

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2243080 ONTARIO INC. and 2496287 ONTARIO INC.

Respondents

APPLICATION UNDER Section 211 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3,  
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**APPLICATION RECORD**

**CHAITONS LLP**  
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Toronto, Ontario, M2N 7E9

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**Lawyers for the Applicant**

TO: **2243080 ONTARIO INC.**  
58 Greyleaf Drive  
Stouffville, ON L4A 1S8

TO: **2496287 ONTARIO INC.**  
58 Greyleaf Drive  
Stouffville, ON L4A 1S8

**Respondent**

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Court File No.: CV-23-

-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2243080 ONTARIO INC. and 2496287 ONTARIO INC.

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

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

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

- In person
- By telephone conference
- BY VIDEO CONFERENCE**

at the following location:

**330 University Avenue, Toronto, Ontario M5G 1R7 on Friday, the 21st day of July, 2023 at 10:00am.**

**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

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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: May 1, 2023

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

Local Registrar

Address of Court Office:

330 University Avenue  
Toronto, Ontario M5G 1R7

TO: 2243080 ONTARIO INC.  
58 Greyleaf Drive  
Stouffville, ON L4A 1S8

TO: 2496287 ONTARIO INC.  
58 Greyleaf Drive  
Stouffville, ON L4A 1S8

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## APPLICATION

1. The Applicant (“**BMO**” or the “**Bank**”) makes application for:
  - (a) An order substantially in the form attached as Schedule “A” to this notice of application, appointing MNP Ltd. as receiver, without security, of the property, assets and undertaking of the respondents, 2243080 Ontario Inc. (“**224**”) and 2496287 Ontario Inc. (“**249**”) (collectively the “**Companies**”); and
  - (b) Such further and other relief as this Court may deem just

### **THE GROUNDS FOR THE APPLICATION** are as follows:

1. 224 and 249 are related companies, both owned by Kalyani Kapilan and Rasakone Kapilan.
2. 224 owns and operates two gas stations with convenience stores on properties, one being an Ultramar branded station, located at 9279 Hwy. 11, Cumberland Beach, Ontario (“**Cumberland**”) and the other an Esso branded station at 8824 Hwy. 17 E., Warren, Ontario (“**Warren**”). 224 owns the properties on which the gas stations are operated.
3. 249 owns and operates one Esso branded gas station on property owned by 249 at 2260 Hwy. 7 E., Pickering, Ontario (“**Pickering**”).

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4. The Bank has advanced to 224 the following loan facilities:
- (a) demand loans totaling \$2,050,000 in connection with Cumberland, consisting of:
    - (i) a demand loan in the original amount of \$1,900,000 to pay out existing financing on the Cumberland property; and
    - (ii) a demand loan in the original amount of \$150,000 to be applied to renovations to the Cumberland gas station;
  - (b) a demand overdraft loan in a maximum amount of \$200,000 for working capital for Cumberland;
  - (c) demand loans totaling \$2,150,000 in connection with Warren, consisting of:
    - (i) a demand loan in the original amount of \$2,000,000 to pay out existing financing on the Warren property; and
    - (ii) a demand loan in the original amount of \$150,000 to be applied to renovations to the Warren gas station;
  - (d) a demand overdraft loan in a maximum amount of \$200,000 for working capital for Warren;
  - (e) a demand loan in the amount of \$100,000 to partially term out the operating loans; and
  - (f) a corporate MasterCard authorized in the amount of \$50,000.

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5. The indebtedness of 224 to the Bank is secured by a general security agreement, a mortgage of the Cumberland property in the principal amount of \$2,920,000, and a mortgage of the Warren property in the principal amount of \$3,100,000.

6. The Bank advanced to 249 of the following loan facilities:

(g) demand loans totaling \$2,425,000 in connection with Pickering, consisting of;

(i) a demand loan in the original amount of \$2,300,000 to pay out existing financing for the Pickering property; and

(ii) a demand loan in the original amount of \$125,000 to be applied to renovations to the Pickering gas station;

(h) a demand overdraft loan in a maximum amount of \$110,000 for working capital for Pickering;

(i) a corporate MasterCard authorized in the amount of \$30,000.

7. The indebtedness of 249 to the Bank is secured by a general security agreement and a mortgage of the Pickering property in the principal amount of \$3,780,000.

8. The GSAs and mortgages referenced above give the Bank the right on default to appoint a receiver or to apply to the Court for the appointment of a receiver.

9. In addition to the facilities noted above, the Bank advanced to each of 224 and 249 Canada Emergency Business Account loans each in the amount of \$60,000.



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10. Responsibility for the oversight and administration of the 224 and 249 accounts and credit facilities was transferred to the Bank's Special Accounts Management Unit in January 2022 because of, among other reasons, (i) poor financial performance, (ii) breach of the Companies' debt service ratio covenants, and (iii) numerous excesses and NSF's on the Companies' operating overdraft facilities.

11. As well property taxes on the Pickering property are in arrears in the total amount of \$66,216.60 dating to 2021.

12. The Kapilans advised the Bank that their intention was to sell the Cumberland and Warren properties/businesses to ease their financial difficulties and allow them to concentrate on Pickering. The Bank agreed therefore to enter into a standstill agreement dated September 15, 2022 whereby 224 and 249 agreed, among other matters, to forthwith take the necessary steps to sell or refinance the Cumberland, Warren and Pickering properties and to provide to the Bank on or before December 15, 2022, a copy of firm and binding financing commitments and/or agreements of purchase and sale in amounts sufficient to repay the indebtedness of 224 and 249 respectively to the Bank by January 31, 2023 and to pay outstanding realty taxes on Pickering.

13. The Companies breached the standstill agreement. The tax arrears on the Pickering property were not paid and the Bank was not provided with agreements of purchase and sale for any of the properties or financing commitments to pay the Bank out.

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14. As a result of these defaults, the Bank, by its lawyers, made demand on 224 and 249 and delivered notices of the Bank's intention to enforce its security under the *Bankruptcy and Insolvency Act* ("**BIA**"), by letters dated November 15, 2022 as follows:

- (a) on 224 for the amounts then outstanding to the Bank in the total amount of \$4,225,256.84;
- (b) on 249 for the amounts then outstanding to the Bank in the total amount of \$2,390,162.74.

15. Following issuance of these demands, the Companies requested additional time to sell or refinance the properties. The Bank agreed to enter into a forbearance agreement dated December 6, 2022, which terms included the following:

- (a) on or before December 31, 2022, all existing loan payment arrears for principal and interest would be brought current and thereafter the Companies would continue to make all monthly loan payments of principal and interest in respect of all loans in a timely manner;
- (b) the Companies would provide to the Bank by the 20th day of each month all in-house financial documentation for the immediately preceding month including accounts receivable, accounts payable, statements of prior claims and deemed trusts;
- (c) on or before December 31, 2022, the Companies would provide to the Bank;
  - (i) their accountant prepared year-end financial statements for 2021;

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- (ii) their corporate income tax returns and CRA notices of assessment for 2021;
  - (iii) their 2021 and 2022 fuel volume reports;
  - (iv) updated appraisals for the Cumberland property, the Warren property and the Picking property;
- (d) The Companies would forthwith take the necessary steps to sell or refinance the Cumberland property, the Warren property and the Pickering property in amounts sufficient to repay the 224 and the 229 indebtedness on or before January 31, 2023 and would provide to the Bank bi-weekly email updates in respect of their progress in arranging for a sale and/or refinancing of their assets. Updates were to include copies of any agreements of purchase and sale, term sheets, commitment letters, letters of intent, and any other relevant documentation.

16. Pursuant to the forbearance agreement, 224 and 249 also agreed as follows:

“We agree and consent to the making of bankruptcy orders and appointments of a receiver and manager of the assets, property and undertaking of the [Companies] and agree to forthwith execute and deliver to the Bank written consents in the form annexed hereto as Schedule “A” which consents are to be held by the Bank’s solicitors in escrow until the occurrence of an Event of Default.”

17. Again, the companies were in breach of the forbearance agreement almost immediately. They did not bring their indebtedness to the Bank current by December 31, 2022, did not provide the 2021 financial information promised, did not provide in-house financial documentation by December 20, 2022, did not provide updated appraisals, and did not provide bi-weekly updates on efforts to sell the properties.

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18. In addition, the Bank was advised that the Cumberland gas station had been closed since early November 2022.

19. The forbearance period ended January 31, 2023 without any sales of the properties or a refinancing. The Bank was requested to extend the forbearance to May 1, 2023. The Bank was prepared to do so on terms that included the following:

- (a) on or before March 15, 2023, 224 would pay to the Bank the sum of \$15,000.00 to be applied in reduction of the loan arrears on its various non revolving demand loans;
- (b) on or before March 31, 2023, 224 would pay to the Bank the balance of the loan arrears on its various non revolving demand loans;
- (c) the Companies would continue to make all principal and interest payments monthly in accordance with existing arrangements;
- (d) the Companies would execute cross-covering guarantees in favour of the Bank for the full amount of the other's indebtedness with each to be supported by existing security (being the GSA's and mortgages described above);
- (e) 224 would provide updates to the Bank with respect to its progress in completing an apparent sale of Cumberland Property and immediately advise the Bank if the agreement of purchase and sale for was terminated;
- (f) the Companies would forthwith list the Warren property and the Pickering property for sale and, if the apparent agreement of purchase and sale for

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the Cumberland Property was terminated, 224 would forthwith list the Cumberland Property for sale;

- (g) the Companies would provide to the Bank as soon as it becomes available all financial information including accountant prepared financial statements for the 2021 and 2022 fiscal years in respect of each of the properties and businesses; and
- (h) the Companies would repay their indebtedness to the Bank on the earlier of completion of any sales of the businesses and land or May 1, 2023.

20. 224 and 249 did execute and provide to the Bank cross-covering guarantees, but again breached the forbearance conditions by failing to make the payments described above, in particular repayment of their indebtedness to the Bank by May 1, 2023, or to provide the financial information agreed to. As well, no information was provided with respect to listing the properties for sale.

21. The loan facilities to 224 and 249 are in default. The Bank has made demand and the Companies are either unable or unwilling to repay the balance of their indebtedness. The Companies have been unable to sell any of the properties/businesses.

22. The Bank seeks the appointment of a receiver to protect its security and to assess the best course of action for the Companies' businesses going forward, either through continued operation of Warren and Pickering, during a sales process or discontinuance of the businesses and sale of the Companies' assets. A receiver will be in a position to determine whether a going

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concern sale of the businesses, including the properties and the assets secured by the mortgages and GSAs, is viable and in the interests of interested parties.

23. As the properties are operated as gas stations, there are safety and environmental issues that must be addressed. A receiver can investigate and report to the court regarding any potential environmental or other concerns with the properties.

24. A receiver will be able to assess the viability of the businesses and, if operations are to continue, will ensure that such is done safely and in accordance with applicable laws and regulations. If operations are to discontinue, a receiver will ensure that such is likewise done in accordance with applicable laws and regulations.

25. A receiver will also be able to deal with the gas suppliers, in particular any potential transfer of rights should there ultimately be a sale of the businesses.

26. It is just and convenient for the Court to appoint a receiver.

27. The Bank relies on s. 243 of the *BIA* and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. Affidavit of Visana Wong; and
2. Such further and other evidence as the applicant may submit and this Honourable Court accepts.

Date: April ●, 2023

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario, M2N 7E9

**Christopher J. Staples** (LSUC #31302R)  
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[chris@chaitons.com](mailto:chris@chaitons.com)

**Lawyers for the Applicant**

SCHEDULE "A"

Court File No. CV-23-

-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) DAY, THE  
JUSTICE ) DAY OF , 2023

**BANK OF MONTREAL**

Applicant

- and -

**2243080 ONTARIO INC. and 2496287 ONTARIO INC.**

Respondents

**ORDER**

THIS Application, brought 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 MNP Ltd. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2243080 Ontario Inc. and 2496287 Ontario Inc. (the "Debtors") acquired for, or used in relation to business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Visana Wong sworn May ●, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the applicant and counsel for the respondents and on reading the consent of MNP Ltd. 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, ● 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 all proceeds thereof (the "Property").

## **RECEIVER'S POWERS**

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

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

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

- (q) 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;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) 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 their 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.

### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

8. 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**

9. 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**

10. 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**

11. 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 Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. 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**

13. 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**

14. 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**

15. 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

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## RECEIVER'S ACCOUNTS

17. 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, 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>1</sup>

18. 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.

19. 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 normal 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.

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<sup>1</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".

## **FUNDING OF THE RECEIVERSHIP**

20. 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 \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. 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.

22. 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.

23. 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.

## **GENERAL**

24. 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.

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

26. 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.

27. 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.

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

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

## SCHEDULE "A"

### RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "Receiver") of the assets, undertakings and properties of 2243080 Ontario Inc. and 2496287 Ontario Inc. (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_\_ of \_\_\_\_\_, 2023 (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 MONTH, 20YR.

MNP Ltd., solely in its capacity as Receiver of  
the Property, and not in its personal capacity

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

Name:

Title:

Electronically issued / Délivré par voie électronique : 01-May-2023  
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-23-00698764-00CL

BANK OF MONTREAL

Applicant

and

2243080 ONTARIO INC. ET AL

Respondent

Court File No.

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

Proceedings commenced at TORONTO

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**NOTICE OF APPLICATION**

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**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Christopher J. Staples** (LSUC #31302R)  
Tel: 416-218-1147  
chris@chaitons.com

**Lawyers for the Applicant**

Court File No. CV-23-00698764-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2243080 ONTARIO INC. and 2496287 ONTARIO INC.

Respondents

APPLICATION UNDER Section 211 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**AFFIDAVIT OF VISANA WONG**

I, **VISANA WONG**, of the City of Toronto, in the Province of Ontario, **MAKE OATH**  
**AND SAY:**

1. I am an Account Manager with the Special Accounts Management Unit (“**SAMU**”) of Bank of Montreal (“**BMO**” or the “**Bank**”) and have carriage of BMO’s accounts and loans with the respondent corporations, 2243080 Ontario Inc. (“**224**”) and 2496287 Ontario Inc. (“**249**”) (collectively the “**Companies**”). As such, I have knowledge of the matters to which I depose in this affidavit. To the extent that I have relied on information from others, I have stated the source of such information and believe that information to be true.

2. I swear this affidavit in support of an application by BMO for an order appointing MNP Ltd. as receiver, without security, of the present and future property, assets and undertaking of the Companies.

### **Background and Overview**

3. 224 and 249 are both owned by Kalyani Kapilan and Rasakone Kapilan, who are spouses. They are the sole officers and directors of both companies. Attached hereto as **Exhibit “A”** is a copy of a corporate profile report for 224. Attached hereto as **Exhibit “B”** is a copy of a corporate profile report for 249.

4. 224 owns and operates two gas stations with convenience stores on properties owned by 224, one being an Ultramar branded station, located at 9279 Hwy. 11, Cumberland Beach, Ontario (“**Cumberland**”) and the other an Esso branded station at 8824 Hwy. 17 E., Warren, Ontario (“**Warren**”). 224 owns the properties on which the gas stations are operated, purchasing the Warren property in 2010 and the Cumberland property in 2015.

5. 249 owns and operates one Esso branded gas station on property owned by 249 at 2260 Hwy. 7 E., Pickering, Ontario (“**Pickering**”). Likewise, 249 owns the Pickering property, having purchased same in 2016.

6. The Bank became a lender to 224 and 249 in 2019 when the Kapilans were seeking consolidated financing to take out certain private financing and operating capital for each of the gas stations.



7. The Bank has advanced mortgage and operating loans to 224 and 249 secured by mortgages against the properties described above and general security agreements. These loans are in default. 224 is currently indebted to the Bank in a total amount of approximately \$4.2 million. 249 is currently indebted to the Bank in a total amount of approximately \$2.35 million.

8. Responsibility for the oversight and management of the credit facilities of 224 and 249 was transferred to SAMU in January 2022 because of concerns regarding the financial performance of 224 and 249, covenant breaches and excesses on operating loans. Since then, the Bank has worked with the Companies under a standstill agreement and a forbearance agreement (both of which are in default). Expected sales of the properties/businesses have not materialized and one of the gas stations has now been closed for an extended period of time.

9. The Bank has made demand on both 224 and 249 and any forbearance has expired as a result of the Companies' failure to meet forbearance terms. Despite demand, the Companies appear to be unable or unwilling to repay their respective indebtedness. As a result, the Bank seeks the appointment of a receiver to take control of the gas stations and properties and to sell same, either as going concerns or otherwise.

### **224 Loan Facilities and Security**

10. By letter of agreement from the Bank to 224 dated October 1, 2019 and restated by agreement dated November 10, 2020, copies of which are attached hereto respectively as **Exhibits "C"** and **"D"**, the Bank advanced to 224 the following loan facilities:

- (a) demand loans totaling \$2,050,000 in connection with Cumberland, consisting of:

- (i) a demand loan in the original amount of \$1,900,000 to pay out existing financing on the Cumberland property; and
- (ii) a demand loan in the original amount of \$150,000 to be applied to renovations to the Cumberland gas station;

A true copy of the promissory note for these loans is attached hereto as **Exhibit “E”**;

- (b) a demand overdraft loan in a maximum amount of \$200,000 for working capital for Cumberland. A true copy of the loan agreement for this loan is attached hereto as **Exhibit “F”**;
- (c) demand loans totaling \$2,150,000 in connection with Warren, consisting of:
  - (i) a demand loan in the original amount of \$2,000,000 to pay out existing financing on the Warren property; and
  - (ii) a demand loan in the original amount of \$150,000 to be applied to renovations to the Warren gas station;

A true copy of the promissory note for these loans is attached hereto as **Exhibit “G”**;

- (d) a demand overdraft loan in a maximum amount of \$200,000 for working capital for Warren. A true copy of the loan agreement for this loan is attached hereto as **Exhibit “H”**;
- (e) a demand loan in the amount of \$100,000 to partially term out the operating loans; and
- (f) a corporate MasterCard authorized in the amount of \$50,000.

11. The indebtedness of 224 to the Bank referenced above is secured, in part, by:
- (a) a general security agreement from 224 to BMO dated November 12, 2019 registered in accordance with the provisions of the *PPSA* (the “**224 GSA**”). A true copy of the 224 GSA is attached hereto as **Exhibit “I”**. A true copy of a *PPSA* certificate showing the registration of the GSA is attached hereto as **Exhibit “J”**. The Bank is the only party with a registered security interest against 224;
  - (b) a mortgage of the Cumberland property from 224 to the Bank registered as Instrument No. SC1641015 on November 18, 2019 in the principal amount of \$2,920,000 and due on demand (the “**Cumberland Mortgage**”). A true copy of the Cumberland Mortgage is attached hereto as **Exhibit “K”**. A true copy of the parcel register for the Cumberland property is attached hereto as **Exhibit “L”**. As the register shows, there are no encumbrances registered against the Cumberland property other than the Cumberland Mortgage; and
  - (c) a mortgage of the Warren property from 224 to the Bank registered as Instrument No. SD387127 on November 18, 2019 in the principal amount of \$3,100,000 and due on demand (the “**Warren Mortgage**”). A true copy of the Warren Mortgage is attached hereto as **Exhibit “M”**. A true copy of the parcel register for the Warren property is attached hereto as **Exhibit “N”**. As the register shows, there are no encumbrances registered against the Warren property other than the Warren Mortgage.
12. The indebtedness of 224 is further secured by a personal guarantee from Kalyani Kapilan and Rasakone Kapilan.
13. In addition to the facilities noted above, the Bank advanced to 224 a Canada Emergency Business Account (“**CEBA**”) loan in the amount of \$60,000.

**249 Loan Facilities and Security**

14. By letter of agreement from the Bank to 249 dated October 1, 2019, a true copy of which is attached hereto as **Exhibit “O”**, the Bank advanced to 249 of the following loan facilities:

- (a) demand loans totaling \$2,425,000 in connection with Pickering, consisting of:
  - (i) a demand loan in the original amount of \$2,300,000 to pay out existing financing for the Pickering property; and
  - (ii) a demand loan in the original amount of \$125,000 to be applied to renovations to the Pickering gas station;

A true copy of the promissory note for these loans is attached hereto as **Exhibit “P”**;

- (b) a demand overdraft loan in a maximum amount of \$110,000 for working capital for Pickering. A true copy of the loan agreement for this loan is attached hereto as **Exhibit “Q”**;
- (c) a corporate MasterCard authorized in the amount of \$30,000.

15. The indebtedness of 249 to the Bank referenced above is secured, in part, by:

- (a) a general security agreement from 249 to BMO dated November 12, 2019 registered in accordance with the provisions of the *PPSA* (the “**249 GSA**”). A true copy of the 249 GSA is attached hereto as **Exhibit “R”**. A true copy of a *PPSA* certificate showing the registration of the 249 GSA is attached hereto as **Exhibit “S”**. There is one prior registration to the Bank to BMW Canada Inc. relating to a registration against a passenger vehicle; and

- (b) a mortgage of the Pickering property from 249 to the Bank registered as Instrument No. DR1847644 on November 18, 2019 in the principal amount of \$3,780,000 and due on demand (the “**249 Pickering Mortgage**”). A true copy of the 249 Pickering Mortgage is attached hereto as **Exhibit “T”**. A true copy of the parcel register for the Pickering property is attached hereto as **Exhibit “U”**. As the register shows, there are no encumbrances registered against the Pickering property other than the Pickering Mortgage.

16. The indebtedness of 249 is further secured by a personal guarantee from Kalyani Kapilan and Rasakone Kapilan.

17. In addition to the facilities noted above, the Bank also advanced to 249 a CEBA loan in the amount of \$60,000.

#### **Right to Appointment of a Receiver**

18. Among other remedies, enforcement of BMO’s rights under the 224 GSA and the 249 GSA include the right to appoint a receiver and to apply to the Court for the appointment of a receiver (paragraph 10). Default includes breach of any obligation to BMO.

19. Among other remedies, enforcement of the Bank’s rights under the Cumberland Mortgage, the Warren Mortgage and the Pickering Mortgage include the right to appoint a receiver and to apply to the Court for the appointment of a receiver.

#### **Bank’s Concerns and Transfer to SAMU**

20. SAMU is responsible for the management and administration of credit facilities and accounts having a higher than acceptable level of risk. Responsibility for the oversight and

administration of the 224 and 249 accounts and credit facilities was transferred to SAMU in January 2022 because of, among other reasons, (i) poor financial performance, (ii) breach of the Companies' debt service ratio covenants, and (iii) numerous excesses and NSF's on the Companies' operating overdraft facilities.

21. As well a tax certificate for the Pickering property as at July 12, 2022 showed that property tax arrears were outstanding in the total amount of \$47,701.96, \$18,535.58 of which dated to 2021. A true copy of the tax certificate for the Pickering property obtained in July 2022 is attached hereto as **Exhibit "V"**.

22. The Kapilans advised the Bank that their intention was to sell the Cumberland and Warren properties/businesses to ease their financial difficulties and allow them to concentrate on Pickering. They advised the Bank that as of January 2022 they had a signed agreement of purchase and sale in place for the Cumberland property but an offer for the Warren property had fallen through. No agreement of purchase and sale for the Cumberland property was provided to the Bank.

### **Standstill Agreement**

23. The Bank was prepared to allow some time for the Kapilans to close sales of the properties but as 2022 progressed they appeared no closer to completing any sale and the Bank made it clear that it required repayment of the 224/249 indebtedness. The Kapilans requested additional time and in consideration of same the Bank agreed to enter into a standstill agreement dated September 15, 2022. The terms of this agreement included the following:

- (a) 224 confirmed total indebtedness to the Bank of \$4,279,947.29 as of September 13, 2022;
- (b) 249 confirmed total indebtedness to the Bank of \$2,429,687.93 as of September 13, 2022;
- (c) 224 confirmed loan arrears totaling \$43,023.24 and agreed to repay same by September 30, 2022;
- (d) the Companies agreed to continue to make all monthly loan payments of principal and interest in respect of all loans;
- (e) 224 advised the Bank that it had entered into an oral agreement to sell the Cumberland and Warren properties with the understanding that an agreement of purchase and sale would be executed by mid-September 2022 with a closing date no later than December 31, 2022. 224 agreed that if it did not enter into an agreement of purchase and sale by September 30, 2022, it would forthwith take the necessary steps to sell or refinance the Cumberland and Warren properties and provide to the Bank on or before December 15, 2022 copies of firm and binding financing commitments and/or agreements of purchase and sale in amounts sufficient to repay its indebtedness by January 31, 2023;
- (f) 249 agreed that it would forthwith take the necessary steps to sell or refinance the Pickering property and provide to the Bank on or before December 15, 2022, a copy of a firm and binding financing commitment and/or agreement of purchase and sale in an amount sufficient to repay its indebtedness by January 31, 2023;
- (g) 249 agreed that on or before September 30, 2022, all tax arrears on the Pickering property would be brought current and it would provide proof of payment to the Bank;

- (h) The Bank would forbear from making demand and enforcing its security until the earlier of January 31, 2023 or default by 224 or 249 of the terms of the standstill agreement.

A true copy of the standstill agreement is attached hereto as **Exhibit “W”**.

24. The Companies were in breach of the standstill agreement almost from the date it went into effect. While funds were provided to bring the 224 and 249 loans up to date to September 1, 2022, the payments on the 224 loans due October 1 and after were not made in full. The tax arrears on the Pickering property were not paid. Attached hereto as **Exhibit “X”** is a true copy of a tax certificate for the Pickering property as at March 1, 2023 showing that total arrears have risen to \$66,216.60. We were not provided with signed (or even draft) agreements of purchase and sale for any of the properties at any time, let alone by September 30, 2022 as required, nor were we provided with financing commitments to pay the Bank out.

### **Demand**

25. As a result of these defaults, the Bank, by its lawyers, made demand on 224 and 249 and delivered notices of the Bank’s intention to enforce its security under the *Bankruptcy and Insolvency Act* by letters dated November 15, 2022 as follows:

- (a) on 224 for the amounts then outstanding to the Bank in the total amount of \$4,225,256.84. A true copy of the demand and notice of the Bank’s intention to exercise its security in accordance with the *Bankruptcy and Insolvency Act* are attached hereto as **Exhibit “Y”**;
- (b) on 249 for the amounts then outstanding to the Bank in the total amount of \$2,390,162.74. A true copy of the demand and notice of the Bank’s



intention to exercise its security in accordance with the *Bankruptcy and Insolvency Act* are attached hereto as **Exhibit “Z”**.

### **Forbearance Agreement**

26. Following issuance of these demands, the Kapilans requested additional time to sell or refinance the properties. The Bank agreed to enter into a forbearance agreement dated December 6, 2022, which terms included the following:

- (a) the Companies did not dispute their indebtedness to the Bank;
- (b) on or before December 31, 2022, all existing loan payment arrears for principal and interest would be brought current and thereafter the Companies would continue to make all monthly loan payments of principal and interest in respect of all loans in a timely manner;
- (c) the Companies would provide to the Bank by the 20th day of each month all in-house financial documentation for the immediately preceding month including accounts receivable, accounts payable, statements of prior claims and deemed trusts;
- (d) on or before December 31, 2022, the Companies would provide to the Bank;
  - (i) their accountant prepared year-end financial statements for 2021;
  - (ii) their corporate income tax returns and Canada Revenue Agency Notices of Assessment for 2021;
  - (iii) their 2021 and 2022 fuel volume reports;
  - (iv) updated appraisals for the Cumberland property, the Warren property and the Picking property;

- (e) The Companies would forthwith take the necessary steps to sell or refinance the Cumberland property, the Warren property and the Pickering property in amounts sufficient to repay the 224 and the 229 indebtedness on or before January 31, 2023 and would provide to the Bank bi-weekly email updates in respect of their progress in arranging for a sale and/or refinancing of their assets. Updates were to include copies of any agreements of purchase and sale, term sheets, commitment letters, letters of intent, and any other relevant documentation.

A true copy of the forbearance agreement is attached hereto as **Exhibit “AA”**.

27. Pursuant to the forbearance agreement, 224 and 249 also agreed as follows:

“We agree and consent to the making of bankruptcy orders and appointments of a receiver and manager of the assets, property and undertaking of the [Companies] and agree to forthwith execute and deliver to the Bank written consents in the form annexed hereto as Schedule “A” which consents are to be held by the Bank’s solicitors in escrow until the occurrence of an Event of Default.”

28. The executed consents to the appointment of a receiver are included with the forbearance agreement at Exhibit “AA”.

29. Again, the companies were in breach of the forbearance agreement almost immediately. They did not bring their indebtedness to the Bank current by December 31, 2022, did not provide the 2021 financial information promised, did not provide in-house financial documentation by December 20, 2022, did not provide updated appraisals, and did not provide bi-weekly updates on efforts to sell the properties.

30. I was able to reach Kalyani Kapilan by telephone on January 6, 2023. She advised me at that time that Cumberland was “sold” but had no information on the price or closing date and

paperwork was to be provided the next week. Concerningly, she told me that Cumberland had been closed for the previous two months because the buyer wanted renovations done. As a result, there have been no sales at Cumberland apparently since early November 2022.

31. Kalyani Kapilan also told me that there is a party interested in Warren who was working on financing and that a commitment letter to finance a payout of Pickering was expected, also the next week. Again, we received nothing.

32. On January 26, 2022 I received from Kalyani a signed agreement of purchase and sale for Cumberland dated January 23, 2023 with a completion date of April 29, 2023. That agreement was conditional on a number of matters.

### **Forbearance Extension**

33. The forbearance period ended January 31, 2023 and the Companies did not sell or refinance the Cumberland property, the Warren property or the Pickering property. The Bank was requested to extend the forbearance to May 1, 2023. The Bank was prepared to do so on terms that included the following:

- (a) again, the Companies did not dispute their indebtedness to the Bank;
- (b) on or before March 15, 2023, 224 would pay to the Bank the sum of \$15,000.00 to be applied in reduction of the loan arrears on its various non revolving demand loans;
- (c) on or before March 31, 2023, 224 would pay to the Bank the balance of the loan arrears on its various non revolving demand loans;

- (d) the Companies would continue to make all principal and interest payments monthly in accordance with existing arrangements;
- (e) the Companies would execute cross-covering guarantees in favour of the Bank for the full amount of the other's indebtedness with each to be supported by existing security (being the GSA's and mortgages described above);
- (f) 224 would provide updates to the Bank with respect to its progress in completing the sale of Cumberland Property and immediately advise the Bank if the agreement of purchase and sale for Cumberland dated January 23, 2023 is terminated;
- (g) the Companies would forthwith list the Warren property and the Pickering property for sale with a listing broker approved by the Bank and authorize and direct the listing broker to communicate with the Bank and keep the Bank fully updated with respect to all matters concerning the listings including prospective purchasers and copies of offers received. If the Agreement of Purchase and Sale for the Cumberland Property was terminated, 224 would forthwith list the Cumberland Property for sale;
- (h) the Companies would provide to the Bank as soon as it becomes available all financial information including accountant prepared financial statements for the 2021 and 2022 fiscal years in respect of each of the properties and businesses; and
- (i) the Companies would repay their indebtedness to the Bank on the earlier of completion of any sales of the businesses and land or May 1, 2023.

A true copy of the forbearance extension agreement is attached hereto as **Exhibit "BB"**.

34. 224 and 249 did execute and provide to the Bank cross-covering guarantees, true copies of which are attached hereto as **Exhibits “CC” and “DD”**. However, they again breached the forbearance conditions by failing to make the payments described above, in particular payment of all indebtedness by May 1, 2023, or to provide the financial information agreed to. As well, no information was provided with respect to listing for sale the Warren Property and the Pickering Property.

35. In addition, the Bank’s lawyers were provided with a further conditional agreement of purchase and sale for the Cumberland Property with a closing date of February 24, 2023, by which we understood the January 23, 2023 agreement of purchase and sale to have been terminated. There was no such closing, and the Bank has been provided with no further information regarding listing or sale of that property.

#### **BMO’s Request for the Appointment of a Receiver**

36. The loan facilities to 224 and 249 are in default. The Bank has made demand and the Companies are either unable or unwilling to repay the balance of their indebtedness. The Companies have been unable to sell any of the properties/businesses.

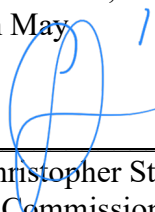
37. The Bank seeks the appointment of a receiver to protect its security and to assess the best course of action for the Companies’ businesses going forward, either through continued operation of Warren and Pickering, during a sales process or discontinuance of the business and sale of the Companies’ assets. A receiver will be in a position to determine whether a going concern sale of the businesses, including the properties and the assets secured by the mortgages and GSAs, is viable and in the interests of interested parties.

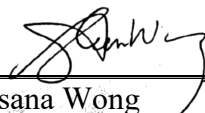
38. As the properties are operated as gas stations, there are safety and environmental issues that must be addressed. A receiver can investigate and report to the court regarding any potential environmental or other concerns with the properties.

39. A receiver will be able to assess the viability of the businesses and, if operations are to continue, will ensure that such is done safely and in accordance with applicable laws and regulations. If operations are to discontinue, a receiver will ensure that such is likewise done in accordance with applicable laws and regulations.

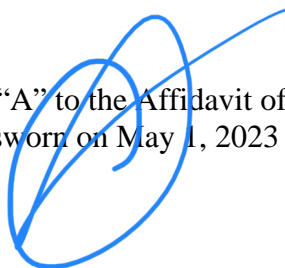
40. A receiver will also be able to deal with the gas suppliers, in particular any potential transfer of rights should there ultimately be a sale of the businesses.

SWORN BEFORE ME VIA  
VIDEOCONFERENCE, the affiant being  
located in the City of Toronto, and  
the Commissioner being located in the City  
of Toronto, in the Province of Ontario  
on May 1, 2023

  
\_\_\_\_\_  
Christopher Staples  
A Commissioner, etc.

  
\_\_\_\_\_  
Visana Wong

This is Exhibit "A" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

A Commissioner for the taking of affidavits, etc.

Ministry of Government and  
Consumer Services

## Profile Report

2243080 ONTARIO INC. as of April 18, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2243080 ONTARIO INC.
Ontario Corporation Number (OCN)	2243080
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	May 07, 2010
Registered or Head Office Address	58 Greyleaf Dr, Stouffville, Ontario, Canada, L4A 1S8

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

A handwritten signature in cursive script that reads "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 12

Name Kalyani KAPILAN  
Address for Service 58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8  
Resident Canadian Yes  
Date Began May 07, 2010

Name Rasakone KAPILAN  
Address for Service 58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8  
Resident Canadian Yes  
Date Began May 07, 2010

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>	Kalyani KAPILAN
<b>Position</b>	Secretary
<b>Address for Service</b>	58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8
<b>Date Began</b>	May 07, 2010

<b>Name</b>	Rasakone KAPILAN
<b>Position</b>	President
<b>Address for Service</b>	58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8
<b>Date Began</b>	May 07, 2010

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

*Barbara Duckitt*

Director/Registrar

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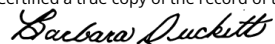
**Corporate Name History****Name**

2243080 ONTARIO INC.

**Effective Date**

May 07, 2010

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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

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**Expired or Cancelled Business Names**

<b>Name</b>	ULTRAMAR
<b>Business Identification Number (BIN)</b>	250720356
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	July 17, 2015
<b>Expired Date</b>	July 16, 2020

<b>Name</b>	WARREN ESSO
<b>Business Identification Number (BIN)</b>	200886786
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	August 18, 2010
<b>Expired Date</b>	August 16, 2020

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**

<b>Filing Name</b>	<b>Effective Date</b>
Annual Return - 2019 PAF: RASAKONE KAPILAN - DIRECTOR	September 20, 2020
Annual Return - 2018 PAF: RASAKONE KAPILAN - DIRECTOR	October 20, 2019
CIA - Notice of Change PAF: RASAKONE KAPILAN - DIRECTOR	October 06, 2017
Annual Return - 2014 PAF: KAPILAN KALYANI - DIRECTOR	July 04, 2015
Annual Return - 2013 PAF: KAPILAN KALYANI - DIRECTOR	November 29, 2014
BCA - Articles of Incorporation	May 07, 2010

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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This is Exhibit "B" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

Ministry of Government and  
Consumer Services

## Profile Report

2496287 ONTARIO INC. as of April 18, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	2496287 ONTARIO INC.
Ontario Corporation Number (OCN)	2496287
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	December 15, 2015
Registered or Head Office Address	58 Grayleaf Dr, Stouffville, Ontario, Canada, L4A 1S8

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

A handwritten signature in cursive script that reads "Barbara Duckitt".

Director/Registrar

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**Active Director(s)**

Minimum Number of Directors 1  
Maximum Number of Directors 10

Name Kalyani KAPILAN  
Address for Service 58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8  
Resident Canadian Yes  
Date Began December 15, 2015

Name Rasakone KAPILAN  
Address for Service 58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8  
Resident Canadian Yes  
Date Began December 15, 2015

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>	Kalyani KAPILAN
<b>Position</b>	Secretary
<b>Address for Service</b>	58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8
<b>Date Began</b>	December 15, 2015

<b>Name</b>	Rasakone KAPILAN
<b>Position</b>	President
<b>Address for Service</b>	58 Grayleaf Drive, Stouffville, Ontario, Canada, L4A 1S8
<b>Date Began</b>	December 15, 2015

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*Barbara Duckitt*

Director/Registrar

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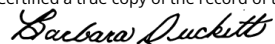
**Corporate Name History****Name**

2496287 ONTARIO INC.

**Effective Date**

December 15, 2015

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



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

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**Expired or Cancelled Business Names**

<b>Name</b>	HIGHWAY 7 ESSO
<b>Business Identification Number (BIN)</b>	260711155
<b>Status</b>	Inactive - Expired
<b>Registration Date</b>	July 11, 2016
<b>Expired Date</b>	July 10, 2021

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*Barbara Duckitt*

Director/Registrar

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## Document List

Filing Name	Effective Date
Annual Return - 2019 PAF: KAPILAN RASAKONE - DIRECTOR	September 20, 2020
Annual Return - 2018 PAF: RASAKONE KAPILAN - DIRECTOR	October 20, 2019
Annual Return - 2017 PAF: RASAKONE KAPILAN - DIRECTOR	September 29, 2019
Annual Return - 2016 PAF: RASAKONE KAPILAN - DIRECTOR	October 14, 2018
Annual Return - 2015 PAF: RASAKONE KAPILAN - DIRECTOR	August 19, 2018
CIA - Notice of Change PAF: RASAKONE KAPILAN - DIRECTOR	October 12, 2017
BCA - Articles of Incorporation	December 15, 2015

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Director/Registrar

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This is Exhibit "C" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.



6605 Hurontario Street Suite 200  
 Mississauga, Ontario L5T 0A4  
 Tel No: 905 670 2413  
 Fax No: 905 670 3973  
 Email: Balwinder.Jandu@bmo.com

October 1, 2019

2243080 Ontario Inc  
 58 Grayleaf Drive  
 Stouffville, Ontario L4A 1S8

Attention: Kalyani Kapilan

### LETTER OF AGREEMENT

Bank of Montreal ("BMO") is pleased to advise that it has authorized the following [new ] credit Facilities for **2243080 ONTARIO INC** (each, a "Facility" and collectively, the "Facilities") on the terms and conditions outlined in this Letter of Agreement. The Schedules listed below and attached form part of this Letter of Agreement.

Notwithstanding any other provision of this Letter of Agreement or in any applicable agreements, any Advance under any Facility hereunder will be made at BMO's sole discretion. Any unutilized portion of any Facility hereunder may be cancelled by BMO at any time without prior notice.

<b>Borrower(s):</b>	2243080 ONTARIO INC <b>(the "Borrower")</b>
<b>Guarantor(s):</b>	Kalyani Kapilan; Rasakone Kapilan <b>(the "Guarantor(s)")</b>
<b>Total Facility Limit:</b>	The total approved amount of all facilities shall not exceed \$4,750,000.00 at any time.
 <b>Facility # 1</b>	
<b>Facility Authorization:</b>	\$2,050,000.00 CAD
<b>Type of Loan:</b>	Demand Loan Non Revolving (DLNR) or Fixed Rate Term Loan (FRTL)
<b>Purpose:</b>	To refinance Orillia Ultramar and payout private financing.
<b>Draw Conditions:</b>	\$2,050M authorization allocated as follows:  1) \$1,900,000 towards payout of private lender. Available in one draw as FRTL / DLNR. Solicitor to control payout.



2) \$150,000 towards renovations of gas station available in DLNR only with max three draws and minimum \$50,000 per draw. Prior to initial draw for renovations confirmation of permit for liquor store and pre-tax cost invoices required.

**Maximum Amortization:**

240 months

**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus 2.00%. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of September 30, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO with equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance; as applicable.

Prepayments of principal in whole or in part are permitted, without penalty.

**Fixed Rate  
Term Loan**

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of October 1, 2019 for a 5 year term is 4.85% (monthly payment approx. \$13,359.80); 2 year rate is 4.75% (monthly payment approx. \$13,247.58) per annum per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** Prepayments of principal in whole or in part are not permitted, without penalty.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

**Facility # 2**

**Facility Authorization:** \$2,150,000.00 CAD

**Type of Loan:** Demand Loan Non Revolving or Fixed Rate Term Loan

**Purpose:** To refinance Warren Esso and payout private financing

**Draw Conditions:** \$2,150M authorization allocated as follows:

- 1) \$2,000,000 towards payout of private lender. Available in one draw as FRTL / DLNR.
- 2) \$150,000 towards renovations of gas station. Available in DLNR only with max three draws and minimum \$50,000 per draw. Prior to initial draw for renovations: confirmation of permit for liquor store and pre-tax cost invoices.

**Maximum Amortization:** 180 months

**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus 2.00%. Interest is calculated monthly in arrears and payable monthly. The Prime Rate in effect as of September 30, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO with equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The

amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Fixed Rate  
Term Loan**

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of October 1, 2019 for a 5 year term is 4.85 % (monthly payment approx. \$16,834.54); 2 year rate is 4.75% (monthly payment approx. \$16,723.39) per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** Prepayments of principal in whole or in part are not permitted, without penalty.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

#### Facility # 3

<b>Facility Authorization:</b>	\$200,000.00 CAD
<b>Type of Loan:</b>	Operating Demand Loan
<b>Purpose:</b>	Working capital requirements for Orillia Ultramar
<b>Interest Rate:</b>	Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable monthly on the last day of each month. The Prime Rate in effect as of September 30, 2019 is 3.95%.
<b>Repayments:</b>	Repayable on demand
<b>Facility Fee:</b>	\$140.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.
<b>Other Costs:</b>	BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.  In the event the Advances under this Facility exceeds the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.

#### Facility # 4

<b>Facility Authorization:</b>	\$200,000.00 CAD
<b>Type of Loan:</b>	Operating Demand Loan
<b>Purpose:</b>	Working capital requirements for Warren Esso

**Interest Rate:** Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable monthly on the last day of each month. The Prime Rate in effect as of September 30, 2019 is 3.95%.

**Repayments:** Repayable on demand

**Facility Fee:** \$140.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.

**Other Costs:** BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.

In the event the Advances under this Facility exceeds the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.

#### Facility # 5

**Facility Authorization:** \$50,000.00 CAD

**Type of Loan:** Letter of Credit

**Purpose:** As per Fuel Supplier requirements for Orillia Ultramar

**Repayments:** To be reduced and/or cancelled in normal course.

**Maximum Term:** 12 months from the date of issue. Renewals as required.

**Drawdown Conditions:** The Borrower may request the issuance of Letters of Credit, in a form reasonably acceptable to BMO, at any time and from time to time. Each Letter of Credit shall expire at or prior to the close of business on the date that is one year after the date of the issuance of such Letter of Credit.

**Commissions and Fees:** Based on specifics of request and Trade Finance client fee schedule.

**Terms and Conditions:** Per Indemnity Agreement

#### Facility # 6

**Facility Authorization:** \$50,000.00 CAD

<b>Type of Loan:</b>	Letter of Credit
<b>Purpose:</b>	As per Fuel Supplier requirements for Warren Esso
<b>Repayments:</b>	To be reduced and/or cancelled in normal course.
<b>Maximum Term:</b>	12 months from the date of issue. Renewals as required.
<b>Drawdown Conditions:</b>	The Borrower may request the issuance of Letters of Credit, in a form reasonably acceptable to BMO, at any time and from time to time. Each Letter of Credit shall expire at or prior to the close of business on the date that is one year after the date of the issuance of such Letter of Credit.
<b>Commissions and Fees:</b>	Based on specifics of request and Trade Finance client fee schedule.
<b>Terms and Conditions:</b>	Per Indemnity Agreement

**Facility # 7**

<b>Facility Authorization:</b>	\$50,000.00 CAD
<b>Type of Loan:</b>	Corporate MasterCard <sup>Â®</sup>
<b>Purpose:</b>	Operating Financing
<b>Interest Rate:</b>	As determined by Corporate MasterCard Agreement.
<b>Repayments:</b>	As determined by Corporate MasterCard Agreement.
<b>Facility Fee:</b>	As determined by Corporate MasterCard Agreement.

Â® MasterCard is a registered trademark of MasterCard International Incorporated. Used under license.

**Conditions Precedent to Advances:**

BMO will not be required to make any advance to the Borrower unless and until each of the conditions set out below and in Schedule C has been completed to BMO's satisfaction

1. Completion of all loan and account documents and all Security as outlined below.
2. Compliance with all covenants, representations and warranties in all loan documents and Security.
3. Receipt of all information necessary for BMO to comply with all legal and internal requirements in respect of money laundering and proceeds of crime legislation, and "know your customer" requirements.
4. Satisfactory review by BMO of insurance policies issued to the Borrower and each Guarantor, if any, and compliance with any changes required to satisfy BMO's insurance requirements.
5. Confirmation of no material adverse change to the Borrower and the Guarantor and their respective property and assets since the latest financial statements provided to BMO.
6. Confirmation that no default or breach under this Letter of Agreement, any of the loan documents or the Security has occurred.

7. All documents to be prepared by BMO appointed solicitor, all funds to be released through trust account of BMO lawyer, lawyer to confirm zoning, Ontario fire code compliance, shareholder agreement (if applicable), TSSA certification, BMO has first and valid and enforceable charge on property to be mortgaged with no second charge from any other party & discharge of existing private lender charges and assignment of rents.
8. Receipt of satisfactory appraisal of the Lands from an appraiser or agrologist satisfactory to BMO confirming a minimum market value of \$2,920,000 for Orillia Ultramar and \$3,100,000 for Warren Esso, together with a letter by the appraiser or agrologist addressed to BMO confirming that BMO may rely on the appraisal for financing purposes. (Held)
9. Phase II Environmental reports for both Orillia Ultramar and Warren Esso satisfactory to the bank (Held).
10. Reliance letters for both Phase II reports (Warren and Orillia)
11. Receipt of satisfactory Environmental Review, Compliance Certificate and Indemnity for Mortgaged Property executed by the Borrower in favour of BMO. (9279 Highway 11, Severn)
12. Receipt of satisfactory Environmental Review, Compliance Certificate and Indemnity for Mortgaged Property executed by the Borrower in favour of BMO. (8824 Highway 17 East, Markstay-Warren)
13. TSSA confirmation of double-walled fibreglass USTs installation date at the Orillia location (to be confirmed as no older than 2011)
14. Confirmation that Rasakone Kapilan's personal taxes are fully paid and UTD
15. Corporate Tax Return and Notice of Assessment with confirmation of no taxes owing for 2243080 Ontario Inc.
16. Satisfactory BIU report on the ownership group to be completed prior to funding (Held).
17. Confirmation that property taxes are up to date for Warren and Orillia.
18. Satisfactory review (site visit) of the Lands, and the condition of the improvements thereon.

#### **Security:**

Each of the following documents, instruments, agreements and other assurances (collectively, the "**Security**") shall be delivered to BMO prior to any advance of funds, in form and substance acceptable to BMO and its solicitors, acting reasonably:

1. Registered first-ranking All Indebtedness Mortgage in the amount of \$2,920,000.00 registered over Lt 151-153, 144 PI 723 North Orillia; Pt Lt 145- 150 PI 723 North Orillia As In RO1305868; Severn with the municipal address of 9279 Highway 11,, Severn, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
2. Registered first-ranking All Indebtedness Mortgage in the amount of \$3,100,000.00 registered over 8824 Highway 17 East Warren Pt Lts 37 & 38 RCP 84S Dunnet Being Part 1 On 53R20501, Part 2 On 53R15743 & Pt 1 On 53R12570; S/T S111419; Municipality Of Markstay-Warren
3. Registered General Security Agreement ("GSA")/Moveable Hypothec ("Hypothec") providing BMO with a security interest/hypothec over all present and after-acquired personal/movable property of the Borrower with a First ranking for Machinery and Equipment, CDN Accounts Receivable, Inventory/Warehouse Receipts
4. Insurance on a "Fire and Extended Coverage" or "All Risks" basis must be arranged (with satisfactory evidence thereof delivered to the Bank's solicitor before advances are made) satisfactory to the Bank for the full insurable or replacement value of the subject property with loss payable to the Bank of Montreal. The policy is to contain the Standard Mortgage Clause (Business insurance and Fire insurance combined coverage minimum \$2.5MM & environmental Coverage of no less than \$2.5MM with minimum \$1MM per occurrence.) A copy of the policy is to be provided for both Orillia Ultramar and Warren Esso.
5. Delivery of an [Up to Date or Existing] survey/certificate of location of Mortgaged Property(ies) and all buildings located on the Mortgaged Property(ies), prepared by a surveyor licensed in the jurisdiction in which the property(ies) is/are located, which:
  - bears the name, address and signature of the surveyor, his official seal and licence number (any, or both), the date of a survey, and
  - includes a Surveyor's Certificate in the form and content required by the jurisdiction(s) in which the property is located
 OR
  - Title insurance from Approved Title Insurance Provider in respect of Lt 151-153, 144 PI 723 North

- Orillia; Pt Lt 145- 150 PI 723 North Orillia As In RO1305868; Severn naming BMO as beneficiary
6. Personal Guarantee for Kalyani and Rasakone Kapilin in the amount of \$4,750,000.00 with ILA for Kalyani if deemed necessary by BMO solicitor.
  7. Assignment of Rents over 9279 Highway 11,, Severn, ON, to be registered under PPSA .
  8. Assignment and receipt of Deposit Instruments in the amount \$50,000.00 for Warren Esso.
  9. Assignment and receipt of Deposit Instruments in the amount \$50,000.00 for Orillia Ultramar
  10. Commercial Loan Insurance to be offered to all guarantors and if declined, assignment of life insurance to be on file in the amount of \$4,750,000
  11. Letter of Credit documentation along with cash collateral in the amount \$50,000.00 for Orillia Ultramar.
  12. Letter of Credit documentation along with cash collateral in the amount \$50,000.00 for Warren Esso.
  13. LF9B - Assignment Postponement and Subordination to be signed by Kalyani and Rasakone Kapilin.
  14. Form 163209 and Form 163226 - Commercial Card Agreement.

Any other documents, instruments or agreements as may be required by BMO, acting reasonably

**Covenants:**

As long as any Advance remains outstanding under or in connection with this Letter of Agreement, or so long as this Letter of Agreement remains in effect, the Borrower and any Guarantor will perform and comply with the covenants set out in Schedule A.

**Financial Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following financial covenants, based on financial statements of the Borrower or applicable Guarantor:

Financial Covenant	Description	Requirement	Frequency
Debt service coverage ratio	(Net Income + Interest + Depreciation + Amortization)/ CPLTD + Interest + Non Discretionary Dividends + Repayment of Subrogated Shareholder Loans)	Greater Than or Equal To 1.25	Annually

**Additional Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following covenants:

1. The Borrower will not, without BMO's prior written consent, participate in any retrofit project or energy or water efficiency project affecting the Mortgaged Property which would have the effect of creating a lien, hypothec or other interest (including, but without limitation, a local improvement charge or similar interest) in the Mortgaged Property ranking, or potentially ranking, in priority to or *pari passu* with the interest of BMO in the Mortgaged Property, whether or not such project is sponsored or endorsed by a municipal or other government, governmental organization or utility.

**Reporting Requirements:**

Annual	<ol style="list-style-type: none"> <li>1. Accountant prepared, minimum Notice to Reader financial statements of the Borrower</li> <li>2. Corporate Income Tax Return &amp; Notice of Assessment of the borrower</li> </ol>
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	<p>3. Municipal tax certificates showing all property taxes paid and up to date</p> <p>4. Confirmation of adequate fire and environmental insurance with BMO as first loss payee</p> <p>5. Updated Personal Net Worth Statement with income and asset confirmations for all personal guarantors to be provided at the Bank's request.</p> <p>6. Annual Fuel Volume Report</p> <p>7. Any other information requested by the Bank</p>
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A \$50 per month fee will be applied for non compliance with reporting requirements. The application of this fee does not waive the default condition.

Prompt notification of management letters, default notices, litigation, and any other material events

Satisfactory evidence that all taxes (including, without limitation, GST, HST, sales tax, withholdings, etc.) have been paid to date

**Representations and Warranties:**

The Borrower and each Guarantor, as applicable, makes the representations and warranties set out in Schedule B. All representations and warranties of the Borrower and any Guarantor, in addition to any representation or warranty provided in any document executed in connection with a Facility or any Security, shall be true and correct on the date of this Letter of Agreement and on the date of any Advance under a Facility.

**Noteless Advances:**

The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Facilities, and interest, fees and other amounts due in connection with the Facilities, in an account of the Borrower maintained by BMO, shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Facilities; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with the terms and conditions of the Facilities set out in this Letter of Agreement shall not be affected by the failure of BMO to make such recording. The Borrower also hereby acknowledges being indebted to BMO for principal amounts shown as outstanding from time to time in BMO's account records, and all accrued and unpaid interest in respect thereto, which principal and interest the Borrower hereby undertakes to pay to BMO in accordance with the terms and conditions applicable to the Facilities as set out in this Letter of Agreement.

**Fees:**

All costs and expense incurred by BMO in connection with this Letter of Agreement and the Facilities (including without limitation all legal, appraisal and consulting fees), and the enforcement of the Security are for the account of the Borrower.

A one-time fee ("Fee") of \$23,750 is payable by the Borrower to BMO upon acceptance of this Letter of Agreement. This fee is deemed to be earned by BMO upon acceptance of this Letter of Agreement, to compensate for time, effort and expense incurred by BMO in authorizing these Facilities.

Credit renewal fees will be payable as advised by BMO annually; at the date of this letter such fees are estimated to be \$ 4,750.

All fees payable under this Letter of Agreement shall be paid to BMO on the dates due, in immediately available funds. Fees paid shall not be refundable except in the case of manifest error in the calculation of

any fee payment.

**Banking Services:**

The Borrower shall maintain its bank accounts, solely with BMO. Borrower acknowledges that the pricing (including interest, fees and charges) contained in this Letter of Agreement is contingent on the Borrower maintaining all of its operating accounts with BMO. In the event the Borrower does not do so, BMO may, at any time, in its sole discretion and without any requirement to obtain the agreement of, or provide prior notice to the Borrower, increase such pricing.

**Treasury & Payment Solutions:**

BMO will provide Non-Credit and treasury & payment solutions to the Borrower. A Treasury & Payment Specialist will contact the Borrower to implement BMO's On-Line Banking for Business platform (OLEBB) and discuss additional treasury & payment features such as Electronic Funds Transfer (EFT), Wire Payments, BMO DepositEdge® and Moneris® Payment Processing Solutions. BMO's objective is to provide a package of services that are tailored to meet both the current and future needs of the Borrower in a cost efficient operating environment.

**Commercial Loan Insurance Plan:**

**You understand that unless you submit an Application for Commercial Loan Insurance Plan ("Application"), and it has been approved by Canada Life as the insurer, you will not be covered under the Commercial Loan Insurance Plan for any facilities under this Letter of Agreement and would be ineligible to submit a claim should you undergo an insurable event.**

**Counterparts; Electronic Transmissions:**

This agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile, PDF or other electronic means and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.

**Governing Law:**

Ontario and the federal laws of Canada applicable therein.

**Schedules:**

The following Schedules are attached to and form part of this letter of agreement:

Schedule A – Covenants

Schedule B – Representations and Warranties

Schedule C – Conditions Precedent to Advances

**BMO's Legal Counsel: [ ]**

In accepting this Letter of Agreement you acknowledge that if, in the opinion of BMO, a material adverse change in risk occurs including, without limitation, any material adverse change in the financial condition, business, property or prospects of the Borrower or any Guarantor, the rights and remedies of BMO, or the ability of the Borrower or any Guarantor to perform its obligations to BMO, any obligation to advance some or all of the above Facilities may be withdrawn or cancelled.

Please indicate your acceptance of the terms and conditions hereof by signing and returning one copy of this Letter of Agreement (and making payment of the above noted fee, if applicable) to BMO no later than October 4, 2019]. If your acceptance of this Letter of Agreement is not received by BMO by that date, BMO shall not be required to proceed with any of the Facilities.

