

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ZAHERALI VISRAM

Applicant

- and -

2220277 ONTARIO INC.

Respondent

RESPONDENT KARRAS COMPENDIUM OF DOCUMENTS FOR
MOTION SCHEDULED FOR FEBRUARY 21 2018
VOLUME III

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ONTARIO
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INDEX

VOLUME I

Application Record of Chaitons for motion returnable July 14 2017;

VOLUME II

Respondents Record of 2220277 Ontario Inc. for motion returnably July 14 2017;

VOLUME III

TAB

- 1 Implemented undertakings of cross-examination of Mr. Visram and in particular the closing statement in connection with the first mortgage extension to 2.6 million and the disbursal of funds;
- 2 Statement of Claim issued by 2220277 Ontario Inc. as against Zaherali Visram dated May 1 2017;
- 3 Respondents Factum for Application returnable July 14/17
- 4 Statement of Claim in Action CV-17-570878;
- 5 Statement of Defence and Counterclaim in Action CV-17-570878;
- 6 Defence to Counterclaim in Action CV-17-570878;

TAB 1

**Summary of Undertakings given at the Cross-Examination of Zaherali Visram,
held on June 14, 2017**

Undertaking	Answer
To review records and confirm whether you have a copy of an appraisal prepared by Stiry Appraisals International Ltd. dated December 19, 2011, and if so, produce same	See appraisal attached hereto and marked as Appendix "A"
To review records and confirm whether you have a mortgage statement from the first mortgagee, which would have been received in connection with the mortgage loan commitment dated January 18, 2012, and if so, produce same	See letter dated January 6, 2012 attached hereto and marked as Appendix "B"
To review records and confirm whether you have any cancelled cheques or other documentation with respect to the \$330,000 advanced by you in connection with the mortgage loan commitment dated January 18, 2012 and referred to in the Revised Re-Direction for Funds dated March 27, 2017 and reproduced as Exhibit "7", and if so, produce same	See copies of cheques collectively attached hereto and marked as Appendix "C" Also refer to Acknowledgement executed by the Respondent dated March 6, 2017 and attached as Exhibit "A" to the Reply Affidavit of Zaherali Visram sworn June 7, 2017
To review records and confirm the calculation for the amount of \$48,000, which is referred to as item 3 in the Redirection – Final Advance of Funds (\$700,000) dated July 26, 2012 and reproduced as Exhibit "9"	Two months' (June and July 2012) interest charged at \$12,000 per month, and extension fees for June and July 2012 at \$12,000 per month
To review records and confirm how the net amount of \$192,250, which is referred to as item 6 in the Redirection – Final Advance of Funds (\$700,000) dated July 26, 2012 and reproduced as Exhibit "9", was disbursed and produce any documentation with respect thereto	See copy of cheque attached hereto and marked as Appendix "D"
To review records and confirm whether you have a law firm trust ledger with respect to the amounts referred to as items 4 and 5 on the Amended Direction dated September 28, 2012 and reproduced as Exhibit "11", and if so, produce same	See trust ledger statement attached hereto and marked as Appendix "E"
To review records and confirm how the amount of \$440,546.40 referred to as item 9 on the Amended Direction dated September 28, 2012 and	See trust ledger attached hereto and marked as Appendix "E" . The disbursement was in accordance with the provisions of the mortgage

Undertaking	Answer
reproduced as Exhibit "11", was disbursed and produce any documentation related thereto and any direction received from the Respondent	loan commitment dated January 18, 2012
To review records and confirm whether you requested and/or received a statement from the Handleman Group as to what was outstanding under the first mortgage when it was acquired, and if so, produce same	See Assignment of Security attached hereto and marked as Appendix "F" that sets out amount of first mortgage
To review your records to see if you have a trust ledger or other documentation supporting payment of the amounts referenced in your handwritten notes detailing the increase of the first mortgage to \$2.6 million, and if so, produce same	See trust ledger statement attached hereto and marked as Appendix "G" .
To review your records to see if you have copies of any mortgage statements you would have given to the Respondent prior to March 15, 2015, and if so, produce same, and confirm and produce any breakdown you may have with respect to calculation of the amount of fees and interest of \$1,289,760 in the forbearance agreement	See fax sent to Evan Karras in May 2015 that includes a breakdown prepared by the Applicant, which is attached hereto and marked as Appendix "H"

APPENDIX “A”

PROSPECTIVE NARRATIVE APPRAISAL REPORT
AND
VALUATION ANALYSIS
OF A
COMMERCIAL/RESIDENTIAL PROPERTY
AT
650 BAY STREET
TORONTO, ONTARIO

◆

Prepared for:

**Royal Bank of Canada
25 Milverton Drive
Mississauga, Ontario
L5R 3G2**

December 19, 2011

Royal Bank of Canada
25 Milverton Drive
Mississauga, Ontario
L5R 3G2

Attention: Mr. Malik Ahmed
Senior Commercial Account Manager
Construction Services & Real Estate
Commercial Financial Services

Dear Sir,

Re: Prospective Narrative Appraisal of a Commercial/Residential
Property located at 650 Bay Street, City of Toronto, Ontario

As authorized, we have inspected the above captioned property (hereinafter referred to as the 'subject property') on November 23, 2011 and made certain investigations and studies for the purpose of expressing to you our opinion as to its prospective market value.

This appraisal report provides a description of the property and other pertinent data gathered during our investigations which have assisted us in arriving at our value conclusion.

In our opinion, the prospective market value of the fee simple interest in the subject property effective November 23, 2011 is:

\$10,100,000

(TEN MILLION ONE HUNDRED THOUSAND DOLLARS)

We wish to advise that we have no present or contemplated interest in this property of any kind whatsoever. This valuation has been prepared in accordance with the "Canadian Uniform Standards of Professional Appraisal Practice" of the Appraisal Institute of Canada.

This report has also been prepared on the assumption that the property complies with all requirements of the authorities having jurisdiction over environmental matters. The value reported may not reflect the prospective market value of the property should the property be found to be contaminated.

It is our understanding that valuation of the fee simple interest is required for first mortgage financing purposes.

Thank you for the opportunity to be of service.

Yours very truly,
STRY APPRAISALS INTERNATIONAL LIMITED,

John R. Le'Count, MIMA, AACI, P. App.
President

TABLE OF CONTENTS

	PAGE
Title Page	
Letter of Transmittal	
Executive Summary	
Photographs of Subject Property	
Photographs of Neighbourhood	
 PART I <input type="checkbox"/> INTRODUCTION	
1. Purpose of Appraisal	1
2. Intended Use of Report	1
3. Legal Description	1
4. Definition of Market Value	1
5. Definition of Prospective Market Value	1
6. Effective Date of Appraisal	1
7. Property Rights Appraised	2
8. Exposure Time	2
9. Marketing Time	2
10. History of Sale of Subject Property	2
11. Scope of Appraisal	3
12. Extraordinary Limiting Conditions	3
 PART II <input type="checkbox"/> DESCRIPTIVE SECTION	
13. Regional & Neighbourhood Data	4
14. Location Map	6
15. Site Analysis	7
16. Description of Improvements	9
17. Land Use Controls	12
18. Highest and Best Use	13
 PART III - V <input type="checkbox"/> VALUATION SECTION	
19. Methods of Valuation	14
20. Prospective Market Value – Direct Comparison Approach	16
21. Prospective Market Value – Income Approach	25
22. Reconciliation and Final Estimate of Prospective Market Value	34
 ADDENDA	
Appendix A Survey of Subject Site	
Appendix B Site / Architectural Plans	
Appendix C Qualifications of Appraiser	
Appendix D Assumptions and Limiting Conditions	
Appendix E Certification	

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STRY APPRAISALS INTERNATIONAL LIMITED
9-6975 Meadowvale Town Centre Circle, Suite 409
Mississauga, Ontario L5N 2V7
Tel: (905) 565-8925
Fax: (905) 565-9736

EXECUTIVE SUMMARY

Effective Date of Appraisal	November 23, 2011
Purpose of Appraisal	To estimate the prospective market value of the within described property for first mortgage financing purposes
Function of Appraisal	For establishing prospective market value
Property Appraised	Commercial/Residential Building
Location	650 Bay Street, City of Toronto, Ontario
Legal Description	Part of Lot 2, Plan 60 As in Instrument CA-720524 City of Toronto Province of Ontario PIN No. 211990067
Frontage (Bay Street)	83.00 feet approximately
Flank (Elm Street)	24.40 feet approximately
Total Site Area	±0.046 acre (±2,054 sq. ft.)
Total Building Area	±6,090 sq. ft.
Site Density	297%
Services	Full municipal services available
Zoning	Mixed Use (CR) T7.8 C2.0 R7.8
Highest and Best Use	Commercial/Residential Building
Direct Comparison Approach	\$9,440,000
Income Approach to Value	\$10,100,000
Final Estimate of Prospective Market Value	\$10,100,000

PHOTOGRAPHS OF SUBJECT PROPERTY



East Elevation



North Elevation



Southeast Elevation



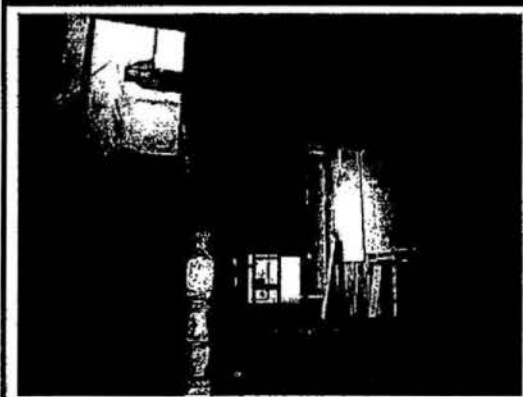
Southwest Elevation



Unit 1 - Sliced Gourmet Unit



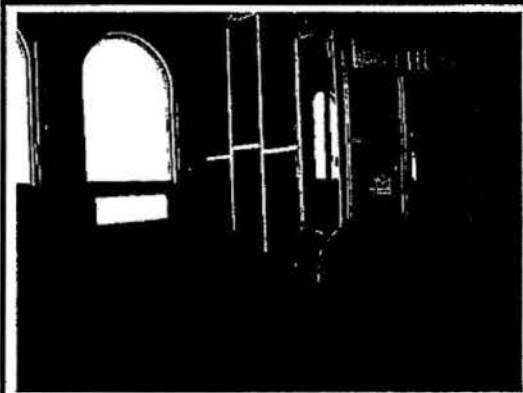
Unit 2 - 2287073 Ontario Inc. Unit



Main Lobby to Upper Floor



Residential Apartment Floor Corridor



Typical Apartment Unit



Basement

PHOTOGRAPHS OF NEIGHBOURHOOD



North View of Bay Street



South View of Bay Street



East View of Elm Street



West View of Elm Street

PART I
INTRODUCTION

Purpose of Appraisal

The purpose of this appraisal report is to estimate the prospective market value of the subject property located at 650 Bay Street, City of Toronto, Ontario.

Intended Use of Report

This appraisal is to be used for first mortgage financing purposes only.

Legal Description

The subject property is legally described as:

Part of Lot 2, Plan 60
As in Instrument CA-720524
City of Toronto
Province of Ontario

PIN No. 211990067

Definition of Market Value

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto;
5. the price represents the normal considerations for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Definition of 'Prospective Market Value'

'Prospective Market Value' is defined as a forecast of value expected at a future date. A prospective value estimate is most frequently sought in connection with real estate projects that are proposed, under conversion to a new use, or those that have not achieved sell-out status or a stabilized level of long-term occupancy at the time the appraisal report is written.

Effective Date of Appraisal

The effective date of this appraisal is November 23, 2011.

Property Rights Appraised

The property rights appraised are those of the fee simple interest in the real estate comprising the subject property. Fee simple is defined as a fee without limitation to any particular class of heirs or restrictions, but subject to the limitations of eminent domain, escheat, police power and taxation.

Exposure Time

Exposure time may be defined as follows: The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market. The reasonable exposure period is a function of price, time and use, not an isolated estimate of time alone. The reasonable exposure time inherent in the market value concept is always presumed to precede the effective date of the appraisal. Exposure time is different for various types of real estate and under various market conditions.

The subject property comprises of a mixed-use commercial building in the City of Toronto, Province of Ontario. Several similar properties that we are aware of in the area are being offered for lease or sale, therefore demand is relatively stable. We anticipate a reasonable exposure time for the subject property to be between 120 to 150 days.

Marketing Time

Marketing Time is an estimate of the amount of time it might take to sell a property interest in real estate at the estimated value level during the period immediately after the effective date of the appraisal. Marketing time differs from exposure time which is always presumed to precede the effective date of an appraisal. We are of the opinion that a reasonable marketing time for the subject property is 120 to 150 days.

History of Sale of Subject Property

The history of the sale of the subject property since 2001 is as follows:

The subject property operated as a limited service motel in downtown Toronto. It sold in April 2001 for \$1,680,000. In November 2008 the property owner defaulted on the mortgage and the mortgagee acquired the property under 'Power of Sale' proceedings. The mortgagee, B&M Handelman Investments Limited sold the property to the present owners, 2220277 Ontario Inc. on November 13, 2009 for \$2,425,000.

Real Estate Listing of Subject Property

To the best of our knowledge, the subject property has not been offered for sale under a real estate listing since its acquisition in November 2009.

SCOPE OF APPRAISAL

The scope of the appraisal encompasses the necessary research and analysis to prepare a report in accordance with the Canadian Uniform Standards of Professional Appraisal Practice established by the Appraisal Institute of Canada. With regard to the subject property, this involved the following steps:

- An inspection of the subject property and surrounding area by the appraiser was made on November 23, 2011;
- Information related to zoning, land use policies and trends were obtained from municipal planning reports and zoning by-laws;
- Discussions with Planning, Zoning and Engineering Officials for the municipality were conducted, if necessary;
- Assembly and analyses of relevant information pertaining to the property being appraised, including acquisition particulars if acquired within three years prior to the date of appraisal;
- Assembly and analyses of pertinent economic and market data;
- An in-depth discussion and statement of highest and best use;
- A discussion of the appraisal methodologies and procedures employed in arriving at indications of value;
- Preparation of the Direct Comparison Approach to Value. A reasonable attempt has been made to verify the sales transaction data to ensure that they were at arms length and reliable;
- Preparation of the Income Approach to Value by applying a market derived capitalization rate to the projected net income of the subject property;
- Reconciliation of the approaches to value into a final estimate of prospective market value as at the effective date of the appraisal; and
- Inclusion of all appropriate photographs, maps and addenda/exhibits.

Extraordinary Limiting Conditions

The following are the Extraordinary Limiting Conditions that apply to this appraisal report because we have not:

1. Verified sales data in the Registry Office. Therefore, we have relied upon third party verification of sales data.
2. Conducted a Title Search, nor examined the existence of easements, right-of-ways or restrictions, if any, and their effect on the appraised property.
3. Applied the Cost Approach to value as it would not reflect the investment rational of typical buyers for this type of property.

PART II
DESCRIPTIVE SECTION

REGIONAL AND NEIGHBOURHOOD DATA

Regional Data

The City of Toronto, found on the north shore of Lake Ontario and between the Peel and Durham regions, was created through the amalgamation the former Metropolitan Toronto which included York, East York, Etobicoke, Scarborough, North York and Toronto. The City of Toronto has a combined population of 2,503,281 according to the census obtained in 2006, an increase of 0.9% from Census 2001. Highway 401, 407, Gardiner Expressway, 427, 400, 404 and Don Valley Parkway all provide ingress and egress to and from the City. Local public transit is linked to other neighbouring cities, offering a comprehensive network of bus, subway and commuter train routes.

The subject property is generally located in central Toronto, in the Toronto Centre-Rosedale district of Ward 27. Ward 27 was home to 67,840 people and consisted of 39,375 households in 2006. The population of Ward 27 reportedly grew by 9.5% between 2001 and 2006. 76% of occupied private dwellings were in high-rise apartments and 12% were in low-rise apartments in 2006. In 2006, 37% of occupied private dwellings were owned while 63% were rented.

The subject is located within the Bay Street Corridor residential neighbourhood which is generally bounded by Bloor Street West to the north, Front Street to the south, University Avenue to the west and Yonge Street to the east. Total population in this neighbourhood was reported to be $\pm 15,320$ persons in 2006, a $\pm 9\%$ increase from the previous census year. Compared to the rest of Toronto, 68% of the residents here rent and the majority of private dwellings here (96%) are apartment buildings 5 storeys and above while only about 3.5% are in apartment buildings below 5 storeys in height. Total private dwellings surveyed were 8,765. The average gross rent in 2005 was reported to be \$1,250 and the average value of a dwelling was \$314,724. The median census family income was \$61,413.

