

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

HSBC BANK CANADA

Applicant

and

NATIONAL TELECOMMUNICATIONS INC.

Respondent

**MOTION RECORD  
(returnable on June 30, 2015)**

June 23, 2015

**Thornton Grout Finnigan LLP**  
Barristers & Solicitors  
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100 Wellington Street West  
P.O. Box 329, Toronto-Dominion Centre  
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Lawyers for the Receiver

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# TAB 1

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

**HSBC BANK CANADA**

Applicant

– and –

**NATIONAL TELECOMMUNICATIONS INC.**

Respondent

**NOTICE OF MOTION  
(returnable on June 30, 2015)**

Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertaking and properties of National Telecommunications Inc. (the “**Debtor**”) will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Tuesday, June 30, 2015 at 10:00 o’clock in the morning, or as soon after that time as the motion can be heard, at 330 University Avenue, in the City of Toronto.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. the Approval and Vesting Order substantially in the form of the Order contained at Tab 3 of the Receiver’s Motion Record approving the sale transaction (the “**Transaction**”)

contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Unit 3 Innovation Drive Inc. (the “**Purchaser**”) made as of May 12, 2015 and appended to the first report of the Receiver dated June 23, 2015 (the “**First Report**”), and vesting in the Purchaser the Debtor’s and the Receiver’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”);

2. an Order in the form of the Order contained at Tab 4 of the Motion Record:
  - (a) abridging the time for service of the Notice of Motion and the Motion Record herein and dispensing with further service thereof;
  - (b) approving the First Report and approving the actions of the Receiver as described therein;
  - (c) authorizing the Receiver to engage a real estate brokerage, if necessary to market and sell the Vaughan Property (as defined in the First Report), subject to further Court approval, in the event that the Mazza Sale Agreement (as defined in the First Report) is terminated in accordance with its terms;
  - (d) authorizing the Receiver to file an assignment of bankruptcy by and on behalf of the Debtor in the name of the Debtor;
  - (e) approving the Receiver’s Statement of Receipts and Disbursements for the period from April 9, 2015 to June 18, 2015;
  - (f) approving the professional fees and disbursements of the Receiver, its legal counsel, Thornton Grout Finnigan LLP (“**TGF**”) and Torkin Manes LLP (“**Torkin Manes**”), as filed; and

- (g) such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. Pursuant to an Order of this Court made April 9, 2015 (the “**Appointment Order**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as Receiver, without security, of all of the assets, undertakings and property of both QMP and TAL;
2. The Appointment Order authorized the Receiver to, among other things, take possession of, and exercise control over the Property and any and all proceeds, receipts and disbursements, arising out of, or from, the Property. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Property or any part thereof out of the ordinary course:
  - (a) without the approval of the Court in respect of any transaction not exceeding \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (b) with the approval of the Court in respect of any transaction exceeding \$150,000 or exceeding \$500,000 in the aggregate.
3. The Receiver has completed the sale of inventory of the Debtor and has collected certain trade receivables of the Debtor;
4. The Receiver entered into negotiations with the Purchaser’s legal counsel, which culminated in the Mazza Sale Agreement on May 12, 2015, a copy of which is attached to the First Report;
5. The Mazza Sales Agreement does not contemplate the payment of a sales commission to a real estate broker or to any other party;
6. The Mazza Sale Agreement is conditional on the approval of this Court;

7. The Receiver recommends that the Court authorize and direct the Receiver to complete the Mazza Sale Agreement for the reasons set out in the First Report;
8. The Receiver reported on its actions and conduct in the First Report filed in support of this motion;
9. The Receiver is of the view, that there are a number of unusual transactions relating to the Debtor that should could be investigated further including with a view to of possibly recovering amounts as settlements of property of preferential transactions;
10. The Receiver is of the view that it would be advantageous to assign the Debtor into bankruptcy for the purpose of permitting the trustee in bankruptcy to efficiently exercise its statutory investigatory and recovery rights pursuant to the BIA;
11. The Receiver has prepared a statement of receipts and disbursements as at June 18, 2015 for approval by this Court;
12. The Receiver and its legal counsel are required to pass their accounts and have submitted their accounts to the Court for this purpose;
13. The Receiver's fees including the fees of its legal counsel are detailed in the affidavits filed in support of this motion; and
14. The Receiver's fees including the fees of its legal counsel, TGF and Torkin Manes, are fair and reasonable;
15. The provisions of the Appointment Order;

16. Rules 1.04, 2.03, 3.02, 16.08 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
17. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Receiver's First Report, to be filed;
2. The Affidavit of Paul Casey sworn on June 19, 2015;
3. The Affidavit of Grant B. Moffat sworn on June 11, 2015;
4. The Affidavit of Aaron English sworn on June 9, 2015; and
5. Such further and other material as counsel may advise and this Honourable Court may permit.

June 23, 2015

**Thornton Grout Finnigan LLP**  
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Lawyers for the Receiver

**TO: THIS HONOURABLE COURT**

**AND TO: THE ATTACHED SERVICE LIST**



**HSBC BANK CANADA V. NATIONAL TELECOMMUNICATIONS INC.  
EMAIL SERVICE LIST  
[AS AT JUNE 23, 2015]**

<b>AND TO:</b>	<p><b>BAKER &amp; McKENZIE LLP</b> 181 Bay Street, P.O. Box 874 Suite 2100 Toronto, ON M5J 2T3</p> <p><b>John Pirie</b> Tel: (416) 865-2325 Fax: (416) 863-6275 Email: <a href="mailto:john.pirie@bakermckenzie.com">john.pirie@bakermckenzie.com</a></p> <p><b>Michael Nowina</b> Tel: (416) 865-2312 Fax: (416) 863-6275 Email: <a href="mailto:michael.nowina@bakermckenzie.com">michael.nowina@bakermckenzie.com</a></p> <p>Lawyers for HSBC Bank Canada</p>
<b>AND TO:</b>	<p><b>DELOITTE RESTRUCTURING INC.</b> Brookfield Place, 181 Bay Street Suite 1400 Toronto, ON M5J 2V1</p> <p><b>Paul Casey</b> Tel: (416) 775-7172 Fax: (416) 601-6690 Email: <a href="mailto:paucasey@deloitte.ca">paucasey@deloitte.ca</a></p> <p><b>Stefano Damiani</b> Tel: (416) 874-4404 Fax: (416) 601-6690 Email: <a href="mailto:sdamiani@deloitte.ca">sdamiani@deloitte.ca</a></p> <p>Court-Appointed Receiver</p>

<b>AND TO:</b>	<p><b>THORNTON GROUT FINNIGAN LLP</b> Barristers &amp; Solicitors Suite 3200, TD West Tower 100 Wellington Street West P.O. Box 329, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p><b>Grant B. Moffat</b> Tel: (416) 304-0599 Fax: (416) 304-1313 Email: <a href="mailto:gmoffat@tgf.ca">gmoffat@tgf.ca</a></p> <p><b>Kyla E.M. Mahar</b> Tel: (416) 304-0594 Fax: (416) 304-1313 Email: <a href="mailto:kmahar@tgf.ca">kmahar@tgf.ca</a></p> <p>Lawyers for the Receiver</p>
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<b>AND TO:</b>	<p><b>GIANFRANCO JOHN DE MATTEIS</b> Barrister and Solicitor 3300 Steeles Avenue West, Unit 204 Concord, ON L4K 2Y4</p> <p>Tel: (905) 738-4900 ext. 240 Fax: (905) 738-4901 Email: <a href="mailto:john@dematteis.ca">john@dematteis.ca</a></p> <p>Lawyer for Unit 3 Innovation Drive Inc., the Purchaser</p>

<b>AND TO:</b>	<b>DEPARTMENT OF JUSTICE</b> Ontario Regional Office The Exchange Tower, Box 36 130 King Street West Suite 3400 Toronto, ON M5X 1K6  <b>Diane Winters</b> Tel: (416) 973-3172 Fax: (416) 973-0810 Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a>  Lawyers for the Canada Revenue Agency
<b>AND TO:</b>	<b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE</b> Legal Services Branch 33 King Street West, 6 <sup>th</sup> Floor Oshawa, ON L1H 8H5  <b>Kevin O'Hara</b> Tel: (905) 433-6934 Fax: (905) 436-4510 Email: <a href="mailto:kevin.ohara@ontario.ca">kevin.ohara@ontario.ca</a>
<b>AND TO:</b>	<b>NATIONAL TELECOMMUNICATIONS INC.</b> 101 Innovation Drive, Unit 3 Vaughan, ON L4H 0S3  Email: <a href="mailto:nelsonguyatt@hotmail.com">nelsonguyatt@hotmail.com</a>
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<b>AND TO:</b>	<b>NORMAN, GOLDBERG &amp; CO. LLP</b> 266 Sheppard Ave West Toronto, Ontario M2N 1N3  <b>Henry Goldberg</b> Tel: (416) 733-1234 Fax: (416) 789-9768 Email: <a href="mailto:henry@henrygoldberg.ca">henry@henrygoldberg.ca</a>

**HSBC BANK CANADA V. NATIONAL TELECOMMUNICATIONS INC.  
COURIER SERVICE LIST  
[AS AT JUNE 23, 2015]**

<b>TO:</b>	<b>HONDA FINANCE CANADA INC.</b> 180 Honda Blvd. Markham, ON L6C 0H9
<b>AND TO:</b>	<b>NATIONAL LEASING GROUP INC.</b> 1525 Buffalo Place Winnipeg, MB R3T 1L9

HSBC BANK CANADA

- and -

NATIONAL TELECOMMUNICATIONS INC.

Applicant

Respondent

Court File No.: CV-15-10921-00CL

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(RETURNABLE ON JUNE 30, 2015)**

**Thornton Grout Finnigan LLP**

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Lawyers for the Receiver

# TAB 2

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

**BETWEEN:**

**HSBC BANK CANADA**

Applicant

- and -

**NATIONAL TELECOMMUNICATIONS INC.**

Respondent

**FIRST REPORT OF THE RECEIVER  
DATED JUNE 23, 2015**

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**EXHIBITS**

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
<b>A</b>	Appointment Order and Endorsement of Justice Conway dated April 9, 2015
<b>B</b>	General security agreement in favour of HSBC Bank Canada
<b>C</b>	HSBC Collateral Charge over Real Property
<b>D</b>	Addiction Associates Inc. payout statement dated June 18, 2015
<b>E</b>	Mazza Sale Agreement dated May 12, 2015 re 101 Innovation Drive, Unit 3, Vaughan, Ontario and certain property located therein
<b>F</b>	Statement of Receipts and Disbursements for the period April 9, 2015 to June 18, 2015
<b>G</b>	Affidavit of Paul Casey of Deloitte Restructuring Inc. sworn June 19, 2015
<b>H</b>	Affidavit of Grant Moffat of Thornton Grout Finnigan LLP sworn June 11, 2015
<b>I</b>	Affidavit of Aaron English of Torkin Manes LLP sworn June 9, 2015

## INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated April 9, 2015 (the “**Appointment Order**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as the receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of National Telecommunications Inc. (“**NTI**” or the “**Debtor**”) acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the “**Property**”). Copies of the Appointment Order and the Endorsement of Justice Conway dated April 9, 2015 are attached hereto as Exhibit “**A**”.
2. The Appointment Order authorized the Receiver to, among other things, take possession of, and exercise control over the Property and any and all proceeds, receipts and disbursements, arising out of, or from, the Property. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Property or any part thereof out of the ordinary course:
  - (a) without the approval of the Court in respect of any transaction not exceeding \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (b) with the approval of the Court in respect of any transaction exceeding \$150,000 or exceeding \$500,000 in the aggregate.
3. Immediately following the issuance of the Appointment Order, the Receiver issued a Notice and Statement of the Receiver (“**Notice to Creditors**”) pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”).
4. The Appointment Order, together with related Court documents, the Notice to Creditors and this First Report have been posted on the Receiver’s website at [www.insolvencies.deloitte.ca/en-ca/NationalTelecommunications](http://www.insolvencies.deloitte.ca/en-ca/NationalTelecommunications).
5. The purpose of this first report of the Receiver (the “**First Report**”) is to:
  - (a) provide this Court with a description of the Property; and
  - (b) provide the Court with the evidentiary basis to make an Order:

- (i) authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Unit 3 Innovation Drive Inc. (“**Mazza**”) dated May 12, 2015 (the “**Mazza Sale Agreement**”) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, for the sale of certain of the Property comprised of the real property located at 101 Innovation Drive, Unit 3, Vaughan, Ontario (the “**Vaughan Property**”) and certain Property located at the Vaughan Property as described in the Mazza Sale Agreement (the “**Sold Assets**”) and vesting title to the Sold Assets in and to Mazza upon closing of the Mazza Sale Agreement;
- (ii) if the Mazza Sale Agreement is terminated in accordance with its terms, authorizing and directing the Receiver to engage a real estate brokerage to market and sell the Vaughan Property, subject to further Court approval;
- (iii) approving the activities of the Receiver as described in the First Report including, without limitation, the steps taken by the Receiver pursuant to the sale of the Sold Assets, collection of accounts receivable, sales of inventory and investigations to date;
- (iv) authorizing and directing the Receiver, on behalf of the Debtor, to file an assignment in bankruptcy of the Debtor;
- (v) approving the Receiver’s Statement of Receipts and Disbursements for the period from April 9, 2015 to June 18, 2015; and
- (vi) approving the professional fees and disbursements of the Receiver and its independent legal counsel set out herein, and authorizing the Receiver to pay all such fees and disbursements from available funds.

#### **TERMS OF REFERENCE**

6. In preparing this First Report, the Receiver has been provided with, and has relied upon unaudited, draft and/or internal financial information, the Debtor’s books and records, discussions with former management and external accountants of the Debtor, and

information from third-party sources (collectively, the “**Information**”). Except as described in this First Report:

- (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
- (b) the Receiver has prepared this First Report in its capacity as a Court-appointed officer to support the Court’s approval of the Mazza Sale Agreement and the other relief being sought. Parties using the First Report, other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

- 7. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.
- 8. Unless otherwise provided, all other capitalized terms not otherwise defined in this First Report are as defined in the Appointment Order.

## **BACKGROUND**

- 9. The Debtor is an Ontario corporation which operated as a re-seller of data communications equipment. The Debtor maintained and owned an office and warehouse located at 101 Innovation Drive, Unit 3, Vaughan, Ontario.
- 10. Nelson Guyatt (“**Guyatt**”) is the sole director and principal of NTI and was the only remaining employee of the Debtor as at the date of the Appointment Order, with one other employee having been terminated prior to the Receiver’s appointment.

11. The Debtor had ceased operating in the ordinary course prior to the date of the Appointment Order.

#### TAKING POSSESSION AND SAFEGUARDING ASSETS

12. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:

- (a) established the Receiver's website and issued the Notice to Creditors described in paragraph 3 herein;
- (b) retained Thornton Grout Finnigan LLP ("TGF") and Torkin Manes LLP ("Tokin Manes") as its independent legal counsel;
- (c) met with Guyatt to review available books and records. The Receiver has significant concerns regarding the accuracy and completeness of such books and records as described below;
- (d) provided notice of the Receiver's appointment to Supreme Insurance Brokers Inc. who arranged for the insurance coverage through Intact Insurance. On May 14, 2015, Intact Insurance informed the Receiver that it would not renew the policy effective the expiry of the year term ending on June 8, 2015. The Receiver has since made alternate arrangements with Marsh Insurance for the period after June 8, 2015;
- (e) arranged for a locksmith to attend at the Vaughan Property to change the locks;
- (f) requested that the cash balance of the Debtor held at accounts with TD Canada Trust be directed to the Receiver and obtained same;
- (g) compiled invoice data and issued demand letters with respect to the Debtor's accounts receivable and undertook collection efforts described herein;
- (h) settled outstanding payment of the property tax arrears and condominium fees owing on the Vaughan Property and obtained the discharge of the condominium fee lien registered against the Vaughan Property;

- (i) arranged for two auctioneers to attend at the premises to inspect the inventory and other fixed assets located at the Vaughan Property;
- (j) obtained and reviewed listing proposals from three real estate brokerages;
- (k) made inquiries of various other parties connected to the business of NTI;
- (l) arranged for the backing up of electronic hard drives;
- (m) communicated with the Debtor's email service provider to ensure the preservation of the Debtor's data;
- (n) prepared an inventory list and conducted the Inventory RFO (as defined below) process;
- (o) made arrangements with Canada Revenue Agency ("CRA") to conduct a payroll audit, and to schedule a meeting for an HST audit;
- (p) coordinated the delivery of T4 slips to the two former employees of the Debtor; and
- (q) communicated with Sun Life Financial with respect to a life insurance policy on Guyatt and requested that the cash surrender value be forwarded to the Receiver.

## **SECURED CREDITORS**

### ***HSBC***

13. HSBC is the first secured creditor of the Debtor and the applicant in this proceeding. Among other security granted to HSBC, HSBC holds a general security agreement ("GSA") and a collateral charge in the principal amount of \$520,000 over the Vaughan Property (the "**Collateral Charge**") to secure the indebtedness owed to it by NTI. A copy of the GSA and the Collateral Charge in favour of HSBC are attached hereto as Exhibits "**B**" and "**C**", respectively.
14. As at June 18, 2015, HSBC advised the Receiver that NTI's outstanding indebtedness to HSBC totals in excess of Cdn \$2.2 million inclusive of interest and costs incurred to date.

15. The Receiver has obtained a security opinion from TGF in respect of the personal property security granted by NTI to HSBC. The opinion confirmed that the GSA creates a valid security interest in the right, title and interest of the Company in and to its personal property Collateral (as defined in the GSA) located in the Province of Ontario in favour of HSBC as security for all indebtedness, obligations and liabilities of any kind now or hereafter existing between the Company and HSBC and that the GSA is properly perfected and enforceable as against the Company and as against the Receiver in accordance with its terms.
16. The Receiver has also obtained a security opinion from Torkin Manes in respect of the Collateral Charge granted by NTI to HSBC. The opinion confirmed that the Collateral Charge is a valid and enforceable first-ranking collateral charge registered against the Vaughan Property. The Collateral Charge is continuing collateral security for payment and satisfaction to HSBC of all obligations, debts and liabilities owing by NTI to HSBC which charge will not secure that portion of the aggregate principal component of the liabilities outstanding at any time which exceeds the principal amount of \$520,000 together with interest on the liabilities at the prime interest rate per annum plus three per cent (3%) per annum and costs, charges and expenses in accordance with its terms.

*Addiction Associates Inc.*

17. In addition to HSBC's Collateral Charge, a property abstract of the Vaughan Property reveals a second charge in the principal amount of \$250,000 registered in favour of Addiction Associates Inc. ("**Addiction Associates**"). On June 18, 2015, counsel to Addiction Associates provided a payout statement (the "**Addiction Associates Payout Statement**") which is attached hereto as Exhibit "**D**".
18. Based on the Addiction Associates Payout Statement, Addiction Associates is owed \$320,250. The Receiver's legal counsel has also requested Addiction Associates' security documentation.

***Condominium Corporation Lien***

19. On June 5, 2015, the Receiver obtained a copy of a Registration of Discharge of Lien document with respect to monthly fees payable to the condominium corporation regarding the Vaughan Property.

***Leased Property***

20. The Debtor had leased two vehicles from Honda Finance Canada Inc. ("**Honda Finance**"). The Receiver confirmed that the vehicle identification number for the 2012 Honda Crosstour parked at the Vaughan Property agreed to the lease documents. Guyatt informed the Receiver that the remaining leased vehicle, a 2012 Honda Odyssey, was returned to the Honda dealership. The Receiver immediately notified Honda Finance of the receivership, which subsequently made its own arrangements in this regard.

**TRADE ACCOUNTS RECEIVABLE**

21. As set out above, the Receiver met with Guyatt to review available books and records of NTI. It is the Receiver's opinion that there was very little financial and operating information located at the Vaughan Property, particularly for a business which had recorded sales revenues of \$18.4 million and \$20.8 million for the fiscal years-ended October 31, 2013 and 2014 respectively, according to draft financial statements provided to the Receiver by NTI's external accountant, Henry Goldberg of Norman, Goldberg & Co. LLP ("**Goldberg**").
22. On April 9, 2015, the Receiver met with Guyatt to discuss, among other things, the outstanding accounts receivable ("**A/R**") and collectability of each customer balance. Guyatt provided the Receiver with A/R subledgers dated April 8, 2015, which are summarized along with the status of the Receiver's collection efforts in the tables below.



**CAD Balances**

<b>Customer Name</b>	<b>Amount (\$CDN) Owing as at April 8, 2015</b>	<b>Amount (\$CDN) Collected from April 9, 2015 to June 18, 2015</b>	<b>Status as at June 18, 2015</b>
Connect Cabling Inc. <sup>1</sup>	282,041	Nil	Collection efforts are ongoing.
LDM Systems	30,001	Nil	Not owing – Customer provided evidence of payment.
Telinks Canada Inc.	17,204	17,204	Paid in full.
Tel e technologies	6,509	Nil	Collection efforts are ongoing.
Comfort Telecom	5,668	Nil	Not owing – Customer provided evidence of payment.
Datacom Solutions	2,644	Nil	Not owing – Customer provided evidence of payment.
Featurecom	2,606	Nil	Collection efforts are ongoing.
Pairo	2,147	Nil	Not owing - Customer provided evidence of payment.
Telogiks	1,356	Nil	Customer claims that NTI did not ship all of the correct equipment, and incurred additional charges.
One Restaurant	1,198	973	Customer paid balance less contra for meal on account.
Broadconnect	1,158	Nil	Customer has claimed offsetting amounts owing from NTI, and that it is a net creditor of NTI.
Motion Technology Solutions	565	565	Paid in full.
Unique Fine Fabrics	226	Nil	Unable to locate customer.
Prime Marketing	226	Nil	Unable to locate customer.
Glasser TV	74	74	Paid in full.
Norvyacom Asset Management	40	Nil	Not owing – Customer provided evidence of payment.
<b>Total (16 customers)</b>	<b>\$353,663</b>	<b>\$18,816</b>	

<sup>1</sup> Connect Cabling Inc. ("**Connect Cabling**") occupies the premises immediately adjacent to the Vaughan Property, and there is evidence of a former inside access door connecting the two units. As noted below, the relationship among the Debtor and Connect Cabling and their respective principals appears to extend beyond normal trade in the resale of used telecommunications equipment. With respect to the A/R owing from Connect Cabling, the Receiver has had multiple exchanges with respect to the collection of amounts owing which have been unsuccessful to date. Accordingly, the Receiver has referred this account to a collection agency.

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**USD Balances**

<b>Customer Name</b>	<b>Amount (\$US) Owing as at April 8, 2015</b>	<b>Amount (\$US) Collected from April 9, 2015 to June 18, 2015</b>	<b>Status as at June 18, 2015</b>
Panda Ventures Inc.	926,086	Nil	Amount not owing – Greg Wass of Panda Ventures and Guyatt advised the Receiver that a \$1,000,000 payment was issued in November, 2014 as “prepayment” for product. This is not consistent with the Debtor’s financial records which indicate this was an equity / financing transaction.
Otisco Valley Telecom Ltd.	162,487	97,487	Customer has made payments on account and advised the Receiver that the balance will be paid in late June 2015.
Featurecom Inc.	67,270	Nil	Collection efforts are ongoing.
Telquest	50,088	Nil	Collection efforts are ongoing.
Viper Communications	38,408	Nil	Collection efforts are ongoing.
Telogiks	7,500	Nil	Customer has claimed an offset based on a verbal agreement with NTL.
MTD Consulting	18	Nil	This customer is not responding to the Receiver.
<b>Total ( 7 customers)</b>	<b>\$1,251,857</b>	<b>\$97,487</b>	

**INVENTORY**

23. According to the January Financial Statements and the Debtor’s unaudited interim balance sheet as at December 31, 2014, the Debtor reported inventory balances of \$860,000 and \$990,000, respectively.
24. Immediately following its appointment, the Receiver met with Guyatt to conduct an inventory count. Based on the inventory count schedule prepared on the date of the

Appointment Order, Guyatt calculated a book value of inventory of approximately \$320,000.