Yours truly,  
BANK OF MONTREAL

By:   
Name: BALWINDER JANDU  
Title: Senior Relationship Manager

Accepted and agreed to this 1 day of OCTOBER, 2019


**BORROWER(S)**

2243080 ONTARIO INC

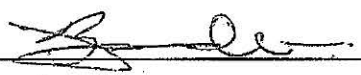
Signature: Kalyani K.  
Name: Kalyani Kapilan  
Title: Secretary

**GUARANTOR(S)**

**KALYANI KAPILAN**

Witness:  Signature: Kalyani K.  
Name: BAL JANDU Name: Kalyani Kapilan

**RASAKONE KAPILAN**

Witness:  Signature: R. Kaulin  
Name: BAL JANDU Name: RASAKONE KAPILAN

SCHEDULE ACOVENANTS

1. Payment of all indebtedness due to BMO in connection with this Letter of Agreement or any Facility
2. Maintenance of corporate existence and status, if applicable
3. Payment of all taxes when due (including, without limitation, corporate, GST, HST, sales tax and withholdings)
4. Compliance with all material laws, regulations and applicable permits or approvals (including health, safety and employment standards, labour codes and environmental laws)
5. Compliance with all material agreements
6. Use of proceeds to be consistent with the approved purpose
7. Notices of death of Borrower or Guarantor, default, material litigation, and regulatory proceedings to be provided to BMO on a timely basis
8. Access by BMO to books and records; BMO to have right to inspect property to which its security applies
9. No assumption of additional indebtedness or guarantee obligations by Borrower without prior written consent of BMO
10. No liens or encumbrances on any assets except with the prior written consent of BMO
11. No change of control or ownership of the Borrower without the prior written consent of BMO
12. No disposition of property or assets (except in the ordinary course of business) without the prior written consent of BMO
13. No material acquisitions, hostile takeovers, mergers or amalgamations without BMO's prior written approval
14. [For multiple currencies]:

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Letter of Agreement, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Letter of Agreement in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which BMO is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its principal office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by BMO of the amount due, the Borrower will, on the date of receipt by BMO, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by BMO on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by BMO is the amount then due under this Letter of Agreement in the Currency Due. If the amount of the Currency Due which BMO is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrower and each Guarantor jointly and severally (solidarily) agree to indemnify BMO from and against any and all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Letter of Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by BMO from time to time and shall continue in full force and effect notwithstanding any judgment or order in respect of an amount due under this Letter of Agreement or under any judgment or order.

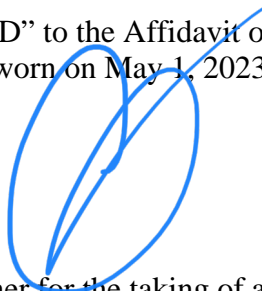
SCHEDULE BREPRESENTATIONS AND WARRANTIES

1. It has the corporate status, power and authority to enter into this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party, and to performs its obligations hereunder and thereunder
2. It is in compliance with all applicable laws (including environmental laws) and its existing agreements
3. Except as otherwise disclosed to BMO in writing, no consent or approval of, registration or filing with, or any other action by, any governmental authority is required in connection with the execution, delivery and performance by it of this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party
4. All factual information that has been provided to BMO for purposes of or in connection with this Letter of Agreement or any transaction contemplated herein is true and complete in all material respects on the date as of which such information is dated or certified
5. No event, development or circumstance has occurred that has had or could reasonably be expected to have a material adverse effect on the business, assets, operations or condition, financial or otherwise, of the Borrower or any Guarantor
6. There is no material litigation pending against it or, to its knowledge, threatened against or affecting it
7. It has timely filed or caused to be filed all required tax returns and reports and has paid or caused to be paid all required taxes
8. It has good and marketable title to its properties and assets including ownership of and/or sufficient rights in any material intellectual property.
9. It has complied with all obligations in connection with any pension plan which it has sponsored, administered or contributed to, or is required to contribute to including, without limitation, registration in accordance with applicable laws, timely payment of all required contributions or premiums, and performance of all fiduciary and administration obligations
10. It maintains insurance policies and coverage that provides sufficient insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons in the same or a similar business
11. It is not in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default under any loan, credit or security agreement, or under any material instrument or agreement, to which it is a party.

SCHEDULE CCONDITIONS PRECEDENT TO ADVANCES

1. Evidence of corporate (or other) status and authority
2. Completion and registration (as applicable) of all Security (defined herein) and other supporting documents
3. Completion of all facility documentation and account agreements and authorities, as applicable
4. Compliance with all representations and warranties contained herein
5. Compliance with all covenants (financial and non-financial) contained herein
6. No Event of Default (defined herein) shall have occurred and be continuing
7. Compliance with all laws (including environmental)
8. Payment of all fees and expenses
9. Receipt of all necessary material governmental, regulatory and other third party approvals including environmental approvals and certificates
10. Satisfactory due diligence (including, without limitation, anti-money laundering, proceeds of crime and "know your customer" requirements and procedures, environmental and insurance due diligence)
11. Repayment of all existing indebtedness (excluding permitted indebtedness), as applicable.
12. Satisfactory review of material contracts, as applicable
13. Satisfactory review by BMO (or, at BMO's option and the Borrower's expense, an insurance consultant) of insurance policies issued to the Borrower(s) and/or the Guarantor(s) and compliance with any changes required to satisfy BMO's insurance requirements
14. Disclosure of all material contingent obligations
15. Confirmation that no shares of the Borrower held by the principal shareholders have been pledged as security for any financial or other indebtedness
16. Corporate taxes of the Borrower and corporate/personal taxes of the Guarantor(s) are to be confirmed current and up-to-date
17. Satisfactory evidence that all other taxes payable by the Borrower and Guarantor(s) (including, without limitation, GST, HST, sales tax, and withholdings) have been paid to date
18. No material judgments or material legal action initiated against the Borrower and/or any Guarantor(s)
19. Any other document or action which BMO may reasonably require

This is Exhibit "D" to the Affidavit of Visana Wong  
sworn on May 1, 2023



A Commissioner for the taking of affidavits, etc.

# Letter of Agreement – Amendment & Restatement



6605 Hurontario Street Suite 200  
 Mississauga, Ontario L5T 0A4  
 Tel No: 905 670 2413  
 Fax No: 905 670 3973  
 Email: Balwinder.Jandu@bmo.com

November 10, 2020

2243080 Ontario Inc  
 58 Grayleaf Drive  
 Stouffville, Ontario L4A 1S8

Attention: Kalyani Kapilan

## LETTER OF AGREEMENT – AMENDMENT & RESTATEMENT

Bank of Montreal (“**BMO**”) is pleased to provide this amended and restated Letter of Agreement with respect to the credit Facilities (each a “**Facility**” and collectively, the “**Facilities**”) described herein. The letter (the “**Letter of Agreement**”) amends and restates the existing Letter of Agreement dated October 1, 2019] (the “**Prior Letter**”). The Facilities are offered (or continue to be offered, as applicable) on the terms and conditions set out in this Letter of Agreement. The Schedules listed below and attached form part of this Letter of Agreement.

The Schedules listed below and attached form part of this Letter of Agreement. Capitalised terms used but not defined have the meanings ascribed to them in Schedule D.

Notwithstanding any other provision of this Letter of Agreement or in any applicable agreements, any Advance under any Facility hereunder will be made at BMO’s sole discretion. Any unutilized portion of any Facility hereunder may be cancelled by BMO at any time without prior notice.

<b>Borrower:</b>	2243080 ONTARIO INC. <b>(the "Borrower")</b>
<b>Guarantor(s):</b>	RASAKONE KAPILAN KALYANI KAPILAN <b>(the "Guarantor(s)")</b>
<b>Total Facility Limit:</b>	The total approved amount of all facilities shall not exceed \$4,693,402.75 at any time.





## Your Product Summary

### Facility/ Facilities:

Facility No#	Product Type	Authorized Amount	Currency
1	Real Estate Facility - Shared limit/Multi-product/Multi-draw	\$2,027,936.29	CAD
2	Real Estate Facility - Shared limit/Multi-product/Multi-draw	\$2,115,466.46	CAD
3	Demand Loan Non Revolving	\$100,000.00	CAD
4	Overdraft Lending Product - CDN or USD	\$200,000.00	CAD
5	Overdraft Lending Product - CDN or USD	\$200,000.00	CAD
6	BMO Corporate MasterCard	\$50,000.00	CAD

## Your Product Details

### Real Estate Facility - Shared limit/Multi-product/Multi-draw

Facility # 1								
<b>Facility Authorization:</b>	\$2,027,936.29 CAD							
<b>Original Advanced Amount:</b>	\$2,050,000.00 CAD							
<b>Type of Loan:</b>	Demand Loan Non Revolving (DLNR) or Fixed Rate Term Loan (FRTL)							
<b>Purpose:</b>	To refinance Orillia Ultramar and payout private financing							
<b>Current Advances:</b>	<b>Product type</b>	<b>Account #</b>	<b>Current Balance</b>	<b>Payment Amount</b>	<b>Payment Type</b>	<b>Payment Frequency</b>	<b>Interest Rate</b>	<b>Maturity Date</b>
	Demand Loan Non Revolving	3858-6984-580	\$147,500.00	\$0.00	Principal Payment	Monthly	4.45%	N/A
	Fixed Rate Term Loan	3858-6985-022	\$1,880,436.29	\$12,185.05	Blended Payment	Monthly	4.66%	30-NOV-2020
<b>Maximum Amortization:</b>	236 months							
<b>Demand Loan Non Revolving</b>	<b>Interest Rate:</b> Prime Rate plus 2.00%. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of November 10, 2020 is 2.45%.							



## Your Product Summary

	<p><b>Repayment Terms:</b> Repayable on demand, provided that until demand is made by BMO:</p> <p>Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.</p> <p>Prepayments of principal in whole or in part are permitted, without penalty</p>
<p><b>Fixed Rate Term Loan</b></p>	<p><b>Type of Loan:</b> Closed Term Loan</p> <p><b>Interest Rate:</b> To be determined at time of Advance.</p> <p>Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in Advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.</p> <p><b>Repayment Terms:</b> Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.</p> <p>The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.</p> <p><b>Prepayment Terms:</b> Prepayments of principal in whole or in part are permitted, without penalty.</p> <p><b>Maximum Term:</b> 5 years</p> <p><b>Maturity Date:</b> The last day of the month determined based on the term selected and the date of Advance.</p>
<p>The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.</p> <p>Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.</p> <p>At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.</p> <p>The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.</p>	



## Your Product Summary

## Real Estate Facility - Shared limit/Multi-product/Multi-draw

Facility # 2								
<b>Facility Authorization:</b>	\$2,115,466.46 CAD							
<b>Original Advanced Amount:</b>	\$2,150,000.00 CAD							
<b>Type of Loan:</b>	Demand Loan Non Revolving (DLNR) or Fixed Rate Term Loan (FRTL)							
<b>Purpose:</b>	To refinance Warren Esso and payout private financing							
<b>Current Advances:</b>	<b>Product type</b>	<b>Account #</b>	<b>Current Balance</b>	<b>Payment Amount</b>	<b>Payment Type</b>	<b>Payment Frequency</b>	<b>Interest Rate</b>	<b>Maturity Date</b>
	Demand Loan Non Revolving	3858-6984-599	\$146,666.08	\$0.00	Principal Payment	Monthly	4.45%	N/A
	Fixed Rate Term Loan	3858-6985-014	\$1,968,800.38	\$15,463.92	Blended Payment	Monthly	4.66%	30-NOV-2020
<b>Maximum Amortization:</b>	176 months							
<b>Demand Loan Non Revolving</b>	<p><b>Interest Rate:</b> Prime Rate plus 2.00%. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of November 10, 2020 is 2.45%.</p> <p><b>Repayment Terms:</b> Repayable on demand, provided that until demand is made by BMO:</p> <p>Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.</p> <p>Prepayments of principal in whole or in part are permitted, without penalty</p>							
<b>Fixed Rate Term Loan</b>	<p><b>Type of Loan:</b> Closed Term Loan</p> <p><b>Interest Rate:</b> To be determined at time of Advance.</p> <p>Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in Advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before</p>							



## Your Product Summary

and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** Prepayments of principal in whole or in part are permitted, without penalty.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of Advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

### Demand Loan Non Revolving

Facility # 3	
<b>Facility Authorization:</b>	\$100,000.00 CAD
<b>Type of Loan:</b>	Demand Loan Non-Revolving
<b>Purpose:</b>	To partially term out Operating Line based on liquor inventory demands.
<b>Interest Rate:</b>	Prime Rate plus 2.00%. Interest is calculated monthly in arrears, and payable monthly, on the last day of each month. The Prime Rate in effect as of November 10, 2020 is 2.45%.
<b>Repayments:</b>	Repayable on demand, provided that until demand is made by BMO:



## Your Product Summary

	<p>Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.</p> <p>Prepayments of principal in whole or in part are permitted, without penalty.</p>
<b>Maximum Amortization:</b>	24 months

## Overdraft Lending Product - CDN or USD

Facility # 4	
<b>Facility Authorization:</b>	\$200,000.00 CAD
<b>Type of Loan:</b>	Operating Demand Loan
<b>Purpose:</b>	Operating Financing
<b>Interest Rate:</b>	Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable monthly on the last day of each month. The Prime Rate in effect as of November 10, 2020 is 2.45%.
<b>Repayments:</b>	Repayable on demand
<b>Facility Fee:</b>	\$140.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.
<b>Other Costs:</b>	<p>BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.</p> <p>In the event the Advances under this Facility exceeds the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.</p>

## Overdraft Lending Product - CDN or USD

Facility # 5	
<b>Facility Authorization:</b>	\$200,000.00 CAD
<b>Type of Loan:</b>	Operating Demand Loan
<b>Purpose:</b>	Operating Financing
<b>Interest Rate:</b>	Prime Rate plus 1.75%. Interest is calculated monthly in arrears, and payable



## Your Product Summary

	monthly on the last day of each month. The Prime Rate in effect as of November 10, 2020 is 2.45%.
<b>Repayments:</b>	Repayable on demand
<b>Facility Fee:</b>	\$140.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.
<b>Other Costs:</b>	<p>BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.</p> <p>In the event the Advances under this Facility exceeds the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.</p>

## BMO Corporate MasterCard

Facility # 6	
<b>Facility Authorization:</b>	\$50,000.00 CAD
<b>Type of Loan:</b>	Corporate MasterCard <sup>Â®</sup>
<b>Purpose:</b>	Operating Financing
<b>Interest Rate:</b>	As determined by Corporate MasterCard Agreement.
<b>Repayments:</b>	As determined by Corporate MasterCard Agreement.
<b>Facility Fee:</b>	As determined by Corporate MasterCard Agreement.
<small>Â® MasterCard is a registered trademark of MasterCard International Incorporated. Used under license.</small>	



## Terms and Conditions

### Conditions Precedent to Advances:

BMO will not be required to make any Advance to the Borrower unless and until each of the following conditions and each of the additional conditions precedent set out in Schedule C have been met to the entire satisfaction of BMO (at its sole discretion):

1. Evidence of repayment of all indebtedness not otherwise permitted under this Agreement, as applicable.
2. Receipt of all notices, certificates, directions, forms or other Documentation required in connection with an Advance.
3. NOA confirming corporate taxes are paid and up to date
4. Confirmation of renewed fire and environmental insurance
5. Confirmation that all real property Taxes have been paid to date.

### Security:

Each of the following documents, instruments, agreements and other assurances (collectively, the "Security") shall be delivered to BMO prior to any Advance of funds, in form and substance acceptable to BMO and its solicitors, acting reasonably:

### Security Held:

1. Registered first-ranking All Indebtedness Mortgage in the amount of \$2,920,000.00 registered over Lt 151-153, 144 Pl 723 North Orillia; Pt Lt 145- 150 Pl 723 North Orillia As In R01305868; Severn with the municipal address of 9279 Highway 11,, Severn, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
2. Registered first-ranking All Indebtedness Mortgage in the amount of \$3,100,000.00 registered over 8824 Highway 17 East Warren Pt Lts 37 & 38 RCP 845 Dunnet Being Part 1 On 53R20501, Part 2 On 53R15743 & Pt 1 On 53R12570; S/T S111419; Municipality Of Markstay-Warren
3. Registered General Security Agreement ("GSA")/Moveable Hypothec ("Hypothec") providing BMO with a security interest/hypothec over all present and after-acquired personal/movable property of the Borrower with a First ranking for Machinery and Equipment, CDN Accounts Receivable, Inventory/Warehouse Receipts
4. Insurance on a "Fire and Extended Coverage" or "All Risks" basis must be arranged (with satisfactory evidence thereof delivered to the Bank's solicitor before advances are made) satisfactory to the Bank for the full insurable or replacement value of the subject property with loss payable to the Bank of Montreal. The policy is to contain the Standard Mortgage Clause (Business insurance and Fire insurance combined coverage minimum \$2.5MM & environmental Coverage of no less than \$2.5MM with minimum \$1MM per occurrence.) A copy of the policy is to be provided for both Orillia Ultramar and Warren Esso.
5. Delivery of an [Up to Date or Existing] survey/certificate of location of Mortgaged Property(ies) and all buildings located on the Mortgaged Property(ies), prepared by a surveyor licensed in the jurisdiction in which the property(ies) is/are located, which:
  - bears the name, address and signature of the surveyor, his official seal and licence number (any, or both), the date of a survey, and
  - includes a Surveyor's Certificate in the form and content required by the jurisdiction(s) in which the property is located

OR

  - Title insurance from Approved Title Insurance Provider in respect of Lt 151-153, 144 Pl 723 North Orillia; Pt Lt 145- 150 Pl 723 North Orillia As In R01305868; Severn naming BMO as beneficiary
6. Personal Guarantee for Kalyani and Rasakone Kapilin in the amount of \$4,750,000.00 with independent legal advice

Any other documents, instruments or agreements as may be required by BMO, acting reasonably

### Covenants

As long as any Advance remains outstanding under or in connection with this Letter of Agreement, or so long as any commitment under this Letter of Agreement remains in effect, the Borrower and any Guarantor will perform and comply with the covenants set out in Schedule A.

### Financial Covenants:

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following financial covenants,



## Terms and Conditions

based on financial statements of the Borrower or applicable Guarantor:

Financial Covenant	Description	Requirement	Frequency
Debt service coverage ratio	(Net Income + Interest + Depreciation + Amortization)/ CPLTD + Interest + Non Discretionary Dividends + Repayment of Subrogated Shareholder Loans)	Greater Than or Equal To 1.25	Annually

### Additional Covenants:

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following covenants:

1. The Borrower will not, without BMO's prior written consent, participate in any retrofit project or energy or water efficiency project affecting the Mortgaged Property which would have the effect of creating a lien, hypothec or other interest (including, but without limitation, a local improvement charge or similar interest) in the Mortgaged Property ranking, or potentially ranking, in priority to or *pari passu* with the interest of BMO in the Mortgaged Property, whether or not such project is sponsored or endorsed by a municipal or other government, governmental organization or utility.
2. Positive Covenants - Standard as per Schedule D of LF984 Letter of Agreement
3. Negative Covenants - Standard as per Schedule D of LF984 Letter of Agreement

### Reporting Requirements:

<b>Annual</b>	<ol style="list-style-type: none"> <li>1. Accountant prepared, minimum Notice to Reader financial statements of the Borrower</li> <li>2. Corporate Income Tax Return &amp; Notice of Assessment of the borrower</li> <li>3. Municipal tax certificates showing all property taxes paid and up to date</li> <li>4. Confirmation of adequate fire and environmental insurance with BMO as first loss payee</li> <li>5. Updated Personal Net Worth Statement with income and asset confirmations for all personal guarantors to be provided at the Bank's request. (F19: PNWS from origination reused, no material updates).</li> <li>6. Annual Fuel Volume Report</li> <li>7. Any other information requested by the Bank</li> </ol>
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A \$100 per month fee will be applied for non compliance with reporting requirements. The application of this fee does not waive the Default condition.

Prompt notification of management letters, Default notices, Litigation, and any other material events

Satisfactory evidence that all Taxes (including, without limitation, GST, HST, sales tax, withholdings, etc.) have been paid to date

### Representations and Warranties:





## Terms and Conditions

The Borrower and each Guarantor, as applicable, makes the representations and warranties set out in Schedule B. All representations and warranties of the Borrower and any Guarantor, in addition to any representation or warranty provided in any document executed in connection with a Facility or any Security, shall be true and correct on the date of this Letter of Agreement and on the date of any Advance under a Facility.

### Noteless Advances:

The Borrower acknowledges that the actual recording of the amount of any Advance or repayment thereof under the Facilities, and interest, fees and other amounts due in connection with the Facilities, in an account of the Borrower maintained by BMO, shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Facilities; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with the terms and conditions of the Facilities set out in this Letter of Agreement shall not be affected by the failure of BMO to make such recording. The Borrower also hereby acknowledges being indebted to BMO for principal amounts shown as outstanding from time to time in BMO's account records, and all accrued and unpaid interest in respect thereto, which principal and interest the Borrower hereby undertakes to pay to BMO in accordance with the terms and conditions applicable to the Facilities as set out in this Letter of Agreement.

### Fees:

All costs and expense incurred by BMO in connection with this Letter of Agreement and the Facilities (including without limitation all legal, appraisal and consulting fees), and the enforcement of the Security are for the account of the Borrower.

A one-time fee ("Fee") of \$4,693 is payable by the Borrower to BMO upon acceptance of this Letter of Agreement. This fee is deemed to be earned by BMO upon acceptance of this Letter of Agreement, to compensate for time, effort and expense incurred by BMO in authorizing these Facilities.

Credit renewal fees will be payable as advised by BMO annually; at the date of this letter such fees are estimated to be \$4,750. All fees payable under this Letter of Agreement shall be paid to BMO on the dates due, in immediately available funds. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

### Banking Services:

The Borrower shall maintain its Bank Accounts, solely with the BMO. Borrower acknowledges that the pricing (including interest, fees and charges) contained in this Letter of Agreement is contingent on the Borrower maintaining all of its operating accounts with BMO. In the event the Borrower does not do so, BMO may, at any time, in its sole discretion and without any requirement to obtain the agreement of, or provide prior notice to the Borrower, increase such pricing.

### Treasury & Payment Solutions:

BMO will provide Non-Credit and treasury & payment solutions to the Borrower. A Treasury & Payment Specialist will contact the Borrower to implement BMO's On-Line Banking for Business platform (OLBB) and discuss additional treasury & payment features such as Electronic Funds Transfer (EFT), Wire Payments, BMO DepositEdge® and Moneris® Payment Processing Solutions. BMO's objective is to provide a package of services that are tailored to meet both the current and future needs of the Borrower in a cost efficient operating environment.

### Commercial Loan Insurance Plan:

**You understand that unless you submit an Application for Commercial Loan Insurance Plan ("Application"), and it has been approved by Canada Life as the insurer, you will not be covered under the Commercial Loan Insurance Plan for any facilities under this Letter of Agreement and would be ineligible to submit a claim should you undergo an insurable event.**

### Counterparts; Electronic Transmissions:

This agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile, PDF or other electronic means and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.



## Terms and Conditions

**Governing Law:**

Ontario and the federal Laws of Canada applicable therein.

**Schedules:**

The following Schedules are attached to and form part of this letter of agreement:

Schedule A - Covenants

Schedule B - Representations and Warranties

Schedule C - Conditions Precedent to Advances

**BMO's Legal Counsel:** [



## Agreement and Consent

This Letter of Agreement amends and restates, without novation, the Prior Letter, as of [November 10, 2020], without prejudice to the effect of the terms of the Prior Letter or to any actions taken under or pursuant to the Prior Letter prior to such date. The entry into effect of this Letter of Agreement shall not be deemed to waive or limit any of BMO's rights in respect of any Event of Default then existing under the Prior Letter or any Event of Default under this Letter of Agreement which exists because of matters occurring prior to such effective date, whether or not known to BMO.

In accepting this agreement you acknowledge that if, in the opinion of BMO, a material adverse change in risk occurs including, without limitation, any material adverse change in the financial condition, business, property or prospects of the Borrower or any Guarantor, the rights and remedies of BMO, or the ability of the Borrower or any Guarantor to perform its Obligations to BMO, any obligation to Advance some or all of the above Facilities may be withdrawn or cancelled.

Please indicate your acceptance of the terms and conditions hereof by signing and returning one copy of this Letter of Agreement (and making payment of the above noted fee, if applicable) to BMO no later than [November 17, 2020]. If your acceptance of this Letter of Agreement is not received by BMO by that date, BMO shall have no obligation to proceed with any of the Facilities.

Yours truly,  
BANK OF MONTREAL

By: Balwinder Jandu  
Name: BALWINDER JANDU  
Title: Senior Relationship Manager



## Agreement and Consent

Accepted and agreed to this 10<sup>th</sup> day of November, 2020  
(Day) (Month) (Year)

### BORROWER(S)

2243080 ONTARIO INC.

Signature: R. Kapilan  
 Name: Rasakone Kapilan  
 Title: President / owner / operator

### GUARANTOR(S)

RASAKONE KAPILAN

Witness: Akshayaa K. Signature: R. Kapilan  
 Name: Akshayaa K. Name: Rasakone Kapilan

KALYANI KAPILAN

Witness: Akshayaa K. Signature: Kalyani K.  
 Name: Akshayaa K. Name: Kalyani Kapilan



SCHEDULE ACOVENANTS

1. Payment of all indebtedness due to BMO in connection with this Letter of Agreement or any Facility.
2. Maintenance of corporate existence and status, if applicable.
3. Payment of all Taxes when due (including, without limitation, corporate, GST, HST, sales tax and withholding).
4. Compliance with all material Laws, regulations and applicable permits or Approvals (including health, safety and employment standards, labour codes and environmental Laws).
5. Compliance with all material agreements.
6. Use of proceeds to be consistent with the approved purpose.
7. Notices of death of Borrower or Guarantor, Default, material Litigation, and regulatory proceedings to be provided to BMO on a timely basis.
8. Access by BMO to books and records; BMO to have right to inspect property to which its security applies.
9. No assumption of additional indebtedness or guarantee Obligations by Borrower without prior written consent of BMO.
10. No liens or encumbrances on any assets except with the prior written consent of BMO.
11. No change of control or ownership of the Borrower without the prior written consent of BMO.
12. No disposition of property or assets (except in the ordinary course of business) without the prior written consent of BMO.
13. No material acquisitions, hostile takeovers, mergers or amalgamations without BMO's prior written approval.
14. [For multiple currencies]:

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Letter of Agreement, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Letter of Agreement in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which BMO is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its principal office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by BMO of the amount due, the Borrower will, on the date of receipt by BMO, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by BMO on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by BMO is the amount then due under this Letter of Agreement in the Currency Due. If the amount of the Currency Due which BMO is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrower and each Guarantor jointly and severally (solidarily) agree to indemnify BMO from and against any and all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other Obligations contained in this Letter of Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by BMO from time to time and shall continue in full force and effect notwithstanding any judgment or order in respect of an amount due under this Letter of Agreement or under any judgment or order.



SCHEDULE BREPRESENTATIONS AND WARRANTIES

1. It has the corporate status, power and authority to enter into this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party, and to perform its Obligations hereunder and thereunder.
2. It is in compliance with all applicable Laws (including environmental Laws) and its existing agreements.
3. Except as otherwise disclosed to BMO in writing, no consent or approval of, registration or filing with, or any other action by, any governmental authority is required in connection with the execution, delivery and performance by it of this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party.
4. All factual information that has been provided to BMO for purposes of or in connection with this Letter of Agreement or any transaction contemplated herein is true and complete in all material respects on the date as of which such information is dated or certified.
5. No event, development or circumstance has occurred that has had or could reasonably be expected to have a Material Adverse Effect on the business, assets, operations or condition, financial or otherwise, of the Borrower or any Guarantor.
6. There is no material Litigation pending against it or, to its knowledge, threatened against or affecting it.
7. It has timely filed or caused to be filed all required tax returns and reports and has paid or caused to be paid all required Taxes.
8. It has good and marketable title to its properties and assets including ownership of and/or sufficient rights in any material intellectual property.
9. It has complied with all Obligations in connection with any pension plan which it has sponsored, administered or contributed to, or is required to contribute to including, without limitation, registration in accordance with applicable Laws, timely payment of all required contributions or premiums, and performance of all fiduciary and administration Obligations.
10. It maintains insurance policies and coverage that provides sufficient insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons in the same or a similar business.
11. It is not in Default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a Default under any loan, credit or security agreement, or under any material instrument or agreement, to which it is a party.



SCHEDULE CADDITIONAL CONDITIONS PRECEDENT TO ADVANCES

1. Delivery and review of the articles or other constating documents, by-laws, certified resolutions, shareholder agreements (if any) and good standing or equivalent certificates of each Credit Party demonstrating corporate or organisational status, due capacity and sufficient authority.
2. Delivery of a duly executed copy of the Documentation.
3. Review of all necessary Approvals.
4. Review of all Material Contracts.
5. Review of all information necessary for BMO to comply with all legal and internal requirements in respect of anti-money laundering and proceeds of crime legislation and "know your customer" requirements.
6. Review (as to covered risks, amounts, periods, renewals, issuer(s), named insured(s), beneficiaries, loss payees, caps, standard mortgage and similar clauses, conditions, exclusions and otherwise) by BMO (or its agents) of all insurance policies issued to the Credit Parties.
7. Completion of all due diligence required by BMO in respect of the Credit Parties and their respective business, operations, assets, property and undertaking (including lien, Litigation and solvency searches, as well as real property, insurance, tax, pension and environmental diligence, in each case where and as applicable).
8. Confirmation that all representations, warranties and other declarations made by the Credit Parties under each of the Documentation are true, complete and accurate at the time made or deemed made (including at the time of any Advance).
9. Confirmation that, since the most recent financial statements provided to BMO, no event or series of events has occurred or failed to occur which would reasonably be expected to have, either singly or in the aggregate, a Material Adverse Effect.
10. Confirmation that no Default shall have occurred or be continuing.
11. Payment of all fees, costs, charges, expenses and other amounts then owing under the Documentation.
12. Any other document or action that BMO may reasonably require.



## Schedules

### SCHEDULE D

#### DEFINITIONS

**"Advance"** means an advance, continuation or conversion (where applicable) of any loan or credit extended under this Agreement.

**"Approvals"** means, collectively, all material governmental, regulatory, third party or other approvals, authorizations, consents, rights, titles, interests, franchises, licenses, permits, privileges, qualifications and the like, and orders, registrations, declarations, publications, recordings, filings, notices and such other actions which, in each case, are necessary or desirable (i) for the ownership, lease, operation and normal conduct of the business, property, undertaking and assets of any Credit Party, or (ii) under or in connection with the Facilities and the Documentation (including the execution, delivery, performance, validity, enforceability and perfection (opposability) thereof).

**"Credit Parties"** means, collectively, the Borrower(s) and the Guarantor(s).

**"Default"** means a breach or default or event which, with the giving of notice or the passage of time or both, would constitute a breach or a default (whether as to the performance or fulfilment of any representations, warranties, covenants, obligations or other provisions thereunder) under the applicable documentation (including the Documentation).

**"Documentation"** means, collectively, this Agreement, the Guarantee and Security (set forth below) and all other agreements and documents required to be delivered in connection with the Facilities or the transactions contemplated hereby.

**"including"** means including but without limitation.

**"Laws"** means all laws, statutes, regulations, rules, codes, orders, ordinances, treaties, conventions, judgements, awards, determinations, directives, orders and decrees applicable to a Credit Party, its business or its property, undertaking and assets, including, without limitation, environmental laws and pension plan and other employee plan matters.

**"Litigation"** means any judgment, writ of execution, order, notice of deficiency, injunction or directive rendered, and any notice of infraction, action, suit, proceeding or investigation pending or threatened, in each case against a Credit Party or any of its property or assets.

**"Material Contracts"** means any contract or agreement entered into by any Credit Party in respect of which any material breach or default or any termination or non-renewal would reasonably be expected to have a Material Adverse Effect under clause (i) or (ii) of the definition thereof, as such contracts or agreements may be amended, supplemented, restated, replaced or otherwise modified from time to time to the extent permitted under the Documentation.

**"Material Adverse Effect"** means a material adverse effect on (i) the business, assets, results of operations, prospects or condition (financial or otherwise) of any Credit Party, (ii) the ability of each Credit Party to perform its obligations under the Documentation, or (iii) the legality, validity, binding nature or enforceability of the rights, remedies or recourses of BMO under any of the Documentation.

**"Obligations"** means all debts, liabilities and obligations owed to BMO under or in connection with the Facilities, this Letter of Agreement or any other Documentation (in principal, interest, fees, premiums, penalties, costs, losses, expenses and other charges).





## Schedules

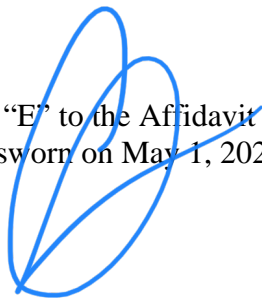
**"Prime Rate"** means the rate of interest announced from time to time by BMO as its reference rate then in effect for determining rates of interest charged on Canadian dollar loans made to its customers in Canada and designated as its prime rate.

**"Taxes"** means all taxes, duties, assessments, imposts, levies and similar charges and claims imposed upon a Credit Party, its income or profits, or upon any properties belonging to it (including, without limitation, corporate, GST, HST, sales tax, real property taxes and other withholdings, deductions and related liabilities).

**"US Base Rate"** means the rate of interest announced from time to time by BMO as its reference rate then in effect for determining rates of interest charged on U.S. Dollar loans made to its customers in Canada and designated as its U.S. base rate.



This is Exhibit "E" to the Affidavit of Visana Wong  
sworn on May 1, 2023



A Commissioner for the taking of affidavits, etc.

6605 Hurontario Street, Suite 200,  
Mississauga, Ontario L5T 0A4  
Branch

On demand I promise to pay to the order of Bank of Montreal the sum of Two Million Fifty Thousand/100 Dollars and to pay interest monthly at a rate of \_\_\_\_\_ per cent per annum above the Bank of Montreal's prime interest rate per annum in effect from time to time, up to and after maturity, compounded monthly from the due date of such interest until actual payment at the above mentioned branch of the Bank of Montreal. At the date of this note such prime interest rate per annum is 3.95 per cent. Value received.

**FOR INTERNAL BANK USE ONLY**

2243080 ONTARIO INC.

Credit Deposit Account No.	Loan Account No.	Initials



\_\_\_\_\_  
Rasakone Kapilan - President

This is Exhibit "F" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.



## Operating Loan Agreement with Availment in Canadian Dollars

To: Bank of Montreal

Date: Nov 12, 2019

The undersigned hereby requests Bank of Montreal (the "Bank") to provide a credit facility to the undersigned, subject to the following terms and conditions:

### 1. DEFINED TERMS

In this Agreement:

- 1.01 "Account" shall mean the Canadian Dollar Account No. \_\_\_\_\_ at the Bank.
- 1.02 "Facility Fee" shall mean a fixed monthly fee of \$ 140.00.
- 1.03 "Loan" shall mean the credit facility (if any) provided pursuant to this Agreement and the amount of the Loan shall mean at any time the aggregate of all amounts debited to the Account (including without limitation cheques, transfers, withdrawals, interest, costs, charges and fees) less the aggregate of all amounts credited to the Account for which the Bank has given value.
- 1.04 "Loan Limit" shall mean Two Hundred Thousand Dollars (\$ 200,000.00 ) or such lesser amount as may be determined by the Bank from time to time including, without limitation, pursuant to a calculation under the Lending Margin Calculation, if any, set out in the Addendum hereto.
- 1.05 "Loan Rate" shall mean a rate equal to the Bank's Prime Rate plus Two per cent ( 2.00% ) per annum.
- 1.06 "Prime Rate" shall mean the floating annual rate of interest established from time to time by the Bank as the reference rate it will use to determine the rate of interest payable to the Bank by borrowers from the Bank in Canadian dollars in Canada and designated by the Bank as its Prime Rate. The Prime Rate on the date hereof is Three point Nine Five per cent (3.95 %) per annum.
- 1.07 "Overdraft Rate" shall mean the annual rate of interest established from time to time by the Bank as the interest rate it will use to calculate the interest payable on overdrawn accounts and designated by the Bank as the "Overdraft Rate". The Overdraft Rate on the date hereof is Twenty One per cent (21.0%) per annum.

### 2. ACCOUNT

- 2.01 Cheques drawn and debits of other kinds made on the Account (including, without limitation, transfers and withdrawals) shall be drawn in Canadian dollars.
- 2.02 The undersigned shall not at any time permit the Loan to exceed the Loan Limit and shall use the Account for business purposes only.
- 2.03 The Bank is authorized to debit the Account for all fees and interest required hereunder and for all costs, charges and expenses referred to in paragraph 6.01 and in any other agreement(s) the undersigned has entered into with the Bank.

### 3. FEES AND INTEREST

- 3.01 The undersigned shall pay the Facility Fee to the Bank, on the last day of each month in addition to all other fees applicable to the Account. Notwithstanding paragraph 1.02, the amount of the Facility Fee may be revised by the Bank from time to time and the revised fee will be effective once the Bank advises the undersigned by notice as herein provided. The Facility Fee shall be payable for the credit facility provided hereunder and for other standard reporting services provided by the Bank in connection with the Account.
- 3.02 The undersigned shall, both before and after demand or judgment, pay interest at the Loan Rate on the daily closing balance of the Loan up to the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.

- 3.03 The undersigned shall, both before and after demand or judgment, pay interest at the Overdraft Rate on the amount of any daily closing balance of the Loan in excess of the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.
- 3.04 Nothing herein shall oblige the Bank to permit the Loan to exceed the Loan Limit. In the event the Loan exceeds the Loan Limit, (i) the Bank may at any time terminate the Loan hereunder and immediately demand payment of the Loan by notice as herein provided and (ii) for each occurrence the undersigned will be charged a fee of 1% per annum calculated on the amount of excess over the Loan Limit or \$100, whichever is greater, and a \$5 overdraft handling charge per item that creates or increases the excess.

#### 4. DEMAND AND TERMINATION

- 4.01 The undersigned shall pay the Loan to the Bank ON DEMAND, regardless of any covenants, conditions, obligations or events of default set out herein including, without limitation, any provisions set out in the Addendum hereto. The Bank may at any time terminate the Loan provided hereunder and demand payment of the Loan by notice as herein provided.
- 4.02 THE BANK MAY REFUSE TO HONOUR ANY CHEQUE OR PERMIT ANY TRANSFER OR WITHDRAWAL FROM THE ACCOUNT UPON (A) ANY DEFAULT BY THE UNDERSIGNED IN THE PERFORMANCE OF ANY OBLIGATION OF THE UNDERSIGNED TO THE BANK WHETHER CONTAINED HEREIN OR IN ANY OTHER AGREEMENT BETWEEN THE UNDERSIGNED AND THE BANK, (B) THE DEATH OF ANY GUARANTOR OF ANY INDEBTEDNESS OF THE UNDERSIGNED OR RECEIPT BY THE BANK OF NOTICE OF TERMINATION OF ANY GUARANTEE OF ANY INDEBTEDNESS OF THE UNDERSIGNED, (C) THE LOAN EXCEEDING THE LOAN LIMIT, OR (D) ANY DEMAND BEING MADE FOR PAYMENT OF THE LOAN, WHETHER OR NOT ANY TIME PERIOD HAS LAPSED AFTER THE TIME OF THE DEMAND.

#### 5. DOCUMENTATION

- 5.01 The undersigned shall deliver to the Bank from time to time, promptly on request, in form and substance satisfactory to the Bank:
- (a) any security required by the Bank; and
  - (b) all other documents and information required by the Bank.
- 5.02 Any security document delivered hereunder shall be held as additional security for the indebtedness of the undersigned for the Loan, and not in substitution or in satisfaction thereof.

#### 6. COSTS

- 6.01 The undersigned shall pay all reasonable costs, charges and expenses incurred by the Bank in the preparation or enforcement of this Agreement or any security required in connection with the Loan.

#### 7. NOTICES

- 7.01 The Bank shall not be required to notify the undersigned of changes to the Prime Rate or the Overdraft Rate or in the Bank's calculations of the Lending Margin Calculation, if any.
- 7.02 Any request for any document or information, notice of termination, demand for payment or other notice to be sent in connection with this Agreement or either of the Accounts may be delivered, or mailed by prepaid ordinary mail or transmitted by facsimile if to the undersigned (or any one of them, if more than one) at the last known address or facsimile number for the undersigned (or any one of them, if more than one) in the Bank's records or if to the Bank at the Branch where the Account is maintained. The undersigned or the Bank, as applicable, shall be deemed to have received such request or notice on the date of delivery, if delivered, on the first business day following the date of transmission if transmitted by facsimile, and four (4) days after mailing, if mailed.

#### 8. AMENDED AND RESTATED AGREEMENT

- 8.01 This Agreement hereby amends and restates the \_\_\_\_\_  
( Insert name of agreement)

Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as heretofore amended and supplemented from time to time (the "Existing Agreement"), between the undersigned and the Bank with effect as and from the date hereof (the "Effective Date"), the whole without any novation whatsoever.

- 8.02 The parties hereby expressly agree that as and from the Effective Date all of the undersigned's obligations, indebtedness and liabilities to the Bank under or pursuant to the Existing Agreement including, without limitation, the outstanding principal amount of the loan thereunder, all interest accrued thereon, all interest on overdue interest and all other amounts owing by the undersigned to the Bank under or pursuant to the Existing Agreement shall be governed by the terms hereof.
- 8.03 The undersigned hereby ratifies, confirms, acknowledges and agrees that it is and continues to be bound by all of the obligations, indebtedness and liabilities of and grants of security made by it under each of the security documents under, pursuant to or in connection with the Existing Agreement, including without limitation any agreement or instrument creating or granting a hypothec, security under the *Bank Act* (Canada), mortgage, pledge, fixed or floating charge, assignment by way of security or any other security interest securing payment or performance of an obligation under or pursuant to the Existing Agreement (herein, collectively, the "Security Documents") and each certificate or other document delivered pursuant to or in connection with the Existing Agreement or the Security Document (the Security Documents and such certificates or other documents are herein, collectively, the "Loan Documents"), and the undersigned acknowledges that the Bank is relying expressly upon the Loan Documents and such ratifications, confirmations, acknowledgements and agreements by the undersigned herein in entering into this Agreement and providing any accommodations hereunder, notwithstanding the amendment and restatement set forth herein.
- 8.04 As and from the Effective Date, all references to the Existing Agreement in any of the Loan Documents shall be construed as being a reference to the Existing Agreement as amended and restated by this Agreement.
- 8.05 This Article 8 is made under express reserve of all the terms and conditions of this Agreement and the Loan Documents and all rights in favour of the Bank hereunder and thereunder and without novation of any kind or derogation from the rank and priority of the Security Documents. Without derogating from or restricting in any way the Security Documents, all obligations under or pursuant to the Existing Agreement and hereunder shall continue to be secured by the Security Documents. All of the provisions of this Article 8 are without novation.

## 9. GENERAL

- 9.01 The provisions of the Addendum, if any, shall be incorporated into this Agreement and form part hereof.
- 9.02 The Bank's statements of the Account at any time shall constitute prima facie evidence of the Loan.
- 9.03 The undersigned will immediately notify the Bank if any guarantor of the indebtedness of the undersigned to the Bank dies.
- 9.04 This Agreement shall be binding upon the undersigned and the respective executors, administrators, successors and assigns of the undersigned, but the undersigned shall not assign any of the rights or obligations of the undersigned hereunder without the prior written consent of the Bank.
- 9.05 The failure of either the undersigned or the Bank to require performance by the other of any provision hereof shall in no way affect the right thereafter to enforce such provision; nor shall the waiver by either party of any breach of any covenant, condition or proviso of this Agreement or any other agreement between the Bank and the undersigned be taken or held to be a waiver of any further breach of the same covenant, condition or proviso.
- 9.06 Subject to Article 8 above (if applicable) this Agreement shall be in addition to and not in substitution for any other agreement between the undersigned and the Bank.
- 9.07 The undersigned agrees that the balance shown in any statement of the Account provided to the undersigned shall be deemed to be a correct and accurate statement of the Loan as at the date of the statement.
- 9.08 All payments relating to the Loan made by the undersigned pursuant to this Agreement shall be paid in Canadian dollars.

Any obligation of the undersigned under this Agreement to make payments in U.S. dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into Canadian dollars except to the extent that such tender or recovery shall result in the effective receipt by the Bank of the full equivalent amount of U.S. dollars so payable hereunder. Accordingly, the obligation of the

undersigned shall be enforceable as an alternative or additional cause of action for the purpose of recovery in Canadian dollars of the amount (if any) by which such payment of a U.S. dollar obligation hereunder in a currency other than U.S. dollars shall fall short of the full amount of U.S. dollars so payable hereunder and shall not be affected by any judgment being obtained for any other sums due hereunder.

- 9.09 If any other provision of this Agreement would oblige the undersigned to pay or entitle the Bank to receive any amount that is prohibited by law, then, notwithstanding such provision, such amount shall be deemed to have been adjusted with retroactive effect to the maximum permitted amount by law. Notwithstanding the foregoing, if the Bank receives an amount in excess of the maximum permitted, then the undersigned shall be entitled, on providing written notice to the Bank, to obtain reimbursement of such excess. Pending reimbursement, such excess shall be deemed to be payable by the Bank. The Bank and the undersigned disavow any intent to receive or pay any amount in excess of that is permitted by law.
- 9.10 Time shall be of the essence of this Agreement.
- 9.11 If more than one party signs this Agreement, the obligations of the undersigned are joint and several.
- 9.12 It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

By executing this Agreement below the undersigned hereby agrees to the foregoing terms and conditions.

DATED as of the date set forth above.

*If signed by corporation or other entity (e.g. partnership).*

**2243080 ONTARIO INC.**

per:



Name: RASAKONE KAPILAN

Title: President

I have authority to bind the Corporation



**ADDENDUM TO  
OPERATING LOAN AGREEMENT**

Lending Margin Calculation and/or Additional Provisions

The Bank may in its discretion reduce the Loan Limit by the amount of any other indebtedness or liability of the undersigned (or any one of them, if more than one) to the Bank including, without limitation, the amount of any bankers acceptances or letters of credit.

Without limiting the foregoing, the following Lending Margin Calculation is applicable to the attached Loan Agreement. The calculation and the amount of the Lending Margin Calculation is in the sole and complete discretion of the Bank, and in cases of dispute, the Lending Margin Calculation calculated by the Bank shall prevail.

The Lending Margin Calculation (if applicable) shall be an amount equal to: \_

\*\*\* Clauses are not applicable if the securities are pledged only against advances to the undersigned.

prejudice the rights, remedies and powers, legal or equitable which the Bank may have in connection with such security of Indebtedness of the Borrower and a foreclosure, surrender, cancellation, variation or any other dealings with or modification of any other security for the Indebtedness shall not release or affect the liability of the Borrower for the entire Indebtedness to the Bank or release or effect any other security held by the Bank. The undersigned renounces to claim against or set up against the Bank any right which the undersigned may have to be subrogated in any rights, hypothecs, privileges and other security held from time to time by the said Bank.

\*\*\* It is further agreed that the Bank shall not be obliged to exhaust its recourse against the Borrower or any other party or parties or against any other security or securities it may hold before realizing on or otherwise dealing with the securities pledged hereunder to the Bank in such manner as the Bank considers desirable, and the Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from, or from perfecting securities of, may accept compositions from, and may otherwise deal with, the Borrower and all other persons (including the undersigned or any one of them) and securities, (including part of the securities hereby pledged), as the Bank may see fit, without prejudice to the right of the Bank to hold, deal with and realize on the securities pledged hereunder to the Bank, in any manner which the Bank considers desirable.

\*\*\* All debts and liabilities present and future of the Borrower to the Undersigned or any of them (if more than one) are hereby postponed to the debts and liabilities of the Borrower to the Bank and all moneys received thereon by the Undersigned or any of them (if more than one) or by his or their assigns, shall be received as trustee(s) for the Bank as shall be paid over to the Bank.

The records of the Bank shall constitute prima facie evidence of the principal amount, interest rate and maturity date of the Investment, Receipt and each Re-Investment and Renewal Receipt and of the amount of the Indebtedness at any time, of the Borrower being in default and of any demand having been made.

The undersigned waives the right to receive any financing or financing change statement registered by the Bank and any confirmation of registration or verification statement issued where permitted by law.

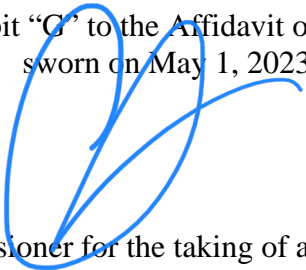
The undersigned acknowledges receipt of a copy of this Agreement

DATED this 12<sup>th</sup> day of November, 2019  
(month) (year)

Signature [Handwritten Signature] Name please print Kapilar, Rasakone

Address \_\_\_\_\_

This is Exhibit "C" to the Affidavit of Visana Wong  
sworn on May 1, 2023

  
A Commissioner for the taking of affidavits, etc.

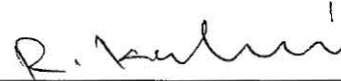
6605 Hurontario Street, Suite 200,  
Mississauga, Ontario L5T 0A4  
Branch

On demand I promise to pay to the order of Bank of Montreal the sum of Two Million One Hundred and Fifty Thousand/100 Dollars and to pay interest monthly at a rate of \_\_\_\_\_ per cent per annum above the Bank of Montreal's prime interest rate per annum in effect from time to time, up to and after maturity, compounded monthly from the due date of such interest until actual payment at the above mentioned branch of the Bank of Montreal. At the date of this note such prime interest rate per annum is 3.95 per cent. Value received.

**FOR INTERNAL BANK USE ONLY**

Credit Deposit Account No.	Loan Account No.	Initials

2243080 ONTARIO INC.



\_\_\_\_\_  
Rasakone Kapilan - President

This is Exhibit "H" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.



## Operating Loan Agreement with Availment in Canadian Dollars

To: Bank of Montreal

Date: Nov. 12, 2019

The undersigned hereby requests Bank of Montreal (the "Bank") to provide a credit facility to the undersigned, subject to the following terms and conditions:

### 1. DEFINED TERMS

In this Agreement:

- 1.01 "Account" shall mean the Canadian Dollar Account No. \_\_\_\_\_ at the Bank.
- 1.02 "Facility Fee" shall mean a fixed monthly fee of \$ 140.00.
- 1.03 "Loan" shall mean the credit facility (if any) provided pursuant to this Agreement and the amount of the Loan shall mean at any time the aggregate of all amounts debited to the Account (including without limitation cheques, transfers, withdrawals, interest, costs, charges and fees) less the aggregate of all amounts credited to the Account for which the Bank has given value.
- 1.04 "Loan Limit" shall mean Two Hundred Thousand Dollars (\$ 200,000.00 ) or such lesser amount as may be determined by the Bank from time to time including, without limitation, pursuant to a calculation under the Lending Margin Calculation, if any, set out in the Addendum hereto.
- 1.05 "Loan Rate" shall mean a rate equal to the Bank's Prime Rate plus two per cent ( 2.00%) per annum.
- 1.06 "Prime Rate" shall mean the floating annual rate of interest established from time to time by the Bank as the reference rate it will use to determine the rate of interest payable to the Bank by borrowers from the Bank in Canadian dollars in Canada and designated by the Bank as its Prime Rate. The Prime Rate on the date hereof is Three point Nine Five per cent (3.95 %) per annum.
- 1.07 "Overdraft Rate" shall mean the annual rate of interest established from time to time by the Bank as the interest rate it will use to calculate the interest payable on overdrawn accounts and designated by the Bank as the "Overdraft Rate". The Overdraft Rate on the date hereof is Twenty One per cent (21.0%) per annum.

### 2. ACCOUNT

- 2.01 Cheques drawn and debits of other kinds made on the Account (including, without limitation, transfers and withdrawals) shall be drawn in Canadian dollars.
- 2.02 The undersigned shall not at any time permit the Loan to exceed the Loan Limit and shall use the Account for business purposes only.
- 2.03 The Bank is authorized to debit the Account for all fees and interest required hereunder and for all costs, charges and expenses referred to in paragraph 6.01 and in any other agreement(s) the undersigned has entered into with the Bank.

### 3. FEES AND INTEREST

- 3.01 The undersigned shall pay the Facility Fee to the Bank, on the last day of each month in addition to all other fees applicable to the Account. Notwithstanding paragraph 1.02, the amount of the Facility Fee may be revised by the Bank from time to time and the revised fee will be effective once the Bank advises the undersigned by notice as herein provided. The Facility Fee shall be payable for the credit facility provided hereunder and for other standard reporting services provided by the Bank in connection with the Account.
- 3.02 The undersigned shall, both before and after demand or judgment, pay interest at the Loan Rate on the daily closing balance of the Loan up to the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.

3.03 The undersigned shall, both before and after demand or judgment, pay interest at the Overdraft Rate on the amount of any daily closing balance of the Loan in excess of the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.

3.04 Nothing herein shall oblige the Bank to permit the Loan to exceed the Loan Limit. In the event the Loan exceeds the Loan Limit, (i) the Bank may at any time terminate the Loan hereunder and immediately demand payment of the Loan by notice as herein provided and (ii) for each occurrence the undersigned will be charged a fee of 1% per annum calculated on the amount of excess over the Loan Limit or \$100, whichever is greater, and a \$5 overdraft handling charge per item that creates or increases the excess.

#### 4. DEMAND AND TERMINATION

4.01 The undersigned shall pay the Loan to the Bank ON DEMAND, regardless of any covenants, conditions, obligations or events of default set out herein including, without limitation, any provisions set out in the Addendum hereto. The Bank may at any time terminate the Loan provided hereunder and demand payment of the Loan by notice as herein provided.

4.02 THE BANK MAY REFUSE TO HONOUR ANY CHEQUE OR PERMIT ANY TRANSFER OR WITHDRAWAL FROM THE ACCOUNT UPON (A) ANY DEFAULT BY THE UNDERSIGNED IN THE PERFORMANCE OF ANY OBLIGATION OF THE UNDERSIGNED TO THE BANK WHETHER CONTAINED HEREIN OR IN ANY OTHER AGREEMENT BETWEEN THE UNDERSIGNED AND THE BANK, (B) THE DEATH OF ANY GUARANTOR OF ANY INDEBTEDNESS OF THE UNDERSIGNED OR RECEIPT BY THE BANK OF NOTICE OF TERMINATION OF ANY GUARANTEE OF ANY INDEBTEDNESS OF THE UNDERSIGNED, (C) THE LOAN EXCEEDING THE LOAN LIMIT, OR (D) ANY DEMAND BEING MADE FOR PAYMENT OF THE LOAN, WHETHER OR NOT ANY TIME PERIOD HAS LAPSED AFTER THE TIME OF THE DEMAND.

#### 5. DOCUMENTATION

5.01 The undersigned shall deliver to the Bank from time to time, promptly on request, in form and substance satisfactory to the Bank:

- (a) any security required by the Bank; and
- (b) all other documents and information required by the Bank.

5.02 Any security document delivered hereunder shall be held as additional security for the indebtedness of the undersigned for the Loan, and not in substitution or in satisfaction thereof.

#### 6. COSTS

6.01 The undersigned shall pay all reasonable costs, charges and expenses incurred by the Bank in the preparation or enforcement of this Agreement or any security required in connection with the Loan.

#### 7. NOTICES

7.01 The Bank shall not be required to notify the undersigned of changes to the Prime Rate or the Overdraft Rate or in the Bank's calculations of the Lending Margin Calculation, if any.

7.02 Any request for any document or information, notice of termination, demand for payment or other notice to be sent in connection with this Agreement or either of the Accounts may be delivered, or mailed by prepaid ordinary mail or transmitted by facsimile if to the undersigned (or any one of them, if more than one) at the last known address or facsimile number for the undersigned (or any one of them, if more than one) in the Bank's records or if to the Bank at the Branch where the Account is maintained. The undersigned or the Bank, as applicable, shall be deemed to have received such request or notice on the date of delivery, if delivered, on the first business day following the date of transmission if transmitted by facsimile, and four (4) days after mailing, if mailed.

#### 8. AMENDED AND RESTATED AGREEMENT

8.01 This Agreement hereby amends and restates the \_\_\_\_\_  
( Insert name of agreement)

Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as heretofore amended and supplemented from time to time (the "Existing Agreement"), between the undersigned and the Bank with effect as and from the date hereof (the "Effective Date"), the whole without any novation whatsoever.

- 8.02 The parties hereby expressly agree that as and from the Effective Date all of the undersigned's obligations, indebtedness and liabilities to the Bank under or pursuant to the Existing Agreement including, without limitation, the outstanding principal amount of the loan thereunder, all interest accrued thereon, all interest on overdue interest and all other amounts owing by the undersigned to the Bank under or pursuant to the Existing Agreement shall be governed by the terms hereof.
- 8.03 The undersigned hereby ratifies, confirms, acknowledges and agrees that it is and continues to be bound by all of the obligations, indebtedness and liabilities of and grants of security made by it under each of the security documents under, pursuant to or in connection with the Existing Agreement, including without limitation any agreement or instrument creating or granting a hypothec, security under the *Bank Act* (Canada), mortgage, pledge, fixed or floating charge, assignment by way of security or any other security interest securing payment or performance of an obligation under or pursuant to the Existing Agreement (herein, collectively, the "Security Documents") and each certificate or other document delivered pursuant to or in connection with the Existing Agreement or the Security Document (the Security Documents and such certificates or other documents are herein, collectively, the "Loan Documents"), and the undersigned acknowledges that the Bank is relying expressly upon the Loan Documents and such ratifications, confirmations, acknowledgements and agreements by the undersigned herein in entering into this Agreement and providing any accommodations hereunder, notwithstanding the amendment and restatement set forth herein.
- 8.04 As and from the Effective Date, all references to the Existing Agreement in any of the Loan Documents shall be construed as being a reference to the Existing Agreement as amended and restated by this Agreement.
- 8.05 This Article 8 is made under express reserve of all the terms and conditions of this Agreement and the Loan Documents and all rights in favour of the Bank hereunder and thereunder and without novation of any kind or derogation from the rank and priority of the Security Documents. Without derogating from or restricting in any way the Security Documents, all obligations under or pursuant to the Existing Agreement and hereunder shall continue to be secured by the Security Documents. All of the provisions of this Article 8 are without novation.