Neighbourhood Data

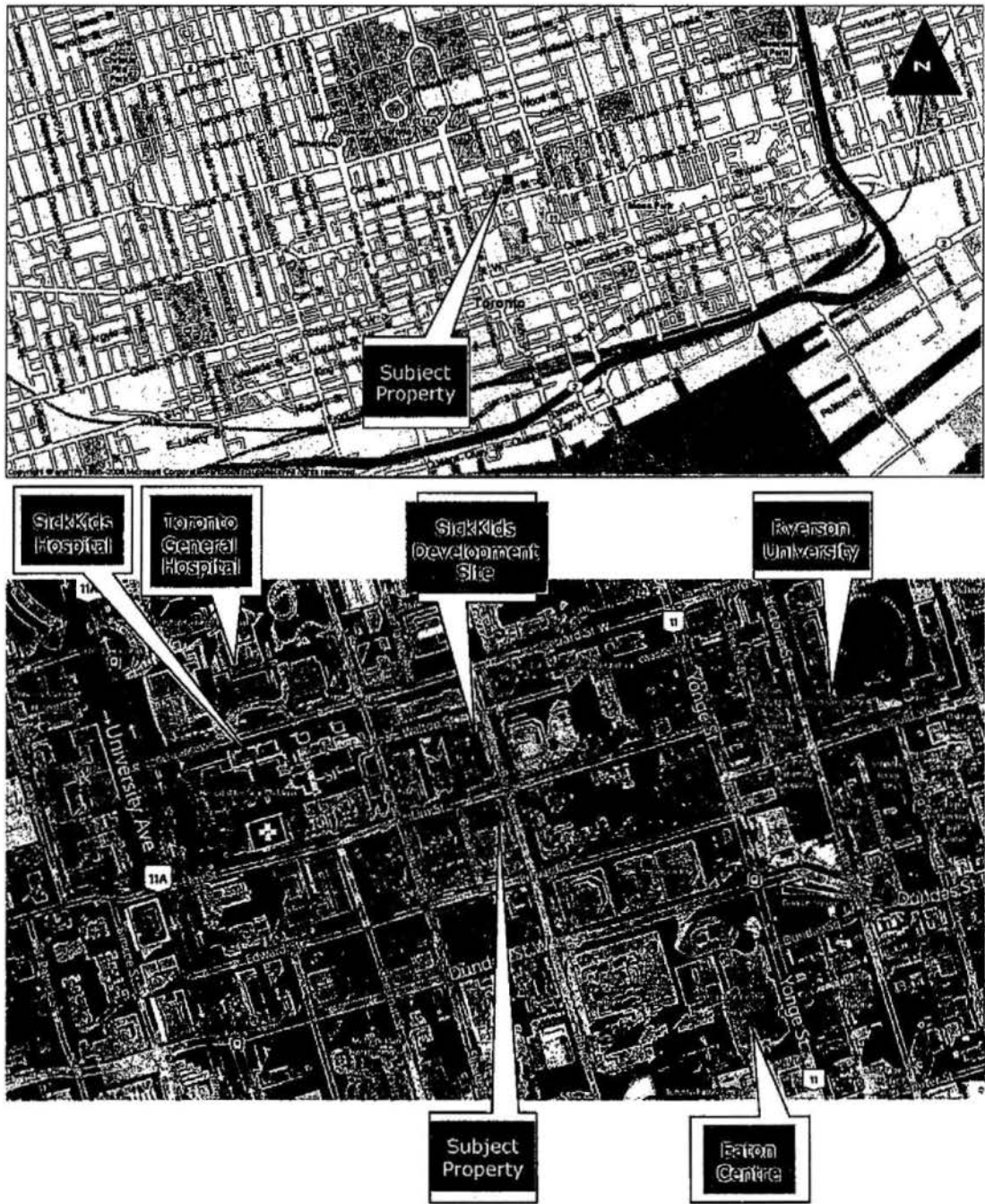
More specifically, the subject property is situated on the southwest corner of Bay Street and Elm Street, the block north of the Toronto Bus Terminal on Bay Street and Edward Street, ± 0.25 km southeast of Toronto General Hospital and generally south of the Women's College Hospital and the University of Toronto. The subject has street frontage on Bay Street and flank on Elm Street with pedestrian access from both streets.

The subject's immediate neighbourhood comprises a combination of institutional, office, residential apartments as well as major retail use buildings such as the Eaton Centre. College Street is a minor collector which travels from Lansdowne Avenue to Yonge Street.

An important development currently underway which will bode well for the subject is the construction of the new research centre of the Hospital for Sick Kids (SickKids). The $\pm \$400$ million, 21-storey, 750,000 sq. ft. Research & Learning Tower is being built at the corner of Bay and Elm Streets directly adjacent the subject property on the north side of Elm Street. This will bring together the 2,000 scientists and staff of SickKids Research Institute. The Tower is slated to be completed by 2013.

Bay Street here is improved with four lanes of traffic, it has concrete walkways and street lights, marred somewhat by overhead utility wires run parallel the street on the east side of

Location Map



SITE ANALYSIS

Legal Description

The subject property is legally described as:

Part of Lot 2, Plan 60
As in Instrument CA-720524
City of Toronto
Province of Ontario

PIN No. 211990067

Survey

The dimensions below were obtained from a plan of survey prepared by Tom A. Senkus, dated August 6, 2004.

The main particulars relating to the site are:

Shape	: Rectangular corner lot
Frontage (Bay Street)	: 83.00 feet approximately
Flankage (Elm Street)	: 24.4 feet approximately
Site Area	: ± 0.046 acre ($\pm 2,054$ sq. ft.)



Topography

Site sits at street grade and is mostly level, almost all of which is built up.

Utilities

Full municipal services and public utilities are available including sanitary and storm sewers, water, gas, telephone; hydro, accessory services, police, street cleaning, etc. are available to the property.

Soil Conditions

Although no soil analysis has been made in conjunction with this appraisal report, it is assumed that the existing soil conditions are typical for the area and soil bearing and drainage qualities are adequate to support future development. It is beyond the scope of this appraisal to assess the environmental liability which may or may not be present in or on the subject property.

To the best of our knowledge there are no mineral deposits contained in the subject property.

Adjacent Properties

The subject site municipally designated with an east facing frontage on Bay Street and with a smaller flank on Elm Street. The following about the subject property:

North	SickKids Research Institute (completion date in 2013)
East	Commercial use properties
West	Commercial and residential use properties
South	Parking lot

Hazardous Factors

No particular hazardous factors inherent in the immediate location of the property, eg. floods, odours etc. were noted. There were no odours in the area. No investigation was carried out as to soil contamination, but this may be explored if considered necessary.

Environmental

This appraisal report is prepared on the assumption that the property is free and clear of any environmental problems. The appraiser is not qualified to provide an opinion on the site's environmental impact, if any.

Off-Site

- Bay Street officially fronts site;
- Bay Street is a north-south collector with four lanes;
- Concrete curbs, sidewalks and gutters for surface drainage, also streetlights;
- Estimated right of way ± 66 feet;
- Subject is a corner lot which enjoys good exposure from both Bay Elm Streets;
- Elm Street is an east-west local street with two lanes;
- Concrete curbs, sidewalks and gutters for surface drainage, also streetlights;
- Estimated right of way ± 33 feet;
- Development is considered to be pedestrian friendly with respect to building placement on the lot, streetscape enhancements and general form and character.

DESCRIPTION OF IMPROVEMENTS

The property is referred to in this report as 650 Bay Street. However, some municipal records show the address as 55 Elm Street. The subject property is developed with a 3-storey mixed-use commercial/residential building 3-storey floors and a full basement. The building which was formerly a motel is presently undergoing an exterior and interior renovation. Once renovated, the building will be a premium mixed-use property with prime commercial retail space on the ground floor and residential bachelor suites on the 2nd and 3rd floors.

The overall aesthetic of the building is to be design forward, modern, sophisticated with clean lines. The upper two floors will consists of 23 hypo-allergic furnished bachelor suites, each with its own bath and kitchenette and will be appeal to visiting corporate executives, doctors, researchers and foreign students seeking accommodation in the heart of downtown Toronto. A description of the construction both exterior and interior follows:

Exterior:

The subject property has a poured concrete and brick foundation. Windows and doors will be set in pre-finished aluminium frames. The exterior of the building will have slate quarry tile on the main floor with granite borders on the front (east side) and the north side facing Elm Street. The two upper floors of the east and north sides will have exposed brick. The remainder of the building will have a brick exterior from the main to the third floor. The roof which is approximately 2,000 sq. ft. will be a built-up flat brick membrane structure with batt insulation. There will be granite steps from the five entrances to the building.

There will be five sets of entry doors which comprise of thermal glass in aluminium frame. Four of them are from Bay Street and provide entry to the small commercial unit, a general entry to the lobby of the building, one door to the large commercial unit and at the corner of Elm and Bay Street there is another entry door. The fifth door is from Elm Street.

Interior:**Basement**

The layout of the basement will include washrooms for men and women, an office or laundry room, storage areas, a central corridor and water, utility room and electrical room. There is potential to create two additional commercial units within the basement for lease in the future. This has not been taken into account by the appraiser since there are no immediate plans to rent them out. The two washrooms within the basement will be large washrooms; ladies washroom includes three stalls and two sinks and the men's washroom will include one stall, 2 urinals and two sinks. Interior finish will be mostly ceramic tile on the floors and walls and the ceiling will be drywall with incandescent or fluorescent light fixtures.

Ground Floor

The ground floor will consist of a small entrance lobby for access to the second and third floor suites. The main floor will have approximately 1,565 sq. ft. of premium commercial space separated into two units; suitable for entertainment, hospitality, food services, retail or service related businesses. The commercial units are 1,165 sq. ft. on the north (Unit 1) and Unit 2 is 420 sq. ft. on the south side of the main floor.

Interior finish of the commercial units includes solid oak entrance doors to each of the two units, flooring will be ceramic tile, interior walls and the ceiling will be drywall. Only the smaller commercial units will have one wall of exposed brick within the unit. Lighting will be halogen and ceiling height of the units is 10 feet. Each unit will have 100-400 amps electrical service.

The lobby will have a glass panel stairwell with stainless steel handrails. The lobby itself will have stainless steel flooring, interior walls will be drywall and the ceiling will be mother of pearl tile with a central chandelier and pot lighting.

Second Floor - Suites 200-211 - 11 units

Each suite will have an area of approximately 120-150 sq. ft. All units will be bachelor units and will be fully furnished. Suites will have a bedroom, washroom and kitchenette. This floor will have a ceiling height of 12 feet. Interior finish will be fire rated entrance doors, floors will be pre-engineered hardwood, interior walls will be drywall with upholstery covering and the ceiling will be drywall. Lighting will be halogen fixtures. Suites will have 5-7 foot windows.

Special features of the suites that will be included are I-Pod dock station/alarm, bar fridge with coffee maker, night stand and desk, microwave, flat screen TV's, bedding, linen, tableware and cutlery. The beds will have pull-out drawers. Each suite will have a PTAC unit for controlling electrical heat and air-conditioning.

The central corridor will have carpeted flooring, interior walls will be drywall with upholstery covering and the ceiling will be drywall with wall-mounted sconces for lighting.

Third Floor - Suites 301-312 - 12 units

This floor will be accessed by a wood frame stairwell with carpet on the steps. The central corridor and suite interior finish will be similar to that on the second floor. This floor will have 9 foot ceiling height.

Signage

The property also has a sign permit allowing for wall advertising on the south wall facing the Toronto Bus Terminal, the adjacent parking lot and the Bay Street north-bound traffic. The wall advertising space was previously leased to Titan Outdoor but at the time of inspection there was no sign on the wall. Once renovations are completed the advertising space will be leased again when the exterior work on the building is completed. This will be a further income generation source for the property.

Potential

The current zoning allows for 7.8 times land coverage which would permit the construction of an additional four floors without any zoning variance. The property owner has advised that the foundation of the building was carefully inspected by Albert Ramprasad, structural engineer who has confirmed that the building can take the load for the additional density, should the need arise.

HVAC

Electrical: Varies from 200 to 800 amps within the building
Pull alarms, fire exits and heat and smoke detectors.

Electric heating
Air-conditioning
Fire escape from Elm Street side of the building.

Completion of the exterior and interior finishes:

These are scheduled as follows:

Completion of exterior work	-	December 2011
Completion of interior work	-	February 2012.

Estimated cost of the upgrading of the subject property is \$ 1,848,343. This appraisal is prepared on the assumption that all work left to be completed will be done so in a timely manner and within the general deadlines referred to above.

Overall Condition of Structures:

When all interior and exterior work is completed, the subject property will be in excellent condition.

LAND USE CONTROLS

Official Plan Designation

The subject property is designated 'Mixed Use Area' under the Official Plan of the City of Toronto.

Zoning

The subject property is zoned Mixed Use (CR) T7.8 C2.0 R7.8 under By-law No. 4-86, as amended. The zoning permits a wide variety of commercial, residential and retail uses.

The current zoning of the subject property allows for 7.8 times land coverage, as opposed to the 1.5 times and 2.5 times coverage typically seen in downtown Toronto. The subject property currently has a site density of ± 3 times and the zoning allows for an additional density of the lot area. Therefore, based on the current land use regulation, any permitted increase in density on the subject property up to 7.8 times would not require any variance or Committee of Adjustment approval from the City of Toronto.

There are various set back requirements and parking requirements established under the zoning by-law.

It is assumed the subject complies with the various requirements of the zoning by-law.

HIGHEST & BEST USE

Introduction

The principle of highest and best use is fundamental to the concept of value in real estate appraising. This principle may be defined as "that use which is most likely to produce the greatest net return over a given period of time". The criteria for determining highest and best use include the following:

- Physical Possibility - the use must be within the realm of probability, a likely one, not speculative or conjectural;
- Legal Permissibility - the use must be legal and in compliance with zoning and building restrictions;
- Financial Feasibility - a demand for such use must exist;
- Maximum Productivity - the use must provide the highest net return to the land.

Physical Possibility

The site is sufficient in size, shape with suitable topography to accommodate the proposed mixed use. Therefore, the intended mixed-use is physically possible.

Legal Permissibility

According to the City of Toronto, the site is designated Mixed Use (CR) T7.8 C2.0 R7.8. This classification permits the current use of the subject property as a mixed-use property. As such, the existing use is legally permissible.

Financial Feasibility

The subject property is being converted to a mixed-use building. Potential rental income will be obtained from leases of the commercial units on the main floor and bachelor apartment units on the second and third floors. The economic viability of the subject property will be evident by its future operating performance.

Maximum Productivity

Of the various uses satisfying the criteria discussed above, the proposed mixed-use represents the maximum productivity of the property at the present time. However, under the present zoning, density can be as much as 7.8 times of lot area; therefore there is the potential to add more floors on the site when market conditions support such an addition.

Conclusion

The subject property, when completed, will consist of commercial retail units on the main floor and apartment units on the upper floors. We do not envision any other use for the site than its proposed use because the building is being upgraded to accommodate commercial/residential use. Following renovations, the remaining economic life of the structure will be over 35 years. There are ample sites in the City of Toronto that can be used for other purposes; therefore, it is doubtful that the subject site would be used for any other purpose than its proposed use. Having considered all pertinent factors it is our opinion that the Highest and Best Use for the subject site, as 'if vacant' and as 'if improved', as at the effective date of this appraisal, is the continuation of its current use as a mixed use commercial / residential building.

PART III
VALUATION SECTION

METHODS OF VALUATION

Valuation Techniques

The purpose of this report is to arrive at an estimate of the prospective market value of the subject property. This is achieved by a systematic gathering, classification and analysis of data which is required in the development of the three basic approaches to value: the Income Approach, the Direct Comparison Approach and the Cost Approach.

Income Approach

With the Income Approach, the value is based on future benefits (cash flows) that may be derived from the property. The two principal techniques utilised for the Income Approach are the discounted cash flow (DCF) analysis method and the direct capitalization of a stabilized income (OCR) method.

Discounted Cash Flow Method

The discounted cash flow (DCF) method attempts to directly quantify more variables related to multi-tenanted income producing properties with irregular cash flows. Using this valuation method, future cash flows from the property are forecast using precisely stated assumptions, together with an estimated reversion value upon a deemed disposition at the end of the holding period. The multi-year model allows the appraiser to directly consider the costs associated with vacancies, leasing costs, exposure to vacancies, growths in rental rates. These future financial benefits then are discounted to present day value at an appropriate discount rate.

The selection of a discount rate allows the appraiser to recognize the time value of money, certainty of payment (risk) and the opportunity cost of funds that can be associated with a long-term non-liquid investment.

Overall Capitalization Rate Method

With the overall capitalization method, an estimate of a stabilized income is capitalized by an investor's expected return based on comparable properties that have sold. Inherent in the capitalization rate are many factors not directly quantifiable in the cash flow such as vacancies, income growth and security of income.

Direct Comparison Approach

The Direct Comparison Approach involves a comparison of the subject property to similar properties that have actually sold in arms-length transactions or are offered for sale. Sale and asking prices are adjusted to reflect the differences that exist between the sale property and the subject property; the adjusted prices are correlated into a final value estimate of subject's prospective market value.

This approach demonstrates what buyers have historically been willing to pay (and sellers willing to accept) for similar properties in an open and competitive market and is particularly useful in estimating the value of the properties that are typically owner occupied. The unit of comparison for improved properties is typically the price per sq. ft. of building area.

Cost Approach

This approach consists of estimating the replacement cost new of all improvements, deducting accrued depreciation from all sources, and adding the value of the underlying land, estimated by comparison to recent land sales. The value derived from this approach is a summation of the various property components contributing to the total property value, and it is applicable when each component is independently measurable, and when the sum of all components is believed to reflect prospective market value.

The Cost Approach is especially useful in estimating insurable value, or in estimating the prospective market value of fairly new improvements and special purpose properties which, because of their design and single-use nature, have a limited market and would not be valued more accurately by another approach.

This approach is not applicable to unimproved land or obsolete improvements and rapidly loses its accuracy when large allowances for depreciation are required or when market stagnation limits the availability of recent comparable land sales transaction and new construction cost data. This approach is also not applicable when the property is encumbered by multiple leases which restrict the direct application of the substitution principle.

Summary

In establishing the prospective market value of a specific property, we must rely upon the approaches that are best suited to estimate value for that property.

In our view, the Prospective market value of the subject property is derived mainly from the Income Approach and the Direct Comparison Approach. The Cost Approach is not used since the subject property is encumbered by multiple leases.

We have therefore appraised the property on the foregoing basis.

PART IV
DIRECT COMPARISON
APPROACH

DIRECT COMPARISON APPROACH

The Direct Comparison Approach is a valuation whereby the property being appraised is compared with similar properties that have recently been sold or offered for sale. The assumption is that if the subject property had been exposed to the market, it would have been in competition with comparable properties dealing with the same type of purchaser under similar market conditions. Since no two properties are completely alike, adjustments must be made for differences between the comparables and the subject property. In arriving at all value conclusion by this method, the greatest weight is given to actual sales of truly comparable properties made at or nearest the effective date of appraisal in order to reflect comparable economic conditions.

Traditionally, the primary elements of comparison are time, location, size, layout and condition. There may be other adjustments necessary in order to compare the subject property. If so, they are stated in the report. The objective is to adjust the sale prices of the comparable properties so that a proper comparison can be made to the subject property in order to determine what the property would achieve in terms of sale price as at the effective date of valuation, if exposed for sale on the market for a reasonable length of time.

The selection of comparable properties was limited to mixed use commercial properties which had retail on the main level and offices / residential on the upper levels, similar to the subject property. Single tenant buildings which are usually purchased by end-users are not considered to be comparable and therefore have not been used in this appraisal. The most relevant comparable sales which form the basis of this approach to value have been summarized for ease of reference on the following pages.

No. 1 : 363 Yonge Street, Toronto

This property is located on a rectangular lot with frontage of ± 49.6 feet and a depth of ± 127 feet, backing onto a public lane, midway between Gould and Gerrard Streets.

The building contains $\pm 9,500$ sq. ft., of which $\pm 3,900$ sq. ft. is on the ground floor and site density is 151%. The building has four storeys and a basement. It was constructed in the 1890's and has a classic Victorian era façade with ornate brickwork, a few stone trimmings and modernized store facades. The back, facing an alley, is far less pretentious, much of it painted black, and has 14 parking spaces which is rare for this type of property. The property contains three ground floor stores and the upper floors have one commercial tenant and five apartments. The property presents an opportunity for additional building construction, especially on the ground floor and for the upgrading of the upper levels.



