alberta, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

**STATEMENT OF GUARANTOR**

I am the person named in this certificate.

\_\_\_\_\_  
Signature of Guarantor



ACKNOWLEDGMENT OF GUARANTEE

(Section 31)

CERTIFICATE OF LAWYER OR NOTARY PUBLIC

I HEREBY CERTIFY THAT:

1. \_\_\_\_\_ of \_\_\_\_\_ in the province of \_\_\_\_\_, the guarantor in the guarantee dated \_\_\_\_\_ made between The Toronto-Dominion Bank and \_\_\_\_\_, which this certificate is attached to or noted upon, appeared in person before me and acknowledged that he/she had executed the guarantee;
2. I satisfied myself by examination of the guarantor that he/she is aware of the contents of the guarantee and understands it;
3. I have not prepared any documents on behalf of the creditor, The Toronto-Dominion Bank, relating to the transaction and I am not otherwise interested in the transaction;
4. I acknowledge that the guarantor signed the following "Statement of Guarantor" in my presence.

Given at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, under my hand and seal of office.

(SEAL REQUIRED WHERE NOTARY  
PUBLIC SIGNS CERTIFICATE)

\_\_\_\_\_  
A LAWYER OR A NOTARY PUBLIC IN  
AND FOR \_\_\_\_\_

STATEMENT OF GUARANTOR

I am the person named in this certificate.

\_\_\_\_\_  
Signature of Guarantor

# EXHIBIT “J”

Properties

PIN

17170 - 0018    LT

Interest/Estate

Fee Simple

Description

PT LT 130 PL 1431 GEORGE HAMILTON SURVEY AS IN CD480053, S/T & T/W  
VM271333; CITY OF HAMILTON

Address

21 AUGUSTA STREET  
HAMILTON

Chargor(s)

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

Name

2580361 ONTARIO INC.

Address for Service

294 East 32nd Street, Hamilton, Ontario,  
L8V 3S7

I, John Mercante, 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

THE TORONTO-DOMINION BANK

Address for Service

100 King Street West, Hamilton, Ontario, L8P 4W9

Provisions

Principal

\$1,205,000.00

Currency

CDN

Calculation Period

see Schedule

Balance Due Date

xxxxxxxxxx

Interest Rate

see Schedule

Payments

Interest Adjustment Date

Payment Date

ON DEMAND

First Payment Date

Last Payment Date

Standard Charge Terms

8520

Insurance Amount

See standard charge terms

Guarantor

2580363 Ontario Inc. and Johnny Mercante

Additional Provisions

See Schedules

Signed By

Jason Scott Wynne

231 Wilson Street East, Unit B  
Ancaster  
L9G 2B8

acting for  
Chargor(s)

Signed

2019 08 21

Tel

905-648-1851

Fax

905-648-1715

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

Submitted By

WYNNE, PRINGLE, JESKE & KOVACS

231 Wilson Street East, Unit B  
Ancaster  
L9G 2B8

2019 08 22

Tel

905-648-1851

Fax

905-648-1715

Fees/Taxes/Payment

Statutory Registration Fee

\$64.40

Total Paid

\$64.40

<b><i>File Number</i></b>
---------------------------

Chargee Client File Number :                      MMRCJ009; Ref#



## Schedule 1

Form 5 - Land Registration Reform Act, 1984

S

Page 2 of

**Additional Property Identifier(s) and/or Other Information**

This is a Schedule to a Charge made between

and THE TORONTO-DOMINION BANK.

**Box (9)(b)** The Chargor hereby agrees to pay interest on the Principal Amount at the following Interest Rate:

- the Bank's Prime Rate plus 5 % per annum. "Prime Rate" means the rate of interest per annum established and reported by the Bank to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of credit worthiness in Canada for Canadian dollar loans made by it in Canada.

**Box (9)(c)** Interest at the Interest Rate aforesaid is calculated and payable monthly, not in advance, before and after demand, default and judgment. Interest is payable on overdue interest and on Indebtedness payable under this Charge at the aforesaid Interest Rate. Any payment appropriated as a permanent reduction of this Charge shall be first applied against interest accrued hereunder.

FOR OFFICE  
USE ONLY

Collateral All Purpose Charge

311964 (0403)

# EXHIBIT “K”

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

**1. Definitions**

In this set of Standard Charge Terms:

- (a) **Bank** means The Toronto-Dominion Bank.
- (b) **Charge** means this Charge/Mortgage of Land made pursuant to the Land Registration Reform Act, 1984 and any amendments thereto, to which the Chargor and the Chargee are parties and which is dated as of the Date of Signature of the first named Chargor who signs the Charge.
- (c) **Chargee** means the Bank.
- (d) **Chargor** means each Chargor described in this Charge.
- (e) **Costs** means the fees, costs, charges and expenses of the Bank of and incidental to:
  - (i) the preparation, execution and registration of the Charge and any other instruments connected herewith;
  - (ii) the collection, enforcement, realization of the security herein contained;
  - (iii) procuring payment of the Indebtedness due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Bank or any other party;
  - (iv) any inspection required to be made of the Property;
  - (v) all necessary repairs required to be made to the Property;
  - (vi) the Bank's having to go into possession of the Property and secure, complete and equip the building or buildings in any way in connection therewith;
  - (vii) the Bank's renewal of any leasehold interest;
  - (viii) the exercise of any of the powers of a receiver contained herein; and
  - (ix) all solicitor's costs, costs and expenses of any necessary examination of the title to and of valuation of the Property.Costs shall:
  - (i) extend to and include legal costs incurred by the Bank as between solicitor and his own client;
  - (ii) be payable forthwith by the Chargor; and
  - (iii) be a charge on the Property.
- (f) **Fixtures** include, but are not limited to, furnaces, boilers, oil burners, stokers, water heaters, electric light fixtures, screen and storm doors and windows, air conditioning, plumbing, cooling and heating equipment and all apparatus and equipment appurtenant to the Property.
- (g) **Indebtedness** means all monies and liabilities matured or not, whether present or future, direct or indirect, absolute or contingent, now or at any time hereafter owing or incurred, wheresoever or howsoever incurred from or by the Chargor, as principal or surety, whether alone or jointly with any other person and in whatever name style or firm, whether otherwise secured or not and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor including, without limitation, advances upon overdrawn accounts or upon bills of exchange, promissory notes or other obligations discounted for the Chargor or otherwise, all bills of exchange, promissory notes and other obligations negotiable or otherwise representing money and liabilities, or any portion thereof, now or hereafter owing or incurred from or by the Chargor and all interest, damages and Costs, and all premiums of insurance upon the buildings, Fixtures and improvements now or hereafter brought or erected upon the said Property which may be paid by the Bank and Taxes.
- (h) **Interest Rate** means the Interest Rate set out in Schedule 1 to this Charge.
- (i) **Principal Amount** means the Principal Amount in lawful money of Canada set out in this Charge.
- (j) **Property** means the property identified in this Charge by the Property Identifier(s) and described in the Description therein and in a Schedule to this Charge, if required, and includes all buildings, Fixtures and improvements now or hereafter brought or erected thereon.



- (k) **Spouse of Chargor** means each Spouse of Chargor described in this Charge.
- (l) **Taxes** means all taxes, rates and assessments, municipal, local, parliamentary or otherwise.

If the Property is a condominium unit, the following definitions apply:

- (m) **Condominium Corporation** means the Condominium Corporation which was created by the registration of the Declaration and the description relating thereto of which the Property hereby charged constitutes a part.
- (n) **Common Expenses** means the expenses of the performance of the objects and duties of the Condominium Corporation and any expenses specified as common expenses in the Condominium Act (Ontario), as amended from time to time or in the Declaration.
- (o) **Declaration** means the Declaration which, together with a description, was registered pursuant to the Condominium Act, to create the Condominium Corporation.

## 2. Charge of Property

The Chargor has, at the request of the Bank, agreed to give this Charge as a CONTINUING COLLATERAL SECURITY for payment to the Bank ON DEMAND of the Indebtedness, provided that such security be limited to the Principal Amount plus Costs with interest thereon at the Interest Rate. Interest at the Interest Rate is calculated and payable monthly, not in advance, before and after demand, default and judgment, with interest on overdue interest and on all other amounts charged to the Chargor hereunder at the Interest Rate. The Chargor,

- (a) if the Property is a freehold property, hereby charges the Property to the Bank; or
- (b) if the Property is a leasehold interest, hereby charges and subleases the Property to the Bank for and during the unexpired residue of the term of the lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in the lease;

to secure the repayment of the Indebtedness and the performance of all of the obligations of the Chargor contained herein. The Chargor hereby releases to the Bank all its claims upon the Property until the Chargor has repaid the Indebtedness and performed all of the obligations of the Chargor in the manner provided by this Charge.

## 3. Covenants of the Chargor

The Chargor hereby covenants with the Bank that:

- (a) The Chargor will ON DEMAND pay the Indebtedness and observe all provisos, conditions and agreements contained herein;
- (b) The Chargor has a good title in fee simple to the Property (unless the Chargor is a lessee of the Property), save and except prior registered encumbrances;
- (c) The Chargor has the right to charge the Property to the Bank;
- (d) On default, the Bank shall have quiet possession of the Property, free from all encumbrances, save as aforesaid;
- (e) Covenant 1.vii, deemed to be included in this Charge by subsection 7(1) of the Land Registration Reform Act, 1984 is hereby expressly varied by providing that the Chargor will, before or after default, execute such further assurances of the Property and do such other acts, at the Chargor's expense, as may be reasonably required;
- (f) The Chargor will insure the Property to an amount of not less than the Principal Amount PROVIDED that if and whenever such amount be greater than the insurable value of the buildings, Fixtures and improvements now or hereafter brought or erected upon the Property, such insurance shall not be required in any greater amount than such insurable value and if and whenever the same shall be less than the insurable value the Bank may require such insurance to the full replacement value. It is further agreed that the Bank may require any insurance hereunder to be cancelled and new insurance effected by an insurer to be approved by it and also may of its own accord effect or maintain any insurance herein provided for and any amount paid by the Bank therefor shall be payable forthwith to the Bank with interest at the Interest Rate by the Chargor and shall be a charge upon the Property;
- (g) The Chargor will in each year within ten (10) days after the Taxes become due and payable produce to and leave with the Bank the duly receipted tax bills for that year covering the Property;
- (h) This Charge shall be void UPON REPAYMENT of the Indebtedness upon demand; or without demand, UPON PERMANENT REPAYMENT of the Indebtedness, with written notice to such effect to the Bank. The Chargor releases to the Bank all the Chargor's claims upon the Property subject to this paragraph; and
- (i) The Chargor agrees to assign to the Bank forthwith upon the request of the Bank as additional security for payment of the Indebtedness and the performance of the covenants herein contained, any present or future lease which may be granted by the Chargor as to the whole or any portion of the Property and agrees to deliver to the Bank executed copies of all such leases at the written request of the Bank. The Chargor covenants to perform and comply with all lessor's covenants contained in any leases assigned by the Chargor to the Bank. Notwithstanding the assignment or assignments of any lease or leases by the Chargor to the Bank, it is nevertheless declared and agreed that none of the rights or remedies of the Bank under this Charge shall be delayed or in any way hindered or prejudiced by such assignment or assignments or by any act of the Bank pursuant thereto.

#### **4. Additional Covenants if Property is a Leasehold Interest**

The Chargor covenants with the Bank that:

- (a) The Chargor has a good leasehold title to the Property;
- (b) The Chargor has a right to charge and sublet the leasehold title to the Property to the Bank in the manner herein provided, and, if required, has obtained the lessor's consent to this Charge;
- (c) Neither the Chargor nor any other person has heretofore made, done, committed or suffered any act to encumber the lease or any part thereof;
- (d) The lease is a good, valid and subsisting lease and not surrendered, forfeited, amended or become void or voidable and the rents and covenants reserved have been duly paid and performed by the Chargor up to the Date of Signature of the Chargor;
- (e) During the continuance of this Charge, the Chargor will not amend, surrender or modify the lease without the written consent of the Bank and will pay the rent reserved by the lease and perform and observe the covenants, provisos and conditions contained in the lease and on the lessee's part to be performed and observed and hereby agrees to keep the Bank indemnified against all actions, claims and demands whatsoever in respect of the said rent and covenants or anything relating thereto; and
- (f) The Chargor will stand possessed of the Property for the last day of the term or any renewal term granted by the lease in trust for the Bank, and will assign and dispose thereof as the Bank may direct, but subject to the same right of redemption and other rights as are hereby given to the Chargor with respect to the derivative term hereby granted.

#### **5. Repair and Maintenance of Property**

The Chargor covenants with the Bank that the Chargor will keep the Property in good condition and repair. The Bank may, whenever it deems it necessary, by its agent enter upon and inspect the Property and the Chargor shall pay the Costs associated therewith. If the Chargor or anyone claiming under him neglects to keep the Property in good condition and repair or commits any act of waste on the Property or does anything by which the value of the Property shall be diminished, as to all of which the Bank shall be sole judge, or makes default as to any of the covenants or provisos herein contained, the Indebtedness shall, at the option of the Bank, forthwith become due and payable. In default of payment thereof the powers of entering upon and leasing or selling hereby given may be exercised forthwith, and the Bank may make such repairs as it deems necessary and the Costs thereof shall be paid by the Chargor.