25. The Receiver requested proposals from two third-party auctioneers. One party declined to submit a proposal because it deemed the inventory to not have any commercial value. A second auctioneer submitted a proposal for \$5,500, inclusive of the Debtor's forklift truck located at the Vaughan Property.
26. The Receiver requested from Guyatt a list of customers with purchase orders for the inventory located at the Vaughan Property. Guyatt informed the Receiver that the inventory was purchased on a speculative basis without specific orders on hand from customers. Notwithstanding, the Receiver obtained the names of 8 prospective purchasers from Guyatt.
27. On April 24, 2015, the Receiver e-mailed a request for offers with respect to the Debtor's inventory (the "**Inventory RFO**") to 10 prospective purchasers, including the 8 parties named by Guyatt. The Inventory RFO included the Debtor's inventory listing and contemplated an offer deadline of May 7, 2015. The Receiver re-issued the Inventory RFO on May 1, 2015 to those prospective purchasers who did not respond to its initial request.
28. The Receiver received two offers pursuant to the Inventory RFO. None of the 8 parties named by Guyatt submitted an offer for the inventory. The Receiver accepted an *en bloc* offer of \$9,500 plus HST, and executed a bill of sale with the successful purchaser on May 8, 2015. This transaction has since closed and all proceeds have been received.

#### **PRELIMINARY REVIEW OF NON-TRADE AMOUNTS OWING TO THE DEBTOR**

29. Prior to its appointment as Receiver, Deloitte was engaged by HSBC as a consultant. On March 13, 2015, Deloitte met with Guyatt and Goldberg at NTI's premises, and was provided with an unaudited interim balance sheet as at January 31, 2015 and an income statement for the period November 1, 2014 to January 31, 2015 (together, the "**January Financial Statements**"). Based on the Receiver's review of the January Financial Statements and other information provided by Guyatt, the Receiver noted certain non-trade accounts receivable discussed below.

30. From the books of account made available to the Receiver, the Receiver issued demand letters to the recipients of certain funds from NTI.
31. Also, the Receiver has commenced a preliminary review of available bank statements with respect to NTI's accounts held at HSBC and TD Canada Trust for the period March 1, 2013 to April 9, 2015. The Receiver has contacted TD Canada Trust to obtain certain bank statements which were missing from the Debtor's records and were missing from the banking records provided by Goldberg.
32. Further details on these non-trade amounts owing to NTI are provided below along with the Receiver's observations on NTI's disbursement to another company, MTD Consulting.

***Gusto Brands Ltd. - \$1.5 Million***

33. Based on the Receiver's discussions with Guyatt, approximately \$1.25 million of a total of \$1.5 million of funds were disbursed from NTI's account at TD Canada Trust as a short-term investment in a food distribution company transaction.
34. Based on the Debtor's A/R subledger as at April 8, 2015, there is an account receivable recorded in the amount of \$504,248. The Receiver is unable to reconcile this balance to the other reported aspects of this transaction.
35. The Receiver has identified that NTI issued two cheques to Connect Cabling on October 28, 2014 and November 19, 2014 in the amounts of \$250,000 and \$1,000,000, respectively.
36. On April 14, 2015, the Receiver wrote to Connect Cabling to request the return of these funds as they appeared to be for assets or investments that could not be identified from the books and records of NTI.
37. On April 24, 2015, Anthony Quinto ("**Quinto**"), Connect Cabling's principal, provided the Receiver with copies of payments totaling \$1.275 million in connection with this investment to the following parties:

- (a) Vincent Leli in the amount of \$50,000 pursuant to a cheque dated November 7, 2014;
  - (b) 2252593 Ontario Inc. (“**2252593**”) in the amount of \$975,000 by way of bank draft dated November 19, 2014; and
  - (c) Gusto Brand Ltd. in the amount of \$250,000 by way of bank draft dated October 28, 2014.
38. In addition, the Receiver determined that on November 3, 2014, NTI directly remitted a separate payment of \$250,000 to 2252593 from its account with TD Canada Trust. Together with the payments via Connect Cabling described above, NTI appears to have contributed at least \$1.525 million of payments to an alleged investment in Gusto.
39. In response to Quinto’s disclosure that Connect Cabling was only acting as “trustee” with respect to these transactions, the Receiver requested evidence of a trust agreement from Connect Cabling.
40. On April 22, 2015, Quinto provided a Trust Declaration which set out the terms of an agreement between NTI and Connect Cabling.
41. The Receiver has reviewed a copy of a promissory note dated November 14, 2014 in favour of NTI issued by Vincent Leli personally and 2252593 in the amount of \$2,000,000, all of which were due on February 15, 2015. The return on the initial investment called for the “...*principal amount together with profit of the Wall Mart PO order# 44104 sale of \$2,867,151.60, being \$452,013 subject to foreign exchange interest rate adjustments.*” No amounts were repaid on or since February 15, 2015 pursuant to this Promissory Note.
42. The Receiver also reviewed a General Security Agreement in favour of “National Telecom Inc.” provided by 2252593. In response to the Receiver’s inquiries, Guyatt had no explanation as to why NTI has never registered its security interest nor took any action to collect the amount due.

43. Vincent Leli, a Director of Gusto Brands Ltd. and 2252593, personally filed an assignment in bankruptcy on December 4, 2014.
44. On April 30, 2015, the Receiver filed a Proof of Claim in the Bankruptcy of Vincent Leli with Richard Goldhar of Goldhar & Associates Ltd. ("**Goldhar**"), the Bankruptcy Trustee for Mr. Leli.
45. The Receiver has obtained a copy of the minutes of the First Meeting of Creditors and Trustee's Preliminary Report to the Creditors from Goldhar.
46. On May 4, 2015 the Receiver attended a call with Goldhar and the Trustee's legal counsel. Goldhar undertook to provide the Receiver with a transaction history with respect to certain parties that are of interest to NTI and the Receiver. This information remains outstanding as at the date of this First Report.
47. The Receiver also sent demand letters to Letters sent to Gusto Brands Ltd., Gusto Brands Inc., and 2252593 o/a Gusto International Foods.
48. By letter dated April 17, 2015, Emilio Bisceglia, legal counsel to Gusto Brands Inc., advised that the Receiver's letter may be referring to Gusto International ("**GI**"), which he advised is not his client. The Receiver reviewed GI's website and confirms that both Gusto Brands Inc. and GI appear to use the same address. The Receiver's investigations are continuing.

***2334270 Ontario Inc. Re Episolar Inc. - \$450,000***

49. In addition to the loss on the Gusto loan above, Guyatt had informed the Receiver that another cause of NTI's financial troubles originated from the loss of funds advanced to Episolar Inc. ("**Episolar**").
50. NTI had a loan receivable from 2334270 Ontario Inc. ("**2334270**") in the amount of \$450,000. Guyatt and Goldberg had informed Deloitte that this receivable related to funds that were invested in Episolar in connection with a solar project in Ghana.

51. Based on the Receiver's review of a corporate profile report for 2334270, Guyatt and Quinto are listed as the principals of 2334270. As noted earlier in the First Report, Quinto is also the principal of Connect Cabling, which among other things, is a customer of NTI and the immediately adjacent tenant located at 101 Innovation Drive, Vaughan. On April 15, 2015, the Receiver issued a demand letter to both Guyatt and Quinto regarding 2334270's indebtedness to NTI. Quinto advised that he was not aware of any loan from NTI to 2334270. Guyatt has yet to respond in this regard. The Receiver is conducting further investigations into the nature of this loan receivable and the potential for recovery of amounts advanced.
52. The Receiver has also emailed and mailed a demand letter to other identified addresses for Episolar, but has not received a response to date.

***2188257 Ontario Ltd.***

53. NTI has a loan receivable from 2188257 Ontario Ltd. ("**2188257**") in the amount of \$43,403. Based on a corporate profile report obtained by the Receiver, Guyatt is listed as the Director of 2188257.
54. On April 15, 2015, the Receiver issued a demand letter to 2188257. Guyatt has informed the Receiver that 2188257 has no funds and is unable to pay this balance. Guyatt did not provide details with respect to this balance or what the funds were used for by 2188257. The Receiver has requested confirmation of the financial status of 2188257 but has not received a response to date.

***Hansen Properties / M&M Industrial Properties / Gary Bluestein***

55. Following a review of bank statements and available invoices found at the Vaughan Property, the Receiver noted that payments exceeding \$170,000 were issued to M&M Industrial Properties ("**M&M**") since April 2, 2014. Also, NTI paid amounts for property management and utilities relating to two properties located at 29 and 31 Hansen Road South, Brampton, Ontario (the "**Hansen Properties**").



56. In response to the Receiver's questions, Guyatt advised that he had entered into an Agreement of Purchase and Sale with M&M to purchase the Hansen Properties. On February 20, 2014, NTI disbursed a deposit of \$200,000 to the seller's legal counsel, Sheldon Skryzlo, from NTI's bank account, notwithstanding that M&M's agreement was with 2188257 and not NTI. Guyatt further advised that he had agreed to forfeit the \$200,000 deposit as he could not carry out the terms of the agreements in connection with the Hansen Properties.
57. Based on the Receiver's review of available documentation, the \$200,000 deposit was issued to "The Seller's Lawyer, Sheldon Skryzlo, in trust".
58. The Receiver wrote to Mr. Skryzlo to request additional information on the release of these funds as the payment had been made from the account of NTI. Mr. Skryzlo advised that the funds were released pursuant to directions from purchaser's lawyer, John Cirillo.
59. On May 15, 2015, the Receiver wrote to Mr. Cirillo who acted as counsel to 2188257 to request details in this regard. We have not received a response from Mr. Cirillo to date. In response to a follow up request made by the Receiver's legal counsel on June 18, 2015, Mr. Cirillo advised that he was attempting to contact his client to obtain instructions.

***MTD Consulting***

60. The Receiver has identified at least \$5.2 million of wire transfers and cheques which were issued to MTD Consulting ("MTD") during the period from April 24, 2013 to February 4, 2015. The Receiver understands that MTD is a real estate development and construction consulting company located in Lonsdale, Minnesota, United States. Guyatt advised the Receiver that these payments related to the sourcing of equipment. The Receiver did not find any information at the Vaughan Property to support underlying transactions that would result in these substantial payments.

**ASSIGNMENT FOR THE GENERAL BENEFIT OF THE CREDITORS OF NTI**

61. Based upon the proceeds of realization obtained by the Receiver to date and anticipated future realizations upon the Property, the Receiver has concluded that the proceeds of the Property will not be sufficient to satisfy the secured and unsecured claims against the Debtor.
62. Since the date of the Appointment Order, the Receiver has made requests of Guyatt and his external accountant for financial information with respect to the Debtor, including several material transactions and investments made out of the ordinary course of NTI's telecommunications business and without notice to HSBC. The Receiver has received only limited cooperation and insufficient explanations to date.
63. As described above, significant disbursements were made with respect to non-trade activities outside the ordinary course of the business.
64. The Receiver requested passwords from Guyatt who advised that the Debtor's email was [nticanada@hotmail.com](mailto:nticanada@hotmail.com). Prior to and on the date of the Appointment Order, Guyatt corresponded with Deloitte using the "@nticanada.com" domain name. The Receiver took steps to preserve the data on these accounts.
65. Based on the Receiver's review of the @hotmail.com email account, the Receiver noted only 26 emails, including spam emails, which covered the period from June 2014 to the date of the Appointment Order.
66. Based on the Receiver's review of the @nticanada.com email account, access to the email account showed that the account was last renewed in 2011 for a 5-year term expiring in 2016. From this account, the Receiver found the following data:
  - (a) only one (1) email was noted for the more than 10-year period from January 2003 to June 2014;
  - (b) only ten (10) emails for the 10-month period from June 2014 to the date of the Appointment Order, all of which all appear to be spam emails; and
  - (c) from the date of the Appointment Order to June 18, 2015 there were over twelve hundred (1,285) emails in the inbox, including the eleven (11)

mentioned above. These contained both business related and numerous spam emails.

67. The Receiver was advised that there was no email backup, which is unusual given the level of operations and size of the business.
68. In reviewing the Debtor's insurance policies, the Receiver noted that NTI's insurance policy also covered a second property located at Unit 28 - 4370 Steeles Avenue West, Vaughan, Ontario ("**4370 Steeles**"). Guyatt advised the Receiver that this property was one of the Debtor's previous locations before moving to 101 Innovation Drive, Vaughan, Ontario. Guyatt could not explain to the Receiver why this insurance had been renewed in June 2014 and was not subsequently cancelled. The Receiver was informed that 4370 Steeles is owned by Connect Cabling, and the Receiver has demanded repayment of these insurance premiums from Connect Cabling. Connect Cabling's principal wrote to the Receiver on April 21, 2015 and advised that it did not derive any benefit from this policy paid by NTI and would not be reimbursing NTI.
69. The Receiver is of the view, that there are a number of unusual transactions that could be investigated further including with a view to of possibly recovering amounts as settlements of property of preferential transactions. Accordingly, the Receiver is of the view that it would be advantageous to assign the Debtor into bankruptcy for the purpose of permitting the trustee in bankruptcy to efficiently exercise its statutory investigatory and recovery rights pursuant to the BIA.
70. NTI has committed an act of bankruptcy in the most recent six-month period by, among other things, ceasing to meet its liabilities as they generally become due.
71. The Receiver has requested that Guyatt, in his capacity as the sole Director and President of NTI, execute the documents necessary for the Debtor to file an assignment in bankruptcy under the BIA. In the event that Guyatt refuses to execute the assignment documents as requested, the Receiver seeks the Court's authorization and direction to file, on behalf of the Debtor, an assignment in bankruptcy pursuant to the BIA to facilitate the following, among other things:

- (a) an investigation to be made of the affairs of the bankrupt, including the examination of the management of the Debtor and any person reasonably thought to have knowledge of the affairs of the Debtor; and
  - (b) the setting aside of preferences and other fraudulent transactions so that all ordinary creditors may share equally in the value realized through administration of the bankrupt's assets, subject to the priorities of preferred creditors and the rights of the secured creditors.
72. HSBC supports the Receiver's recommendation that an assignment in bankruptcy be filed so that a trustee in bankruptcy can be appointed over the estate of NTI.
73. As set out above, the Receiver has confirmed with independent legal counsel the validity and enforceability of the Bank's security over all of the assets and undertaking of NTI. Deloitte consents to act as the bankruptcy trustee of NTI if such an assignment is made. Given the uncertainty of recovery of amounts for the general benefit of NTI's creditors after the settlement of secured claims, the Bank has agreed to indemnify the proposed trustee for its fees and costs for the administration of the NTI bankruptcy.

#### **SALE OF THE SOLD ASSETS INCLUDING THE VAUGHAN PROPERTY**

74. On the evening of April 8, 2015, the day prior to the Appointment Order, the Bank and Deloitte received an email from Goldberg, NTI's external accountant, with respect to the Vaughan Property. Goldberg's e-mail contained an unsolicited offer (the "**April 8 Offer**") for the Vaughan Property from "John Mazza in Trust". This offer had an expiry date of Saturday, April 11, 2015. The April 8 Offer contemplated a sales commission payable to Fernando Giandomenico of Intercity Realty Inc. and contained other conditions which were not acceptable to the Receiver. The Receiver also deemed the April 11, 2015 deadline to be unreasonable in the circumstances.
75. The Receiver made numerous requests to Guyatt for background information on the Vaughan Property, including a copy of a report which Guyatt advised had been prepared by a third party consultant. The Receiver did not receive further information or cooperation from Guyatt in this regard.

76. The Receiver made arrangements with three GTA based real estate brokerages with affiliations to national agencies to attend at the Vaughan Property, and requested listing proposals and estimated valuations.
77. On April 27, 2015, Fernando Giandomenico submitted a revised offer to the Receiver (the "**April 27 Offer**") on behalf of "John Mazza in Trust".
78. Following the Receiver's review and analysis of the three listing proposals and the April 27 Offer, the Receiver engaged legal counsel to prepare an Agreement of Purchase and Sale with respect to the Vaughan Property. The Receiver entered into negotiations with Mazza's legal counsel, which culminated in the Mazza Sale Agreement on May 12, 2015, a copy of which is attached hereto as Exhibit "E". The Mazza Sales Agreement does not contemplate the payment of a sales commission to a real estate broker nor to any other party. The Mazza Sale Agreement is conditional on the approval of this Court.
79. In accordance with the Mazza Sale Agreement, a deposit of \$20,000 was delivered to the Receiver.
80. The Receiver agreed to Mazza's request for an extension of the Title Due Diligence date from May 28, 2015 to June 2, 2015. On June 2, 2015, Mazza's legal counsel informed the Receiver in writing that the financing condition set out in the Mazza Sale Agreement was waived.
81. Although a closing date has not been established, the outside date for closing has been extended from June 24, 2015 to July 15, 2015 pursuant to correspondence between legal counsel for Mazza and the Receiver, for the purpose of obtaining Court approval of the transaction. Pursuant to the Mazza Sale Agreement Court approval is to be obtained no later than 14 days prior to the Outside Closing Date.
82. The Receiver recommends that the Court authorize and direct the Receiver to complete the Mazza Sale Agreement for the following reasons:
  - (a) following a review of three listing proposals from third party real estate brokerages and considering the additional carrying costs that would be incurred for this vacant unit, the Receiver has concluded that it is unlikely that it would

realize superior net proceeds for the Vaughan Property if the Court does not approve the Mazza Sale Agreement and the Receiver were required to remarket the Vaughan Property;

- (b) the Mazza Sale Agreement is in a form acceptable to the Receiver and its legal counsel; and,
- (c) HSBC supports the Receiver's recommendation that it be authorized and directed to complete the Mazza Sale Agreement.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

- 83. Attached as Exhibit "F" is the Statement of Receipts and Disbursements for the period April 9, 2015 to June 18, 2015 (the "**Receivership Period**"). As at June 18, 2015, the closing cash balance was approximately \$160,000, which includes a deposit of \$20,000 with respect to the sale of the Sold Assets.
- 84. The Receiver has collected \$139,000 of A/R to date, after conversion of US currency accounts to Canadian currency.
- 85. As set out above, the Receiver collected \$9,500 plus HST with respect to the sale of inventory.
- 86. On May 21, 2015, the Receiver also sold the Debtor's Toyota Electric Forklift Truck for \$2,200 plus HST.
- 87. Cash disbursements for the Receivership Period to June 8, 2015 were \$13,000 and primarily composed of property taxes (\$6,000), condominium fees and discharge of related lien (\$4,700), and remittance to CRA with respect to deemed trust amounts for unremitted source deductions outstanding as at the date of the Appointment Order (\$1,500).

#### **PROFESSIONAL FEES**

- 88. The Receiver, and its legal counsel, TGF and Torkin Manes, have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraph 21 of the Appointment Order, the Receiver and its legal counsel

were directed to pass their accounts from time to time before this Honourable Court and were granted a Receiver's Charge over the Property.

89. The total fees of the Receiver during the period from April 9, 2015 to June 5, 2014, amount to \$166,827.00, together with expenses and disbursements in the sum of \$1,755.90 and harmonized sales tax ("HST") in the amount of \$21,915.78, totalling \$190,498.68 (the "**Receiver's Fees**"). The time spent by the Receiver is more particularly described in the Affidavit of Paul Casey of Deloitte, sworn June 19, 2015 (the "**Casey Affidavit**") in support hereof and attached hereto as Exhibit "**G**".
90. The total legal fees incurred by the Receiver during the period April 23, 2015 to May 31, 2015, for services provided by TGF amount to \$7,525.00, together with disbursements in the sum of \$205.17 and HST in the amount of \$991.51 totalling \$8,721.68. The time spent by TGF personnel is more particularly described in the Affidavit of Grant Moffat, a partner of TGF, sworn June 11, 2015 (the "**Moffat Affidavit**") in support hereof and attached hereto as Exhibit "**H**".
91. The total legal fees incurred by the Receiver during the period May 4, 2015 to June 5, 2015, for services provided by Torkin Manes amount to \$7,667.50, together with disbursements in the sum of \$59.00 and HST in the amount of \$1,001.07, totalling \$8,727.57. The time spent by Torkin Manes personnel is more particularly described in the Affidavit of Aaron English, a partner of Torkin Manes, sworn June 9, 2015 (the "**English Affidavit**" and collectively with the Casey Affidavit and the Moffat Affidavit, the "**Fee Affidavits**") in support hereof and attached hereto as Exhibit "**I**".
92. The Receiver is of the view that the fees and disbursements set out in the Fee Affidavits are reasonable in the circumstances.


#### **RECEIVER'S RECOMMENDATIONS**

93. For the reasons set out above, the Receiver recommends that the Court make an Order:
  - (a) approving the activities of the Receiver as described in the First Report including, without limitation, the steps taken by the Receiver pursuant to the sale of the Vaughan Property, efforts to collect accounts receivable, sales of inventory and investigations to date;

- (b) authorizing and directing the Receiver, on behalf of the Debtor, to file an assignment in bankruptcy of the Debtor;
- (c) authorizing and directing the Receiver to enter into and carry out the terms of the Mazza Sale Agreement, together with any amendments thereto deemed necessary by the Receiver in its sole opinion and vesting title to that part of the Sold Assets in and to Mazza upon closing of the Mazza Sale Agreement;
- (d) if the Mazza Sale Agreement is terminated in accordance with its terms, authorizing and directing the Receiver to engage a real estate brokerage to market and sell the Vaughan Property, subject to further Court approval;
- (e) approving the Receiver's Statement of Receipts and Disbursements for the period from April 9, 2015 to June 18, 2015; and
- (f) approving the professional fees and disbursements of the Receiver and its independent legal counsel set out in the Fee Affidavits, and authorizing the Receiver to pay all such fees and disbursements from available funds.

All of which is respectfully submitted at Toronto, Ontario this 23<sup>rd</sup> day of June, 2015.

**Deloitte Restructuring Inc.,**  
solely in its capacity as the  
Court-appointed receiver and manager  
of National Telecommunications Inc., and  
without personal or corporate liability

Per:   
\_\_\_\_\_  
Paul M. Casey, CPA, CA, CIRP  
Senior Vice-President



# EXHIBIT “A”

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MADAM

)

THURSDAY, THE 9th

JUSTICE CONWAY

)

DAY OF APRIL, 2015

)



HSBC BANK CANADA

Applicant

and

NATIONAL TELECOMMUNICATIONS INC.

Respondent

**ORDER**  
(appointing Receiver)

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertaking and properties of National Telecommunications Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of John Borch sworn March 25, 2015 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, and all other parties listed on the Counsel Slip, no one appearing for any other party although duly served as it appears from the Affidavits of Service of Edna Domingues de Araujo sworn on March 30, 2015 and Sean Louth sworn on March 27, 2015, and on reading the Consent of Deloitte to act as the Receiver,

**SERVICE**

1. **THIS COURT ORDERS** that, if necessary, the time for service of the Notice of Application and the Application Record herein is hereby abridged, and that service as effected is hereby validated so that this motion 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, Deloitte 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**").

**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 agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) 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;

- (j) 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;
- (k) 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 \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

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

- (l) 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;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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;
- (p) 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;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

BL

- ~~(r) to make an assignment in bankruptcy on behalf of the Debtor; and~~
- <sup>R</sup>~~(s)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations,

governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that Nelson Guyatt shall forthwith identify and provide the information and documents requested by the Receiver in the attached Schedule "A" if available to him.

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to examine ~~under oath Nelson Guyatt and other Persons reasonably thought to have knowledge of the affairs of the Debtor on dates to be agreed upon by the solicitors for the Receiver and for those individuals, and absent agreement or in the event these individuals are not represented by counsel, that these examinations may be compelled by service of notices of examination in the form prescribed in the Rules of Civil Procedure for examinations for discovery and service of such notices of examination shall be effective by email or facsimile sent on five days' notice to the solicitors for these individuals or the individuals themselves if unrepresented, and such individuals are ordered and directed to attend such examinations.~~

*intentionally deleted  
bc.*

9. **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**

10. **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**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

12. **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**

13. **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**

14. **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, 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.

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

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

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

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

**GENERAL**

29. **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.

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

31. **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.

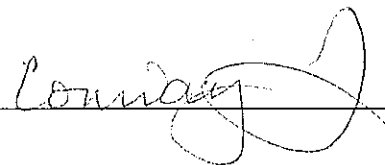
32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is 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.

33. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff'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.

34. **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.

  
\_\_\_\_\_

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO.  
LE / DANS LE REGISTRE NO..