At this location, Yonge Street is a major arterial road with buried services, four narrow lanes and no on-street parking. Pedestrian traffic is heavy despite narrow sidewalks. An intensive retailing route, it is lined for many blocks by old storefronts, many of them modernized, and by occasional office or apartment towers of more recent vintage.

Analysis

Adjustments made to this sale include the following:

Factor	Adjustment	Remarks
Time:	Upward	This is the earliest sale surveyed requiring an upward time adjustment to reflect the growth in the real estate market in the downtown Toronto market.
Location:	Upward	Although located closest to the subject and on Yonge Street, the subject's location which is adjacent the new SickKids Research Institute is a significant advantage. An upward location adjustment is therefore considered necessary.
Size:	Upward	As there is generally an inverse relationship between the size of a building and its sale price per unit with larger buildings typically selling at lower per unit prices, an adjustment for size is made for this larger sized building when compared to the subject.
Other:	Upward	The subject will have the added benefit of 23 residential units which would typically command a higher rate based on the short term stay nature of these units. The subject is also being extensively renovated and renewed to modern standards. The overall adjustment is upwards for both layout and condition.

No. 2 : 410 Bloor Street West, Toronto

This property has a total area of ± 0.120 acre of which 2,810 sq. ft. is on Bloor Street, 2,410 sq. ft. at the rear of 5 Howland Avenue – the parking lot.

Building area is $\pm 5,200$ sq. ft. of which 2,800 sq. ft. is retail space on the ground floor. The building is 3 storeys and has a basement. It was built circa 1910-1930. There are two apartments on the upper floors and four parking spaces to the rear of the property.

This is a typical brick storefront property with narrow frontage. It had been remodelled in 2006 to accommodate 'The Pump', a tavern and restaurant. The rear of 5 Howland parcel of land is a small parking area, separated by a lane from the back of the storefront building.



At this location, Bloor Street has buried services, good walking environment and the street is lined by well-kept storefronts.

Analysis

Adjustments made to this sale include the following:

Factor	Adjustment	Remarks
Time:	Upward	An upward time adjustment to reflect the growth in the real estate market in the downtown Toronto market.
Location:	Upward	Although located on Bloor Street West, the subject's location which is adjacent the new SickKids Research Institute is a significant advantage. An upward location adjustment is therefore considered necessary.
Size:	Downward	As this is a smaller building compared to the subject, a downward size adjustment is made.
Other:	Upward	The subject will have the added benefit of 23 residential units which would typically command a higher rate based on the short term stay nature of these units. The subject is also being extensively renovated and renewed to modern standards. The overall adjustment is upwards for both layout and condition.

No. 3 : 399 Queen Street West, Toronto

This property is located on a small lot of ± 0.13 acre.

The building contains $\pm 6,000$ sq. ft. of which $\pm 4,000$ sq. ft. are on the ground floor. It has 3 storeys and was built in 1900 and renovated in or around 2000. No parking is available.

This is a single store building with a glamorous three storey street front, backed by a grim looking rear not usually seen by shoppers.

Queen Street at this particular location is a fashionable retail strip, overcrowded with cars, pedestrians and streetcars.



Analysis

Adjustments made to this sale include the following:

Factor	Adjustment	Remarks
Time:	Upward	An upward time adjustment to reflect the growth in the real estate market in the downtown Toronto market.
Location:	Upward	Although located on Queen Street West, the subject's location which is adjacent the new SickKids Research Institute is a significant advantage. An upward location adjustment is therefore considered necessary.
Size:	None	No size adjustment is considered necessary.
Other:	Upward	The subject will have the added benefit of 23 residential units which would typically command a higher rate based on the short term stay nature of these units. The subject is also being extensively renovated and renewed to modern standards. The overall adjustment is upwards for both layout and condition.

No. 4 : 840 Yonge Street, Toronto

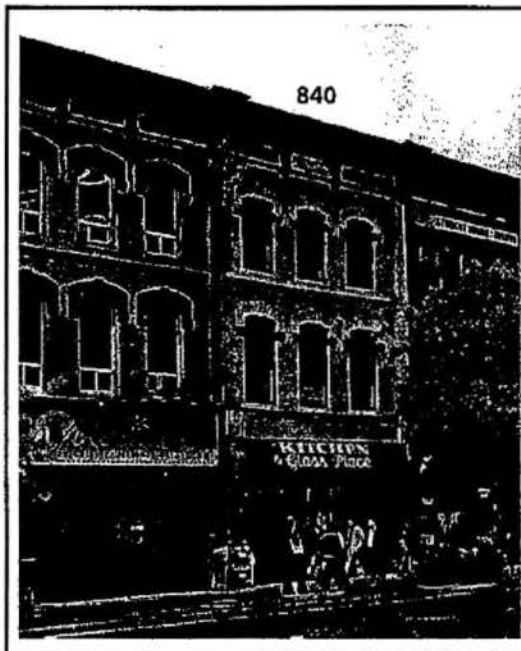
The property is located on a rectangular lot of 20 x 147 feet, the sixth property south of Yorkville Avenue, backing onto a public lane.

This is a 3-storey structure with a total gross floor area of $\pm 4,300$ sq. ft.; $\pm 2,500$ sq. ft. of which is the main floor. It has a full basement. The property was constructed in the 1880's and has two parking spaces.

This is a typical Victorian era storefront; most of its value is in the ground floor retail space. The two upper floors, suitable for modest offices, were vacant at the time of sale.

The property is 150 metres north of the Yonge/Bloor intersection and the junction subway station. The immediate neighbourhood is a strong retail location.

At this location, Yonge Street is quite congested thoroughfare with busy sidewalks, lined with old storefronts and more recent office and apartment towers.



Analysis

Adjustments made to this sale include the following:

Factor	Adjustment	Remarks
Time:	Upward	An upward time adjustment to reflect the growth in the real estate market in the downtown Toronto market.
Location:	Upward	Although located on Yonge Street, the subject's location which is adjacent the new SickKids Research Institute is a significant advantage. An upward location adjustment is therefore considered necessary.
Size:	Downward	As this is a smaller building compared to the subject, a downward size adjustment is made.
Other:	Upward	The subject will have the added benefit of 23 residential units which would typically command a higher rate based on the short term stay nature of these units. The subject is also being extensively renovated and renewed to modern standards. The overall adjustment is upwards for both layout and condition.

No. 5 : 346 Queen Street West, Toronto

The building is located on a narrow rectangular lot with a frontage of 13 feet and a depth of 99 feet on the north side of Queen Street West, in the block east of Spadina Avenue. There was no rear lane.

The gross floor area of the building is $\pm 3,000$ sq. ft. of which $\pm 1,000$ sq. ft. is on the ground floor. It has a high density of 234%. This is a 3-storey structure built in 1888.

Despite its age, this small storefront had been well preserved, its ornate Victoria era ornamentation still in good condition. The upper floors are also commercially utilized.



Vacant when sold, the building had been occupied by a health food store and the vendor's trading company.

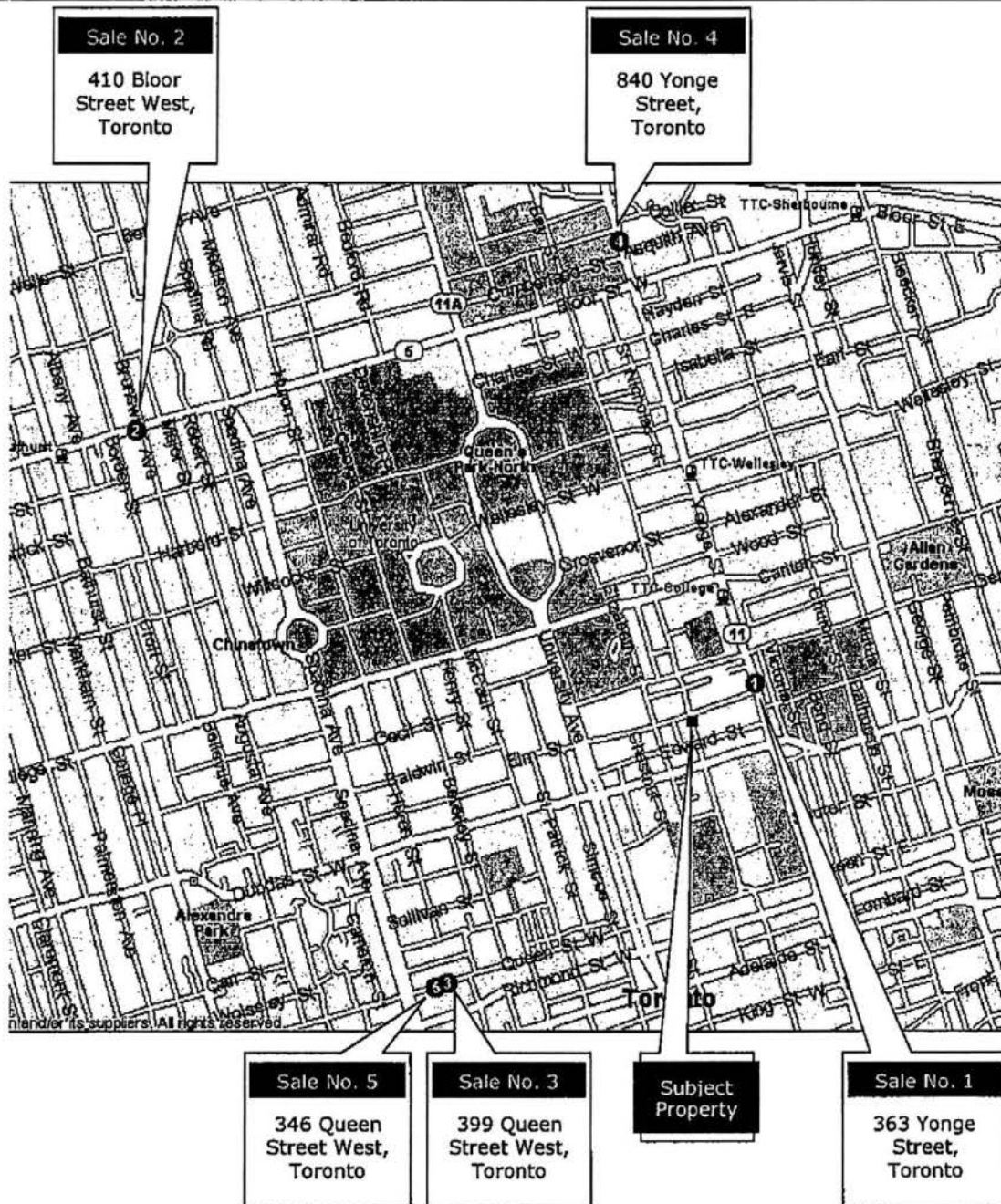
Queen Street is a four-lane arterial road with overhead wires, streetcar tracks in the middle and an unusually wide northern sidewalk. At this location it is the best part of the commercial strip along Queen Street.

Analysis

Adjustments made to this sale Include the following:

Factor	Adjustment	Remarks
Time:	Upward	An upward time adjustment to reflect the growth in the real estate market in the downtown Toronto market.
Location:	Upward	Although located on Queen Street West, the subject's location which is adjacent the new SickKids Research Institute is a significant advantage. An upward location adjustment is therefore considered necessary.
Size:	Downward	As this is a smaller building compared to the subject, a downward size adjustment is made.
Other:	Upward	The subject will have the added benefit of 23 residential units which would typically command a higher rate based on the short term stay nature of these units. The subject is also being extensively renovated and renewed to modern standards. The overall adjustment is upwards for both layout and condition.

Location Map of Comparable Sales



Comparable Mixed-Use Commercial/Residential Property Sales

Sale No.	Address	Date of Sale	Sale Price	Total Building Area (sq. ft.)	Sale Price Per Sq. Ft.	ADJUSTMENTS				Adjusted Sale Price Per Sq. Ft.
						Time	Location	Size	Layout & Condition	
1	363 Yonge Street, Toronto	Apr-07, 2009	\$6,980,000	9,500	\$735	↑	↑	↑	↑	\$1,673
2	410 Bloor Street West, Toronto	Feb-19, 2010	\$2,500,000	5,200	\$481	↑	↑	↓	↑	\$1,348
3	399 Queen Street West, Toronto	Apr-14, 2010	\$4,950,000	6,000	\$825	↑	↑	↔	↑	\$1,779
4	840 Yonge Street, Toronto	Aug-31, 2010	\$2,325,000	4,300	\$541	↑	↑	↓	↑	\$1,511
5	346 Queen Street West, Toronto	Jan-27, 2011	\$2,000,000	3,000	\$667	↑	↑	↓	↑	\$1,558
SP	650 Bay Street, Toronto			6,090						
Average Adjusted Sale Price Per Sq. Ft.										\$1,574
Median Adjusted Sale Price Per Sq. Ft.										\$1,558

SP = Subject Property

Valuation

A search for sales of mixed use commercial / residential buildings in the City of Toronto revealed five. They are summarized in the preceding pages.

Adjustments made are for time of sale, location, size, layout and condition of each comparable as it relates to the subject. This is detailed within the narration and analysis of each comparable.

Adjusted sale prices for the various comparable properties range from \$1,348 to \$1,779 per sq. ft. Average adjusted sale price is \$1,574 per sq. ft. and the median is \$1,558 per sq. ft.

The subject property is a mixed use property that was once a motel. It is being extensively renovated with main floor commercial and upper floors will comprise of 23 short term stay bachelor apartment units. Its location across from the SickKids Research Institute which is currently under construction and scheduled to be completed by 2013 bodes extremely well for the subject property as it will offer short term accommodation to visiting researchers, doctors, corporate executives and so on. Its downtown location and close proximity to other downtown hospitals as well as the major shopping venues, such as Eaton Centre are also positives.

Taking into consideration that the subject has a higher proportion of short term residential space and its prime main floor commercial space, it is the appraiser's opinion that the prospective market value of the subject is at established at **\$1,550 per sq. ft.**, effective November 23, 2011:

Prospective Market Value By Direct Comparison Approach				
Subject Property	6,090 sq. ft. x	\$1,550	per sq. ft. = \$	9,439,500
Rounded to				<u>\$ 9,440,000</u>

\$9,440,000

(NINE MILLION FOUR HUNDRED FORTY THOUSAND DOLLARS)

PART V
INCOME APPROACH

INCOME APPROACH

The Income Approach is based upon our estimate of income that an investor may reasonably expect to earn and then converting or capitalizing this cash flow to a capital value. The two main methods of capitalization used are the Overall Capitalization Rate (OCR) and the Discounted Cash Flow (DCF) methods. The OCR method measures the relationship of value to the net operating income expected for one year, using an analysis of comparable sales of other similar investment properties. The DCF method involves the reasonable estimation of net operating income over a longer investment horizon, based upon a typical market expectation of rental income and expense inflators. The forecast annual net operating income and the reversionary value of the asset are discounted to express the present value using rates as surveyed from the market.

Given typical investment parameters utilized by investors within this market segment, the OCR method has been employed in the valuation of the subject property.

Scope of Income Approach

We have carried out a survey of competing retail and furnished residential suites to obtain pertinent rental data from which 'fair market rent' was determined. We have also reviewed the commercial the leases presently in place on the subject property.

Having regard to our projections made for income, vacancy allowance and operating costs, we have estimated a reasonable projection of net operating income in accordance with Appraisal Standards.

We have interpreted the particular investment characteristics displayed by the subject property and have applied a market derived capitalization rate based upon market expectations to establish the subject's prospective market value.

Subject Property Commercial Leases

Tenant	Unit	Lease Expiry	Renewal Options	Size of Unit	Lease Rate (NET)	Annual Rent
Sliced Gourmet	1	Oct-31, 2016	2 x 5 years	1,165	\$67.50	\$78,638
Remarks:	Rent escalates in Yrs. 3 & 4 to \$70 per sq. ft. and in Yr.5 to \$75 per sq. ft. First renewal term rents have been negotiated at: Yr.6 = \$76.50; Yr.7 = \$78.03; Yr.8 = \$79.59; Yr.9 = \$81.18 and Yr.10 = \$82.80 per sq. ft. The second renewal term rents will be renegotiated but not less than \$82.80 per sq. ft.					
2287073 Ontario Inc.	2	Oct-31, 2016	Open	420	\$75.00	\$31,500
Remarks:	Rent escalates in Yr.2 = \$78.75; Yr.3 = \$82.69; Yr.4 = \$86.82 and Yr.5 = \$91.16 per sq. ft.					

The subject property includes retail space located on the main level and residential space on the upper levels of the buildings with street exposure on Bay Street and/or Elm Street. Leases negotiated are recent and are for 5 year terms, one of which can be extended at fixed rents for an additional 5 years and +5 year extension at current market terms.

Comparable Retail/Commercial Space Rental Data

Index No.	Address	Lease / Sale Date	Rentable Area (sq. ft.)	Net Lease Rate Psf / Annum
1	542-546 College Street	Oct 16, 2008	2,450	\$63.50
2	2576-2578 Yonge Street	Oct 27, 2008	2,156	\$48.00
3	372 Yonge Street	Mar 27, 2009	2,100	\$42.86
4	409 Queen Street West	Apr 09, 2009	769	\$110.00
5	409 Queen Street West	Apr 09, 2009	3,400	\$62.00
6	252 Carlton Street	Apr 09, 2009	840	\$55.36
7	356 King Street West	Jun 22, 2011	978	\$80.00
8	101 Yorkville Avenue, #102	Jul 05, 2011	676	\$73.00
9	83 Yorkville Avenue	Aug 19, 2011	2,407	\$70.00
10	101 Yorkville Avenue, #103	Sep 15, 2011	476	\$70.00
11	70 Yorkville Avenue	Oct 15, 2011	714	\$75.00
12	2011 Yonge Street	Nov 14, 2011	2,052	\$60.00
13	247 Yonge Street	Current	8,230	\$84.75
Average Rent				\$68.81
Median Rent				\$70.00

Comparable Short Term Stay Accommodation Rates

Index No.	Address	Apartment Type	Daily Rent	Weekly Rent
1	1150 Queen Street West - Drake Hotel	Bachelor	\$189.00	\$1,323.00
2	1 King Street West - One King	Bachelor	\$95.00	\$665.00
3	1214 Queen Street West - Gladestone Hotel	Bachelor	\$165.00	\$1,155.00
4	350-390 Queens Quay West - The Maple Leaf	1 B/R + Den	\$109.00	\$728.00
5	736 Bay Street - Conservatory Tower	1 B/R	\$119.00	\$798.00
6	50 John Street - Rosemont	Bachelor	\$105.00	\$735.00
7	38 Elm Street	1 B/R	\$80.00	\$560.00
8	200 Victoria Street - Pantages	Studio	\$90.00	\$630.00
9	955 Bay Street - Apartments on Bay	Studio	\$90.00	\$630.00
10	165 Grange Avenue - The Grange Apartment Hotel	Bachelor	\$65.00	\$455.00
11	592 Shebourne Street - Clarion Hotel and Suites Shelby	Single	\$79.00	\$553.00
Average Rent			\$107.82	\$748.36
Median Rent			\$95.00	\$665.00

Economic (Market) Rent

Reference should be made to the chart of market rental data for retail/commercial space above.