#### **6. Obligation to Build Diligently**

The Chargor covenants with the Bank that if the Chargor fails at any time for a period of ten days to diligently carry on the work of construction of any building or buildings being or to be erected on the Property or, without the consent in writing of the Bank, departs in such construction from any plans and specifications thereof which must be approved by the Bank or from the generally accepted standards of construction in the locality of the Property, or permits any construction or other lien to be registered against the Property for any period exceeding thirty days, the Bank at its option at any time thereafter through its agents or contractors may enter the Property and have exclusive possession thereof and of all materials, plant, gear and equipment thereon free of interference from or by the Chargor and complete the construction of the building or buildings either according to the said plans and specifications or according to other plans, specifications or design as the Bank in its absolute discretion shall elect. All Costs in connection therewith shall be payable by the Chargor.

#### **7. Remedies on Default of Chargor**

It is hereby provided that:

##### **(a) Power to Lease or Sell Property**

The Bank on default of payment of the Indebtedness or any portion thereof for the minimum default period on giving the minimum notice, according to applicable law, may enter on, lease or sell the Property. Provided further that on default of payment for the minimum default period, according to applicable law, the foregoing power of entry, leasing and selling may be exercised by the Bank without any notice whatsoever.

##### **(b) Rights of Bank in Sale of Property**

- (i) The Bank in the event of default by the Chargor in payment of the Indebtedness or any portion thereof may sell the Property or any part thereof or, if the Property is a leasehold interest, sell the unexpired term of years demised by the lease or any part thereof by public auction or private sale for such price as can reasonably be obtained therefor and on such terms as to credit and otherwise and with such conditions of sale as it shall in its discretion deem proper, and in the event of any sale on credit or for cash or for part cash and part credit, the Bank shall not be accountable for or be charged with any monies until actually received by it. The Bank may rescind or vary any contract or sale and may buy in and re-sell the Property or any part thereof without being answerable for loss occasioned thereby; and no purchaser shall be bound to enquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety; and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale hereunder, but the Bank alone shall be responsible. The Bank may sell without entering into actual possession of the Property and while in possession shall be accountable only for monies which are actually received by it and sales may be made by it from time to time of parts of the Property to satisfy any portion of the Indebtedness, leaving the residue thereof secured hereunder on the remainder of the Property, or may take proceedings to sell and may sell the Property or any portion of the Property subject to the balance of the Indebtedness not yet due at the time of the said sale.

- (ii) **Disposition of Leasehold Property** - If the Property is a leasehold interest, the Chargor hereby irrevocably appoints the Bank as the Chargor's substitute to be the Chargor's attorney during the continuance of this security. In the event of default and on giving the notice contemplated herein to the Chargor for and on behalf of the Chargor, the Bank may assign the lease and convey the Property and the last day of the term granted by the lease as the Bank shall at any time direct, and in particular, upon any sale made by the Bank under the statutory power or power of sale herein contained, to assign the lease and convey the Property and the said reversion to the purchaser. It is hereby declared that the Bank or other person for the time being entitled to the Indebtedness may at any time, by deed, remove the Chargor or any other person from being a trustee of the lease under the declaration of trust hereinbefore declared and on the removal of the Chargor or any future trustee of the lease, appoint a new trustee or trustees in the Chargor's place.
- (iii) If the Property is a leasehold interest, the Chargor will, with respect to the lease, at the request of the Bank, but at the cost, charge and expense of the Chargor, grant and assign unto the Bank, or the person whom it may appoint, the last day of the said term hereinbefore excepted or any renewal or substituted term; and further, in the event of the Bank making any sale under the power of sale herein contained the Chargor shall stand seized and possessed of the Property for the last day of the said term hereinbefore excepted, and of any renewal or substituted term, and of all rights of renewal in trust for the purchaser or purchasers, his or their heirs, executors, administrators, successors and assigns.

**(c) Costs of Sale of Property**

The Costs of any sale proceedings hereunder, whether such sale proves abortive or not, incurred in taking, recovering or keeping possession of the Property or in enforcing the personal remedies under this Charge or by reason of non-payment or in procuring payment of the Indebtedness shall be payable by the Chargor whether any action or proceeding has commenced or not.

**8. Appointment of Receiver**

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to the Bank then the Bank may in writing, appoint any person, whether an officer or employee of the Bank or not, to be a receiver of the Property and the rents and profits derived therefrom, and may remove the receiver so appointed and appoint another in his stead. The term "receiver" as used in this Charge includes a receiver and manager. The following provisions shall apply to this paragraph:

- (a) The receiver so appointed is conclusively the agent of the Chargor and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Bank shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct the payment thereof from proceeds collected;
- (b) Nothing contained herein and nothing done by the Bank or by the receiver shall render the Bank a mortgagee in possession or responsible as such;
- (c) All monies received by the receiver, after providing for payment and charges ranking prior to this Charge and for all applicable Costs shall be applied in or towards satisfaction of the remaining Indebtedness;
- (d) The receiver so appointed shall have power to:
  - (i) take possession of the Property, collect rents and profits and realize upon additional or collateral security granted by the Chargor to the Bank and for that purpose may take any proceedings, be they legal or otherwise, in the name of the Chargor or otherwise;
  - (ii) carry on or concur in carrying on the business which the Chargor is conducting on and from the Property and for that purpose may borrow money on the security of the Property in priority to this Charge; and
  - (iii) lease all or any portion of the Property and for this purpose execute contracts in the name of the Chargor which said contracts shall be binding upon the Chargor;
- (e) The rights and powers conferred herein are supplemental to and not in substitution for any rights which the Bank may have from time to time.

**9. Taking Possession of Personal Property**

The Bank may distrain for arrears of any portion of the Indebtedness. The Chargor hereby waives the right to claim exemption and agrees that the Bank shall not be limited to the amount for which it may distrain.

**10. Quiet Possession**

Until default of payment the Chargor shall have quiet possession of the Property.

## **11. Release of Property by Bank**

It is hereby agreed by the Chargor that the Bank may at its discretion at all times release any part or parts of the Property or any other security or any surety for the Indebtedness or any portion thereof either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the Property or any person from this Charge or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Bank, it being expressly agreed that every part or lot into which the Property is or may hereafter be divided does and shall stand charged with the whole of the Indebtedness.

No extension of time given by the Bank to the Chargor, or any one claiming under the Chargor or any other dealing by the Bank with the owner or owners of the Property or of any part thereof shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable for the payment of the Indebtedness or any portion thereof.

## **12. Payment of Other Charges and Performance of Other Obligations by Bank**

The Chargor hereby agrees that:

- (a) The Bank may satisfy any charge now or hereafter existing or to arise or be claimed upon the Property and the amount so paid shall be added to the Indebtedness and bear interest at the Interest Rate and shall be payable forthwith by the Chargor to the Bank and in default of payment, the Indebtedness shall become payable and the powers of sale hereby given may be exercised forthwith without any notice. And in the event of the Bank satisfying any such charge or claim, it shall be entitled to all equities and securities of the person or persons so satisfied and it may retain any discharge or cessation of charge unregistered until paid; and
- (b) If the Property is a leasehold interest, and if the Chargor shall refuse or neglect to renew the lease or any renewals thereof granted hereafter, then, and as often as it shall happen, the Bank may, effect such renewals in its own name or otherwise, and every renewal of the lease and the Property thereby demised shall remain and be security to the Bank for the Indebtedness. All Costs in connection therewith shall be payable by the Chargor.

## **13. Sale or Transfer of Property by Chargor**

The Chargor covenants and agrees with the Bank that:

- (a) The Chargor will not without the prior consent in writing of the Bank, sell, transfer or otherwise dispose of the Property or any portion thereof or any interest therein; and, in the event of such sale, transfer or other disposition, without the consent of the Bank, the Indebtedness hereby secured shall, at the option of the Bank, forthwith become due and payable; and
- (b) If the Property is a leasehold interest, no sale or other dealing by the Chargor with the lease or the Property or any part thereof or any other dealing by the Bank with the lease or the Property or any part thereof, shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable to repay the Indebtedness hereby secured.

## **14. Charge Not a Substitute For Any Other Security**

It is hereby expressly agreed by the Chargor that this Charge shall not create any merger, rebate or discharge of any debt owing to the Bank or of any lien, bond, promissory note, bill of exchange or other security held by or which may hereafter be held by the Bank, whether from the Chargor or any other party or parties whomsoever and this Charge shall not in any way affect any security held or which may hereafter be held by the Bank for the Indebtedness or any portion or portions thereof or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Bank for or on account of the Indebtedness or any portion or portions thereof nor shall the remedies of the Bank in respect thereof be affected in any manner whatsoever.

## **15. Judgments**

The taking of a judgment or judgments against the Chargor on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Bank's rights to interest on the Indebtedness at the Interest Rate, and further that any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment shall have been fully paid and satisfied.

## **16. Bank May Appropriate Payments to Any Debt**

It is hereby agreed that the Bank shall have the right at any time to appropriate any payment made as a temporary or permanent reduction of any portion of the Indebtedness whether the same be represented by open account, overdraft or by any bills, notes or other instruments and whether then due or to become due and may from time to time revoke or alter such appropriation and appropriate such payment as a temporary or permanent reduction of any other portion of the Indebtedness as in its sole and uncontrolled discretion it may see fit.

## **17. Charge Continuing Security**

It is hereby agreed that this Charge may secure a current or running account and shall stand as a continuing security to the Bank for the payment of the Indebtedness and all interest, damages and Costs which may become due or payable to the Bank notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the bills, notes or other obligations now or hereafter representing the same or any portion thereof or in the names of the parties to the said bills, notes or obligations or any of them.

## **18. Additional Covenants if Property is a Condominium Unit**

The Chargor covenants with the Bank that:

- (a) The Chargor will promptly observe and perform all obligations imposed on the Chargor by the Condominium Act as enacted from time to time, and by the Declaration, the By-laws and the Rules, as amended from time to time, of the Condominium Corporation, by virtue of the Chargor's ownership of the Property. Any breach of the said duties and obligations shall constitute a breach of covenant under this Charge;
- (b) Without in any way limiting or restricting the generality of the foregoing:
  - (i) The Chargor will pay promptly when due any contributions to Common Expenses required of the Chargor as an owner of the Property;
  - (ii) The Chargor will transmit to the Bank forthwith upon the demand of the Bank satisfactory proof that all Common Expenses assessed against or in respect of the said Property have been paid as assessed;
  - (iii) The Bank may put out of and deduct from any advance of the Principal Amount secured hereunder all contributions to the Common Expenses assessed against or in respect of the said Property which have become due and payable and are unpaid at the date of such advance; and
  - (iv) Whenever and so long as the Bank so requires the Chargor shall on or before the date when any sum becomes payable by the Chargor in respect of Common Expenses pay such sum to the Bank. The Bank shall forthwith on receipt thereof remit all such sums to the Condominium Corporation on behalf of the Chargor or as the Condominium Corporation may from time to time direct;
- (c) The Bank by accepting delivery of and registering this Charge authorizes and empowers the Chargor to vote or consent or not to consent respecting all matters relating to the affairs of the relevant Condominium Corporation provided that:
  - (i) The Bank may at any time upon written notice to the Chargor and the Condominium Corporation revoke this authorization;
  - (ii) The Bank shall not be under any obligation to vote or consent or not to consent as aforesaid to protect the interest of the Chargor; and
  - (iii) The exercise by the Bank of its right to vote or consent or not to consent as aforesaid shall not constitute the Bank a mortgagee in possession.

## **19. Assignment of Rents**

The Chargor hereby agrees with the Bank as follows:

- (a) The Chargor hereby assigns and sets over to the Bank all rents payable from time to time under all leases of the Property or any part thereof, whether presently existing or arising in the future, together with the benefit of all covenants, agreements and provisos contained in the said leases, in favour of the Bank;
- (b) Forthwith after making any lease of the Property or any part thereof the Chargor will execute and deliver to the Bank an assignment in registrable form in the Bank's usual form of all rents payable under such lease, the benefit of all covenants, agreements and provisos therein contained on the part of the tenant to be observed and performed and the reversion of such lease, and will also execute and deliver to the Bank all such notices and other documents as may be required in order to render such assignment effectual in law;
- (c) Nothing herein contained shall make the Bank responsible for the collection of rents payable under any lease of the Property or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease;
- (d) The Bank shall not by virtue of these presents be deemed a mortgagee in possession of the Property;
- (e) The Bank shall be liable to account for only such rents as actually come into its hands less reasonable collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness; and
- (f) Notwithstanding anything herein contained no lease of the Property or any part thereof made by the Chargor without the consent in writing of the Bank shall have priority over this Charge.

