



Court File No. \_\_\_\_\_

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

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

**B E T W E E N:**

**ICICI BANK CANADA**

Applicant

**- and -**

**2338486 ONTARIO LIMITED**

Respondent

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing (*choose one of the following*)

☐ In person

☐ By telephone conference

☒ By video conference, the details of which will be made available in CaseCentre,

before a Judge presiding over the Ontario Superior Court of Justice (Commercial List) at 330 University Ave., Toronto, Ontario, on a date to be scheduled.

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

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

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: \_\_\_\_\_

Issued by: \_\_\_\_\_  
Local Registrar

Address of court office: 330 University Avenue, 9th Floor  
Toronto, ON M5G 1R7

**TO: THIS HONOURABLE COURT**

**AND TO: THE SERVICE LIST**

## APPLICATION

1. The applicant, ICICI Bank Canada (the “**Bank**”), makes an application for an Order (the “**Receivership Order**”) pursuant to section 243(1) of *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), among other things, (a) appointing Albert Gelman Inc. (“**AGI**”) as the receiver (in such capacity, the “**Receiver**”), without security, of all property, assets, and undertakings of 2338486 Ontario Limited (the “**Debtor**”), including but not limited to the real property owned by the Debtor municipally known as 392 Erb Street West, Waterloo, Ontario and 398 Erb Street West, Waterloo, Ontario (together, the “**Erb Properties**”) (collectively, the “**Property**”), and (b) such further and other relief as this Honourable Court may deem just.

### THE GROUNDS FOR THE APPLICATION ARE:

#### Overview

2. Pursuant to a Commitment Letter dated June 29, 2023, as amended by the August Amendment Letter dated August 30, 2024 (together, the “**Commitment Letter**”) between the Debtor and the Bank, the Bank provided a secured term loan to the Debtor in the principal amount of \$2.8 million (the “**Term Loan**”).
3. The Term Loan is secured by, among other things, a first-ranking mortgage registered on title to the Erb Properties (the “**Mortgage**”), a general security agreement dated June 29, 2023 (the “**GSA**”), and a general assignment of rents and leases in favour of the Bank. The obligations of the Debtor to the Bank under the Commitment Letter have been personally guaranteed by the sole director and officer of the Debtor, Kamal Patel.

4. As of March 1, 2025, the Debtor was indebted to the Bank in the amount of \$2,964,777.84, plus accruing interest, legal fees, and other expenses associated with the enforcement of the Bank's rights (the "**Indebtedness**").
5. The Debtor has committed multiple defaults under the Commitment Letter and the Mortgage, including payment defaults beginning in September 2024. Although the Bank has provided accommodation to the Debtor, including agreeing to forbear from exercising its rights pursuant to a forbearance agreement, the Debtor continues to be in default. The Bank has provided the Debtor with plenty of written notice, including two default letters: one in November 2024 and a second in January 2025.
6. The failure to remedy the defaults and submit a viable repayment plan to the Bank forced the Bank to deliver a demand letter and Notice of Intention to Enforce Security on March 20, 2025. All amounts owing under the Commitment Letter have been accelerated and are immediately due and payable. The requisite 10-day notice period has also expired.
7. Following issuance of the demand letter, the Bank learned that CORFinancial Corp. ("**CORFinancial**") registered an alleged charge/mortgage over the Erb Properties (the "**CORFinancial Charge**"), registered a security interest under the *Personal Property Security Act* (Ontario) ("**PPSA**") and issued a Notice of Sale in respect of the Erb Properties. CORFinancial did all of this without consulting and without the consent of the Bank.
8. The Bank has not received any meaningful communication from the principal for months and the Bank has lost confidence in the prospect of any voluntary sale or repayment. The Notice of Sale is of great concern to the Bank as the senior secured creditor of the Debtor.

At this stage, it is uncertain whether the Erb Properties are sufficient to repay the Bank in full. The GSA and the Mortgage gives the Bank the contractual right to appoint a receiver. A court-supervised receivership is the only viable way to maximize the Erb Properties' value for the benefit of all creditors.