Retail/Commercial Space

The survey of all comparable retail rents range from \$42.86 to \$110.00 per sq. ft. per annum net, representing a wide range that is reflective of the age, condition, size and location of each of the comparables. These are current leases within the general location of the subject property. From the survey, it is apparent that the lease rates for smaller sized units typically command a higher per unit rate when compared to larger sized units. The average lease rate is \$68.81 per sq. ft. and the median is \$70.00 per sq. ft.

The contract rents of the subject property set for the first year range from \$67.50 per sq. ft. net for the larger space and \$75.00 per sq. ft. net for the smaller space. It is noted that both leases have rent escalations negotiated in them. Base on the survey of competing rents, the appraiser is of the opinion that the contract rents for the commercial retail space in the subject property are within the range surveyed. We have therefore accepted the rents as representative of 'fair market rent' and applied them to derive revenue for the retail space.

Competitive Short Term Stay Accommodation Rates

In determining the 'fair market rate' for the subject property, the appraiser has surveyed competitive short term stay accommodation rates in downtown Toronto and are referenced in the table above.

The subject property will offer 23 fully furnished bachelor style apartment units which will be offered for rent on a daily, weekly or monthly basis. In comparing the subject apartment units to that available in the market place for short term rent, the appraiser has considered professionally managed, fully furnished apartments in condominium buildings and hotels.

Of the comparables surveyed, Drake Hotel (Index No. 1) and Gladstone Hotel (Index No. 3) have mostly smaller rooms of 150 sq. ft. (similar in area to the subject), with a few larger 'suites'. Neither The Gladstone nor The Drake has a kitchenette in their rooms for extended stay. The classic rooms at The Gladstone start at \$165 per night and the 'Crashpad's' at the Drake start at \$189 per night. These equate to \$1,155 to \$1,323 per week.

ONE KING (Index No. 2) offers in-room kitchenettes. The rate for a studio room works out to \$95 per night or more or less \$665 per week.

Index Nos. 4 to 6 comprises fully furnished apartment units within a residential condominium building that are offered for short term stay accommodation. Amenities included in these facilities are typical of which are offered within a modern residential condominium building and though some have weekly availability, most have minimum stay requirements of a month. These range from \$105 to \$109 per night and \$728 to \$798 per week.

Index Nos. 7 to 11 includes boutique style hotels and older style apartment / hotel buildings. Rates range from \$65 to \$90 per night and \$455 to \$630 per week.

Of interest, Delta Chelsea Hotel offers a corporate rate of \$150 per night for a Delta Room, Holiday Inn Bloor Yorkville has a standard room for \$129.99 per night. Other Guest Houses or Inns in the downtown area advertise rates ranging from \$55 to \$125 per night and \$350 to \$560 per week depending on the location, condition and amenities offered.

It should also be noted that the rates quoted are seasonal, going higher during the busy seasons.

Conclusion

Our survey of comparable furnished apartment rents range from \$455 to \$1,323 per apartment per week representing a reasonable range that is reflective of the age, condition, location and amenities offered for each of the comparables. Average rent for the various comparables is \$748.36 per week and the median is \$665.00 per week for the comparables referred to herein.

Projected weekly rates for the subject property are \$550.00 per week, which falls within the range of the comparables surveyed. Though below the overall median rate of \$665 per week, the appraiser is of the opinion that the projected rent is realistic given the subject's location, size of the apartment units and amenities offered as well as the competitive nature of what is available in the market place. For purposes of this appraisal, the appraiser has used the projected rate of \$550.00 per week to calculate rental income for the subject property.

Wall Signage

Wall advertising revenue is based on a previous contract amount signed with Titan Outdoor and is considered to be realistic given the exposure of the subject property.

Vacancy and Credit Loss

In the proforma for the subject property, a vacancy rate of 3.30% of Effective Gross Income to reflect potential vacancy within the building. Since the subject property is substantially 'residential use', we find that the projection of 3.30% reasonable for both vacancy and any bad debt that would arise.

Stabilized Operating Expenses

The procedure of analyzing operating expenses involves an examination of amounts expended in previous years; the trends indicated to date; the current costs in each classification and the probable trends in the foreseeable future. The resulting amount represents the forecasted annual expenditure based upon typical operating conditions and on current prices. The best source of information for preparing a reconstructed statement is the actual (if possible audited) financial statements for the past several years. Since the subject property is a redevelopment, no financial statements are available. Estimated expenses for the subject are made based on some known expenditures for the subject in addition to that available to us based on our ongoing analysis of similar properties.

Management

A management fee of \$41,284 is projected in the proforma provided to us. This is equivalent to $\pm 5.281\%$ of Effective Gross Income which is deemed appropriate for this type of property. Management is also anticipated to be minimal for this type of property as the apartments would likely be rented to corporate clients in batches (several units) for several months at a time.

Structural Repairs and Maintenance

All buildings require maintenance to maintain them in stable condition. In addition to cosmetic needs, they require maintenance to parts of the building fabric and equipment. Such maintenance can involve regular service to the heating system, safety systems and less apparent items such as repairs to caulking and attention to roof flashing. This includes periodic structural changes such as roof replacement over the life of the building. We consider an allowance of 2% of Effective Gross Income as suitable for this property.

Other Expenses**Maintenance & Repairs**

This item is for the maintenance of the apartment units and includes items such as bed linen, pillows and so on and is estimated at \$500 per apartment for a total of \$11,500 per annum. Also included in this item is maintenance and repairs of the building which is estimated at \$2,500 per annum. This is considered realistic since the building is going through an extensive renovation where most of the building components will be new. These also include day to day expenses for wear and tear that may occur and are separate from Structural Repairs referred to above.

Professional Fees

This item refers to expenses required for professional services to maintain the operation at specific standards. The amount projected is also to cover legal expenses incurred in day to day operations as well as book-keeping for the operation. This includes filing of financial statements to Revenue Canada and other parties which have to be prepared by a certified accountant.

Property Taxes

Property taxes estimated by the owner are based on a percentage increase over last year's taxes as a 'hotel' property. However, once all upgrading/renovation of the subject property are completed, there will be a reassessment of the property by Municipal Property Assessment Corporation (MPAC). We have recalculated property taxes based on our ongoing experience in estimating property taxes for other projects and have therefore adjusted the property owner's estimate of \$40,000 per year for the residential portion to \$48,000 per year, a $\pm 20\%$ adjustment.

Utilities

This expense is self-explanatory referring to cost of water, gas and hydro for the residential portion only.

Cable / Internet

Payment made to the communications company that provides service to the residential portion only.

Insurance

Covers fire insurance for the residential portion only.

Stabilized Income and Expense Statement

Based upon the preceding comments, a Stabilized Income and Expense Statement has been developed for the subject property as set out on the following page.

STABILIZED INCOME AND EXPENSE STATEMENT

650 Bay Street, City of Toronto, Ontario

					Projection
<u>Net Rental Income</u>					
Main Floor Commercial:	1,165 sq. ft @	\$ 76.50	per sq. ft. net	\$	89,123
Main Floor Commercial:	420 sq. ft @	\$ 75.00	per sq. ft. net	\$	31,500
Apartment Rents	23 apartments @		550 per week	\$	657,800
Wall Signage	\$ 2,500	per month		\$	30,000
<u>TOTAL RENTAL</u>					\$ 808,423
Less: Vacancy & Bad Debt Allowance @ 3.3%					\$ 26,678
Effective Gross Income (EGI)					\$ 781,745
<u>Operating Expenses</u>					
Management Fee (% of EGI) : 5.28%					\$ 41,284
Structural Repairs & Maintenance (% of EGI): 2%					\$ 15,635
Maintenance & Repairs					\$ 14,000
Professional Fees					\$ 2,700
Property Tax (Residential Portion only)					\$ 48,000
Utilities (Residential Portion only)					\$ 36,000
Cable/Internet (Residential Portion only)					\$ 6,000
Insurance (Residential Portion only)					\$ 12,000
TOTAL EXPENSES					\$ 175,619
NET OPERATING INCOME					\$ 606,126
Percentage Operating Expenses to Effective Gross Income					22%

Capitalization Rates on Commercial Properties

No.	Property	Date of Sale	Building (Sq. Ft.)	Sale Price	Cap Rate
1	257 King Street East, Toronto	Mar-25, 2009	2,615	\$1,235,000	7.40%
2	372 Yonge Street, Toronto	Mar-27, 2009	4,200	\$2,600,000	6.90%
3	409 Queen Street West, Toronto	Apr-06, 2009	7,369	\$5,200,000	6.10%
4	252 Carlton Street, Toronto	Apr-09, 2009	7,756	\$1,515,000	8.10%
5	283 Spadina Avenue, Toronto	Aug-24, 2009	22,345	\$6,710,000	4.50%
6	647 College Street, Toronto	Dec-01, 2009	6,000	\$1,700,000	8.30%
7	247 Yonge Street, Toronto	Dec-18, 2009	8,230	\$6,900,000	7.70%
8	567 Queen Street West, Toronto	Jan-28, 2010	15,312	\$5,150,000	5.00%
9	672 Queen Street East, Toronto	Mar-16, 2011	6,282	\$1,245,000	7.70%
Average					6.86%
Median					7.40%

Summary

- The chart of capitalization rates above show a market derived overall average capitalization rate of 6.86% and a median of 7.40%;
- The subject is a relatively small investment property;
- The subject property is located in the heart of the downtown district within walking distance to several hospitals, Eaton Centre and the University of Toronto and Ryerson;
- The SickKids Research Institute currently under construction adjacent the subject and projected to be completed by 2013 will have a significant positive influence on the subject;
- The subject property, previously a motel, is being extensively renovated and remodelled with retail/commercial on the main floor + 23 fully furnished apartment units on the upper floors will be in excellent condition once renovations are completed;
- The subject's zoning which allows for 7.8 time total density is also considered to be a positive factor for potential expansion in the future when conditions are right;
- ±74% of space within the subject property is residential in nature and capitalization rates for walk-up residential apartment buildings in Toronto surveyed by the appraiser average 5.5%.

There was limited information on small commercial / residential capitalization rates in close proximity to the subject property. As such, it was necessary to expand the search to include capitalization rates in other competing neighbourhoods such as those identified in the chart above.

Based on the foregoing comments, we are of the opinion that a suitable capitalization rate for the subject property should be in the lower end of the range at 5.50% to 6.50% and a

rate of **6.00%** is considered suitable for the subject property in determining its market value via the Income Approach given the subject property's mixed use, location, size and overall condition.

Capitalizing the Net Income

Capitalization of Net Income

Relevant Factors : Subject's Net Income
 Overall Capitalization Rate – (Ro)

Formula :
$$\frac{\text{Subject's Net Income}}{\text{Capitalization Rate}} = \text{Value}$$

Therefore the prospective market value of the subject property using the Income Approach to value is calculated as follows as of November 23, 2011.

Prospective Market Value By Income Approach			
Net Operating Income:	\$ 606,126	=	\$ 10,102,100
Capitalization Rate:	6.00%		
		Rounded to	\$ 10,100,000

\$10,100,000

(TEN MILLION ONE HUNDRED THOUSAND DOLLARS)

RECONCILIATION & FINAL ESTIMATE OF PROSPECTIVE MARKET VALUE

Two approaches to value have been applied to the subject. They are the Direct Comparison Approach and the Income Approach. The derived values are:

Direct Comparison Approach	\$9,440,000
Income Approach	\$10,100,000

Direct Comparison Approach

In this approach to value, there were limited transactions involving comparable mixed-use properties that were in close proximity to the subject. Therefore, the search was expanded to include sales of mixed-use properties in competing municipalities. No two properties are similar therefore to make a reasonable comparison of them to the subject requires adjustment to the sale price.

In the appraiser's view, this is the secondary approach to value and it establishes the lower limit of the two approaches to value that have been used in this appraisal.

Income Approach

The Income Approach is the more reliable method and is considered to be the primary approach in this valuation because this is an income producing property. Market rents were used to support the retail/commercial rents as achieved and projected apartment rents have been compared to rates established by competing establishments. Therefore, in our opinion the income that can be generated from the subject property is reasonably reliable and market derived capitalization rates have been applied to provide a value conclusion via this approach.

Final Estimate of Prospective Market Value

In the final analysis the appraiser has leaned towards the Income Approach to value for reasons stated above and established the final prospective market value of the subject property.

In our opinion the prospective market value of the subject property, effective November 23, 2011 is:

\$10,100,000

(TEN MILLION ONE HUNDRED THOUSAND DOLLARS)

APPENDIX A
SURVEY OF SUBJECT SITE

APPENDIX B

SITE / ARCHITECTURAL
PLANS



1 GROUND FLOOR PLAN - CONSTRUCTION

[illegible]

NAME	ADDRESS	CITY
Mr. J. H. Smith	123 Main St.	Springfield, Ill.

**Marilyn Ypes
Architect Inc.**



NO ORDERS
TAKEN ON
SUNDAY

i

THESE RESULTS ARE IN ACCORD WITH THE FINDINGS OF OTHER STUDIES.

$\frac{1}{2} \text{H}_2 + \frac{1}{2} \text{F}_2 \rightarrow \text{HF}$	Product is
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[illegible]

1. **NAME**
 2. **ADDRESS**
 3. **CITY**
 4. **STATE**
 5. **ZIP**

Marilyn Ypes
Architect Inc.
Graduate
of the
AIA

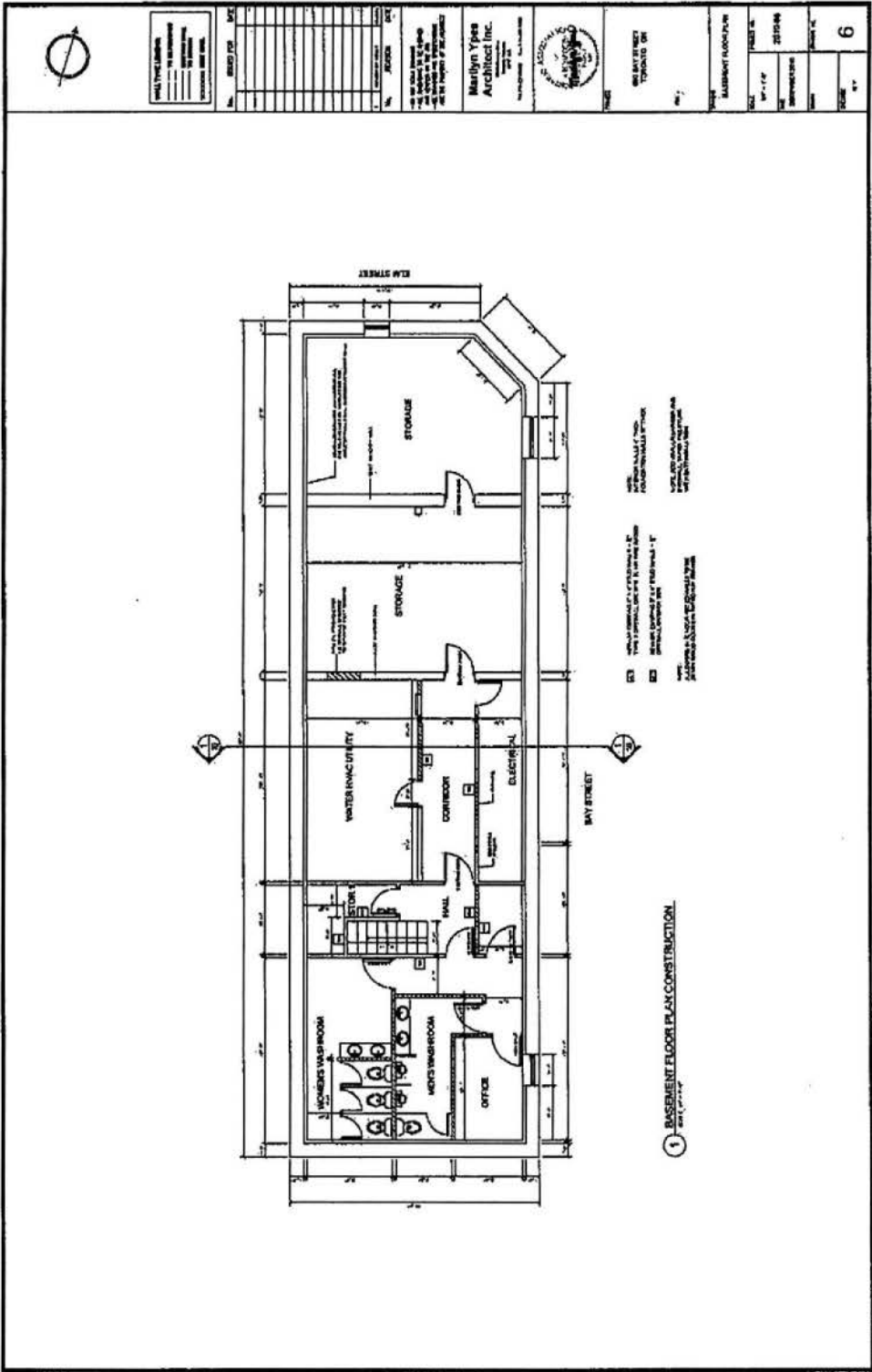


8-8847 2700
TORONTO ON

RECORDS MANAGEMENT

2010-08	2010-08
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8	1



APPENDIX C
QUALIFICATIONS OF
APPRAISER



JOHN R. Le'COUNT, MIMA, AACI, P.App.
PRESIDENT

STRY APPRAISALS INTERNATIONAL LIMITED

EDUCATION

- **Queen's University (3-year Extension Course)**
"Property Assessment - Practice and Principles"
Granted MIMA Designation
Awarded the Municipal World Award for outstanding scholarship in the above course in Ontario.
- **Appraisal Institute of Canada**
Granted AACI, P.App. Designation
Certificate No. 1822 issued July 4th, 1977
Qualified to do appraisals of all types of real estate
- **Seneca College of Applied Arts and Technology**
Economic Course (Micro and Macro)
- **British Institute of Engineering Technology**
Diploma in Company Secretaryship

DESIGNATIONS

- **MIMA** (Member of the Institute of Municipal Assessors of Ontario)
AACI, P.App. (Accredited Appraiser Canadian Institute)

OTHER

- Former Part-time member (Adjudicator) of the Assessment Review Board
(Attorney General's Office, Province of Ontario)

EXPERIENCE

- 1967 - 1986 **Marathon Realty Company Limited**
Assistant to Executive Vice President
Director of Sales
Operations Manager (Land) for Ontario and Manitoba
- 1986 - 1989 **York Hannover Developments Limited**
Director of Leasing
Director of Land Sales
- 1989 - 1990 **The Manufacturers Life Insurance Company**
Real Estate Investment Director - North America
- 1990 - 1991 **City of Etobicoke**
Director of Realty Service
- 1991 - Present **Fee Appraiser**

APPENDIX D

ASSUMPTIONS AND
LIMITING CONDITIONS

ASSUMPTIONS AND LIMITING CONDITIONS

This report is prepared at the request of **Royal Bank of Canada** for the purpose of an appraisal at prospective market value. It is not reasonable for any person or company other than **Royal Bank of Canada** to rely upon this appraisal without first obtaining written authorization from us. There may be qualifications, assumptions or limiting conditions in addition to those set out below relevant to that person's identity of his intended use. This report is prepared on the assumption that no other person will rely on it for any other purpose and that all liability to all such persons is denied.