APR 9 - 2015

NB

## SCHEDULE "A"

- | <b>Item</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1           | <p><b>Financial Forecasts</b></p> <ul style="list-style-type: none"><li>a) Schedule of weekly collections to April 30, 2015 (and beyond) for individual accounts receivable (by customer).</li><li>b) Files, documentation, and general ledger transaction history report with respect to funds flowing from and to Panda Ventures Inc. and Otisco.</li><li>c) List of potential orders that can be filled from inventory on-hand as at March 25, 2015.</li><li>d) List of critical shipping and brokerage amounts and names to collect A/R.</li><li>e) Access to copies of supporting documentation for all receivable balances.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 2           | <p><b>Financial and Tax Information</b></p> <ul style="list-style-type: none"><li>a) Finalized October 31, 2014 fiscal year-end financial statements, as reviewed by NTI's external accountant (if available)</li><li>b) February 28, 2015 month-end adjusted trial balance and general ledger, with supporting bank reconciliations for each account (if available).</li><li>c) March 25, 2015 trial balance and general ledger.</li><li>d) Draft trial balance and general ledger as at March 25, 2015.</li><li>e) Copies of the most recent tax filings, CRA Notices of Assessment and Statements of Account:<ul style="list-style-type: none"><li>i. Payroll Taxes and T4 Summary for 2014.</li><li>ii. HST return for February 2015 with supporting documentation.</li><li>iii. Income tax return for 2014, and the prior year return.</li></ul></li><li>f) Provide any reports or letters from CRA re: any audits performed in the last two years.</li><li>g) Insurance – Copies of the Certificates of Insurance, Statement of Account, and proof of the most recent payment for each insurance policy (e.g. key management life insurance, premises, property and other).</li><li>h) Copies of the Company's bank statements with financial institutions other than HSBC (e.g. TD Canada Trust) from January 2014 to March 2015. Online access to all bank accounts to obtain activity reports since the date of the last bank statement.</li></ul> |
| 3           | <p><b>Inventory</b></p> <ul style="list-style-type: none"><li>a) Copy of the inventory listing as at March 13 and 25, 2015 by description, cost, age, SKU, etc. Also, include an estimated selling price in a separate column. Identify obsolete/damaged inventory.</li><li>b) Details of any consignment inventory with NTI or customers, and any bill-and-hold arrangements, including inventory that the Company received since March 13, 2015.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 4           | <p><b>Fixed Assets</b></p> <ul style="list-style-type: none"><li>a) Summary of leased equipment, including access to lease documentation.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 5           | <p><b>Real Property</b></p> <ul style="list-style-type: none"><li>a) Copies of the most recent annual property tax assessments/statements (MPAC if available).</li><li>b) Details on the property (e.g. square footage for the warehouse and office sections), including copies of any prior real estate appraisals and reports.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

- 6      **Accounts Payable & Accrued Liabilities**
- a) Explain the nature of recent purchases from Broadconnect (\$314K) and Featurecom (\$75K), and whether this product is on-site.
  - b) Details of nature and amounts due to/from related parties, including supporting documentation.
  - c) Breakdown of accrued liabilities, including of outstanding employee vacation pay.
  - d) Details regarding any customer/ product warranty programs.
- 7      **Litigation**
- a) Copies of documents and details with respect to any ongoing, pending, or possible litigation.
  - b) Gusto Brands Ltd. Promissory Note
    - i. A detailed accounting of which sets out the amounts, payee, and timing of all transactions relating to the Gusto Promissory Note
    - ii. Files, documentation and written and e-mail correspondence regarding Gusto.
- 8      **Episolar Transactions**
- a) Copy of the executed agreement with respect to Episolar, and any other parties.
  - b) A detailed accounting which sets out the amounts, payee, and timing of all transactions relating to Episolar.

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc, the receiver (the "**Receiver**") of the assets, undertakings and properties of National Telecommunications Inc. 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 \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Order**") made in an action having Court file number CV-15-10921-00CL, 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\_\_.

Deloitte Restructuring Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

**HSBC BANK CANADA**  
Applicant

-and-

**NATIONAL TELECOMMUNICATIONS INC.**  
Respondent

Court File No.: CV-15-10921-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO, ONTARIO**

**RECEIVERSHIP ORDER**

**BAKER & MCKENZIE LLP**  
Barristers & Solicitors  
181 Bay Street, P.O. Box 874,  
Suite 2100  
Toronto, Ontario M5J 2T3

**John Pirie (LSUC #40993K)**  
Email: john.pirie@bakermckenzie.com  
Tel.: 416.865.2325

**Michael Nowina (LSUC #496330)**  
Email: michael.nowina@bakermckenzie.com  
Tel: (416) 865 2312  
Fax: 416.863.6275

Lawyers for HSBC Bank Canada



HSBC BANK CANADA  
Applicant

-and-  
Respondent

NATIONAL TELECOMMUNICATIONS INC.

April 2/15

Court File No.: CV-15-10921-00CL

April 2/15 M. Nowina v J. Pirie, for HSBC  
Mr Nowina concedes that it was an  
error that Mr Goldberg (Addiction  
Associates) was not served. I require  
him to serve Mr Goldberg & the matter  
can be served for a brief hearing (15 min)  
on Thursday April 9, 2015 before me.  
If the matter is opposed it may come  
to me as a 9:30 am

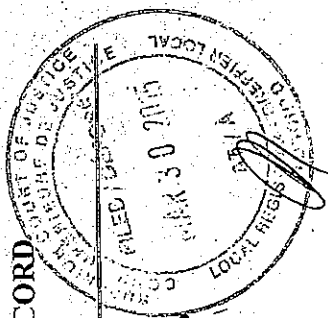
~~Conway~~  
Conway

April 9/15 M. Nowina, for HSBC

Mr Goldberg has now been served & has  
not appeared or opposed. Mr Goyath has  
consented to the relationship but not the  
precise form of the order. HSBC wants to  
include clauses 7 & 8 (non standard) in the  
term. I am not prepared at this point to grant  
an order examining him under oath but there  
can be a later date should the debtor  
not cooperate. I am also not prepared to include

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)  
PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

APPLICATION RECORD



BAKER & MCKENZIE LLP  
Barristers & Solicitors  
181 Bay Street, P.O. Box 874,  
Suite 2100  
Toronto, Ontario M5J 2T3

John Pirie (LSUC #40993K)  
Email: john.pirie@bakermckenzie.com  
Tel.: 416.865.2325

Michael Nowina (LSUC #496330)  
Email: michael.nowina@bakermckenzie.com  
Tel: (416) 865-2312  
Fax: 416.863.6275

Lawyers for HSBC Bank Canada



the term re immediately  
bankrupting the debtor - apparently  
Mr Boyar agreed to this in  
principle (re Mr Nowlin) but has  
not received legal advice on this  
proposed term.

OTG in form signed by me.

Conway J

# **EXHIBIT “B”**

**HSBC Bank Canada**  
**GENERAL SECURITY AGREEMENT (Ontario)**

1013579-E (04-2009)

This General Security Agreement made as of the 28 day of January, 2013.

Between:

**NATIONAL TELECOMMUNICATIONS INC.**  
101 Innovation Drive, Unit 3  
Vaughan, ON L4H 0S3

(hereinafter called the "Debtor")

And:

**HSBC BANK CANADA**  
20 Eglinton Avenue West  
Toronto, ON M4R 1K8

(hereinafter called the "Bank")

The Debtor hereby enters into this General Security Agreement with the Bank for valuable consideration and as security for the repayment and discharge of all indebtedness, obligations and liabilities of any kind, now or hereafter existing, direct or indirect, absolute or contingent, joint or several, of the Debtor to the Bank, whether as principal or surety, together with all expenses (including legal fees on a substantial indemnity basis) incurred by the Bank, its receiver or agent in the preparation, perfection and enforcement of security or other agreements held by the Bank in respect of such indebtedness, obligations or liabilities and interest thereon (all of which present and future indebtedness, obligations, liabilities, expenses and interest are herein collectively called the 'Indebtedness').

**A. Grant of Security Interests**

1. The Debtor hereby grants to the Bank, by way of mortgage, charge, assignment and transfer, a security interest (the 'Security Interest') in the undertaking of the Debtor and in all Personal Property including, without limitation, all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), Accounts, Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles, Money and Investment Property now or hereafter owned or acquired by or on behalf of the Debtor and in all proceeds and renewals thereof, accretions thereto and substitutions therefor (hereinafter collectively called the 'Collateral') including without limitation, all of the following now or hereafter owned or acquired by or on behalf of the Debtor:
  - (i) all Inventory of whatever kind and wherever situate;
  - (ii) all Equipment of whatever kind and wherever situate including, without limitation, all machinery, tools, apparatus, plant furniture, fixtures and vehicles of whatsoever nature or kind;
  - (iii) all accounts and book debts and generally all debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, guarantees and advices of credit which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor;
  - (iv) all deeds, documents, writings, papers, books of account and other books relating to or being records of Accounts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
  - (v) all contractual rights and insurance claims and all goodwill, patents, trademarks, copyrights and other intellectual property;
  - (vi) all monies other than trust monies lawfully belonging to others; and
  - (vii) all property and assets, real and personal, moveable or immoveable, of whatsoever nature and kind.
2. The Security Interest hereby created shall not extend or attach to (i) any personal property held in trust by the Debtor and lawfully belonging to others; or (ii) any property of the Debtor that constitutes consumer goods for the personal use of the Debtor; or (iii) the last day of the term of any lease, oral or written or agreement therefor, now held or hereafter acquired by the Debtor, provided that upon the enforcement of the Security Interest the Debtor shall stand possessed of such last day in trust to assign and dispose of the same to any person acquiring such term. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed thereto in the PPSA.

**B. Attachment**

3. The Debtor warrants and acknowledges that the Debtor and the Bank intend the Security Interest in existing Collateral to attach upon the execution of this General Security Agreement; that value has been given; that the Debtor has rights in such existing

Collateral; and that the Debtor and the Bank intend the Security Interest in hereafter acquired Collateral to attach at the same time as the Debtor acquires rights in the said after acquired Collateral.

#### C. Representations and Warranties of Debtor

4. The Debtor hereby represents and warrants to the Bank that:
- (a) the Debtor has or expects hereafter to have assets at the location(s) set out in Schedule 'A';
  - (b) the Collateral is primarily situate or located at the location(s) set out in Schedule 'A' on the date hereof but may from time to time be located at other premises of the Debtor; may also be located at other places while in transit to and from such locations and premises; and may from time to time be situate or located at any other place when on lease or consignment to any lessee or consignee from the Debtor; and
  - (c) the Collateral is genuine and owned by the Debtor free of all security interests, mortgages, liens, claims, charges or other encumbrances (collectively hereinafter called 'Encumbrances'), save for the Security Interest and those Encumbrances set out in Schedule 'B'.

#### D. Covenants and Agreements of Debtor

5. The Debtor hereby covenants and agrees with the Bank that until all of the Indebtedness is paid in full:
- (a) the Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral in the ordinary course of business or otherwise, and if the amounts on or in respect of the Collateral or Proceeds thereof shall be paid to the Debtor, the Debtor shall receive the same in trust for the Bank and forthwith pay over the same to the Bank upon request; provided however that the Inventory of the Debtor may be sold or disposed of in the ordinary course of business and for the purpose of carrying on the same;
  - (b) the Debtor shall not without the prior written consent of the Bank create or permit any Encumbrances upon or assign or transfer as security or pledge or hypothecate as security the Collateral except to the Bank;
  - (c) the Debtor shall at all times have and maintain insurance over the Collateral against risks of fire (including extended coverage), theft, and such risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and reasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions. In the event that Debtor fails to pay all premiums and other sums payable in accordance with the foregoing insurance provision, the Bank may make such payments to be repayable by the Debtor on demand and any such payments made by the Bank shall be secured hereby;
  - (d) the Debtor shall keep the Collateral in good condition and repair according to the nature and description thereof, and the Bank may, whenever it deems necessary, either in person or by agent, inspect the Collateral and the reasonable cost of such inspection shall be paid by the Debtor and secured hereby and the Bank may make repairs as it deems necessary and the cost thereof shall be paid by the Debtor and secured hereby;
  - (e) the Debtor shall duly pay all taxes, rates, levies, assessments of every nature which may be lawfully levied, assessed or imposed against or in respect of the Debtor or the Collateral as and when the same become due and payable; and
  - (f) the Debtor agrees that the Bank may, at any time, whether before or after a default under this General Security Agreement, notify any account debtor of the Debtor of the Security Interest, require such account debtor to make payment to the Bank, take control of any Proceeds of Collateral and may hold all amounts received from any account debtor and any Proceeds as part of the Collateral and as security for the Indebtedness.
6. The Debtor shall at all times and from time to time do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered any such further act, deed, transfer, assignment, assurance, document or instrument as the Bank may reasonably require for the better granting, mortgaging, charging, assigning and transferring unto the Bank the property and assets hereby subjected or intended to be subject to the Security Interest or which the Debtor may hereafter become bound to mortgage, charge, assign, transfer or subject to the Security Interest in favour of the Bank for the better accomplishing and effectuating of this General Security Agreement and the provisions contained herein and each and every officer of the Bank is irrevocably appointed attorney to execute in the name and on behalf of the Debtor any document or instrument for the said purposes.
7. The Debtor shall permit the Bank at any time, either in person or by agent, to inspect the Debtor's books and records pertaining to the Collateral. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request including, without limitation, lists of Inventory and Equipment and lists of Accounts showing the amounts owing upon each Account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the Accounts.
8. The Debtor acknowledges and agrees that, in the event it amalgamates with any other corporation or corporations, it is the intention of the parties hereto that the term 'Debtor' when used herein shall apply to each of the amalgamating corporations and to the amalgamated corporation, such that the Security Interest granted hereby:

- i) shall extend and attach to 'Collateral' (as that term is herein defined) owned by each of the amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any 'Collateral' thereafter owned or acquired by the amalgamated corporation;
- (ii) shall secure the 'Indebtedness' (as that term is herein defined) of each of the amalgamating corporations and the amalgamated corporation to the Bank at the time of amalgamation and any 'Indebtedness' of the amalgamated corporation to the Bank thereafter arising.

#### **E. Default**

9. The Debtor shall be in default under this General Security Agreement upon the occurrence of any one of the following events:
- (a) the nonpayment by the Debtor, when due, whether by acceleration or otherwise, of any of the Indebtedness;
  - (b) the death or a declaration of incompetency by a court of competent jurisdiction with respect to the Debtor, if an individual;
  - (c) the failure of the Debtor to observe or perform any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not;
  - (d) an execution or any other process of the Court becomes enforceable against the Debtor or a distress or an analogous process is levied upon the property of the Debtor or any part thereof;
  - (e) the Debtor becomes insolvent, commits an act of bankruptcy, makes an assignment in bankruptcy or a bulk sale of its assets, any proceeding for relief as a debtor or liquidation, re-assignment or winding-up is commenced with respect to the Debtor or a bankruptcy petition is filed or presented against the Debtor and is not bona fide opposed by the Debtor;
  - (f) the Debtor ceases to carry on business; or
  - (g) the Debtor defaults in the observance or performance of any provision relating to indebtedness of the Debtor to any creditor other than the Bank and thereby enables such creditor to demand payment of such indebtedness.
10. The Bank may in writing waive any breach by the Debtor of any of the provisions contained herein or any default by the Debtor in the observance or performance of any covenant or condition required by the Bank to be observed or performed by the Debtor; provided that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default or the rights resulting therefrom.

#### **F. Remedies of the Bank**

11. (a) Upon any default under this General Security Agreement, the Bank may declare any or all of the Indebtedness to be immediately due and payable and the Bank may proceed to realize the security hereby constituted and to enforce its rights by entry or by the appointment by instrument in writing of a receiver or receivers of all or any part of the Collateral and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor.
- (b) Any such receiver or receivers so appointed shall have power:
- (i) to take possession of the Collateral or any part thereof and to carry on the business of the Debtor;
  - (ii) to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor;
  - (iii) to further charge the Collateral in priority to the Security Interest as security for money so borrowed; and
  - (iv) to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine.
- In exercising any powers any such receiver or receivers shall be deemed to act as agent or agents for the Debtor and the Bank shall not be responsible for the actions of such agent or agents.
- (c) In addition, the Bank may enter upon and lease or sell the whole or any part or parts of the Collateral and any such sale may be made hereunder by public auction, by public tender or by private contract, with or without notice, advertising or any other formality, all of which are hereby waived by the Debtor, and such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken such possession of such Collateral.
- (d) No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, and any one or more of such remedies may from time to time be exercised independently or in combination.
- (e) The term 'receiver' as used in this General Security Agreement includes a receiver and manager.

## G. Rights of the Bank

12. All payments made in respect of the Indebtedness and money realized from any securities held therefor may be applied on such part or parts of the Indebtedness as the Bank may see fit and the Bank shall at all times and from time to time have the right to change any appropriation of any money received by it and to re-apply the same on any other part or parts of the Indebtedness as the Bank may see fit, notwithstanding any previous application by whomsoever made.
13. The Debtor grants to the Bank the right to set off against any and all accounts, credits or balances maintained by it with the Bank, the aggregate amount of any of the Indebtedness when the same shall become due and payable whether at maturity, upon acceleration of maturity thereof or otherwise.
14. The Bank, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from and may otherwise deal with the Debtor and all other persons and securities as the Bank may see fit.
15. The Bank may assign, transfer and deliver to any transferee any of the Indebtedness or any security or any documents or instruments held by the Bank in respect thereof provided that no such assignment, transfer or delivery shall release the Debtor from any of the Indebtedness; and thereafter the Bank shall be fully discharged from all responsibility with respect to the Indebtedness and security, documents and instruments so assigned, transferred or delivered. Such transferee shall be vested with all powers and rights of the Bank under such security, documents or instruments but the Bank shall retain all rights and powers with respect to any such security, documents or instruments not so assigned, transferred or delivered. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Bank.

## H. Miscellaneous

16. This General Security Agreement is in addition to, not in substitution for and shall not be merged in any other agreement, security, document or instrument now or hereafter held by the Bank or existing at law in equity or by statute.
17. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any indebtedness of the Debtor to the Bank.
18. This General Security Agreement shall be binding upon the Debtor and its heirs, legatees, trustees, executors, administrators, successors and assigns including any successor by reason of amalgamation of or any other change in the Debtor and shall enure to the benefit of the Bank and its successors and assigns.
19. In construing this General Security Agreement, terms herein shall have the same meaning as defined in the PPSA as hereinafter defined, unless the context otherwise requires. Words importing gender shall include all genders. Words importing the singular number shall include the plural and vice versa.
20. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
21. The headings in this General Security Agreement are included herein for convenience of reference only and shall not constitute a part of this General Security Agreement for any other purpose.
22. Any notice or statement referred to herein may be delivered, sent by facsimile machine or providing that postal service throughout Canada is fully operative, may be mailed by ordinary prepaid mail to the Debtor at his last address known to the Bank and the Debtor shall be deemed to have received such notice or statement on the day of delivery, if delivered, one business day after transmission and confirmation received if sent by facsimile machine and three business days after mailing, if mailed.
23. Where any provision or remedy contained or referred to in this General Security Agreement is prohibited, modified or altered by the laws of any province or territory of Canada which governs that aspect of this General Security Agreement and the provision or remedies may be waived or excluded by the Debtor in whole or in part, the Debtor hereby waives and excludes such provision to the fullest extent permissible by law.
24. This General Security Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario as the same may be in effect from time to time including, where applicable, the Personal Property Security Act of that Province (as amended or substituted, the 'PPSA'). For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the said Province and to be performed there and the courts of that Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to

the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Bank from proceeding at this election against the Debtor in the Courts of any other Province, country or jurisdiction.

25. The Debtor acknowledges having received a copy of this General Security Agreement.

This General Security Agreement has been duly executed by the Debtor on the 28 day of January, 2013.

**NATIONAL TELECOMMUNICATIONS INC.**


Per: 

Name: Nelson Guyatt

Title: President

I have authority to bind the Corporation.

SCHEDULE 'A'

 Locations of Collateral:

101 Innovation Drive, Unit 3, Vaughan, Ontario



Schedule 'B'

Encumbrances Affecting Collateral:

Nil

# EXHIBIT “C”

**Properties**

*PIN* 29683 - 0003 LT *Interest/Estate* Fee Simple  
*Description* UNIT 3, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1152 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : BLOCKS 3 & 5, PLAN 65M4044, VAUGHAN. S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION YR1295786.  
*Address* 3 UNIT  
 101 INNOVATION DRIVE  
 VAUGHAN

**Chargor(s)**

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

*Name* NATIONAL FIBER COMMUNICATIONS INC.  
*Address for Service* 101 Innovation Drive, Unit 3  
 Vaughan, ON L4H 0S3

I, Nelson Guyatt, President, have the authority to bind the corporation.

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

**Chargee(s)***Capacity**Share*

*Name* HSBC BANK CANADA  
*Address for Service* 20 Eglinton Avenue West  
 Toronto, ON M4R 1K8

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$ 520,000.00 *Currency* CDN  
*Calculation Period* SEE SCHEDULE  
*Balance Due Date* ON DEMAND  
*Interest Rate* SEE SCHEDULE  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 9916  
*Insurance Amount* full insurable value  
*Guarantor*

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

yyyy mm dd Page 2 of 2

**Signed By**

Lizabeth Jane Phelan	2900-390 Bay Street Toronto M5H 2Y2	acting for Chargor(s)	Signed	2013 03 06
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Tel 4168672283

Fax 4168690321

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

**Submitted By**

BEBER & ASSOCIATES PROFESSIONAL CORPORATION	2900-390 Bay Street Toronto M5H 2Y2	2013 03 07
------------------------------------------------	-------------------------------------------	------------

Tel 4168672283

Fax 4168690321

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00

Total Paid \$60.00

**File Number**

Chargor Client File Number 121346

## SCHEDULE

1. Whereas National Telecommunications Inc., (hereinafter called the "Customer") is obligated to the Chargee. If more than one person is named above, the term "Customer" means all and any one or more of them and the liabilities of the Customer (as hereinafter defined) means the liabilities of all or any one or more of them to the Chargee.
2. And Whereas the Chargor has at the request of the Chargee agreed to give this Charge as a continuing collateral security for payment and satisfaction to the Chargee of all obligations, debts and liabilities, present and future, direct or indirect, absolute or contingent, matured or not, extended or renewed at any time owing by the Customer to the Chargee or remaining unpaid by the Customer to the Chargee heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealings between the Chargee and the Customer or from any agreement or dealings with any third party by which the Chargee may be or become in any manner whatsoever a creditor of the Customer or however otherwise incurred or arising anywhere within or outside Canada and whether the Customer be bound alone or with another or others and whether as principal or surety and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again (such obligations, debts and liabilities being hereinafter called the "liabilities") but it being agreed that this Charge at any one time will not secure that portion of the aggregate principal component of the liabilities outstanding at such time which exceeds the sum of Five Hundred and Twenty Thousand Dollars (\$520,000.00).
3. Provided this Charge to be void upon the Chargor, his heirs, executors, administrators, successors or assigns or any of them, paying on demand to the Chargee, its successors or assigns, the ultimate balance of the liabilities, the principal component of such liabilities not exceeding the sum of Five Hundred and Twenty Thousand Dollars (\$520,000.00) together with interest on the liabilities at the Prime Interest Rate per annum in effect from time to time plus three per centum (3.00%) per annum, calculated and payable monthly as well after as before maturity, default and judgment, with interest on overdue interest at the same rate as on the principal sum, and all other amounts payable by the Chargor hereunder and paying any taxes, rates, levies, charges or assessments upon the said lands no matter by whom or what authority imposed and observing and performing all covenants, provisos and conditions herein contained. For the purposes hereof, Prime Interest Rate is the annual rate of interest in effect from time to time as announced from time to time by the Chargee then in effect as a reference rate for determining interest rates on Canadian dollar loans in Canada.
4. It is Agreed By and Between the Parties Hereto as follows:
  - (a) That no part of any liabilities of the Customer to the Chargee existing at the date of this Charge or incurred or arising thereafter, shall be deemed to be unsecured by this Charge;
  - (b) That this Charge is and shall be a continuing collateral security to the Chargee for the amount of such liabilities and interest as herein provided and shall be deemed to be taken as security for the ultimate balance of such liabilities; and these presents shall not, nor shall anything herein contained operate so as to create any merger or discharge of any debt owing to the Chargee or of any lien, bond, promissory note, bill of exchange or other security held by or which may hereafter be held by the Chargee from the Chargor or from the Customer or from any other person or persons and this Charge shall not in any way prejudicially affect any security held or which may hereafter be held by the Chargee for the said liabilities or any part thereof, or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Chargee for or on account of the said liabilities or any part or parts thereof, nor shall the remedies of the Chargee in respect thereof be prejudiced or delayed in any manner whatsoever by the taking of this Charge;
  - (c) That any and all payments made in respect of the said liabilities and interest and the moneys or other proceeds realized from the sale of any securities held therefor including this Charge may be applied and reapplied notwithstanding any previous application on such part or parts of such liabilities or interest as the Chargee may see fit or may be held unappropriated in a separate collateral account for such time as the Chargor may see fit;
  - (d) That the Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities and guarantees from and give the same and any and all existing securities and guarantees up to, may abstain from taking

securities or guarantees from or from perfecting securities or guarantees of, may accept compositions from and may otherwise deal with the Chargor, the Customer and all other persons securities and guarantees as the Chargee may see fit without prejudicing the rights of the Chargee under this Charge; and

- (e) That the taking of judgment in respect of the said liabilities or any instrument or instruments now or hereafter representing or evidencing the said liabilities or under any of the covenants herein or in any such instrument contained or implied shall not operate as a merger of the said liabilities or such instrument, instruments or covenants nor affect the Chargee's right to interest at the rate and times herein provided nor effect nor prejudice any rights or remedies given to the Chargee by the terms hereof.

