

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

**MOTION RECORD
(Re: Approval and Vesting Order and Ancillary Relief)
(returnable March 6, 2024 at 10:00 a.m.)**

February 27, 2024

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Lawyers for the Applicants and the Court-
appointed Receiver, RSM Canada Limited (now
known as TDB Restructuring Limited)

TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST

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INDEX

TAB	DOCUMENT
1	Notice of Motion returnable March 6, 2024
2	First Report of the Receiver dated February 27, 2024
Appendix “A”	Appointment Order dated February 6, 2024
Appendix “B”	Summary of Registrations made against the Debtors pursuant to the <i>Personal Property Security Act</i> (Ontario) as of February 25, 2024
Appendix “C”	Amended Agreement of Purchase and Sale in respect of Unit 302
Appendix “D”	Notice of Termination dated February 24, 2024, with respect to Unit 211 Agreement of Purchase and Sale
Appendix “E”	Execution Certificate in favour of TA Appliances Inc. against Vandyk-Backyard Queensview Limited.
Appendix “F”	Letter from counsel for TA Appliances Inc. dated February 27, 2024
3	Draft Approval and Vesting Order
4	Blackline of draft Approval and Vesting Order against Model Order
5	Draft Liens Claim Process Order
6	Draft Ancillary Order

TAB 1

**ONTARIO
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B E T W E E N:

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Applicants

- and -

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Respondents

**NOTICE OF MOTION
(Re: Approval and Vesting Order, Ancillary Relief and Lien Claims Process)**

RSM CANADA LIMITED (now known as TDB Restructuring Limited) in its capacity as Court-appointed receiver (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers (collectively, the “**Unsold Units**”) constituting property of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”), will make a motion before the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on Wednesday, March 6, 2024, at 10:00 a.m. (Eastern Time), or as soon after that time as the motion can be heard, at Toronto, Ontario.

Please advise if you intend to attend the hearing by email to Puya Fesharaki at pfesharaki@tgf.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- In writing under subrule 37.12.1(1) because it is on consent, unopposed *or* made without notice;
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By videoconference, via Zoom, the details of which will be made available by the Court in CaseLines.

THIS MOTION IS FOR:

1. The Receiver is seeking the following Orders, substantially in the form included in the Motion Record:
 - (a) an Approval and Vesting Order in respect of Unit 302, authorizing and directing the Receiver to enter into and carry out the terms of the Unit 302 agreement of purchase and sale (the “**Unit 302 APS**”), with such minor further amendments thereto deemed necessary by the Receiver, and vesting title to the Purchased Assets (as defined in the Unit 302 APS) in the purchasers upon the closing of the purchase and sale transaction contemplated thereby;
 - (b) an Order approving the lien claims process (the “**Lien Claim Process Order**” to permit an assessment of the validity and priority of any construction lien claims at the appropriate time; and
 - (c) an Ancillary Order:
 - (i) approving the First Report of the Receiver dated February 27, 2024 (the “**First Report**”) and the Receiver’s activities set out herein;

- (ii) ratifying the Receiver's termination of the agreement of purchase and sale in respect of Unit 211 (the "**Unit 211 APS**");
 - (iii) establishing the maximum holdback amount that may be applicable in respect of any lien claims against the Unsold Units that may subsequently be determined to be valid and in priority to the first mortgage registered in favour of the Applicants (the "**First Mortgage**"); and
 - (iv) approving the distribution of net proceeds of sale of the Unsold Units, net of commissions, amounts payable on closing and related closing costs (the "**Net Proceeds**"), and subject to the Receiver first retaining and holding 15% of the Net Proceeds in trust for any lien claims that may subsequently be determined to be valid and in priority to the First Mortgage;
2. Abridging the time for service of the Motion Record; and
 3. Such other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

Capitalized Terms

4. Capitalized terms not expressly defined herein are as defined in the First Report.

Background

5. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted on February 6, 2024 (the "**Appointment Order**"), RSM Canada Limited (now known as TDB Restructuring Limited) was appointed Receiver of the Unsold Units of the Debtors and the proceeds therefrom (collectively, the "**Property**") under section

243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario) (the “**CJA**”).

6. Following its appointment, the Receiver has, among things, sought to fulfill its mandate to realize on the Property for the benefit of all stakeholders, which has included:
 - (a) engaging VKP Real Estate Limited (“**VKP**”), a qualified broker, to market the Unsold Units for sale;
 - (b) assessing the existing agreements of purchase and sale in respect of Units 302 and 211, and as described more fully, assuming the former agreement and terminating the latter agreement; and
 - (c) engaging with various stakeholders, including various lien claimants that had registered construction liens against title to the Unsold Units (collectively, the “**Construction Liens**”).

Closing the Sale of Unit 302

7. The Debtors had entered into an agreement of purchase and sale with respect to Unit 302 prior to the Receiver’s appointment, with a closing date of February 21, 2024. The agreement was incapable of being completed due to, among other things, the Construction Liens registered against the property, the registration of an execution, and the commencement of these receivership proceedings.
8. Following its appointment, the Receiver reviewed the Unit 302 APS and determined that, subject to certain amendments thereto and further to its discussions with VKP regarding the purchase price for the property, that the price and terms of sale were acceptable to the

Receiver. Subject to court approval which is sought herein, the Receiver has accepted the Unit 302 APS, as amended, and wishes to complete the transaction by seeking an order vesting the property in the purchasers.

9. VKP marketed Unit 302 for sale. The Receiver is satisfied that: (i) sufficient efforts were made to obtain the highest and best price for the unit; (ii) the length of the marketing process was appropriate; (iii) the marketing process was conducted fairly and with integrity; and (iv) the offer received for Unit 302 represents the highest and best offer in the circumstances.

Termination of Unit 211 APS

10. The Debtors had entered into the Unit 211 APS on November 28, 2018. The Unit 211 APS never closed, for reasons that are not certain to the Receiver. Following its appointment, and further to the Receiver's discussions with VKP, the Receiver formed the view that the amount was materially lower than the current fair market value of the property.
11. Accordingly, the Receiver determined that it is beneficial for the Receiver to terminate and continue to seek a purchaser for Unit 211. By letter dated February 24, 2024, the Receiver terminated the Unit 211 APS and advised the purchaser to seek any recourse with respect to its deposit for the property that may be available from Tarion Warranty Corporation ("**Tarion**"). The Receiver seeks the Court's ratification of its termination of the Unit 211 APS.
12. The Receiver understands that the purchaser of Unit 211 does not object to the Receiver's termination of the Unit 211 APS and, following termination, intends to seek a refund of its

deposit from Tarion.

Marketing of the Other Unsold Units

13. The Receiver intends to market the remaining Unsold Units for sale. VKP has advised the Receiver that there exists strong interest and showings in respect of the Unsold Units currently listed for sale.

Results of Independent Legal Opinion and the Applicants' Request for an Interim Distribution

14. The Receiver has received an opinion from its independent counsel, Loopstra Nixon LLP (the "**Legal Opinion**") that, based on the usual assumptions and subject to the usual qualifications set out therein, regarding the following security granted by the Debtors in favour of the Applicant, Peoples Trust Company ("**Peoples**"):
- (a) the First Mortgage is a first-ranking valid and binding obligation of the Debtors; and
 - (b) the general security agreement is (i) perfected under the PPSA and constitutes a valid and binding obligation of the Debtors, and (ii) constitutes a first-ranking security interest in favour of Peoples in respect of any personal property of the Debtors that may be located within the Unsold Units.
15. The Applicants have advised the Receiver that they would like to receive the Net Proceeds of each sale transaction to be applied to reduce the First Mortgage indebtedness. The Receiver supports interim distributions to the Applicants on the basis that it will serve to reduce accrued and accruing interest on the Mortgage, which is for the benefit of all stakeholders.

Inquiries from Stakeholders

16. The Receiver has received and responded to various inquiries from stakeholders and creditors including, as set out herein.
17. Counsel to TA Appliances Inc. (“**TA**”), a judgment creditor, regarding certain household appliances in the Unsold Units. On February 27, 2024, immediately prior to serving the Motion Record, counsel for the Receiver received a letter from TA outlining its position with respect to the appliances on site. The Receiver’s counsel has requested further information from TA’s counsel, including the underlying documentation. The Receiver’s preliminary views on TA’s stated position are set out in the First Report.
18. Counsel for Plycon Forming Ltd. (“**Plycon**”), who does not have a Lien Claim but has commenced an action against Vandyk-Backyard Humberside Limited and John Vandyk for breach of trust for alleged unpaid work performed at the Property. The Receiver’s preliminary views on Plycon’s stated position are set out in the First Report.

Proposed Lien Claims Process

19. The issue of (i) whether the Construction Liens are valid and were filed on a timely basis, and (ii) whether any portion could be in priority to the First Mortgage will need to be determined. Provided the Lien Holdback Amount (defined below) has been held by the Receiver and not distributed pursuant to the First mortgage with other Net Proceeds of sale, the timing of this determination is not required while amounts remain outstanding under the First Mortgage and interest continues to accrue.
20. As a matter of efficiency and expediency, the Receiver’s proposed Lien Claims Process

Order proposed by the Receiver requires the Construction Lien claimants to complete proofs of lien claim and provide documentation in support thereof to the Receiver. Following repayment of the First Mortgage from the Net Proceeds of sale, and subject at all times to the Lien Holdback being maintained by the Receiver, a recommendation could then be made by the Receiver as to the most efficient and cost-effective manner of having the Construction Liens determined.

21. All parties would receive notice of any such proposed process for the determination of such Construction Liens.

Lien Holdback Amount and Proposed Interim Distribution

22. In consultation with its real estate counsel, the Receiver has determined that the amount that the Construction Lien claimants may be entitled to recover pursuant to the *Construction Act* in priority to the First Mortgage, if all construction liens were determined to be valid and in priority to the First Mortgage, is no more than \$1,970,017.11 (the “**Maximum Holdback Amount**”). The Maximum Holdback amount represents 10% of the aggregate contract value for each Lien Claimant who had a direct contract with the Debtors.
23. To protect the interests of the Lien Claimants, while at the same time balancing the need for the Applicants to reduce the amounts owing under the First Mortgage and accruing interest, the Receiver is proposing to hold back an amount equal to fifteen per cent (15%) of the Net Proceeds from each of the Unsold Units that are sold (the “**Lien Holdback**”). This will produce an amount that is in excess of the Maximum Holdback Amount.

24. The Receiver proposes, subject to holding the Lien Holdback in trust for the benefit of the Construction Liens to be determined at a future date, to pay the balance of the Net Proceeds to the Applicants, up to the total indebtedness owing on the Applicants' loan secured by the First Mortgage.

Approval of Receiver's Activities

25. The Receiver's activities since its appointment, set out in greater detail in the First Report. The Receiver has acted in good faith and due diligence in carrying out all such activities and seeks the approval of the First Report and activities.

Other Grounds for Relief

26. The provisions of the BIA and the inherent and equitable jurisdiction of this Court.
27. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37, 39 and 41.05 of the *Rules of Civil Procedure* (Ontario), R.R.O. 1990, Reg. 194.; and
28. Such further and other grounds as counsel may advise and this honourable Court may permit.

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

- (a) the First Report; and
- (b) such further and other evidence as counsel may advise and this honourable Court may permit.

February 27, 2024

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Lawyers for the Court-appointed Receiver, RSM
Canada Limited (now known as TDB Restructuring
Limited)

TO: THIS HONOURABLE COURT
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Applicants

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Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**NOTICE OF MOTION
(Returnable March 6, 2024 at 10:00 a.m.)**

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(as at February 26, 2024)

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AND TO:	<p>GIFFEN LLP 101 Randall Drive, Unit A Waterloo, ON N2V 1C5</p> <p>Cynthia Davis Tel: (519) 578-4150 Email: cd@giffenlawyers.com</p> <p>Tyler James Nivins Email: tjn@giffenlawyers.com</p> <p>Lawyers for T A Appliance Inc. (judgment creditor CV-23-00001672-000)</p>

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AND TO:	<p>SOCCOL LAW 7823 Kipling Avenue Vaughan, ON L4L 1Z4</p> <p>Fabio M. Soccol Tel: (905) 605-2332 Fax: (905) 605-1812 Email: fabio@soccollaw.com</p> <p>Lawyers for Plycon Forming Ltd. (breach of trust creditor CV 23-00710524-0000)</p>
AND TO:	<p>INTAKE CENTRE FOR INSOLVENCY (Ontario Region) Administrative Agreement Requests Manager, Insolvency Toronto Centre Tax Services Office, Canada Revenue Agency</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p>
AND TO:	<p>MINISTER OF FINANCE INSOLVENCY UNIT 6th Floor, 33 King Street West Oshawa, ON L1H 8H5</p> <p>Insolvency Unit Email: insolvency.unit@ontario.ca</p>

AND TO:	<p>JK LAW PROFESSIONAL CORPORATION 10210 Yonge Street, Unit B, Richmond Hill, Ontario, L4C 3B6</p> <p>Janet Kiraly Tel.: 289-217-7920 Fax.: 289-217-7922 E-Mail: janet@jklawfirm.ca</p> <p>Lawyers for Purchasers of Unit 302</p>
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TAB 2

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

**FIRST REPORT OF THE RECEIVER
February 27, 2024**

TABLE OF CONTENTS

INDEX OF APPENDICES 1

INTRODUCTION 2

PURPOSE OF REPORT..... 2

TERMS OF REFERENCE 4

THE RECEIVER’S ACTIVITIES..... 4

THE FIRST MORTGAGE AND REGISTRATIONS AGAINST THE PROPERTY 5

UNIT SALES..... 8

TERMINATION OF UNIT 211 APS..... 10

SECURITY OPINION AND THE APPLICANTS’ REQUEST FOR A DISTRIBUTION 10

INQUIRIES FROM STAKEHOLDERS 11

LIEN CLAIMS PROCESS..... 12

PROPOSED DISTRIBUTION 14

CONCLUSIONS AND RECOMMENDATIONS 15

INDEX OF APPENDICES

Appendix	DOCUMENT
A	Appointment Order dated February 6, 2024
B	Summary of Registrations made against the Debtors pursuant to the <i>Personal Property Security Act</i> (Ontario) as of February 25, 2024
C	Amended Agreement of Purchase and Sale in respect of Unit 302
D	Notice of Termination dated February 24, 2024, with respect to Unit 211 Agreement of Purchase and Sale
E	Execution Certificate in favour of TA Appliances Inc. against Vandyk-Backyard Queensview Limited.
F	Letter from counsel for TA Appliances Inc. dated February 27, 2024

INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on February 6, 2024 (the “**Appointment Order**”), RSM Canada Limited (now known as TDB Restructuring Limited) was appointed receiver and manager (the “**Receiver**”), without security, of the unsold condominium units, parking units, and storage lockers (collectively, the “**Unsold Units**”) constituting property of Vandyk-Backyard Queensview Limited (“**Backyard**”) and Vandyk-Backyard Humberside Limited (together with Backyard, the “**Debtors**”). A copy of the Appointment Order is attached as **Appendix “A”** to this report.¹
2. Pursuant to the authority granted to it under the Appointment Order, the Receiver retained the law firm of Thornton Grout Finnigan LLP (“**TGF**”), who is also counsel to the Applicants, to act as the Receiver’s insolvency and litigation legal counsel. In addition, the Receiver retained the law firm of Fogler Rubinoff LLP (“**Fogler**”) to act as its real estate counsel. Loopstra Nixon LLP acts as independent counsel to the Receiver in respect of any matter where a conflict may exist.
3. On February 1, 2024, RSM Canada Limited rebranded and legally changed its name to TDB Restructuring Limited (“**TDB**”). TDB is in the process of obtaining an omnibus Order from the Court in order to change the name on all of its current mandates from RSM Canada Limited to TDB. The anticipated timing of the granting of such Order is early March 2024. Upon receipt of such Order, all insolvency-related business transacted by RSM Canada Limited will be in the name TDB.

PURPOSE OF REPORT

4. The purpose of this report (the “**First Report**”) is to:

¹ The Appointment Order and other pertinent documents relating to these proceedings have been posted on the Receiver’s web page (the “**Receiver’s Web Page**”), which can be found at: <https://tdbadvisory.ca/insolvency-case/vandyk-backyard-queensview-limited-vandyk-backyard-humberside-limited/>

- (a) report to the Court on the activities of the Receiver from the date of its appointment to February 26, 2024;
- (b) report to the Court on the marketing activities to date relating to the Unsold Units;
- (c) report to the Court regarding the Receiver's intent to complete the sale of Unit 302, subject to Court approval, pursuant to an agreement of purchase and sale ("**APS**") in respect of such unit initially entered into with Backyard, as assumed and accepted by the Receiver;
- (d) report to the Court regarding the Receiver's termination of a pre-filing APS that had been entered into by Backyard with respect to Unit 211 in 2018, which the Receiver has determined not to assume and complete;
- (e) report to the Court on the Receiver's receipt of an independent opinion on the validity, enforceability and registered priority of the first mortgage registered in favour of the Applicants (the "**First Mortgage**") and the properly-perfected, first-ranking security interest granted by Backyard in favour of the Applicants;
- (f) describe the relief being sought by the Receiver, including:
 - (i) an Approval and Vesting Order in respect of Unit 302, authorizing and directing the Receiver to enter into and carry out the terms of the Unit 302 APS, with such minor further amendments thereto deemed necessary by the Receiver, and vesting title to the Purchased Assets (as defined in the Unit 302 APS) in the purchasers upon the closing of the purchase and sale transaction contemplated thereby;
 - (ii) an Order establishing the Lien Claims Process (as defined herein) to permit an assessment of the validity and priority of any construction lien claims at the appropriate time; and
 - (iii) an Ancillary Order (i) approving this First Report and the Receiver's activities set out herein; (ii) ratifying the Receiver's termination of the APS

in respect of Unit 211; (iii) establishing the maximum holdback amount that may be applicable in respect of any lien claims against the Unsold Units that may subsequently be determined to be valid and in priority to the First Mortgage; and (iv) approving the distribution of net proceeds of sale of the Unsold Units, net of commissions and other customary closing costs (the “**Net Proceeds**”), and subject to the Receiver retaining and holding 15% of the Net Proceeds in trust for any lien claims that may subsequently be determined to be valid and in priority to the First Mortgage.

TERMS OF REFERENCE

5. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent practicable or necessary, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
6. Unless otherwise stated, all monetary amounts contained in the First Report are expressed in Canadian Dollars.

THE RECEIVER’S ACTIVITIES

7. The Receiver’s activities since its appointment have consisted primarily of:
 - (a) investigating insurance coverage in respect of the Unsold Units;
 - (b) sending a notice to creditors of the Unsold Units pursuant to Sections 245 and 246(1) of the *Bankruptcy and Insolvency Act*;

- (c) obtaining an independent legal opinion on the validity, enforceability and registered priority of the First Mortgage and personal property security granted by Backyard in favour of the Applicants;
- (d) responding to inquiries from stakeholders;
- (e) engaging VKP Real Estate Limited (“**VKP**”), a qualified broker, to market the Unsold Units for sale;
- (f) reviewing the OREA condominium sale agreement in respect of the prospective sale of the Unsold Units with the Receiver’s real estate counsel and amending same to include provisions that reflect an “as is, where is” sale in the context of a receivership proceeding;
- (g) issuing a termination notice in respect of the Unit 211 APS;
- (h) corresponding with the Lien Claimants (as defined herein) regarding their asserted claims against the Unsold Units;
- (i) corresponding with Canada Revenue Agency in respect of the administration of these receivership proceedings;
- (j) communicating with Trisura Guarantee Insurance Company (“**Trisura**”) in respect of the status of any deposits with respect to the Unsold Units, and with Tarion Warranty Corporation regarding available deposit insurance;
- (k) considering the impact of any registrations made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”) in respect of any personal property of the Debtors that may be relevant to a sale of the Unsold Units; and
- (l) preparing this First Report.