1. While expert in appraisal matters, the author is not qualified and does not purport to give legal advice. It is assumed that:
 - a. a legal description as set out herein is correct;
 - b. title to the property is good and marketable;
 - c. there are no encroachments, encumbrances, restrictions, leases or covenants that would in any way affect the valuation, except as expressly noted herein;
 - d. the existing use is legally conforming use which may be continued by any purchaser from the existing owner;
 - e. rights of way, easements or encroachments over the real property and leases or other covenants noted herein are legally enforceable.

Because these assumptions have been made, no investigation, legal or otherwise, has been undertaken which would verify these assumptions except as expressly noted herein.

2. The author is not a qualified surveyor and no legal survey concerning the subject property has been provided.
3. The author is not qualified to give engineering advice. It is assumed that there are no patent or latent defects in the subject improvements, that no objectionable materials such as Urea Formaldehyde Foam are present, that they are structurally sound and in need of no immediate repairs, unless expressly noted within this report. No soil tests have been done nor have tests been done of the heating, plumbing, electrical, air-conditioning or other systems and, for the purpose of this opinion, they are assumed to be in good working order.
4. No investigation has been undertaken with the local zoning office, the fire department, the building inspector, the health department or any other government regulatory agency unless such investigations are expressly presented to have been in this report. The subject property must comply with such government regulations and, if it does not comply, its non-compliance may affect prospective market value. To be certain of compliance, further investigations may be necessary.
5. Neither possession of this report nor a copy carries with it the right of publication. All copyright is reserved to the author and is considered confidential by the author and his client. It shall not be disclosed, quoted from or referred to, in whole or in part, or published in any manner, without the express written consent of the appraiser; subject only to confidential review by the Appraisal Institute of Canada.

6. Market data has been obtained in part from documents at the Land Registry Office, or as reported by the real estate board. As well as using such documents and generally reliable evident of market transactions, it was also necessary to rely on hearsay evidence.
7. Because market conditions, including economic, social and political factors, change rapidly and, on occasion, without warning, the market value expressed as of the date of this appraisal cannot be relied upon to estimate the market value of any other date except with further advice of the appraiser.
8. The compensation for services rendered in this report does not include a fee for court preparation or court appearances, which must be negotiated separately. However, neither this nor any other of these limiting conditions is an attempt to limit the use that might be made of this report should its property become evident in a judicial proceeding. In such case, it is acknowledged that it is the judicial body which will decide the use the report which best serves the administration of justice.
9. This is a Prospective Narrative Appraisal Report which is intended to comply with the reporting requirements set forth under Standard Rules of the Uniform Standards of Professional Appraisal Practice for such reports. As such, it includes full discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report.
10. The appraiser is not qualified to comment on environmental issues that may affect the prospective market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions that might give rise to either, and in compliance with all regulatory environmental requirement, government or otherwise, and free of any environmental condition, past, present or future, that might affect the prospective market value of the property appraised. If the party relying on this report require information about environmental issues then that party is cautioned to retain an expert qualified in such issues. We expressly deny any legal liability relating to the effect of environmental issues on the prospective market value of the property appraised.
11. This report cannot be used for the purpose referred to in this report until (a) our fee is paid in full and (b) it contains the original signature of the appraiser.

APPENDIX E
CERTIFICATION

CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. An inspection of the subject property municipally described as 650 Bay Street, City of Toronto, Ontario was carried out on November 23, 2011. At that time the land was inspected and photographs were taken of the site and the neighbourhood.
2. The statements of fact contained in this report are true and correct.
3. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, unbiased professional analyses, opinions and conclusions.
4. I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
5. My engagement in and my compensation for this assignment were not contingent upon developing or reporting predetermined results, the amount of the value estimate, or a conclusion favouring the client.
6. I have the knowledge and experience to complete the assignment competently.
7. This appraisal was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.
8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Canadian Uniform Standards of Professional Appraisal Practice.
9. No one provided significant professional assistance to the person signing this report.
10. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Canadian Uniform Standards of Professional Appraisal Practice established by the Appraisal Institute of Canada.
11. The use of this report is subject to the requirements of the Appraisal Institute of Canada relating to review by its duly authorized representatives.
12. As of the date of this report, the undersigned has fulfilled the requirements of The Appraisal Institute of Canada's Continuing Professional Development Program for designated members.

13. The estimated prospective market value of the real estate as of the effective date of appraisal of November 23, 2011 is:

\$10,100,000

(TEN MILLION ONE HUNDRED THOUSAND DOLLARS)

and is subject to the assumptions and limiting conditions contained in the body of the report.

Date

John R. Le'Count, MIMA, AACI, P. App.
President
STRY APPRAISALS INTERNATIONAL LIMITED

APPENDIX “B”

HARVEY SPRING
Barrister and Solicitor

404 Yonge Street
Suite 200
Toronto, Ontario
M4Y 1W9

Telephone: (416) 967-0800
Fax: (416) 967-2783

January 6, 2012

2220277 Ontario Inc.
650 Bay Street
Toronto, Ontario
M5G 1M8

By Fax to 416-352-7832

Dear Sir/Madam:

Re: B & M Handelman Investments Limited, et al
1st mortgage 650 Bay Street/55 Elm Street, Toronto

I act for the mortgagees herein.

This will confirm that the outstanding principal amount of the abovementioned mortgage is \$2,100,000.00 and the mortgage is in good standing.

Yours very truly,



Harvey Spring

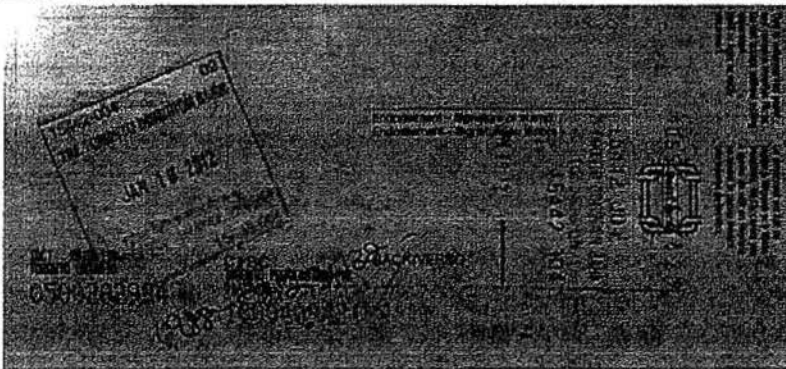
HS:wp
File No. 09-5883

APPENDIX “C”



Serial number	Transit number	Bank number	Account number	Amount
229275532	9502	010	1322743345	\$200,000.00

Waive service charge



Print language: English ▾

200,000.00



Serial number	Transit number	Bank number	Account number	Amount
4	132	010	3883930	\$50,000.00

Waive service charge

MRS. ZAHARA VIGOR
 7 LAUREO CRT.
 WILLOWDALE, ONTARIO M2M 4M7

DATE 2012-02-02
 Y Y M M D D

PAY TO THE ORDER OF HUSH HONOR INC \$50,000.00
Five thousand only 100 DOLLARS

CIBC CANADIAN IMPERIAL BANK OF COMMERCE
 100 KING ST. W. TORONTO, ONT. M5X 1C5

MR. J. HONOR INC
 600 BAYVIEW

MICR: ⑆001⑆ ⑆00132⑆010⑆ 3883930⑆ ⑆0005000000⑆

FEB 03 2012
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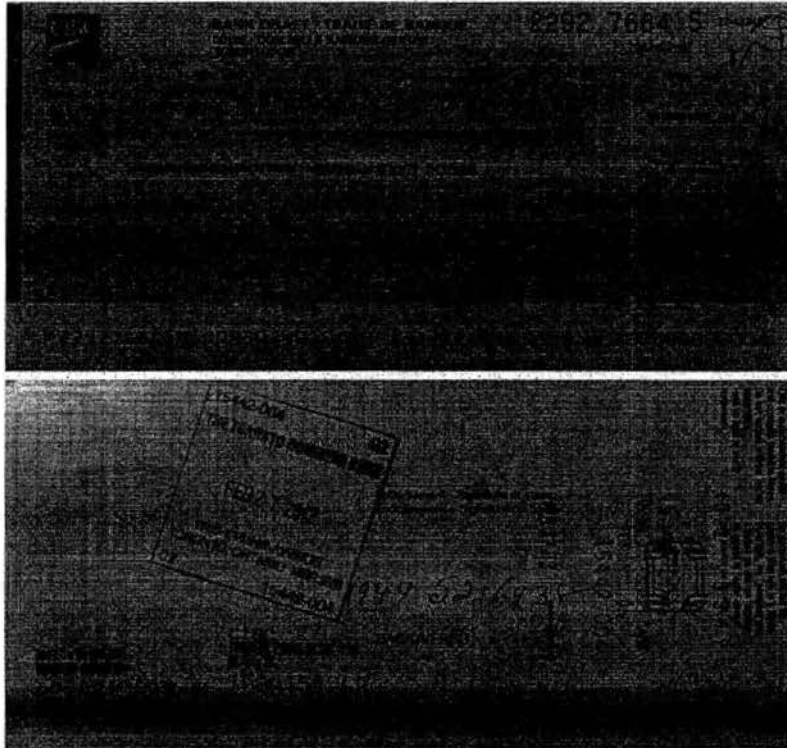
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50,000.00



Serial number	Transit number	Bank number	Account number	Amount
229276845	9502	010	1322743345	\$80,000.00

Waive service charge



Print language: English ▼

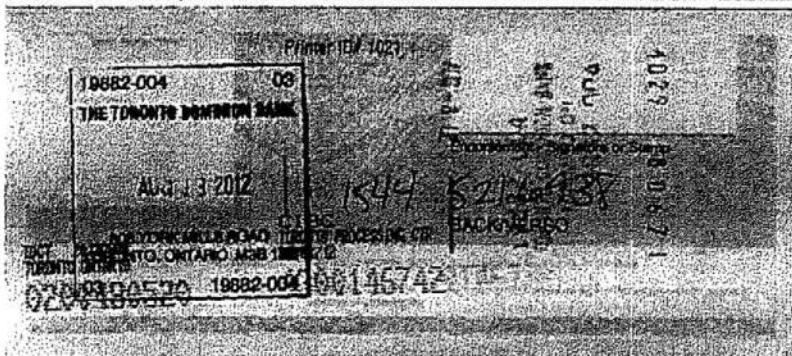
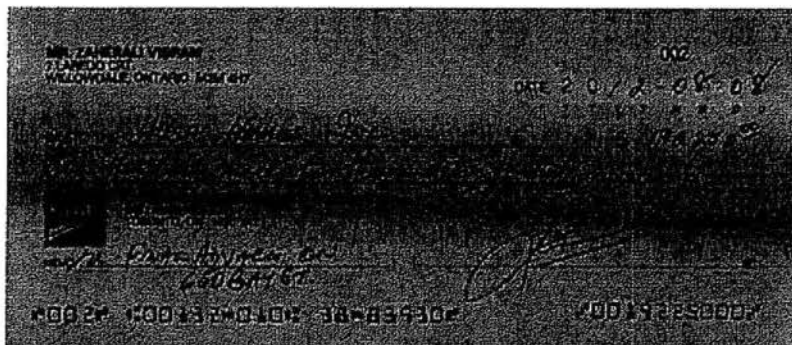
80,000⁰⁰

APPENDIX “D”



Serial number	Transit number	Bank number	Account number	Amount
2	132	010	3883930	\$192,250.00

Value service charge



Print language: English ▾

192250

APPENDIX “E”

VISI 2731

RE: Second amendment to second mortgage loan from Zaherali Visram to 2220277 Ontario Inc. (the "Borrower"), in the original amount of \$1,200,000.00 secured by a second mortgage over the property municipally known as 55 Elm Street/650 Bay Street (the "Property") registered on March 6, 2012 as Instrument No. AT2960459; and Guaranteed by Evan Karras Musa Suleman, Naheel Suleman, and Hush Homes Inc. (collectively referred to as the "Guarantors") being amended to increase the principal amount of the loan to \$1,900,000.00, secured, by a Notice registered on August 7, 2012 as Instrument No. AT3095262; and being further amended to increase the principal amount of the loan to \$3,000,000.00

TRUST LEDGER STATEMENT

Received from Lender		\$1,100,000.00
Paid legal fees and disbursements	\$3,664.75	
Zaherali Visram - Interest Reserve Hold back	100,000.00	
Zaherali Visram - Construction Lien Act Hold back	100,000.00	
Zaherali Visram - Lender's Fee	90,000.00	
Zaheral Visram - Repayment of Loan from Zaherali Visram to Hush Homes Inc.	204,000.00	
Paid Sterling Bailiffs Inc. (outstanding 2010 realty taxes)	49,037.44	
Paid City of Toronto (Tax Department) Re: outstanding 2011 and 2012 realty taxes with o/standing 2011 and 2012 water accounts transferred to tax roll	112,751.41	
Paid to Hush Homes Inc., as per Redirection by Borrower	440,546.40	
	\$1,100,000.00	\$1,100,000.00

THIS IS OUR STATEMENT HEREIN

Cosman & Associates

E. & O. E.

APPENDIX “F”

ASSIGNMENT OF SECURITY

THIS ASSIGNMENT is dated as of the 27th day of May, 2015.

AMONG:

B&M HANDELMAN INVESTMENTS LIMITED
JRS CAPITAL MANAGEMENT CORP.
TEPERMAN, MARVIN
HARZAHAV HOLDINGS LIMITED
M. HIMEL HOLDINGS INC.
UNION FELT PRODUCTS INC.
BRENKIDS INC.
STEELE VALLEY DEVELOPMENTS LIMITED
1530468 ONTARIO LTD.
GOLDMAN, JENNIFER
STANDING DEVELOPMENTS INC.
LEDMAR INVESTMENTS LTD.
SHARJOD HOLDINGS INC.
FLORDALE HOLDINGS LIMITED
RABARDO CORPORATION

(collectively, the "Creditor")

- and -

ZAHERALI VISRAM

(the "Assignee")

- and -

2220277 ONTARIO INC.

(the "Debtor")

WHEREAS the Debtor is indebted to the Creditor for the sums more particularly described in Schedule "A" hereto (the "Debt");

AND WHEREAS the Creditor has been granted and holds the mortgage security more particularly described in Schedule "B" hereto (the "Security") as security for repayment of the Debt;

AND WHEREAS the Creditor has agreed to assign the Security to the Assignee upon payment of the sum of \$2,190,000.00 ("Purchase Price") by the Assignee to the Creditor;

THEREFORE IN CONSIDERATION OF payment of the Purchase Price by the Assignee to the Creditor, the Creditor hereby assigns the Debt and the Security to the Assignee and the Debtor hereby confirms the Debt and the Security on the following terms:

1. The Creditor hereby jointly and severally represents and warrants that (i) the full amount of the Debt is outstanding and due and owing by the Debtor to the Creditor as at the date hereof, (ii) the Debt and the Security have not been previously assigned, charged or pledged by the Creditor, which warranties shall survive the closing hereof, but the Creditor makes no other and has not made any other representations or warranties of any kind whatsoever.
2. The Creditor jointly and severally covenants:
 - a. To execute such further and other assurances as may be reasonably required to give effect to this Assignment, at the expense of the Assignee;
 - b. To deliver the original evidence of the Debt and related documents in its possession (if any) immediately upon receipt of payment of the Purchase Price;
 - c. To have the outstanding proceedings in Action CV-15-10923-00CL (the "Action") dismissed without costs within two weeks from the date of this Assignment.

3. The Creditor hereby authorizes the Assignee and its professional advisors to notify the Debtor, any relevant guarantors, and other third parties, as may be required, to give effect to this Assignment.

4. The Debtor hereby acknowledges and agrees as follows:

a. The full amount of the Debt as set out in Schedule "A" is outstanding and due and owing by the Debtor to the Creditor as at the date hereof;

b. The Debtor does not dispute the validity or enforceability of the Debt or the Security; and

c. The Debtor has notice of this assignment and will make all future payments to the Assignee or as it may further direct.

5. The Debtor hereby releases the Creditor and the Assignee from any claims for costs arising from or with respect to the Action.

6. The Assignee hereby releases the Creditor from any claims for costs arising from or with respect to the Action.

7. All parties agree to execute such further and other assurances as may be required to give effect to the terms of this Assignment. If it is subsequently discovered that the Creditor or any one of them holds security or collateral for the Debt in addition to what is set out in Schedule "B", then the Creditor in question will, if the Debt or any part thereof is still owing to the Assignee and if so requested by the Assignee, assign and transfer that additional security or collateral to the Assignee on the same terms as herein provided for.

8. This Agreement may be executed in several counterparts, each of which so executed is deemed to be an original, and such counterparts together constitute one and the same instrument.

9. Execution of this Agreement or any document or notice hereunder by telefax, portable document format, tagged image format or other form of electronic reproduced copies of original handwritten signatures in ink constitutes valid, effective and binding execution and of that document.

10. This Agreement shall be binding on and enure for the benefit of the parties hereto and their respective heirs, executors, successors, administrators and assigns.

11. There are no representations, warranties, conditions, other agreements or acknowledgements whether direct or collateral, express or imply, that form part of or affect this Agreement other than those set forth herein. No party to this Agreement relies upon or regards as material, any representations, warranties, conditions, other agreements or acknowledgements not expressly made in this Agreement or in the agreements and other documents to be delivered pursuant hereto.