5. In the event one or more of the Chargors is not also the Customer, each such Chargor which is not also the Customer (hereinafter in this paragraph called "such Chargor") jointly and severally covenants with the Chargee as follows:

- (a) This charge and the covenants, provisos, obligations and agreements on the part of the Chargor herein contained shall be the continuing obligations and liability of each such Chargor and shall cover all the liabilities and obligations of the Chargor hereunder and shall apply to and shall secure any ultimate balance of the moneys secured or intended to be secured hereby;
- (b) The Chargee shall not be bound to exhaust its recourse against the Customer or others or any securities (which term when used in this Paragraph 5 includes guarantees) it may at any time hold before being entitled to payment from each such Chargor of the moneys hereby secured and such Chargor renounces to all benefits of discussion and division;
- (c) This Charge and the liabilities and obligations of each such Chargor hereunder shall not be affected by the death or loss or diminution of capacity of the Customer or of any such Chargor or by any change in the name of the Customer or in the membership of the Customer's firm through the death or retirement of one or more partners or the introduction of one or more other partners or otherwise, or by the acquisition of the Customer's business by a corporation, or by any change whatsoever in the objects, capital, structure or constitution of the Customer, or by the Customer or the Customer's business being amalgamated with a corporation or corporations, or wound up or its corporate existence terminated but shall notwithstanding the happening of any such event continue to exist and apply to the full extent as if such event had not happened;
- (d) This Charge shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money for the time being due or remaining unpaid to the Chargee and all dividends, compositions, proceeds of security valued and payments received by the Chargee from the Customer or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of any such Chargors to claim in reduction of his liability under this Charge the benefit of any such dividends, compositions, proceeds or payments or any securities held by the Chargee or proceeds thereof, and none of such Chargors shall have the right to be subrogated in any rights of the Chargee until the Chargee shall have received payment in full of all liabilities;
- (e) All of the moneys hereby secured or intended to be secured hereby shall be deemed to form part of the liabilities and obligations of each such Chargor notwithstanding any lack or limitations of status or of power, incapacity or disability of the Customer or of the directors, partners or agents thereof, or that the Customer may not be a legal or suitable entity, or any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or creditors, or in the taking or registering of this Charge or any other securities, the whole whether known to the Chargee or not; and all the moneys secured hereby or intended to be secured hereby shall be recoverable from each such Chargor as sole or principal debtor in respect thereof and shall be paid to the Chargee on demand with interest and accessories; and
- (f) Each such Chargor shall be bound by any account settled between the Chargee and the Customer, and if no such account has been so settled immediately before demand of payment hereunder any account stated by the Chargee shall be accepted by such Chargor and each of them as conclusive evidence of the amount which at the date of the account so stated is due by the Customer to the Chargee or remains unpaid by the Customer to the Chargee.







(vii) The Chargee, upon demand, will transfer all policies of insurance effected upon the structures, erections or fixtures on the Charged Premises, (with the mortgage clause in a form approved by the Chargee attached) and the indemnity which may become due therefrom, to the Chargee, and the Chargee shall have a lien for its mortgage debt on all insurance on the said structures, erections or fixtures and may elect to have these insurance monies applied in reinstatement or towards payment of monies secured hereby whether due or not but shall not be bound to accept the said monies in payment of any principal not yet due.

(viii) There are no actions, suits, judgments, awards or proceedings pending or, to the knowledge of the Chargee, threatened against the Chargee before any court or government department, commission, board, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind, which would, if determined adversely to the Chargee, materially adversely affect its business, property, financial condition or prospects or its ability to perform any of the provisions of this Charge to which it is a party or which purports to affect the legality, validity or enforceability of this Charge, and the Chargee is not in default with respect to any judgment, order, writ, injunction, award, rule or regulation of any governmental authority or any arbitrator, which individually or in the aggregate results in any such material adverse effect.

8. Release

The Chargee has released, remised and forever quitted claim, and by these presents does release, remise, and forever quit claim unto the Chargee, all right, title, interest, claim and demand whatsoever of, unto and out of the said lands and premises hereby charged or intended so to be, and every part and parcel thereof, so as that the Chargee, shall not at any time hereafter have, claim, pretend to, challenge or demand the said lands and premises or any part thereof, in any manner whatsoever, subject always to the proviso for defeasance.

9. Entry After Default and Power of Sale

(a) In the event of a default by the Chargee of payment of the principal and interest or any part thereof or other amounts payable as provided herein and by the Charge required or in the observing, performing, fulfilling or keeping of any or more of the covenants of the Chargee provided in the Charge, the Chargee may enter into possession of the lands and premises hereby charged or intended so to be and take the rents, issues and profits and whether in or out of possession make such lease or leases as he or they shall think fit, and also on 15 days' default as aforesaid and after giving at least 35 days' written notice to the persons and in the manner and form prescribed by Part III of the Mortgage Act, R.S.O. 1990, M.40 as it may be amended from time to time, may sell the lands and premises charged by the Chargee or intended so to be or any part or parts thereof by public auction or private contract, or partly the one and partly the other, and may convey and assure the same when so sold to the purchaser or purchasers thereof, his or their heirs, successors or assigns, or as he or they shall direct and may do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid, and the Chargee shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid unless the same shall happen by reason of his or their wilful neglect or default. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable it is agreed that notice may be effectually given by leaving it with a grown-up person on the Charged Premises, if occupied, or by placing it on some portion of the Charged Premises (if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargee at his last known address, or by publishing it once in a newspaper published in the county or district in which the Charged Premises are situate, or otherwise giving notice as permitted by law, and such notice shall be sufficient although not addressed to any person or persons by name or designation and notwithstanding that any person or persons to be affected thereby may be unknown, unascertained or under disability. And it is hereby further agreed that the proceeds of sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Charged Premises or by reason of non-payment or procuring payment of monies, secured hereby or otherwise, and that the Chargee may sell all or any part of the Charged Premises on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper, and may buy in or re-lease or vary any contract for the sale of the whole or any part of the Charged Premises and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargee only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of said purposes may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder; and that the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any person damaged by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power in damages only. The Chargee may sell fixtures, machinery, crops and standing or fallen trees apart from the Charged Premises, and the purchaser as well as the Chargee shall have all necessary access for securing, cutting and removal. If there is default as aforesaid, (i) the Chargee may sell or lease all or part of the Charged Premises without entering into actual possession of the Charged Premises and when it desires to take possession it may break locks and bolts and while in possession shall only be accountable for monies received by it (ii) subject to the compliance with the Planning Act, R.S.O. 1990, Chapter P.13, as amended and supplemented from time to time, sales may be made from time to time of any part or parts of the Charged Premises to satisfy any portion of the principal or interest or other indebtedness owing to the Chargee pursuant to or in respect of the Charge, leaving the principal or residue thereof secured with the interest payable under the Charge on the remainder of the Charged Premises; (iii) the Chargee may take proceedings to sell and may sell the Charged Premises for part of any sum owing or in arrears subject to the balance of said sum not yet due at the time of the said sale; (iv) the Chargee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending; (v) the Chargee hereby appoints the Chargee the Chargee's true and lawful attorney and agent to make application under the said Planning Act and to do all things and execute all documents to effectually complete any such sale or lease. It is agreed between the parties to the Charge that nothing in this section contained shall prejudice or diminish any other rights and remedies and powers of the Chargee hereunder or in the Charge contained or existing at law by virtue thereof.

(b) Until such sale or sales shall be made as aforesaid, the Chargee shall and will stand possessed of the rents and profits of the said Charged Premises in case it shall take possession of them on default as aforesaid and after such sale or sales shall stand possessed of the monies to arise and be produced from such sales, or which might arise from any insurance upon the Charged Premises or any part thereof upon trust: firstly in payment of all the expenses incident to the sales, leases, conveyances, or attempted sales, or leases, secondly all costs, charges, damages and expense of the Chargee relating to taxes, rents, insurance, repairs, utilities and any other amounts which the Chargee may be paid relating to the Charged Premises, thirdly in discharge of all interest and costs then due to respect of the Charge, fourthly in discharge of the principal monies secured by the Charge, fifthly in payment of the subsequent encumbrances according to their priorities and the residue shall be paid to the Chargee as he may direct and shall also, in such event, at the request, costs and charges of the Chargee transfer, release and assure unto the Chargee or to such person or persons as he shall direct and appoint, all such parts of the Charged Premises as shall remain unsold for the purposes aforesaid, discharged from all the Charge, but no person who shall be required to make or execute any such assurances shall be compelled for the making thereof to go or travel from his usual place of abode. Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that notwithstanding the power of sale and the other powers and provisions contained in the Charge the Chargee shall have and be entitled to its right of foreclosure of the fee interest or equity of redemption of the Chargee in the lands hereby charged as fully and effectually as it might have exercised and enjoyed the same in case the power of sale, and the other former provisos and trusts incident thereto had not been herein contained.

10. Distress and Attachment

The Chargee and any Additional Covenantors agree that the Chargee may distress for arrears of interest against the Charged Premises or any part thereof and recover by way of rent reserved as in the case of a demise the arrears of interest and all costs and expenses incurred in such levy or distress and may also distress for arrears of principal and monthly payments of taxes, if required, in the same manner as if the same were arrears of interest. To the extent the Charged Premises or any part thereof is not residential premises or units so as to be subject to the provisions of the Tenant Protection Act, 1997, S.O. 1997, Chapter 24, as amended from time to time, the Chargee hereby agrees to and becomes a tenant of such Charged Premises to the Chargee from year to year from the day of the execution of the Charge during the term of the Charge and any renewal or renewals thereof at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the indebtedness, the legal relation of landlord and tenant being hereby constituted between the Chargee and the Chargee in regard to the Charged Premises. It is agreed that neither the existence of this provision nor anything done by virtue hereof shall render the Chargee a mortgagee in possession or accountable for any monies except those actually received by it and the Chargee may, on default of payment or in breach of any of the covenants contained or included in the Charge, enter on the Charged Premises and determine the tenancy hereby created without notice.

11. Principal Due on Default

If any default shall occur in the payment of the interest money secured by the Charge, or any part thereof, or on payment of any instalment or principal as the same mature or of any instrument, promissory note, bill of exchange or other obligations now or at any time held by the Chargee in respect of or representing or securing the money hereby secured or any part thereof, or in the performance of any covenant, proviso or agreement herein contained or if any waste be committed or suffered on the Charged Premises when at the option of the Chargee, the principal money secured by the Charge or intended so to be shall forthwith become due and payable in like manner and with the like consequences and effects as if the time herein mentioned for payment of such principal money had fully come and expired, subject to any relief afforded to the Chargee at law. The Chargee may, however, waive its right to call in the principal and shall not be therefore debarred from asserting and exercising its right to call in the principal upon the happening of any future default or breach.

12. Chargee's Quiet Possession Until Default

Until default in the payment of principal or interest secured by the Charge or intended so to be, or any part of either of the same or in the performance of any of the provisions set forth in the Charge, it shall be lawful for the Chargee, peaceably and quietly to have, hold, use, occupy, possess and enjoy the Charged Premises, and receive and take the rents and profits thereon to its own use and benefit, without let, suit, hindrance, interruption, or denial by the Chargee, or of or by any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for it, them or any or either of them.

13. Buildings, Advances and Costs

Any and all buildings erected or to be erected on the Charged Premises shall form part of the security for the full amount of the monies secured by the Charge, and that all advances are to be made in such manner at such times and in such amounts up to the full amount of said monies as the Chargee in its sole discretion may determine and subject always to the provision to which the Chargee hereby agrees that notwithstanding the execution or registration of the Charge or the advancement of any part of the monies, the Chargee is not bound to advance the monies or any undivided portion thereof and the advance notwithstanding the execution or registration of the Charge or the advancement of any part of the monies, but nevertheless the Charge shall take effect forthwith upon the execution thereof by the Chargee and the expenses of the examination of the title and of the Charge and valuation are to be secured by the Charge in the event of the whole or any balance of the principal sum not being advanced, the same to be a charge upon the Charged Premises and shall be without demand thereof, payable forthwith with interest at the rate provided for in the Charge and in default the said Chargee's power of sale, and all other remedies under the Charge shall be exercisable.

14. Fixtures

All structures, fixtures, erections and improvements fixed or otherwise now on or hereafter put upon the Charged Premises, (including but without limiting the generality of the foregoing, all fences, heating, piping, plumbing, aerials, air-conditioning, ventilating, lighting and water heating equipment, cooking and refrigeration equipment, window blinds, radiators and covers, fixed mirrors, fitted blinds, storm windows and storm doors, window screens and screen doors, shutters and awnings, floor coverings, and all apparatus and equipment appurtenant thereto, and all farm machinery and improvements, fixed or otherwise and even though not attached to the lands otherwise than by their own weight, are and shall, in addition to other fixtures thereon, be and become fixtures and form part of the realty and shall be a portion of the security for the indebtedness herein mentioned, unless the Chargee agrees otherwise in writing.

15. Partial Release

The Chargee may at all times release any part or parts of the Charged Premises or any other security or any surety for payment of all or any part of the monies hereby secured or may release the Chargee or any other person from any covenant or other liability to pay the said monies or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Chargee and without thereby releasing any other part of the Charged Premises, or any other securities or covenants herein contained, it being especially agreed that notwithstanding any such release the Charged Premises, securities and covenants remaining unreleased shall stand charged with the whole of the monies secured by the Charge.

16. Default in Prior Charges

If default is made by the Chargee in the observance or performance of any of the covenants, provisos, agreements or conditions contained in any mortgage or charge to which the Chargee is subject or any other Remainder Encumbrance, then the monies hereby secured shall at the option of the Chargee, forthwith become due and be payable, and all the powers in and by the Charge conferred shall become exercisable, and the powers of sale herein contained may be exercised as herein provided.

17. Liens and Construction

Upon the registration of any lien against the Charged Premises, or in the event of any buildings being erected thereon being allowed to remain unfinished or without any work being done on them for a period of 10 days, the principal and interest hereby secured shall, at the option of the Chargee, forthwith become due and payable.

18. Waste, Vacancy and Repair

The Chargee covenants and agrees with the Chargee that the Chargee will not permit waste to be committed or suffered on the Charged Premises and that he will maintain the buildings or other improvements on the Charged Premises in good condition, order and repair to the satisfaction of the Chargee and will not permit or suffer them to become or remain vacant and that the Chargee whenever it deems necessary, may by its surveyor or agent enter upon and inspect the Charged Premises, and the reasonable cost of such inspection shall be added to the debt secured by the Charge. The Chargee covenants not to do anything or let anyone else do anything that lowers the value of the Charged Premises.

19. Alterations

The Chargee covenants and agrees with the Chargee that the Chargee will not make or permit to be made any alterations or additions to the Charged Premises without the consent of the Chargee.

20. Non-Merger

The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenant or affect the Chargee's right to interest at the rate and times herein provided, and further that said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

21. Rights on Default

The Chargee covenants and agrees with the Chargee that in the event of default in the payment of any instalment of principal, interest or taxes hereby secured or any other monies payable hereunder by the

Charger or on breach of any covenant, proviso or agreement herein contained after all or any part of the monies hereby secured have been advanced, the Chargee may at such time or times as it may deem necessary and without the concurrence of any other person enter upon the Charged Premises and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the Charged Premises, or for inspecting, taking care of, leasing, collecting the rents of, and managing generally the Charged Premises as it may deem expedient, and all reasonable costs, charges and expenses including allowances for the time and service of any employee of the Chargee or other person appointed for the above purposes shall be forthwith payable to the Chargee, and shall be a charge upon the Charged Premises secured by the Charge and shall bear interest at the rate aforesaid until paid.

#### 22. Obligations Survive Sale

No sale or other dealing by the Charger with the Charged Premises or any part thereof shall in any way change the liability of the Charger or in any way alter the rights of the Chargee as against the Charger or any other person liable for payment of the monies secured by the Charge.

#### 23. Debt on Sale

In the event of:

- the Charger selling, conveying, transferring, optioning or entering into any agreement of sale or transfer of the title of the Charged Premises to a purchaser, grantee or transferee not approved in writing by the Chargee; or
  - such purchaser, grantee or transferee failing to (a) apply for and receive the Chargee's written approval as aforesaid, (b) personally assume all the obligations of the Charger under this Charge, and (c) execute an Assumption Agreement in the form required by the Chargee; or
  - a change in control of the Charger or a change in the beneficial ownership of the Charged Premises, without the prior approval in writing of the Chargee. A change of control means, in the case of any corporation or partnership, the transfer or issue by sale, assignment, subscription, transmission on death, mortgage, charge, security interest, operation of law or otherwise, of any shares, voting right or interest which would result in any change in the effective control of such corporation or partnership unless such change occurs as a result of trading in the shares of a corporation listed on a recognized stock exchange in Canada or the United States.
  - the Charger, without the prior written consent of the Chargee, granting, permitting or causing any mortgage, charge or encumbrance whatsoever or lien other than any prior mortgage or charge to which this Charge is expressly made subject, to be registered or acquired against the Charged Premises;
- then, and in each of such events, at the option of the Chargee, all monies hereby secured with accrued interest thereon and unearned interest thereon shall forthwith become due and payable.

#### 24. Prior Encumbrances

The Chargee may pay the amount of any encumbrance, lien or charge now or hereafter existing, or to arise or to be claimed upon the Charged Premises having priority over this Charge, including any taxes, utility charges or other rates on the Charged Premises or any of them, or any amounts payable to the Condominium Corporation, and may pay all costs, charges and expenses and all solicitors' charges or commissions, as between a solicitor and his client, which may be incurred in taking, recovering and keeping possession of the Charged Premises and generally in any proceedings or steps of any nature whatsoever properly taken in connection with or to realize this security, or in respect of the collection of any overdue interest, principal, insurance premiums or any other monies whatsoever payable by the Charger hereunder whether any action of any judicial proceedings to enforce such payments has been taken or not, and the amount so paid and insurance premiums for fire or other risks or hazards and any other monies to be paid hereunder by the Chargee shall be added to the debt hereby secured and be a charge on the Charged Premises and shall bear interest at the rate aforesaid, and shall be payable forthwith by the Charger to the Chargee, and the non-payment of such amount shall be a default of payment within the meaning of those words in the paragraph dealing with power of sale and shall enable the Chargee to exercise the power of sale and all other remedies hereby given. In the event of the Chargee paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the monies advanced on the security or otherwise, he shall be entitled to all the rights, equities and securities of the person or persons, company, corporation, or Government so paid off, and is hereby authorized to retain any discharge thereof, without registration, for a longer period than 6 months if he thinks proper to do so.

#### 25. Ontario New Home Warranties Plan Act

If the Chargee incurs any cost or expense of any nature or kind in any way arising from or relating to the Act above referred to and the Regulations thereunder (in this section, the "Act"), including, without any limitation whatsoever, any cost or expense relating to registration as a Vendor under the Act or cancelling the Charged Premises or entering into any agreement or agreement relating to performance of warranty obligations or performing any warranty obligations, all such cost and expense shall be added to the debt hereby secured and be a charge on the Charged Premises in priority to all other encumbrances registered or arising subsequent to the Charge and shall bear interest at the rate aforesaid, and shall be payable forthwith by the Charger to the Chargee.

#### 26. Extension

No extension of time given by the Chargee to the Charger, or anyone claiming under the Charger or any other dealing with the owner of the Charged Premises, or of the equity of redemption of all or any part of the Charged Premises, shall in any way affect or prejudice the rights of the Chargee against the Charger or any other person liable for the payment of the monies hereby secured.

#### 27. Bonus on Default

On default of payment of any of the monies hereby secured or payable, the Chargee shall be entitled to require payment, in addition to all other monies hereby secured or payable, hereunder of a bonus equal to 3 months interest in advance at the rate aforesaid upon the principal money hereby secured, and the Charger shall not be entitled to require a discharge of the Charge without such payment but nothing contained in the Charge shall affect or limit the right of the Chargee to recover by action or otherwise the principal so in arrears after default has been made.

#### 28. Discharge, Partial Discharge and Subdivisions

The Chargee shall have a reasonable time after payment of the monies secured by the Charge in full within which to prepare and execute a discharge (or, if requested, an assignment) of the Charge, and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargee and all legal and other expenses for the preparation and execution of such discharge and assignment shall be borne by the Charger. The Charger may, at its option, establish terms upon which it will partially discharge parts of the Charged Premises from this Charge. If a partial discharge is given, whether for value or not, the Charge shall continue in full force and effect against the balance of the Charged Premises. If the Charged Premises are subdivided, this Charge shall be secured by each part into which the Charged Premises are subdivided.

#### 29. Other Security

The Chargee is in addition to and not in substitution for any other security held by the Chargee including any promissory note or notes for all or any part of the monies secured hereunder, and it is understood and agreed that the Chargee may pursue its remedies thereunder or hereunder concurrently or successively at its option. Any judgment or recovery hereunder or under any other security held by the Chargee for the monies secured by the Charge shall not affect the right of the Chargee to realize upon this or any other such security.

#### 30. Spouse's Consent

The spouse of the Charger so named in the Charge hereby consents to the transaction evidenced by the Charge and releases all interest in the Charged Premises to the extent necessary to give effect to the rights of the Chargee hereunder, and agrees that the Chargee may, without further notice, deal with the Charged Premises and the debt hereby created as the Chargee may see fit.

#### 31. Family Law Act

The Charger consents and agrees that:

- the Charger or the owner from time to time of the Charged Premises will advise and keep advised the Chargee as to whether the Charger or the owner from time to time is a spouse as defined by Section 1 of the Family Law Act (in this section, the "Act"), or any amendments thereto, and if so, the name of the spouse, and of any change in spousal status or in the status of the Charged Premises as the matrimonial home within the meaning of the Act, and
- the Chargee shall be kept fully informed of the names and addresses of the legal and beneficial owner(s) from time to time of the Charged Premises, the equity of redemption and of any spouse who is not an owner but has a right of possession in the Charged Premises, and
- forthwith on request he will furnish the Chargee with such evidence in connection with any of the matters referred to in this section as the Chargee may from time to time require, including, without limitation, his and his spouse's name, address and birth date and his spouse's authorization to the Registrar under The Vital Statistics Act of the Province of Ontario to provide the Chargee from time to time on request all information in its possession relative to any marriage, divorce or death of the Charger or his spouse, and on default the principal money, interest and all other monies hereby secured shall, at the option of the Chargee, forthwith become due and payable.

