



**First Report to Court of  
KSV Restructuring Inc.  
as Receiver and Manager of  
Vandyk – 41 Wabash Limited**

August 9, 2024

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COURT FILE NUMBER: 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**

**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,**

**FIRST REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER AND MANAGER**

**AUGUST 9, 2024**

## **1.0 Introduction**

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on January 23, 2024, KSV Restructuring Inc. ("KSV") was appointed receiver and manager ("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, of all 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"). A copy of the Receivership Order is attached as Appendix "A".

2. Pursuant to five additional orders granted by the Court on November 14, 2023, December 11, 2023, December 12, 2023, January 18, 2024<sup>1</sup> and January 23, 2024, KSV was also appointed receiver and manager of certain property of other companies within the Vandyk Group (as defined below).
3. 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.
4. This report (the “Report”) is filed by KSV in its capacity as Receiver and deals with the Receiver’s recommendation in respect of the sale of certain Property of the Debtor, a proposed distribution from the proceeds anticipated from same, the Receiver’s discharge over the Debtor, and certain other relief.
5. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Debtor and the receivership proceeding herein;
  - b) summarize the results of the Sale Process with respect to the Property;
  - c) summarize a proposed sale transaction (the “Transaction”) in respect of the property 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”);
  - d) propose a distribution from the proceeds of the Transaction (the “Proceeds”) to Fiera FP Real Estate Financing Fund, L.P. (“Fiera”), the Debtor’s principal secured creditor and Applicant in the receivership proceedings herein;
  - e) summarize the fees and disbursements of: (i) the Receiver from the commencement of the receivership proceedings herein to July 31, 2024; and (ii) the Receiver’s counsel, Osler, Hoskin & Harcourt LLP (“Osler”), from the commencement of the receivership proceedings herein to July 31, 2024;
  - f) set out the final outstanding matters in the receivership proceedings herein with respect to the Debtor to be addressed once the Transaction is completed and the basis for the Receiver’s recommendation that it be discharged upon the filing of a certificate (the “Termination Certificate”); and

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<sup>1</sup> The Court issued two separate receivership Orders in the herein Application – one against the Debtor and one against the respondent 1000318652 Ontario Inc. which is another company within the Vandyk Group and which owns a different development property than the Debtor.

- g) recommend that this Court issue the following Orders:
- i. an Approval and Vesting Order (“AVO”), among other things:
    - approving the Transaction;
    - 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;
    - approving the Receiver’s authority to terminate and disclaim the Unit Sales Agreements (as defined below); and
    - sealing the unredacted APA until the closing of the Transaction;
  - ii. a Distribution and Termination Order (the “Distribution & Termination Order”), among other things:
    - authorizing and directing the Receiver to make one or more distributions to Fiera;
    - terminating the receivership proceeding herein in respect of the Debtor and discharging KSV as Receiver of the Debtor upon the filing of the Termination Certificate;
    - 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;
    - approving the fees and disbursements of the Receiver and Osler, as detailed in the Fee Affidavits (as defined below), and the Remaining Fee Estimate (as defined below); and
    - approving the Consolidated Report of the Receiver dated March 1, 2024 with respect to the Debtor and Property (the “Consolidated Report”) and this Report, including the Receiver’s conduct and activities described therein.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon: (i) the Debtor’s unaudited financial information; (ii) information provided by Fiera; (iii) discussions with various stakeholders in these proceedings (including their legal representatives); and (iv) the receivership application materials (collectively, the “Information”).

2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.
3. Additional background information regarding the Debtor and the reasons for the appointment of the Receiver are provided in Fiera’s application materials. Copies of the Court materials filed in these proceedings are available on the Receiver’s case [website](#).

## 2.0 Background

1. 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.
2. 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 develop a residential townhome project (the “Project”).
3. As at the date of the Receivership Order, construction of the Project had not started. The Real Property currently consists of a vacant commercial building.
4. The Receiver understands that one unit in the Project had been pre-sold as at the date of the Receivership Order.

## 3.0 Creditors

### 3.1 Secured Creditors

1. The Receiver understands that:
  - a) 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”).
  - b) 2306610 Ontario Corp. (“230 Ont”), which registered a second-ranking mortgage charge over the Real Property in the amount of \$1.2 million. The Receiver has not reviewed the validity of 230 Ont’s mortgage given that the Proceeds are less than the value of the Fiera Indebtedness.

### 3.2 Other Creditors

1. Based on the Debtor’s books and records, as at the date of the Receivership Order, its unsecured obligations totalled approximately \$217,000, which amounts were primarily owing to consultants.

2. The Receiver also understands that the Debtor is in arrears of municipal taxes in the amount of approximately \$32,000, which the Receiver understands constitutes a priority secured claim over the Real Property, and that will be addressed on the closing of the Transaction (as discussed further below).

## **4.0 Sale Process**

### **4.1 Marketing Process**

1. The Receiver carried out the Sale Process for the Property in accordance with the Sale Process Order. A summary of the Sale Process is as follows:
  - a) in accordance with the Sale Process Order, the Receiver retained Colliers Macaulay Nicolls Inc., Brokerage (“Colliers”) to list the Property for sale;
  - b) Colliers launched the Sale Process for the Property on April 2, 2024 by distributing an investment summary (the “Teaser”) and a form of non-disclosure agreement (“NDA”) to its database of prospective buyer contacts. Colliers also marketed the Property through, among other things, email campaigns, print and digital ads;
  - c) interested parties were required to sign the NDA to access a virtual data room (“VDR”);
  - d) the VDR contained information regarding the Property and the Project, including financial information, contracts, permits, designs, drawings, budgets and other diligence information that had been provided to the Receiver by the Vandyk Group;
  - e) the VDR also included a form of asset purchase agreement (the “Template APA”). Prospective purchasers were encouraged to submit offers in the form of the Template APA, together with a blackline against the Template APA. However, prospective buyers were informed that the Receiver would consider initial bids in the form of a Letter of Intent (“LOI”); and
  - f) Colliers facilitated site visits for prospective purchasers over the course of the Sale Process.
2. In consultation with Colliers and based on its experience marketing similar distressed properties, the Receiver elected to forego a hard deadline for the submission of LOI’s under the Sale Process, and instead elected to communicate a date after which the Receiver would start accepting bids, being June 3, 2024 (the “Bid After Date”), being nine (9) weeks from the commencement of the marketing of the Real Property.

### **4.2 Sale Process Results**

1. A summary of the results of the Sale Process for the Property is as follows:
  - a) 6,217 parties were sent the Teaser and the NDA;
  - b) 26 parties executed the NDA and were provided access to the VDR to perform due diligence; and

- c) a number of parties expressed verbal or written interest in the Property, however, Colliers advised the Receiver that the purchase price they were contemplating was substantially less than the Purchase Price and the Purchaser was the only party that ultimately submitted a formal offer after the Bid After Date.
2. The Purchaser submitted its offer on June 27, 2024. The Receiver reviewed the Purchaser's offer for the Property and the Receiver and/or Colliers engaged in direct discussions with the Purchaser and/or its legal counsel to understand its bid, including its conditionality, financial ability to close and any other due diligence that remained outstanding.
3. 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.

## 5.0 The Transaction<sup>2</sup>

### 5.1 APA

1. The following constitutes a summary description of the APA only. Reference should be made directly to the APA for all of its terms and conditions. A redacted copy of the APA is attached as Appendix "B".
2. The key terms of the APA are provided below.
  - **Purchased Assets**: all of the Receiver's and the Debtor's, right, title and interest in:
    - a) the Real Property;
    - b) the Buildings;
    - c) the Additional Assets; and
    - d) the Intellectual Property, Project Rights and Documents, but each only to the extent transferable to the Purchaser.
  - **Excluded Assets**: all property, assets and undertaking, other than the Purchased Assets, including but not limited to any Unit Sales Agreements, Unit Deposits, all cash and equivalents and all accounts receivable of the Debtor, including insurance refunds and all HST refunds or other tax receivables. "Unit Sales Agreements" are defined to mean "any and all offers, agreements 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".

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<sup>2</sup> Capitalized terms in this section have the meaning provided to them in the APA unless otherwise defined herein.



- **Purchase Price:** for the reasons provided in Section 5.4 of this Report, the Receiver is seeking to have the purchase price contemplated by the APA (the “Purchase Price”) sealed until Closing.

The Purchase Price is to be adjusted on closing for adjustments standard for a real estate transaction, including property taxes and utilities, as further described in Section 3.6 of the APA.

- **Deposit:** a deposit of \$500,000 has been paid to the Receiver. The balance of the Purchase Price, subject to any applicable adjustments, is to be paid on the Closing Date.
- **Excluded Liabilities:** all liabilities of the Debtor other than the Assumed Liabilities, being:
  - a) all Liabilities arising from the ownership, use or operation on or after the Closing of the Purchased Assets acquired by the Purchaser on Closing;
  - b) all Liabilities under the Project Rights and Documents; and
  - c) all Liabilities under the Approved Contracts.
- **Unit Sales Agreements:** the APA contemplates that the existing pre-sale homebuyer agreement in respect of the Project **will not** be assumed by the Purchaser.
- **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e., on an “as is, where is” basis, with limited representations and warranties.
- **Closing Date:** three Business Days following the date on which the conditions under the APA are satisfied, unless otherwise agreed in writing by the Receiver and the Purchaser. The Outside Date under the APA is October 15, 2024.
- **Remaining Material Conditions:** include, among other things:
  - a) there shall be no legal proceedings pending which enjoins, restricts or prohibits the purchase and sale of the Purchased Assets contemplated by the APA, including, without limitation, any order issued by any Governmental Entity against either of the parties or involving any of the Purchased Assets, enjoining, preventing or restraining the completion of the Transaction; and
  - b) the Court shall have issued the AVO on or before September 2, 2024, and the AVO shall be a Final Order.
- **Termination:** the APA can be terminated, among other things:
  - a) upon mutual written consent of the Receiver and the Purchaser;
  - b) if any of the conditions in favour of the Receiver or the Purchaser, as applicable, are not satisfied, waived or performed by the Outside Date; and

- c) if Closing has not occurred on or before the Outside Date, provided, however, that a party may not exercise such termination right if they are in material breach of their obligations under the APA.

## **5.2 Disclaimer of Unit Sales Agreements**

1. The APA provides that the Unit Sales Agreements are Excluded Assets. Accordingly, the Receiver is seeking to be authorized and directed, on or prior to Closing, to terminate and disclaim the Unit Sales Agreements. The Receiver is only aware of one Unit Sales Agreement for one homebuyer (“Homebuyer”).
2. The Receiver recommends that the Court approve the Receiver’s authority to terminate and disclaim the Unit Sales Agreements as:
  - a) 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; and
  - b) no other offer was submitted under the Sale Process.
3. The Receiver intends to serve the Homebuyer of the Project with this motion by email and/or registered mail.
4. The Receiver understands that 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.
5. The Unit Sales Agreement provides that the buyer thereunder subordinates its 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.

## **5.3 Transaction Recommendation**

1. The Receiver recommends 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. Of greater significance, 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, the Debtor's senior secured lender, is expected to incur a shortfall on its secured mortgage and is supportive of the Transaction; and
- e) as at the date of this Report, the Receiver is not aware of any objections to the relief being sought pursuant to the proposed AVO.

#### 5.4 Sealing

1. The Receiver recommends that the unredacted APA (Confidential Appendix "1") be filed with the Court on a confidential basis and remain sealed pending closing of the Transaction.
2. 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.
3. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. 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. The Receiver is of the view that the sealing of the Confidential Appendix is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendix is appropriate in the circumstances.

#### 6.0 Distributions

1. As at the date of this Report, 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.
2. Fiera is the principal secured creditor of the Debtor. As at the date of this Report, the Receiver is not aware of any parties that have an outstanding priority claim that ranks ahead of Fiera. If the proposed Transaction is approved by the Court, the Receiver is seeking authorization and direction to distribute the balance of 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. Based on the Proceeds from Transaction, Fiera is expected to incur a shortfall on its loans to the Debtor.
3. The Receiver requested that Osler, as independent legal counsel, conduct a review of the security granted by the Debtor in respect of the Fiera Indebtedness. 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.