THE FIRST MORTGAGE AND REGISTRATIONS AGAINST THE PROPERTY

8. The Applicants, Peoples Trust Company (“**Peoples**”) and Firm Capital Mortgage Fund Inc., together made a loan to the Debtors secured by, among other things, the First

Mortgage securing the principal amount of \$12.7 million plus interest, fees and costs, and a general security agreement (the “**Loan**”), which Loan was fully advanced to the Debtors by way of a one-time advance on August 24, 2023. As of January 23, 2024, the Debtors were indebted to the Applicants under the Loan in the amount of \$12,000,201.89 (which includes principal, accrued interest, costs and other amounts payable in accordance with the terms of the Loan, other than any accrued legal fees). Interest on the loan continues to accrue at a rate of approximately \$95,000 per month, or \$3,050 per diem.

9. Title searches in respect of the Unsold Units dated January 30, 2024 (the “**Parcel Abstracts**”), disclosed the following additional claims registered against the Unsold Units in order of registration:
 - (a) in favour of Trisura, which registration has been fully subordinated in favour of Peoples pursuant to a priority agreement between Peoples and Trisura dated August 16, 2023, save and except for any “Deposit Monies” that may be held in respect of which Trisura retains a priority claim;
 - (b) in respect of certain of the Unsold Units, in favour of Toronto Standard Condominium Corporation No. 2983, the condominium building corporation, for unpaid common area expenses, the relevant portion of which will be paid on closing of each of the Unsold Units; and
 - (c) in favour of various construction lien claimants, as more fully described below.

Copies of the Parcel Abstracts were previously attached as Exhibit “J” to the Affidavit of Michael Lombard sworn January 30, 2024 (the “**Lombard Affidavit**”), filed in support of the Appointment Order.

10. Searches of the PPSA Registry in respect of the Debtors disclosed various registrations, as of February 25, 2024. Attached as **Appendix “B”** to this First Report is a summary of registrations made against the Debtors pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”), current as of February 25, 2024. As it relates to any personal property in respect of the Unsold Units at 25 Neighbourhood Lane, Toronto, and after taking into account “no interest” letters in favour of Peoples and registrations that relate to

unrelated specific equipment, the PPSA registrations made by Peoples have first registered priority.

11. As set out in the Lombard Affidavit, the following construction liens were registered on title against the Unsold Units by various lien claimants (the “**Lien Claimants**”):

Lien Claimant	Lien Registration Date / Instrument No.	Certificate of Action	Lien Claim Amount
Dircam Electric Limited	2023-08-25 AT6407058	AT6439785 registered on 2023-10-12	\$384,182.90
Foremont Drywall Highrise	2023-08-28 AT6407909	AT6445432 registered on 2023-10-23	\$1,845,369.24
Brunco Insulation Ltd.	2023-09-07 AT6416262	None	\$30,203.77
Classic Tile Contractors Limited	2023-10-30 AT6450100	None	\$1,142,744.43
Torre D.C.C. Carpentry Ltd.	2023-11-01 AT6452324	AT6481040 registered on December 15, 2023	\$702,998.75
Summit Concrete & Drain Ltd.	2023-11-10 AT6457807	AT6460839 registered on November 15, 2023	\$16,952.26
Urban Mechanical Contracting Ltd.	2023-11-10 AT6458231	AT6469954 registered on November 30, 2023	\$2,282,408.34
Urban Mechanical Contracting Ltd.	2023-11-10 AT6458352	AT6469955 registered on November 30, 2023	\$658,839.90
2164705 Ontario inc.	2023-11-15 AT6459779	AT6480459 registered on December 14 2023	\$127,350.04
Venice Construction Inc.	2023-11-15 AT6460827	None	\$122,337.11
Live Patrol Inc.	2023-11-22 AT6464044	None	\$1,130.00

KC Structural Ltd.	2023-12-04 AT6472516	None	\$462,217.91
Permacorp Group of Companies	2023-12-15 AT6481578	None	\$323,750.00
Next Plumbing & Hydronics Supply Inc.	2023-10-06 A6436267	AT6445723 registered on 2023-10-23; Application to Delete AT6465065 registered on November 23, 2023 against certain properties	\$213,401.51

12. The current aggregate principal amount of the registered construction liens claimed against the Unsold Units (the “**Lien Claims**”) is \$8,313,886.16. To the Receiver’s knowledge, the Lien Claims reflect the foregoing stated quantum as at the date of this First Report.

UNIT SALES

Marketing of the Units

13. Upon its appointment, the Receiver engaged in discussions with VKP regarding the marketing efforts to date led by VKP and the Debtors, with a view to strategically marketing the Unsold Units for sale.

14. In consultation with VKP, the Receiver has decided that the best course of action is to list no more than 5 or 6 of the Unsold Units on MLS at any given time, as too much supply in the same building may result in lower demand and transaction prices for certain units. VKP has advised the Receiver that there exists strong interest and showings in respect of the Unsold Units currently listed for sale.

15. VKP has also advised the Receiver that, based on similar transactions that have been completed recently, the approximate current market value of the Unsold Units is \$900 to \$950 per square foot.

16. Depending on how the sale process continues over the coming weeks, the Receiver may consider *en bloc* sales and/or leasing certain of the Unsold Units. At this time, and given the increased interest throughout February, 2024, the Receiver will continue with the aforementioned plan of listing a small number of units on MLS at a time and selling them in the open market.

Approval of the Unit 302 Sale Transaction

17. As set out in the Lombard Affidavit, the Debtors had previously entered into an APS on January 7, 2024 with certain individual purchasers with respect to Unit 302. The APS contemplated that Unit 302 would be sold, together with a parking space and a locker, and that the transaction would close on February 21, 2024. Due to the registration of the Lien Claims against title the subject property, an execution registered by one party, and the receivership application brought by the Applicants, the Debtors were unable to complete the transaction.
18. Upon its appointment, the Receiver reviewed Unit 302 APS and determined that, subject to certain amendments thereto and further to its discussions with VKP regarding price, that the price and terms of sale were acceptable to the Receiver and that it was prepared to adopt the APS, as amended, and complete the transaction, subject to Court approval.
19. A copy of the amended APS in respect of Unit 302 redacted only for the personal information of the purchasers is attached as **Appendix “C”** to this First Report.
20. The Receiver is of the view that: (i) sufficient efforts were made to obtain the highest and best price for the unit; (ii) the length of the marketing process was appropriate; (iii) the marketing process was conducted fairly and with integrity; and (iv) the offer received for Unit 302 represents the highest and best offer in the circumstances.
21. The Receiver therefore recommends that this Court approve the Unit 302 APS and authorize the Receiver to carry out the terms thereof and grant an Order vesting title to Unit 302 in the purchasers thereof upon the closing of the transaction, in accordance with the terms of the draft Approval and Vesting Order sought herein.

TERMINATION OF UNIT 211 APS

22. On November 28, 2018, prior to the commencement of construction of the subject condominium building, the Debtors entered into an APS to sell Unit 211, as amended from time to time (as amended, the “**211 APS**”). Following its appointment, the Receiver consulted with VKP in respect of the purchase price for Unit 211 and formed the view that the amount was materially lower than the current fair market value of the property.
23. The Receiver is not certain of the reasons that the 211 APS did not close prior to the Receiver’s appointment. The Receiver understands that the purchaser of Unit 211 is agreeable to terminating the Unit 211 APS and, following termination, intends to seek a refund of its deposit from Tarion.
24. In view of the foregoing, and pursuant to the Receiver’s powers as set forth in Section 3(c) of the Appointment Order, on February 24, 2024, the Receiver issued a Notice of termination with respect to the Unit 211 APS (the “**211 Termination Notice**”). A copy of the 211 Termination Notice is attached as **Appendix “D”** to this First Report.

SECURITY OPINION AND THE APPLICANTS’ REQUEST FOR A DISTRIBUTION

25. The Receiver has received an opinion (the “**Legal Opinion**”) from its independent counsel, Loopstra Nixon LLP that, based on the usual assumptions and subject to the usual qualifications set out therein:
 - (a) the First Mortgage is a first-ranking, valid and binding obligation against Backyard and constitutes a first-rank charge/mortgage in favour of Peoples; and
 - (b) the general security agreement given by Backyard in favour of Peoples is (i) perfected under the PPSA and constitutes a valid and binding obligation of Backyard in accordance with its terms, and (ii) constitutes a first-ranking security interest in favour of Peoples with respect to the personal property of the Debtors at 25 Neighbourhood Lane, Toronto.

26. The Applicants have advised the Receiver that they would like to receive the Net Proceeds of each sale transaction, to be applied to reduce the First Mortgage indebtedness. The Receiver supports interim distributions to the Applicants on the basis that it will serve to reduce accrued and accruing interest on the Mortgage, which is for the benefit of all stakeholders.

INQUIRIES FROM STAKEHOLDERS

27. Counsel to TA Appliances Inc. (“TA”), a judgment creditor, reached out to the Receiver’s counsel TGF to inquire about its ability to take possession of certain kitchen appliances in the Unsold Units, to satisfy its judgment. Based on PPSA searches conducted by the Receiver’s counsel, TA does not have a perfected security interest in the appliances in question. Based on the Legal Opinion obtained by the Receiver, Peoples holds a first priority perfected security interest in all personal property within the Unsold Units, including the appliances. TGF has advised counsel to TA of the foregoing.
28. Attached as **Appendix “E”** to this First Report is a copy of an execution certificate and writ details report in respect of TA’s judgment against Backyard.
29. On February 27, 2024, immediately prior to serving the First Report and the Motion Record, counsel for the Receiver received a letter from TA outlining its legal position with respect to the appliances on site. Attached as **Appendix “F”** to this First Report is a copy of the letter received from counsel for TA.
30. Based on preliminary discussions with the Receiver’s legal counsel, the Receiver understands that any rights that TA may assert against the Debtors were crystallized in an unsecured judgment obtained and execution filed with the Sheriff’s Office at the time this insolvency proceeding was commenced. The Receiver further understands that the appliances in question for multiple units within the construction project constitute inventory in the hands of the corporate Debtors (secured by the existing General Security Agreement in favour of Peoples), and not “consumer goods” as asserted by TA in their letter, as Backyard is not a “consumer” as an individual homeowner who purchases

appliances would be. Counsel for the Receiver has requested that TA provide it with copies of certain documents for review.

31. Counsel for Plycon Forming Ltd. (“**Plycon**”) has also reached out to TGF in connection with a claim it has against Backyard, John Vandyk and one or more unknown individuals for breach of trust pursuant to the *Construction Act* and related relief. Plycon alleges that it contracted with Backyard for the supply of labour and materials to the Property and that the sum of \$1,263,804.71 (including HST) remains owing to it. To the Receiver's knowledge, Plycon does not have a preserved or perfected lien against the Property. Plycon takes the position that the proceeds of the sale of the Unsold Units constitute a vendor's trust pursuant to Section 9 of the *Construction Act*, which would survive any bankruptcy proceeding. Plycon's counsel also makes reference to section 85 of the *Construction Act* regarding priorities on insolvency.
32. Based on the Receiver's preliminary evaluation of Plycon's position, the Receiver notes that the vendor's trust arising under Section 9 of the *Construction Act* relates only to the net proceeds of any sale of the property in question, after the deduction of reasonable expenses arising from the sale and any amount paid to discharge mortgage indebtedness. The Receiver also notes that while Section 85 of the *Construction Act* relates to the trust claims of beneficiaries to the Trust created by Section 8 of the *Construction Act*, it also makes clear that, upon insolvency by a payer, those beneficiaries who have proved liens shall rank in priority to those beneficiaries whose liens have not been proved. Accordingly, Plycon's claim is not in priority to the proposed payment of Net Proceeds (subject to the Lien Holdback referred to below) to the First Mortgagee.

LIEN CLAIMS PROCESS

33. The issue of (i) whether the Lien Claims are valid and were filed on a timely basis, and (ii) whether any portion could be in priority to the First Mortgage, will need to be determined. Provided the Lien Holdback (defined below) has been held by the Receiver and not distributed to the First Mortgagee with other Net Proceeds of sale, the timing of this determination is not required while amounts remain outstanding under the First Mortgage and interest continues to accrue.

34. On February 22, 2024, the Receiver's real estate counsel, Fogler, wrote to counsel to each of the Lien Claimants to request that they provide proof of their Lien Claims, with supporting documentation, to the Receiver. Fogler requested such information on behalf of the Receiver pursuant to the authority granted to the Receiver under the Appointment Order. Fogler further advised counsel to the Lien Claimants that the Receiver may be requesting that the Court approve a formal claims process for the Lien Claimants.
35. The Receiver is requesting that the Court approve a lien claims process (the "**Lien Claims Process**") to facilitate the delivery of information that would allow an assessment to be made as to the validity and priority of any Lien Claims that may be in priority to the First Mortgage, which will be relevant to any subsequent distributions of net sale proceeds of the Unsold Units. The Lien Claims Process Order being sought by the Receiver with respect to the Lien Claims Process includes the following salient terms:
- (a) that completed proofs of lien claim and all supporting documents shall be provided by each Lien Claimant to the Receiver on or before April 1, 2024 (the "**Claims Bar Date**"). The Claims Bar Date may only be extended by the Receiver in its sole discretion, or by further Order of the Court;
 - (b) any Lien Claimant who receives the proof of lien claim from the Receiver and does not deliver a completed proof of lien claim to the Receiver by the Claims Bar Date shall be forever barred from asserting such Claim against the Debtors, the Receiver, the Property and its proceeds, and any "owner" (as defined in the *Construction Act*) of the Unsold Units comprising the Property, such claim shall be forever discharged and extinguished; and
 - (c) following repayment of the First Mortgage from the Net Proceeds of sale, and subject at all times to the Lien Holdback being maintained by the Receiver, a recommendation could then be made by the Receiver as to the most efficient and cost-effective manner of having the Lien Claims determined. All parties would receive notice of any such proposed process for the determination of such Lien Claims.

PROPOSED DISTRIBUTION

36. Following the closing of the sale for Unit 302 and receipt by the Receiver of the Net Proceeds therefrom, funds will be available to the Receiver for distribution.
37. The Receiver has not yet determined the validity or priority of any Lien Claims in relation to the First Mortgage. Rather, the Receiver has attempted to determine the maximum amount of the Lien Claims, to the extent they are found to be valid, that could potentially have priority over the First Mortgage.
38. The Receiver understands that the *Construction Act* required the Debtors to maintain a basic holdback equal to ten per cent (10%) of the price of the services or materials supplied under each construction contract entered into by the Debtors. As of the date of the Receiver's appointment, the Debtors were not in possession of any holdback funds.
39. Under subsection 78(5) of the *Construction Act*, construction liens have priority over a mortgage registered after the time when the lien first arose², to the extent of the deficiency in the holdbacks that an owner was required to retain.
40. Otherwise, and pursuant to subsection 78(6) of the *Construction Act*, a mortgage registered after the time the liens first arose has priority to the liens unless (a) at the time the advance was made, there was a preserved or perfected lien against the premises, or (b) prior to the time the advance was made, the person making the advance had received written notice of a lien.
41. Based on the Receiver's review of the dates of registration of the lien claims, at the time that the first and only advance was made by the Applicants, there were no preserved or perfected liens against the premises. The Applicant has sworn an affidavit in this proceeding confirming that no written notice of a lien had been received prior to its one and only advance under the First Mortgage.

² Section 15 of the *Construction Act* provides that a lien arises when the person first supplies services or materials to the improvement.

42. In consultation with its real estate counsel, Fogler, the Receiver has determined that the maximum amount that the Lien Claimants may be entitled to recover pursuant to the *Construction Act* would be approximately \$1,970,017.11 (the “**Maximum Holdback Amount**”), being 10% of the total contract value for each Lien Claimant who had a direct contract with the Debtors, as reported in each of the Lien Claimants' registered Claim for Lien.
43. As set out above, interest payable on the Loan continues to accrue at a rate of approximately \$95,000 per month, or \$3,050 per diem. Timely distributions of Net Proceeds to the Applicants would serve to reduce the Loan balance and the related interest that is payable, thereby making further funds available for other creditors upon the First Mortgage being repaid and discharged.
44. To protect the interests of the Lien Claimants, while at the same time balancing the need for the Applicants to reduce the amounts owing under the First Mortgage and accruing interest, the Receiver is proposing to hold back an amount equal to fifteen per cent (15%) of the Net Proceeds from each of the units sold (the “**Lien Holdback**”). The Receiver is satisfied that the aggregate market value of the Unsold Units, net of commissions and other amounts payable on closing, will result in a Lien Holdback that is more than sufficient to cover the Maximum Holdback Amount, from a sale of all of the Unsold Units.
45. In view of the foregoing, the Receiver proposes to address the Net Proceeds as follows:
- (a) a Lien Holdback equal to 15% of the net sale proceeds from unit 302 will be set aside by the Receiver and held in trust for the benefit of any lien claimants who are determined to have a valid lien claim in priority to the First Mortgage; and
 - (b) the balance of the Net Proceeds to the Applicants, up to the total indebtedness owing on the Loan and secured by the First Mortgage.

CONCLUSIONS AND RECOMMENDATIONS

46. The Receiver respectfully requests that the Court issue the Orders granting the relief set out in paragraph 3(f) above.

All of which is respectfully submitted this 27th day of February, 2024.

RSM CANADA LIMITED, solely in its capacity as
Court-appointed Receiver of the Property,
and not in its personal or corporate capacity

Per: *Bryan A. Tannenbaum*

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

APPENDIX A



Court File No. CV-24-00713783-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE

)

TUESDAY, THE 6TH

)

JUSTICE CAVANAGH

)

DAY OF FEBRUARY, 2024

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by Peoples Trust Company and Firm Capital Mortgage Fund Inc. (collectively, the “**Applicants**”) 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 RSM Canada Limited (“**RSM**”) as receiver and manager (in such capacities, the “**Receiver**”), without security, of the unsold condominium units, parking units, and storage lockers legally described in **Schedule “A”** hereto (collectively, the “**Unsold Units**”) constituting property of Vandyk-Backyard Queensview

Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Affidavit of Michael Lombard sworn January 30, 2024 and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, and such other parties listed on the counsel slip, no one else appearing although duly served as it appears from the Affidavit of Service of Rudrakshi Chakrabarti sworn February 2, 2024, filed, and on reading the Consent of RSM to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein is hereby abridged and validated such that this Application is properly returnable today, and hereby dispenses with further service thereof, and authorizes substitute service via electronic mail.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM is hereby appointed Receiver, without security, of the Unsold Units, 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, relocating of Property to safeguard it, engaging independent security personnel, taking of physical inventories and 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 pay such protective disbursements as may be deemed necessary to preserve and protect the Property pending any sale or disposition of same;
- (f) 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 on behalf of any of the Debtors, for any purpose pursuant to this Order;
- (g) 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

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;

(h) 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;

(i) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

(j) 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, encumbrances or other instruments affecting such Property, other than such permitted encumbrances as may be acceptable to the purchaser or rights that run with the land;

- (k) 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;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (m) 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 either of the Debtors;
- (n) 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 any of the Debtors;
- (o) to create and manage any data room containing such documents and information as may be necessary or desirable to market the Property; and
- (p) 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 any of the Debtors, and without interference from any other Person.

RECEIVER'S LEGAL COUNSEL

4. **THIS COURT ORDERS** that the Receiver is authorized but not required to retain the same law firm to act as legal counsel to the Applicants, to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order, in any matter where there is no conflict arising from that firm's existing and ongoing role as counsel for the Applicants. In respect of any issue where a conflict may exist or arise in respect of the Applicants and the Receiver or a third party, the Receiver shall utilize independent counsel.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **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 their 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.

6. **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 Property or 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 6 or in paragraph 7 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.

7. **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

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

NO PROCEEDINGS AGAINST THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against 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 Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Receiver, or affecting the Property, including, without limitation, certification, licenses and permits, 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 to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with any of the Debtors relating to the Property 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, contractors, equipment suppliers, insurance, transportation services, utility or other services to the Debtors relating to the Property 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, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors relating to the Property or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. **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

15. **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

16. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings. The Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, claims, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, save and except that it shall be subordinate to the Charge/Mortgage of Land registered on title to the Property in favour of the Applicants (the “**Mortgage**”), but for greater certainty, in all cases in priority to every other Person having, or claiming, any interest in the from the Property, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

17. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their 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.