9. It is just and convenient that AGI be appointed as the Receiver over the Property of the Debtor, to realize on the Property for the benefit of all creditors.

### **The Debtor and Guarantor**

10. The Debtor is a single-purpose real estate holding company incorporated under the Ontario *Business Corporations Act* on August 10, 2012. It maintains its registered head office at 1333 Weber Street E, Kitchener, Ontario, N2A. The primary business activity of the Debtor is the development of Erb Properties.
11. The Debtor's sole director and officer is Kamal Patel, who has personally guaranteed the Debtor's obligations to the Bank.
12. The Debtor has not obtained draft site plan approvals (the "**Draft Plan**") or made any meaningful progress towards developing the Erb Properties. The Draft Plan is a critical step towards the development and monetization of the Erb Properties by the Debtor.

### **The Mortgage and Security Held by the Applicant**

13. Pursuant to the Commitment Letter, the Bank provided the Debtor with a \$2.8 million term mortgage loan in respect of the Erb Properties.
14. As security for its obligations to the Bank, the Debtor granted to the Bank, among other things, the following security:

- (a) a Mortgage securing the principal amount of \$2.8 million registered on August 4, 2023, in the Land Registry Office for the Land Titles Division of Waterloo (LRO #58) as Instrument No. WR1517871;
  - (b) a first-ranking security interest on all personal property and assets located on or used in connection with the Property pursuant to the GSA; and
  - (c) a general assignment of rents and leases registered on title to the Erb Properties as Instrument No. WR1517872.
15. Pursuant to the Mortgage and the GSA, the Bank is entitled to appoint a receiver over the Property upon the occurrence of any event of default.
16. The Mortgage is registered on title to the Erb Properties. The Bank has properly perfected its security interests by way of registration against the Debtor pursuant to the PPSA.
17. The Bank is aware of one other potential secured creditor. The Bank understands that the Debtor allegedly granted CORFinancial a security interest in the Property, and permitted CORFinancial to register a separate charge/mortgage of \$500,000. The Bank learned of this through its own searches, and the Debtor and CORFinancial did not consult with or seek approval of the Bank prior to these actions. The Commitment Letter prohibits the Debtor from granting security to any other person without the Bank's consent.

### **The Defaults**

18. Between September and October 2024, the Debtor first defaulted on payment to the Bank. In response, the Bank sent a default letter on November 5, 2024, that provided written

notice to the Debtor that it was in default under the Commitment Letter due to the failure to make the September and October payments.

19. The Debtor requested the Bank provide it with more time to come up with a repayment plan. Accordingly, the Bank instructed its counsel to prepare and deliver a forbearance agreement that, among other things, granted additional time to repay the Term Loan, required a \$50,000 forbearance fee, and required the Debtor to submit a detailed repayment plan to the Bank. In return, the Bank agreed not to enforce until April 1, 2025, subject to termination of the agreement.
20. Although the Debtor made the September and October monthly payments, the Debtor never signed the forbearance agreement. However, the Bank delivered a second default letter dated January 14, 2025 (the “**Second Default Letter**”) to the Debtor. The Second Default Letter summarized further and continuing defaults the Commitment Letter and the (unsigned) forbearance agreement. Although the forbearance agreement was never signed, the Debtor acknowledged in writing the defaults listed in the Second Default Letter, including the defaults under the terms of the forbearance agreement.
21. On March 17, 2025, a lien (the “**Lien**”) was registered against the Erb Properties by Masri O Inc. for unpaid architectural services, constituting a further event of default under the Commitment Letter.
22. In summary, the Debtor has committed the following defaults under the Commitment Letter and the Forbearance Agreement:

**Commitment Letter**

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- (a) failure to make six monthly payments between November 2024 and April 2025;
- (b) failure to pay the property tax owing on the Erb Properties;
- (c) failure to adequately maintain and keep current premium payments under the home insurance and commercial policy;
- (d) failure to comply with reporting requirements to the Bank, including failure to deliver financial statements, confirm that realty taxes are current, or provide updates on the status of site plan approval for the Erb Properties;
- (e) granting CORFinancial a security interest in the Property, and allowing CORFinancial to register its security against the Debtor, each without providing notice to the Bank and without receiving consent of the Bank;
- (f) permitting the Lien to be registered against the Erb Properties;

**Forbearance Agreement**

- (g) failure to submit a repayment plan;
- (h) failure to pay the forbearance fee installments;
- (i) failure to repay the outstanding principal and interest amounts owing; and
- (j) allowing CORFinancial to purport to exercise any rights against the Property.

(collectively, the “**Defaults**”).

23. Due to the continuing Defaults, the Bank delivered the Demands and the NITES that demanded immediate payment of the Indebtedness.



### **Discussions with CORFinancial**

24. Since November 19, 2024, the Bank engaged in discussions with CORFinancial. At that time, the Bank understood that CORFinancial was a financial advisor retained by the Debtor to advise the Debtor in respect of the Erb Properties.
25. Following the Second Default Letter, CORFinancial expressed interest in possibly acquiring the Term Loan and the security held by the Bank.
26. Based on these discussions, the Bank's counsel drafted and delivered a draft assignment of debt and security agreement to CORFinancial on February 26, 2025. No response was received.
27. The Bank subsequently learned that CORFinancial had registered a separate security interest against the Debtor on January 28, 2025. On March 24, 2025, CORFinancial advised the Bank it intended to commence a power of sale proceeding.
28. On April 4, 2025, the Bank was provided with a Notice of Sale dated March 19, 2025, to enforce the CORFinancial Charge (the "**Notice**"). On April 7, 2025, counsel to the Bank delivered a letter to CORFinancial and its lawyers advising CORFinancial that it does not consent to the Notice and requested CORFinancial immediately take all necessary steps to withdraw the Notice.
29. Any enforcement steps by CORFinancial, whose interest is subordinate to the Bank's, would add uncertainty and risk concerning the realization of the Erb Properties, reinforcing the need for a court-appointed Receiver to ensure orderly administration and protect stakeholders.

### **Necessity for the Appointment of the Receiver**

30. In the circumstances, the appointment of a receiver is necessary and appropriate for the following reasons:

- (a) the Bank has demanded repayment of the Indebtedness and all applicable notice periods have expired;
- (b) the Debtor has committed numerous defaults that have not been cured or otherwise remedied, notwithstanding significant accommodation given by the Bank;
- (c) the Debtor has stopped communicating with the Bank;
- (d) the Mortgage, the GSA, and the Forbearance Agreement expressly provide for the appointment of a receiver upon default;
- (e) the Notice creates an immediate risk to the Erb Properties that requires the appointment of Receiver;
- (f) a receivership proceeding allows the Court to supervise the process, and the proposed Receiver will report to the Court and all stakeholders to ensure transparency;
- (g) there is uncertainty created by the registration of the Lien and the actions taken by CORFinancial that is resolved by the appointment of the Receiver;
- (h) the proposed Receiver is experienced in Canadian insolvency proceedings, including with respect to real estate receiverships in particular; and
- (i) it is just and convenient to appoint the Receiver.

31. AGI has consented to act as the Receiver.

***Rules & Statutes***

32. Rules 1.04, 2.03, 3.02, 14.05(2), 14.05(3)(h), 16, and 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
33. The provisions of *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, including s. 243(1) thereof, and the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, including s.101 thereof, and the inherent and equitable jurisdiction of this Court.
34. Such other grounds as this Honourable Court may permit.

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

35. the Affidavit of Lionel Meunier, to be affirmed;
36. the Consent of AGI to act as Receiver; and
37. such other material as this Honourable Court may permit.

April 8, 2025

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

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Respondent

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceedings commenced at Toronto, Ontario

**NOTICE OF APPLICATION**

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