## 9. GENERAL

- 9.01 The provisions of the Addendum, if any, shall be incorporated into this Agreement and form part hereof.
- 9.02 The Bank's statements of the Account at any time shall constitute prima facie evidence of the Loan.
- 9.03 The undersigned will immediately notify the Bank if any guarantor of the indebtedness of the undersigned to the Bank dies.
- 9.04 This Agreement shall be binding upon the undersigned and the respective executors, administrators, successors and assigns of the undersigned, but the undersigned shall not assign any of the rights or obligations of the undersigned hereunder without the prior written consent of the Bank.
- 9.05 The failure of either the undersigned or the Bank to require performance by the other of any provision hereof shall in no way affect the right thereafter to enforce such provision; nor shall the waiver by either party of any breach of any covenant, condition or proviso of this Agreement or any other agreement between the Bank and the undersigned be taken or held to be a waiver of any further breach of the same covenant, condition or proviso.
- 9.06 Subject to Article 8 above (if applicable) this Agreement shall be in addition to and not in substitution for any other agreement between the undersigned and the Bank.
- 9.07 The undersigned agrees that the balance shown in any statement of the Account provided to the undersigned shall be deemed to be a correct and accurate statement of the Loan as at the date of the statement.
- 9.08 All payments relating to the Loan made by the undersigned pursuant to this Agreement shall be paid in Canadian dollars.

Any obligation of the undersigned under this Agreement to make payments in U.S. dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into Canadian dollars except to the extent that such tender or recovery shall result in the effective receipt by the Bank of the full equivalent amount of U.S. dollars so payable hereunder. Accordingly, the obligation of the



undersigned shall be enforceable as an alternative or additional cause of action for the purpose of recovery in Canadian dollars of the amount (if any) by which such payment of a U.S. dollar obligation hereunder in a currency other than U.S. dollars shall fall short of the full amount of U.S. dollars so payable hereunder and shall not be affected by any judgment being obtained for any other sums due hereunder.

- 9.09 If any other provision of this Agreement would oblige the undersigned to pay or entitle the Bank to receive any amount that is prohibited by law, then, notwithstanding such provision, such amount shall be deemed to have been adjusted with retroactive effect to the maximum permitted amount by law. Notwithstanding the foregoing, if the Bank receives an amount in excess of the maximum permitted, then the undersigned shall be entitled, on providing written notice to the Bank, to obtain reimbursement of such excess. Pending reimbursement, such excess shall be deemed to be payable by the Bank. The Bank and the undersigned disavow any intent to receive or pay any amount in excess of that is permitted by law.
- 9.10 Time shall be of the essence of this Agreement.
- 9.11 If more than one party signs this Agreement, the obligations of the undersigned are joint and several.
- 9.12 It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

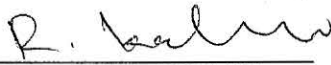
By executing this Agreement below the undersigned hereby agrees to the foregoing terms and conditions.

DATED as of the date set forth above.

*If signed by corporation or other entity (e.g. partnership).*

**2243080 ONTARIO INC.**

per:



Name: RASAKONE KAPILAN

Title: President

I have authority to bind the Corporation

**ADDENDUM TO  
OPERATING LOAN AGREEMENT**

**Lending Margin Calculation and/or Additional Provisions**

The Bank may in its discretion reduce the Loan Limit by the amount of any other indebtedness or liability of the undersigned (or any one of them, if more than one) to the Bank including, without limitation, the amount of any bankers acceptances or letters of credit.

Without limiting the foregoing, the following Lending Margin Calculation is applicable to the attached Loan Agreement. The calculation and the amount of the Lending Margin Calculation is in the sole and complete discretion of the Bank, and in cases of dispute, the Lending Margin Calculation calculated by the Bank shall prevail.

The Lending Margin Calculation (if applicable) shall be an amount equal to: \_

This is Exhibit "I" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

**SECURITY AGREEMENT**

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). This Security Agreement is entered into pursuant to and is governed by the *Personal Property Security Act* (Ontario) insofar as it affects personal property located in Ontario.

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations in Ontario:  
 9279 PROVINCIAL HWY 11, CUMBERLAND BEACH, ONTARIO  
 58 GRAYLEAF DRIVE, STOUFFVILLE, ONTARIO  
 8824 HIGHWAY 17 EAST, WARREN, ONTARIO

List all premises and asset locations, by schedule, if necessary

2. The Debtor hereby:

- (a) mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment and any proceeds therefrom, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired or in respect of which the Debtor has rights now or in the future and any equipment specifically listed or otherwise described in any Schedule hereto ;
- (b) mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory and any proceeds therefrom, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service ;
- (c) assigns, transfers and sets over to the Bank and grants to the Bank a security interest in, all its present and future intangibles and any proceeds therefrom, including, without limiting the generality of the foregoing, all its present and future accounts, accounts receivable, client lists, client records, client files, contract rights and other choses in action of every kind or nature now due or hereafter to become due, including insurance rights arising from or out of the assets referred to in sub-clauses (a) and (b) above ;
- (d) grants, mortgages, charges, transfers and assigns to the Bank a security interest in, all its present and future chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom ; and

Attach a schedule, if equipment is to be listed

- (e) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, moveable or immovable, of whatsoever nature and kind, both present and future (other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and to the exceptions hereinafter contained). For the purposes of this Security Agreement, the equipment, inventory, intangibles, undertaking and all other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes collectively called the "Collateral". Without limiting the generality of the description of Collateral as set out in this clause 2, and for the greater certainty, the Collateral shall include all present and future personal property of the Debtor of the type described in any schedule attached hereto. The Debtor agrees that it shall promptly advise the Bank in writing of any acquisition of personal property which is not of the type herein described. The Debtor agrees to execute and deliver from time to time, at its own expense, amendments to this Security Agreement or additional security agreements, which may be reasonably required by the Bank to ensure attachment of security interests in such personal property.
3. The Collateral is on the date hereof primarily situate or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places while in transit to and from such locations and premises; and the Collateral may from time to time be situated or located at any other place when on lease or consignment to any lessee or consignee from the Debtor.
4. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be excepted out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid upon trust to assign and dispose of the same as any purchaser of such term of years shall direct. There shall also be excluded from the security created by this Security Agreement any property of the Debtor that constitutes consumer goods for the personal use of the Debtor.
5. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral other than that described in sub-clause (b) of clause 2 above which may be sold only in the ordinary course of business and for the purpose of carrying on the same; and if the amounts of any of the intangibles referred to in sub-clause (c) of clause 2 above or any proceeds arising from the Collateral described in sub-clauses (a) and (b) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank. The Debtor shall not without the prior written consent of the Bank create any liens upon or assign or transfer as security or pledge or hypothecate as security or create a security interest in the Collateral except to the Bank. The Debtor agrees that the Bank may require any account debtor to the Debtor to make payment to the Bank and the Bank may take control of any proceeds referred to in sub-clauses (a), (b) and (c) of clause 2 hereof and may hold all amounts received from any account debtors and any proceeds as cash collateral as part of the Collateral and as security for the Obligations of the Debtor to the Bank.
6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the property and assets hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement.

7. The Debtor shall at all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and seasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.

8. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of inventory and equipment and lists of accounts and accounts receivable showing the amounts owing upon each account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the account.

9. The Debtor shall be in default under this Security Agreement upon the occurrence of any one of the following events:

- (a) the Debtor shall default under any of the Obligations;
- (b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not and including any covenant or undertaking set out in any Schedule to this Security Agreement;
- (c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;
- (d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be *bona fide* opposed by the Debtor;
- (e) the Debtor shall cease to carry on business.

10. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead, or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, the Bank may enter upon the applicable premises and lease or sell the whole or any part or parts of the Collateral. The Debtor agrees that considering the nature of that part of the Collateral that is not perishable it will be commercially reasonable to sell such part of the Collateral:

- (a) as a whole or in various lots;
- (b) by a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
- (c) by private sale after the receipt by the Bank of at least two offers from prospective purchasers who may include persons related to or affiliated with the Debtor or other customers of the Bank.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

11. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this Security Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.

12. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in the preparation, perfection and enforcement of this Security Agreement, including all expenses incurred by the Bank and its agents to put into place and confirm the priority of any security interest in this Security Agreement and the payment of such expenses shall be secured hereby.

13. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or rights resulting therefrom.

14. The Debtor acknowledges that value has been given, that the Debtor has rights in the Collateral and that the parties have not agreed to postpone the time for attachment of any security interest in this Security Agreement.

15. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Obligations of the Debtor shall at any time or from time to time be fully satisfied or paid.

16. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment or any indebtedness or liability of the Debtor to the Bank.

17. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.

18. This Security Agreement is a security agreement within the meaning of the Personal Property Security Act (Ontario) and does not constitute an acknowledgement of any particular indebtedness or liability of the Debtor to the Bank.

19. The Debtor acknowledges receipt of a copy of this agreement.

20. In construing this Security Agreement, terms herein shall have the same meaning as defined in the *Personal Property Security Act* (Ontario), unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor on

Insert date of execution

12 day of November, 2019. (year)

To be signed by Debtor, if Debtor is a corporation ensure signatures are authorized and if Debtor is a corporation with a corporate seal, affix Corporate Seal; Debtor's name should be typed.

*If signed by corporation or other entity (e.g. partnership).*

**2243080 ONTARIO INC.**

per:



Name: RASAKONE KAPILAN  
Title: President

I have authority to bind the Corporation

**CORPORATE AUTHORIZING RESOLUTION**

Required only for a corporation

"WHEREAS it is in the interests of the Company to enter into a security agreement with the Bank of Montreal as security for its present and future obligations to the Bank of Montreal and therein mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future property and assets;

**NOW THEREFORE BE IT RESOLVED THAT:**

1. the Company do enter into, execute and deliver to the Bank of Montreal a security agreement substantially in the form of the draft security agreement presented to the directors, subject to such alternations, amendments or additions to which the President or a Vice-President of the Company may agree;
2. the Company do mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future equipment, inventory, intangibles, undertaking and other property and assets as security for its present and future obligations to the Bank of Montreal, all as provided in the said draft security agreement;
3. the execution by the President or a Vice-President of the Company of the said security agreement shall be conclusive proof of his agreement to any amendments, alterations or additions incorporated therein;
4. the President and the Vice-President of the Company be and they are each along hereby authorized to execute and deliver the security agreement aforesaid on behalf of the Company and each of the officers of the Company are hereby authorized to execute all such other documents and writings and to do such others acts and things as may be necessary for fulfilling the Company's obligations under the said security agreement."



CERTIFICATE

To be completed by Secretary or other authorized officer; insert name of corporation. Insert appropriate date.

I am the Secretary of 2243080 ONTARIO INC. and I hereby certify that:

- 1. the foregoing is a true copy of a resolution duly and properly passed or consented to by the board of directors of the said Company on the 12 day of November, 2019;(year)
- 2. the attached Security Agreement is in the form of the draft security agreement referred to in the resolution and has been duly and properly executed by the proper officers of the Company under its corporate seal; and
- 3. the resolution was passed at a meeting duly called and held on the date aforesaid and at which a quorum of the directors was present throughout the meeting, all the directors having received proper notice of the meeting or waiving such notice in accordance with the by-laws of the Company

Use applicable clause

(or where applicable – the Company is subject to the *Business Corporations Act* of Ontario and the resolution was consented to by the signatures of all the directors of the Company on the date aforesaid in accordance with the *Business Corporations Act*.)

To be signed by Secretary or other authorized officer; affix corporate seal

By: Kalyani K.  
 Name: KALYANI KAPILAN  
 Title: Secretary



® Registered trade-marks of Bank of Montreal

This is Exhibit "J" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123015.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 1850)

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

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2243080 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

ENQUIRY NUMBER 20220418123015.66 CONTAINS 6 PAGE(S), 2 FAMILY(IES).

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

CHAITONS LLP (SD) - SILVIA DURANTE  
5000 YONGE STREET, 10TH FLOOR  
TORONTO ON M2N 7E9

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

(crj5 06/2019)

CONTINUED... 2



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123015.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
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TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2243080 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
757641897

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	002		20191115 1236 1862 2410	P PPSA	6

02 DEBTOR NAME  
03 BUSINESS NAME 2243080 ONTARIO INC.  
04 ADDRESS 58 GRAYLEAF DRIVE STOUFFVILLE ONTARIO CORPORATION NO. 2243080 ON L4A 1S8

05 DEBTOR NAME  
06 BUSINESS NAME 2243080 ONTARIO INC.  
07 ADDRESS 9279 PROVINCIAL HWY 11 CUMBERLAND BEACH ON L3V 6H3

08 SECURED PARTY / LIEN CLAIMANT BANK OF MONTREAL  
09 ADDRESS 6605 HURONTARIO STREET, SUITE 300 MISSISSAUGA ON L5T 0A4

10 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			

11 MOTOR VEHICLE YEAR MAKE MODEL V.I.N.

13 GENERAL COLLATERAL DESCRIPTION  
14 GENERAL SECURITY AGREEMENT OVER ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY.

16 REGISTERING AGENT MANN LAW, BARRISTERS & SOLICITORS  
17 ADDRESS 920 DERRY ROAD EAST MISSISSAUGA ON L5T 2X6

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

CONTINUED... 3

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

(crj)fu 06/2019)



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123015.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
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TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2243080 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
757641897

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	002	002		20191115 1236 1862 2410		

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 2243080 ONTARIO INC.

04 ADDRESS 8824 HIGHWAY 17 EAST WARREN ONTARIO CORPORATION NO. 2243080 ON POB 2N0

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / LIEN CLAIMANT

09 ADDRESS

COLLATERAL CLASSIFICATION		MOTOR VEHICLE		AMOUNT	DATE OF	NO. FIXED
CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED	MATURITY OR MATURITY DATE
10						

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL

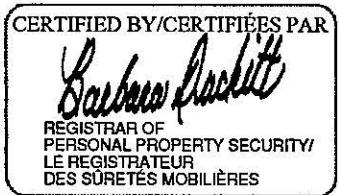
14 COLLATERAL DESCRIPTION

16 REGISTERING AGENT

17 ADDRESS

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

CONTINUED... 4



(crj1fu 06/2019)



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123015.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
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TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2243080 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
757642338

CAUTION FILING	PAGE NO.	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	002		20191115 1245 1862 2411	P PPSA	6

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 2243080 ONTARIO INC.

04 ADDRESS 58 GRAYLEAF DRIVE STOUFFVILLE ONTARIO CORPORATION NO. 2243080 ON L4A1S8

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME 2243080 ONTARIO INC.

07 ADDRESS 9279 PROVINCIAL HWY 11 CUMBERLAND BEACH ON L3V 6H3 ONTARIO CORPORATION NO. 2243080

08 SECURED PARTY / LIEN CLAIMANT BANK OF MONTREAL

09 ADDRESS 6605 HURONTARIO STREET, SUITE 300 MISSISSAUGA ON L5T 0A4

COLLATERAL CLASSIFICATION		MOTOR VEHICLE		AMOUNT	DATE OF	NO. FIXED
CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED	MATURITY OR MATURITY DATE
			X	X		

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL ASSIGNMENT OF RENTS REGISTERED AGAINST 9279 PROVINCIAL HWY 11,  
14 COLLATERAL CUMBERLAND BEACH, ONTARIO AND 8824 HIGHWAY 17 EAST, WARREN, ONTARIO  
15 DESCRIPTION

16 REGISTERING AGENT MANN LAW, BARRISTERS & SOLICITORS

17 ADDRESS 920 DERRY ROAD EAST MISSISSAUGA ON L5T 2X6

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

CONTINUED... 5

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

(c)11u 08/2019)



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123015.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
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TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2243080 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER : 757642338

01 CAUTION FILING PAGE NO. OF TOTAL PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD  
002 002 20191115 1245 1862 2411

02 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 2243080 ONTARIO INC.  
04 ADDRESS 8824 HIGHWAY 17 EAST WARREN ONTARIO CORPORATION NO. 2243080 ON POB 2N0

05 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.  
07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT

09 ADDRESS

10 COLLATERAL CLASSIFICATION CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO. FIXED MATURITY DATE

11 MOTOR VEHICLE YEAR MAKE MODEL V.I.N.

13 GENERAL COLLATERAL DESCRIPTION

16 REGISTERING AGENT ADDRESS

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

CONTINUED... 6

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Archibutt*  
REGISTRAR OF PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES  
(crjifu 06/2019)



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123015.66

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
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TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2243080 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
757641897	20191115 1236 1862 2410			
757642338	20191115 1245 1862 2411			

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

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

(crfj5 06/2019)







This is Exhibit "K" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

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

yyyy mm dd Page 1 of 1

**Properties**

*PIN* 58615 - 0331 LT *Interest/Estate* Fee Simple  
*Description* LT 151-153, 144 PL 723 NORTH ORILLIA; PT LT 145-150 PL 723 NORTH ORILLIA AS IN RO1305868; SEVERN  
*Address* 9279 PROVINCIAL HWY 11 CUMBERLAND BEACH

**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* 2243080 ONTARIO INC.  
*Address for Service* 58 GRAYLEAF DRIVE, STOUFFVILLE, ONTARIO, L4A 1S8  
 I, RASAKONE KAPILAN, 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* BANK OF MONTREAL  
*Address for Service* 6605 Hurontario Street, Suite 300, Mississauga, Ontario L5T 0A4

**Provisions**

*Principal* \$2,920,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* On Demand  
*Interest Rate* PRIME + 5%  
*Payments*  
*Interest Adjustment Date*  
*Payment Date* On Demand  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 201607  
*Insurance Amount* Full insurable value  
*Guarantor* KALYANI KAPILAN and RASAKONE KAPILAN

**Signed By**

Rhea Reshma Nanan 920 Derry Road East acting for Signed 2019 11 18  
 Mississauga Chargor(s)  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

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

**Submitted By**

MANN LAW OFFICE 920 Derry Road East 2019 11 18  
 Mississauga  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

**Fees/Taxes/Payment**

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

**BANK OF MONTREAL  
ONTARIO  
STANDARD CHARGE TERMS  
ALL INDEBTEDNESS MORTGAGE  
(COMMERCIAL/FARM)**

Filing Number: 201607

The following set of standard charge terms (together with the schedule attached hereto, the "Standard Charge Terms") shall be deemed to be included in each mortgage or charge in which it is referred to by its filing number as provided in section 9 of the *Land Registration Reform Act*, R.S.O. 1990, except to the extent that the provisions of the Standard Charge Terms are excluded or varied by such mortgage or charge.

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**B. DEFINITIONS**

In this set of Standard Charge Terms and in each Mortgage, the following terms shall have the following meanings:

1. **"Applicable Rate"** means:
  - (a) the applicable interest rate specified by the applicable note or agreement delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee; or
  - (b) if the interest rate referred to in subsection (a) is not so specified, the applicable interest rate specified by the Mortgage.
2. **"Controlling Entity"** means any corporation or other entity which on the date of the Mortgage beneficially owned, directly or indirectly, shares, other securities or other equity interests issued by the Mortgagor or a Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor.
3. **"Default"** means a default referred to in section I.
4. **"Guarantor"** means a person who guaranteed payment of all or any Indebtedness.
5. **"Indebtedness"** means all present and future indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee whether direct or indirect, absolute or contingent, or revolving or non-revolving, whether incurred by the Mortgagor alone or together with any other debtor or debtors and whether incurred pursuant to the provisions of the Mortgage or otherwise including all principal, interest, guarantee liabilities, letter of credit indemnity liabilities, bankers' acceptance indemnity liabilities, fees and expenses now or hereafter owing by the Mortgagor to the Mortgagee.
6. **"Insolvency Proceeding"** means a proceeding commenced under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any other similar statute.
7. **"Lease"** means a lease, offer to lease or other similar agreement of or with respect to the Mortgaged Land in favour of, or held by the Mortgagor as tenant and referred to in the Mortgage, as such lease, offer to lease or other similar agreement is amended or replaced from time to time.
8. **"Mortgage"** means the applicable registered mortgage or charge (as amended from time to time) in which this set of Standard Charge Terms is incorporated by reference to its filing number (including all Schedules thereto), includes any such mortgage or charge registered electronically or otherwise and includes such mortgage or charge whether or not any provision of the Standard Charge Terms is excluded or varied.
9. **"Mortgaged Land"** means the real property described in the Mortgage, all appurtenances thereto and all estates and interests therein, and includes all buildings, plant, machinery, crops, erections and improvements, fixed or otherwise, present or future, built, grown, placed or put thereon including all fences, heating equipment, plumbing equipment, antennae, radiators, mirrors, air-conditioning equipment, ventilating equipment, fire alarm and protective systems, lighting and lighting fixtures, hay racks, barn fixtures, milking machine equipment, water tanks, pumps and windmills, water bowls and pipes, feed boxes, litter carriers and tracks, mobile homes affixed to the real property, furnaces, boilers, oil burners, stokers, water heating equipment, cooking and refrigeration equipment, window blinds, floor coverings, storm windows, storm doors, window screens, door screens, shutters and awnings, all apparatus and equipment appurtenant thereto, and all other fixtures and accessions of any kind or nature.
10. **"Mortgagee"** means the mortgagee or chargee referred to in the Mortgage and its successors and assigns.
11. **"Mortgagee's Prime Rate"** means the fluctuating annual rate of interest determined by Bank of Montreal from time to time as the reference rate it will use to determine rates of

interest payable by borrowers from Bank of Montreal of Canadian dollar loans made in Canada and designated by Bank of Montreal as its prime rate.

12. "Mortgagor" means the person or persons identified as the mortgagor or chargor in the Mortgage and his, her, its or their respective heirs, executors, administrators, personal representatives, successors and assigns.
13. "Other Encumbrances" means all statutory liens, construction liens, mechanics' liens, builders' liens, other liens, executions, mortgages, charges, and other encumbrances which charge or otherwise affect or could affect the Mortgaged Land but excludes the Mortgage.
14. "Permitted Prior Mortgage" means a mortgage or charge of the Mortgaged Land which ranks in priority to the Mortgage and which the Mortgagee has approved in writing.
15. "Receiver" means a receiver, receiver and manager or other similar person.
16. "Schedule" means a schedule to the Mortgage.
17. "Taxes" means all taxes, rates and assessments, municipal, provincial, federal or otherwise, with respect to the Mortgaged Land.

### **C. OPERATION OF THE MORTGAGE**

1. *Charge of Mortgaged Land.* In consideration of other valuable consideration and a loan advance made or other credit extended by the Mortgagee to the Mortgagor (the receipt and sufficiency of which are acknowledged by the Mortgagor), the Mortgagor hereby mortgages and charges the Mortgaged Land to and in favour of the Mortgagee as security for payment to the Mortgagee of all Indebtedness and as security for the observance and performance by the Mortgagor of all other obligations of the Mortgagor pursuant to or in respect of the Mortgage or the Standard Charge Terms. Subject to the provisions of the Mortgage, the Mortgagor releases to the Mortgagee, all the Mortgagor's claims upon the Mortgaged Land.

2. *Repayment of Principal on Demand.* The Mortgagor shall pay all Indebtedness to the Mortgagee on demand by the Mortgagee for payment.

3. *Restriction on Voluntary Prepayments.* The Mortgagor shall not be entitled to prepay voluntarily any principal amount (including any principal amount owing with respect to a revolving line of credit or a demand loan) except to the extent agreed to by the Mortgagee in writing.

4. *Calculation and Payment of Interest.* The Mortgagor shall pay to the Mortgagee when due interest payable by the Mortgagor on each part of the Indebtedness (including interest on overdue interest) at the Applicable Rate which applies to such part of the Indebtedness. Interest shall accrue on each part of the Indebtedness from the date such part is incurred to the date such part is paid to the Mortgagee in full. Interest shall, both before and after Default, be calculated and payable monthly not in advance on the first day of each month unless otherwise agreed by the Mortgagor and the Mortgagee in writing. Whenever there is more than one Applicable Rate, the Applicable Rate referred to in sections D, E, G, J and K shall, unless otherwise agreed by the Mortgagee in writing, be the higher or highest of such Applicable Rates.

5. *Continuing Security.* The Mortgage shall be continuing security in favour of the Mortgagee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is:

- (a) any change in the nature, state or form of any account between the Mortgagor and the Mortgagee;
- (b) any new advance by the Mortgagee to the Mortgagor, whether by way of loan, discount, the drawing of a cheque against an account of the Mortgagor or otherwise;
- (c) any discount or acceptance by the Mortgagee from or for the Mortgagor of any note, bill of exchange or other negotiable instrument or commercial paper;
- (d) any credit of any amount to any account of the Mortgagor by reason of deposit of moneys or otherwise; or

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- (e) any renewal, replacement, substitution or alteration of any note, bill of exchange or other negotiable instrument or other commercial paper from time to time held by the Mortgagee or any reduction, satisfaction, payment, release or discharge thereof or of any other security therefor.

Nothing herein shall prejudice any of the Mortgagee's rights pursuant to or in respect of any note, bill of exchange, other agreement or other security now or hereafter held by the Mortgagee.

6. *Divided Parts of Mortgaged Land.* Every part of the Mortgaged Land into which the Mortgaged Land may hereafter be divided by a plan of subdivision or otherwise shall continue to be charged with payment of all Indebtedness but the Mortgagee may discharge any part or parts of the Mortgaged Land with or without sufficient consideration and without releasing the Mortgagor from the Mortgage and no person shall have any right to require the Indebtedness to be apportioned between or among such parts.

7. *Application of Amounts Paid.* Any and all amounts received by the Mortgagee with respect to Indebtedness before a Default shall, unless otherwise specified by the Mortgagee in writing, be applied firstly to reduce compound interest, secondly to reduce interest (other than compound interest), thirdly to reduce principal and fourthly to reduce any other Indebtedness. Any and all amounts received by the Mortgagee after a Default (including any and all amounts received from any security held by the Mortgagee) shall be applied by the Mortgagee in the manner determined by the Mortgagee in its sole discretion.

8. *Discharge of Mortgage.* If the Mortgagor shall duly pay to the Mortgagee all Indebtedness and the Mortgagee is not then obligated to extend any credit to the Mortgagor, the Mortgagor may request from the Mortgagee a discharge of the Mortgage and, upon delivery by the Mortgagee to the Mortgagor of a discharge of the Mortgage, the Mortgage shall terminate and cease to operate; provided that the Mortgage shall not terminate or cease to operate while any Indebtedness remains unpaid or while the Mortgagee is obligated to extend any credit to the Mortgagor only because, at any prior time or times, all Indebtedness had been paid in full. The Mortgagee shall not be obligated to deliver any partial discharge of the Mortgage.

9. *Consolidation of Mortgages.* To the extent permitted by law, the doctrine of consolidation shall apply with respect to *inter alia* the Mortgage.

#### **D. COVENANTS, REPRESENTATIONS AND WARRANTIES OF MORTGAGOR**

1. *Payment of Principal and Interest.* The Mortgagor shall pay to the Mortgagee when due all Indebtedness without deduction or set-off of any kind. The Mortgagor expressly agrees not to fail to pay any Indebtedness when due and not to reduce the amount of any due payment of any Indebtedness as a result, or in respect of any existing or future claim by the Mortgagor against the Mortgagee or against any other person whether such claim relates to any or all Indebtedness, the Mortgage, any other agreement between the Mortgagor and the Mortgagee, any other transaction or any other agreement or matter whatsoever.

2. *Observance and Performance of Other Obligations.* The Mortgagor shall duly and punctually observe and perform all the Mortgagor's existing and future obligations pursuant to the Mortgage and all the Mortgagor's existing and future obligations pursuant to any and all other existing and future agreements delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee.

3. *Payment of Taxes.* The Mortgagor shall promptly pay all Taxes as they become due and, within one month after the date fixed for the payment of the last installment of Taxes in each year, shall deliver to the Mortgagee a receipted tax bill showing payment in full of all such Taxes payable during such year. If the Mortgagor fails to pay any Taxes as they become due, the Mortgagee may, at its option, pay the whole or any part of such Taxes. The amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

4. *Good Title and Free From Encumbrances.* The Mortgagor represents and warrants to the Mortgagee that the Mortgagor is the legal and beneficial owner of, and has good, absolute and indefeasible title and estate in fee simple to the Mortgaged Land (or the leasehold interest therein

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if section E applies), free of any Other Encumbrances except any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears, public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land or other encumbrances consented to by the Mortgagee in writing, and free of any reservations, limitations, provisos or conditions whatsoever except those contained in the original grant thereof, if any, from the Crown; the Mortgagor has good right, full power and lawful and absolute authority to mortgage and charge the Mortgaged Land (or, if section E applies, its leasehold interest therein) to the Mortgagee in accordance with the provisions of the Mortgage.

5. *Insurance.* The Mortgagor shall maintain, in form, substance and amount and with insurers satisfactory to the Mortgagee, all insurance required by the Mortgagee from time to time with respect to the Mortgaged Land (including boiler, property, public liability, rental, environmental and business interruption insurance and insurance covering all crops grown on the Mortgaged Land insuring such crops against damage by hail and against perils covered by all-risk crop insurance). The Mortgagor shall deliver to the Mortgagee, from time to time at the Mortgagee's request, certificates of insurance and certified copies of such insurance policies showing all loss payable to the Mortgagee as first mortgagee (subject to the interests of the holder of any Permitted Prior Mortgage) and loss payee and containing a mortgage clause satisfactory to the Mortgagee. As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns to the Mortgagee all the Mortgagor's present and future interests in and to all such present and future insurance policies and all proceeds therefrom. The Mortgagor shall not repair any damage using proceeds of any insurance without the Mortgagee's prior written consent and the Mortgagee may, at its discretion, apply any and all insurance proceeds to reduce Indebtedness. If the Mortgagor fails to maintain insurance required by the Mortgagee, the Mortgagee may arrange insurance with respect to the Mortgaged Land, the Mortgagor shall pay to the Mortgagee, on demand by the Mortgagee, all amounts paid by the Mortgagee to effect such insurance and the Mortgagor shall pay interest thereon at the Applicable Rate; and all such amounts owing by the Mortgagor shall be part of the Indebtedness and secured by the Mortgage. The Mortgagor shall, forthwith on the occurrence of any loss or damage, furnish at the Mortgagor's own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. Any insurance monies received may, at the option of the Mortgagee, to the extent permitted by law, be applied to rebuild or repair the premises on the Mortgaged Land or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Mortgaged Land, or be applied to pay Indebtedness whether or not then due, despite any law, equity or statute to the contrary. The Mortgagor, to the extent permitted by law, hereby waives any statutory or other right it may have to require any insurance proceeds to be applied in any particular manner.

6. *Payment of Other Encumbrances.* The Mortgagor shall promptly pay when due all amounts now or hereafter owing pursuant to or with respect to any Other Encumbrances and shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any Other Encumbrances when due, the Mortgagee may, at its option, pay the whole or any part of any present or future Other Encumbrances. The amounts so paid shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. In the event the Mortgagee pays any Other Encumbrance, it shall be entitled to all the equities, rights and securities of the person or persons so paid and to obtain an assignment of such Other Encumbrance so paid and of any right to payment and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit to do so.

7. *Payment of Expenses.* The Mortgagor shall, on demand by the Mortgagee, pay all costs, charges, expenses (including legal fees as between a solicitor and his or her own client), commissions and fees which may be incurred by the Mortgagee in negotiating any credit or credits secured by the Mortgage, investigating the title to the Mortgaged Land, preparing and

registering the Mortgage and other documents, administering any credit or credits extended by the Mortgagee to the Mortgagor, inspecting the Mortgaged Land, collecting any Indebtedness, taking any proceeding in connection with or to collect any Indebtedness, taking and maintaining possession of the Mortgaged Land, maintaining and repairing the Mortgaged Land, and taking any other enforcement proceedings. The Mortgagor shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any such amounts as they become due, the Mortgagee may, at its option, pay any such amounts and the amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the



Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

8. *Compliance with Laws.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, the Mortgagor has complied with, and the Mortgagor agrees that it shall comply with all laws, by-laws and regulations affecting the Mortgaged Land and all orders and decisions of any governmental authority, governmental agency or court having jurisdiction affecting the Mortgaged Land (including all such laws, by-laws, regulations, orders and decisions relating to the environment or to residential or other property, including those relating to the amount of rent charged by the Mortgagor with respect to any part of the Mortgaged Land). The Mortgagor shall, at the Mortgagor's expense, promptly and in good and workmanlike manner make all improvements, alterations, clean-ups and repairs and effect any change in use that may be required from time to time to so comply.

9. *Maintain in Good Repair and Avoid Waste.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, all buildings, erections, equipment, machinery and improvements on the Mortgaged Land are in good condition and repair and that all noxious weeds have been eradicated from the Mortgaged Land. The Mortgagor shall maintain all buildings, erections, equipment, machinery and improvements on the Mortgaged Land in good condition and repair to the satisfaction of the Mortgagee, shall eradicate all noxious weeds from the Mortgaged Land and shall not permit waste to be committed or suffered on the Mortgaged Land or any part thereof. The Mortgagee or its agent shall be entitled, from time to time, to enter on the Mortgaged Land to inspect the Mortgaged Land and to undertake any tests (including intrusive environmental tests) required by the Mortgagee. If the Mortgagor neglects to keep the Mortgaged Land or any buildings, erections, equipment, machinery or improvements on the Mortgaged Land in good condition and repair, fails to eradicate noxious weeds from the Mortgaged Land or commits or permits any act of waste on the Mortgaged Land (as to which the Mortgagee shall be the sole judge), or fails to comply with section D.8., the Mortgagee or its agent may enter upon the Mortgaged Land and make such repairs and undertake such work and take such action as the Mortgagee deems necessary. All costs of such inspection, testing, repairs, work and action shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

10. *Environmental Representation and Indemnity.* The Mortgagor represents and warrants to the Mortgagee that there has not occurred, after the date the Mortgagor acquired an interest in the Mortgaged Land, any spill, leak, contamination or other material environmental problem affecting the Mortgaged Land or any part thereof (other than any such spill, leak, contamination or other environmental problem which has been remedied). The Mortgagor shall indemnify and save harmless the Mortgagee and any Receiver of the Mortgaged Land from any and all expenses and damages incurred or suffered by the Mortgagee or such Receiver as a result, or in respect of any spill, leak, contamination or other environmental problem affecting the Mortgaged Land or any part thereof. This indemnity shall survive the payment of all Indebtedness and the satisfaction, discharge or enforcement of the Mortgage or any other security.

11. *No Alterations or Change in Use.* The Mortgagor shall not, without the prior written consent of the Mortgagee, make, or permit to be made, any alterations or additions to the Mortgaged Land or any building thereon or change the Mortgagor's use of the Mortgaged Land or any building thereon and the Mortgagor shall not allow the Mortgaged Land to be unoccupied or unused.

12. *No Unapproved Charge or Encumbrance by Mortgagor.* The Mortgagor shall not, without the Mortgagee's prior written consent, mortgage, charge, lien or encumber the Mortgaged Land or any part thereof or any interest therein or permit any Other Encumbrance to remain thereon except for any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears and public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land.

13. *Change in Ownership or Spousal Status.* Upon any change or event affecting any of the following, namely:

- (a) the spousal status of the Mortgagor, if the Mortgagor is an individual;
- (b) the qualification of the Mortgaged Land as a matrimonial home; or

## (c) the ownership of the Mortgaged Land,

the Mortgagor shall forthwith advise the Mortgagee accordingly in writing and furnish the Mortgagee with full particulars thereof, the intention being that the Mortgagee shall be kept fully informed of the names and addresses of the owner or owners of the Mortgaged Land and of any spouse who is not an owner but who may have a legal right of possession of or interest in the Mortgaged Land. The Mortgagor shall furnish the Mortgagee with such evidence in connection with any of subsections (a), (b) and (c) of this provision as the Mortgagee may from time to time request.

14. *Expropriation.* If the Mortgaged Land or any part thereof is condemned or expropriated to an extent which, in the Mortgagee's sole discretion, materially affects the Mortgagee's security, all Indebtedness shall, at the option of the Mortgagee, be deemed to have become due and payable on the day before such condemnation or expropriation, and interest shall continue to accrue thereon, at the Applicable Rate, until the Mortgagee has been paid all Indebtedness. The Mortgagor shall pay to the Mortgagee from any condemnation or expropriation proceeds the full amount thereof, to be applied by the Mortgagee to reduce Indebtedness.

15. *Power of Attorney.* The Mortgagor hereby irrevocably appoints the Mortgagee or any Receiver appointed by the Mortgagee under or pursuant to the Mortgage or by any order of a court of competent jurisdiction, as the Mortgagor's attorney for all purposes to take any and all action deemed appropriate by the Mortgagee or such Receiver after the occurrence of a Default.

16. *Further Assurances.* The Mortgagor shall (and shall cause each person having or claiming to have an estate, right, title or interest in or to the Mortgaged Land to) at any time and from time to time, at the Mortgagee's request, do, execute and deliver or cause to be made, executed and delivered to the Mortgagee such further and other reasonable acts, deeds, conveyances, charges and assurances as may be required by the Mortgagee to fully and effectually carry out the intention and meaning of the Mortgage and the provisions included in the Mortgage and the reasonable cost of such further assurances shall be part of the Indebtedness and secured by the Mortgage.

17. *Business Purposes Only.* The Mortgagor shall use only for business purposes any amounts loaned by the Mortgagee to the Mortgagor and secured by the Mortgage.

18. *No Registration of Condominiums or Strata Title Developments.* The Mortgagor shall not, without the Mortgagee's prior written consent, register any condominium or strata title development with respect to all or part of the Mortgaged Land or any declaration or description with respect thereto and the Mortgagee shall not have any obligation to provide such consent.

19. *Delivery of Information.* The Mortgagor shall deliver to the Mortgagee, promptly at the Mortgagee's request, all financial statements and other information as the Mortgagee may request from time to time with respect to the Mortgagor, a Guarantor or the Mortgaged Land.

20. *No Litigation or Other Proceedings.* The Mortgagor represents and warrants that, as at the date of the Mortgage, there is no application, litigation, proceeding or investigation outstanding or, to the Mortgagor's knowledge, pending or threatened, against the Mortgagor or any Guarantor or with respect to the Mortgaged Land or any part thereof including any application, litigation, proceeding or investigation in respect of residential or other property by-laws or regulations. The Mortgagor shall notify the Mortgagee in writing of any such application, litigation, proceeding or investigation commenced after the date of the Mortgage, promptly after such commencement.

21. *Mortgagor a Canadian Resident.* The Mortgagor represents and warrants that, as at the date of the Mortgage, it is not a non-resident of Canada for purposes of the Income Tax Act and agrees that the Mortgagor shall not, without the Mortgagee's prior written consent, become a non-resident of Canada.

22. *Good Management of Mortgaged Land.* The Mortgagor shall at all times cause the Mortgaged Land to be managed in a commercially reasonable manner by the Mortgagor or by a property manager satisfactory to the Mortgagee, acting reasonably.

23. *Abutting Real Property.* The Mortgagor shall not, without the Mortgagee's prior written consent, acquire any real property which abuts the Mortgaged Land. If the Mortgagee gives such consent, the Mortgagor shall, at the Mortgagee's request, deliver to the Mortgagee a mortgage or

charge of such abutting real property and of the Mortgaged Land in form and substance satisfactory to the Mortgagee.

24. *Deemed Covenants Excluded.* In accordance with subsection 7(3) of the *Land Registration Reform Act*, the covenants deemed to be included in a mortgage or charge by subsection 7(1) of such statute are expressly excluded from the Mortgage.

25. *Defeasance Provisions Excluded.* The provisions relating to defeasance in subsection 6(2) of the *Land Registration Reform Act* are expressly excluded from the Mortgage.

#### **E. MORTGAGE OF LEASEHOLD INTEREST**

If the Mortgagor is not the owner of the Mortgaged Land in fee simple but is the owner of a leasehold interest in the Mortgaged Land as tenant, or as an assignee or successor of a tenant, pursuant to a Lease, the following provisions shall apply:

1. *Representations and Warranties.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage:

- (a) the Lease is a good, valid and subsisting lease and has not been surrendered, forfeited or terminated or, except as specified in the Mortgage, amended, and the rents, covenants and provisions therein reserved and contained have been duly paid, performed and observed by the Mortgagor up to the date of the Mortgage; and
- (b) the Mortgagor has good right and full, lawful and absolute authority to charge, mortgage, demise and sublet the Mortgaged Land in accordance with the Mortgage and any consent thereto required of the applicable landlord has been obtained.

2. *Covenants Relating to Lease.* The Mortgagor agrees with the Mortgagee as follows:

- (a) The Mortgagor shall at all times fully perform and comply with all the obligations of the Mortgagor under or with respect to the Lease, or imposed on, assumed by or agreed to by the Mortgagor pursuant to any Other Encumbrances and, if the Mortgagor fails to do so, the Mortgagee may (but shall not be obliged to) take any action the Mortgagee deems necessary or desirable to prevent or to cure any default by the Mortgagor in the performance of or compliance with any such obligations. The Mortgagor shall promptly provide to the Mortgagee a copy of any notice the Mortgagor receives from the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person under or relating to the Lease of the Mortgaged Land. Upon receipt by the Mortgagee from the Mortgagor, the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person of any notice, including a notice of default, the Mortgagee may rely thereon and take any action with respect to such notice as may be required in the Mortgagee's sole discretion, including to cure a default even though the existence of such default or the nature thereof may be questioned or denied by or on behalf of the Mortgagor and the Mortgagee shall have the absolute and immediate right to enter in and upon the Mortgaged Land or any part thereof to such extent and as often as the Mortgagee, in its sole discretion deems necessary or desirable, in order to prevent or to cure any such default. The Mortgagee may pay and expend such amounts as the Mortgagee in its sole discretion deems necessary for any such purpose, and the amounts so paid shall be payable by the Mortgagor to the Mortgagee on demand by the Mortgagee with interest thereon at the Applicable Rate, and shall be a part of the Indebtedness and be secured by the Mortgage.
- (b) If the Mortgage is outstanding at the expiration of the term of the Lease and the Mortgagor refuses or neglects to exercise the Mortgagor's right, if any, to renew or extend the term of the Lease or refuses to pay any fees, costs, charges or expenses payable upon any such renewal or extension, the Mortgagee may effect such renewal or extension in the name of the Mortgagor or otherwise, and every such renewed or extended Lease shall remain and be mortgaged and charged pursuant to the Mortgage in accordance with the Mortgage.

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- (c) From and after the execution and delivery of the Mortgage, the Mortgagor shall stand possessed of the Mortgaged Land for the remainder of the Lease in trust for the Mortgagee, and shall exercise any right to renew or extend the term of the Lease or to assign the Lease as the Mortgagee may direct, but subject to the Mortgagor's right of redemption under the Mortgage. The Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagor's attorney for and on behalf of the Mortgagor to exercise any such renewal or extension right and to assign the Lease and convey the leasehold interest in the Mortgaged Land and the reversion thereof as the Mortgagee shall at any time direct after the occurrence of a Default and, in particular, upon any sale made by the Mortgagee under any power of sale contained in the Mortgage or granted by statute to assign the Lease and convey the Mortgagor's leasehold interest in the Mortgaged Land and the reversion to a purchaser. The Mortgagee may at any time remove the Mortgagor or any other person from being a trustee of the Lease under the above declaration of trust and appoint a new trustee or trustees.
- (d) The Mortgagor shall not surrender, terminate, amend or modify the Lease or agree to do so without the prior written consent of the Mortgagee, which the Mortgagee may withhold in its absolute discretion. No release or forbearance of any of the Mortgagor's obligations under the Lease or under any Other Encumbrance shall release the Mortgagor from any of the Mortgagor's obligations under the Mortgage.
- (e) Unless the Mortgagee expressly consents in writing, the title in fee simple to the Mortgaged Land and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates by purchase or otherwise.

3. *Last Day of Term Excepted.* Despite any other provision of the Mortgage, the last day of the term of the Lease and of any renewal or extension thereof and of any agreement therefor now held or hereafter acquired by the Mortgagor shall be excepted out of the mortgage, charge and demise contained in the Mortgage.

4. *Charge by way of Sublease.* Despite section C.1. and any other provision of the Mortgage (except section E.3.), the Mortgagor mortgages and charges, by way of sublease, the Mortgagor's leasehold interest in the Mortgaged Land pursuant to the Lease, the mortgages and charges contained in the Mortgage shall be by way of sublease and the Mortgagee shall not have any obligation or liability to the landlord or any other person pursuant to or in respect of the Lease.

5. *Leasehold Interests.* Wherever any reference is made in the Mortgage to any right of the Mortgagee to sell, transfer, assign, lease, sublease, alienate or otherwise deal with the Mortgaged Land, such reference shall be deemed, subject to section E.3., to relate to the existing and future rights and interests of the Mortgagor in the Mortgaged Land pursuant to the Lease.

#### F. ASSIGNMENT OF LEASES AND RENTS

If the Mortgagor or any predecessor of the Mortgagor grants or has granted any lease, offer to lease, tenancy agreement or other similar agreement of all or any part of the Mortgaged Land as landlord, the following provisions shall apply:

1. *Assignment.* As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee, all the Mortgagor's rights and interests as landlord in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Mortgaged Land, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Mortgaged Land or any building, improvement, fixture or part thereof forming part of the Mortgaged Land.

2. *Separate Assignments.* The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Mortgagor to the Mortgagee pursuant to section F.1. shall be deemed to be a separate assignment so that the Mortgagee in its discretion may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

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3. *Collection by Mortgagor before Default.* Until there occurs a Default, the Mortgagor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time in accordance with sound business practice.

4. *No Liability of Mortgagee and Indemnity by Mortgagor.* Nothing herein shall obligate the Mortgagee to assume or perform (and nothing herein shall impose on the Mortgagee) any liability or obligation of the Mortgagor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise and the Mortgagor hereby indemnifies and saves harmless the Mortgagee from any and all claims with respect thereto, provided that the Mortgagee may, at its sole option, assume or perform any such obligations as it considers necessary or desirable.

5. *Re-assignment.* The Mortgagee may, at any time without further request or agreement by the Mortgagor, reassign to the Mortgagor, or the Mortgagor's heirs, administrators, successors or assigns, any or all of the collateral referred to in section F.1.

6. *Application by Mortgagee.* The Mortgagee's obligations with respect to any amount collected by the Mortgagee shall be discharged by the application of such amount to reduce Indebtedness.

7. *Not Mortgagee in Possession.* Nothing contained herein shall have the effect of making the Mortgagee a mortgagee in possession of the Mortgaged Land.

#### G. CONDOMINIUM OR STRATA TITLE DEVELOPMENT PROVISIONS

If the Mortgaged Land is or includes one or more condominium units or strata title units, the following provisions shall apply:

1. *Compliance with Requirements.* The Mortgagor shall observe and perform each of the covenants and provisions required to be observed and performed pursuant to the Mortgage, all applicable statutes governing or affecting condominiums or strata title developments, and the declaration, description, by-laws and rules, as amended from time to time, of the applicable condominium corporation or strata corporation.

2. *Common Expense Payments.* The Mortgagor shall pay promptly when due any and all unpaid condominium or strata development fees, common expenses, common element expenses, assessments, levies, instalments, payments or any other amounts due to the applicable condominium corporation or strata corporation or any agent thereof by the Mortgagor and, at the Mortgagee's request, deliver to the Mortgagee evidence of the payment thereof.

3. *Right of Mortgagee to Pay.* If the Mortgagor does not pay when due any condominium or strata development fees, common expenses or other amounts referred to in section G.2., the Mortgagee may (but shall not be obliged to) pay such amounts, the Mortgagor shall forthwith pay such amounts to the Mortgagee with interest thereon at the Applicable Rate, and all such amounts owing by the Mortgagor to the Mortgagee shall be a part of the Indebtedness and secured by the Mortgage.

4. *Voiting by Mortgagee.* The Mortgagor hereby irrevocably authorizes the Mortgagee to exercise the rights of the Mortgagor as an owner of the Mortgaged Land to vote or to consent in all matters relating to the affairs of the condominium corporation or strata corporation or arising under applicable law or the declaration or by-laws of the condominium or strata corporation, provided that:

- (a) in any case where the Mortgagee is entitled to receive and does receive notice of a meeting of owners, the Mortgagee may notify the condominium or strata corporation and the Mortgagor of its intention to exercise the right of the owner to vote or to consent at such meeting at least two days before the date specified in the notice for the meeting, failing which the Mortgagor may exercise such right to vote or consent at such meeting;
- (b) the Mortgagee shall not, by virtue of the giving to the Mortgagee of the right to vote or consent, be under any obligation to vote or consent or to protect the interests

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of the Mortgagor, and the Mortgagee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and

- (c) nothing herein contained, including the exercise by the Mortgagee of the right to vote or consent, shall constitute the Mortgagee a mortgagee in possession.

#### H. MORTGAGE AS SECURITY FOR A GUARANTEE

If the Mortgagor has delivered to the Mortgagee or now or hereafter delivers to the Mortgagee a guarantee or guarantees of payment to the Mortgagee of indebtedness or liability of another or others, the Indebtedness shall include all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagees pursuant to such guarantee or guarantees, whether direct or indirect, absolute or contingent, and the Mortgage shall secure payment of all such indebtedness and liability of the Mortgagor pursuant to such guarantee or guarantees in addition to all other Indebtedness. If any such guarantee is increased or otherwise amended, the Mortgage shall also secure payment of all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee as increased or otherwise amended.

#### I. DEFAULT

The Mortgagor shall be in default of the Mortgage and a Default shall occur pursuant to the Mortgage if:

1. the Mortgagor fails to pay any Indebtedness when due;
2. the Mortgagor or a Guarantor fails to comply with any obligation of the Mortgagor or the Guarantor pursuant to or in respect of the Mortgage or any existing or future note, instrument or agreement delivered by the Mortgagor and the Guarantors (or any of them) to the Mortgagee or between the Mortgagor and the Guarantors (or any of them) and the Mortgagee;
3. the Mortgagor fails to comply with any obligation of the Mortgagor pursuant to or in respect of any Permitted Prior Mortgage or any Other Encumbrance;
4. any representation or warranty made by the Mortgagor or a Guarantor in the Mortgage, any agreement between the Mortgagor and the Guarantors (or any of them) and the Mortgagee, or any loan or credit application made in connection with any Indebtedness was untrue when made;
5. a Receiver is appointed of any asset of the Mortgagor or of a Guarantor;
6. any construction lien, mechanics' lien or builders' lien is registered against all or any part of the Mortgaged Land and is not discharged within seven days after a request by the Mortgagee that such lien be discharged;
7. all or any part of the Mortgaged Land is condemned or expropriated;
8. the Mortgagor or a Guarantor becomes bankrupt or insolvent;
9. a petition in bankruptcy is filed against the Mortgagor or a Guarantor;
10. the Mortgagor or a Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
11. the Mortgagor or a Guarantor makes an application as a debtor in any Insolvency Proceeding or any other person makes an application against the Mortgagor or a Guarantor in any Insolvency Proceeding;
12. the Mortgagor sells, transfers or disposes of in any other manner the Mortgaged Land, any part thereof or any interest therein (unless the Mortgagee has approved in writing such sale, transfer or other disposition);
13. an execution, judgment or order of execution is filed or made against the Mortgaged Land or any part thereof and remains unsatisfied for a period of ten days;

14. the Mortgagor fails to pay when due any amount owing by the Mortgagor to the applicable condominium corporation or strata corporation or any agent thereof referred to in section G.2.; or
15. the Mortgagor or a Guarantor is not an individual and a change in control of the Mortgagor or such Guarantor occurs without the prior written consent of the Mortgagee; for the purposes hereof, a change in control of the Mortgagor or a Guarantor shall be deemed to occur if there occurs one or more sales, transfers or other dispositions of the beneficial ownership existing on the date of the Mortgage in the aggregate of:
  - (a) shares, other securities or other equity interests issued by the Mortgagor or such Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor; or
  - (b) shares, other securities or equity interests issued by any Controlling Entity which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by such Controlling Entity.

#### **J. REMEDIES OF MORTGAGEE**

1. *Acceleration and Termination of Obligation to Extend Credit.* Without prejudice to any right of the Mortgagee to demand at any time payment by the Mortgagor of any and all Indebtedness, upon the occurrence of a Default all Indebtedness (or any part thereof determined by the Mortgagee) shall, at the Mortgagee's option, forthwith become due and payable, the Mortgage shall become enforceable and the Mortgagee shall not be obligated to extend any further credit to the Mortgagor.

2. *Right of Entry.* Upon the occurrence of a Default, the Mortgagee may, at any time or times without the concurrence of any person, enter upon, take and maintain possession of the Mortgaged Land, inspect, complete the construction of, repair or maintain any buildings or other improvements thereon, lease, collect the rents, profits and other amounts derived from the Mortgaged Land and manage the Mortgaged Land as the Mortgagee may deem fit without hindrance or interruption by the Mortgagor or any other person, and all reasonable costs, charges and expenses, including legal fees on a solicitor and his or her own client basis, and disbursements, commissions and allowances for the time and services of any employees of the Mortgagee or any agent of the Mortgagee or other persons appointed for any such purpose shall be forthwith payable by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. Upon the occurrence of a Default, the Mortgagee may also enforce its security against all crops growing on the Mortgaged Land, the Mortgagee may, at any time or times without the concurrence of any person, enter upon the Mortgaged Land for the purpose of cutting, harvesting and removing such crops and for otherwise farming and working the Mortgaged Land, the Mortgagee may bring on the Mortgaged Land all machines, equipment and instruments necessary for such purposes, and the Mortgagee may use all yards, barns, granaries, grain bins or all other improvements and equipment located on the Mortgaged Land to carry out any of such activities.

3. *Sale.* Upon the occurrence of a Default which continues for at least fifteen days, the Mortgagee may, on at least thirty-five days' notice, sell the Mortgaged Land or any part or parts thereof, in accordance with the following provisions:

- (a) notice shall be given to such persons and in such manner and form and within such time as provided by law; provided that, in the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice may be effectually given by leaving it with a person on the Mortgaged Land, if occupied, or by placing the same on some portion thereof, if unoccupied or, at the option of the Mortgagee, by mailing it by registered mail in a notice or letter addressed to the Mortgagor at the Mortgagor's last known address, or by publishing it once in a newspaper published in the area or region in which the Mortgaged Land is situated;

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- (b) such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under any disability;
- (c) sale of the Mortgaged Land may be by public auction or private sale or partly by one and partly by the other, for such price or prices as can reasonably be obtained therefor and on such terms as to credit or otherwise and with such conditions of sale and stipulations as to title or evidence of title or otherwise as the Mortgagee in its sole discretion shall deem appropriate;
- (d) in the event of any sale on credit or for part cash and part credit, the Mortgagee shall not be accountable for or charged with any moneys until actually received;
- (e) the Mortgagee may rescind or vary any contract of sale and may buy in and re-sell the Mortgaged Land or any part thereof without being answerable for any loss occasioned thereby;
- (f) the Mortgagee may sell all or any part of the buildings, fixtures, machinery, equipment, crops and standing or fallen trees separately from the Mortgaged Land and the purchaser shall have all necessary access to the Mortgaged Land for the purposes of severing, cutting and removal; and
- (g) subject to compliance with law, sales may be made from time to time of any part or parts of the Mortgaged Land to satisfy any part or parts of the Indebtedness then owing to the Mortgagee leaving the remaining outstanding Indebtedness secured by the Mortgage as a charge of the remainder of the Mortgaged Land.

4. *Sale or Lease.* The following shall apply with respect to any sale or lease by the Mortgagee, its agent or any Receiver of all or part of the Mortgaged Land after the occurrence of a Default:

- (a) no purchaser or lessee shall be bound to enquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety and no lack of default or lack of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease;
- (b) the Mortgagee may sell or lease all or part of the Mortgaged Land without entering into actual possession of the Mortgaged Land and, when it desires to take possession, it may break locks and bolts and while in possession shall only be accountable for moneys actually received by it;
- (c) the Mortgagor hereby appoints the Mortgagee as the Mortgagor's true and lawful attorney and agent to make application under any statute for consent to sever, sell or lease part or parts of the Mortgaged Land and to do all things and execute all documents to effectually complete any such severance, sale or lease;
- (d) the Mortgagee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending;
- (e) the Mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale of the Mortgaged Land unless such loss is caused by the Mortgagee's willful misconduct; and
- (f) no sale, leasing or other dealing by the Mortgagee with the Mortgaged Land or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of any Indebtedness.