12. If any provision of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction from which no further appeal lies or is taken, that provision shall be deemed to be severed herefrom, and the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.

13. Each of the parties represent and warrant to the other parties that (1) all necessary action to execute and deliver this Agreement has been taken, (2) no notices, approvals, consents or authorizations are needed for the due execution, delivery and performance of this Agreement and (3) this Agreement has been duly authorized, executed and delivered by such party and constitutes a legal, valid and binding obligation of such party enforceable against it in accordance with the terms of this Agreement.

14. This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario. The parties hereto irrevocably attorn to the non-exclusive jurisdiction of the Ontario courts in connection with, related to or in any way arising from this Agreement.

15. Within 30 days of the Closing Date, the Assignee shall advise any insurance agent or broker or similar entity who holds any insurance policies in respect of the properties to which the Mortgages

relate that the Assignor no longer has an interest in any such policy and that all interests of the Assignor have been assigned to the Assignee; and if such agent, broker or entity requires a release of insurance from the Creditor the Creditor will provide a signed release of insurance within 30 days of it being so requested to provide one.

16. The Assignee shall refrain from any use of the name of the Assignors in any proceedings taken in respect of the Indebtedness and/or the Security, in absence of Assignor's express written consent to such use other than necessary references to the assignment contained herein.

17. Other than as set out above, the Assignee acknowledges that the Assignor has made no representations, warranties, covenants, agreements, promises or statements, express or implied or by statute, as to any cause, matter or thing whatsoever, including, without limitation, with respect to or in any way connected with the Loan, the Indebtedness or the Security, including, without limiting the generality of the foregoing, the validity, enforceability, registration, perfection or priority of the Security or any part thereof, or the nature, description or value of the collateral charged by the Security or any part thereof.

18. The Assignee represents, warrants, agrees and covenants with the Assignor that other than as expressly set out herein, the assignment of the Security and the rights granted to the Assignee in the Indebtedness and the Security herein provided for is without recourse as against the Assignor, as; Assignee hereunder, as a second mortgagee and/or in any other capacity related to the Property. The Assignee hereby releases the Assignor from any and all claims, actions, demands, costs, whatsoever, he may have had, does have or will have with the Assignor, in respect of the Property, save for the terms in this Agreement.

19. The Assignee represents, warrants, agrees and covenants with the Assignor that it has relied upon its own due diligence and has satisfied itself with respect to all things relating to the terms of this Agreement, the Loan, the Indebtedness and the Security, save and except for the representations, warranties and covenants contained herein. These representations and warranties shall survive closing.

[remainder of page intentionally left blank; signature page follows]

**B&M HANDLMAN INVESTMENTS
LIMITED**

Per: 
Name:
Title:

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

JRS CAPITAL MANAGEMENT CORP.

Per: _____
Name: _____
Title: _____

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

Witness: _____

MARVIN TEPPERMAN

HARZAHAY HOLDINGS LIMITED

Per: _____
Name: _____
Title: _____

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

M. HIMEL HOLDINGS INC.

Per: _____
Name: _____
Title: _____

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

**B&M HANDELMAN INVESTMENTS
LIMITED**

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

JRS CAPITAL MANAGEMENT CORP.

Per: HAT: 100
Name: _____
Title: **HARRY A. KICHLER ASO**

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

Witness: _____

MARVIN TEPERMAN

HARZAHAV HOLDINGS LIMITED

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

M. HIMEL HOLDINGS INC.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

**R&M HANDELMAN INVESTMENTS
LIMITED**

For: _____
Name: _____
Title: _____

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

JES CAPITAL MANAGEMENT CORP.

For: _____
Name: _____
Title: _____

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


Witness:


MARVIN TETERMAN

HARZAHAY HOLDINGS LIMITED

For: _____
Name: _____
Title: _____

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

M. HUMEL HOLDINGS INC.

For: _____
Name: _____
Title: _____

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

UNION BELT PRODUCTS INC.

**B&M HANDELMAN INVESTMENTS
LIMITED**

Per: _____
Name: _____
Title: _____

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

JRS CAPITAL MANAGEMENT CORP.

Per: _____
Name: _____
Title: _____

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

Witness: _____

MARVIN TEPERMAN

HARZAHAV HOLDINGS LIMITED

Per: *Gella Rothstein*
Name: CELLA ROTHSTEIN
Title: DIRECTOR

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

M. HIMEL HOLDINGS INC.

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

M. HIMEL HOLDINGS INC.

Per: [Signature]
Name: per Mel Himel
Title:

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation. yes.

UNION FELT PRODUCTS INC.

Per: [Signature]
Name: I Himel
Title:

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

BRENKIDS INC.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

UNION BELT PRODUCTS INC.

For: _____
Name: _____
Title: _____

For: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

BRENNER INC.

For: R. D. Blue
Name: _____
Title: _____

For: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

STEEL VALLEY DEVELOPMENTS
LIMITED

For: _____
Name: _____
Title: _____

For: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

1530468 ONTARIO LTD.

For: _____
Name: _____
Title: _____

For: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation.

Witness: _____

JENNIFER GOLDMAN

UNION FELT PRODUCTS INC.

Per: _____
Name: _____
Title: _____

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

BRENKIDS INC.

Per: _____
Name: _____
Title: _____

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

STEELE VALLEY DEVELOPMENTS
LIMITED

Per: [Signature]
Name: HARRY A KICHLER
Title: ASO

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

1530468 ONTARIO LTD.

Per: _____
Name: _____
Title: _____

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

Witness: _____

JENNIFER GOLDMAN

UNION FELT PRODUCTS INC.

Per: _____
Name: _____
Title: _____

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

BRENKIDS INC.

Per: _____
Name: _____
Title: _____

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

**STEELE VALLEY DEVELOPMENTS
LIMITED**

Per: _____
Name: _____
Title: _____

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

1530468 ONTARIO LTD.

Per: J. Raxa
Name: JUDITH AXER
Title: _____

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

UNION FELT PRODUCTS INC.

Per: _____
Name: _____
Title: _____

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

BRENKIDS INC.

Per: _____
Name: _____
Title: _____

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

**STEELE VALLEY DEVELOPMENTS
LIMITED**

Per: _____
Name: _____
Title: _____

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

1530468 ONTARIO LTD.

Per: _____
Name: _____
Title: _____

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


Witness: _____


JENNIFER GOLDMAN

STANDEN DEVELOPMENTS INC.

Per: [Signature]
Name:
Title:

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

LEDMAR INVESTMENTS LTD.

Per: _____
Name:
Title:

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

SHARJOD HOLDINGS INC.

Per: _____
Name:
Title:

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

FLORDALE HOLDINGS LIMITED

Per: _____
Name:
Title:

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

RABADO CORPORATION

Per: [Signature]
Name:
Title:

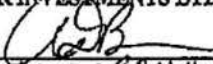
Per: _____
Name:
Title:
I/We have authority to bind the Corporation.

STANDING DEVELOPMENTS INC.

Per: _____
Name: _____
Title: _____


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

LEDMAR INVESTMENTS LTD.

Per: 
Name: ALLAN BROWN
Title: A. S. O.

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

SHARJOD HOLDINGS INC.

Per: 
Name: ALLAN BROWN
Title: A. S. O.

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

FLORDALE HOLDINGS LIMITED

Per: _____
Name: _____
Title: _____

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

RABARDO CORPORATION

Per: _____
Name: _____
Title: _____

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

STANDING DEVELOPMENTS INC.

Per: _____
Name: _____
Title: _____

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

LEDMAR INVESTMENTS LTD.

Per: _____
Name: _____
Title: _____

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

SHARJOD HOLDINGS INC.

Per: _____
Name: _____
Title: _____

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

FLORDALE HOLDINGS LIMITED

Per: 
Name: ALBERT SILVER
Title: A.S.O.

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

RABARDO CORPORATION

Per: _____
Name: _____
Title: _____

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


Witness: _____


ZAHERALI VISRAM

2220277 ONTARIO INC.

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation.

Witness:

ZAHERALI VISRAM

2220277 ONTARIO INC.

Per: _____

Name: Evan Karpas

Title: President

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"
DEBT

\$2,283,464.00, including principal, interest and costs.

SCHEDULE "B"
SECURITY

(1) Charge AT2228545 registered November 13, 2009;

APPENDIX “G”

2017/Mar/16

 Phil Thompson
 Client Trust Ledger
 To 2017/Mar/16
 Resp

Page: 1

Client	Matter Date	Description Received From/Paid To Entry # Explanation	Lawyer Chg#/Rec#	Bank Acct#	Deposit Type	Receipt	Last Entry Date Disba	Acct Bal
1629	Visram, Esherali	FR						
	4884	650 Bay 55 Elm Toronto (2220277 Ontario Inc.)					Aug 17/2016	
	May 27/2015	Dickinson Wright LLP, in trust			wire		2190000.00	2190000.00
	346454	file 4884 - closing funds						
	May 27/2015	Vaheralli Visram	01362		Wire	2506536.10		316536.00
	346922	file 4884 - mortgage advance						
	May 27/2015	Vaheralli Visram	01362		Wire	-80.30		316456.00
	346923	file 4884 - mortgage advance - CIBC wire charge						
	May 27/2015	Vaheralli Visram	01362		Wire	-17.30		316338.50
	346924	file 4884 - mortgage advance - TD Canada trust						
	May 28/2015	City of Toronto	4277				126000.00	190438.50
	346532	file 4884 - taxes 19-04-06-6-540-0080-0000-0-4						
	May 28/2015	KRG Insurance Brokers	4278				22770.60	167667.90
	346534	file 4884 - payment of account: \$75639.1						
	May 28/2015	First American Title Insurance Company	4279				1679.40	165988.50
	346543	file 4884 - title insurance - inv 101-09-1184220V						
	Jun 18/2015	Phil Thompson Professional Corporation	4304				7790.54	158197.96
	348467	file 4884 - payment of invoice 17807-4884						
	Jun 30/2015	DRUDI ALEXIOU KUCAR LLP, in trust	4319				37489.07	120708.89
	349208	FR4884 - lien settlement Alpa Stairs and Rush Homes						
	Jul 14/2015	Vaheralli Visram	4330				73000.00	47708.89
	350031	FR4884 - tender fee on refinancing						
	Jul 14/2015	Vaheralli Visram	4331				45000.00	2708.89
	350033	FR4884 - payment on account of 2nd mortgage						
	Aug 13/2015	Phil Thompson Professional Corporation	4360				2102.93	605.96
	352611	file 4884 - payment of invoice 17899-4884						
	Aug 17/2016	Vaheralli Visram	4683				605.96	0.00
	380283	file 4884 - balance of trust funds						
Matter Total:				2		2506438.50	2506438.50	0.00
Client Total:				2		2506438.50	2506438.50	0.00
Firm Totals:		2 - TD MIXED TRUST ACCOUNT, TD Canada Trust, 0884302				2506438.50	2506438.50	0.00

REPORT SELECTIONS - Client Trust Ledger

Layout Template	Default
Advanced Search Filter	None
Requested by	Susan
Finished	Thursday, March 16, 2017 at 03:13:12 PM
Ver	14.0 (14.0.20140923)
Matters	4884
Clients	All
Major Clients	All
Client Intro Lawyer	All
Matter Intro Lawyer	All
Responsible Lawyer	All
Assigned Lawyer	All
Type of Law	All
Select From	Active, Inactive, Archived Matters
Matters Sort by	Default
New Page for Each Lawyer	No
Show Totals for All Matters with Trust Balances	Yes
Matter with No Trust Activity on or After	No
Details Begin Date	1982/Jan/1
Details End Date	2199/Dec/31
Matters with Balances Greater Than or Equal to	No
Include Cheques	Yes
Include Receipts	Yes
Include Details for Account	Cheque, Cash, Credit Card, Bank Chk, Dir Dpst, Money Order, Other, Wire, Crtfd Chk
Show Entries which result in a neg. balance	All
All Matters with Activity	No
Firm Totals Only	Yes
Totals Only	No
Negative Balances Only	No
Sort by	Date

APPENDIX “H”

DATE: MAY 20, 2018

FROM: **ZAHERALI VISRAM**
FAX: (416) 512 - 1318
TEL: (416) 512 - 6835

TO: EVAN KARRAS

FAX NO: 416. 552-7832

ATTENTION: EVAN

RE: 650 BAY ST MORTGAGE STATEMENT.

YOUR REFERENCE NO: _____

COMMENTS: I am herewith faxing you
the mortgage statement.

MAY 8, 2015

RG 400 Bay St Toronto

2ND MORTGAGE

Date	INTEREST	PAYMENTS	ACCUMULATED
			BALANCE
SEPT 15, 2012 PRINCIPAL			\$ 3,000,000.
OCT 15, 2012	87500		3,037,500
NOV 15, 2012	87500		3,075,000
DEC 15, 2012	87500		3,112,500
JAN 15, 2013	87500		3,150,000
FEB 15, 2013	87500		3,187,500
MAR 15, 2013	87500		3,225,000
MAR 15, 2013 RELEASE HOLD BACK	87500		3,312,500
MAR 15, 2013 HOLD BACK CREDIT		200,000	3,112,500
APRIL 15, 2013	38906		3,151,406
MAY 15, 2013	39393		3,190,799
MAY 15, 2013 EXTENSION FEES	45000		3,235,799
JUNE 15, 2013	40447		3,276,246
JULY 15, 2013	40954		3,317,200
AUG 15, 2013	41465		3,358,665
SEPT 15, 2013	41983		3,400,648
OCT 15, 2013	42508		3,443,156
NOV 15, 2013	43046		3,486,196
NOV 15, 2013 EXTENSION FEES	100,000		3,586,196
DEC 15, 2013	44827	40,000	3,591,023
JAN 15, 2014	45886	20,000	3,615,911
FEB 15, 2014	46198	15,000	3,646,109
MARCH 15, 2014	46576	25,000	3,666,885
MARCH 15, 2014 EXT FEES	73600		3,740,485
APRIL 15, 2014	46762		3,786,937
MAY 15, 2014	47337	5,000	3,829,274
JUNE 15, 2014	47866	40,000	3,837,140
JULY 15, 2014	47964		3,885,104
AUG 15, 2014	48564		3,933,668
SEPT 15, 2014	49171		3,982,839

	INTEREST	PAYMENTS	ACCUMULATED BALANCE
SEPT 15, 2014 Bal b/fwd			3,982,839
OCT 15, 2014	49785		4,032,624
NOV 15, 2014	50407		4,083,031
DEC 15, 2014	51038		4,134,069
JAN 15, 2015	50425		4,184,494
FEB 15, 2015	52306		4,236,800
MAR 15, 2015	52960		4,289,760
MARCH 15, 2015 EXT FEE	123500		4,413,260
APRIL 15, 2015	55165		4,468,425
MAY 15, 2015	55855		4,524,280
MAY 15, 2015 NSF Cheque Chqrs @ 1050			4,525,330
JUNE 15, 2015	57566		4,582,896
JULY 15, 2015	57274		4,639,170
AUG 15, 2015	57990		4,697,160
SEPT 15, 2015	58715		4,755,875
SEPT 15, 2015 EXT FEE	45000		4,800,875

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ZAHERALI VISRAM

Applicant

- and -

2220277 ONTARIO INC.

Respondent

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

RESPONDENTS FACTUM
(Application returnable July 14 2017)

RESPONDENTS FACTUM

Alfred Schorr
Barrister & Solicitor
227 Eagle Street East, Suite 200
Newmarket, Ontario L3Y 1J8

Toronto No. 905-940-9252
Toronto Fax 905-940-5583
Newmarket No. 905-898-8176
Newmarket Fax 905-898-4935
LSUC #11693H
Lawyer for the Respondent

To:
Chaitons LLP
Barristers & Solicitors
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Attention: Harvey Chaiton/Sam Rappos
Telephone: 416-218-1129 and 416-218-1137
Fax: 416-218-1849 and 416-218-1837
Lawyers for the Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ZAHERALI VISRAM

Applicant

- and -

2220277 ONTARIO INC.

Respondent

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

RESPONDENTS FACTUM
(Application returnable July 14 2017)

PART I OVERVIEW

1. This Factum is filed by the Respondent in connection with the Application brought by the Applicant for an Order appointing A. Farber & Partners Inc. as Receivers of the property, assets and undertakings of 2220277 Ontario Inc. which comprises of real property located at the southwest corner of the intersection of Bay Street and Elm Street in the City of Toronto and municipally known as 650 Bay Street or alternatively 55 Elm Street.

2. The Applicant is the holder of a first and second mortgage over the property. The principal amount of the first mortgage is 2.6 million dollars and the principal

amount of the second mortgage is 3 million dollars. The Applicant was not the lender in connection with the first mortgage but acquired the same by way of Assignment.

3. The Applicant on the 18th of April 2017 forwarded by registered mail and regular mail to the Respondents notices pursuant to Section 244 of the Bankruptcy & Insolvency Act in connection with both securities.

4. Within 10 days of the Respondent's receipt of the Notice of Intention to Enforce Security the Respondent commenced action against the Applicant seeking a permanent, interlocutory and interim injunction restraining the Applicant from taking any steps to attempt to realize on its first or second mortgage pending the determination of the issues in the action or as otherwise may be ordered by the Court; an accounting of what if anything is owed under the two mortgages held by the Defendant; alternatively, an Order under the Mortgages Act requiring an Order of Discharge of both mortgages upon payment into Court of such monies as to this Honourable Court may seem just; general and punitive damages. In the action the Respondent accuses the Applicant of abusive predatory lending, including breaches of the Criminal Code provisions for interest as provided for in Section 347 of the Criminal Code of Canada. Despite numerous opportunities given by the Respondent to the Applicant the Applicant ultimately refused to deliver a Statement of Defence and has been noted in default. The Applicant is, pursuant to the Rules of Civil Procedure, deemed to have admitted the facts in the Respondent's Statement of

Claim.

5. These proceedings were brought by the Applicant some 18 days after the Respondent's Action.

6. In its Application the Applicant suggests that it is in the best interest of the Respondent's creditors generally that a Receiver be appointed to market and sell the property as a vacant building and that this would be for the benefit of all of the creditors of the debtor.

7. Although the Applicant has served all of the mortgage holders in connection with the property in question the Applicant has not produced any evidence that any other mortgagee supports the Applicant's position. To the contrary a number of mortgagees have expressed their opposition to the same.]