#### 32. Additional Covenantor or Guarantor

If a party is named in the Charge or schedule thereto as covenantor or guarantor then each such party (the "Additional Covenantor"), jointly and severally in the case of more than one covenantor and unconditionally for himself, his heirs, executors, administrators and assigns, in consideration of the loan referred to in the Charge and the sum of One (\$1.00) Dollar now paid by the Chargee to him (receipt whereof is hereby acknowledged),

- covenant with the Chargee, as principal debtor and not as surety, that he will well and truly pay or cause to be paid to the Chargee all monies payable hereunder on the days and times and in the manner herein limited and appointed for the payment thereof;
- unconditionally guarantee full performance and discharge by the Charger of all the obligations of the Charger under the provisions of this Charge at the times and in the manner herein provided;
- covenant and agree to indemnify and save harmless the Chargee against and from all losses, damages, costs and expenses which the Chargee may sustain, incur or be or become liable for by reason of:
  - the failure for any reason whatsoever of the Charger to pay the monies expressed to be payable pursuant to this Charge or to do and perform any other acts, matter or thing pursuant to the provisions of this Charge;
  - any act, action or proceeding of or by the Chargee for or in connection with the recovery of the said monies or the obtaining of performance by the Chargee or any other person liable hereunder of any other act, matter or thing pursuant to the provisions of this Charge;
  - agrees that the Chargee shall not be obliged to proceed against the Charger or any other person liable hereunder or to enforce or exhaust any security before proceeding to enforce the obligations of the Additional Covenantor herein stipulated and the enforcement of such obligations may take place before, after or contemporaneously with enforcement of any debt or obligation of the Charger or any other person liable hereunder or the enforcement of any security for any such debt or obligation;
  - agrees that any waiver by the Chargee of any right or remedy available to it against the Charger or the granting by the Chargee to the Charger of any extension of time shall in no way affect the obligations of the Additional Covenantor hereunder;
  - agrees that upon written demand being made by the Chargee, the Additional Covenantor will reimburse the Chargee, to the extent that reimbursement is not made by the Charger, for all costs and expenses, including legal fees and disbursements incurred by the Chargee in recovering from the Charger any monies hereby secured or in the enforcement of this Guarantee;
- agrees that until all monies hereby secured have been paid to the Chargee in full, the Additional Covenantor shall have no right of subrogation and the Additional Covenantor hereby waives unconditionally any right to participate in any collateral security given by the Charger to the Chargee;
- agrees that the Chargee may at any time and from time to time without the consent of or notice to the Additional Covenantor, without incurring any responsibility to the Additional Covenantor and without thereby relieving the Additional Covenantor of any of its obligations hereunder:
  - change the manner, place or terms of payment of any monies payable by the Charger hereunder;
  - settle or compromise any of the Charger's obligations hereunder;
  - exercise or refrain from exercising any rights or remedies against the Charger;
  - sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property pledged or mortgaged to the Chargee to secure the Charger's obligations hereunder;
  - make new advances, grant extensions of time for payment, renew or extend the term of this Charge and make any amendments or modifications to this Charge.
- A release of one Additional Covenantor shall not release or affect the obligations of any other Additional Covenantor or the Charger.

#### 33. No Prejudice from Failure to Enforce Rights

No failure to enforce at any time or from time to time any of the rights of the Chargee hereunder shall prejudice such rights or any other rights of the Chargee; so performance or payment by the Chargee in respect of any breach or default hereunder of the Chargee shall relieve the Charger from any default hereunder; and no waiver at any time or from time to time of any such rights of the Chargee shall prejudice such rights in the event of any future default or breach.

#### 34. Farm Lands

If the Charged Premises are farm lands, the Charger will in each year during the currency of the Charge either put into crop or summer fallow in good, proper and husband-like manner every portion of the Charged Premises which has been or may hereafter be brought under cultivation and will keep the Charged Premises clean and free from all noxious weeds and generally see that the Charged Premises does not depreciate in any way.

#### 35. Condominiums

If the Charge is of land within a condominium, the following provisions shall apply:

- The Charger consents and agrees at all times and from time to time to observe and perform all duties and obligations imposed on him by the Condominium Act and by the Declaration and the By-laws, as amended from time to time, of the Condominium Corporation, by virtue of his ownership of the Charged Premises. Any breach of the said duties and obligations shall constitute a breach of covenant under the Charge.
- Without limiting the generality of the foregoing, the Charger consents and agrees that he will pay promptly when due any contributions to common expenses or special assessments required of him as

Owner of the Charged Premises and in the event of his default in doing so the Chargee. At its option, may pay the same and the amount so paid shall be added to the debt secured by the Charge and shall be a charge on the Charged Premises and shall bear interest at the same rate from the time of such payment and shall be payable forthwith by the Chargee to the Chargee whether or not any payment in default has priority to the Charge or any part of the monies secured thereby. The Chargee covenants to transmit to the Chargee, forthwith upon request, satisfactory proof that all common expenses and special assessments levied or assessed against the Charged Premises have been paid in full. Failure to make such payment is deemed a default under this Charge as if there was a failure to make a payment required to be paid to the Chargee.

- (c) The Chargee hereby irrevocably authorizes and empowers the Chargee to exercise the right of the Chargee as an Owner of the Charged Premises to vote or to consent in all matters relating to the affairs of the Condominium Corporation provided that:
- (i) The Chargee may at any time or from time to time give notice in writing to the Chargee and the said Condominium Corporation that the Chargee does not intend to exercise the said right to vote or consent and in that event until the Chargee revokes the said notice the Chargee may exercise the right to vote. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter.
  - (ii) The Chargee shall not by virtue of the assignment to the Chargee of the right to vote or consent be under any obligation to vote or consent or to protect the interests of the Chargee.
  - (iii) The exercise of the right to vote or consent shall not constitute the Chargee a Chargee in possession.
- (d) The Chargee may vote, refuse to vote, grant consent or refuse to grant consent in its sole discretion without in any way consulting with the Chargee and without incurring liability to the Chargee or anyone else.
- (e) The Chargee acknowledges that he has received a copy of the Declaration and By-laws (individually a "By-law" and collectively the "By-laws") of the Corporation of which this unit forms a part and agrees to comply with the stipulations, restrictions, covenants and provisions therein and with the By-laws or Rules and Regulations passed pursuant thereto from time to time.
- (f) The Chargee covenants with the Chargee to deliver to the Chargee in person or by prepaid registered mail, a copy of the following:
- (i) each Notice of Meeting sent to the Chargee pursuant to the provisions of the Declaration and By-laws or the Condominium Act, either as owner of the unit or as a member of the Corporation, which copy is to be received by the Chargee at least 5 clear days prior to the date upon which such meeting is fixed to convene;
  - (ii) every claim against the Chargee or demand for payment from the Chargee, which claim or demand is pursuant to the provisions of the Declaration and By-laws, which copy is to be received by the Chargee at least 5 clear days prior to the date upon which such claim or demand becomes due and payable;
  - (iii) every notice received by the Chargee of a breach by the Chargee of the provisions, restrictions, terms, specifications or stipulations set out in the Declaration and By-laws, which copy is to be received by the Chargee within 5 days of the date upon which such notice is received by the Chargee;
  - (iv) every request or claim for the consent of the Chargee affecting the unit or the common elements of the Condominium Plan, which copy is to be received by the Chargee within 5 days of the date upon which such demand or request is received by or made of the Chargee;
  - (v) any information known to the Chargee concerning the termination of a Management Agreement or Insurance Trust Agreement for the Corporation, such information to be delivered to the Chargee immediately upon the Chargee learning of such information.
- (g) The Chargee by these presents does hereby charge his interest in the assets of the Corporation, which assets are now owned or may hereinafter be acquired by the Corporation, in a like manner as the lands charged in this Charge.
- (h) The Chargee covenants that he will not without permission in writing from the Chargee, do any act or fail to do any act which will or may have the effect of furthering any of the following:
- (i) the engagement by the Corporation of a management company or other person for the property who is not or who has not been actively engaged in the field of professional property management; or
  - (ii) the leasing by the Corporation of any of the common elements of the property.
- (i) In the event that the government of the property included in the Condominium Plan is terminated, or in the event of the sale of the property or of a part of the common elements of the Condominium Plan being authorized by a vote of the owners of the unit on the said Plan, then in such event, the monies hereby secured shall become due and payable, at the option of the Chargee, and all the powers in being authorized by a vote of the owners of the unit on the said Plan shall continue to apply to the Charged Premises. The Chargee is authorized to agree to a partition of the Condominium property and pay or receive equalization due and payable, all of the terms of this Charge shall continue to apply to the Charged Premises. The Chargee is authorized to agree to a partition of the Condominium property and pay or receive equalization due and payable, all of the terms of this Charge shall continue to apply to the Charged Premises. The Chargee hereby assigns to the Chargee its share of the assets of the Condominium and the proceeds of the sale payments, execute documents and do all acts necessary or advisable to carry out the partition. The Chargee hereby assigns to the Chargee its share of the assets of the Condominium and the proceeds of the sale payments, execute documents and do all acts necessary or advisable to carry out the partition. Any such amounts received by the Chargee shall be applied to expenses and the indebtedness under this Charge. Any balance remaining owing shall be payable by the Chargee to the Chargee.

### 36. Leasehold Interest

If the Chargee is a tenant of the Charged Premises, the following provisions apply in addition to the other provisions of this Charge as applicable:

- (a) The Chargee represents, warrants and covenants that as of the date of this Charge and each subsequent advance that:
    - (i) The Charged Premises are leased by the Chargee under a lease (the "Lease") a true copy of which, together with any amendments or modifications, has been provided to the Chargee;
    - (ii) The Lease is a valid, binding and existing Lease and all information provided in the Chargee respecting the Lease is true;
    - (iii) All rents and all other amounts due under the Lease have been paid to date and all future rents and amounts payable will be paid as they come due;
    - (iv) The Chargee has obtained any necessary consent to assign, sublease and charge the Lease under this Charge and has the full power and lawful authority to charge and demise by way of sublease, the Charged Premises to the Chargee according to the terms of this Charge and is not aware of any fact or notice that would materially affect the security provided in this Charge;
    - (v) There are no limitations, restrictions or encumbrances on the Chargee's interest in the Charged Premises except those which the Chargee has agreed, in writing, to accept;
    - (vi) The Chargee has complied with and in the future will comply with all other terms of the Lease and shall keep the Lease in good standing;
    - (vii) The Chargee will not surrender its interest in the Lease nor terminate the Lease nor will the Chargee take any action or give any notice which would have the effect of terminating or permitting the termination of the Lease nor shall the Chargee modify, change, supplement, alter or amend the Lease, either orally or in writing, without the prior written consent of the Chargee, and the Chargee hereby assigns to the Chargee all its rights, privileges and prerogatives under the Lease to terminate, surrender, cancel, modify, change, supplement, alter or amend the Lease;
    - (viii) The Chargee covenants that it will:
      - i. promptly notify the Chargee in writing of the receipt by the Chargee of any notice (other than notices customarily sent on a regular periodic basis which the Chargee has previously received) from the Landlord under the Lease and of any notice relating to or claiming any default by the Chargee in the performance or observance of any of the terms, covenants or conditions on the part of the Chargee to be performed or observed under the Lease and a copy of the response it intends to send to the Landlord under the Lease setting out the manner in which it will rectify or dispute the default;
      - ii. promptly notify the Chargee in writing of the receipt by the Chargee of any notice from the Landlord under the Lease of termination of the Lease;
      - iii. promptly notify each tenant under each sublease of the assignment of rentals to the Chargee; and
      - iv. promptly notify the Chargee in writing of the receipt by the Chargee of any notice from a tenant or subtenant under any lease (other than notices customarily sent on a regular periodic basis which the Chargee has previously received);
    - (ix) that the Chargee will comply with and keep in good standing the Permitted Encumbrances;
    - (x) that in the event any building is hereafter erected on the Charged Premises and remains unfinished and without any work being done in it for a period that is unreasonable in the circumstances, the Chargee may at such time or times as the Chargee may deem necessary after giving notice to the Chargee and without the concurrence of any person, enter upon the Charged Premises and do all work necessary to protect the same from deterioration and may make such arrangements for completing the construction of, repairing or putting in order any improvements to the Charged Premises or for inspecting, taking care of, leasing, collecting the rents of and managing generally the Charged Premises as the Chargee may deem expedient and all reasonable costs, charges and expenses, including allowances for the time and service of any employee of the Chargee or other person appointed for the above purposes, shall be forthwith payable to the Chargee and shall be a charge upon the Charged Premises and shall bear interest at the interest rate provided for herein;
    - (xi) that it will promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority or agency concerning the Charged Premises (save where such compliance is the obligation of any of the tenants under the Lease, in which case the Chargee will use its best efforts to cause such tenants to comply with same) and further agrees to make or cause to be made any and all improvements thereon or alterations thereto, structural or otherwise, ordinary or extraordinary, which may be required at any time hereafter by any such present or future law, rule, requirements, order, direction, ordinance or regulation;
    - (xii) the Lease provides for notice of default under the Lease to the Chargee and allows the Chargee to pursue its remedies; and
    - (xiii) it shall execute and deliver to the Chargee such further assurances advisable in the Chargee's opinion for validly giving to the Chargee the charge, sublease and assignments hereby intended to be created in such form as the Chargee may request.
  - (b) The Chargee hereby charges the Charged Premises to the Chargee by way of sublease of the Charged Premises for the term of the Lease less one day and assigns to the Chargee any other benefits contained in the Lease.
  - (c) The Chargee covenants not to do anything that will interfere with the Chargee or the Chargee's interest in the Charged Premises and further covenants to provide the Chargee with a true copy of any notice or request received or given concerning the Lease and to notify the Chargee immediately if the Landlord advises the Chargee in default or the Landlord intends to or takes any steps to effect early termination of the Lease.
  - (d) The Chargee may, in its sole discretion, cure any default by the Chargee under the Lease but is not required to do so. If the Chargee cures any such default, the costs and expenses so incurred shall be repaid by the Chargee forthwith, shall bear interest at the rate set out in this Charge and shall be added to the principal amount hereby secured.
  - (e) The implied covenants deemed to be included in a charge pursuant to subsection 7(1) of the Land Registration Reform Act, R.S.O. 1990, c.L.4 shall be and are hereby expressly excluded and replaced by the provisions hereof which are covenants by the Chargee for itself and its successors and assigns to and for the benefit of the Chargee and its successors and assigns;
  - (f) If any of the forms of words contained herein are substantially in the forms of words contained in Column One of Schedule "B" of the Short Form of Mortgage Act and distinguished by a number therein, this charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule "B" of the said Act distinguished by the same number, and this charge shall be interpreted as if the Short Form of Mortgage Act was still in force and effect;
  - (g) If all or any part of the Charged Premises at any time or from time to time is taken by the exercise of any power of expropriation or under any other similar power or by sale in reasonable anticipation thereof, the Chargee shall release the part of the Charged Premises so taken or sold upon:
    - (i) receipt by the Chargee of a certificate signed by the President or Secretary of the Chargee briefly describing the part of the Charged Premises taken and the amount of the compensation therefor, stating either that such amount has been determined by arbitration or judicial proceedings or that it is in the opinion of the President or Secretary fair and reasonable and stating the extent, if any, to which tenants under the Lease may be entitled to any part of such compensation;
    - (ii) the assignment of and the deposit with the Chargee of the compensation for such part of the Charged Premises; and
    - (iii) receipt by the Chargee of an opinion of its counsel stating that such part of the Charged Premises has been duly taken by the exercise of one of the aforesaid powers.
- If the Chargee proposes or proceeds to sell any part of the Charged Premises to the expropriating authority in anticipation of expropriation, as aforesaid, it shall first obtain the written consent of the Chargee.
- (b) In case the whole or substantially the whole of the Charged Premises shall be taken by exercise of any expropriation powers, the proceeds of any such taking are hereby assigned to the Chargee and shall be applied by the Chargee to reduce the principal amount outstanding and should such proceeds, together with all other assets held by the Chargee and available for that purpose, be insufficient to pay off all of the outstanding principal amount and all interest thereon and all other moneys (if any) outstanding hereunder, such proceeds shall be applied to the reduction of the principal amount as aforesaid and the Chargee the outstanding principal amount and all interest thereon and all other moneys (if any) outstanding hereunder, such proceeds shall be applied to the reduction of the principal amount as aforesaid and the Chargee the hereby covenants to deposit with the Chargee an amount that, together with such proceeds and the other assets and security held by the Chargee and available for that purpose, will be sufficient to effect the payment of all of the principal amount outstanding together with all interest thereon and other moneys (if any) outstanding hereunder.
  - (i) If the Chargee acquires the fee simple title to the Charged Premises, then contemporaneously with the execution and delivery of the conveyance of the Charged Premises to the Chargee, the Chargee shall execute and deliver to the Chargee a first freehold charge having priority to any encumbrances upon the Charged Premises, substantially upon the terms and conditions of this charge or as otherwise agreed upon between the Chargee and the Chargee, of the Charged Premises acquired pursuant to such conveyance together with all buildings or structures then or thereafter constructed, erected or placed thereon with all their appurtenances, fixtures and chattels, in favour of the Chargee, for an amount equal to the principal amount, accrued interest, any additional payments, together with any costs, charges and other moneys then outstanding under this charge at the time of such conveyance and upon the registration of such first freehold charge this debenture shall be discharged.

### 37. Building Mortgage

If the purpose of this Charge is to finance improvements on the Charged Premises, the following conditions shall apply:

- (a) All construction on the Charged Premises shall be carried out by reputable contractors with sufficient experience in a project of this nature and size, which contractors and contracts must be prior approved by the Chargee in writing, such approval not to be unreasonably withheld;
- (b) The renovations to the building and structures located on the Charged Premises having been commenced shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the Plans and Specifications delivered to the Chargee and to the satisfaction of all governmental and regulatory authorities having jurisdiction;
- (c) Should construction on the project on the Charged Premises cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Chargee) for a period of ten consecutive days (Saturdays, Sundays and statutory holidays excepted), then this Charge, and all monies secured hereby, at the option of the Chargee shall immediately become due and payable. In the event that construction does cease, then the Chargee shall have the right, at its sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Chargee and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) added to the principal amount of this Charge, shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Chargee shall have the same rights and remedies with respect to collection of same as it would have with respect to collection of principal and interest hereunder or at law;
- (d) Advances secured by this Charge will be advanced in stages on a cost to complete basis as construction of the building(s) or other structure(s) on the Charged Premises proceed(s) or as the conditions as enumerated by the commitment or facility lender are complied with. At all times there shall be sufficient funds advanced under this Charge and retained by the Chargee to complete the construction and/or renovation of the project on the Charged Premises as well as a holdback of 10 percent (10%) with respect to work already completed;
- (e) All advances which are made from time to time hereunder shall be based on Certificates of an Architect or other person satisfactory to the Chargee and/or retained by the Chargee at the expense of the

Chargor, which Certificates shall without limitation certify the value of the work completed and the estimated costs to complete any uncompleted work and such Certificates shall further certify that such completed construction and/or renovation to the date of such Certificate shall be in accordance with the approved Plans and Specifications for the said construction and further, in accordance with the Building Permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Premises. Such Certificates with respect to any values shall not include materials on the site which are not incorporated into the building;

- (f) The Chargor covenants and agrees upon completion of the project to be erected on the Charged Premises to deliver as further security for the loan herein secured, a Chattel Mortgage or Security Agreement covering the goods, equipment, proceeds, inventory and chattels to be installed in the said building, said Chattel Mortgage or Security Agreement to be in a form approved by the solicitor of the Chargor;
- (g) The Chargor shall pay an inspection fee in such reasonable amount as the Chargor may charge from time to time for each such inspection and the Chargor's solicitors shall be paid their reasonable fees and disbursements for each subsite and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Chargor shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.

#### 36. Receivership

Notwithstanding anything herein contained if there shall be default under the provisions of the Charge, the Chargee may, at such time and from time to time and with or without entry into possession of the Charged Premises, or any part thereof, by instrument in writing appoint any person, whether an officer or officers or an employee or employees of the Chargee or not, to be a receiver (which terms as used herein includes a receiver manager and also includes the plural as well as the singular) of the Charged Premises, or any part thereof, and of the rents and profits thereof, and with or without security, and may from time to time by similar writing remove any receiver and appoint another in his stead, and that, in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor, but no such appointment shall be revocable by the Chargor. The Chargor hereby agrees and consents to the appointment of such receiver of the Chargee's choice and without limitation, whether pursuant to the Charge, the Mortgage Act, the Construction Lien Act or pursuant to the Courts of Justice Act (as the Chargee may at its sole option require). Upon the appointment of any such receiver from time to time the following provisions shall apply:

- (a) Every such receiver shall have unlimited access to the Charged Premises as agent and attorney for the Chargor (which right of access shall not be revocable by the Chargor) and shall have full power and unlimited authority to:
- collect the rents and profits from tenancies whether created before or after these presents;
  - rent any portion of the Charged Premises which may become vacant on such terms and conditions as he considers advisable and enter into and execute leases, accept surrenders and terminate leases;
  - complete the construction of any building or buildings or other erections or improvements on the Charged Premises left by the Chargor in an unfinished state or award the same to others to complete and purchase, repair and maintain any personal property including, without limitation, appliances and equipment, necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Chargor's materials, supplies, plans, tools, equipment (including appliances) and property of every kind and description;
  - manage, operate, repair, alter or extend the Charged Premises or any part thereof.
- The Chargor undertakes to ratify and confirm whatever any such receiver may do in the Charged Premises.
- (b) The Chargee may at its discretion vest the receiver with all or any of the rights and powers of the Chargee.
- (c) The Chargee may fix the reasonable remuneration of the receiver who shall be entitled to deduct the same out of the revenue or the sale proceeds of the Charged Premises.
- (d) Every such receiver shall be deemed the agent or attorney of the Chargor and, in no event, the agent of the Chargee and the Chargee shall not be responsible for his acts or omissions.
- (e) The appointment of any such receiver by the Chargee shall not result in or create any liability or obligation on the part of the Chargee to the receiver or to the Chargor or to any other person and no appointment or removal of a receiver and no actions of a receiver shall constitute the Chargee a Chargee in possession of the Charged Premises.
- (f) No such receiver shall be liable to the Chargor to account for monies other than monies actually received by him in respect of the Charged Premises, or any part thereof, and out of such monies so received every such receiver shall, in the following order, pay:
- his remuneration aforesaid;
  - all costs and expenses of every nature and kind incurred by him in connection with the exercise of his powers and authority hereby conferred;
  - interest, principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to these presents, including taxes, insurance premiums and every other proper expenditure incurred by him in respect to the Charged Premises or any part thereof;
  - to the Chargee all interest, principal and other monies due hereunder to be paid in such order as the Chargee in its discretion shall determine;
  - and thereafter, every such receiver shall be accountable to the Chargor for any surplus.

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

- (g) Save as to claims for accounting under clauses (f) of this paragraph, the Chargor hereby releases and discharges any such receiver from every claim of every nature, whether sounding in damages or not which may arise or be caused to the Chargor or any person claiming through or under him by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of dishonesty or fraud.
- (h) The Chargee may, at any time and from time to time, terminate any such receivership by notice in writing to the Chargor and to any such receiver.
- (i) The statutory declaration of an officer of the Chargee as to default under the provisions of these presents and as to the due appointment of the receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with a receiver who is ostensibly exercising powers herein provided for and such dealing shall be deemed, as regards such person, to be valid and effectual.
- (j) The rights and powers conferred herein in respect of the receiver are supplemental to and not in substitution of any other rights and powers which the Chargee may have.
- (k) Any such receiver shall have the power to borrow money to carry on the business of the Chargor or to maintain the whole or any part of the Charged Premises, in such amounts as the receiver may from time to time deem necessary and in so doing the receiver may issue certificates that may be payable when the receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the lands in priority to this Charge.
- (l) Any such receiver shall have the power to execute and prosecute all suits, proceedings and actions which the receiver in his opinion considers necessary for the proper protection of the Charged Premises, to defend all suits, proceedings and actions against the Chargor or the receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action.

#### 39. Renewal or Extension: Attention Subsequent Interests

The Charge may be renewed or extended by an agreement in writing, before, at or after maturity, for any term with or without an increased rate of interest notwithstanding that there may be subsequent encumbrances and it shall not be necessary to register any such agreement in order to retain priority for the charge so altered over any instrument registered subsequently to the Charge. However, nothing contained in this paragraph shall confer any right of renewal or extension upon the Chargor.