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

FUNDING OF THE RECEIVERSHIP

19. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicants such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (or such greater amount as this Court may by further Order authorize) at any time, at a rate of 15% per annum, 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, claims, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to (i) the Mortgage in favour of the Applicants; (ii) the Receiver’s Charge; and (iii) the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, if applicable. Any advances that may be made by the Applicants to the Receiver hereunder shall be, and are hereby deemed to be, advances made by the Applicants under the existing Mortgage granted by the Borrower in favour of the Applicants, and shall form part of the indebtedness secured by the existing Mortgage in favour of the Applicants, but for greater certainty, in all cases in priority to every other Person having, or claiming, any interest in the Unsold Units.

20. **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.

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

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

SERVICE AND NOTICE

23. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.rsmcanada.com/vandyk-backyard-queensview>.

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by email, ordinary mail, courier, personal delivery or facsimile

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

GENERAL

25. **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.

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

27. **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.

28. **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.

29. **THIS COURT ORDERS** that the Applicants shall have the costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Property.

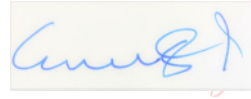
30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

REGISTRATION ON TITLE

32. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) accept this Order for registration on title to the Real Property described in Schedule "A" hereto.

33. **THIS COURT ORDERS** that this order is effective from the date that it is made and is enforceable without any need for entry and filing.



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"
Real Property

Dwelling Units

PIN 76983 – 0011 (LT)

Description: UNIT 2, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0014 (LT)

Description: UNIT 5, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0017 (LT)

Description: UNIT 8, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0020 (LT)

Description: UNIT 11, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0026 (LT)

Description: UNIT 2, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0035 (LT)

Description: UNIT 11, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0036 (LT)

Description: UNIT 12, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0073 (LT)

Description: UNIT 4, LEVEL 6, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0083 (LT)

Description: UNIT 14, LEVEL 6, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0088 (LT)

Description: UNIT 4, LEVEL 7, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0094 (LT)

Description: UNIT 10, LEVEL 7, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0097 (LT)

Description: UNIT 13, LEVEL 7, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0098 (LT)

Description: UNIT 14, LEVEL 7, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0102 (LT)

Description: UNIT 3, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0110 (LT)

Description: UNIT 11, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0114 (LT)

Description: UNIT 3, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0125 (LT)

Description: UNIT 2, LEVEL 10, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0126 (LT)

Description: UNIT 3, LEVEL 10, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0127 (LT)

Description: UNIT 4, LEVEL 10, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0128 (LT)

Description: UNIT 5, LEVEL 10, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0135 (LT)

Description: UNIT 12, LEVEL 10, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

Parking Units

PIN 76983 – 0136 (LT)

Description: UNIT 1, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0137 (LT)

Description: UNIT 2, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0138 (LT)

Description: UNIT 3, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0139 (LT)

Description: UNIT 4, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0140 (LT)

Description: UNIT 5, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0141 (LT)

Description: UNIT 6, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0143 (LT)

Description: UNIT 8, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0144 (LT)

Description: UNIT 9, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0145 (LT)

Description: UNIT 10, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0146 (LT)

Description: UNIT 11, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0147 (LT)

Description: UNIT 12, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0148 (LT)

Description: UNIT 13, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 –0151 (LT)

Description: UNIT 16, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0152 (LT)

Description: UNIT 17, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0153 (LT)

Description: UNIT 18, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0154 (LT)

Description: UNIT 19, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0155 (LT)

Description: UNIT 20, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0156 (LT)

Description: UNIT 21, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0157 (LT)

Description: UNIT 22, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 –0161 (LT)

Description: UNIT 26, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0162 (LT)

Description: UNIT 27, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0163 (LT)

Description: UNIT 28, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0164 (LT)

Description: UNIT 29, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0165 (LT)

Description: UNIT 30, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0166 (LT)

Description: UNIT 31, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0169 (LT)

Description: UNIT 34, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0172 (LT)

Description: UNIT 37, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0235 (LT)

Description: UNIT 13, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0243 (LT)

Description: UNIT 21, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0328 (LT)

Description: UNIT 19, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0336 (LT)

Description: UNIT 27, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0351 (LT)

Description: UNIT 42, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0354 (LT)

Description: UNIT 45, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0399 (LT)

Description: UNIT 4, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0400 (LT)

Description: UNIT 5, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

Locker Units

PIN 76983 – 0182 (LT)

Description: UNIT 47, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0183 (LT)

Description: UNIT 48, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0184 (LT)

Description: UNIT 49, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0185 (LT)

Description: UNIT 50, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0186 (LT)

Description: UNIT 51, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0187 (LT)

Description: UNIT 52, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0189 (LT)

Description: UNIT 54, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0190 (LT)

Description: UNIT 55, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0191 (LT)

Description: UNIT 56, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0192 (LT)

Description: UNIT 57, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0193 (LT)

Description: UNIT 58, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0194 (LT)

Description: UNIT 59, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0195 (LT)

Description: UNIT 60, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0196 (LT)

Description: UNIT 61, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0197 (LT)

Description: UNIT 62, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0198 (LT)

Description: UNIT 63, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0200 (LT)

Description: UNIT 65, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0201 (LT)

Description: UNIT 66, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0202 (LT)

Description: UNIT 67, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0203 (LT)

Description: UNIT 68, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0204 (LT)

Description: UNIT 69, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0205 (LT)

Description: UNIT 70, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0206 (LT)

Description: UNIT 71, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0214 (LT)

Description: UNIT 79, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0290 (LT)

Description: UNIT 68, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0380 (LT)

Description: UNIT 71, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0382 (LT)

Description: UNIT 73, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0387 (LT)

Description: UNIT 78, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0421 (LT)

Description: UNIT 26, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0424 (LT)

Description: UNIT 29, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0426 (LT)

Description: UNIT 31, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0428 (LT)

Description: UNIT 33, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited., the receiver and manager (the "**Receiver**") of the Property (as defined and described in) the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated _____, 2024 (the "**Order**") made in an application having Court File No. CV-24-00713783-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$►, being part of the total principal sum of \$► which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other Person other than the Applicants, 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 _____, 2024.

**RSM Canada Limited, solely in its capacity as
Receiver of the Property, and not in its personal
capacity**

Per:

Name:

Title:

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Applicants

Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Appointing Receiver)**

THORNTON GROUT FINNIGAN LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Tel: (416) 304-1616 / Fax: (416) 304-1313

D.J. Miller (LSO# 34393P)

Email: djmiller@tgf.ca

Puya Fesharaki (LSO# 70588L)

Email: pfesharaki@tgf.ca

Rudrakshi Chakrabarti (LSO# 86868U)

Email: rchakrabarti@tgf.ca

Lawyers for the Applicants, Peoples Trust Company
and Firm Capital Mortgage Fund Inc.

APPENDIX B

PPSA Registrations Against the Legal and Beneficial Owners as of February 25, 2024

<u>File Number</u>	<u>Secured Party</u>	<u>Collateral Classification¹ and Collateral Description</u>	<u>Registration Date</u>
<u>VANDYK-BACKYARD QUEENSVIEW LIMITED</u> <u>(LEGAL OWNER)</u>			
739834479	Trisura Guarantee Insurance Company	A, O Purchasers deposits and monies paid pursuant to agreements of purchase and sale and interest earned thereon held in escrow/trust pursuant to a deposit trust agreement, together with any monies retained in escrow from such deposits and interest as security for any bond or other security provided to the secured party, for the project located at 144 Berry Road, Toronto, Ontario and known as the Backyard Neighbourhood Condominiums.	May 29, 2018
767939418	Wells Fargo Equipment	E, MV 2020 Bobcat S595- B3NL19234 2020 Bobcat T740- B3CA17882 The goods described above together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, and all proceeds in any form derived directly or indirectly from any dealing with the collateral or proceeds thereof, and without limitation, money, cheques, deposits in deposit-taking institutions, goods, accounts receivable, rents or other payments arising from the lease of the collateral, chattel paper, instruments, intangibles, documents of title, securities, and rights of insurance payments or any other payments as indemnity or compensation for loss or damage to the collateral or proceeds of the collateral (as may be amended or updated from time to time).	November 23, 2020

¹ I= Inventory, E= Equipment, A= Accounts, O= Other, and MV= Motor Vehicle Included.

<u>File Number</u>	<u>Secured Party</u>	<u>Collateral Classification¹ and Collateral Description</u>	<u>Registration Date</u>
770537799	Royal Bank of Canada	A, O Peoples Trust Company has a non-interest letter from RBC with respect to this registration.	March 12, 2021
770537754	Royal Bank of Canada	I, E, A, O, MV Peoples Trust Company has a non-interest letter from RBC with respect to this registration.	March 12, 2021
781935201	KingSett Mortgage Corporation	I, E, A, O, MV All of the debtors' present and after-acquired personal property located at, relating to, arising from or used in connection with, or which is necessary to the use and operation of the property municipally known as 320 Derry Road, Mississauga , on and all proceeds therefrom.	April 11, 2022
791556633	2633609 Ontario Limited	I, E, O One (1) Canam Trisorter Recycling System, Ten (10) floor control Panels, One (1) Canam60 Apartment Compactor, Three (3) 3-yard Garbage Compaction containers, three (3) FEL recycling containers, and two (2) FEL Organic Containers. Registered on March 17, 2023, and then amended on August 14, 2023, where the business debtor's property was transferred from Vandyk-Backyard Queensview Limited to Toronto Standard Condominium Corporation No. 2983.	March 17, 2023
795231585	Peoples Trust Company	I, E, A, O Property now or hereafter used in connection with, situate at, or arising from the ownership, development, use or disposition of the lands municipally known as 25 Neighbourhood Lane, Toronto, Ontario and proceeds thereof.	July 13, 2023

<u>File Number</u>	<u>Secured Party</u>	<u>Collateral Classification¹ and Collateral Description</u>	<u>Registration Date</u>
501114213	Metergy Solutions Inc.	I, E, A, O, MV	December 11, 2023
<u>VANDYK-BACKYARD HUMBERSIDE LIMITED</u> <u>(BENEFICIAL OWNER)</u>			
715992219	Aviva Insurance Company of Canada	A, O Security interest in all deposit monies, together with all interest earned or accrued thereon, pursuant to a deposit trust agreement with respect to a condominium project located at 144 Berry Road, in the city of Toronto, Ontario , and known as Backyard Neighbourhood Condos.	April 26, 2016
761628114	Home Trust Company	I, E, A, O Security Agreement and Assignment of Rents related to 10 Neighbourhood Lane, Toronto, Ontario .	April 28, 2020
761778423	CWB National Leasing Inc.	E All industrial equipment, garbage containers, organic containers, 3 stream tri sorter, T-20X compactor, recycling containers with related components of every nature or kind described in agreement number 2954213, between the secured party and the debtor, as amended from time to time, together with all attachments, accessories, substitutions and proceeds of any kind derived directly or indirectly therefrom. Registered on May 7, 2020, and then amended and on August 12, 2021, where the business debtor's property was transferred from Vandyk-Backyard Humberside Limited to Toronto Standard Condominium Corporation No. 2805 .	May 7, 2020
762316506	Kubota Canada Ltd.	E, O, MV 2020 KUBOTA #BX2380 KBUC1BHRCLGE38802	June 2, 2020

<u>File Number</u>	<u>Secured Party</u>	<u>Collateral Classification¹ and Collateral Description</u>	<u>Registration Date</u>
763058529	MCAP Financial Corporation	A, O Subordination And Assignment Re Vandyk - Backyard Kings Mill Limited Debt And Charge Of Beneficial Interest In That Property Being 15 Neighbourhood Lane, Etobicoke, Ontario.	June 25, 2020
795231648	Peoples Trust Company	I, E, A, O Property now or hereafter used in connection with, situate at, or arising from the ownership, development, use or disposition of the lands municipally known as 25 Neighbourhood Lane, Toronto, Ontario, as well as an assignment of accounts owing to the debtor by Vandyk-Backyard Queensview limited and an assignment of choses-in-action and other claims which the debtor now or hereafter has against Vandyk-Backyard Queensview limited and proceeds thereof.	July 13, 2023

APPENDIX C



Offer Summary Document

For use with Agreement of Purchase and Sale

Form 801

for use in the Province of Ontario

This Form when completed may be utilized to comply with the provisions of the Trust in Real Estate Services Act, 2002 which prescribes content that is required for an offer summary document. Further, when sent to the Listing Brokerage this document may be used to confirm the existence of a written signed offer by a Buyer.

Section For Brokerage submitting the offer on behalf of the Buyer:

REAL PROPERTY ADDRESS: 25 Neighbourhood Lane 302 Toronto ON M8Y 0C4 (the "property")
(municipal address and/or legal description)

for an Agreement of Purchase and Sale dated: the 7 day of January, 2024 ("offer")

BROKERAGE: [Redacted]

SALES REPRESENTATIVE/BROKER: Paul Foggia Simona Moscillo

I/We DocuSigned by: [Signature] have signed an offer for the property.
Name of Buyer(s) 1/7/2024 1/7/2024
(Signature of Buyer) (Date) (Signature of Buyer) (Date)

This offer was submitted, BY EMAIL to the Listing Brokerage at 10:10 on the 7th day of January, 2024 Irrevocable until 5:00 on the 9 day of January, 2024
(by fax, by email or in person) (a.m./p.m.) (a.m./p.m.)

(For Buyer counter offer - complete the following)

I/We, [Redacted] have signed an offer for the property.
Name of Buyer(s)
(Signature of Buyer) (Date) (Signature of Buyer) (Date)

An offer was submitted, [Redacted] to the Listing Brokerage at [Redacted] on the [Redacted] day of [Redacted], 20[Redacted] Irrevocable until [Redacted] on the [Redacted] day of [Redacted], 20[Redacted].
(by fax, by email or in person) (a.m./p.m.) (a.m./p.m.)

For Listing Brokerage receiving the offer:

SELLER(S): Vandyk-Backyard Queensview Limited

SELLER(S) CONTACT: [Redacted] (ie. phone / email / fax)

LISTING BROKERAGE: [Redacted]

SALES REPRESENTATIVE/BROKER: [Redacted]

This offer was received, [Redacted] by the Listing Brokerage at [Redacted] on the [Redacted] day of [Redacted], 20[Redacted].
(by fax, by email or in person) (a.m./p.m.)

This offer was presented, [Redacted] to the Seller(s) at [Redacted] on the [Redacted] day of [Redacted], 20[Redacted].
(by fax, by email or in person) (a.m./p.m.)

Offer was: Accepted Signed Back/Countered Expired/Declined

Comments: [Redacted]

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Agreement of Purchase and Sale Condominium Resale

Form 101

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 7 day of January, 2024

BUYER: PAUL MICHAEL FOGGIA & SIMONA MOSCILLO, agrees to purchase from
(Full legal names of all Buyers)

SELLER: Vandyk-Backyard Queensview Limited, the following
(Full legal names of all Sellers)

PROPERTY:
a unit in the condominium property known as Unit No. 302
(Apartment/Townhouse/Suite/Unit)

located at 25 Neighbourhood Lane Toronto ON M8Y 0C4

in the City of TORONTO

being TSCC Condominium Plan No. 2805
(Legal Name of Condominium Corporation)

Unit Number 02 Level No. 3 Building No. together with ownership

or exclusive use of Parking Space(s) D27, underground, together with ownership or exclusive use of
(Number(s), Level(s))

Locker(s) #78, together with Seller's proportionate undivided tenancy-in-common interest
(Number(s), Level(s))

in the common elements appurtenant to the Unit as described in the Declaration and Description including the exclusive right to use such other parts of the common elements appurtenant to the Unit as may be specified in the Declaration and Description: the Unit, the proportionate interest in the common elements appurtenant thereto, and the exclusive use portions of the common elements, being herein called the "Property".

PURCHASE PRICE: Dollars (CDN\$) 522,500.00

Five Hundred Twenty-Two Thousand Five Hundred Dollars

DEPOSIT: Buyer submits upon acceptance
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Twenty-Six Thousand Five Hundred Dollars (CDN\$) 26,500.00

by negotiable cheque payable to VKP REAL ESTATE LTD. "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A & B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Seller until 5:00 on the 9 day of January, 2024, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.
(Seller/Buyer) (a.m./p.m.)

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 21 day of February, 2024. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): [Handwritten initials]

INITIALS OF SELLER(S): [Handwritten initials]

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **The Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices where the Brokerage represents both the Seller and the Buyer (multiple representation) or where the Buyer or the Seller is a self-represented party.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: (For delivery of Documents to Seller) FAX No.: (For delivery of Documents to Buyer)
Email Address: (For delivery of Documents to Seller) Email Address: (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**
All stainless steel appliances: Fridge, Stove & Dishwasher. Stackable Washer + Dryer, 1 underground parking spot And 1 Locker unit.

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**
N/A

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer ` agrees to assume the rental contract(s), if assumable:
Hot Water Tank, If Rental

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **COMMON EXPENSES:** Seller warrants to Buyer that the common expenses presently payable to the Condominium Corporation in respect of the Property are approximately \$ 544.42 per month, which amount includes the following: **Building Insurance, Common Elements, Heating, Central Air Conditioning, Parking, Locker**

8. **PARKING AND LOCKERS:** Parking and Lockers are as described above or assigned as follows: 1 owned underground parking spot D27
1 owned locker storage unit #78 at an additional cost of: included in purchase price

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

9. **HST:** If the sale of the Property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be included in the Purchase Price. If the sale of the Property is not subject to HST, Seller agrees to certify on or before
(included in/in addition to)
closing, that the sale of the Property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

10. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 7 day of February, 2024, (Requisition Date) to examine the title to the Property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no

outstanding work orders or deficiency notices affecting the Property, and that its present use (Single family residential dwelling) may be lawfully continued. If within that time any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the Property. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the Property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

11. **TITLE:** Buyer agrees to accept title to the Property subject to all rights and easements registered against title for the supply and installation of telecommunication services, electricity, gas, sewers, water, television cable facilities and other related services; provided that title to the Property is otherwise good and free from all encumbrances except: (a) as herein expressly provided; (b) any registered restrictions, conditions or covenants that run with the land provided such have been complied with; (c) the provisions of the Condominium Act and its Regulations and the terms, conditions and provisions of the Declaration, Description and By-laws, Occupancy Standards By-laws, including the Common Element Rules and other Rules and Regulations; and (d) any existing municipal agreements, zoning by-laws and/or regulations and utilities or service contracts.

12. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, nonregistrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

13. **STATUS CERTIFICATE AND MANAGEMENT OF CONDOMINIUM:** Seller represents and warrants to Buyer that there are no special assessments contemplated by the Condominium Corporation, and there are no legal actions pending by or against or contemplated by the Condominium Corporation. The Seller consents to a request by the Buyer or the Buyer's authorized representative for a Status Certificate from the Condominium Corporation. Buyer acknowledges that the Condominium Corporation may have entered into a Management Agreement for the management of the condominium property.

14. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the Property except such as are in the possession or control of Seller. Seller agrees to deliver to Buyer, if it is possible without incurring any costs in so doing, copies of all current condominium documentation of the Condominium Corporation, including the Declaration, Description, By-laws, Common Element Rules and Regulations and the most recent financial statements of the Condominium Corporation. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

15. **MEETINGS:** Seller represents and warrants to Buyer that at the time of the acceptance of this Offer the Seller has not received a notice convening a special or general meeting of the Condominium Corporation respecting; (a) the termination of the government of the condominium property; (b) any substantial alteration in or substantial addition to the common elements or the renovation thereof; OR (c) any substantial change in the assets or liabilities of the Condominium Corporation; and Seller covenants that if Seller receives any such notice prior to the date of completion Seller shall forthwith notify Buyer in writing and Buyer may thereupon at Buyer's option declare this Agreement to be null and void and all monies paid by Buyer shall be refunded without interest or deduction.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

- 16. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the Property.**
- 17. **APPROVAL OF THE AGREEMENT:** In the event that consent to this sale is required to be given by the Condominium Corporation or the Board of Directors, the Seller will apply forthwith for the requisite consent, and if such consent is refused, then this Agreement shall be null and void and the deposit monies paid hereunder shall be refunded without interest or other penalty to the Buyer.
- 18. **INSURANCE:** The Unit and all other things being purchased shall be and remain at the risk of the Seller until completion. In the event of substantial damage to the Property Buyer may at Buyer's option either permit the proceeds of insurance to be used for repair of such damage in accordance with the provisions of the Insurance Trust Agreement, or terminate this Agreement and all deposit monies paid by Buyer hereunder shall be refunded without interest or deduction. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
- 19. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer.
- 20. **RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 21. **ADJUSTMENTS:** Common Expenses; realty taxes, including local improvement rates; mortgage interest; rentals; unmetered public or private utilities and fuel where billed to the Unit and not the Condominium Corporation; are to be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Buyer. There shall be no adjustment for the Seller's share of any assets or liabilities of the Condominium Corporation including any reserve or contingency fund to which Seller may have contributed prior to the date of completion.
- 22. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the Property, save and except any property taxes that accrued prior to the completion of this transaction.
- 23. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 24. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the *Canadian Payments Act (R.S.C., 1985, c. C-21)*, as amended from time to time.
- 25. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 26. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the Property, Seller has not caused any building on the Property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the Property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 27. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
- 28. **CONSUMER REPORTS: The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**
- 29. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 30. **ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 31. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the Property is located.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

32. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein. SIGNED, SEALED AND DELIVERED in the presence of:

DocuSigned by: *[Signature]*
IN WITNESS whereof I have hereunto set my hand and seal: 1/7/2024
F53D03ED500A4CC... (Seal) (Date)
(Witness)
(Buyer) **PAUL MICHAEL FOGGIA**
DocuSigned by: *[Signature]*
IN WITNESS whereof I have hereunto set my hand and seal: 1/7/2024
F53D03ED500A4CC... (Seal) (Date)
(Witness)
(Buyer) **SIMONA MOSCILLO**

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal: 1/8/2024 | 7:17 AM PST
DocuSigned by: *[Signature]*
(Witness) (Seller) **vandyk-Backyard Queensview Limited** (Seal) (Date)
DocuSigned by: *[Signature]*
(Witness) (Seller) (Seal) (Date)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) (Spouse) (Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 12:15pm this 8 day of January, 2024.
(a.m./p.m.)

DocuSigned by: *[Signature]*
(Signature of Seller or Buyer) 496589855F53458...
DocuSigned by: *[Signature]*

INFORMATION ON BROKERAGE(S)
Listing Brokerage (Tel.No.)
..... (Salesperson/Broker/Broker of Record Name)
Co-op/Buyer Brokerage (Tel.No.)
..... (Salesperson/Broker/Broker of Record Name)

Property Manager: **Duka Property Management Inc 6205 Airport Rd, Mississauga, ON L4V 1E1 (905) 673-7338**
(Name) (Address) (Tel. No., Fax. No.)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer. 1/8/2024 | 7:17 AM PST
DocuSigned by: *[Signature]*
(Seller) **vandyk-Backyard Queensview Limited** (Date)
DocuSigned by: *[Signature]*
(Buyer) **PAUL MICHAEL FOGGIA** 1/7/2024
DocuSigned by: *[Signature]*
(Buyer) **SIMONA MOSCILLO** 1/7/2024
Address for Service (Tel. No.)
Seller's Lawyer Buyer's Lawyer
Address
Email
(Tel. No.) (Fax. No.) (Tel. No.) (Fax. No.)

FOR OFFICE USE ONLY COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by: DocuSigned by: *[Signature]*
(Authorized to bind the Listing Brokerage) (Authorized to bind the Co-operating Brokerage)



Schedule A Agreement of Purchase and Sale - Condominium Resale

Form 101

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: PAUL MICHAEL FOGGIA & SIMONA MOSCILLO , and

SELLER: Vandyk-Backyard Queensview Limited

for the purchase and sale of 25 Neighbourhood Lane 302

..... Toronto ON M8Y 0C4 dated the 7 day of January , 20 24

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque, or wire transfer using the Large Value Transfer System.

This offer is conditional upon the Buyer and the Buyer's lawyer reviewing the Status Certificate and Attachments and finding the Status Certificate and Attachments satisfactory in the Buyer's and the Buyer's lawyer's sole and absolute discretion. The Seller agrees to request at the Seller's expense, the Status Certificate and Attachments within TEN(10) banking days after acceptance of this Offer. Unless the buyer gives notice in writing to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 5 p.m. on the second day (excluding Saturdays, Sundays and Statutory Holidays) following receipt by the buyer of the Status Certificate and Attachments, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

~~DS [Signature] This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provision for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto within FIVE (5) business days following acceptance of this offer, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.~~

~~DS [Signature] This Offer is conditional upon the inspection of the subject property by a qualified home inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto within FIVE (5) business days following the acceptance of this offer, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.~~

Notwithstanding the completion date set out in this Offer, the Buyer may advance the completion date of the transaction by not more than 20 days, by giving written notice of the amended completion date to the Seller or the Seller's solicitor at least 10 days in advance of the earlier of the completion date set out herein and the amended completion date.

The Buyer and the Seller agree that the Buyer shall have the right to visit the property on TWO (2) mutually agreed upon times prior to the closing for the purpose of measuring and/or getting quotations and estimates from contractors.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): DS [Signature] DS [Signature]

INITIALS OF SELLER(S): [Signature]



Schedule A Agreement of Purchase and Sale - Condominium Resale

Form 101

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: PAUL MICHAEL FOGGIA & SIMONA MOSCILLO , and

SELLER: Vandyk-Backyard Queensview Limited

for the purchase and sale of 25 Neighbourhood Lane 302

..... Toronto ON M8Y 0C4 dated the 7 day of January , 20 24

Buyer agrees to pay the balance as follows:

The Seller further agrees to provide access to the property if requested by the Lending Institution at a mutually agreed upon time prior to completion of this agreement. This appointment shall NOT count as ONE of the buyers visits.

The Seller represents and warrants that the chattels and fixtures as included in this Agreement of Purchase and Sale will be in good working order and free from all liens and encumbrances on completion. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Broker or Salesperson, for any changes in property taxes as a result of a re-assessment of the property.

The Seller warrants that there are no work orders or deficiency notices outstanding against the property, and if so, will be complied with at his/her expense on or before closing.

The Seller agrees to leave the premises, appliances, including the floors, in a clean and broom swept condition.

For the purpose of this agreement, "banking days"/"business days" are considered to be days other than Saturday, Sunday, or Statutory Holidays in the Province of Ontario. The Buyer and Seller acknowledge that the Province of Ontario has implemented "Current Value Assessment" (CVA) and properties may be re-assessed on an annual basis.

The Seller represents and warrants that on completion, there is no known damage to the condominium unit caused by water seepage or flooding. The Parties agree that these representations and warranties shall survive and not merge on the completion of this transaction but apply only to the state of the property at completion of this transaction.

The Seller agrees to deliver to the Buyer on completion of this transaction TWO (2) sets of all keys, fobs, access cards and other devices relating to this property, in the possession of the Seller, that provide access and entry, without limitation, to the building, unit and parking. Provided that the Buyer shall not be entitled to receive such keys, fobs, access cards or other devices that the Condominium Corporation requires to be returned to the said Condominium Corporation.

N
This Offer is conditional upon the board approval of the terms hereof by the Seller's financial institution. Unless the seller gives notice in writing delivered to the Buyer or to the Buyer's address as hereinafter indicated personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 11:59 PM on the January 16th, 2024, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Seller and may be waived at the seller's sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

DS
[Signature]

DS
[Signature]

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): *[Initials]*

INITIALS OF SELLER(S): *[Initials]*



Schedule B Agreement of Purchase and Sale

Form 105

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: Paul Foggia Simona Moscillo, and

SELLER: Vandyk-Backyard Queensview Limited

for the property known as 25 Neighbourhood Lane #302, Toronto, ON, M8Y 0C4

dated the 7 day of January, 2023

Further to the Deposit clause contained in this Agreement of Purchase and Sale, the Buyer agrees to deliver a Certified Cheque or Bank Draft as a deposit payable to VKP Real Estate Ltd., Brokerage within one business day of the acceptance of this Offer. Upon receipt of the Certified Cheque or Bank Draft, the uncertified cheque provided upon acceptance of this offer, if any, will be returned to the Buyer or the Buyers agent.

The Parties to this agreement hereby acknowledge and agree that the deposit holder [VKP Real Estate Ltd., Brokerage] shall place the deposit in trust in its non-interest bearing real estate trust account and no interest shall be earned, received or paid on the deposit. The Buyer acknowledges that the feature brochures, floor plans, marketing materials and any pre-inspection reports provided by the Listing Broker with respect to this Property were ordered and obtained for their respective purposes. The Listing Broker makes no representations or warranties regarding these materials and/or their content. Any reliance on the materials is at the Buyers sole risk. The Buyer agrees to indemnify and hold harmless the Seller, the Listing Broker and its sales representatives for any error, omissions and any expressions, express or implied contained in the materials.

In the event of a Mutual Release, the Buyer acknowledges, all funds will be returned after the full bank clearing period. For bank drafts & wire transfer, the period is five (5) banking days, for others, the period is fifteen (15) banking days.

The Buyer & Seller agree that the term "Banking Days" or "Business Day" shall mean any day, other than Saturday, Sunday, or statutory holiday in the province of Ontario or the country of Canada.

The Seller hereby acknowledges that it may be a requirement of the Buyer's lender to have an appraiser access the subject property prior to closing. The Seller covenants & agrees to provide access for such purposes. Access to the property shall be deemed to include the dwelling & any other outbuilding, as may be required.

The Parties hereto acknowledge that, 1. They have had the opportunity to consult with applicable professional advisers prior to signing this Agreement, 2. All measurements, square footage and information provided by VKP Real Estate Ltd., Brokerage in the MLS Listing, feature sheet, and any other marketing materials have been obtained from sources deemed reliable, however, they have been provided for information purposes only, 3. The types of representation as defined in the Real Estate and Business Brokers Act, 2002,(REBBA 2002) were explained prior to this offer being signed.

The Seller represents and warrants that during the time the Seller has owned the property, the use of the property and the buildings and structures thereon has not been for the growth or manufacture of any illegal substances, and that to the best of the Sellers knowledge and belief, the use of the property and the buildings and structures thereon has never been for the growth or manufacture of illegal substances. This warranty shall survive and not merge on the completion of this transaction.

The parties hereto consent and agree to the use of electronic signature pursuant to the Electronic Commerce Act 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

The Brokerages named in the attached Confirmation of Co-operation and Representation represent that they have complied with the FINTRAC requirements for customer/client identification by reference to original government issued photo identification, or such other means as approved under the regulations, including name, address, date of birth, occupation and employment and have such information on file and available for inspection.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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Form 320

for use in the Province of Ontario

Confirmation of Co-operation and Representation Buyer/Seller

BUYER: PAUL MICHAEL FOGGIA & SIMONA MOSCILLO

SELLER: Vandyk-Backyard Queensview Limited

For the transaction on the property known as: 25 Neighbourhood Lane 302 Toronto ON M8Y 0C4

DEFINITIONS AND INTERPRETATIONS: For the purposes of this Confirmation of Co-operation and Representation: "Seller" includes a vendor, landlord, lessor or a prospective seller, vendor, landlord or lessor and "Buyer" includes a purchaser, tenant, lessee or a prospective buyer, purchaser, tenant or lessee and "sale" includes a lease, and "Agreement of Purchase and Sale" includes an Agreement to Lease. Commission shall be deemed to include other remuneration.

The following information is confirmed by the undersigned salesperson/broker representatives of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

DECLARATION OF INSURANCE: The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Trust in Real Estate Services Act, 2002 (TRESA).

1. LISTING BROKERAGE

- a) [X] The Listing Brokerage represents the interests of the Seller in this transaction. It is further understood and agreed that:
1) [X] The Listing Brokerage is not representing the Buyer and has not entered into an agreement with the Buyer to provide service.
2) [] The Listing Brokerage is providing assistance to the Buyer and the Buyer is a self-represented party.
b) [] MULTIPLE REPRESENTATION: The Listing Brokerage has entered into a Buyer Representation Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, for this transaction.
c) [] MULTIPLE REPRESENTATION AND LIMITED SERVICES REPRESENTATION: The Listing Brokerage is representing both the Seller and the Buyer, where one or both the Seller and Buyer are receiving limited services and representation the Listing Brokerage shall have a duty of services and representation and disclosure to one or both the Seller and the Buyer, as more particularly set out in the agreement with the respective Seller or Buyer.
d) [] MULTIPLE REPRESENTATION AND DESIGNATED REPRESENTATION: Where the Seller and the Buyer are represented by a designated representative of the Brokerage, multiple representation will not result unless that designated representative represents more than one client in the same trade.

Additional comments and/or disclosures by Listing Brokerage: (e.g., The Listing Brokerage represents more than one Buyer offering on this property.)

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INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)
BUYER CO-OPERATING/BUYER BROKERAGE SELLER LISTING BROKERAGE

2. PROPERTY SOLD BY BUYER BROKERAGE

- a) The Brokerage represents the Buyer **and the** Brokerage will be paid;
 - 1) by the Buyer directly
 - 2) by the Seller in accordance with a Seller Limited Services Representation Agreement.
- b) **MULTIPLE REPRESENTATION:** The Brokerage has entered into a Limited Client Agreement with the Seller and represents the interests of the Seller and the Buyer, with their consent, for this transaction. The Brokerage must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Brokerage has a duty of full disclosure to both the Buyer and the Seller.
 However, the Brokerage shall not disclose:
 - that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
 - that the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
 - the motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
 - the price the Buyer should offer or the price the Seller should accept; and
 - the Brokerage shall not disclose to the Buyer the terms of any other offer, unless otherwise directed in writing by the Seller.
 However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.
- c) **MULTIPLE REPRESENTATION AND LIMITED SERVICES REPRESENTATION:** The Brokerage is representing both the Seller and the Buyer, where one or both the Seller and Buyer are receiving limited services and representation the Brokerage shall have a duty of services and representation and disclosure to one or both the Seller and the Buyer, as more particularly set out in the agreement with the respective Seller or Buyer.
- d) **MULTIPLE REPRESENTATION AND DESIGNATED REPRESENTATION:** Where the Buyer and the Seller are represented by a designated representative of the Brokerage, multiple representation will not result unless that designated representative represents more than one client in the same trade.
 - 1) The Buyer and Seller understand and acknowledges that the Brokerage designated representative(s) represents more than one client in the same trade resulting in multiple representation and the duty of disclosure to both Buyer and Seller client is as more particularly set out in the agreement with the respective Buyer and Seller.
 - 2) The Buyer client and Seller client are each separately represented by different designated representatives of the same brokerage and there is no multiple representation.
 - 3) The designated representative(s) is providing representation to the Buyer client and the Brokerage is providing services to the Buyer client.

Additional comments and/or disclosures by Buyer Brokerage: (e.g., The Buyer Brokerage represents more than one Buyer offering on this property.)

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3. Co-operating Brokerage completes Section 3 and Listing Brokerage completes Section 1.

- a) **CO-OPERATING BROKERAGE - REPRESENTATION:**
 - 1) The Co-operating Brokerage represents the interests of the Buyer in this transaction.
 - 2) The Co-operating Brokerage, **who has a Seller Limited Services Representation Agreement with Seller client**, is providing assistance to the Buyer as a self-represented party in this transaction.
- b) **CO-OPERATING BROKERAGE - COMMISSION:**
 - 1) The Listing Brokerage will pay the Co-operating Brokerage the commission as indicated in the MLS® information for the property **2.5%** to be paid from the amount paid by the Seller to the Listing Brokerage.

 (Commission As Indicated In MLS® Information)
 - 2) The Co-operating Brokerage will be paid as follows:

Additional comments and/or disclosures by Co-operating Brokerage: (e.g., The Co-operating Brokerage represents more than one Buyer offering on this property.)

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DS INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)

			
BUYER	CO-OPERATING/BUYER BROKERAGE	SELLER	LISTING BROKERAGE

**REVIVAL & AMENDMENT TO
AGREEMENT OF PURCHASE AND SALE**

THIS AMENDING AGREEMENT made as of the 26th day of February 2024.

BETWEEN:

**PAUL MICHAEL FOGGIA & SIMONA
MOSCILLO**

(hereinafter collectively referred to as the
“**Purchaser**”)

OF THE FIRST PART,

- and -

**VANDYK-BACKYARD QUEENSVIEW BY
RSM CANADA LIMITED, solely in its capacity
as the court-appointed Receiver for the Property
and not in its personal capacity**

(hereinafter referred to as the “**Vendor**”)

OF THE SECOND PART:

WHEREAS:

- A. the Purchaser and Vandyk-Backyard Queensview Limited (the "**Original Vendor**") entered into a Purchase and Sale Agreement dated January 7, 2024, as may be amended from time to time (collectively the “**Purchase Agreement**”), whereby the Vendor agreed to sell, and the Purchaser agreed to purchase the Property as defined in the Purchase Agreement;
- B. the Vendor has been appointed as the receiver for the Property, and will be selling the Property to the Purchaser;
- C. the Purchase Agreement has expired in accordance with the terms thereof; and
- D. the Vendor and Purchaser wish to revive and amend the Purchase Agreement as provided for herein (the “**Amending Agreement**”).

NOW THEREFORE in consideration of good and valuable consideration and the sum of Ten Dollars (\$10.00) now paid by each party hereto to the other (the receipt and sufficiency of which is acknowledged), the parties hereto agree to amend the Purchase Agreement in the following respects:

1. All capitalized terms in this Amending Agreement shall have the meanings ascribed to them in the Purchase Agreement.
2. The Original Vendor is hereby replaced with the Vendor in the Purchase Agreement as seller.
3. The sentence beginning with "Schedule" on the first page of the OREA form of the Purchase Agreement (the "**OREA Form**") is hereby deleted and replaced with the following: "*Schedules A, B, C, D & E attached hereto form part of this Agreement.*"
4. In Section 2 of the OREA Form delete the words "on the 21st day of February 2024" and insert in its place the following "the 11th day of March, 2024.
5. Schedule "B" of the OREA Form is hereby amended to be Schedule "E" of the Purchase Agreement.
6. Schedules "B", "C", and "D", copies of which are attached hereto as Exhibit "A", are hereby inserted as schedules to the Purchase Agreement and named in corresponding fashion.
7. In all other respects the Purchaser and the Vendor confirm the terms and conditions contained in the Purchase Agreement and the parties agree and acknowledge that except as modified by this Amending Agreement, the terms, covenants and conditions of the Purchase Agreement shall remain unchanged and in full force and effect and time shall remain of the essence.
8. This Amending Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
9. This Amending Agreement may be executed in counterparts each of which counterpart so executed shall be deemed to be an original and such counterparts taken together shall constitute a single Amending Agreement.
10. This Amending Agreement may be signed by facsimile or electronically and transmission of executed copies of this Amending Agreement by facsimile or electronically shall be deemed to have the same effect as delivery of an original copy to the party receiving the facsimile or electronic transmission.

[Remainder of page intentionally left blank. Signature page follows]

IN WITNESS WHEREOF the parties have duly executed this Amending Agreement as of the date first above written.

VANDYK-BACKYARD QUEENSVIEW LIMITED BY RSM CANADA LIMITED, solely in its capacity as the court-appointed Receiver for the Property and not in its personal capacity

Per: Bryan A. Tannenbaum
Name: Bryan Tannenbaum
Title: President

Per: _____
Name:
Title:
I/We have authority to bind the Corporation

Witness

PAUL MICHAEL FOGGIA

Witness

SIMONA MOSCILLO

IN WITNESS WHEREOF the parties have duly executed this Amending Agreement as of the date first above written.

**VANDYK-BACKYARD QUEENSVIEW
LIMITED BY RSM CANADA LIMITED, solely
in its capacity as the court-appointed Receiver
for the Property and not in its personal capacity**

Per: _____

Name: Bryan Tannenbaum

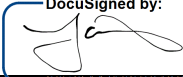
Title: President

Per: _____

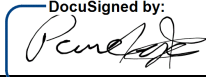
Name:

Title:


I/We have authority to bind the Corporation

DocuSigned by:



Witness Janet Kiraly
86B8E74A68C040C...

DocuSigned by:


PAUL MICHAEL FOGGIA
F4E15CCDA1474FE

DocuSigned by:


Witness Janet Kiraly
86B8E74A68C040C...

DocuSigned by:


SIMONA MOSCILLO
FE841BCA3A7242D...