## **20. Interpretation and Headings**

It is hereby agreed that wherever in this Charge the word "Chargor" is used the same shall extend to and include the heirs, executors, administrators, successors and assigns of the Chargor, and wherever in this Charge the word "Bank" is used the same shall extend to and include the successors and assigns of the Bank and wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties hereto so require. The headings do not form part of this document and have been inserted for convenience of reference only.

## **21. Condominium Act**

If the Property is a condominium unit, this Charge is made pursuant to the Condominium Act.

# EXHIBIT “L”



Hamilton Commercial Banking Centre  
100 King Street West, 4Th Floor  
Hamilton, ON  
L8P 1A2  
Telephone No.: (905) 528 6270  
Fax No.: (905) 529 5451

August 9, 2019

2580361 ONTARIO INC. (B)  
56 Varley Crescent  
Brantford, ON  
N4R 7Z7

Attention: Johnny Mercante

Dear Mr. Mercante,

We are pleased to offer the Borrower the following credit facilities (the "Facilities"), subject to the following terms and conditions.

**BORROWER**

2580361 ONTARIO INC. (the "Borrower")

**LENDER**

The Toronto-Dominion Bank (the "Bank"), through its Commercial Banking Centre located in Hamilton, ON.

**CREDIT LIMIT**

- 1) CAD\$1,200,000 as reduced pursuant to the section headed "Repayment and Reduction of Amount of Credit Facility".

**PURPOSE**

- 1) To refinance the property located at 21 Augusta Street, Hamilton ON

**TENOR**

- 1) Committed

**CONTRACTUAL  
TERM**

- 1) Up to 60 months from the date of drawdown

**RATE TERM**  
**(FIXED RATE**  
**TERM LOAN)**

- 1) Fixed rate: 12-60 months but never to exceed the Contractual Term Maturity Date  
Floating rate: No term

**AMORTIZATION**

- 1) 240 month(s)

**INTEREST RATES**  
**AND FEES**

Advances shall bear interest and fees as follows:

- 1) **Committed Reducing Term Facility:**
- Fixed Rate Term Loans: as determined by the Bank, in its sole discretion, for the Rate Term selected by the Borrower, and as set out in the Rate and Payment Terms Notice applicable to that Fixed Rate Term Loan.
  - Floating Rate Term Loans available by way of:
    - Prime Based Loans: Prime Rate + 1.500% per annum.

For all Facilities, interest payments will be made in accordance with Schedule "A" attached hereto unless otherwise stated in this Letter or in the Rate and Payment Terms Notice applicable for a particular drawdown. Information on interest rate and fee definitions, interest rate calculations and payment is set out in the Schedule "A" attached hereto.

**ARRANGEMENT**  
**FEE**

The Borrower has paid a non-refundable arrangement fee of CAD\$3,000.

**EXCESS MONITORING FEE**

The Borrower may, at the Bank's discretion, be charged an Excess Monitoring Fee of \$250.00, payable in the currency of the Facility, each time that the Credit Limit of a Facility is exceeded. Any extension of credit above the Credit Limit will be at the Bank's sole and absolute discretion.

**LATE REPORTING FEE**

CAD\$ 150 per occurrence.

If any required reporting is not received within the agreed upon timeframe the Late Reporting Fee will be levied. The Late Reporting Fee does not imply waiver of compliance with any reporting requirement.

**DRAWDOWN**

**Assigned Description**  
**Facilities**

- 1) One time drawdown, upon satisfaction of disbursement conditions, after which time, any amount not drawn is cancelled. Amounts repaid may not be redrawn.



**REPAYMENT AND  
REDUCTION OF  
AMOUNT OF CREDIT  
FACILITY**

**Assigned Description  
Facilities**

- 1) All amounts outstanding will be repaid on or before the Contractual Term Maturity Date. The drawdown will be repaid in monthly payments. The details of repayment and interest rate applicable to such drawdown will be set out in the "Rate and Payment Terms Notice" applicable to that drawdown. Any amounts repaid may not be reborrowed.

**PREPAYMENT**

**Assigned Description  
Facilities**

- 1) Fixed Rate: The Borrower has selected the 10% Prepayment Option and accordingly, Fixed Rate Term Loans under this Facility may be prepaid in accordance with Section 4a) and 4b) of Schedule A.  
Floating Rate: No prepayment penalties.

**SECURITY**

The following security shall be provided, shall, unless otherwise indicated, support all present and future indebtedness and liability of the Borrower and the grantor of the security to the Bank including without limitation indebtedness and liability under guarantees, foreign exchange contracts, cash management products, and derivative contracts, shall be registered in first position, and shall be on the Bank's standard form, supported by resolutions and solicitor's opinion, all acceptable to the Bank.

- a) General Security Agreement ("GSA") representing a First charge on all the Borrower's present and after acquired personal property – To Be Obtained.
- b) Guarantee of Advances – To Be Obtained.
  - Unlimited
  - Executed by 2580363 ONTARIO INC. (the "Guarantor")
- c) General Security Agreement ("GSA") representing a First charge on all the Borrower's present and after acquired personal property 2580363 ONTARIO INC. – To Be Obtained.
- d) Continuing Collateral Mortgage, representing a First charge, on real property located at 21 Augusta Street, Hamilton, Ontario in the principal amount of CAD \$1,205,000, beneficially owned by and registered in the name of 2580361 ONTARIO INC. – To Be Obtained.
- e) Assignment of Fire Insurance of 2580361 ONTARIO INC. – To Be Obtained.
- f) Guarantee of Advances – To Be Obtained
  - Unlimited
  - Executed by JOHNNY MERCANTE (the "Guarantor")
- g) General Assignment of Rents and Leases representing a First charge – To Be Obtained.

h) Postponement and Assignment of Creditor's Claim executed by 2580361 ONTARIO INC. Postponement of all present and future indebtedness from Shareholders – To Be Obtained.

i) Assignment of Fire Insurance of 2580363 ONTARIO INC – To Be Obtained.

All persons and entities required to provide a guarantee shall be referred to in this Agreement individually as a "Surety" and/or "Guarantor" and collectively as the "Guarantors";

All of the above security and guarantees shall be referred to collectively in this Agreement as "Bank Security".

#### **DISBURSEMENT CONDITIONS**

The obligation of the Bank to permit any drawdown hereunder is subject to the Standard Disbursement Conditions contained in Schedule "A" and the following additional drawdown conditions:

Delivery to the Bank of the following, all of which must be satisfactory to the Bank:

##### **Assigned Description Facilities**

- All) Acceptance or waiver of Business Credit Life Insurance for the Guarantor.
- All) Reliance / Transmittal Letter addressed to the Bank for the Appraisal Report May 31, 2019 on the property located at 21 Augusta Street, Hamilton, Ontario.
- All) The Bank to complete a satisfactory Property Inspection and Site Visit for the property located at 21 Augusta Street, Hamilton, ON.
- All) Receipt and satisfactory review of Personal Net Worth Statement.
- All) All security to be on hand and in good order (or funded in escrow).

#### **REPRESENTATIONS AND WARRANTIES**

All representations and warranties shall be deemed to be continually repeated so long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect. The Borrower makes the Standard Representations and Warranties set out in Schedule "A".

#### **POSITIVE COVENANTS**

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Positive Covenants set out in Schedule "A".

##### **Reporting Covenants:**

##### **Assigned Description Facilities**

- All) Annual Notice to Reader Financial Statements of 2580361 Ontario Inc. within 120 days of fiscal year end.
- All) Annual Notice to Reader Financial Statements of 2580363 Ontario Inc. within 120 days of fiscal year end.
- All) Provide confirmation to the Bank on an annual basis that taxes are current for the property located at 21 Augusta Street, Hamilton, Ontario. Such confirmation to be in a format acceptable to the Bank.
- All) Delivery of a Personal Financial Statement and Privacy Agreement from the Guarantor(s) and such supporting documentation as the Bank may reasonably request.

## NEGATIVE COVENANTS

So long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, the Borrower will and will ensure that its subsidiaries and each of the Guarantors will observe the Standard Negative Covenants set out in Schedule "A" and in addition:

Assigned Facilities	Description
All)	The Borrower will not further encumber the property located at 21 Augusta Street, Hamilton, ON without the written consent of the Bank.

## PERMITTED LIENS

Permitted Liens as referred to in Schedule "A" are:

Assigned Facilities	Description
All)	Purchase Money Security Interests in equipment which Purchase Money Security Interests exist on the date of this Agreement ("Existing PMSIs") which are known to the Bank and all future Purchase Money Security Interests on equipment acquired to replace the equipment under Existing PMSIs, provided that the cost of such replacement equipment may not exceed the cost of the equipment subject to the Existing PMSI by more than 10%

## FINANCIAL COVENANTS

The Borrower agrees at all times, on a Combined\* basis to maintain a Debt Service Coverage ratio (DSC) of not less than 120% at all times.

The DSC is calculated as follows:

$$\frac{(\text{Earnings before Interest, Taxes, Depreciation and Amortization} - \text{Unfinanced Capital Expenditures}^{**} - \text{Distributions}^{***})}{(\text{Principal} + \text{Interest})}$$

\* Combined is defined as 2580363 Ontario Inc. and 2580361 Ontario Inc.

\*\* Unfinanced Capital expenditures is defined as total capital expenditures less proceeds on disposal of assets, less new funds advanced

\*\*\* Distributions include but are not limited to Dividends or any outflow of shareholders or related party loans.

## EVENTS OF DEFAULT

The Bank may accelerate the payment of principal and interest under any committed credit facility hereunder and cancel any undrawn portion of any committed credit facility hereunder, at any time after the occurrence of any one of the Standard Events of Default contained in Schedule "A" attached hereto.

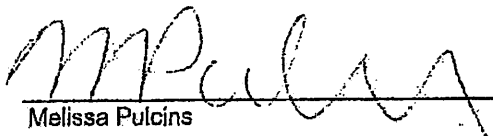
**SCHEDULE "A" -**  
**STANDARD TERMS**  
**AND CONDITIONS**


Schedule "A" sets out the Standard Terms and Conditions ("Standard Terms and Conditions") which apply to these credit facilities. The Standard Terms and Conditions, including the defined terms set out therein, form part of this Agreement, unless this letter states specifically that one or more of the Standard Terms and Conditions do not apply or are modified.

We trust you will find these facilities helpful in meeting your ongoing financing requirements. We ask that if you wish to accept this offer of financing (which includes the Standard Terms and Conditions), please do so by signing and returning the attached duplicate copy of this letter to the undersigned. This offer will expire if not accepted in writing and received by the Bank on or before August 31, 2019.

Yours truly,

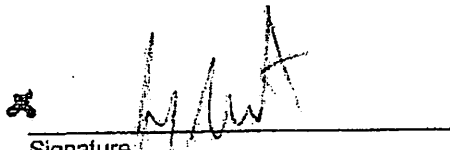
THE TORONTO-DOMINION BANK

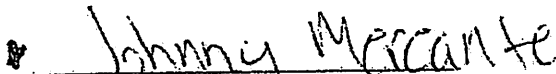
  
Melissa Pulcins  
Account Manager

  
Greg Neven  
Manager Commercial Sales

TO THE TORONTO-DOMINION BANK:

2580361 ONTARIO INC. hereby accepts the foregoing offer this 11 day of August, 2019. The Borrower confirms that, except as may be set out above, the credit facility(ies) detailed herein shall not be used by or on behalf of any third party.

  
Signature

  
Print Name & Position

**SCHEDULE A**  
**STANDARD TERMS AND CONDITIONS**

**1. INTEREST RATE DEFINITIONS**

Prime Rate means the rate of interest per annum (based on a 365 day year) established and reported by the Bank to the Bank of Canada from time to time as the reference rate of interest for determination of interest rates that the Bank charges to customers of varying degrees of creditworthiness in Canada for Canadian dollar loans made by it in Canada.

The Stamping Fee rate per annum for CAD B/As is based on a 365 day year and the Stamping Fee is calculated on the Face Amount of each B/A presented to the Bank for acceptance. The Stamping Fee rate per annum for USD B/As is based on a 360 day year and the Stamping Fee is calculated on the Face Amount of each B/A presented to the Bank for acceptance.

CDOR means, for any day, the annual rate for B/As denominated in Canadian Dollars for a specified term that appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Toronto time) on such day (or, if such day is not a Business Day, then on the immediately preceding Business Day).

LIBOR means the rate of interest per annum (based on a 360 day year) as determined by the Bank (rounded upwards, if necessary to the nearest whole multiple of 1/16th of 1%) at which the Bank may make available United States dollars which are obtained by the Bank in the Interbank Euro Currency Market, London, England at approximately 11:00 a.m. (Toronto time) on the second Business Day before the first day of, and in an amount similar to, and for the period similar to the interest period of, such advance.

USBR means the rate of interest per annum (based on a 365 day year) established by the Bank from time to time as the reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of creditworthiness for US dollar loans made by it in Canada.

If Prime Rate, CDOR, LIBOR, USBR or any other applicable base rate is less than zero, such base rate shall be deemed to be zero for purposes of this Agreement.

Any interest rate based on a period less than a year expressed as an annual rate for the purposes of the Interest Act (Canada) is equivalent to such determined rate multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the period upon which it was based.