## 7.0 Receiver's Activities

1. In addition to dealing with the matters addressed above, the Receiver's activities relating to the Debtor since its appointment have included, with the assistance of counsel, among other things, the following:
  - a) corresponding with the Vandyk Group's management and their counsel regarding the Debtor's affairs and these proceedings;
  - b) corresponding with Fiera regarding all aspects of this mandate, including providing periodic status updates;
  - c) reviewing information provided by the Vandyk Group and Fiera relating to the Project, including its development status;
  - d) developing and carrying out, with the assistance of Colliers, the Court-approved Sale Process for the Property;
  - e) reviewing and commenting on drafts of the Sale Process materials, including the Teaser and NDA;
  - f) preparing the Consolidated Report in connection with the Sale Process motion;
  - g) compiling and reviewing information uploaded to the VDRs;
  - h) dealing with Colliers regarding due diligence requests from prospective purchasers;
  - i) attending update calls with Colliers and Fiera, as applicable, regarding the status of the Sale Process;
  - j) corresponding with the Purchaser and its counsel regarding the APA and the Transaction;
  - k) corresponding with Masters Insurance, the Debtor's insurance broker;
  - l) corresponding with the Debtor's creditors;
  - m) corresponding with representatives of the City of Toronto regarding the status of the Project and the Sale Process;
  - n) arranging for the maintenance, security and general upkeep of the Real Property;
  - o) corresponding with the Canada Revenue Agency regarding the Debtor's HST accounts; and
  - p) drafting this Report and reviewing the motion materials in respect of same.

2. The proposed Distribution & Termination Order seeks approval of the Consolidated Report, this Report and the actions, conduct and activities of the Receiver described herein. The Receiver is of the view that the actions, conduct and activities undertaken to date in connection with the receivership proceedings, as detailed above, have been carried out in good faith and in accordance with the orders issued throughout the receivership proceedings.

## 8.0 Receiver's Discharge

1. 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.
2. Based on the foregoing, the Receiver recommends that the Court issue an order terminating the receivership proceedings and granting the Receiver its discharge. Subject to Court approval, it is the Receiver's intention to file the Termination Certificate effecting its discharge shortly after closing the Transaction and making the proposed distributions from the Proceeds.

## 9.0 Professional Fees

1. The fees of the Receiver from the commencement of these receivership proceedings to July 31, 2024 total \$29,308.50, excluding disbursements and HST. Osler's fees from the commencement of these receivership proceedings to July 31, 2024 total \$15,456.00, excluding disbursements and HST.
2. The average hourly rate for the referenced billing period was (i) \$606.80 for the Receiver; and (ii) \$984.46 for Osler.

3. Fee affidavits and accompanying invoices in respect of the fees and disbursements of the Receiver and Osler are attached as Appendices “C” and “D”, respectively, to this Report (together, the “Fee Affidavits”).
4. The Receiver is of the view that Osler’s hourly rates for this mandate are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.
5. The Receiver is also of the view that the amount of \$100,000 (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 Discharge Certificate, including the fees incurred in connection with preparing this Report and the accompanying motion materials.

## 10.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the order granting the relief detailed in Section 1.1(1) (a) - (g) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
VANDYK – 41 WABASH LIMITED  
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

## **Appendix “A”**

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

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

THE HONOURABLE ) TUESDAY, THE 23<sup>rd</sup>  
 )  
JUSTICE WILTON-SIEGEL ) DAY OF JANUARY, 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

**APPLICATION UNDER** Section 243 of the *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

**ORDER  
(Appointing Receiver – Wabash)**

**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 KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of the Respondent Vandyk – 41 Wabash Limited, formerly known as 2196251 Ontario Inc. (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 ("**Real Property**"), acquired for, or



used in relation to a business carried on by the Debtor, was heard this day at Toronto, Ontario, by Zoom videoconference.

**ON READING** the Notice of Application issued December 19, 2023 (the “**Notice of Application**”), the Affidavit of Henryk Gilbert sworn December 20, 2023, and the Exhibits thereto, and the affidavit of Chad Kopach sworn January 19, 2024, and the Exhibit thereto, and on hearing the submissions of counsel for the Applicant, the proposed Receiver, and such other parties listed on the Participant Information Form, no one else on the service list appearing, and on reading the consent of KSV to act as the Receiver, and on having been advised by counsel for the Respondents that they do not oppose this Order,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record dated December 20, 2023, 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, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”). For greater certainty, in this Order, Property includes, without limitation, the Real Property listed in Schedule “A” hereto, and all proceeds thereof.

### **RECEIVER’S POWERS**

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

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

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any contracts or agreements in connection therewith (including any amendments and modifications thereto), repudiate or disclaim any contracts or agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify, disclaim and/or terminate any contracts or agreements to which the Debtor is a party;
- (d) to engage construction managers, contractors, subcontractors, tradespersons, quantity surveyors, engineers, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, including a property manager, mortgage brokers or administrators, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to undertake any construction at the Real Property necessary to bring the Real Property into compliance with applicable laws and building codes;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor (including, without limitation, any rent or lease payments in respect of the Real Property) and to exercise all remedies of

the Debtor in collecting such monies and accounts, including, without limitation, to enforce any security held by the Debtor;

- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtor or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, 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;
- (l) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements by the Debtor and other Persons (as defined below), including without limitation, other companies and entities that are affiliates of the Debtor, that appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtor requested by the Receiver in connection with such investigations;

- (m) to undertake environmental or worker's health and safety assessments of the Property and the operation of the Debtor thereon;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) to report to, meet with and discuss with such affected Persons 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;
- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (s) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor and to meet with and discuss with such governmental authority and execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (t) 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;
- (u) to undertake any investigation deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (v) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to the Debtor,

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, 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, (iii) all construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all

other persons acting on their instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any aspect(s) or portion(s) of the Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, cloud 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, cloud 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, in a cloud 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, cloud or

other system and providing the Receiver with any and all access codes, account names, account numbers and account-creating credentials that may be required to gain access to the information.

7. **THIS COURT ORDERS** that, without limiting the generality of paragraphs 4-6 of this Order, all Persons, including, without limitation, any affiliates of the Debtor (collectively, the "**Vandyk Group**"), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtor and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Vandyk Group, or any of them, shall be required to do the following:

(a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents relevant to the Debtor and/or the Property:

(1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof;

(2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and

(3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and

(b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required or requested with respect to the exercise of the Receiver's authority hereunder.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any

applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property or any assets located on premises belonging to the Debtor shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property or any assets located on premises belonging to the Debtor are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, 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**

12. **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, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

14. **THIS COURT ORDERS** that subject to Court Order, in the event that an account for the supply of goods and/or services is transferred from the Debtor to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

### **RECEIVER TO HOLD FUNDS**

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

for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

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

### **PIPEDA**

17. **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.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

19. **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**

20. **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 (including, without limitation, deemed 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.

21. **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.

22. **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**

23. **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 \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed 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.

24. **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.

25. **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.

26. **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**

27. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/vandyk>.

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide 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.

29. **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. 8100-2-175 (SOR/DORS).

**GENERAL**

30. **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.

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

32. **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.

33. **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.

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

35. **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.

36. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal Order for original signing, entry and filing, as the case may be.

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**SCHEDULE "A"**  
**REAL PROPERTY**

21335-0047 (LT) in LRO #66

PT LT 5-6 PL 1256 TORONTO AS IN CA291324; CITY OF TORONTO



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

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

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

1. **THIS IS TO CERTIFY** that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 23<sup>rd</sup> day of January, 2024 (the "**Order**") made in an application having Court file number CV-23-00711612-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

Name:

Title:

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

and

Court File No. CV-23-00711612-00CL  
**VANDYK - 41 WABASH LIMITED and  
1000318652 ONTARIO INC. et al.**  
Respondents

Applicant

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

Proceeding commenced at Toronto

**ORDER  
(Appointing Receiver – Wabash)**

**BLANEY McMURTRY LLP**  
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Lawyers for the Applicant

## **Appendix “B”**

**ASSET PURCHASE AGREEMENT**

**THIS AGREEMENT** is made the 14<sup>th</sup> day of July, 2024 (the “**Execution Date**”).

**BETWEEN:**

**KSV RESTRUCTURING INC.**, solely in its capacity as court-appointed receiver and manager and not in its personal or corporate capacity (in such capacity, the “**Receiver**”) of the Vandyk Real Property (as hereinafter defined), and all present and future assets, undertakings and personal property of **VANDYK - 41 WABASH LIMITED** (“**Vandyk**”) located at, related to, or used in connection with or arising from or out of the Vandyk Real Property, or which is necessary to the use and operation of the Vandyk Real Property

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

- and-

**THMR DEVELOPMENT INC.**

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

**WHEREAS** Vandyk is the registered owner of the Vandyk Real Property;

**WHEREAS** by an Order (the “**Receivership Order**”) dated January 23, 2024, of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), among other things, KSV Restructuring Inc. was appointed as Receiver;

**WHEREAS** pursuant to the Sale Process Order (as hereinafter defined) the Court approved the Vandyk Sale Process (as hereinafter defined);

**AND WHEREAS**, the Vendor desires to sell and assign to the Purchaser and the Purchaser desires to purchase and assume from the Vendor the Purchased Assets (as defined herein) in accordance with the terms of this Agreement, the Sale Process Order and the Vandyk Sale Process;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the respective covenants, agreements, representations, warranties and indemnities of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Defined Terms**

Wherever used in this Agreement, unless the context otherwise requires, the following terms shall have the following meanings and grammatical variations of such terms shall have the corresponding meanings:

**“Additional Assets”** means the equipment, goods, materials, inventory and other personal property of Vandyk located at or related to or used in connection with the Vandyk Real Property, or which is necessary to the use and operation of the Vandyk Real Property, other than those assets which the Purchaser notifies the Vendor in writing prior to Closing that it does not wish to purchase and assume from the Vendor, which assets shall constitute Excluded Assets;

**“Affiliate”** has the meaning given to that term in the *Business Corporations Act* (Ontario);

**“Applicable Laws”** means any statute, by-law, rule or regulation or any judgment, order, writ, injunction, ordinance or decree of any Governmental Entity having the force of law to which a specified person or property is subject;

**“Approval and Vesting Order”** has the meaning ascribed thereto in Subsection 7.3(a);

**“Approved Contracts”** means the Contracts set forth on Schedule “B” hereto;

**“Assumed Liabilities”** has the meaning ascribed thereto in Section 2.3;

**“Buildings”** means all buildings, structures, improvements, appurtenances, attachments and fixtures located on, in or under the Vandyk Real Property, including without limitation all incomplete buildings and all systems including heating, ventilation, air-conditioning, electrical, lighting, plumbing and water systems;

**“Business Day”** means any day, other than a Saturday, a Sunday, or a holiday in the Province of Ontario;

**“Claims”** means all past, present and future claims, charges, suits, proceedings, liabilities, deficiencies, demands, controversies, actions, causes of action, obligations, losses, damages, penalties, orders, judgments, costs, expenses, fines, amounts paid in settlement, disbursements, legal fees on a substantial indemnity basis, and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever, including, without limitation, any labour grievances, pay equity claims, and successor employer claims;

**“Closing”** means the completion of the Transaction in accordance with the terms and subject to the conditions of this Agreement;

**“Closing Date”** means three (3) Business Days after the satisfaction or waiver of all conditions to Closing set forth in this Agreement, unless otherwise agreed to by the parties hereto in their sole discretion;

**“Contracts”** means the agreements entered into by Vandyk, or its predecessors in title that were assumed by Vandyk, in each case in respect of the Vandyk Real Property and/or the Buildings, including any duly executed amendments or modifications of such Contracts;