8. The Respondent is clearly solvent and has commitments for alternate financing but does not accept the Applicant's financial claims. For the reasons as set out in this Factum the Respondent submits that:

(a) The Application be dismissed;

(b) In the alternative the Respondent pay into Court \$10,000,000.00 subject to the Court making an Order pursuant to Sections 2 and 12 of the Mortgages Act or alternatively with the consent of the Applicant to the Assignment of the first and second mortgage to a third party lender;

(c) In the further alternative payment by the Respondent to the Applicant on a monthly basis in the amount of \$45,000.00 (roughly equivalent to the mortgage payments under the first and second mortgage) pending the final determination of the Respondent's action.

PART II – THE FACTS

9. The Respondent acquired the property under Power of Sale in November of 2009, giving a vendor take back mortgage to the then mortgagee (selling under Power of Sale) for \$2,100,000.00. According to the principal of the Respondent (Evan Karras – hereinafter referred to as Karras) the property was being operated as a hotel.

10. At first Karras was uncertain as to what he would do with the property. He eventually decided that he would totally renovate the property.

11. In the interim Karras was introduced to the Suleman family in 2010. The Suleman family were operating Hush Homes Inc. and related companies involved in the building and selling of homes.

12. In due course a Share Purchase Agreement was entered into in connection with the Bay Street property (Exhibit "F" to the Affidavit of Karras – Respondents Record pages 208 to 212).

13. Under the Share Purchase Agreement Naheel Suleman was to acquire a 30% interest in the corporation in exchange for the payment of \$1,125,000.00 in three installments between the 20th of July 2010 and the 29th of October 2010.

14. The evidence of Karras was that Suleman did not live up to the terms of the Share Purchase Agreement, although he received some \$500,000.00 over time, including some work which was done (hereinafter referred to in this Factum).

Affidavit of Karras at paragraphs 5 and 8, Respondents Record
At page 2;

15. Karras was looking for approximately \$1,000,000.00 to convert the building into a 22 room hotel with space for restaurants or retail on the main floor. According to Karras he provided the Applicant with the actual budget for construction. At first, under cross-examination, the Applicant denied it but then subsequently indicated he could not remember. Marked as exhibits are e-mails between Karras and Suleman which confirms the testimony of Karras to the providing of the budget to the Applicant.

16. Prior to the dealings with the Applicant, in the summer of 2011 Karras was looking to others for financing for the renovations of the "boutique hotel and ancillary retail uses" which he was planning to undertake at the subject property.

Exhibit "G" (pages 214 to 228) is a second mortgage commitment for \$1,500,000.00 subject to, among other things, a letter of intent from Royal Bank of Canada for take out financing and an appraisal.

17. It is clear that Karras had sought take out financing from Royal Bank of Canada who then in November of 2011 requested and obtained an appraisal. Karras provided this appraisal to the Applicant (see implementation of undertakings by the Applicant and in particular Appendix A).

18. The aforesaid appraisal was in the amount of \$10,100,000.00. At that point the property was subject to only one mortgage, namely the vendor take back first mortgage of \$2,100,000.00. (see partial register abstract of title at Exhibit "2" to the Affidavit of the Applicant – Applicant's Record).

19. According to Karras the Sulemans persuaded him to deal with the Applicant as "Mr. Visram and Musa Suleman had been long time friends and compatriots...he insisted it would be best to work with Visram."

Respondents Record, Affidavit of Karras at paragraph 7, page
2;

20. According to Karras, at the last minute, the Applicant advised him that there was some outstanding loans which the Applicant had made to Hush Homes Inc. and

to the Suleman family and he required them to be repaid before he would advance any funds to the Respondent. Karras relented and accepted the mortgage loan commitment marked as Exhibit "5" to the Affidavit of the Applicant (Respondents Record pages 49 to 53 inclusive).

21. The mortgage loan commitment provided that \$400,000.00 of the funds advanced "shall be used to pay down the mortgage from 2173252 Ontario Inc. in favour of Zaherali Visram. The balance of mortgage funds shall be used solely for the purpose of completing construction and other related costs with respect to the property. This clause was further amended in handwriting to provide that the balance of the funds shall be used to complete construction and payment of taxes. Little did the Respondent know, nor did the Applicant or the Sulemans disclose to the Respondent, that in addition to various loans to Hush Homes (which subsequently became a part of an Application by Hush Homes under the Companies Creditors Arrangement Act) that the loan from the Applicant to 2173252 Ontario Inc. was made in November of 2011 and was in the amount of \$3,500,000.00, nor did they disclose that the Applicant was about to make an additional \$400,000.00 in unsecured loans which were advanced in February and April of 2012. (See letter from Chaitons dated June 29th 2017).

22. Under the Agreement dated the 28th of January 2012 all advances were to be made into a separate bank account solely in the name and under the control of Hush Homes Inc. with all of the monies being used for construction save only for the

\$400,000.00. The Agreement also provides for a lender's fee of \$48,000.00 and legal fees with which the Respondent takes no issue.

23. When it came time to advance the \$1,200,000.00 pursuant to the Agreement of January 28 2012, in addition to no monies being advanced whatsoever to the Respondent, it appears that Hush Homes received \$375,000.00. With Karras's concurrence \$200,000.00 was also paid to a former partner (Shareholder) to complete Karras's acquisition of 100% of the shares of the Respondent. Accordingly Karras received indirectly \$200,000.00 (the amount paid to the former partner) and indirectly \$375,000.00 which was paid to Hush Homes for the project. All of the rest of the money was for fees, plus the \$400,000.00 for an unrelated loan. The loan was for a three month term at 12%. Additionally there was a \$50,000.00 holdback for construction liens of which there never were any but which was credited back much later as a payment on account to the Applicant.

24. Later in March of 2012 out of the differential between the amounts in the original direction and the \$1,200,000.00, (\$122,000.00) some \$86,000.00 was paid to Hush Homes Inc. (Respondents Record at page 75).

25. The evidence of Karras was that out of all of the monies paid to Hush Homes for construction at best \$100,000.00 of work was done. (See paragraph 14 of Affidavit of Karras at page 4 of Respondents Record).

26. Karras's evidence was that when the Applicant provided to him the Fund Directions "I protested and pointed out to Mr. Visram that this was not why I had sought his assistance – I needed \$1,000,000.00 to complete the project. He said words to the effect that I shouldn't be concerned due to my relationship with the Suleman family and that if they didn't come through I'll give you more money if you need it."

Evidence of Karras, paragraph 15 of his Affidavit at page 5 of Respondents Record;

27. As the Respondent received no money for construction in connection with the \$1,200,000.00 mortgage and very little construction work was done by the Suleman family Karras contacted the Applicant advising that the Respondent needed at least \$700,000.00 to complete the project. In response the Applicant indicated that he was prepared to increase the \$1,200,000.00 second mortgage to \$1,900,000.00. The Applicant wanted a \$90,000.00 lender's fee which would have left the Respondent with \$600,000.00. The Respondent agreed. The Respondent did not get any monies in connection with this increased loan to \$1,900,000.00. Instead at the last minute the Applicant insisted that the loan be increased to \$3,000,000.00 in order to free up for the Respondent the \$700,000.00 which Karras felt was needed and an extra cushion of \$300,000.00 to \$400,000.00.

Karras Affidavit, paragraph 18, Respondents Record page 6

And 7;

28. As appears from Exhibit 9 of the Affidavit of the Applicant on the increase of the loan from \$1,200,000.00 to \$1,900,000.00 the Applicant received a lender's fee of \$19,000.00. To that must be added out of payments made on account of the mortgage by Hush Homes the Applicant appropriated another \$24,000.00 as a lenders fee or bonus (he called it mortgage extension fee). See letter from Rappos dated June 29th 2017.

29. Exhibit 9 also shows a \$400,000.00 amount which was held by the Applicant referable to an alleged personal loan. It now appears that this a personal loan that was made in February and in April of \$200,000.00 which was apparently made to Hush Homes. In addition there is a reference to \$192,250.00 being paid to Hush Homes but it now appears that most of it was for trade creditors of which the Respondent would have got some benefit. When Exhibit 9 is combined with Exhibit 11 which is the increase from the \$1,900,000.00 to \$3,000,000.00 there is another \$204,000.00 that is paid to Hush Homes for alleged loans and approximately \$170,000.00 was paid for taxes. Accordingly out of the increase from \$1,200,000.00 to \$3,000,000.00 the Respondent received at the most actual benefits (money for construction or for taxes) \$350,000.00. The Respondent has never received an accounting from anyone until the commencement of these proceedings as to what happened with the \$3,000,000.00.

Karras Affidavit, paragraphs 18 to 22 inclusive;

30. In September of 2015 the Respondent was able to secure a loan for \$525,000.00 in order to complete the project.

Karras Affidavit, paragraph 27, page 9 of Respondents Record;

31. Karras accounts for the other mortgages which were subsequently registered. The mortgage for \$625,000.00 to 932005 Ontario Inc. was a collateral mortgage in connection with an unrelated property. The mortgage to which it is collateral is up to date and not in any way in default. The same is the case in connection with the \$100,000.00 mortgage to Harbour First Mortgage Fund GP. The mortgage in favour of Goldcard has now been paid in full (\$100,000.00) – it was collateral security for equipment for the property. The mortgage to 9480536 Canada Inc. in the amount of \$600,000.00 is to a friendly investor. The mortgage to Am-Stat Corporation in the amount of \$5,500,000.00 is collateral security for the mortgages of the three adjoining properties which were acquired by a group of investors with whom Karras has an outstanding agreement.

Karras Affidavit, paragraphs 27 and 28, page 9 of
Respondents Record,

32. As far as Ardellini Investments is concerned the same is a collateral mortgage. Karras swears as to the truth of facts as stated in the Statement of Defence in that action.

33. Karras does no deny that various lawyers were acting for the Respondent company. None of them were "independent". His testimony that they were Hush Homes lawyers (Suleman family) is not disputed.

34. In connection with the first mortgage the same was in good standing throughout. It matured. The mortgagees wanted to get paid. The Respondent had arranged financing but the Applicant refused. The financing would have involved an increase of about \$400,000.00 (for taxes and trades – likely part of the outstanding encumbrance for which no subsequent approval would be required) but the interest rate was to be 9.25% which was a substantial increase. It is not disputed that the Applicant had a right to refuse this but the Applicant then proceeded to acquire the mortgage and exact from the Respondent the same terms and conditions.

Karras evidence at paragraphs 31 and 32 pages 10 and
11 of Respondents Record.

35. When the Applicant insisted on the Forbearance Agreement in connection with the second mortgage Karras realized he was the victim of predatory lending

practices and likely that the Suleman family were involved with the Applicant in this connection.

Karris Affidavit, paragraphs 30 and 35, Respondents
Record;

36. Karras was able to obtain Agreements of Purchase and Sale in the amount of \$13,000,000.00 in 2015 and \$13,750,000.00 in 2016 and ultimately a Joint Venture Agreement in which for his shares he could obtain up to \$15,000,000.00. The most recent appraisal is May of 2012 in the amount of \$13,970,000.00.

Application Record, Tabs 18 and 19,
Karras Affidavit paragraph 36 (Respondents Record)
page 12;
Share Transfer Agreement, Respondents Record, Tab B;
Appraisal, Respondent's Record, Tab E;

37. The only reason why this Application and the action are outstanding is because of the disagreement between the parties as to what is owed under the first and second mortgage.

38. It is clear that there is ample equity in the property to obtain financing to discharge the first and second mortgage. There is no reason why the subsequent

mortgages need to be discharged and in any event apart from the disputed action with Ardellini none of the mortgagees are making any claims.

39. A rough tally of the \$3,000,000.00 loan is as follows:

(a)	Payment of loans to third parties or making of loans to third parties	1,004,000.00;
(b)	Lender fees to Lender	\$157,000.00;
(c)	Monies paid to Hush Homes for construction	\$1,007,000.00;
(d)	Monies paid to former partner, for realty taxes, for liens and for trades as per direction from the Respondent	\$449,000.00;
(e)	Balance – legal fees and other expenses	The balance

40. Out of the \$1,007,000.00 paid to Hush Homes for work to be done the undisputed evidence is that only \$100,000.00 of work was done.

41. Marked as Exhibit “C” to the Respondents Record are the only statements ever received from the Applicant prior to this litigation. The first mortgage statement commenced appropriately after the mortgage is acquired by the Applicant. The second mortgage statement starts with the balance as set out in the Forbearance Agreement. It contains in excess of \$800,000.00 for “extension fees” or “other charges”. Most of these are fictitious charges, not otherwise agreed to. At best they are additional charges for the mortgage having been due but not paid.

42. In the absence of an actuary it is difficult to calculate what actually is owed taking into account interest factors and particularly compound interest.

43. Apart from all of this there are a number of discrepancies including showing amounts advanced to pay trades as a debit rather than a credit since the monies consist of borrowed funds already debited, a duplication in lender's fees in connection with the second mortgage (payment made by Hush Homes which the Applicant repeatedly denied receiving under oath and eventually conceded in correspondence from his Counsel that such funds were received). It also appears that on July 14 2015 the Applicant received out of the increased first mortgage \$45,000.00 to be applied on account of the second mortgage (see Appendix G to Applicant's Answer to Undertakings – lawyers trust ledgers) yet in the mortgage statement dated May 20 2015 no such credit is shown (see Appendix H to the Applicant's Answer to Undertakings). The same statement shows the holdback funds of \$87,500.00 as a debit rather than a credit (it was part of the \$3,000,000.00 loan which is the starting point of the statement).

PART III THE LAW

44. Section 101 of the Courts of Justice Act provides that the Court may appoint a Receiver by interlocutory Order "where it appears to a Judge of the Court to be just or convenient to do so." Generally the appointment of a Receiver is to preserve

assets for the purposes of execution and is therefore extraordinary relief which pre-judges the conduct of a litigant and should be granted sparingly; (b) The appointment of a Receiver is effective execution before judgment and to justify the appointment there must be strong the Plaintiff's rights to recover is in serious jeopardy; (c) The appointment of a Receiver is very intrusive and should only be used sparingly, with due consideration for the effect on the parties as well as consideration of the conduct of the parties; (d) Deciding whether to appoint a Receiver the Court must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto; (e) The test for the appointment of an interlocutory receiver is comparable to the test for interlocutory injunctive relief.

Anderson v. Hunking, 2010 ONSC 4008 (CanLII)

45. It is not disputed that the right under a security to appoint a Receiver is an important factor to be considered in favour of the appointment of a Receiver. Nonetheless it is quite clear that it is a discretionary remedy that should only be granted when it is "just or convenient" to do so.

46. Under the Unconscionable Transactions Relief Act where in respect of money lent the Court finds that having regard to the risk and to all circumstances the costs of the loan is excessive and that the transaction is harsh and unconscionable the Court may, among other things, re-open the transaction, order the creditor to repay any excess or set aside either wholly or in part or revise or alter any security given

or agreement made. Those powers may be exercised in an action by the creditor or in an action by the debtor or in any other proceedings in which the amount due or to become due in respect of the money lent is in question.

Unconscionable Transactions Relief Act, RSO
1990, c. U.2;

47. In *Fraser Jewellers (1982) Ltd. v. Lang* the Ontario Court of Appeal stated that the weighing of the bargaining power of the parties is not the test for unconscionability. The test is whether there was an abuse of bargaining power.

Fraser Jewellers (1982) Ltd. v. Dominion Electric Protection Co. 34 O.R. (3d) 1

48. In connection with the Unconscionable Transactions Relief Act there are two principle requirements: (a) that the cost of the loan is excessive, and (b) that the transaction is harsh and unconscionable. A loan which violates the provisions of the Criminal Code is clearly a breach of both. As well the lack of independent legal advice is an important consideration.

Ekstein et al v. Jones 2005 CanLII 30309 (ONSC)

Milani v. Banks 32 O.R. (3d) 557;

William E. Thomson Associates Inc. v. Carpenter
69 O.R. (2d) 545;

CMZ Equity Corporation v. Bataar Group Inc. et al

2014 ONSC 2076;

49. In CMZ Equity Corporation v. Bataar the borrowers were sophisticated borrowers.

50. Where monies, no matter how labeled, are payable only when a mortgage is in default such that the costs of the loan on default is greater than the interest provided for in the loan the same is invalid. Likewise any charges that do not accord with reality (for example a \$250.00 charge for an NSF cheque) are invalid except for the actual cost.

P. A. R. C. E. L. Inc. v. Acquaviva, 126 O.R. (3d) 108;

Krayzel Corp. v. Equitable Trust Co. 1 S.C.R. 273;

All of which is respectfully submitted by Counsel on behalf of
the Respondent 2220277 Ontario Inc.

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Lawyer for the Respondent
2220277 Ontario Inc.

SCHEDULE A
LIST OF AUTHORITIES REFERRED TO

1. Anderson v. Hunking, 2010 ONSC 4008 (CanLII)
2. Unconscionable Transactions Relief Act, RSO 1990, c. U.2;
3. Fraser Jewellers (1982) Ltd. v. Dominion Electric Protection Co. 34 O.R. (3d) 1;
4. Ekstein et al v. Jones 2005 CanLII 30309 (ONSC)
5. Milani v. Banks 32 O.R. (3d) 557;
6. William E. Thomson Associates Inc. v. Carpenter 69 O.R. (2d) 545;
7. CMZ Equity Corporation v. Bataar Group Inc. et al 2014 ONSC 2076;
8. P. A. R. C. E. L. Inc. v. Acquaviva, 126 O.R. (3d) 108
9. Krayzel Corp. v. Equitable Trust Co. 1 S.C.R. 273;

SCHEDULE B

**TEXT OF ALL RELEVANT PROVISIONS OF STATUTES
REGULATIONS AND BYLAWS**

Unconscionable Transactions Relief Act, RSO 1990, c. U.2
See Tab 2 of Casebook

Court File No. CV-17-11811-00CL

Zaherali Visram

and 2220277 Ontario Inc.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced in
Toronto

Respondents Factum

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(905) 940-9252
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Law Society No. 11693H
Lawyer for the Respondent

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No.