**2. INTEREST CALCULATION AND PAYMENT**

Interest on Prime Based Loans and USBR Loans is calculated daily (including February 29 in a leap year) and payable monthly in arrears based on the number of days the subject loan is outstanding unless otherwise provided in the Rate and Payment Terms Notice. Interest is charged on February 29 in a leap year.

The Stamping Fee is calculated based on the amount and the term of the B/A and is payable upon acceptance by the Bank of the B/A. The net proceeds received by the Borrower on a B/A advance will be equal to the Face Amount of the B/A discounted at the Bank's then prevailing B/A discount rate for CAD B/As or USD B/As as the case may be, for the specified term of the B/A less the B/A Stamping Fee. If the B/A discount rate (or the rate used to determine the B/A discount rate) is less than zero, it shall instead be deemed to be zero for purposes of this Agreement.

Interest on LIBOR Loans and CDOR Loans is calculated and payable on the earlier of contract maturity or quarterly in arrears, for the number of days in the LIBOR or CDOR interest period, as applicable.

L/C and L/G fees are payable at the time set out in the Letter of Credit Indemnity Agreement applicable to the issued L/C or L/G.

Interest on Fixed Rate Term Loans is compounded monthly and payable monthly in arrears unless otherwise provided in the Rate and Payment Terms Notice.

Interest is payable both before and after maturity or demand, default and judgment.

Each payment under this Agreement shall be applied first in payment of costs and expenses, then interest and fees and the balance, if any, shall be applied in reduction of principal.

For loans not secured by real property, all overdue amounts of principal and interest and all amounts outstanding in excess of the Credit Limit shall bear interest from the date on which the same became due or from when the excess was incurred, as the case may be, until the date of payment or until the date the excess is repaid at the Bank's standard rate charged from time to time for overdrafts, or such lower interest rate if the Bank agrees to a lower interest rate in writing. Nothing in this clause shall be deemed to authorize the Borrower to incur loans in excess of the Credit Limit.

If any provision of this Agreement would oblige the Borrower to make any payment of interest or other amount payable to the Bank in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Bank of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by the Bank of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows: first, by reducing the amount or rate of interest, and, thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the Bank which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

### **3. DRAWDOWN PROVISIONS**

#### **Prime Based and USBR Loans**

There is no minimum amount of drawdown by way of Prime Based Loans and USBR Loans, except as stated in this Agreement. The Borrower shall provide the Bank with 3 Business Days' notice of a requested Prime Based Loan or USBR Loan over \$1,000,000.

#### **B/As**

The Borrower shall advise the Bank of the requested term or maturity date for B/As issued hereunder. The Bank shall have the discretion to restrict the term or maturity dates of B/As. In no event shall the term of the B/A exceed the Contractual Term Maturity Date or Maturity Date, as applicable. Except as otherwise stated in this Agreement, the minimum amount of a drawdown by way of B/As is \$1,000,000 and in multiples of \$100,000 thereafter. The Borrower shall provide the Bank with 3 Business Days' notice of a requested B/A drawdown.

The Borrower shall pay to the Bank the full amount of the B/A at the maturity date of the B/A.

The Borrower appoints the Bank as its attorney to and authorizes the Bank to (i) complete, sign, endorse, negotiate and deliver B/As on behalf of the Borrower in handwritten form, or by facsimile or mechanical signature or otherwise, (ii) accept such B/As, and (iii) purchase, discount, and/or negotiate B/As.

#### **LIBOR and CDOR**

The Borrower shall advise the Bank of the requested LIBOR or CDOR contract maturity period. The Bank shall have the discretion to restrict the LIBOR or CDOR contract maturity. In no event shall the term of the LIBOR or CDOR contract exceed the Contractual Term Maturity Date. Except as otherwise stated in this Agreement, the minimum amount of a drawdown by way of a LIBOR Loan or a CDOR Loan is \$1,000,000, and shall be in multiples of \$100,000 thereafter. The Borrower will provide the Bank with 3 Business Days' notice of a requested LIBOR Loan or CDOR Loan.

#### **L/C and/or L/G**

The Bank shall have the discretion to restrict the maturity date of L/Gs or L/Cs.

#### **B/A, LIBOR and CDOR - Conversion**

Any portion of any B/A, LIBOR or CDOR Loan that is not repaid, rolled over or converted in accordance with the applicable notice requirements hereunder shall be converted by the Bank to a Prime Based Loan effective as of the maturity date of the B/A or the last day in the interest period of the LIBOR or CDOR contract, as applicable. The Bank may charge interest on the amount of the Prime Based Loan at the rate of 115% of the rate applicable to Prime Based Loans for the 3 Business Day period immediately following such maturity. Thereafter, the rate shall revert to the rate applicable to Prime Based Loans.

#### **B/A, LIBOR and CDOR – Market Disruption**

If the Bank determines, in its sole discretion, that a normal market in Canada for the purchase and sale of B/As or the making of CDOR or LIBOR Loans does not exist, any right of the Borrower to request a drawdown under the applicable borrowing option shall be suspended until the Bank advises otherwise. Any drawdown request for B/As, LIBOR or CDOR Loans, as applicable, during the suspension period shall be deemed to be a drawdown notice requesting a Prime Based Loan in an equivalent amount.

#### **Cash Management**

The Bank may, and the Borrower hereby authorizes the Bank to, drawdown under the Operating Loan, Agriculture Operating Line or Farm Property Line of Credit to satisfy any obligations of the Borrower to the Bank in connection with any cash management service provided by the Bank to the Borrower. The Bank may drawdown under the Operating Loan, Agriculture Operating Line or Farm Property Line of Credit even if the drawdown results in amounts outstanding in excess of the Credit Limit.

#### **Notice**

Prior to each drawdown under a Fixed Rate Term Loan, other than a Long Term Farm Loan, an Agriculture Term Loan, a Canadian Agricultural Loans Act Loan, a Dairy Term Loan or a Poultry Term Loan and at least 10 days prior to the maturity of each Rate Term, the Borrower will advise the Bank of its selection of drawdown options from those made available by the Bank. The Bank will, after each drawdown, other than drawdowns by way of BA, CDOR, or LIBOR Loan or under the operating loan, send a Rate and Payment Terms Notice to the Borrower.

### **4. PREPAYMENT**

#### **Fixed Rate Term Loans**

##### **10% Prepayment Option Chosen.**

- (a) Once, each calendar year, ("Year"), the Borrower may, provided that an Event of Default has not occurred, prepay in one lump sum, an amount of principal outstanding under a Fixed Rate Term Loan not exceeding 10% of the original amount of the Fixed Rate Term Loan, upon payment of all interest accrued to the date of prepayment without paying any prepayment charge. If the prepayment privilege is not used in one Year, it cannot be carried forward and used in a later Year.
- (b) Provided that an Event of Default has not occurred, the Borrower may prepay more than 10% of the original amount of a Fixed Rate Term Loan in any Year, upon payment of all interest accrued to the date of prepayment and an amount equal to the greater of:
  - i) three months' interest on the amount of the prepayment (the amount of prepayment is the amount of prepayment exceeding the 10% limit described in Section 4(a)) using the interest rate applicable to the Fixed Rate Term Loan being prepaid; and
  - ii) the Yield Maintenance, being the difference between:
    - a. the current outstanding principal balance of the Fixed Rate Term Loan; and
    - b. the sum of the present values as of the date of the prepayment of the future payments to be made on the Fixed Rate Term Loan until the last day of the Rate Term, plus the present value of the principal amount of the Fixed Rate Term Loan that would have been due on the maturity

of the Rate Term, when discounted at the Government of Canada bond yield rate with a term which has the closest maturity to the unexpired term of the Fixed Rate Term Loan.

#### **10% Prepayment Option Not Chosen.**

- (c) The Borrower may, provided that an Event of Default has not occurred, prepay all or any part of the principal then outstanding under a Fixed Rate Term Loan upon payment of all interest accrued to the date of prepayment and an amount equal to the greater of:
- i) three months' interest on the amount of the prepayment using the interest rate applicable to the Fixed Rate Term Loan being prepaid; and
  - ii) the Yield Maintenance, being the difference between:
    - a. the current outstanding principal balance of the Fixed Rate Term Loan; and
    - b. the sum of the present values as of the date of the prepayment of the future payments to be made on the Fixed Rate Term Loan until the last day of the Rate Term, plus the present value of the principal amount of the Fixed Rate Term Loan that would have been due on the maturity of the Rate Term, when discounted at the Government of Canada bond yield rate with a term which has the closest maturity to the unexpired term of the Fixed Rate Term Loan.

#### **Floating Rate Term Loans**

The Borrower may prepay the whole or any part of the principal outstanding under a Floating Rate Term Loan, at any time without the payment of prepayment charges.

#### **5. STANDARD DISBURSEMENT CONDITIONS**

The obligation of the Bank to permit any drawdowns hereunder at any time is subject to the following conditions precedent:

- a) The Bank shall have received the following documents which shall be in form and substance satisfactory to the Bank:
  - i) A copy of a duly executed resolution of the Board of Directors of the Borrower empowering the Borrower to enter into this Agreement;
  - ii) A copy of any necessary government approvals authorizing the Borrower to enter into this Agreement;
  - iii) All of the Bank Security and supporting resolutions and solicitors' letter of opinion required hereunder;
  - iv) The Borrower's compliance certificate certifying compliance with all terms and conditions hereunder;
  - v) All operation of account documentation; and
  - vi) For drawdowns under the Facility by way of L/C or L/G, the Bank's standard form Letter of Credit Indemnity Agreement
- b) The representations and warranties contained in this Agreement are correct.
- c) No event has occurred and is continuing which constitutes an Event of Default or would constitute an Event of Default, but for the requirement that notice be given or time elapse or both.
- d) The Bank has received the arrangement fee payable hereunder (if any) and the Borrower has paid all legal and other expenses incurred by the Bank in connection with the Agreement or the Bank Security.

#### **6. STANDARD REPRESENTATIONS AND WARRANTIES**

The Borrower hereby represents and warrants, which representations and warranties shall be deemed to be continually repeated so long as any amounts remain outstanding and unpaid under this Agreement or so long as any commitment under this Agreement remains in effect, that:



# EXHIBIT “M”



This **Guarantee** is made as of the 21<sup>st</sup> day of August, 2019.

Whereas the undersigned (each hereinafter referred to as the "Guarantor") has agreed to provide The Toronto-Dominion Bank (hereinafter referred to as the "Bank") with a guarantee of the Obligations (as hereinafter defined) of

2580361 Ontario Inc.

(the "Customer");

And whereas the Guarantor has agreed that if the guarantee herein is not enforceable, the Guarantor will indemnify the Bank or be liable as primary obligor.

**NOW THEREFORE**, in consideration of the Bank dealing with the Customer now or in the future and/or for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees with the Bank as follows:

**1. Obligations Guaranteed**

The Guarantor unconditionally and irrevocably guarantees payment of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, wheresoever and howsoever incurred of the Customer to the Bank, whether arising from dealings between the Bank and the Customer or from other dealings or proceedings by which the Bank may be or become in any manner whatsoever a creditor of the Customer, in any currency, whether incurred by the Customer alone or jointly with another or others and whether as a indemnitor or surety, including interest thereon and all amounts owed by the Customer for fees, costs and expenses (collectively referred to as the "Obligations").

**2. Extent of Guarantor's Liability**

This is an unlimited Guarantee and the Guarantor's liability to the Bank under this Guarantee shall not be limited as to amount.

**3. Indemnity/Primary Obligation**

If (i) any Obligations are not duly paid by the Customer and are not recoverable under Section 1 for any reason, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Bank from and against all losses resulting from the failure of the Customer to pay such Obligations, and (ii) any Obligations are not duly paid by the Customer and are not recoverable under Section 1 or the Bank is not indemnified under clause (i) above of this Section 3, for any reason, such Obligations will, as a separate and distinct obligation, be paid by and recoverable from the Guarantor as primary obligor.

The liabilities of the Guarantor under Section 1 and each of clauses (i) and (ii) of this Section 3 are separate and distinct from each other, but the provisions of this Agreement shall apply to each of such liabilities unless the context otherwise requires.