Exhibit "A"

Schedule "B"

1. As used herein the following words and terms have the following respective meanings unless there is something in the context or the subject matter inconsistent therewith:

"Agreement" means this Agreement of Purchase and Sale;

"Appointment Order" means the order of the Court dated the 6th day of February, 2024 appointing RSM Canada Limited, as receiver of the of the Assets pursuant to the provisions of Section 243 (1) of the *Bankruptcy and Insolvency Act* (Canada) as amended and Section 101 of the *Courts of Justice Act*, Ontario, as amended;

"Assets" means the unsold condominium units, parking units and storage lockers legally described in Schedule "A" of the Appointment Order and constituting the Property of the Debtors including all proceeds derived therefrom;

"Business Day" means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday, or statutory holiday in the Province of Ontario;

"Claims" means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a full indemnity basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever and **"Claim"** means any one of the foregoing.

"Closing Date" means March 11, 2024;

"Court" means the Ontario Superior Court of Justice (Commercial List);

"CRA" has the meaning ascribed to it in Section 21 hereof;

"Debtors" means collectively Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited;

"Documents" has the meaning ascribed to it in Section 5 (b) hereof;

"Encumbrances" means in the case of any of the Property any pledge, lien, charge, security agreement, security interest, lease, sublease, title retention agreement, mortgage, encumbrance, execution, easement, right-of-way, restrictive covenant, restriction, encroachment, title defect, option or adverse claim of any kind or character whatsoever, or similar interests or instruments charging or creating a security interest in, or against title to, such Property, whether created by agreement, statute or otherwise at law, attaching to the property assets or rights whether registered or unregistered, condominium documents, including without limitation declaration, by-laws rules and the like;

"Excluded Assets" means any and all tax refunds from any Government Authority, rent arrears, insurance proceeds, if any, litigation claims of the Debtors, if any;

"HST" has the meaning ascribed to it in Section 21 hereof;

"Inaccuracies" has the meaning ascribed to it in Section 5 (c) hereof;

“**Permitted Encumbrances**” means all the Encumbrances other than those listed on Schedule "C" attached hereto which Encumbrances shall be extinguished from title by the Vesting Order.

"**Property**" means the lands and premises described in the OREA form of the agreement of purchase and sale to which this Schedule is attached.

"**Purchaser**" means the Buyer as set out in the OREA form of the agreement of purchase and sale to which this Schedule is attached;

"**Rebate**" has the meaning ascribed to it in Section 21 hereof;

"**Rebate Form**" has the meaning ascribed to it in Section 21 hereof;

“**Receiver**” means RSM Canada Limited., in its capacity as receiver of the Assets, and not in its personal capacity;

“**Transaction**” means the transaction of purchase and sale of the Property contemplated by this Agreement;

“**Vendor**” means RSM Canada Limited., in its capacity as receiver of the Assets, and not in its personal capacity;

“**Vesting Order**” has the meaning set out in Section 3(a);

“**Work Orders**” means collectively work orders, deficiency notices, infractions, stop work orders, outstanding building permits or any other non-compliance of every nature and kind with applicable laws and issued by any governmental authority;

Where utilized in this Agreement the word "**Purchaser**" shall also mean "**Buyer**" and the word "**Vendor**" shall also mean "**Seller**" and vice versa.

2. Subject to the terms and conditions hereof and subject to the Court granting the Vesting Order, the Receiver, exercising the powers of sale granted pursuant to the Appointment Order, shall sell to the Purchaser, and the Purchaser shall purchase, the Property on the Completion Date.
3. The Purchaser and the Vendor acknowledge and agree that the Vendor is selling the rights, title and interest of the Debtors in and to the Property pursuant to the Vendor's powers and as authorized by the Vesting Order. The Purchaser agrees to purchase and accept the rights, title and interests of the Debtors in and to the Property pursuant to and in accordance with the terms of this Agreement, the Appointment Order and the Vesting Order and that neither the Vendor nor the Purchaser shall be obliged to complete the transaction contemplated in this Agreement unless:
 - (a) an order, or orders, in form and substance satisfactory to the Receiver, shall have been made by the Court on or before the Closing Date approving this Agreement and the Transaction, authorizing the Vendor to enter into this Agreement and complete the Transaction, and vesting in the Purchaser all the right, title and interest of the Debtors in the Property free and clear of any and all Encumbrances except for the Permitted Encumbrances (the "**Vesting Order**"); and

- (b) the Vesting Order shall not have been stayed, varied or vacated, and no order shall have been issued which restrains or prohibits the completion of the Transaction as at the Closing Date, which may occur immediately following the granting of the Vesting Order.

If the Court does not grant the Vesting Order, the Vendor may at its option pursue such right of appeal if any as is available or terminate this Agreement by written notice to the Purchaser. If this Agreement is so terminated the deposit shall forthwith be returned to the Purchaser and neither party shall be further liable to the other. The Vendor's solicitors shall provide the Purchaser's solicitors with draft Vesting Order for its comments. If the Purchaser's solicitors do not provide any comments within two (2) Business Days of receipt of the Vesting Order it shall be deemed to have approved the same.

- 4.
 - (a) The Purchaser shall pay all taxes exigible and registration costs on the registration of the Vesting Order.
 - (b) The Purchaser acknowledges that the Vendor shall not be required to discharge any existing mortgages, liens or other Encumbrances with respect to the Property; and
 - (c) The Vendor shall have the right, exercisable at any time, up to and including the Closing Date, to terminate the Agreement by written notice to the Purchaser or the Purchaser's solicitor, in the event it is prevented from completing this transaction by decision of the Court. In such event, this Agreement shall be null and void and the deposit shall be returned to the Purchaser, and the Vendor shall not be liable to the Purchaser for any losses, costs, expenses or damages whatsoever incurred or suffered by the Purchaser as a result of the termination of this Agreement.

- 5.
 - (a) The Purchaser acknowledges to the Vendor that it has inspected the Property and that the Receiver is selling the Property on an "as is, where is" basis with all faults known, or unknown, as they shall exist as of the date of execution of this Agreement, or on the Closing Date. The Purchaser further acknowledges that: (i) it has entered into this Agreement on the basis that the Purchaser has conducted such inspections of the condition of and title to the Property as it deemed appropriate and has satisfied itself with regard to these matters; and (ii) the Receiver is not licensed under the New Home Construction Licensing Act . No representation, warranty or condition is expressed or can be implied as to any matter including, title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality, latent defects, cost, size, value, state of repair, environmental condition, environmental laws, zoning, permitted uses, permits, governmental compliance, threatened Claims, litigation, or in respect of any other matter or thing whatsoever concerning the Property. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the Sale of Goods Act (Ontario) or similar legislation do not apply hereto and are hereby waived by the Purchaser. The description of the Property contained in the Documents, in this Agreement and in any marketing material is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of the Documents, Schedules and in any marketing material. The Purchaser agrees that it is purchasing and accepts the Property on an "as is", where is" basis, as of the date of acceptance and as of the Closing Date, including without limiting the generality of the foregoing, the Purchaser shall assume the obligation of all outstanding Work Orders including: (i) municipal zoning by-laws; (ii) agreements with governmental authorities; or (iii) provincial or federal laws referable to the Property as of the Closing Date. The Purchaser further acknowledges that, notwithstanding any statutory provisions or provisions in this Agreement to the contrary, the Purchaser has no right to submit requisitions on title in respect of any of the Permitted Encumbrances.

- (b) The Purchaser further acknowledges and agrees that s/he/they or it has/have reviewed or has/have had the opportunity prior to submitting this Agreement: (i) information, documents and other materials, including any condominium documents (collectively the "**Documents**") made available or to be made available by the Vendor and/or its agent or otherwise in connection with the sale of the Property has been prepared and provided solely for the convenience of prospective purchasers only without any representation or warrant of any kind; (ii) the Vendor has not made and shall not make any representation or warranty whatsoever as to the accuracy, currency or completeness of the Documents; (iii) it has relied entirely upon its own inspections and investigations with respect to the purchase of the Property including the quantity, quality and value thereof; and (iv) it is solely responsible for satisfying itself with respect to the accuracy, currency, adequacy and completeness of the Documents and the Purchaser hereby releases the Vendor from any and all Claims it now has, or may in the future have, in that regard;
- (c) The description of the Property in the Documents, in any marketing material, listing information, and any like material delivered or made available by the Vendor, its agents or any other party on its behalf to the Purchaser or its representatives are believed to be correct, but if any misstatement, error, inaccuracy or omission (collectively the "**Inaccuracies**") is found in the particulars thereof, the Purchaser shall not be entitled to any abatement, damages, reimbursement, costs or to termination of this Agreement as a result thereof and the Purchaser hereby releases the Vendor from any Claims, damages, suits, costs, etc., the Purchaser had, has or may have as a result of such Inaccuracies; and
- (d) the environmental state of the Property, the uses, present or future, made or to be made of the Property, the existence, nature, kind, state or identity of any contaminants or hazardous substances on, under or about the Property, the existence, state, nature, kind, identity, extent and effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under the Environmental Protection Act (Ontario) , the Ontario Water Resources Act, the Canadian Environmental Protection Act or other statute, regulation, rule or provision or law, the existence, state, nature, kind, identity, extent or effect of which imposes any liability to fulfil any obligation with respect to the environmental state of the Property.
6. If there is any conflict, discrepancy or inconsistency between any of the terms and provisions contained in this Schedule "B" and any terms and provisions contained in the OREA form of the agreement of purchase and sale to which this Schedule is annexed (including any other schedules annexed thereto), the terms and conditions of this Schedule shall prevail to the extent of such conflict, discrepancy or inconsistency.
7. This Agreement, any amendments thereto, and any notices given pursuant to this Agreement of Purchase and Sale may be transmitted by fax and electronic mail and shall be binding upon the parties hereto as if executed in the original. Any notice, approval, waiver, agreement, amendment, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's solicitors on behalf of the Purchaser and by the Vendor's solicitors on behalf of the Vendor.
8. The Purchaser covenants and agrees not to register Notices of this Agreement, Assignment thereof, Caution, Certificate of Pending Litigation, Purchaser's Liens or any other instrument or reference to this Agreement of his/her interest in this Property. If any such registration occurs, the Vendor may, at its option, terminate this Agreement and all deposit monies shall be forfeited as liquidated damages and not as a penalty. The Purchaser hereby irrevocably consents to a court order removing any such

registrations and agrees to bear all costs in obtaining such order. The Purchaser agrees that this Agreement does not grant the Purchaser any interest in the Property.

9. Subject to any exceptions set out or prescribed in the Prohibition on the Purchase of Residential Property by Non-Canadians Act S.C. 2022, c. 10, s. 235, (statute), the Purchaser represents and warrants that the Purchaser is not and on completion, will not be a Non-Canadian under the Non-Canadian provisions of the Prohibition on the Purchase of Residential property by Non-Canadians Act S.C. 2022, c. 10, s. 235, which representation and warranty shall survive and not merge upon the completion of this transaction and the Purchaser shall deliver to the Vendor a statutory declaration that the Purchaser is not then a Non-Canadian of Canada; provided further that if the Purchaser qualifies for any exception as set out or prescribed by the statute, the Purchaser shall deliver to the Vendor a statutory declaration that the Purchaser is a Non-Canadian but is not in contravention of the statute because of a valid exception as set out or prescribed in the statute.
10. The Purchaser or the Purchaser's designate agrees to meet the Vendor's representative at the date and time designated by the Vendor, prior to the Closing Date, to conduct a pre-delivery inspection of the Property (the "**PDI**") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Property on the Tarion Certificate of Completion and Possession (the "**CCP**") and the PDI form, in the forms prescribed from time to time by, and required to be completed pursuant to the provisions of the Ontario New Warranties Home Plan Act ("**ONHWPA**"). The said CCP and PDI forms shall be executed by both the Purchaser or the Purchaser's designate and the Vendor's representative at the PDI. The CPP and PDI shall not constitute an undertaking by the Vendor with respect to incomplete or deficient work and the Purchaser shall not require the Vendor to complete any outstanding items on the PDI. In the event that the Vendor performs any additional work to the Property in its sole and subjective discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations hereunder. The Purchaser acknowledges that the Vendor is not required to be a registrant under ONHWPA and that the Vendor has been advised by Tarion that the Tarion coverage in respect of the Property is available from Vandyk-Backyard Queensview Limited as a registrant under ONHWPA. The Purchaser acknowledges and agrees that the Vendor has no liability or obligations to the Purchaser with respect to any deficiencies at the Property nor in respect of any matters related to the Tarion registration and releases the Vendor from any Claims in respect of same.
11. The Purchaser confirms, represents and warrants that it and its officers, directors and shareholders are not related or affiliated to the Debtors or any of their respective officers, directors and shareholders, and furthermore, that the Purchaser has not entered into any agreement, joint-venture or partnership with the Debtors or any of their respective officers, directors and shareholders in relation to their proposed purchase of the Property and the Debtors and their respective officers, directors and shareholders have no interest in the Purchaser entity nor will they have any rights or ownership interest in the Property after completion of the within transaction whether directly or indirectly.
12. Notwithstanding any provision to the contrary in this Agreement the Purchaser shall not assign this Agreement without the prior written consent of the Vendor, which consent may be granted or be withheld in the Vendor's sole and unfettered discretion. Notwithstanding any assignment consented to by the Vendor, the Purchaser shall not be released or relieved from any of its obligations hereunder until Closing and shall be jointly and severally liable with the assignee hereunder until Closing.
13. On or before the Closing, the Purchaser shall execute or deliver as applicable to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) Payment of the balance of Purchase Price;
 - (b) a certificate of the Purchaser executed by the Purchaser or a senior officer of the Purchaser, as applicable, confirming that the Purchaser (or such permitted assignee of the Purchaser) is purchasing the Property on its own account and not as agent, trustee or nominee for any other person and that it is a registrant for HST purposes under the Excise Tax Act (Canada) as at the Closing Date and setting out the registration number of the Purchaser for HST purposes and indemnity as contemplated by Section 14 hereof;
 - (c) an assignment and assumption of the agreement of purchase and sale if title is direct to a third party;
 - (d) a direction re title, if applicable;
 - (e) Statutory Declaration pursuant to Section 9 hereof;
 - (f) an undertaking by the Purchaser to readjust any errors, omissions or changes in the statement of adjustments;
 - (g) **two originally signed HST New Housing Rebate Form;**
 - (h) assignment of the Rebate in favour of the Vendor;
 - (i) Statutory Declaration that Property will be occupied as a principal residence of the Purchaser as set forth in Section 21 hereof;
 - (j) DocuSign certificate of completion, if applicable.
 - (k) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.
14. On or before the Closing the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:
- (a) the Vesting Order;
 - (b) the Receiver's Certificate as contemplated by the Vesting Order;
 - (c) a statement of adjustments;
 - (d) an undertaking by the Vendor to readjust any errors, omissions or changes in the statement of adjustments, with any readjustments to be completed within sixty days of Closing;
 - (e) a certificate the Vendor is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act, Canada, as amended; and
 - (f) such other documents as may be reasonably requested by the Purchaser to give effect to this Agreement.
15. The closing documents may be delivered in electronic format and original closing documents need not be provided. If the closing documents were executed utilizing DocuSign then the DocuSign certificate of completion shall be provided. Notwithstanding anything provided to the contrary in this

Agreement, it is expressly understood and agreed that the Purchaser shall nevertheless be obliged to provide and deliver to the Vendor's Solicitors **at least two originally signed HST New Housing Rebate Form** (and not an electronically-signed version thereof, nor a photocopy, a telefaxed copy or a scanned/e-mailed copy thereof) in connection with the final closing of this purchase and sale transaction.

16. Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following such day.
17. The Vendor and Purchaser agree that this Agreement shall not merge on closing but shall survive the closing without limitation.
18. The Purchaser acknowledges that the Vendor, has been appointed as Receiver pursuant to the Appointment Order. The Purchaser further acknowledges and agrees that the Receiver acts solely in its capacity as Receiver, without personal or corporate liability. The Purchaser acknowledges and agrees that Receiver is entering into this Agreement solely in its capacity as the Receiver and that the Receiver, its agents, officers, partners and employees shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, or at equity as a result of or in any way connected with this Agreement or as a result of the Vendor performing or failing to perform any of its obligations hereunder. The Purchaser agrees that it will fully and irrevocably release the Receiver from any and all Claims that the Purchaser may now have or hereafter acquire against the Receiver for any costs, loss, liability, damage, expense, demand, claims, action or cause of action arising from the Transaction. The Receiver is not liable or bound, in any manner, by any oral or written statements, representations or information pertaining to the Assets, or the operation thereof, furnished by any real estate broker, agent or representative of the Receiver.
19. Intentionally Deleted.
20. Notwithstanding anything contained to the contrary in the OREA printed form of Agreement of Purchase and Sale to which this Schedule is attached, the Buyer acknowledges and agrees that the Seller is making no warranties or representations with respect to any matters relating to the Condominium Corporation including, without limitation, whether or not the Seller owns or has an exclusive use parking space(s) and/or locker(s), the amount of the monthly common expense payments, the amount of any special assessment, any matter set out in the status certificate issued by the condominium corporation and all other matters. The Buyer further agrees that all warranties and representations contained in the OREA form in respect of the Condominium Corporation are hereby deleted. The Buyer acknowledges and agrees that it will satisfy itself, in respect of the Condominium Corporation, including, the amount of the monthly common expenses, the amount of special assessments, if any, and if there is an owned or exclusive use parking space(s) and/or locker(s).
21. It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction less the Rebate as defined below (hereinafter referred to as the "**HST**"), and that the Vendor shall remit the HST to Canada Revenue Agency ("**CRA**") on behalf of the Purchaser forthwith following the completion of this transaction. The Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the federal and provincial new housing rebates applicable pursuant to the *Excise Tax Act* (Canada), as may be amended, (collectively, the "**Rebate**") and **further warrants and represents that the Purchaser is a natural person who is acquiring the Property**

with the intention of being the sole beneficial owner thereof on the Closing Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Closing Date the Purchaser or one or more of the Purchaser's relations (as such term is defined in the Excise Tax Act) shall personally occupy the Property as his/her/their primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Property. The Purchaser further warrants and represents that s/he/they has/have not claimed (and hereby covenants that the Purchaser shall not hereafter claim), for the Purchaser's own account, any part of the Rebate in connection with the Purchaser's acquisition of the Property, save as may be otherwise hereinafter expressly provided or contemplated. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate directly to the Vendor. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's or Vendor's solicitors request for same (and in any event on or before the Closing Date), all requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require in order to confirm the Purchaser's entitlement to the Rebate and/or to enable the Vendor to obtain the benefit of the Rebate (by way of assignment or otherwise), including without limitation, the GST/HST New Housing Rebate Application for Houses Purchased from a Builder or other similar form as prescribed from time to time (the "**Rebate Form**"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his interest in the Property with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:

- (a) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's solicitors request for same (and in any event on or before the Closing Date) the Rebate Form duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor or the Vendor's solicitors may, reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or
- (b) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Closing Date;

then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Purchaser shall be obliged to pay to the Vendor (or to whomsoever the Vendor may in writing direct), by certified cheque delivered on the Closing Date, an amount equivalent to the Rebate, in addition to the Purchase Price and in those circumstances where the Purchaser maintains that he is eligible for the Rebate despite the Vendor's belief to the contrary, the Purchaser shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to pursue the procurement of the Rebate directly from CRA. It is further understood and agreed that in the event that the

Purchaser intends to rent out the Property before or after the Closing Date, the Purchaser shall not be entitled to the Rebate, but may nevertheless be entitled to pursue, on his own after the Closing Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to Section 256.2 of the *Excise Tax Act*, as may be amended, and other applicable legislation to be enacted relating to the provincial new rental housing rebate.

22. Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, any credits granted by the Vendor or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement or any amendment or addenda thereto, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the *Excise Tax Act*. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades, credits or adjustments (including any increase in the rate of HST) and as a result of such increase, the quantum of the Rebate that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "**Reduction**"), then the Purchaser shall pay to the Vendor on the Closing Date the amount of (as determined by the Vendor in its sole and absolute discretion) the Reduction.
23. The Purchaser acknowledges that prior to entering into the agreement it had access to the data room established by the Vendor's in respect of the Property.

