

Court File No. CV-19-00631363-00CL

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

BETWEEN:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

**APPLICATION RECORD  
(returnable December 6, 2019)**

November 22, 2019

**CASSELS BROCK & BLACKWELL LLP**  
Barristers & Solicitors  
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Lawyers for the applicant

TO: 168 Old Kennedy Inc.  
505 Highway 7 East  
Penthouse  
Thornhill, Ontario  
L3T 7T1

Respondent

AND TO: Sammy Wing Fu Hui  
505 Highway 7 East  
Penthouse  
Thornhill, Ontario  
L3T 7T1

Guarantor

AND TO: Shao Jun Xiao  
505 Highway 7 East  
Penthouse  
Thornhill, Ontario  
L3T 7T1

Guarantor

AND TO: Alai Developments Inc. (formerly 2080552 Ontario Inc.)  
18 Alai Circle  
Markham, Ontario  
L3R 1E2

Second mortgagee

AND TO: 10114812 Canada Corporation  
37 Cranleigh Drive  
Markham, Ontario  
L3R 8M2

Third mortgagee

AND TO: Olympia Trust Company  
PO Box 2581, Stn Central  
Calgary, Alberta  
T2P 1C8

Party with security registration

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**TAB 1**

Court File No.  
CY-19-00631363-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:



VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

NOTICE OF APPLICATION  
(Application for Appointment of Receiver)

TO THE RESPONDENT

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

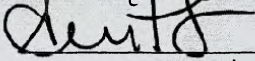
THIS APPLICATION will come on for a hearing on December 6, 2019, at ~~10:00~~<sup>9:30</sup> a.m., at 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7

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

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.** If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Anita Stanojevic  
Registrar, Superior Court of Justice

Date: November 20, 2019 Issued by:  \_\_\_\_\_  
Local Registrar

Address of court office: 330 University Avenue, 9<sup>th</sup> Floor  
Toronto, ON ~~48~~.  
M5G 1R7

TO: 168 Old Kennedy Inc.  
505 Highway 7 East  
Penthouse  
Thornhill, Ontario  
L3T 7T1

Respondent

AND TO: Sammy Wing Fu Hui  
505 Highway 7 East  
Penthouse  
Thornhill, Ontario  
L3T 7T1

Guarantor

AND TO: Shao Jun Xiao  
505 Highway 7 East  
Penthouse  
Thornhill, Ontario  
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Guarantor

AND TO: Alai Developments Inc. (formerly 2080552 Ontario Inc.)  
18 Alai Circle  
Markham, Ontario  
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Second mortgagee

AND TO: 10114812 Canada Corporation  
37 Cranleigh Drive  
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L3R 8M2

Third mortgagee

AND TO: Olympia Trust Company  
PO Box 2581, Stn Central  
Calgary, Alberta  
T2P 1C8

Party with security registration



## APPLICATION

1. The applicant, Vector Financial Services Limited ("**Vector**"), makes an application for:
  - (a) If necessary, abridging the time for service and filing of this notice of application and application record or, in the alternative, dispensing with the same;
  - (b) an order ("**Order**") substantially in the form attached hereto as **Schedule "A"**, appointing RSM Canada Limited ("**RSM Canada**") as receiver of the real property owned by 168 Old Kennedy Inc. ("**168**") and municipally known as 168 Old Kennedy Road, Markham, Ontario ("**Property**"); and
  - (c) such further and other relief as counsel may advise and this Honourable Court may permit.
  
2. The grounds for the application are:

### **Background**

- (a) Vector is a private lender and mortgage broker in the business of originating and administering mortgage loans in Ontario.
- (b) The respondent, 168, is a privately held corporation incorporated under the *Business Corporations Act* (Ontario) RSO 1990, c. B.16. 168 is a real estate holding company with the primary purpose of developing the Property.
- (c) Pursuant to the terms of a written loan proposal agreement dated April 12, 2017 and a commitment letter dated May 7, 2017 Vector advanced a loan of \$5,940,000 to 168 ("**Loan**").
- (d) The Loan was advanced on May 12, 2017.

- (e) As security for the Loan, Vector obtained, among other things, (i) a first-ranking mortgage against the Property ("**Mortgage**"); (ii) a general assignment of rents; and (iii) a general security agreement ("**GSA**"). The Property is the sole asset of 168 and consists of approximately 1.46 acres of vacant land.
  
- (f) A recent search of title of the Property discloses the following registrations:
  - (i) the Mortgage in favour of Vector;
  - (ii) Notice of general assignment of rents in favour of Vector;
  - (iii) A second charge in favour of 2090552 Ontario Inc.; and
  - (iv) A third charge in favour of 10114812 Canada Corporation.
  
- (g) A search conducted against 168 under the personal property registration system discloses two registrations in favour of Vector, one subsequent registration in favour of Olympia Trust Company, and no other registrations or other secured parties.

**Maturity, Default**

- (h) The Mortgage matured on June 10, 2019 at which point all amounts owing under the Mortgage became due and payable.
  
- (i) Thereafter, Vector made multiple attempts to accommodate 168 by means of a refinancing. This did not occur.
  
- (j) Vector is not prepared to delay further and is not prepared to extend the Mortgage loan beyond its maturity date, which is now past.

- (k) 168 is in default under the Mortgage as it has failed to repay the Loan and certain other amounts due following the maturity date.
- (l) Vector issued a notice of intention to enforce security on September 6, 2019.
- (m) Vector issued a statement of claim against 168 and the guarantors under the Mortgage on October 2, 2019 ("**Claim**").
- (n) Vector issued a notice of sale under mortgage to 168 on October 7, 2019. The redemption period under the notice of sale expired on November 15, 2019.
- (o) As of the date of issuance of this application 168 has not delivered a statement of defence to the Claim.
- (p) In the circumstances of this application, Vector has instructed its counsel to promptly discontinue the Claim.
- (q) As at November 15, 2018, the amount owing under the Mortgage, exclusive of legal fees, is \$6,214,096.36.

#### **Receivership**

- (r) The GSA and Schedule "A", "Additional Provisions" to the Mortgage contemplate the appointment of a receiver in the event the mortgage is in default. Specifically, pursuant to term 27 of Schedule "A", "Additional Provisions" to the Mortgage:

**Receiver** Notwithstanding anything herein contained... when there shall be an Event of Default, the Chargee may... by instrument in writing appoint any person... to be a receiver... of the Property.

- (s) Vector considers it reasonable and prudent to pursue the enforcement of its security by seeking a court appointed receiver.

- (t) Appointing a receiver is within Vector's rights under its security.
- (u) It is in the best interest of all parties that a receiver be appointed to realize on the Property in a manner that is efficient, open and transparent. The proposed receiver, RSM Canada, would be required to seek court approval for the sale of the Property on notice to all interested parties.
- (v) It is just and convenient in the circumstances to appoint a receiver over the Property with the power to market and sell the Property for the benefit of Vector and any other creditors.
- (w) RSM Canada is prepared to act as receiver if so appointed.
- (x) Section 101 of the *Courts of Justice Act*, R.S.O., c. C.43, as amended.
- (y) Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
- (z) Rules 1.04, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*, RRO 1990, c. C.43.
- (aa) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The affidavit of Noah Mintz sworn November 15, 2019;
- (b) The consent of RSM Canada to act as receiver; and
- (c) Such other materials as counsel may advise and this Honourable Court may permit.

November 20, 2019

**CASSELS BROCK & BLACKWELL LLP**  
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Lawyers for the Applicant

**TAB A**

**SCHEDULE "A"**  
**FORM OF ORDER APPOINTING RECEIVER**

Attached.

Court File No.

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

THE HONOURABLE ) WEEKDAY, THE #  
 )  
JUSTICE ) DAY OF MONTH, 20YR  
 )

**VECTOR FINANCIAL SERVICES LIMITED**

Applicant

- and -

**168 OLD KENNEDY INC.**

Respondent

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

**ORDER**  
**(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, of real property municipally known as 168 Old Kennedy Road, Markham, Ontario and legally described as set out on Schedule "A" hereto (the "Property") owned by 168 Old Kennedy Inc. (the "Debtor"), was heard this day at 330 University Avenue, Toronto, Ontario.



ON READING the affidavit of Noah Mintz sworn November \_\_, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties listed on the Counsel Slip, no one appearing for any other party although duly served as appears from the affidavit of service of Jeremy Bornstein sworn November \_\_, 2019 and on reading the consent of RSM Canada Limited to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of 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 exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, real estate brokers, 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;

- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor with respect to the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to settle, extend or compromise any indebtedness owing to the Debtor with respect to the Property;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (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 the Property, including advertising and soliciting offers in respect of the Property 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 with the approval of this Court, and notice under section 31 of the Ontario *Mortgages Act* shall not be required;
- (j) to apply for any vesting order or other orders necessary to convey the Property to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting the Property;

- (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 the Property;
- (m) to apply for any permits, licences, approvals or permissions with respect to the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (n) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; and
- (o) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

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

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

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

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

#### NO PROCEEDINGS AGAINST THE RECEIVER

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

**NO PROCEEDINGS AGAINST THE PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of 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**

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

**NO INTERFERENCE WITH THE RECEIVER**

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

**CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor in connection with or 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, insurance, transportation services, utility or other services to the Debtor in connection with or 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.

#### **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of the Property and the collection of any accounts receivable in whole or in part in connection with or relating to the Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

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

#### **PIPEDA**

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

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

**NO POSSESSION BY THE RECEIVER**

15. THIS COURT ORDERS that the Receiver shall not go into possession of the Property.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of 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 the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

**LIMITATION ON THE RECEIVER'S LIABILITY**

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

## **RECEIVER'S ACCOUNTS**

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

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

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

## **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise,



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

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

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

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

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [rsmcanada.com/168-old-kennedy-road](http://rsmcanada.com/168-old-kennedy-road).

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as

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

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

#### **GENERAL**

28. 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.

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

30. 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.

31. 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.

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

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

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## SCHEDULE "A"

### LEGAL DESCRIPTION OF THE PROPERTY

The lands and premises municipally known as 168 Old Kennedy Road, Markham, Ontario and legally described as:

**PIN 02953-0145 (LT):** BLOCK 2, PLAN 65M4289 T/W EASE OVER PT E1/2 LT 2, CON 5, PTS 4, 6, 7 & 8, PL 65R30487 IN FAVOUR OF PT BLK 2, PL 65M4289 LYING WITHIN THE LIMITS OF PT 1, PL 65R30487, AS IN MA91760; T/W EASE OVER PT E1/2 LT 2, CON 5, PTS 2, 4, 7 & 8, PL 65R30487 IN FAVOUR OF PT BLK 2, PL 65M4289 LYING WITHIN LIMITS OF PT 5, PL 65R30487, AS IN MA110959; T/W EASE OVER PT E1/2 LT 2, ONC 5, PTS 2, 6, 7 & 8 IN FAVOUR OF PT BLK 1, PL 65M4289 LYING WITHIN LIMITS OF PT 3, PL 65R30487, AS IN R694330; S/T EASE AS IN YR1610522; S/T EASE IN GROSS AS IN YR1684881;; SUBJECT TO AN EASEMENT IN GROSS AS IN YR1749103; SUBJECT TO AN EASEMENT IN GROSS AS IN YR1778673; SUBJECT TO AN EASEMENT AS IN YR1905638; SUBJECT TO AN EASEMENT OVER PTS 2, 4 & 6, 65R33280 IN FAVOUR OF BLK 3, PL 65M4289 AS IN YR1936318; CITY OF MARKHAM

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver and manager (the "Receiver") of the real property municipally known as 168 Old Kennedy Road, Markham, Ontario owned by 168 Old Kennedy Inc. (the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an application having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

RSM CANADA LIMITED, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

and

168 OLD KENNEDY INC.

Respondent

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

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jbornstein@casselsbrock.com

Lawyers for the Applicant

VECTOR FINANCIAL SERVICES LIMITED

Applicant

and

168 OLD KENNEDY INC.

Respondent

Court File No. **CY-19-00631 363-0004**

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

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jbornstein@casselsbrock.com

Lawyers for the Applicant



**TAB 2**

Court File No.

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

B E T W E E N:

**VECTOR FINANCIAL SERVICES LIMITED**

Applicant

- and -

**168 OLD KENNEDY INC.**

Respondent

**AFFIDAVIT OF NOAH MINTZ  
(sworn November 20, 2019)**

I, Noah Mintz, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Managing Director, with Vector Financial Services Inc. ("**Vector**"), the applicant in this proceeding. I have personal knowledge of the matters to which I hereinafter depose.

Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

**I. PURPOSE**

2. I swear this affidavit in support of an application brought by Vector to appoint RSM Canada Limited ("**RSM Canada**") as receiver over the real property owned by 168 Old Kennedy Inc. ("**168**"), municipally known as 168 Old Kennedy Road, Markham, Ontario ("**Property**").

3. Vector is seeking to appoint RSM Canada as receiver because, among other things, 168 has and continues to fail to pay the principal amount outstanding and monthly installments due under the Loan Proposal and the 2017 Commitment Letter since the Loan matured on June 10, 2019 (as such capitalized terms are defined below).

4. Vector has a right to the appointment of a receiver pursuant to the terms of its security. There are subsequent registered interests on title, which lenders have advanced significant sums of money.

5. It is in the best interest of all parties that a receiver be appointed to realize on the Property (as defined below) in a manner that is efficient, open, and transparent. The proposed receiver, RSM Canada, would be required to seek court approval for the sale of the Property on notice to all interested parties.

## II. BACKGROUND

6. Vector is a private lender and mortgage broker in the business of originating and administering mortgage loans in Ontario.

7. The respondent, 168, is a privately held corporation incorporated under the *Business Corporations Act* (Ontario) RSO 1990, c. B.16. 168 is a real estate holding company with the primary purpose of developing the Property.

8. Pursuant to the terms of a written loan proposal agreement dated April 12, 2017 ("**Loan Proposal**") and a commitment letter dated May 3, 2017 ("**2017 Commitment Letter**"), Vector advanced a loan of \$5,940,000 to 168 ("**Loan**"). Copies of the Loan Proposal and 2017 Commitment Letter are attached hereto as **Exhibits "A" and "B"**.

9. As security for the Loan, Vector was granted, among other things, (i) a first-ranking mortgage against the Property ("**Mortgage**"); (ii) a general assignment of rents ("**GAR**"); (iii) a general security agreement ("**GSA**"); (iv) a covenant and postponement of claim executed by the two principals of 168 ("**Postponement**"); and (v) an assignment of insurance proceeds ("**Assignment of Insurance**"). Copies of the Mortgage, GAR, GSA, Postponement and Assignment of Insurance are attached hereto as **Exhibits "C", "D", "E", "F" and "G"**, respectively.

10. The Property is owned by 168 and consists of approximately 1.46 acres of vacant land located at Steeles Avenue and Kennedy Road in the Milliken neighbourhood.

11. The maturity date of the Mortgage is June 10, 2019.

12. The interest rate on the Loan is the greater of 8.00% per annum, or the Canadian Imperial Bank of Commerce ("**CIBC**") prime rate from time to time plus 5.00% per annum.

13. In the month prior to the maturity date, the interest rate increased to the greater of 12.00% per annum or the CIBC prime rate from time to time plus 9.00% per annum ("**Overholding Rate**") thereafter. Failure to repay the principal amount of the Loan due and owing on the maturity date constitutes a default regardless of whether or not the borrower makes interest payments at the Overholding Rate.

14. Interest on the Loan is calculated daily, compounded monthly and payable monthly before maturity, and both before and after default.

15. Less than three months after the Mortgage was granted 168 breached the Loan Proposal, the 2017 Commitment Letter and the Mortgage by obtaining third mortgage financing from 10114812 Canada Corporation ("**101**") without Vector's consent ("**2017 Default**").

16. More specifically, in or about November 2017 Vector learned about the Third Mortgage through a routine title check on the Property. The Third Mortgage was registered on July 28, 2017 in the amount of \$3,500,000 ("**Third Mortgage**").

17. Thereafter, Vector took steps to address the 2017 Default, including:

- a. Vector notified 168 that Vector was aware of the default; and
- b. Vector issued a demand letter and notice of intention to enforce security dated December 13, 2017 ("**2017 Demand**"). A copy of the 2017 Demand is attached hereto as **Exhibit "H"**.

18. A Subordination and Standstill Agreement was entered between 101, Vector and 168 on December 20, 2017 where 101 agreed to subordinate and postpone to Vector and standstill from commencing enforcing proceedings in connection with the Third Mortgage ("**Third Mortgagee Postponement**"). A copy of the Third Mortgagee Postponement is attached hereto as **Exhibit "I"**.

19. At the same time, 168 provided an undertaking to Vector whereby 168 agreed to pay Vector an aggregate of \$150,000 in consideration for Vector agreeing to forbear in commencing enforcement proceedings relating to the 2017 Default ("**Undertaking**"). A copy of the Undertaking is attached hereto as **Exhibit "J"**.

20. On May 7, 2019, one month in advance of the maturity date, 168 and Vector entered into a commitment letter for a new loan that would repay the Mortgage and provide approximately \$860,000 of additional funding to 168 ("**2019 Commitment Letter**"). The 2019 Commitment Letter was intended to close on the maturity date of the Loan, which was June 10, 2019. A copy of the 2019 Commitment Letter is attached hereto as **Exhibit "K"**.

21. The 2019 Commitment Letter was conditional upon, among other things, the second mortgagee entering into a subordination and standstill agreement.
22. The second mortgagee on title would not agree to postpone to Vector and as a result the conditions of the 2019 Commitment Letter were not met and the financing was not completed.
23. 168 failed to pay all amounts outstanding under the Mortgage when they became due on the June 10, 2019 maturity date.
24. While 168 was attempting to negotiate a subordination and standstill agreement with the second mortgagee, 168 agreed to make interest payments under the Mortgage at the Overholding Rate. 168 made four such payments with the last payment being made on September 18, 2019.
25. 168 has not made any other payments since the Mortgage matured.
26. In early September 2019, in an effort to remedy matters, Vector offered an amendment to the 2019 Commitment Letter ("**2019 Commitment Amendment**"). The amendment, which was dated September 3, 2019, proposed \$6,500,000 be advanced to 168 and provided that a portion of the funds be used to discharge the second mortgage. A copy of the 2019 Commitment Amendment is attached hereto as **Exhibit "L"**.
27. The terms of the 2019 Commitment Amendment were not acceptable to 168 and the financing did not proceed.
28. Subsequently, Vector collaborated with the second mortgagee and proposed alternative terms for a new loan by e-mail in late September 2019 ("**Late September 2019 Proposal**"). The terms of the proposal included, among other things, a \$6,300,000 loan to be used to repay the Mortgage and 50% of the second mortgage. These terms were also not acceptable to 168.

A copy of an e-mail outlining the Late September 2019 Proposal is attached hereto as **Exhibit “M”**.

29. Vector has cooperated with 168 to attempt to reach an agreement to refinance or pay out the Mortgage and thereby avoid enforcement proceedings. As indicated, this includes offering the terms of the 2019 Commitment Letter, the 2019 Commitment Amendment, and the Late September 2019 Proposal.

30. A search of title against the Property discloses the following registrations:

- (a) the Mortgage in favour of Vector;
- (b) Notice of general assignment of rents in favour of Vector;
- (c) A second charge in favour of 2090552 Ontario Inc. registered on May 15, 2017 in the amount of \$1,020,038.15; and
- (d) A third charge in favour of 10114812 Canada Corporation registered on July 28, 2017 in the amount of \$3,500,000.

A copy of the title search is attached hereto as **Exhibit “N”**.

31. I have recently been in contact with the principal of the second mortgagee, Mr. Alawn Lai, who advised me that the second mortgage has also matured and is in default. Mr. Lai indicated that the second mortgagee was considering matters and may take enforcement action.

32. Based on my discussions with Mr. A. Sivakumaran, the primary representative of 168 that Vector has dealt with, I believe the third mortgage is a non-arm's length mortgage taken by

certain investors in the 168 development. I do not know the other circumstances of the third mortgage and whether it is in good standing or subject to enforcement proceedings.

33. I am advised by Cassels Brock & Blackwell LLP that as of November 15, 2019 there are tax arrears owing on the Property in the amount of \$14,410.13.

34. A search conducted against 168 under the personal property registration system discloses two registrations in favour of Vector, a subsequent registration in favour of Olympia Trust Company, and no other registrations or other secured parties. A summary and a copy of the personal property registration system search results is attached hereto as **Exhibit "O"**.

### III. MATURITY, DEFAULT

35. The Loan matured on June 10, 2019 at which point the entire \$5,940,000 principal balance became immediately due and owing. 168 has failed to pay this debt and certain other amounts properly due and owing under the mortgage.

36. The amount outstanding under the Mortgage as at October 1, 2019 was as follows:

Principal balance	\$5,940,000.00
Interest to October 1, 2019	46,637.80
Interest on late Payment	181.95
Over Hold Fee	59,400.00
Outstanding Earnest Fee (from the 2019 Commitment)	50,000.00
Reimbursement for Expenses Paid	4,847.50
Discharge Fee	500.00
Bank Processing Fee	500.00
Bank Wire Fee	15.00
Annual Review Fee (incl. HST) – 2018 & 2019	1,130.00
Regulatory Fee (incl. HST)	847.50
Statement Fee (incl. HST)	791.00
<b>Amount</b>	<b>\$6,104,850.75</b>



37. Vector issued a notice of intention to enforce security on September 6, 2019 (“**NITE**”). A copy of the NITE is attached hereto as **Exhibit “P”**.

38. Vector issued a statement of claim against 168 and the guarantors under the Mortgage on October 2, 2019 (“**Claim**”). A copy of the issued Claim is attached hereto as **Exhibit “Q”**.

39. Vector issued a notice of sale under mortgage to 168 on October 7, 2019. The redemption period under the notice of sale expired on November 15, 2019 (“**Notice of Sale**”). A copy of the Notice of Sale is attached hereto as **Exhibit “R”**.

40. As of the date of issuance of this application 168 has not delivered a statement of defence to the Claim.

41. In the circumstances of this application, Vector has instructed its counsel to promptly discontinue the Claim.

42. As at November 15, 2018, the amount owing under the Mortgage, exclusive of legal fees, is \$6,214,096.36.

#### **IV. RECEIVERSHIP**

43. The GSA attached as Exhibit “E” and Schedule “A”, “Additional Provisions” to the Mortgage attached as Exhibit “B” contemplate the appointment of a receiver in the event the mortgage is in default. Specifically, pursuant to term 27 of Schedule “A”, “Additional Provisions” to the Mortgage:

**Receiver** Notwithstanding anything herein contained... when there shall be an Event of Default, the Chargee may... by instrument in writing appoint any person... to be a receiver... of the Property.

44. It is just and convenient in the circumstances to appoint a receiver over the Property with the power to market and sell the Property for the benefit of Vector and any other creditors.

45. RSM Canada is prepared to act as receiver if so appointed. A copy of RSM Canada's consent to act as receiver is attached hereto as **Exhibit "S"**.

**IV. CONCLUSION**

46. I swear this affidavit in support of the application brought by Vector to appoint RSM Canada as receiver over the Property.

**SWORN/AFFIRMED BEFORE ME**

at the City of Toronto  
in the Province of Ontario  
this 20th day of November, 2019

Aaron Fretz Cressman, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires May 10, 2021.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

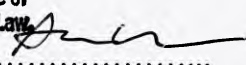


\_\_\_\_\_  
**NOAH MINTZ**

# TAB A

This is **Exhibit "A"** referred to in the affidavit of **Noah Mintz** sworn before me in the City of Toronto, in the Province of Ontario, Canada this 20th day of November, 2019.

Aaron Fretz Cressman, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law,  
Expires May 10, 2021.



.....  
A Commissioner For Taking Affidavits



**LOAN PROPOSAL**

April 10, 2017

168 Old Kennedy Inc.  
c/o Intrend Mortgage Inc.  
205-590 Alden Road  
Markham, Ontario L3R 8N2

**Attention: Andre Dellino & Sammy Wing Fu Hui**

Dear Sirs,

**Re: First (1st) Mortgage Financing (the "Loan") on 168-178 Old Kennedy Road, Markham, Ontario (the "Property"). Our Ref: 17-18**

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This Loan Proposal ("**Proposal**") will serve to express interest on behalf of the Lender, subject to receipt and satisfactory review by the Lender of all deliveries and information required herein including site visit, to arrange **first (1<sup>st</sup>) mortgage** financing for the Property, on the following terms. This Proposal is not to be construed as a Commitment Letter ("**Commitment**"). Upon delivery by the Lender of the Commitment, this Loan Proposal shall be binding on the parties hereto.

1. **BORROWER:**

168 Old Kennedy Inc.

2. **JOINT & SEVERAL GUARANTORS:**

The joint and several unlimited guarantees of Sammy Wing Fu Hui and Shao Jun Xiao shall be provided for the full Loan Amount outstanding.

3. **SYNDICATOR & BROKERAGE:**

Vector Financial Services Limited, a Licensed Brokerage, License #10160 through Vector Financial Services Limited Administrator License #11205, hereinafter referred to as the Brokerage.

4. **LENDER:**

Vector Financial Services Limited (Vector)

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5. **LOAN AMOUNT:**

The Loan amount will be **Five Million Nine Hundred and Forty Thousand Dollars (\$5,940,000)**, advanced as a **first (1<sup>st</sup>)** mortgage secured by the security described in Item 14, herein, owned by the Borrower and pursuant to the Advance provisions in Section 13, herein.

6. **PURPOSE & EXIT:**

- a) The Loan will be used to facilitate the acquisition of the Property.
- b) The proposed development when rezoned will include the construction of 46 back-to-back townhouses with a Gross Floor Area of approximately 73,600 square feet (the “**Project**”). The Borrower represents that the current zoning classification allows for 36 mixed-use residential with ground floor commercial.

c) **Use of Funds:**

<b>Use of Funds</b>	<b>Total</b>
Land Acquisition	\$8,800,000
Lender Fee	118,800
Broker Fee	30,000
LTT (Est)	171,200
Legals & Closing Costs (Est)	20,000
<b>Total Costs</b>	<b>\$9,140,000</b>
<b>Source of Funds:</b>	
Vector Loan	\$5,940,000
Borrower’s Equity	3,200,000
<b>Total Funds</b>	<b>\$9,140,000</b>

- d) The Loan shall be repaid out of the sale or refinancing of the Property.

7. **TERM & MATURITY:**

**25 Months** from the **Interest Adjustment Date (“IAD”)**, being the **10<sup>th</sup>** day of the month following the **Advance Date**.

The Loan shall mature **June 10, 2017**.

8. **AMORTIZATION:**

NIL, Interest only

*R WS*

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9. **PAYMENT DATE:**

Due monthly, on the 10<sup>th</sup> day of each month or, the following business day if the 10<sup>th</sup> falls on a weekend or holiday, (the “**Interest Payment Date**”) not in advance, with interest being calculated daily, and compounded monthly on each Payment Date on the total of the principal balance plus accrued interest, if any outstanding on the Payment Date.

10. **LOAN FEES AND DISBURSEMENTS:**

The Lender’s Fee shall total **\$118,800** payable as follows:

- a) **\$25,000 (“Earnest Fee”)** payable upon acceptance of this Proposal, to pay costs incurred by the by the Lender, if any, with the balance to be credited to the Lender’s Fee on the terms and conditions set out below. (The Lender acknowledges receiving a \$5,000 Earnest Fee deposit).
- b) A further **\$93,800 (“Commitment Fee”)**, deemed earned after issuance by the Lender of a Commitment Letter (“**Commitment**”), which amount shall be deducted from and payable at the time of the Initial Advance.

In addition to the above-mentioned fees, the Borrower confirms that **\$30,000** shall be deducted from the Initial Advance and paid to Intrend Mortgage Inc., a brokerage. Although the fee is being advanced under the Loan, the Borrower shall be responsible for any brokerage or finder’s fees, commissions or other compensation payable to any person not affiliated with or contracted by the Lender in connection with this transaction and shall indemnify and hold the Lender and all related entities harmless in respect of same.

- c) The Borrower is directed to “**Schedule A**”, hereto, which lists typical incidental fees that the Lender may charge from time to time during the term of the herein Loan.
- d) Whether or not the transaction contemplated herein shall be completed, the Borrower agrees to pay the reasonable legal fees and disbursements of the Lender’s Counsel: **Cassels Brock LLP** for the Security and all other documents resulting here from. Legal fees are estimated to be **\$15,000** not including disbursements and HST.

If the Lender issues a Commitment on substantially the same terms and conditions as the Proposal, and the Borrower elects not to draw down on the Loan, then the Earnest Fee shall be retained as consideration for the time, effort, and expense incurred by the Lender, Lender’s employees and officers involved in reviewing the material, documents, financial information, and inspections necessary to prepare an application for approval from the Lender.

If the initial information and representations submitted by the Borrower are deemed by the Lender, after review, to be materially different than originally represented, then the Earnest Fee shall be retained as consideration for the time, effort, and expense incurred by the Lender, Lender employees and officers involved in reviewing the material, documents, financial information, and

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inspections necessary to prepare an application for approval from the Lender, even in the event the Lender declines to issue a Commitment.

If a Commitment is not issued through no fault of the Borrower then the Earnest Fee shall be returned to the Borrower net of disbursements, if any, the Lender has incurred for legal fees, third party peer review, and any other reasonable disbursements incurred by the Lender in reviewing the Loan.

In the event the Lender issues a Commitment but funding does not occur through no fault of the Lender, the balance of the Commitment Fee in clause b) above shall be deemed earned and payable by the Borrower and/or Guarantors.

11. **INTEREST:**

For the initial 24 months of the term: Floating at the greater of 8.00% per annum, or the Canadian Imperial Bank of Commerce (“CIBC”) Posted Bank Prime Rate of Interest from time to time plus 5% Per Annum.

Commencing on the first day of the 25<sup>th</sup> month (final) of the term; Floating at the greater of 12% per annum, or the CIBC Posted Bank Prime Rate of Interest from time to time plus 9% Per Annum (the “Overholding Rate”).

12. **PREPAYMENT:**

When not in default, the Loan shall be open for full prepayment, on any date six (6) months following the LAD on payment of 1 month’s interest as a bonus, with interest due and payable on a per diem basis. If the Borrower elects to exercise this clause to prepay the Loan prior to the scheduled maturity date, this must be so indicated in writing and a date chosen (the “New Maturity Date”). If the Borrower fails pay off the Loan on the New Maturity Date, then the Loan shall be due and payable immediately and the Interest Rate charged thereon shall be set at the Overholding Rate, and 3 months’ interest shall become due pursuant to the Mortgages Act.

13. **ADVANCES:**

The Loan shall be funded as follows:

- a) The Loan will be advanced as one advance of \$5,940,000 (the “Advance”) and paid out on May 8, 2017 (the “Advance Date”) (subject to change) as follows:
  - (i) \$93,800 towards the Commitment Fee;
  - (ii) The balance of \$5,846,200 will be deposited with the Lender’s solicitor and forwarded to the Borrower’s solicitor and will be used to pay for land acquisition and closing costs, including broker fees and legal costs, pursuant to the provisions set up herein.

*R* *Nd*



14. **SECURITY:**

The Loan will be secured by the following, each to be, in form and substance, satisfactory to the Lender and its solicitors. It is understood that all security will be in the **first** position. Without limiting the generality of the foregoing, the **Security** will include:

- a) **1st Mortgage** for the full amount of the Loan, fees and interest in the amount of **\$5,940,000**, over the following “**Security**”:

<b>Municipal Address</b>	<b>Legal Description &amp; Zoning</b>
168-178 Old Kennedy Road, Markham, Ontario	Legal Description TBD

- b) **General security agreement** registered in Ontario under Personal Property Security Act (“**PPSA**”), providing a **first (1<sup>st</sup>) charge** over all accounts receivable, inventory, chattels and equipment other than leased assets as detailed in the Borrower’s financial statements on or about the property described in Item 14a), above. Schedule to include financial covenants as described above.
- c) **Postponement of all loans** including the Borrower’s Shareholder Loans, if any. In addition, no distributions of any kind (including but not limited to dividends, loans, interest on shareholders’ loans if any, or management fees payable to the Borrower or Guarantors.) shall be permitted to the Shareholders of the Borrower or related entities during the term of the herein Loan without the consent of the Lender, which consent may be arbitrarily withheld.
- d) **Personal Joint and Several Guarantees** signed by **Guarantors** stated in Section 2 for 100% of the Loan Amount, including any unpaid interest from time to time.
- e) **1<sup>st</sup> assignment of 3<sup>rd</sup> party liability insurance** proceeds in the minimum amount of not less than **\$5,000,000**, per occurrence, naming the Lender as loss payee and **1<sup>st</sup> mortgagee**.
- f) **Solicitor’s favourable Letter of Opinion**, confirming the validity of the Lender’s **1<sup>st</sup> Charge** over the Property, qualified as to what an up to date location survey may reveal. **Title insurance will be required.**
- g) **1<sup>st</sup> assignment of all Leases and Lease Renewals**, present and future, relating to the Property, if any. **Estoppels Certificates** using the Lender’s form will be required prior to the Advance Date.

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- h) 1<sup>st</sup> assignment, of all plans, site plans, studies, reports, and all contracts and agreements relating to the development and on-going management of the Property in the Borrower's possession. The Borrower shall be responsible for the payment, in full, to all the Project's consultants.
- i) 1<sup>st</sup> assignment, of all municipal deposits, levies, and fees made by the Borrower, from time to time, in connection with the development of the Property.
- j) 1<sup>st</sup> assignment of all Letters of Credit and other deposits given to government authorities in connection with the herein Property. The Borrower shall execute a Direction Letter to all recipients of said Letters of Credit and other deposits to pay, on maturity or redemption, all proceeds to the Lender.

15. **PRE-FUNDING DELIVERABLES:**

All items in Section 15 must be received no later than 7 days following acceptance of this Loan Proposal to ensure the Lender has sufficient time to complete a review and complete the syndication of the herein Loan.

- a) Receipt of the Earnest Fee pursuant to Section 10a) above.
- b) Receipt and satisfactory review by the Lender, of current and previous 3 years externally prepared financial statements of the Borrower on at least a Notice to Reader format. If the Borrower is a newly incorporated entity, then an opening balance sheet and trial balance are required.
- c) Receipt and satisfactory review, by the Lender, of current signed Net-Worth Statement of the Guarantors listed in Section 2.
- d) A credit check will be required and is consented to by the Borrower and Guarantors. In addition, a Corporate and Personal due diligence check, using the services of **Sterling BackCheck**, will be conducted by the Lender and is consented to by the Borrower and Guarantor. The cost of the review shall be borne by the Borrower (**See Schedule "A"**).
- e) Prior to the Advance Date, the Borrower shall demonstrate cash equity of at least **\$3,200,000** has been injected into the Project to fund Project related costs.
- f) Receipt of Articles of Incorporation of the Borrower, a Directors' Register and list of Officers, and a corporate organizational chart that includes the beneficial owners which own 10% or more of the Borrower.
- g) Receipt and satisfactory review by the Lender, of current Phase 1 and Phase 2 (if necessary) Environmental and Geotechnical Reports for the Property, prepared by consultants acceptable to the Lender with reliance letters stating that the Lender may rely on such reports.





- h) Receipt and satisfactory review by the Lender of a current (not more than 12 months old) Appraisal Report for the Property, with a reliance letter, addressed to the Lender, and prepared by a consultant acceptable to the Lender.
- i) Receipt of the final Agreements of Purchase and Sale including all amendments thereto, entered into by the Borrower to acquire the Property.
- j) The Borrower's detailed development budget and schedule, indicating individual costs per line item.
- k) A pro-forma profit statement.
- l) Receipt of all leases and offers to lease affecting the Property together with estoppels if required by the Lender.
- m) Receipt of evidence satisfactory to the Lender, as to the source of the Borrower's required equity in the Property. Such evidence to include the bank account number where the funds will be drawn from and copies of the most recent 3 months of banking statements, if applicable.
- n) Receipt, by the Lender, of an overview and assessment report by the Lender's Planning Consultant that the Project as described in Item 6 b) above is permitted under current zoning by-laws, or can be developed with reasonable effort and within a reasonable time frame.
- o) Receipt of a signed Subordination & Standstill agreement between the Lender and any approved subsequent mortgagees.
- p) Receipt, by the Lender, of a currently dated Survey (or Surveys, if more than one property), prepared by an acceptable Surveyor and showing all boundaries and improvements on the Property.

**16. SYNDICATION AND COMMITMENT CONFIRMATION:**

The Lender reserves the right to syndicate an interest in this Loan to one or more co-lenders who may or may not be related to the Lender herein. Provided the Loan Proposal has been accepted and the Earnest Fee paid, the Lender shall have up to 7 business days following the receipt and satisfactory review by the Lender and its consultants of all the requested underwriting information, to syndicate a portion of the Loan, in an amount to be determined by the Lender, in its sole discretion, and subject to terms satisfactory to Lender, failing which this Loan Proposal will be cancelled and Commitment Fee will not apply. The Borrower and Guarantors consent to the disclosure by the Lender to any such prospective assignee/participant of all information and documents regarding the Loan, the Borrower and Guarantors within the possession or control of the Lender. It is further agreed that the acceptance and return of this Loan Proposal shall not bind the Lender to advance the Loan. If no Commitment is so provided, this Loan Proposal shall be of no further effect and the Commitment Fee shall not apply.

**17. OPTION TO PROVIDE CONSTRUCTION FINANCING:**

The Lender shall have the first right to provide construction financing for the project on terms mutually agreed to between the Lender and the Borrower. Neither the Lender nor the Borrower are required to provide, nor accept, the terms should a Construction Loan be offered by the Lender.

**18. INFORMATION UPDATES AND FINANCIAL REPORTING:**

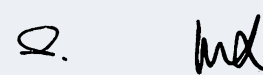
Until repayment of the Loan, the Borrower shall supply the Lender with such updated information relating to any of the Project or condition precedent requirements as the Lender may request from time to time. Such information shall be provided to the Lender within 14 days from the date of the Lender's request.

Until repayment of the loan or upon request, the Borrower shall provide the Lender, within 120 days after the end of their fiscal year, or within 120 days after the end of each calendar year, if applicable, with the following:

- a) At least Notice to Reader financial statements of the Borrower and of any corporate Guarantor, including a balance sheet and supporting schedules, a detailed statement of income and expenses and supporting schedules, and a statement of change in cash flow. In the case of an individual Borrower or additional Guarantor, net worth statements may be supplied in lieu of financial statements.
- b) At least Notice to Reader financial statements in respect of the property, including a balance sheet and supporting schedules and a detailed statement of income and expenses and supporting schedules. (If applicable)
- c) A current rent roll for the property containing such detail as may be required by the Lender. (If applicable)
- d) A budget for the property for the next fiscal year, forecasting operating income, expenses and capital expenditures. (If applicable).

**19. GENERAL CONDITIONS:**

- a) The Borrower agrees to comply, at all times, with the Construction Lien Act.
- b) The Borrower and Lender specifically acknowledge and agree that they are not entering into a joint venture or partnership agreement by virtue of this Loan transaction.
- c) If the Borrower intends to Lease any part of the Property then the Lender must approve the tenant and its intended use. The Lender may require, in its sole discretion, a statutory declaration, signed by the Tenant, of its intended use.



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- d) No financing, subsequent to the Loan facility, shall be permitted without the prior written consent of the Lender. The Borrower shall disclose to the Lender all existing or proposed financing related to the Project and the Security and shall not pledge or otherwise encumber its interest in the Property or the Security to any other party, other than the Lender, without the written consent of the Lender.
  - e) The Borrower shall operate a segregated bank account for the Property or Project during the term of the Loan and all receipts and payments for the Project must be deposited into / disbursed from that account. The Borrower undertakes not to co-mingle any funds from other projects, Property and/or entities of the Borrower and Guarantors into that account.
  - f) In the event of the Borrower failing to pay any amount when due, or being in breach of any covenant, condition, or term of the Proposal, Commitment, if issued, or the Security, or if any representation made by the Borrower, the Guarantors, or their agents, or any information provided by them is found to be untrue or incorrect, or if any Event of Default, as defined in the Security, occurs, relating to the Borrower, the Borrower shall, at the option of the Lender, be in default of its obligations to the Lender and the Lender may cease or delay further funding or may exercise any and/or all remedies available to it at law or in equity. Further, the Lender may, at its option, on notice to the Borrower, declare the principal and interest on the Loan, and any other amount, due under the Proposal and Commitment, forthwith due and payable, whereupon the same shall be and become immediately due and payable in full.
  - g) If the Lender deems that use of the Property is illegal, it shall be permitted to inform the authorities of this situation.
  - h) The Lender shall have the right, on reasonable notice, to conduct inspections of the Property over the term of the Loan and to ensure it is properly maintained and that its intended use conforms to all laws.
  - i) The Borrower and the Guarantors agree that if any one or more of the provisions contained in this Proposal, or in the Commitment, if issued, shall for any reason be held to be invalid, illegal, or unenforceable, in any respect, such invalidity, illegality, or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Proposal or the Commitment, if issued, and this Proposal and the Commitment, if issued, shall be construed as if such invalid, illegal, or un-enforceable provision had never been contained herein.

- j) The Borrower and Guarantors shall indemnify, and save harmless, the Lender, its officers, agents, trustees, employees, contractors, licensees, or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature, whatsoever, arising out of the provisions of this Proposal, the Commitment, if issued, and the Security, any letters of credit, letters of guarantee issued, sale or lease of the Project and/or the use or occupation of the Project, including, without limitation, those arising from the right to enter the Project, from time to time, and to carry out the various tests, inspections, and other activities permitted by the Proposal, Commitment, if issued, and the Security. In addition to any liability imposed on the Borrower and Guarantors, under any instrument evidencing or securing the Loan indebtedness, the Borrower and Guarantors shall be liable for any and all of the Lender's costs, expenses, damages, or liabilities, including, without limitation, all reasonable legal fees, directly, or indirectly arising out of, or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under, or about the Project of any hazardous or noxious substances. The representations, warranties, covenants and agreements of the Borrower and Guarantors set forth in this subparagraph:
- i. Are separate and distinct obligations from the Borrower's and Guarantors other obligations;
  - ii. Survive the payment and satisfaction of their other obligations and the discharge of the Security, from time to time, taken as Security therefore;
  - iii. Are not discharged or satisfied by foreclosure of the charges created by any of the Security; and
  - iv. Shall continue in effect after any transfer of the land including, without limitation, transfers pursuant to foreclosure proceedings (whether judicial or non-judicial) or by any transfer in lieu of foreclosure.
- k) The Borrower and Guarantors will provide the usual warranties and representations, respecting accuracy of financial statements and that there has been no material adverse change in either the Borrowers, or Guarantors' financial condition or operations, as reflected in the financial statements used to evaluate this credit; title to the Project charged by the Security; power and authority to execute and deliver documents; accuracy of documents delivered, and representations made to the Lender; no pending adverse claims; no outstanding judgments; no defaults under other agreements relating to the proceedings; payment of all taxes; no consents, approvals or authorizations necessary, in connection with documentation; compliance of construction of permitted encumbrances; all necessary services available to the Project; no hazardous substances used, stored, discharged or present on the mortgaged lands, and will warrant such other reasonable matters, as Lender, or its legal counsel may require.

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- i. The control over the Borrower shall not change without the consent of the Lender acting reasonably.
  - ii. Neither mind nor management nor the location of the Borrower's offices and place of records should change without the consent of the Lender acting reasonably.
- 
- l) Loan disbursement(s) shall take place only on title to the Property, being acceptable to the Lender's legal counsel and all matters in connection with the priority, validity and enforceability of the Security and other documentation deemed necessary or advisable by Lender's legal counsel being complied with by the Borrower and the Guarantors.
  - m) The Borrower shall pay forthwith on demand all other reasonable fees and disbursements incurred or to be incurred in connection with the Security and all other documents, including, but not limited to, registration costs, discharge costs, appraisal fees, surveyor's costs, and monitoring costs, and costs itemized on Schedule A.
  - n) The waiver of the Lender of any breach or default by the Borrower or the Guarantors of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower or the Guarantors. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Loan or other Security shall not constitute a waiver thereof.
  - o) All reports, statements and other information required to be delivered by the Borrower to the Lender (herein referred to as "Deliveries") under the herein Loan Proposal and, if issued, a Commitment, shall be subject to the Lender's satisfactory review and approval, acting reasonably, of such Deliveries.
  - p) If a Commitment is issued, it is not assignable by the Borrower.
  - q) This Proposal shall be read in conjunction with the Lender's form of charge documents, and in all cases where the interpretation of the terms hereof and the intention of the parties hereto may be in question, where applicable, the Lender shall determine which shall prevail.
  - r) Section headings are not to be considered part of this agreement and are included solely for the convenience of reference and are not intended to be full or accurate descriptions of the contents thereof.
  - s) In this Proposal, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders.





- t) The Lender shall have the right to provide a sign, at its cost, no greater than 2' x 3' advertising the fact that Project financing was provided by the Lender. The sign shall be erected, by the Developer/Borrower, at its cost in a prominent location on or about the hording or construction fence at a location to be approved by the Borrower and the Lender.
- u) This Proposal and, if issued, a Commitment, the Loan and the Security may all be assigned, transferred or otherwise disposed of by the Lender to a non-arm's length party without the Borrower's or the Guarantors consent.

**20. OVER HOLDING FEE:**

If the Loan is not repaid in full on or before the Maturity Date, the Borrower shall be required to pay to the Lender an Over Holding Fee, in addition to all other rates, fees and costs to be paid to the Lender by the Borrower pursuant to this Loan Proposal. More particularly, this fee shall be earned by and payable to the Lender monthly, in advance, on the first business day of each month and shall be payable at the rate of 0.25% per month, or part thereof, multiplied by the then outstanding Loan Amount (the "Over Holding Fee"). The Borrower hereby acknowledges that the requirement to pay the Over Holding Fee does not constitute an extension of the Loan. If the Loan is not repaid in full by the Maturity Date, the same shall constitute default by the Borrower under the Commitment (if and when issued) and Security documents notwithstanding payment of the Over Holding Fee. The Borrower further acknowledges that he Lender, at its option, may add the Over Holding Fee to the outstanding principal balance of the Loan and the Security for the Loan also secures the Over Holding Fee.

**21. STATUS OF BORROWER & GUARANTORS:**

The Solicitors for the Borrower and the Guarantors are to certify, without qualification, that the Loan documents have been properly executed and they have confirmed the identity of the person(s) signing.

Each Borrower and Guarantor will be required to produce identification acceptable to the Lender and to the Lender's solicitor at the time the documentation is signed, and prior to any funds being advanced, for the purpose of compliance with the provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and Regulations there under. Such identification shall include at least two documents, with at least one document including photo ID, together with a solicitor's confirmation that the identity of all persons signing as or on behalf of the Borrower or as a Guarantors have been identified as the proper persons to sign. The Lender is to be provided with clear and legible copies [front and back] of any identification documents together with a solicitor's certification that the copies are true copies of the original documents. Ontario Health Cards are not acceptable identification documents

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**22. BORROWER'S REPRESENTATIONS:**

The Borrower and Guarantors represent and warrant that as of the date of the acceptance of this Loan Proposal and as of the Closing Dates:

- a) They have the power, capacity and authority to enter into this agreement and to perform and complete the transaction contemplated herein, all of which have been duly authorized, where required, by all necessary corporate action and that no consents are necessary.
- b) They have not withheld any information of a material nature relating to the Property or to the Borrower or Guarantors.
- c) The use of the Property shall be legal and that illegal use of the Property will result in default under the Loan.

**23. BORROWER'S ACKNOWLEDGMENTS:**

The Borrower acknowledges and represents that:

- a) It has considered the risks entailed in private borrowing and has been informed of the risks involved in the Loan;
- b) The Terms and the Interest Rate in this Commitment may be higher and more onerous than that of institutional Lenders;
- c) It has had an opportunity to consult its legal counsel and accountant or other financial advisors;
- d) If the Lender does not advance the Loan by the Advance Date, the Borrower may be unable to satisfy the intended purpose for the Loan;
- e) In the event the Borrower is unable to pay monthly payments, property taxes, fire insurance premiums, the principal amount when the Loan is due, and or any other payment required under the Loan, the Lender could obtain a court judgment and enforce all remedies available by law, including 3 months of interest payments. Furthermore, income could be seized to pay the judgment or, as an alternative, the Lender may keep the Property or sell it under foreclosure proceedings.



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**DISCLOSURE REQUIREMENTS UNDER THE NEW MORTGAGE BROKERS, LENDERS AND ADMINISTRATOR'S ACT, BILL 65:**

- a) The Brokerage and Broker act for the Lender;
- b) Cost of Borrowing (“COB”) and Actual Percentage Rate (“APR”) are disclosed in the Statement of Mortgage, which will be prepared should the Lender proceed to issue a Loan Commitment Letter.
- c) Notwithstanding Item a), there are no conflicts of interest, which either the Brokerage or the Broker, are aware of.
- d) Risk factors, which the Brokerage/Broker have identified as being associated with the herein Loan are noted below, and are not limited to following:
  - i) The herein Loan bears interest only. With the exception of permitted or required periodic principal repayments, the entire Loan principal as well as expenses, recoveries and unpaid interest, if any, will be due on maturity date as determined and defined from time to time;
  - ii) Default under any term of the herein Loan may result in the Borrower's equity being at risk;
  - iii) The Loan Guarantors may be called upon to repay the Loan in full and make good on shortfalls required to fully discharge the herein Loan.
  - iv) The Borrower's ability to refinance the herein Loan is solely dependent upon external factors over which the Borrower has no control. This may include, but is not limited to, the Lender's refusal to renew the herein Loan on maturity, the lack of other refinancing alternatives and/or adverse market conditions. If the Borrower is unable to refinance the Loan, the Lender may exercise remedies accorded to it under the herein charge and other relevant statutes and acts.
  - v) The Borrower's ability to service the herein Loan may be dependent upon factors beyond the Borrower's control, such as the impairment of the sources of cash flows used to service the herein Loan. The inability to service the Loan may result in defaults under the term of the herein Loan, which may result in any one of the consequences described above.

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Vector Financial Services Limited and all their related or associated companies (collectively “**Vector**”) subscribe to Canada’s *Personal Information Protection and Electronic Documents Act*. Vector’s Privacy Policy is attached herewith for review.

As a potential Borrower and/or Guarantors, you have provided us with certain personal and financial information. The Borrower’s and/or Guarantors’ signature(s) on this document is consent to allow Vector to use the information so provided to ascertain the credit-worthiness of the Borrower and/or Guarantors. This may include, but is not limited to, obtaining credit reports, contacting the Borrower’s and/or Guarantors’ bank, verifying employment, completing Background and Criminal & Bankruptcy Checks. Acceptance of this Loan Proposal acknowledges that the Borrower and/or Guarantors have read and understand the attached *Vector’s Privacy Policy* and fully agree to the contents contained therein.

The funds advanced under this mortgage will likely come from a number of private lenders who will each contribute a portion of this Loan. The Ontario government’s *Mortgage Brokerages, Lenders and Administrators Act* requires that lenders have access to financial information about the borrower’s ability to meet mortgage payments. This information is provided in the required *Investor/Lender Disclosure Statement for Brokered Transactions*, which all lenders in this Loan will receive.

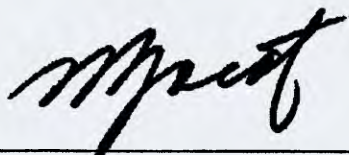
**By signing and accepting this Loan Proposal, the Borrower and Guarantors acknowledge that the herein Loan, if granted, is not life insured. The Borrower is encouraged to seek relevant protection from its’ insurance professionals.**

The Borrowers hereby grants permission to the Lender to obtain credit reports to be used in determining the acceptability of credit risk in connection with this Loan.

If the terms and conditions of this Loan Proposal are acceptable, please so indicate by signing the attached copy of this Letter, together with the \$15,000 balance of the **Earnest Fee** owed and return it to the writer’s attention by **April 14, 2017**.

Yours very truly,

**VECTOR FINANCIAL SERVICES LIMITED**



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Mickey Baratz, Director of Finance



ACCEPTANCE OF LOAN PROPOSAL

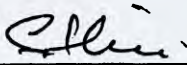
ACCEPTED on the terms and conditions herein provided this 12 day of April, 2017.

168 Old Kennedy Inc. - As Borrower



Per:

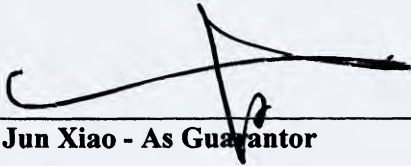
I have the sole authority to bind the corporation.



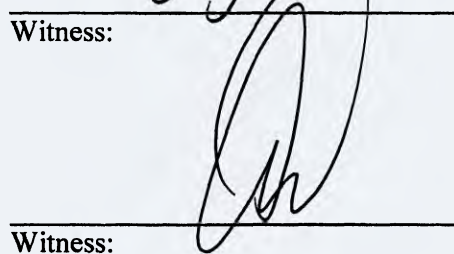
Sammy Wing Fu Hui - As Guarantor



Witness:



Shao Jun Xiao - As Guarantor



Witness:

**SCHEDULE “A” – FEE SCHEDULE**

ITEM	ESTIMATED FEE AMOUNT	COMMENT
Mortgage Statement	\$350 per Statement	<ul style="list-style-type: none"> <li>For information purposes</li> </ul>
Approval of Subordinate Financing	\$350	<ul style="list-style-type: none"> <li>For audit verification</li> <li>Approval of subordinate financing</li> </ul>
Mortgage Discharge Statement	\$350 per statement	<ul style="list-style-type: none"> <li>Pay off and discharge mortgage</li> </ul>
Expense Recovery re Credit Bureau & Due Diligence Report (Sterling BackCheck)	\$50 per credit report \$75- \$160 Sterling BackCheck report (per guarantor)	<ul style="list-style-type: none"> <li>Deducted from first advance to reimburse lender for expenses incurred in ordering credit bureau and Sterling BackCheck investigations</li> </ul>
Valuation Verification (RealNet) Third Party Market Research	\$250 per Loan To be determined	<ul style="list-style-type: none"> <li>Valuation verification</li> <li>Valuation verification</li> </ul>
Expense Recovery re Site Inspections.	To be determined	<ul style="list-style-type: none"> <li>Deducted from first advance to reimburse lender for all reasonable costs incurred as part of due diligence.</li> </ul>
Title Search (Teranet)	\$40 per PIN	<ul style="list-style-type: none"> <li>To confirm title (as required)</li> </ul>
N.S.F. Cheque and/or Failed Debit under an EFT Plan	\$350 per occurrence	<ul style="list-style-type: none"> <li>The borrower shall pay liquidated damages to cover the lender’s administrative costs.</li> </ul>
Insurance Coverage Change	\$350 per occurrence	<ul style="list-style-type: none"> <li>Lapsed or cancelled insurance not reinstated or replaced by borrower. Lender shall have option to replace coverage without notice to borrower.</li> </ul>
Property Insurance Review	\$500-\$750 (land only) \$1,000-\$1,500 (land and construction)	<ul style="list-style-type: none"> <li>Peer review of insurance coverage by Intech Risk Management</li> <li>Quote available on request for land and construction review</li> </ul>
Environmental Site Assessment – Peer Review Report	\$500 - \$1,000 per Report	<ul style="list-style-type: none"> <li>Peer review of subject property for hazardous materials and contaminants.</li> </ul>
Geotechnical Reports	\$500 - \$1,000 per Report	<ul style="list-style-type: none"> <li>Peer review of subject property for site suitability.</li> </ul>
Cost Consultant	\$500 - \$1,000 per Report	<ul style="list-style-type: none"> <li>Peer review of construction budget, work in place and cost to complete</li> </ul>
Planning Review	\$1,500 - \$3,000 per Report	<ul style="list-style-type: none"> <li>Peer review of planned development</li> </ul>
Subsequent Advance Review (Hard & Soft Costs - Vector)	\$500-\$1,000	<ul style="list-style-type: none"> <li>Deducted from the draw upon release of funds to the Borrower</li> </ul>
Default Letters	\$750 per occurrence	<ul style="list-style-type: none"> <li>For each collection letter written whether in connection with one default or more.</li> </ul>
Default Administration	\$2,500 monthly \$5,000 monthly	<ul style="list-style-type: none"> <li>1<sup>st</sup> default that remains uncured for 14 days.</li> <li>2<sup>nd</sup> and subsequent default that remains uncured for 14 days.</li> </ul>
Annual Review	\$500 per year	<ul style="list-style-type: none"> <li>Confirmation of realty taxes</li> <li>Confirmation of insurance coverage</li> <li>Project monitoring</li> </ul>
Bank Processing Fee	\$500	<ul style="list-style-type: none"> <li>On repayment of Loans over \$2Million</li> </ul>

*S. M. K.*



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## Lawyer Contact Information

### New Search

#### Contact Information

Full Name	Yi Zhou
Mailing Name	Yi Zhou
Licence Type	Lawyer (L1)
Real Estate Insured †	Yes
Status <u>Definitions</u>	In Private Practice
Business Name	Yi Zhou Law Office
Business Address	209-100 Cowdray Court Toronto Ontario M1S 5C8
Phone	1 416 916 2068
Fax	1 416 292 4822
Email address	
Main Area(s) of Law/Legal Services	
Trusteeships	None
Current Practice Restrictions	None
Current Regulatory Proceedings	None
Discipline History	None

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† A "Yes" in the Real Estate insured field indicates that lawyer has the required insurance to provide Real Estate Services to the public.

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INTREND MORTGAGE INC.

000579

DATE 2017-04-12  
Y Y Y Y M M D D

PAY to  
the order of

VECTOR FINANCIAL SERVICES LTD.

\$ 25,000.-

Twenty Five Thousand



CANADIAN IMPERIAL BANK OF COMMERCE  
HWY 404 & MAJOR MACKENZIE DR. BANKING CENTRE  
700 MARKL AND ST.  
MARKHAM, ONT L6C 0G6

Security  
features  
included

100 DOLLARS  
INTREND MORTGAGE INC.

RE

Deposit for 168-178 Old Kennedy

PER

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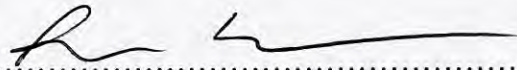
Endorsement - Signature or Stamp

**BACKVERSO**



# TAB B

This is **Exhibit "B"** referred to in the affidavit of **Noah Mintz** sworn before me in the City of Toronto, in the Province of Ontario, Canada this 20th day of November, 2019.



.....  
A Commissioner For Taking Affidavits

Aaron Fretz Cressman, a  
Commissioner, etc., **Province of**  
Ontario, while a Student **at Law.**  
Expires **May 10, 2021.**



**Vector Financial**  
SERVICES LIMITED  
Brokerage Licence #10160, Administrator Licence #11205

**COMMITMENT LETTER**

May 3, 2017

168 Old Kennedy Inc.  
c/o Intrend Mortgage Inc.  
205-590 Alden Road  
Markham, Ontario L3R 8N2

**Attention: Mr. Andre Dellino & Mr. Sammy Wing Fu Hui**

Dear Sirs,

Re: Vector Financial Services Limited (the "Lender") First (1st) Mortgage Financing  
(the "Loan") on 168-178 Old Kennedy Road in Markham, Ontario (the "Property")  
to 168 Old Kennedy Inc. (the "Borrower") - Our Ref: 17-18

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This letter confirms that subject to the amendments contained herein, our clients represented by Vector Financial Services Limited ("VFSL") are prepared to approve your loan on the terms set out in this Commitment Letter ("Commitment") and read in conjunction with the Loan Proposal ("Proposal") dated April 10, 2017, as amended and accepted April 12, 2017. **This commitment, however, is subject to receipt and satisfactory review by the Lender of the required deliverables as more particularly described in the Proposal and the terms contained herein.**

The following revisions are made to the Proposal:

**Section 7:** The Loan shall mature **June 10, 2019.**

**Commitment Expiry:** **May 15, 2017.** At the option of the Lender, this loan may be cancelled in the event that the representations of the Borrowers are found to be inaccurate, or if title to the security is not satisfactory, or if funds are not advanced, due to no fault of the Lender, by the above- mentioned date.

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25 Imperial Street, Suite 500, Toronto, Ontario M5P 1B9  
Phone: 416-483-8018 Fax: 416-483-9763  
[www.vectorfinancialservices.com](http://www.vectorfinancialservices.com)

**Interest**

**Adjustment Date:** The Interest Adjustment date shall be the 10<sup>th</sup> day of the month following the Advance Date under the Loan and the term shall run thereafter. Interest shall accrue from the date the advance of funds is made to our solicitor, which will be one day before the advance of funds on this mortgage.

**Legal Fees:** Please note that the legal work on our behalf will be done by:

**Jonathan Freeman**  
Cassels Brock LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Telephone: (416) 860-2927

All legal costs & fees incurred, in connection with this mortgage shall be paid by Borrower. All questions should be directed to **Mr. Freeman**. An estimate of his fees of **\$15,000** plus disbursements & HST has been provided. Title insurance (required), fees, disbursements and HST will be charged separately.

**Mortgage:** The terms and conditions of the mortgage loan commitment shall continue to apply notwithstanding the preparation and execution and registration of the mortgage and other documents. In case of any inconsistency or conflict between any provisions of this Commitment and Proposal and any provisions of the charge/mortgage, the Commitment and Proposal shall prevail.

**Title and Legal Requirements:** The advance of funds shall be made subject to the Lender and its solicitor being satisfied with title to all property secured and all legal aspects, required of the transaction (the "Security").

**Solicitors and Documentation:** All legal matters and documentation shall be satisfactory to the Lender's solicitors, whose fees and disbursements the Borrower agrees to pay whether or not this transaction is completed as contemplated herein.

**Standard**

**Charge Terms:** The Borrower acknowledges and agrees that the Mortgage Document may incorporate by reference such standard charge terms or schedule and may incorporate such additional provisions as are contemplated by the Proposal and Commitment, and/or as may be considered required by the Lender or its solicitor.

**Covenant to Give  
Notice of Casualty  
or Legal Claim:**

The Borrower hereby covenants and agrees that it will give immediate notice in writing to the Lender of any damage to or legal claim against the Security, or of any conveyance, transfer, or change of ownership or control or possession of the Security or any other change in viability of the strength of the Borrower or any Guarantor.

**Mortgage Statements:**

The Borrower shall pay for each Mortgage Statement prepared for and provided by the Lender, on request, the current fee (see Schedule A attached) for the preparation and providing of such statement.

**Additional Fees and  
Charges:**

The Borrower acknowledges that a retainer of \$6,000 shall be deducted from the advance and the amount by which the retainer exceeds the actual costs and charges will be refunded to the Borrower within 30 days of receipt of all corresponding invoices.

**Right of Inspection:**

The Borrower shall permit the Lender, or his agent or agents, at all reasonable times, to make investigation or examination concerning the performance by the Borrower of its obligations under the Mortgage to have access to any and all of the buildings and improvements forming part of the mortgaged property for the purpose of inspecting or protecting the same as well as performing an environmental assessment. The Borrower shall take all reasonable steps, including legal proceedings, to protect its own right, title, and interest in any of the mortgaged property and to enable the Lender to defend the interest of the Lender therein.

**Subsequent  
Encumbrances:**

Borrowers may not place subsequent encumbrances on the subject property other than those agreed to in the Proposal without written consent of the Lender otherwise, and at the option of the Lender, the Loan will become due and payable in full.

---

**Non-Transferable:** It is agreed and understood that in the event of a sale, conveyance, lease or transfer of the title of the Property to a purchaser, grantee, transferee, lender, or lessee not approved in writing by the Lender, then at the option of the Lender, all monies secured under the mortgage with accrued interest shall forthwith become due and payable and the Borrower's and Guarantors' liability hereunder shall remain in full force and effect until all monies owing to the Lender in connection with this indebtedness is paid in full.

**Realty Taxes:** Realty Taxes are to be paid to the date of the advance and must be kept current during the term of the mortgage.

**Zoning:** The use of the land shall comply with all relevant laws, and shall be in accordance with the provisions of all agreements with governmental (Municipal, Provincial and Federal Statutes) or other authorities providing services to the property, throughout the term of the mortgage.

**Survey:** We require an original up to date survey of the land and premises prepared by a qualified Ontario Land Surveyor under seal, showing no encroachments, and showing all improvements on the mortgage property constructed in compliance with the local zoning by-laws or Title Insurance.

**Pre-authorized Chequing Plan:** All payments made under this Charge by the Borrower shall be made by a pre-authorized cheque payment plan, electronically debiting the Borrower's account ("EFT") as approved by the Lender. The Borrower shall complete all forms required by the Lender in this regard and the Lender shall not be obligated to accept any payment other than payment made by EFT. Failure to make all payments by EFT shall be considered an act of default within the meaning of this Charge and the Lender shall at its option, be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary.

**N.S.F. Cheque and/or failed Debit under an ETF Plan:** In the event that any of the Borrower's cheques or debits under an EFT Plan are not honoured when presented or processed for payment, the Borrower shall pay to the Lender, for each such occasion, the sum per Schedule A as a liquidated amount to cover the Lender's administrative costs and not as a penalty and each sum shall be a charge upon the lands and shall bear interest at the rate set out in the within mortgage.

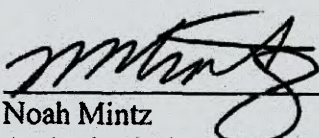
- 
- Property Insurance:** Each Loan requires property insurance coverage acceptable to the Lender and its consultant. Such policy must contain standard mortgage clauses and must indicate the interest of the Lender as first Lender and Loss payee.
- Should improvements or buildings on the subject property be demolished with the Lender's consent, then only Liability Insurance may be required there-after subject to the Lender's insurance consultant's consent.
- In the event that the Lender receives notice that the insurance coverage has or is about to be cancelled, the Lender shall have the right to place a new policy of insurance on the property without notice to the Borrower and add the cost thereof, together with an administrative charge of per Schedule A to the principal amount outstanding.
- Default:** Provided further that in the event there is any kind of default under this mortgage and a collection letter is issued by the Lender the Lender is entitled to a fee per Schedule A for each collection letter written, whether in connection with one or more defaults under the Charge.
- Commitment Cancellation:** This Commitment may be cancelled at the Lender's option if any of the conditions set out in the Proposal or set out herein are not complied with or if any of the requirements of the Lender's solicitors are not satisfactorily fulfilled by **May 6, 2017**.
- Other:** Borrowers acknowledge the fact that at the Lender's sole discretion the Mortgage may be assigned and/or hypothecated.
- Upon a payout of the mortgage in which the Lender is in receipt of the funds due after 3:00 p.m. on any day, the Borrower agrees to pay interest up to and including, the next business day.
- Borrowers acknowledge that parties related to the Lender may be advancing funds under the mortgage.
- Representation And Credit:** By acceptance of this Commitment the Borrower and Guarantors covenant that the representations and information submitted by them in connection with this Loan is full disclosure and is true and accurate. The Lender, in its sole discretion, must be satisfied that no material change in the Borrower's or Guarantors' credit standing has occurred prior to the first advance under the Loan. The Borrower and Guarantors hereby authorize the Lender to have credit checks performed.
- Acceptance Date:** This commitment is open for acceptance until **May 6, 2017**.

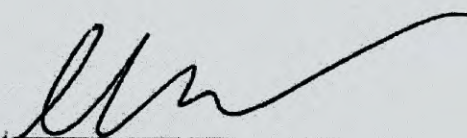
168 Old Kennedy Inc.  
Commitment Letter – 168-178 Old Kennedy Road  
May 3<sup>rd</sup>, 2017

The Borrower acknowledges having executed a Statement of Mortgage and a copy (attached) has been delivered to the same.

Yours truly,

**VECTOR FINANCIAL SERVICES LIMITED**

  
\_\_\_\_\_  
Noah Mintz  
Authorized Signing Officer  
Lic. #: MO8006173

  
\_\_\_\_\_  
Mitchell Oelbaum  
Authorized Signing Officer  
Lic #: M13001562

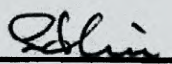
**ACCEPTANCE OF COMMITMENT LETTER**

ACCEPTED on the terms and conditions herein provided this      day of \_\_\_\_\_, 2017.

168 Old Kennedy Inc. - As Borrower

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

I have the authority to bind the corporation.

  
\_\_\_\_\_  
Mr. Sammy Wing Fu Hui  
As Joint & Several Guarantor

\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Mr. Shao Jun Xiao  
As Joint & Several Guarantor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
25 Imperial Street, Suite 500, Toronto, Ontario M5P 1B9  
Phone: 416-483-8018 Fax: 416-483-9763  
[www.vectorfinancialservices.com](http://www.vectorfinancialservices.com)





Transaction No.: 17-18

# Statement of Mortgage

## Important

This Statement of Mortgage must be completed by the mortgage broker and an amortization schedule for the mortgage must be attached to it. A copy of the Statement of Mortgage signed by the mortgage broker must be given to you at least 72 hours (excluding Sundays and holidays) before you are asked to sign the mortgage instrument or a commitment to enter into the mortgage. This 72-hour period does not apply if:

- 1) no brokerage fee is payable by you to the mortgage brokerage, AND
- 2) the lender is a bank, loan or trust corporation, insurance company, credit union or finance company.

If the 72-hour period applies to your mortgage, it may be reduced to 24 hours, but only if you obtain independent legal advice.

**YOU ARE STRONGLY ADVISED TO OBTAIN INDEPENDENT LEGAL ADVICE ABOUT THIS MORTGAGE BEFORE YOU SIGN THE MORTGAGE CONTRACT.**

If the principal amount of the mortgage is \$200,000 or less, the mortgage broker cannot require you to make, and cannot accept, an advance payment or deposit for services to be rendered or expenses to be incurred by the mortgage broker or any other person.

<b>1. Property to be mortgaged:</b>	<u>PIN: 029530145 (AS PER GEOWAREHOUSE)</u>		
	<u>168 - 178 Old Kennedy Road, Markham, Ontario</u>		
<b>2. Is the mortgage broker, or any party with other than an arm's length business relationship to the mortgage broker acting as lender for this mortgage loan?</b>			
<input type="checkbox"/> No			
<input checked="" type="checkbox"/> Yes			
If "Yes", describe nature of relationship, and name and address of lender: Officers and Directors of Vector Financial Services Limited will participate in this loan.			
A signed commitment to fund the mortgage as described below was obtained on <u>May 3, 2017</u> <span style="float: right; font-size: small;">date</span>			
<b>3. Principal amount of the</b>	<u>Regular</u> <small>(regular or collateral)</small>	<u>1st</u> <small>(1st, 2nd, 3rd)</small>	<b>mortgage to be repaid by the borrower</b>
			<u>55,940,000</u>
<b>4. The principal amount of the mortgage will bear interest at</b>			
<u>8.00%</u> per year or at the variable interest rate of			
<u>N/A</u> , and will be repayable in <u>Monthly</u> instalments of <u>\$39,600.00</u> <u>only</u> interest. <small>(description) (weekly, monthly, etc.) (plus or including)</small>			
<b>5. The Mortgage will be amortized over</b>			
<u>N/A</u> years and interest is to be compounded <u>None</u> <small>(monthly, semi-annually, annually, etc)</small>			
<b>6. Fees and costs payable by the borrower:</b>			
			<b>Check if amount is to be deducted from principal</b>
i) Mortgage Brokers fee or commission:	Vector Financial Services Limited (Lender's Fee)		118,800.00 X
ii) Co-operating Broker	Originating Broker (Co-brokerage Fee)		30,000.00 X
iii) Other lender's fees:			
iv) Lender's legal fees and estimated disbursements:	Cassels Brock LLP (Estimated Legal Fees)		15,000.00 X
v) Inspection and appraisal fees:			
vi) Other costs or fees payable to persons other than broker or lender (itemize; e.g. registration fees, mortgage fees, insurance fees)	Vector Financial Services Limited (Peer Review Retainer)		6,000.00 X
vii) Any other amount payable by borrower regarding this mortgage: (itemize)			
<b>TOTAL:</b>			<b>169,800.00</b>
Principal Amount:	<u>5,940,000</u>	<b>TOTAL COST OF BORROWING:</b>	
Less: Fees ("X" in Item 6)	<u>-169,800</u>	<u>9.372%</u>	
equals NET ADVANCE OF FUNDS:	<u>5,770,200</u>	( <i>i.e.</i> costs, including rate of interest shown on mortgage and all costs itemized in paragraph 6, expressed as a percentage accurate to within one eighth of 1 per cent)	
Initials <u>  E  </u>		Date	

Transaction No.:

17-18

Statement of Mortgage

7. This mortgage will become due and payable in 25 months, at which time the borrower, if all payments are made on the due date and any prepayment is not used will owe \$5,940,000.

8. The mortgage is not renewable on the same terms and conditions as described in items 4 and 5 and does not contain any privileges or penalties (including charges for NSF cheques), except as follows:

9. Other terms and conditions of the mortgage:  
  
Int greater of 8% or prime plus 5% for first 24 months, 12% or prime plus 9% thereafter. Open 6 months after IAD with one month bonus.

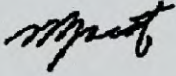
10. This mortgage shall be arranged on or before May 08, 2017

11. Vector Financial Services Limited (Name of mortgage brokerage) 10160 (Registration no.) is presently registered and in good standing as a mortgage brokerage under the *Mortgage Brokerages, Lenders and Administrators Act*.

12. The mortgage broker has not requested or required the borrower to sign the mortgage instrument (whether completed or blank) or any commitment to enter into the mortgage, and will not do so until permitted to do so by the regulations made under the *Mortgage Brokerages, Lenders and Administrators Act*.

13. I have fully completed the above Statement of Mortgage in accordance with the *Mortgage Brokerages, Lenders and Administrators Act*, and regulations.

May 3, 2017  
Date

  
Signature of Mortgage Broker, or of a person authorized to sign on behalf of the mortgage broker  
Mickey Baratz  
Print name of person signing


ACKNOWLEDGEMENT

I, 168 Old Kennedy Inc. of 505 Highway 7 East, Penthouse, Thornhill Ont, the borrower under the proposed mortgage, have read and fully understand the above Statement of Mortgage furnished to me by: Vector Financial Services Limited, 25 Imperial Street, Suite 500, Toronto ON M5P 1B9

I have not yet signed the mortgage instrument (whether completed or blank) or a commitment to enter into the mortgage.

I acknowledge receipt of a fully completed copy of this Statement of Mortgage, signed by the mortgage brokerage.

MAY 5 2017  
Dated by Borrower

  
Signature of Borrower

One copy of this form must be provided to the prospective borrower and one copy must be retained by the mortgage brokerage.

**APPLICANT** **Applicant**

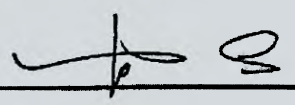
Name: 168 Old Kennedy Inc  
 Address: 168-178 Old Kennedy Road Markham, ON L3R 0L5  
 Residential Status: Own      Time at residence: 3 Years  
 Work Phone:      Cell Phone:      Home Phone: (905) 415-8488  
 Fax Number:      eMail:  
 Marital Status: Single      Date of Birth: Jan-01-1990      Dependents: 0      SIN:

Other Income			
Type	Description	Period Total:	Amount

Financial Assets			
Description	Value	Total:	Value

Liabilities			
Description	Value	Total:	Value
Totals		Balance	Monthly Payment      Payoff



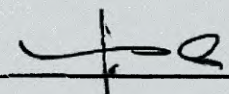
**APPLICANT - Continued** **Guarantor**

Name: Mr. Sammy Wing Fu Hui  
 Address: 43 Redheugh Crescent Toronto, ON M1W 3C4  
 Residential Status: Other Time at residence: 3 Years  
 Work Phone: Cell Phone: (416) 999-7799 Home Phone:  
 Fax Number: eMail:  
 Marital Status: Other Date of Birth: Jun-17-1948 Dependents: 0 SIN:715-931-721  
 Current Employer: REMAX Realtron Realty Inc Time at job: 6 Years  
 Occupation: Self-Employed Job Title: Real Estate Agent Employment Type: Full Time  
 Self Employed: Yes Annual Income: \$ 900,000.00

**Other Income**

Type	Description	Period Total:	Amount
------	-------------	---------------	--------

Financial Assets		Value		
Description		Total:	Monthly Payment	Payoff
<b>Liabilities</b>	<b>Description</b>	<b>Value</b>	<b>Balance</b>	
Credit Card	ROYAL BANK VISA	\$ 9,300.00	\$ 2,492.00	\$ 56.00
Credit Card	CAPITAL ONE COSTCO	\$ 9,000.00	\$ 1,639.00	\$ 48.00
Credit Card	CAPITAL ONE BANK	\$ 7,000.00	\$ 1,421.00	\$ 38.00
Credit Card	CAPITAL ONE HBC	\$ 8,250.00	\$ 8,160.00	\$ 82.00
Credit Card	INFINITE AVION	\$ 14,000.00	\$ 9,653.00	\$ 185.00
Lease	MERCEDES BENZ FINSER		\$ 12,000.00	\$ 979.00
Auto Loan	MERCEDES BENZ FINSER		\$ 47,000.00	\$ 854.00
Unsecured Line of Credit	TDCT TR0197	\$ 8,500.00	\$ 8,485.00	\$ 84.00
Personal Loan	TDCT TR0197		\$ 2,199.00	\$ 2,202.00
Credit Card	AMERICAN EXPRESS	\$ 13,000.00	\$ 1.00	\$ 0.03
Other	AMERICAN EXPRESS		\$ 727.00	\$ 21.81
Credit Card	TD CREDIT CARDS	\$ 20,000.00	\$ 17,000.00	\$ 356.00
Credit Card	CAPITAL ONE BANK	\$ 10,000.00	\$ 1,720.00	\$ 33.00
	<b>Totals</b>	<b>\$ 99,050.00</b>	<b>\$ 112,497.00</b>	<b>\$ 4,938.84</b>



**APPLICANT - Continued** **Guarantor**

Name: Mr. Shao Jun Xiao  
 Address: 97 Riding Mountain Drive Richmond Hill, ON L4E 0V2  
 Residential Status: Other Time at residence: 3 Years  
 Work Phone: Cell Phone: (647) 515-1111 Home Phone:  
 Fax Number: eMail: markxiaotoronto@gmail.com  
 Marital Status: Married Date of Birth: Jan-04-1972 Dependents: 0 SIN:561-861-899

Current Employer: REMAX Realtron Realty Inc Time at job: 10 Years  
 Occupation: Self-Employed Job Title: Real Estate Agent Employment Type: Full Time  
 Self Employed: Yes Annual Income: \$ 900,000.00

**Other Income**

Type	Description	Period	Amount
			<b>Total:</b>

Financial Assets		Description	Value	Total:	
<b>Liabilities</b>	<b>Description</b>	<b>Value</b>	<b>Balance</b>	<b>Monthly Payment</b>	<b>Payoff</b>
Unsecured Line of Credit	NATIONAL BANK	\$ 100,000.00	\$ 98,000.00	\$ 379.00	
Credit Card	INFINITE AVION	\$ 28,000.00	\$ 10,000.00	\$ 409.00	
Credit Card	WALMART CDA BANK MC	\$ 2,800.00	\$ 1.00	\$ 0.03	
Unsecured Line of Credit	CIBC TR 0412	\$ 10,000.00	\$ 1.00	\$ 0.03	
Unsecured Line of Credit	CIBC TR 0412	\$ 16,000.00	\$ 1.00	\$ 0.03	
Unsecured Line of Credit	ROYAL BK	\$ 25,000.00	\$ 25,000.00	\$ 750.00	
Unsecured Line of Credit	TDCT TR 10742	\$ 284.00	\$ 19.00	\$ 19.00	
Unsecured Line of Credit	SCOTIALINE	\$ 10,000.00	\$ 8,173.00	\$ 85.00	
Credit Card	SCOTIABANK VISA	\$ 7,500.00	\$ 1.00	\$ 0.03	
Lease	PORSCHE FIN SERVICES		\$ 67,000.00	\$ 2,406.00	
Credit Card	MASTERCARD BNC	\$ 15,000.00	\$ 1.00	\$ 0.03	
Personal Loan	TDCT TR 10742		\$ 17,000.00	\$ 310.00	
Credit Card	SCOTIABANK VISA	\$ 2,000.00	\$ 1.00	\$ 0.03	
Credit Card	BNS FORM. CHASE PL	\$ 1,600.00	\$ 1.00	\$ 0.03	
<b>Totals</b>		<b>\$ 218,184.00</b>	<b>\$ 225,199.00</b>	<b>\$ 4,358.21</b>	

**Other Properties**  
 Address: 281 Elgin Mills Road W Richmond Hill, ON L4C 4M1  
 Property Value: \$ 1,200,000.00  
 Monthly Rental Income: \$ 2,600.00 Rental Offset Option: Reduce Rental exp., add bal to Gross Inc. Offset %: 75  
 Property Taxes: \$ 5,619.53 Condo Fees: Heating: \$ 125.00 Insurance:  
 Hydro: Repairs: Mgmt Expenses: Interest Charges:  
 General Expenses:  
 Mortgage Type: First Mortgage Balance: \$ 887,438.91 Frequency Payment: \$ 1,563.22 Payment Frequency: Biweekly  
 Maturity Date: Mar-31-2017 Rate Type: Fixed Term Type: Closed Mtg. Interest Rate: 2.090%  
 Mortgage Holder: CIBC Payoff: Loan Type: Mortgage

**FINANCING****Requested Mortgage**

Lender: <Not Assigned>	Product Name:	Loan Type: Mortgage
Purpose: Purchase	Mortgage Type: First	Closing Date: May-08-17
Payment Frequency: Monthly	Purchase/Value: \$ 8,800,000.00	Insurance Premium: \$ 0.00
Monthly Payment: \$ 39,600.00	Total Mortgage Amount: \$ 5,940,000.00	Net Rate: 8.000%
Term: 2 Years	Amortization:	
Repayment Type: Interest Only		

**Down Payment**

Source	Description	Amount
Other	Deposit on purchase	\$ 500,000.00
Personal Cash	Personal savings	\$ 2,140,000.00
	<b>Total</b>	<b>\$ 2,640,000.00</b>

**PROPERTY**

Property Address: 168-178 Old Kennedy Road Markham, ON L3R 0L5

Lot:	Block:	Concession/Township: York	
Appraised Date:	Occupancy: Rental	Age:	Heating Type: Forced Air Gas/Oil/Electric
Living Space: Sq Ft	Lot Size: 2 Acres	Dwelling Type: Detached	
Dwelling Style:	Garage Size:	Garage Type:	
Taxation Year: 2017	Taxes Paid By: Borrower		
Environmental Hazard: No			
Purchase Price: \$ 8,800,000.00	Estimated Value:	Appraised Value:	
Heating Cost: \$ 150.00	Condo Fees: \$ 0.00	Annual Taxes: \$ 15,000.00	
Improvements:	Value of Improvements:		

**Rental Property Expense**

Monthly Rental Income: \$ 0.00	Rental Offset Option: None	
Offset %: 0		
Insurance: \$ 0.00	Hydro: \$ 0.00	Management Expenses: \$ 0.00
Repairs: \$ 0.00	Interest Charges: \$ 0.00	General Expenses: \$ 0.00
Total Expense: \$ 1,400.00		

**Mortgage Brokerages, Lenders and Administrators Act**

This document must be provided to the borrower 2 business days prior to the signing of any mortgage instruments, unless waived below.

## Disclosure to Borrower

**Cost of Borrowing Disclosure:**

Property to be mortgaged: 168-178 Old Kennedy Road Markham, Ontario L3R 0L5 . Detached . York

**Details of Mortgage:**

The principal amount of the First mortgage \$ 5,940,000.00, will be repayable in Monthly installments of \$ 39,600.00, to be paid on the 10th, only interest, starting on July 10, 2017. The net advance of funds is \$ 5,770,200.00.

The total amount of all payments over the 2 Years term will be \$ 950,400.00. The mortgage will be amortized over

**Interest:**

The date on which interest begins to accrue is: May 08, 2017 and if any grace period is given, the details are:

N/A

The annual interest rate is 8.000 % and the compounding period is Monthly.

Interest for each payment period is calculated against the balance owing. Each payment is applied first to the accumulated cost of borrowing, and then to the outstanding principal. Any interest unpaid becomes part of the balance owing for the purposes of calculating the interest charged in future payment periods.

Where the annual interest rate may change, the method of determining the annual interest rate is:

**Fees and Costs Payable by Borrower:**

	Comments	Value	Included In APR
Appraisal	Estimated Paid to Appraiser	\$ <u>4,500.00</u>	X
Brokerage Fee	Payable Intrend Mortgage Inc.	\$ <u>30,000.00</u>	X
Legal Fees & Disbursements	Estimated Legal Fees	\$ <u>15,000.00</u>	X
Other Lender Fees	See Commitment for Details	\$ <u>118,800.00</u>	X
VFSL Peer Review Retainer	See Commitment for Details	\$ <u>6,000.00</u>	X
<b>Total Costs:</b>		\$ <u>174,300.00</u>	

**Total Cost of Borrowing:**

Total Cost of Borrowing (including interest) to be paid over the term of the mortgage: \$ 1,124,700.00 APR: 9.467 %

*The APR is not the contract rate of the mortgage. It is the interest costs, plus the non-interest costs required to obtain the mortgage, expressed as a percentage of the average mortgage balance over the term of the mortgage.*

**Terms and Conditions:**

Prepayment Privileges: See commitment for details

Transferability: See commitment for details

Method of Payment: See commitment for details

Special Conditions: YOU ARE APPROVED FOR A 2-YEAR CLOSED TERM MORTGAGE AT A FIXED RATED OF 8.00%. WITH PAYMENT SET AT INTEREST ONLY.

Particulars / Penalties: YOU HAVE BEEN APPROVED FOR A MORTGAGE WITH VECTOR FINANCIAL SERVICES LIMITED. PLEASE REFER TO COMMITMENT FOR DETAILS.

**Conflict of Interest Disclosure:**

**Mortgage Brokerages, Lenders and Administrators Act**  
This document must be provided to the borrower 2 business days prior to the signing  
of any mortgage instruments, unless waived below.

Disclosure

**Referral Fees to Brokerage and/or Broker/Agent:**

Describe any direct or indirect interest that the Brokerage has or, as currently contemplated, may acquire in the transaction for which this disclosure statement is provided.

**Mortgage - Commissions**

The brokerage will receive a commission and may receive contingent commissions from the Lender. Commissions are generally a fixed percentage of principal amounts of the mortgage being placed. Contingent commissions may be based on factors such as the volume of business placed with the Lender, or a certain percentage growth in the placement of business over a previous period, and may be paid in cash or some other form of compensation.

**Bonus**

The Brokerage may receive a bonus or contingent commission from the Lender. Contingent commissions may be based on factors such as the volume of business placed with the Lender, or a certain percentage of growth in the placement of business over a previous period.

**Other Compensation**

The Lender involved in this transaction may provide the brokerage fees or incentives dependant on the interest rate and the term(s) accepted by the Borrower. The brokerage may retain the fees and incentives or may use them for the benefit of another of the brokerage's clients.

**Referral - No Referral Fee Paid**

The Borrower was referred to the brokerage, and no referral fee is being paid to the referring party.

**Information on Brokerage:**

The Brokerage is representing The Borrower & the Lender, not to the preference of either in this transaction.

The Brokerage has acted for 15 lenders during the previous fiscal year.

Name and Address of Brokerage: Intrend Mortgage Inc. Licence #: 12586 205-590 Alden Road, Markham, ON L3R 8N2

Name of Authorized Person signing on behalf of Brokerage: Andre Dellino, Broker Licence #: M11002193

Date: 05/03/2017 Authorized Signature: \_\_\_\_\_

**Disclosure of Material Risks:**

The brokerage has reviewed with the borrower the general risks associated with a mortgage commitment. These risks include: risk of falling into arrears, default and foreclosure, prepayment penalties, etc.

Acknowledgment

I / we acknowledge receipt of a copy of this form, and corresponding Amortization Schedule and that I / we have reviewed the information.

Date: \_\_\_\_\_ Borrower: Shui  
168 Old Kennedy Inc

Date: \_\_\_\_\_ Guarantor: Shui  
Sammy Wing Fu Hui

Date: \_\_\_\_\_ Guarantor: Shao Jun Xiao  
Shao Jun Xiao

I / we waive the 2 business days requirement for this disclosure.

Date: \_\_\_\_\_ Borrower: Shui  
168 Old Kennedy Inc

Date: \_\_\_\_\_ Guarantor: Shui  
Sammy Wing Fu Hui

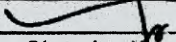
Shui



**Mortgage Brokerages, Lenders and Administrators Act**  
This document must be provided to the borrower 2 business days prior to the signing  
of any mortgage instruments, unless waived below.

Disclosure to Borrower

Date: May 5, 2017

Guarantor:   
Shao Jun Xiao

*This form is provided "as-is" and D+H Limited Partnership ("D+H") makes no representations, warranties or conditions with regard to this form. Without limiting the generality of the foregoing, D+H does not warrant that this form complies with any applicable legislation and/or regulation. To the maximum extent permitted by applicable law, D+H disclaims all warranties and conditions implied or statutory, including, but not limited to, any warranties or conditions of merchantability, fitness for a particular purpose, and non-infringement.*

LETTER OF DIRECTION

May 04, 2017

Notary's Name: \_\_\_\_\_  
Notary's Firm: \_\_\_\_\_  
Notary's Address: \_\_\_\_\_  
Notary's Fax: \_\_\_\_\_

ATTENTION: \_\_\_\_\_

RE: LETTER OF DIRECTION - FEE AGREEMENT

APPLICATION NUMBER: ITMO-2039

CLIENT INFORMATION:

Name: 168 Old Kennedy Inc  
Address: 168-178 Old Kennedy Road Markham Ontario L3R0L5  
Name: Sammy Wing Fu Hui  
Address: 43 Redheugh Crescent Toronto Ontario M1W3C4  
Name: Shao Jun Xiao  
Address: 97 Riding Mountain Drive Richmond Hill Ontario L4E0V2

PROPERTY INFORMATION:

Mortgaged Property: 168-178 Old Kennedy Road  
Markham ON L3R 0L5

Lender: private

Closing Date: May 08, 2017

MORTGAGE INFORMATION:

Principal Amount: \$ 5,940,000.00  
Interest Rate: 8.000%  
Payment Amount: \$ 39,600.00

Lender Reference Number:  
Payment Frequency: Monthly  
Term: 2 Year(s) 0 Month(s)  
Amortization: 0 Year(s) 0 Month(s)

BROKERAGE INFORMATION:

Name: Intrend Mortgage Inc.  
Address: 205 590 Alden Road Markham ON L3R 8N2  
License #: 12586  
Agent Name: Andre Dellino  
License # (if applicable): M11002193  
Brokerage Fee: \$ 30,000.00 (Canadian Dollars)

INSTRUCTIONS:

As a deduction on closing from the proceeds, we the undersigned hereby irrevocably authorize and direct you to pay the above noted brokerage fee to the brokerage Intrend Mortgage Inc. .

Additional Instructions:

Client Authorization

Witness

\_\_\_\_\_  
168 Old Kennedy Inc

Witness

\_\_\_\_\_  
Sammy Wing Fu Hui

Witness

\_\_\_\_\_  
Shao Jun Xiao

## AMORTIZATION SUMMARY

Transaction No:  
ITMO-2039-1

Prepared For: 168 Old Kennedy Inc

### MORTGAGE INFORMATION

Mortgage Amount:	\$ 5,940,000.00	Closing Date:	May-8-2017
Interest Rate:	8.000%	Interest Adjustment Date:	June-10-2017
Amortization:	0 Years 0 Months	First Payment Date:	July-10-2017
Term:	24 Months	Maturity Date:	June-10-2019
Disclosure Rate:	9.467%	Interest Adjustment Amount:	\$ 42,975.43
Payment Frequency:	Monthly	Interest Only:	Yes
Compounded:	Monthly		

### MORTGAGE SUMMARY

Monthly Payment: \$ 39,600.00

Total Payments:	\$ 950,400.00
Total Interest:	\$ 950,400.00
Total Principal:	\$ 0.00
Balance Remaining at Maturity:	\$ 5,940,000.00

Prepared by : Broker

Andre Dellino - M11002193  
Intrend Mortgage Inc.

205 - 590 Alden Road  
Markham, Ontario  
L3R 8N2

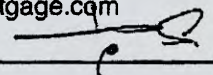
12586

Tel : (905) 415-8488

Fax : (905) 940-8848

E-mail : andre.dellino@intrendmortgage.com

E. + O. E.



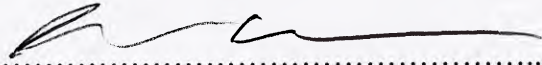
### AMORTIZATION SCHEDULE

Payment Date	Interest	Principal	Balance
July 10. 2017	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
August 10. 2017	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
September 10. 2017	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
October 10. 2017	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
November 10. 2017	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
December 10. 2017	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
January 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
February 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
March 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
April 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
May 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
June 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
July 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
August 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
September 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
October 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
November 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
December 10. 2018	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
January 10. 2019	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
February 10. 2019	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
March 10. 2019	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
April 10. 2019	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
May 10. 2019	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
June 10. 2019	\$ 39,600.00	\$ 0.00	\$ 5,940,000.00
<b>At End of Term:</b>	<b>\$ 950,400.00</b>	<b>\$ 0.00</b>	<b>\$ 5,940,000.00</b>

J S

# TAB C

This is **Exhibit "C"** referred to in the affidavit of **Noah Mintz** sworn before me in the City of Toronto, in the Province of Ontario, Canada this 20th day of November, 2019.



.....  
A Commissioner For Taking Affidavits

Aaron Fretz Cressman, a  
Commissioner, etc., **Province of**  
Ontario, while a Student-at-Law.  
Expires May 10, 2021.

**Properties**

**PIN** 02953 - 0145 LT **Interest/Estate** Fee Simple

**Description** BLOCK 2, PLAN 65M4289 T/W EASE OVER PT E1/2 LT 2, CON 5, PTS 4, 6, 7 & 8, PL 65R30487 IN FAVOUR OF PT BLK 2, PL 65M4289 LYING WITHIN THE LIMITS OF PT 1, PL 65R30487, AS IN MA91760; T/W EASE OVER PT E1/2 LT 2, CON 5, PTS 2, 4, 7 & 8, PL 65R30487 IN FAVOUR OF PT BLK 2, PL 65M4289 LYING WITHIN LIMITS OF PT 5, PL 65R30487, AS IN MA110959; T/W EASE OVER PT E1/2 LT 2, ONC 5, PTS 2, 6, 7 & 8 IN FAVOUR OF PT BLK 1, PL 65M4289 LYING WITHIN LIMITS OF PT 3, PL 65R30487, AS IN R694330; S/T EASE AS IN YR1610522; S/T EASE IN GROSS AS IN YR1684881;; SUBJECT TO AN EASEMENT IN GROSS AS IN YR1749103; SUBJECT TO AN EASEMENT IN GROSS AS IN YR1778673; SUBJECT TO AN EASEMENT AS IN YR1905638; SUBJECT TO AN EASEMENT OVER PTS 2, 4 & 6, 65R33280 IN FAVOUR OF BLK 3, PL 65M4289 AS IN YR1936318; CITY OF MARKHAM

**Address** 168 OLD KENNEDY ROAD  
MARKHAM

**Chargor(s)**

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

**Name** 168 OLD KENNEDY INC.

**Address for Service** 505 Highway 7 East  
Penthouse  
Thornhill, Ontario  
L3T 7T1

I, Wing-Fu Hui, Director and Shao Jun Xiao, Director, have the authority to bind the corporation.

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

<b>Chargee(s)</b>	<b>Capacity</b>	<b>Share</b>
<b>Name</b> VECTOR FINANCIAL SERVICES LIMITED		
<b>Address for Service</b> 25 Imperial Street Suite 500 Toronto, Ontario M5P 1B9		

**Statements**

Schedule: See Schedules

**Provisions**

<b>Principal</b>	\$ 5,940,000.00	<b>Currency</b>	CDN
<b>Calculation Period</b>	daily, compounded monthly		
<b>Balance Due Date</b>	2019/06/10		
<b>Interest Rate</b>	See Schedule		
<b>Payments</b>			
<b>Interest Adjustment Date</b>	2017 05 10		
<b>Payment Date</b>	10th day of each month		
<b>First Payment Date</b>	2017 06 10		
<b>Last Payment Date</b>	2019 06 10		
<b>Standard Charge Terms</b>	200033		
<b>Insurance Amount</b>	full insurable value		
<b>Guarantor</b>	See Schedule		

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

**Signed By**

Jonathan David Freeman

40 King Street West, Suite 2100  
Toronto  
M5H 3C2

acting for  
Chargor(s)

Signed

2017 05 15

Tel 416-869-5300

Fax 416-360-8877

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

**Submitted By**

CASELS BROCK & BLACKWELL LLP

40 King Street West, Suite 2100  
Toronto  
M5H 3C2

2017 05 15

Tel 416-869-5300

Fax 416-360-8877

**Fees/Taxes/Payment**

Statutory Registration Fee \$63.35

Total Paid \$63.35

**File Number**

Chargee Client File Number : 49004-22



## SCHEDULE "A"

### ADDITIONAL PROVISIONS

#### 1. STANDARD CHARGE TERMS

The terms contained in this schedule are in addition to the terms contained in the Standard Charge Terms. In the event of any conflict between the terms contained in this schedule and those contained in the Standard Charge Terms, the terms contained in this schedule shall, to the extent of the conflict, prevail.

#### 2. DEFINITIONS

In this schedule, the following definitions apply:

- (a) **Applicable Laws** means, in respect of any person, property, transaction or event, all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licences, authorizations, approvals and all applicable common law or equitable principles in force and effect during the currency of this Charge;
- (b) **Balance Due Date** means twenty five (25) months from the Interest Adjustment Date;
- (c) **Charge** means this Charge/Mortgage of Land made pursuant to the *Land Registration Reform Act* and any amendments thereto and including the Standard Charge Terms;
- (d) **Chargee** shall mean Vector Financial Services Limited;
- (e) **Chargor** shall mean 168 Old Kennedy Inc.;
- (f) **CIBC** means the Canadian Imperial Bank of Commerce;
- (g) **Commitment Letter** means collectively the loan proposal issued by the Chargee and addressed to the Chargor dated April 10, 2017 and the commitment letter issued by the Chargee and addressed to the Chargor dated the 3rd day of May, 2017, setting out the terms of the loan secured by this Charge, as they may be amended from time to time;
- (h) **Costs** shall include but not be limited to all of the fees, costs, charges, losses, damages and expenses incurred by the Chargee as a direct or indirect consequence of granting the loan secured by this Charge including, without limitation, all expenses incurred in the construction, preservation, maintenance, repair, insuring and realization of the security contained herein, and all legal costs incurred by the Chargee as between a solicitor and his own client;
- (i) **Covenantor** shall mean collectively, Shao Jun Xiao and Wing-Fu Hui;
- (j) **Environmental Laws** means all present and future Applicable Laws, standards and requirements relating to environmental or occupational health and safety matters, including those relating to the presence, release, reporting, licensing, permitting, investigation, disposal, storage, use, remediation and clean-up or any other aspect of a Hazardous Substance;
- (k) **Environmental Proceeding** means any investigation, action, proceeding, conviction, fine, judgment, notice, order, claim, directive, permit, license, approval, agreement or Lien of any nature or kind arising under or relating to Environmental Laws;

- (l) **Hazardous Substance** means any substance or material that is prohibited, controlled, otherwise regulated by any governmental authority or is otherwise hazardous in fact, including without limitation contaminants, pollutants, asbestos, lead, urea formaldehyde foam insulation, polychlorinated by-phenyls or hydrocarbon products, any materials containing same or derivatives thereof, explosives, radioactive substances, petroleum and associated products, underground storage tanks, dangerous or toxic substances or materials, controlled products, and hazardous wastes.
- (m) **Interest** means interest at the Interest Rate calculated daily and compounded monthly not in advance both before and after maturity, default, and judgment;
- (n) **Interest Adjustment Date** means May 10, 2017;
- (o) **Interest Rate** means the greater of 8.00% per annum, or the CIBC Prime Rate from time to time plus 5.00% per annum for the first twenty-four (24) months of the Loan Term, increasing to the greater of 12.00% per annum or the CIBC Prime Rate from time to time plus 9.00% per annum (the "**Overholding Rate**") thereafter. Interest on advanced funds will be calculated daily, compounded monthly and payable monthly;
- (p) **Loan** means the loan made by the Chargee to the Chargor pursuant to the terms of the Commitment Letter.
- (q) **Monthly Payments** means the payments of Interest only made on the tenth (10th) day of each month on the Principal outstanding from time to time;
- (r) **Prime Rate** means the annual rate of interest which is announced from time to time by CIBC as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans made in Canada;
- (s) **Principal Amount or Principal** means the maximum principal amount of \$5,940,000.00 in lawful money of Canada which may be advanced under this Charge as it may be increased or decreased prior to registration of a discharge of this Charge;
- (t) **Project** means the proposed development located on the Property which will include the construction of 46 back-to-back townhouses with a Gross Floor Area of approximately 73,600 square feet;
- (u) **Property or Charged Property** means the lands described in the Charge to which this Schedule is attached and all buildings, fixtures and improvements now or hereafter brought or erected thereon;
- (v) **Standard Charge Terms** means the set of Standard Charge Terms filed as No. 200033; and
- (w) **Receiver** means a receiver or receiver-manager of the Property.

### 3. CHARGE

Upon the request of the Chargee, the Chargor hereby give this Charge and charges the Property as security for full payment to the Chargee of the Principal Amount, Interest and all other amounts payable hereunder and as security for the observance and performance of all of the obligations of the Chargor to the Chargee pursuant to this Charge or otherwise.

### 4. MONTHLY PAYMENTS

Interest on the Principal Amount from time to time advanced prior to the Interest Adjustment Date, computed from the respective dates of such advances to the Interest

Adjustment Date, shall, at the option of the Chargee, be deducted from the advances; after the Interest Adjustment Date, the Interest only payments computed from the Interest Adjustment Date on the Principal Amount outstanding from time to time, shall become due and be paid in Monthly Payments as provided by this Schedule to this Charge and the balance of the Principal Amount and Interest shall become due and payable on the Balance Due Date. The Monthly Payments, when received, shall be applied firstly to outstanding Costs, secondly to outstanding Interest and the balance.

**5. PREPAYMENT**

During the term of the Loan (the "Term"), provided no Event of Default, as hereinafter defined, has occurred and is continuing, the Chargor shall have the right to prepay the Loan in full, on any date that is six (6) months following the Interest Adjustment Date on payment of one (1) month's Interest as a bonus, with Interest due and payable on a per diem basis. If the Chargor elects to exercise its rights to prepay the Loan prior to the Balance Due Date, this must be so indicated by the Chargor to the Chargee in writing and a date for such prepayment shall be chosen by the Chargee (the "New Maturity Date"). If the Chargor fails to pay off the Loan in full on the New Maturity Date, then the Loan shall be due and payable immediately and the Interest Rate charged thereon shall be set at the Overholding Rate, and three (3) months interest shall be due and payable.

**6. PAYMENTS BY CHARGEЕ**

The Chargee may pay all premiums of insurance and all taxes, rates, levies, charges, assessments, utility and heating charges which shall from time to time fall due and be unpaid in respect of the Property and all costs, charges, legal fees (as between solicitor and his own client) and expenses as deemed necessary by the Chargee to preserve the Property and/or to realize upon the Chargee's security and all such payments shall be deemed Costs hereunder.

**7. COSTS**

Costs shall be forthwith due and payable by the Chargor to the Chargee and shall bear Interest until fully paid.

**8. INSURANCE PROVISIONS**

The Chargor will at all times during the Term maintain the insurance required by the Chargee including, without limitation, the following coverages:

- (i) builders' all risk coverage, including flood, earthquake and sewer back-up for an amount satisfactory to the Chargee, on a replacement cost basis, with loss payable to the Chargee by way of the IBC Standard Mortgage Clause. The policy will provide coverage for 100% of the hard construction costs and recurring soft costs. The policy must allow for partial occupancy of the premises;
- (ii) comprehensive broad form boiler and machinery insurance covering all pressure vessels (whether fired or unfired), air conditioning and miscellaneous electrical apparatus on the Property, for an amount satisfactory to the Chargee, with loss payable to the Chargee under a Boiler and Machinery Insurance Association mortgage clause;
- (iii) third party liability coverage for a minimum of \$5,000,000 per occurrence, covering the Chargor and all contractors, sub-contractors and trades with respect to work or operations at the Project, or in respect of the Project written on an inclusive basis;
- (iv) fire insurance on a replacement cost basis; and
- (v) such other insurance coverage which is normal and customary for a construction project similar to the Project.

All policies shall name the Chargee as first mortgagee and loss payee and shall be on a "no co-insurance" basis. All such insurance shall be placed with a company or companies satisfactory to the Chargee. Deductible amounts shall also be subject to Chargee's approval. All cancellation and alteration clauses in the above-referenced policies, including those contained in the mortgage clause endorsements, shall provide for at least thirty (30) days prior written, notice to the Chargee of any cancellation of or material alteration to the policy. The Chargor shall provide evidence of policy renewal or satisfactory replacement annually at least thirty (30) days prior to expiry. The Chargor shall deliver to the Chargee original or certified copies of all policies required hereunder. At the time of funding, the expiry date of each of the insurance policies required hereunder shall be at least one year from the date of funding. The Chargee shall be entitled to require coverage of such other risks and perils as the Chargee may from time to time consider advisable or desirable and in respect of which insurance coverage is available.

#### 9. ENVIRONMENTAL CLAUSE

##### Representations:

The Chargor hereby represents, warrants, covenants and agrees with the Chargee that the Property and all businesses and operations conducted thereon comply with all Environmental Laws. The Property has not been used for or designated as a waste disposal site and, except as disclosed in the environmental audit obtained by the Chargee prior to the advance of funds under this Charge (the "**Environmental Audit**"), contains no Hazardous Substances and there is no existing or threatened Environmental Proceeding against or affecting the Property. Copies of all existing environmental assessments, audits, tests and reports relating to the Property have been delivered to the Chargee. To the best of the Chargor's knowledge and belief, there are no pending or proposed changes to Environmental Laws or to any Environmental Proceedings which would render illegal or materially restrict or change the present use and operation of the Property. Except as disclosed in the Environmental Audit, neither of the Chargor nor, to the best of the Chargor's knowledge and belief after due inquiry and investigation, any other person or organization: (i) has used or permitted the use of the Property to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances; (ii) has been subject to any Environmental Proceeding related to the Property; (iii) has caused or permitted the release or discharge of any Hazardous Substance on or in the vicinity of the Property; (iv) has received or otherwise has knowledge of any Environmental Proceedings or of any facts which could give rise to any Environmental Proceeding related to the Property; (v) has undertaken any remediation or clean-up of any Hazardous Substance on or in the vicinity of the Property; or (vi) has defaulted in reporting any occurrence or circumstance to any governmental authority in relation to the Property which is or was required to be reported pursuant to any Environmental Laws.

##### Covenants:

The Chargor shall: (i) ensure that the Property and the Chargor comply with all Environmental Laws at all times; (ii) not permit any Hazardous Substance to be located, manufactured, stored, spilled, discharged or disposed of at, on or under the Property (except in the ordinary course of business of the Chargor or any tenant and in compliance with all Environmental Laws) nor permit any other activity on or in respect of the Property that might result in any Environmental Proceeding affecting the Property, Chargor or Chargee; (iii) notify the Chargee promptly of any threatened or actual Environmental Proceedings; (iv) remediate and cure in a timely manner any non-compliance by the Property or the Chargor with Environmental Laws, including removal of any Hazardous Substances from the Property; (v) maintain all environmental and operating documents and records including all permits, licenses, certificates, approvals, orders and agreements relating to the Property as required by Environmental Laws; (vi) provide the Chargee promptly upon request with such information, documents, records, permits, licences, certificates, approvals, orders, agreements, environmental audits,

reports, assessments and inspections and take such other steps (all at the Chargor's expense) as may be required by the Chargee to confirm and/or ensure compliance by the Property and the Chargor with Environmental Laws, and (vii) execute all consents, authorizations and directions necessary to permit any inspection of the Property by any governmental authority and to permit the release to the Chargee or its representatives, of any information relating to the Property and the Chargor.

**Indemnity:**

Without limiting any other provision of this Charge or any document collateral hereto, the Chargor shall indemnify and pay, protect, defend and save the Chargee harmless from and against all actions, proceedings, losses, damages, liabilities, claims, demands, judgments, costs, expenses, (including legal fees and disbursements on a solicitor and his own client basis) (collectively "**Environmental Claims**"), imposed on, made against or incurred by the Chargee arising from or relating to, directly or indirectly, and whether or not disclosed by the Environmental Audit and whether or not caused by the Chargor or within its control, (i) any actual or alleged breach of Environmental Laws relating to or affecting the Property, (ii) the actual or alleged presence, release, discharge or disposition of any Hazardous Substance in, on, over, under, from or affecting all or part of the Property or surrounding lands, including any personal injury or property damage arising therefrom, (iii) any actual or threatened Environmental Proceeding affecting the Property including any settlement thereof, (iv) any assessment, investigation, containment, monitoring, remediation and/or removal of all Hazardous Substances from all or part of the Property or surrounding areas or otherwise complying with Environmental Laws, or (v) any breach by the Chargor of any covenant hereunder or under any document collateral hereto or under Applicable Law relating to environmental matters. This indemnity shall survive repayment of the loan secured hereby, foreclosure upon this Charge and any other extinguishing of the obligations of the Chargor under this Charge and any other exercise by the Chargee of any remedies available to it against the Chargor.

**Inspections:**

The Chargee or its agent may, at any time, before and after an Event of Default, and for any purpose deemed necessary by the Chargee, enter upon the Property, upon 48 hours' prior written notice to the Chargor (except in the case of an emergency), to inspect the Property and buildings thereon to ensure it is properly maintained and that its intended use conforms to all laws. Without in any way limiting the generality of the foregoing, the Chargee may enter upon the Property, upon 48 hours' prior written notice to the Chargor (except in the case of an emergency), to conduct any environmental testing, site assessment, investigation or study deemed necessary by the Chargee and the reasonable cost of such testing, assessment, investigation or study, as the case may be, shall bear interest at the rate set out in this Charge from the date of disbursement until paid and all such sums together with interest as aforesaid shall be a charge upon the Property. The exercise of any of the powers enumerated in this clause shall not result in the Chargee, or its agents being deemed to be in possession, management, or control of the Property and buildings.

**10. PROPERTY MANAGEMENT**

The Chargee shall have the right to require the Chargor to retain professional property management for the Property satisfactory to the Chargee, acting reasonably. The Chargee shall also have the right to approve the terms and conditions of the management agreement. Any change in the management of the Property shall require the prior written approval of the Chargee, both as to manager and the terms and conditions of the management agreement.

**11. SURVIVAL OF COMMITMENT LETTER**

Neither the execution and delivery of this Charge or any security documents which are contemplated by the Commitment Letter nor the advance of any portion of the Principal Amount shall, at any way, merge or extinguish the Commitment Letter or the terms and

conditions contained in the Commitment Letter. The Commitment Letter and all of its provisions shall continue in full force and effect until the Principal Amount has been repaid in full; provided that in case of any inconsistency or conflict between any provision or provisions of the Commitment Letter and any provision or provisions of this Charge or any other security documents granted pursuant to the Commitment Letter, the provisions of the Commitment Letter, as same may have been amended from time to time, shall prevail.

## 12. EVENTS OF DEFAULT

The Chargor shall be in default under this Charge if any one or more of the following events of default (an "Event of Default") occurs at any time or times prior to registration of a complete discharge of this Charge:

- (a) the Chargor default under any one or more of the covenants, conditions, terms, agreements, provisions and obligations contained in this Charge to be kept, observed and performed by the Chargor;
- (b) the Chargor becomes insolvent, bankrupt or a trustee in bankruptcy is appointed for the Chargor or the Chargor makes a general assignment for the benefit of creditors or goes into liquidation either voluntarily or under an order of the court of competent jurisdiction or otherwise acknowledges his insolvency;
- (c) there is shown to be any discrepancy or inaccuracy in any written information, statement, warranty or representations made or furnished to the Chargee by or on behalf of the Chargor with respect to the Property or the Chargor financial condition and if such discrepancies or inaccuracies are material in the opinion of the Chargee, acting reasonably;
- (d) the Chargor defaults under any one or more covenants, conditions, terms, agreements, provisions and obligations contained in any document submitted to the Chargee by or on behalf of the Chargor in connection with this Charge;
- (e) any or all of the shares issued and outstanding in the capital stock of the Chargor are directly or indirectly transferred, pledged, encumbered, hypothecated or dealt with in any manner whatsoever such that the Chargee determines, in its sole and unfettered discretion, that there is a change in control of the Chargor;
- (f) there is litigation or any other proceeding, application, claim or action before any court, administrative board, or other tribunal which, if determined adversely to the Chargor or, in the opinion of the Chargee, acting reasonably, would materially affect the Property, the financial condition of the Chargor or the value of the Property;
- (g) there is rendered against the Chargor a final judgment, order or decree for the payment of money which remains unpaid for 30 days and which, in the sole opinion of the Chargee, will materially affect the Property, the financial condition of the Chargor or the value of the Property;
- (h) the Chargor is in default under any subsequent mortgage or encumbrance affecting the Property;
- (i) there is a change in mind or management or location of the Chargor's offices or place of records without the consent of the Chargee, not to be unreasonably withheld; or
- (j) the Chargor fails to operate a segregated bank account for the Property or Project or co-mingles any funds from any other projects or properties and/or entities of the Chargor or Covenantor;

If any of the foregoing Events of Default shall occur and which Event of Default remains uncured by the Chargor for a period of five (5) days after notice is received by the Chargor of such Event of Default then, notwithstanding the provisions of any other agreement between the Chargor and the Chargee and at the option of the Chargee, the whole of the Principal Amount and Interest shall immediately become due and payable and the Chargee shall be relieved of any further obligations to advance monies to the Chargor. If an Event of Default is waived by the Chargee, such waiver shall not operate as a waiver of any other, further or continuation of the same Event of Default. In addition, any failure by the Chargee to exercise any rights or remedies hereunder shall not constitute a waiver hereof.

### 13. DUE ON SALE

If:

- (a) the Chargor or beneficial owner of the Charged Premises directly or indirectly sells, conveys, transfers or otherwise disposes of its interest in the Property or any part thereof or agrees to do so;
- (b) there is a change in the direct or indirect effective voting control of the Chargor or more than 25% of the voting shares/units of the Chargor are transferred unless the Chargor is a publicly traded entity (as hereinafter defined); or
- (c) the Chargor amalgamates or merges;

without the prior written consent of the Chargee being obtained, such consent not to be unreasonably withheld, then the Chargee may, at its option, declare forthwith due and payable the entire balance of the unpaid principal together with accrued and unpaid interest due thereon. The decision to accelerate the Loan shall be at the sole option of the Chargee. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. A "publicly traded entity" means an entity whose shares/units are listed and traded on a recognized stock exchange in Canada or the United States.

The Chargor will provide reasonable notice to the Chargee of any anticipated or impending transaction which would require the consent of the Chargee under this Section together with such reasonable information as the Chargee may require to determine whether or not to grant its consent thereto.

No sale or other dealing by the Chargor with the Property or any part thereof shall in any way change or affect the liability of the Chargor hereunder, or in any way alter the rights of the Chargee as against the Property, the Chargor or any other person or persons liable for payment of the Principal Amount, Interest and Costs.

### 14. SUBSEQUENT ENCUMBRANCES

The Chargor shall not, without the Chargee's prior written approval, which may be withheld in its sole discretion, further charge or otherwise encumber the Property or any interest therein. The Chargor shall disclose to the Chargee all existing or proposed financing relating to the Project and the Security and shall not pledge or otherwise encumber its interest in the Property or the Security to any other party other than the Chargee, without the prior written approval of the Chargee, which may be withheld in its sole discretion.

### 15. RIGHT TO DISTRAIN

The Chargee may distrain for arrears of any portion of the Principal Amount, Interest or any other amounts due and unpaid hereunder. The Chargor waives all rights to claim exemption and confirms that there is no limit in the amount for which the Chargee may distrain.

**16. CHARGEЕ NOT A CHARGEЕ IN POSSESSION**

It is agreed that the Chargee, in exercising any of its rights under this Charge, shall be deemed not to be a chargee in possession or a mortgagee in possession of the Property.

**17. LEASES AND SPECIFIC ASSIGNMENTS OF LEASES**

If the Chargor intends on leasing any part of the Property, the Chargee must approve the prospective tenant and its intended use. The Chargee may require, in its sole discretion, a statutory declaration, signed by such prospective tenant, of its intended use of the Property. As further security for this Charge, the Chargor covenant and agree to grant to the Chargee upon thirty (30) days prior written notice from the Chargee to the Chargor, a specific assignment of any lease or leases of part or all of the Property comprising the security of this Charge.

**18. ADDITIONAL SECURITY**

In the event that the Chargee, in addition to the Property, holds or shall hold, in the future, further security on account of the Principal Amount, it is agreed that no single or partial exercise of any of the Chargee's powers under this Charge or any of such further security (this Charge and any such further security are hereinafter together referred to as the "Security"), shall preclude other and further exercise of any other right, power or remedy pursuant to the Security. The Chargee shall at all times have the right to proceed against all, any or any portion of the Security in such order and in such a manner as the Chargee shall, in the Chargee's sole and unfettered discretion, deem fit without waiving any rights which the Chargee might have with respect to the Security and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Chargor under the remaining Security.

**19. FINANCIAL STATEMENTS**

Until repayment of the Loan, the Chargor shall supply the Chargee with such updated information relating to the Project or condition precedent requirements as the Chargee may request from time to time. Such information shall be provided to the Chargee within 14 days from the date of the Chargee's request.

Until repayment of the Loan or upon request, the Chargor shall provide the Chargee within 120 days after the end of each calendar year, if applicable:

- (a) at least notice to reader financial statements of the Chargor and of any corporate Covenantor, including a balance sheet and supporting schedules, a detailed statement of income and expenditures and supporting schedules, and a statement of change in cash flow; in the case of an individual chargor or additional covenantor, net worth statements may be supplied in lieu of financial statements;
- (b) at least notice to reader financial statements in respect of the Property, including a balance sheet and supporting schedules and a detailed statement of income and expenditures and supporting schedules, if applicable;
- (c) a current rent roll for the Property containing such detail as may be required by the Chargee, if applicable; and
- (d) a budget for the Property for the next fiscal year, forecasting operating income, expenses and capital expenditures, if applicable.

The Chargor and Covenantor hereby authorize the Chargee to obtain such further financial information requested by the Chargee.



## 20. CREDIT MANAGEMENT

The Chargor acknowledges that it is important to insulate the revenue stream from the Property in order to avoid claims by other projects, commitments or liabilities of the Chargor. If this is not possible, the Chargor agrees to provide the Chargee with a reasonable degree of revenue segregation through separate reporting. In this regard the Chargee will monitor the financial aspects of the Property, depending upon its financial status.

The Chargor covenants and agrees to provide the Chargee with standalone property reporting, isolating the Property's financial and operating accounts and information from that of other properties owned by the Chargor. The Chargor further covenants and agrees to provide the Chargee with separate financial statements for the Property. In the Event of Default by the Chargor under the Charge that is continuing beyond all applicable cure periods, or if the Chargor seeks relief under the Companies' Creditors Arrangement Act or other debtor relief legislation, the Chargee shall, if possible, be entitled to establish a separate project bank account for the Property.

As security for the aforesaid, an assignment of revenue (general assignment of rents) shall be registered both against title to the Property as well as under the applicable personal property registration system. The assignment of revenue shall take effect automatically, at the Chargee's option, if there is a default under the Charge. In addition, a general security agreement (or equivalent), shall be provided to the Chargee.

## 21. SIGNAGE

The Chargee shall have the right to provide a sign, at its cost, no greater than 2' x 3' advertising that the Project financing was provided by the Chargee. Such signage shall be erected by the developer of the Project or the Chargor, at its cost, in a prominent location on or about the hoarding or construction fence at a location to be approved by the Chargor and the Chargee, each acting reasonably.

## 22. PAYMENTS

Any payment made by the Chargor to the Chargee which is received by the Chargee on a non-business day of the Chargee or after 2:00 p.m. on any business day of the Chargee shall be deemed to have been received by the Chargee on the next business day of the Chargee.

## 23. OPTION TO PROVIDE CONSTRUCTION FINANCING

The Chargee shall have the first right to provide construction financing for the Project on terms mutually agreed to between the Chargee and the Chargor. Neither the Chargee nor the Chargor are required to provide, nor accept, the terms should a construction loan be offered by the Chargee.

## 24. TAXES

The Chargor covenants that, in addition to the monthly payments of principal and interest payable pursuant to this Charge, the Chargor shall also provide to the Chargee, on the 1<sup>st</sup> day of each month, an amount stipulated by the Chargee sufficient to provide a fund to pay, in full, the annual taxes at the time that the first installments for regular tax bills for such taxes become due and payable. Until there is an Event of Default, the Chargee shall from time to time make payments to the taxing authority when taxes are due. Where the Chargee has made tax payments in excess of those collected, such excess amounts shall be payable on demand and shall be secured by the Charge and bear interest at the interest rate under the Charge. After an Event of Default, the Chargee may, at its sole option, pay taxes with respect to the Property and such payments will be added to the principal balance of the Charge. The Chargee reserves

the right to adjust, from time to time, the estimated monthly tax amount payable, based on taxes actually levied against the Property.

#### 25. MAJOR ALTERATIONS

Any major changes, additions and/or alterations contemplated to the Property (occurring after the completion of the initial renovation), including major changes in use of the Property and for proposed use of the Property must receive the Chargee's written consent, such consent not to be unreasonably withheld, prior to the commencement of the changes, additions and/or alterations. If the Chargor changes and/or alters the Property without the prior written consent of the Chargee being obtained, then the Chargee may, at its sole option, declare forthwith due and payable the entire balance of the unpaid principal together with the accrued interest due thereon. The Chargor will provide reasonable notice to the Chargee of any anticipated or impending transaction which would require the consent of the Chargee under this Section together with such reasonable information as the Chargee may require to determine whether or not to grant its consent thereto.

#### 26. CONSENT TO DISCLOSURE

The Chargor and Covenantor consent to the disclosure by the Chargee to any such perspective assignee/participant of all information and documents regarding the Loan, the Chargor and Covenantor within the possession or control of the Chargee.

#### 27. RECEIVER

Notwithstanding anything herein contained, it is declared and agreed that any time and from time to time when there shall be an Event of Default, the Chargee may, at such time and from time to time and with or without entry into possession of the Property, or any part thereof, by instrument in writing appoint any person, whether an officer or officers or an employee or employees of the Chargee or not, to be a receiver (which term as used herein includes a receiver manager and also includes the plural as well as the singular) of the Property, or any part thereof, and of the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any receiver and appoint another in his stead, and that, in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor, but no such appointment shall be revocable by the Chargor. Upon the appointment of any such receiver from time to time the following provisions shall apply:

- (a) Every such receiver shall have unlimited access to the Property as agent and attorney for the Chargor (which right of access shall not be revocable by the Chargor) and shall have full power and unlimited authority to:
  - (i) collect the rents and profits from tenancies whether created before or after these presents;
  - (ii) rent any portion of the Property which may become vacant on such terms and conditions as he considers advisable and enter into and execute leases, accept surrenders and terminate lease;
  - (iii) complete the construction of any building or buildings or other erections or improvements on the Property left by the Chargor in an unfinished state or award the same to others to complete and purchase, repair and maintain any personal property including, without limitation, appliances and equipment, necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Chargor's materials, supplies, plans, tools, equipment (including appliances) and property of every kind and description;
  - (iv) manage, operate, repair, alter or extend the Property or any part thereof.

The Chargor undertakes to ratify and confirm whatever any such receiver may do in the Property.

- (b) The Chargee may at its discretion vest the receiver with all or any of the rights and powers of the Chargee.
- (c) The Chargee may fix the reasonable remuneration of the receiver who shall be entitled to deduct the same out of the revenue or the sale proceeds of the Property.
- (d) Every such receiver shall be deemed the agent or attorney of the Chargor and, in any event, the agent of the Chargee and the Chargee shall not be responsible for his acts or omissions except if as a result of gross negligence or willful misconduct.
- (e) The appointment of any such receiver by the Chargee shall not result in or create any liability or obligation on the part of the Chargee to the receiver or to the Chargor or to any other person and no appointment or removal of a receiver and no actions of a receiver shall constitute the Chargee a Chargee in possession of the Property.
- (f) No such receiver shall be liable to the Chargor to account for monies other than monies actually received by him in respect of the Property, or any part thereof, and out of such monies so received every such receiver shall, in the following order, pay:
  - (i) his remuneration aforesaid;
  - (ii) all costs and expenses of every nature and kind incurred by him in connection with the exercise of his powers and authority hereby conferred;
  - (iii) interest, principal and other money which may, from time to time, be or become charged upon the Property in priority to these presents, including taxes;
  - (iv) to the Chargee all interest, principal and other monies due hereunder to be paid in such order as the Chargee in its discretion shall determine;
  - (v) and thereafter, every such receiver shall be accountable to the Chargor for any surplus.

The remuneration and expenses of the receiver shall be paid by the Chargor on demand and shall be a charge on the Property and shall bear interest from the date of demand at the same rate as applies to the principal hereby secured.

- (g) Save as to claims for accounting under clause (f) of this paragraph, the Chargor hereby releases and discharges any such receiver from every claim of every nature, whether sounding in damages or not which may arise or be caused to the Chargor or any person claiming through or under him by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of dishonesty or fraud or gross negligence.
- (h) The Chargee may, at any time and from time to time, terminate any such receivership by notice in writing to the Chargor and to any such receiver.
- (i) The statutory declaration of an officer of the Chargee as to default under the provisions of these presents and as to the due appointment of the receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with a receiver who is ostensibly exercising powers herein provided for and such dealing shall be deemed, as regards such person, to be valid and effectual.

- (j) The rights and powers conferred herein in respect of the receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have.

**28. CRIMINAL RATE OF INTEREST**

Notwithstanding the provisions of this Charge or in any agreement, instrument or other document held by the Chargee in connection with the Charge, in no event shall aggregate "interest" (as that term is defined in Section 347 of the Criminal Code (Canada)) exceed the effective annual rate of interest on the "credit advanced" (as defined therein) lawfully permitted under the Section. The effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices over the term of the Charge, and in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries selected by the Chargee shall be conclusive for the purposes of such determination.

**29. NEGATIVE COVENANTS OF THE CHARGOR**

The Chargor covenants that, without the Chargee's prior written consent, which consent may be arbitrarily withheld, it shall not:

- (a) enter into any shareholder loans with any shareholder of the Chargor;
- (b) pay management fees to the Chargor or Covenantor; or
- (c) distribute dividends of any kind (including, but not limited to, dividends, loans or interest on shareholders loans, if any) to any shareholder of the Chargor or related party.

The Project may be subdivided or condominiumized only with the prior written consent of the Chargee, which consent may be withheld by the Chargee, acting reasonably.

**30. VALIDITY OF PROVISIONS**

If any provision of this Charge is held to any extent invalid or unenforceable, the remainder of this Charge shall not be affected and shall remain valid and enforceable.

**31. TIME OF THE ESSENCE**

Time shall be of the essence in all matters relating to this Charge.

**32. INTERPRETATION AND HEADINGS**

Wherever in this Charge the singular or masculine is used, the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties hereto so require. The headings do not form part of this Charge and have been inserted for convenience of reference only.

**33. INTENTIONALLY DELETED**

**34. SUBDIVISION OR CONDOMINIUMIZATION**

The Chargor acknowledges that the Property may not be subdivided or condominiumized without the prior written consent of the Chargee, which consent may be withheld by the Chargee in its sole discretion.

**34. OVER HOLDING FEE**

If the Loan is not repaid in full on or before the Balance Due Date, the Chargor shall be required to pay to the Chargee an Over Holding Fee, in addition to all other rates, fees