CV-17-574895

BETWEEN:



2220277 ONTARIO INC.

PLAINTIFFS

- and -

ZAHERALI VISRAM

DEFENDANT

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

(Where the claim made is for money only, include the following:)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date **MAY 01 2017**

Issued by

Local registrar

Address of
court office 393 University Avenue, 10th
Floor, Toronto, Ontario M5G 1E6

TO: ZAHERALI VISRAM

CLAIM

1. The Plaintiff claims as against the Defendant :
 - (a) A permanent, interlocutory and interim injunction restraining the Defendant from taking any steps to attempt to realize on its first or second mortgage pending the determination of the issues in this action or as may otherwise be ordered by the Court;
 - (b) An accounting of what if anything is owed under two mortgages held by the Defendant;
 - (d) In the alternative an Order that nothing is owed under either mortgage;
 - (d) In the further alternative an Order that no interest or other charges are due and owing under either mortgage;
 - (e) An Order under the Mortgages Act requiring an Order of discharge of both mortgages upon payment into court of such monies as to this Honourable Court may seem just;
 - (f) General damages in the amount of \$20,000,0000.00;
 - (g) Punitive damages in the amount of \$500,000.00;
 - (h) Interest in accordance with the Courts of Justice Act;
 - (i) Costs on a substantial indemnity basis;
 - (j) Such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff is a corporation incorporated pursuant to the Laws of the Province of Ontario and at all material times was the owner of lands and premises municipally known as 650 Bay Street in the City of Toronto.
3. The Defendant is an individual residing in the City of Toronto in the Municipality of Metropolitan Toronto.
4. On or about the 13th of November 2009 the Plaintiff acquired the aforesaid property at 650 Bay Street, Toronto, for \$2,425,000.00. Included in the purchase price was a vendor take back first mortgage in the amount of \$2,100,000.00 held by a group of private investors.
5. The Plaintiff intended to convert the premises into a boutique hotel with restaurants. In order to do so the Plaintiff required further financing.
6. On or about the 6th of March 2012 the Defendant agreed to lend to the Plaintiff \$1,200,000.00 as a second charge on the subject premises. The parties agreed to interest at 12%.
7. At all material times the Defendant intended to enter into predatory financing transactions with the Plaintiff such as ultimately to deprive the Plaintiff of its valuable property in Toronto. In furtherance of and in compliance with this intention the Defendant required the Plaintiff to permit the registration of a second mortgage in the amount of \$1,200,000.00 with interest at 12% calculated monthly and to be

registered on the 6th of March 2012 with a maturity date of the 18th day of April 2012 (a period of approximately 40 days). The mortgage further provided that in the event that the mortgagee intended to prepay the mortgage the mortgagee would be required to make a further payment of one months interest as a bonus. The mortgage also provided for a \$250.00 charge for any dishonoured cheques. In connection with the said mortgage loan the Defendant charged the Plaintiff a lender's fee of \$48,000.00, a requirement that \$400,000.00 of the \$1,200,000.00 would be withheld by the mortgagee (Defendant) in connection with a totally unrelated loan which the Defendant had made to a third party together with another \$45,000.00 to be advanced to the said third party. The overall cost of this loan to the Plaintiff was in excess of 550% interest per annum.

8. In or about August of 2012 as construction was ongoing and the Plaintiff required further monies, particularly since the \$1,200,000.00 second mortgage was not fully advanced to it, the Defendant proposed to amend the aforesaid second mortgage to increase the second mortgage to \$1,900,000.00. The aforesaid increase was memorialized in a mortgage registered August 7 2012 as instrument number AT3095262. This mortgage provided for a maturity date of October 18 2012 and interest at 18% after September 19 2012, together with a lender's fee of \$19,000.00. By the end of September it was further amended to provide for a mortgage loan of \$3,000,000.00 with a lender's fee of \$90,000.00 and a further deduction of \$204,000.00 for a loan to a third party made by the

Defendant.

9. Accordingly within a period of six months the Defendant required the Plaintiff to repay the sum of \$3,000,000.00 of which the Plaintiff only received \$2,200,000.00 plus 12% interest.
10. In or about May of 2015 the Defendant purchased the first mortgage from the first mortgagees for \$2,190,000.00 having denied the Plaintiff the available opportunity to replace it. The Defendant insisted that the Plaintiff agree to amend the mortgage from \$2,100,000.00 to \$2,600,000.00 – with no monies being advanced. The mortgage was to bear interest at 9.25% per annum with maturity to occur on or about May 31 2016, NSF fees at \$350.00., and administration fees of \$500.00 for any default.
11. During the interval between the maturity date on the second mortgage and the date when the Defendant acquired the first mortgage the Defendant imposed almost monthly “renewal fees” despite the fact that no renewal was ever sought nor in fact granted. These fees were equivalent to and were intended to be penalties or increased interest on arrears contrary to the provisions of Section 8 of the Canada Interest Act and totaled hundreds of thousands of dollar.
12. Upon acquiring the first mortgage the Defendant demanded that the Plaintiff enter into a Forbearance Agreement agreeing to pay some

\$200,000.00 by way of bonuses by way of eight post-dated cheques and demanding that the Plaintiff agree that the second mortgage with a principal amount of \$3,000,000.00 (of which the Plaintiff received nowhere near that amount) had a balance of \$4,289,760.00 owing consisting of the aforesaid \$3,000,000 plus accumulated interest and fees and interest accruing thereon at 15% per annum calculated and compounded monthly. The Defendant also exacted from the Plaintiff a one time Forbearance fee of \$123,450.00, and a further Forbearance fee on September 15 2015 of \$45,000.00. Thereafter the Defendant arbitrarily charged extension fees through to April of 2017 of \$800,000.00 in connection with the second mortgage and some \$268,000.00 in connection with the first mortgage up to and including April of 2017.

13. The Defendant is now demanding that the Plaintiff pay to it almost \$10,000,000.00 when at best less than \$5,000,000.00 is owed under the first and second mortgage.
14. As a result of the usurious conduct of the Defendant the Plaintiff has been unable to raise sufficient funding to complete the project.
15. The Plaintiff states that the overall effect of the conduct of the Defendant was to exact from the Plaintiff fees, charges and interest in excess of the criminal rate of interest provided for under the Criminal Code and in any event charges on money in default contrary to Section 8 of the Interest

Act. Alternatively and in any event such charges as were clearly unconscionable and in bad faith and designed to thwart the Plaintiff from achieving its plans. The Defendants actions were intentional, known to be unlawful, and intended as predatory throughout. Accordingly the Defendant states that the Plaintiff should be disentitled to receive anything. Alternatively the Defendant should not be permitted to receive any interest or other charges.

16. By reason of the conduct of the Defendant the Plaintiff has been unable to raise sufficient financing to complete the project, and is being put to constant pressure by the Defendant to make payments which are otherwise not required or lawful.
17. But for the excessive demands of the Defendant and its bad faith dealings as pleaded herein other financing is available to complete the project and there is substantial equity in the property.
18. The Plaintiff claims an entitlement to the relief sought in paragraph 1 herein.
19. The Plaintiff pleads and relies on the provisions of the Interest Act and Section 347 of the Criminal Code.

Dated at Newmarket Ontario this 1st day of May 2017

MAY 01 2017

Alfred Schorr
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227 Eagle Street East, Suite 200
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Telephone: 905-940-9252 Fax -905-940-5583
Law Society No. 11693H
Lawyer for the Plaintiff

Action No. CU-17-574395

2220277 Ontario Inc.

and Zaherali Visram

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced in
Toronto

Statement of Claim

Service of this document, a true copy
hereof, is accepted this 17th day of
May, 20 17.

Per: *A. R. [Signature]*

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Law Society No. 11693H
Lawyer for the Plaintiff

TAB 4

Court File No. CV-17-570878

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CVC ARDELLINI INVESTMENTS INC.

**Plaintiff
(Defendant by Counterclaim)**

-and-

2220277 ONTARIO INC.

**Defendant
(Plaintiff by Counterclaim)**

STATEMENT OF DEFENCE TO COUNTERCLAIM

1. The Plaintiff admits the allegations contained in the first and second sentence of paragraph 8, and in paragraph 9 of the Defendant's Statement of Defence and Counterclaim. The Plaintiff denies the terms violate the provision of the *Interest Act* as set out in the last sentence of paragraph 8 of the Defendant's Statement of Defence and Counterclaim.

2. Except as expressly admitted hereafter, the Plaintiff denies all other allegations contained in the Statement of Defence and Counterclaim, and denies that the Defendant (Plaintiff by Counterclaim) is entitled to the relief claimed in paragraphs 14 and 15 of the Statement of Defence and Counterclaim.

3. The Plaintiff has no knowledge of the remaining allegations of the Statement of Defence and Counterclaim including the allegations set out in paragraphs 4, 5, 6, 7 (with respect to the approval of municipal plans), 10, 11, and 17 of the Statement of Defence and Counterclaim.

4. The Plaintiff repeats and relies on the allegations contained in its Statement of Claim herein.

The Loan

5. On or about September 2013, the Defendant's mortgage broker, Toronto Capital, approached the Plaintiff to inquire whether the Plaintiff wished to extend financing to the Defendant.

6. In or about September 2013, the Plaintiff entered into negotiations with Hush Homes Inc. ("Hush Homes"). Hush Homes was seeking \$2,500,000.00 (the "Loan") to fund a construction project.

7. The properties owned by Hush Homes were over-encumbered and could not support the Defendant's financing request. The Plaintiff sought additional security from Hush Homes. The principal of Hush Homes arranged additional security to be pledged by 2173252 Ontario Inc., 2142301 Ontario Inc., and 2220277 Ontario Inc. (collectively, with Hush Homes, the "Borrowers"), being other corporations controlled and or operated by the principal of Hush Homes.

8. The Plaintiff agreed to advance funds if and only if the Borrowers arranged could pledge the additional security promised. The terms and conditions of the agreement(s) between Hush Homes and the Borrowers are unknown to the Plaintiff.

9. The Loan was advanced to the Borrowers and it was secured by Charges/Mortgages given by each of the Borrowers, 2173252 Ontario Inc., 2142301 Ontario Inc., and 2220277 Ontario Inc., who pledged 650 Bay Street, Toronto as security (the "Mortgage"). The aforesaid security being a fundamental term and pre-condition to the advance of funds.

10. The Plaintiff denies having made any representations regarding conditions of the Loan to Toronto Capital or the Borrowers as alleged in the Defendant's Statement of Defence and Counterclaim.

11. The terms and conditions of the Loan were detailed in written agreements, drafted and prepared in part, by the Defendant's broker, Toronto Capital. The terms and conditions were set out in the various documents, including the term sheet, the mortgage charge terms appended to the registered Charge and a Promissory Note dated September 12, 2014, executed by the Defendant.

12. At all material times, the Defendants who are sophisticated parties, knew or ought to have known that they could not rely on any unwritten representations or warranties, in particular those made by their own broker, Toronto Capital. Toronto Capital had no authority to bind the Plaintiff and was not acting as agent for the Plaintiff.

13. Contrary to the allegations set out in paragraph 7 of the Defendants Statement of Defence and Counterclaim, the Plaintiff advanced mortgage funds in excess of \$2,500,000.00, the conditions and terms of which were known and accepted by the Defendant as a primary borrower.

14. On October 5, 2016, the Defendant acknowledged a debt of \$2,743,426.20 and confirmed an intention to elevate the Plaintiff's mortgage to a position of second priority.

15. On or about January 2015, all of the Borrowers to the Loan with the exception of the Defendant, made an Application for an Order under the *Companies Creditors Arrangement Act*. The Defendant was not an Applicant in those proceedings.

16. The Plaintiff states that the Defendant's liability on the Mortgage was specifically excluded from the Plan of Arrangement by paragraph 14 of the Order of the Honourable Justice Penny, which states:

14. THIS COURT ORDERS thatnothing in the Plan shall have the effect of extinguishing any Claims against any Applicant to the extent that such Claims may be guaranteed by any Persons other than the Applicants or the Releasees or to the extent that Persons other than the Applicants or the Releasees may be liable or otherwise contractually obligated to the Creditors in respect of such Claims. For greater certainty, if any Claims against the Applicants that are guaranteed by, or are otherwise liabilities of, Persons who are not Applicants or Releasees, such Claims shall not be extinguished or released by the Plan and shall remain outstanding so that the holders of such Claims may seek payment from such other Persons under any such guarantees or other instruments giving rise to such liability, including any security therefore.

17. The Plaintiff denies having received any shares as alleged in paragraph 10 of the Defendant's Statement of Defence and Counterclaim, or having received payments in any form that would otherwise satisfy the debt owed to the Plaintiff, or estop the Plaintiff from taking

steps to enforce under the collateral security granted by the Defendant, as a result of the Defendant's neglect, failure or refusal to remit the requirement payment which default continue to date.

18. The Plaintiff states the Defendant's obligations in respect of the Loan continue, having been specifically excluded from the Plan of Arrangement and the Defendant is indebted to the Plaintiff in the amount set out in the Plaintiff's Statement of Claim.

Date: May 1, 2017

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Lawyers for the Defendant

**CVC ARDELLINI INVESTMENTS
INC.
Plaintiff**

- and -

**2220277 ONTARIO INC.
Defendant**

COURT FILE # CV-17-570878

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced in TORONTO

**STATEMENT OF DEFENCE TO
COUNTERCLAIM**

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04/26/2017 17:15

(FAX)

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TAB 5

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CVC ARDELLINI INVESTMENTS INC.

Plaintiff
(Defendant by Counterclaim)

- and -

2220277 ONTARIO INC.

Defendant
(Plaintiff by Counterclaim)

STATEMENT OF DEFENCE AND COUNTERCLAIM
ON BEHALF OF 2220277 ONTARIO INC.

1. The Defendant admits the allegations contained in paragraphs 2, 3, 4, 5, 8, and 9 of the Plaintiff's Statement of Claim.
2. Save only as hereinafter may be admitted the Defendant denies each and every other allegation contained in the Plaintiff's Statement of Claim, seriatim.
3. In or about September of 2013 the Defendant corporation was seeking further mortgage funding for the property at 650 Bay Street.
4. The Defendant sought the services of Toronto Capital, a mortgage brokerage firm.
5. In or about mid September of 2013 representatives of Toronto Capital advised the Defendant's principal that they had a lender who was prepared to provide a new first mortgage of \$5,000,000.00 and a lender who was prepared to

provide a second mortgage at \$1,800,000.00 for a total of \$6,800,000.00. They proposed that in order to facilitate the loan the lender wished to have further security for monies which the lender had loaned or was prepared to loan to Hush Homes Inc. and some numbered companies controlled by the principal of Hush Homes Inc. The identified lender was the Plaintiff herein.

6. In consideration of the promise by the Plaintiff through its broker Toronto Capital that the aforesaid funding for the Defendant would be forthcoming the Defendant was asked to provide a collateral mortgage on its property at 650 Bay Street as collateral security for the loans to Hush Homes Inc. which collateral security would be discharged as soon as Hush Homes Inc. received confirmation from the City of Mississauga regarding the approval of the registration of a subdivision plan which the Plaintiff was funding, to which the Defendant agreed. An agreement was subsequently concluded that whether the confirmation from the City of Mississauga was received or otherwise the collateral mortgage would be discharged within three months of its registration.

7. The City of Mississauga did confirm the approval of the registration of the subdivision plan and at least three months elapsed but the expected financing of the Defendant never materialized.

8. The mortgage forming the subject matter of these proceedings expressly provided "this Charge is security for a loan made to the Chargor herein and to 2173252 Ontario Inc., 2142301 Ontario Inc. and Hush Homes Inc., jointly, which loan was also secured against the properties owned by 2173252 Ontario Inc., the properties owned by 2142301 Ontario Inc., and, payment under one Charge shall be deemed to be payment under all of the others, and a default under this Charge or any of the other Charges referenced....securing the subject loan shall be deemed to be a default under the Charge and each of the others." The Charge also provided for administrative fees, \$500.00 for each and every returned cheque, a collection fee of \$500.00 if at least three interest payments are in arrears, and a fee

in the amount of \$2,000.00 for each legal action or proceeding instituted. The Defendant states that the aforesaid terms violate the provisions of the Interest Act and are accordingly void.

9. On or about the 15th of January 2015 Hush Homes Inc., 2122763 Ontario Inc. and 2142301 Ontario Inc. made an Application for an Order under the Companies Creditors Arrangement Act. An Order was granted by the Honourable Mr. Justice Penny on the 15th of January 2015 staying all proceedings and remedies in respect of the Applicants or any of their property.

10. In due course a Plan of Arrangement was proposed in which the Plaintiff was to receive, and in fact agreed to receive or was deemed to have agreed to receive, preference shares having a value equal to the total amount of their claims as against the said Applicants in connection with which obligation the mortgage herein was collateral security and in fact has received such shares.

11. By reason of the facts as pleaded in the paragraph next preceding the Defendant states that any and all obligations under the collateral mortgage have now been satisfied or alternatively and in any event the Plaintiff is estopped, having accepted the aforesaid Proposal or being deemed to have done so, from taking any steps under the collateral security granted by this Defendant.

12. The Defendant further states that:

(a) The amount claimed is in any event incorrect particularly in light of the provisions of the mortgage which this Defendant states violates the provisions of the Interest Act;

(b) The obligations to the Plaintiff have in any event been satisfied in the accepted Proposal in the Application by Hush Homes Inc., 2173252 Ontario Inc., and 2142301 Ontario Inc. as pleaded aforesaid;

(c) By reason of the facts pleaded herein the mortgage ought to have been discharged or alternatively the same is voidable by reason of the misrepresentations made on behalf of the Plaintiff by its broker.

13. The Defendant objects to this action proceeding under Rule 76 because the Plaintiff's claim does not comply with subrule (1).

14. The Defendant therefore submits that the Plaintiff's claim be dismissed with costs on a substantial indemnity basis.

COUNTERCLAIM

15. The Defendant (Plaintiff by Counterclaim) claims as against the Plaintiff (Defendant by Counterclaim):

- (a) An Order pursuant to Section 12 of the Mortgages Act discharging the mortgage forming the subject matter of this action;
- (b) General Damages in the amount of \$500,000.00 and punitive damages in the amount of \$50,000.00 for slander of title;
- (c) Prejudgment interest in accordance with the Courts of Justice Act;
- (d) Costs of this action on a Solicitor/Client basis;
- (e) Such further and other relief as to this Honourable Court may seem just.

16. The Defendant (Plaintiff by Counterclaim) repeats and incorporates by reference the facts as pleaded in the Statement of Defence herein.

17. By reason of the failure of the Defendant by Counterclaim to discharge the mortgage forming the subject matter of this action the Plaintiff by Counterclaim has been unable to raise sufficient financing for its purposes and in particular to pay off high interest loans. Full particulars of damages will be provided prior to discoveries in this action.

Dated at Newmarket this 12th day of April 2017.

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Lawyers for the Plaintiff

Action No. CV-17-570878

CVC Ardellini Investments Inc.

and 2220277 Ontario Inc.

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced in
Toronto

Statement of Defence and
Counterclaim

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Court File No. CV-17-11811-00CL

Zaherali Visram

and 2220277 Ontario Inc.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced in
Toronto

RESPONDENT KARRAS
COMPENDIUM OF DOCUMENTS
FOR MOTION SCHEDULED FOR
FEBRUARY 21 2018
VOLUME III

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