SCHEDULE "C"**PERMITTED ENCUMBRANCES****GENERAL ENCUMBRANCES**

1. Encumbrances, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including charges, levies or imposts for sewers, electricity, power, gas, water and other services and utilities) not yet due and owing or, if due and owing, that are adjusted for pursuant to this Agreement, or the validity of which is being contested in good faith, and encumbrances or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the Vendor or the Debtors.
2. Inchoate or statutory encumbrances in respect of construction, renovations or current operations, in respect of which the Vendor or the Debtors has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts and of the Construction Lien Act (Ontario) or the Construction Act, Ontario (collectively the "Acts") and (i) for which no claim has been registered against the Property and of which no notice in writing has been given to the Vendor or the Debtors pursuant to the Acts or otherwise, or (ii) that relate to obligations not yet due.
3. Statutory liens and levies and other rights conferred upon, reserved to or vested in the Crown, the public or any municipality or governmental or other public authority by any statutory provision including rights of expropriation, access or user.
4. Subsisting reservations, limitations, provisos, conditions or exceptions contained in any grant of the Property or any portion thereof or interest therein from the Crown, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
5. Unregistered liens, charges, adverse claims, security interests or other encumbrances of any nature claimed or held by any Governmental Authority.
6. The right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, licence, franchise, grant or permit of the Person, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof.
7. Restrictions, by-laws, regulations, ordinances and similar instruments affecting the use of land or the nature of any structures which may be erected on the Property, including zoning, land-use and building by-laws and ordinances.
8. Minor encroachments or illegal views by the Property over neighbouring land and/or permitted under agreements with neighbouring landowners and minor encroachments or illegal views over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners.

9. Any minor title defects, irregularities, encroachments, easements, rights-of-way, rights to use, servitudes or similar interests revealed by any plan, technical description or survey or certificate of location of Property disclosed to or obtained by the Purchaser, or which would be revealed by an up-to-date survey or certificate of location of the Property.
10. any registrations, notice or caveat in respect thereof (including subleases, amendments to leases or assignments of leases or subleases) and any encumbrance of any nature whatsoever charging the interest of persons (other than the Seller) under any such lease (including subleases, amendments to leases or assignments of leases or subleases).
11. Agreements with any governmental authority or any public utility or private supplier of services or utilities including subdivision agreements, site plan control agreements, development agreements, servicing agreements, utility agreements, engineering agreements, grading agreements or landscaping agreements, provided either (i) such agreements have been complied with or (ii) if such agreements have not complied with, such non-compliance does not materially impair the use, operation or marketability of the Property.
12. Unregistered agreements, authorizations, consents, postponements, subordinations, licences, easements in favour of Hydro One or the local utility provided that they have been complied with or if not complied with, that any non-compliance does not materially impair the use, operation or marketability of the Property.
13. Easements, rights-of-way, servitudes, rights to use, restrictions, restrictive covenants, and similar rights in real property or immovables or any interest therein which do not materially impair the use, operation or marketability of the Property.
14. Minor easements, rights-of-way, licences or agreements for the supply of utilities or telephone services to the Property or adjacent land and/or for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, sidewalks, public ways, gas, steam or water mains, electric light and power, telephone and other telecommunication conduits, poles, wires and cables.
15. Minor title defects or irregularities that do not materially impair the use, operation or marketability of the Property.
16. Restrictive covenants, private deed restrictions, and other similar land use control agreements that are registered on title to the Property that do not materially impair the use, operation or marketability of the Property.
17. Statutory exceptions, reservations or qualifications to title including the liabilities, rights and interests described in Section 44(1) of the Land Titles Act (Ontario) and any rights reserved to or vested in any person by any statutory provision including rights of expropriation.
18. Any possessory title rights, easements, servitudes or interests that may have been obtained by abutting owners including the rights of any person entitled to any portion of the Property through length of adverse possession or prescription.
19. Any claim to the Property or any part thereof by way of aboriginal title.
20. With respect to instruments registered via Teraview Electronic Registration System (“TER System”), any error or omission in the receipt, transmission or recording of such instrument, or of

any of the particulars contained in such instruments, subsequent to creation and electronic delivery of same to Teranet Land Information Services Inc. via the TER System.

21. On first registration, those additional matters constituting statutory exceptions or reservations pursuant to Subsection 44 (1) of the Land Titles Act (Ontario) (save and except Subsection 44 (1) paragraph 11 (Planning Act), paragraph 14 (Dower Rights), Provincial succession duties and escheats or forfeiture to the Crown); the rights of any person who, but for the Land Titles Act (Ontario), would be entitled to the land or any part of it through length of possession, prescription, mis-description or boundaries settled by convention; and any lease to which Subsection 70 (2) of the Registry Act (Ontario) applies.
22. The permitted encumbrances set out in paragraph 10 of the OREA Form 500 to which this schedule is attached.
23. All instruments and Encumbrances on the PINS for the Property, (more particularly detailed in Schedule "E" of the draft Vesting Order) other than those to be extinguished as set out in Schedule "D" hereof.

SCHEDULE "D"
Encumbrances to be Extinguished pursuant to
the Vesting Order

	Registration Number	Date	Instrument Type	Amount	Parties To
1.	AT5030525	2018/12/12	Charge	\$18,750,000	Trisura Guarantee Insurance Co.
2.	AT5175582 Remarks: AT5030525	2019/07/02	Notice		Trisura Guarantee Insurance Co.
3.	AT6405972	2023/08/24	Charge	\$12,700,000	Peoples Trust Company
4.	AT6405973 Remarks: AT6405972	2023/08/24	No Assgn Rent Gen		Peoples Trust Company
5.	AT6406080	2023/08/24	Postponement		Peoples Trust Company
6.	AT6407058	2023/08/25	Construction Lien	\$384,182	
7.	AT6407909	2023/08/28	Construction Lien	\$1,845,369	
8.	AT6436267	2023/10/06	Construction Lien	\$213,401	
9.	AT6439785 Remarks: AT6407058	2023/10/12	Certificate		
10.	AT6445432 Remarks: AT6407909	2023/10/23	Certificate		Vandyk-Backyard Queensview Limited Peoples Trust Company Trisura Guarantee Insurance Company
11.	AT6450100	2023/10/30	Construction Lien	\$1,142,744	
12.	AT6452324	2023/11/01	Construction Lien	\$702,998	
13.	AT6457807	2023/11/10	Construction Lien	\$16,952	
14.	AT6458231	2023/11/10	Construction Lien	\$2,282,408	
15.	AT6458352	2023/11/10	Construction Lien	\$658,839	
16.	AT6459779	2023/11/15	Construction Lien	\$127,350	

17.	AT6460827	2023/11/15	Construction Lien	\$122,337	
18.	AT6460839 Remarks: AT6457807	2023/11/15	Certificate		
19.	AT6464044	2023/11/22	Construction Lien	\$1,130	
20.	AT6469954 Remarks: AT6458231	2023/11/30	Certificate Certificate of Action		
21.	AT6469955 Remarks: AT6458352	2023/11/30	Certificate Certificate of Action		
22.	AT6471094	2023/12/01	Condo Lien/98	\$3,295	
23.	AT6470896	2023/12/01	Condo Lien/98	\$87	
24.	AT6470584	2023/12/01	Condo Lien/98	\$417	
25.	AT6472516	2023/12/04	Construction Lien	\$462,217	
26.	AT6480459 Remarks: AT6459779	2023/12/14	Certificate		
27.	AT6481040 Remarks: AT6452324	2023/12/15	Certificate		
28.	AT6481578	2023/12/15	Construction Lien	\$323,750	
29.	AT6495103 Remarks: AT6481578	2024/01/12	Certificate		
30.	AT6496982 Remarks: AT6450100	2024/01/16	Certificate		
31.	AT6508018 Remarks: AT6472516	2024/02/02	Certificate		
32.	AT6510972 Remarks: Appointing RSM Canada Limited as Receiver	2024/02/08	Apl Court Order		RSM Canada Limited

33.	AT6513372 Remarks: AT6460827	2024/02/13	Certificate		
34.	24-0000442 Creditor: TA Appliance Inc.	2024/01/26	Toronto	\$499,709.91 @ 7% interest starting 2024/01/19 \$4,876.56 @ 7% interest starting 2021/01/19	

APPENDIX D



RSM Canada Limited

Licensed Insolvency Trustee

11 King St W
Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160

F +1 416 480 2646

www.rsmcanada.com

February 24, 2024

Via Email ([REDACTED])

Oluwaseun Olowolafe
[REDACTED]
[REDACTED]

Dear Mr. Olowolafe,

RE: Vandyk-Backyard Project at 25 Neighbourhood Lane, Toronto

By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 6, 2024 (the “**Appointment Order**”), TDB Restructuring Limited (formerly RSM Canada Limited) was appointed as receiver and manager (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers legally described in Schedule “A” of the Appointment Order constituting the property (the “**Property**”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (collectively, the “**Debtors**”).

A copy of the Appointment Order is enclosed herewith for your reference.

Pursuant to section 3(c) of the Appointment Order, the Receiver is expressly empowered and authorized to, among other things, cease to perform any contracts of the Debtors where the Receiver considers it necessary or desirable.

We refer to the Agreement of Purchase and Sale between Vandyk-Backyard Queensview Limited and yourself dated November 28, 2018, as amended from time to time (as amended, the “**APS**”) in respect of the sale of Condominium Unit 211 and proposed parking and storage units.

TAKE NOTICE that the Receiver, pursuant to the authority granted to it by the Appointment Order and section 3(c) thereof, terminates the APS as of the date hereof. The APS, and the transaction contemplated thereby, is of no further force and effect.

[Letter continues on following page]

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

You are hereby advised to contact Tarion Warranty Corporation (“**Tarion**”) in respect of the return of any deposits paid pursuant to the APS, as Tarion may determine. You may visit www.Tarion.com for more information about how to contact Tarion.

Yours truly,

**RSM Canada Limited (now known as TDB Restructuring Limited)
solely in its capacity as Court-appointed Receiver of the Property,
and not in its personal or corporate capacity**

A handwritten signature in black ink, appearing to read "Jeff Berger", with a long horizontal flourish extending to the right.

Jeffrey Berger, CPA, CA, CIRP, LIT
Vice-President

c.c. Tarion Warranty Corporation

Encl.

APPENDIX E

SHERIFF OF/ SHÉRIF DE: CITY OF TORONTO (TORONTO)**CERTIFICATE #/ N° DE CERTIFICAT:** 48705427-1348624B**DATE OF CERTIFICATE/ DATE DU CERTIFICAT:** 2024-JAN-26 / 2024-JANV.-26**SHERIFF'S STATEMENT**

THIS CERTIFIES THAT LISTED BELOW ARE ALL WRITS OF EXECUTION, ORDERS AND CERTIFICATES OF LIEN FILED AND ENTERED INTO THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE *EXECUTION ACT* AT THE TIME OF SEARCHING AGAINST THE REAL AND PERSONAL PROPERTY OF:

DÉCLARATION DU SHÉRIF

LE PRÉSENT CERTIFICAT ATTESTE QUE TOUTES LES ORDONNANCES ET TOUS LES BREFS D'EXÉCUTION FORCÉE ET CERTIFICATS DE PRIVILÈGE ÉNUMÉRÉS CI-DESSOUS ONT ÉTÉ DÉPOSÉS ET INSCRITS DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA *LOI SUR L'EXÉCUTION FORCÉE* AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES ET IMMEUBLES DE :

NAME SEARCHED / NOM RECHERCHÉ

PERSON OR COMPANY / PERSONNE OU SOCIÉTÉ	NAME OR SURNAME, GIVEN NAME(S) / NOM OU NOM DE FAMILLE, PRÉNOM(S)
COMPANY / SOCIÉTÉ	VANDYK - BACKYARD QUEENSVIEW LIMITED

SEARCH RESULTS / RÉSULTATS DE LA RECHERCHE

EXECUTION # / N° D'EXÉCUTION FORCÉE	DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S)
24-0000442*	VANDYK-BACKYARD QUEENSVIEW LIMITED
24-0000442*	VANDYK - BACKYARD QUEENSVIEW LIMITED

CAUTION TO PARTY REQUESTING SEARCH:

1. IT IS THE RESPONSIBILITY OF THE REQUESTING PARTY TO ENSURE THAT THE NAME SEARCHED IS CORRECT.
2. WRITS, ORDERS OR CERTIFICATES OF LIEN MAY BE REMOVED FROM THE SHERIFF'S INDEX ANYTIME AFTER THIS SEARCH AND THEREFORE MAY NOT APPEAR ON A SUBSEQUENT SEARCH FOR THE SAME NAME ON THIS DATE OR IN FUTURE.
3. WRITS FILED WITH THE SHERIFF DO NOT BECOME EFFECTIVE WITHIN THE WRITS SYSTEM UNTIL THE FOLLOWING BUSINESS DAY.

AVERTISSEMENT À LA PARTIE QUI DEMANDE LA RECHERCHE :

1. IL INCOMBE À LA PARTIE QUI DEMANDE LA RECHERCHE DE S'ASSURER QUE LE NOM RECHERCHÉ EST EXACT.
2. LES BREFS D'EXÉCUTION FORCÉE, LES ORDONNANCES OU LES CERTIFICATS DE PRIVILÈGE PEUVENT ÊTRE RETIRÉS DU RÉPERTOIRE DU SHÉRIF EN TOUT TEMPS APRÈS CETTE RECHERCHE ET, PAR CONSÉQUENT, ILS PEUVENT NE

AVERTISSEMENT À LA PARTIE QUI DEMANDE LA RECHERCHE :

PAS APPARAÎTRE LORS D'UNE RECHERCHE SUBSÉQUENTE VISANT LE MÊME NOM À CETTE DATE OU À L'AVENIR.

3. LES BREFS D'EXÉCUTION FORCÉE DÉPOSÉS AUPRÈS DU SHÉRIF NE PRENNENT EFFET DANS LE SYSTÈME DE BREFS QUE LE PROCHAIN JOUR OUVRABLE.

CHARGE FOR THIS CERTIFICATE/ FRAIS POUR CE CERTIFICAT: CA\$12.85

SEARCHER REFERENCE/ REFERENCE CONCERNANT L'AUTEUR DE LA DEMANDE: 235236

(*) WRIT REGISTERED AT LAND TITLES / BREF ENREGISTRÉ AU BUREAU D'ENREGISTREMENT DES DROITS IMMOBILIERS

SHERIFF OF / SHÉRIF DE: CITY OF TORONTO (TORONTO)

CERTIFICATE # / N° DE CERTIFICAT: 48705433-1499838B

DATE OF CERTIFICATE / DATE DU CERTIFICAT: 2024-JAN-26 / 2024-JANV.-26

IF THERE IS INFORMATION CONTAINED IN THIS FORM IN FRENCH AND YOU REQUIRE IT IN ENGLISH, CONTACT THE SHERIFF

S'IL Y A DES INFORMATIONS EN ANGLAIS DANS CE FORMULAIRE ET QUE VOUS EN AVEZ BESOIN EN FRANÇAIS, CONTACTEZ LE SHÉRIF

SHERIFF'S STATEMENT

IT IS HEREBY CERTIFIED THAT THE INFORMATION CONTAINED BELOW IS A TRUE REPRESENTATION OF INFORMATION WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE EXECUTION ACT, AT THE TIME OF THE REPORT REQUEST.

DÉCLARATION DU SHÉRIF

IL EST CERTIFIÉ, PAR LA PRÉSENTE, QUE LES RENSEIGNEMENTS CI-APRÈS REPRODUISENT EXACTEMENT L'INFORMATION CONTENUE DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA LOI SUR L'EXÉCUTION FORCÉE AU MOMENT DE LA DEMANDE DE RAPPORT.

FILE DETAILS / DÉTAILS DU DOSSIER

EXECUTION # / N° D'EXÉCUTION FORCÉE : 24-0000442
ISSUE DATE / DATE DE DÉLIVRANCE : 2024-JAN-23
EXPIRY DATE / DATE D'EXPIRATION : 2030-JAN-22
EFFECTIVE DATE / DATE DE PRISE D'EFFET : 2024-JAN-24
COURT FILE OR REFERENCE # / N° DE DOSSIER DU TRIBUNAL OU DE RÉFÉRENCE : CV-23-00001672-000
COURT TYPE / TYPE DE TRIBUNAL : SCJ - CIVIL
JURISDICTION / TERRITOIRE DE COMPÉTENCE : KITCHENER

DEBTOR SEARCH NAME(S) / NOM(S) DU(DES) DÉBITEUR(S) RECHERCHÉ(S)		
#	DEBTOR TYPE / TYPE DE DÉBITEUR	DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S)
1.	COMPANY / SOCIÉTÉ	VANDYK-BACKYARD QUEENSVIEW LIMITED
2.	COMPANY / SOCIÉTÉ	VANDYK - BACKYARD QUEENSVIEW LIMITED

PARTY DETAILS / COORDONNÉES DES PARTIES

DEFENDANT / DÉFENDEUR		
1.	NAME / NOM :	VANDYK-BACKYARD QUEENSVIEW LIMITED
	ADDRESS / ADRESSE :	1944 FOWLER DRIVE, MISSISSAUGA, ONTARIO, CA, L5K 0A1
	EMAIL / COURRIEL :	JVANDYK@VANDYK.COM

CREDITOR / CRÉANCIER		<input checked="" type="checkbox"/> C/O LAWYER/AGENT / A/S PROCUREUR/AGENT
1.	COMPANY / SOCIÉTÉ :	TA APPLIANCE INC.
	ADDRESS / ADRESSE :	C/O GIFFEN LLP 101 RANDALL DRIVE, UNIT A, WATERLOO, ON, N2V 1C5, CANADA EMAIL: CD@GIFFENLAWYERS.COM TEL: 519-578-4150 FAX: 519-578-8740

LAWYER/AGENT / PROCUREUR/AGENT		<input type="checkbox"/> SAME AS FIRST CREDITOR / MÊME QUE LE PREMIER CRÉANCIER
NAME / NOM :		
FIRM NAME / NOM DE L'ENTREPRISE :		GIFFEN LLP
ADDRESS / ADRESSE :		101 RANDALL DRIVE, UNIT A, WATERLOO, ON, N2V 1C5, CANADA EMAIL: CD@GIFFENLAWYERS.COM TEL: 519-578-4150 FAX: 519-578-8740

JUDGMENT/COST DETAILS / DÉTAILS DU JUGEMENT/DÉPENS					
#	JUDGMENT OR COSTS / JUGEMENT OU DÉPENS	AMOUNT / MONTANT	INTEREST RATE / TAUX D'INTÉRÊT	START DATE / DATE DE DÉBUT	
1.	JUDGMENT / JUGEMENT	CAD 499,709.91	7.0000%	2024-JAN-19	
	COSTS / DÉPENS	CAD 0.00	0.0000%		
	CALCULATION DETAILS / DÉTAILS DU CALCUL				
	AGAINST DEBTORS / CONTRE LES DÉBITEURS		ALL DEBTORS / TOUS LES DÉBITEURS		
2.	JUDGMENT / JUGEMENT	CAD 0.00	0.0000%		
	COSTS / DÉPENS	CAD 4,876.56	7.0000%	2024-JAN-19	
	CALCULATION DETAILS / DÉTAILS DU CALCUL				
	AGAINST DEBTORS / CONTRE LES DÉBITEURS		ALL DEBTORS / TOUS LES DÉBITEURS		

FINANCIAL TRANSACTIONS / OPÉRATIONS FINANCIÈRES				
#	FEE OR PAYMENT / FRAIS OU PAIEMENT	TRANSACTION DATE / DATE D'OPÉRATION	AMOUNT / MONTANT	REFERENCE OR NOTES / RÉFÉRENCE OU NOTES
1.	FEE / FRAIS	2024-JAN-23	CAD 39.49	VALUE ADD FEE
2.	FEE / FRAIS	2024-JAN-23	CAD 50.00	PREPARATION FEE UNDER RULE 60.19
3.	FEE / FRAIS	2024-JAN-23	CAD 77.00	ISSUANCE FEE
4.	FEE / FRAIS	2024-JAN-23	CAD 100.00	FILING FEE

COMMENTS / REMARQUES

ISSUED & FILED BY TYLER JAMES NIVINS ON JAN 23, 2024 04:02 P.M. EST REMOTELY
FEE OF 216.49 COLLECTED

CAUTION:

ENSURE THAT THE NAME AND EXECUTION# (NUMBER) MATCH YOUR REQUEST.