**“Court”** has the meaning ascribed thereto in the Recitals;

**“Deposit”** has the meaning ascribed thereto in Section 3.1(b);

**“Document Registration Agreement”** has the meaning ascribed thereto in Subsection 9.4(a);

**“Due Diligence Date”** means 5:00 p.m. (EST) on the date that is fourteen (14) days following the Execution Date.

**“ETA”** means the *Excise Tax Act* (Canada), as amended from time to time;

**“Encumbrances”** means all mortgages, pledges, charges, liens, executions, levies, charges, financial or other monetary claims, debentures, trust deeds, trusts or deemed trusts (whether contractual, statutory or otherwise), assignments by way of security, security interests (whether contractual, statutory or otherwise), conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, or against title to, the Purchased Assets or any part thereof or interest therein, and any registered instruments, agreements, options, easements, servitudes, rights of way, restrictions, executions or other liens, charges or encumbrances (including notices or other registrations in respect of any of the foregoing) against title to the Purchased Assets or any part thereof or interest therein, in each case whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

**“Environmental Laws”** has the meaning ascribed thereto in Section 10.10;

**“Excluded Assets”** has the meaning ascribed thereto in Section 2.2;

**“Excluded Liabilities”** means all Liabilities of Vandyk, other than the Assumed Liabilities;

**“Final Order”** means, in respect of any order of any court of competent jurisdiction, that such order shall not have been vacated, set aside, or stayed, and that the time within which an appeal or request for leave to appeal must be initiated has passed with no appeal or leave to appeal having been initiated or any appeal or leave to appeal having been dismissed;

**“Governmental Authorization”** means, with respect to any Person, any order, authorization, approval, licence, registration or permit or similar authorization issued by or from any Governmental Entity having jurisdiction over such Person;

**“Governmental Entity”** means any court or tribunal in any jurisdiction or any federal, provincial, municipal or other governmental body, agency, authority, department, commission, board, instrumentality or tribunal thereof having or claiming to have jurisdiction over Vandyk or all or part of the Vandyk Real Property;

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered or issued by or with any Governmental Entity;

**“Hazardous Materials”** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm, impairment or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any **“contaminants”**, **“dangerous substances”**, **“hazardous materials”**, **“hazardous substances”**, **“hazardous wastes”**, **“industrial wastes”**, **“liquid wastes”**, **“pollutants”** and **“toxic substances”**, all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation, mono or poly-chlorinated biphenyl wastes, and per- and polyfluoroalkyl substances;

**“HST”** means all taxes payable under the ETA and any reference to a specific provision of the ETA or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

**“Indemnities”** has the meaning ascribed thereto in Section 10.10;

**“Investment Canada Act”** means the *Investment Canada Act* (Canada);

**“Intellectual Property”** means all of the Vendor's and Vandyk's interest in the following (if any) used in connection with the Vandyk Real Property: (i) copyrights, copyright registrations and applications for copyright registration; (ii) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (iii) software; and (iv) any other intellectual property and industrial property;

**“KSV”** means KSV Restructuring Inc.;

**“Levies”** means all municipal development charges, educational development charges, community benefits charges, amounts owing pursuant to Section 37 of the Planning Act, amounts owing pursuant to an agreement under Section 45 of the Planning Act (Ontario), cash in lieu of parkland, lot levies, water allocation payments, sewer allocation payments, building permit application fees, planning application fees or any other amount paid to the municipality or Governmental Entities as a prerequisite to obtaining a building permit for construction and development on the Vandyk Real Property;

**“Liabilities”** means any and all debts, liabilities, commitments and obligations of any nature whatsoever, whether accrued or fixed, absolute or contingent, matured or unmatured



or determined or determinable, including those arising under any applicable law, Claim or Governmental Order, and those arising under any contract, agreement, arrangement, commitment or undertaking;

**“Outside Date”** means October 15, 2024;

**“Permits”** means all permits, consents, orders, waivers, applications, authorizations, licences, certificates, approvals, variances, registrations, franchises, rights, privileges and exemptions or the like issued or granted by any Governmental Entity, or by any third party with respect to the Vandyk Real Property;

**“Permitted Encumbrances”** means all those Encumbrances described in Schedule “C” hereto;

**“Person”** means an individual, corporation, partnership, joint venture, association, company, trust, enterprise, unincorporated organization, Governmental Entity or other entity however designated or constituted;

**“Post-Closing Environmental Indemnity”** has the meaning ascribed thereto in Section 10.10;

**“Project Rights and Documents”** means the Permits and all architectural, engineering and construction drawings, plans and specifications, budgets, schedules, manuals, promotional and marketing materials, applications, books, records, studies, reports (including soil, environmental, geotechnical and other reports), surveys, appraisals and other documents, and Levies, in each case pertaining to the construction, development, ownership and operation of the Vandyk Real Property or any part thereof;

**“Proposed Condominium”** means the proposed condominium project previously planned by Vandyk on the Vandyk Real Property;

**“Purchase Price”** means ██████████ in cash, which shall be paid by the Purchaser pursuant to the terms and conditions herein;

**“Purchased Assets”** has the meaning ascribed thereto in Section 2.1;

**“Receiver”** has the meaning ascribed thereto in the Recitals;

**“Receivership Order”** has the meaning ascribed thereto in the Recitals;

**“Receivership Proceedings”** means the proceedings commenced pursuant to the Receivership Order;

**“Sale Process Order”** means the Order of the Court made on March 8, 2024 in the Receivership Proceedings.

**“Tax Act”** means the *Income Tax Act* (Canada);

**“Time of Closing”** means 2:00 p.m. (Toronto time) on the Closing Date, or such other time on the Closing Date as the Vendor and the Purchaser may mutually determine in writing;

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

**“Unit Deposits”** means any monies paid to Vandyk or on its behalf as a deposit or on account of a Unit Sales Agreement;

**“Unit Sales Agreements”** means any and all offers, agreements and all amendments, extensions 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;

**“Vandyk”** has the meaning ascribed thereto in the Recitals;

**“Vandyk Real Property”** means the real property legally described in Schedule “A” hereto; and

**“Vandyk Sale Process”** means the sale process approved pursuant to the Sale Process Order;

## **1.2 Currency**

Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian currency.

## **1.3 Sections and Headings**

The division of this Agreement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section, Subsection or Schedule refers to the specified article of, section of, subsection of, or schedule to, this Agreement. The terms “this Agreement”, “hereof”, “hereunder”, and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection or other portion hereof and include an agreement supplemental hereto.

## **1.4 Number, Gender**

In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders.

## **1.5 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the parties with respect to the subject matter hereof and set out all the covenants, promises, warranties, representations, conditions and agreements between the parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations

and discussions, whether written or oral between the parties. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

#### **1.6 Time of Essence**

Time shall be of the essence of this Agreement.

#### **1.7 Applicable Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

#### **1.8 Successors and Assigns**

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective successors and permitted assigns.

#### **1.9 Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

#### **1.10 Amendments and Waivers**

No amendment of any provision of this Agreement shall be binding on either party unless agreed to in writing by each of the parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.

#### **1.11 Statutory References**

Any reference in this Agreement to a statute includes all regulations made thereunder, all amendments to such statutes or regulations in force from time to time and any statute or regulation that supplements or supersedes such statute or regulations.

#### **1.12 Consent**

Whenever a provision of this Agreement requires an approval or consent by a person who is a party to such agreement and notification of such approval or consent is not delivered within the applicable time period, then, unless otherwise specified, such person shall be conclusively deemed to have withheld its approval or consent.

### **1.13 Calculation of Time**

Unless otherwise specified, time periods referred to in this Agreement within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### **1.14 Conflict or Inconsistency**

Wherever any provision, whether express or implied, of any Schedule conflicts or is at variance with any provision in the main body of this Agreement, the provision in the main body shall prevail. Wherever any provision, whether express or implied, of this Agreement conflicts with or is at variance with any documentation issued in furtherance hereof, the provision of this Agreement shall prevail.

### **1.15 Business Day**

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next Business Day following such day.

### **1.16 Independent Legal Advice**

Each of the parties hereto acknowledge that they have been afforded the opportunity of receiving independent legal advice concerning this Agreement, and in the event that any party has executed this Agreement without the benefit of independent legal advice, such party hereby waives the right to receive such independent legal advice.

### **1.17 Schedules**

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

Schedule "A" – Real Property

Schedule "B" – List of Approved Contracts

Schedule "C" – Permitted Encumbrances

Schedule "D" – Purchase Price Allocation

## **ARTICLE 2** **PURCHASE AND SALE OF PURCHASED ASSETS**

### **2.1 Purchased Assets**

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase and assume from the Vendor, on the Closing Date, effective as of the Time of Closing, all of Vandyk's and the

Vendor's right, title and interest, in and to the following property and assets (collectively, the "**Purchased Assets**"):

- (a) the Vandyk Real Property;
- (b) the Buildings, if any;
- (c) the Additional Assets, if any;
- (d) the Approved Contracts, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees;
- (e) the Intellectual Property in the possession or subject to the control of the Vendor; and
- (f) the Project Rights and Documents in the possession or subject to the control of the Vendor, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees.

## **2.2 Excluded Assets**

All undertaking, property and assets of Vandyk other than the Purchased Assets shall be excluded from the purchase and sale of assets provided for in this Agreement (collectively, the "**Excluded Assets**"), including without limitation, the Unit Sales Agreements, Unit Deposits, all cash and equivalents and all accounts receivable of Vandyk, including insurance refunds and all HST refunds and other tax receivables.

## **2.3 Assumed Liabilities**

Subject to the terms and conditions of this Agreement, the Purchaser shall assume, on the Closing Date, effective as of the Time of Closing, and shall pay, discharge, honour, fulfill and perform, as the case may be and as and when due, from and after the Closing Date, the following Liabilities (the "**Assumed Liabilities**"):

- (a) all Liabilities arising from the ownership, use or operation on or after the Closing of the Purchased Assets acquired by the Purchaser on Closing;
- (b) all Liabilities under the Project Rights and Documents; and
- (c) all Liabilities under the Approved Contracts.

## **2.4 Exclusion of Liabilities**

The Purchaser does not assume and shall have no obligation to pay, discharge, honour, fulfill or perform the Excluded Liabilities or any other Liabilities of Vandyk whatsoever, other than the Assumed Liabilities.

## **2.5 As is, Where is**

The Purchaser hereby acknowledges and agrees with and to be subject to the following:

- (a) it is responsible for conducting its own searches and investigations of the current state of the Purchased Assets, including the Vandyk Real Property and the Buildings and the current and past uses of the Purchased Assets;
- (b) the Vendor makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Purchased Assets, including the Vandyk Real Property or the Buildings, is or will be lawful or permitted;
- (c) it is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis subject to the terms hereof;
- (d) it is relying entirely upon its own investigations and inspections in entering into this Agreement;
- (e) any documentation relating to the Purchased Assets obtained from the Vendor or from the Vendor’s agents or representatives has been prepared or collected solely for the convenience of prospective purchasers and is not warranted to be complete or accurate and is not part of this Agreement;
- (f) the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Purchased Assets, including the Vandyk Real Property or the Buildings, except as expressly provided herein;
- (g) the Vendor has made no representations or warranties with respect to or in any way related to the Purchased Assets, except as expressly provided for herein, including the Vandyk Real Property or the Buildings, including without limitation, the following:
  - (i) the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value, location or any other matter or thing whatsoever related to the Purchased Assets, either stated or implied; and
  - (ii) the environmental state of the Vandyk Real Property or the Buildings, the existence, presence, identity, nature, kind, state, status, extent, or effect of any Hazardous Materials at, on, under, in, or about the Vandyk Real Property or Buildings, the existence, presence, identity, state, status, nature, kind, extent and effect of any Governmental Order, including administrative order, control order, stop order, compliance order or any other orders, directions, requirements, proceedings or actions under the Environmental Protection Act (Ontario), or any other Environmental Law, and the existence, presence, identity, state, status, nature, kind, extent and effect of any liability to fulfill any obligation to compensate any Person for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether at, on, under, in or about the Vandyk Real Property or Buildings or elsewhere.

- (g) Except as otherwise expressly provided for in this Agreement, the Vendor will have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Purchased Assets or the condition thereof.
- (h) The provisions of this Section 2.5 will survive Closing or the termination of this Agreement.

## 2.6 Access

Following the execution of this Agreement, the Purchaser, its consultants and their respective agents and employees shall be entitled to enter upon the Vandyk Real Property and Buildings for the purpose of making such inspections, tests and investigations as the Purchaser considers necessary or desirable, provided that (a) prior notice of such entering shall be given to the Vendor and the Vendor or its representative shall be entitled to accompany the Purchaser and its consultants, agents or employees who are so entering the Vandyk Real Property and Buildings, and (b) the Purchaser shall repair any damage to the Vandyk Real Property and Buildings caused by such inspections, tests and investigations (to the same standard in which the Vandyk Real Property and Buildings was prior to any such damage) and agrees to indemnify the Vendor against all claims arising from such inspections, tests and investigations. At the request and sole cost and expense of the Purchaser, the Vendor agrees to forthwith execute such authorization or authorizations as the Purchaser may reasonably require in connection with its investigations of the Purchased Assets.

## **ARTICLE 3** **PURCHASE PRICE**

### 3.1 Satisfaction of Purchase Price

- (a) On the Closing Date, the Purchaser shall pay to the Vendor the Purchase Price.
- (b) The Purchase Price shall be paid, accounted for and satisfied as follows:
  - (i) **Deposit:** A deposit equal to the amount of **\$500,000** (the “**Deposit**”) shall be made payable to and be deposited in the trust account of the Vendor within one Business Day following the execution of this Agreement by the Vendor. The Deposit, or any portion thereof, is to be held in accordance with the terms of this Agreement and the Vandyk Sale Process. The Deposit will be held by the Vendor until Closing or termination of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Vendor shall place the Deposit in a non-interest bearing account and no interest shall be earned, received or paid on the Deposit.
  - (ii) **Balance Due at Closing:** The balance of the Purchase Price by payment at Closing to the Vendor or to the order of the Vendor.
  - (iii) **Method of Payment:** The Deposit and the balance due on Closing shall be made by way of wire transfer.

### **3.2 Deposit**

The Deposit shall be held in trust by the Vendor and shall be:

- (a) credited against the Purchase Price on the Closing Date if the purchase and sale of the Purchased Assets is completed pursuant to this Agreement;
- (b) subject to Section 3.2(c), refunded to the Purchaser without interest or deduction if this Agreement is terminated, including pursuant to Section 7.1; or
- (c) retained by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty, in addition to any other rights and remedies that the Vendor may have under this Agreement and at law, including offering the Purchased Assets for sale to another person, if the purchase and sale of the Purchased Assets is not completed pursuant to this Agreement as a result of the Purchaser's breach hereunder.

### **3.3 Allocation of Purchase Price**

The Purchase Price shall be allocated among the Purchased Assets in accordance with Schedule "D" hereto, and the parties shall ensure that all financial information and any tax returns, declarations or elections filed are consistent with such allocations. If Schedule "D" is not completed on the date of execution of this Agreement, failure of the parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each of the Purchaser and the Vendor shall each be free to make their own reasonable allocation.

### **3.4 Property Tax Refunds and Rebates**

Any refund or rebate of realty tax relating to the Purchased Assets in respect of the period before the Closing Date (each, a "Property Tax Refund") will remain the property of the Vendor. To the extent the Purchaser receives payment or credit on account of any Property Tax Refund, the Purchaser shall hold such amount in trust for the Vendor, endorse such amount (without recourse) in favour of the Vendor and immediately deliver such amounts to the Vendor. Any refund or rebate of realty tax relating to the Purchased Assets in respect of the period after the Closing Date will be the property of the Purchaser. To the extent the Vendor receives payment of any such amount, the Vendor shall hold such amount in trust for the Purchaser, endorse such payment (without recourse) in favour of the Purchaser and immediately deliver such payments to the Purchaser.

### **3.5 Sales Tax, Land Transfer Tax and Registration Fees on Transfer**

- (a) The Purchaser is liable for and shall pay all land transfer tax, HST, other similar taxes and duties, fees in respect of the registration of the transfer, and other like charges properly payable by a purchaser upon and in connection with the sale, assignment and transfer of the Purchased Assets from the Vendor to the Purchaser.
- (b) The Purchaser agrees to self-assess, be liable for and remit to the appropriate Governmental Entity all HST payable in connection with its purchase of the



Vandyk Real Property and Buildings, and to indemnify the Vendor for any amounts for which the Vendor may become liable as a result of any failure by the Purchaser to pay the HST payable in respect of the sale of the Vandyk Real Property and Buildings under Part IX of the ETA. The Purchaser shall deliver, on or prior to Closing, its certificate in form acceptable to the Vendor, certifying that the Purchaser shall be liable for, shall self assess and shall remit to the appropriate Governmental Entity all HST payable in respect of the sale of the Vandyk Real Property and Buildings, and is purchasing the Vandyk Real Property and Buildings as principal for its own account and is not being purchased by the Purchaser as an agent, trustee, or otherwise on behalf of or for another Person, and the Purchaser's HST registration number. Such certificate shall also set out the indemnity provided for in the first sentence of this Subsection (b).

- (c) If the Purchaser delivers the HST certificate and indemnity as set out in Subsection 3.5(b), then the Purchaser will not be required to pay to the Vendor, and the Vendor will not be required to collect from the Purchaser, HST in respect of the Vandyk Real Property and Buildings. If the Purchaser does not deliver the HST certificate and indemnity as set out in Subsection 3.5(b), then without limiting the generality of the foregoing in this paragraph, the Purchaser shall pay to the Vendor an amount equal to the HST payable on the Purchase Price allocated to the Vandyk Real Property and Buildings on Closing.
- (d) If requested by the Purchaser, acting reasonably, the Vendor (on behalf of Vandyk) and the Purchaser shall jointly make the election provided for in paragraph 167(1)(b) of the ETA and any equivalent or corresponding provision under any applicable provincial or territorial legislation (including section 75 of an *Act respecting Québec sales tax* (Québec)), in prescribed form and within the required time period, to have subsection 167(1.1) of the ETA and any equivalent or corresponding provision under any applicable provincial or territorial legislation apply in respect of the sale and purchase of the Purchased Assets (other than the Vandyk Real Property and Buildings) under this Agreement. The Purchaser shall file the completed election form with the applicable Governmental Entity no later than the due date for the Purchaser's HST returns for the first reporting period in which HST would, in the absence of this election, become payable in connection with the Transaction. Notwithstanding such election and anything to the contrary in this Agreement, in the event it is determined by any relevant Governmental Entity that the Vendor or Vandyk is liable to collect and remit HST in respect of the Transaction, the Purchaser shall forthwith pay such HST, plus any applicable interest and penalties, to the Vendor for remittance to the applicable Governmental Entity and the Purchaser shall indemnify and save the Vendor and Vandyk (and any present or former directors and officers of the Vendor or Vandyk) harmless with respect to any taxes, penalties, interest, and other costs payable resulting from such determination.
- (e) The indemnities in this Section 3.5 shall survive the Closing Date in perpetuity.

### 3.6 Adjustment of Purchase Price.

- (a) The Purchase Price shall be adjusted as of Closing in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property taxes (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale.
- (b) The Vendor shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval by no later than three business days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined by the Closing Date, then, and only then an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such agreed upon estimate shall be final and binding, and no further adjustments shall be made post Closing Date.
- (c) Notwithstanding anything contained in this Agreement, there shall be no adjustment in either party's favour in respect of any Levies whether paid or unpaid, unless the Parties agree otherwise in writing.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

#### 4.1 Representations and Warranties

The Vendor represents and warrants to the Purchaser as follows as of the date of this Agreement and again as on Closing and acknowledges that the Purchaser is relying on such representations and warranties in connection with its purchase of the Purchased Assets:

- (a) **Execution, Delivery and Enforceability.** The Vendor has been appointed by the Court as receiver and manager, without security, of the Purchased Assets. Subject to the entry of the Approval and Vesting Order, the Vendor has all the necessary authority to enter into this Agreement and all other documents contemplated herein to which it is or will be a party. This Agreement has been duly executed and delivered by the Vendor and, subject to the entry of the Approval and Vesting Order, this Agreement is a legal, valid and binding obligation of the Vendor, enforceable against the Vendor in its capacity as receiver and manager of Vandyk by the Purchaser in accordance with its terms.
- (b) **Residency.** Vandyk is not a non-resident of Canada for the purposes of the Tax Act.

#### 4.2 Representations and Warranties at Closing

The Vendor represents and warrants to the Purchaser that each and every representation and warranty of the Vendor made in this Article 4 shall be true and correct at and as of the Time of Closing with the same force and effect as if such representations and warranties had been made at and as of the Time of Closing.

**ARTICLE 5**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PURCHASER**

**5.1 Representations and Warranties**

The Purchaser represents and warrants to the Vendor as follows as of the date of this Agreement and again on Closing and acknowledges and confirms that the Vendor is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- (a) **Organization.** The Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of Ontario and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement; neither the execution of this Agreement nor the performance (such performance shall include, without limitation, the exercise of any of the Purchaser's rights and compliance with each of the Purchaser's obligations hereunder) by the Purchaser of the Transaction will violate:

- (i) the Purchaser's articles of incorporation and by-laws;
- (ii) any agreement to which the Purchaser is bound or is a party;
- (iii) any judgement or order of a court of competent authority or any Government Authority; or
- (iv) any applicable law;

and the Purchaser has duly taken, or has caused to be taken, all requisite corporate action required to be taken by it to authorize the execution and delivery of this Agreement and the performance of each of its obligations hereunder.

- (b) **Execution, Delivery and Enforceability.** The execution and delivery of and performance by the Purchaser of this Agreement have been authorized by all necessary corporate action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser and is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser by the Vendor in accordance with its terms.
- (c) **Residency.** The Purchaser is not a non-resident of Canada for purposes of the Tax Act.
- (d) **HST Registration.** The Purchaser is duly registered for the purposes of the ETA with respect to the goods and services tax and harmonized sales tax and its registration number shall be provided at least three days before closing.
- (e) **Brokers' or Finders' Fees.** The Purchaser has not incurred any obligation or liability, contingent or otherwise, for any broker's or finder's fees or commissions in respect of this Transaction for which the Vendor shall have any obligation or liability to pay.

- (f) ***Investment Canada Act (Canada)***. Either (i) the Purchaser is a “**Canadian**”, as defined in the *Investment Canada Act (Canada)* (“ICA”); or (ii) if the Purchaser is a “non-Canadian”, this Transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the Transaction and will use its best efforts to obtain Investment Canada’s approval within ten (10) days thereafter.
- (g) **Solvency**. The Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.
- (h) The purchase and assumption of the Purchased Assets by the Purchaser will not violate or be non-compliant with *the Prohibition on the Purchase of Residential Property by Non-Canadians Act, S.C. 2022, c. 10, s. 235*.
- (i) The Purchaser is purchasing and assuming the Purchased Assets for its own account and not on account of any other party.

## 5.2 Representations and Warranties at Closing

The Purchaser represents and warrants to the Vendor that each and every representation and warranty of the Purchaser made in this Article 5 shall be true and correct at and as of the Time of Closing with the same force and effect as if such representations and warranties had been made at and as of the Time of Closing.

## ARTICLE 6 RISK

### 6.1 Notice of Untrue Representation or Warranty

Each of the parties shall promptly notify the other party upon any representation or warranty of such party contained in this Agreement becoming untrue or incorrect from the date of this Agreement until the Time of Closing.

### 6.2 Risk of Loss

Until the Time of Closing, the Purchased Assets shall remain at the risk of the Vendor. After Closing occurs, the Purchased Assets shall be at the sole risk of the Purchaser regardless of the location of the Purchased Assets. If, prior to the Time of Closing, all or any material part of the Purchased Assets are destroyed or damaged by fire or any other casualty or shall be appropriated, expropriated or seized by any Governmental Entity or other lawful authority,

the Purchaser shall be entitled but not required to complete the purchase contemplated hereby without a reduction to the Purchase Price. If the Purchaser elects to complete the purchase contemplated hereby in accordance with the previous sentence, the Purchaser shall be entitled to all proceeds of insurance related to the Purchased Assets arising from such destruction or damage, in the event of destruction or damage, and, in the event of appropriation, expropriation or seizure, to all compensation related to the Purchased Assets for appropriation, expropriation or seizure that are, in each case, payable to the Vendor, and all right and claim of the Vendor to any such amounts not paid by the Closing Date shall be assigned to the Purchaser. Prior to the Closing Date, the Vendor shall own and secure the Property in accordance with reasonable management practices for similar vacant property in the City of Toronto, including reasonable security precautions and monitoring practices.

### 6.3 Insurance Matters

Any property, liability and other insurance maintained by the Vendor shall not be transferred as of the Closing Date but shall remain the responsibility of the Vendor until the Time of Closing. The Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Purchased Assets in respect of the period from and after the Time of Closing.

## **ARTICLE 7** **CONDITIONS OF CLOSING**

### 7.1 Conditions for the Benefit of the Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Purchaser:

- (a) **Due Diligence.** On or before 5:00 p.m. on the Due Diligence Date; (i) the Purchaser shall have conducted whatever searches the Purchaser, in its sole discretion, deems advisable with respect to the Purchased Assets including, without limitation, title to the Vandyk Real Property and all Encumbrances thereon, searches and investigations and reports with respect to environmental (including compliance with Environmental Laws), engineering, electrical, structural and mechanical matters, the condition of the Buildings and the state of repair of any improvements located on the Vandyk Real Property, environmental condition of the Vandyk Real Property, zoning and permitting in relation to the existing and proposed uses at the Purchased Assets, status of development approvals and applications, and any other matters of interest to the Purchaser with respect to the Purchased Assets, and (ii) the Purchaser shall be satisfied, in its sole discretion, with the results of all such searches and with all legal, physical and financial aspects of the Purchased Assets (the “**Due Diligence Condition**”).
- (b) **Representations and Warranties.** The representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects at the Time of the Closing with the same force and effect as if such representations and warranties were made at such time, and a certificate of the Vendor, dated as of the Closing Date, to that effect shall have been delivered to

the Purchaser, such certificate to be in a form and substance satisfactory to the Purchaser acting reasonably;

- (c) **Covenants.** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor at or before the Time of Closing shall have been complied with or performed in all material respects;
- (d) **No Encumbrances.** Save and except for the Permitted Encumbrances, there shall be no Encumbrances registered on title to the Purchased Assets or matters affecting title to the Purchased Assets, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order;
- (e) **Vacant Possession.** At the Time of Closing, as provided in the Approval and Vesting Order, the Vendor shall have delivered vacant possession of the Purchased Assets to the Purchaser, subject to all Approved Contracts;
- (f) **Delivery of Documents.** The delivery at the Time of Closing of the documents referenced in Subsection 9.3(a) to the Purchaser.

## 7.2 Conditions for the Benefit of the Vendor

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Vendor, to be performed or fulfilled at or prior to the Time of Closing:

- (a) **Representations and Warranties.** The representations and warranties of the Purchaser contained in Article 5 of this Agreement shall be true and correct at the Time of Closing with the same force and effect as if such representations and warranties were made at such time, and a certificate of the Purchaser, dated as of the Closing Date, to that effect shall have been delivered to the Vendor, such certificate to be in form and substance satisfactory to the Vendor, acting reasonably;
- (b) **Covenants.** All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser at or before the Time of Closing shall have been complied with or performed;
- (c) **Payment of Purchase Price.** The Purchaser shall have tendered to the Vendor the Purchase Price; and
- (d) **Delivery of Documents.** The delivery of the documents referenced in Subsection 9.3(b) to the Vendor.

## 7.3 Conditions for the Mutual Benefit of the Vendor and Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the mutual benefit of the Vendor and the Purchaser, to be performed or fulfilled at or prior to the Time of Closing:

- (a) by no later than five calendar days from the Due Diligence Date, the Vendor shall have sought and obtained the first available Court date for which service of the motion could be provided in accordance with the *Rules of Civil Procedure* (or such later date as the Vendor and the Purchaser may agree in their sole discretion) for the Vendor's motion for an order, *inter alia*, approving this Agreement and the Transaction and conveying to the Purchaser upon Closing all of Vandyk's and the Vendor's right, title and interest in and to the Purchased Assets free and clear of all (i) Claims, and (ii) Encumbrances other than Permitted Encumbrances (the "**Approval and Vesting Order**"), which Approval and Vesting Order shall be in form and substance satisfactory to the Vendor and the Purchaser, each acting reasonably;
- (b) the Approval and Vesting Order shall be obtained on or before September 2, 2024 and shall be a Final Order; and
- (c) at the Time of Closing, no legal proceeding shall be pending which enjoins, restricts or prohibits the purchase and sale of the Purchased Assets contemplated hereby, including, without limitation, any order issued by any Governmental Entity against either of the parties or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;

#### **7.4 Non-Satisfaction of Due Diligence Condition**

If by the Due Diligence Date, the Purchaser has not provided written notice to the Vendor that the Due Diligence Condition has been satisfied or waived, the Due Diligence Condition shall be deemed not to have been satisfied, this Agreement shall be deemed to be terminated, the Deposit shall be forthwith returned to the Purchaser without interest, and without any set-off or deduction and each of the Purchaser and the Vendor shall be released from all covenants and obligations under this Agreement.

### **ARTICLE 8** **TERMINATION**

#### **8.1 Termination**

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either party, immediately upon the issuance of a final and non-appealable order, decree, or ruling or any other action by a Governmental Entity to restrain, enjoin or otherwise prohibit the Transaction;
- (b) by mutual written consent of the Vendor and the Purchaser;
- (c) by either the Vendor or the Purchaser if the Closing has not occurred on or before the Outside Date; provided, however, that a party may not exercise such termination right if they are in material breach of their obligations under this Agreement;

- (d) by the Vendor, if the Purchaser fails to fulfill any condition set forth in Section 7.2 by the Outside Date and failure has not been waived by the Vendor or cured by the Outside Date;
- (e) by the Purchaser, if the Vendor fails to fulfill any condition set forth in Section 7.1 by the Outside Date and such failure has not been waived by the Purchaser or cured by the Outside Date;
- (f) by the Purchaser, if the Purchaser delivers notice to the Vendor on or before 5:00 p.m. on the Due Diligence Date that it has not satisfied, nor will it waive the Due Diligence Condition;
- (g) automatically and without any action or notice by either party, if the Purchaser has not delivered notice to the Vendor on or before 5:00 p.m. on the Due Diligence Date that it has satisfied or waives the Due Diligence Condition; or
- (h) by either the Vendor or the Purchaser if the conditions set forth in Section 7.3 have not been satisfied by the date specified therein or, if not specified, by the Outside Date.

## **8.2 Effects of Termination**

If this Agreement is terminated pursuant to Section 8.1, except as expressly provided herein, all further rights and obligations of the parties under or pursuant to this Agreement shall terminate without further liability of any party to the other.

## **ARTICLE 9 CLOSING DATE AND TRANSFER OF POSSESSION**

### **9.1 Time, Date and Place of Closing**

Closing shall take place at the Time of Closing at the offices of the Vendor's solicitors or at such other place, on such other date, and at such other time as may be agreed upon in writing between the Vendor and the Purchaser.

### **9.2 Transfer of Possession**

Subject to compliance with the terms and conditions hereof, the transfer of the Purchased Assets shall be deemed to take effect as at the Time of Closing. At the Time of Closing, the Vendor shall deliver possession of the Purchased Assets to the Purchaser subject to the provisions of this Agreement.

### **9.3 Delivery of Closing Documents**

- (a) At the Time of Closing, the Vendor shall deliver the following items to the Purchaser each of which shall be in form and substance satisfactory to the Purchaser acting reasonably:
  - (i) A direction regarding funds directing the party to which the balance of the Purchase Price shall be paid;



- (ii) Intentionally deleted;
  - (iii) a statement of adjustments in form and substance satisfactory to the Purchaser, acting reasonably;
  - (iv) a certificate of an officer of the Vendor confirming that all conditions to Closing in its favour are either satisfied or waived;
  - (v) the Document Registration Agreement;
  - (vi) all master keys and duplicate keys to any building located on the Vandyk Real Property that are in the possession and control of the Vendor;
  - (vii) an application for vesting in Teraview in accordance with the Purchaser's direction regarding title; and
  - (viii) such other documents as may be specifically required hereunder or as may be reasonably required by the Purchaser or the Purchaser's solicitors.
- (b) At the Time of Closing, the Purchaser shall deliver the following items to the Vendor, each of which shall be in form and substance satisfactory to the Vendor acting reasonably:
- (i) the Purchase Price in accordance with Section 3.1(b);
  - (ii) a direction regarding title as to the name and address for service of, and name and identity of the signatory for, the transferee of the transfer/deed of land;
  - (iii) a certificate of an officer of the Purchaser confirming that the representations and warranties of the Purchaser contained in this Agreement are true and correct as of the Closing Date;
  - (iv) a certificate of an officer of the Purchaser confirming that all conditions to Closing in its favour are either satisfied or waived;
  - (v) an HST indemnity and warranty;
  - (vi) the Document Registration Agreement;
  - (vii) an application for vesting in Teraview in accordance with the Purchaser's direction regarding title; and
  - (viii) such other documents as may be specifically required hereunder or as may be reasonably required by the Vendor or the Vendor's solicitors.

#### **9.4 Electronic Registration**

If electronic registration of documents at the applicable land registry office is mandatory on the Closing Date, or is optional and is requested by the Purchaser, the following terms shall form part of this Agreement:

- (a) the Vendor and the Purchaser shall each authorize and instruct their respective legal counsel to enter into an escrow closing agreement in the form mandated by the Law Society of Ontario, subject to such reasonable amendments as such legal counsel or the circumstances of the Transaction may require, establishing the procedures and timing for completion of the Transaction (the “**Document Registration Agreement**”);
- (b) the delivery and exchange of documents and funds and the release thereof to the Vendor and the Purchaser, as the case may be:
  - (i) shall not occur contemporaneously with the registration of the transfer; and
  - (ii) shall be governed by the Document Registration Agreement, pursuant to which the lawyer receiving the documents and/or funds will be required to hold the same in escrow and will not be entitled to release the same except in accordance with the provisions of the Document Registration Agreement.

#### **9.5 Registration Costs**

The Purchaser shall bear all costs in registering any conveyances of title to the Purchased Assets to it, including all land transfer taxes and all costs of preparing any further assurances required to convey the Purchased Assets to it. The Purchaser shall register all such conveyances in accordance with the Document Registration Agreement.

#### **9.6 Tender**

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser’s solicitors on behalf of the Purchaser and by the Vendor’s solicitors on behalf of the Vendor and any tender of Closing Documents may be made upon the Vendor’s solicitors and the Purchaser’s solicitors, as the case may be.

### **ARTICLE 10** **MISCELLANEOUS**

#### **10.1 Notices**

- (a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by telecopy or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:
  - (i) if to the Vendor:

KSV Restructuring Inc.  
220 Bay Street, 13<sup>th</sup> Floor  
Toronto, Ontario M5J 2W4

Attention: David Sieradzki / Murtaza Tallat  
Email : [dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com) / [mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com)

with a copy to:

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place, Suite 6200  
100 King Street West  
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman / Dave Rosenblat / Josh Disenhouse  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com) / [drosenblat@osler.com](mailto:drosenblat@osler.com) /  
[jdisenhouse@osler.com](mailto:jdisenhouse@osler.com)

(ii) if to the Purchaser:

**THMR Development Inc.**

307 - 15 Wellesley Street West.

Toronto, ON M4Y 0G7

Attention: Ran Zha, General Manager  
Email: [rzha@everison.ca](mailto:rzha@everison.ca)

with a copy to:

DLA Piper (Canada) LLP  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, Ontario M5X 1E2

Attention: Edmond Lamek / Jonathan Born  
Email: [edmond.lamek@dlapiper.com](mailto:edmond.lamek@dlapiper.com) / [jonathan.born@dlapiper.com](mailto:jonathan.born@dlapiper.com)

- (b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means or recorded electronic communication as aforesaid.
- (c) Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 10.1.

## **10.2 Non-Waiver**

No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

## **10.3 Expenses**

Each of the parties hereto shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

## **10.4 Further Assurances**

Each party to this Agreement covenants and agrees that it will at all times promptly execute and deliver all such documents including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as the other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

## **10.5 Assignment**

Neither the Purchaser nor the Vendor may assign this Agreement or any rights or obligations hereunder in whole or in part without the prior written consent of the other counterparty, which consent is not to be unreasonably withheld, provided that the Purchaser shall be entitled to assign this Agreement to an Affiliate of the Purchaser without the consent of the Vendor, provided further that the Purchaser may designate one or more nominees to take title in and to the Purchased Assets, or any part thereof, by giving the Vendor written notice of such assignment prior to the date of the hearing for the Approval and Vesting Order. Notwithstanding the foregoing, no assignment or designation by the Purchaser under this Section 10.5 shall relieve the Purchaser from its obligations or liabilities under this Agreement until Closing.

## **10.6 Non-Merger**

The registration of the Approval and Vesting Order and the execution and delivery of documents on the Closing Date or thereafter as herein contemplated or any independent investigation by the Purchaser or its agents shall not merge or affect any of the warranties, representations, covenants, conditions or terms of this Agreement or any agreement or document delivered pursuant to this Agreement, all of which shall survive the closing of the Transaction.

## **10.7 Planning Act**

This Agreement is effective to create an interest in the Vandyk Real Property and Buildings only if the subdivision control provisions of the *Planning Act* (Ontario), as amended, are complied with on or before Closing.

## 10.8 No Personal Liability of the Vendor

The Vendor is executing this Agreement solely in its capacity as Court-appointed receiver and manager of the Purchased Assets and not in personal or corporate capacity and none of the Vendor, KSV or any of their respective directors, officers, agents, servants or employees shall have any personal or corporate liability hereunder or at common law, or by statute, or equity or otherwise as a result hereof.

## 10.9 Counterparts, Facsimile or Electronic Signatures

This Agreement may be executed by electronic signature, in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile or electronic mail which, for all purposes, shall be deemed to be an original signature.

## 10.10 Purchaser Indemnity

The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees, agents and representatives (collectively, the “**Indemnitees**”) from and against any and all Liabilities which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the operations of the Purchaser on the Vandyk Real Property or any order (including, without limitation, any Governmental Order), notice, directive, or requirement under, or breaches, violations or non-compliance with any Environmental Laws but only to the extent that either occurs after the Closing Date or as a result of the generation, removal, disposal, transportation, storage, discharge, release or threat of discharge or release or spill at, on, in or about the Vandyk Real Property or Buildings of any Hazardous Materials after the Closing Date (the “**Post-Closing Environmental Indemnity**”). Notwithstanding the foregoing, the Post-Closing Environmental Indemnity shall also include any and all matters, events, incidents, discharges, releases, spills, breaches, violations or non-compliances with any Environmental Laws or matters involving any Hazardous Materials, that occurred or may have occurred prior to the Closing Date which are caused by, exacerbated by or contributed to by the Purchaser. For the purposes of the foregoing, “**Environmental Laws**” shall mean all requirements under or prescribed by common law and all federal, provincial, regional, municipal and local laws, rules, statutes, ordinances, regulations, guidelines, directives, notices and orders from time to time with respect to the discharge, release, spill, generation, removal, transportation, storage or handling of or exposure to any Hazardous Materials or otherwise to the protection and preservation of the environment, health and safety. The obligation of the Purchaser hereunder shall survive the Closing Date.

## 10.11 Purchaser Release

The Purchaser agrees to release and discharge the Vendor and its directors, officers, employees, agents and representatives from every claim of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Vandyk Real Property. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Vandyk Real Property or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials. This provision shall not expire with, or be terminated or extinguished by or merged in the Closing

of the transaction of purchase and sale, contemplated by this Agreement, and shall survive the termination of this Agreement for any reason or cause whatsoever and the closing of this Transaction.

### **10.12 Non-Registration of Agreement**

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document, instrument or Court order or judgement providing evidence of this Agreement against title to the Vandyk Real Property. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Section 10.12 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Vandyk Real Property any of the items set out in this Section 10.12.

### **10.13 Confidentiality**

The Purchaser and its agents, advisors and authorized representatives shall maintain in strict confidence, until the Closing Date, all information and materials delivered or made available pursuant to this Agreement, except as may reasonably be disclosed by the Purchaser:

- (a) to comply with laws requiring disclosure; or
- (b) otherwise agreed upon in writing by the Vendor (in consultation with the Receiver).

In the event that the transaction contemplated in this Agreement is, for any reason whatsoever, not completed, then the Purchaser shall promptly return to the Vendor all materials delivered hereunder and deliver to the Vendor all copies of materials made available hereunder.

**[signature page immediately follows]**

**IN WITNESS WHEREOF** the undersigned agree to the terms of this Agreement as of the date first written above.

**KSV RESTRUCTURING INC.**, in its capacity as court-appointed receiver and manager of the Vandyk Real Property and all present and future assets, undertakings and personal property of Vandyk located at, related to, or used in connection with or arising from or out of the Vandyk Real Property, and not in its personal or in any other capacity

Per: 

Name: DAVID SIERASZYK

Title: MANAGING DIRECTOR

**THMR DEVELOPMENT INC.**

Per: 

Name: Trueman Zha

Title: President

**Schedule "A"**  
**Real Property**

**PIN 21335-0047 (LT)**

PT LT 5-6 PL 1256 TORONTO AS IN CA291324; CITY OF TORONTO.



**Schedule "B"**  
**Approved Contracts**

NIL.

**Schedule "C"**  
**Permitted Encumbrances**

Permitted Encumbrances with respect to the Vandyk Real Property (as defined in the Agreement) means:

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.

**Schedule "D"**  
**Purchase Price Allocation**

## **Appendix “C”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**BETWEEN:**

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

**APPLICANT**

**- AND -**

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

**RESPONDENTS**

**AFFIDAVIT OF DAVID SIERADZKI**  
(Sworn August 9, 2024)

I, David Sieradzki, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Managing Director of KSV Restructuring Inc. ("KSV").
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on January 23, 2024 ("Order"), KSV was appointed as receiver and manager (the "Receiver") of the property, assets and undertakings of Vandyk – 41 Wabash Limited (the "Company").
3. I have been involved in the management of this mandate since the proceedings commenced. As such, I have knowledge of the matters to which I hereinafter depose.
4. On August 9, 2024, the Receiver issued its First Report to Court in which it outlined its activities with respect to the Company and provided information with respect to its fees.
5. I hereby confirm that attached as Exhibit "A" hereto are true copies of the accounts of KSV for the periods indicated and confirm that these accounts accurately reflect the services provided by KSV in this matter and the fees and disbursements claimed by it.

6. Additionally, attached hereto as Exhibit "B" is a summary of additional information with respect to all members of KSV who have worked on this matter, including their roles, hours and rates, and I hereby confirm that the list represents an accurate account of such information.

7. I consider the accounts to be fair and reasonable considering the circumstances connected with this administration.

8. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amount claimed in the accounts.

**SWORN (OR AFFIRMED) BEFORE ME**, in the )  
Province of Ontario, this 9th day of August, )  
2024. )



\_\_\_\_\_  
Catherine Anne Stuyck-Therault, a Commissioner, etc., )  
Province of Ontario, for KSV Advisory Inc. and KSV )  
Restructuring Inc. )  
Expires February 19, 2025 )



\_\_\_\_\_  
David Sieradzki, CPA, CA, LIT

This is Exhibit "A" referred to in the  
Affidavit of David Sieradzki  
sworn before me, this 9<sup>th</sup> day of August, 2024



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Catherine Anne Stuyck-Therault, a Commissioner, etc.,  
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.  
Expires February 19, 2025





**ksv advisory inc.**  
220 Bay St, Suite 1300 PO Box 20  
Toronto, Ontario, M5J 2W4  
T +1 416 932 6262  
F +1 416 932 6266

ksvadvisory.com

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## INVOICE

Vandyk – 41 Wabash Limited.  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

August 8, 2024

Invoice No: 3707  
HST #: 818808768RT0001

**Re: Vandyk – 41 Wabash Limited (the “Company”)**

For professional services rendered by KSV Restructuring Inc. for the period January 4, 2024 to July 31, 2024 in its capacity as receiver and manager (the “Receiver”) of the Company, including its real property and all other property, assets and undertaking of the Company pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued on January 23, 2024 (the “Receivership Order”), including:

Background and General

- Corresponding extensively with Osler, Hoskin & Harcourt LLP (“Osler”), the Receiver’s counsel, regarding various aspects of the receivership;
- Corresponding regularly with Fiera FP Real Estate Financing Fund, L.P. (“Fiera”), the senior mortgagee, regarding the receivership proceedings generally;
- Corresponding with Blaney McMurtry LLP (“Blaney”), Fiera’s counsel, regarding the receivership proceedings generally;
- Corresponding with representatives of the Vandyk Group to, among other things, obtain the Company’s books and records, including financial information pertaining to the real property located at 41 Wabash Avenue, Toronto (the “Real Property”);
- Corresponding with Fiera on a weekly basis to discuss the receivership and a potential sale process for the Real Property;

- Reviewing financial and other information related to the Company, including, among other things, the:
  - development status of the Real Property;
  - most recent trial balances;
  - most recent bank statements;
  - title searches;
  - insurance policies; and
  - real estate appraisals;
- Engaging Tert & Ross Inc. (“T&R”), a third-party contractor, to perform site visits and to secure and monitor the Real Property;
- Corresponding extensively with T&R regarding the Real Property;
- Reviewing reports from T&R regarding site conditions and security matters;
- Corresponding with Kroll Consulting Canada Co. (“Kroll”) to image the Company’s electronic records;
- Attending at the head office of the Company to assist Kroll with imaging the electronic records;
- Opening an estate bank account for the Company;
- Corresponding with Masters Insurance Limited, the Company’s insurance broker, to obtain copies of the insurance policies and to request that the Receiver be added as a named insured and loss payee on the policies;
- Corresponding with Canada Revenue Agency (“CRA”) regarding the status of the Company’s HST accounts and opening new HST accounts for the receivership proceedings;

#### Court Matters

- Reviewing and commenting on all application materials filed by Fiera regarding the appointment of a receiver;
- Attending in Court (virtually) on January 18, 19 and 23, 2024 in connection with the receivership application;
- Reviewing the Receivership Order and the corresponding Endorsement issued by the Court;
- Reviewing materials filed with the Court in connection with a motion filed by the Receiver returnable on March 8, 2024 (the “Sale Process Motion”), including:
  - the Notice of Motion of the Receiver; and
  - the draft Orders;

- Drafting the Consolidated Report of the Receiver dated March 1, 2024, in connection with the Sale Process Motion;
- Attending in Court (virtually) on March 8, 2024 in connection with the Sale Process Motion;

#### Request For Proposals from Realtors

- Requesting proposals from commercial real estate brokerage firms (the “Brokers”) to list the Real Property for sale (“RFP”);
- Corresponding with each of the Brokers regarding the receivership proceedings and the RFP process;
- Preparing an RFP package for each of the Brokers, including a confidentiality agreement;
- Preparing a virtual data room with detailed information regarding the Real Property, including drawings, designs, development applications, environmental reports and correspondence with municipalities for the purposes of providing the Brokers with information to perform due diligence;
- Corresponding and attending calls with the Brokers to assist with their diligence;
- Reviewing the proposals submitted by the Brokers and considering their approaches to the Real Property;
- Preparing a summary of the proposals and discussing same with Fiera;
- Attending calls and meetings with each of the Brokers and Fiera regarding the proposal;
- Preparing follow-up questions for each of the Brokers regarding their proposals;
- Selecting the successful broker, Colliers Macaulay Nicolls Inc. (“Colliers”), as the listing agent;

#### Sale Process

- Corresponding extensively with Colliers and Fiera regarding all aspects of the sale process for the Real Property (the “Sale Process”)
- Preparing a non-disclosure agreement (“NDA”) for prospective purchasers to sign to access a virtual data room maintained by the Broker (“VDR”);
- Reviewing the VDR and marketing materials prepared by the Broker, including a teaser and offering memorandum;
- Reviewing and commenting on a template form of agreement of purchase and sale for prospective purchasers and making same available in the VDR;
- Attending weekly update meetings with the Broker and Fiera regarding the Sale Process;

- Corresponding with prospective purchasers and facilitating due diligence requests;
- Reviewing the offer submitted in the Sale Process and discussing same with Colliers and Fiera;
- Negotiating the Asset Purchase Agreement dated July 14, 2024;

Other General Matters

- Responding to numerous inquiries from creditors and interested parties regarding the Company;
- Maintaining the receivership case website;
- Drafting a Notice and Statement of the Receiver (the "Notice") for the Company pursuant to Subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* ("BIA");
- Drafting the Receiver's interim report as required under the BIA;
- Preparing an interim statement of receipts and disbursements;
- Reviewing the Company's payables listings and financial statements;

Other

- Dealing with numerous vendors to resolve issues arising at the Real Property, including relating to general maintenance and security issues;
- Convening internal meetings; and
- To all other meetings, correspondence, etc. related to this matter.

Total fees and disbursements	\$	33,198.79
HST		4,302.84
Total due	\$	<u>37,501.63</u>

KSV Restructuring Inc.  
Vandyk - 41 Wabash Limited

**Time Summary**

For the period January 4, 2024 to July 31, 2024

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
David Sieradzki	750	20.00	15,000.00
Murtaza Tallat	550	19.90	10,945.00
Meg Ostling	475	5.95	2,826.25
Other staff and administration		2.45	537.25
Total Fees		48.30	29,308.50
Add: Out of Pocket Disbursements			
Ascend fee			325.00
Firmex (virtual data room)			3,412.50
Travel			8.77
OSB fees (non-taxable)			75.30
Postage			25.82
Other (non-taxable)			24.70
Photocopy			18.20
Total Disbursements			3,890.29
Total Fees and Disbursements			33,198.79

This is Exhibit "B" referred to in the  
Affidavit of David Sieradzki  
sworn before me, this 9<sup>th</sup> day of August, 2024



---

Catherine Anne Stuyck-Therault, a Commissioner, etc.,  
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.  
Expires February 19, 2025

**Vandyk - 41 Wabash Limited**  
**Schedule of Professionals' Time and Rates**  
**For the Period January 4, 2024 to July 31, 2024**

---

<u>Name</u>	<u>Role</u>	<u>Hours</u>	<u>Billing Rate</u> <u>(Per Hour)</u>	<u>Total Fees by</u> <u>Professional</u> <u>(\$)</u>
David Sieradzki	Overall responsibility	20.00	\$ 750	15,000.00
Murtaza Tallat	All aspects of mandate	19.90	\$ 550	10,945.00
Meg Ostling	Mandate assistance	5.95	\$ 475	2,826.25
Other staff and administrative		2.45	\$ 195 - 225	537.25
Total hours				48.30
Total fees				\$ 29,308.50
Average hourly rate				\$ 606.80

## **Appendix “D”**



**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**

**AFFIDAVIT OF DAVID ROSENBLAT**

(sworn August 9, 2024)

I, David Rosenblat, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

1. I am a partner with the law firm of Osler, Hoskin & Harcourt LLP (“**Osler**”), which is counsel to KSV Restructuring Inc. 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 (the “**Real Property**”), acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom (collectively, the “**Property**”), pursuant to the Receivership Order granted on January 23, 2024 (the “**Receivership Order**”) by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and where so stated I verily believe it to be true.

2. This affidavit is made in support of a motion to be heard on August 15, 2024 by the Receiver for a Distribution and Termination Order (the “**Distribution and Termination Order**”) seeking, among other things, approval of the fees and disbursements of Osler in its capacity as legal counsel for the Receiver for the period ending July 31, 2024 (the “**Approval Period**”) and the period since July 31, 2024 to the filing of the Termination Certificate (as defined in the Distribution and Termination Order) (the “**Remaining Fee Estimate Period**”).

3. Pursuant to paragraph 20 of the Receivership Order, the Receiver and its legal counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of these proceedings. Pursuant to paragraph 21 of the Receivership Order, the Receiver and its legal counsel are required to pass their accounts from time to time, and for that purpose the accounts of the Receiver and its legal counsel are referred to the Court.

4. Attached hereto and marked as **Exhibit “A”** are true copies of the accounts (the “**Osler Accounts**”) rendered by Osler to the Receiver for the Approval Period.

5. Attached hereto as **Exhibit “B”** is a schedule summarizing the Osler Accounts in respect of the Approval Period. As shown in the summary, Osler incurred fees and disbursements during

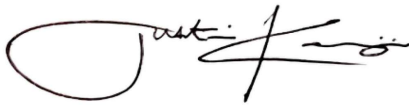
the Approval Period totaling \$18,414.49 comprised of fees of \$15,456.00, disbursements of \$840.00 and taxes of \$2118.49. All amounts billed were at Osler's standard rates and charges.

6. Attached hereto as **Exhibit "C"** is a schedule summarizing the respective years of call (as applicable) and billing rates of each of the professionals at Osler that rendered services to the Receiver, the hours worked by each such individual and a blended hourly rate for fees incurred during the Approval Period. As shown in the summary, Osler incurred a total of 15.7 hours in connection with this matter during the Approval Period at an average hourly rate of \$984.46.

7. Osler's fees and disbursements for the Remaining Fee Estimate Period will be calculated and billed at Osler's standard rates.

8. To the best of my knowledge, the rates charged by Osler during the Approval Period are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services. I believe that the total hours, fees and disbursements incurred by Osler during the Approval Period are reasonable and appropriate in the circumstances.

**SWORN BEFORE ME** this 9th day of August, 2024. The affiant and the commissioner were located in the City of Toronto, in the Province of Ontario.

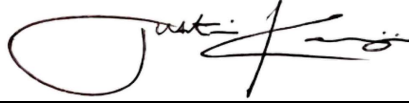


*Commissioner for Taking Affidavits*  
Justin Kanji | LSO # 881780



**DAVID ROSENBLAT**

THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF DAVID ROSENBLAT  
SWORN BEFORE ME ON THIS 9TH DAY OF AUGUST 2024

A handwritten signature in black ink, appearing to read "Justin Kanji". The signature is written in a cursive style with a large, looped initial "J".

---

Justin Kanji | LSO # 881780  
A Commissioner for Taking Affidavits

**EXHIBIT A**

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
416.862.6666 facsimile

OSLER

## Invoice Issued in Canadian Dollars

KSV Advisory Inc.  
Bay Adelaide Centre  
333 Bay Street  
Suite 1400  
Toronto, ON M5H 2R2  
CANADA

Attention: Noah Goldstein  
Managing Director

Invoice No.: 12928339  
Date: March 6, 2024  
Payor ID: 228776  
GST/HST No.: 121983217 RT0001  
Contact: Marc Wasserman  
Direct Dial: (416) 862-4908  
E-mail: MWasserman@Osler.com

*\*Revised from Invoice no 12862858\**

For professional services rendered for Fiera FP Real Estate Financing Fund, L.P. (F#1252786) .

OUR FEE HEREIN	5,542.50
HST @ 13%	720.53
<b>TOTAL (CAD):</b>	<b>6,263.03</b>

Accounts are due and payable on delivery. Interest will accrue at the annual rate of 12% from the date that is one month after delivery until the date paid.



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751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 12928339  
Payor ID: 228776  
Amount: 6,263.03 CAD

Please provide details of EFT/wire to [payments@osler.com](mailto:payments@osler.com), itemizing invoice number(s) being paid. Email money transfers are not accepted.

Please return remittance advice(s) with cheque.

osler.com

**FEE SUMMARY**

<b>NAME</b>	<b>HRS</b>	<b>RATE</b>	<b>FEES</b>
<b><u>PARTNER</u></b>			
David Rosenblat	4.20	1,050	4,410.00
Marc Wasserman	0.50	1,500	750.00
<b><u>PARAPROFESSIONAL</u></b>			
Annie Tran	0.90	425	382.50
<b>TOTAL FEES (CAD):</b>	<b>5.60</b>		<b>5,542.50</b>

**FEE DETAIL**

<b>DATE</b>	<b>NAME</b>	<b>DESCRIPTION</b>	<b>HRS</b>
Jan-17-24	David Rosenblat	Engaged with E. Golden and KSV regarding application; reviewing application materials; reviewing correspondence; responding to emails (Wabash).	0.70
Jan-18-24	David Rosenblat	Engaged with E. Golden and KSV regarding application; reviewing application materials; attending motion (Wabash).	0.80
Jan-19-24	Marc Wasserman	Attending to discussions regarding Wabush and other matters.	0.50
Jan-22-24	David Rosenblat	Reviewing correspondence; responding to email (Wabash).	0.10
Jan-23-24	David Rosenblat	Reviewing correspondence; responding to email; preparing for and attending motion; attending to PIN search; finalizing information request letter; attending to registrations of receivership (Wabash).	1.10
Jan-23-24	Annie Tran	Reviewing parcel register for the Wabash Lands; reviewing court order; drafting application to register court order for the Wabash Lands.	0.60
Jan-29-24	David Rosenblat	Following up on signed Order; attending to registration issues (Wabash).	0.10
Jan-30-24	David Rosenblat	Reviewing correspondence; responding to emails; attending to receivership registration (Wabash).	0.20
Jan-30-24	Annie Tran	Preparing and sending email to D. Sieradzki requesting execution of acknowledgment and direction to register court order on Wabash Lands; reviewing signed acknowledgment and direction; attending to registration of application to register court order; sending email to D. Sieradzki enclosing copy of registered Application.	0.30
Jan-31-24	David Rosenblat	Reviewing correspondence; responding to emails; engaged regarding diligence issues (Wabash).	0.10

Feb-06-24	David Rosenblat	Attending to security review; attending call with KSV; reviewing correspondence; responding to emails; engaged regarding trust issues (Wabash).	0.20
Feb-22-24	David Rosenblat	Attending call with E. Smith regarding construction matters; engaged internally regarding same; reviewing correspondence (Wabash).	0.10
Feb-23-24	David Rosenblat	Reviewing correspondence; responding to email; attending to sales process materials and booking; engaged regarding trust issues; attending call with KSV: engaged regarding registration issues (Wabash).	0.30
Feb-27-24	David Rosenblat	Reviewing correspondence; responding to email; attending to sales process motion materials; attending to stakeholder inquiries (Wabash).	0.20
Feb-28-24	David Rosenblat	Attending to stakeholder inquiries; reviewing correspondence; responding to email; attending to sales process matters (Wabash).	0.20
Feb-29-24	David Rosenblat	Reviewing correspondence; responding to email; attending to sales process matters and materials; attending call with KSV; attending to stakeholder inquiries (Wabash).	0.10

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<b>TOTAL HOURS:</b>		<b>5.60</b>
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**EXPENSE SUMMARY**

DESCRIPTION	AMOUNT
<b>TOTAL (CAD):</b>	<b>0.00</b>

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OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
416.862.6666 facsimile



## Invoice Issued in Canadian Dollars

KSV Advisory Inc.  
Bay Adelaide Centre  
333 Bay Street  
Suite 1400  
Toronto, ON M5H 2R2  
CANADA

Attention: Noah Goldstein  
Managing Director

Invoice No.: 12928340  
Date: July 23, 2024  
Payor ID: 228776  
GST/HST No.: 121983217 RT0001  
Contact: Marc Wasserman  
Direct Dial: (416) 862-4908  
E-mail: MWasserman@Osler.com

*\*Revised from Invoice no 12913979\**

For professional services rendered for Fiera FP Real Estate Financing Fund, L.P. (F#1252786) .

OUR FEE HEREIN	5,745.00
HST @ 13%	746.85
<b>TOTAL (CAD):</b>	<b>6,491.85</b>

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751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
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Account No: 5219313  
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 12928340  
Payor ID: 228776  
Amount: 6,491.85 CAD

Please provide details of EFT/wire to [payments@osler.com](mailto:payments@osler.com), itemizing invoice number(s) being paid. Email money transfers are not accepted.

Please return remittance advice(s) with cheque.

**FEE SUMMARY**

<b>NAME</b>	<b>HRS</b>	<b>RATE</b>	<b>FEES</b>
<b><u>PARTNER</u></b>			
Joshua Disenhouse	1.00	915	915.00
David Rosenblat	3.80	1,050	3,990.00
<b><u>CORPORATE SEARCHES FIXED FEES</u></b>			
Corporate Searches by Elizabeth E. Buchanan			840.00
<b>TOTAL FEES (CAD):</b>	<b>4.80</b>		<b>5,745.00</b>

**FEE DETAIL**

<b>DATE</b>	<b>NAME</b>	<b>DESCRIPTION</b>	<b>HRS</b>
Mar-01-24	David Rosenblat	Reviewing correspondence; responding to email; attending to stakeholder inquiries; attending multiple calls with KSV; attending to motion materials (Wabash).	0.40
Mar-05-24	David Rosenblat	Reviewing correspondence; responding to email; reviewing factum (Wabash).	0.10
Mar-08-24	David Rosenblat	Preparing for and attending SISP approval motion; reviewing correspondence; responding to email; reviewing and commenting on home buyer update (Wabash).	0.30
Mar-11-24	David Rosenblat	Attending to stakeholder inquiries; reviewing correspondence; responding to email (Wabash).	0.10
Mar-13-24	David Rosenblat	Attending to stakeholder inquiries; reviewing correspondence; responding to email (Wabash).	0.10
Mar-20-24	David Rosenblat	Reviewing correspondence; responding to email; preparing for and attending call with Torkin Manes and Osler working group (Wabash).	0.20
Mar-26-24	David Rosenblat	Reviewing correspondence; engaged regarding stakeholder inquiries (Wabash).	0.10
Mar-28-24	David Rosenblat	Reviewing correspondence; engaged internally regarding form of purchase agreement; responding to email; attending to stakeholder inquiries (Wabash).	0.10
Apr-03-24	David Rosenblat	Reviewing correspondence; responding to email; attending to form of purchase agreement; attending internal call regarding same; attending to stakeholder inquiries (Wabash).	0.30
Apr-04-24	David Rosenblat	Reviewing correspondence; responding to email; attending to form of purchase agreement (Wabash).	0.10

Apr-05-24	David Rosenblat	Reviewing correspondence; responding to email; preparing form of purchase agreement for bidders (Wabash).	0.10
Apr-08-24	David Rosenblat	Reviewing and revising form of purchase agreement; engaged internally regarding same; discussing related issues with M. Tallat; reviewing correspondence; responding to email (Wabash).	0.50
Apr-09-24	David Rosenblat	Reviewing revised form of purchase agreement; engaged internally regarding same; reviewing correspondence; reviewing Kramer motion materials (Wabash).	0.40
Apr-10-24	David Rosenblat	Considering and responding to D. Nuri inquiry (Wabash).	0.10
Apr-11-24	David Rosenblat	Reviewing and commenting on revised form of purchase agreement; engaged internally regarding same; attending call with Bennett Jones regarding same (Wabash).	0.20
Apr-17-24	David Rosenblat	Reviewing correspondence (Wabash).	0.10
Apr-18-24	David Rosenblat	Reviewing correspondence; responding to email; attending to stakeholder inquiries (Wabash).	0.10
Apr-19-24	David Rosenblat	Reviewing correspondence; responding to email; attending to stakeholder inquiries (Wabash).	0.10
Apr-26-24	David Rosenblat	Reviewing correspondence; responding to email (Wabash).	0.10
May-07-24	David Rosenblat	Reviewing correspondence (Wabash).	0.10
Jun-20-24	Corporate Searches by Elizabeth E. Buchanan	Receiving instructions from C. Duggal, conducting corporate history, Personal Property Security Act, Bank Act, Official Receiver and Execution searches province wide respecting Vandyk - 41 Wabash Limited and two additional names, arranging for litigation search and reporting thereon.	
Jun-20-24	Joshua Disenhouse	Reviewing draft purchase agreement for Wabash.	1.00
Jun-27-24	David Rosenblat	Reviewing correspondence; responding to email (Wabash).	0.20
<b>TOTAL HOURS:</b>			<b>4.80</b>

#### EXPENSE SUMMARY

DESCRIPTION	AMOUNT
<b>TOTAL (CAD):</b>	<b>0.00</b>

OSLER, HOSKIN & HARCOURT LLP  
1 First Canadian Place  
PO BOX 50  
Toronto ON M5X 1B8  
CANADA  
416.362.2111 main  
416.862.6666 facsimile

OSLER

## Invoice Issued in Canadian Dollars

KSV Advisory Inc.  
Bay Adelaide Centre  
333 Bay Street  
Suite 1400  
Toronto, ON M5H 2R2  
CANADA

Attention: Noah Goldstein  
Managing Director

Invoice No.: 12928341  
Date: August 8, 2024  
Payor ID: 228776  
GST/HST No.: 121983217 RT0001  
Contact: Marc Wasserman  
Direct Dial: (416) 862-4908  
E-mail: MWasserman@Osler.com

For professional services rendered for Fiera FP Real Estate Financing Fund, L.P. (F#1252786) .

OUR FEE HEREIN	5,008.50
HST @ 13%	651.11
<b>TOTAL (CAD):</b>	<b>5,659.61</b>

Accounts are due and payable on delivery. Interest will accrue at the annual rate of 12% from the date that is one month after delivery until the date paid.



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751 3rd Street S.W.  
Calgary, Alberta T2P 4K8  
Transit No: 80629-0004  
Account No: 5219313  
SWIFT Code: TDOMCATTOR

Cheque Payments:

Osler, Hoskin & Harcourt LLP  
FINANCE & ACCOUNTING  
(RECEIPTS)  
1 First Canadian Place  
PO BOX 50  
Toronto, Ontario M5X 1B8  
Canada

Invoice No.: 12928341  
Payor ID: 228776  
Amount: 5,659.61 CAD

Please provide details of EFT/wire to [payments@osler.com](mailto:payments@osler.com), itemizing invoice number(s) being paid. Email money transfers are not accepted.

Please return remittance advice(s) with cheque.

osler.com

## FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Joshua Disenhouse	1.90	915	1,738.50
David Rosenblat	3.00	1,050	3,150.00
<u>PARAPROFESSIONAL</u>			
Elizabeth E. Buchanan	0.40	300	120.00
<b>TOTAL FEES (CAD):</b>	<b>5.30</b>		<b>5,008.50</b>

## FEE DETAIL

DATE	NAME	DESCRIPTION	HRS
Jul-05-24	Elizabeth E. Buchanan	Receiving instructions from C. Duggal, reviewing corporate microfiche respecting Vandyk - 41 Wabash Limited and 1000318652 Ontario Inc., and reporting thereon.	0.40
Jul-05-24	David Rosenblat	Reviewing APS mark-up; attending call with KSV regarding same; engaged internally regarding same (Wabash).	0.50
Jul-07-24	David Rosenblat	Engaged internally regarding purchase agreement (Wabash).	0.20
Jul-08-24	Joshua Disenhouse	Reviewing and revising draft purchase agreement for 41 Wabash; telephone call with C. Jumaa to discuss same; attending to e-mail correspondence with D. Rosenblat regarding revisions to draft purchase agreement.	1.00
Jul-08-24	David Rosenblat	Attending to purchase agreement; engaged internally regarding same (Wabash).	0.50
Jul-09-24	David Rosenblat	Attending to purchase agreement; engaged internally regarding same (Wabash).	0.50
Jul-11-24	David Rosenblat	Reviewing correspondence (Wabash).	0.10
Jul-15-24	David Rosenblat	Reviewing correspondence; considering Diversified issue (Wabash).	0.40
Jul-29-24	Joshua Disenhouse	41 Wabash - Attending to waiver of diligence date; corresponding with J. Born regarding same.	0.60
Jul-29-24	David Rosenblat	Reviewing correspondence; attending call with J. Disenhouse; attending to court booking (Wabash).	0.30
Jul-30-24	David Rosenblat	Reviewing correspondence; attending to closing matters (Wabash).	0.20
Jul-31-24	Joshua Disenhouse	41 Wabash- reviewing terms of assignment of purchase agreement.	0.30

Jul-31-24	David Rosenblat	Discussing draft orders with J. Kanji; reviewing correspondence (Wabash).	0.30
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<b>TOTAL HOURS:</b>			<b>5.30</b>
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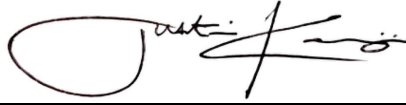
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**EXPENSE SUMMARY**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
<b>TOTAL (CAD):</b>	<b>0.00</b>

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THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF DAVID ROSENBLAT  
SWORN BEFORE ME ON THIS 9TH DAY OF AUGUST 2024

A handwritten signature in black ink, appearing to read "Justin Kanji". The signature is written in a cursive style with a large, looped initial "J".

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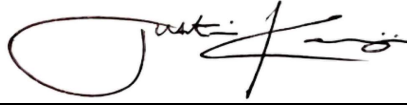
Justin Kanji | LSO # 881780  
A Commissioner for Taking Affidavits

**EXHIBIT B**

<b>Date of Account</b>	<b>For Billing Period Ending</b>	<b>Fees (\$)</b>	<b>Disbursements (\$)</b>	<b>Taxes (\$)</b>	<b>Total (\$)</b>
6-March-24	29-February-24	\$5,542.50	\$0.00	\$720.53	\$6,263.03
23-July-24	27-June-24	\$4,905.00	\$840.00	\$746.85	\$6,491.85
8-August-24	31-July-24	\$ 5,008.50	\$0.00	\$651.11	\$5,659.61
<b>Total</b>	-	\$16,296.00	\$0.00	\$2,118.49	\$18,414.49



THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF DAVID ROSENBLAT  
SWORN BEFORE ME ON THIS 9TH DAY OF AUGUST 2024

A handwritten signature in black ink, appearing to read "Justin Kanji". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

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Justin Kanji | LSO # 881780  
A Commissioner for Taking Affidavits

**EXHIBIT C**

<b><u>Name</u></b>	<b><u>Year of Call (if applicable)</u></b>	<b><u>Billing Rate (\$/Hour)</u></b>	<b><u>Hours Worked</u></b>
Wasserman, Marc	2001	1,500	0.50
Rosenblat, Dave	2013	1,050	11.00
Disenhouse, Joshua	2014	915	2.90
Tran, Annie	Paraprofessional	425	0.90
Buchanan, Elizabeth E.	Paraprofessional	300	0.40
		<b>Total:</b>	15.70

<b>Blended Rate</b> (excluding disbursements and HST) $\$15,456.00 \div 15.70 \text{ hours} =$	\$984.46
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**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

**AFFIDAVIT OF DAVID ROSENBLAT**

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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

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**FIRST REPORT OF THE RECEIVER**

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