#### 40. Compliance with Law

The Chargor covenants and agrees to promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority and agency concerning the Charged Premises and will at its own expense make any and all improvements, repairs or alterations thereto, structural or otherwise, which may be required at any time by any such present or future law, rule, requirement, order, direction, ordinance or regulation. The Chargee, whenever it deems necessary, may by its surveyor or agent enter upon and inspect the Charged Premises and make such improvements and alterations as the Chargee deems necessary to render the Charged Premises in compliance with such laws, rules, requirements, orders, directions, ordinances or regulations and the reasonable cost of such inspection, improvements and alterations with interest at the rate set forth in the Charge shall be payable forthwith and be a charge upon the Charged Premises secured by the Charge.

#### 41. Chargee Expenses

The Chargor agrees to pay the reasonable and necessary costs, charges and expenses of and incidental to this Charge, and to any and all other documents required in connection therewith, and of any amendment or renewal thereof, and of anything done in connection with the enforcement of the security granted hereby or the procuring or payment of any monies payable hereunder including, without limiting the generality of the foregoing, all solicitor's fees, costs and expenses of examination of title, and the obtaining of the opinion of counsel for the Chargee thereon and all costs and expenses relating to the Charged Premises in connection with the foregoing. The Chargor further agrees that such amounts shall be paid forthwith upon demand and until paid shall bear interest at the rate provided for in the Charge and shall be a charge on the Charged Premises.

#### 42. Assignment of Rents

- (a) To further secure the indebtedness secured hereunder, the Chargor hereby assigns and transfers unto the Chargee all rents, income, profits and other benefits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal or any letting of, or of any agreement for the use or occupancy of the Charged Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to, or which may be granted, it being the intention of the parties to establish an absolute transfer and assignment of all such rents, income, profits and other benefits under such leases and agreements and all the avails thereunder unto the Chargee;
- (b) If the Chargor further covenants and agrees to execute and deliver at the request of the Chargee all such further assurances and assignments with respect to such tenancies as the Chargee shall from time to time require, and shall do all other acts with respect to such tenancies as requested by the Chargee;
- (c) In the event that the Chargee collects any payments of rent due to the Chargor's default, the Chargee shall be entitled to receive from such rent a management fee of 10 percent (10%) of all the gross receipts from such rent, it being understood for greater certainty that the Chargor and Chargee have agreed that in the circumstances a management fee equal to 10 percent (10%) of gross receipts received by the Chargee in the collection of such rents is a just and equitable fee having regard to the circumstances;
- (d) The Chargor covenants and agrees that no rent has been or will be paid by any person in possession of any portion of the premises described herein, more than 1 month in advance and that the payment of some of the rents to secure for any portion of the Charged Premises have been or will be waived, released, reduced, discounted or otherwise discharged or comprised by the Chargor;
- (e) Provided further that the Chargor will not perform any act or do any thing or omit to do any thing which will cause the default of any lease in or of the buildings or structures erected on the Charged Premises, unless consented to by the Chargee;
- (f) The Chargor agrees that all leases, offers to lease and agreements to lease shall be bona fide and shall be at rates and on terms consistent with comparable space in the area of the Charged Premises secured hereunder and provided further that the Chargor shall obtain the consent of the Chargee prior to the execution of any lease, offer, agreement to lease or any tenancy agreement;
- (g) Nothing contained under this paragraph shall have the effect of making the Chargee a Chargee in possession.

#### 43. Payments

- (a) Payments hereby secured shall be made to the Chargee at the address designated in the Charge, or at such other place as the Chargee may designate in writing to the Chargor from time to time.
- (b) Any payment of principal, interest or principal and interest combined made after 1:00 p.m. shall be deemed, for the purpose of calculation of interest, to have been made and received on the next bank business day.
- (c) Any payment to be made hereunder which is not made by the Chargor within the time limited for such payment hereunder shall be added to the debt hereby secured and shall be payable forthwith, with interest at the rate aforesaid and in default, this Charge shall immediately become due and payable at the option of the Chargee and all powers in this Charge conferred shall become exercisable.
- (d) Any payment made by the Chargee on account of realty taxes and insurance premiums, or otherwise, as provided in this Charge, shall be added to the debt hereby secured and shall be payable forthwith, with interest, at the rate aforesaid and in default, this Charge shall immediately become due and payable at the option of the Chargee and all powers in this Charge conferred shall become exercisable.

#### 44. Non-Merger

Notwithstanding the registration of this Charge and the advance of funds pursuant hereto, the terms and/or conditions of the commitment or facility letter pertaining to the loan transaction evidenced by this Charge shall remain binding and effective on the parties hereto, and shall not merge in this Charge nor in any document executed and/or delivered on closing of this transaction, and the terms thereof are incorporated herein by reference. In the event of any inconsistency between the terms of such commitment or facility letter and this Charge, the Chargee shall decide in its sole and unfettered discretion which shall prevail.

#### 45. Urea Formaldehyde Foam Insulation, Asbestos and Pets

The Chargor warrants that the Charged Premises is not now and never has been insulated with or contains urea formaldehyde foam insulation and has not been constructed with, or upon lands containing, any toxic or noxious materials, including asbestos, that reduce or will reduce if known, the fair market value of the Property nor is the Charged Premises infested with pests such as termites or carpenter ants. The Chargor will not insulate or allow any buildings, erections, additions or improvements to be insulated with or contain Urea Formaldehyde Foam Insulation or asbestos nor infested with pests. The indebtedness will immediately become due and payable if at any time it is determined that any building, erection, addition or improvement subject to this Charge contains urea formaldehyde foam insulation, or has been constructed with or upon lands containing any toxic or noxious materials that reduce or will reduce if known, the fair market value of the Property or is infested with pests.

#### 46. Environmental

- (a) The Chargor hereby represents, warrants and covenants that:
- neither the Chargor, nor, to the best knowledge of the Chargor, any other person has ever caused or permitted any Hazardous Substance (defined herein) to be placed, held, located or disposed of on, under or at any Charged Premises to the extent that such would be in violation of any Environmental Law;
  - that all businesses and assets at the Charged Premises are and will be operated in compliance with Environmental Laws (including, without limitation laws respecting the disposal, release or emission of any Hazardous Substance);
  - no enforcement actions in respect of Environmental Laws are threatened or pending. The Chargor permits the Chargee to conduct inspections and appraisals of all or any of its records, business and assets at any time and from time to time to ensure such compliance;

(iv) there are no underground or above ground storage tanks at the Charged Premises nor will there be in the future, except as the Chargee consents in writing. If there are permitted storage tanks, they will be registered, installed, maintained and repaired in accordance with all applicable laws including Environmental Laws;

(v) to the best of the Chargor's knowledge (after due and diligent inquiry), no condition exists as to any real property contiguous to or in close proximity with the Charged Premises which would require a qualification to any of the above representations or warranties if such condition applied to the Charged Premises;

(vi) except for substances necessary to the carrying on of the normal business at the Charged Premises, no Hazardous Substance shall be brought onto or used on or in any part of the Charged Premises without the prior written consent of the Chargee and any Hazardous Substance brought onto or into any part of the Charged Premises or used by the person on or in any part of the Charged Premises shall be transported, used, stored and disposed of only in accordance with all Environmental Laws, other lawful requirements, prudent industrial standards (including without limitation any published environmental standards of any applicable industry association) and any requirements of applicable insurance policies;

(vii) the Chargor has created, properly organized and maintained all documentation and records concerning environmental matters as required by any Environmental Laws and will maintain such documentation and records at all times in future as aforesaid;

(viii) the Chargor has provided to the Chargee any environmental assessment and related documentation concerning any of the Charged Premises in its possession or control and shall promptly provide to the Chargee any such material as the Chargee may obtain in future.

(b) The Chargor shall promptly notify the Chargee if it:

- (i) receives notice from any governmental authority of any violation or potential violation of any Environmental Laws, including the Release of a Hazardous Substance, which may have occurred or been committed or is about to occur or be committed;
- (ii) receives notice that any administrative or judicial complaint or Environmental Order has been issued or filed or is about to be issued or filed against any of the occupants of the Chargor alleging violations of any Environmental Laws or Environmental Orders or requiring the taking of any action in connection with any Hazardous Substance;
- (iii) learns of the enactment of any Environmental Laws or the issuance of any Environmental Order which may have a material adverse effect on the Charged Premises or the operations or the condition, financial or otherwise, of any of the occupants of the Chargor;
- (iv) knows or suspects that any Hazardous Substance (other than a substance necessary to the carrying on of the normal business at the Charged Premises that is handled, stored, used and disposed of in accordance with Environmental Laws) has been brought onto any part of the Charged Premises or that there is any actual, threatened or potential Release of any Hazardous Substance (whether or not a substance necessary to the carrying on of the normal business at the Charged Premises) on, from, to or under any of the Charged Premises.

(c) The Chargor hereby grants to the Chargee and its employees and agents an irrevocable and non-exclusive licence, subject to the rights of the occupants of the Charged Premises, to enter any of the Charged Premises to conduct testing and monitoring with respect to the Hazardous Substances and to remove any and all such Hazardous Substances at the cost and expense of the Chargor (which cost and expense shall be secured by this Charge).

(d) The Chargor hereby indemnifies the Chargee, its officers, directors, employees, agents and its shareholders and agrees to hold each of them harmless from and against:

- (i) any and all losses, liabilities, damages, costs, expenses and claims of any and every kind whatsoever (including without limitation, the costs of defending and/or counterclaiming or claiming over against third parties in respect of any action or matter);
- (ii) any cost, liability or damage arising out of a settlement of any action entered into by the Chargee (which may be done without the consent of the Chargor) which at any time or from time to time may be paid, incurred or assessed against, any of them for, with respect to, or as a direct or indirect result of, the presence on or under, or the Release from, any property or into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Substance including without limitation the clean-up, decommissioning, restoration and remediation of the Charged Premises and other affected lands or property.

(e) The provisions of and undertakings and indemnification set out in this section shall survive the satisfaction and release of the security for, and payment and satisfaction of the indebtedness and liability of the Chargor to the Chargee pursuant to this Charge. The Chargor shall be entitled to defend any such potential loss, provided that the Chargee, if it reasonably determines that its security is or could be materially impaired, may also defend against any such loss and may recover any costs or expenses related thereto in accordance with this section.

(f) The following terms shall have the following meanings:

- "Environmental Laws" means all applicable federal, provincial, regional, state, municipal or local laws, common law, statutes, regulations, ordinances, codes, rules, guidelines, requirements, certificates of approval, licences or permits relating to Hazardous Substances or the use, consumption, handling, transportation, storage or Release thereof including without limitation (and in addition to any such laws relating to the environment generally) any such laws relating to public health, occupational health and safety, product liability or transportation;
- "Environmental Order" means any prosecution, order, decision, notice, direction, report, recommendation or request issued, rendered or made by any governmental authority in connection with Environmental Laws or Environmental Orders;
- "Release" includes abandon, add, deposit, discharge, disperse, dispose, dump, emit, empty, escape, leach, leak, migrate, pour, pump, release, seepage or spill;
- "Hazardous Substance" means any substance, combination of substances or by-product of any substance which is or may become hazardous, toxic, injurious or dangerous to any person, property, air, land, water, flora, fauna or wildlife; and includes but is not limited to contaminants, pollutants, wastes and dangerous, toxic, deleterious or designated substances as defined in or pursuant to any Environmental Laws or Environmental Orders.

47. Prepayment

The Charge may not be prepaid in whole or in part except as permitted by law or by any written agreement with the Chargee.

48. Continuing Security

The Charge shall be continuing security to the Chargee notwithstanding any new advance, discount or credit, renewal, or replacement substitution or alteration of any negotiable instrument. The Chargee may, at its option, sell or deposit the Chargor's indebtedness to the Chargee as evidenced by this Charge and any other security to one or more third party(ies) without notice to or the consent of the Chargor and in such event this Charge is deemed to continue to secure the Chargor's obligations hereunder.

49. Amendments

This Charge may be amended or modified only by written agreement signed by the Chargor and Chargee and any such amendment or modification is binding on any Additional Covenantors and subsequent encumbrancers whether or not notice is given.

50. Notice

Notices to the Chargor may be given to the Charged Premises. Any notice to the Chargee is deemed received when it is received at the branch of the Chargee noted on the Charge or such other branch as the Chargee may advise.

51. Notes to Evidence Debt

If the indebtedness of the Chargor to the Chargee intended to be secured by this Charge is evidenced by any note or notes by the Chargor to the Chargee, such note or notes shall constitute prima facie evidence of the indebtedness secured by this Charge, provided it is not necessary that the indebtedness or any part thereof be evidenced by a note or notes.

52. Severability of any Invalid Provisions

It is agreed that in the event that at any time any provision of these presents is illegal or invalid under or inconsistent with the provisions of any applicable statute or regulation thereunder or would by reason of the provisions of any such statute or regulation render the Chargee unable to collect the amount of any loss sustained by it as a result of making the above recited loan which it would otherwise be able to collect under such statute, then such provision shall not apply and shall be construed so as not to apply to the extent that it is so illegal, invalid or inconsistent or would so render the Chargee unable to collect the amount of any such loss.

53. Interpretation

The expression "the Chargor" used in this Charge shall include heirs, executors, administrators, successors and assigns of the Chargor or any of them as appropriate in the context and the expression "the Chargee" shall include the heirs, executors, administrators, successors and assigns of the Chargee or any of them as appropriate in the context. If the Charge affects a condominium, the reference to the "Condominium" or to the "Corporation" shall mean the condominium corporation referred to in the description and the expression "Declarator(s)" shall mean the declaration registered in connection with the Condominium Corporation. Words in the singular include the plural, any words in the plural include the singular, and words impugning the masculine gender include the feminine and neuter genders where the context so requires. All covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor shall be equally binding upon his, her or their respective heirs, executors, administrators, successors and assigns and that all such covenants, liabilities and obligations shall be joint and several, and that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargee shall be equally secured to and exercisable by and shall inure for the benefit of his heirs, executors, administrators, successors and assigns. If any of the forms of words contained herein are also contained in the Column One of Schedule "B" of the Short Form of Mortgages Act and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the Short Form of Mortgages Act were still in full force and effect. This Charge shall be governed by the laws of Ontario and the laws of Canada applicable thereto.

54. Paragraph Headings

The paragraph headings herein are inserted for convenience of reference only and are deemed not to form part of the Charge and are not to be considered in the construction or interpretation of the Charge or any part thereof.

55. Date of Charge

This Charge, unless otherwise specifically provided, shall be deemed to be dated as of the date of signature thereof by the first named Chargor.

56. True Copy

The Chargor acknowledges receipt of a true copy of the within Charge. However failure to obtain such acknowledgement does not affect the applicability of these Standard Charge Terms.

Dated this \_\_\_\_\_ day of September, 2015.

HSBC Bank Canada  
By its solicitors,

Per:

# EXHIBIT “D”

## **Addiction Associates Inc.**

June 18, 2015

*Re: Addiction Associates Inc-101 Innovation Dr, Unit 3 Vaughan*

I act for the mortgagee above-referenced.

The following is the amount required to pay out the above mortgages as at June 18, 2015:

Original principal amount	\$	250,000.00
Accrued interest (December 23 2013 – June 18, 2015 511 days @10%)	\$	<u>35,000.00</u>
	\$	285,000.00
Extension fee agreed to	\$	20,000.00
Non-payment at maturity fee (Add. Prov. s.4(h))	\$	6,250.00
Default proceedings fee (Add. Prov. s.11)		2,000.00
Inspection fees	\$	2,000.00
NSF/non-tendered cheque charge (Add. Prov. s.4(b) – 17 months)	\$	3,400.00
Statement preparation fees (x3 Add. Prov. s.5) 2 times	\$	1,200.00
Legal fees and disbursements re: Discharges	\$	<u>400.00</u>
	\$	35,250.00
Net pay out amount	\$	<b>320,250.00</b>

Yours very truly,

**Henry Goldberg**

Henry Goldberg

# EXHIBIT “E”



**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT MADE THIS 5<sup>TH</sup> DAY OF MAY, 2015**

BETWEEN:

**Deloitte Restructuring Inc.**, solely in its capacity as the Court Appointed Receiver and Manager of the Property (as defined herein) of National Telecommunications Inc., with no personal or corporate liability

(hereinafter referred to as the "Vendor")

**OF THE FIRST PART**

- and -  
*Unit 3 Innovation Drive Inc.*  
~~John Mazza, in trust for a company to be incorporated~~



(hereinafter referred to as the "Purchaser")

**OF THE SECOND PART**

WHEREAS:

- A. Pursuant to the Appointment Order, Deloitte Restructuring Inc. was appointed by the Court as receiver and manager, without security, of all of the assets, undertakings and properties of National Telecommunications Inc. (the "Company") acquired for, or used in relation to the business carried on by the Company, including all proceeds thereof (collectively, the "Property").
- B. Pursuant to the Appointment Order, the Vendor was authorized to market and, subject to Court approval, sell the Property.
- C. Subject to the Court issuing the Approval & Vesting Order, the Purchaser offers to purchase all of the Vendor's and the Company's right, title and interest in and to the Purchased Assets on the terms and conditions contained herein. The Purchaser acknowledges that the Vendor's acceptance of such offer and execution of this Agreement are subject to the terms and conditions contained herein and the approval of the Court of such actions.



NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties agree as follows:

**ARTICLE I**  
**INTERPRETATION**

**1.01 Definitions**

In this Agreement:

“**Agreement**” means this agreement and all schedules and instruments in amendment or confirmation of it; and the expressions “article” and “section” followed by a number mean and refer to the specified article or section of this agreement. The words “herein”, “hereof”, “hereto” and “hereunder” refer to this agreement.

“**Appointment Order**” means the order of the Court dated April 9, 2015 appointing Deloitte Restructuring Inc. as the Receiver pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada).

“**Approval & Vesting Order**” means an order of the Court (i) authorizing and directing the Vendor to complete the terms of this Agreement and (ii) providing for the vesting and/or the transfer of the Purchased Assets in and to the Purchaser free and clear of all claims, liabilities and Encumbrances other than Permitted Encumbrances. The Approval & Vesting Order shall be substantially in the form of the Order annexed hereto as Schedule “C” or as the parties may otherwise agree.

“**Assumed Liabilities**” means those liabilities of the Vendor or the Company which shall be assumed by the Purchaser at Closing, all as more particularly described in Section 2.06.

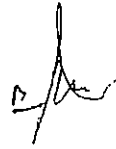
“**Authorization**” means, with respect to any Person, any order, permit, approval, waiver or similar authorization of any Governmental Entity having jurisdiction over the Person.

“**Business Day**” means any day which is not a Saturday, a Sunday or a day observed as a statutory or civic holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario, on which the principal commercial banks in the City of Toronto, Ontario are open for business.

“**Closing**” means the closing of the transaction contemplated by this Agreement.

“**Closing Date**” means the 15<sup>th</sup> day after the granting of the Approval & Vesting Order or such other date as agreed by the Vendor and the Purchaser, provided such date is not later than June 24, 2015.

“**Closing Time**” means 11:00 o'clock a.m., Toronto time, on the Closing Date or such later time on the Closing Date as Closing takes place.



**"Company"** means National Telecommunications Inc.

**"Conditions Precedent"** means those conditions in favour of the Purchaser set out in Section 7.01, those conditions in favour of the Vendor set out in Section 8.01 and those conditions in favour of the Purchaser and Vendor set out in Section 9.01.

**"Condominium Corporation"** means York Region Standard Condominium Corporation No. 1152.

**"Condominium Documents"** means the Declaration, By-laws and Rules of the Condominium Corporation, some of which are registered against the title to the Innovation Drive Property, as such term is hereinafter defined.

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

**"Deposit"** means the deposit of \$20,000 paid to the Vendor by the Purchaser by way of certified cheque or bank draft drawn upon a Schedule 1 Canadian chartered bank to be held by the Vendor in trust and to be credited toward the Purchase Price on Closing, subject to the termination provisions of this Agreement set out in Article X below.

**"Encumbrance"** means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), claim, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.

**"Excluded Assets"** has the meaning ascribed thereto in Section 2.02.

**"Excluded Liabilities"** has the meaning ascribed thereto in Section 2.07.

**"Governmental Entity"** means (i) any multinational, federal, provincial, state, municipal, local or other government or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**"HST"** means taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder; and **"HST Legislation"** means such act and regulations together.

**"Income Tax Act"** means, collectively, the *Income Tax Act* (Canada), the *Income Tax Application Rules* (Canada) and the *Income Tax Regulations*, in each case as amended to the date hereof.

**"Innovation Drive Property"** means the property legally described as Unit 3, Level 1, York Region Condominium Plan No. 1152 and its appurtenant interest, as more particularly described in Schedule "A" hereto, being all of PIN 29683-0003 (LT), and municipally known as 101 Innovation Drive, Unit 3, Vaughan, Ontario.



"**Laws**" means any and all applicable laws including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, ruling or awards, policies, guidelines and general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which the word is used.

"**Liabilities**" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any Applicable Law, or claim or order by any Governmental Entity, and those arising under any contract, agreement, arrangement, commitment or undertaking, but excluding those relating to claims for income taxes, interest, penalties and fines;

"**Parties**" means the Vendor, the Purchaser and any other Person who may become a party to this Agreement.

"**Permitted Encumbrances**" means those encumbrances specified in Schedule "B".

"**Person**" means a natural person, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

"**PPSA**" means the *Personal Property Security Act* (Ontario), R.S.O. 1990, c.P. 10, as amended from time to time, and the regulations made thereunder.

"**Prepaid Expenses**" means all liabilities, including all operating expenses, with respect to the Purchased Assets referable in whole or in part to the period from and after the Closing Date which have been prepaid by the Company or the Vendor as at the Closing Date.

"**Property**" means all of the assets, undertakings and properties of the Company acquired for, or used in relation to the business carried on by the Company, including all proceeds thereof.

"**Purchased Assets**" has the meaning ascribed thereto in Section 2.01.

"**Receiver**" means Deloitte Restructuring Inc., solely in its capacity as the receiver and manager of the Property of National Telecommunications Inc. appointed pursuant to the Appointment Order, and not in its personal or corporate capacity.

"**Tax**" or "**Taxes**" means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Entity under any applicable tax legislation, including Canadian federal, provincial, territorial, municipal and local, foreign or other income, capital, harmonized sales, goods and services, sales, use, consumption, excise, value added, business, real property, land transfer, personal property, transfer, franchise, withholding, payroll, or employer health taxes, customs, import, anti-dumping or countervailing duties, Canada Pension Plan contributions, employment insurance premiums, and provincial workers' compensation payments, including any interest, penalties and fines associated therewith.



"**Title Diligence Date**" means the 10<sup>th</sup> Business Day following acceptance of this Agreement by both the Purchaser and the Vendor.

"**Transfer Taxes**" means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Entity in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including HST but excluding any taxes imposed or payable under the *Income Tax Act* and any other applicable income tax legislation.

**1.02 Currency**

All references in this Agreement to monetary amounts, unless indicated to the contrary, are to the currency of Canada.

**1.03 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to its subject matter, and supersedes any and all prior negotiations, understandings and agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the Party to be bound thereby. Subject to the Approval & Vesting Order being issued by the Court, this Agreement is intended to create binding obligations on the part of the Vendor as set forth herein and on acceptance by the Purchaser, is intended to create binding obligations on the part of the Purchaser, as set out herein.

**1.04 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each Party hereto irrevocably submits to the exclusive jurisdiction of the Court with respect to any matter arising hereunder or relating hereto.

**1.05 Singular, Plural and Gender**

Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

**1.06 Certain Words**

In this Agreement, the words "including" and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.



**1.07 Headings and Table of Contents**

The headings and any table of contents contained in this Agreement, including the separation of this Agreement into sections, subsections, paragraphs and clauses, are for convenience of reference only, and shall not affect the meaning or interpretation.

**1.08 Statutory References**

All references to any statute is to that statute or regulation as now enacted or as may from time to time be amended, re-enacted or replaced and includes all regulations made thereunder, unless something in the subject matter or context is inconsistent therewith or unless expressly provided otherwise in this Agreement.

**1.09 Actions to be Performed on a Business Day**

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following such day.

**1.10 Schedules**

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof.