**4. Nature of Guarantor's Liability**

The liability of the Guarantor under this Guarantee is continuing, absolute and unconditional and will not be affected by any act, omission, event or circumstance that might constitute a legal or equitable defence (any and all such legal and equitable defences are hereby expressly waived by the Guarantor) to or a discharge, limitation or reduction of the liability of the Guarantor hereunder, other than as a result of the indefeasible payment in full of the Obligations, including:

- (a) the unenforceability of any of the Obligations for any reason, including as a result of the act of any governmental authority;

- (b) any irregularity, fraud, illegality, defect or lack of authority or formality in incurring the Obligations, notwithstanding any inquiry that may or may not have been made by the Bank;
- (c) failure of the Bank to comply with or perform any agreements relating to the Obligations;
- (d) any discontinuance, renewal, extension, increase or reduction in the amount, or any other variance of any loans or credits now or hereafter made available to the Customer by the Bank or guaranteed by the Customer to the Bank or any other change to any of the terms or conditions of any of the Obligations (including, without limitation, respecting rates of interest, fees or charges, maturity dates), or any waiver by the Bank respecting any of the Obligations;
- (e) the taking of or the failure by the Bank to take a guarantee from any other person;
- (f) any release, compromise, settlement or any other dealing with any person, including any other Guarantor;
- (g) the reorganization of the Customer or its business (whether by amalgamation, merger, transfer, sale or otherwise); and in the case of an amalgamation or merger, the liability of the Guarantor shall apply to the Obligations of the resulting or continuing entity and the term "Customer" shall include such resulting or continuing entity;
- (h) the current financial condition of the Customer and any change in the Customer's financial condition;
- (i) any change in control or ownership of the Customer, or if the Customer is a general or limited partnership, any change in the membership of that partnership or other entity;
- (j) any change in the name, articles or other constating documents of the Customer, or its objects, business or capital structure;
- (k) the bankruptcy, winding-up, dissolution, liquidation or insolvency of the Customer or any proceedings being taken by or against the Customer with respect thereto, and any stay of or moratorium on proceedings by the Bank against the Customer as a result thereof;
- (l) a breach of any duty of the Bank (whether fiduciary or in negligence or otherwise) and whether owed to the Guarantor, the Customer or any other person;
- (m) any lack or limitation of power, capacity or legal status of the Customer, or, if the Customer is an individual, the death of the Customer;
- (n) the Customer's account being closed or the Bank ceasing to deal with the Customer;
- (o) any taking or failure to take any security by the Bank, any loss of or diminution in value of any security, the invalidity, unenforceability, subordination, postponement, release, discharge or substitution, in whole or in part, of any security, or the failure to perfect or maintain perfection or enforce any security; or
- (p) any failure or delay by the Bank in exercising any right or remedy respecting the Obligations or under any security or guarantee.

## **5. Continuing Guarantee**

The obligations of the Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Bank and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Bank. This Guarantee will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Bank as a result of the occurrence of any action or event, including the insolvency, bankruptcy or reorganization of the Customer or the Guarantor, all as though such payment had not been made.

## **6. Demand for Payment**

The Guarantor shall make payment to the Bank under this Guarantee immediately upon receipt of a written demand for payment from the Bank. If any Obligation is not paid by the Customer when due, the Bank may treat all Obligations as due and payable by the Customer and may demand immediate payment under this Guarantee of all or some of the Obligations whether such other Obligations would otherwise be due and payable by the Customer at such time or whether or not any demands, steps or proceedings have been made or taken by the Bank against the Customer or any other person respecting all or any of the Obligations. If any stay of or moratorium on proceedings by the Bank against the Customer is imposed in respect of any Obligation, the Bank may nevertheless demand immediate payment of such Obligation from the Guarantor as if such Obligation was due and payable by the Customer.

**7. Interest**

If the Guarantor does not make immediate payment in full of the Obligations when demand for payment has been made by the Bank, the Guarantor shall pay interest on any unpaid amount to the Bank at the highest rate of interest per annum that is charged on any Obligations for which payment has been demanded hereunder and which remain unpaid.

**8. State of Account**

The records of the Bank in respect of the Obligations will be prima facie evidence of the balance of the amount of the Obligations that are due and payable by the Customer to the Bank.

**9. Application of Moneys Received**

The Bank may, without notice and demand of any kind and at any time, apply any money received from the Guarantor, the Customer or any other person (including arising from any security that the Bank may from time to time hold) or any balance in any account of the Guarantor held at the Bank or any of the Bank's affiliates, to such part of the Obligations, whether due or to become due, as the Bank in its sole and absolute discretion considers appropriate, or may, in its sole and absolute discretion, refrain from applying any such money. The Bank may also revoke and alter any such application in whole or in part. If any amount that is to be applied is in a currency other than the currency of the Obligation to which such amount is to be applied, then the amount that is applied shall be converted from one currency to another using the rate of exchange for the conversion of such currency as determined by the Bank or its agents and the Bank or its agent may earn revenue on such conversion.

**10. No Set-off or Counterclaim**

The Guarantor will make all payments required to be made under this Guarantee without claiming or asserting any right of setoff or counterclaim that the Guarantor has or may have against the Customer or the Bank, all of which rights the Guarantor waives.

**11. Exhausting Recourse**

The Bank is not required to take any proceedings, exhaust its recourse against the Customer or any other Guarantor or person or under any security the Bank may from time to time hold, or take any other action, before being entitled to demand payment from the Guarantor under this Guarantee, and the Guarantor waives all benefits of discussion and division.

**12. No Representations**

There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties except as expressly set forth herein. The Bank will not be bound by any representations or promises made by Customer to the Guarantor and possession of this Guarantee by the Bank will be conclusive evidence against the Guarantor that this Guarantee was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been complied with, and this Guarantee will be binding on each Guarantor who has signed this Guarantee notwithstanding the non-execution thereof by any proposed guarantor.

**13. Postponement and Assignment**

The Guarantor hereby postpones payment of all present and future debts and liabilities of the Customer to the Guarantor, and as security for payment of the Obligations, the Guarantor hereby assigns such debts and liabilities to the Bank and agrees that all moneys received from the Customer by or on behalf of the Guarantor shall be held in trust for the Bank and forthwith upon receipt paid over to the Bank, all without prejudice to and without in any way limiting or lessening the liability of the Guarantor to the Bank under this Guarantee. This assignment and postponement is independent of the guarantee, indemnity and primary obligor obligations contained in this Guarantee and will remain in full force and effect until, in the case of the assignment, the liability of the Guarantor under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Obligations are performed and indefeasibly paid in full.

**14. Subrogation**

The Guarantor will not be entitled to be subrogated to the rights of the Bank against the Customer, to be indemnified by the Customer or to claim contribution from any other Guarantor until the Guarantor makes indefeasible payment to the Bank of all amounts owing by the Guarantor to the Bank under this Guarantee and the Obligations are indefeasibly paid in full.

## **15. Bankruptcy of Customer**

Upon the bankruptcy or winding up or other distribution of assets of the Customer or of any surety or Guarantor for the Obligations, the Bank's rights shall not be affected by the Bank's failure to prove its claim and the Bank may prove such claim if and in any manner as it deems appropriate in its sole discretion. The Bank may value as it sees fit or refrain from valuing any security held by the Bank without in any way releasing, reducing or otherwise affecting the liability of the Guarantor to the Bank, and until all the Obligations of the Customer to the Bank have been indefeasibly paid in full, the Bank shall have the right to include in its claim the amount of all sums paid by the Guarantor to the Bank under this Guarantee and to prove and rank for and receive dividends in respect of such claim, any and all right to prove and rank for such sums paid by the Guarantor and to receive the full amount of all dividends in respect thereto being hereby assigned and transferred to the Bank.

## **16. Costs and Expenses**

The Guarantor agrees to pay all costs and expenses, including legal fees, of enforcing this Guarantee including the charges and expenses of the Bank's in-house lawyers. The Guarantor will pay all legal fees on a solicitor and own client basis.

## **17. Other Guarantees and Security**

The liability of the Guarantor under any other guarantee or guarantees given to the Bank in connection with the Obligations shall not be affected by this Guarantee, nor shall this Guarantee affect or be affected by the endorsement by the Guarantor of any note or notes of the Customer, the intention being that the liability of the Guarantor under such other guarantee or guarantees and this Guarantee, and under such other note or notes and this Guarantee, shall be cumulative. Nor shall the Bank be required to marshal in favour of the Guarantor other guarantees granted by other persons or any security, money or other property that the Bank may be entitled to receive or may have a claim upon.

## **18. Amendment and Waivers**

No amendment to this Guarantee will be valid or binding unless set forth in writing and duly executed by the Guarantor and the Bank. No waiver by the Bank of any breach of any provision of this Guarantee will be effective or binding unless made in writing and signed by the Bank and, unless otherwise provided in the written waiver, will be limited to the specific breach waived. No delay in the exercise of any right or remedy by the Bank shall operate as a waiver thereof. No failure to exercise a right or remedy or partial exercise of a right or remedy by the Bank shall preclude other or further exercise thereof or the exercise of any other right or remedy by the Bank.

## **19. Discharge**

The Guarantor will not be released or discharged from its obligations hereunder except by a written release or discharge signed by the Bank.

## **20. General**

This Guarantee shall be binding on the successors of the Guarantor or, if the Guarantor is an individual, the heirs, executors, administrators and other legal representatives of the Guarantor, and shall enure to the benefit of the successors and assigns of the Bank.

If more than one Guarantor has signed this Guarantee, each Guarantor shall be jointly and severally liable under this Guarantee.

To the extent that any limitation period applies to any claim for payment hereunder of the Obligations or remedy for the enforcement of such payment, the Guarantor agrees that any such limitation period is excluded or waived, but if such exclusion and waiver is not permitted by applicable law, then any limitation period is extended to the maximum length permitted by applicable law.

Any notice or demand which the Bank may wish to give under this Guarantee may be personally served on the Guarantor or sent by ordinary mail or electronic mail to the last known address of the Guarantor. Any notice that is sent by ordinary mail shall be conclusively deemed to have been received on the fifth day following the day on which it is mailed. Any notice that is sent by electronic mail shall be conclusively deemed to have been received on the day it is sent.

If any provision of this Guarantee is determined by any court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions of this Guarantee.

This Guarantee shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Any word herein contained importing the singular number shall include the plural and any word importing a person shall include a corporation, partnership, firm and any other entity.

Subject to Section 17, this Guarantee constitutes the entire agreement between the Guarantor and the Bank with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto.

Each of the undersigned acknowledges receipt of a copy of this Guarantee.

2580363 Ontario Inc.

J.N.  
←

**Personal Guarantee**

Per: \_\_\_\_\_  
(authorized signature) Johnny Morcante

Signature of Guarantor: 

Print name: \_\_\_\_\_

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)

**Personal Guarantee**

Signature of Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

[Name of Guarantor]

Per: \_\_\_\_\_  
(authorized signature)



I HEREBY CERTIFY THAT:

1. \_\_\_\_\_,  
the guarantor in the guarantee dated \_\_\_\_\_  
made between \_\_\_\_\_  
\_\_\_\_\_ and The Toronto-Dominion Bank, which this certificate is attached to or noted on, appeared in person before me and acknowledged that he/she had executed the guarantee.
2. I satisfied myself by examination of the guarantor that he/she is aware of the contents of the guarantee and understands it.

CERTIFIED by \_\_\_\_\_,  
Barrister and Solicitor at the \_\_\_\_\_ of \_\_\_\_\_,  
in the Province of Alberta, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature

**STATEMENT OF GUARANTOR**

I am the person named in this certificate.

\_\_\_\_\_  
Signature of Guarantor



ACKNOWLEDGMENT OF GUARANTEE

(Section 31)

CERTIFICATE OF LAWYER OR NOTARY PUBLIC

I HEREBY CERTIFY THAT:

1. \_\_\_\_\_ of \_\_\_\_\_ in the province of \_\_\_\_\_, the guarantor in the guarantee dated \_\_\_\_\_ made between The Toronto-Dominion Bank and \_\_\_\_\_, which this certificate is attached to or noted upon, appeared in person before me and acknowledged that he/she had executed the guarantee;
2. I satisfied myself by examination of the guarantor that he/she is aware of the contents of the guarantee and understands it;
3. I have not prepared any documents on behalf of the creditor, The Toronto-Dominion Bank, relating to the transaction and I am not otherwise interested in the transaction;
4. I acknowledge that the guarantor signed the following "Statement of Guarantor" in my presence.

Given at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, under my hand and seal of office.

(SEAL REQUIRED WHERE NOTARY  
PUBLIC SIGNS CERTIFICATE)

\_\_\_\_\_  
A LAWYER OR A NOTARY PUBLIC IN  
AND FOR \_\_\_\_\_

STATEMENT OF GUARANTOR

I am the person named in this certificate.

\_\_\_\_\_  
Signature of Guarantor



# EXHIBIT “N”

Enquiry Result

File Currency: 06APR 2022



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Type of Search	Business Debtor									
Search Conducted On	2580363 ONTARIO INC.									
File Currency	06APR 2022									
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status			
	754689861	1	1	1	2	22AUG 2024				
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN										
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period			
754689861		001	001		20190822 1600 1862 6469	P PPSA	5			
Individual Debtor	Date of Birth	First Given Name			Initial		Surname			
Business Debtor	Business Debtor Name						Ontario Corporation Number			
	2580361 ONTARIO INC.						2580361			
	Address				City	Province	Postal Code			
	21 AUGUSTA STREET				HAMILTON	ON	L8N 1P6			
Individual Debtor	Date of Birth	First Given Name			Initial		Surname			
Business Debtor	Business Debtor Name						Ontario Corporation Number			
	2580363 ONTARIO INC						2580363			
	Address				City	Province	Postal Code			
	21 AUGUSTA STREET				HAMILTON	ON	L8N 1P6			
Secured Party	Secured Party / Lien Claimant									
	THE TORONTO-DOMINION BANK									
	Address				City	Province	Postal Code			
	100 KING STREET WEST				HAMILTON	ON	L8P 4W9			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
		X	X	X	X	X			X	
Motor Vehicle Description	Year	Make			Model		V.I.N.			
General Collateral Description	General Collateral Description									

<b>Registering Agent</b>	<b>Registering Agent</b>			
	CYBERBAHN			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	400-333 BAY STREET	TORONTO	ON	M5H 2R2

CONTINUED

<b>Type of Search</b>	Business Debtor			
<b>Search Conducted On</b>	2580363 ONTARIO INC.			
<b>File Currency</b>	06APR 2022			
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>
	754689861	1	1	2
				<b>of Pages</b>
				2

**FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT**

	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>
		001	1		20220107 1313 1590 2454	P PPSA

<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>
	754689861		X	A AMNDMNT		

<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>		
	2580363 ONTARIO INC.		

<b>Other Change</b>	<b>Other Change</b>

<b>Reason / Description</b>	<b>Reason / Description</b>
	TO ADD AN ADDITIONAL BUSINESS DEBTOR.

<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>			<b>Ontario Corporation Number</b>
	AOUT'N ABOUT			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	56 VARLEY CRESCENT	BRANTFORD	ON	N3R 7Z7

<b>Assignor Name</b>	<b>Assignor Name</b>

Secured Party	Secured party, lien claimant, assignee			
	Address	City	Province	Postal Code

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

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

191

General Collateral Description	General Collateral Description			
Registering Agent	Registering Agent or Secured Party/ Lien Claimant			
	HARRISON PENSA LLP (189982/TCH)			
	Address	City	Province	Postal Code
	450 TALBOT ST. PO BOX 3237	LONDON	ON	N6A 4K3

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# EXHIBIT “O”

Enquiry Result

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Type of Search	Business Debtor								
Search Conducted On	2580361 ONTARIO INC.								
File Currency	06APR 2022								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	754689861	1	1	1	2	22AUG 2024			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
754689861		001	001		20190822 1600 1862 6469	P PPSA	5		
Individual Debtor	Date of Birth		First Given Name			Initial	Surname		
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	2580361 ONTARIO INC.					2580361			
	Address				City	Province	Postal Code		
	21 AUGUSTA STREET				HAMILTON	ON	L8N 1P6		
Individual Debtor	Date of Birth		First Given Name			Initial	Surname		
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	2580363 ONTARIO INC					2580363			
	Address				City	Province	Postal Code		
	21 AUGUSTA STREET				HAMILTON	ON	L8N 1P6		
Secured Party	Secured Party / Lien Claimant								
	THE TORONTO-DOMINION BANK								
	Address				City	Province	Postal Code		
	100 KING STREET WEST				HAMILTON	ON	L8P 4W9		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			X
Motor Vehicle Description	Year	Make			Model		V.I.N.		
General Collateral Description	General Collateral Description								

<b>Registering Agent</b>	<b>Registering Agent</b>			
	CYBERBAHN			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	400-333 BAY STREET	TORONTO	ON	M5H 2R2

CONTINUED

<b>Type of Search</b>	Business Debtor			
<b>Search Conducted On</b>	2580361 ONTARIO INC.			
<b>File Currency</b>	06APR 2022			
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>
	754689861	1	1	2
				<b>of Pages</b>
				2

**FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT**

	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>
		001	1		20220107 1313 1590 2454	P PPSA

<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>
	754689861		X	A AMNDMNT		

<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>		
	2580363 ONTARIO INC.		

<b>Other Change</b>	<b>Other Change</b>

<b>Reason / Description</b>	<b>Reason / Description</b>
	TO ADD AN ADDITIONAL BUSINESS DEBTOR.

<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>
	<b>Business Debtor Name</b>			<b>Ontario Corporation Number</b>
	AOUT'N ABOUT			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	56 VARLEY CRESCENT	BRANTFORD	ON	N3R 7Z7

<b>Assignor Name</b>	<b>Assignor Name</b>

Secured Party	Secured party, lien claimant, assignee			
	Address	City	Province	Postal Code

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

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b>
				195

General Collateral Description	General Collateral Description			
Registering Agent	Registering Agent or Secured Party/ Lien Claimant			
	HARRISON PENSA LLP (189982/TCH)			
	Address	City	Province	Postal Code
	450 TALBOT ST. PO BOX 3237	LONDON	ON	N6A 4K3

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# EXHIBIT “P”



Financial Restructuring Group  
3140 Dufferin Street  
Toronto, ON  
M6A 2T1  
Telephone No.: 416-785-7483  
Fax No.: (416) 785 5082

January 28, 2022

Via E-mail and Mail ([johnmercante7@gmail.com](mailto:johnmercante7@gmail.com))

2580361 Ontario Inc.  
2580363 Ontario Inc.  
56 Varley Crescent  
Brantford, ON N4R 7Z7

294 East 32<sup>nd</sup> Street,  
Hamilton, ON L8V 3S7

Attention: Johnny Mercante

Dear Sir,

**RE: The Toronto-Dominion Bank (the "Bank"), and 2580361 Ontario Inc. (the "361") 2580363 Ontario Inc. ("363")**

361

We refer to the Credit Agreement dated August 9, 2019, as executed by 361 (the "361 Agreement").

Pursuant to the 361 Agreement, 361 agreed to and is required to pay monthly payments of the sum of \$7,869.49, on or before the 22<sup>nd</sup> day of each month (the "361 Payment"). 361 has a history of the 361 Payment not being made in a timely manner.

361 has failed to make the 361 Payment for each of December 2021 and January 2022, and 361 remains in default of the 361 Agreement as a result thereof (the "361 Default").

363

We also refer to the Credit Agreement dated August 9, 2019, as executed by 363 and amended by Amending Agreements dated March 23, 2020, October 7, 2020 and June 8, 2021 (collectively, the "363 Agreement").

Pursuant to the 363 Agreement, 363 agreed to and is required to pay monthly interest payments of the sum of \$904.11 (the "363 Payment"). We confirm that 363 failed to make the 363 Payment when it became due on January 17, 2022, which is a default of the 363 Agreement as a result thereof.

On January 24, 2022, 363 deposited two (2) cheques, each in the amount of \$1,500, into its account with the Bank (the "363 Cheques"), that have since been returned. Prior to the 363 Cheques being returned, 363 completed the 363 Payment. As a result of 363 Cheques being returned, 363's account is in excess. This is a further default of the 363 Agreement (collectively, the "363 Defaults").

The Bank does not waive compliance with all obligations under the 361 Agreement and the 363 Agreement. Please be advised that the Bank reserves all rights and remedies under any and all agreements and security provided in connection with the 361 Agreement and the 363 Agreement.

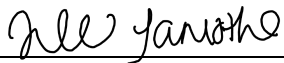
Please be advised that:

- a) if 361 fails to rectify the 361 Default to the complete satisfaction of the Bank by making all missed payments, on or before February 11, 2022, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law; and
- b) if 363 fails to rectify the 363 Defaults to the complete satisfaction of the Bank, by returning the excess sum to 363's account at the Bank for use by 363 in its operations, on or before February 11, 2022, the Bank will exercise any or all rights and remedies under such agreements and security, and/or such rights and remedies as may otherwise be available to it at law.

If you have any queries or comments, please do not hesitate to contact the writer.

Yours truly,

**THE TORONTO-DOMINION BANK**



---

Jill Lamothe  
Account Manager



Financial Restructuring Group  
3140 Dufferin Street  
Toronto, ON  
M6A 2T1  
Telephone No.: 416-785-7483  
Fax No.: (416) 785 5082

January 28, 2022

Via E-mail and Mail ([johnmercante7@gmail.com](mailto:johnmercante7@gmail.com))

2580363 Ontario Inc.  
56 Varley Crescent  
Brantford, ON N4R 7Z7

294 Esat 32<sup>nd</sup> Street,  
Hamilton, ON L8V 3S7

Attention: Johnny Mercante

Dear Sir,

**RE: The Toronto-Dominion Bank (the “Bank”), and 2580363 Ontario Inc. (the “Borrower”)**

We refer to the Credit Agreement dated August 9, 2019, as executed by the Borrower and amended by Amending Agreements dated March 23, 2020, October 7, 2020 and June 8, 2021 (collectively, the “Agreement”).

Specific to the June 8, 2021 agreement amending the Agreement, the Bank agreed to advance the Borrower a HASCAP Term Loan in the sum of \$250,000 (the “HASCAP Loan”).

We confirm that from the advance made by the Bank to the Borrower under the HASCAP Loan, among other things, the following sums were paid out from the HASCAP Loan proceeds:

- a) On June 17, 2021, a transfer to the Borrower's credit card in the sum of \$9,000;
- b) On June 17, 2021, a transfer to Johnny Mercante in the sum of \$60,000;
- c) On June 17, 2021, a cash withdrawal in the sum of \$6,000;
- d) On June 18, 2021, a cash withdrawal in the sum of \$4,000;
- e) On June 21, 2021, a transfer to Dennis Vranich in the sum of \$125,000;
- f) On June 21, 2021, a cash withdrawal in the sum of \$6,000; and,
- g) On June 23, 2021, a transfer to Dennis Vranich in the sum of \$22,000.

(the “HASCAP Advances”)

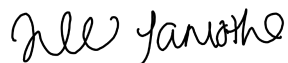
The Bank is concerned the HASCAP Advances were completed contrary to the HASCAP Eligible Borrower's Representations and Warranties.

In this regard, please ensure that you provide details of the HASCAP Advances and evidence as to the use of such funds to the undersigned on or before February 11, 2022.

The Bank does not waive compliance with all obligations under the Agreement. Please be advised that the Bank reserves all rights and remedies under any and all agreements and security provided in connection with the Agreement.

Yours truly,

**THE TORONTO-DOMINION BANK**

A handwritten signature in black ink, appearing to read "Jill Lamothe", is written over a horizontal line.

Jill Lamothe  
Account Manager

# EXHIBIT “Q”

## Thomas Masterson

---

**From:** Lamothe, Jill <Jill.Lamothe@td.com>  
**Sent:** Friday, February 4, 2022 10:49 AM  
**To:** 'John Mercante'  
**Subject:** FW: The Toronto-Dominion Bank (the "Bank") and 2580361 Ontario et al - Aout N About (the "Borrowers") [IWOV-HPMain.FID592145]  
**Attachments:** Default Letter.pdf; Hascap.pdf; 21 Augusta APS.pdf

Hello Mr. Mercante,

I am following the below e-mail of January 31, 2022.

Can you please confirm receipt of the below e-mail and this e-mail.

Also, can you please confirm that the conditions with respect to the environmental site assessment and a new charge/mortgage were waived by January 30, 2022?

We look forward to hearing from you as soon as possible.

Thank you,

Jill

Jill Lamothe | Account Manager | **TD Commercial Banking**  
CBC # 1070 | 3140 Dufferin Street, Toronto, ON M6A 2T1  
T: 416 785 5296 | F: 416 785 5082 | [jill.lamothe@td.com](mailto:jill.lamothe@td.com)

---

**From:** Tim Hogan <thogan@harrisonpensa.com>  
**Sent:** Monday, January 31, 2022 6:55 AM  
**To:** johnmercante7@gmail.com  
**Cc:** Lamothe, Jill <Jill.Lamothe@td.com>; Thomas Masterson <tmasterson@harrisonpensa.com>; Cathy Coleiro <ccoleiro@harrisonpensa.com>  
**Subject:** The Toronto-Dominion Bank (the "Bank") and 2580361 Ontario et al - Aout N About (the "Borrowers") [IWOV-HPMain.FID592145]

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TION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ PAS DE PIÈCES JOINTES AUXQUELS VOUS NE FAITES PAS CON

Mr. Mercante

We are the lawyers for the Bank.

Attached please find the Bank's correspondence in this matter.

We look forward to hearing from you or the Borrowers' counsel.

**Tim Hogan** | [HARRISON PENSEA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362  
| [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.



# EXHIBIT “R”



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

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

February 18, 2022

**Via Registered & Regular Mail**

2580363 Ontario Inc.  
56 Varley Crescent  
Brantford, ON N4R 7Z7

Dear Sir:

**Re: Indebtedness of 2580363 Ontario Inc. to The Toronto-Dominion Bank  
(the "Bank")  
Our File No. 189982**

We are the solicitors for the Bank with respect to loans provided to 2580363 Ontario Inc. (hereinafter the "**Debtor**").

According to the Bank's records, the Debtor is indebted to the Bank as at February 18, 2022, in the total sum of \$303,507.64 including all interest to February 18, 2022, plus all accruing interest, plus the Bank's costs of enforcement on a solicitor and client basis (the "**Indebtedness**")<sup>1</sup>.

The Indebtedness is comprised of the following:

Operating Loan (5234636-0346)	\$4,477.35 (*subject to change)
TD Visa Business (ending 9671)	\$9,002.89 (*subject to change)
HASCAP Term Loan	\$250,000.00
Canada Emergency Business Credit Agreement (" <b>CEBA</b> ")	\$40,000.00

---

<sup>1</sup> Including the CEBA

HARRISON PENSA LLP  
Lawyers

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

1. Letter Agreement dated August 9, 2019 and amended by way of Amending Agreements dated March 23, 2020, October 7, 2020 and June 8, 2021;
2. General Security Agreement dated August 21, 2019.

Further, the Debtor has provided the following guarantee to the Bank and this correspondence shall stand as the Bank's demand for payment on the following guarantee:

1. Guarantee from the Debtor with respect to the obligations of 2580361 Ontario Inc. dated August 21, 2019 and unlimited in sum, upon which the sum of \$1,143,980.19 is due and owing, plus accruing interest and costs (the "**Guarantee Indebtedness**").

The total Indebtedness owing by the Debtor is \$1,447,487.83 <sup>2</sup>

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

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

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

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

---

<sup>2</sup> The Indebtedness plus the Guarantee Indebtedness

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

Yours truly,

HARRISON PENSA <sup>LLP</sup>

A handwritten signature in black ink, appearing to be 'TH' or 'T.H.', written in a stylized, cursive-like font.

Timothy C. Hogan

Direct: (519) 661-6743

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

TCH/cc

Enclosure

c: 2580361 Ontario Inc., Johnny Mercante as guarantors

6672556\_1

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

TO: 2580363 Ontario Inc., an insolvent person

**TAKE NOTICE THAT:**

1. The Toronto-Dominion Bank, a secured creditor, intends to enforce its security on the property of the insolvent person described as:

All collateral of the insolvent person as described in all agreements between the insolvent person and The Toronto-Dominion Bank charging assets including the following security and the proceeds from the sale of said collateral:

- a. General Security Agreement dated August 21, 2019;

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

2. The security that is to be enforced is as detailed in all agreements between the insolvent person and The Toronto-Dominion Bank charging assets including in the form of:

- a. General Security Agreement dated August 21, 2019;

3. The total amount of indebtedness secured by the security is \$1,407,487.83, as of February 18, 2022, plus accruing interest as set out in the agreements, plus all costs of enforcement on a solicitor and client basis.

4. The secured creditor will not have the right to enforce its security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at London, Ontario this 18<sup>th</sup> day of February, 2022.

THE TORONTO-DOMINION BANK  
by its solicitors, Harrison Pensa LLP



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

Timothy C. Hogan  
Harrison Pensa LLP  
450 Talbot Street, P.O. Box 3237  
London, Ontario N6A 4K3  
(519) 661-6743

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

**CONSENT**  
**(s.244(2) of the *Bankruptcy and Insolvency Act*)**

THE UNDERSIGNED hereby acknowledges receipt of a copy of The Toronto-Dominion Bank's demand dated February 18, 2022 and the Notice of Intention to Enforce Security dated February 18, 2022 pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* and hereby waives the 10 day period set out in the demand and notice and consents to the immediate enforcement of The Toronto-Dominion Bank's security.

DATED at \_\_\_\_\_, Ontario this \_\_\_\_\_ day of February, 2022.

2580363 ONTARIO INC.

\_\_\_\_\_  
I have the authority to bind the Corporation

2580361 ONTARIO INC.

\_\_\_\_\_  
I have the authority to bind the Corporation

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Johnny Mercante



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

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

February 18, 2022

**Via Registered & Regular Mail**

2580361 Ontario Inc.  
56 Varley Crescent  
Brantford, ON N4R 7Z7

21 Augusta Street  
Hamilton, ON L8N 1P6

Dear Sir:

**Re: Indebtedness of 2580361 Ontario Inc. to The Toronto-Dominion Bank  
(the "Bank")  
Our File No. 189982**

We are the solicitors for the Bank with respect to loans provided to 2580361 Ontario Inc. (hereinafter the "**Debtor**").

According to the Bank's records, the Debtor is indebted to the Bank as at February 18, 2022, in the total sum of \$1,143,980.19 including all interest to February 18, 2022, plus all accruing interest, plus the Bank's costs of enforcement on a solicitor and client basis (the "**Indebtedness**").

The Indebtedness is comprised of the following:

Mortgage (Loan number 9234520-01-2512)	\$1,143,980.19
-------------------------------------------	----------------

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

1. Letter Agreement dated August 9, 2019;
2. General Security Agreement dated August 21, 2019;
3. Charge/Mortgage of Land from the Debtor in the amount of \$1,205,000.00 and receipted as instrument number WE1375722 on

**HARRISON PENSA LLP**  
Lawyers

August 22, 2019 over property legally described as: PT LT 130 PL 1431 George Hamilton Survey as in CD480053, S/T & T/W VM271333, City of Hamilton (PIN 17170-0018 LT) (the "Property") from the Debtor;

4. General Assignment of Rents & Leases dated August 21, 2019, receipted against the Property as instrument number WE1375723 on August 22, 2019.

Further, the Debtor has provided the following guarantee to the Bank and this correspondence shall stand as the Bank's demand for payment on the following guarantee:

1. Guarantee from the Debtor with respect to the obligations of 2580363 Ontario Inc. dated August 21, 2019 and unlimited in sum, upon which the sum of \$263,507.64 is due and owing, plus accruing interest and costs (the "**Guarantee Indebtedness**").

The total Indebtedness owing by the Debtor is \$1,407,487.83 <sup>1</sup>

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

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

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

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

---

<sup>1</sup> The Indebtedness plus the Guarantee Indebtedness



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

Yours truly,

HARRISON PENZA LLP

A handwritten signature in black ink, appearing to be 'TH' with a stylized flourish.

Timothy C. Hogan

Direct: (519) 661-6743

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

TCH/cc

Enclosure

c: 2580363 Ontario Inc., Johnny Mercante as guarantors

6672383\_1

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

TO: 2580361 Ontario Inc., an insolvent person

**TAKE NOTICE THAT:**

1. The Toronto-Dominion Bank, a secured creditor, intends to enforce its security on the property of the insolvent person described as:

All collateral of the insolvent person as described in all agreements between the insolvent person and The Toronto-Dominion Bank charging assets including the following security and the proceeds from the sale of said collateral:

- a. General Security Agreement dated August 21, 2019;
- b. Charge/Mortgage of Land, from the Debtor in the amount of \$1,205,000.00 and receipted as instrument number WE1375722 on August 22, 2019 over property legally described as: PT LT 130 PL 1431 George Hamilton Survey as in CD480053, S/T & T/W VM271333, City of Hamilton (PIN 17170-0018 LT) (the "Property");
- c. General Assignment of Rents and Leases dated August 21, 2019, receipted against the Property as instrument number WE1375723 on August 22, 2019.

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

2. The security that is to be enforced is as detailed in all agreements between the insolvent person and The Toronto-Dominion Bank charging assets including in the form of:
  - a. General Security Agreement dated August 21, 2019;
  - b. Charge/Mortgage of Land, from the Debtor in the amount of \$1,205,000.00 and receipted as instrument number WE1375722 on August 22, 2019 over the Property;
  - c. General Assignment of Rents and Leases dated August 21, 2019, receipted against the Property as instrument number WE1375723 on August 22, 2019.
3. The total amount of indebtedness secured by the security is \$1,407,487.83, as of February 18, 2022, plus accruing interest as set out in the agreements, plus all costs of enforcement on a solicitor and client basis.
4. The secured creditor will not have the right to enforce its security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at London, Ontario this 18<sup>th</sup> day of February, 2022.

THE TORONTO-DOMINION BANK  
by its solicitors, Harrison Pensa LLP



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

Timothy C. Hogan  
Harrison Pensa LLP  
450 Talbot Street, P.O. Box 3237  
London, Ontario N6A 4K3  
(519) 661-6743

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

**CONSENT**  
**(s.244(2) of the *Bankruptcy and Insolvency Act*)**

THE UNDERSIGNED hereby acknowledges receipt of a copy of The Toronto-Dominion Bank's demand dated February 18, 2022 and the Notice of Intention to Enforce Security dated February 18, 2022 pursuant to s.244(1) of the *Bankruptcy and Insolvency Act* and hereby waives the 10 day period set out in the demand and notice and consents to the immediate enforcement of The Toronto-Dominion Bank's security.

DATED at \_\_\_\_\_, Ontario this \_\_\_\_\_ day of February, 2022.

2580361 ONTARIO INC.

\_\_\_\_\_  
I have the authority to bind the Corporation  
2580363 ONTARIO INC.

\_\_\_\_\_  
I have the authority to bind the Corporation

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Johnny Mercante

# EXHIBIT “S”

## Thomas Masterson

---

**From:** Gerry Falletta <gfalletta@cenlawgroup.com>  
**Sent:** Wednesday, March 2, 2022 11:18 AM  
**To:** Tim Hogan  
**Subject:** RE: BDC HASCAP Loan [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

So the agreement has a tentative closing date of March 31<sup>st</sup>, 2022. However, they need to waive conditions and firm up still, but will evidently be doing that this week.

Once they have firmed up, the deal will be going to my partner and I can provide you with all particulars.

Sincerely,

### Gerry Falletta (P.C.) - B.A., LL.B.

Barrister & Solicitor | Partner



**CENTENNIAL**  
LAW GROUP LLP  
Barristers & Solicitors

105 Main Street East, Suite 1010  
Hamilton, ON L8N 1G6  
Tel: 905-388-2458  
Fax: 905-574-4929  
[www.cenlawgroup.com](http://www.cenlawgroup.com)  
[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)

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---

**From:** Tim Hogan [mailto:thogan@harrisonpensa.com]  
**Sent:** March 2, 2022 10:48 AM  
**To:** Gerry Falletta <gfalletta@cenlawgroup.com>  
**Cc:** Lamothe, Jill <jill.lamothe@td.com>  
**Subject:** RE: BDC HASCAP Loan [IWOV-HPMain.FID592145]  
**Importance:** High

Gerry

As discussed, please see attached collateral charge, default letter and letter to 2580363 Ontario Inc. with respect to the Bank's concerns on the HASCAP loan advanced.

Please confirm the closing of the sale of the charged property, that same is firm and what the closing date is?

thanks

**Tim Hogan** | [HARRISON PENZA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel* 519-661-6743 | *fax* 519-667-3362  
| [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel* 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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---

**From:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Sent:** Tuesday, March 1, 2022 5:49 PM  
**To:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>  
**Subject:** Re: BDC HASCAP Loan [IWOV-HPMain.FID592145]

Yes can you call me then?

**Tim Hogan** | [HARRISON PENZA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel* 519-661-6743 | *fax* 519-667-3362  
| [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel* 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Sent:** Tuesday, March 1, 2022 5:46:52 PM  
**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>  
**Subject:** Re: BDC HASCAP Loan [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Hi Tim,

Does 10:30 AM work for you?

Girolamo (Gerry) Falletta

On Mar 1, 2022, at 5:15 PM, Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)> wrote:

Gerry

We are counsel to TD Bank.

You can correspond with me on this matter.

I am attaching my e-mails to your client of February 22 and 28, attaching copies of the demands issued by the Bank .

Note that these demands expired today.

I am open tomorrow morning for a call, let me know what time works for you.

**Tim Hogan** | [HARRISON PENZA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743  
| *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>

**Sent:** Tuesday, March 1, 2022 1:56 PM

**To:** Lamothe, Jill <[Jill.Lamothe@td.com](mailto:Jill.Lamothe@td.com)>

**Subject:** FW: BDC HASCAP Loan

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ATTENTION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ PAS DE PIÈCES JOINTES  
VOUS NE FAITES PAS CONFIANCE

Hi Jill,

I represent Mr. Mercante with respect to the attached.

Do you have some time today or tomorrow for a quick chat so that I can advise my client of his possible options?

I look forward to hearing from you. Thank you.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**

Barrister & Solicitor | Partner

105 Main Street East, Suite 1010

Hamilton, ON L8N 1G6

Tel: 905-388-2458

Fax: 905-574-4929

[www.cenlawgroup.com](http://www.cenlawgroup.com)

[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)

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# EXHIBIT “T”

## Thomas Masterson

---

**From:** Tim Hogan <thogan@harrisonpensa.com>  
**Sent:** Wednesday, March 2, 2022 12:40 PM  
**To:** Gerry Falletta  
**Cc:** Lamothe, Jill  
**Subject:** FW: BDC HASCAP Loan [IWOV-HPMain.FID592145]

Gerry,

Please advise on the below as soon as possible.

Note that the demands in this matter are now expired.

The Bank will provide day-to-day continuing credit, bank services and forbearance to the end of this week, to allow your client to provide evidence to the Bank of a firm sale.

Note that this day-to-day credit, bank services and forbearance is provided in the Bank's discretion and can be terminated with no further notice.

Thank-you

**Tim Hogan** | [HARRISON PENSEA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362  
| [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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**From:** Gerry Falletta [gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)  
**Sent:** Wednesday, March 2, 2022 11:18 AM  
**To:** Tim Hogan [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
**Subject:** RE: BDC HASCAP Loan [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

So the agreement has a tentative closing date of March 31<sup>st</sup>, 2022. However, they need to waive conditions and firm up still, but will evidently be doing that this week.