AVERTISSEMENT :

ASSUREZ-VOUS QUE LE NOM ET LE NUMÉRO DU DOSSIER D'EXÉCUTION FORCÉE SONT LES MÊMES QUE CEUX QUI SE TROUVENT DANS VOTRE DEMANDE.

CHARGE FOR THIS REPORT / FRAIS POUR CE RAPPORT: CAD 7.00

REQUESTER REFERENCE / REFERENCE CONCERNANT L'AUTEUR(E) DE LA DEMANDE: 235236

APPENDIX F

February 27, 2024

Thornton Grout Finnigan LLP
100 Wellington Street W., Suite 3200
P.O. Box 329, Toronto-Dominion Centre
Toronto, Ontario
M5K 1K7

Attention: Puya Fesharaki, Counsel to the Receiver of Vandyk - Queensview Limited

Dear Mr. Fesharaki

**Re: TA Appliances Inc. (“TA”) v. Vandyk – Queensview Limited (“Vandyk”)
25 Neighbourhood Lane, Etobicoke (the “Property”)
TA’s entitlement to appliances supplied by TA to Vandyk at the Property**

As you are aware, we are the lawyers for TA. Further to your request on February 8th, 2024, we set out herein the grounds for our client’s right to return of its appliances supplied by TA currently located in the unsold condominium units (the “Units”) of the Property.

On February 11, 2021, TA, and entered into a contract for the supply and installation of various appliances as described by the parties in the contract (the “Appliances”) for Vandyk’s newly constructed condominium development for a total purchase price of \$492,064.71 (the “Contract”).

TA supplied and installed the Appliances, however, Vandyk failed to remit any payments required by the Contract. Accordingly, title to the Appliances has not transferred from TA and TA remains the true owner of the Appliances. Vandyk retained only a possessory interest in the Appliances. Such true ownership gives TA priority over secured creditors.

Vandyk did not have rights to transfer the Appliances as collateral to a third party: see section 11(2) of the *Personal Property Security Act* (“PPSA”) which confirms that attachment occurs when value is given, and the debtor has rights in the collateral or power to transfer rights in collateral to a third party.

This position is supported by secondary materials and by the jurisprudence. As described by the esteemed Wood, Cuming, and Walsh in the Irwin Law on *Personal Property Security* at page 165:

[J]ust because a security interest has attached does not mean that the secured party will prevail. The PPSA preserves the supplementary application of the “principles of the common law, equity and the law merchant” to the extent not inconsistent with the Act. These principles include *nemo dat quod non habet* (no one can give that which she has not). If the debtor had no proprietary interest beyond possession to convey, then the security interest can only attach to that possessory interest. A possessory title is good against the whole world except the true owner. The true owner (or co-owners in the foregoing scenario) will therefore prevail over the secured party.

This above was confirmed in the decision *Gray v Royal Bank of Canada*, [1997] B.C.J. No. 151. In this case, the BC supreme court confirmed that where a security interest attaches to a mere possessory interest, the security interest is subject to the true owner’s proprietary rights. The court cites Cuming and Wood at para 33:

A person in possession of goods belonging to another has, by virtue of his possessory interest, sufficient rights to grant a security interest in goods. However, the secured party obtains a security interest in the defeasible possessory title of the debtor which, although effective against a stranger, is not effective against the true owner. The true owner therefore enjoys priority over the secured party.

Vandyk has only ever had possessory interest in the Appliances, and accordingly, secured creditors that have registered security interests attach only to those possessory rights. The possessory interest of any secured creditor does not take priority over the true owners of the property.

While the above is sufficient to confirm TA’s priority claim to the Appliances, it is also of import that a review of the registered secured interests confirms that such interests do not include the Appliances as consumer goods.

We understand that there are three secured creditors:

- Royal Bank of Canada - having registered a GSA on March 12, 2021;
- Peoples Trust Company - having registered a GSA on July 13, 2023;
- Metergy Solutions Inc. - having registered a GSA on December 11, 2023.

No creditor has registered an interest in the consumer goods of Vandyk. Furthermore, it is well understood that no security interest attaches to after-acquired consumer goods unless rights are acquired in the consumer goods within 10 days of the secured party giving value (s. 12(2)(b) *PPSA*).

As noted by you during our call, the Receiver has not taken control over consumer goods, and the Appliances in question are classified as Consumer Goods within the meaning of the *PPSA*: see section 1(1) where Consumer Goods are defined as, “goods that are used or acquired for use primarily for personal, family or household purposes.” The Appliances consist of refrigerators, ovens, microwaves and natural gas barbeques, which were acquired for household purposes.

TA delivered the Appliances to Vandyk between February and June, 2023. Therefore, the Royal Bank of Canada's GSA could not attach to the Appliances as after-acquired consumer goods.

The Peoples Trust Company and Metergy Solutions Inc. GSA's specifically omit in their registrations any security interest in consumer goods.

Finally, as against the lien claimants, TA maintains that the liens do not extend to the Appliances as the Appliances in question are properly classified as chattels and not fixtures to the improvement.

Kindly confirm whether the Receiver has any interest in purchasing the Appliances from TA for the purpose of selling together with the Units. To assist in this regard, TA confirms that (on average) the appliances within each Unit had a purchase price of \$3,600. TA is prepared to negotiate with the Receiver in this regard.

We note that there is one agreement of purchase and sale for a Unit that may be closing in the near future. TA may be prepared to sell the Appliances in this specific Unit to the Receiver to the extent that such Appliances were included in the sale price.

To the extent that the Receiver has no interest in purchasing the Appliances from TA, or otherwise fails to make any such arrangements by Friday, March 8, 2024, TA will contact the Receiver to make arrangements to pick up the Appliances forthwith.

Yours truly,
Giffen LLP



Cynthia Davis

CD/

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

Court File No. CV-24-00713783-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceedings commenced at Toronto, Ontario

FIRST REPORT OF THE RECEIVER

THORNTON GROUT FINNIGAN LLP
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TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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Lawyers for the Court-appointed Receiver, RSM Canada
Limited (now known as TDB Restructuring Limited)

TAB 3

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE) WEDNESDAY, THE 6TH
)
JUSTICE CAVANAGH) DAY OF MARCH, 2024

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited (now known as TDB Restructuring Limited) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers (the “**Unsold Units**”) legally described in the Order appointing the Receiver granted by this Court on February 6, 2024 constituting property of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between Paul Michael Foggia and Simona Moschillo, as joint tenants, (together, the “**Purchasers**”) and Vandyk-Backyard Queensview Limited dated January 7, 2024, as amended and accepted by the Receiver on February 26, 2024 a copy of which is appended to the First Report of the Receiver dated February 27, 2024 (the “**First Report**”) as Appendix “C”, and vesting in the Purchasers the Debtors’ and the Receiver’s right, title and interest in and to the property described in the Sale Agreement (the

“**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver and such other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service of ► sworn ►, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the First Report.

APPROVAL AND VESTING

3. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor and non-material amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.
4. **THIS COURT ORDERS** that, upon the delivery of a Receiver’s certificate to the Purchasers substantially in the form attached as **Schedule “A”** hereto (the “**Receiver’s Certificate**”), all of the Receiver’s and the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule “B”** hereto shall vest absolutely in the Purchasers free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice

Cavanagh dated February 6, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the encumbrances listed on **Schedule “D”** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that, upon the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchasers as the owners, as joint tenants, of the subject property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

6. **THIS COURT ORDERS** that the Receiver pay to Toronto Standard Condominium Corporation No. 2983 (the “**Condo Corp**”) from the sale proceeds of the Transaction any amounts owing in respect of the notices and other instruments registered by the Condo Corp against title to the Unsold Units.

7. **THIS COURT ORDERS AND DIRECTS** that the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) shall delete and expunge Instrument No. AT6510972, being an Application to Register Court Order registered on February 6, 2024, in favour of RSM Canada Limited, from title to the Real Property identified on **Schedule “B”** hereto.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, as soon as practicable after delivery thereof.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

11. **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.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-24-00713783-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to the Order of Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 6, 2024 (the “**Appointment Order**”), RSM Canada Limited (now known as TDB Restructuring Limited) was appointed as the receiver (the “**Receiver**”) of the Unsold Units, including all proceeds thereof (the “**Property**”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) located at 25 Neighbourhood Lane, Toronto, Ontario.

B. Pursuant to an Approval and Vesting Order of the Court dated March 6, 2024, the Court approved the agreement of purchase and sale made as of January 7, 2024 between Vandyk-Backyard Queensview Limited (the “**Seller**”) and Paul Michael Foggia and Simona Moschillo (together, the “**Purchasers**”), which agreement was subsequently amended and entered into by the Receiver pursuant to its powers under the Appointment Order (the “**Sale Agreement**”) and provided for the vesting in the Purchasers of the Receiver’s and the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Appointment Order and the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid, and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

RSM Canada Limited (now known as TDB Restructuring Limited), solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

Schedule “B” – Purchased Assets

UNIT 302

PIN 76983 – 0026 (LT)

Description: UNIT 2, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0336 (LT)

Description: UNIT 27, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0387 (LT)

Description: UNIT 78, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

Municipally known as Unit 302, 25 Neighbourhood Lane, Toronto, and all other property governed by the Sale Agreement and all amendments thereto.

Schedule “C” – Claims to be Deleted and Expunged from Title to The Real Property

	Registration Number	Date	Instrument Type	Amount	Parties To
1.	AT5030525	2018/12/12	Charge	\$18,750,000	Trisura Guarantee Insurance Co.
2.	AT5175582 Remarks: AT5030525	2019/07/02	Notice		Trisura Guarantee Insurance Co.
3.	AT6405972	2023/08/24	Charge	\$12,700,000	Peoples Trust Company
4.	AT6405973 Remarks: AT6405972	2023/08/24	No Assgn Rent Gen		Peoples Trust Company
5.	AT6406080	2023/08/24	Postponement		Peoples Trust Company
6.	AT6407058	2023/08/25	Construction Lien	\$384,182	
7.	AT6407909	2023/08/28	Construction Lien	\$1,845,369	
8.	AT6436267	2023/10/06	Construction Lien	\$213,401	
9.	AT6439785 Remarks: AT6407058	2023/10/12	Certificate		
10.	AT6445432 Remarks: AT6407909	2023/10/23	Certificate		Vandyk-Backyard Queensview Limited Peoples Trust Company Trisura Guarantee Insurance Company
11.	AT6450100	2023/10/30	Construction Lien	\$1,142,744	
12.	AT6452324	2023/11/01	Construction Lien	\$702,998	
13.	AT6457807	2023/11/10	Construction Lien	\$16,952	
14.	AT6458231	2023/11/10	Construction Lien	\$2,282,408	
15.	AT6458352	2023/11/10	Construction Lien	\$658,839	
16.	AT6459779	2023/11/15	Construction Lien	\$127,350	
17.	AT6460827	2023/11/15	Construction Lien	\$122,337	
18.	AT6460839	2023/11/15	Certificate		

	Remarks: AT6457807				
19.	AT6464044	2023/11/22	Construction Lien	\$1,130	
20.	AT6469954 Remarks: AT6458231	2023/11/30	Certificate Certificate of Action		
21.	AT6469955 Remarks: AT6458352	2023/11/30	Certificate Certificate of Action		
22.	AT6471094	2023/12/01	Condo Lien/98	\$3,295	
23.	AT6470896	2023/12/01	Condo Lien/98	\$87	
24.	AT6470584	2023/12/01	Condo Lien/98	\$417	
25.	AT6472516	2023/12/04	Construction Lien	\$462,217	
26.	AT6480459 Remarks: AT6459779	2023/12/14	Certificate		
27.	AT6481040 Remarks: AT6452324	2023/12/15	Certificate		
28.	AT6481578	2023/12/15	Construction Lien	\$323,750	
29.	AT6495103 Remarks: AT6481578	2024/01/12	Certificate		
30.	AT6496982 Remarks: AT6450100	2024/01/16	Certificate		
31.	AT6508018 Remarks: AT6472516	2024/02/02	Certificate		
32.	AT6510972 Remarks: Appointing RSM Canada Limited as Receiver	2024/02/08	Apl Court Order		RSM Canada Limited
33.	AT6513372 Remarks:	2024/02/13	Certificate		

	AT6460827				
34.	24-0000442 Creditor: TA Appliance Inc.	2024/01/26	Toronto	\$499,709.91 @ 7% interest starting 2024/01/19 \$4,876.56 @ 7% interest starting 2021/01/19	

Schedule “D” – Permitted Encumbrances Related to the Real Property
(unaffected by the Vesting Order)

	REG. NUM.	Date	Instrument Type	Parties From	Parties To	Cert/CHKD
1.	EB160013	1955/10/24	Agreement		The Corporation of the Township of Etobicoke	C
2.	EB163037	1956/01/03	Certificate			C
3.	EB177163	1956/11/19	Agreement		The Corporation of the Township of Etobicoke	C
4.	EB181933	1957/04/04	Agreement		The Corporation of the Township of Etobicoke	C
5.	EB186721	1957/07/29	Bylaw			C
6.	EB188451	1957/09/06	Agreement		Township of Etobicoke	C
7.	AT5347788	2020/01/22	Notice		City of Toronto	C
8.	AT5367386	2020/02/19	Transfer of Easement	Vandyk-Backyard Queensview Limited	Rogers Communications Inc.	C
9.	AT5531340	2020/09/29	Notice	Vandyk – Backyard Humberside Limited Vandyk – Backyard Queensview Limited Vandyk-Backyard Kingsmill Limited	Rogers Communications	C
10.	AT5713886	2021/04/23	Certificate	Her Majesty the Queen in right of Ontario as represented		C

				by The Minister of Environment, Conservation and Parks		
11.	TCP2983	2023/07/07	Standard Condo Plan			C
12.	AT6370359	2023/07/07	Condo Declaration	Vandyk – Backyard Queensview Limited		C
13.	AT6373564	2023/07/12	Condo Bylaw – No. 1	Toronto Standard Condominium Corporation No. 2983		C
14.	AT6373568	2023/07/12	Condo Bylaw – No. 2	Toronto Standard Condominium Corporation No. 2983		C
15.	AT6373569	2023/07/12	Condo Bylaw – No. 3	Toronto Standard Condominium Corporation No. 2983		C
16.	AT6373573	2023/07/12	Condo Bylaw – No. 4	Toronto Standard Condominium Corporation No. 2983		C
17.	AT6373575	2023/07/12	Condo Bylaw – No. 5	Toronto Standard Condominium Corporation No. 2983		C
18.	AT6373578	2023/07/12	Condo Bylaw – No. 6	Toronto Standard Condominium Corporation No. 2983		C

19.	AT6373584	2023/07/12	Notice	Vandyk – Backyard Queensview Limited	Toronto Standard Condominium Corporation No. 2983	C
20.	AT6373595	2023/07/12	Notice	Vandyk – Backyard Queensview Limited	Toronto Standard Condominium Corporation No. 2983	C
21.	AT6373604	2023/07/12	Notice	Vandyk- Backyard Queensview Limited	Toronto Standard Condominium Corporation No. 2983	C

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Approval and Vesting Order)**

THORNTON GROUT FINNIGAN LLP
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TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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Rudrakshi Chakrabarti (LSO# 86868U)

Email: rchakrabarti@tgf.ca

Lawyers for the Court-appointed Receiver, RSM Canada
Limited (now known as TDB Restructuring Limited)

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended

THE HONOURABLE _____)	WEEKDAY <u>WEDNESDAY</u> , THE #
JUSTICE _____)	DAY OF MONTH, 20YR <u>6TH</u>
)	
<u>JUSTICE CAVANAGH</u>)	<u>DAY OF MARCH, 2024</u>

B E T W E E N:

PLAINTIFF

Plaintiff

PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.

Applicants

- and -

DEFENDANT

Defendant

VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ RSM Canada Limited (now known as TDB Restructuring Limited) in its capacity as the Court-appointed receiver (the "Receiver") of the ~~undertaking~~, unsold condominium units, parking units, and storage lockers (the "Unsold

Units) legally described in the Order appointing the Receiver granted by this Court on February 6, 2024 constituting property ~~and assets~~ of ~~[DEBTOR]~~ (Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the "Debtor" "Debtors")) for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between ~~the Receiver and [NAME OF PURCHASER]~~ (the "Purchaser") dated ~~[DATE]~~ and Paul Michael Foggia and Simona Moscillo, as joint tenants, (together, the "Purchasers") and Vandyk-Backyard Queensview Limited dated January 7, 2024, as amended and accepted by the Receiver on February 26, 2024 a copy of which is appended to the First Report of the Receiver dated ~~[DATE]~~ February 27, 2024 (the "First Report") as Appendix "C", and vesting in the ~~Purchaser~~ Purchasers the ~~Debtor~~ Debtors' and the Receiver's right, title and interest in and to the ~~assets~~ property described in the Sale Agreement (the "Purchased Assets"), was heard this day ~~at 330 University Avenue,~~ by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ and such other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as it appears from the ~~affidavit~~ Affidavit of ~~[NAME]~~ Service of ▶ sworn ~~[DATE]~~ ▶, filed¹:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service and filing of the Notice of Motion and Motion Record herein is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms not defined herein shall have the meanings ascribed thereto in the First Report.

APPROVAL AND VESTING

3. ~~1. THIS COURT ORDERS AND DECLARES~~ that the Transaction is hereby approved,²

¹ This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the

and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor and non-material amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the ~~Purchaser~~Purchasers.

~~4. THIS COURT ORDERS AND DECLARES~~ that, upon the delivery of a Receiver's certificate to the ~~Purchaser~~Purchasers substantially in the form attached as **Schedule "A"** hereto (the **"Receiver's Certificate"**), all of the ~~Debtor's~~Receiver's and the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~and listed on Schedule "B" hereto~~⁴ shall vest absolutely in the ~~Purchaser~~Purchasers free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the **"Claims"**⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Cavanagh dated ~~[DATE]~~February 6, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the **"Encumbrances"**, which term shall not include the ~~permitted encumbrances, easements and restrictive covenants~~ listed on **Schedule "D" hereto**) and, for greater certainty, this Court orders that all of the

~~Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

~~³In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

~~⁴To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

~~⁵The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~5. 3. THIS COURT ORDERS~~ THIS COURT ORDERS that, upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of ~~{LOCATION}~~ Metro Toronto (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* ~~and/or the Land Registration Reform Act~~⁶, the Land Registrar is hereby directed to enter the ~~Purchaser~~ Purchasers as the ~~owner~~ owners, as joint tenants, of the subject ~~real~~ property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

6. THIS COURT ORDERS that the Receiver pay to Toronto Standard Condominium Corporation No. 2983 (the “**Condo Corp**”) from the sale proceeds of the Transaction any amounts owing in respect of the notices and other instruments registered by the Condo Corp against title to the Unsold Units.

7. THIS COURT ORDERS AND DIRECTS that the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) shall delete and expunge Instrument No. AT6510972, being an Application to Register Court Order registered on February 6, 2024, in favour of RSM Canada Limited, from title to the Real Property identified on **Schedule “B”** hereto.

~~8. 4. THIS COURT ORDERS~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the ~~net proceeds~~⁷ Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. ~~5.~~ **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, ~~forthwith~~ as soon as practicable after delivery thereof.

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

10. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~ Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~ Debtors;

the vesting of the Purchased Assets in the ~~Purchaser~~ Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~ Debtors and shall not be void or voidable by creditors of the ~~Debtor~~ Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

⁸ ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

GENERAL

11. ~~9.~~ **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.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-24-00713783-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

B E T W E E N:

~~PLAINTIFF~~

Plaintiff

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

~~DEFENDANT~~

~~Defendant~~

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to ~~an~~the Order of ~~the~~ Honourable ~~[NAME OF JUDGE]~~Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~February 6, 2024 (the “Appointment Order”), RSM Canada Limited (now known as TDB Restructuring Limited) was appointed as the receiver (the “Receiver”) of the ~~undertaking, property and assets of [DEBTOR] (the “Debtor”)~~Unsold Units, including all proceeds thereof (the “Property”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “Debtors”) located at 25 Neighbourhood

Lane, Toronto, Ontario.

B. Pursuant to an Approval and Vesting Order of the Court dated ~~[DATE]~~ March 6, 2024, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ (the "Sale Agreement") ~~between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser"~~ January 7, 2024 between Vandyk-Backyard Queensview Limited (the "Seller") and Paul Michael Foggia and Simona Moscillo (together, the "Purchasers"), which agreement was subsequently amended and entered into by the Receiver pursuant to its powers under the Appointment Order (the "Sale Agreement") and provided for the vesting in the ~~Purchaser~~ Purchasers of the ~~Debtor's~~ Receiver's and the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the ~~Purchaser~~ Purchasers of a certificate confirming (i) the payment by the ~~Purchaser~~ Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing ~~as~~ set out in ~~section • of~~ the Sale Agreement have been satisfied or waived by the Receiver and the ~~Purchaser~~ Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Appointment Order and the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The ~~Purchaser has~~ Purchasers have paid, and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section • of~~ the Sale Agreement have been satisfied or waived by the Receiver and the ~~Purchaser~~ Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~[NAME OF RECEIVER],~~ RSM Canada Limited (now known as TDB Restructuring Limited), solely in its capacity as Receiver of the ~~undertaking, property and assets of [DEBTOR] Property,~~ and not in its personal capacity

Per: _____

Name:

Title:

Schedule “B” – Purchased Assets

UNIT 302

PIN 76983 – 0026 (LT)

Description: UNIT 2, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0336 (LT)

Description: UNIT 27, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0387 (LT)

Description: UNIT 78, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983 AND ITS APPURTENANT INTEREST; CITY OF TORONTO

Municipally known as Unit 302, 25 Neighbourhood Lane, Toronto, and all other property governed by the Sale Agreement and all amendments thereto.

Schedule “C” – Claims to be ~~deleted~~Deleted and ~~expunged~~Expunged from ~~title~~Title to ~~The~~Real Property

	<u>Registration Number</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties To</u>
1.	AT5030525	2018/12/12	Charge	\$18,750,000	Trisura Guarantee Insurance Co.
2.	AT5175582 Remarks: AT5030525	2019/07/02	Notice		Trisura Guarantee Insurance Co.
3.	AT6405972	2023/08/24	Charge	\$12,700,000	Peoples Trust Company
4.	AT6405973 Remarks: AT6405972	2023/08/24	No Assgn Rent Gen		Peoples Trust Company
5.	AT6406080	2023/08/24	Postponement		Peoples Trust Company
6.	AT6407058	2023/08/25	Construction Lien	\$384,182	
7.	AT6407909	2023/08/28	Construction Lien	\$1,845,369	
8.	AT6436267	2023/10/06	Construction Lien	\$213,401	
9.	AT6439785 Remarks: AT6407058	2023/10/12	Certificate		
10.	AT6445432 Remarks: AT6407909	2023/10/23	Certificate		Vandyk-Backyard Queensview Limited Peoples Trust Company Trisura Guarantee Insurance Company
11.	AT6450100	2023/10/30	Construction Lien	\$1,142,744	
12.	AT6452324	2023/11/01	Construction Lien	\$702,998	
13.	AT6457807	2023/11/10	Construction Lien	\$16,952	
14.	AT6458231	2023/11/10	Construction Lien	\$2,282,408	
15.	AT6458352	2023/11/10	Construction Lien	\$658,839	
16.	AT6459779	2023/11/15	Construction Lien	\$127,350	
17.	AT6460827	2023/11/15	Construction Lien	\$122,337	
18.	AT6460839 Remarks: AT6457807	2023/11/15	Certificate		
19.	AT6464044	2023/11/22	Construction	\$1,130	

			<u>Lien</u>		
<u>20.</u>	<u>AT6469954</u> <u>Remarks:</u> <u>AT6458231</u>	<u>2023/11/30</u>	<u>Certificate</u> <u>Certificate of</u> <u>Action</u>		
<u>21.</u>	<u>AT6469955</u> <u>Remarks:</u> <u>AT6458352</u>	<u>2023/11/30</u>	<u>Certificate</u> <u>Certificate of</u> <u>Action</u>		
<u>22.</u>	<u>AT6471094</u>	<u>2023/12/01</u>	<u>Condo Lien/98</u>	<u>\$3,295</u>	
<u>23.</u>	<u>AT6470896</u>	<u>2023/12/01</u>	<u>Condo Lien/98</u>	<u>\$87</u>	
<u>24.</u>	<u>AT6470584</u>	<u>2023/12/01</u>	<u>Condo Lien/98</u>	<u>\$417</u>	
<u>25.</u>	<u>AT6472516</u>	<u>2023/12/04</u>	<u>Construction</u> <u>Lien</u>	<u>\$462,217</u>	
<u>26.</u>	<u>AT6480459</u> <u>Remarks:</u> <u>AT6459779</u>	<u>2023/12/14</u>	<u>Certificate</u>		
<u>27.</u>	<u>AT6481040</u> <u>Remarks:</u> <u>AT6452324</u>	<u>2023/12/15</u>	<u>Certificate</u>		
<u>28.</u>	<u>AT6481578</u>	<u>2023/12/15</u>	<u>Construction</u> <u>Lien</u>	<u>\$323,750</u>	
<u>29.</u>	<u>AT6495103</u> <u>Remarks:</u> <u>AT6481578</u>	<u>2024/01/12</u>	<u>Certificate</u>		
<u>30.</u>	<u>AT6496982</u> <u>Remarks:</u> <u>AT6450100</u>	<u>2024/01/16</u>	<u>Certificate</u>		
<u>31.</u>	<u>AT6508018</u> <u>Remarks:</u> <u>AT6472516</u>	<u>2024/02/02</u>	<u>Certificate</u>		
<u>32.</u>	<u>AT6510972</u> <u>Remarks:</u> <u>Appointing RSM</u> <u>Canada Limited</u> <u>as Receiver</u>	<u>2024/02/08</u>	<u>Apl Court</u> <u>Order</u>		<u>RSM Canada</u> <u>Limited</u>
<u>33.</u>	<u>AT6513372</u> <u>Remarks:</u> <u>AT6460827</u>	<u>2024/02/13</u>	<u>Certificate</u>		
<u>34.</u>	<u>24-0000442</u> <u>Creditor: TA</u> <u>Appliance Inc.</u>	<u>2024/01/26</u>	<u>Toronto</u>	<u>\$499,709.91 @</u> <u>7% interest</u> <u>starting</u> <u>2024/01/19</u> <u>\$4,876.56 @ 7%</u> <u>interest starting</u> <u>2021/01/19</u>	

**Schedule “D” – Permitted Encumbrances, ~~Easements and Restrictive Covenants~~
related Related to the Real Property
(unaffected by the Vesting Order)**

	<u>REG. NUM.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Parties From</u>	<u>Parties To</u>	<u>Cert/CHKD</u>
1.	EB160013	1955/10/24	Agreement		The Corporation of the Township of Etobicoke	C
2.	EB163037	1956/01/03	Certificate			C
3.	EB177163	1956/11/19	Agreement		The Corporation of the Township of Etobicoke	C
4.	EB181933	1957/04/04	Agreement		The Corporation of the Township of Etobicoke	C
5.	EB186721	1957/07/29	Bylaw			C
6.	EB188451	1957/09/06	Agreement		Township of Etobicoke	C
7.	AT5347788	2020/01/22	Notice		City of Toronto	C
8.	AT5367386	2020/02/19	Transfer of Easement	Vandyk-Backyard Queensview Limited	Rogers Communications Inc.	C
9.	AT5531340	2020/09/29	Notice	Vandyk – Backyard Humberside Limited Vandyk – Backyard Queensview Limited Vandyk-Backyard Kingsmill Limited	Rogers Communications	C
10.	AT5713886	2021/04/23	Certificate	Her Majesty the Queen in right of Ontario as represented by The Minister of Environment, Conservation and		C

				<u>Parks</u>		
<u>11.</u>	<u>TCP2983</u>	<u>2023/07/07</u>	<u>Standard Condo Plan</u>			<u>C</u>
<u>12.</u>	<u>AT6370359</u>	<u>2023/07/07</u>	<u>Condo Declaration</u>	<u>Vandyk – Backyard Queensview Limited</u>		<u>C</u>
<u>13.</u>	<u>AT6373564</u>	<u>2023/07/12</u>	<u>Condo Bylaw – No. 1</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>		<u>C</u>
<u>14.</u>	<u>AT6373568</u>	<u>2023/07/12</u>	<u>Condo Bylaw – No. 2</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>		<u>C</u>
<u>15.</u>	<u>AT6373569</u>	<u>2023/07/12</u>	<u>Condo Bylaw – No. 3</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>		<u>C</u>
<u>16.</u>	<u>AT6373573</u>	<u>2023/07/12</u>	<u>Condo Bylaw – No. 4</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>		<u>C</u>
<u>17.</u>	<u>AT6373575</u>	<u>2023/07/12</u>	<u>Condo Bylaw – No. 5</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>		<u>C</u>
<u>18.</u>	<u>AT6373578</u>	<u>2023/07/12</u>	<u>Condo Bylaw – No. 6</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>		<u>C</u>
<u>19.</u>	<u>AT6373584</u>	<u>2023/07/12</u>	<u>Notice</u>	<u>Vandyk – Backyard Queensview Limited</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>	<u>C</u>
<u>20.</u>	<u>AT6373595</u>	<u>2023/07/12</u>	<u>Notice</u>	<u>Vandyk – Backyard Queensview Limited</u>	<u>Toronto Standard Condominium Corporation No. 2983</u>	<u>C</u>
<u>21.</u>	<u>AT6373604</u>	<u>2023/07/12</u>	<u>Notice</u>	<u>Vandyk-Backyard Queensview Limited</u>	<u>Toronto Standard Condominium Corporation No.</u>	<u>C</u>

					<u>2983</u>	
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IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Approval and Vesting Order)**

THORNTON GROUT FINNIGAN LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Tel: (416) 304-1616 / Fax: (416) 304-1313

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Rudrakshi Chakrabarti (LSO# 86868U)

Email: rchakrabarti@tgf.ca

Lawyers for the Court-appointed Receiver, RSM Canada
Limited (now known as TDB Restructuring Limited)

TAB 5

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE) WEDNESDAY, THE 6TH
)
JUSTICE CAVANAGH) DAY OF MARCH, 2024

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

**Order
(LIEN CLAIMS PROCESS)**

THIS MOTION, made by RSM Canada Limited (now known as TDB Restructuring Limited) in its capacity as Court-appointed receiver (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers legally described in the Order appointing the Receiver granted by this Court on February 6, 2024 (the “**Unsold Units**”), including all proceeds thereof (together with the Unsold Units, the “**Property**”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) for an order requiring the delivery of information that would allow an assessment to be made as to the validity and priority of any construction lien claims that may be in priority to the First Mortgage (the “**Claims**”, and the holders thereof, the “**Lien Claimants**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report of the Receiver dated February 27, 2024 and the Appendices thereto, and on hearing the submissions of counsel for the Receiver and such other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service of ► sworn ►, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein is hereby validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the First Report.

PROVING CLAIMS

3. **THIS COURT ORDERS** that forthwith after the granting of this Order, the Receiver shall provide to each Lien Claimant who has registered a lien against the Unsold Units as of the date of the Appointment Order granted in these proceedings, or counsel for such Lien Claimants as set out in the Service List in these proceedings, the form of proof of lien claim attached as **Schedule "A"** hereto, for the purpose of requesting that each Lien Claimant prove its Claim.
4. **THIS COURT ORDERS** that the completed proof of lien claim and all supporting documents shall be provided by each Lien Claimant to the Receiver on or before April 1, 2024 (the "**Claims Bar Date**"). The Claims Bar Date may only be extended by the Receiver in its sole discretion, or by further Order of the Court.
5. **THIS COURT ORDERS** that any Lien Claimant who receives the proof of lien claim from the Receiver and does not deliver a completed proof of lien claim to the Receiver by the Claims Bar Date shall be forever barred from asserting such Claim against the Debtors, the Receiver, the Property and its proceeds, and any "owner" (as defined in the *Construction Act*) of the Unsold Units comprising the Property, such Claim shall be forever discharged and extinguished.
6. **THIS COURT ORDERS** that, following repayment of the First Mortgage from the Net Proceeds of sale, and subject at all times to the Lien Holdback being maintained by the Receiver,

the Receiver may determine the most efficient and cost-effective process for having the Claims determined in the form of a claims determination process to be presented to the Court at a future hearing for the Court's approval.

7. **THIS COURT ORDERS** that the Receiver shall notify all interested parties of any such proposed process for the determination of Claims.

8. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

SCHEDULE "A"
PROOF OF LIEN CLAIM

**FOR THE LIEN CLAIMS IN RESPECT OF
the Unsold Units constituting property of Vandyk-Backyard Queensview Limited and Vandyk-
Backyard Humberside Limited and located at 25 Neighbourhood Lane, Toronto, Ontario
(the "Property")**

A. PARTICULARS OF LIEN CLAIMANT

1. Full legal name of the lien claimant _____ (the "Lien Claimant")
 2. Full Mailing address of the Lien Claimant:
 3. Telephone Number:
- Email address:
- Attention (Contact Person):

B. PROOF OF LIEN CLAIM

I _____ (state name, position and title) of the City of _____ in the Province of _____, do solemnly declare and say as follows.

That I am the authorized representative of the Lien Claimant and have knowledge of all the circumstances connected with the Lien Claim.

That at the date hereof, _____ [*insert name of Owner or Contractor*] was, and still is, indebted to the Lien Claimant for materials and services supplied on the following contract or contracts in the amounts noted herein.

(specify the particular contract or contracts on which materials and services were supplied, the amounts owing and, in detail, the amount of material and services supplied to the improvement).

C. DOCUMENTS IN SUPPORT OF LIEN CLAIM

I attach the following documents in support of the Lien Claim:

- Copy of full, executed Contract, Subcontract or Purchase Order (as applicable)
- If applicable, a copy of the agreed Schedule of Values for the work to be performed under the Contract, Subcontract or Purchase Order
- Copies of all change orders, change directives, pending, unapproved or disputed changes and any other claims for a change in the price of the Contract, Subcontract or Purchase Order.
- Copies of all invoices submitted to the Owner or Contractor (as applicable), including all supporting documentation (i.e., Schedule of Values, CCDC9 Statutory Declarations, WSIB Certificates)
- Copies of all payments from the Owner or Contractor (as applicable)
- Summary reconciliation of all invoices issued under the Contract, Subcontract or Purchase Order and all payments received by the Owner or Contractor
- Evidence of the date of last supply under the Contract, Subcontract or Purchase Order
- Evidence of the nature of the unfinished work (if any) and its value in respect of the Contract, Subcontract or Purchase Order as of the date of last supply
- Notices and/or correspondence to and from the Lien Claimant and the Owner or Contractor relevant to the Lien Claim
- Any written notice(s) of lien provided by the Lien Claimant to anyone having a mortgage over the Property, with proof of service
- Copy of the Claim for Lien and the Statement of Claim, if applicable
- Any other documents the Lien Claimant considers relevant to the Lien Claim

D. FILING PROOF OF LIEN CLAIM

A Proof of Lien Claim must be received by the Receiver by 5:00 p.m. (Eastern Standard Time) on April 1, 2024 (the "Claims Bar Date"), or such later date as the Receiver may consent to in writing, or as ordered by the Court.

Failure to file your Proof of Lien Claim as directed by the relevant Claims Bar Date will, among other things, result in your lien claim being barred and you will be prohibited from making or enforcing a lien claim against the Property.

This Proof of Lien Claim must be delivered by electronic communication to:

TDB Advisory Limited
11 King St. W, Suite 700
Toronto, Ontario M5H 4C7

Attention: Jeff Berger,
email: jberger@tdbadvisory.ca
tel: 647-726-0496

Any such notice or other communication delivered by a lien claimant shall be deemed to be received upon actual receipt by the Receiver thereof prior to 5:00 p.m. (Eastern Standard Time) on a day that is not a holiday (as defined in the *Rules of Civil Procedure*) or, if delivered after 5:00 p.m. (Eastern Standard Time), on the next day that is not a holiday.

...

I acknowledge that the information contained in this declaration, and the documents included herein, are being provided to assist the Court-appointed Receiver of the Property (the "**Receiver**") in connection with its review and evaluation of the Lien Claims and pursuant to paragraph 6 of the Receivership Order dated February 6, 2024. I further acknowledge that the provision of the information and documentation provided herein does not constitute an acknowledgement by the Receiver of the accuracy of such information or the admissibility such documentation.

I make this declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Dated at the [*City/Town*] of _____ in the Province of _____ this ____ day of _____, 2024.

Name

Title

Signature

(A Commissioner for Oaths, Notary Public, Justice of the Peace, etc.)

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Lien Claims Process)**

THORNTON GROUT FINNIGAN LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Tel: (416) 304-1616 / Fax: (416) 304-1313

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Rudrakshi Chakrabarti (LSO# 86868U)

Email: rchakrabarti@tgf.ca

Lawyers for the Court-appointed Receiver, RSM Canada
Limited (now known as TDB Restructuring Limited)

TAB 6

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE) WEDNESDAY, THE 6TH
)
JUSTICE CAVANAGH) DAY OF MARCH, 2024

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

**Order
(Ancillary Relief)**

THIS MOTION, made by RSM Canada Limited (now known as TDB Restructuring Limited) in its capacity as Court-appointed receiver (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers legally described in the Order appointing the Receiver granted by this Court on February 6, 2024 (the “**Appointment Order**”), including all proceeds thereof (the “**Property**”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) for an order among other things: (i) approving the First Report of the Receiver dated February 27, 2024 (the “**First Report**”) and the Receiver’s activities set out therein; (ii) ratifying the Receiver’s termination of the agreement of purchase and sale (the “**Unit 211 Agreement**”) between Vandyk-Backyard Queensview Limited and Oluwaseun Olowolafe dated November 28, 2018, as amended; (iii) establishing the maximum priority that the lien claims, if determined to be valid, may have as against the first ranking

charge/mortgage against the Property; and (iv) approving the distribution of the aggregate net proceeds (the "**Net Proceeds**") set out herein from the sale of Unit 302, subject to the Receiver first retaining and holding 15% of the Net Proceeds in trust for any lien claims that may subsequently be determined to be valid and in priority to the first mortgage registered on title to the Property, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report and the Appendices thereto, and on hearing the submissions of counsel for the Receiver and such other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service of ► sworn ► , filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein is hereby validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the First Report.

APPROVAL OF FIRST REPORT AND RECEIVER'S ACTIVITIES

3. **THIS COURT ORDERS** that the First Report and the Receiver's activities set out therein are hereby approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize in any way such approval.

TERMINATION OF UNIT 211 AGREEMENT

4. **THIS COURT ORDERS** that the Receiver's termination of the Unit 211 Agreement is hereby approved and ratified, and any rights of the parties under the Unit 211 Agreement do not constitute any continuing obligations against the Property or against any of the parties under the Unit 211 Agreement.

HOLDBACK OF NET PROCEEDS OF SALE

5. **THIS COURT ORDERS** that the maximum aggregate entitlement of potential lien claims against the Property that could assert priority to the first-ranking Mortgage is \$1,970,017.11 (being the maximum statutory holdback, as determined by the Receiver).

6. **THIS COURT ORDERS** that the Receiver shall hold back 15% of the Net Proceeds received by the Receiver from the sale any of the Unsold Units (the “**Holdback Requirement**”) in trust for the benefit of lien claimants, pending resolution or determination of the entitlement of any lien claimants or further Order of this Court.

DISTRIBUTION

7. **THIS COURT ORDERS** that, subject to the Holdback Requirement and any amounts that may be required by the Receiver to fund the receivership proceeding, the Receiver is hereby authorized and directed to distribute the Net Proceeds to the Applicants, in reduction of the first-ranking Charge/Mortgage registered against the Property.

GENERAL

8. **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.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Ancillary Relief)**

THORNTON GROUT FINNIGAN LLP
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Lawyers for the Court-appointed Receiver, RSM Canada
Limited (now known as TDB Restructuring Limited)

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

Court File No. CV-24-00713783-00CL

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

Proceedings commenced at Toronto, Ontario

**MOTION RECORD
(Returnable March 6, 2024 at 10:00 a.m.)**

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Lawyers for the Court-appointed Receiver, RSM Canada
Limited operating as TDB Restructuring Limited