- Schedule "A" - Legal Description of Innovation Drive Property
- Schedule "B" - Permitted Encumbrances
- Schedule "C" - Approval & Vesting Order

**ARTICLE II**

**PURCHASE AND SALE OF PURCHASED ASSETS AND ASSUMPTION OF LIABILITIES**

**2.01 Purchased Assets**

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, the Vendor agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from the Vendor, all of the Vendor's and all of the Company's right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances except only for Permitted Encumbrances. The Purchased Assets shall not include the Excluded Assets. The Purchased Assets comprise the following:

- (a) the Innovation Drive Property (subject to the Permitted Encumbrances); and



- (b) the chattels, furniture, furnishings, equipment and machinery owned by the Company, if any, located on or at the Innovation Drive Property.

**2.02 Excluded Assets**

The Excluded Assets shall consist of all of the Property, other than the Purchased Assets, including, without limitation, the following:

- (a) the Company's Toyota lift truck located at the Innovation Drive Property or the property of which it forms a part (or at such other location at which it may be located);
- (b) all cash, bank balances, funds on deposit with banks or other depositories and other similar items owned or held by or for the account of the Vendor or the Company as at the Closing Date, including the Purchase Price;
- (c) all inventory of the Company;
- (d) the books and records of the Company;
- (e) all amounts owing to the Company by any and all federal, provincial, municipal and other governmental authorities whatsoever;
- (f) any refunds in respect of reassessments for any Taxes (including, without limitation, realty taxes) paid or payable by the Company or the Vendor on or prior to the Closing Date with respect to the Innovation Drive Property;
- (g) refundable Taxes;
- (h) all amounts owing from any director, officer, former director or officer, shareholder, employee or any affiliate of the Company; and
- (i) insurance policies of the Company or the Vendor relating to the Purchased Assets and all rights in connection therewith including any rights to payments thereunder upon the occurrence of an insured event or refunds of insurance payments except for insured events in respect of the Purchased Assets for which proceeds of insurance shall be paid to the Purchaser.

**2.03 Purchase Price**

The aggregate consideration payable by the Purchaser to the Vendor in consideration of the sale and transfer of the Purchased Assets shall be the aggregate of (i) cash consideration in the amount of Seven Hundred and Sixty Thousand Dollars (\$760,000.00); and (ii) the assumption by the Purchaser of the Assumed Liabilities (collectively, the "Purchase Price"). The Purchase Price shall be exclusive of all Taxes, including all Transfer Taxes. The Purchase Price, as adjusted in accordance with Section 2.08, shall be paid and satisfied by the Purchaser on Closing as follows:



- (a) payment of the Deposit; *on or before May 14, 2015 at 6:00 pm*
- (b) payment to the Vendor, or as the Vendor may otherwise direct in writing, of the balance of the cash consideration comprising the Purchase Price, after payment of the Deposit, by way of wire transfer drawn on a Schedule 1 Canadian chartered bank, as adjusted in accordance with Section 2.08 as at the Closing Time; and
- (c) the assumption by the Purchaser of the Assumed Liabilities.



**2.04 Transfer Taxes**

The Parties agree that:

- (a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets or the registration of any conveyances necessitated hereby;
- (b) if the Vendor is required under any applicable Law to collect or pay Transfer Taxes, the Purchaser will pay the amount of such Transfer Taxes to the Vendor at Closing in the same manner as the Purchase Price. The Vendor shall provide the Purchaser within a reasonable period of time following Closing with supporting documentation to confirm that such Transfer Taxes have been paid to the appropriate Governmental Entity within the time prescribed by the applicable Transfer Tax legislation;
- (c) except where the Vendor is required under an applicable Law to collect or pay such Transfer Taxes, the Purchaser shall pay such Transfer Taxes directly to the appropriate Governmental Entity or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due. The Vendor will do and cause to be done such things as are reasonably requested to enable the Purchaser to comply with such obligation in a timely manner. If the Vendor is required under any applicable Law to pay any such Transfer Taxes, the Purchaser shall promptly reimburse the Vendor the full amount of such Transfer Taxes upon delivery to the Purchaser of copies of receipts showing payment of such Transfer Taxes;
- (d) the Purchaser shall indemnify the Vendor for any Transfer Taxes (including any interest or penalties imposed by a Governmental Entity) for which the Vendor may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes; and
- (e) the Purchaser shall be entitled to provide the Vendor with evidence that the Purchaser is an exempt purchaser, in whole or in part, for purposes of relevant Transfer Tax legislation and, upon provision of such evidence satisfactory to the Vendor, acting reasonably, the Purchaser shall not be required to pay on Closing any Transfer Taxes in respect of which the relevant exemption is applicable.





**2.05 HST**

With respect to HST:

- (a) the Purchaser represents and warrants to the Vendor that either (i) it is currently a registrant for HST purposes and will continue to be a registrant at the Closing Date in accordance with the provisions of the HST Legislation, or (ii) if the Purchaser is not currently a registrant for HST purposes the Purchaser will be a registrant at the Closing Date in accordance with the provisions of the HST Legislation;
- (b) HST shall be in addition to the Purchase Price. Subject to Section 2.05(c) below, the Purchaser shall pay all HST applicable to the sale and transfer of the Purchased Assets to the Vendor on Closing by wire transfer drawn on a Schedule 1 Canadian chartered bank;
- (c) Notwithstanding the foregoing, the Purchaser shall not be required to pay HST to the Vendor in accordance with Section 2.05(b) above if the Purchaser provides to the Vendor on or before Closing a HST Certificate, Warranty and Indemnity in form and content required by the Vendor confirming that and containing: (i) the Purchaser is purchasing the Purchased Assets as a 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; (ii) the Purchaser is a registrant for the purposes of the HST Legislation, including the Purchaser's HST registration number and a statement that the registration is in good standing; (iii) the Purchaser will self-assess and remit all HST payable in connection with the transaction contemplated in this Agreement; and (iv) an indemnity whereby the Purchaser agrees to indemnify and save harmless the Vendor from and against any and all HST, penalties, interest, claims, demands, liabilities, losses, costs, damages, disputes or actions that may be suffered or incurred, directly or indirectly, by the Vendor as a result of the Purchaser's failure to register for the purpose of HST imposed under the HST Legislation or the Purchaser's failure to perform its obligations under the HST Legislation or the Certificate, Warranty and Indemnity in connection with the purchase of the Property. The foregoing covenant of indemnity shall not merge on the Closing, but rather shall survive same, and shall continue in full force and effect. In addition to the above, the Purchaser shall deliver to the Vendor its HST registration number at least five (5) Business Days prior to Closing.

**2.06 Assumed Liabilities**

At Closing, the Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist of all Liabilities arising or accruing from the use of the Purchased Assets from and after the Closing Date.



**2.07 Excluded Liabilities**

The Purchaser shall not assume nor be liable for any indebtedness, liabilities or obligations of the Company or the Vendor other than the Assumed Liabilities (collectively the "Excluded Liabilities"). The Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as agreed in Section 2.04, all Taxes payable by the Company or the Vendor referable to the period up to the Closing Date including present or future federal and provincial income taxes, municipal business taxes, realty taxes, and school taxes;
- (b) any sales commissions payable by the Company or the Vendor to any real estate agent, agency, broker or brokerage retained by the Vendor with respect to the transaction described in this Agreement; and
- (c) any Liabilities otherwise related to the Excluded Assets.

**2.08 Adjustments to the Purchase Price**

(i) **Adjustment Date.** The Purchase Price shall not be adjusted for any cause, matter, or thing, save and except for the following, each of which shall be apportioned and allowed to the Closing Date and the Closing Date itself shall be apportioned to and be the responsibility of the Purchaser. The Purchase Price shall be adjusted in accordance with the Statement of Adjustments at to be delivered by the Vendor to the Purchaser in accordance with the terms of this Agreement and shall include:

- (a) the Prepaid Expenses which shall be added to the Purchase Price;
- (b) interest on the Deposit which shall be credited towards the Purchase Price upon Closing;
- (c) all applicable Taxes, including Transfer Taxes, which shall be added to the Purchase Price; and
- (d) realty taxes, local improvement rates and charges, water and assessment rates, and common expenses attributable to the Innovation Drive Property and payable to the Condominium Corporation.

(ii) **Statement of Adjustments.** A statement of adjustments shall be delivered to the Purchaser by the Vendor at least five (5) Business Days prior to the Closing Date and shall have annexed to it details of the calculations used by the Vendor to arrive at all debits and credits on the statement of adjustments.

(iii) **Re-Adjustment.** If the final cost or amount of an item that is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Parties, acting reasonably, as of the Closing Date on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will



be. In each case, when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Parties shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditors' determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 180<sup>th</sup> day after the Closing Date after which time neither Party shall have any right to request re-adjustment.

(iv) **Current Year Realty Tax Refunds or Re-Assessments.** All right, title and benefit in and to any realty tax refunds or re-assessments with respect to the Innovation Drive Property for the period commencing on the Closing Date shall be transferred and assigned by the Vendor to the Purchaser on Closing. The Vendor and the Purchaser shall jointly direct the municipality to pay any refund or re-assessment of realty taxes for the 2015 calendar year to the Vendor and the parties shall readjust the amount of any such refund or re-assessment payment between them after the conclusion of any assessment appeal based upon the respective *pro rata* entitlements thereto (net of any fee payable to any consultant). In addition, to the extent that any refund or re-assessment payment is made for the period the Company was in possession of the Innovation Drive Property in respect of the 2015 calendar year, such refund or re-assessment payment shall be disbursed in accordance with the following section.

(v) **Prior Years Realty Tax Refunds or Re-Assessments.** With respect to any realty tax refunds or re-assessments for the period prior to the Closing Date, the Vendor and the Purchaser shall jointly direct any consultant currently engaged in connection with such refunds or re-assessments to continue its work on the same fee basis previously arranged (for which fees the Purchaser shall not be responsible). The Vendor and the Purchaser shall jointly direct the municipality to pay any refund or re-assessment of realty taxes for calendar years prior to 2015 to the Vendor.

### ARTICLE III

#### DUE DILIGENCE

##### 3.01 Title Due Diligence

The Purchaser shall accept title to the Innovation Drive Property subject to the Permitted Encumbrances. The Purchaser shall examine title to the Innovation Drive Property at its own expense and shall not call for the production of any title, deed, abstract, survey or proof of or evidence of title to the Innovation Drive Property nor to have furnished to it copies of any such documents other than those in the possession or within the control of the Vendor. The Purchaser shall be allowed until the Title Diligence Date to satisfy itself as to title to the Innovation Drive Property at its own expense. If, within such time, the Purchaser furnishes the Vendor with any valid objection as to title which the Vendor is unable or unwilling to remove or correct on or before the Closing Date or for which the Purchaser is not able to obtain title insurance coverage pursuant to a title insurance policy that can be obtained by the Purchaser, and which the Purchaser will not waive, this Agreement shall be terminated in accordance with Section 10. Save as to any valid objections so made within such time or any objection going to the root of



title, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Innovation Drive Property.

**3.02 Acceptance of Title**

If the Purchaser does not terminate this Agreement pursuant to Section 3.01 or if this Agreement is not terminated pursuant to Section 3.03, the Purchaser shall be deemed to have waived any and all rights that it has under Section 3.01 and Section 3.03 and shall be deemed to have accepted title to the Innovation Drive Property and to be satisfied in all respects with the Purchased Assets and shall be obligated to complete the transaction contemplated by this Agreement, subject to satisfaction of the Conditions Precedent specified in this Agreement.

**3.03 Planning Act**

This Agreement shall be effective to create an interest in the Innovation Drive Property only if the provisions of the *Planning Act*, R.S.O. 1990, c. P-13, as amended from time to time, are complied with, failing which this Agreement shall be terminated in accordance with Section 10.

**3.04 Approval & Vesting Order**

Subject to the Vendor obtaining the Approval & Vesting Order, the Vendor will deliver the Approval & Vesting Order to transfer all of the right, title and interest of the Vendor and the Company in the Purchased Assets to the Purchaser at Closing in accordance with the terms of this Agreement.

**3.05 Passing of Title**

The Vendor's right, title and interest in and to the Purchased Assets shall not pass to the Purchaser until the Purchase Price, and all other payments to be made by the Purchaser pursuant to this Agreement, have been paid in full, the Purchaser shall have complied with all of the Purchaser's covenants herein contained and all Conditions Precedent specified shall have been fulfilled or waived.

**3.06 Access to Innovation Drive Property**

Unless and until this Agreement is terminated in accordance with its terms, the Vendor shall provide the Purchaser with access to the Purchased Assets on two occasions during normal business hours on 48 hours' prior notice to the Vendor. The Vendor may require that a representative of the Vendor accompany the Purchaser's representative during any such visit. The Purchaser shall not be entitled to carry out any testing, inspection or otherwise exercise such right of access in respect of the Purchased Assets in a manner which would affect the health or safety of any Person, interfere with the Vendor's use or possession of the Innovation Drive Property or in any way contravene any provisions of the Condominium Documents. The Purchaser shall promptly repair any damage to the Innovation Drive Property or to the common elements of the Condominium Corporation caused by such visits to the Innovation Drive Property and shall indemnify the Vendor with respect to any such damage and with respect to any loss, claim, demand or action arising out of any such visits. The Purchaser shall not be

responsible for damage caused by anyone other than the Purchaser, its servants, agents, representatives or invitees.

**ARTICLE IV**

**"AS IS" CONDITION OF PURCHASED ASSETS**

**4.01 "As Is, Where Is"**

As at the Closing Time, the Purchaser acknowledges to and in favour of the Vendor, that it has inspected the Purchased Assets and, save and except as is expressly set out in Section 5.01, the Purchased Assets are sold on an "as is, where is" basis at the Closing Time and that no representation, warranty or condition is expressed or implied as to title, description, fitness for purpose, location, merchantability, quantity, conditions or quality thereof or in respect of any other matter or thing whatsoever, including any law, by-law, regulation, code, standard or agreement of, or administered by, any municipality, utility or other government or authority, fire insurance underwriters or any other Person. Without limitation, the Purchased Assets are specifically offered as they exist on Closing with no adjustments to be allowed the Purchaser for changes in condition, location, quality or quantity of the Purchased Assets from the date hereof to the Closing Date. The Purchaser acknowledges that the Vendor is not required to inspect or count, or provide any inspection or counting, of the Purchased Assets or any part thereof and the Purchaser shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. Without limiting the generality of the foregoing, any and all conditions, warranties and representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S-1, as amended from time to time, do not apply to the sale of the Purchased Assets and have been waived by the Purchaser.

4.02 Subject to the Purchaser's right to terminate this Agreement in accordance with Section 3.01, the Purchaser acknowledges to and in favour of the Vendor that, without limiting the generality of Section 4.01 and 6.01, the Purchaser has entered into this Agreement and has purchased the Purchased Assets from the Vendor on the basis that:

- (a) the Purchaser shall not require the deletion of nor compliance with any registered agreement with any municipality, governmental authority, public or private utility or conservation authority;
- (b) the Purchaser is purchasing the Purchased Assets on a "as is, where is" basis subject to any and all zoning and/or other by-laws and regulations and easements affecting the Innovation Drive Property, restrictions and covenants which run with the Innovation Drive Property, the Condominium Documents, defects and deficiencies, encroachments, work orders, deficiency notices, compliance requests, impost charges, lot levies, sewer charges, development charges and any requirements which may have been, now are or may in the future be imposed by any federal, provincial, municipal or other governmental authority having jurisdiction over the Purchased Assets including, but not limited to, the Permitted Encumbrances;



- (c) the Vendor shall not be required to provide any letters of compliance, releases or acknowledgements whatsoever including, without limitation, any confirmations in respect of any registered agreements, restrictions and/or easements or in respect of the Condominium Documents. The Purchaser further acknowledges that, pursuant to the Purchaser's further review of title to the Innovation Drive Property, the Purchaser will be deemed to have received notice of all provisions and obligations contained in any site plan, development or other registered agreement whether registered by any provincial, regional, municipal, public or private utility or governmental authority or any owner or occupant of adjoining lands, as well as notice of all provisions of the Condominium Documents;
- (d) the Vendor is not providing and has made no representations, warranties, covenants, agreements, statements, acknowledgements, inducements or promises whatsoever, save and except as expressly contained in Section 5.01, with respect to the Innovation Drive Property, whether express or implied, by statute, at law or in equity, to or in favour of the Purchaser, oral or written, legal, equitable, collateral, or otherwise, including without limitation, with respect to:
- (i) title, including, without limitation, the existence, validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims or demands of whatsoever nature or kind affecting or in any way relating to the Innovation Drive Property;
  - (ii) compliance with the terms and provisions of the Condominium Documents;
  - (iii) the status of common expenses relating to the Innovation Drive Property;
  - (iv) the existence or status of any special assessments contemplated or levied by the Condominium Corporation, whether or not there are any legal actions by or against or contemplated by the Condominium Corporation, or the receipt or status of any notices from the Condominium Corporation respecting any potential changes to the status of the Condominium Corporation, the common elements or the assets and liabilities of the Condominium Corporation;
  - (v) the fitness for any particular purpose or use, zoning, suitability, description, marketability, access, condition, quality, extent of the Innovation Drive Property, availability of services, permitted use or state of repair of the Innovation Drive Property or the building of which the Innovation Drive Property forms a part, compliance or accord of any improvements with municipal building by-laws and/or Ontario building code requirements and/or Ontario or municipal fire code requirements;
  - (vi) the presence, absence, nature and/or extent of Hazardous Substances on, in, under, about or migrating from the Innovation Drive Property or the building of which the Innovation Drive Property forms a part; the



discharge of such Hazardous Substances from, on, or in relation to the Innovation Drive Property or the building or property of which the Innovation Drive Property forms a part; the existence, state, nature, identity, extent or effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario) or any other applicable law in relation to the Innovation Drive Property or the Condominium Corporation; nor, the existence, state, nature, kind, identity, extent or effect of any liability on the Purchaser to fulfil any obligations with respect to the environmental condition or quality of the Innovation Drive Property or the building or property of which the Innovation Drive Property forms a part. The Purchaser acknowledges that it accepts the Innovation Drive Property subject to the environmental condition and any Hazardous Substances, whether or not such environmental condition or Hazardous Substance is known by the Vendor prior to the completion date, and acknowledges that the Purchaser will have no recourse against the Vendor for any such pre-existing environmental conditions or Hazardous Substances. "Hazardous Substances" means (i) any substance or material that is prohibited, controlled or regulated by any governmental authority pursuant to the Environmental Laws, including contaminants, pollutants, dangerous goods, liquid wastes, industrial wastes, hauled liquid wastes, radioactive wastes, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in any Environmental Laws, (ii) asbestos and urea formaldehyde, and (iii) petroleum products. "Environmental Laws" means all applicable laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law concerning Hazardous Substances or protection of the environment or otherwise relating to the environment (including the air within any structure or underground space) or to environmental aspects of occupational health and safety, including applicable laws pertaining to (i) reporting, licensing, permitting, investigating, removing, treating or otherwise remediating the presence of Hazardous Substances, and (ii) the storage, generation, use, handling, manufacture, processing, transportation, treatment, release and disposal of Hazardous Substances. "Release" means, in addition to the meaning given to it under any applicable Environmental Laws, any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage or placement; and

- (vii) any defects in workmanship or any existing, executed or partially performed agreement for the supply of materials or services to the Innovation Drive Property or any improvement constructed thereon or therein including any right, license or easement to the use of any portion of the Innovation Drive Property or any fixtures or chattels located thereon; or any other matter or thing whatsoever in respect of all or any of



the Innovation Drive Property or otherwise affecting this Agreement or any right or entitlement by which agreement or operation of law may run with and bind the Innovation Drive Property.

**4.03 Independent Investigation**

As at the Closing Time, the Purchaser acknowledges to and in favour of the Vendor that it has inspected and investigated the Purchased Assets and that it has relied entirely upon its own inspections and investigations in entering into this Agreement and purchasing the Purchased Assets from the Vendor.

**ARTICLE V**

**REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

**5.01 Vendor's Representations and Warranties**

The Vendor hereby represents and warrants to and in favour of the Purchaser, acknowledging that the Purchaser is relying on such representations or warranties, as follows:

- (a) the Vendor was appointed as the Receiver pursuant to the Appointment Order;
- (b) subject to the Vendor obtaining the Approval & Vesting Order, the Vendor has the right, power and authority to enter in to and perform its obligations under this Agreement and, subject to the Vendor obtaining the Approval & Vesting Order, to convey the Purchased Assets to the Purchaser;
- (c) subject to any charges created by the Appointment Order, the Vendor has done no act itself to encumber, sell or dispose of any of the Purchased Assets;
- (d) the Vendor is not aware of any action or proceeding pending or threatened against it which may affect its right to convey any of the Purchased Assets as contemplated hereby; and
- (e) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

**ARTICLE VI**

**REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

**6.01 Purchaser's Representations and Warranties**

The Purchaser hereby represents and warrants to and in favour of the Vendor, acknowledging that the Vendor is relying upon such representations and warranties, as follows:





- (a) if the Purchaser is a corporation, the Purchaser is a corporation duly and validly incorporated under the laws of the Province of Ontario and is a valid and subsisting corporation;
- (b) if the Purchaser is a corporation, the Purchaser has the requisite right, power and authority to enter into this Agreement and to complete the transactions contemplated hereby;
- (c) if the Purchaser is a corporation, all necessary actions and approvals have been taken or obtained by the Purchaser to authorize the creation, execution, delivery and performance of this Agreement;
- (d) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;
- (e) other than the Approval & Vesting Order, the execution, delivery and performance of this Agreement by the Purchaser does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Entity, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent, affect or delay the consummation by the Purchaser of the transaction contemplated hereby;
- (f) there are no proceedings for or pending before any Governmental Entity, or threatened to be brought by or before any Governmental Entity by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transaction contemplated hereby by the Purchaser;
- (g) the Purchaser is not subject to any order of any Governmental Entity, nor are there any such orders threatened to be imposed by any Governmental Entity, which could affect the legality, validity or enforceability of this Agreement or the consummation of the transaction contemplated hereby by the Purchaser;
- (h) the Purchaser has made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price to the Vendor on the Closing Date, subject to the financing condition in favour of the Purchaser set out in Section 7.01 below;
- (i) the Purchaser acknowledges and agrees that, notwithstanding anything else contained herein, the Purchased Assets and the Assumed Liabilities are sold on an "as is" and "where is" basis at the Purchaser's risk and peril without any representations or warranties, express or implied, in fact or by law with respect to the Purchased Assets or the Assumed Liabilities, other than as set out in Section 5.01;
- (j) the Purchaser has provided to the Vendor a true copy of all of the documents relating to the financing commitments necessary for the Purchaser to complete the

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acquisition of the Purchased Assets and such documents are in effect on the date hereof and there have been no amendments to, alterations of or variations in or to such documents;

- (k) the Purchaser will be responsible for and will remit to or reimburse, as applicable, Taxes, Transfer Taxes, levies or the like that arise from the sale of the Purchased Assets unless otherwise specified in this Agreement;
- (l) the Purchaser (i) is currently a registrant for HST purposes and will continue to be a registrant at the Closing Date in accordance with the provisions of the HST Legislation, or (ii) if the Purchaser is not currently a registrant for HST purposes the Purchaser will be a registrant at the Closing Date in accordance with the provisions of the HST Legislation, and the Purchaser will provide to the Vendor its HST registration number at least five (5) Business Days prior to Closing; and
- (m) neither this Agreement nor closing of the transaction contemplated by this Agreement contravenes the Purchaser's constating documents, any law, statute, by-law, rule, regulation, order, ordinance, protocol, decree or judicial, administrative, ministerial or departmental judgment, award or requirements of any Government Entity.

#### ARTICLE VII

#### CONDITIONS IN FAVOUR OF THE PURCHASER

7.01 The Purchaser's obligation to complete this Agreement is subject to satisfaction of the following conditions precedent on or before the earlier of either the Closing Date or the Title Diligence Date as applicable, provided that any such date may be extended by the mutual agreement of each of the Purchaser and the Vendor, and which conditions are inserted for the sole benefit of the Purchaser and may be waived only by the Purchaser by notice in writing to the Vendor on or before the earlier of either the Title Diligence Date or the Closing Date, as applicable:

- (a) on or before the Title Diligence Date, the Purchaser shall have secured satisfactory financing for the purchase of the Purchased Assets on such terms and conditions as may be acceptable to the Purchaser;
- (b) on or before the Title Diligence Date, the Purchaser shall have waived, or shall have been deemed to have waived, its rights to terminate this Agreement under Section 3.01;
- (c) the representations and warranties of the Vendor shall be true and correct as at the Closing Date with the same force and effect as if made at and as of such time and the Vendor shall deliver to the Purchaser a certificate signed by a representative of the Vendor to that effect (provided that acceptance of such evidence and the completion of the transaction contemplated hereunder shall not be a waiver of such representations and warranties); and



- (d) the Vendor shall have complied with and performed all of its covenants and obligations contained in this Agreement to be performed by it before or by the Closing Date.