5. *Attornment.* To the extent the Mortgaged Land or any part thereof is not a residential premises so as to be subject to the provisions of the applicable statute governing residential tenancies, the Mortgagor hereby attorns to and becomes a tenant of such Mortgaged Land to the Mortgagee from year to year from the date of the execution of the Mortgage until the Mortgage is discharged at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the Indebtedness, the legal relation of landlord and tenant being hereby constituted between the Mortgagee and the Mortgagor in regard to the Mortgaged Land. The Mortgagor agrees that neither



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the existence of this provision nor anything done by virtue hereof shall impose any obligation on the Mortgagee or render the Mortgagee a mortgagee in possession or accountable for any moneys except moneys actually received by the Mortgagee and the Mortgagee may, upon the occurrence of any Default, enter on the Mortgaged Land and terminate the tenancy hereby created without notice.

6. *Right to Distrain.* Upon the occurrence of a Default, to the extent permitted by law, the Mortgagee may distrain for payment of any and all Indebtedness upon the Mortgaged Land or any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Mortgaged Land, such moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Mortgagee with respect to or in connection therewith as in like cases of distress for rent. The Mortgagor waives the right to claim exceptions and agrees that the Mortgagee shall not be limited in the amount for which it may distrain.

7. *Judgments and Non-Merger.* The taking of a judgment or judgments with respect to any of the covenants contained herein, in the Mortgage or otherwise shall not operate as a merger of any such covenants or affect the Mortgagee's right to receive interest under the Mortgage and each such judgment may provide, at the option of the Mortgagee, that interest thereon shall be computed and payable until such judgment has been fully paid and satisfied.

8. *Separate Remedies.* All remedies of the Mortgagee may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Mortgagee however created.

9. *Application of Proceeds and Mortgagor's Liability for Deficiency.* All amounts received by the Mortgagee or any Receiver pursuant to any enforcement of the Mortgage may be held by the Mortgagee as security for the Indebtedness or applied to reduce Indebtedness in such manner as may be determined by the Mortgagee and the Mortgagee may at any time apply or change any such appropriation of such payments to such part or parts of the Indebtedness as the Mortgagee may determine in its sole discretion. The Mortgagor shall be and remain liable to the Mortgagee for any deficiency. Any surplus amounts realized after payment of all Indebtedness shall be paid in accordance with applicable law.

10. *Mortgagor's Insolvency Proceedings.* The Mortgagor acknowledges that the Mortgaged Land is of such a unique nature that, if the Mortgagor seeks to reorganize or restructure its affairs pursuant to any Insolvency Proceeding, the Mortgagee would not have a sufficient commonality of interest with any other creditor or creditors of the Mortgagor such that the Mortgagee would be required to vote on any plan, reorganization, arrangement, compromise or other transaction in a class with any other creditor or creditors of the Mortgagor and, in that regard, the Mortgagor agrees that the Mortgagee shall be placed in its own exclusive class of creditors for voting purposes. The Mortgagor further agrees that:

- (a) it will give the Mortgagee not less than 10 days written notice prior to the commencement of any Insolvency Proceeding with respect to the Mortgagor;
- (b) in no circumstance will the Mortgagor seek an order which stays any right of the Mortgagee or, to the extent permitted by law, permit any right of the Mortgagee to be stayed, in any Insolvency Proceeding and, if any court-ordered or automatic stay is imposed on the Mortgagee, the Mortgagor hereby consents to an order lifting such stay as against the Mortgagee;
- (c) if an Insolvency Proceeding is commenced with respect to the Mortgagor, the Mortgagor will consent to an order directing that all rents or other revenues generated or received from or in respect of the Mortgaged Land be deposited to a segregated trust account under the sole control of the Mortgagee and that same shall not result in the Mortgagee's being a mortgagee in possession of, or in control or management of the Mortgaged Land or result in the acceleration of payment of any Indebtedness unless such acceleration is required by the Mortgagee in writing; and
- (d) it shall not, without the Mortgagee's prior written consent, propose or permit the sale or transfer of the Mortgaged Land or any part thereof, in or as part of any Insolvency Proceeding, for a net sale price less than the amount required to pay in

full all Indebtedness outstanding as at the date of payment of such net sale proceeds to the Mortgagee.

#### K. APPOINTMENT OF A RECEIVER

1. *Appointment.* Upon the occurrence of a Default, in addition to any other remedies available to the Mortgagee, the Mortgagee may by instrument in writing appoint a Receiver of all or any part of the Mortgaged Land and all rents, incomes, profits and other amounts now or hereafter arising therefrom. The Mortgagee may also apply to any court of competent jurisdiction for the appointment of a Receiver.

2. *Powers of Receiver.* Any Receiver appointed by the Mortgagee shall, to the extent permitted by law, have the following powers:

- (a) to enter upon, take possession of, use, and occupy the Mortgaged Land or any part thereof;
- (b) to collect all rents, incomes, profits and other amounts in respect of the Mortgaged Land and to carry on the business of the Mortgagor on the Mortgaged Land;
- (c) to borrow money required for the maintenance, preservation or protection of the Mortgaged Land or for carrying on the business of the Mortgagor and, in the discretion of the Receiver, to charge the Mortgaged Land in priority to the Mortgage as security for the principal amounts so borrowed, interest thereon and costs related thereto;
- (d) to sell, lease, or otherwise dispose of the Mortgaged Land or any part thereof on such terms and conditions and in such manner as the Receiver shall determine in its sole discretion, and to effect such sale by conveying in the name and on behalf of the Mortgagor or otherwise;
- (e) to demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession of the Mortgaged Land, and to give valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the rents, accounts receivable or any other obligation of any person to the Mortgagor;
- (f) to exercise any rights or remedies which could have been exercised by the Mortgagee against the Mortgagor or the Mortgaged Land or with respect thereto; and
- (g) to execute all documents required to effect any of the foregoing.

3. *Identity of Receiver and Removal.* Any Receiver so appointed by the Mortgagee may be any person or persons satisfactory to the Mortgagee, and the Mortgagee may remove any Receiver so appointed and appoint another or others instead.

4. *Receiver as Agent of Mortgagor.* Any Receiver appointed by the Mortgagee shall be deemed to be agent of the Mortgagor unless the Mortgagee expressly specifies in writing that the Receiver shall be agent of the Mortgagee. The Mortgagor agrees to ratify and confirm all actions of the Receiver acting as agent for the Mortgagor and to release and indemnify the Receiver in respect of all such actions.

5. *Receivership Expenses.* The Mortgagor shall pay to the Receiver, forthwith on demand by the Mortgagee or the Receiver, the amount of all reasonable fees, disbursements and other expenses incurred by the Receiver in the exercise of its powers hereunder, with interest thereon at the Applicable Rate from the date on which such sums are incurred. All such sums, together with interest thereon at the Applicable Rate, shall be part of the Indebtedness and secured by the Mortgage.

6. *No Enquiries Required.* No persons dealing with the Receiver or its agents, upon any sale or other dealing with the Mortgaged Land, shall be concerned to inquire as to their powers or as to

the application of any money paid to them, such sale or dealing shall be deemed as regards such person to be within the powers hereby conferred and to be valid and effectual.

#### L. MISCELLANEOUS

1. *Records of Mortgagee.* The records of the Mortgagee disclosing the amount of an extension of credit by the Mortgagee to the Mortgagor, the repayment of any principal amount of Indebtedness, the amount of accrued and unpaid interest owing by the Mortgagor and the amount of other Indebtedness (or any part thereof) at any time outstanding, shall constitute conclusive evidence thereof in the absence of mathematical error.

2. *Revolving Line of Credit.* The Mortgagee may wish to make loan advances and re-advances or otherwise extend credit to the Mortgagor from time to time up to a total outstanding principal amount not exceeding the principal amount referred to in the Mortgage. The Mortgage is and shall be continuing security to the Mortgagee for the payment of all Indebtedness. Any portion of the Indebtedness may be advanced or re-advanced by the Mortgagee or other credit may be extended by the Mortgagee in one or more sums at any future time or times and the amount of all such advances, re-advances or other credits when so made or extended shall be secured by the Mortgage and be payable by the Mortgagor with interest thereon at the Applicable Rate and the Mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, provided that none of the execution or registration of the Mortgage or the advance in part of any monies or extension of any other credit by the Mortgagee shall obligate the Mortgagee to advance any unadvanced portion thereof or to extend any other credit. The Mortgage shall not be void or cease to operate because the Indebtedness secured hereby has at any time or times been paid in full.

3. *Assignment and Syndication.* The Mortgagee shall be entitled from time to time, both before and after a Default, without notice to, or the consent of the Mortgagor or any Guarantor:

- (a) to sell or assign all or part of the Indebtedness and the Mortgagee's interests in the Mortgage and any other security and agreements held by the Mortgagee; and
- (b) to syndicate all or part of the Indebtedness, the Mortgage and any other security and agreements held by the Mortgagee and to grant participations therein.

To facilitate the foregoing, the Mortgagee may provide each prospective purchaser, assignee, syndicated lender or participant and their respective advisers with financial and other information concerning the Indebtedness, the Mortgagor, the Mortgaged Land, any Guarantor, any other collateral or any other matter.

4. *General Indemnity by Mortgagor.* The Mortgagor hereby agrees, on demand by the Mortgagee, to indemnify and hold harmless the Mortgagee and its officers, directors, employees and agents from and against any and all claims, expenses, liabilities, losses and damages that may be asserted against or incurred by any of such indemnified persons arising out of, or in connection with the Mortgage, any Indebtedness or any claim, investigation, proceeding or litigation relating to any of the foregoing, regardless of whether any such indemnified person is a party thereto (including any and all breakage costs reasonably incurred by the Mortgagee in respect of any breach by the Mortgagor of any of its obligations under the Mortgage) and to reimburse each such indemnified person, on demand by the Mortgagee, for any and all reasonable legal and other expenses incurred in investigating, pursuing or defending any of the foregoing or otherwise in connection with any of the foregoing; provided that the foregoing indemnity shall not, as to any indemnified person, apply to any claim, expense, liability, loss or damage or related expense to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the wilful misconduct or gross negligence of such indemnified person.

5. *Effect of Sale.* No sale, conveyance, transfer or other dealing by the Mortgagor with the Mortgaged Land or any part thereof or any approval of the Mortgagee relating thereto shall in any way change or affect the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person or persons liable for payment of the Indebtedness or any part thereof.

6. *Dealings with the Mortgagor and Others.* The Mortgagee may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and give the same and

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any and all existing security up to, may abstain from taking security from or from perfecting security of, may accept compositions from, may amend the Mortgage, and may otherwise deal with the Mortgagor and all other persons (including any principal debtor, any Guarantor or any owner of the Mortgaged Land) and security as the Mortgagee may see fit without prejudicing any rights of the Mortgagee under the Mortgage.

7. *Amendments to Mortgage.* The Mortgagor and the Mortgagee may from time to time amend the Mortgage (including to increase the interest rate specified by the Mortgage) by an amendment agreement between the Mortgagor and the Mortgagee, whether or not such amendment agreement (or notice thereof) is registered. This provision shall constitute notice of such amendments and the Mortgage shall secure payment of all Indebtedness (including all interest and other Indebtedness arising or resulting from such amendments) and retain its priority with respect thereto over any mortgage, charge or other instrument registered subsequent to the Mortgage.

8. *Waiver.* No waiver, condonation or excusing by the Mortgagee of any default, breach or other non-performance by the Mortgagor at any time or times in respect of any provision of the Mortgage (including any Default) shall operate as a waiver by the Mortgagee of any subsequent or other default, breach or non-performance or prejudice or affect in any way the rights of the Mortgagee in respect of any such subsequent or other default, breach or non-performance.

9. *Discharge or Assignment.* The Mortgagee shall be entitled to prepare or have its counsel prepare a discharge or assignment of the Mortgage and any other documents necessary to discharge or assign any other security held by the Mortgagee and shall have a reasonable time after payment of the Indebtedness in full within which to prepare, execute and deliver such instruments. All reasonable costs, fees and disbursements of the Mortgagee and the Mortgagee's counsel in connection with the preparation, review, execution and delivery of the discharge, assignment or any other documents necessary to discharge or assign the Mortgage or any other security shall, to the extent permitted by law, be paid by the Mortgagor to the Mortgagee and be secured by the Mortgage.

10. *No Obligation to Advance.* Nothing herein and nothing contained in the Mortgage shall obligate the Mortgagee to loan any amount to the Mortgagor or to extend any other credit to the Mortgagor.

11. *Appointment of Attorney Irrevocable.* Each appointment by the Mortgagor of an attorney in the Mortgage or the Standard Charge Terms is coupled with an interest and may not be revoked.

12. *Other Security.* The Mortgage is in addition to and not in substitution for any other security at any time held by the Mortgagee as security for payment of all or any part of the Indebtedness, and the Mortgagee may, at its option, pursue its remedies thereunder or under the Mortgage concurrently or successively. Any judgment or recovery under the Mortgage or under any other security held by the Mortgagee as security for payment of Indebtedness shall not affect the right of the Mortgagee to enforce or realize on the Mortgage or any other such security.

13. *Financing Statement.* To the extent permitted by law, the Mortgagor hereby waives its right to receive from the Mortgagee a copy of any financing statement, financing change statement, verification statement or other similar statement filed by or received by the Mortgagee or any agent of the Mortgagee.

14. *Notice.* Except as otherwise herein provided, any notice, demand or other communication to the Mortgagor referred to herein or in the Mortgage may be forwarded to the Mortgagor by personal delivery or mailed by prepaid ordinary or registered mail to the Mortgagor at the Mortgagor's last known address as shown on the Mortgagee's records. The Mortgagor shall be deemed to have received the same on the date of delivery, if personally delivered, or on the fourth day after the same is mailed by prepaid ordinary mail or registered mail, if mailed, even if the Mortgagor does not actually receive it.

15. *Different Currencies.* The payment of any part of the Indebtedness shall be made by the Mortgagor in the same currency as the currency in which such part of the Indebtedness is then denominated and all interest and fees shall be paid by the Mortgagor in the same currency as the currency in which that part of the Indebtedness to which they relate is denominated.

16. *Judgment Currency.* If in the recovery by the Mortgagee of any Indebtedness in any currency, judgment can only be obtained in another currency and, because of changes in the exchange rate

Page 19.

of such currencies between the date of judgment and payment in full of the amount of such judgment, the recovery under the judgment differs from the receipt by the Mortgagee of the full amount of such Indebtedness, the Mortgagor shall pay any such deficiency to the Mortgagee, such deficiency may be claimed by the Mortgagee against the Mortgagor as an alternative or additional cause of action and any surplus received by the Mortgagee shall be repaid to the Mortgagor.

17. *Foreign Exchange Rate Determinations.* Whenever any provision of the Mortgage requires or permits the determination of the rate of exchange between any currencies, such rate of exchange shall be determined by the Mortgagee based on its normal practice as at the date of such determination.

18. *Governing Law.* The Standard Charge Terms and the Mortgage shall be governed by the law of the jurisdiction in which the Mortgaged Land is located.

19. *Time of Essence.* Time shall be of the essence of the Mortgage.

20. *Severability.* If any provision of the Mortgage is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the Mortgage shall remain in full force and effect without such provision.

21. *Interpretation.* Whenever the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing any gender shall include the other genders. Whenever used in the Standard Charge Terms, the Mortgage or any Schedule, the words "including" and "includes" shall mean "including, without limitation" and "includes, without limitation", respectively, and the word "person" shall include an individual, corporation, partnership, government, government agency and any other entity.

22. *Titles.* Titles used in the Standard Charge Terms, the Mortgage or any Schedule are inserted for convenience of reference only and shall not affect or modify the interpretation or construction of any provision of the Standard Charge Terms, the Mortgage or any Schedule.

23. *Joint and Several Obligations.* If there is more than one Mortgagor, all Mortgagors shall be jointly and severally liable for all obligations of the Mortgagors pursuant to the Mortgage.

24. *Schedule.* Schedule "A" shall form part of the Standard Charge Terms.

25. *Equivalent Rate Information.* Schedule "A" is a summary of various annual rates of interest calculated half-yearly not in advance equivalent to the corresponding annual rates calculated monthly not in advance or calculated quarter-annually not in advance. The rate of interest chargeable, calculated half-yearly not in advance, equivalent to each Applicable Rate, is shown by Schedule "A".

26. *Successors and Assigns.* All rights and powers of the Mortgagee shall enure to the benefit of and be exercisable by the Mortgagee and the Mortgagee's successors and assigns. All covenants, obligations and liabilities entered into or imposed on the Mortgagor shall be binding on the Mortgagor and the Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns.

**SCHEDULE "A"**

The interest rates set out in Column C are the annual interest rates calculated half-yearly not in advance which are equivalent to the corresponding annual interest rates calculated monthly not in advance set out in Column A and quarter-annually not in advance set out in Column B.

COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C
Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance	Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance
1.0000%	1.0008%	1.0021%	9.5000%	9.5754%	9.6500%
1.1250%	1.1281%	1.1276%	9.6250%	9.7024%	9.8201%
1.2500%	1.2513%	1.2533%	9.7500%	9.8294%	9.9502%
1.3750%	1.3768%	1.3788%	9.8750%	9.9565%	10.0804%
1.5000%	1.5019%	1.5047%	10.0000%	10.0836%	10.2107%
1.6250%	1.6272%	1.6305%	10.1250%	10.2107%	10.3410%
1.7500%	1.7526%	1.7564%	10.2500%	10.3378%	10.4714%
1.8750%	1.8779%	1.8823%	10.3750%	10.4650%	10.6018%
2.0000%	2.0033%	2.0084%	10.5000%	10.5921%	10.7324%
2.1250%	2.1288%	2.1344%	10.6250%	10.7194%	10.8630%
2.2500%	2.2542%	2.2606%	10.7500%	10.8466%	10.9937%
2.3750%	2.3797%	2.3868%	10.8750%	10.9739%	11.1244%
2.5000%	2.5052%	2.5131%	11.0000%	11.1011%	11.2552%
2.6250%	2.6307%	2.6394%	11.1250%	11.2285%	11.3861%
2.7500%	2.7563%	2.7658%	11.2500%	11.3558%	11.5170%
2.8750%	2.8819%	2.8923%	11.3750%	11.4832%	11.6480%
3.0000%	3.0075%	3.0188%	11.5000%	11.6106%	11.7791%
3.1250%	3.1331%	3.1454%	11.6250%	11.7380%	11.9102%
3.2500%	3.2588%	3.2721%	11.7500%	11.8654%	12.0414%
3.3750%	3.3845%	3.3988%	11.8750%	11.9929%	12.1727%
3.5000%	3.5102%	3.5258%	12.0000%	12.1204%	12.3040%
3.6250%	3.6360%	3.6525%	12.1250%	12.2479%	12.4354%
3.7500%	3.7617%	3.7794%	12.2500%	12.3755%	12.5669%
3.8750%	3.8675%	3.8864%	12.3750%	12.5031%	12.6985%
4.0000%	4.0133%	4.0335%	12.5000%	12.6307%	12.8301%
4.1250%	4.1392%	4.1606%	12.6250%	12.7583%	12.9618%
4.2500%	4.2651%	4.2878%	12.7500%	12.8859%	13.0935%
4.3750%	4.3910%	4.4151%	12.8750%	13.0136%	13.2253%
4.5000%	4.5169%	4.5424%	13.0000%	13.1413%	13.3572%
4.6250%	4.6428%	4.6698%	13.1250%	13.2691%	13.4892%
4.7500%	4.7688%	4.7973%	13.2500%	13.3968%	13.6212%
4.8750%	4.8948%	4.9248%	13.3750%	13.5246%	13.7533%
5.0000%	5.0209%	5.0524%	13.5000%	13.6524%	13.8854%
5.1250%	5.1469%	5.1800%	13.6250%	13.7803%	14.0177%
5.2500%	5.2730%	5.3078%	13.7500%	13.9082%	14.1499%
5.3750%	5.3991%	5.4355%	13.8750%	14.0360%	14.2823%
5.5000%	5.5252%	5.5634%	14.0000%	14.1640%	14.4147%
5.6250%	5.6514%	5.6913%	14.1250%	14.2919%	14.5472%
5.7500%	5.7776%	5.8183%	14.2500%	14.4199%	14.6798%
5.8750%	5.9038%	5.9474%	14.3750%	14.5479%	14.8124%
6.0000%	6.0300%	6.0755%	14.5000%	14.6758%	14.9451%
6.1250%	6.1563%	6.2037%	14.6250%	14.8040%	15.0779%
6.2500%	6.2826%	6.3319%	14.7500%	14.9320%	15.2108%
6.3750%	6.4089%	6.4603%	14.8750%	15.0601%	15.3437%
6.5000%	6.5353%	6.5887%	15.0000%	15.1883%	15.4766%
6.6250%	6.6616%	6.7171%	15.1250%	15.3164%	15.6097%
6.7500%	6.7880%	6.8458%	15.2500%	15.4446%	15.7428%
6.8750%	6.9145%	6.9742%	15.3750%	15.5728%	15.8760%
7.0000%	7.0409%	7.1029%	15.5000%	15.7011%	16.0092%
7.1250%	7.1674%	7.2318%	15.6250%	15.8293%	16.1425%
7.2500%	7.2939%	7.3604%	15.7500%	15.9576%	16.2759%
7.3750%	7.4204%	7.4892%	15.8750%	16.0859%	16.4094%
7.5000%	7.5470%	7.6182%	16.0000%	16.2143%	16.5429%
7.6250%	7.6736%	7.7472%	16.1250%	16.3427%	16.6765%
7.7500%	7.8002%	7.8762%	16.2500%	16.4710%	16.8102%
7.8750%	7.9268%	8.0053%	16.3750%	16.5995%	16.9439%
8.0000%	8.0535%	8.1345%	16.5000%	16.7278%	17.0777%
8.1250%	8.1801%	8.2638%	16.6250%	16.8564%	17.2118%
8.2500%	8.3068%	8.3931%	16.7500%	16.9849%	17.3458%
8.3750%	8.4336%	8.5225%	16.8750%	17.1134%	17.4795%
8.5000%	8.5604%	8.6519%	17.0000%	17.2420%	17.6136%
8.6250%	8.6871%	8.7815%	17.1250%	17.3706%	17.7477%
8.7500%	8.8140%	8.9111%	17.2500%	17.4992%	17.8819%
8.8750%	8.9408%	9.0407%	17.3750%	17.6278%	18.0162%
9.0000%	9.0677%	9.1704%	17.5000%	17.7564%	18.1506%
9.1250%	9.1946%	9.3002%	17.6250%	17.8851%	18.2850%
9.2500%	9.3215%	9.4301%	17.7500%	18.0138%	18.4195%
9.3750%	9.4484%	9.5600%	17.8750%	18.1426%	18.5540%

This is Exhibit "L" to the Affidavit of Visana Wong  
sworn on May 1, 2023



A Commissioner for the taking of affidavits, etc.

LAND  
REGISTRY  
OFFICE #51

58615-0331 (LT)

PREPARED FOR Amy12345  
ON 2023/01/16 AT 14:42:57

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

PROPERTY DESCRIPTION: LT 151-153, 144 PL 723 NORTH ORILLIA; PT LT 145-150 PL 723 NORTH ORILLIA AS IN R01305868; SEVERN

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

2001/12/10

OWNERS' NAMES

2243080 ONTARIO INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2001/12/07 **						
**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: 2001/12/10 **						
RO204275	1965/06/15	BYLAW				C
RO1305868	1996/02/22	TRANSFER		*** COMPLETELY DELETED ***	FLYING "D" OF SEVERN BRIDGE LIMITED	
SC712118	2009/01/14	CERTIFICATE		*** COMPLETELY DELETED *** THE CORPORATION OF THE TOWNSHIP OF SEVERN		
REMARKS: TAX ARREARS - MUNICIPAL ACT, 2001						
SC797160	2010/01/25	TRANSFER		*** COMPLETELY DELETED *** FLYING "D" OF SEVERN BRIDGE LIMITED	1698409 ONTARIO LIMITED	
REMARKS: PLANNING ACT STATEMENTS						
SC798696	2010/02/01	APL (GENERAL)		*** COMPLETELY DELETED *** THE CORPORATION OF THE TOWNSHIP OF SEVERN		
REMARKS: TAX ARREARS CANCELLATION RE: SC712118						
SC905879	2011/06/02	NOTICE OF LEASE		*** COMPLETELY DELETED *** 1698409 ONTARIO LIMITED	ULTRAMAR LTD.	

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.



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REGISTRY  
OFFICE #51

58615-0331 (LT)

PREPARED FOR Amy12345  
ON 2023/01/16 AT 14:42:57

\* 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
SC911753	2011/06/28	TRANSFER		*** COMPLETELY DELETED *** 1698409 ONTARIO LIMITED	2251481 ONTARIO INC.	
	<i>REMARKS: PLANNING ACT STATEMENTS</i>					
SC911754	2011/06/28	CHARGE		*** COMPLETELY DELETED *** 2251481 ONTARIO INC.	BANK OF MONTREAL	
SC911771	2011/06/28	CHARGE		*** COMPLETELY DELETED *** 2251481 ONTARIO INC.	1698409 ONTARIO LIMITED	
SC1053476	2013/04/29	NO ASSG LESSEE INT		*** COMPLETELY DELETED *** ULTRAMAR LTD.	CST CANADA CO.	
	<i>REMARKS: SC905879.</i>					
SC1236446	2015/08/14	TRANSFER	\$2,500,000	2251481 ONTARIO INC.	2243080 ONTARIO INC.	C
SC1236447	2015/08/14	CHARGE		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.	ROYAL BANK OF CANADA	
SC1236454	2015/08/14	CHARGE		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.	2251481 ONTARIO INC	
SC1236918	2015/08/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** 1698409 ONTARIO LIMITED		
	<i>REMARKS: SC911771.</i>					
SC1239124	2015/08/26	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
	<i>REMARKS: SC911754.</i>					
SC1313549	2016/06/20	NOTICE OF LEASE		2243080 ONTARIO INC.	CST CANADA CO.	C
SC1466206	2017/11/03	APL CH NAME INST		CST CANADA CO.	COUCHE-TARD INC.	C
	<i>REMARKS: SC1313549.</i>					
SC1467467	2017/11/08	NO ASSG LESSEE INT		COUCHE-TARD INC.	PARKLAND FUEL CORPORATION	C
	<i>REMARKS: SC1313549.</i>					
SC1551201	2018/10/26	APL (GENERAL)		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.		
	<i>REMARKS: SC905879, SC1053476</i>					

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.

LAND  
REGISTRY  
OFFICE #51

58615-0331 (LT)

PREPARED FOR Amy12345  
ON 2023/01/16 AT 14:42:57

\* 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
SC1551205	2018/10/26	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2251481 ONTARIO INC		
	<i>REMARKS: SC1236454.</i>					
SC1552614	2018/11/01	CHARGE		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.	RATHCLIFFE CAPITAL CORP.	
SC1552615	2018/11/01	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.	RATHCLIFFE CAPITAL CORP.	
	<i>REMARKS: SC1552614</i>					
SC1552696	2018/11/01	POSTPONEMENT		*** COMPLETELY DELETED *** PARKLAND FUEL CORPORATION	RATHCLIFFE CAPITAL CORP.	
	<i>REMARKS: SC1313549, SC1467467 TO SC1552614</i>					
SC1560144	2018/11/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
	<i>REMARKS: SC1236447.</i>					
SC1641015	2019/11/18	CHARGE	\$2,920,000	2243080 ONTARIO INC.	BANK OF MONTREAL	C
SC1641116	2019/11/18	NO ASSGN RENT GEN		2243080 ONTARIO INC.	BANK OF MONTREAL	C
	<i>REMARKS: SC1641015</i>					
SC1641196	2019/11/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** RATHCLIFFE CAPITAL CORP.		
	<i>REMARKS: SC1552614.</i>					



This is Exhibit "M" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

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

yyyy mm dd Page 1 of 1

**Properties**

*PIN* 73466 - 0857 LT *Interest/Estate* Fee Simple  
*Description* PT LTS 37 & 38 RCP 84S DUNNET BEING PART 1 ON 53R20501, PART 2 ON 53R15743 & PT 1 ON 53R12570; S/T S111419;; MUNICIPALITY OF MARKSTAY-WARREN  
*Address* 8824 HIGHWAY 17 EAST  
 WARREN

**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* 2243080 ONTARIO INC.  
*Address for Service* 58 GRAYLEAF DRIVE, STOUFFVILLE,  
 ONTARIO, L4A 1S8  
 I, RASAKONE KAPILAN, 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* BANK OF MONTREAL  
*Address for Service* 6605 Hurontario Street, Suite 300, Mississauga, Ontario L5T 0A4

**Provisions**

*Principal* \$3,100,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* On Demand  
*Interest Rate* Prime + 5%  
*Payments*  
*Interest Adjustment Date*  
*Payment Date* On Demand  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 201607  
*Insurance Amount* Full insurable value  
*Guarantor* Kalyani Kapilan and Rasakone Kapilan

**Signed By**

Rhea Reshma Nanan 920 Derry Road East acting for Signed 2019 11 18  
 Mississauga Chargor(s)  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

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

**Submitted By**

MANN LAW OFFICE 920 Derry Road East 2019 11 18  
 Mississauga  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

**Fees/Taxes/Payment**

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

**BANK OF MONTREAL  
ONTARIO  
STANDARD CHARGE TERMS  
ALL INDEBTEDNESS MORTGAGE  
(COMMERCIAL/FARM)**

Filing Number: 201607

The following set of standard charge terms (together with the schedule attached hereto, the "Standard Charge Terms") shall be deemed to be included in each mortgage or charge in which it is referred to by its filing number as provided in section 9 of the *Land Registration Reform Act*, R.S.O. 1990, except to the extent that the provisions of the Standard Charge Terms are excluded or varied by such mortgage or charge.

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**B. DEFINITIONS**

In this set of Standard Charge Terms and in each Mortgage, the following terms shall have the following meanings:

1. **"Applicable Rate"** means:
  - (a) the applicable interest rate specified by the applicable note or agreement delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee; or
  - (b) if the interest rate referred to in subsection (a) is not so specified, the applicable interest rate specified by the Mortgage.
2. **"Controlling Entity"** means any corporation or other entity which on the date of the Mortgage beneficially owned, directly or indirectly, shares, other securities or other equity interests issued by the Mortgagor or a Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor.
3. **"Default"** means a default referred to in section I.
4. **"Guarantor"** means a person who guaranteed payment of all or any Indebtedness.
5. **"Indebtedness"** means all present and future indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee whether direct or indirect, absolute or contingent, or revolving or non-revolving, whether incurred by the Mortgagor alone or together with any other debtor or debtors and whether incurred pursuant to the provisions of the Mortgage or otherwise including all principal, interest, guarantee liabilities, letter of credit indemnity liabilities, bankers' acceptance indemnity liabilities, fees and expenses now or hereafter owing by the Mortgagor to the Mortgagee.
6. **"Insolvency Proceeding"** means a proceeding commenced under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any other similar statute.
7. **"Lease"** means a lease, offer to lease or other similar agreement of or with respect to the Mortgaged Land in favour of, or held by the Mortgagor as tenant and referred to in the Mortgage, as such lease, offer to lease or other similar agreement is amended or replaced from time to time.
8. **"Mortgage"** means the applicable registered mortgage or charge (as amended from time to time) in which this set of Standard Charge Terms is incorporated by reference to its filing number (including all Schedules thereto), includes any such mortgage or charge registered electronically or otherwise and includes such mortgage or charge whether or not any provision of the Standard Charge Terms is excluded or varied.
9. **"Mortgaged Land"** means the real property described in the Mortgage, all appurtenances thereto and all estates and interests therein, and includes all buildings, plant, machinery, crops, erections and improvements, fixed or otherwise, present or future, built, grown, placed or put thereon including all fences, heating equipment, plumbing equipment, antennae, radiators, mirrors, air-conditioning equipment, ventilating equipment, fire alarm and protective systems, lighting and lighting fixtures, hay racks, barn fixtures, milking machine equipment, water tanks, pumps and windmills, water bowls and pipes, feed boxes, litter carriers and tracks, mobile homes affixed to the real property, furnaces, boilers, oil burners, stokers, water heating equipment, cooking and refrigeration equipment, window blinds, floor coverings, storm windows, storm doors, window screens, door screens, shutters and awnings, all apparatus and equipment appurtenant thereto, and all other fixtures and accessions of any kind or nature.
10. **"Mortgagee"** means the mortgagee or chargee referred to in the Mortgage and its successors and assigns.
11. **"Mortgagee's Prime Rate"** means the fluctuating annual rate of interest determined by Bank of Montreal from time to time as the reference rate it will use to determine rates of

interest payable by borrowers from Bank of Montreal of Canadian dollar loans made in Canada and designated by Bank of Montreal as its prime rate.

12. "Mortgagor" means the person or persons identified as the mortgagor or chargor in the Mortgage and his, her, its or their respective heirs, executors, administrators, personal representatives, successors and assigns.
13. "Other Encumbrances" means all statutory liens, construction liens, mechanics' liens, builders' liens, other liens, executions, mortgages, charges, and other encumbrances which charge or otherwise affect or could affect the Mortgaged Land but excludes the Mortgage.
14. "Permitted Prior Mortgage" means a mortgage or charge of the Mortgaged Land which ranks in priority to the Mortgage and which the Mortgagee has approved in writing.
15. "Receiver" means a receiver, receiver and manager or other similar person.
16. "Schedule" means a schedule to the Mortgage.
17. "Taxes" means all taxes, rates and assessments, municipal, provincial, federal or otherwise, with respect to the Mortgaged Land.

### **C. OPERATION OF THE MORTGAGE**

1. *Charge of Mortgaged Land.* In consideration of other valuable consideration and a loan advance made or other credit extended by the Mortgagee to the Mortgagor (the receipt and sufficiency of which are acknowledged by the Mortgagor), the Mortgagor hereby mortgages and charges the Mortgaged Land to and in favour of the Mortgagee as security for payment to the Mortgagee of all Indebtedness and as security for the observance and performance by the Mortgagor of all other obligations of the Mortgagor pursuant to or in respect of the Mortgage or the Standard Charge Terms. Subject to the provisions of the Mortgage, the Mortgagor releases to the Mortgagee, all the Mortgagor's claims upon the Mortgaged Land.

2. *Repayment of Principal on Demand.* The Mortgagor shall pay all Indebtedness to the Mortgagee on demand by the Mortgagee for payment.

3. *Restriction on Voluntary Prepayments.* The Mortgagor shall not be entitled to prepay voluntarily any principal amount (including any principal amount owing with respect to a revolving line of credit or a demand loan) except to the extent agreed to by the Mortgagee in writing.

4. *Calculation and Payment of Interest.* The Mortgagor shall pay to the Mortgagee when due interest payable by the Mortgagor on each part of the Indebtedness (including interest on overdue interest) at the Applicable Rate which applies to such part of the Indebtedness. Interest shall accrue on each part of the Indebtedness from the date such part is incurred to the date such part is paid to the Mortgagee in full. Interest shall, both before and after Default, be calculated and payable monthly not in advance on the first day of each month unless otherwise agreed by the Mortgagor and the Mortgagee in writing. Whenever there is more than one Applicable Rate, the Applicable Rate referred to in sections D, E, G, J and K shall, unless otherwise agreed by the Mortgagee in writing, be the higher or highest of such Applicable Rates.

5. *Continuing Security.* The Mortgage shall be continuing security in favour of the Mortgagee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is:

- (a) any change in the nature, state or form of any account between the Mortgagor and the Mortgagee;
- (b) any new advance by the Mortgagee to the Mortgagor, whether by way of loan, discount, the drawing of a cheque against an account of the Mortgagor or otherwise;
- (c) any discount or acceptance by the Mortgagee from or for the Mortgagor of any note, bill of exchange or other negotiable instrument or commercial paper;
- (d) any credit of any amount to any account of the Mortgagor by reason of deposit of moneys or otherwise; or



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- (e) any renewal, replacement, substitution or alteration of any note, bill of exchange or other negotiable instrument or other commercial paper from time to time held by the Mortgagee or any reduction, satisfaction, payment, release or discharge thereof or of any other security therefor.

Nothing herein shall prejudice any of the Mortgagee's rights pursuant to or in respect of any note, bill of exchange, other agreement or other security now or hereafter held by the Mortgagee.

6. *Divided Parts of Mortgaged Land.* Every part of the Mortgaged Land into which the Mortgaged Land may hereafter be divided by a plan of subdivision or otherwise shall continue to be charged with payment of all Indebtedness but the Mortgagee may discharge any part or parts of the Mortgaged Land with or without sufficient consideration and without releasing the Mortgagor from the Mortgage and no person shall have any right to require the Indebtedness to be apportioned between or among such parts.

7. *Application of Amounts Paid.* Any and all amounts received by the Mortgagee with respect to Indebtedness before a Default shall, unless otherwise specified by the Mortgagee in writing, be applied firstly to reduce compound interest, secondly to reduce interest (other than compound interest), thirdly to reduce principal and fourthly to reduce any other Indebtedness. Any and all amounts received by the Mortgagee after a Default (including any and all amounts received from any security held by the Mortgagee) shall be applied by the Mortgagee in the manner determined by the Mortgagee in its sole discretion.

8. *Discharge of Mortgage.* If the Mortgagor shall duly pay to the Mortgagee all Indebtedness and the Mortgagee is not then obligated to extend any credit to the Mortgagor, the Mortgagor may request from the Mortgagee a discharge of the Mortgage and, upon delivery by the Mortgagee to the Mortgagor of a discharge of the Mortgage, the Mortgage shall terminate and cease to operate; provided that the Mortgage shall not terminate or cease to operate while any Indebtedness remains unpaid or while the Mortgagee is obligated to extend any credit to the Mortgagor only because, at any prior time or times, all Indebtedness had been paid in full. The Mortgagee shall not be obligated to deliver any partial discharge of the Mortgage.

9. *Consolidation of Mortgages.* To the extent permitted by law, the doctrine of consolidation shall apply with respect to *inter alia* the Mortgage.

#### **D. COVENANTS, REPRESENTATIONS AND WARRANTIES OF MORTGAGOR**

1. *Payment of Principal and Interest.* The Mortgagor shall pay to the Mortgagee when due all Indebtedness without deduction or set-off of any kind. The Mortgagor expressly agrees not to fail to pay any Indebtedness when due and not to reduce the amount of any due payment of any Indebtedness as a result, or in respect of any existing or future claim by the Mortgagor against the Mortgagee or against any other person whether such claim relates to any or all Indebtedness, the Mortgage, any other agreement between the Mortgagor and the Mortgagee, any other transaction or any other agreement or matter whatsoever.

2. *Observance and Performance of Other Obligations.* The Mortgagor shall duly and punctually observe and perform all the Mortgagor's existing and future obligations pursuant to the Mortgage and all the Mortgagor's existing and future obligations pursuant to any and all other existing and future agreements delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee.

3. *Payment of Taxes.* The Mortgagor shall promptly pay all Taxes as they become due and, within one month after the date fixed for the payment of the last installment of Taxes in each year, shall deliver to the Mortgagee a receipted tax bill showing payment in full of all such Taxes payable during such year. If the Mortgagor fails to pay any Taxes as they become due, the Mortgagee may, at its option, pay the whole or any part of such Taxes. The amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

4. *Good Title and Free From Encumbrances.* The Mortgagor represents and warrants to the Mortgagee that the Mortgagor is the legal and beneficial owner of, and has good, absolute and indefeasible title and estate in fee simple to the Mortgaged Land (or the leasehold interest therein

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if section E applies), free of any Other Encumbrances except any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears, public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land or other encumbrances consented to by the Mortgagee in writing, and free of any reservations, limitations, provisos or conditions whatsoever except those contained in the original grant thereof, if any, from the Crown; the Mortgagor has good right, full power and lawful and absolute authority to mortgage and charge the Mortgaged Land (or, if section E applies, its leasehold interest therein) to the Mortgagee in accordance with the provisions of the Mortgage.

5. *Insurance.* The Mortgagor shall maintain, in form, substance and amount and with insurers satisfactory to the Mortgagee, all insurance required by the Mortgagee from time to time with respect to the Mortgaged Land (including boiler, property, public liability, rental, environmental and business interruption insurance and insurance covering all crops grown on the Mortgaged Land insuring such crops against damage by hail and against perils covered by all-risk crop insurance). The Mortgagor shall deliver to the Mortgagee, from time to time at the Mortgagee's request, certificates of insurance and certified copies of such insurance policies showing all loss payable to the Mortgagee as first mortgagee (subject to the interests of the holder of any Permitted Prior Mortgage) and loss payee and containing a mortgage clause satisfactory to the Mortgagee. As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns to the Mortgagee all the Mortgagor's present and future interests in and to all such present and future insurance policies and all proceeds therefrom. The Mortgagor shall not repair any damage using proceeds of any insurance without the Mortgagee's prior written consent and the Mortgagee may, at its discretion, apply any and all insurance proceeds to reduce Indebtedness. If the Mortgagor fails to maintain insurance required by the Mortgagee, the Mortgagee may arrange insurance with respect to the Mortgaged Land, the Mortgagor shall pay to the Mortgagee, on demand by the Mortgagee, all amounts paid by the Mortgagee to effect such insurance and the Mortgagor shall pay interest thereon at the Applicable Rate; and all such amounts owing by the Mortgagor shall be part of the Indebtedness and secured by the Mortgage. The Mortgagor shall, forthwith on the occurrence of any loss or damage, furnish at the Mortgagor's own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. Any insurance monies received may, at the option of the Mortgagee, to the extent permitted by law, be applied to rebuild or repair the premises on the Mortgaged Land or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Mortgaged Land, or be applied to pay Indebtedness whether or not then due, despite any law, equity or statute to the contrary. The Mortgagor, to the extent permitted by law, hereby waives any statutory or other right it may have to require any insurance proceeds to be applied in any particular manner.

6. *Payment of Other Encumbrances.* The Mortgagor shall promptly pay when due all amounts now or hereafter owing pursuant to or with respect to any Other Encumbrances and shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any Other Encumbrances when due, the Mortgagee may, at its option, pay the whole or any part of any present or future Other Encumbrances. The amounts so paid shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. In the event the Mortgagee pays any Other Encumbrance, it shall be entitled to all the equities, rights and securities of the person or persons so paid and to obtain an assignment of such Other Encumbrance so paid and of any right to payment and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit to do so.

7. *Payment of Expenses.* The Mortgagor shall, on demand by the Mortgagee, pay all costs, charges, expenses (including legal fees as between a solicitor and his or her own client), commissions and fees which may be incurred by the Mortgagee in negotiating any credit or credits secured by the Mortgage, investigating the title to the Mortgaged Land, preparing and

registering the Mortgage and other documents, administering any credit or credits extended by the Mortgagee to the Mortgagor, inspecting the Mortgaged Land, collecting any Indebtedness, taking any proceeding in connection with or to collect any Indebtedness, taking and maintaining possession of the Mortgaged Land, maintaining and repairing the Mortgaged Land, and taking any other enforcement proceedings. The Mortgagor shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any such amounts as they become due, the Mortgagee may, at its option, pay any such amounts and the amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the

Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

8. *Compliance with Laws.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, the Mortgagor has complied with, and the Mortgagor agrees that it shall comply with all laws, by-laws and regulations affecting the Mortgaged Land and all orders and decisions of any governmental authority, governmental agency or court having jurisdiction affecting the Mortgaged Land (including all such laws, by-laws, regulations, orders and decisions relating to the environment or to residential or other property, including those relating to the amount of rent charged by the Mortgagor with respect to any part of the Mortgaged Land). The Mortgagor shall, at the Mortgagor's expense, promptly and in good and workmanlike manner make all improvements, alterations, clean-ups and repairs and effect any change in use that may be required from time to time to so comply.

9. *Maintain in Good Repair and Avoid Waste.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, all buildings, erections, equipment, machinery and improvements on the Mortgaged Land are in good condition and repair and that all noxious weeds have been eradicated from the Mortgaged Land. The Mortgagor shall maintain all buildings, erections, equipment, machinery and improvements on the Mortgaged Land in good condition and repair to the satisfaction of the Mortgagee, shall eradicate all noxious weeds from the Mortgaged Land and shall not permit waste to be committed or suffered on the Mortgaged Land or any part thereof. The Mortgagee or its agent shall be entitled, from time to time, to enter on the Mortgaged Land to inspect the Mortgaged Land and to undertake any tests (including intrusive environmental tests) required by the Mortgagee. If the Mortgagor neglects to keep the Mortgaged Land or any buildings, erections, equipment, machinery or improvements on the Mortgaged Land in good condition and repair, fails to eradicate noxious weeds from the Mortgaged Land or commits or permits any act of waste on the Mortgaged Land (as to which the Mortgagee shall be the sole judge), or fails to comply with section D.8., the Mortgagee or its agent may enter upon the Mortgaged Land and make such repairs and undertake such work and take such action as the Mortgagee deems necessary. All costs of such inspection, testing, repairs, work and action shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

10. *Environmental Representation and Indemnity.* The Mortgagor represents and warrants to the Mortgagee that there has not occurred, after the date the Mortgagor acquired an interest in the Mortgaged Land, any spill, leak, contamination or other material environmental problem affecting the Mortgaged Land or any part thereof (other than any such spill, leak, contamination or other environmental problem which has been remedied). The Mortgagor shall indemnify and save harmless the Mortgagee and any Receiver of the Mortgaged Land from any and all expenses and damages incurred or suffered by the Mortgagee or such Receiver as a result, or in respect of any spill, leak, contamination or other environmental problem affecting the Mortgaged Land or any part thereof. This indemnity shall survive the payment of all Indebtedness and the satisfaction, discharge or enforcement of the Mortgage or any other security.

11. *No Alterations or Change in Use.* The Mortgagor shall not, without the prior written consent of the Mortgagee, make, or permit to be made, any alterations or additions to the Mortgaged Land or any building thereon or change the Mortgagor's use of the Mortgaged Land or any building thereon and the Mortgagor shall not allow the Mortgaged Land to be unoccupied or unused.

12. *No Unapproved Charge or Encumbrance by Mortgagor.* The Mortgagor shall not, without the Mortgagee's prior written consent, mortgage, charge, lien or encumber the Mortgaged Land or any part thereof or any interest therein or permit any Other Encumbrance to remain thereon except for any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears and public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land.

13. *Change in Ownership or Spousal Status.* Upon any change or event affecting any of the following, namely:

- (a) the spousal status of the Mortgagor, if the Mortgagor is an individual;
- (b) the qualification of the Mortgaged Land as a matrimonial home; or

(c) the ownership of the Mortgaged Land,

the Mortgagor shall forthwith advise the Mortgagee accordingly in writing and furnish the Mortgagee with full particulars thereof, the intention being that the Mortgagee shall be kept fully informed of the names and addresses of the owner or owners of the Mortgaged Land and of any spouse who is not an owner but who may have a legal right of possession of or interest in the Mortgaged Land. The Mortgagor shall furnish the Mortgagee with such evidence in connection with any of subsections (a), (b) and (c) of this provision as the Mortgagee may from time to time request.

14. *Expropriation.* If the Mortgaged Land or any part thereof is condemned or expropriated to an extent which, in the Mortgagee's sole discretion, materially affects the Mortgagee's security, all Indebtedness shall, at the option of the Mortgagee, be deemed to have become due and payable on the day before such condemnation or expropriation, and interest shall continue to accrue thereon, at the Applicable Rate, until the Mortgagee has been paid all Indebtedness. The Mortgagor shall pay to the Mortgagee from any condemnation or expropriation proceeds the full amount thereof, to be applied by the Mortgagee to reduce Indebtedness.

15. *Power of Attorney.* The Mortgagor hereby irrevocably appoints the Mortgagee or any Receiver appointed by the Mortgagee under or pursuant to the Mortgage or by any order of a court of competent jurisdiction, as the Mortgagor's attorney for all purposes to take any and all action deemed appropriate by the Mortgagee or such Receiver after the occurrence of a Default.

16. *Further Assurances.* The Mortgagor shall (and shall cause each person having or claiming to have an estate, right, title or interest in or to the Mortgaged Land to) at any time and from time to time, at the Mortgagee's request, do, execute and deliver or cause to be made, executed and delivered to the Mortgagee such further and other reasonable acts, deeds, conveyances, charges and assurances as may be required by the Mortgagee to fully and effectually carry out the intention and meaning of the Mortgage and the provisions included in the Mortgage and the reasonable cost of such further assurances shall be part of the Indebtedness and secured by the Mortgage.

17. *Business Purposes Only.* The Mortgagor shall use only for business purposes any amounts loaned by the Mortgagee to the Mortgagor and secured by the Mortgage.

18. *No Registration of Condominiums or Strata Title Developments.* The Mortgagor shall not, without the Mortgagee's prior written consent, register any condominium or strata title development with respect to all or part of the Mortgaged Land or any declaration or description with respect thereto and the Mortgagee shall not have any obligation to provide such consent.

19. *Delivery of Information.* The Mortgagor shall deliver to the Mortgagee, promptly at the Mortgagee's request, all financial statements and other information as the Mortgagee may request from time to time with respect to the Mortgagor, a Guarantor or the Mortgaged Land.

20. *No Litigation or Other Proceedings.* The Mortgagor represents and warrants that, as at the date of the Mortgage, there is no application, litigation, proceeding or investigation outstanding or, to the Mortgagor's knowledge, pending or threatened, against the Mortgagor or any Guarantor or with respect to the Mortgaged Land or any part thereof including any application, litigation, proceeding or investigation in respect of residential or other property by-laws or regulations. The Mortgagor shall notify the Mortgagee in writing of any such application, litigation, proceeding or investigation commenced after the date of the Mortgage, promptly after such commencement.

21. *Mortgagor a Canadian Resident.* The Mortgagor represents and warrants that, as at the date of the Mortgage, it is not a non-resident of Canada for purposes of the Income Tax Act and agrees that the Mortgagor shall not, without the Mortgagee's prior written consent, become a non-resident of Canada.

22. *Good Management of Mortgaged Land.* The Mortgagor shall at all times cause the Mortgaged Land to be managed in a commercially reasonable manner by the Mortgagor or by a property manager satisfactory to the Mortgagee, acting reasonably.

23. *Abutting Real Property.* The Mortgagor shall not, without the Mortgagee's prior written consent, acquire any real property which abuts the Mortgaged Land. If the Mortgagee gives such consent, the Mortgagor shall, at the Mortgagee's request, deliver to the Mortgagee a mortgage or

charge of such abutting real property and of the Mortgaged Land in form and substance satisfactory to the Mortgagee.

**24. Deemed Covenants Excluded.** In accordance with subsection 7(3) of the *Land Registration Reform Act*, the covenants deemed to be included in a mortgage or charge by subsection 7(1) of such statute are expressly excluded from the Mortgage.

**25. Defeasance Provisions Excluded.** The provisions relating to defeasance in subsection 6(2) of the *Land Registration Reform Act* are expressly excluded from the Mortgage.

#### **E. MORTGAGE OF LEASEHOLD INTEREST**

If the Mortgagor is not the owner of the Mortgaged Land in fee simple but is the owner of a leasehold interest in the Mortgaged Land as tenant, or as an assignee or successor of a tenant, pursuant to a Lease, the following provisions shall apply:

**1. Representations and Warranties.** The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage:

- (a) the Lease is a good, valid and subsisting lease and has not been surrendered, forfeited or terminated or, except as specified in the Mortgage, amended, and the rents, covenants and provisions therein reserved and contained have been duly paid, performed and observed by the Mortgagor up to the date of the Mortgage; and
- (b) the Mortgagor has good right and full, lawful and absolute authority to charge, mortgage, demise and sublet the Mortgaged Land in accordance with the Mortgage and any consent thereto required of the applicable landlord has been obtained.

**2. Covenants Relating to Lease.** The Mortgagor agrees with the Mortgagee as follows:

- (a) The Mortgagor shall at all times fully perform and comply with all the obligations of the Mortgagor under or with respect to the Lease, or imposed on, assumed by or agreed to by the Mortgagor pursuant to any Other Encumbrances and, if the Mortgagor fails to do so, the Mortgagee may (but shall not be obliged to) take any action the Mortgagee deems necessary or desirable to prevent or to cure any default by the Mortgagor in the performance of or compliance with any such obligations. The Mortgagor shall promptly provide to the Mortgagee a copy of any notice the Mortgagor receives from the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person under or relating to the Lease of the Mortgaged Land. Upon receipt by the Mortgagee from the Mortgagor, the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person of any notice, including a notice of default, the Mortgagee may rely thereon and take any action with respect to such notice as may be required in the Mortgagee's sole discretion, including to cure a default even though the existence of such default or the nature thereof may be questioned or denied by or on behalf of the Mortgagor and the Mortgagee shall have the absolute and immediate right to enter in and upon the Mortgaged Land or any part thereof to such extent and as often as the Mortgagee, in its sole discretion deems necessary or desirable, in order to prevent or to cure any such default. The Mortgagee may pay and expend such amounts as the Mortgagee in its sole discretion deems necessary for any such purpose, and the amounts so paid shall be payable by the Mortgagor to the Mortgagee on demand by the Mortgagee with interest thereon at the Applicable Rate, and shall be a part of the Indebtedness and be secured by the Mortgage.
- (b) If the Mortgage is outstanding at the expiration of the term of the Lease and the Mortgagor refuses or neglects to exercise the Mortgagor's right, if any, to renew or extend the term of the Lease or refuses to pay any fees, costs, charges or expenses payable upon any such renewal or extension, the Mortgagee may effect such renewal or extension in the name of the Mortgagor or otherwise, and every such renewed or extended Lease shall remain and be mortgaged and charged pursuant to the Mortgage in accordance with the Mortgage.

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- (c) From and after the execution and delivery of the Mortgage, the Mortgagor shall stand possessed of the Mortgaged Land for the remainder of the Lease in trust for the Mortgagee, and shall exercise any right to renew or extend the term of the Lease or to assign the Lease as the Mortgagee may direct, but subject to the Mortgagor's right of redemption under the Mortgage. The Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagor's attorney for and on behalf of the Mortgagor to exercise any such renewal or extension right and to assign the Lease and convey the leasehold interest in the Mortgaged Land and the reversion thereof as the Mortgagee shall at any time direct after the occurrence of a Default and, in particular, upon any sale made by the Mortgagee under any power of sale contained in the Mortgage or granted by statute to assign the Lease and convey the Mortgagor's leasehold interest in the Mortgaged Land and the reversion to a purchaser. The Mortgagee may at any time remove the Mortgagor or any other person from being a trustee of the Lease under the above declaration of trust and appoint a new trustee or trustees.
- (d) The Mortgagor shall not surrender, terminate, amend or modify the Lease or agree to do so without the prior written consent of the Mortgagee, which the Mortgagee may withhold in its absolute discretion. No release or forbearance of any of the Mortgagor's obligations under the Lease or under any Other Encumbrance shall release the Mortgagor from any of the Mortgagor's obligations under the Mortgage.
- (e) Unless the Mortgagee expressly consents in writing, the title in fee simple to the Mortgaged Land and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates by purchase or otherwise.

3. *Last Day of Term Excepted.* Despite any other provision of the Mortgage, the last day of the term of the Lease and of any renewal or extension thereof and of any agreement therefor now held or hereafter acquired by the Mortgagor shall be excepted out of the mortgage, charge and demise contained in the Mortgage.

4. *Charge by way of Sublease.* Despite section C.1. and any other provision of the Mortgage (except section E.3.), the Mortgagor mortgages and charges, by way of sublease, the Mortgagor's leasehold interest in the Mortgaged Land pursuant to the Lease, the mortgages and charges contained in the Mortgage shall be by way of sublease and the Mortgagee shall not have any obligation or liability to the landlord or any other person pursuant to or in respect of the Lease.

5. *Leasehold Interests.* Wherever any reference is made in the Mortgage to any right of the Mortgagee to sell, transfer, assign, lease, sublease, alienate or otherwise deal with the Mortgaged Land, such reference shall be deemed, subject to section E.3., to relate to the existing and future rights and interests of the Mortgagor in the Mortgaged Land pursuant to the Lease.

#### **F. ASSIGNMENT OF LEASES AND RENTS**

If the Mortgagor or any predecessor of the Mortgagor grants or has granted any lease, offer to lease, tenancy agreement or other similar agreement of all or any part of the Mortgaged Land as landlord, the following provisions shall apply:

1. *Assignment.* As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee, all the Mortgagor's rights and interests as landlord in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Mortgaged Land, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Mortgaged Land or any building, improvement, fixture or part thereof forming part of the Mortgaged Land.
2. *Separate Assignments.* The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Mortgagor to the Mortgagee pursuant to section F.1. shall be deemed to be a separate assignment so that the Mortgagee in its discretion may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

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3. *Collection by Mortgagor before Default.* Until there occurs a Default, the Mortgagor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time in accordance with sound business practice.

4. *No Liability of Mortgagee and Indemnity by Mortgagor.* Nothing herein shall obligate the Mortgagee to assume or perform (and nothing herein shall impose on the Mortgagee) any liability or obligation of the Mortgagor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise and the Mortgagor hereby indemnifies and saves harmless the Mortgagee from any and all claims with respect thereto, provided that the Mortgagee may, at its sole option, assume or perform any such obligations as it considers necessary or desirable.

5. *Re-assignment.* The Mortgagee may, at any time without further request or agreement by the Mortgagor, reassign to the Mortgagor, or the Mortgagor's heirs, administrators, successors or assigns, any or all of the collateral referred to in section F.1.

6. *Application by Mortgagee.* The Mortgagee's obligations with respect to any amount collected by the Mortgagee shall be discharged by the application of such amount to reduce Indebtedness.

7. *Not Mortgagee in Possession.* Nothing contained herein shall have the effect of making the Mortgagee a mortgagee in possession of the Mortgaged Land.

#### G. CONDOMINIUM OR STRATA TITLE DEVELOPMENT PROVISIONS

If the Mortgaged Land is or includes one or more condominium units or strata title units, the following provisions shall apply:

1. *Compliance with Requirements.* The Mortgagor shall observe and perform each of the covenants and provisions required to be observed and performed pursuant to the Mortgage, all applicable statutes governing or affecting condominiums or strata title developments, and the declaration, description, by-laws and rules, as amended from time to time, of the applicable condominium corporation or strata corporation.

2. *Common Expense Payments.* The Mortgagor shall pay promptly when due any and all unpaid condominium or strata development fees, common expenses, common element expenses, assessments, levies, instalments, payments or any other amounts due to the applicable condominium corporation or strata corporation or any agent thereof by the Mortgagor and, at the Mortgagee's request, deliver to the Mortgagee evidence of the payment thereof.

3. *Right of Mortgagee to Pay.* If the Mortgagor does not pay when due any condominium or strata development fees, common expenses or other amounts referred to in section G.2., the Mortgagee may (but shall not be obliged to) pay such amounts, the Mortgagor shall forthwith pay such amounts to the Mortgagee with interest thereon at the Applicable Rate, and all such amounts owing by the Mortgagor to the Mortgagee shall be a part of the Indebtedness and secured by the Mortgage.

4. *Voiting by Mortgagee.* The Mortgagor hereby irrevocably authorizes the Mortgagee to exercise the rights of the Mortgagor as an owner of the Mortgaged Land to vote or to consent in all matters relating to the affairs of the condominium corporation or strata corporation or arising under applicable law or the declaration or by-laws of the condominium or strata corporation, provided that:

- (a) in any case where the Mortgagee is entitled to receive and does receive notice of a meeting of owners, the Mortgagee may notify the condominium or strata corporation and the Mortgagor of its intention to exercise the right of the owner to vote or to consent at such meeting at least two days before the date specified in the notice for the meeting, failing which the Mortgagor may exercise such right to vote or consent at such meeting;
- (b) the Mortgagee shall not, by virtue of the giving to the Mortgagee of the right to vote or consent, be under any obligation to vote or consent or to protect the interests

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of the Mortgagor, and the Mortgagee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and

- (c) nothing herein contained, including the exercise by the Mortgagee of the right to vote or consent, shall constitute the Mortgagee a mortgagee in possession.

#### H. MORTGAGE AS SECURITY FOR A GUARANTEE

If the Mortgagor has delivered to the Mortgagee or now or hereafter delivers to the Mortgagee a guarantee or guarantees of payment to the Mortgagee of indebtedness or liability of another or others, the Indebtedness shall include all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagees pursuant to such guarantee or guarantees, whether direct or indirect, absolute or contingent, and the Mortgage shall secure payment of all such indebtedness and liability of the Mortgagor pursuant to such guarantee or guarantees in addition to all other Indebtedness. If any such guarantee is increased or otherwise amended, the Mortgage shall also secure payment of all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee as increased or otherwise amended.

#### I. DEFAULT

The Mortgagor shall be in default of the Mortgage and a Default shall occur pursuant to the Mortgage if:

1. the Mortgagor fails to pay any Indebtedness when due;
2. the Mortgagor or a Guarantor fails to comply with any obligation of the Mortgagor or the Guarantor pursuant to or in respect of the Mortgage or any existing or future note, instrument or agreement delivered by the Mortgagor and the Guarantors (or any of them) to the Mortgagee or between the Mortgagor and the Guarantors (or any of them) and the Mortgagee;
3. the Mortgagor fails to comply with any obligation of the Mortgagor pursuant to or in respect of any Permitted Prior Mortgage or any Other Encumbrance;
4. any representation or warranty made by the Mortgagor or a Guarantor in the Mortgage, any agreement between the Mortgagor and the Guarantors (or any of them) and the Mortgagee, or any loan or credit application made in connection with any Indebtedness was untrue when made;
5. a Receiver is appointed of any asset of the Mortgagor or of a Guarantor;
6. any construction lien, mechanics' lien or builders' lien is registered against all or any part of the Mortgaged Land and is not discharged within seven days after a request by the Mortgagee that such lien be discharged;
7. all or any part of the Mortgaged Land is condemned or expropriated;
8. the Mortgagor or a Guarantor becomes bankrupt or insolvent;
9. a petition in bankruptcy is filed against the Mortgagor or a Guarantor;
10. the Mortgagor or a Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
11. the Mortgagor or a Guarantor makes an application as a debtor in any Insolvency Proceeding or any other person makes an application against the Mortgagor or a Guarantor in any Insolvency Proceeding;
12. the Mortgagor sells, transfers or disposes of in any other manner the Mortgaged Land, any part thereof or any interest therein (unless the Mortgagee has approved in writing such sale, transfer or other disposition);
13. an execution, judgment or order of execution is filed or made against the Mortgaged Land or any part thereof and remains unsatisfied for a period of ten days;



14. the Mortgagor fails to pay when due any amount owing by the Mortgagor to the applicable condominium corporation or strata corporation or any agent thereof referred to in section G.2.; or
15. the Mortgagor or a Guarantor is not an individual and a change in control of the Mortgagor or such Guarantor occurs without the prior written consent of the Mortgagee; for the purposes hereof, a change in control of the Mortgagor or a Guarantor shall be deemed to occur if there occurs one or more sales, transfers or other dispositions of the beneficial ownership existing on the date of the Mortgage in the aggregate of:
  - (a) shares, other securities or other equity interests issued by the Mortgagor or such Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor; or
  - (b) shares, other securities or equity interests issued by any Controlling Entity which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by such Controlling Entity.

#### **J. REMEDIES OF MORTGAGEE**

1. *Acceleration and Termination of Obligation to Extend Credit.* Without prejudice to any right of the Mortgagee to demand at any time payment by the Mortgagor of any and all Indebtedness, upon the occurrence of a Default all Indebtedness (or any part thereof determined by the Mortgagee) shall, at the Mortgagee's option, forthwith become due and payable, the Mortgage shall become enforceable and the Mortgagee shall not be obligated to extend any further credit to the Mortgagor.

2. *Right of Entry.* Upon the occurrence of a Default, the Mortgagee may, at any time or times without the concurrence of any person, enter upon, take and maintain possession of the Mortgaged Land, inspect, complete the construction of, repair or maintain any buildings or other improvements thereon, lease, collect the rents, profits and other amounts derived from the Mortgaged Land and manage the Mortgaged Land as the Mortgagee may deem fit without hindrance or interruption by the Mortgagor or any other person, and all reasonable costs, charges and expenses, including legal fees on a solicitor and his or her own client basis, and disbursements, commissions and allowances for the time and services of any employees of the Mortgagee or any agent of the Mortgagee or other persons appointed for any such purpose shall be forthwith payable by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. Upon the occurrence of a Default, the Mortgagee may also enforce its security against all crops growing on the Mortgaged Land, the Mortgagee may, at any time or times without the concurrence of any person, enter upon the Mortgaged Land for the purpose of cutting, harvesting and removing such crops and for otherwise farming and working the Mortgaged Land, the Mortgagee may bring on the Mortgaged Land all machines, equipment and instruments necessary for such purposes, and the Mortgagee may use all yards, barns, granaries, grain bins or all other improvements and equipment located on the Mortgaged Land to carry out any of such activities.

3. *Sale.* Upon the occurrence of a Default which continues for at least fifteen days, the Mortgagee may, on at least thirty-five days' notice, sell the Mortgaged Land or any part or parts thereof, in accordance with the following provisions:

- (a) notice shall be given to such persons and in such manner and form and within such time as provided by law; provided that, in the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice may be effectually given by leaving it with a person on the Mortgaged Land, if occupied, or by placing the same on some portion thereof, if unoccupied or, at the option of the Mortgagee, by mailing it by registered mail in a notice or letter addressed to the Mortgagor at the Mortgagor's last known address, or by publishing it once in a newspaper published in the area or region in which the Mortgaged Land is situated;

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- (b) such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under any disability;
- (c) sale of the Mortgaged Land may be by public auction or private sale or partly by one and partly by the other, for such price or prices as can reasonably be obtained therefor and on such terms as to credit or otherwise and with such conditions of sale and stipulations as to title or evidence of title or otherwise as the Mortgagee in its sole discretion shall deem appropriate;
- (d) in the event of any sale on credit or for part cash and part credit, the Mortgagee shall not be accountable for or charged with any moneys until actually received;
- (e) the Mortgagee may rescind or vary any contract of sale and may buy in and re-sell the Mortgaged Land or any part thereof without being answerable for any loss occasioned thereby;
- (f) the Mortgagee may sell all or any part of the buildings, fixtures, machinery, equipment, crops and standing or fallen trees separately from the Mortgaged Land and the purchaser shall have all necessary access to the Mortgaged Land for the purposes of severing, cutting and removal; and
- (g) subject to compliance with law, sales may be made from time to time of any part or parts of the Mortgaged Land to satisfy any part or parts of the Indebtedness then owing to the Mortgagee leaving the remaining outstanding Indebtedness secured by the Mortgage as a charge of the remainder of the Mortgaged Land.

4. *Sale or Lease.* The following shall apply with respect to any sale or lease by the Mortgagee, its agent or any Receiver of all or part of the Mortgaged Land after the occurrence of a Default:

- (a) no purchaser or lessee shall be bound to enquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety and no lack of default or lack of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease;
- (b) the Mortgagee may sell or lease all or part of the Mortgaged Land without entering into actual possession of the Mortgaged Land and, when it desires to take possession, it may break locks and bolts and while in possession shall only be accountable for moneys actually received by it;
- (c) the Mortgagor hereby appoints the Mortgagee as the Mortgagor's true and lawful attorney and agent to make application under any statute for consent to sever, sell or lease part or parts of the Mortgaged Land and to do all things and execute all documents to effectually complete any such severance, sale or lease;
- (d) the Mortgagee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending;
- (e) the Mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale of the Mortgaged Land unless such loss is caused by the Mortgagee's willful misconduct; and
- (f) no sale, leasing or other dealing by the Mortgagee with the Mortgaged Land or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of any Indebtedness.

5. *Attornment.* To the extent the Mortgaged Land or any part thereof is not a residential premises so as to be subject to the provisions of the applicable statute governing residential tenancies, the Mortgagor hereby attorns to and becomes a tenant of such Mortgaged Land to the Mortgagee from year to year from the date of the execution of the Mortgage until the Mortgage is discharged at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the Indebtedness, the legal relation of landlord and tenant being hereby constituted between the Mortgagee and the Mortgagor in regard to the Mortgaged Land. The Mortgagor agrees that neither

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the existence of this provision nor anything done by virtue hereof shall impose any obligation on the Mortgagee or render the Mortgagee a mortgagee in possession or accountable for any moneys except moneys actually received by the Mortgagee and the Mortgagee may, upon the occurrence of any Default, enter on the Mortgaged Land and terminate the tenancy hereby created without notice.

6. *Right to Distrain.* Upon the occurrence of a Default, to the extent permitted by law, the Mortgagee may distrain for payment of any and all Indebtedness upon the Mortgaged Land or any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Mortgaged Land, such moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Mortgagee with respect to or in connection therewith as in like cases of distress for rent. The Mortgagor waives the right to claim exceptions and agrees that the Mortgagee shall not be limited in the amount for which it may distrain.

7. *Judgments and Non-Merger.* The taking of a judgment or judgments with respect to any of the covenants contained herein, in the Mortgage or otherwise shall not operate as a merger of any such covenants or affect the Mortgagee's right to receive interest under the Mortgage and each such judgment may provide, at the option of the Mortgagee, that interest thereon shall be computed and payable until such judgment has been fully paid and satisfied.

8. *Separate Remedies.* All remedies of the Mortgagee may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Mortgagee however created.

9. *Application of Proceeds and Mortgagor's Liability for Deficiency.* All amounts received by the Mortgagee or any Receiver pursuant to any enforcement of the Mortgage may be held by the Mortgagee as security for the Indebtedness or applied to reduce Indebtedness in such manner as may be determined by the Mortgagee and the Mortgagee may at any time apply or change any such appropriation of such payments to such part or parts of the Indebtedness as the Mortgagee may determine in its sole discretion. The Mortgagor shall be and remain liable to the Mortgagee for any deficiency. Any surplus amounts realized after payment of all Indebtedness shall be paid in accordance with applicable law.

10. *Mortgagor's Insolvency Proceedings.* The Mortgagor acknowledges that the Mortgaged Land is of such a unique nature that, if the Mortgagor seeks to reorganize or restructure its affairs pursuant to any Insolvency Proceeding, the Mortgagee would not have a sufficient commonality of interest with any other creditor or creditors of the Mortgagor such that the Mortgagee would be required to vote on any plan, reorganization, arrangement, compromise or other transaction in a class with any other creditor or creditors of the Mortgagor and, in that regard, the Mortgagor agrees that the Mortgagee shall be placed in its own exclusive class of creditors for voting purposes. The Mortgagor further agrees that:

- (a) it will give the Mortgagee not less than 10 days written notice prior to the commencement of any Insolvency Proceeding with respect to the Mortgagor;
- (b) in no circumstance will the Mortgagor seek an order which stays any right of the Mortgagee or, to the extent permitted by law, permit any right of the Mortgagee to be stayed, in any Insolvency Proceeding and, if any court-ordered or automatic stay is imposed on the Mortgagee, the Mortgagor hereby consents to an order lifting such stay as against the Mortgagee;
- (c) if an Insolvency Proceeding is commenced with respect to the Mortgagor, the Mortgagor will consent to an order directing that all rents or other revenues generated or received from or in respect of the Mortgaged Land be deposited to a segregated trust account under the sole control of the Mortgagee and that same shall not result in the Mortgagee's being a mortgagee in possession of, or in control or management of the Mortgaged Land or result in the acceleration of payment of any Indebtedness unless such acceleration is required by the Mortgagee in writing; and
- (d) it shall not, without the Mortgagee's prior written consent, propose or permit the sale or transfer of the Mortgaged Land or any part thereof, in or as part of any Insolvency Proceeding, for a net sale price less than the amount required to pay in

full all Indebtedness outstanding as at the date of payment of such net sale proceeds to the Mortgagee.

#### K. APPOINTMENT OF A RECEIVER

1. *Appointment.* Upon the occurrence of a Default, in addition to any other remedies available to the Mortgagee, the Mortgagee may by instrument in writing appoint a Receiver of all or any part of the Mortgaged Land and all rents, incomes, profits and other amounts now or hereafter arising therefrom. The Mortgagee may also apply to any court of competent jurisdiction for the appointment of a Receiver.

2. *Powers of Receiver.* Any Receiver appointed by the Mortgagee shall, to the extent permitted by law, have the following powers:

- (a) to enter upon, take possession of, use, and occupy the Mortgaged Land or any part thereof;
- (b) to collect all rents, incomes, profits and other amounts in respect of the Mortgaged Land and to carry on the business of the Mortgagor on the Mortgaged Land;
- (c) to borrow money required for the maintenance, preservation or protection of the Mortgaged Land or for carrying on the business of the Mortgagor and, in the discretion of the Receiver, to charge the Mortgaged Land in priority to the Mortgage as security for the principal amounts so borrowed, interest thereon and costs related thereto;
- (d) to sell, lease, or otherwise dispose of the Mortgaged Land or any part thereof on such terms and conditions and in such manner as the Receiver shall determine in its sole discretion, and to effect such sale by conveying in the name and on behalf of the Mortgagor or otherwise;
- (e) to demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession of the Mortgaged Land, and to give valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the rents, accounts receivable or any other obligation of any person to the Mortgagor;
- (f) to exercise any rights or remedies which could have been exercised by the Mortgagee against the Mortgagor or the Mortgaged Land or with respect thereto; and
- (g) to execute all documents required to effect any of the foregoing.

3. *Identity of Receiver and Removal.* Any Receiver so appointed by the Mortgagee may be any person or persons satisfactory to the Mortgagee, and the Mortgagee may remove any Receiver so appointed and appoint another or others instead.

4. *Receiver as Agent of Mortgagor.* Any Receiver appointed by the Mortgagee shall be deemed to be agent of the Mortgagor unless the Mortgagee expressly specifies in writing that the Receiver shall be agent of the Mortgagee. The Mortgagor agrees to ratify and confirm all actions of the Receiver acting as agent for the Mortgagor and to release and indemnify the Receiver in respect of all such actions.

5. *Receivership Expenses.* The Mortgagor shall pay to the Receiver, forthwith on demand by the Mortgagee or the Receiver, the amount of all reasonable fees, disbursements and other expenses incurred by the Receiver in the exercise of its powers hereunder, with interest thereon at the Applicable Rate from the date on which such sums are incurred. All such sums, together with interest thereon at the Applicable Rate, shall be part of the Indebtedness and secured by the Mortgage.

6. *No Enquiries Required.* No persons dealing with the Receiver or its agents, upon any sale or other dealing with the Mortgaged Land, shall be concerned to inquire as to their powers or as to

the application of any money paid to them, such sale or dealing shall be deemed as regards such person to be within the powers hereby conferred and to be valid and effectual.

#### L. MISCELLANEOUS

1. *Records of Mortgagee.* The records of the Mortgagee disclosing the amount of an extension of credit by the Mortgagee to the Mortgagor, the repayment of any principal amount of Indebtedness, the amount of accrued and unpaid interest owing by the Mortgagor and the amount of other Indebtedness (or any part thereof) at any time outstanding, shall constitute conclusive evidence thereof in the absence of mathematical error.

2. *Revolving Line of Credit.* The Mortgagee may wish to make loan advances and re-advances or otherwise extend credit to the Mortgagor from time to time up to a total outstanding principal amount not exceeding the principal amount referred to in the Mortgage. The Mortgage is and shall be continuing security to the Mortgagee for the payment of all Indebtedness. Any portion of the Indebtedness may be advanced or re-advanced by the Mortgagee or other credit may be extended by the Mortgagee in one or more sums at any future time or times and the amount of all such advances, re-advances or other credits when so made or extended shall be secured by the Mortgage and be payable by the Mortgagor with interest thereon at the Applicable Rate and the Mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, provided that none of the execution or registration of the Mortgage or the advance in part of any monies or extension of any other credit by the Mortgagee shall obligate the Mortgagee to advance any unadvanced portion thereof or to extend any other credit. The Mortgage shall not be void or cease to operate because the Indebtedness secured hereby has at any time or times been paid in full.

3. *Assignment and Syndication.* The Mortgagee shall be entitled from time to time, both before and after a Default, without notice to, or the consent of the Mortgagor or any Guarantor:

- (a) to sell or assign all or part of the Indebtedness and the Mortgagee's interests in the Mortgage and any other security and agreements held by the Mortgagee; and
- (b) to syndicate all or part of the Indebtedness, the Mortgage and any other security and agreements held by the Mortgagee and to grant participations therein.

To facilitate the foregoing, the Mortgagee may provide each prospective purchaser, assignee, syndicated lender or participant and their respective advisers with financial and other information concerning the Indebtedness, the Mortgagor, the Mortgaged Land, any Guarantor, any other collateral or any other matter.

4. *General Indemnity by Mortgagor.* The Mortgagor hereby agrees, on demand by the Mortgagee, to indemnify and hold harmless the Mortgagee and its officers, directors, employees and agents from and against any and all claims, expenses, liabilities, losses and damages that may be asserted against or incurred by any of such indemnified persons arising out of, or in connection with the Mortgage, any Indebtedness or any claim, investigation, proceeding or litigation relating to any of the foregoing, regardless of whether any such indemnified person is a party thereto (including any and all breakage costs reasonably incurred by the Mortgagee in respect of any breach by the Mortgagor of any of its obligations under the Mortgage) and to reimburse each such indemnified person, on demand by the Mortgagee, for any and all reasonable legal and other expenses incurred in investigating, pursuing or defending any of the foregoing or otherwise in connection with any of the foregoing; provided that the foregoing indemnity shall not, as to any indemnified person, apply to any claim, expense, liability, loss or damage or related expense to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the wilful misconduct or gross negligence of such indemnified person.

5. *Effect of Sale.* No sale, conveyance, transfer or other dealing by the Mortgagor with the Mortgaged Land or any part thereof or any approval of the Mortgagee relating thereto shall in any way change or affect the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person or persons liable for payment of the Indebtedness or any part thereof.

6. *Dealings with the Mortgagor and Others.* The Mortgagee may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and give the same and

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any and all existing security up to, may abstain from taking security from or from perfecting security of, may accept compositions from, may amend the Mortgage, and may otherwise deal with the Mortgagor and all other persons (including any principal debtor, any Guarantor or any owner of the Mortgaged Land) and security as the Mortgagee may see fit without prejudicing any rights of the Mortgagee under the Mortgage.

7. *Amendments to Mortgage.* The Mortgagor and the Mortgagee may from time to time amend the Mortgage (including to increase the interest rate specified by the Mortgage) by an amendment agreement between the Mortgagor and the Mortgagee, whether or not such amendment agreement (or notice thereof) is registered. This provision shall constitute notice of such amendments and the Mortgage shall secure payment of all Indebtedness (including all interest and other Indebtedness arising or resulting from such amendments) and retain its priority with respect thereto over any mortgage, charge or other instrument registered subsequent to the Mortgage.

8. *Waiver.* No waiver, condonation or excusing by the Mortgagee of any default, breach or other non-performance by the Mortgagor at any time or times in respect of any provision of the Mortgage (including any Default) shall operate as a waiver by the Mortgagee of any subsequent or other default, breach or non-performance or prejudice or affect in any way the rights of the Mortgagee in respect of any such subsequent or other default, breach or non-performance.

9. *Discharge or Assignment.* The Mortgagee shall be entitled to prepare or have its counsel prepare a discharge or assignment of the Mortgage and any other documents necessary to discharge or assign any other security held by the Mortgagee and shall have a reasonable time after payment of the Indebtedness in full within which to prepare, execute and deliver such instruments. All reasonable costs, fees and disbursements of the Mortgagee and the Mortgagee's counsel in connection with the preparation, review, execution and delivery of the discharge, assignment or any other documents necessary to discharge or assign the Mortgage or any other security shall, to the extent permitted by law, be paid by the Mortgagor to the Mortgagee and be secured by the Mortgage.

10. *No Obligation to Advance.* Nothing herein and nothing contained in the Mortgage shall obligate the Mortgagee to loan any amount to the Mortgagor or to extend any other credit to the Mortgagor.

11. *Appointment of Attorney Irrevocable.* Each appointment by the Mortgagor of an attorney in the Mortgage or the Standard Charge Terms is coupled with an interest and may not be revoked.

12. *Other Security.* The Mortgage is in addition to and not in substitution for any other security at any time held by the Mortgagee as security for payment of all or any part of the Indebtedness, and the Mortgagee may, at its option, pursue its remedies thereunder or under the Mortgage concurrently or successively. Any judgment or recovery under the Mortgage or under any other security held by the Mortgagee as security for payment of Indebtedness shall not affect the right of the Mortgagee to enforce or realize on the Mortgage or any other such security.

13. *Financing Statement.* To the extent permitted by law, the Mortgagor hereby waives its right to receive from the Mortgagee a copy of any financing statement, financing change statement, verification statement or other similar statement filed by or received by the Mortgagee or any agent of the Mortgagee.

14. *Notice.* Except as otherwise herein provided, any notice, demand or other communication to the Mortgagor referred to herein or in the Mortgage may be forwarded to the Mortgagor by personal delivery or mailed by prepaid ordinary or registered mail to the Mortgagor at the Mortgagor's last known address as shown on the Mortgagee's records. The Mortgagor shall be deemed to have received the same on the date of delivery, if personally delivered, or on the fourth day after the same is mailed by prepaid ordinary mail or registered mail, if mailed, even if the Mortgagor does not actually receive it.

15. *Different Currencies.* The payment of any part of the Indebtedness shall be made by the Mortgagor in the same currency as the currency in which such part of the Indebtedness is then denominated and all interest and fees shall be paid by the Mortgagor in the same currency as the currency in which that part of the Indebtedness to which they relate is denominated.

16. *Judgment Currency.* If in the recovery by the Mortgagee of any Indebtedness in any currency, judgment can only be obtained in another currency and, because of changes in the exchange rate

Page 19.

of such currencies between the date of judgment and payment in full of the amount of such judgment, the recovery under the judgment differs from the receipt by the Mortgagee of the full amount of such Indebtedness, the Mortgagor shall pay any such deficiency to the Mortgagee, such deficiency may be claimed by the Mortgagee against the Mortgagor as an alternative or additional cause of action and any surplus received by the Mortgagee shall be repaid to the Mortgagor.

17. *Foreign Exchange Rate Determinations.* Whenever any provision of the Mortgage requires or permits the determination of the rate of exchange between any currencies, such rate of exchange shall be determined by the Mortgagee based on its normal practice as at the date of such determination.

18. *Governing Law.* The Standard Charge Terms and the Mortgage shall be governed by the law of the jurisdiction in which the Mortgaged Land is located.

19. *Time of Essence.* Time shall be of the essence of the Mortgage.

20. *Severability.* If any provision of the Mortgage is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the Mortgage shall remain in full force and effect without such provision.

21. *Interpretation.* Whenever the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing any gender shall include the other genders. Whenever used in the Standard Charge Terms, the Mortgage or any Schedule, the words "including" and "includes" shall mean "including, without limitation" and "includes, without limitation", respectively, and the word "person" shall include an individual, corporation, partnership, government, government agency and any other entity.

22. *Titles.* Titles used in the Standard Charge Terms, the Mortgage or any Schedule are inserted for convenience of reference only and shall not affect or modify the interpretation or construction of any provision of the Standard Charge Terms, the Mortgage or any Schedule.

23. *Joint and Several Obligations.* If there is more than one Mortgagor, all Mortgagors shall be jointly and severally liable for all obligations of the Mortgagors pursuant to the Mortgage.

24. *Schedule.* Schedule "A" shall form part of the Standard Charge Terms.

25. *Equivalent Rate Information.* Schedule "A" is a summary of various annual rates of interest calculated half-yearly not in advance equivalent to the corresponding annual rates calculated monthly not in advance or calculated quarter-annually not in advance. The rate of interest chargeable, calculated half-yearly not in advance, equivalent to each Applicable Rate, is shown by Schedule "A".

26. *Successors and Assigns.* All rights and powers of the Mortgagee shall enure to the benefit of and be exercisable by the Mortgagee and the Mortgagee's successors and assigns. All covenants, obligations and liabilities entered into or imposed on the Mortgagor shall be binding on the Mortgagor and the Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns.

**SCHEDULE "A"**

The interest rates set out in Column C are the annual interest rates calculated half-yearly not in advance which are equivalent to the corresponding annual interest rates calculated monthly not in advance set out in Column A and quarter-annually not in advance set out in Column B.

COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C
Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance	Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance
1.0000%	1.0008%	1.0021%	9.5000%	9.5754%	9.6500%
1.1250%	1.1281%	1.1276%	9.6250%	9.7024%	9.8201%
1.2500%	1.2513%	1.2533%	9.7500%	9.8294%	9.9502%
1.3750%	1.3768%	1.3788%	9.8750%	9.9565%	10.0804%
1.5000%	1.5019%	1.5047%	10.0000%	10.0836%	10.2107%
1.6250%	1.6272%	1.6305%	10.1250%	10.2107%	10.3410%
1.7500%	1.7526%	1.7564%	10.2500%	10.3378%	10.4714%
1.8750%	1.8779%	1.8823%	10.3750%	10.4650%	10.6018%
2.0000%	2.0033%	2.0084%	10.5000%	10.5921%	10.7324%
2.1250%	2.1288%	2.1344%	10.6250%	10.7194%	10.8630%
2.2500%	2.2542%	2.2606%	10.7500%	10.8466%	10.9937%
2.3750%	2.3797%	2.3868%	10.8750%	10.9739%	11.1244%
2.5000%	2.5052%	2.5131%	11.0000%	11.1011%	11.2552%
2.6250%	2.6307%	2.6394%	11.1250%	11.2285%	11.3861%
2.7500%	2.7563%	2.7658%	11.2500%	11.3558%	11.5170%
2.8750%	2.8819%	2.8923%	11.3750%	11.4832%	11.6480%
3.0000%	3.0075%	3.0188%	11.5000%	11.6106%	11.7791%
3.1250%	3.1331%	3.1454%	11.6250%	11.7380%	11.9102%
3.2500%	3.2588%	3.2721%	11.7500%	11.8654%	12.0414%
3.3750%	3.3845%	3.3988%	11.8750%	11.9929%	12.1727%
3.5000%	3.5102%	3.5258%	12.0000%	12.1204%	12.3040%
3.6250%	3.6360%	3.6525%	12.1250%	12.2479%	12.4354%
3.7500%	3.7617%	3.7794%	12.2500%	12.3755%	12.5669%
3.8750%	3.8675%	3.8864%	12.3750%	12.5031%	12.6985%
4.0000%	4.0133%	4.0335%	12.5000%	12.6307%	12.8301%
4.1250%	4.1392%	4.1606%	12.6250%	12.7583%	12.9618%
4.2500%	4.2651%	4.2878%	12.7500%	12.8859%	13.0935%
4.3750%	4.3910%	4.4151%	12.8750%	13.0136%	13.2253%
4.5000%	4.5169%	4.5424%	13.0000%	13.1413%	13.3572%
4.6250%	4.6428%	4.6698%	13.1250%	13.2691%	13.4892%
4.7500%	4.7688%	4.7973%	13.2500%	13.3968%	13.6212%
4.8750%	4.8948%	4.9248%	13.3750%	13.5246%	13.7533%
5.0000%	5.0209%	5.0524%	13.5000%	13.6524%	13.8854%
5.1250%	5.1469%	5.1800%	13.6250%	13.7803%	14.0177%
5.2500%	5.2730%	5.3078%	13.7500%	13.9082%	14.1499%
5.3750%	5.3991%	5.4355%	13.8750%	14.0360%	14.2823%
5.5000%	5.5252%	5.5634%	14.0000%	14.1640%	14.4147%
5.6250%	5.6514%	5.6913%	14.1250%	14.2919%	14.5472%
5.7500%	5.7776%	5.8183%	14.2500%	14.4199%	14.6798%
5.8750%	5.9038%	5.9474%	14.3750%	14.5479%	14.8124%
6.0000%	6.0300%	6.0755%	14.5000%	14.6758%	14.9451%
6.1250%	6.1563%	6.2037%	14.6250%	14.8040%	15.0779%
6.2500%	6.2826%	6.3319%	14.7500%	14.9320%	15.2108%
6.3750%	6.4089%	6.4603%	14.8750%	15.0601%	15.3437%
6.5000%	6.5353%	6.5887%	15.0000%	15.1883%	15.4766%
6.6250%	6.6616%	6.7171%	15.1250%	15.3164%	15.6097%
6.7500%	6.7880%	6.8458%	15.2500%	15.4446%	15.7428%
6.8750%	6.9145%	6.9742%	15.3750%	15.5728%	15.8760%
7.0000%	7.0409%	7.1029%	15.5000%	15.7011%	16.0092%
7.1250%	7.1674%	7.2318%	15.6250%	15.8293%	16.1425%
7.2500%	7.2939%	7.3604%	15.7500%	15.9576%	16.2759%
7.3750%	7.4204%	7.4892%	15.8750%	16.0859%	16.4094%
7.5000%	7.5470%	7.6182%	16.0000%	16.2143%	16.5429%
7.6250%	7.6736%	7.7472%	16.1250%	16.3427%	16.6765%
7.7500%	7.8002%	7.8762%	16.2500%	16.4710%	16.8102%
7.8750%	7.9268%	8.0053%	16.3750%	16.5995%	16.9439%
8.0000%	8.0535%	8.1345%	16.5000%	16.7278%	17.0777%
8.1250%	8.1801%	8.2638%	16.6250%	16.8564%	17.2118%
8.2500%	8.3068%	8.3931%	16.7500%	16.9849%	17.3458%
8.3750%	8.4336%	8.5225%	16.8750%	17.1134%	17.4795%
8.5000%	8.5604%	8.6519%	17.0000%	17.2420%	17.6136%
8.6250%	8.6871%	8.7815%	17.1250%	17.3706%	17.7477%
8.7500%	8.8140%	8.9111%	17.2500%	17.4992%	17.8819%
8.8750%	8.9408%	9.0407%	17.3750%	17.6278%	18.0162%
9.0000%	9.0677%	9.1704%	17.5000%	17.7564%	18.1506%
9.1250%	9.1946%	9.3002%	17.6250%	17.8851%	18.2850%
9.2500%	9.3215%	9.4301%	17.7500%	18.0138%	18.4195%
9.3750%	9.4484%	9.5600%	17.8750%	18.1426%	18.5540%



This is Exhibit "N" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

LAND  
REGISTRY  
OFFICE #53

73466-0857 (LT)

PREPARED FOR sdurante  
ON 2022/05/18 AT 19:13:59

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

PROPERTY DESCRIPTION: PT LTS 37 & 38 RCP 84S DUNNET BEING PART 1 ON 53R20501, PART 2 ON 53R15743 & PT 1 ON 53R12570; S/T S111419;; MUNICIPALITY OF MARKSTAY-WARREN

PROPERTY REMARKS: PLANNING ACT CONSENT AS IN S100657. PLANNING ACT CONSENT AS IN S112768. PLANNING ACT CONSENT IN DOCUMENT SD323729.

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
CONSOLIDATION FROM 73466-0718, 73466-0854

PIN CREATION DATE:  
2016/10/05

OWNERS' NAMES  
2243080 ONTARIO INC.

CAPACITY SHARE  
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2016/10/05 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/11/24 **						
S86283Z	1984/10/05	REST COV APL ANNEX		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: DELETED SEPTEMBER 6, 2017						
S86284	1984/10/05	LEASE		*** DELETED AGAINST THIS PROPERTY ***	SHELL CANADA LIMITED	
53R12570	1990/02/21	PLAN REFERENCE				C
S100655	1990/09/07	RELEASE		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: PARTIAL, S86283 DELETED SEPTEMBER 6, 2017						
S100656	1990/09/07	SURRENDER OF LEASE				C
REMARKS: PARTIAL, S86284						
53R15743	1996/08/14	PLAN REFERENCE				C
SD183308	2010/09/29	TRANSFER	\$700,000	1442810 ONTARIO INC.	2243080 ONTARIO 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.

LAND  
REGISTRY  
OFFICE #53

73466-0857 (LT)

PREPARED FOR sdurante  
ON 2022/05/18 AT 19:13:59

\* 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
SD299878	2015/08/14	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2243080 ONTARIO INC.	ROYAL BANK OF CANADA	
53R20501	2015/08/27	PLAN REFERENCE	\$70			C
SD313072	2016/04/04	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2243080 ONTARIO INC.	THE BANK OF NOVA SCOTIA TRUST COMPANY GLICKMAN, ANNE HANDELMAN, ANNE BAMBURGH HOLDINGS LTD. GORDON, BEVERLEY 4055845 CANADA INC. POLLOCK, RONALD POLLOCK, JUDY 593651 ONTARIO LTD. OSTRO, AURELIA OSTRO, EITAN C & K MORTGAGE SERVICES INC.	
SD313073	2016/04/04	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** 2243080 ONTARIO INC.	THE BANK OF NOVA SCOTIA TRUST COMPANY GLICKMAN, ANNE HANDELMAN, ANNE BAMBURGH HOLDINGS LTD. GORDON, BEVERLEY 4055845 CANADA INC. POLLOCK, RONALD POLLOCK, JUDY 593651 ONTARIO LTD. OSTRO, AURELIA OSTRO, EITAN C & K MORTGAGE SERVICES INC.	
		REMARKS: SD313072.				
SD315905	2016/05/27	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** C & K MORTGAGE SERVICES INC.	THE BANK OF NOVA SCOTIA TRUST COMPANY	
		REMARKS: SD313072.				
SD323729	2016/09/23	TRANSFER	\$15,000	SPAULL, ANNE	2243080 ONTARIO INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
SD323730	2016/09/23	APL CONSOLIDATE		2243080 ONTARIO INC.		C

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LAND  
REGISTRY  
OFFICE #53

73466-0857 (LT)

PREPARED FOR sdurante  
ON 2022/05/18 AT 19:13:59

\* 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
SD325371	2016/10/20	LR'S ORDER <i>REMARKS: AMEND T/N DESCRIPTION</i>		LAND REGISTRAR, SUDBURY LAND REGISTRY OFFICE		C
SD343353	2017/09/15	CHARGE		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.	ROYAL BANK OF CANADA	
SD343383	2017/09/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE BANK OF NOVA SCOTIA TRUST COMPANY GLICKMAN, ANNE HANDELMAN, ANNE BAMBURGH HOLDINGS LTD. GORDON, BEVERLEY 4055845 CANADA INC. POLLOCK, RONALD POLLOCK, JUDY 593651 ONTARIO LTD. OSTRO, AURELIA OSTRO, EITAN C & K MORTGAGE SERVICES INC.		
		<i>REMARKS: SD313072.</i>				
SD343454	2017/09/19	APL (GENERAL) <i>REMARKS: DELETING S86284</i>		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.		
SD343919	2017/09/26	DISCH OF CHARGE <i>REMARKS: SD299878.</i>		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
SD366007	2018/11/01	CHARGE		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.	RATHCLIFFE CAPITAL CORP.	
SD366008	2018/11/01	NO ASSGN RENT GEN <i>REMARKS: SD366007</i>		*** COMPLETELY DELETED *** 2243080 ONTARIO INC.	RATHCLIFFE CAPITAL CORP.	
SD367805	2018/11/30	DISCH OF CHARGE <i>REMARKS: SD343353.</i>		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
SD387127	2019/11/18	CHARGE	\$3,100,000	2243080 ONTARIO INC.	BANK OF MONTREAL	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.

LAND  
 REGISTRY  
 OFFICE #53

73466-0857 (LT)

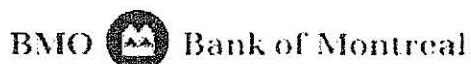
\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SD387150	2019/11/18	NO ASSGN RENT GEN REMARKS: SD387127		2243080 ONTARIO INC.	BANK OF MONTREAL	C
SD387162	2019/11/18	DISCH OF CHARGE REMARKS: SD366007.		*** COMPLETELY DELETED *** RATHCLIFFE CAPITAL CORP.		

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.

This is Exhibit "O" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.



6605 Hurontario Street Suite 200  
 Mississauga, Ontario L5T 0A4  
 Tel No: 905 670 2413  
 Fax No: 905 670 3973  
 Email: Balwinder.Jandu@bmo.com

October 1, 2019

2496287 Ontario Inc.  
 58 Grayleaf Drive  
 Stouffville, Ontario L4A 1S8

Attention: Kalyani Kapilan

#### LETTER OF AGREEMENT

Bank of Montreal ("BMO") is pleased to advise that it has authorized the following [new] credit Facilities for **2496287 ONTARIO INC.** (each, a "Facility" and collectively, the "Facilities") on the terms and conditions outlined in this Letter of Agreement. The Schedules listed below and attached form part of this Letter of Agreement.

Notwithstanding any other provision of this Letter of Agreement or in any applicable agreements, any Advance under any Facility hereunder will be made at BMO's sole discretion. Any unutilized portion of any Facility hereunder may be cancelled by BMO at any time without prior notice.

<b>Borrower(s):</b>	2496287 ONTARIO INC. <b>(the "Borrower")</b>
<b>Guarantor(s):</b>	Kalyani Kapilan; Rasakone Kapilan, <b>(the "Guarantor(s)")</b>
<b>Total Facility Limit:</b>	The total approved amount of all facilities shall not exceed \$2,615,000.00 at any time.
<b>Facility # 1</b>	
<b>Facility Authorization:</b>	\$2,425,000.00 CAD
<b>Type of Loan:</b>	Demand Loan Non Revolving (DLNR) or Fixed Rate Term Loan (FRTL)
<b>Purpose:</b>	To refinance Pickering Esso and payout private financing
<b>Draw Conditions:</b>	\$2,425M authorization allocated as follows: <ol style="list-style-type: none"> <li>1) \$2,300,000 towards payout of private lender. Available in one</li> </ol>

draw as FRTL / DLNR. Solicitor to control payout.

- 2) \$125,000 towards renovations of gas station. Available in DLNR only with maximum of three draws and minimum \$50,000 per draw. Prior to each draw invoices confirming pre-tax costs to be provided.

**Maximum Amortization:** 240 months

**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus 2.00%. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of September 30, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO with Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Fixed Rate  
Term Loan**

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of October 1, 2019 for a 5 year term is 4.85 % (monthly payment approx. \$15,803.67); 2 year rate is 4.75% (monthly payment approx. 15,670.92) per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.



**Prepayment Terms:** Prepayments of principal in whole or in part are not permitted, without penalty.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.

The Borrower shall give to BMO 5 Business Days' notice with respect to any request for a Loan under this Facility.

#### Facility # 2

<b>Facility Authorization:</b>	\$110,000.00 CAD
<b>Type of Loan:</b>	Operating Demand Loan
<b>Purpose:</b>	Working capital requirements
<b>Interest Rate:</b>	Prime Rate plus 1.75%. Interest is calculated monthly in arrears and payable monthly on the last day of each month. The Prime Rate in effect as of October 1, 2019 is 3.95%.
<b>Repayments:</b>	Repayable on demand
<b>Facility Fee:</b>	\$110.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.
<b>Other Costs:</b>	BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.

In the event the Advances under this Facility exceed the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the

Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.

**Facility # 3**

**Facility Authorization:** \$50,000.00 CAD

**Type of Loan:** Letter of Credit

**Purpose:** As per Fuel Supplier requirements for Pickering Esso

**Repayments:** To be reduced and/or cancelled in normal course.

**Maximum Term:** 12 months from the date of issue. Renewals as required.

**Drawdown Conditions:** The Borrower may request the issuance of Letters of Credit, in a form reasonably acceptable to BMO, at any time and from time to time. Each Letter of Credit shall expire at or prior to the close of business on the date that is one year after the date of the issuance of such Letter of Credit.

**Commissions and Fees:** Based on specifics of request and Trade Finance client fee schedule.

**Terms and Conditions:** Per Indemnity Agreement

**Facility # 4**

**Facility Authorization:** \$30,000.00 CAD

**Type of Loan:** Corporate MasterCard®

**Purpose:** Operating Financing

**Interest Rate:** As determined by Corporate MasterCard Agreement.

**Repayments:** As determined by Corporate MasterCard Agreement.

**Facility Fee:** As determined by Corporate MasterCard Agreement.

Â®\* MasterCard is a registered trademark of MasterCard International Incorporated. Used under license.

**Conditions Precedent to Advances:**

BMO will not be required to make any advance to the Borrower unless and until each of the conditions set out below and in Schedule C has been completed to BMO's satisfaction

1. Completion of all loan and account documents and all Security as outlined below.
2. Compliance with all covenants, representations and warranties in all loan documents and Security.
3. Receipt of all information necessary for BMO to comply with all legal and internal requirements in

- respect of money laundering and proceeds of crime legislation, and "know your customer" requirements.
4. Satisfactory review by BMO of insurance policies issued to the Borrower and each Guarantor, if any, and compliance with any changes required to satisfy BMO's insurance requirements.
  5. Confirmation of no material adverse change to the Borrower and the Guarantor and their respective property and assets since the latest financial statements provided to BMO.
  6. Confirmation that no default or breach under this Letter of Agreement, any of the loan documents or the Security has occurred.
  7. All documents to be prepared by BMO appointed solicitor, all funds to be released through trust account of BMO lawyer, lawyer to confirm zoning, Ontario fire code compliance, shareholder agreement ( if applicable), TSSA certification, BMO has first and valid and enforceable charge on property to be mortgaged with no second charge from any other party & discharge of existing private lender charges and assignment of rents.
  8. Receipt of satisfactory appraisal of the Lands from an appraiser or agrologist satisfactory to BMO confirming a minimum market value of \$3,780,000, together with a letter by the appraiser or agrologist addressed to BMO confirming that BMO may rely on the appraisal for financing purposes. (Held)
  9. Phase II Environmental Report satisfactory to the bank. (Held)
  10. Reliance letter for Phase II report
  11. Receipt of satisfactory Environmental Review, Compliance Certificate and Indemnity for Mortgaged Property executed by the Borrower in favour of BMO.
  12. Confirmation that Rasakone Kapilan's personal taxes are fully paid and UTD
  13. Corporate Tax Return and Notice of Assessment with confirmation of no taxes owing for 2496287 Ontario Inc.
  14. Satisfactory BIU report on the ownership group to be completed prior to funding.(Held)
  15. Confirmation that all property taxes have been paid to date.
  16. Satisfactory review (site visit) of the Lands, and the condition of the improvements thereon.

#### Security:

Each of the following documents, instruments, agreements and other assurances (collectively, the "**Security**") shall be delivered to BMO prior to any advance of funds, in form and substance acceptable to BMO and its solicitors, acting reasonably:

1. Registered first-ranking [All indebtedness Mortgage in the amount of \$3,780,000.00 registered over Pt Lt 13 Con 6 Pickering Pts 4 & 5 PI 40R-20455; Pickering, Regional Municipality Of Durham, S/T ROW Over Pt 4 PL 40R-20455 In Favour Of PTS 1, 2, & 3 PL 40R-20455 As In DR34575, T/W ROW Over Pt 2 PI 40R-20455 As In DR34575 with the municipal address of 2260 Highway 7 East, Pickering, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation.
2. Registered General Security Agreement ("GSA")/Moveable Hypothec ("Hypothec") providing BMO with a security interest/hypothec over all present and after-acquired personal/movable property of the Borrower with a First ranking for Machinery and Equipment, Inventory/Warehouse Receipts, CDN Accounts Receivable
3. Insurance on a "Fire and Extended Coverage" or "All Risks" basis must be arranged (with satisfactory evidence thereof delivered to the Bank's solicitor before advances are made) satisfactory to the Bank for the full insurable or replacement value of the subject property with loss payable to the Bank of Montreal. The policy is to contain the Standard Mortgage Clause (Business insurance and Fire insurance combined coverage minimum \$2.5MM & environmental Coverage of no less than \$2.5MM with minimum \$1MM per occurrence.) A copy of the policy is to be provided for Pickering Esso.
4. Delivery of an [Up to Date or Existing] survey/certificate of location of Mortgaged Property(ies) and all buildings located on the Mortgaged Property(ies), prepared by a surveyor licensed in the jurisdiction in which the property(ies) is/are located, which:
  - bears the name, address and signature of the surveyor, his official seal and licence number (any, or both), the date of a survey; and
  - includes a Surveyor's Certificate in the form and content required by the jurisdiction(s) in which the property is located
 OR
  - Title insurance from [Approved Title Insurance Provider] in respect of Pt Lt 13 Con 6 Pickering Pts 4 &

5 PI 40R-20455; Pickering, Regional Municipality Of Durham, S/T ROW Over Pt 4 PL 40R-20455 In Favour Of PTS 1, 2, & 3 PL 40R-20455 As In DR34575, TW ROW Over Pt 2 PI 40R-20455 As In DR34575 naming BMO as beneficiary

5. Personal Guarantee for Kalyani and Rasakone Kapilin in the amount of \$2,615,000 with ILA for Kalyani if deemed necessary by BMO solicitor.
6. Assignment and receipt of Deposit Instruments in the amount \$50,000.00.
7. Commercial Loan Insurance to be offered to all guarantors and if declined, assignment of life insurance to be on file in the amount of \$2,615,000
8. Letter of Credit documentation along with cash collateral in the amount \$50,000.00
9. LF9B - Assignment Postponement and Subordination to be signed by Kalyani and Rasakone Kapilin in the amount of \$950,000.
10. Form163209 and Form 163226 - Commercial Card Agreement

Any other documents, instruments or agreements as may be required by BMO, acting reasonably

**Covenants:**

As long as any Advance remains outstanding under or in connection with this Letter of Agreement, or so long as this Letter of Agreement remains in effect, the Borrower and any Guarantor will perform and comply with the covenants set out in Schedule A.

**Financial Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following financial covenants, based on financial statements of the Borrower or applicable Guarantor:

Financial Covenant	Description	Requirement	Frequency
Debt service coverage ratio	(Net Income + Interest + Depreciation + Amortization)/ CPLTD + Interest + Non Discretionary Dividends + Repayment of Subrogated Shareholder Loans)	Greater Than or Equal To 1.25	Annually

**Additional Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following covenants:

1. The Borrower will not, without BMO's prior written consent, participate in any retrofit project or energy or water efficiency project affecting the Mortgaged Property which would have the effect of creating a lien, hypothec or other interest (including, but without limitation, a local improvement charge or similar interest) in the Mortgaged Property ranking, or potentially ranking, in priority to or *pari passu* with the interest of BMO in the Mortgaged Property, whether or not such project is sponsored or endorsed by a municipal or other government, governmental organization or utility.

**Reporting Requirements:**

Annual	<ol style="list-style-type: none"> <li>1. Accountant prepared, minimum Notice to Reader financial statements of the Borrower</li> <li>2. Corporate Income Tax Return &amp; Notice of Assessment of the</li> </ol>
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	borrower  3. Municipal tax certificates showing all property taxes paid and up to date  4. Confirmation of adequate fire and environmental insurance with BMO as first loss payee  5. Updated Personal Net Worth Statement with income and asset confirmations for all personal guarantors to be provided at the Bank's request.  6. Annual Fuel Volume Report  7. Any other information requested by the Bank
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A \$50 per month fee will be applied for non compliance with reporting requirements. The application of this fee does not waive the default condition.

Prompt notification of management letters, default notices, litigation, and any other material events

Satisfactory evidence that all taxes (including, without limitation, GST, HST, sales tax, withholdings, etc.) have been paid to date

**Representations and Warranties:**

The Borrower and each Guarantor, as applicable, makes the representations and warranties set out in Schedule B. All representations and warranties of the Borrower and any Guarantor, in addition to any representation or warranty provided in any document executed in connection with a Facility or any Security, shall be true and correct on the date of this Letter of Agreement and on the date of any Advance under a Facility.

**Noteless Advances:**

The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Facilities, and interest, fees and other amounts due in connection with the Facilities, in an account of the Borrower maintained by BMO, shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Facilities; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with the terms and conditions of the Facilities set out in this Letter of Agreement shall not be affected by the failure of BMO to make such recording. The Borrower also hereby acknowledges being indebted to BMO for principal amounts shown as outstanding from time to time in BMO's account records, and all accrued and unpaid interest in respect thereto, which principal and interest the Borrower hereby undertakes to pay to BMO in accordance with the terms and conditions applicable to the Facilities as set out in this Letter of Agreement.

**Fees:**

All costs and expense incurred by BMO in connection with this Letter of Agreement and the Facilities (including without limitation all legal, appraisal and consulting fees), and the enforcement of the Security are for the account of the Borrower.

A one-time fee ("Fee") of \$13,075 is payable by the Borrower to BMO upon acceptance of this Letter of Agreement. This fee is deemed to be earned by BMO upon acceptance of this Letter of Agreement, to compensate for time, effort and expense incurred by BMO in authorizing these Facilities.

Credit renewal fees will be payable as advised by BMO annually; at the date of this letter such fees are estimated to be \$ 2,615.

All fees payable under this Letter of Agreement shall be paid to BMO on the dates due, in immediately available funds. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

**Banking Services:**

The Borrower shall maintain its bank accounts, solely with BMO. Borrower acknowledges that the pricing (including interest, fees and charges) contained in this Letter of Agreement is contingent on the Borrower maintaining all of its operating accounts with BMO. In the event the Borrower does not do so, BMO may, at any time, in its sole discretion and without any requirement to obtain the agreement of, or provide prior notice to the Borrower, increase such pricing.

**Treasury & Payment Solutions:**

BMO will provide Non-Credit and treasury & payment solutions to the Borrower. A Treasury & Payment Specialist will contact the Borrower to implement BMO's On-Line Banking for Business platform (OLBB) and discuss additional treasury & payment features such as Electronic Funds Transfer (EFT), Wire Payments, BMO DepositEdge® and Moneris® Payment Processing Solutions. BMO's objective is to provide a package of services that are tailored to meet both the current and future needs of the Borrower in a cost efficient operating environment.

**Commercial Loan Insurance Plan:**

**You understand that unless you submit an Application for Commercial Loan Insurance Plan ("Application"), and it has been approved by Canada Life as the insurer, you will not be covered under the Commercial Loan Insurance Plan for any facilities under this Letter of Agreement and would be ineligible to submit a claim should you undergo an insurable event.**

**Counterparts; Electronic Transmissions:**

This agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile, PDF or other electronic means and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.

**Governing Law:**

Ontario and the federal laws of Canada applicable therein.

**Schedules:**

The following Schedules are attached to and form part of this letter of agreement:

Schedule A – Covenants

Schedule B – Representations and Warranties

Schedule C – Conditions Precedent to Advances

**BMO's Legal Counsel: [ ]**

In accepting this Letter of Agreement you acknowledge that if, in the opinion of BMO, a material adverse change in risk occurs including, without limitation, any material adverse change in the financial condition, business, property or prospects of the Borrower or any Guarantor, the rights and remedies of BMO, or the ability of the Borrower or any Guarantor to perform its obligations to BMO, any obligation to advance some or all of the above Facilities may be withdrawn or cancelled.

Please indicate your acceptance of the terms and conditions hereof by signing and returning one copy of this Letter of Agreement (and making payment of the above noted fee, if applicable) to BMO no later than October 7, 2019]. If your acceptance of this Letter of Agreement is not received by BMO by that date, BMO shall not be required to proceed with any of the Facilities.

Yours truly,  
BANK OF MONTREAL

By: [Signature]  
Name: BALWINDER JANDU  
Title: Senior Relationship Manager

Accepted and agreed to this 1 day of OCTOBER, 2019

**BORROWER(S)**

2496287 ONTARIO INC.

Signature: Kaly = k.  
Name: Kalyani Kapilan  
Title: Secretary

**GUARANTOR(S)**

**KALYANI KAPILAN**

Witness: [Signature]      Signature: Kaly = k.  
Name: BAL JANDU      Name: KALYANI KAPILAN

**RASAKONE KAPILAN**

Witness: [Signature]      Signature: R. Kapilan  
Name: BAL JANDU      Name: RASAKONE KAPILAN

SCHEDULE ACOVENANTS

1. Payment of all indebtedness due to BMO in connection with this Letter of Agreement or any Facility
2. Maintenance of corporate existence and status, if applicable
3. Payment of all taxes when due (including, without limitation, corporate, GST, HST, sales tax and withholdings)
4. Compliance with all material laws, regulations and applicable permits or approvals (including health, safety and employment standards, labour codes and environmental laws)
5. Compliance with all material agreements
6. Use of proceeds to be consistent with the approved purpose
7. Notices of death of Borrower or Guarantor, default, material litigation, and regulatory proceedings to be provided to BMO on a timely basis
8. Access by BMO to books and records; BMO to have right to inspect property to which its security applies
9. No assumption of additional indebtedness or guarantee obligations by Borrower without prior written consent of BMO
10. No liens or encumbrances on any assets except with the prior written consent of BMO
11. No change of control or ownership of the Borrower without the prior written consent of BMO
12. No disposition of property or assets (except in the ordinary course of business) without the prior written consent of BMO
13. No material acquisitions, hostile takeovers, mergers or amalgamations without BMO's prior written approval
14. [For multiple currencies]:

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Letter of Agreement, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Letter of Agreement in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which BMO is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its principal office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by BMO of the amount due, the Borrower will, on the date of receipt by BMO, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by BMO on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by BMO is the amount then due under this Letter of Agreement in the Currency Due. If the amount of the Currency Due which BMO is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrower and each Guarantor jointly and severally (solidarily) agree to indemnify BMO from and against any and all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Letter of Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by BMO from time to time and shall continue in full force and effect notwithstanding any judgment or order in respect of an amount due under this Letter of Agreement or under any judgment or order.



SCHEDULE BREPRESENTATIONS AND WARRANTIES

1. It has the corporate status, power and authority to enter into this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party, and to performs its obligations hereunder and thereunder
2. It is in compliance with all applicable laws (including environmental laws) and its existing agreements
3. Except as otherwise disclosed to BMO in writing, no consent or approval of, registration or filing with, or any other action by, any governmental authority is required in connection with the execution, delivery and performance by it of this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party
4. All factual information that has been provided to BMO for purposes of or in connection with this Letter of Agreement or any transaction contemplated herein is true and complete in all material respects on the date as of which such information is dated or certified
5. No event, development or circumstance has occurred that has had or could reasonably be expected to have a material adverse effect on the business, assets, operations or condition, financial or otherwise, of the Borrower or any Guarantor
6. There is no material litigation pending against it or, to its knowledge, threatened against or affecting it
7. It has timely filed or caused to be filed all required tax returns and reports and has paid or caused to be paid all required taxes
8. It has good and marketable title to its properties and assets including ownership of and/or sufficient rights in any material intellectual property.
9. It has complied with all obligations in connection with any pension plan which it has sponsored, administered or contributed to, or is required to contribute to including, without limitation, registration in accordance with applicable laws, timely payment of all required contributions or premiums, and performance of all fiduciary and administration obligations
10. It maintains insurance policies and coverage that provides sufficient insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons in the same or a similar business
11. It is not in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default under any loan, credit or security agreement, or under any material instrument or agreement, to which it is a party.

SCHEDULE CCONDITIONS PRECEDENT TO ADVANCES

1. Evidence of corporate (or other) status and authority
2. Completion and registration (as applicable) of all Security (defined herein) and other supporting documents
3. Completion of all facility documentation and account agreements and authorities, as applicable
4. Compliance with all representations and warranties contained herein
5. Compliance with all covenants (financial and non-financial) contained herein
6. No Event of Default (defined herein) shall have occurred and be continuing
7. Compliance with all laws (including environmental)
8. Payment of all fees and expenses
9. Receipt of all necessary material governmental, regulatory and other third party approvals including environmental approvals and certificates
10. Satisfactory due diligence (including, without limitation, anti-money laundering, proceeds of crime and "know your customer" requirements and procedures, environmental and insurance due diligence)
11. Repayment of all existing indebtedness (excluding permitted indebtedness), as applicable.
12. Satisfactory review of material contracts, as applicable
13. Satisfactory review by BMO (or, at BMO's option and the Borrower's expense, an insurance consultant) of insurance policies issued to the Borrower(s) and/or the Guarantor(s) and compliance with any changes required to satisfy BMO's insurance requirements
14. Disclosure of all material contingent obligations
15. Confirmation that no shares of the Borrower held by the principal shareholders have been pledged as security for any financial or other indebtedness
16. Corporate taxes of the Borrower and corporate/personal taxes of the Guarantor(s) are to be confirmed current and up-to-date
17. Satisfactory evidence that all other taxes payable by the Borrower and Guarantor(s) (including, without limitation, GST, HST, sales tax, and withholdings) have been paid to date
18. No material judgments or material legal action initiated against the Borrower and/or any Guarantor(s)
19. Any other document or action which BMO may reasonably require

This is Exhibit "P" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

Nov 12, 19  
Date

**193**  
\$2,425,000.00

6605 Hurontario Street, Suite 200,  
Mississauga, Ontario L5T 0A4  
Branch

On demand I promise to pay to the order of Bank of Montreal the sum of Two Million Four Hundred and Twenty Five Thousand Dollars/100 Dollars and to pay interest monthly at a rate of \_\_\_\_\_ per cent per annum above the Bank of Montreal's prime interest rate per annum in effect from time to time, up to and after maturity, compounded monthly from the due date of such interest until actual payment at the above mentioned branch of the Bank of Montreal. At the date of this note such prime interest rate per annum is 3.95 per cent. Value received.

**FOR INTERNAL BANK USE ONLY**

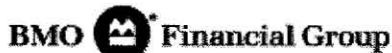
Credit Deposit Account No.	Loan Account No.	Initials

2496287 Ontario Inc.

R. Kapilan  
Rasakone Kapilan - President

This is Exhibit "Q" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.



## Operating Loan Agreement with Availment in Canadian Dollars

To: Bank of Montreal

Date: Nov 12, 2015

The undersigned hereby requests Bank of Montreal (the "Bank") to provide a credit facility to the undersigned, subject to the following terms and conditions:

### 1. DEFINED TERMS

In this Agreement:

- 1.01 "Account" shall mean the Canadian Dollar Account No. \_\_\_\_\_ at the Bank.
- 1.02 "Facility Fee" shall mean a fixed monthly fee of \$ 110.00.
- 1.03 "Loan" shall mean the credit facility (if any) provided pursuant to this Agreement and the amount of the Loan shall mean at any time the aggregate of all amounts debited to the Account (including without limitation cheques, transfers, withdrawals, interest, costs, charges and fees) less the aggregate of all amounts credited to the Account for which the Bank has given value.
- 1.04 "Loan Limit" shall mean One Hundred Ten Thousand Dollars (\$ 110,000.00 ) or such lesser amount as may be determined by the Bank from time to time including, without limitation, pursuant to a calculation under the Lending Margin Calculation, if any, set out in the Addendum hereto.
- 1.05 "Loan Rate" shall mean a rate equal to the Bank's Prime Rate plus Two per cent ( 2.00% ) per annum.
- 1.06 "Prime Rate" shall mean the floating annual rate of interest established from time to time by the Bank as the reference rate it will use to determine the rate of interest payable to the Bank by borrowers from the Bank in Canadian dollars in Canada and designated by the Bank as its Prime Rate. The Prime Rate on the date hereof is Three point Nine Five per cent (3.95 %) per annum.
- 1.07 "Overdraft Rate" shall mean the annual rate of interest established from time to time by the Bank as the interest rate it will use to calculate the interest payable on overdrawn accounts and designated by the Bank as the "Overdraft Rate". The Overdraft Rate on the date hereof is Twenty One per cent (21.0%) per annum.

### 2. ACCOUNT

- 2.01 Cheques drawn and debits of other kinds made on the Account (including, without limitation, transfers and withdrawals) shall be drawn in Canadian dollars.
- 2.02 The undersigned shall not at any time permit the Loan to exceed the Loan Limit and shall use the Account for business purposes only.
- 2.03 The Bank is authorized to debit the Account for all fees and interest required hereunder and for all costs, charges and expenses referred to in paragraph 6.01 and in any other agreement(s) the undersigned has entered into with the Bank.

### 3. FEES AND INTEREST

- 3.01 The undersigned shall pay the Facility Fee to the Bank, on the last day of each month in addition to all other fees applicable to the Account. Notwithstanding paragraph 1.02, the amount of the Facility Fee may be revised by the Bank from time to time and the revised fee will be effective once the Bank advises the undersigned by notice as herein provided. The Facility Fee shall be payable for the credit facility provided hereunder and for other standard reporting services provided by the Bank in connection with the Account.
- 3.02 The undersigned shall, both before and after demand or judgment, pay interest at the Loan Rate on the daily closing balance of the Loan up to the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.

3.03 The undersigned shall, both before and after demand or judgment, pay interest at the Overdraft Rate on the amount of any daily closing balance of the Loan in excess of the Loan Limit, such interest to be calculated and payable monthly on the last day of each month.

3.04 Nothing herein shall oblige the Bank to permit the Loan to exceed the Loan Limit. In the event the Loan exceeds the Loan Limit, (i) the Bank may at any time terminate the Loan hereunder and immediately demand payment of the Loan by notice as herein provided and (ii) for each occurrence the undersigned will be charged a fee of 1% per annum calculated on the amount of excess over the Loan Limit or \$100, whichever is greater, and a \$5 overdraft handling charge per item that creates or increases the excess.

#### 4. DEMAND AND TERMINATION

4.01 The undersigned shall pay the Loan to the Bank ON DEMAND, regardless of any covenants, conditions, obligations or events of default set out herein including, without limitation, any provisions set out in the Addendum hereto. The Bank may at any time terminate the Loan provided hereunder and demand payment of the Loan by notice as herein provided.

4.02 THE BANK MAY REFUSE TO HONOUR ANY CHEQUE OR PERMIT ANY TRANSFER OR WITHDRAWAL FROM THE ACCOUNT UPON (A) ANY DEFAULT BY THE UNDERSIGNED IN THE PERFORMANCE OF ANY OBLIGATION OF THE UNDERSIGNED TO THE BANK WHETHER CONTAINED HEREIN OR IN ANY OTHER AGREEMENT BETWEEN THE UNDERSIGNED AND THE BANK, (B) THE DEATH OF ANY GUARANTOR OF ANY INDEBTEDNESS OF THE UNDERSIGNED OR RECEIPT BY THE BANK OF NOTICE OF TERMINATION OF ANY GUARANTEE OF ANY INDEBTEDNESS OF THE UNDERSIGNED, (C) THE LOAN EXCEEDING THE LOAN LIMIT, OR (D) ANY DEMAND BEING MADE FOR PAYMENT OF THE LOAN, WHETHER OR NOT ANY TIME PERIOD HAS LAPSED AFTER THE TIME OF THE DEMAND.

#### 5. DOCUMENTATION

5.01 The undersigned shall deliver to the Bank from time to time, promptly on request, in form and substance satisfactory to the Bank:

- (a) any security required by the Bank; and
- (b) all other documents and information required by the Bank.

5.02 Any security document delivered hereunder shall be held as additional security for the indebtedness of the undersigned for the Loan, and not in substitution or in satisfaction thereof.

#### 6. COSTS

6.01 The undersigned shall pay all reasonable costs, charges and expenses incurred by the Bank in the preparation or enforcement of this Agreement or any security required in connection with the Loan.

#### 7. NOTICES

7.01 The Bank shall not be required to notify the undersigned of changes to the Prime Rate or the Overdraft Rate or in the Bank's calculations of the Lending Margin Calculation, if any.

7.02 Any request for any document or information, notice of termination, demand for payment or other notice to be sent in connection with this Agreement or either of the Accounts may be delivered, or mailed by prepaid ordinary mail or transmitted by facsimile if to the undersigned (or any one of them, if more than one) at the last known address or facsimile number for the undersigned (or any one of them, if more than one) in the Bank's records or if to the Bank at the Branch where the Account is maintained. The undersigned or the Bank, as applicable, shall be deemed to have received such request or notice on the date of delivery, if delivered, on the first business day following the date of transmission if transmitted by facsimile, and four (4) days after mailing, if mailed.

#### 8. AMENDED AND RESTATED AGREEMENT

8.01 This Agreement hereby amends and restates the \_\_\_\_\_  
( Insert name of agreement)

Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as heretofore amended and supplemented from time to time (the "Existing Agreement"), between the undersigned and the Bank with effect as and from the date hereof (the "Effective Date"), the whole without any novation whatsoever.

- 8.02 The parties hereby expressly agree that as and from the Effective Date all of the undersigned's obligations, indebtedness and liabilities to the Bank under or pursuant to the Existing Agreement including, without limitation, the outstanding principal amount of the loan thereunder, all interest accrued thereon, all interest on overdue interest and all other amounts owing by the undersigned to the Bank under or pursuant to the Existing Agreement shall be governed by the terms hereof.
- 8.03 The undersigned hereby ratifies, confirms, acknowledges and agrees that it is and continues to be bound by all of the obligations, indebtedness and liabilities of and grants of security made by it under each of the security documents under, pursuant to or in connection with the Existing Agreement, including without limitation any agreement or instrument creating or granting a hypothec, security under the *Bank Act* (Canada), mortgage, pledge, fixed or floating charge, assignment by way of security or any other security interest securing payment or performance of an obligation under or pursuant to the Existing Agreement (herein, collectively, the "Security Documents") and each certificate or other document delivered pursuant to or in connection with the Existing Agreement or the Security Document (the Security Documents and such certificates or other documents are herein, collectively, the "Loan Documents"), and the undersigned acknowledges that the Bank is relying expressly upon the Loan Documents and such ratifications, confirmations, acknowledgements and agreements by the undersigned herein in entering into this Agreement and providing any accommodations hereunder, notwithstanding the amendment and restatement set forth herein.
- 8.04 As and from the Effective Date, all references to the Existing Agreement in any of the Loan Documents shall be construed as being a reference to the Existing Agreement as amended and restated by this Agreement.
- 8.05 This Article 8 is made under express reserve of all the terms and conditions of this Agreement and the Loan Documents and all rights in favour of the Bank hereunder and thereunder and without novation of any kind or derogation from the rank and priority of the Security Documents. Without derogating from or restricting in any way the Security Documents, all obligations under or pursuant to the Existing Agreement and hereunder shall continue to be secured by the Security Documents. All of the provisions of this Article 8 are without novation.

## 9. GENERAL

- 9.01 The provisions of the Addendum, if any, shall be incorporated into this Agreement and form part hereof.
- 9.02 The Bank's statements of the Account at any time shall constitute prima facie evidence of the Loan.
- 9.03 The undersigned will immediately notify the Bank if any guarantor of the indebtedness of the undersigned to the Bank dies.
- 9.04 This Agreement shall be binding upon the undersigned and the respective executors, administrators, successors and assigns of the undersigned, but the undersigned shall not assign any of the rights or obligations of the undersigned hereunder without the prior written consent of the Bank.
- 9.05 The failure of either the undersigned or the Bank to require performance by the other of any provision hereof shall in no way affect the right thereafter to enforce such provision; nor shall the waiver by either party of any breach of any covenant, condition or proviso of this Agreement or any other agreement between the Bank and the undersigned be taken or held to be a waiver of any further breach of the same covenant, condition or proviso.
- 9.06 Subject to Article 8 above (if applicable) this Agreement shall be in addition to and not in substitution for any other agreement between the undersigned and the Bank.
- 9.07 The undersigned agrees that the balance shown in any statement of the Account provided to the undersigned shall be deemed to be a correct and accurate statement of the Loan as at the date of the statement.
- 9.08 All payments relating to the Loan made by the undersigned pursuant to this Agreement shall be paid in Canadian dollars.

Any obligation of the undersigned under this Agreement to make payments in U.S. dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into Canadian dollars except to the extent that such tender or recovery shall result in the effective receipt by the Bank of the full equivalent amount of U.S. dollars so payable hereunder. Accordingly, the obligation of the



undersigned shall be enforceable as an alternative or additional cause of action for the purpose of recovery in Canadian dollars of the amount (if any) by which such payment of a U.S. dollar obligation hereunder in a currency other than U.S. dollars shall fall short of the full amount of U.S. dollars so payable hereunder and shall not be affected by any judgment being obtained for any other sums due hereunder.

- 9.09 If any other provision of this Agreement would oblige the undersigned to pay or entitle the Bank to receive any amount that is prohibited by law, then, notwithstanding such provision, such amount shall be deemed to have been adjusted with retroactive effect to the maximum permitted amount by law. Notwithstanding the foregoing, if the Bank receives an amount in excess of the maximum permitted, then the undersigned shall be entitled, on providing written notice to the Bank, to obtain reimbursement of such excess. Pending reimbursement, such excess shall be deemed to be payable by the Bank. The Bank and the undersigned disavow any intent to receive or pay any amount in excess of that is permitted by law.
- 9.10 Time shall be of the essence of this Agreement.
- 9.11 If more than one party signs this Agreement, the obligations of the undersigned are joint and several.
- 9.12 It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

By executing this Agreement below the undersigned hereby agrees to the foregoing terms and conditions.

DATED as of the date set forth above.

*If signed by corporation or other entity (e.g. partnership).*

**2496287 Ontario Inc.**

per:



Name: Rasakone Kapilan

Title: Director

I have authority to bind the Corporation

**ADDENDUM TO  
OPERATING LOAN AGREEMENT**

Lending Margin Calculation and/or Additional Provisions

The Bank may in its discretion reduce the Loan Limit by the amount of any other indebtedness or liability of the undersigned (or any one of them, if more than one) to the Bank including, without limitation, the amount of any bankers acceptances or letters of credit.

Without limiting the foregoing, the following Lending Margin Calculation is applicable to the attached Loan Agreement. The calculation and the amount of the Lending Margin Calculation is in the sole and complete discretion of the Bank, and in cases of dispute, the Lending Margin Calculation calculated by the Bank shall prevail.

The Lending Margin Calculation (if applicable) shall be an amount equal to: \_

**ACKNOWLEDGEMENT**

**TO:** BMO – Bank of Montreal (“BMO”)  
**AND TO:** MANN LAW Barristers and Solicitors Professional Corporation  
**RE:** BMO Loan to 2496287 Ontario Inc.


---

**THE UNDERSIGNED** hereby acknowledges receipt of a copy of the registration statement attached hereto as Schedule “A” as required by section 46 of the *Personal Property Security Act (Ontario)*.

**DATED** at Toronto this 12 day of November, 2019.

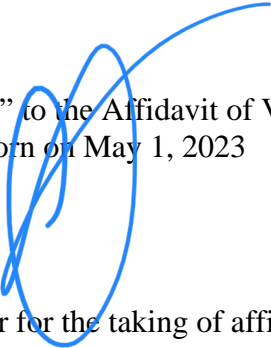
**2496287 Ontario Inc.**

per:



Name: Rasakone Kapilan  
Title: President

I have authority to bind the Corporation



This is Exhibit "R" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

### SECURITY AGREEMENT

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). This Security Agreement is entered into pursuant to and is governed by the *Personal Property Security Act* (Ontario) insofar as it affects personal property located in Ontario.

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations in Ontario:

58 GRAYLEAF DRIVE, STOUFFVILLE, ONTARIO, L4A 1S8  
2260 Highway 7 East, Pickering, Ontario, L0H 1H0

List all premises  
and asset  
locations, by  
schedule, if  
necessary

2. The Debtor hereby:

- (a) mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment and any proceeds therefrom, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired or in respect of which the Debtor has rights now or in the future and any equipment specifically listed or otherwise described in any Schedule hereto ;
- (b) mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory and any proceeds therefrom, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service ;
- (c) assigns, transfers and sets over to the Bank and grants to the Bank a security interest in, all its present and future intangibles and any proceeds therefrom, including, without limiting the generality of the foregoing, all its present and future accounts, accounts receivable, client lists, client records, client files, contract rights and other choses in action of every kind or nature now due or hereafter to become due, including insurance rights arising from or out of the assets referred to in sub-clauses (a) and (b) above ;
- (d) grants, mortgages, charges, transfers and assigns to the Bank a security interest in, all its present and future chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom ; and

Attach a  
schedule, if  
equipment is to  
be listed

(e) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, moveable or immovable, of whatsoever nature and kind, both present and future (other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and to the exceptions hereinafter contained). For the purposes of this Security Agreement, the equipment, inventory, intangibles, undertaking and all other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes collectively called the "Collateral". Without limiting the generality of the description of Collateral as set out in this clause 2, and for the greater certainty, the Collateral shall include all present and future personal property of the Debtor of the type described in any schedule attached hereto. The Debtor agrees that it shall promptly advise the Bank in writing of any acquisition of personal property which is not of the type herein described. The Debtor agrees to execute and deliver from time to time, at its own expense, amendments to this Security Agreement or additional security agreements, which may be reasonably required by the Bank to ensure attachment of security interests in such personal property.

3. The Collateral is on the date hereof primarily situate or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places while in transit to and from such locations and premises; and the Collateral may from time to time be situated or located at any other place when on lease or consignment to any lessee or consignee from the Debtor.

4. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be excepted out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid upon trust to assign and dispose of the same as any purchaser of such term of years shall direct. There shall also be excluded from the security created by this Security Agreement any property of the Debtor that constitutes consumer goods for the personal use of the Debtor.

5. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral other than that described in sub-clause (b) of clause 2 above which may be sold only in the ordinary course of business and for the purpose of carrying on the same; and if the amounts of any of the intangibles referred to in sub-clause (c) of clause 2 above or any proceeds arising from the Collateral described in sub-clauses (a) and (b) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank. The Debtor shall not without the prior written consent of the Bank create any liens upon or assign or transfer as security or pledge or hypothecate as security or create a security interest in the Collateral except to the Bank. The Debtor agrees that the Bank may require any account debtor to the Debtor to make payment to the Bank and the Bank may take control of any proceeds referred to in sub-clauses (a), (b) and (c) of clause 2 hereof and may hold all amounts received from any account debtors and any proceeds as cash collateral as part of the Collateral and as security for the Obligations of the Debtor to the Bank.

6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the property and assets hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement.

7. The Debtor shall at all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and seasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.

8. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of inventory and equipment and lists of accounts and accounts receivable showing the amounts owing upon each account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the account.

9. The Debtor shall be in default under this Security Agreement upon the occurrence of any one of the following events:

- (a) the Debtor shall default under any of the Obligations;
- (b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not and including any covenant or undertaking set out in any Schedule to this Security Agreement;
- (c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;
- (d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be *bona fide* opposed by the Debtor;
- (e) the Debtor shall cease to carry on business.

10. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead, or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed; and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, the Bank may enter upon the applicable premises and lease or sell the whole or any part or parts of the Collateral. The Debtor agrees that considering the nature of that part of the Collateral that is not perishable it will be commercially reasonable to sell such part of the Collateral:

- (a) as a whole or in various lots;
- (b) by a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
- (c) by private sale after the receipt by the Bank of at least two offers from prospective purchasers who may include persons related to or affiliated with the Debtor or other customers of the Bank.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

11. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this Security Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.

12. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in the preparation, perfection and enforcement of this Security Agreement, including all expenses incurred by the Bank and its agents to put into place and confirm the priority of any security interest in this Security Agreement and the payment of such expenses shall be secured hereby.

13. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or rights resulting therefrom.

14. The Debtor acknowledges that value has been given, that the Debtor has rights in the Collateral and that the parties have not agreed to postpone the time for attachment of any security interest in this Security Agreement.

15. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Obligations of the Debtor shall at any time or from time to time be fully satisfied or paid.

16. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment or any indebtedness or liability of the Debtor to the Bank.

17. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.

18. This Security Agreement is a security agreement within the meaning of the Personal Property Security Act (Ontario) and does not constitute an acknowledgement of any particular indebtedness or liability of the Debtor to the Bank.

19. The Debtor acknowledges receipt of a copy of this agreement.



20. In construing this Security Agreement, terms herein shall have the same meaning as defined in the *Personal Property Security Act* (Ontario), unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor on

Insert date  
of execution

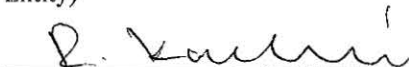
12 day of November, 2019. (year)

To be signed by  
Debtor, if Debtor is a  
corporation ensure  
signatures are  
authorized and if  
Debtor is a corporation  
with a corporate seal,  
affix Corporate Seal;  
Debtor's name should  
be typed.

*If signed by corporation or other entity (e.g. partnership).*

2496287 Ontario Inc.  
(Name of Entity)

By:



Name: Rasakone Kapilan

Title: President

#### CORPORATE AUTHORIZING RESOLUTION

Required  
only for a  
corporation

"WHEREAS it is in the interests of the Company to enter into a security agreement with the Bank of Montreal as security for its present and future obligations to the Bank of Montreal and therein mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future property and assets;

#### NOW THEREFORE BE IT RESOLVED THAT:

1. the Company do enter into, execute and deliver to the Bank of Montreal a security agreement substantially in the form of the draft security agreement presented to the directors, subject to such alternations, amendments or additions to which the President or a Vice-President of the Company may agree;
2. the Company do mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future equipment, inventory, intangibles, undertaking and other property and assets as security for its present and future obligations to the Bank of Montreal, all as provided in the said draft security agreement;
3. the execution by the President or a Vice-President of the Company of the said security agreement shall be conclusive proof of his agreement to any amendments, alterations or additions incorporated therein;
4. the President and the Vice-President of the Company be and they are each along hereby authorized to execute and deliver the security agreement aforesaid on behalf of the Company and each of the officers of the Company are hereby authorized to execute all such other documents and writings and to do such others acts and things as may be necessary for fulfilling the Company's obligations under the said security agreement."

## CERTIFICATE

To be completed  
by Secretary or  
other authorized  
officer; insert  
name of  
corporation.  
Insert  
appropriate  
date

I am the Secretary of 2496287 Ontario Inc. and I hereby certify that:

1. the foregoing is a true copy of a resolution duly and properly passed or consented to by the board of directors of the said Company on the 12 day of November, 2019,(year)
2. the attached Security Agreement is in the form of the draft security agreement referred to in the resolution and has been duly and properly executed by the proper officers of the Company under its corporate seal; and
3. the resolution was passed at a meeting duly called and held on the date aforesaid and at which a quorum of the directors was present throughout the meeting, all the directors having received proper notice of the meeting or waiving such notice in accordance with the by-laws of the Company

Use  
applicable  
clause

(or where applicable – the Company is subject to the *Business Corporations Act* of Ontario and the resolution was consented to by the signatures of all the directors of the Company on the date aforesaid in accordance with the *Business Corporations Act*.)

To be  
signed by  
Secretary or  
other  
authorized  
officer; affix  
corporate  
seal

By:

Name: Kalyani Kapilan

Title: Secretary

seal

® Registered trade-marks of Bank of Montreal

**ACKNOWLEDGEMENT**

**TO:** BMO – Bank of Montreal (“BMO”)  
**AND TO:** MANN LAW Barristers and Solicitors Professional Corporation  
**RE:** BMO Loan to 2496287 Ontario Inc.


---

**THE UNDERSIGNED** hereby acknowledges receipt of a copy of the registration statement attached hereto as Schedule “A” as required by section 46 of the *Personal Property Security Act (Ontario)*.

**DATED** at Toronto this 12 day of November, 2019.

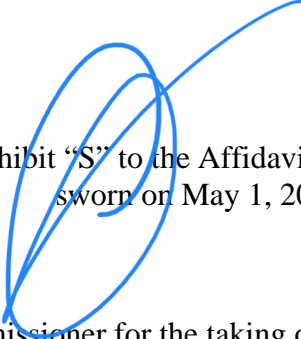
**2496287 Ontario Inc.**

per:



Name: Rasakone Kapilan  
Title: President

I have authority to bind the Corporation



This is Exhibit "S" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123055.12

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 1856)

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

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2496287 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

ENQUIRY NUMBER 20220418123055.12 CONTAINS 5 PAGE(S), 3 FAMILY(IES).

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

CHAITONS LLP (SD) - SILVIA DURANTE  
5000 YONGE STREET, 10TH FLOOR  
TORONTO ON M2N 7E9

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

(crj5 06/2019)

CONTINUED... 2



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123055.12

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 1857)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2496287 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
757641366

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	001		20191115 1219 1862 2395	P PFSA	6

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
02				

03 BUSINESS NAME : 2496287 ONTARIO INC.

04 ADDRESS : 58 GRAYLEAF DRIVE STOUFFVILLE

ONTARIO CORPORATION NO. 2496287  
ON L4A 1S8

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05				

06 BUSINESS NAME : 2496287 ONTARIO INC.

07 ADDRESS : 2260 HIGHWAY 7 EAST PICKERING

ONTARIO CORPORATION NO. 2496287  
ON L0H 1H0

08 SECURED PARTY / LIEN CLAIMANT : BANK OF MONTREAL

09 ADDRESS : 6605 HURONTARIO STREET SUITE 300 MISSISSAUGA

ON L5T 0A4

COLLATERAL CLASSIFICATION

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

MOTOR VEHICLE	YEAR MAKE	MODEL	V.I.N.
11			

13 GENERAL COLLATERAL DESCRIPTION : GENERAL SECURITY AGREEMENT OVER ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY.

16 REGISTERING AGENT : MANN LAW, BARRISTERS & SOLICITORS

17 ADDRESS : 920 DERRY ROAD EAST MISSISSAUGA ON L5T 2X6

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

CONTINUED... 3

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

(c/j)1fu 06/2019)



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123055.12

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
( 1858)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2496287 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
757641591

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	001		20191115 1226 1862 2409	P PPSA	6

02 DEBTOR NAME  
03 BUSINESS NAME : 2496287 ONTARIO INC.  
04 ADDRESS : 58 GRAYLEAF DRIVE STOUFFVILLE ONTARIO CORPORATION NO: 2496287 ON L4A 1S8

05 DEBTOR NAME  
06 BUSINESS NAME : 2496287 ONTARIO INC.  
07 ADDRESS : 2260 HIGHWAY 7 EAST PICKERING ONTARIO CORPORATION NO: 2496287 ON L0H 1H0

08 SECURED PARTY / LIEN CLAIMANT : BANK OF MONTREAL  
09 ADDRESS : 6605 HURONTARIO STREET SUITE 300 MISSISSAUGA ON L5T 0A4

10 COLLATERAL CLASSIFICATION

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

11 MOTOR VEHICLE  
12 YEAR MAKE : MODEL : V-I-N :

13 GENERAL DESCRIPTION : ASSIGNMENT OF RENTS ON FILE.  
14 COLLATERAL DESCRIPTION

16 REGISTERING AGENT : MANN LAW, BARRISTERS & SOLICITORS  
17 ADDRESS : 920 DERRY ROAD EAST MISSISSAUGA ON L5T 2X6

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

CONTINUED... 4

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

(eji1fu 06/2019)



RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123055.12

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 4  
( 1859)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2496287 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
746378451

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
01 001 20181130 1039 1529 4188 P PPSA 5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
03 NAME BUSINESS NAME 2496287 ONTARIO INC

04 ADDRESS 2250 HIGHWAY 7 GREENWOOD ONTARIO CORPORATION NO  
ON L0H 1H0

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
06 NAME BUSINESS NAME 23AUG1970 KALYANI KAPILAN

07 ADDRESS 58 GRAYLEAF DR STOUFFVILLE ONTARIO CORPORATION NO  
ON L4A 1S8

08 SECURED PARTY / BMW CANADA INC  
09 LIEN CLAIMANT

09 ADDRESS 50 ULTIMATE DRIVE RICHMOND HILL ON L4S 0C8

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X 58845 X

11 MOTOR YEAR MAKE MODEL V.I.N.  
12 VEHICLE 2018 BMW 340I XDRIVE SEDAN WB88B7C53JA586098

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING CANADIAN SECURITIES REGISTRATION SYSTEMS  
17 AGENT ADDRESS 4126 NORLAND AVENUE BURNABY BC V5G 3S8

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

CONTINUED... 5

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

(crj1fu 06/2019)





RUN NUMBER : 108  
RUN DATE : 2022/04/18  
ID : 20220418123055.12

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 5  
( 1860)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2496287 ONTARIO INC.  
FILE CURRENCY : 17APR 2022

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
757641366	20191115 1219 1862 2395			
757641591	20191115 1226 1862 2409			
746378451	20181130 1039 1529 4188			

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

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

(crj)5 06/2019)



This is Exhibit "1" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

**Properties**

*PIN* 26401 - 0048 LT *Interest/Estate* Fee Simple  
*Description* PT LT 13 CON 6 PICKERING PTS 4 & 5 PL 40R-20455; PICKERING, REGIONAL MUNICIPALITY OF DURHAM, S/T ROW OVER PT 4 PL 40R-20455 IN FAVOUR OF PTS 1, 2, & 3 PL 40R-20455 AS IN DR34575, T/W ROW OVER PT 2 PL 40R-20455 AS IN DR34575  
*Address* 2260 HIGHWAY 7 EAST  
 PICKERING

**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* 2496287 ONTARIO INC.  
*Address for Service* 58 Grayleaf Drive, Stouffville,  
 Ontario, L4A 1S8

I, Rasakone Kapilan, 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* BANK OF MONTREAL  
*Address for Service* 6605 Hurontario Street, Suite 300,  
 Mississauga, Ontario L5T 0A4

**Provisions**

*Principal* \$3,780,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* ON DEMAND  
*Interest Rate* Prime + 5%  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 201607  
*Insurance Amount* Full insurable value  
*Guarantor* Kalyani Kapilan and Rasakone Kapilan

**Signed By**

Rhea Reshma Nanan 920 Derry Road East acting for Signed 2019 11 18  
 Mississauga  
 L5T 2X6 Chargor(s)

Tel 905-565-5770

Fax 905-565-1149

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

**Submitted By**

MANN LAW OFFICE 920 Derry Road East 2019 11 18  
 Mississauga  
 L5T 2X6

Tel 905-565-5770

Fax 905-565-1149

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$65.05

*Total Paid* \$65.05

**BANK OF MONTREAL  
ONTARIO  
STANDARD CHARGE TERMS  
ALL INDEBTEDNESS MORTGAGE  
(COMMERCIAL/FARM)**

Filing Number: **201607**

The following set of standard charge terms (together with the schedule attached hereto, the "Standard Charge Terms") shall be deemed to be included in each mortgage or charge in which it is referred to by its filing number as provided in section 9 of the *Land Registration Reform Act*, R.S.O. 1990, except to the extent that the provisions of the Standard Charge Terms are excluded or varied by such mortgage or charge.

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**B. DEFINITIONS**

In this set of Standard Charge Terms and in each Mortgage, the following terms shall have the following meanings:

1. **"Applicable Rate"** means:
  - (a) the applicable interest rate specified by the applicable note or agreement delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee; or
  - (b) if the interest rate referred to in subsection (a) is not so specified, the applicable interest rate specified by the Mortgage.
2. **"Controlling Entity"** means any corporation or other entity which on the date of the Mortgage beneficially owned, directly or indirectly, shares, other securities or other equity interests issued by the Mortgagor or a Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor.
3. **"Default"** means a default referred to in section I.
4. **"Guarantor"** means a person who guaranteed payment of all or any Indebtedness.
5. **"Indebtedness"** means all present and future indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee whether direct or indirect, absolute or contingent, or revolving or non-revolving, whether incurred by the Mortgagor alone or together with any other debtor or debtors and whether incurred pursuant to the provisions of the Mortgage or otherwise including all principal, interest, guarantee liabilities, letter of credit indemnity liabilities, bankers' acceptance indemnity liabilities, fees and expenses now or hereafter owing by the Mortgagor to the Mortgagee.
6. **"Insolvency Proceeding"** means a proceeding commenced under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any other similar statute.
7. **"Lease"** means a lease, offer to lease or other similar agreement of or with respect to the Mortgaged Land in favour of, or held by the Mortgagor as tenant and referred to in the Mortgage, as such lease, offer to lease or other similar agreement is amended or replaced from time to time.
8. **"Mortgage"** means the applicable registered mortgage or charge (as amended from time to time) in which this set of Standard Charge Terms is incorporated by reference to its filing number (including all Schedules thereto), includes any such mortgage or charge registered electronically or otherwise and includes such mortgage or charge whether or not any provision of the Standard Charge Terms is excluded or varied.
9. **"Mortgaged Land"** means the real property described in the Mortgage, all appurtenances thereto and all estates and interests therein, and includes all buildings, plant, machinery, crops, erections and improvements, fixed or otherwise, present or future, built, grown, placed or put thereon including all fences, heating equipment, plumbing equipment, antennae, radiators, mirrors, air-conditioning equipment, ventilating equipment, fire alarm and protective systems, lighting and lighting fixtures, hay racks, barn fixtures, milking machine equipment, water tanks, pumps and windmills, water bowls and pipes, feed boxes, litter carriers and tracks, mobile homes affixed to the real property, furnaces, boilers, oil burners, stokers, water heating equipment, cooking and refrigeration equipment, window blinds, floor coverings, storm windows, storm doors, window screens, door screens, shutters and awnings, all apparatus and equipment appurtenant thereto, and all other fixtures and accessions of any kind or nature.
10. **"Mortgagee"** means the mortgagee or chargee referred to in the Mortgage and its successors and assigns.
11. **"Mortgagee's Prime Rate"** means the fluctuating annual rate of interest determined by Bank of Montreal from time to time as the reference rate it will use to determine rates of

interest payable by borrowers from Bank of Montreal of Canadian dollar loans made in Canada and designated by Bank of Montreal as its prime rate.

12. "Mortgagor" means the person or persons identified as the mortgagor or chargor in the Mortgage and his, her, its or their respective heirs, executors, administrators, personal representatives, successors and assigns.
13. "Other Encumbrances" means all statutory liens, construction liens, mechanics' liens, builders' liens, other liens, executions, mortgages, charges, and other encumbrances which charge or otherwise affect or could affect the Mortgaged Land but excludes the Mortgage.
14. "Permitted Prior Mortgage" means a mortgage or charge of the Mortgaged Land which ranks in priority to the Mortgage and which the Mortgagee has approved in writing.
15. "Receiver" means a receiver, receiver and manager or other similar person.
16. "Schedule" means a schedule to the Mortgage.
17. "Taxes" means all taxes, rates and assessments, municipal, provincial, federal or otherwise, with respect to the Mortgaged Land.

### **C. OPERATION OF THE MORTGAGE**

1. *Charge of Mortgaged Land.* In consideration of other valuable consideration and a loan advance made or other credit extended by the Mortgagee to the Mortgagor (the receipt and sufficiency of which are acknowledged by the Mortgagor), the Mortgagor hereby mortgages and charges the Mortgaged Land to and in favour of the Mortgagee as security for payment to the Mortgagee of all Indebtedness and as security for the observance and performance by the Mortgagor of all other obligations of the Mortgagor pursuant to or in respect of the Mortgage or the Standard Charge Terms. Subject to the provisions of the Mortgage, the Mortgagor releases to the Mortgagee, all the Mortgagor's claims upon the Mortgaged Land.

2. *Repayment of Principal on Demand.* The Mortgagor shall pay all Indebtedness to the Mortgagee on demand by the Mortgagee for payment.

3. *Restriction on Voluntary Prepayments.* The Mortgagor shall not be entitled to prepay voluntarily any principal amount (including any principal amount owing with respect to a revolving line of credit or a demand loan) except to the extent agreed to by the Mortgagee in writing.

4. *Calculation and Payment of Interest.* The Mortgagor shall pay to the Mortgagee when due interest payable by the Mortgagor on each part of the Indebtedness (including interest on overdue interest) at the Applicable Rate which applies to such part of the Indebtedness. Interest shall accrue on each part of the Indebtedness from the date such part is incurred to the date such part is paid to the Mortgagee in full. Interest shall, both before and after Default, be calculated and payable monthly not in advance on the first day of each month unless otherwise agreed by the Mortgagor and the Mortgagee in writing. Whenever there is more than one Applicable Rate, the Applicable Rate referred to in sections D, E, G, J and K shall, unless otherwise agreed by the Mortgagee in writing, be the higher or highest of such Applicable Rates.

5. *Continuing Security.* The Mortgage shall be continuing security in favour of the Mortgagee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is:

- (a) any change in the nature, state or form of any account between the Mortgagor and the Mortgagee;
- (b) any new advance by the Mortgagee to the Mortgagor, whether by way of loan, discount, the drawing of a cheque against an account of the Mortgagor or otherwise;
- (c) any discount or acceptance by the Mortgagee from or for the Mortgagor of any note, bill of exchange or other negotiable instrument or commercial paper;
- (d) any credit of any amount to any account of the Mortgagor by reason of deposit of moneys or otherwise; or

Page 5.

- (e) any renewal, replacement, substitution or alteration of any note, bill of exchange or other negotiable instrument or other commercial paper from time to time held by the Mortgagee or any reduction, satisfaction, payment, release or discharge thereof or of any other security therefor.

Nothing herein shall prejudice any of the Mortgagee's rights pursuant to or in respect of any note, bill of exchange, other agreement or other security now or hereafter held by the Mortgagee.

6. *Divided Parts of Mortgaged Land.* Every part of the Mortgaged Land into which the Mortgaged Land may hereafter be divided by a plan of subdivision or otherwise shall continue to be charged with payment of all Indebtedness but the Mortgagee may discharge any part or parts of the Mortgaged Land with or without sufficient consideration and without releasing the Mortgagor from the Mortgage and no person shall have any right to require the Indebtedness to be apportioned between or among such parts.

7. *Application of Amounts Paid.* Any and all amounts received by the Mortgagee with respect to Indebtedness before a Default shall, unless otherwise specified by the Mortgagee in writing, be applied firstly to reduce compound interest, secondly to reduce interest (other than compound interest), thirdly to reduce principal and fourthly to reduce any other Indebtedness. Any and all amounts received by the Mortgagee after a Default (including any and all amounts received from any security held by the Mortgagee) shall be applied by the Mortgagee in the manner determined by the Mortgagee in its sole discretion.

8. *Discharge of Mortgage.* If the Mortgagor shall duly pay to the Mortgagee all Indebtedness and the Mortgagee is not then obligated to extend any credit to the Mortgagor, the Mortgagor may request from the Mortgagee a discharge of the Mortgage and, upon delivery by the Mortgagee to the Mortgagor of a discharge of the Mortgage, the Mortgage shall terminate and cease to operate; provided that the Mortgage shall not terminate or cease to operate while any Indebtedness remains unpaid or while the Mortgagee is obligated to extend any credit to the Mortgagor only because, at any prior time or times, all Indebtedness had been paid in full. The Mortgagee shall not be obligated to deliver any partial discharge of the Mortgage.

9. *Consolidation of Mortgages.* To the extent permitted by law, the doctrine of consolidation shall apply with respect to *inter alia* the Mortgage.

#### **D. COVENANTS, REPRESENTATIONS AND WARRANTIES OF MORTGAGOR**

1. *Payment of Principal and Interest.* The Mortgagor shall pay to the Mortgagee when due all Indebtedness without deduction or set-off of any kind. The Mortgagor expressly agrees not to fail to pay any Indebtedness when due and not to reduce the amount of any due payment of any Indebtedness as a result, or in respect of any existing or future claim by the Mortgagor against the Mortgagee or against any other person whether such claim relates to any or all Indebtedness, the Mortgage, any other agreement between the Mortgagor and the Mortgagee, any other transaction or any other agreement or matter whatsoever.

2. *Observance and Performance of Other Obligations.* The Mortgagor shall duly and punctually observe and perform all the Mortgagor's existing and future obligations pursuant to the Mortgage and all the Mortgagor's existing and future obligations pursuant to any and all other existing and future agreements delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee.

3. *Payment of Taxes.* The Mortgagor shall promptly pay all Taxes as they become due and, within one month after the date fixed for the payment of the last installment of Taxes in each year, shall deliver to the Mortgagee a receipted tax bill showing payment in full of all such Taxes payable during such year. If the Mortgagor fails to pay any Taxes as they become due, the Mortgagee may, at its option, pay the whole or any part of such Taxes. The amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

4. *Good Title and Free From Encumbrances.* The Mortgagor represents and warrants to the Mortgagee that the Mortgagor is the legal and beneficial owner of, and has good, absolute and indefeasible title and estate in fee simple to the Mortgaged Land (or the leasehold interest therein



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if section E applies), free of any Other Encumbrances except any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears, public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land or other encumbrances consented to by the Mortgagee in writing, and free of any reservations, limitations, provisos or conditions whatsoever except those contained in the original grant thereof, if any, from the Crown; the Mortgagor has good right, full power and lawful and absolute authority to mortgage and charge the Mortgaged Land (or, if section E applies, its leasehold interest therein) to the Mortgagee in accordance with the provisions of the Mortgage.

5. *Insurance.* The Mortgagor shall maintain, in form, substance and amount and with insurers satisfactory to the Mortgagee, all insurance required by the Mortgagee from time to time with respect to the Mortgaged Land (including boiler, property, public liability, rental, environmental and business interruption insurance and insurance covering all crops grown on the Mortgaged Land insuring such crops against damage by hail and against perils covered by all-risk crop insurance). The Mortgagor shall deliver to the Mortgagee, from time to time at the Mortgagee's request, certificates of insurance and certified copies of such insurance policies showing all loss payable to the Mortgagee as first mortgagee (subject to the interests of the holder of any Permitted Prior Mortgage) and loss payee and containing a mortgage clause satisfactory to the Mortgagee. As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns to the Mortgagee all the Mortgagor's present and future interests in and to all such present and future insurance policies and all proceeds therefrom. The Mortgagor shall not repair any damage using proceeds of any insurance without the Mortgagee's prior written consent and the Mortgagee may, at its discretion, apply any and all insurance proceeds to reduce Indebtedness. If the Mortgagor fails to maintain insurance required by the Mortgagee, the Mortgagee may arrange insurance with respect to the Mortgaged Land, the Mortgagor shall pay to the Mortgagee, on demand by the Mortgagee, all amounts paid by the Mortgagee to effect such insurance and the Mortgagor shall pay interest thereon at the Applicable Rate; and all such amounts owing by the Mortgagor shall be part of the Indebtedness and secured by the Mortgage. The Mortgagor shall, forthwith on the occurrence of any loss or damage, furnish at the Mortgagor's own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. Any insurance monies received may, at the option of the Mortgagee, to the extent permitted by law, be applied to rebuild or repair the premises on the Mortgaged Land or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Mortgaged Land, or be applied to pay Indebtedness whether or not then due, despite any law, equity or statute to the contrary. The Mortgagor, to the extent permitted by law, hereby waives any statutory or other right it may have to require any insurance proceeds to be applied in any particular manner.

6. *Payment of Other Encumbrances.* The Mortgagor shall promptly pay when due all amounts now or hereafter owing pursuant to or with respect to any Other Encumbrances and shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any Other Encumbrances when due, the Mortgagee may, at its option, pay the whole or any part of any present or future Other Encumbrances. The amounts so paid shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. In the event the Mortgagee pays any Other Encumbrance, it shall be entitled to all the equities, rights and securities of the person or persons so paid and to obtain an assignment of such Other Encumbrance so paid and of any right to payment and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit to do so.

7. *Payment of Expenses.* The Mortgagor shall, on demand by the Mortgagee, pay all costs, charges, expenses (including legal fees as between a solicitor and his or her own client), commissions and fees which may be incurred by the Mortgagee in negotiating any credit or credits secured by the Mortgage, investigating the title to the Mortgaged Land, preparing and

registering the Mortgage and other documents, administering any credit or credits extended by the Mortgagee to the Mortgagor, inspecting the Mortgaged Land, collecting any Indebtedness, taking any proceeding in connection with or to collect any Indebtedness, taking and maintaining possession of the Mortgaged Land, maintaining and repairing the Mortgaged Land, and taking any other enforcement proceedings. The Mortgagor shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any such amounts as they become due, the Mortgagee may, at its option, pay any such amounts and the amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the

Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

8. *Compliance with Laws.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, the Mortgagor has complied with, and the Mortgagor agrees that it shall comply with all laws, by-laws and regulations affecting the Mortgaged Land and all orders and decisions of any governmental authority, governmental agency or court having jurisdiction affecting the Mortgaged Land (including all such laws, by-laws, regulations, orders and decisions relating to the environment or to residential or other property, including those relating to the amount of rent charged by the Mortgagor with respect to any part of the Mortgaged Land). The Mortgagor shall, at the Mortgagor's expense, promptly and in good and workmanlike manner make all improvements, alterations, clean-ups and repairs and effect any change in use that may be required from time to time to so comply.

9. *Maintain in Good Repair and Avoid Waste.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, all buildings, erections, equipment, machinery and improvements on the Mortgaged Land are in good condition and repair and that all noxious weeds have been eradicated from the Mortgaged Land. The Mortgagor shall maintain all buildings, erections, equipment, machinery and improvements on the Mortgaged Land in good condition and repair to the satisfaction of the Mortgagee, shall eradicate all noxious weeds from the Mortgaged Land and shall not permit waste to be committed or suffered on the Mortgaged Land or any part thereof. The Mortgagee or its agent shall be entitled, from time to time, to enter on the Mortgaged Land to inspect the Mortgaged Land and to undertake any tests (including intrusive environmental tests) required by the Mortgagee. If the Mortgagor neglects to keep the Mortgaged Land or any buildings, erections, equipment, machinery or improvements on the Mortgaged Land in good condition and repair, fails to eradicate noxious weeds from the Mortgaged Land or commits or permits any act of waste on the Mortgaged Land (as to which the Mortgagee shall be the sole judge), or fails to comply with section D.8., the Mortgagee or its agent may enter upon the Mortgaged Land and make such repairs and undertake such work and take such action as the Mortgagee deems necessary. All costs of such inspection, testing, repairs, work and action shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

10. *Environmental Representation and Indemnity.* The Mortgagor represents and warrants to the Mortgagee that there has not occurred, after the date the Mortgagor acquired an interest in the Mortgaged Land, any spill, leak, contamination or other material environmental problem affecting the Mortgaged Land or any part thereof (other than any such spill, leak, contamination or other environmental problem which has been remedied). The Mortgagor shall indemnify and save harmless the Mortgagee and any Receiver of the Mortgaged Land from any and all expenses and damages incurred or suffered by the Mortgagee or such Receiver as a result, or in respect of any spill, leak, contamination or other environmental problem affecting the Mortgaged Land or any part thereof. This indemnity shall survive the payment of all Indebtedness and the satisfaction, discharge or enforcement of the Mortgage or any other security.

11. *No Alterations or Change in Use.* The Mortgagor shall not, without the prior written consent of the Mortgagee, make, or permit to be made, any alterations or additions to the Mortgaged Land or any building thereon or change the Mortgagor's use of the Mortgaged Land or any building thereon and the Mortgagor shall not allow the Mortgaged Land to be unoccupied or unused.

12. *No Unapproved Charge or Encumbrance by Mortgagor.* The Mortgagor shall not, without the Mortgagee's prior written consent, mortgage, charge, lien or encumber the Mortgaged Land or any part thereof or any interest therein or permit any Other Encumbrance to remain thereon except for any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears and public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land.

13. *Change in Ownership or Spousal Status.* Upon any change or event affecting any of the following, namely:

- (a) the spousal status of the Mortgagor, if the Mortgagor is an individual;
- (b) the qualification of the Mortgaged Land as a matrimonial home; or

(c) the ownership of the Mortgaged Land,

the Mortgagor shall forthwith advise the Mortgagee accordingly in writing and furnish the Mortgagee with full particulars thereof, the intention being that the Mortgagee shall be kept fully informed of the names and addresses of the owner or owners of the Mortgaged Land and of any spouse who is not an owner but who may have a legal right of possession of or interest in the Mortgaged Land. The Mortgagor shall furnish the Mortgagee with such evidence in connection with any of subsections (a), (b) and (c) of this provision as the Mortgagee may from time to time request.

14. *Expropriation.* If the Mortgaged Land or any part thereof is condemned or expropriated to an extent which, in the Mortgagee's sole discretion, materially affects the Mortgagee's security, all Indebtedness shall, at the option of the Mortgagee, be deemed to have become due and payable on the day before such condemnation or expropriation, and interest shall continue to accrue thereon, at the Applicable Rate, until the Mortgagee has been paid all Indebtedness. The Mortgagor shall pay to the Mortgagee from any condemnation or expropriation proceeds the full amount thereof, to be applied by the Mortgagee to reduce Indebtedness.

15. *Power of Attorney.* The Mortgagor hereby irrevocably appoints the Mortgagee or any Receiver appointed by the Mortgagee under or pursuant to the Mortgage or by any order of a court of competent jurisdiction, as the Mortgagor's attorney for all purposes to take any and all action deemed appropriate by the Mortgagee or such Receiver after the occurrence of a Default.

16. *Further Assurances.* The Mortgagor shall (and shall cause each person having or claiming to have an estate, right, title or interest in or to the Mortgaged Land to) at any time and from time to time, at the Mortgagee's request, do, execute and deliver or cause to be made, executed and delivered to the Mortgagee such further and other reasonable acts, deeds, conveyances, charges and assurances as may be required by the Mortgagee to fully and effectually carry out the intention and meaning of the Mortgage and the provisions included in the Mortgage and the reasonable cost of such further assurances shall be part of the Indebtedness and secured by the Mortgage.

17. *Business Purposes Only.* The Mortgagor shall use only for business purposes any amounts loaned by the Mortgagee to the Mortgagor and secured by the Mortgage.

18. *No Registration of Condominiums or Strata Title Developments.* The Mortgagor shall not, without the Mortgagee's prior written consent, register any condominium or strata title development with respect to all or part of the Mortgaged Land or any declaration or description with respect thereto and the Mortgagee shall not have any obligation to provide such consent.

19. *Delivery of Information.* The Mortgagor shall deliver to the Mortgagee, promptly at the Mortgagee's request, all financial statements and other information as the Mortgagee may request from time to time with respect to the Mortgagor, a Guarantor or the Mortgaged Land.

20. *No Litigation or Other Proceedings.* The Mortgagor represents and warrants that, as at the date of the Mortgage, there is no application, litigation, proceeding or investigation outstanding or, to the Mortgagor's knowledge, pending or threatened, against the Mortgagor or any Guarantor or with respect to the Mortgaged Land or any part thereof including any application, litigation, proceeding or investigation in respect of residential or other property by-laws or regulations. The Mortgagor shall notify the Mortgagee in writing of any such application, litigation, proceeding or investigation commenced after the date of the Mortgage, promptly after such commencement.

21. *Mortgagor a Canadian Resident.* The Mortgagor represents and warrants that, as at the date of the Mortgage, it is not a non-resident of Canada for purposes of the Income Tax Act and agrees that the Mortgagor shall not, without the Mortgagee's prior written consent, become a non-resident of Canada.

22. *Good Management of Mortgaged Land.* The Mortgagor shall at all times cause the Mortgaged Land to be managed in a commercially reasonable manner by the Mortgagor or by a property manager satisfactory to the Mortgagee, acting reasonably.

23. *Abutting Real Property.* The Mortgagor shall not, without the Mortgagee's prior written consent, acquire any real property which abuts the Mortgaged Land. If the Mortgagee gives such consent, the Mortgagor shall, at the Mortgagee's request, deliver to the Mortgagee a mortgage or

charge of such abutting real property and of the Mortgaged Land in form and substance satisfactory to the Mortgagee.

24. *Deemed Covenants Excluded.* In accordance with subsection 7(3) of the *Land Registration Reform Act*, the covenants deemed to be included in a mortgage or charge by subsection 7(1) of such statute are expressly excluded from the Mortgage.

25. *Defeasance Provisions Excluded.* The provisions relating to defeasance in subsection 6(2) of the *Land Registration Reform Act* are expressly excluded from the Mortgage.

#### **E. MORTGAGE OF LEASEHOLD INTEREST**

If the Mortgagor is not the owner of the Mortgaged Land in fee simple but is the owner of a leasehold interest in the Mortgaged Land as tenant, or as an assignee or successor of a tenant, pursuant to a Lease, the following provisions shall apply:

1. *Representations and Warranties.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage:

- (a) the Lease is a good, valid and subsisting lease and has not been surrendered, forfeited or terminated or, except as specified in the Mortgage, amended, and the rents, covenants and provisions therein reserved and contained have been duly paid, performed and observed by the Mortgagor up to the date of the Mortgage; and
- (b) the Mortgagor has good right and full, lawful and absolute authority to charge, mortgage, demise and sublet the Mortgaged Land in accordance with the Mortgage and any consent thereto required of the applicable landlord has been obtained.

2. *Covenants Relating to Lease.* The Mortgagor agrees with the Mortgagee as follows:

- (a) The Mortgagor shall at all times fully perform and comply with all the obligations of the Mortgagor under or with respect to the Lease, or imposed on, assumed by or agreed to by the Mortgagor pursuant to any Other Encumbrances and, if the Mortgagor fails to do so, the Mortgagee may (but shall not be obliged to) take any action the Mortgagee deems necessary or desirable to prevent or to cure any default by the Mortgagor in the performance of or compliance with any such obligations. The Mortgagor shall promptly provide to the Mortgagee a copy of any notice the Mortgagor receives from the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person under or relating to the Lease of the Mortgaged Land. Upon receipt by the Mortgagee from the Mortgagor, the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person of any notice, including a notice of default, the Mortgagee may rely thereon and take any action with respect to such notice as may be required in the Mortgagee's sole discretion, including to cure a default even though the existence of such default or the nature thereof may be questioned or denied by or on behalf of the Mortgagor and the Mortgagee shall have the absolute and immediate right to enter in and upon the Mortgaged Land or any part thereof to such extent and as often as the Mortgagee, in its sole discretion deems necessary or desirable, in order to prevent or to cure any such default. The Mortgagee may pay and expend such amounts as the Mortgagee in its sole discretion deems necessary for any such purpose, and the amounts so paid shall be payable by the Mortgagor to the Mortgagee on demand by the Mortgagee with interest thereon at the Applicable Rate, and shall be a part of the Indebtedness and be secured by the Mortgage.
- (b) If the Mortgage is outstanding at the expiration of the term of the Lease and the Mortgagor refuses or neglects to exercise the Mortgagor's right, if any, to renew or extend the term of the Lease or refuses to pay any fees, costs, charges or expenses payable upon any such renewal or extension, the Mortgagee may effect such renewal or extension in the name of the Mortgagor or otherwise, and every such renewed or extended Lease shall remain and be mortgaged and charged pursuant to the Mortgage in accordance with the Mortgage.

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- (c) From and after the execution and delivery of the Mortgage, the Mortgagor shall stand possessed of the Mortgaged Land for the remainder of the Lease in trust for the Mortgagee, and shall exercise any right to renew or extend the term of the Lease or to assign the Lease as the Mortgagee may direct, but subject to the Mortgagor's right of redemption under the Mortgage. The Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagor's attorney for and on behalf of the Mortgagor to exercise any such renewal or extension right and to assign the Lease and convey the leasehold interest in the Mortgaged Land and the reversion thereof as the Mortgagee shall at any time direct after the occurrence of a Default and, in particular, upon any sale made by the Mortgagee under any power of sale contained in the Mortgage or granted by statute to assign the Lease and convey the Mortgagor's leasehold interest in the Mortgaged Land and the reversion to a purchaser. The Mortgagee may at any time remove the Mortgagor or any other person from being a trustee of the Lease under the above declaration of trust and appoint a new trustee or trustees.
- (d) The Mortgagor shall not surrender, terminate, amend or modify the Lease or agree to do so without the prior written consent of the Mortgagee, which the Mortgagee may withhold in its absolute discretion. No release or forbearance of any of the Mortgagor's obligations under the Lease or under any Other Encumbrance shall release the Mortgagor from any of the Mortgagor's obligations under the Mortgage.
- (e) Unless the Mortgagee expressly consents in writing, the title in fee simple to the Mortgaged Land and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates by purchase or otherwise.

3. *Last Day of Term Excepted.* Despite any other provision of the Mortgage, the last day of the term of the Lease and of any renewal or extension thereof and of any agreement therefor now held or hereafter acquired by the Mortgagor shall be excepted out of the mortgage, charge and demise contained in the Mortgage.

4. *Charge by way of Sublease.* Despite section C.1. and any other provision of the Mortgage (except section E.3.), the Mortgagor mortgages and charges, by way of sublease, the Mortgagor's leasehold interest in the Mortgaged Land pursuant to the Lease, the mortgages and charges contained in the Mortgage shall be by way of sublease and the Mortgagee shall not have any obligation or liability to the landlord or any other person pursuant to or in respect of the Lease.

5. *Leasehold Interests.* Wherever any reference is made in the Mortgage to any right of the Mortgagee to sell, transfer, assign, lease, sublease, alienate or otherwise deal with the Mortgaged Land, such reference shall be deemed, subject to section E.3., to relate to the existing and future rights and interests of the Mortgagor in the Mortgaged Land pursuant to the Lease.

#### **F. ASSIGNMENT OF LEASES AND RENTS**

If the Mortgagor or any predecessor of the Mortgagor grants or has granted any lease, offer to lease, tenancy agreement or other similar agreement of all or any part of the Mortgaged Land as landlord, the following provisions shall apply:

1. *Assignment.* As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee, all the Mortgagor's rights and interests as landlord in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Mortgaged Land, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Mortgaged Land or any building, improvement, fixture or part thereof forming part of the Mortgaged Land.
2. *Separate Assignments.* The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Mortgagor to the Mortgagee pursuant to section F.1. shall be deemed to be a separate assignment so that the Mortgagee in its discretion may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

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3. *Collection by Mortgagor before Default.* Until there occurs a Default, the Mortgagor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time in accordance with sound business practice.

4. *No Liability of Mortgagee and Indemnity by Mortgagor.* Nothing herein shall obligate the Mortgagee to assume or perform (and nothing herein shall impose on the Mortgagee) any liability or obligation of the Mortgagor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise and the Mortgagor hereby indemnifies and saves harmless the Mortgagee from any and all claims with respect thereto, provided that the Mortgagee may, at its sole option, assume or perform any such obligations as it considers necessary or desirable.

5. *Re-assignment.* The Mortgagee may, at any time without further request or agreement by the Mortgagor, reassign to the Mortgagor, or the Mortgagor's heirs, administrators, successors or assigns, any or all of the collateral referred to in section F.1.

6. *Application by Mortgagee.* The Mortgagee's obligations with respect to any amount collected by the Mortgagee shall be discharged by the application of such amount to reduce Indebtedness.

7. *Not Mortgagee in Possession.* Nothing contained herein shall have the effect of making the Mortgagee a mortgagee in possession of the Mortgaged Land.

#### G. CONDOMINIUM OR STRATA TITLE DEVELOPMENT PROVISIONS

If the Mortgaged Land is or includes one or more condominium units or strata title units, the following provisions shall apply:

1. *Compliance with Requirements.* The Mortgagor shall observe and perform each of the covenants and provisions required to be observed and performed pursuant to the Mortgage, all applicable statutes governing or affecting condominiums or strata title developments, and the declaration, description, by-laws and rules, as amended from time to time, of the applicable condominium corporation or strata corporation.

2. *Common Expense Payments.* The Mortgagor shall pay promptly when due any and all unpaid condominium or strata development fees, common expenses, common element expenses, assessments, levies, instalments, payments or any other amounts due to the applicable condominium corporation or strata corporation or any agent thereof by the Mortgagor and, at the Mortgagee's request, deliver to the Mortgagee evidence of the payment thereof.

3. *Right of Mortgagee to Pay.* If the Mortgagor does not pay when due any condominium or strata development fees, common expenses or other amounts referred to in section G.2., the Mortgagee may (but shall not be obliged to) pay such amounts, the Mortgagor shall forthwith pay such amounts to the Mortgagee with interest thereon at the Applicable Rate, and all such amounts owing by the Mortgagor to the Mortgagee shall be a part of the Indebtedness and secured by the Mortgage.

4. *Voiting by Mortgagee.* The Mortgagor hereby irrevocably authorizes the Mortgagee to exercise the rights of the Mortgagor as an owner of the Mortgaged Land to vote or to consent in all matters relating to the affairs of the condominium corporation or strata corporation or arising under applicable law or the declaration or by-laws of the condominium or strata corporation, provided that:

- (a) in any case where the Mortgagee is entitled to receive and does receive notice of a meeting of owners, the Mortgagee may notify the condominium or strata corporation and the Mortgagor of its intention to exercise the right of the owner to vote or to consent at such meeting at least two days before the date specified in the notice for the meeting, failing which the Mortgagor may exercise such right to vote or consent at such meeting;
- (b) the Mortgagee shall not, by virtue of the giving to the Mortgagee of the right to vote or consent, be under any obligation to vote or consent or to protect the interests

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of the Mortgagor, and the Mortgagee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and

- (c) nothing herein contained, including the exercise by the Mortgagee of the right to vote or consent, shall constitute the Mortgagee a mortgagee in possession.

#### H. MORTGAGE AS SECURITY FOR A GUARANTEE

If the Mortgagor has delivered to the Mortgagee or now or hereafter delivers to the Mortgagee a guarantee or guarantees of payment to the Mortgagee of indebtedness or liability of another or others, the Indebtedness shall include all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagees pursuant to such guarantee or guarantees, whether direct or indirect, absolute or contingent, and the Mortgage shall secure payment of all such indebtedness and liability of the Mortgagor pursuant to such guarantee or guarantees in addition to all other Indebtedness. If any such guarantee is increased or otherwise amended, the Mortgage shall also secure payment of all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee as increased or otherwise amended.

#### I. DEFAULT

The Mortgagor shall be in default of the Mortgage and a Default shall occur pursuant to the Mortgage if:

1. the Mortgagor fails to pay any Indebtedness when due;
2. the Mortgagor or a Guarantor fails to comply with any obligation of the Mortgagor or the Guarantor pursuant to or in respect of the Mortgage or any existing or future note, instrument or agreement delivered by the Mortgagor and the Guarantors (or any of them) to the Mortgagee or between the Mortgagor and the Guarantors (or any of them) and the Mortgagee;
3. the Mortgagor fails to comply with any obligation of the Mortgagor pursuant to or in respect of any Permitted Prior Mortgage or any Other Encumbrance;
4. any representation or warranty made by the Mortgagor or a Guarantor in the Mortgage, any agreement between the Mortgagor and the Guarantors (or any of them) and the Mortgagee, or any loan or credit application made in connection with any Indebtedness was untrue when made;
5. a Receiver is appointed of any asset of the Mortgagor or of a Guarantor;
6. any construction lien, mechanics' lien or builders' lien is registered against all or any part of the Mortgaged Land and is not discharged within seven days after a request by the Mortgagee that such lien be discharged;
7. all or any part of the Mortgaged Land is condemned or expropriated;
8. the Mortgagor or a Guarantor becomes bankrupt or insolvent;
9. a petition in bankruptcy is filed against the Mortgagor or a Guarantor;
10. the Mortgagor or a Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
11. the Mortgagor or a Guarantor makes an application as a debtor in any Insolvency Proceeding or any other person makes an application against the Mortgagor or a Guarantor in any Insolvency Proceeding;
12. the Mortgagor sells, transfers or disposes of in any other manner the Mortgaged Land, any part thereof or any interest therein (unless the Mortgagee has approved in writing such sale, transfer or other disposition);
13. an execution, judgment or order of execution is filed or made against the Mortgaged Land or any part thereof and remains unsatisfied for a period of ten days;

14. the Mortgagor fails to pay when due any amount owing by the Mortgagor to the applicable condominium corporation or strata corporation or any agent thereof referred to in section G.2.; or
15. the Mortgagor or a Guarantor is not an individual and a change in control of the Mortgagor or such Guarantor occurs without the prior written consent of the Mortgagee; for the purposes hereof, a change in control of the Mortgagor or a Guarantor shall be deemed to occur if there occurs one or more sales, transfers or other dispositions of the beneficial ownership existing on the date of the Mortgage in the aggregate of:
  - (a) shares, other securities or other equity interests issued by the Mortgagor or such Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor; or
  - (b) shares, other securities or equity interests issued by any Controlling Entity which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by such Controlling Entity.

#### **J. REMEDIES OF MORTGAGEE**

1. *Acceleration and Termination of Obligation to Extend Credit.* Without prejudice to any right of the Mortgagee to demand at any time payment by the Mortgagor of any and all Indebtedness, upon the occurrence of a Default all Indebtedness (or any part thereof determined by the Mortgagee) shall, at the Mortgagee's option, forthwith become due and payable, the Mortgage shall become enforceable and the Mortgagee shall not be obligated to extend any further credit to the Mortgagor.

2. *Right of Entry.* Upon the occurrence of a Default, the Mortgagee may, at any time or times without the concurrence of any person, enter upon, take and maintain possession of the Mortgaged Land, inspect, complete the construction of, repair or maintain any buildings or other improvements thereon, lease, collect the rents, profits and other amounts derived from the Mortgaged Land and manage the Mortgaged Land as the Mortgagee may deem fit without hindrance or interruption by the Mortgagor or any other person, and all reasonable costs, charges and expenses, including legal fees on a solicitor and his or her own client basis, and disbursements, commissions and allowances for the time and services of any employees of the Mortgagee or any agent of the Mortgagee or other persons appointed for any such purpose shall be forthwith payable by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. Upon the occurrence of a Default, the Mortgagee may also enforce its security against all crops growing on the Mortgaged Land, the Mortgagee may, at any time or times without the concurrence of any person, enter upon the Mortgaged Land for the purpose of cutting, harvesting and removing such crops and for otherwise farming and working the Mortgaged Land, the Mortgagee may bring on the Mortgaged Land all machines, equipment and instruments necessary for such purposes, and the Mortgagee may use all yards, barns, granaries, grain bins or all other improvements and equipment located on the Mortgaged Land to carry out any of such activities.

3. *Sale.* Upon the occurrence of a Default which continues for at least fifteen days, the Mortgagee may, on at least thirty-five days' notice, sell the Mortgaged Land or any part or parts thereof, in accordance with the following provisions:

- (a) notice shall be given to such persons and in such manner and form and within such time as provided by law; provided that, in the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice may be effectually given by leaving it with a person on the Mortgaged Land, if occupied, or by placing the same on some portion thereof, if unoccupied or, at the option of the Mortgagee, by mailing it by registered mail in a notice or letter addressed to the Mortgagor at the Mortgagor's last known address, or by publishing it once in a newspaper published in the area or region in which the Mortgaged Land is situated;



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- (b) such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under any disability;
- (c) sale of the Mortgaged Land may be by public auction or private sale or partly by one and partly by the other, for such price or prices as can reasonably be obtained therefor and on such terms as to credit or otherwise and with such conditions of sale and stipulations as to title or evidence of title or otherwise as the Mortgagee in its sole discretion shall deem appropriate;
- (d) in the event of any sale on credit or for part cash and part credit, the Mortgagee shall not be accountable for or charged with any moneys until actually received;
- (e) the Mortgagee may rescind or vary any contract of sale and may buy in and re-sell the Mortgaged Land or any part thereof without being answerable for any loss occasioned thereby;
- (f) the Mortgagee may sell all or any part of the buildings, fixtures, machinery, equipment, crops and standing or fallen trees separately from the Mortgaged Land and the purchaser shall have all necessary access to the Mortgaged Land for the purposes of severing, cutting and removal; and
- (g) subject to compliance with law, sales may be made from time to time of any part or parts of the Mortgaged Land to satisfy any part or parts of the Indebtedness then owing to the Mortgagee leaving the remaining outstanding Indebtedness secured by the Mortgage as a charge of the remainder of the Mortgaged Land.

4. *Sale or Lease.* The following shall apply with respect to any sale or lease by the Mortgagee, its agent or any Receiver of all or part of the Mortgaged Land after the occurrence of a Default:

- (a) no purchaser or lessee shall be bound to enquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety and no lack of default or lack of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease;
- (b) the Mortgagee may sell or lease all or part of the Mortgaged Land without entering into actual possession of the Mortgaged Land and, when it desires to take possession, it may break locks and bolts and while in possession shall only be accountable for moneys actually received by it;
- (c) the Mortgagor hereby appoints the Mortgagee as the Mortgagor's true and lawful attorney and agent to make application under any statute for consent to sever, sell or lease part or parts of the Mortgaged Land and to do all things and execute all documents to effectually complete any such severance, sale or lease;
- (d) the Mortgagee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending;
- (e) the Mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale of the Mortgaged Land unless such loss is caused by the Mortgagee's willful misconduct; and
- (f) no sale, leasing or other dealing by the Mortgagee with the Mortgaged Land or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of any Indebtedness.

5. *Attornment.* To the extent the Mortgaged Land or any part thereof is not a residential premises so as to be subject to the provisions of the applicable statute governing residential tenancies, the Mortgagor hereby attorns to and becomes a tenant of such Mortgaged Land to the Mortgagee from year to year from the date of the execution of the Mortgage until the Mortgage is discharged at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the Indebtedness, the legal relation of landlord and tenant being hereby constituted between the Mortgagee and the Mortgagor in regard to the Mortgaged Land. The Mortgagor agrees that neither

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the existence of this provision nor anything done by virtue hereof shall impose any obligation on the Mortgagee or render the Mortgagee a mortgagee in possession or accountable for any moneys except moneys actually received by the Mortgagee and the Mortgagee may, upon the occurrence of any Default, enter on the Mortgaged Land and terminate the tenancy hereby created without notice.

6. *Right to Distrain.* Upon the occurrence of a Default, to the extent permitted by law, the Mortgagee may distrain for payment of any and all Indebtedness upon the Mortgaged Land or any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Mortgaged Land, such moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Mortgagee with respect to or in connection therewith as in like cases of distress for rent. The Mortgagor waives the right to claim exceptions and agrees that the Mortgagee shall not be limited in the amount for which it may distrain.

7. *Judgments and Non-Merger.* The taking of a judgment or judgments with respect to any of the covenants contained herein, in the Mortgage or otherwise shall not operate as a merger of any such covenants or affect the Mortgagee's right to receive interest under the Mortgage and each such judgment may provide, at the option of the Mortgagee, that interest thereon shall be computed and payable until such judgment has been fully paid and satisfied.

8. *Separate Remedies.* All remedies of the Mortgagee may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Mortgagee however created.

9. *Application of Proceeds and Mortgagor's Liability for Deficiency.* All amounts received by the Mortgagee or any Receiver pursuant to any enforcement of the Mortgage may be held by the Mortgagee as security for the Indebtedness or applied to reduce Indebtedness in such manner as may be determined by the Mortgagee and the Mortgagee may at any time apply or change any such appropriation of such payments to such part or parts of the Indebtedness as the Mortgagee may determine in its sole discretion. The Mortgagor shall be and remain liable to the Mortgagee for any deficiency. Any surplus amounts realized after payment of all Indebtedness shall be paid in accordance with applicable law.

10. *Mortgagor's Insolvency Proceedings.* The Mortgagor acknowledges that the Mortgaged Land is of such a unique nature that, if the Mortgagor seeks to reorganize or restructure its affairs pursuant to any Insolvency Proceeding, the Mortgagee would not have a sufficient commonality of interest with any other creditor or creditors of the Mortgagor such that the Mortgagee would be required to vote on any plan, reorganization, arrangement, compromise or other transaction in a class with any other creditor or creditors of the Mortgagor and, in that regard, the Mortgagor agrees that the Mortgagee shall be placed in its own exclusive class of creditors for voting purposes. The Mortgagor further agrees that:

- (a) it will give the Mortgagee not less than 10 days written notice prior to the commencement of any Insolvency Proceeding with respect to the Mortgagor;
- (b) in no circumstance will the Mortgagor seek an order which stays any right of the Mortgagee or, to the extent permitted by law, permit any right of the Mortgagee to be stayed, in any Insolvency Proceeding and, if any court-ordered or automatic stay is imposed on the Mortgagee, the Mortgagor hereby consents to an order lifting such stay as against the Mortgagee;
- (c) if an Insolvency Proceeding is commenced with respect to the Mortgagor, the Mortgagor will consent to an order directing that all rents or other revenues generated or received from or in respect of the Mortgaged Land be deposited to a segregated trust account under the sole control of the Mortgagee and that same shall not result in the Mortgagee's being a mortgagee in possession of, or in control or management of the Mortgaged Land or result in the acceleration of payment of any Indebtedness unless such acceleration is required by the Mortgagee in writing; and
- (d) it shall not, without the Mortgagee's prior written consent, propose or permit the sale or transfer of the Mortgaged Land or any part thereof, in or as part of any Insolvency Proceeding, for a net sale price less than the amount required to pay in

full all Indebtedness outstanding as at the date of payment of such net sale proceeds to the Mortgagee.

#### K. APPOINTMENT OF A RECEIVER

1. *Appointment.* Upon the occurrence of a Default, in addition to any other remedies available to the Mortgagee, the Mortgagee may by instrument in writing appoint a Receiver of all or any part of the Mortgaged Land and all rents, incomes, profits and other amounts now or hereafter arising therefrom. The Mortgagee may also apply to any court of competent jurisdiction for the appointment of a Receiver.

2. *Powers of Receiver.* Any Receiver appointed by the Mortgagee shall, to the extent permitted by law, have the following powers:

- (a) to enter upon, take possession of, use, and occupy the Mortgaged Land or any part thereof;
- (b) to collect all rents, incomes, profits and other amounts in respect of the Mortgaged Land and to carry on the business of the Mortgagor on the Mortgaged Land;
- (c) to borrow money required for the maintenance, preservation or protection of the Mortgaged Land or for carrying on the business of the Mortgagor and, in the discretion of the Receiver, to charge the Mortgaged Land in priority to the Mortgage as security for the principal amounts so borrowed, interest thereon and costs related thereto;
- (d) to sell, lease, or otherwise dispose of the Mortgaged Land or any part thereof on such terms and conditions and in such manner as the Receiver shall determine in its sole discretion, and to effect such sale by conveying in the name and on behalf of the Mortgagor or otherwise;
- (e) to demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession of the Mortgaged Land, and to give valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the rents, accounts receivable or any other obligation of any person to the Mortgagor;
- (f) to exercise any rights or remedies which could have been exercised by the Mortgagee against the Mortgagor or the Mortgaged Land or with respect thereto; and
- (g) to execute all documents required to effect any of the foregoing.

3. *Identity of Receiver and Removal.* Any Receiver so appointed by the Mortgagee may be any person or persons satisfactory to the Mortgagee, and the Mortgagee may remove any Receiver so appointed and appoint another or others instead.

4. *Receiver as Agent of Mortgagor.* Any Receiver appointed by the Mortgagee shall be deemed to be agent of the Mortgagor unless the Mortgagee expressly specifies in writing that the Receiver shall be agent of the Mortgagee. The Mortgagor agrees to ratify and confirm all actions of the Receiver acting as agent for the Mortgagor and to release and indemnify the Receiver in respect of all such actions.

5. *Receivership Expenses.* The Mortgagor shall pay to the Receiver, forthwith on demand by the Mortgagee or the Receiver, the amount of all reasonable fees, disbursements and other expenses incurred by the Receiver in the exercise of its powers hereunder, with interest thereon at the Applicable Rate from the date on which such sums are incurred. All such sums, together with interest thereon at the Applicable Rate, shall be part of the Indebtedness and secured by the Mortgage.

6. *No Enquiries Required.* No persons dealing with the Receiver or its agents, upon any sale or other dealing with the Mortgaged Land, shall be concerned to inquire as to their powers or as to

the application of any money paid to them, such sale or dealing shall be deemed as regards such person to be within the powers hereby conferred and to be valid and effectual.

#### L. MISCELLANEOUS

1. *Records of Mortgagee.* The records of the Mortgagee disclosing the amount of an extension of credit by the Mortgagee to the Mortgagor, the repayment of any principal amount of Indebtedness, the amount of accrued and unpaid interest owing by the Mortgagor and the amount of other Indebtedness (or any part thereof) at any time outstanding, shall constitute conclusive evidence thereof in the absence of mathematical error.

2. *Revolving Line of Credit.* The Mortgagee may wish to make loan advances and re-advances or otherwise extend credit to the Mortgagor from time to time up to a total outstanding principal amount not exceeding the principal amount referred to in the Mortgage. The Mortgage is and shall be continuing security to the Mortgagee for the payment of all Indebtedness. Any portion of the Indebtedness may be advanced or re-advanced by the Mortgagee or other credit may be extended by the Mortgagee in one or more sums at any future time or times and the amount of all such advances, re-advances or other credits when so made or extended shall be secured by the Mortgage and be payable by the Mortgagor with interest thereon at the Applicable Rate and the Mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, provided that none of the execution or registration of the Mortgage or the advance in part of any monies or extension of any other credit by the Mortgagee shall obligate the Mortgagee to advance any unadvanced portion thereof or to extend any other credit. The Mortgage shall not be void or cease to operate because the Indebtedness secured hereby has at any time or times been paid in full.

3. *Assignment and Syndication.* The Mortgagee shall be entitled from time to time, both before and after a Default, without notice to, or the consent of the Mortgagor or any Guarantor:

- (a) to sell or assign all or part of the Indebtedness and the Mortgagee's interests in the Mortgage and any other security and agreements held by the Mortgagee; and
- (b) to syndicate all or part of the Indebtedness, the Mortgage and any other security and agreements held by the Mortgagee and to grant participations therein.

To facilitate the foregoing, the Mortgagee may provide each prospective purchaser, assignee, syndicated lender or participant and their respective advisers with financial and other information concerning the Indebtedness, the Mortgagor, the Mortgaged Land, any Guarantor, any other collateral or any other matter.

4. *General Indemnity by Mortgagor.* The Mortgagor hereby agrees, on demand by the Mortgagee, to indemnify and hold harmless the Mortgagee and its officers, directors, employees and agents from and against any and all claims, expenses, liabilities, losses and damages that may be asserted against or incurred by any of such indemnified persons arising out of, or in connection with the Mortgage, any Indebtedness or any claim, investigation, proceeding or litigation relating to any of the foregoing, regardless of whether any such indemnified person is a party thereto (including any and all breakage costs reasonably incurred by the Mortgagee in respect of any breach by the Mortgagor of any of its obligations under the Mortgage) and to reimburse each such indemnified person, on demand by the Mortgagee, for any and all reasonable legal and other expenses incurred in investigating, pursuing or defending any of the foregoing or otherwise in connection with any of the foregoing; provided that the foregoing indemnity shall not, as to any indemnified person, apply to any claim, expense, liability, loss or damage or related expense to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the wilful misconduct or gross negligence of such indemnified person.

5. *Effect of Sale.* No sale, conveyance, transfer or other dealing by the Mortgagor with the Mortgaged Land or any part thereof or any approval of the Mortgagee relating thereto shall in any way change or affect the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person or persons liable for payment of the Indebtedness or any part thereof.

6. *Dealings with the Mortgagor and Others.* The Mortgagee may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and give the same and

Page 18.

any and all existing security up to, may abstain from taking security from or from perfecting security of, may accept compositions from, may amend the Mortgage, and may otherwise deal with the Mortgagor and all other persons (including any principal debtor, any Guarantor or any owner of the Mortgaged Land) and security as the Mortgagee may see fit without prejudicing any rights of the Mortgagee under the Mortgage.

7. *Amendments to Mortgage.* The Mortgagor and the Mortgagee may from time to time amend the Mortgage (including to increase the interest rate specified by the Mortgage) by an amendment agreement between the Mortgagor and the Mortgagee, whether or not such amendment agreement (or notice thereof) is registered. This provision shall constitute notice of such amendments and the Mortgage shall secure payment of all Indebtedness (including all interest and other Indebtedness arising or resulting from such amendments) and retain its priority with respect thereto over any mortgage, charge or other instrument registered subsequent to the Mortgage.

8. *Waiver.* No waiver, condonation or excusing by the Mortgagee of any default, breach or other non-performance by the Mortgagor at any time or times in respect of any provision of the Mortgage (including any Default) shall operate as a waiver by the Mortgagee of any subsequent or other default, breach or non-performance or prejudice or affect in any way the rights of the Mortgagee in respect of any such subsequent or other default, breach or non-performance.

9. *Discharge or Assignment.* The Mortgagee shall be entitled to prepare or have its counsel prepare a discharge or assignment of the Mortgage and any other documents necessary to discharge or assign any other security held by the Mortgagee and shall have a reasonable time after payment of the Indebtedness in full within which to prepare, execute and deliver such instruments. All reasonable costs, fees and disbursements of the Mortgagee and the Mortgagee's counsel in connection with the preparation, review, execution and delivery of the discharge, assignment or any other documents necessary to discharge or assign the Mortgage or any other security shall, to the extent permitted by law, be paid by the Mortgagor to the Mortgagee and be secured by the Mortgage.

10. *No Obligation to Advance.* Nothing herein and nothing contained in the Mortgage shall obligate the Mortgagee to loan any amount to the Mortgagor or to extend any other credit to the Mortgagor.

11. *Appointment of Attorney Irrevocable.* Each appointment by the Mortgagor of an attorney in the Mortgage or the Standard Charge Terms is coupled with an interest and may not be revoked.

12. *Other Security.* The Mortgage is in addition to and not in substitution for any other security at any time held by the Mortgagee as security for payment of all or any part of the Indebtedness, and the Mortgagee may, at its option, pursue its remedies thereunder or under the Mortgage concurrently or successively. Any judgment or recovery under the Mortgage or under any other security held by the Mortgagee as security for payment of Indebtedness shall not affect the right of the Mortgagee to enforce or realize on the Mortgage or any other such security.

13. *Financing Statement.* To the extent permitted by law, the Mortgagor hereby waives its right to receive from the Mortgagee a copy of any financing statement, financing change statement, verification statement or other similar statement filed by or received by the Mortgagee or any agent of the Mortgagee.

14. *Notice.* Except as otherwise herein provided, any notice, demand or other communication to the Mortgagor referred to herein or in the Mortgage may be forwarded to the Mortgagor by personal delivery or mailed by prepaid ordinary or registered mail to the Mortgagor at the Mortgagor's last known address as shown on the Mortgagee's records. The Mortgagor shall be deemed to have received the same on the date of delivery, if personally delivered, or on the fourth day after the same is mailed by prepaid ordinary mail or registered mail, if mailed, even if the Mortgagor does not actually receive it.

15. *Different Currencies.* The payment of any part of the Indebtedness shall be made by the Mortgagor in the same currency as the currency in which such part of the Indebtedness is then denominated and all interest and fees shall be paid by the Mortgagor in the same currency as the currency in which that part of the Indebtedness to which they relate is denominated.

16. *Judgment Currency.* If in the recovery by the Mortgagee of any Indebtedness in any currency, judgment can only be obtained in another currency and, because of changes in the exchange rate

Page 19.

of such currencies between the date of judgment and payment in full of the amount of such judgment, the recovery under the judgment differs from the receipt by the Mortgagee of the full amount of such Indebtedness, the Mortgagor shall pay any such deficiency to the Mortgagee, such deficiency may be claimed by the Mortgagee against the Mortgagor as an alternative or additional cause of action and any surplus received by the Mortgagee shall be repaid to the Mortgagor.

17. *Foreign Exchange Rate Determinations.* Whenever any provision of the Mortgage requires or permits the determination of the rate of exchange between any currencies, such rate of exchange shall be determined by the Mortgagee based on its normal practice as at the date of such determination.

18. *Governing Law.* The Standard Charge Terms and the Mortgage shall be governed by the law of the jurisdiction in which the Mortgaged Land is located.

19. *Time of Essence.* Time shall be of the essence of the Mortgage.

20. *Severability.* If any provision of the Mortgage is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the Mortgage shall remain in full force and effect without such provision.

21. *Interpretation.* Whenever the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing any gender shall include the other genders. Whenever used in the Standard Charge Terms, the Mortgage or any Schedule, the words "including" and "includes" shall mean "including, without limitation" and "includes, without limitation", respectively, and the word "person" shall include an individual, corporation, partnership, government, government agency and any other entity.

22. *Titles.* Titles used in the Standard Charge Terms, the Mortgage or any Schedule are inserted for convenience of reference only and shall not affect or modify the interpretation or construction of any provision of the Standard Charge Terms, the Mortgage or any Schedule.

23. *Joint and Several Obligations.* If there is more than one Mortgagor, all Mortgagors shall be jointly and severally liable for all obligations of the Mortgagors pursuant to the Mortgage.

24. *Schedule.* Schedule "A" shall form part of the Standard Charge Terms.

25. *Equivalent Rate Information.* Schedule "A" is a summary of various annual rates of interest calculated half-yearly not in advance equivalent to the corresponding annual rates calculated monthly not in advance or calculated quarter-annually not in advance. The rate of interest chargeable, calculated half-yearly not in advance, equivalent to each Applicable Rate, is shown by Schedule "A".

26. *Successors and Assigns.* All rights and powers of the Mortgagee shall enure to the benefit of and be exercisable by the Mortgagee and the Mortgagee's successors and assigns. All covenants, obligations and liabilities entered into or imposed on the Mortgagor shall be binding on the Mortgagor and the Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns.

**SCHEDULE "A"**

The interest rates set out in Column C are the annual interest rates calculated half-yearly not in advance which are equivalent to the corresponding annual interest rates calculated monthly not in advance set out in Column A and quarter-annually not in advance set out in Column B.

COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C
Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance	Interest rate calculated monthly not in advance	Interest rate calculated quarter-annually not in advance	Interest rate calculated half-yearly not in advance
1.0000%	1.0008%	1.0021%	9.5000%	9.5754%	9.6500%
1.1250%	1.1281%	1.1276%	9.6250%	9.7024%	9.8201%
1.2500%	1.2513%	1.2533%	9.7500%	9.8294%	9.9502%
1.3750%	1.3768%	1.3788%	9.8750%	9.9565%	10.0804%
1.5000%	1.5019%	1.5047%	10.0000%	10.0836%	10.2107%
1.6250%	1.6272%	1.6305%	10.1250%	10.2107%	10.3410%
1.7500%	1.7526%	1.7564%	10.2500%	10.3378%	10.4714%
1.8750%	1.8779%	1.8823%	10.3750%	10.4650%	10.6018%
2.0000%	2.0033%	2.0084%	10.5000%	10.5921%	10.7324%
2.1250%	2.1288%	2.1344%	10.6250%	10.7194%	10.8630%
2.2500%	2.2542%	2.2606%	10.7500%	10.8466%	10.9937%
2.3750%	2.3797%	2.3868%	10.8750%	10.9739%	11.1244%
2.5000%	2.5052%	2.5131%	11.0000%	11.1011%	11.2552%
2.6250%	2.6307%	2.6394%	11.1250%	11.2285%	11.3861%
2.7500%	2.7563%	2.7658%	11.2500%	11.3558%	11.5170%
2.8750%	2.8819%	2.8923%	11.3750%	11.4832%	11.6480%
3.0000%	3.0075%	3.0188%	11.5000%	11.6106%	11.7791%
3.1250%	3.1331%	3.1454%	11.6250%	11.7380%	11.9102%
3.2500%	3.2588%	3.2721%	11.7500%	11.8654%	12.0414%
3.3750%	3.3845%	3.3988%	11.8750%	11.9929%	12.1727%
3.5000%	3.5102%	3.5258%	12.0000%	12.1204%	12.3040%
3.6250%	3.6360%	3.6525%	12.1250%	12.2479%	12.4354%
3.7500%	3.7617%	3.7794%	12.2500%	12.3755%	12.5669%
3.8750%	3.8675%	3.8864%	12.3750%	12.5031%	12.6985%
4.0000%	4.0133%	4.0335%	12.5000%	12.6307%	12.8301%
4.1250%	4.1392%	4.1606%	12.6250%	12.7583%	12.9618%
4.2500%	4.2651%	4.2878%	12.7500%	12.8859%	13.0935%
4.3750%	4.3910%	4.4151%	12.8750%	13.0136%	13.2253%
4.5000%	4.5169%	4.5424%	13.0000%	13.1413%	13.3572%
4.6250%	4.6428%	4.6698%	13.1250%	13.2691%	13.4892%
4.7500%	4.7688%	4.7973%	13.2500%	13.3968%	13.6212%
4.8750%	4.8948%	4.9248%	13.3750%	13.5246%	13.7533%
5.0000%	5.0209%	5.0524%	13.5000%	13.6524%	13.8854%
5.1250%	5.1469%	5.1800%	13.6250%	13.7803%	14.0177%
5.2500%	5.2730%	5.3078%	13.7500%	13.9082%	14.1499%
5.3750%	5.3991%	5.4355%	13.8750%	14.0360%	14.2823%
5.5000%	5.5252%	5.5634%	14.0000%	14.1640%	14.4147%
5.6250%	5.6514%	5.6913%	14.1250%	14.2919%	14.5472%
5.7500%	5.7776%	5.8183%	14.2500%	14.4199%	14.6798%
5.8750%	5.9038%	5.9474%	14.3750%	14.5479%	14.8124%
6.0000%	6.0300%	6.0755%	14.5000%	14.6758%	14.9451%
6.1250%	6.1563%	6.2037%	14.6250%	14.8040%	15.0779%
6.2500%	6.2826%	6.3319%	14.7500%	14.9320%	15.2108%
6.3750%	6.4089%	6.4503%	14.8750%	15.0601%	15.3437%
6.5000%	6.5353%	6.5887%	15.0000%	15.1883%	15.4766%
6.6250%	6.6616%	6.7171%	15.1250%	15.3164%	15.6097%
6.7500%	6.7880%	6.8458%	15.2500%	15.4446%	15.7428%
6.8750%	6.9145%	6.9742%	15.3750%	15.5728%	15.8760%
7.0000%	7.0409%	7.1029%	15.5000%	15.7011%	16.0092%
7.1250%	7.1674%	7.2318%	15.6250%	15.8293%	16.1425%
7.2500%	7.2939%	7.3604%	15.7500%	15.9576%	16.2759%
7.3750%	7.4204%	7.4892%	15.8750%	16.0859%	16.4094%
7.5000%	7.5470%	7.6182%	16.0000%	16.2143%	16.5429%
7.6250%	7.6736%	7.7472%	16.1250%	16.3427%	16.6765%
7.7500%	7.8002%	7.8762%	16.2500%	16.4710%	16.8102%
7.8750%	7.9268%	8.0053%	16.3750%	16.5995%	16.9439%
8.0000%	8.0535%	8.1345%	16.5000%	16.7278%	17.0777%
8.1250%	8.1801%	8.2638%	16.6250%	16.8564%	17.2118%
8.2500%	8.3068%	8.3931%	16.7500%	16.9849%	17.3458%
8.3750%	8.4336%	8.5225%	16.8750%	17.1134%	17.4795%
8.5000%	8.5604%	8.6519%	17.0000%	17.2420%	17.6136%
8.6250%	8.6871%	8.7815%	17.1250%	17.3706%	17.7477%
8.7500%	8.8140%	8.9111%	17.2500%	17.4992%	17.8819%
8.8750%	8.9408%	9.0407%	17.3750%	17.6278%	18.0162%
9.0000%	9.0677%	9.1704%	17.5000%	17.7564%	18.1506%
9.1250%	9.1946%	9.3002%	17.6250%	17.8851%	18.2850%
9.2500%	9.3215%	9.4301%	17.7500%	18.0138%	18.4195%
9.3750%	9.4484%	9.5600%	17.8750%	18.1426%	18.5540%

This is Exhibit "U" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.



LAND  
REGISTRY  
OFFICE #40

26401-0048 (LT)

PREPARED FOR sdurante  
ON 2022/05/18 AT 19:21:56

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

PROPERTY DESCRIPTION: PT LT 13 CON 6 PICKERING PTS 4 & 5 PL 40R-20455; PICKERING, REGIONAL MUNICIPALITY OF DURHAM, S/T ROW OVER PT 4 PL 40R-20455 IN FAVOUR OF PTS 1, 2, & 3 PL 40R-20455 AS IN DR34575, T/W ROW OVER PT 2 PL 40R-20455 AS IN DR34575

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

DIVISION FROM 26401-0028

PIN CREATION DATE:

2002/02/20

OWNERS' NAMES

2496287 ONTARIO INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2002/02/20 **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 1999/02/15 **</p>						
CO94360	1961/05/17	BYLAW				C
REMARKS: PLANNING ACT FOR SUBDIVISION CONTROL DELETED UNDER DR116972 *AS TO PIN 26409-0006 *ADDED 2003 01 06 BY DONNA WARREN						
CO220539	1972/03/03	ORDER				C
40R20455	2001/05/17	PLAN REFERENCE				C
DR34576	2001/11/09	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** FISHER, LESLIE GERALD FISHER, KAREN ELAINE	FISHER, LESLIE GERALD FISHER, KAREN ELAINE	
DR429824	2005/09/22	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
REMARKS: AIRPORT ZONING REGULATIONS						
DR1408142	2015/10/02	TRANSFER		*** COMPLETELY DELETED *** FISHER, KAREN ELAINE FISHER, LESLIE GERALD	2414660 ONTARIO LIMITED	

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.

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<i>REMARKS: PLANNING ACT STATEMENTS.</i>						
DR1408143	2015/10/02	CHARGE		*** COMPLETELY DELETED *** 2414660 ONTARIO LIMITED SHCOLYAR, GIL	BRAUN, JOSEF BRAUN, AGNES	
DR1461881	2016/04/05	DISCH OF CHARGE		*** COMPLETELY DELETED *** BRAUN, JOSEF BRAUN, AGNES		
<i>REMARKS: DR1408143.</i>						
DR1461882	2016/04/05	TRANSFER	\$2,500,000	2414660 ONTARIO LIMITED	2496287 ONTARIO INC.	C
DR1461888	2016/04/05	CHARGE		*** COMPLETELY DELETED *** 2496287 ONTARIO INC.	THE BANK OF NOVA SCOTIA TRUST COMPANY GLICKMAN, ANNE HANDELMAN, ANNE BAMBURGH HOLDINGS LTD. GORDON, BEVERLEY 4055845 CANADA INC. POLLOCK, RONALD POLLOCK, JUDY 593651 ONTARIO LTD. OSTRO, AURELIA OSTRO, EITAN C & K MORTGAGE SERVICES. INC	
DR1461889	2016/04/05	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2496287 ONTARIO INC.	THE BANK OF NOVA SCOTIA TRUST COMPANY GLICKMAN, ANNE HANDELMAN, ANNE BAMBURGH HOLDINGS LTD. GORDON, BEVERLEY 4055845 CANADA INC. POLLOCK, RONALD POLLOCK, JUDY 593651 ONTARIO LTD. OSTRO, AURELIA OSTRO, EITAN C & K MORTGAGE SERVICES. INC	
<i>REMARKS: DR1461888</i>						
DR1461935	2016/04/05	CHARGE		*** COMPLETELY DELETED ***		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
DR1477243	2016/05/27	TRANSFER OF CHARGE		2496287 ONTARIO INC.  *** COMPLETELY DELETED *** C & K MORTGAGE SERVICES. INC	2414660 ONTARIO LIMITED  THE BANK OF NOVA SCOTIA TRUST COMPANY	
		REMARKS: DR1461888. PARTIAL TRANSFER				
DR1637622	2017/09/15	CHARGE		*** COMPLETELY DELETED *** 2496287 ONTARIO INC.	ROYAL BANK OF CANADA	
DR1637786	2017/09/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE BANK OF NOVA SCOTIA TRUST COMPANY GLICKMAN, ANNE HANDELMAN, ANNE BAMBURGH HOLDINGS LTD. GORDON, BEVERLEY 4055845 CANADA INC. POLLOCK, RONALD POLLOCK, JUDY 593651 ONTARIO LTD. OSTRO, AURELIA OSTRO, EITAN THE BANK OF NOVA SCOTIA TRUST COMPANY		
		REMARKS: DR1461888.				
DR1637799	2017/09/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2414660 ONTARIO LIMITED		
		REMARKS: DR1461935.				
DR1748521	2018/11/01	CHARGE		*** COMPLETELY DELETED *** 2496287 ONTARIO INC.	RATHCLIFFE CAPITAL CORP.	
DR1748522	2018/11/01	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2496287 ONTARIO INC.	RATHCLIFFE CAPITAL CORP.	
		REMARKS: DR1748521				
DR1756368	2018/11/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		REMARKS: DR1637622.				
DR1847644	2019/11/18	CHARGE	\$3,780,000	2496287 ONTARIO INC.	BANK OF MONTREAL	C
DR1847754	2019/11/18	NO ASSGN RENT GEN		2496287 ONTARIO INC.	BANK OF MONTREAL	C
		REMARKS: DR1847644.				

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26401-0048 (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
DR1847865	2019/11/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** RATHCLIFFE CAPITAL CORP.		
REMARKS: DR1748521.						



This is Exhibit "V" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

City of Pickering  
 One The Esplanade  
 Pickering, ON L1V 6K7  
 T 905.420.4614  
 905.683.2760  
 1.866.683.2760  
 Fax 905.420.5313  
 propertytaxes@pickering.ca  
 pickering.ca

*City of*  
**PICKERING**

**TAX CERTIFICATE** 243

No: 141783 Fee Paid: \$75.00  
 Date: July 12, 2022

Roll No: 01-03-0-008-17701-0000-0 2  
 Location: 2260 HIGHWAY 7  
 Description: PICKERING CON 6 PT LT 13 RP  
 40R20455 PTS 4 AND 5  
 Owner: 2496287 ONTARIO INC  
 Reference: FILE: 69799

CHAITONS  
 5000 YONGE ST  
 10TH FLOOR  
 TORONTO ON M2N 7E9  
 CA

**Levy Information**

Year	Interim	Annual	Supplementaries	Appeals	Apportionment	Cap/Clawback	Total
2022		28,501.65					28,501.65
2021		26,178.98					26,178.98

**Tax Information**

**\* Future Instalments**

Year	Tax Owing	Pen/Int Owing	Total Owing	September 28, 2022	
2022	28,511.65	654.73	29,166.38	15,412.65	
2021	17,044.23	1,491.35	18,535.58		
2020					
2019 & Prior					
<b>Sub Total</b>	<b>45,555.88</b>	<b>2,146.08</b>	<b>47,701.96</b>		
<b>Tax Loans</b>					
<b>Total</b>	<b>45,555.88</b>	<b>2,146.08</b>	<b>47,701.96</b>	* included in total owing	

**Collection Activity**

I hereby certify that this statement shows all arrears of taxes against the lands described hereon, and proceedings have (not) been commenced under Part XI of the Municipal Act, 2001, S. O. 2001, c. 25, as amended. Subsequent additional levies for the current year or prior years under the provisions of the Assessment Act, as amended, the Municipal Act, as amended, or other statutes, including those resulting from assessment reconsiderations and appeals, tax appeals pursuant to Part X of the Municipal Act, 2001, S. O. 2001, c. 25, as amended, and adjustments pursuant to Part IX of the Municipal Act, 2001, S. O. 2001, c. 25, as amended, which may be billed in future years, are not included. E. & O.E.

For Treasurer: 

This is Exhibit "W" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

**BMO**  **Bank of Montreal**

Special Accounts Management Unit  
100 King Street West, 19th floor  
Toronto, ON M5X 1A1  
Telephone: (416) 643-1635  
Facsimile: (416) 643-1653

VIA EMAIL TO: [kapilan3@hotmail.com](mailto:kapilan3@hotmail.com) & [kalyanikapilan@yahoo.ca](mailto:kalyanikapilan@yahoo.ca)

September 14, 2022

2243080 Ontario Inc.  
2496287 Ontario Inc.  
c/o 58 Greyleaf Drive  
Stouffville, ON L4A 1S8

**Attention: Rasakone Kapilan and Kalyani Kapilan**

Dear Mr. and Mrs. Kapilan:

**Re: Bank of Montreal (the "Bank") loans to  
2243080 Ontario Inc. ("224") and 2496287 Ontario Inc. ("249")  
(collectively, the "Borrowers")**

Further to our discussions, we confirm our advice that we are concerned with the Borrowers' performance which concerns include frequent account excesses, reduction in sales volumes, locked in operating loans, covenant breaches, and overdue financial reporting.

Notwithstanding the aforementioned concerns, the Bank is willing to forbear from demanding payment of the amounts outstanding under the credit facilities made available to (i) 224 on and subject to the terms and conditions confirmed in a Letter of Agreement dated October 1, 2019 as amended by a Letter of Agreement - Amendment & Restatement dated November 10, 2020, an Operating Loan Agreement dated November 12, 2019, a Demand Promissory Note in the amount of \$2,050,000.00 dated November 12, 2019, a Demand Promissory Note in the amount of \$2,150,000.00 dated November 12, 2019, and two Demand Promissory Notes each in the amount of \$150,000.00 and each dated December 9, 2019; and (ii) 249 October 1, 2019, a Fixed Rate Term Loan Agreement dated November 2019, a Demand Promissory Note in the amount of \$2,425,000.00 dated November 12, 2019, a Demand Promissory Note in the amount of \$125,000.00 dated December 9, 2019, and a Commercial Card Agreement dated December 6, 2019; (collectively, the "Credit Facility Agreements") and taking steps to enforce the security held by the Bank until the earlier of January 31, 2023 or the occurrence of an Event of Default (as hereinafter defined), in order to allow the Borrowers an opportunity to arrange for

*Handwritten initials/signature*



a sale of assets and/or refinancing(s) in an amount(s) sufficient to repay their indebtedness to the Bank. The Bank's forbearance is subject to and in accordance with the following terms and conditions:

**224**

1. 224 confirms that it is indebted to the Bank as at September 13, 2022 in the amount of \$4,279,947.29 inclusive of principal and interest, more particularly set out as follows:

<u>Loan No.</u>	<u>Principal</u>	<u>Interest</u>
Overdraft Lending C/A ("224 ODL") Loan No. 3858-1003-915 (Bank prime plus 1.75% per annum)	\$201,835.49	\$418.01
Overdraft Lending C/A ("224 ODL") Loan No. 3858-1007-916 (Bank prime plus 1.75% per annum)	\$199,990.12	\$437.38
Demand Loan Non Revolving Loan No. 3858-6981-128 (Bank prime plus 1.75% per annum)	\$16,666.68	\$40.74
Demand Loan Non Revolving Loan No. 3858-6984-580 (Bank prime plus 2.00% per annum)	\$128,323.17	\$296.01
Demand Loan Non Revolving Loan No. 3858-6984-599 (Bank prime plus 2.00% per annum)	\$125,511.51	\$289.52
Demand Loan Non Revolving Loan No. 3858-6975-182 (Bank prime plus 1.75% per annum)	\$1,751,314.77	\$3,901.01
Fixed Rate Term Loan ("FRTL") Loan No. 3858-6985-014 (3.25% per annum)	\$1,774,608.03	\$1,896.16
FRTL Interest Rate Differential Penalty	\$14,418.69	-
Canada Emergency Business Account Loan No. 5112-4200-0073-2564	\$60,000.00	-
<b>TOTAL:</b>	<b>\$4,272,668.46</b>	<b>\$7,278.83</b>

2. Rasakone Kapilan ("Rasakone") and Kalyani Kapilan ("Kalyani") (collectively, the "224 Guarantors") acknowledge that the Bank holds from them the following guarantee of the indebtedness and liabilities of 224 to the Bank:
  - (a) a guarantee from the 224 Guarantors dated November 12, 2019 limited to the principal amount of \$4,750,000.00 with interest thereon at the rate of Bank prime plus 5.00% per annum from the date of demand for payment.
3. The 224 Guarantors further acknowledge that their guarantee is valid and enforceable against them in accordance with its written terms.
4. 224 and the 224 Guarantors acknowledge and confirm that they do not dispute their liability to pay the indebtedness set out in Paragraphs 1 and 2 herein on any basis whatsoever and that they have no claim for setoff, counterclaim, demand or damages on any basis whatsoever against the Bank and that there is no matter, fact or thing which may be asserted by them in extinction or diminution of their indebtedness to the Bank or result in any bar or recovery thereof. If there are such claims, they are hereby expressly released and discharged.
5. 224 and the 224 Guarantors confirm that the security in support of 224's indebtedness including, *inter alia*, a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$2,920,000.00 registered against title to the property municipally known as 9279 Provincial Hwy 11, Cumberland Beach, ON (the "Cumberland Property") on November 18, 2019 registered as SC1641015, a Notice of Assignment of Rents-General registered against title to the Cumberland Property on November 18, 2019 registered as SC1641116, a Charge/Mortgage of Land in the principal amount of \$3,100,000.00 registered against title to the property municipally known as 8824 Highway 17 East, Warren, ON (the "Warren Property") on November 18, 2019 registered as SD387127, and a Notice of Assignment of Rents-General registered against title to the Warren Property on August 18, 2019 registered as SD387150 (collectively, with the 224 guarantee, the "224 Security") has not been discharged, waived or varied, that the Security is binding upon 224, and is valid and enforceable in accordance with its written terms.

249

6. 249 confirms that it is indebted to the Bank as at September 13, 2022 in the amount of \$2,429,687.93 inclusive of principal and interest, more particularly set out as follows:

<u>Loan No.</u>	<u>Principal</u>	<u>Interest</u>
Overdraft Lending C/A ("249 ODL") Loan No. 3858-1007-908 (Bank prime plus 1.75% per annum)	\$106,549.02	\$211.71
Demand Loan Non Revolving Loan No. 3858-6984-660 (Bank prime plus 2.00% per annum)	\$110,284.16	\$254.26
Fixed Rate Term Loan ("FRTL") Loan No. 3858-6985-006 (3.55% per annum)	\$2,100,692.05	\$2,453.09
FRTL Interest Rate Differential Penalty	\$18,643.64	-
Canada Emergency Business Account Loan No. 5112-4200-0063-2798	\$60,000.00	-
Corporate MasterCard Account Card No. 526455000020155 (Standard Rates)	\$30,600.00	-
<b>TOTAL:</b>	<b>\$2,426,768.87</b>	<b>\$2,919.06</b>

7. Rasakone and Kalyani (collectively, the "249 Guarantors") acknowledge that the Bank holds from them the following guarantee of the indebtedness and liabilities of 249 to the Bank:
- (a) a guarantee from the 249 Guarantors dated November 12, 2019 limited to the principal amount of \$2,615,000.00 with interest thereon at the rate of Bank prime plus 5.00% per annum from the date of demand for payment.
8. The 249 Guarantors further acknowledge that their guarantee is valid and enforceable against them in accordance with its written terms.
9. 249 and the 249 Guarantors acknowledge and confirm that they do not dispute their liability to pay the indebtedness set out in Paragraphs 6 and 7 herein on any basis whatsoever and that they have no claim for setoff,

counterclaim, demand or damages on any basis whatsoever against the Bank and that there is no matter, fact or thing which may be asserted by them in extinction or diminution of their indebtedness to the Bank or result in any bar or recovery thereof. If there are such claims, they are hereby expressly released and discharged.

10. 249 and the 249 Guarantors confirm that the security in support of 249's indebtedness including, *inter alia*, a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$3,780,000.00 registered against title to the property municipally known as 2260 Highway 7 East, Pickering, ON (the "Pickering Property") on November 18, 2019 registered as DR1847644, a Notice of Assignment of Rents-General registered against title to the Pickering Property on November 18, 2019 received as DR1847754, and an Assignment, Postponement and Subordination Agreement dated November 12, 2019 granted by Rasakone and Kalyani in favour of the Bank, acknowledged and agreed to by 249 (collectively, with the 249 guarantee, the "249 Security") has not been discharged, waived or varied, that the Security is binding upon 249, and is valid and enforceable in accordance with its written terms.
11. 224 is currently in arrears of loan payments and on or before September 30, 2022 will pay to the Bank the following arrears:
- |                            |                   |
|----------------------------|-------------------|
| Account No. 3858-6975-182: | \$24,900.21       |
| Account No. 3858-6985-014: | \$15,111.03       |
| Account No. 3858-6984-599: | <u>\$3,012.00</u> |
| Total:                     | \$43,023.24       |
12. The Borrowers will continue to make all monthly loan payments of principal and interest in respect of all loans in accordance with existing arrangements.
13. The Borrowers will not be allowed any unauthorized excesses (including daylight or same day coverage) and will monitor their respective cash flows to ensure that sufficient room is available on their respective operating lines to honour any cheques/debits/wires presented for payment, failing which they will be returned marked "non-sufficient funds".
14. The Borrowers will remit, as and when required, all current amounts required to be deducted or withheld and remitted under the Income Tax Act (Canada), Excise Tax Act, Harmonized Sales Tax Act, Retail Sales Tax Act, Employment Standards Act, Municipal Act (Ontario) and any other claims which, if unpaid, would rank in priority to the Bank's security position.

15. 224 will maintain and keep the Cumberland Property and the Warren Property in a good state of repair and shall ensure that all realty taxes are kept current and paid on a timely basis when due and owing.
16. 249 will maintain and keep the Pickering Property in a good state of repair and shall ensure that all realty taxes are kept current and paid on a timely basis when due and owing. On or before September 30, 2022, all tax arrears will be brought current (\$47,701.00 as at July 12, 2022) and 249 will provide proof of payment to the Bank.
17. On or before September 30, 2022, 249 will provide to the Bank proof of renewal of fire and general liability insurance for the Pickering Property showing the Bank as first loss payee.
18. The 249 Corporate MasterCard facility will be cancelled at the end of business on September 30, 2022 and 249 will repay the outstanding balance in full.
19. 224 has advised the Bank that it has entered into an oral agreement to sell the Cumberland Property and the Warren Property with the understanding that an agreement of purchase and sale ("APS") will be executed by mid September with a closing date no later than December 31, 2022. A fully executed copy of the firm and binding APS will be provided to the Bank by no later than September 30, 2022. If 224 does not enter into the APS by September 30, 2022, it shall forthwith take the necessary steps to sell or refinance the Cumberland Property and the Warren Property and provide to the Bank on or before December 15, 2022, copies of firm and binding financing commitments and/or agreements of purchase and sale in amounts sufficient to repay its indebtedness by January 31, 2023.
20. 249 will forthwith take the necessary steps to sell or refinance the Pickering Property and provide to the Bank on or before December 15, 2022, a copy of a firm and binding financing commitment and/or agreement of purchase and sale in an amount sufficient to repay its indebtedness by January 31, 2023.
21. Upon maturity on November 30, 2022, the balance owing on 224's Fixed Rate Term Loan will be converted to a Non Revolving Demand Loan bearing interest at the rate of Bank prime plus 3.00% per annum.
22. Any one or more of the following events shall constitute an event of default herein (each an "Event of Default"), it being acknowledged that an Event of Default by one Borrower constitutes an Event of Default by both Borrowers:
  - (i) the non-payment when due of any amount payable by a Borrower, the 224 Guarantors, or the 249 Guarantors, under the Credit Facility Agreements, the 224 Security, or the 249 Security or otherwise;

- (ii) if the Borrowers or any of them default in the observance or performance of any covenant, agreement or undertaking contained in this agreement, the Credit Facility Agreements, the 224 Security or the 249 Security;
  - (iii) a judgment or decree for the payment of money is obtained or entered against any of the Borrowers, the 224 Guarantors, or the 249 Guarantors;
  - (iv) the Bank receives a garnishment notice or other notice of similar effect in respect of any of the Borrowers or the 224 Guarantors, or the 249 Guarantors pursuant to the *Income Tax Act (Canada)*, or any similar notice under any other federal or provincial statute;
  - (v) the commission of an act of bankruptcy or the commencement of bankruptcy or insolvency proceedings by or against any of the Borrowers or guarantors or if any of the Borrowers ceases to carry on business, files an assignment in bankruptcy or is adjudicated insolvent or bankrupt; or
  - (vi) the Bank determines, acting reasonably, that a material adverse change has occurred after the date of this letter in respect of the operations, business, financial condition or affairs of any of the Borrowers;
  - (vii) failure of 224 to repay its indebtedness to the Bank in full inclusive of principal, interest, fees and costs on the earlier of the completion of a sale and/or refinancing of the Cumberland Property and the Warren Property or January 31, 2023; and
  - (viii) failure of 249 to repay its indebtedness to the Bank in full inclusive of principal, interest, fees and costs on the earlier of the completion of a sale and/or refinancing of the Pickering Property or January 31, 2023.
23. Upon or after an Event of Default, the Bank may at its option:
- (i) declare the Borrowers' indebtedness to the Bank to be immediately due and payable;
  - (ii) take any steps, which the Bank considers necessary or desirable to collect payment of either of the Borrowers' indebtedness to the Bank, including issuing demands and enforcement of all or any of the 224 Security or the 249 Security; or

- (iii) in addition to those rights and remedies granted herein, the Bank shall have all other rights and remedies available to it under the 224 Security or the 249 Security, the Credit Facility Agreements, at law or in equity.
24. The Borrowers shall pay to the Bank a combined standstill agreement fee in the amount of \$5,000.00 and the Bank is irrevocably authorized and directed to debit either of the Borrowers' accounts in respect of payment of such fee.
25. The Borrowers agree to pay all reasonable costs and expenses whether incurred before or after the date hereof of the Bank including, without limitation, all legal fees and disbursements and late fees incurred in connection with this matter and the Bank is irrevocably authorized and directed to debit either one of the Borrowers' accounts in respect of payment of such costs, expenses, and late fees, together with the standstill agreement fee provided for in paragraph 24 above.
26. The covenants and other terms and conditions contained herein, in the 224 Security or the 249 Security, the Credit Facility Agreements or otherwise shall continue in full force and effect and the Borrowers shall comply with same, except to the extent there exists any actual inconsistency between such provisions and the provisions contained herein, in which case the provisions herein shall govern.
27. The Borrowers represent and warrant to the Bank that they have the capacity and authority to enter into and perform the obligations herein provided and the execution of this letter agreement and the performance by them of their obligations hereunder have been duly authorized by all necessary proceedings.
28. This agreement and any documents provided in conjunction with the agreement may be executed in counterparts and by facsimile transmission or email in PDF format, and each counterpart when so executed and delivered by facsimile transmission or email in PDF format shall be deemed an original and such counterparts when taken together shall constitute one and the same instrument.

Please acknowledge your agreement with the terms and conditions hereinbefore set out by executing and returning by fax or scanned in pdf format a fully executed copy of this letter by no later than September 23, 2022.

Yours truly,

**BANK OF MONTREAL**

Per: Visana Wong

(COMPUTER GENERATED SIGNATURE)

Name: Visana Wong,

Title: Account Manager

I have authority to bind the Bank



We hereby acknowledge and agree to the terms and conditions hereinbefore set out.

Dated at Toronto this 22<sup>nd</sup> day of September, 2022.

**2243080 ONTARIO INC.**

Per: *R. Kapilan*  
Name: Rasakone Kapilan  
Title: President

I have authority to bind the Corporation

**2496287 ONTARIO INC.**

Per: *R. Kapilan*  
Name: Rasakone Kapilan  
Title: President

I have authority to bind the Corporation

*[Signature]*  
WITNESS

*R. Kapilan*  
RASAKONE KAPILAN

*[Signature]*  
WITNESS

*Kalyani K.*  
KALYANI KAPILAN



This is Exhibit "X" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

City of Pickering  
 One The Esplanade  
 Pickering, ON L1V 6K7  
 T 905.420.4614  
 905.683.2760  
 1.866.683.2760  
 Fax 905.420.5313  
 propertytaxes@pickering.ca  
 pickering.ca

City of  
**PICKERING**

**TAX CERTIFICATE**

No: 142163 Fee Paid: \$75.00

Date: March 1, 2023

Roll No: 01-03-0-008-17701-0000-0 2

Location: 0 2260 HIGHWAY 7

Description: PICKERING CON 6 PT LT 13 RP  
40R20455 PTS 4 AND 5

Owner: 2496287 ONTARIO INC

Reference:

CHATONS  
 5000 YONGE ST  
 10TH FLOOR  
 TORONTO ON M2N 7E9  
 CA

**Levy Information**

Year	Interim	Annual	Supplementaries	Appeals	Apportionment	Cap/Clawback	Total
2023	14,250.00						14,250.00
2022		28,501.65					28,501.65

**Tax Information****\* Future Instalments**

Year	Tax Owing	Pen/Int Owing	Total Owing		
2023	14,250.00	89.06	14,339.06	April 27, 2023	7,125.00
2022	28,516.65	3,120.91	31,637.56		
2021	17,044.23	3,195.75	20,239.98		
2020 & Prior					
Sub Total	59,810.88	6,405.72	66,216.60		
Tax Loans					
Total	59,810.88	6,405.72	66,216.60	* included in total owing	

**Collection Activity**

I hereby certify that this statement shows all arrears of taxes against the lands described hereon, and proceedings have (not) been commenced under Part XI of the Municipal Act, 2001, S. O. 2001, c. 25, as amended. Subsequent additional levies for the current year or prior years under the provisions of the Assessment Act, as amended, the Municipal Act, as amended, or other statutes, including those resulting from assessment reconsiderations and appeals, tax appeals pursuant to Part X of the Municipal Act, 2001, S. O. 2001, c. 25, as amended, and adjustments pursuant to Part IX of the Municipal Act, 2001, S. O. 2001, c. 25, as amended, which may be billed in future years, are not included. E. & O.E.

For Treasurer:



This is Exhibit "Y" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

November 15, 2022

**VIA REGISTERED AND REGULAR MAIL  
PERSONAL AND CONFIDENTIAL**2243080 Ontario Inc.  
c/o 58 Greyleaf Drive  
Stouffville, ON L4A 1S8  
Attention: Rasakone Kapilan, President**Re: Bank of Montreal (the "Bank") loans to  
2243080 Ontario Inc. (the "Company")**

Dear Sir,

We act as solicitors for the Bank. According to our client's records, the Company is indebted to the Bank as of November 14, 2022 in the amount of \$4,225,256.84, particulars of which are as follows:

<u>Loan No.</u>	<u>Principal</u>	<u>Interest</u>
Overdraft Lending C/A Loan No. 3858-1003-915 (Bank prime plus 1.75% per annum)	\$203,728.79	\$590.00
Overdraft Lending C/A Loan No. 3858-1007-916 (Bank prime plus 1.75% per annum)	\$203,706.99	\$619.18
Demand Loan Non Revolving Loan No. 3858-6981-128 (Bank prime plus 1.75% per annum)	\$8,333.34	\$24.61
Demand Loan Non Revolving Loan No. 3858-6984-580 (Bank prime plus 2.00% per annum)	\$127,432.04	\$388.58
Demand Loan Non Revolving Loan No. 3858-6984-599 (Bank prime plus 2.00% per annum)	\$121,633.92	\$370.90
Demand Loan Non Revolving Loan No. 3858-6975-182 (Bank prime plus 1.75% per annum)	\$1,718,114.49	\$5,074.32
Fixed Rate Term Loan ("FRTL") Loan No. 3858-6985-014 (3.25% per annum)	\$1,758,757.35	\$2,192.43
FRTL Interest Rate Differential Penalty	\$14,289.90	-

Canada Emergency Business Account Loan No. 5112-4200-0073-2564	\$60,000.00	-
<b>TOTAL:</b>	\$4,215,996.82	\$9,260.02

Interest continues to accrue on the principal amounts aforementioned from November 15, 2022 to the date of payment at the rates of interest as set out above.

The indebtedness of the Company is secured by certain securities including a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$2,920,000.00 registered against title to the property municipally known as 9279 Provincial Hwy 11, Cumberland Beach, ON (the "Cumberland Property") on November 18, 2019 registered as SC1641015, a Notice of Assignment of Rents-General registered against title to the Cumberland Property on November 18, 2019 registered as SC1641116, a Charge/Mortgage of Land in the principal amount of \$3,100,000.00 registered against title to the property municipally known as 8824 Highway 17 East, Warren, ON (the "Warren Property") on November 18, 2019 registered as SD387127, and a Notice of Assignment of Rents-General registered against title to the Warren Property on August 18, 2019 registered as SD387150 (collectively, the "Security").

On behalf of the Bank, we hereby demand payment of the indebtedness of the Company pursuant to the Security and all other security held by the Bank from it as security for the payment of its indebtedness, together with payment of interest thereon, any further principal advances and legal costs to the date of payment.

Payment is to be made forthwith.

In the event that payment in full is not made as required, the Bank will be obliged to take such proceedings as it considers necessary to recover payment of the indebtedness of the Company in full and to enforce its Security, which proceedings may involve the appointment of an agent or receiver and manager and enforcement of the mortgage security.

Enclosed please find our client's Notice of Intention to Enforce Security which is served on the Company pursuant to the provisions of the Bankruptcy and Insolvency Act.

Yours truly,  
CHAITONS LLP

  
Gary N. Feldman  
PARTNER

GNF/sd  
Encl.

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

TO: 2243080 ONTARIO INC., an insolvent person,

Take notice that:

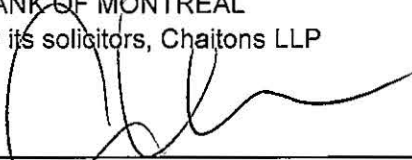
1. Bank of Montreal, a secured creditor, intends to enforce its security on the hereinafter described property of the insolvent person:

All assets, property and undertaking of 2243080 Ontario Inc.

2. The security that is to be enforced is in the form of a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$2,920,000.00 registered against title to the property municipally known as 9279 Provincial Hwy 11, Cumberland Beach, ON (the "Cumberland Property") on November 18, 2019 registered as SC1641015, a Notice of Assignment of Rents-General registered against title to the Cumberland Property on November 18, 2019 registered as SC1641116, a Charge/Mortgage of Land in the principal amount of \$3,100,000.00 registered against title to the property municipally known as 8824 Highway 17 East, Warren, ON (the "Warren Property") on November 18, 2019 registered as SD387127, and a Notice of Assignment of Rents-General registered against title to the Warren Property on August 18, 2019 registered as SD387150 (collectively, the "Security").
3. The total amount of indebtedness secured by the Security as at November 14, 2022 is \$4,225,256.84 plus costs.
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto this 15<sup>th</sup> day of November, 2022.

BANK OF MONTREAL  
by its solicitors, Chaitons LLP



---

Gary N. Feldman

This is Exhibit "Z" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.



November 15, 2022

**VIA REGISTERED AND REGULAR MAIL  
PERSONAL AND CONFIDENTIAL**2496287 Ontario Inc.  
c/o 58 Greyleaf Drive  
Stouffville, ON L4A 1S8  
Attention: Rasakone Kapilan, President**Re: Bank of Montreal (the "Bank") loans to  
2496287 Ontario Inc. (the "Company")**

Dear Sir,

We act as solicitors for the Bank. According to our client's records, the Company is indebted to the Bank as of November 14, 2022 in the amount of \$2,390,162.74, particulars of which are as follows:

<u>Loan No.</u>	<u>Principal</u>	<u>Interest</u>
Overdraft Lending C/A Loan No. 3858-1007-908 (Bank prime plus 1.75% per annum)	\$113,150.76	\$308.10
Demand Loan Non Revolving Loan No. 3858-6984-660 (Bank prime plus 2.00% per annum)	\$109,213.44	\$333.03
Fixed Rate Term Loan ("FRTL") Loan No. 3858-6985-006 (3.55% per annum)	\$2,085,801.80	\$2,844.12
FRTL Interest Rate Differential Penalty	\$18,511.49	-
Canada Emergency Business Account Loan No. 5112-4200-0063-2798	\$60,000.00	-
TOTAL:	\$2,386,677.49	\$3,485.25

Interest continues to accrue on the principal amounts aforementioned from November 15, 2022 to the date of payment at the rates of interest as set out above.

The indebtedness of the Company is secured by certain securities including a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$3,780,000.00 registered against title to the property municipally known as 2260 Highway 7 East, Pickering, ON (the "Pickering Property") on November 18, 2019 registered as DR1847644, and a Notice of Assignment of Rents-General registered against title to the Pickering Property on November 18, 2019 receipted as DR1847754 (collectively, the "Security").

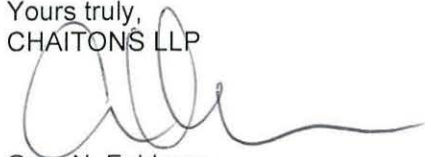
On behalf of the Bank, we hereby demand payment of the indebtedness of the Company pursuant to the Security and all other security held by the Bank from it as security for the payment of its indebtedness, together with payment of interest thereon, any further principal advances and legal costs to the date of payment.

Payment is to be made forthwith.

In the event that payment in full is not made as required, the Bank will be obliged to take such proceedings as it considers necessary to recover payment of the indebtedness of the Company in full and to enforce its Security, which proceedings may involve the appointment of an agent or receiver and manager and enforcement of the mortgage security.

Enclosed please find our client's Notice of Intention to Enforce Security which is served on the Company pursuant to the provisions of the Bankruptcy and Insolvency Act.

Yours truly,  
CHAITONS LLP



Gary N. Feldman  
PARTNER

GNF/sd  
Encl.

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

TO: 2496287 ONTARIO INC., an insolvent person,

Take notice that:

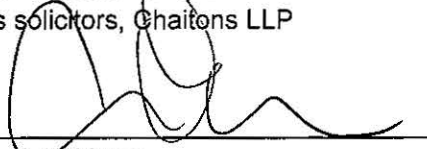
1. Bank of Montreal, a secured creditor, intends to enforce its security on the hereinafter described property of the insolvent person:

All assets, property and undertaking of 2496287 Ontario Inc.

2. The security that is to be enforced is in the form of a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$3,780,000.00 registered against title to the property municipally known as 2260 Highway 7 East, Pickering, ON (the "Pickering Property") on November 18, 2019 registered as DR1847644, and a Notice of Assignment of Rents-General registered against title to the Pickering Property on November 18, 2019 receipted as DR1847754 (collectively, the "Security").
3. The total amount of indebtedness secured by the Security as at November 14, 2022 is \$2,390,162.74, plus costs.
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto this 15<sup>th</sup> day of November, 2022.

BANK OF MONTREAL  
by its solicitors, Chaitons LLP



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Gary N. Feldman

This is Exhibit "AA" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

2243080 Ontario Inc.  
 2496287 Ontario Inc.  
 c/o 58 Greyleaf Drive  
 Stouffville, ON L4A 1S8

December 6, 2022

Ms. Visana Wong  
 Bank of Montreal  
 First Canadian Place  
 100 King Street West  
 19<sup>th</sup> Floor  
 Toronto, ON M5X 1A1

Dear Ms. Wong:

**Re: Bank of Montreal (the "Bank") loans to  
 2243080 Ontario Inc. ("224") and 2496287 Ontario Inc. ("249")  
 (collectively, the "Borrowers")**

**2243080 Ontario Inc.**

We acknowledge receipt of the Bank's Notice of Intention to Enforce Security November 15, 2022 (the "224 Notice") and letter dated November 15, 2022 demanding payment of the indebtedness and liabilities of 224 to the Bank.

We acknowledge that as at December 1, 2022, 224 is indebted to the Bank in respect of its direct indebtedness in the amount of \$4,194,240.85 comprising \$4,173,201.73 for principal and \$21,039.12 for interest, particulars of which are as follows:

<u>Loan No.</u>	<u>Principal</u>	<u>Interest</u>
Overdraft Lending C/A ("224 ODL") Loan No. 3858-1003-915 (Bank prime plus 1.75% per annum)	\$200,518.35	\$45.64
Overdraft Lending C/A ("224 ODL") Loan No. 3858-1007-916 (Bank prime plus 1.75% per annum)	\$196,411.77	\$2,891.42
Demand Loan Non Revolving Loan No. 3858-6981-128 (Bank prime plus 1.75% per annum)	\$8,333.34	\$54.52
Demand Loan Non Revolving Loan No. 3858-6984-580 (Bank prime plus 2.00% per annum)	\$125,649.78	\$860.40
Demand Loan Non Revolving Loan No. 3858-6984-599 (Bank prime plus 2.00% per annum)	\$119,902.74	\$821.26

Demand Loan Non Revolving Loan No. 3858-6975-182 (Bank prime plus 1.75% per annum)	\$1,718,114.49	\$11,240.58
Demand Loan Non Revolving Loan No. 3858-6985-014 (Bank prime plus 3.00% per annum)	\$1,744,271.26	\$5,125.30
Canada Emergency Business Account Loan No. 5112-4200-0073-2564	\$60,000.00	-
<b>TOTAL:</b>	<b>\$4,173,201.73</b>	<b>\$21,039.12</b>

We further acknowledge that interest continues to accrue on the loans from December 2, 2022, to the date of payment at the rates set out above.

The amount of \$4,194,240.85 together with any further advances and additional interest accruing from December 2, 2022 and fees and costs actually incurred to the date of payment, is hereinafter collectively referred to as the "224 Indebtedness".

We confirm that we do not dispute 224's liability to pay the 224 Indebtedness and that 224 has no claim for setoff, counterclaim or damages on any basis whatsoever against the Bank. If there are any claims for setoff, counterclaim or damages, they are hereby expressly released and discharged.

We confirm that as security for the 224 Indebtedness, the Bank holds, *inter alia*, a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$2,920,000.00 registered against title to the property municipally known as 9279 Provincial Hwy 11, Cumberland Beach, ON (the "Cumberland Property") on November 18, 2019 registered as SC1641015, a Notice of Assignment of Rents-General registered against title to the Cumberland Property on November 18, 2019 registered as SC1641116, a Charge/Mortgage of Land in the principal amount of \$3,100,000.00 registered against title to the property municipally known as 8824 Highway 17 East, Warren, ON (the "Warren Property") on November 18, 2019 registered as SD387127, and a Notice of Assignment of Rents-General registered against title to the Warren Property on August 18, 2019 registered as SD387150 (collectively, the "224 Security"). We confirm that the 224 Security has not been discharged, waived or varied, that it is binding upon 224 and that it is valid and enforceable in accordance with its written terms.

Rasakone Kapilan and Kalyani Kapilan (the "224 Guarantors") acknowledge that the Bank holds from them the following guarantee of the 224 Indebtedness:

- a) a joint and several guarantee from the 224 Guarantors dated November 12, 2019 limited to the principal amount of \$4,750,000.00 with interest thereon at the rate of Bank prime plus 5.00% per annum from the date of demand for payment.

The 224 Guarantors confirms that their guarantee has not been released, waived or varied, that it is binding upon them and that it is valid and enforceable against them in accordance with its written terms.

The 224 Guarantors confirm that they do not dispute their liability pursuant to their guarantee and that they do not have any claim for setoff, counterclaim or damages on any basis whatsoever against the Bank. If there are any claims for setoff, counterclaim or damages, they are hereby expressly released and discharged.

**2496287 Ontario Inc.**

We acknowledge receipt of the Bank's Notice of Intention to Enforce Security dated November 15, 2022 (the "249 Notice") and letter dated November 15, 2022 demanding payment of the indebtedness and liabilities of 249 to the Bank.

We acknowledge that as at December 1, 2022, 249 is indebted to the Bank in the amount of \$2,354,753.49 comprising \$2,347,699.46 for principal and \$7,054.03 for interest, particulars of which are as follows:

<u>Loan No.</u>	<u>Principal</u>	<u>Interest</u>
Overdraft Lending C/A ("249 ODL") Loan No. 3858-1007-908 (Bank prime plus 1.75% per annum)	\$106,888.90	\$23.85
Demand Loan Non Revolving Loan No. 3858-6984-660 (Bank prime plus 2.00% per annum)	\$108,678.08	\$737.49
Fixed Rate Term Loan ("FRTL") Loan No. 3858-6985-006 (3.55% per annum)	\$2,072,132.48	\$6,292.69
Canada Emergency Business Account Loan No. 5112-4200-0063-2798	\$60,000.00	-
<b>TOTAL:</b>	<b>\$2,347,699.46</b>	<b>\$7,054.03</b>

We further acknowledge that interest continues to accrue on the loans from December 2, 2022, to the date of payment at the rates set out above.

The amount of \$2,354,753.49 together with any further advances and additional interest accruing from December 2, 2022 and fees and costs actually incurred to the date of payment, is hereinafter collectively referred to as the "249 Indebtedness".

We confirm that we do not dispute 249's liability to pay the 249 Indebtedness and that 249 has no claim for setoff, counterclaim or damages on any basis whatsoever against the

Bank. If there are any claims for setoff, counterclaim or damages, they are hereby expressly released and discharged.

We confirm that as security for 249 Indebtedness, the Bank holds, *inter alia*, a General Security Agreement dated November 12, 2019, a Charge/Mortgage of Land in the principal amount of \$3,780,000.00 registered against title to the property municipally known as 2260 Highway 7 East, Pickering, ON (the "Pickering Property") on November 18, 2019 registered as DR1847644, a Notice of Assignment of Rents-General registered against title to the Pickering Property on November 18, 2019 receipted as DR1847754, and an Assignment, Postponement and Subordination Agreement dated November 12, 2019 granted by Rasakone Kapilan and Kalyani Kapilan in favour of the Bank, acknowledged and agreed to by 249 (collectively, the "249 Security"). We confirm that 249 Security has not been discharged, waived or varied, that it is binding upon 249 and that it is valid and enforceable in accordance with its written terms.

Rasakone Kapilan and Kalyani Kapilan (the "249 Guarantors") acknowledge that the Bank holds from them the following guarantee of 249 Indebtedness:

- a) a joint and several guarantee from the 249 Guarantors dated November 12, 2019 limited to the principal amount of \$2,615,000.00 with interest thereon at the rate of Bank prime plus 5.00% per annum from the date of demand for payment.

The 249 Guarantors confirm that their guarantee has not been released, waived or varied, that it is binding upon them and that it is valid and enforceable against them in accordance with its written terms.

The 249 Guarantors confirm that they do not dispute their liability pursuant to their guarantee and that they do not have any claim for setoff, counterclaim or damages on any basis whatsoever against the Bank. If there are any claims for setoff, counterclaim or damages, they are hereby expressly released and discharged.

### **The Borrowers**

We do not request that the Bank withdraw the demands for payment or the 224 Notice and 249 Notice. However, we request that the Bank forbear until January 31, 2023 (the "Forbearance Period") from taking steps to recover payment of the 224 Indebtedness and 249 Indebtedness or from enforcing the 224 Security and 249 Security. In consideration of the Bank's forbearance, we undertake, agree, acknowledge and confirm as follows:

- (a) on or before December 31, 2022, all existing loan payment arrears for principal and interest will be brought current and thereafter the Borrowers will continue to make all monthly loan payments of principal and interest in respect of all loans in a timely manner in accordance with the terms and conditions of their respective agreements with the Bank;
- (b) effective December 1, 2022, the interest rate on all facilities other than 249's Fixed Rate Term Loan No. 3858-6985-006 is increased to Bank prime plus 3.00% per annum;
- (c) the Borrowers will not be allowed any unauthorized excesses (including daylight or same



- day coverage) and will monitor their respective cash flows to ensure that sufficient room is available on their respective operating lines to honour any cheques/debits/wires presented for payment, failing which they will be returned marked "non-sufficient funds".
- (d) the Borrowers will remit, as and when required, all current amounts required to be deducted or withheld and remitted under the Income Tax Act (Canada), Excise Tax Act, Harmonized Sales Tax Act, Retail Sales Tax Act, Employment Standards Act, Municipal Act (Ontario) and any other claims which, if unpaid, would rank in priority to the Bank's security position;
  - (e) 224 will maintain and keep the Cumberland Property and the Warren Property in a good state of repair and shall ensure that all realty taxes are kept current and paid on a timely basis when due and owing;
  - (f) 249 will maintain and keep the Pickering Property in a good state of repair and shall ensure that all realty taxes are kept current and paid on a timely basis when due and owing. On or before December 31, 2022, all tax arrears will be brought current (\$47,701.00 as at July 12, 2022) and 249 will provide proof of payment to the Bank.
  - (g) to provide to the Bank by the 20th day of each month all in-house financial documentation for the immediate preceding month including accounts receivable, accounts payable, statements of prior claims and deemed trusts;
  - (h) the Borrowers will deposit to their respective accounts with the Bank all monies received by them on a daily basis;
  - (i) neither of the Borrowers shall attempt to sell or dispose of any of the Borrowers' assets, other than in the ordinary course of business without the prior written consent of the Bank;
  - (j) on or before December 31, 2022, the Borrowers will provide to the Bank the following:
    - i. their accountant prepared year end financial statements for 2021;
    - ii. their corporate income tax returns and Canada Revenue Agency Notices of Assessment for 2021;
    - iii. their 2021 and 2022 fuel volume reports;
    - iv. updated appraisals for the Cumberland Property, the Warren Property and the Pickering Property;
  - (k) the Borrowers will provide to the Bank their accountant prepared year end financial statements, corporate tax returns and Canada Revenue Agency notices of assessment for 2022 as soon as they are available;
  - (l) the Borrowers will forthwith take the necessary steps to sell or refinance the Cumberland Property, Warren Property and Pickering Property in amounts sufficient to repay the 224 Indebtedness and the 229 Indebtedness on or before the expiration of the Forbearance Period and will provide to the Bank bi-weekly email updates in respect of their progress in arranging for a sale and/or refinancing of their assets. Updates will include copies of

any agreements of purchase and sale, term sheets, commitment letters, letters of intent, and any other relevant documentation;

- (m) to maintain insurance coverage on all of the Borrowers' business assets to their full insurable value with the Bank shown as first loss payee;
- (n) to continue to maintain all of the Borrowers' accounts solely with the Bank while the Bank extends credit to the Borrowers;
- (o) a default (as hereinafter defined) by either of the Borrowers constitutes a default by both Borrowers;
- (p) to pay to the Bank the sum of \$5,000.00 as an application fee for this request to forbear.

We further acknowledge and confirm that any one or more of the following events shall constitute an event of default ("Event of Default") under this forbearance agreement:

- (a) if either of the Borrowers defaults in the observance or performance of any covenant, agreement or undertaking contained in this forbearance agreement, the 224 Security and 249 Security, or any other agreement between either of the Borrowers and the Bank;
- (b) if either of the Borrowers ceases to carry on business, makes an assignment for the benefit of creditors, files an assignment in bankruptcy or makes a proposal under the *Bankruptcy and Insolvency Act*, an application in bankruptcy is issued or either of the Borrowers is adjudicated insolvent or bankrupt; either of the Borrowers applies to any tribunal for the appointment of a receiver, trustee or similar liquidator; if any proceeding is commenced relating to either Borrower or to any portion of their property under any law relating to reorganization, arrangement or readjustment of debt, dissolution, winding-up or similar law; or if a receiver, trustee, manager, consultant, liquidator, agent or other similar party is appointed in respect of the property of either Borrower or any part thereof;
- (c) if any person takes possession of any property of either of the Borrowers by way of or in contemplation of enforcement of security, or a distress, execution or similar process is levied or enforced against any such property;
- (d) if an execution or any other process of any court is enforced against either of the Borrowers or if a distress, lease termination or analogous process is levied upon the property of either of the Borrowers or any part thereof;
- (e) the Bank determines, acting reasonably, that a material adverse change has occurred during the Forbearance Period in respect of the operations, business, financial condition or affairs of either of the Borrowers;
- (f) failure to repay the 224 Indebtedness and 249 Indebtedness on or before the expiration of the Forbearance Period.

Upon the occurrence of an Event of Default: (i) the 224 Indebtedness and 249 Indebtedness shall, at the option of the Bank, become immediately due and payable; (ii) interest thereon shall be due and payable from such date at the rate applicable to the 224 Indebtedness

and 249 Indebtedness to the actual date of payment; and (iii) the 224 Security and 249 Security shall, at the option of the Bank, become enforceable without further notice in accordance with its terms.

We agree and consent to the making of bankruptcy orders and appointments of a receiver and manager of the assets, property and undertaking of the Borrowers and agree to forthwith execute and deliver to the Bank written consents in the form annexed hereto as Schedule "A" which consents are to be held by the Bank's solicitors in escrow until the occurrence of an Event of Default.

We further agree to pay all reasonable costs and expenses whether incurred before or after the date hereof of the Bank including, without limitation, all legal fees and disbursements incurred in connection with the preparation, negotiation and enforcement of this forbearance agreement. The Bank is hereby expressly authorized to debit either of the Borrowers' accounts at the Bank for payment of all of the aforementioned costs.

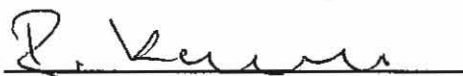
We further acknowledge and agree that your actual forbearance shall be good and sufficient consideration for the contents hereof. The 224 Guarantors and 249 Guarantors have joined in this request for forbearance and acknowledge that your actual forbearance will not in any way affect its liability to the Bank.

This Agreement and any ancillary documents may be executed in counterparts and by facsimile transmission or email in PDF format, and each counterpart when so executed and delivered by facsimile transmission or email in PDF format shall be deemed an original and such counterparts when taken together shall constitute one and the same instrument.

DATED at TORONTO this 14<sup>th</sup> day of December, 2022.

**2243080 ONTARIO INC.**

Per:

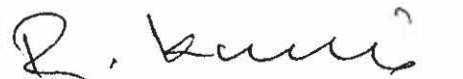


Rasakone Kapilan  
President

I have the authority to bind the Company


**2496287 ONTARIO INC.**

Per:

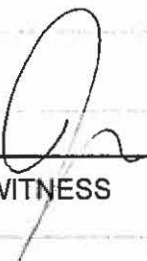


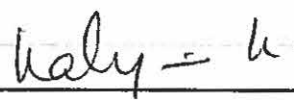
Rasakone Kapilan  
President

I have authority to bind the Company


  
 \_\_\_\_\_  
 WITNESS J. Frymer

  
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 RASAKONE KAPILAN

  
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 WITNESS J. Frymer

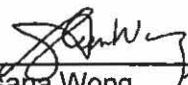
  
 \_\_\_\_\_  
 KALYANI KAPILAN

BANK OF MONTREAL hereby acknowledges receipt of this request for forbearance and agrees to the terms and provisions contained herein.

DATED at Toronto this  day of December, 2022.

**BANK OF MONTREAL**

Per:

  
 \_\_\_\_\_  
 Visana Wong,  
 Account Manager

I have authority to bind the Bank

## SCHEDULE "A"

CONSENT

TO: BANK OF MONTREAL

2243080 ONTARIO INC. hereby consents to the appointment of a Receiver and Manager pursuant to the General Security Agreement dated November 12, 2019.

DATED at Stouffville this <sup>th</sup> 15 day of December, 2022.

2243080 ONTARIO INC.

Per:



Rasakone Kapilan  
President

I have the authority to bind the Company

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY OF 2243080 Ontario  
Inc., a company incorporated under the laws of the Province  
of Ontario, carrying on business in the Town of Stouffville, in  
the Province of Ontario.

CONSENT

2243080 ONTARIO INC. hereby consents to the immediate making of a Bankruptcy  
Order in respect of its property.

DATED at Stouffville this 15<sup>th</sup> day of December, 2022.

2243080 ONTARIO INC.

Per:



Raakona Kaplin  
President

I have the authority to bind the Company

**CONSENT****TO: BANK OF MONTREAL**

2496287 ONTARIO INC. hereby consents to the appointment of a Receiver and Manager pursuant to the General Security Agreement dated November 12, 2019.

DATED at *TORONTO* this *14<sup>th</sup>* day of December, 2022.

**2496287 ONTARIO INC.**

Per:



Rasakone Kapilan  
President

I have authority to bind the Company

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY OF 2496287 Ontario  
Inc., carrying on business in the Town of Stouffville, in the  
Province of Ontario.

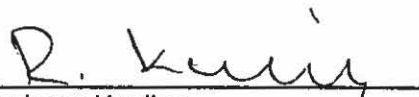
CONSENT

2496287 ONTARIO INC. hereby consents to the immediate making of a Bankruptcy  
Order in respect of its property.

DATED at *TORONTO* this *14<sup>th</sup>* day of December, 2022.

2496287 ONTARIO INC.

Per:

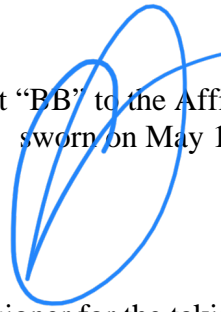


Rasakone Kapitan  
President

I have authority to bind the Company



This is Exhibit "BB" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

A Commissioner for the taking of affidavits, etc.

2243080 Ontario Inc.  
2496287 Ontario Inc.  
c/o 58 Greyleaf Drive  
Stouffville, ON L4A 1S8

February 10, 2023

Ms. Visana Wong  
Bank of Montreal  
100 King Street West  
19<sup>th</sup> Floor  
Toronto, ON M5X 1A1

Dear Ms. Wong:

**Re: Bank of Montreal (the "Bank") loans to  
2243080 Ontario Inc. ("224") and 2496287 Ontario Inc. ("249")  
(collectively, the "Borrowers")**

---

We refer to the forbearance letter agreement dated December 6, 2022, between the Borrowers and the Bank (the "Forbearance Agreement") whereby the Bank agreed to forbear until January 31, 2023 from taking steps to recover payment of the indebtedness described below or from enforcing the Bank's security as more particularly set out in the Forbearance Agreement. Capitalized terms have the same meaning as set out in the Forbearance Agreement.

We acknowledge that as at January 29, 2023, 224 is indebted to the Bank in the amount of \$4,233,757.23, comprising \$4,152,384.54 for principal and \$81,372.69 for interest, plus costs. We acknowledge that as at January 29, 2023, 249 is indebted to the Bank in the amount of \$2,332,096.83, comprising \$2,317,653.74 for principal and \$14,443.09 for interest, plus costs. Interest continues to accrue at the applicable rates.

The combined amount of \$6,565,854.06 together with any further advances and additional interest accruing from January 30, 2023, and costs actually incurred to the date of payment is hereinafter referred to as the "Indebtedness".

We hereby request that the Bank extend the forbearance period in respect of the Indebtedness to May 1, 2023. In consideration of the Bank's agreement to the foregoing, we hereby undertake, acknowledge, confirm and agree as follows:

- (i) on or before February 28, 2023, 224 will pay to the Bank the sum of \$15,000.00 to be applied in reduction of the loan arrears on its various non revolving demand loans;
- (ii) on or before March 15, 2023, 224 will pay to the Bank the sum of \$15,000.00 to be applied in reduction of the loan arrears on its various non revolving demand loans;
- (iii) on or before March 31, 2023, 224 will pay to the Bank the balance of the loan arrears on its various non revolving demand loans;
- (iv) to continue to make all principal and interest payments monthly in accordance with existing arrangements;
- (v) 224 and 249 will forthwith execute cross-covering guarantees in favour of the Bank for the full amount of the other's indebtedness with each to be supported by existing security;
- (vi) 224 will provide updates to the Bank with respect to its progress in completing the sale of Cumberland Property and will immediately advise the Bank if the existing Agreement of Purchase and Sale with Puviventhan Navratnasingam in trust is terminated;
- (vii) the Borrowers will forthwith list the Warren Property and the Pickering Property for sale with a listing broker approved by the Bank and hereby authorize and direct such listing broker to communicate with the Bank and keep the Bank fully updated with respect to all matters concerning the listings including prospective purchasers and copies of offers received. If the Agreement of Purchase and Sale for the Cumberland Property is terminated, 224 will forthwith list the Cumberland Property for sale on the same terms and conditions;
- (viii) to provide to the Bank as soon as it comes available all financial information including accountant prepared financial statements for the 2021 and 2022 fiscal years in respect of each of the properties and businesses located thereon. Without limiting the generality of the foregoing, the Borrowers will provide to the Bank their 2023 monthly fuel volume reports by the 10<sup>th</sup> day of each month for the immediate preceding month;
- (ix) to pay to the Bank the sum of \$5,000.00 as an application fee for this request for continued forbearance; and

- (x) to repay the Indebtedness on the earlier of completion of any sales or refinancing of the businesses and land or May 1, 2023.

We confirm that all other terms, conditions and undertakings contained in the Forbearance Agreement remain in full force and effect to the extent that they are not inconsistent with the terms, conditions and undertakings contained herein.

We further acknowledge and agree that your actual forbearance shall be good and sufficient consideration for the contents hereof.

This Agreement may be executed by facsimile transmission or email in PDF format, and when so executed and delivered by facsimile transmission or email in PDF format shall be deemed an original.

Dated at TORONTO this 14<sup>th</sup> day of February, 2023

**2243080 ONTARIO INC.**

Per:



Rasakone Kapilan  
President

I have the authority to bind the Company


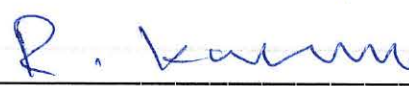


**2496287 ONTARIO INC.**

Per:



Rasakone Kapilan  
President

I have authority to bind the Company

 _____ WITNESS	 _____ RASAKONE KAPILAN
 _____ WITNESS	 _____ KALYANI KAPILAN

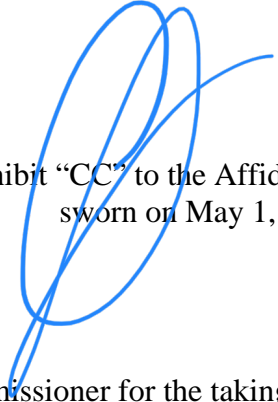
**BANK OF MONTREAL** hereby acknowledges receipt of this request for continued forbearance and agrees to the terms and provisions contained herein.

DATED at Toronto this 15th day of February, 2023.

**BANK OF MONTREAL**

Per:   
\_\_\_\_\_  
Name: Misana Wong  
Title: Account Manager

I have authority to bind the Bank



This is Exhibit "CC" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

### Guarantee for Indebtedness of an Incorporated Company

To BANK OF MONTREAL:

IN CONSIDERATION of Bank of Montreal (the "Bank") dealing with **2243080 ONTARIO INC.** (the "Customer"), the undersigned hereby jointly and severally (solidarily in the Province of Québec) guarantees payment to the Bank of all present and future debts and liabilities in any currency, direct, indirect, contingent or otherwise, matured or not, including interest thereon, now or at any time, due or owing to the Bank from or by the Customer or by any successor of the Customer, 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 whatever a creditor of the Customer, wherever incurred and whether incurred by the Customer as principal or surety, alone or jointly with any other person, or otherwise howsoever. The liability of the undersigned (or each undersigned, if more than one), under this Guarantee, is limited to the aggregate amount of **FOUR MILLION Dollars \$4,000,000** plus interest thereon at a rate of **3%** per cent per annum above the Bank's prime interest rate in effect from time to time, from and including the date of demand until payment, and legal or other costs, charges and expenses. The liability of the undersigned to make payment under this Guarantee shall arise immediately after demand for payment under this Guarantee has been made in writing by the Bank on the undersigned or any one of them, if more than one. The term "prime interest rate" means the floating annual rate of interest established from time to time by the Bank as the base rate it uses to determine rates of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

IT IS AGREED that no change in the name, objects, capital stock, ownership, control or constitution of the Customer shall in any way affect the liability of the undersigned with respect to transactions occurring either before or after any such change. If the Customer amalgamates with one or more other corporations this Guarantee shall continue and apply to all debts and liabilities owing to the Bank by the corporation continuing from the amalgamation. The Bank shall not be required to inquire into or confirm the powers of the Customer or any of its directors or other agents acting or purporting to act on its behalf, and all amounts, liabilities, advances, renewals and credits in fact incurred, borrowed or obtained from the Bank shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding whether incurring such debts or liabilities exceeded the powers of the Customer or of its directors or agents, or was in any way irregular, defective or improper.

IT IS FURTHER AGREED that the undersigned shall be liable to the Bank in respect of all debts and liabilities, subject to the limitation, if any, set forth in the first paragraph of this Guarantee, stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, notwithstanding whether any such agreement or any provision thereof is invalid, void, illegal, or unenforceable and notwithstanding whether such agreement was properly completed, entered into or authorized. Subject to the limitation, if any, set forth in the first paragraph of this Guarantee, the undersigned shall indemnify and save the Bank harmless from any losses which may arise by virtue of any debts and liabilities stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, or any other agreement relating to any of the foregoing, being or becoming for any reason whatsoever in whole or in part (a) void, voidable, null, *ultra vires*, illegal, invalid, ineffective or otherwise unenforceable in accordance with its terms, or (b) released or discharged by operation of law (all of the foregoing being an "Indemnifiable Circumstance"). For greater certainty, the losses shall include the amount of all debts and liabilities owing to the Bank by the Customer which would have been payable by the Customer but for the Indemnifiable Circumstance. Nothing set out herein shall be interpreted as requiring any debts or liabilities which are hereby guaranteed to be documented by written agreement between the Bank and the Customer.

IT IS FURTHER AGREED that the Bank, without the consent of the undersigned and without exonerating in whole or in part the undersigned, may grant time, renewals, extensions, indulgences, releases and discharges to, may abstain from taking, perfecting or realizing upon security from, may release security to, may accept compositions from, and may otherwise change the terms of any of the debts and liabilities hereby guaranteed and otherwise deal with, the Customer and all other persons (including any other undersigned and any other guarantor) and security, as the Bank may see fit. No loss or diminution of any security received by the Bank from the Customer or others, whether the loss or diminution is due to the fault of the Bank or otherwise, shall in any way limit or lessen the liability of the undersigned under this Guarantee. All dividends, compositions, and amounts received by the Bank from the Customer or from any other person or estate capable of being applied by the Bank in reduction of the debts and liabilities hereby guaranteed, shall be regarded for all purposes as payments in gross, and the Bank shall be entitled to prove against the estate of the Customer upon any insolvency or winding-up in respect of the whole of said debts and liabilities, and the undersigned shall have no right to be subrogated to the Bank in respect of any such proof until the Bank has received from such estate payment in full of its claim with interest.

AND IT IS FURTHER AGREED that this shall be a continuing guarantee, and shall guarantee any ultimate balance owing to the Bank, including all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of amounts due to the Bank from the Customer either alone or in conjunction with any other person or otherwise howsoever, or attempting to do so. The Bank shall not be obliged to seek recourse against the Customer or any other person or realize upon any security it may hold before being entitled to payment from the undersigned of all debts and liabilities hereby guaranteed. The undersigned hereby renounces the benefits of discussion and division. The undersigned renounces claiming or setting up against the Bank any right which such undersigned may have to be subrogated in any of the rights, hypothecs, privileges and other security held from time to time by the Bank. The undersigned may terminate the further liability of such terminating party under this continuing Guarantee by providing ninety days' prior written notice to be given to the Bank. The liability of such terminating party shall continue under this Guarantee during such 90-day period, notwithstanding the death or insanity of such terminating party. After the expiry of such 90-day period, the terminating party shall be released from this Guarantee with respect to debts and liabilities arising after the expiry of such 90-day period but shall remain liable under this Guarantee in respect of all debts and liabilities owing to the Bank prior to the expiry of such 90-day period and also in respect of any contingent or future liabilities incurred to or by the Bank on or before such date which mature thereafter. Termination by the undersigned or the executors, liquidators, administrators or legal representatives of such undersigned shall not terminate the liability hereunder of any other undersigned. If after such termination any payment from the Customer must be returned to the Customer, or any successor or representative of the Customer, for any reason (including the designation of such payment as a mistake or as a preference following the bankruptcy of the Customer), then this Guarantee shall continue after the termination as if such payment had not been made. A written statement from any manager or acting manager of the Bank purporting to show the amount at any particular time due and payable to the Bank, and guaranteed by this Guarantee,

shall be conclusive evidence as against the undersigned that such amount is at such time so due and payable to the Bank and is guaranteed hereby. Each of the executors, liquidators, administrators and legal representatives of the undersigned shall immediately give notice in writing to the Bank of the death of such undersigned.

Insert name of Canadian Province in which Customer's account with the Bank is kept at the time Guarantee is given

THIS CONTRACT shall be construed in accordance with the laws of the Province of **ONTARIO** and for the purpose of legal proceedings this contract shall be deemed to have been made in the said province and to be performed there, and the courts of that province shall have non-exclusive jurisdiction over all disputes which may arise under this contract, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the undersigned in the courts of any other province or country.

IF ANY PROVISION of this Guarantee is determined to be unenforceable, prohibited, invalid or illegal, it shall be severed from this Guarantee solely to the extent of such unenforceability, prohibition, invalidity or illegality and the remainder of such provision and the remainder of this Guarantee shall be unaffected thereby. The liability of the undersigned under this Guarantee shall not be terminated if this Guarantee is held to be unenforceable against any other undersigned.

ALL DEBTS AND LIABILITIES present and future of the Customer to the undersigned are hereby assigned (to the extent permitted by applicable law) to the Bank and postponed to the debts and liabilities of the Customer to the Bank and all such amounts paid to the undersigned or its assigns shall be received on behalf of and in trust for the Bank and shall immediately be paid over to the Bank..

THE UNDERSIGNED acknowledges that this Guarantee has been delivered free of any conditions and that no representations have been made to the undersigned affecting the liability of the undersigned under this Guarantee save as may be specifically embodied herein and agrees that this Guarantee is in addition to and not in substitution for any other guarantees now or subsequently held by the Bank.

THE UNDERSIGNED represents and warrants that (i) it fully understands the provisions of this Guarantee and its obligations hereunder; (ii) it has been afforded the opportunity to engage independent legal counsel, at its own expense, to explain the provisions of this Guarantee and its obligations hereunder; and (iii) it has either engaged legal counsel in connection with its execution of this Guarantee or has decided, at its sole discretion, not to do so.

THE UNDERSIGNED agrees, without limitation of the rights of the Bank under applicable law, that the Bank may apply any amounts owing to, or sum standing to the credit of, the undersigned with any office, branch, subsidiary or affiliate of the Bank to the payment when due of any amount owing by the undersigned hereunder. For this purpose, the Bank may convert any such amount or sum into the currency of the amount owing hereunder at a rate of exchange at which the Bank could purchase the relevant currency on the relevant date acting in good faith.

THIS GUARANTEE shall remain in effect notwithstanding any change in the circumstances having led the undersigned to execute this Guarantee and notwithstanding the termination of or a change in the office or duties of such undersigned or in any relationship between such undersigned and the Customer.

THE UNDERSIGNED acknowledges and agrees that the Bank may make a claim or demand payment hereunder notwithstanding any limitation period regarding such claim or demand set forth in the *Limitations Act, 2002* (Ontario) or under any other applicable law with similar effect and, to the maximum extent permitted by applicable law, any limitations periods set forth in such act or applicable law are hereby explicitly excluded or, if excluding such limitations periods is not permitted by such act or applicable law, are hereby extended to the maximum limitation period permitted by such act or applicable law. For greater certainty, the undersigned acknowledges and agrees that this Guarantee is a "business agreement" as defined under Section 22 of the *Limitations Act, 2002* (Ontario).

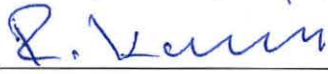
IN THIS GUARANTEE, unless the context otherwise requires, references to the undersigned shall be interpreted as referring to each of the undersigned if there is more than one undersigned.

It is the express wish of the parties hereto that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

DATED as of <sup>February</sup> ~~January~~ 23, 2023.

This clause applies to the Province of Québec only



WITNESS(ES) TO SIGNATURES OF INDIVIDUAL(S)	SIGNATURE OF GUARANTOR(S)
<p style="font-size: small;">Witness to sign for each individual (i.e. natural person) guarantor who signs.</p> <p>_____</p> <p>Name: _____</p> <p>_____</p> <p>Name: _____</p> <p>_____</p> <p>Name: _____</p> <p>_____</p> <p>Name: _____</p>	<p>_____</p> <p style="text-align: center;">(Individual Guarantor)</p> <p>Name: _____</p> <p>_____</p> <p style="text-align: center;">(Individual Guarantor)</p> <p>Name: _____</p> <p>_____</p> <p style="text-align: center;">(Individual Guarantor)</p> <p>Name: _____</p> <p>_____</p> <p style="text-align: center;">(Individual Guarantor)</p> <p>Name: _____</p> <p><b>2496287 Ontario Inc.</b>            (Name of Corporation/Entity Guarantor)</p> <p>By: <u></u></p> <p>Name: <b>Rasakone Kapilan</b></p> <p>Title: <b>President</b></p>

This is Exhibit "DD" to the Affidavit of Visana Wong  
sworn on May 1, 2023

A Commissioner for the taking of affidavits, etc.

### Guarantee for Indebtedness of an Incorporated Company

To BANK OF MONTREAL:

IN CONSIDERATION of Bank of Montreal (the "Bank") dealing with **2496287 ONTARIO INC.** (the "Customer"), the undersigned hereby jointly and severally (solidarily in the Province of Québec) guarantees payment to the Bank of all present and future debts and liabilities in any currency, direct, indirect, contingent or otherwise, matured or not, including interest thereon, now or at any time, due or owing to the Bank from or by the Customer or by any successor of the Customer, 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 whatever a creditor of the Customer, wherever incurred and whether incurred by the Customer as principal or surety, alone or jointly with any other person, or otherwise howsoever. The liability of the undersigned (or each undersigned, if more than one), under this Guarantee, is limited to the aggregate amount of **TWO MILLION Dollars \$2,000,000** plus interest thereon at a rate of **3% per cent per annum** above the Bank's prime interest rate in effect from time to time, from and including the date of demand until payment, and legal or other costs, charges and expenses. The liability of the undersigned to make payment under this Guarantee shall arise immediately after demand for payment under this Guarantee has been made in writing by the Bank on the undersigned or any one of them, if more than one. The term "prime interest rate" means the floating annual rate of interest established from time to time by the Bank as the base rate it uses to determine rates of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

IT IS AGREED that no change in the name, objects, capital stock, ownership, control or constitution of the Customer shall in any way affect the liability of the undersigned with respect to transactions occurring either before or after any such change. If the Customer amalgamates with one or more other corporations this Guarantee shall continue and apply to all debts and liabilities owing to the Bank by the corporation continuing from the amalgamation. The Bank shall not be required to inquire into or confirm the powers of the Customer or any of its directors or other agents acting or purporting to act on its behalf, and all amounts, liabilities, advances, renewals and credits in fact incurred, borrowed or obtained from the Bank shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding whether incurring such debts or liabilities exceeded the powers of the Customer or of its directors or agents, or was in any way irregular, defective or improper.

IT IS FURTHER AGREED that the undersigned shall be liable to the Bank in respect of all debts and liabilities, subject to the limitation, if any, set forth in the first paragraph of this Guarantee, stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, notwithstanding whether any such agreement or any provision thereof is invalid, void, illegal, or unenforceable and notwithstanding whether such agreement was properly completed, entered into or authorized. Subject to the limitation, if any, set forth in the first paragraph of this Guarantee, the undersigned shall indemnify and save the Bank harmless from any losses which may arise by virtue of any debts and liabilities stated to be owing to the Bank by the Customer under any agreement entered into by the Customer with respect to such debts and liabilities, or any other agreement relating to any of the foregoing, being or becoming for any reason whatsoever in whole or in part (a) void, voidable, null, *ultra vires*, illegal, invalid, ineffective or otherwise unenforceable in accordance with its terms, or (b) released or discharged by operation of law (all of the foregoing being an "Indemnifiable Circumstance"). For greater certainty, the losses shall include the amount of all debts and liabilities owing to the Bank by the Customer which would have been payable by the Customer but for the Indemnifiable Circumstance. Nothing set out herein shall be interpreted as requiring any debts or liabilities which are hereby guaranteed to be documented by written agreement between the Bank and the Customer.

IT IS FURTHER AGREED that the Bank, without the consent of the undersigned and without exonerating in whole or in part the undersigned, may grant time, renewals, extensions, indulgences, releases and discharges to, may abstain from taking, perfecting or realizing upon security from, may release security to, may accept compositions from, and may otherwise change the terms of any of the debts and liabilities hereby guaranteed and otherwise deal with, the Customer and all other persons (including any other undersigned and any other guarantor) and security, as the Bank may see fit. No loss or diminution of any security received by the Bank from the Customer or others, whether the loss or diminution is due to the fault of the Bank or otherwise, shall in any way limit or lessen the liability of the undersigned under this Guarantee. All dividends, compositions, and amounts received by the Bank from the Customer or from any other person or estate capable of being applied by the Bank in reduction of the debts and liabilities hereby guaranteed, shall be regarded for all purposes as payments in gross, and the Bank shall be entitled to prove against the estate of the Customer upon any insolvency or winding-up in respect of the whole of said debts and liabilities, and the undersigned shall have no right to be subrogated to the Bank in respect of any such proof until the Bank has received from such estate payment in full of its claim with interest.

AND IT IS FURTHER AGREED that this shall be a continuing guarantee, and shall guarantee any ultimate balance owing to the Bank, including all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of amounts due to the Bank from the Customer either alone or in conjunction with any other person or otherwise howsoever, or attempting to do so. The Bank shall not be obliged to seek recourse against the Customer or any other person or realize upon any security it may hold before being entitled to payment from the undersigned of all debts and liabilities hereby guaranteed. The undersigned hereby renounces the benefits of discussion and division. The undersigned renounces claiming or setting up against the Bank any right which such undersigned may have to be subrogated in any of the rights, hypothecs, privileges and other security held from time to time by the Bank. The undersigned may terminate the further liability of such terminating party under this continuing Guarantee by providing ninety days' prior written notice to be given to the Bank. The liability of such terminating party shall continue under this Guarantee during such 90-day period, notwithstanding the death or insanity of such terminating party. After the expiry of such 90-day period, the terminating party shall be released from this Guarantee with respect to debts and liabilities arising after the expiry of such 90-day period but shall remain liable under this Guarantee in respect of all debts and liabilities owing to the Bank prior to the expiry of such 90-day period and also in respect of any contingent or future liabilities incurred to or by the Bank on or before such date which mature thereafter. Termination by the undersigned or the executors, liquidators, administrators or legal representatives of such undersigned shall not terminate the liability hereunder of any other undersigned. If after such termination any payment from the Customer must be returned to the Customer, or any successor or representative of the Customer, for any reason (including the designation of such payment as a mistake or as a preference following the bankruptcy of the Customer), then this Guarantee shall continue after the termination as if such payment had not been made. A written statement from any manager or acting manager of the Bank purporting to show the amount at any particular time due and payable to the Bank, and guaranteed by this Guarantee,

shall be conclusive evidence as against the undersigned that such amount is at such time so due and payable to the Bank and is guaranteed hereby. Each of the executors, liquidators, administrators and legal representatives of the undersigned shall immediately give notice in writing to the Bank of the death of such undersigned.

Insert name of Canadian Province in which Customer's account with the Bank is kept at the time Guarantee is given

THIS CONTRACT shall be construed in accordance with the laws of the Province of **ONTARIO** and for the purpose of legal proceedings this contract shall be deemed to have been made in the said province and to be performed there, and the courts of that province shall have non-exclusive jurisdiction over all disputes which may arise under this contract, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the undersigned in the courts of any other province or country.

IF ANY PROVISION of this Guarantee is determined to be unenforceable, prohibited, invalid or illegal, it shall be severed from this Guarantee solely to the extent of such unenforceability, prohibition, invalidity or illegality and the remainder of such provision and the remainder of this Guarantee shall be unaffected thereby. The liability of the undersigned under this Guarantee shall not be terminated if this Guarantee is held to be unenforceable against any other undersigned.

ALL DEBTS AND LIABILITIES present and future of the Customer to the undersigned are hereby assigned (to the extent permitted by applicable law) to the Bank and postponed to the debts and liabilities of the Customer to the Bank and all such amounts paid to the undersigned or its assigns shall be received on behalf of and in trust for the Bank and shall immediately be paid over to the Bank..

THE UNDERSIGNED acknowledges that this Guarantee has been delivered free of any conditions and that no representations have been made to the undersigned affecting the liability of the undersigned under this Guarantee save as may be specifically embodied herein and agrees that this Guarantee is in addition to and not in substitution for any other guarantees now or subsequently held by the Bank.

THE UNDERSIGNED represents and warrants that (i) it fully understands the provisions of this Guarantee and its obligations hereunder; (ii) it has been afforded the opportunity to engage independent legal counsel, at its own expense, to explain the provisions of this Guarantee and its obligations hereunder; and (iii) it has either engaged legal counsel in connection with its execution of this Guarantee or has decided, at its sole discretion, not to do so.

THE UNDERSIGNED agrees, without limitation of the rights of the Bank under applicable law, that the Bank may apply any amounts owing to, or sum standing to the credit of, the undersigned with any office, branch, subsidiary or affiliate of the Bank to the payment when due of any amount owing by the undersigned hereunder. For this purpose, the Bank may convert any such amount or sum into the currency of the amount owing hereunder at a rate of exchange at which the Bank could purchase the relevant currency on the relevant date acting in good faith.

THIS GUARANTEE shall remain in effect notwithstanding any change in the circumstances having led the undersigned to execute this Guarantee and notwithstanding the termination of or a change in the office or duties of such undersigned or in any relationship between such undersigned and the Customer.


THE UNDERSIGNED acknowledges and agrees that the Bank may make a claim or demand payment hereunder notwithstanding any limitation period regarding such claim or demand set forth in the *Limitations Act, 2002* (Ontario) or under any other applicable law with similar effect and, to the maximum extent permitted by applicable law, any limitations periods set forth in such act or applicable law are hereby explicitly excluded or, if excluding such limitations periods is not permitted by such act or applicable law, are hereby extended to the maximum limitation period permitted by such act or applicable law. For greater certainty, the undersigned acknowledges and agrees that this Guarantee is a "business agreement" as defined under Section 22 of the *Limitations Act, 2002* (Ontario).

IN THIS GUARANTEE, unless the context otherwise requires, references to the undersigned shall be interpreted as referring to each of the undersigned if there is more than one undersigned.

It is the express wish of the parties hereto that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

DATED as of February 23, 2023.

This clause applies to the Province of Québec only

WITNESS(ES) TO SIGNATURES OF INDIVIDUAL(S)	SIGNATURE OF GUARANTOR(S)
<p>Witness to sign for each individual (i.e. natural person) guarantor who signs.</p> <p>_____</p> <p>Name: _____</p>	<p>_____</p> <p>(Individual Guarantor)</p>
<p>_____</p> <p>Name: _____</p>	<p>Name: _____</p>
<p>_____</p> <p>Name: _____</p>	<p>_____</p> <p>(Individual Guarantor)</p>
<p>_____</p> <p>Name: _____</p>	<p>Name: _____</p>
<p>_____</p> <p>Name: _____</p>	<p>_____</p> <p>(Individual Guarantor)</p>
<p>_____</p> <p>Name: _____</p>	<p>Name: _____</p>
<p>_____</p> <p>Name: _____</p>	<p>_____</p> <p>(Individual Guarantor)</p>
<p>_____</p> <p>Name: _____</p>	<p>Name: _____</p>
	<p><b>2243080 Ontario Inc.</b> (Name of Corporation/Entity Guarantor)</p> <p>By: <u></u></p> <p>Name: <b>Rasakone Kapilan</b></p> <p>Title: <b>President</b></p>

BANK OF MONTREAL

Applicant

and

2243080 ONTARIO INC. ET AL

Respondents

Court File No. CV-23-00698764-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceedings commenced at TORONTO

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**APPLICATION RECORD**

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**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Christopher J. Staples** (LSUC #31302R)  
Tel: 416-218-1147  
chris@chaitons.com

**Lawyers for the Applicant**