Once they have firmed up, the deal will be going to my partner and I can provide you with all particulars.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**

Barrister & Solicitor | Partner



**CENTENNIAL**  
LAW GROUP LLP  
Barristers & Solicitors

105 Main Street East, Suite 1010

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---

**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>

**Sent:** Wednesday, March 2, 2022 11:06 AM

**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>

**Subject:** RE: BDC HASCAP Loan [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Thank you Tim.

I just spoke to my client and I am wrong, he is not handling the sale.

I will speak to my client and get you that information ASAP.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**

Barrister & Solicitor | Partner



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Hamilton, ON L8N 1G6  
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---

**From:** Tim Hogan [<mailto:thogan@harrisonpensa.com>]  
**Sent:** March 2, 2022 10:48 AM  
**To:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>  
**Subject:** RE: BDC HASCAP Loan [IWOV-HPMain.FID592145]  
**Importance:** High

Gerry

As discussed, please see attached collateral charge, default letter and letter to 2580363 Ontario Inc. with respect to the Bank's concerns on the HASCAP loan advanced.

Please confirm the closing of the sale of the charged property, that same is firm and what the closing date is?

thanks

**Tim Hogan** | [HARRISON PENZA LLP](http://HARRISON PENZA LLP) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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---

**From:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Sent:** Tuesday, March 1, 2022 5:49 PM  
**To:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>  
**Subject:** Re: BDC HASCAP Loan [IWOV-HPMain.FID592145]

Yes can you call me then?

**Tim Hogan** | [HARRISON PENZA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
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---

**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Sent:** Tuesday, March 1, 2022 5:46:52 PM  
**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>  
**Subject:** Re: BDC HASCAP Loan [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Hi Tim,

Does 10:30 AM work for you?

Girolamo (Gerry) Falletta

On Mar 1, 2022, at 5:15 PM, Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)> wrote:

Gerry

We are counsel to TD Bank.

You can correspond with me on this matter.

I am attaching my e-mails to your client of February 22 and 28, attaching copies of the demands issued by the Bank .

Note that these demands expired today.

I am open tomorrow morning for a call, let me know what time works for you.

**Tim Hogan** | [HARRISON PENZA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)  
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**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Sent:** Tuesday, March 1, 2022 1:56 PM  
**To:** Lamothe, Jill <[Jill.Lamothe@td.com](mailto:Jill.Lamothe@td.com)>  
**Subject:** FW: BDC HASCAP Loan

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ATTENTION : COURRIEL EXTERNE. NE CLIQUEZ PAS SUR DES LIENS ET N'OUVREZ PAS DE PIÈCES JOINTES AUXQUELS VOUS NE FAITES PAS

Hi Jill,

I represent Mr. Mercante with respect to the attached.

Do you have some time today or tomorrow for a quick chat so that I can advise my client of his possible options?

I look forward to hearing from you. Thank you.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**

Barrister & Solicitor | Partner

105 Main Street East, Suite 1010

Hamilton, ON L8N 1G6

Tel: 905-388-2458

Fax: 905-574-4929

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# EXHIBIT “U”

## Thomas Masterson

---

**From:** Tim Hogan <thogan@harrisonpensa.com>  
**Sent:** Monday, March 7, 2022 9:24 AM  
**To:** Gerry Falletta  
**Cc:** Lamothe, Jill  
**Subject:** FW: Mercante, John [IWOV-HPMain.FID592145]  
**Attachments:** ATT00001.htm  
  
**Importance:** High

Gerry

Is there a response back from Thomas Brown to Catherine Jeske's e-mail of Thursday March 03, 2022, confirming that the financing arranged for the purchaser by the vendor is acceptable?

Is there evidence that all conditions have been waived and that a final closing date has been set?

Please advise as soon as possible, with the Bank continuing to provide day to day forbearance in its discretion.

Thank-you.

**Tim Hogan** | [HARRISON PENSEA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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---

**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Sent:** Friday, March 4, 2022 12:08 PM  
**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Subject:** RE: Mercante, John [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Hi Tim,

Thomas Brown acts for the purchaser.

Dennis vrancih owns the neighbouring property (13 Augusta). Evidently it is a package deal, the purchaser is buying both.

Does this clarify things?



## Gerry Falletta (P.C.) - B.A., LL.B.

Barrister & Solicitor | Partner



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---

**From:** Tim Hogan [<mailto:thogan@harrisonpensa.com>]

**Sent:** March 4, 2022 11:28 AM

**To:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>

**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>

**Subject:** FW: Mercante, John [IWOV-HPMain.FID592145]

Thanks, I am not sure that e-mail chain attached is complete and are difficult to follow.

Who does Thomas Brown and Catherine Jeske act for? Who is Dennis Vranich?

There does not appear to be any confirmation that the environmental and financing conditions have been met.

To clarify, is your client's proposal that 2580361 Ontario Inc. loan be paid in full and that the loans to 2580363 Ontario Inc. be collateralized by the property at 167 Eglington Rd Callander?

**Tim Hogan** | [HARRISON PENZA LLP](http://HARRISON PENZA LLP) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362  
| [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

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**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>

**Sent:** Friday, March 4, 2022 11:09 AM

**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>

**Subject:** Mercante, John

[EXTERNAL EMAIL]

Good morning Tim,

As promised, please find attached the APS with respect to the property, together with email chains speaking to conditions and extensions. Please advise if you have any questions.

Also, I am attaching the property which my client would like to offer as security for extending the loan.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**

Barrister & Solicitor | Partner



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Tel: 905-388-2458

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# EXHIBIT “V”

## Thomas Masterson

---

**From:** Gerry Falletta <gfalletta@cenlawgroup.com>  
**Sent:** Monday, March 7, 2022 10:00 AM  
**To:** Tim Hogan  
**Cc:** Lamothe, Jill  
**Subject:** RE: Mercante, John [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Tm,

I believe financing is the only condition which remains outstanding and was extended to the 15<sup>th</sup>. I will follow up now and advise.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**  
Barrister & Solicitor | Partner



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---

**From:** Tim Hogan [mailto:thogan@harrisonpensa.com]  
**Sent:** March 7, 2022 9:24 AM  
**To:** Gerry Falletta <gfalletta@cenlawgroup.com>  
**Cc:** Lamothe, Jill <jill.lamothe@td.com>  
**Subject:** FW: Mercante, John [IWOV-HPMain.FID592145]  
**Importance:** High

Gerry

Is there a response back from Thomas Brown to Catherine Jeske's e-mail of Thursday March 03, 2022, confirming that the financing arranged for the purchaser by the vendor is acceptable?

Is there evidence that all conditions have been waived and that a final closing date has been set?

Please advise as soon as possible, with the Bank continuing to provide day to day forbearance in its discretion.

Thank-you.

**Tim Hogan** | [HARRISON PENSA LLP](mailto:thogan@harrisonpensa.com) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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---

**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Sent:** Friday, March 4, 2022 12:08 PM  
**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Subject:** RE: Mercante, John [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Hi Tim,

Thomas Brown acts for the purchaser.

Dennis vranich owns the neighbouring property (13 Augusta). Evidently it is a package deal, the purchaser is buying both.

Does this clarify things?

**Gerry Falletta (P.C.) - B.A., LL.B.**  
Barrister & Solicitor | Partner



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**From:** Tim Hogan [<mailto:thogan@harrisonpensa.com>]  
**Sent:** March 4, 2022 11:28 AM  
**To:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>  
**Subject:** FW: Mercante, John [IWOV-HPMain.FID592145]

Thanks, I am not sure that e-mail chain attached is complete and are difficult to follow.

Who does Thomas Brown and Catherine Jeske act for? Who is Dennis Vranich?

There does not appear to be any confirmation that the environmental and financing conditions have been met.

To clarify, is your client's proposal that 2580361 Ontario Inc. loan be paid in full and that the loans to 2580363 Ontario Inc. be collateralized by the property at 167 Eglington Rd Callander?

**Tim Hogan** | [HARRISON PENSEA LLP](https://www.harrisonpensa.com) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743 | *fax* 519-667-3362  
| [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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**From:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>  
**Sent:** Friday, March 4, 2022 11:09 AM  
**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Subject:** Mercante, John

[EXTERNAL EMAIL]

Good morning Tim,

As promised, please find attached the APS with respect to the property, together with email chains speaking to conditions and extensions. Please advise if you have any questions.

Also, I am attaching the property which my client would like to offer as security for extending the loan.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**  
Barrister & Solicitor | Partner



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# EXHIBIT “W”



## Thomas Masterson

---

**From:** Gerry Falletta <gfalletta@cenlawgroup.com>  
**Sent:** Tuesday, March 8, 2022 2:41 PM  
**To:** Tim Hogan  
**Subject:** Re: Mercante, John [IWOV-HPMain.FID592145]  
**Attachments:** image001.jpg; image001.jpg; image001.jpg

[EXTERNAL EMAIL]

I am still waiting to hear back. Once I do I will advise.

Thank you,

Girolamo (Gerry) Falletta

On Mar 8, 2022, at 2:06 PM, Tim Hogan <thogan@harrisonpensa.com> wrote:

Gerry,

Is there anything available currently to evidence a firm agreement?

Please advise by 12 noon tomorrow March 9, 2022.

**Tim Hogan** | [HARRISON PENSEA LLP](#) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743  
| *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Assistant | Cathy Coleiro | *tel*/ 519-850-5568 | [ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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---

**From:** Gerry Falletta <gfalletta@cenlawgroup.com>  
**Sent:** Monday, March 7, 2022 10:00 AM  
**To:** Tim Hogan <thogan@harrisonpensa.com>  
**Cc:** Lamothe, Jill <jill.lamothe@td.com>  
**Subject:** RE: Mercante, John [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Tm,

I believe financing is the only condition which remains outstanding and was extended to the 15<sup>th</sup>. I will follow up now and advise.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**

Barrister & Solicitor | Partner



105 Main Street East, Suite 1010

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Tel: 905-388-2458

Fax: 905-574-4929

[www.cenlawgroup.com](http://www.cenlawgroup.com)

[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)

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**From:** Tim Hogan [<mailto:thogan@harrisonpensa.com>]

**Sent:** March 7, 2022 9:24 AM

**To:** Gerry Falletta <[gfalletta@cenlawgroup.com](mailto:gfalletta@cenlawgroup.com)>

**Cc:** Lamothe, Jill <[jill.lamothe@td.com](mailto:jill.lamothe@td.com)>

**Subject:** FW: Mercante, John [IWOV-HPMain.FID592145]

**Importance:** High

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Please advise as soon as possible, with the Bank continuing to provide day to day forbearance in its discretion.

Thank-you.

**Tim Hogan** | [HARRISON PENZA LLP](http://HARRISON PENZA LLP) | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6743  
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# EXHIBIT “X”

## Thomas Masterson

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**Sent:** Thursday, March 24, 2022 8:06 AM  
**To:** Gerry Falletta  
**Cc:** Tim Hogan  
**Subject:** RE: Mercante, John [IWOV-HPMain.FID592145]

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Please be advised that the day to day forbearance provided by the Bank is terminated, and the Bank will be seeking an Order appointing a receiver.

We will provide you a copy of the Notice of Application once issued.

Regards,

**Tom Masterson** | Associate | HARRISON PENSA LLP | 450 Talbot St., London, Ontario N6A 5J6 | *tel*/ 519-661-6797  
| *fax* 519-667-3362 | [tmasterson@harrisonpensa.com](mailto:tmasterson@harrisonpensa.com)

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Thank you,

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Please advise by 12 noon tomorrow March 9, 2022.

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# EXHIBIT “Y”

## Thomas Masterson

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**From:** Gerry Falletta <gfalletta@cenlawgroup.com>  
**Sent:** Thursday, March 24, 2022 10:09 AM  
**To:** Thomas Masterson  
**Cc:** Tim Hogan  
**Subject:** RE: Mercante, John [IWOV-HPMain.FID592145]

[EXTERNAL EMAIL]

Good morning,

I have not received any further information from my client. I will follow up and if anything changes I will advise.

Sincerely,

**Gerry Falletta (P.C.) - B.A., LL.B.**

Barrister & Solicitor | Partner



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THE TORONTO-DOMINION BANK

-and-

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Applicant

Respondents

Court File No. CV-22-00078521-0000

<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b>  Proceeding commenced at Hamilton, Ontario	
<b>AFFIDAVIT OF JILL LAMOTHE</b>	
<b>HARRISON PENZA</b> <sup>LLP</sup> Barristers and Solicitors 450 Talbot Street, P.O. Box 3237 London, Ontario N6A 4K3  <b>Timothy C. Hogan (LSO #36553S)</b> <b>Robert Danter (LSO #69806Q)</b>  Tel: (519) 679-9660 Fax: (519) 667-3362 Email: <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a> <a href="mailto:rdanter@harrisonpensa.com">rdanter@harrisonpensa.com</a>  Solicitors for the Applicant, The Toronto-Dominion Bank	

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**APPLICATION RECORD**

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