In the event that any of the foregoing conditions are not fulfilled or waived by the Purchaser on or before the Title Diligence Date or the Closing Date, as applicable, this Agreement may be terminated at the Purchaser's option in accordance with Section 10.

#### ARTICLE VIII

##### CONDITIONS IN FAVOUR OF THE VENDOR

**8.01** The following conditions in favour of the Vendor must be fulfilled on or before the Closing Date, provided that such date may be extended by the mutual agreement of each of the Purchaser and the Vendor, and which conditions are inserted for the sole benefit of the Vendor and may be waived only by the Vendor by notice in writing to the Purchaser on or before the Closing Date:

- (a) the representations and warranties of the Purchaser shall be true and correct as of the Closing Date with the same force and effect as if made at and as of such time and the Purchaser shall deliver to the Vendor a certificate signed by a representative of the Purchaser to that effect (provided that acceptance of such evidence and the completion of the transaction contemplated hereunder shall not be a waiver of such representations and warranties); and
- (b) the Purchaser shall have complied with and performed all of its covenants and obligations contained in this Agreement to be performed by it before or by the Closing Date.

In the event that any of the foregoing conditions are not fulfilled or waived by the Vendor on or before the Closing Date, this Agreement may be terminated by the Vendor in accordance with Section 10.

#### ARTICLE IX

##### CONDITIONS IN FAVOUR OF THE VENDOR AND THE PURCHASER

**9.01** The following conditions in favour of the Vendor and the Purchaser must be fulfilled on or before the Closing Date, provided that such date may be extended by the mutual agreement of each of the Purchaser and the Vendor, and which conditions are inserted for the benefit of each of the Vendor and the Purchaser and may be waived only by both of the Vendor and Purchaser on or before the Closing Date:

- (a) on or before the Closing Date, the Approval & Vesting Order shall have been obtained, the terms of the Approval & Vesting Order shall not differ materially from the form of Order at Schedule "C", and such Order shall not have been stayed, reversed or dismissed. The Purchaser acknowledges that the Vendor shall not seek the Approval & Vesting Order unless and until the Purchaser has waived



or be deemed to have waived its right to terminate this Agreement pursuant to Section 3.01;

- (b) as of the Closing Date, no order shall have been made and no motion, action or proceeding shall be pending, threatened or commenced by any person, government, Government Entity, regulatory body or agency in any jurisdiction which seeks to restrain or prevent the sale of the Purchased Assets under this Agreement or seeks to restrict, prohibit or direct the Vendor not to complete the transaction contemplated by this Agreement;
- (c) as at the Closing Date, the Purchased Assets shall not have been removed from the control of the Vendor by any means or process; and
- (d) as at the Closing Date, no person shall have taken any action to redeem any of the Purchased Assets.

In the event that any of the foregoing conditions are not waived by the Vendor and the Purchaser or fulfilled as required on or before the Closing Date, then this Agreement may be terminated by the Vendor or the Purchaser in accordance with Section 10.

## **ARTICLE X**

### **TERMINATION**

#### **10.01 Termination by the Parties**

This Agreement may be terminated upon the occurrence of any of the following:

- (a) upon the mutual written agreement of the Vendor and the Purchaser;
- (b) by the Purchaser pursuant to Section 7.01, 9.01 or 11.03;
- (c) by the Vendor pursuant to Section 8.01 or 9.01; and
- (d) by either of the Parties following June 24, 2015, unless the Closing has taken place or the Vendor and the Purchaser have agreed in writing to an extension of the Closing beyond June 24, 2015.

#### **10.02 Remedies for Breach of Agreement**

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of a Party, the terminating Party's right to pursue all legal remedies with respect to such breach shall survive such termination.

#### **10.03 Vendor's Right to Retain Deposit**

Subject to the provisions of this Agreement, if the Purchaser is in default hereunder and fails to proceed with the completion of the transaction contemplated by this Agreement for



reasons within its control within five (5) Business Days of having received a written notice from the Vendor requiring that such default be remedied, unless such default or failure is attributable, directly or indirectly, to any action or inaction by the Vendor, then the Vendor may terminate this Agreement by notice in writing to the Purchaser and the Vendor shall be released from all obligations hereunder and shall be entitled to retain the Deposit. The parties acknowledge and agree that the Deposit represents satisfaction of the full amount of any and all damages that the Vendor would suffer under such circumstances.

**10.04 Termination If No Breach of Agreement**

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (a) all obligations of each of the Vendor and the Purchaser hereunder shall be at an end;
- (b) the Vendor shall return the Deposit to the Purchaser, together with any accrued interest thereon; and
- (c) neither party shall have any right to specific performance, to recover damages or expenses or to any other remedy or relief other than as provided herein.

**ARTICLE XI**

**DAMAGE TO PURCHASED ASSETS**

**11.01 Risk of Loss**

The Purchased Assets shall be and remain at the risk of the Vendor, as its interests may appear, until the Closing Time. From and after such date and time, the Purchased Assets shall be at the risk of the Purchaser.

**11.02 Removal of Purchased Assets from Vendor's Control**

If, prior to the Closing Time, the Purchased Assets are removed from the Vendor's control by government action, civil commotion or by order of the Court, or any other cause beyond the Vendor's control, then this Agreement shall automatically be terminated in accordance with Section 10.

**11.03 Purchaser's Right to Close or Terminate**

If, prior to the Closing Date, the Purchased Assets are substantially damaged or destroyed by fire, flood, the elements or other casualty, then by written notice to the Vendor within seven (7) days after notification to the Purchaser by the Vendor of the occurrence of such loss or damage, the Purchaser may exercise an option to complete the transaction contemplated in this Agreement. In such event, the Purchaser shall be entitled to an assignment of the Vendor's and the Company's right, title and interest in, and the proceeds payable under, the existing insurance policies of the Vendor or the Company and/or the Condominium Corporation for the Purchased



Assets in full settlement of any obligation of the Vendor. If the Purchaser does not exercise such option within such seven (7) day period, then this Agreement shall be automatically terminated in accordance with Section 10.

**11.04 Abatement if No Insurance**

In the event that there is material damage to any of the Purchased Assets in respect of which no insurance is payable, the Vendor and the Purchaser, acting reasonably, shall agree upon a reduction in the Purchase Price to reflect such material insured damage or loss.

**ARTICLE XII**

**NOTICE**

**12.01 Addresses for Notice**

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery or by electronic mail (with an original to follow) addressed to the recipient as follows:

to the Vendor:

Deloitte Restructuring Inc.  
181 Bay Street  
Brookfield Place, Suite 1400  
Toronto, Ontario  
M5J 2V1

Attention: Stefano Damiani

Email: [sdamiani@deloitte.ca](mailto:sdamiani@deloitte.ca)

with a copy to:

Thornton Grout Finnigan LLP  
Barristers and Solicitors  
Suite 3200  
100 Wellington Street West  
Toronto ON M5K 1K7

Attention: Grant Moffat

Email: [gmoffat@tgf.ca](mailto:gmoffat@tgf.ca)

to the Purchaser:

c/o Gianfranco J. De Matteis, Barrister and Solicitor

A handwritten signature in black ink, appearing to be 'a/b' or similar initials, located in the bottom right corner of the page.

3300 Steeles Avenue West, Unit 204  
Concord, ON L4K 2Y4

Attention: G. John De Matteis

Email: john@dematteis.ca

or to such other address as may be designated by notice given by either party to the other. Any notice or other communication given by personal delivery shall be deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during normal business hours on the Business Day during which such normal business hours next occur if not given during such hours on any day.

**ARTICLE XIII**  
**CLOSING DELIVERIES**

**13.01 Vendor's Deliveries**

At Closing, the Vendor shall surrender the Purchased Assets to the Purchaser at their then current location. On or before the Closing Date or such other date specified below, the Vendor shall deliver to the Purchaser the following:

- (a) Application for Vesting Order in registrable form and a certified copy of the issued Approval & Vesting Order. The Purchaser shall be responsible for all costs and expenses (including land transfer tax) relating to the registration of such Application for Vesting Order and the Vendor shall be responsible for the cost of obtaining the Approval & Vesting Order;
- (b) a statement of adjustments, as contemplated by Section 2.08;
- (c) an undertaking by the Vendor to readjust any errors, omissions or changes in the statement of adjustments;
- (d) the certificate of the Vendor referenced in Section 7.01 (c); and
- (e) such other documents as may be reasonably requested by the Purchaser's solicitors and agreed upon by the Vendor and the Vendor's solicitors to give effect to this Agreement, all acting reasonably.

**13.02 Purchaser's Deliveries**

On or before the Closing Date or such other date as provided for below, the Purchaser shall deliver to the Vendor or such other party specified below:

- (a) the Purchase Price adjusted in accordance with Section 2.08, by way of wire transfer drawn on a Schedule I Canadian chartered bank;



- (b) the amount of all Taxes (including Transfer Taxes) payable in respect of the transaction contemplated by this Agreement by way of wire transfer drawn on a Schedule 1 Canadian chartered bank, excluding any taxes that are included in Excluded Liabilities or which the Purchaser is obligated to pay directly to the applicable recipient;
- (c) evidence of HST registration;
- (d) an indemnity in form satisfactory to the Vendor indemnifying and holding the Vendor harmless from and against any Assumed Liabilities for matters occurring on or after, and which relate to the period on or after, the Closing Date;
- (e) an undertaking by the Purchaser to readjust any errors, omissions or changes in the statement of adjustments;
- (f) if the Purchaser is a corporation, a certified copy of a resolution of the board of directors of the Purchaser authorizing the execution of this Agreement and performance of each of the Purchaser's obligations hereunder;
- (g) if the Purchaser is a corporation, a certificate of status and copy of the Articles of Incorporation of the Purchaser;
- (h) the HST Certificate, Warranty and Indemnity as described in Section 2.05;
- (i) the certificate by the Purchaser referred to in Section 8.01 (a); and
- (j) such other documents as may be reasonably requested by the Vendor's solicitors to give effect to this Agreement.

#### ARTICLE XIV

#### GENERAL PROVISIONS

##### 14.01 Further Assurances

Each of the Vendor and the Purchaser shall from time to time at the cost of the requesting party execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to properly give effect to the sale, assignment and transfer of the Purchased Assets to the Purchaser.

##### 14.02 Time of Essence

Time shall be of the essence of this Agreement.

##### 14.03 Obligations to Survive





The representations and warranties made by each of the Vendor and Purchaser herein shall not merge on Closing and shall survive Closing.

**14.04 Fees and Expenses**

Each of the parties hereto will be responsible for and shall pay all costs and expenses (including fees and expenses of legal counsel and any other advisors) each party incurs in connection with the negotiation, preparation and execution of this Agreement.

**14.05 Waiver**

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose of which it was given, and shall not constitute a continuing waiver or consent.

**14.06 No Third Party Beneficiaries**

This Agreement shall be binding upon and enure solely to the benefit of each of the Parties hereto and its permitted assigns and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement. Each of the Parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, survive the closing of the transactions contemplated by this Agreement.

**14.07 Assignment**

This Agreement, and any rights hereunder, may not be assigned by the Vendor.

The Vendor and the Purchaser acknowledge and agree that the Purchaser shall have the right at any time prior to Closing to assign this Agreement to a corporation, provided that

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written notice thereof shall be given to the Vendor together with an assignment and assumption executed by the Purchaser and the assignee in form and content satisfactory to the Vendor and the Vendor's solicitors and which shall be addressed to the Vendor and the Purchaser pursuant to which the assignee shall assume all of the Purchaser's rights and obligations hereunder to the same extent and in the same manner as if such assignee had executed this Agreement as Purchaser. Upon delivery of such notice and the said signed assignment and assumption agreement, the original named Purchaser shall not be released hereunder but shall be obligated to the Vendor, jointly and severally with the assignee, for all rights and obligations hereunder up to the Closing Time and shall only be released from such rights and obligations following the successful completion of the transaction contemplated herein, at which point the original named Purchaser shall automatically be fully released from all rights and obligations hereunder.

**14.08 Injunctive Relief**

Each of the parties hereto acknowledges and agrees that the rights acquired by each party hereunder are unique and that irreparable damage would occur in the event that any of the provisions of this Agreement to be performed by the other party were not performed in accordance with their specific terms or were otherwise breached. Accordingly, in addition to any other remedy to which the parties hereto are entitled at law or in equity, each party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party and to enforce specifically the terms and provisions hereof in any court to which the parties have agreed hereunder submit to jurisdiction.

**14.09 Severability**

In the event that any particular provision or provisions or a part of a provision of this Agreement is found to be void, voidable or unenforceable for any reason whatsoever, then the particular provision or provisions or part of the provision of this Agreement shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force and effect.

**14.10 Strict Construction**

Each party to this Agreement hereto acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

**14.11 Counterparts**

This Agreement shall be considered properly executed and delivered by any party if executed in counterpart and transmitted by facsimile or electronic mail to the other party.

**14.12 Capacity of Receiver**

The Purchaser acknowledges that Deloitte Restructuring Inc. has been appointed as Receiver pursuant to the Appointment Order. The Purchaser further acknowledges and agrees



that Deloitte Restructuring Inc. acts solely in its capacity as Receiver, without personal or corporate liability. The Purchaser acknowledges and agrees that Deloitte Restructuring Inc. is entering into this Agreement solely in its capacity as the Receiver and that Deloitte Restructuring Inc., its agents, officers, partners and employees shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, or at equity as a result of or in any way connected with this Agreement or as a result of the Vendor performing or failing to perform any of its obligations hereunder.

**14.13 Schedules**

The following are the schedules delivered separately and initialled by the Vendor and the Purchaser for identification, and incorporated into this Agreement by reference and deemed to be a part hereof, namely:

- Schedule "A" - Legal Description of Innovation Drive Property
- Schedule "B" - Permitted Encumbrances
- Schedule "C" - Approval & Vesting Order

IN WITNESS WHEREOF the Vendor has duly executed this Agreement this 8<sup>th</sup> day of May, 2015.

DELOITTE RESTRUCTURING INC., solely in its capacity as the Court Appointed Receiver and Manager of the Property (as defined herein) of National Telecommunications Inc., with no personal or corporate liability

Per: PC  
 Name: PAUL R. CAYG  
 Title: JUNIOR VICE-PRESIDENT  
 (I have the authority to bind the Receiver)

14

This Agreement shall be open for acceptance by the Purchaser until 5:00 PM EST on May 12, 2015, after which time, if not accepted by the Purchaser, this Agreement shall be null and void and of no further force and effect.

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement this 12<sup>th</sup> day of May, 2015.

Unit 3 Innovation Drive Inc.  
 Per: S. Mazza  
 S. Mazza - A/D.

Witness

**GIANFRANCO J. DE MATTEIS**  
 Barrister and Solicitor  
 Unit 204, 3300 Steeles Avenue West  
 Concord, Ontario L4K 2Y4

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF INNOVATION DRIVE PROPERTY**

Unit 3, Level 1, York Region Standard Condominium Plan No. 1152 and its appurtenant interest.

The description of the condominium property is: Blocks 3 & 5, Plan 65M4044, Vaughan.

Subject to and together with as set out in Schedule "A" of Declaration YR1295786.

Being all of PIN 29683-0003 (LT)

A handwritten signature in black ink, appearing to be a stylized name, located in the lower right quadrant of the page.

## SCHEDULE "B"

### PERMITTED ENCUMBRANCES

Permitted Encumbrances with respect to the Innovation Drive Property means:

- a) All of the instruments set out in this Schedule "B";
- b) All of the instruments set out on the parcel register for the Innovation Drive Property as of the Closing Date, other than mortgages, charges or other financial encumbrances;
- c) The Condominium Documents;
- d) Any easements, servitudes, rights-of-way, licences, restrictions that run with the land 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);
- e) Defects or irregularities in title to the Innovation Drive Property;
- f) Inchoate liens for municipal property taxes, local improvement assessments and/or taxes and/or charges, and/or other taxes, assessments or recoveries, and/or common expenses and/or special assessments relating to the Innovation Drive Property not yet due or liens for same 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 Purchaser, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
- g) Zoning and building by-laws and ordinances, municipal by-laws and regulations, development agreements, subdivision agreements, site plan agreements, notices, and/or building restrictions;
- h) Inchoate liens for public utilities not due as at the Closing Date;
- i) The exceptions, limitations and qualifications set out in the *Land Titles Act* and/or set out on the parcel register for the Innovation Drive Property and any amendments thereto;
- j) All reservations, limitations, provisos and/or conditions set out in the original grant from the Crown; and
- k) All encroachments of buildings or other improvements and/or mislocated fences that may be shown on any existing survey or any up-to-date survey for the Innovation Drive Property.



Without limiting the foregoing Permitted Encumbrances include the following:

1. Notice of Subdivision Agreement with The Corporation of the City of Vaughan (the "City") registered as Instrument No. YR1092996 on November 27, 2011;
2. Transfer of Easement in favour of the City registered as Instrument No. YR1146292 on April 8, 2008;
3. Transfer of Easement in favour of the City registered as Instrument No. YR1146294 on April 8, 2008;
4. Transfer of Easement in favour of Powerstream Inc. registered as Instrument No. YR1160938 on May 9, 2008;
5. Notice of Condominium Agreement with the City registered as Instrument No. YR1279127 on January 21, 2009;
6. Plan of Condominium registered as YRCP1152 on March 17, 2009;
7. Condominium Declaration registered as Instrument No. YR1295786 on March 17, 2009;
8. Condominium By-law No. 1 of the Condominium Corporation registered as Instrument No. YR1302469 on April 6, 2009;
9. Condominium By-law No. 2 of the Condominium Corporation registered as Instrument No. YR1302470 on April 6, 2009;
10. Condominium By-law No. 3 of the Condominium Corporation registered as Instrument No. YR1302471 on April 6, 2009;
11. Condominium By-law No. 4 of the Condominium Corporation registered as Instrument No. YR1302657 on April 6, 2009;
12. Application to Annex Restrictive Covenants registered as Instrument No. YR1302658 on April 6, 2009; and
13. Amendment to Condominium Declaration registered as Instrument No. YR2101509 on March 3, 2014.



**SCHEDULE "C"**

Court File No. CV-15-10921-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ► ) ► DAY, THE ► DAY  
JUSTICE ► ) OF ►, 2015

BETWEEN:

**HSBC BANK CANADA**

Applicant

- and -

**NATIONAL TELECOMMUNICATIONS INC.**

Respondent

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by **Deloitte Restructuring Inc.** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of **National Telecommunications Inc.** (the "**Debtor**"), acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and [NAME OF PURCHASER] (the "**Purchaser**") made as of [DATE] and appended to the Report of the Receiver dated [DATE] (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.



ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Receiver's and all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated April 9, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region of an Application for Vesting Order in the form prescribed





by the *Land Titles Act* and/or the *Land Registration Reform Act*], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

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

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

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

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

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



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

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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A handwritten signature in black ink, appearing to be 'C. J. ...', located in the bottom right corner of the page.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-15-10921-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

HSBC BANK CANADA

Applicant

- and -

NATIONAL TELECOMMUNICATIONS INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "Court") dated April 9, 2015, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "Receiver") of all of the assets, undertakings and properties of National Telecommunications Inc. (the "Debtor"), acquired for, or used in relation to the business carried on by the Debtor, including the proceeds thereof (collectively, the "Property").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Receiver’s and the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections



7, 8 and 9 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 7, 8 and 9 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

**DELOITTE RESTRUCTURING INC.**, solely in its capacity as the Court Appointed Receiver and Manager of the Property (as defined herein) of National Telecommunications Inc., with no personal or corporate liability

Per: \_\_\_\_\_  
Name: ►  
Title: ►



---

**Schedule B – Purchased Assets**

All of the Receiver's (if any) and the Debtors' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) including, without limitation, the following real property:

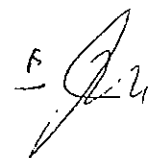
The property legally described as Unit 3, Level 1, York Region Condominium Plan No. 1152 and its appurtenant interest, being all of PIN 29683-0003 (LT), and municipally known as 101 Innovation Drive, Unit 3, Vaughan, Ontario.

A handwritten signature in black ink, appearing to be a stylized name, located in the bottom right corner of the page.

**Schedule C – Claims to be deleted and expunged from title to Real Property**

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Charge in favour of HSBC Bank Canada ("HSBC") registered as Instrument No. YR1953135 on March 7, 2013;
2. Notice of Assignment of Rents - General in favour of HSBC registered as Instrument No. YR1953136 on March 7, 2013;
3. Charge in favour of Addiction Associates Inc. registered as Instrument No. YR2078222 on December 23, 2013; and
4. Condominium Lien in favour of York Region Standard Condominium Corporation No. 1152 registered as Instrument No. YR2283965 on April 29, 2015.

A handwritten signature in black ink, appearing to be 'F. J. L.', is located in the bottom right corner of the page.

**Schedule D -- Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Innovation Drive Property (as defined in the Sales Agreement) means:


- a) All of the instruments set out in this Schedule "B";
- b) All of the instruments set out on the parcel register for the Innovation Drive Property as of the Closing Date, other than mortgages, charges or other financial encumbrances;
- c) The Condominium Documents, as defined in the Sale Agreement;
- d) Any easements, servitudes, rights-of-way, licences, restrictions that run with the land 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);
- e) Defects or irregularities in title to the Innovation Drive Property;
- f) Inchoate liens for municipal property taxes, local improvement assessments and/or taxes and/or charges, and/or other taxes, assessments or recoveries, and/or common expenses and/or special assessments relating to the Innovation Drive Property not yet due or liens for same 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 Purchaser, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
- g) Zoning and building by-laws and ordinances, municipal by-laws and regulations, development agreements, subdivision agreements, site plan agreements, notices, and/or building restrictions;
- h) Inchoate liens for public utilities not due as at the Closing Date;
- i) The exceptions, limitations and qualifications set out in the *Land Titles Act* and/or set out on the parcel register for the Innovation Drive Property and any amendments thereto;
- j) All reservations, limitations, provisos and/or conditions set out in the original grant from the Crown; and



- k) All encroachments of buildings or other improvements and/or mislocated fences that may be shown on any existing survey or any up-to-date survey for the Innovation Drive Property.

Without limiting the foregoing Permitted Encumbrances include the following:

1. Notice of Subdivision Agreement with The Corporation of the City of Vaughan (the "City") registered as Instrument No. YR1092996 on November 27, 2011;
2. Transfer of Easement in favour of the City registered as Instrument No. YR1146292 on April 8, 2008;
3. Transfer of Easement in favour of the City registered as Instrument No. YR1146294 on April 8, 2008;
4. Transfer of Easement in favour of Powerstream Inc. registered as Instrument No. YR1160938 on May 9, 2008;
5. Notice of Condominium Agreement with the City registered as Instrument No. YR1279127 on January 21, 2009;
6. Plan of Condominium registered as YRCP1152 on March 17, 2009;
7. Condominium Declaration registered as Instrument No. YR1295786 on March 17, 2009;
8. Condominium By-law No. 1 of York Region Standard Condominium Corporation No. 1152 (the "Condominium Corporation") registered as Instrument No. YR1302469 on April 6, 2009;
9. Condominium By-law No. 2 of the Condominium Corporation registered as Instrument No. YR1302470 on April 6, 2009;
10. Condominium By-law No. 3 of the Condominium Corporation registered as Instrument No. YR1302471 on April 6, 2009;
11. Condominium By-law No. 4 of the Condominium Corporation registered as Instrument No. YR1302657 on April 6, 2009;
12. Application to Annex Restrictive Covenants registered as Instrument No. YR1302658 on April 6, 2009; and
13. Amendment to Condominium Declaration registered as Instrument No. YR2101509 on March 3, 2014.





HSBC BANK CANADA

and

NATIONAL TELECOMMUNICATIONS INC.

Applicant

Respondent

Court File No.: CV-15-10921-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver