

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**FIERA FP REAL ESTATE FINANCING FUND, L.P.**

Applicant

- and -

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,  
VANDYK PROPERTIES INCORPORATED and JOHN VANDYK**

Respondents

**IN THE MATTER OF AN 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**

**MOTION RECORD**

**(Approval and Vesting Order and Distribution and Termination Order)**

August 9, 2024

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Lawyers for KSV Restructuring Inc., in its  
capacity as Receiver

TO: **SERVICE LIST**

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

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

**SERVICE LIST**

As of August 9, 2024	
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**ONTARIO**  
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# TAB 1

**ONTARIO  
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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**NOTICE OF MOTION  
(Approval and Vesting Order and Distribution and Termination Order)**

KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the “**Debtor**”), including the real property owned by the Debtor legally described as Part Lot 5-6, Plan 1256, Toronto as in CA291324; City of Toronto, being all of PIN 21335-0047 (LT) in LRO #66 (the “**Real Property**”), acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom (collectively, the “**Property**”) will make a Motion to a Judge presiding over the Commercial List on Thursday, August 15, 2024 at 11:00 a.m., or as soon after that time as the Motion can be heard.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference

at the following location:

<https://ca01web.zoom.us/j/61474879934?pwd=NDQvb3ZKRkN0b3hpTWNPU1RaaWt0QT09#success>

**THE MOTION IS FOR**

1. An Approval and Vesting Order (the “**AVO**”), substantially in the form of the draft order included in the Motion Record, among other things:
  - (a) approving the proposed sale transaction (the “**Transaction**”) pursuant to an Asset Purchase Agreement dated July 14, 2024 (the “**APA**”) between the Receiver and THMR Development Inc., which was subsequently assigned by THMR Development Inc. to Telon Land Group Inc. (the “**Purchaser**”);
  - (b) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed AVO (the “**Receiver’s Certificate**”), transferring and vesting all of the Receiver’s and the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the

Purchaser, free and clear of all liens, charges, security interests and encumbrances, other than certain permitted encumbrances;

- (c) approving the Receiver's authority to terminate and disclaim the Unit Sales Agreements (defined below); and
- (d) sealing the unredacted APA until the closing of the Transaction; and

2. A Distribution and Termination Order (the "**Distribution & Termination Order**"), substantially in the form of the draft order included in the Motion Record, among other things:

- (a) authorizing and directing the Receiver to make one or more distributions to Fiera FP Real Estate Financing Fund, L.P. ("**Fiera**"), the Debtor's principal secured creditor and Applicant in these proceedings;
- (b) terminating the receivership proceeding herein in respect of the Debtor, and discharging KSV as Receiver of the Debtor upon the filing of a certificate (the "**Termination Certificate**");
- (c) releasing the Receiver from any and all liabilities it now has or may hereafter have by reason of, or in any way arising out of, its actions or omissions, save and except for its gross negligence or wilful misconduct on the Receiver's part;
- (d) approving the fees and disbursements of the Receiver and its counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), as detailed in the Fee Affidavits (defined below), and the Remaining Fee Estimate (defined below); and

- (e) approving the Consolidated Report of the Receiver dated March 1, 2024, with respect to the Debtor and the Property (the “**Consolidated Report**”) and the First Report (defined below), including the Receiver’s conduct and activities described therein; and
3. Such further and other Relief as to this Honourable Court may seem just.

## THE GROUNDS FOR THE MOTION<sup>1</sup>

### *Background and the Proceedings*

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on January 23, 2024, KSV was appointed Receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (“**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.30 (“**CJA**”), without security, over all Property of the Debtor;
2. The Debtor is part of a broader group of real estate development companies (collectively, the “**Vandyk Group**”), which is a real estate developer with its head office in Mississauga, Ontario. The Vandyk Group mainly develops low, mid and high-rise residential projects in the Greater Toronto Area;
3. The Debtor is a single-purpose real estate development company that owns the Real Property municipally known as 41 Wabash Avenue, Toronto, Ontario, on which it intended to

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<sup>1</sup> All capitalized terms not otherwise defined have the meanings given to them in the First Report of KSV Restructuring Inc. as Receiver dated August 9, 2024 (the “**First Report**”).

develop a residential townhome project (the “**Project**”). As at the date of the Receivership Order, construction of the Project had not started;

4. On March 8, 2024, the Court issued an order (the “**Sale Process Order**”) approving a sale process (the “**Sale Process**”) for the Property and the property of certain other entities within the Vandyk Group;

5. The Receiver carried out the Sale Process for the Property in accordance with the Sale Process Order. A summary of the Sale Process Order is included in the First Report;

6. The Receiver retained Colliers Macaulay Nicolls Inc., Brokerage (“**Colliers**”) to list the Property for sale. Based on Colliers’ recommendation and after consulting with Fiera, the Receiver selected the Purchaser as the successful bidder for the Property, resulting in the execution of the APA on July 14, 2024. The APA contained a 14-day due diligence clause, which was waived by the Purchaser on July 29, 2024, resulting in the APA becoming “firm” on that date. The key terms of the APA are summarized in the First Report;

7. The APA provides that the Unit Sales Agreements, defined to mean “any and all offers, agreement and all amendments and related agreements with respect to the sale of residential condominium dwelling and commercial units in construction or to be constructed as part of the Proposed Condominium”, are Excluded Assets;

8. Fiera is the Debtor’s senior secured creditor and holds a mortgage and certain other security over the Property. As at August 1, 2024, Fiera was owed approximately \$9.96 million by the Debtor (together with interests and costs which continue to accrue, the “**Fiera Indebtedness**”);

*Approval and Vesting Order*

9. The Receiver requests that the Court issue the proposed AVO for the following reasons:
- (a) the process undertaken by the Receiver to market the Property was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
  - (b) Colliers has extensive experience selling development properties in and around the Greater Toronto Area and widely canvassed the market for prospective purchasers. Colliers was the listing agent when the Debtor acquired the Real Property in 2022, and accordingly, has extensive experience with the Real Property and its value. Colliers strongly recommends that the Transaction be completed at this time;
  - (c) the Purchaser's offer was the only offer received in the Sale Process, and accordingly, the Receiver is of the view that the Transaction provides for the most certain and highest recovery available for the benefit of the Debtor's stakeholders in the circumstances;
  - (d) Fiera is expected to incur a shortfall on its secured mortgage and is supportive of the Transaction; and
  - (e) the Receiver is not aware of any objections to the relief being sought pursuant to the proposed AVO;

10. The Receiver is also seeking to be authorized and directed, on or prior to Closing, to terminate and disclaim the Unit Sales Agreements for the following reasons:

- (a) The Receiver is only aware of one Unit Sales Agreement for one homebuyer (the “**Homebuyer**”);
- (b) The APA represents the best and only offer received for the Property, and its terms and conditions provide that the Unit Sales Agreements are Excluded Assets;
- (c) The deposit (\$149,500) paid by the Homebuyer under the Unit Sales Agreement is held in trust with Schneider Ruggiero Spencer Milburn LLP and has not been released to the Debtor; and
- (d) The Unit Sales Agreement provides that the buyer thereunder subordinates their agreement to any mortgages on the Real Property and any advances under such mortgage from time to time, and that the buyer will not register the Unit Sales Agreement on title to the Real Property. The Unit Sales Agreement is not registered on title to the Real Property;

11. The Receiver also requests that the unredacted APA be filed with the Court on a confidential basis and remain sealed pending closing of the Transaction. The proposed sealing of the Confidential Appendix is appropriate in the circumstances for the following reasons:

- (a) The Purchase Price being available to the public prior to the closing of the Transaction could adversely impact the future marketability of the Property should

the Transaction not close. Therefore, sealing this information is necessary for ensuring recoveries in these proceedings are maximized;

- (b) The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances; and
- (c) The Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full.

### ***Distribution & Termination Order***

12. If the proposed Transaction is approved by the Court, the Receiver is seeking authorization and direction to distribute the balance of the proceeds of the Transaction (the “**Proceeds**”), after reserving for the closing costs (i.e. broker commissions, property taxes) and the costs of these proceedings (i.e. the fees and costs of the Receiver and its counsel), to Fiera as partial payment of the Fiera Indebtedness;

13. There have been no receipts or disbursements in these receivership proceedings, and accordingly, the anticipated Proceeds from the Transaction are expected to be the only source of funds available for distribution, net of such holdbacks as the Receiver considers appropriate to fund the receivership, including its fees and the fees of its counsel;

14. The Receiver is not aware of any parties that have an outstanding priority claim that ranks ahead of Fiera;

15. Based on the Proceeds from Transaction, Fiera is expected to incur a shortfall on its loans to the Debtor;

16. Osler provided the Receiver with an opinion that, subject to standard assumptions and qualifications, the security granted by the Debtor in respect of the Fiera Indebtedness constitutes valid and enforceable security interests and charges, as applicable;

17. Pursuant to the proposed Distribution & Termination Order, the Receiver will be authorized to issue the Termination Certificate following the completion of the Transaction and any other matters necessary to complete these receivership proceedings to the Receiver's satisfaction. The Receiver believes it is appropriate for it to be discharged at that time for the following reasons:

- (a) all of the Debtor's known assets will have been realized upon pursuant to the proposed Transaction;
- (b) the Receiver has discharged its duties and obligations in accordance with the Receivership Order and other orders issued in these receivership proceedings, including the Sale Process Order;
- (c) apart from closing the proposed Transaction and making the proposed distributions, the Receiver's administration is complete and there are no known outstanding issues at this time that would require that the receivership proceedings continue; and
- (d) notwithstanding its discharge, the proposed Distribution & Termination Order provides that the Receiver will continue to have the protections afforded to it at law or pursuant to the Receivership Order and the other orders issued in these proceedings and the Receiver shall remain Receiver for the performance of such

incidental duties as may be required to complete the administration of the receivership. The Receiver believes that this Commercial List Model Receiver Discharge Order provision is appropriate in the circumstances so that the Receiver can deal with incidental issues that may arise following its discharge;

18. The proposed Distribution & Termination Order also seeks approval of:
  - (a) the Consolidated Report, the First Report and the actions, conduct and activities of the Receiver described herein. The actions, conduct and activities undertaken to date in connection with the receivership proceedings, as detailed in the First Report, have been carried out in good faith and in accordance with the orders issued throughout the receivership proceedings; and
  - (b) the fees and disbursements of the Receiver and Osler for the period ending July 31, 2024, as detailed in the fee affidavits attached to the First Report (the “**Fee Affidavits**”), plus the amount of \$100,000 (the “**Remaining Fee Estimate**”). The fees set out in the Fee Affidavits are reasonable and appropriate in the circumstances. The Remaining Fee Estimate is reasonable and appropriate in the circumstances as it provides for the estimated fees incurred since July 31, 2024 and to be incurred by both the Receiver and Osler prior to the filing of the Termination Certificate;

### *Other Grounds*

19. The provisions of the BIA, and section 101 of the CJA, and the inherent and equitable jurisdiction of this Court;

20. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

21. Such further and other grounds as counsel may advise and this Honourable Court may deem just;

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

1. The First Report of KSV in its capacity as Receiver dated August 9, 2024; and
2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

August 9, 2024

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Lawyers for the Receiver

TO: **SERVICE LIST**

IN THE MATTER OF AN 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

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and VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO  
INC., VANDYK PROPERTIES INCORPORATED et al.  
Respondents Court File No.: CV-23-00711612-00CL

Applicant

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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Lawyers for the Receiver

# TAB 2

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

THE HONOURABLE	)	THURSDAY, THE 15TH
	)	
JUSTICE CONWAY	)	DAY OF AUGUST, 2024

B E T W E E N:

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Applicant

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SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS  
AMENDED**

**APPROVAL AND VESTING ORDER  
(WABASH)**

**THIS MOTION**, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the “**Debtor**”), including the real property owned by the Debtor legally described as Part Lot 5-6, Plan 1256, Toronto as in CA291324; City of Toronto, being all of PIN 21335-0047 (LT) in LRO #66 (the “**Real Property**”), acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and THMR

Development Inc. (the “**Original Purchaser**”) dated July 14, 2024, which Sale Agreement was subsequently assigned by the Original Purchaser, as assignor, to Telon Land Group Inc. (the “**Purchaser**”), as assignee, by way of an assignment and assumption agreement dated August 1, 2024, and vesting in the Purchaser the Debtors’ right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the First Report of the Receiver dated August 9, 2024, the Appendices and Confidential Appendix thereto, and on hearing the submissions of counsel for the Receiver, and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn August 9, 2024, filed,

1. **THIS COURT ORDERS** that unless otherwise indicated herein, capitalized words and terms have the meanings given to them in the Sale Agreement or the First Report, as applicable.

#### **APPROVAL AND VESTING**

2. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Receiver's Certificate**”), all of the Purchased Assets, including, without limitation, all of the Debtor's right, title and interest in and to the Real Property, shall vest absolutely in Telon Land Group Inc., free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Wilton-Siegel made on

January 23, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) all rights any person had, has, or may in the future have in connection with or arising from the Unit Sales Agreements; and (iv) those Claims listed on Schedule “B” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “C”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets upon the delivery of the Receiver’s Certificate.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Telon Land Group Inc. as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “B” hereto.

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

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, on or prior to Closing, to terminate and disclaim the Unit Sales Agreement (as defined in the Sale Agreement) and following delivery of the Receiver’s Certificate in accordance with this Order, such Unit Sales Agreement shall cease to be a continuing obligation effective against the Real Property or binding on the Purchaser.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these proceedings;
  - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Debtor;

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

#### **SEALING PROVISION**

9. **THIS COURT ORDERS** that Confidential Appendix “1” to the First Report shall be sealed, kept confidential and not form part of the public record until closing of the Transaction contemplated under the Sale Agreement.

#### **GENERAL**

10. **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.

11. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

---

Justice Conway

**Schedule “A” – Form of Receiver’s Certificate**

Court File No. CV-23-00711612-00CL

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

B E T W E E N:

**FIERA FP REAL ESTATE FINANCING FUND, L.P.**

Applicant

- and –

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,  
VANDYK PROPERTIES INCORPORATED and JOHN VANDYK**

Respondents

**RECEIVER’S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on January 23, 2024, KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the “**Debtor**”), including the real property owned by the Debtor legally described as Part Lot 5-6, Plan 1256, Toronto as in CA291324; City of Toronto, being all of PIN 21335-0047 (LT) in LRO #66 (the “**Real Property**”), acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom.
- B. Pursuant to an Order of the Court dated August ●, 2024, the Court approved the agreement of purchase and sale made as of July 14, 2024 (the “**Sale Agreement**”) between the Receiver and THMR Development Inc. (the “**Original Purchaser**”), which Sale

Agreement was subsequently assigned by the Original Purchaser, as assignor, to Telon Land Group Inc. (the “**Purchaser**”), as assignee, by way of an assignment and assumption agreement dated August 1, 2024, and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets (as defined in the Sale Agreement) upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

**THE RECEIVER CERTIFIES** the following:

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

**KSV RESTRUCTURING INC., in its  
capacity as Receiver, and not in its personal  
or corporate capacity**

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

Name:

Title:

**Schedule “B” – Instruments to be Deleted from Title**

1. Instrument No. AT6223544 being a Charge registered on November 15, 2022.
2. Instrument No. AT6223545 being a Notice of Assignment of Rents – General registered on November 15, 2022.
3. Instrument No. AT6393137 being a Charge registered on August 9, 2023.
4. Instrument No. AT6393138 being a Notice of Assignment of Rents – General registered on August 9, 2023.
5. Instrument No. AT6504605 being an Application to Register Court Order registered on January 30, 2024.

**Schedule “C” – Permitted Encumbrances****(unaffected by the Vesting Order)**

1. The exceptions and qualifications set out in the Section 44(1) of the *Land Titles Act* (Ontario), save and excepts paragraph 3, 4, 5, 6, 11 and 14 thereof;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any easements, servitudes, rights-of-way, licences, restrictions registered against the Vandyk Real Property as of the date of this agreement and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Any unregistered easements for sewer drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables;
5. Inchoate liens for taxes, assessments, public utility charges, which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
6. Any encroachments, minor defects or irregularities indicated on the Survey of the Property prepared by Helmut Piller, Ontario Land Surveyor, dated February 14, 2023;
7. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements registered against the Vandyk Real Property as of the date of the Agreement with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Plans, by-laws or transfers registered on title to the Vandyk Real Property as of the date of the Agreement.
10. The following instruments registered on title to the Vandyk Real Property:
  - (a) Instrument No. 63R2139 being a Reference Plan, registered on September 30, 1980.
  - (b) Instrument No. AT5553142 being a Notice of Heritage Easement Agreement dated September 28, 2020 between 41 Wabash Avenue Incorporated and the City of Toronto, registered on October 23, 2020.

- (c) Instrument No. AT5641865 being a City of Toronto By-Law to designate the Vandyk Real Property as being of cultural heritage value or interest, registered on February 3, 2021.
- (d) Instrument No. 66R33178 being a Reference Plan, registered on March 6, 2023.

**IN THE MATTER OF AN 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**

**FIERA FP REAL ESTATE FINANCING FUND,  
L.P.**

and

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,  
VANDYK PROPERTIES INCORPORATED et al.**

Applicant

Respondent

Court File No. CV-23-00711612-00CL

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

Proceedings commenced in Toronto

**APPROVAL AND VESTING ORDER  
(WABASH)**

**OSLER, HOSKIN & HARCOURT LLP**

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*Lawyers for KSV Restructuring Inc., in its capacity as Receiver*

# TAB 3

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

THE HONOURABLE	)	THURSDAY, THE 15 <sup>th</sup>
	)	
JUSTICE CONWAY	)	DAY OF AUGUST, 2024

**FIERA FP REAL ESTATE FINANCING FUND, L.P.**

Applicant

- and -

**VANDYK - 41 WABASH LIMITED, 1000318652 ONTARIO INC.,  
VANDYK PROPERTIES INCORPORATED and JOHN VANDYK**

Respondents

**IN THE MATTER OF AN 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**

**DISTRIBUTION AND TERMINATION ORDER**

**THIS MOTION** made by KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver and manager (the “**Receiver**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 without security, of all of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the “**Debtor**”), including the real property owned by the Debtor legally described as Part Lot 5-6, Plan 1256, Toronto as in CA291324; City of Toronto, being all of PIN 21335-0047 (LT) in LRO #66, acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom (collectively, the “**Property**”) for an order, among other things (a) approving the

Consolidated Report of the Receiver dated March 1, 2024 with respect to all matters relating to the Property (the “**Consolidated Report**”) and the First Report of the Receiver dated August 9, 2024 (the “**First Report**”) and the Receiver’s conduct and activities described therein; (b) approving the fees and disbursements of the Receiver and the Receiver’s counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”), as set out in the Affidavit of David Sieradzki sworn August 9, 2024 attached at Appendix “C” to the First Report (the “**Sieradzki Affidavit**”) and the Affidavit of David Rosenblat sworn on August 9, 2024 attached at Appendix “D” to the First Report (the “**Rosenblat Affidavit**” and, together with the Sieradzki Affidavit, the “**Fee Affidavits**”); (c) authorizing and directing the Receiver to make certain payments and distributions as recommended and described in the First Report; and (d) discharging the Receiver as Receiver of the Property upon occurrence of the Receivership Termination Time (as hereinafter defined) was heard by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Notice of Motion of the Receiver, the Consolidated Report, the First Report, the Fee Affidavits, and on hearing the submissions of counsel for the Receiver, Fiera FP Real Estate Financing Fund, L.P. (“**Fiera**”) and the other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service of ● affirmed August ●, 2024,

## **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that all terms not otherwise defined herein shall have the meaning ascribed to them in the First Report.

#### **APPROVAL OF RECEIVER'S REPORTS AND ACTIVITIES**

3. **THIS COURT ORDERS** that each of the Consolidated Report and the First Report, and the actions, conduct and activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only KSV, in its capacity as Receiver and not in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver up until July 31, 2024, and the Remaining Fee Estimate of the Receiver, as set out in the First Report and the Sieradzki Affidavit, are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of Osler up until July 31, 2024, and the Remaining Fee Estimate of Osler, as set out in the First Report and the Rosenblat Affidavit, are hereby approved.

6. **THIS COURT ORDERS** that the Remaining Fee Estimate of the Receiver and Osler in connection with the completion by the Receiver of its remaining duties and administration of the receivership proceedings of the Debtor is hereby approved, and the Receiver and Osler shall not be required to pass their accounts in respect of any further activities in connection with the completion by the Receiver of its remaining duties and administration of the receivership proceedings of the Debtor.

**DISTRIBUTIONS**

7. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make one or more distributions to Fiera from the proceeds of the sale transaction contemplated by the Sale Agreement as described in the First Report, subject to such holdbacks as the Receiver considers appropriate to fund the receivership, including its fees and the fees of its counsel.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized to take all reasonably necessary steps and actions to effect the Distributions in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distributions.

**TERMINATION AND DISCHARGE**

9. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 7 hereof (the “**Distributions**”) and upon the filing by the Receiver of a certificate in form attached hereto as Schedule “A” (the “**Termination Certificate**”) certifying that it has made the Distributions, and to its knowledge all matters to be attended to in connection with the Debtor’s receivership proceedings, as determined by the Receiver, have been completed, the Receiver shall be discharged (the “**Receivership Termination Time**”) as Receiver of the Property, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership proceedings of the Debtor, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stay of proceedings in favour of KSV in its capacity as Receiver.

10. **THIS COURT ORDERS** that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the

acts or omissions of KSV while acting in its capacity as Receiver of the Debtor, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership proceedings of the Debtor, save and except for any gross negligence or wilful misconduct on the Receiver's part.

11. **THIS COURT ORDERS** that, upon occurrence of the Receivership Termination Time, the style of cause in these proceedings shall be amended by removing the Debtor from list of Respondents.

#### **GENERAL**

12. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by orders in the receivership proceedings of the Debtor; and (b) all charges, security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended or any other personal property or real property registry system.

13. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment

or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

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

- (a) the pendency of these proceedings and receivership proceedings in respect of the Debtor;
- (b) any applications for a bankruptcy order issued pursuant to the BIA in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

any payment or distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any other foreign jurisdiction 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.

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

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Justice Conway

**Schedule “A” – Form of Receiver’s Certificate**

Court File No. CV-23-00711612-00CL

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

B E T W E E N:

**FIERA FP REAL ESTATE FINANCING FUND, L.P.**

Applicant

- and –

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,  
VANDYK PROPERTIES INCORPORATED and JOHN VANDYK**

Respondents

**TERMINATION CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on January 23, 2024, KSV Restructuring Inc. (“**KSV**”) was appointed as the receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the “**Debtor**”), including the real property owned by the Debtor legally described as Part Lot 5-6, Plan 1256, Toronto as in CA291324; City of Toronto, being all of PIN 21335-0047 (LT) in LRO #66, acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom (the “**Property**”).
- B. Pursuant to an Order of this Court dated August ●, 2024 (the “**Distribution and Termination Order**”) among other things, KSV shall be discharged as the Receiver of the Property and the Debtor’s receivership proceedings shall be terminated upon the service of

this Termination Certificate on the service list in these receivership proceedings, all in accordance with the terms of the Distribution and Termination Order.

- C. Unless otherwise indicated herein, defined terms have the meanings set out in Distribution Order and Termination Order.

**THE RECEIVER CERTIFIES** the following:

1. The Distributions contemplated at paragraph 7 of the Distribution and Termination Order have been made; and
2. To its knowledge all matters to be attended to in connection with the Debtor's receivership proceedings, as determined by the Receiver, have been completed.

**ACCORDINGLY**, the Receivership Termination Time as defined in the Distribution and Termination Order has occurred.

This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**IN THE MATTER OF AN 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**

**FIERA FP REAL ESTATE FINANCING FUND,  
L.P.**

and

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,  
VANDYK PROPERTIES INCORPORATED et al.**

Applicant

Respondent

Court File No. CV-23-00711612-00CL

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

Proceedings commenced in Toronto

**DISTRIBUTION AND TERMINATION ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

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*Lawyers for KSV Restructuring Inc., in its capacity as Receiver*

IN THE MATTER OF AN 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

**FIERA FP REAL ESTATE  
FINANCING FUND, L.P.**

and

**VANDYK – 41 WABASH LIMITED, 1000318652  
ONTARIO INC., VANDYK PROPERTIES  
INCORPORATED ET AL.**

Court File No: CV-23-00711612-00CL

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

---

**MOTION RECORD**

---

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for KSV Restructuring Inc., in its capacity as  
Receiver