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**IN THE MATTER OF THE RECEIVERSHIP OF**  
**CBJ DEVELOPMENTS INC., CBJ – CLEARVIEW GARDEN ESTATES INC.,**  
**CBJ BRIDLE PARK II INC.**

**FIRST SUPPLEMENT TO THE THIRD REPORT TO THE COURT OF TDB**  
**RESTRUCTURING LIMITED**

**November 7, 2025**

## Contents

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>3</b>
<b>1.1</b>	<b>PURPOSE OF REPORT .....</b>	<b>3</b>
<b>2.0</b>	<b>TERMS OF REFERENCE .....</b>	<b>4</b>
<b>3.0</b>	<b>THE APRIL 14 HEARING .....</b>	<b>4</b>
<b>4.0</b>	<b>COMMENCEMENT OF THE ONTARIO ACTION .....</b>	<b>6</b>
<b>5.0</b>	<b>THE VALUE OF THE ACTIONS .....</b>	<b>7</b>
<b>5.1</b>	<b>Value of the Alberta Action .....</b>	<b>8</b>
<b>5.2</b>	<b>Value of the Ontario Action .....</b>	<b>14</b>

**APPENDICES**

Order and Endorsement of Justice Osborne dated March 18, 2025 ..... A

Alberta Stay Order ..... B

Affidavit of Chris Agagnier dated April 11, 2025 ..... C

Aide Memoire of the Receiver.....D

Endorsement of Justice Osborne dated April 14, 2025 ..... E

Email Between Greg Roberts and Bryan Tannenbaum (and enclosures) ..... F

Alberta Action statement of claim ..... G

APS.....H

APS amendments..... I

NDA.....J

Term Sheet..... K

Order of the Court of King’s Bench of Alberta dated October 27, 2023 ..... L

Ontario Action statement of claim..... M

Inter-Company Transfer Ledger.....N

First Report of TDB Restructuring Limited in its capacity as receiver of CBJ-FEH ..... O

## 1.0 INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 26, 2024 (the “**Receivership Order**”), RSM Canada Limited (“**RCL**”) was appointed receiver and manager (the “**Receiver**”) of all property, assets, and undertakings of CBJ - Clearview Garden Estates Inc. (“**CBJ Clearview**”), CBJ Bridle Park II Inc. (“**CBJ Bridle Park II**”), and CBJ Developments Inc. (“**CBJ Developments**” and collectively referred to as the “**Debtors**”).
2. The property, assets and undertakings of the Debtors is comprised primarily of the following real property:
  - a) 7535 Highway 26 Nottawasaga comprising 97.28 acres (the “**CBJ Property**”);
  - b) 7535 Highway 26, Nottawasaga, Ontario comprising 78.6 acres (the “**Bridle Park II Property**”); and
  - c) 6273 27/28 Sideroad, Stayner (the “**Clearview Property**”).

Together, the CBJ Property, the Bridle Park II Property and the Clearview Property are referred to herein as the “**Real Property**” or “**Properties**”.

3. Terms not defined herein are defined in the Third Report of the Receiver dated March 7, 2025 (the “**Third Report**”).
4. The Receivership Order, together with Court documents related to the receivership proceeding, have been posted on the Receivers website, which can be found at: <https://tdbadvisory.ca/insolvency-case/cbj-developments-inc-cbj-clearview-garden-estates-inc-and-cbj-bridle-park-ii-inc/> (the “**Case Website**”).

### 1.1 PURPOSE OF REPORT

5. The purpose of this First Supplement to the Third Report is to address and respond to certain issues that were raised at the Receiver’s motion for a discharge on April 14, 2025 (the “**April 14 Hearing**”) including to:

- a) provide the Court with the Receiver's opinion concerning the value of the Actions which were commenced by the principal of CBJ Developments without the Receiver's knowledge or approval; and
- b) address certain allegations made by CBJ Developments in connection with the Ontario Action (defined below), which was commenced by CBJ Developments on July 5, 2024 without the consent of the Receiver.

## **2.0 TERMS OF REFERENCE**

6. In preparing this First Supplement to the Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in this First Supplement to the Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
7. Unless otherwise stated, all monetary amounts contained in this First Supplement to the Third Report are expressed in Canadian dollars.

## **3.0 THE APRIL 14 HEARING**

8. The Receiver's motion for discharge was originally returnable on March 18, 2025 (the "**March 18 Hearing**").
9. This hearing was adjourned to April 14, 2025 by the Order of Justice Osborne to allow the Alberta Defendants' (as defined below) motion to strike the Alberta Action before the Court of King's Bench of Alberta (the "**Alberta Motion**") to be determined before

proceeding with the discharge hearing. Copies of the Order and Endorsement of Justice Osborne in connection with the March 18 Hearing in this matter are attached hereto as **Appendix “A.”**

10. On March 31, 2025, the Court of King’s Bench of Alberta decided the Alberta Motion and made an Order staying the Alberta Action pending:
  - a) An Order from the Ontario Superior Court of Justice (Commercial List) granting leave *nunc pro tunc* to commence the Alberta Action; or
  - b) Discharge of the Receiver in a manner that contemplates continued carriage of the Alberta Action by CBJ Developments (the “**Alberta Stay Order**”).
11. A copy of the Alberta Stay Order is attached hereto as **Appendix “B.”**
12. In addition, on April 11, 2025, shortly before the April 14 Hearing, CBJ Developments delivered an affidavit sworn by Mr. Agagnier which alleged, for the first time, that the Ontario Action was commenced with the knowledge of the Receiver (the “**Agagnier Affidavit**”). A copy of the Agagnier Affidavit is attached hereto as **Appendix “C.”**
13. At the April 14 Hearing, the Receiver took the position that, while the Actions were commenced without authorization and contrary to the terms of the Receivership Order, the Receiver lacked adequate funding to complete a fulsome review of the Actions and, accordingly, did not want this fact to prejudice the stakeholders of CBJ Developments’ estate, in the event that the Actions did have some merit.
14. Accordingly, the Receiver recommended that the Court make an Order granting leave *nunc pro tunc* for CBJ Developments to commence the Alberta Action and also recommended that the Court refrain from making any Order that would prejudice CBJ Developments advancing the Ontario Action. This position is set out in the aide memoire of the Receiver attached hereto as **Appendix “D.”**
15. At the conclusion of the April 14 Hearing, Justice Osbourne adjourned the April 14 Hearing *sine die* to permit the Receiver to:

- a) Address the allegations made by CBJ Developments that it commenced the Ontario Action with the approval of the Receiver; and
  - b) Advise the Court with the respect to the value, if any, to the estate of CBJ Developments of either or both of the Actions.
16. A copy of the endorsement of Justice Osborne in connection with the April 14 Hearing is attached hereto as **Appendix “E.”**

#### **4.0 COMMENCEMENT OF THE ONTARIO ACTION**

17. CBJ Developments belatedly alleged that the Receiver *did* in fact consent to the commencement of the Ontario Action by CBJ Developments. This allegation is untrue and unsupported by any evidence.
18. On July 3, 2024, Greg Roberts, counsel to CBJ Developments, contacted Bryan Tannenbaum, managing director of TDB Restructuring Limited, the Receiver, to discuss the possibility of an action involving CBJ Developments and to obtain information about the within proceedings.
19. Mr. Tannenbaum recalls that, on that day, Mr. Roberts and Mr. Tannenbaum had an approximately two-minute phone call wherein Mr. Tannenbaum advised Mr. Roberts of the Receivership Order and Mr. Roberts advised that Chris Agagnier, the principal of CBJ Developments, intended to issue a statement of claim against certain entities related to CBJ Developments.
20. In this phone call, Mr. Roberts did not advise Mr. Tannenbaum that one of the contemplated plaintiffs of the proposed action was going to be CBJ Developments itself nor did Mr. Roberts ask for Mr. Tannenbaum’s consent for CBJ Developments to commence such an action.
21. Following the above noted telephone call, on July 3, 2024, Mr. Roberts sent an email to Mr. Tannenbaum requesting that Mr. Tannenbaum provide Mr. Roberts a copy of the Receivership Order. Mr. Tannenbaum then replied to Mr. Roberts to provide a copy of the Receivership Order and associated endorsement as well as a link to the

website maintained by the Receiver for the within proceeding. This was the last piece of correspondence exchanged between Mr. Tannenbaum and Mr. Roberts before the April 14 Hearing. A copy of this email correspondence and enclosures are attached hereto as **Appendix “F.”**

22. Unbeknownst to the Receiver, shortly after the above noted telephone call, on July 5, 2024, Mr. Agagnier commenced the Ontario Action, purportedly on behalf of CBJ Developments.
23. When the Receiver learned of the Ontario Action on March 7, 2025, the Receiver’s counsel sent a letter to Mr. Roberts advising that the Ontario Action was improperly commenced without the knowledge or consent of the Receiver (this letter is attached as Appendix L to the Third Report).
24. Additionally, the Receiver notes that:
  - a) the Agagnier Affidavit appears to depose to the contents of the July 3, 2024 phone conversation between Mr. Roberts and Mr. Tannenbaum, despite the fact that Mr. Agagnier was not a party to that conversation; and
  - b) the Agagnier Affidavit is the first occasion on which CBJ Developments took the position that the Ontario Action was commenced with the knowledge of the Receiver, despite the fact that the Receiver advised CBJ Developments of the impropriety of the Ontario Action on March 5, 2025 (over one month before the Agagnier Affidavit was sworn).

## **5.0 THE VALUE OF THE ACTIONS**

25. In the Receiver’s view, and as set out in greater detail below, neither of the Actions is of any net value to the estate of CBJ Developments.

## 5.1 Value of the Alberta Action

26. The allegations in the Alberta Action (as this term is defined in the Third Report and bearing Court file number 2401-18658) relate to the purchase of property municipally known as 801 Seventh Avenue S.W in Calgary, Alberta (the “**Calgary Property**”) through a mixed residential/office condominium project conceived of by CBJ Developments called “Tower 37” (the “**Calgary Project**”).
27. A copy of the statement of claim from the Alberta Action is attached hereto as **Appendix “G”**.
28. The key allegations of the Alberta Action are as follows:
  - a) On January 5, 2022, CBJ Developments entered into an Agreement of Purchase and Sale (the “**APS**”) with various parties to acquire the Calgary Property for \$65 million from 801 Seventh Inc. (the “**Vendor**”), which APS was later amended on several occasions. CBJ Developments intended to transform the Calgary Property from an empty office tower into a mixed-use condominium for residential, office and commercial purposes. A copy of the APS is attached hereto as **Appendix “H”**;
  - b) The APS included a specific representation and warranty that the Vendor was not aware of any pending or threatened claims, actions or proceedings with respect to the Calgary Property other than a specific proceeding concerning CNOOC Petroleum North America ULC;
  - c) On March 6, 2022, the then owners of the Calgary Property (the “**Owners**”) informed CBJ Developments that a previous conditional purchaser of the Property, Ayrshire Real Property Corporation, had commenced an action (the “**Ayrshire Litigation**”) against the Vendor on February 1, 2022. After discovering the Ayrshire Litigation, CBJ Developments took the position that the Vendor had deliberately and intentionally failed to disclose the litigation and this was a material breach of its representation that there was no pending or threatened litigation against the Calgary Property. CBJ Developments believed that,

as a result, it was impossible for it to complete the purchase of the Property by the closing date;

- d) On March 23, 2022, CBJ Developments and the Vendor entered into an agreement to amend the APS, which agreement appeared to resolve the dispute concerning the Ayrshire Litigation by providing that the Vendor indemnify CBJ Developments in respect of the Ayrshire Litigation. This amending agreement also provided for a closing date of April 15, 2022. Copies of the amending agreements to the APS are attached hereto as **Appendix “I”**;
- e) CBJ Developments was unable to complete the purchase of the Calgary Property by the amended closing date. CBJ Developments took the position that the failure to close was as a result of certain alleged breaches of the APS by the Vendor. CBJ Developments then commenced an action (the “**801 Action**”) against the Vendor and related parties before the Court of Queen’s Bench of Alberta in connection with the APS. On June 22, 2022, the Vendor then delivered a formal notice of termination to CBJ Developments in respect of the APS;
- f) In June 2022, CBJ Developments was introduced to Ian Cockwell, principal of an investment fund called Ursataur Capital Management LP (“**Ursataur**”). Mr. Agagnier proposed to Mr. Cockwell that Ursataur finance CBJ Development’s acquisition of the Calgary Property;
- g) On June 17, 2022, Andrew Cockwell, the Managing Partner of Ursataur, signed a non-disclosure agreement on behalf of Ursataur intended to protect any “Confidential Information” disclosed by CBJ Developments to Ursataur in connection with the Property (the “**NDA**”). A copy of the NDA is attached hereto as **Appendix “J”**;
- h) On July 7, 2022, CBJ Developments and Mutende Equities Ltd. (“**Mutende**”), an entity related to Ursataur, signed a term sheet (the “**Term Sheet**”) which described terms under which Mutende would

lend \$55 million to CBJ Developments in connection with CBJ Development's acquisition of the Calgary Property. A copy of the Term Sheet is attached hereto as **Appendix "K"**;

- i) On July 23, 2022, the Defendants also sent a draft loan agreement to CBJ Developments with Mutende as the lender and CBJ Developments as the borrower, providing that Mutende would provide \$55 million in debt financing in accordance with the Term Sheet. CBJ Developments calls this document the "Mutende Loan Agreement," though CBJ Developments appears to admit that this was never finalized into a final and binding agreement;
- j) The Term Sheet stated that any loan would be subject to a series of conditions precedent, including that CBJ Developments provide \$20 million in equity towards the transaction, a satisfactory review of the purchase agreement for the Calgary Property by Mutende, and the acquisition of the Calgary Property with closing no later than August 31, 2022;
- k) Though CBJ Developments did not acquire the Calgary Property by August 31, 2022, the Alberta Action alleges that, due to its ongoing dealings, communications, conduct and activities with Ursataur, Mutende and its principals (collectively, the "**Alberta Defendants**") about the Calgary Property, CBJ Developments entered into a valid, binding and legally enforceable agreement with the Alberta Defendants. CBJ Developments calls this purported agreement the "**Plaintiff/Defendants Agreement.**"
- l) The Alberta Action alleges that the terms of the Plaintiff/Defendants Agreement included the following terms:
  - i. CBJ Developments and the Alberta Defendants would "join forces" to finance the Calgary Property. CBJ Developments would have to raise \$20 million for this project and the Alberta

Defendants would acquire a 20 percent equity position in the ownership of the Calgary Property and an entitlement to 20 percent of all net revenue and net profit while CBJ Developments would retain the remaining 80%;

- ii. The Alberta Defendants would consider either providing equity investment in the Calgary Property or arranging for third party equity investment if so required. The Alberta Defendants would expeditiously approve financing required for the closing of the Calgary Property;
  - iii. Given that the Alberta Defendants had previously attempted to purchase the Calgary Property, which the Alberta Action alleges to be “a potential conflict of interest,” both CBJ Developments and the Alberta Defendants represented and warranted to each other that they would work together on the project on an exclusive basis, they would not enter into any communications, negotiations or agreements with the Owners, and that they would not do or say anything that would place them in a “conflict of interest” with one another;
  - iv. The Alberta Defendants would have no direct contact with the Vendor without CBJ Developments’ prior consent or approval;
  - v. Neither party would be entitled to terminate the Plaintiff/Defendants Agreement without the consent of the other or without agreeing to “fair and reasonable compensation to the aggrieved party”;
- m) CBJ Developments claims that the Plaintiff/Defendants Agreement commenced in June 2022 until it was improperly breached and terminated by the Defendants in January 2023, when the Alberta Defendants informed CBJ Developments that they had purchased the Calgary Property on December 22, 2022;

- n) On October 27, 2023, the Court of King’s Bench of Alberta dismissed the 801 Action and awarded the Vendor damages in the amount of \$1.3 million as against CBJ Developments. A copy of this Order is attached as **Appendix “M.”**
29. On December 23, 2024, Mr. Agagnier issued the Alberta Action, which listed CBJ Developments as the plaintiff. The Alberta Action claims damages against the Alberta Defendants on under a variety of legal theories including breach of contract and a variety of torts.
30. Based on the documents it has reviewed and the pleadings, the Receiver is of the view that the Alberta Action is not worth pursuing in the receivership (even if the Receiver could find funding for this action). The Receiver makes the following observations, in this regard:
- a) While Ursataur did engage in a transaction that would have the effect of preventing CBJ Developments from acquiring the Calgary Property, CBJ Developments likely did not have any right to acquire the Property, as a result of the dismissal of its action in the 801 Litigation. Because CBJ Developments lost any interest or right to acquire the Calgary Property from the Vendor as a result, this means that the Property likely did not represent a business opportunity of CBJ Developments that was capable of being interfered with; and
  - b) CBJ Developments admits that the Alberta Defendants were aware of the Calgary Property and had considered purchasing it before the Alberta Defendants were introduced to CBJ Developments. Accordingly, the opportunity to purchase the Calgary Property likely does not constitute “Confidential Information” for the purposes of the NDA;
  - c) While CBJ Developments has alleged that part of the Confidential Information that it provided to the Alberta Defendants was its “Unique Concept” for the Calgary Project (being the creation of a residential and office condominium with each floor consisting of a separate unit), CBJ

Developments has not provided the Receiver any evidence to support that the Alberta Defendants are using this Unique Concept in connection with the Property, and the Alberta Defendants have specifically denied such allegation;

- d) The Receiver was not provided with any documents that are consistent with the Plaintiff-Defendant Agreement or that contain any specific terms or representations on behalf of the Alberta Defendants in which they agreed to be bound by such a Plaintiff-Defendant Agreement and the Defendants specifically deny that any such agreement was formed. On the contrary, the email correspondence that Mr. Agagnier reproduced in the Alberta Action's statement of claim suggests that the Plaintiff and Defendants continued to negotiate the terms of a potential agreement to fund the acquisition of the Property from August through October 2022 (see paragraphs 59 and 72 of the Alberta Action statement of claim);
- e) CBJ Developments claims that the Alberta Defendants owed CBJ Developments a fiduciary obligation that was breached when the Alberta Defendants acquired the Property. In the Receiver's view, a Court would be unlikely to find that one of two arm's length corporations involved in discussions over financing to acquire an investment property owed a fiduciary duty to the other; and
- f) CBJ Developments claims that the Alberta Defendants have committed the tort of unjust enrichment. Unjust enrichment requires (1) the enrichment of the defendant, (2) the corresponding deprivation of the plaintiff and (3) the absence of a juristic reason for the enrichment. The Receiver is of the view that a Court would likely find that, to the extent that the Alberta Defendants were enriched by their acquisition of the Calgary Property, there was a juristic reason for this: an agreement to purchase the Calgary Property from the Owners. Likewise, a court would likely find that the Alberta Defendants conduct has not occasioned any corresponding deprivation on the part of CBJ Developments. CBJ

Developments likely had no right or interest in the Calgary Property which was deprived by the Alberta Defendants' acquisition of the same (as a result of the outcome of the 801 Litigation, in which judgment was granted against CBJ Developments and in favour of the Owners).

31. As a result of the foregoing, the Receiver is of the view that the Alberta Action does not represent an asset of the estate of CBJ Developments.

## 5.2 Value of the Ontario Action

32. The allegations in the Ontario Action (as this term is defined in the Third Report, and bearing Court file number CV-24-00723362-00CL) relate to certain financing acquired by an affiliate of CBJ Developments. Among other things, the Ontario Action alleges that certain of the defendants to the Ontario Action (collectively, the "**Ontario Defendants**") induced Mr. Agagnier to procure such financing and to distribute such funds to certain of the Ontario Defendants through means of fraud.
33. A copy of the statement of claim from the Ontario Action is attached hereto as **Appendix "N"**.
34. The key allegations of the Ontario Action are as follows:
  - a) In or around 2021, an affiliate of CBJ Developments called CBJ-Fort Erie Hills Inc. ("**CBJ-FEH**") purchased certain real property ("**FEH Lands**") from an entity called Fort Erie Hills Inc. ("**Hills**");
  - b) At this time, CBJ-FEH was owned by Mr. Agagnier and his business partner, Jeffrey Burrell;
  - c) The purchase price of the FEH Lands was \$15.95 million plus the assumption of an existing first mortgage on the FEH Lands and less 50% of the costs required to complete certain remediation of the FEH Lands;
  - d) CBJ-FEH satisfied the purchase price for the FEH Lands through a number of sources including a vendor take back mortgage in favour of

Hills and mortgage financing from parties related to certain of Mr. Agagnier's business partners, including Mr. Burrell and Salvatore Romeo;

- e) There was a partially written and partially verbal agreement (such agreement being the "**Management Agreement**") between CBJ Developments and CBJ-FEH governing the management and payment of expenses in relation to the FEH Lands which contemplated that:
  - i. CBJ Developments would make certain payments in respect of outstanding loans and remediation expenses in connection with the FEH Lands. CBJ Development's expenses in connection with these payments would be repayable by CBJ-FEH to CBJ Developments on demand; and
  - ii. CBJ-FEH granted CBJ Developments a charge on the FEH Lands (though this charge was never registered on title to the FEH Lands).
- f) In or around October 2023, Mr. Agagnier negotiated a financing agreement with Hillmount Capital Inc. ("**Hillmount**") which contemplated a loan of \$8 million to CBJ-FEH in exchange for a first charge on the FEH Lands (such loan being the "**Hillmount Loan**").
- g) The purpose of the Hillmount Loan was:
  - i. To fund the ongoing development of the FEH Lands;
  - ii. To payout a portion of CBJ-FEH's secured debt;
  - iii. Payment of outstanding interest payments due and owing by CBJ-FEH to its creditors; and
  - iv. Payment of funds due and owing to CBJ Developments pursuant to the Management Agreement;

- h) In or about October 2023, Mr. Burrell advised Mr. Agagnier that, in his capacity as director of CBJ Developments and CBJ-FEH, he would not approve the Hillmount Loan on behalf of these companies unless Mr. Agagnier agreed that “a significant advance [...] be paid against first and second mortgages [in favour of entities related to Mr. Burrell and Mr. Romeo] and that [Mr. Burrell’s family trust] participate in any restructured security package that Mr. Agagnier was negotiating” with Hills and other then existing secured creditor of the FEH Lands;
- i) “[H]aving no choice, [Mr. Agagnier] agreed to this demand from [Mr. Burrell]” and, to facilitate the Hillmount Loan, in October and November 2023, Mr. Agagnier negotiated various loan and security amending agreements with CBJ-FEH’s various creditors. This included a forbearance agreement between Hills and CBJ-FEH that required CBJ-FEH to make certain payments to Hills from the Hillmount Loan and required that Mr. Agagnier and Mr. Burrell pledge their shares in CBJ-FEH to Hills as security for these obligations. Hills would be entitled to enforce its security if all amount owing to it by CBJ-FEH were not paid by February 28, 2024;
- j) The defendant Joe Bressi represented to Mr. Agagnier that Mr. Bressi owned a business that raised several millions in investment capital through the sale of bonds. Mr. Bressi represented to Mr. Agagnier that, if CBJ Developments proceeded with obtaining the Hillmount Loan and provided Mr. Bressi with equity in CBJ Developments and its affiliates, Mr. Bressi would provide a minimum of \$70 million from his business to cover all of the payments that would be due and owing by the CBJ Developments and related entities in respect of their acquisition of various pieces of real property (such agreement being the “**Bressi Funding Agreement**”);
- k) Mr. Bressi, Randy Hoffner (the principal of Hills) and Mr. Burrell coordinated to pressure Mr. Agagnier to proceed with the Hillmount

Loan and to prevent Mr. Agagnier from obtaining other alternative financing sources to repay the indebtedness securing the FEH Lands;

- l) Just prior to the advance of the Hillmount Loan, and in exchange for providing the funding pursuant to the Bressi Funding Agreement, Mr. Bressi demanded that CBJ Developments pay him a funding fee of \$1,000,000 USD from the Hillmount Loan (the “**Bressi Fee**”);
  - m) To avoid enforcement proceedings threatened by Mr. Hoffner and Hills, and relying on representations from Mr. Bressi, Mr. Burrell and Mr. Hoffner that Mr. Bressi would loan \$70 million to CBJ Developments and its affiliates if Bressi received \$1 million USD from the Hillmount Loan, in or around October 2023, Mr. Agagnier caused CBJ Developments to complete the Hillmount Loan transaction. The funds received from Hillmount were then used to pay the Bressi Fee and to repay certain indebtedness secured by the FEH Lands including Hills, the Burrell Family Trust and the Romeo Family Trust;
  - n) Notwithstanding representations by Mr. Bressi, he never provided CBJ Developments any loan funding;
  - o) In February 2024, CBJ Developments and CBJ-FEH defaulted under the various loan agreements that were secured by the FEH Lands, including to Hills, and the various secured parties commenced enforcement proceedings against CBJ Developments, CBJ-FEH and Agagnier. As a result, Hills took possession of the shares in CBJ-FEH; and
  - p) Some of the Ontario Defendants caused CBJ-FEH to sell the FEH Lands to a third party at a purchase price which is substantially below its actual market value. The Ontario Action states that this third party was either Elena Salvatore, Vincent Salvatore Jr. or an unknown entity or person.
35. On July 5, 2024, Mr. Agagnier issued the Ontario Action, which listed both himself and CBJ Developments as plaintiffs. The Ontario Action claims a wide variety of relief

on behalf of Mr. Agagnier, as well as the following relief on behalf of CBJ Developments:

- a) damages in the amount of \$3,000,000 as against CBJ-FEH on account CBJ-FEH's indebtedness to CBJ Developments under the Management Agreement;
  - b) further damages in an amount to be particularized before trial as against CBJ-FEH, for lost opportunity with respect to the real property development that Mr. Agagnier intended to develop on the FEH Lands (the "**Fort Erie Project**"), which project is alleged to have failed as a result of the Ontario Defendants' alleged misconduct; and
  - c) damages in the amount of \$375,000 as against Hills, Mr. Hoffner and Trans Global Partnership (a party which the Receiver understands to be the beneficial owner of Hills) for repayment of CBJ Development's 50% share of the remediation expenses CBJ Developments incurred in connection with the FEH Lands.
36. Based on the documents it has reviewed, the Receiver is of the view that the Ontario Action does not represent an asset to CBJ Developments and that the prosecution of the Ontario Action would not produce any net benefit for the estate of CBJ Developments. The Receiver makes the following observations, in this regard:
- a) the Ontario Action alleges that CBJ Developments and CBJ-FEH entered into the Management Agreement, which was a partially written and partially verbal agreement under which CBJ-FEH is alleged to have agreed to compensate CBJ Developments for certain costs incurred and work completed in connection with the development of the FEH Lands. The Receiver was provided with a ledger documenting due to/due from transfers of funds from CBJ Developments to CBJ-FEH which were purportedly made pursuant to this Management Agreement. A copy of this ledger is attached hereto as **Appendix "O"**. On its face, this ledger does appear to record that CBJ-FEH owes monies to CBJ Developments.

However, the Receiver was not provided with any other evidence to support that CBJ Developments loaned money or incurred expenses in connection with the purported Management Agreement. The Receiver notes that the FEH Lands were sold by TDB Restructuring Limited in its capacity as Receiver of CBJ-FEH in April 2025 and that the secured indebtedness registered against the FEH Lands appears to far exceed the proceeds of the FEH Lands (see the First Report of TDB Restructuring Limited in its capacity as receiver of CBJ-FEH, which is attached hereto as **Appendix “P.”** Paragraph 55 notes that the principal indebtedness apparently secured by the FEH Lands is \$62 million. This number does not, of course, account for unsecured creditors. The FEH Lands were only sold for \$15.6 million). As a result, even if there were amounts due and owing by CBJ-FEH to CBJ Developments under the Management Agreement, there appears to be negligible prospect of recovery from CBJ-FEH which, to the Receiver’s knowledge, had no other assets other than the FEH Lands;

- b) CBJ Developments claims unparticularized damages for the lost opportunity to participate in the Fort Erie Project. While it may be that Mr. Agagnier has a plausible cause of action against one or more of the Ontario Defendants (and the Receiver explicitly expresses no view with respect any of Mr. Agagnier’s claims), the Receiver is of the view that CBJ Developments likely does not have such a claim and did not suffer any damages as a result of the Defendants’ alleged conduct. This is because Mr. Agagnier does not allege that CBJ Developments had any ownership interest in CBJ-FEH (which entity was owned by Mr. Agagnier and Mr. Burrell) of which it was wrongfully deprived by the actions of the Ontario Defendants. Had CBJ-FEH retained control of the FEH Lands and not defaulted under its loan agreement with Hills and other creditors, it is unclear what opportunity CBJ Developments would have obtained or been entitled to participate in; and

- c) The Ontario Action alleges that CBJ-FEH received a credit on the purchase price of the FEH Lands in the amount of 50% of the costs required to complete certain remediation of the FEH Lands. The Ontario Action appears to allege that CBJ Developments incurred \$750,000 in connection with the remediation of the FEH Lands and that, accordingly, Hills was required to reimburse CBJ for 50% of this amount. The Receiver was not provided any documents to evidence that (1) CBJ Developments was a party to such an agreement and would have the benefit of this credit, (2) CBJ Developments incurred costs in the amount of \$750,000 in connection with such remediation or (3) that these costs were properly reimbursable by Hills to CBJ Developments.

37. As a result of the foregoing, the Receiver is of the view that the Ontario Action is likely of no value to the estate of CBJ Developments.

All of which is respectfully submitted to this Court as of this 7<sup>th</sup> day of November, 2025.

**TDB RESTRUCTURING LIMITED**, solely in its capacity  
as Receiver of the Debtors and not in its personal or corporate  
capacity

*Bryan A. Tannenbaum*

Per:

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT  
Managing Director

# **APPENDIX “A”**



Court File No. CV-23-00707989-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
JUSTICE OSBORNE

)  
)  
)

TUESDAY, THE 18TH  
DAY OF MARCH, 2025

B E T W E E N:

**1180554 ONTARIO LIMITED**

Applicant

- and -

**CBJ DEVELOPMENTS INC., CBJ – CLEARVIEW GARDEN ESTATES INC. and  
CBJ – BRIDLE PARK II INC.**

Respondents

**APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act* R.S.C.  
1985, C. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O.  
1990, c. C.43**

**INTERIM DISTRIBUTION ORDER**

THIS MOTION, made by TDB Restructuring Limited in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of CBJ - Clearview Garden Estates Inc., CBJ Bridle Park II Inc., and CBJ Developments Inc. (collectively, the "Debtors"), for an order:

- (a) approving the activities of the Receiver as set out in the third report of the Receiver dated March 7, 2025 (the "Report");
- (b) approving the fees and disbursements of the Receiver and its counsel;

- (c) approving the distribution of the remaining proceeds available in the estate of the Debtor;
- (d) discharging TDB Restructuring Limited as Receiver of the undertaking, property and assets of the Debtor; and
- (e) releasing TDB Restructuring Limited from liability,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report, the fee affidavit of Bryan Tannenbaum, sworn March 4, 2025 and the fee affidavit of Beatrice Loschiavo, sworn March 3, 2025 (being, together, the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver and the parties listed on the counsel slip, no one else appearing although served as evidenced by the Lawyer's Certificate of Service of Ryan Shah dated March 7, 2025, filed;

**A. Definitions**

1. THIS COURT ORDERS that all capitalized terms not otherwise defined herein shall have the meaning given to them in the Report.

**B. Adjournment**

2. THIS COURT ORDERS that the Receiver's Motion for discharge is hereby adjourned to April 14, 2025 at 12:00 PM, or as soon thereafter as the Motion can be heard.

**C. Activities, Fees and Disbursements**

3. THIS COURT ORDERS that the activities of the Receiver, as set out in the Report, are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

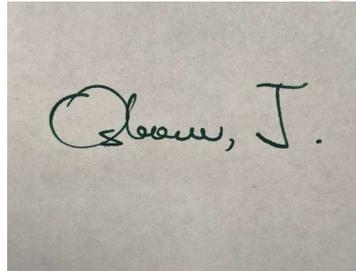
4. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, including the estimated further fees of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved. Neither the Receiver nor its counsel shall be required to pass their accounts in respect of any further fees and disbursements incurred in connection with the administration of these receivership proceedings, up to the amount of the estimated fees of the Receiver and its counsel, as set out in the Fee Affidavits.

5. THIS COURT AUTHORIZES AND DIRECTS the Receiver to distribute the funds remaining in its hands, less a holdback of \$22,600 for the fees of the Receiver and its Counsel, to 1180554 Ontario Limited.

6. THIS COURT ORDERS that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Penny made on January 26, 2024, and (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act or any other personal property registry system or real property registry system.

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

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

A rectangular image showing a handwritten signature in black ink on a light-colored background. The signature reads "Osborne, J." in a cursive script.

Digitally signed  
by Osborne J.

Date:

2025.03.20

10:57:36 -04'00'

**1180554 ONTARIO LIMITED.**

**-and- CBJ DEVELOPMENTS INC. et al.**

Applicant

Respondents

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

**INTERIM DISTRIBUTION ORDER**

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
155 Wellington Street West, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

**Jeffrey Larry** (LSO#44608D)  
Tel: 416.646-43  
[jeff.larry@paliareroland.com](mailto:jeff.larry@paliareroland.com)

**Ryan Shah** (LSO# 88250C)  
Tel: 416.646-6356  
[ryan.shah@paliareroland.com](mailto:ryan.shah@paliareroland.com)

Lawyers for the Receiver, TDB Restructuring Limited



**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**COUNSEL SLIP / ENDORSEMENT**

**COURT FILE NO.:** CV-23-00707989-00CL

**DATE:** March 18, 2025

**REGISTRAR:** Chidera Emeruem

**NO. ON LIST:** 1

**TITLE OF PROCEEDING:** 1180554 ONTARIO LIMITED  
vs  
CBJ DEVELOPMENT INC., et al

**BEFORE JUSTICE:** OSBORNE

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Ryan Shah Jeff Larry	TDB Restructuring (Receiver)	ryan.shah@paliareroland.com jeff.larry@paliareroland.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Andrew Parley Davon Kapoor	Ursataur Capital Management LP Andrew Cockwell Lan Cockwell Mutende Equities Limited	aparley@litigate.com dkapoor@litigate.com
Jonathan Kulathungam	1180554 Ontario Limited	jkulathungam@teplitskyllp.com

## **ENDORSEMENT OF JUSTICE OSBORNE**

1. The Receiver moves for a discharge and release order, and an order approving the Third Report dated March 7, 2025, the statement of receipts and disbursements for the period January 26, 2024 to February 28, 2025, and an order approving the fees of the Receiver and its counsel.
2. The Receiver relies on the Third Report. The Service List has been served. The motion is unopposed. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
3. The Sales Transaction closed on November 7, 2024. Given that administration of the estate is substantially complete, the Receiver seeks a discharge and related relief, including authorization to make a distribution to the Applicant.
4. The activities of the Receiver as set out in the Third Report are consistent with its mandate provided in the original Appointment Order, were appropriate, and have been accretive to the progress of this proceeding. They are approved.
5. The statement of receipts and disbursements is appropriate and is also approved.
6. The fees of the Receiver and its counsel relate to the activities described in the Third Reports in the earlier reports. They are fully described in the fee affidavits appended to the Third Report. They are appropriate, reasonable, and they also are approved: *Bank of Nova Scotia v. Deimer*.
7. That leaves the request for a discharge of the Receiver. The administration of the estate is, as noted above, substantially complete. Ordinarily, it would follow that a discharge today might well be appropriate. However, in my view, such relief ought not to be granted today, given certain events that have transpired as set out in the Third Report at Section 6.0.
8. In particular, the Receiver was advised on February 24, 2025 that on December 23, 2024, CBJ Developments commenced an action in Alberta against Ursatur Capital Management LP, Andrew Cockwell, Ian Cockwell and Mutende Equities Ltd. The statement of claim in the Alberta action is appended to the Third Report as Appendix H.
9. Counsel to the Receiver sent a letter to CBJ Developments advising that the Alberta action was commenced without the consent of the Receiver, contrary to the express terms of the Receivership Order, and the Receiver demanded that CBJ Developments refrain from taking any steps in the Alberta Action without the explicit consent of the Receiver, which has not been given (Appendix I).
10. CBJ responded by correspondence dated March 5, 2025 advising that no further steps would be taken in the Alberta action pending the outcome of the receivership or seeking Court approval to proceed with same. (Appendix J).
11. Then, on March 7, 2025, the Receiver learned that CBJ had commenced another action in Ontario (Appendix K). On the same day, counsel to the Receiver wrote to Ontario counsel for CBJ advising of the fact that this action also was improper and not permitted by the Receivership Order and requesting that no further steps be taken in the Ontario action without the consent of the Receiver which has likewise not been given.
12. Counsel present today advise that the Alberta action was before the Court of King's Bench in Alberta last week, but was adjourned at the request of CBJ to March 31, 2025.
13. Both the Alberta action and the Ontario action were commenced by CBJ in direct breach of the Receivership Order of Penny, J of the Commercial List in this Court. I am concerned by the blatant and

repeated disregard of the Receivership Order by CBJ. I am also concerned by the fact that, in its response, CBJ did not undertake to immediately discontinue the actions, but rather advised that it would not take any further steps “pending the outcome of the Receivership or [my] seeking Court approval to proceed with the claim”.

14. Moreover, I do not know whether the adjournment request in Alberta (to a date subsequent to the date of this previously scheduled discharge hearing) was related to the fact that the Receiver was seeking a discharge today in this Court, something of which CBJ was aware.
15. In any event, and given the pendency of these actions and particularly the Alberta action, in the circumstances, in my view, it is not appropriate to discharge the Receiver today. The receivership continues, and the Receiver remains an officer of this Court with the powers granted to it in the Receivership Order, including with respect to actions brought by or on behalf of CBJ.
16. The Court of King’s Bench will obviously do as it sees fit in respect of the Alberta Action. This Endorsement should be brought to the attention of that Court at the March 31 hearing.
17. In the circumstances, I am adjourning the Receiver’s motion for a discharge to be returnable before me on April 14, 2025 at 12 PM noon.
18. The Receiver had intended to make a distribution of surplus proceeds to the Applicant (who will suffer a shortfall in any event) upon discharge. The Applicant wants those funds, and there is no issue that the Applicant is beneficially entitled to them. There is no reason to delay that distribution, and it is approved.
19. Order to go with respect to the approval of the Third Report, the fees of the Receiver and its counsel, and with respect to the distribution by the Receiver of the surplus proceeds to the Applicant.

Osborne J.

# **APPENDIX “B”**

COURT FILE NUMBER **2401-18658**  
COURT **COURT OF KING'S BENCH OF ALBERTA**  
JUDICIAL CENTRE **CALGARY**  
PLAINTIFF **CBJ DEVELOPMENT INC.**  
DEFENDANTS **URSATAUR CAPITAL MANAGEMENT L.P., ANDREW  
COCKWELL, IAN COCKWELL and MUTENDE EQUITIES  
LTD.**

DOCUMENT **ORDER**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT **Code Hunter LLP**  
Barristers  
850, 440 – 2 Avenue SW  
Calgary, AB T2P 5E9  
Christian J. Popowich  
Telephone: 403.234-9800  
Facsimile: 403.261.2054  
File No: 12081.001



**DATE AND PLACE THIS ORDER WAS PRONOUNCED: 31 March 2025, Calgary, AB**

**NAME OF APPLICATIONS JUDGE WHO MADE THIS ORDER: J.R. Farrington**

**UPON THE APPLICATION** of the defendants for an Order striking the Statement of Claim filed by the plaintiff CBJ Developments Inc. (“**CBJ**”) on 23 December 2024; **AND UPON** reviewing the affidavit of Andrew Cockwell sworn 7 March 2025, the affidavit of Chris Agagnier sworn 27 March 2025, the initial and supplemental bench briefs of the defendants, the letter of Paliare Roland Rosenberg Rothstein LLP (counsel for the receiver of CBJ) to this Court dated 14 March 2025, the Endorsement of the Ontario Superior Court of Justice (Commercial List) dated 18 March 2025 in Court File No. CV-23-00707989-00CL, and other materials provided by counsel for the parties; **AND UPON** hearing the oral submissions of counsel for the parties;

**IT IS HEREBY ORDERED THAT:**

1. The application for an Order striking the Statement of Claim is dismissed.

2. The within action is stayed pending either:
  - a. CBJ obtaining an Order from the Ontario Superior Court of Justice (Commercial List) granting leave *nunc pro tunc* to commence the within action; or
  - b. discharge of the receiver of CBJ, in a manner which contemplates continued carriage of the action by CBJ.
3. Costs of the application are in the cause.



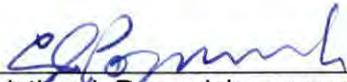
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A.J.C.K.B.A.

**APPROVED AS TO FORM AND CONTENT:**

**Code Hunter LLP**

Per:



---

Christian J. Popowich, counsel for  
the plaintiff

**Lenczner Slaght LLP**

Per:



---

Devon R. Kapoor, counsel for the  
defendants

# **APPENDIX “C”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**1180554 ONTARIO LIMITED**

Applicant

- and -

**CBJ DEVELOPMENTS INC., CBJ - CLEARVIEW GARDEN ESTATES INC.  
and CBJ - BRIDLE PARK II INC.**

Respondents

**AFFIDAVIT OF CHRISTOPHER AGAGNIER**

I, **CHRISTOPHER AGAGNIER**, of the Town of Ridgeway, Province of Ontario  
MAKE OATH AND SAY:

1. I am a director and officer of the respondent CBJ Developments Inc. (“**CBJ Developments**”) and therefore, I have knowledge of the facts hereinafter deposed to. To the extent that I rely upon facts provided by others, I verily believe those facts to be true.
2. I acknowledge that I instructed our lawyer Greg Roberts to issue the statement of claim a copy of which is attached hereto as Exhibit “A”, which issued on July 5, 2024 (the “**Fort Erie action**”). This is an action for damages and relief under the *Business Corporations Act* (Ontario) for oppression, fraud and conspiracy and has nothing to do with the issues in the receivership.
3. In the Fort Erie action, CBJ Developments is claiming flow through expenses to the development in Fort Erie. My cause of action in that proceeding is against the personal defendants for fraud in the transfer of my shares in CBJ-Fort Erie Hills Inc., the company which owned the development in Fort Erie.
4. The Receivership involves a property in Stayner, Ontario.

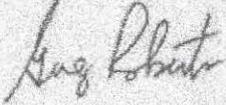
7. I understood that the receivership in this action related only to the issues regarding the Stayner property, which I understand was sold to the mortgage holder.

8. I was in constant communication with the receiver Bryan Tannenbaum. Mr. Tannenbaum was aware of the fact that I was going to issue the Fort Erie action at all times. Mr. Tannenbaum also spoke to Mr. Roberts, my lawyer, who I understand advised Mr. Tannenbaum that we were going to issue the claim against the defendants for causes of action unrelated to the Stayner property. I am advised by Mr. Roberts and verily believe that Mr. Tannenbaum did not take any issue with that course of action.

9. Other than serving the statement of claim, we have not taken any further action in this proceeding waiting for the receivership to be discharged. We have received several demands for particulars and a demand to inspect documents – several months ago in December 2024. We have taken no action to respond to these demands, while waiting for the receiver to be discharged. Although we asked for a certificate of pending litigation in the Fort Erie action, we have not brought this motion as the receivership action is still outstanding.

10. At the return of this hearing, CBJ Developments will seek the discharge of the receiver of CBJ in a manner which contemplates continued carriage of the Fort Erie Action by CBJ Developments or an order granting leave *nunc pro tunc* for CBJ to commence the Fort Erie action.

Sworn remotely by Christopher Agagner stated )  
as being located in Ridgeway, Province of )  
Ontario, before me at Sun City West, Arizona )  
USA on April 11, 2025 in accordance with O. )  
Reg 431/20, Administering Oath or Declaration )  
Remotely. )



Commissioner for Taking Affidavits  
Greg Roberts



CHRISTOPHER AGAGNER

This is Exhibit "A" to the Affidavit Christopher Agagnier stated as being located in the Town of Ridgway, Province of Ontario before me at Sun City West, Arizona USA on April 11, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration.

A handwritten signature in black ink that reads "Greg Roberts". The signature is written in a cursive, flowing style.

Greg Roberts

A commissioner etc.



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**CHRIS AGAGNIER and CBJ DEVELOPMENTS INC.**

Plaintiffs

and

**CBJ-FORT ERIE HILLS INC., FORT ERIE HILLS INC., JEFFREY BURRELL,  
RANDY HOFFNER, JOSEPH BRESSI, TRANS GLOBAL PARTNERSHIP,  
SALVATORE ROMEO as trustee for the ROMEO FAMILY TRUST, JEFFREY  
BURRELL as trustee for the BURRELL FAMILY TRUST, RON BURRELL ELENA  
SALVATORE, VICENT SALVATORE JR., JOHN DOE and XYZ CORP.**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

**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.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$2,500.00 or 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 \$400 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: July 2024

Issued by:.....

Local registrar

Address of Court office:

330 University Avenue, 7th Floor  
Toronto M5G 1R7  
Fax: (416) 327-6228

**TO: CBJ-FORT ERIE HILLS INC.,**  
801 Lawrence Avenue East, Suite Ph5  
Toronto, Ontario, M3C 3W2

**FORT ERIE HILLS INC.**  
77 City Centre Drive, Unit 602  
Mississauga, Ontario, L5B 1M5

**JEFFREY BURRELL**  
72 Babcombe Drive  
Thornhill, Ontario L3T 1N1

**RANDY HOFFNER**  
77 City Centre Drive, Unit 602  
Mississauga, Ontario, L5B 1M5

**JOSEPH BRESSI**  
675 Cochrane Drive  
6th Floor, East Tower  
Markham, Ontario L3R 0B9

**TRANS GLOBAL PARTNERSHIP**  
**c/o RANDY HOFFNER**  
77 City Centre Drive, Unit 602  
Mississauga, Ontario, L5B 1M5

**SALVATORE ROMEO**  
947 Blind Creek Drive  
Shuniah, Ontario P7A 0C6

**RON BURRELL**  
72 Babcombe Drive  
Thornhill, Ontario L3T 1N1

**ELENA SALVATORE**  
801 Lawrence Avenue East, Suite Ph5  
Toronto, Ontario, M3C 3W2

**VICENT SALVATORE JR.**  
801 Lawrence Avenue East, Suite Ph5  
Toronto, Ontario, M3C 3W2

**JOHN DOE**

**XYZ CORP.**

## CLAIM

1. The Plaintiff Chris Agagnier (“**Chris**”) claims against CBJ-Fort Erie Hills Inc. (“**FEH**”) and Jeffrey Burrell (“**Jeff**”):

- (a) a declaration that Chris is a “complainant” for the purposes of advancing an oppression claim under section 248 of the *OBCA*;
- (b) relief pursuant to section 248 of the *OBCA* that this Honourable Court deems fit;
- (c) an interim and final declaration pursuant to sections 161(2)(b) and 248 of the *OBCA* that:
  - (i) the business of CBJ-Fort Erie Hills Inc. (“**FEH**”) has been and is being carried on with intent to defraud Chris to affect a result;
  - (ii) the business or affairs of FEH is or has been carried on or conducted, or the powers of Jeff, as one of the former directors of FEH and now by the Defendants Elena Salvatore (“**Elena**”) and the Defendant Vincent Salvatore Jr. (“**Vincent**”), the current directors of FEH, is or has been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of Chris; or
  - (iii) Jeff, a former director of FEH and Elena and Vincent, the current directors of FEH have acted fraudulently or dishonestly;
  - (iv) the acts and omissions of Jeff, Elena and Vincent effected a result;
  - (v) the business and affairs of FEH were carried on or conducted at all material times by Jeff and then by Elena and Vincent in a manner; and
  - (vi) the powers of Jeff, then Elena and Vincent, the former and the current directors of FEH at the time were exercised in a manner, that was oppressive of, unfairly prejudicial to, and that unfairly disregarded the interests of the Plaintiffs;
- (d) an interim and final declaration pursuant to section 161(2)(a) of the *OBCA* that the business of FEH was and is carried on by Jeff and now by Elena and Vincent, the current directors of FEH, with intent to defraud Chris;
- (e) an interim and final declaration that Chris is an aggrieved person as that term is used in section 248(3)(j) of the *OBCA*;
- (f) an order compensating Chris as an aggrieved person;
- (g) an interim order that Chris is at liberty to obtain a certificate of pending litigation in respect of the FEH Lands more particularly described in Schedule A attached hereto;
- (h) an interim injunction preventing the sale of the FEH Lands and the FEH Shares, as defined below;

- (i) an interim order appointing a Monitor over the FEH Lands on such terms and conditions as this Honourable Court shall establish including without limitation, an interim order preventing any further dealings by any party to this Action with the FEH Lands except with the approval of the Monitor and an order relating thereto; and
- (j) an interim order appointing a Receiver Manager over the FEH Lands on such terms and conditions as this Honourable Court shall establish including without limitation, an interim order preventing any further dealings by any party to this Action with the FEH Lands except with the approval of the Receiver Manager and an order relating thereto.

2. Chris claims against all of the Defendants:

- (a) a declaration that the Restated Loan Agreement, the Share Pledge Agreement and the Illegal FEH Land Sale Agreement or Illegal FEH Share Agreement, as defined below, are illegal, null and void, invalid and unenforceable;
- (b) an interim order that all of the issued FEH Shares, as defined below, be forthwith surrendered to the Monitor or the Receiver Manager, once appointed, pending the outcome of the trial of this Action and that no party be entitled to vote or otherwise deal with said FEH Shares without prior order from this Honorable Court;
- (c) damages in the amount of \$25,000,000 for fraud, conspiracy, breach of fiduciary duty and oppression;
- (d) further damages in an amount to be particularized before trial, for damages, lost profits and lost opportunity with respect to the Fort Erie Project (defined below), which is unable to proceed through the real estate development process as a result of the defendants' actions;
- (e) punitive damages in the amount of \$1,000,000;
- (f) orders for restitution, an accounting and disgorgement of all assets, properties and funds belonging to FEH and improperly diverted by or to any of the Defendants or any person, corporation or other entity on such Defendant's behalf;
- (g) a declaration that the Plaintiffs are entitled to trace the assets, properties and funds of FEH into the hands of any of the Defendants, and a declaration that such Defendants hold those assets, properties and funds as constructive trustee for the Plaintiffs;
- (h) a constructive trust and tracing or following order in respect of all assets, properties and funds belonging to the Plaintiffs and improperly diverted by or to any of the Defendants or any person, corporation or entity on such defendant's behalf, and in respect of all the traceable products thereof;
- (i) a declaration the Defendants are jointly and severally responsible to provide full and complete indemnification for and on behalf of Chris for all amounts that he may be obliged to pay to third parties for any amounts due and owing by CBJ or

FEH to third parties that he has guaranteed or is otherwise personally liable to pay;

- (j) prejudgment and post-judgment interest accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (k) costs of this proceeding on a substantial indemnity basis, or alternatively, on a partial indemnity basis; and
- (l) such further and other relief as this Honourable Court may deem just.

3. The Plaintiff CBJ Developments Inc. claims against the Defendant CBJ-Fort Erie Hills Inc.:

- (a) damages in the amount of \$3,000,000 on account of fees and expenses paid in accordance with the Management Agreement, as explained below;
- (b) further damages in an amount to be particularized before trial, for damages, lost profits and lost opportunity with respect to the Fort Erie Project (defined below), which is unable to proceed through the real estate development process as a result of the defendants' actions;
- (c) prejudgment and post-judgment interest at the prime rate quoted by the Royal Bank of Canada plus 2% or in the alternative, in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) costs of this proceeding on a substantial indemnity basis, or alternatively, on a partial indemnity basis; and
- (e) such further and other relief as this Honourable Court may deem just.

4. The Plaintiff CBJ Developments Inc. claims against the Defendants Fort Erie Hills Inc., Randy Hoffner and Trans Global Partnership:

- (a) damages in the amount of \$375,000 for repayment of their share of the FEH Remediation Expenses, as defined below;
- (b) prejudgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) costs of this proceeding on a full or substantial indemnity basis; and
- (d) such further and other relief as the lawyers for the Plaintiffs may advise or this Honourable Court may deem just.

## **PARTIES**

5. The Plaintiff CBJ Developments Inc. (“**CBJ**”) is an Ontario corporation with its head office located at Ridgeway Ontario.
6. The Plaintiff Chris Agagnier (“**Chris**”), a resident of Ridgeway Ontario.
7. The Defendant CBJ-Fort Erie Hills Inc. (“**FEH**”) is an Ontario corporation with its head office located at Thornhill, Ontario.
8. The Defendant Jeffrey Burrell (“**Jeff**”) is a resident of Thornhill, Ontario. Jeff was a director of CBJ and FEH, and the trustee of the Burrell Family Trust.
9. Chris and Jeff were equal shareholders of CBJ and FEH.
10. The Defendant Trans Global Partnership (“**TGP**”) is a partnership of overseas Japanese investors who collectively were the owners of those lands which form the subject matter of this Action and other lands which comprise the “Land Acquisitions” as hereinafter defined.
11. The Defendant Fort Erie Hills Inc. (“**Hills**”) is an Ontario corporation with its head office located at Burlington Ontario. Hills acted as bare trustee and Canadian agent for TGP.
12. The Defendant Randy Hoffner (“**Randy**”) is a resident of Burlington Ontario. At all material times, Randy was the principal of Hills, and the authorized agent and trustee for TPG.
13. The Defendant Salvatore Romeo (“**Romeo**”) is a resident of Shuniah Ontario and at all material times, Romeo was the trustee for the Romeo Family Trust.
14. The Defendant Joseph Bressi (“**Bressi**”) currently resides in Markham Ontario.
15. The Defendant Elena Salvatore (“**Elena Salvatore**”) resides in the City of Toronto, Ontario.

16. The Defendant Vincent Salvatore Jr. (“**Vincent Salvatore**”) resides in the City of Toronto, Ontario.

17. The Defendant XYZ Corp., is a corporation that has entered into an agreement of purchase and sale to purchase the FEH Lands or the FEH Shares.

18. The Defendant John Doe is the principal of the XYZ Corp. or is the purchaser of the FEH Lands or the FEH Shares.

### **FACTS**

19. On incorporation, Chris and Jeff were appointed the directors of CBJ. Chris and Jeff were each originally issued 50% of the shares of CBJ.

20. In or about December 2023 to January 2024, Jeff advised CBJ that he was relinquishing his duties as director of CBJ and wanted nothing further to do with CBJ effectively leaving Chris as its sole managing director. From and after that date, Jeff has continuously reiterated that position and from that time forward Jeff has been inactive in managing CBJ.

21. Given Jeff’s improper and illegal conduct, as described below, Chris seeks an order pursuant to s. 248(3)(e) of the OBCA removing Jeff as a director of CBJ.

22. Chris and Jeff acquired four parcels of development lands in Fort Erie and Stayner, Ontario (the “**Land Acquisitions**”) from Hills, acting as Canadian agent for TPG, which beneficially owned these lands. To acquire the Land Acquisitions, CBJ purchased one parcel and Chris and Jeff incorporated three special purpose vehicles to purchase the other three properties (the “**CBJ Affiliates**”) including the FEH Lands.

23. All of the shares of the CBJ Affiliates were owned by Chris and Jeff, including the shares of FEH (the “**FEH Shares**”).

24. On November 1, 2021, one of these parcels was acquired by FEH (the “**FEH Lands**”). The FEH Lands consist of eighty-five acres of raw development land located in Fort Erie, Ontario, municipally described as 85 Crooks Street, Fort Erie, Ontario and legally described on Schedule “A” hereto (the “**Fort Erie Project**”).

25. TGP authorized Hills to be its Canadian representative with full authority to represent them on all matters relating to the Land Acquisitions, including the closing of the purchase of the FEH Lands. Randy was the sole director, officer and shareholder of Hills and the trustee for TPG.

26. The other three parcels were purchased using the other special purpose vehicles (including FEH, the “**CBJ Affiliates**”).

27. The main purpose for the structuring of the CBJ Affiliates including FEH was to:

- (a) establish separate legal ownership for each of the Land Acquisitions so as to maximize the potential for return on each investment and minimize potential exposure or liability relating to the ongoing financing and development of each of the four CBJ Land Acquisitions;
- (b) oversee and manage the Land Acquisitions including negotiating the terms of each purchase, securing financing for each purchase and managing and administering the closing for each separate parcel of land, including the FEH Lands;
- (c) on an ongoing basis, manage and administer all aspects of the development of each parcel of land, including obtaining all permitting and rezoning approvals as and when required, infrastructure installation/construction, subdivision and development and all financing from time to time required for each development; and
- (d) ultimately, facilitate the marketing and sale of single and multi-family residential homes to both builders and end users.

28. The original purchase price paid by FEH to Hills (on behalf of TGP) for the FEH Lands was \$15,950,000 plus assumption of an existing first mortgage to 2703738 Ontario Limited on title with an approximate \$600,000 principal balance ( the “**First Mortgage**”) less fifty (50%)

per cent of all costs required to remediate the FEH Lands (the “**Remediation Cost**”) and is hereinafter referred to as the “**FEH Purchase Price**”.

29. The total Remediation Cost was \$750,000; therefore, FEH’s share was \$375,000. This amount has never been repaid to CBJ from Hills/TGP and remains due and owing as an outstanding indebtedness owing by them to CBJ plus interest.

30. The FEH Purchase Price was satisfied by:

- (a) \$1,053,000 million borrowed from Jeffrey Burrell as trustee for the “Burrell Family Trust”, which loan was secured by a mortgage registered on November 1, 2021 as instrument number SN698784 in the Land Registry Office No. 59;
- (b) \$621,000 borrowed from Salvatore Romeo as trustee for the “Romeo Family Trust” which loan was secured by a mortgage registered on November 1, 2021 as instrument number SN698785 in the Land Registry Office No. 59;
- (c) \$13,152,383.87 by a Vendor Take Back Mortgage in favor of Hills (on behalf of Hills and TGP) registered against the FEH Lands as a third secured charge in the original principal amount of registered on November 1, 2021 as instrument number SN698786 in the Land Registry Office No. 59 ( the “**Hills VTB**”); and
- (d) Assumption of the First Mortgage to 270378 Ontario Limited in the approximate amount of \$600,000; and
- (e) Equity from CBJ.

31. CBJ agreed to provide management services (the “**CBJ Management Services**”) and fund payment of certain of the CBJ Affiliates ongoing expenses, including:

- (a) payments due and owing relating to financing obtained for the initial purchase of the FEH Lands, including the Hills VTB and other loans obtained from time to time for FEH’s direct or indirect benefit; and
- (b) all payments to cover ongoing development expenses for the FEH Lands which, inter alia, included substantial payments made by CBJ to cover remediation as well as archeology expenses required for the FEH Lands (collectively the “**FEH Payments**”).

32. The advance and repayment of the FEH Payments and payment arrangements for the CBJ Management Services were subject to the terms of an agreement (which was partially in

writing and partially verbal), entered into between CBJ and FEH (the “**Management Agreement**”) concurrent with the purchase by FEH of the FEH Lands, which included:

- (a) all of the FEH Payments would to be repaid on demand with interest at a commercial rate of interest based on the Royal Bank of Canada (“**RBC**”) prime rate (as from time to time determined) plus 2%;
- (b) CBJ Management Services would be charged out to FEH at rates prevailing in the market by comparable management/administrative service companies;
- (c) all of the FEH Payments together with the fees due and owing for the CBJ Management Services would be repaid in priority to any other secured or unsecured FEH indebtedness, subject only to:
  - (i) any secured financing from time to time registered against title to the FEH Lands; or
  - (ii) as otherwise agreed from time to time between CBJ and FEH in writing;
- (d) as security for repayment of the FEH Payments and the CBJ Management Services, FEH granted CBJ an ongoing and continuing charge against the FEH Lands (the “**CBJ Charge**”) and the right, at its option, to secure said CBJ Charge by registering same against title to the FEH Lands; and
- (e) if it registered the CBJ Charge, CBJ would postpone the CBJ Charge to any present or future secured financing that it would arrange to be charged against the FEH Land.

33. As at the date of the filing of this Claim, the total amount due and owing by FEH to CBJ pursuant to the Management Agreement is \$2,314,000.00 plus interest (the “**FEH to CBJ Indebtedness**”).

34. Subsequent to the closing of the purchase of the FEH Lands, Chris arranged for a further private mortgage for \$2,500,000 from 2703738 Ontario Limited (“**270 Corp**”) registered on February 25, 2022 as instrument number SN714863 in the Land Registry Office No. 59 (the “**Elena Loan**”). The Elena Loan was used for costs and expenses for the initial phases of the remediation and development of the FEH Lands. With Hills consent, the Elena Loan was secured as a third charge against title to the FEH Lands.

35. The charges referred to above are hereinafter collectively referred to as the “**FEH Charged Debt**” and the FEH secured creditors referred to above are hereinafter referred to as the “**FEH Secured Creditors.**”

36. In addition to the FEH Secured Debt, Chris arranged a \$500,000 unsecured loan from Ron Burrell, administered by Jeffrey Burrell (the “**Ron Burrell Loan**”) and a further loan from Niagara Estates of Chippawa II Inc. (“**Niagara**”) for \$5,250,000 (the “**Niagara Loan**”) for use, in part, for the development of the FEH Lands.

37. CBJ retained Colliers International Realty Advisors Inc. (“**Colliers**”) to appraise the FEH Lands. Hadley Duncan, AACI, P. App., Colliers’ Executive Director, completed his appraisal in March 2023, which estimated its as is current market value of the FEH Lands at March 17, 2023 to be \$49,460,000.

38. Acting in good faith, CBJ decided not to register the CBJ Charge because:

- (a) the fair market value of the FEH Lands provided substantial comfort to CBJ that the FEH to CBJ Indebtedness could easily be repaid on the sale of the FEH Lands; and
- (b) Hills advised CBJ that the CBJ Charge should not be registered on title to the FEH Lands until the Hills VTB had been substantially paid down or paid out in full.

39. Although interest was accruing on some of the outstanding FEH Charged Debt and other unsecured indebtedness referred to above, no demand for payment to FEH had been made nor had any of FEH creditors (secured or unsecured) issued a notice of default or taken any other steps to enforce repayment of any funds due and owing to them.

40. In or about October 2023, in accordance with CBJ’s obligations under the Management Agreement, Chris arranged for financing against the FEH Lands from a third party lender Hillmount Capital Inc. (“**Hillmount**”) in the principal amount of \$8 million (the “**Hillmount**”).

**Financing**”). On October 25, 2023, Hillmount registered a mortgage on the FEH Lands as instrument number SN783192 in the Land Registry Office No. 59 for \$8 million.

41. In conjunction with the Hillmount Financing, Chris negotiated a payout of the Elena Loan with 270 Corp., in exchange for Niagara Estates of Chippawa II Inc. agreeing to advance a new \$5.25 million loan to FEH plus an additional \$330,000 loan arranged by Jeff and Randy (collectively the “**New Niagara Loan**”) to be secured on other lands.

42. The primary purposes for the Hillmount Financing and the New Niagara Loan as negotiated by Chris were for payment of:

- (a) ongoing development expenses relating to the FEH Lands;
- (b) payout to 270 Corp.;
- (c) payment of some outstanding interest payments due and owing to various FEH creditors include those holding some of the FEH Charged Debt; and
- (d) payment of funds due and owing to CBJ pursuant to the Management Agreement to be paid out in part to CBJ and in part to Chris and the other management as management fees/bonuses.

43. One of the pre-conditions to the Hillmount Financing was that Hillmount would have a first charge on the FEH Lands and that no secondary financing would be allowed on the FEH Lands at any time while the Hillmount Loan was outstanding. This required Chris to negotiate new loan agreements with the FEH Secured Creditors and 270 Corp. which included, without limitation:

- (a) negotiating lump sum payments to each of the FEH Secured Creditors to be paid from the Hillmount Financing in order to get their agreement to discharge their respective security off title to the FEH Lands;
- (b) payout in full of the second and third mortgages to the Burrell Family Trust and Romeo Family Trust;
- (c) negotiating a specific repayment date for the payment of the balance of all funds due and owing on the FEH Secured Debt together with a “Standstill” arrangement

to prevent any of the FEH Secured Creditors from taking any enforcement steps on their respective date until said date; and

- (d) providing alternate and acceptable security to the FEH Secured Creditors.

44. At this same time Jeff insisted that a significant advance from the Hillmount Financing be paid against first and second mortgages to the Burrell Family Trust and the Romeo Family Trust and that Ron Burrell participate in any restructured security package that Chris was negotiating, failing which, in his capacity as both a CBJ and FEH director and shareholder, he would not approve the Hillmount Financing and threatened to demand repayment in full of the Ron Burrell Loan then due and owing by FEH.

45. Having no choice, Chris agreed to this demand from Jeff.

46. This resulted in Chris negotiating and approving a revised omnibus security arrangement with the FEH secured creditors and Ron Burrell (the “**Revised FEH Security Package**”) which provided, *inter alia*, for the following:

- (a) A new “Amended and Restated Loan Agreement” which was dated November 17, 2023 and entered into between CBJ as Borrower and 270 Corp., Niagara and Hills as Lenders (the “**Restated Loan Agreement**”);
- (b) Forbearance and Standstill Agreement (the “**Forbearance Agreement**”) entered into between Hills and FEH dated and effective Oct 23, 2023 and acknowledged by CBJ which obligated:
  - (i) FEH to make a payment to Hills of \$1.2 million from the Hillmount Financing;
  - (ii) FEH to pay Hills \$4.7 million on Dec 31, 2023 as per the terms of the Restated Loan Agreement;
  - (iii) FEH to pay Hills the balance owing on the Hills VTB on or before February 28, 2024;
  - (iv) Chris and Jeff as the two registered FEH shareholders, to enter into a Share Pledge Agreement with FEH, Niagara, the Burrell Family Trust and the Romeo Family Trust and Ron Burrell (the “**Share Pledge Agreement**”) to pledge their FEH shares to Hills if all amounts due and owing to Hills were not paid in full by February 28, 2024;

- (v) Chris and Jeff to provide unlimited personal guarantees for the payment of the all indebtedness due and owing under the Forbearance Agreement and the Restated Loan Agreement (the “**Restated Loan Indebtedness**”); and
- (vi) FEH, Jeff and Chris to provide and execute a “Consent to Judgment” for the Restated Loan Indebtedness if same was not paid in full by February 28, 2024.

47. During this same period of time, Bressi had been working with CBJ on various projects and had continuously represented to Chris that his company “Global Financial” had a “Bonding” business which raised several millions of investment capital through the sale of bonds.

48. Bressi further continuously represented to Chris that on condition that CBJ proceed with the Hillmount Financing, he would provide up to a minimum of \$70 Million dollars in financing from his bonding business to cover all of the payments that would be due and owing pursuant to the Restated Loan Agreement, the Forbearance Agreement, the Share Pledge Agreement and all other amounts relating thereto, pay out other financing due and owing by another CBJ Affiliate owing on another parcel of land in Stayner Ontario (the “**Stayner Indebtedness**”) plus provide significant other funding for the ongoing development of the FEH Lands, in exchange for his acquiring a significant equity position in CBJ and the CBJ Affiliates.

49. Bressi, however, refused to document the terms of the Bressi Funding Agreement in writing and it therefore remained as a verbal agreement between CBJ, Bressi, the CBJ Affiliates and the CBJ principals including Chris and Jeff.

50. During this time:

- (a) the Stayner Indebtedness had resulted in the commencement of legal action against a CBJ Affiliate, thereby increasing the pressure on Chris to proceed with the Hillmount Financing in order to access funds from Bressi pursuant to the Bressi Funding Agreement and resolve the Stayner litigation;
- (b) Randy and Jeff, in conjunction with Bressi, made every effort to prevent Chris from arranging alternate financing from other sources, which effectively resulted

in Chris having no alternative, but do whatever he could to finalize the Hillmount Financing.

51. Just prior to the advance of funds from the Hillmount Financing, and in exchange for providing the funding pursuant to the Bressi Funding Agreement, Bressi demanded that CBJ pay him (through another corporation he owned/controlled named Monaco Street Ltd.) a funding fee of \$1,000,000 (in U.S. Funds) from the Hillmount Financing (the “**Bressi Fee**”).

52. Chris initially refused to approve the Bressi Fee because Bressi had previously failed to provide funding for other projects even though CBJ had paid him millions of dollars in upfront fees for same. However, Jeff and Randy not only actively supported payment of the Bressi Fee but, specifically (without in any manner limiting the generality of the foregoing):

- (a) Jeff made it clear that he would not allow the Hillmount Financing to proceed unless the Bressi Fee was paid; and
- (b) Randy made it clear that he would not cause Hills to agree to the Revised FEH Security Package and would commence immediate action on behalf of Hills for repayment of all funds due and owing under the Hills VTB unless the Bressi Fee was paid.

53. As a result, and fearful that without the Hillmount Financing and the implementation of the Revised FEH Security Package:

- (a) Randy and Hills, as threatened, could trigger enforcement proceedings pursuant to the Hills VTB which would jeopardize both FEH’s ownership and development of the FEH Lands;
- (b) said enforcement proceedings would potentially cause FEH to lose untold millions of dollars in anticipated revenue;
- (c) Chris would be placed in severe financial jeopardy because of previous personal guarantees that they had provided on the VTB and other FEH security;
- (d) the Stayner Indebtedness and resulting litigation would proceed thereby causing additional losses to CBJ and Chris pursuant to the security granted to the Stayner lenders, including a personal guarantees from Chris;
- (e) by their actions Randy, Jeff and Bressi had made it impossible for Chris to arrange other financing; and

- (f) Bressi, Jeff and Randy all confirmed and represented to Chris, both individually and collectively, that the funding pursuant to the Bressi Funding Agreement would take place as and when agreed upon so as to ensure that:
- (i) there would be sufficient funds available to meet all of the payment requirements set out in the Revised FEH Security Package;
  - (ii) reimburse the payment of the Bressi Fee;
  - (iii) payout the Stayner Indebtedness in full;
  - (iv) repay all funds due and owing by FEH to CBJ pursuant to the FEH Agreement; and
  - (v) provide sufficient working capital to cover all ongoing CBJ and CBJ Affiliate expenses, specifically including the development of the FEH Lands.

54. Chris had no alternative but to finalize the requirements necessary for the Hillmount Financing to be funded including executing approvals for payment of the Bressi Fee.

55. Accordingly, in October 2023, funds from the Hillmount Financing were advanced and distributed as follows:

Payment of the Bressi Fee:	\$1.4 million
Payment to Hills: (Restated Loan Agreement)	\$1.2 million
Payment in full to Burrell Family Trust	\$1.45 million
Payment to in full Romeo Family Trust	\$600,000
Payment to 270 Corp. (Elena Loan)	the original Elena Loan of 2.25 Million plus outstanding interest was repaid and Elena (through Chris' efforts ) then lent CBJ / FEH 5.25 Million Dollars ( less pre-paid interest)
Legal Fees	\$200,000
Retained by Hillmount for future advances and to cover interest payments	\$1,000,000
Retained by Bennett Jones LLP in trust by FEH's lawyers earmarked to cover ongoing development expenses for the FEH Lands ( the	\$200,000

“Bennett Jones Holdback”);	
Dennis Blain (Niagara)	\$200,000

56. The Plaintiffs state and the fact is that the aforesaid payment of \$1.4 million to Jeffrey Burrell and Salvatore Romeo by Jeff was not authorized or approved by Chris.

57. Notwithstanding the Bressi Funding Agreement and Bressi’s ongoing and continuous representations and assurances (as supported by both Jeff and Randy) that he would provide or facilitate the necessary funding required by CBJ, Bressi did not provide any funding.

58. Bressi’s representations of funding were false representations of fact. Bressi made these representations with a knowledge of their falsehood, or recklessly, without belief in their truth, with the intention that they should be acted upon by Chris. Bressi’s false representations did in fact induce Chris to act. Chris suffered damages as a result of Bressi’s fraudulent misrepresentations. Jeff, Randy, and Romeo knew of or ought to have known that Bressi’s representations were false and fraudulent.

59. In February 2024 and facing the February 28, 2024 deadline for payment of funds, pursuant to the Revised FEH Security Package, and after:

- (a) Jeff had *de facto* relinquished or had been removed from his role as director and CEO of CBJ; and
- (b) Chris had completed his own internal inquiries and investigations into Bressi’s business history and learned about “private” meetings held between Bressi, Jeff and Randy in the Bahamas which took place at the same time as the Revised FEH Security Package was being negotiated, it became clear to Chris that:
  - (i) Bressi had a long history of swindling other business partners out of millions of dollars;
  - (ii) Bressi never intended nor had the means to fund any monies to CBJ or FEH and entered into the Bressi Funding Agreement for the sole purpose of creating a situation where Chris and the other CBJ beneficial

shareholders would be coerced by undue duress (and fear of massive potential personal liability) from Bressi, Randy and Jeff into agreeing to the terms of the Revised FEH Security Package and agreeing to the payment of the Bressi Fee; and

- (iii) Bressi, Jeff, Randy, Romeo, TGP, Elena Salvatore and Vincent Salvatore (and potentially other parties currently unknown to the Plaintiffs) had clandestinely and intentionally entered into an illegal and improper agreement between themselves (the “**Illegal Agreement**”) to maneuver Chris and FEH into such a position where they had no alternative but to agree to the onerous terms of the Revised FEH Security Package, knowing that both CBJ and FEH would inevitably end up in default of same; and
- (iv) said default would then lead to the loss by Chris of any interest or entitlement that he had ( directly or indirectly) to the value and equity and all benefits (present or future) in the FEH Lands;

60. The Plaintiffs state and the fact is that the terms of the Illegal Agreement were to be implemented by Bressi, Jeff, Randy, Romeo, TGP, Elena Salvatore and Vincent Salvatore with their joint and mutual intention to achieve the following specific goals:

- (a) Bressi, on his own behalf and on behalf of Jeff, Randy, Romeo, TGP, Elena Salvatore and Vincent Salvatore, would convince Chris that through his “bonding” company, he could and would supply all the funding required by FEH, always knowing that he had no intention nor ability to provide said funds;
- (b) extorting Chris to agree to the payment of the Bressi Fee (portions of which may have been split amongst the parties to the Illegal Agreement) prior to Chris signing off on the Hillmount Financing;
- (c) Randy and TGP, on their own behalf and on behalf of Jeff and Bressi, would induce and effectively coerce Chris into agreeing to the terms of the Revised FEH Security Package by not approving, scuttling or otherwise making it impossible for Chris to raise or secure financing from any third parties other than Hillmount;
- (d) convincing Chris, through their material, intentional and fraudulent misrepresentations to Chris that there would be sufficient funding pursuant to the Bressi Funding Agreement to “solve” all of CBJ’s and FEH’s financial needs;
- (e) taking all other steps, through threats (verbal and in writing), intimidation and restriction of payments due and owing to Chris (based on actions taken by Jeff in intentionally failing to approve said payments to him) into coercing Chris to agree to the terms of the Revised FEH Funding Package knowing that by doing so both CBJ and FEH would default with the end result that Hills (i.e. TGP), Niagara, the Burrel Family Trust, the Romeo Family Trust and Ron would end up owning all of the FEH shares and in sole position to deal with the FEH Lands as they so

choose and without having to go through a Power of Sale or other judicially monitored process to do so;

- (f) once they had control of the FEH Lands through the implementation of the Share Pledge Agreement, Hills (i.e. TGP), Niagara, the Burrel Family Trust, the Romeo Family Trust and Ron would facilitate an immediate private sale of the FEH Lands or the FEH Shares, either directly or indirectly to themselves (through an affiliate, related corporation or “straw” buyer”) or to a “friendly” third party at a price substantially below market value, but sufficiently high enough to cover all of the FEH Indebtedness plus provide them with additional funds as negotiated, with the specific intent to:
    - (i) deprive CBJ, Chris and other members of the CBJ Management team of any of the funds due and owing to them, including all funds due and owing pursuant to the Management Agreement; and
    - (ii) Deprive FEH (and by extension, Chris and other members of the CBJ Management team) of their entitlement to the funds they should have received had the FEH Lands or FEH Shares had been sold on the open market at fair market value;
  - (g) place Chris at risk of being personally liable for certain CBJ and FEH debt that he had either personally guaranteed or which he had personally incurred for and on behalf of CBJ or FEH;
  - (h) ensure that Hills, Randy and TGP received all funds due and owing to them pursuant to the original Hills VTB plus additional payments and benefits to them;
  - (i) ensure that Jeff received all funds due and owing to the Family Trusts, the Ron Burrell Loan plus additional payments and benefits to Jeff; and
  - (j) ensure that Bressi receives the Bressi Fee plus additional payments and benefits to him.
61. By those actions and statements set out in (a) – (f) above, induced Chris to:
- (a) agree to the very onerous terms of the Revised FEH Financing Plan; and
  - (b) at this same time inducing Chris not to pursue the sale of the FEH Lands on the open market;
  - (c) not to pursue the refinancing of the FEH Lands (other than through Hillmount);
  - (d) not to register the CBJ Charge against title to the FEH Lands; or
  - (e) take any other reasonable and prudent steps to ensure that there would be sufficient funds available when the terms of the Revised FEH Security Package became enforceable so as not lose their strong equity position in the FEH Lands through their respective ownership of the FEH shares.

62. As planned and as part of the Illegal Agreement, both CBJ and FEH defaulted on the repayment obligations set out in the Revised FEH Security Package resulting on February 28, 2024 with Hills, on behalf of the FEH Secured Creditors and other parties to the Revised FEH Security Package, initiating enforcement proceedings under the Share Pledge Agreement and have, to the Plaintiffs' best knowledge, information and belief, now taken possession and ownership of the FEH Shares.

63. The Defendants have entered or are about to enter into a sale of the FEH Lands or have sold the FEH Shares as contemplated pursuant to the Illegal Agreement to a "friendly" third party: Elena Salvatore and Vincent Salvatore Jr., John Doe or XYZ Corp. (the "**Illegal FEH Sale**") at a purchase price which is substantially below its actual market value for the FEH Lands of the FEH Shares.

64. The Defendants Elena Salvatore and Vincent Salvatore Jr., John Doe or XYZ Corp., are purchasing the FEH Lands or have purchased the FEH Shares, and are fully aware of, and are acting in concert with the Defendants' illegal activities and actions as previously described.

65. Chris states and the fact is that their agreements to approve and proceed with:

- (a) the Revised FEH Security Package;
- (b) payment of the Bressi Fee;
- (c) the Hillmount Financing; and
- (d) such further and other approvals, agreements and authorizations as may be proven at trial were made:
  - (i) in reliance on the intentional and fraudulent misrepresentations that had been made to them by Jeff, Randy and Bressi as aforesaid together with such further and other evidence relating thereto as the Plaintiffs shall present to this Honorable Court at trial;
  - (ii) under duress, and induced because of the coercive actions of Jeff, Randy and Bressi as hereinbefore set out in this Claim together with such further

and other evidence relating thereto, as the Plaintiffs shall present to this Honorable Court at trial; and

- (iii) in accordance with the terms of the Illegal Agreement which by its very nature is null and void, against public policy and should be subject to sanction by this Court;

66. Accordingly, the Plaintiffs state and the fact is that the Illegal Agreement and Illegal FEH Sale is illegal, improper and will constitute a conveyance of real property made with the intent to defeat, hinder, delay or defraud creditors or others of their lawful action are void as against such persons and therefore constitutes a fraudulent conveyance in breach of the provisions of the *Fraudulent Conveyances Act*, RSO 1990 Ch. F29.

67. In the alternative, Chris states and the fact is that based on those matters set out above relating to the Illegal Agreement, the Share Pledge Agreement is null and void and unenforceable and accordingly any attempts by any or all of the Defendants to take control, possession or ownership of the FEH Shares from Chris and Jeff (who acquiesced) pursuant to said Share Pledge Agreement are therefore also illegal and unenforceable.

68. The oppressive conduct includes, without limitation:

- (a) unilaterally and without authority entering into agreements for and on behalf of both CBJ and FEH that are nullities, void ab initio, against public policy, illegal and based on willful neglect and/or are fraudulent;
- (b) completely ignoring Chris and others in their capacity as legal and beneficial shareholders of CBJ and FEH, by committing both corporations to those agreements referred to in (a) above despite their ongoing and continuous objections and dissent to same;
- (c) failing to provide Chris with full disclosure of all matters relating to, *inter alia*, the Bressi Funding Agreement, the Revised FEH Security Package, the terms and conditions of the Share Pledge Agreement, the Illegal Agreement and the Illegal FEH Sale;
- (d) obtaining funds from the Hillmount Loan for their own personal benefit without payment of any of those funds to Chris;
- (e) unilaterally and without authority preventing Chris or other members of the CBJ Management team from being paid funds due and owing to them from CBJ and

FEH thereby depriving them of any source of funding to retain counsel or other professional advisors to contest steps taken pursuant to the enforcement of the Share Pledge Agreement or prevent the implementation thereof; and

- (f) such further and other particulars as Chris shall provide prior to trial.

69. As previously stated, if the Illegal Agreement and Illegal FEH Sale closes with title and beneficial ownership of the FEH Lands or the FEH Shares have been or are transferred to Elena Salvatore, Vincent Salvatore, John Doe or XYZ Corp., CBJ may have no recourse against FEH for payment of the Management Fee or any other amounts that are currently due and owing to CBJ and will further deprive Chris and others of substantial value arising from their legal and/or beneficial share ownership in those corporations based on the actual and true market value of the FEH Lands.

70. In the further alternative, Chris states and the fact is that the actions taken by Jeff, Elena Salvatore and Vincent Salvatore Jr. constitute material and substantial “oppressive conduct” towards Chris in his capacity as a CBJ and FEH shareholder which permits judicial relief as per the provisions set out in the *OBCA*.

71. Accordingly, Chris is seeking an interim injunction to enjoin the Defendants from selling or otherwise dealing with the FEH Lands or FEH Shares or to any other parties pending the outcome of this Action. Chris states that:

- (a) there is a serious issue to be tried – the alleged conspiracy to defraud Chris
- (b) damages alone will not provide an adequate remedy, in that irreparable harm will be created if the interim injunction is not granted. No fair and reasonable redress would be available after trial if the FEH Lands are sold to a third party; and
- (c) the balance of convenience favours the granting of the interim injunction.

72. Further, the Plaintiffs collectively state and the fact is that they are entitled to immediately charge the FEH Lands by way of a Certificate of Pending Litigation to secure the

FEH Lands and prevent the sale, financing or transfer of the FEH Lands and are further entitled to an order enjoining the transfer of the FEH shares pending the outcome of this Action.

## CLAIMS

### A. Conspiracy

73. The Defendants engaged in a conspiracy. Each of the individual Defendants conspired to profit from and harm Chris. The particulars of the Defendants' conduct in entering into the Illegal Agreement and the Share Pledge Agreement are described above.

74. The Defendants acted with the predominant purpose of harming Chris. They:

- (a) mapped out the conspiracy and reached the Illegal Agreement on how to maximize the profits from the conspiracy, while minimizing the chances of getting caught;
- (b) acted with the predominant purpose of harming Chris by stripping his interest in FEH; and
- (c) if the sale of the FEH Lands or FEH Shares is not enjoined, they will have caused actual damage to Chris.

75. Similarly, the Defendants' orchestrated unlawful conduct which constituted a conspiracy.

They:

- (a) came to an agreement on how to proceed with the conspiracy and acted in combination with a common design of harming Chris, while profiting themselves;
- (b) acted unlawfully, as set out above by entering into and carrying out the Illegal Agreement;
- (c) directed their unlawful conduct toward Chris;
- (d) knew they were harming Chris; and
- (e) unless the sale of the FEH Lands or the FEH Shares is enjoined, the Defendants will in fact harm Chris.

76. Each of the Defendants played key roles in the conspiracy. While Jeff and Bressi were the puppeteers, the other Defendants played important roles and are accordingly, jointly and severally liable for all damages resulting from the conspiracy.

### **Breach of Fiduciary Duty and Knowing Assistance**

77. Chris was at Jeff's mercy. Jeff had the ability to orchestrate the conspiracy. In his role as a director or FEH and as the trustee of the Burrell Family Trust, Jeff had the obligation to act in the best interests of FEH as well as make full and frank disclosure to Chris. Instead, Jeff acting with the other Defendants, developed a scheme to defraud Chris of more than \$25 million, while destroying the Fort Erie Project, and leaving it with no cash to continue development.

78. FEH was insolvent at the time of Bressei's false promises to fund. Jeff knew that Bressei's representation regarding funding were false and that the Bressi Funding Agreement would never provide the necessary funding to FEH. None of the actions taken by Jeff were in the best interests of FEH and the Plaintiffs. They were purely self-motivated.

79. The remaining Defendants knew or ought to have known that Jeff was acting in breach of his fiduciary duties to FEH. Again, they assisted Jeff in his breaches and profited from that assistance.

### **Oppression**

80. As a shareholder of FEH, Chris is a "complainant" for the purposes of section 248 of the OBCA.

81. Jeff's actions, as one of the directors of FEH, and the actions of Elena Salvatore and Vincent Salvatore as the current directors of FEH, were oppressive and have unfairly disregarded Chris' interests. FEH's business was the development of the FEH Lands and he always had the reasonable expectation that Jeff would act in his best interest toward the development of the FEH Lands.

82. Instead, Jeff used his position as a director or controlling mind of FEH to permit Jeff and the other Defendants to profit from the improvident sale the FEH Shares. Jeff has acted solely in his own interests, to Chris' detriment.

### **Restitution and Tracing**

83. Chris pleads that all the Defendants have been unjustly enriched at Chris' expense and are liable to Chris for all amounts by which they have been unjustly enriched. Chris has been correspondingly deprived of the benefit of these amounts, and there is no juristic reason for the Defendants' enrichment. Chris pleads and rely upon the doctrine of unjust enrichment and claims that he is entitled to restitution from all the Defendants.

84. Chris pleads that the Defendants hold any amounts by which they have been unjustly enriched and the FEH Lands (by Elena Salvatore and Vincent Salvatore) as trust funds or trust assets pursuant to a constructive trust, and that Chris is the beneficiary of those funds and/or assets. Chris further pleads that, given the circumstances, there are no factors that would render the imposition of a constructive trust in favour of Chris unjust.

85. Any funds originating with or that should have been paid to Chris and obtained by any of the Defendants by way of fraud, breach of fiduciary duty, self-dealing, oppression or other improper conduct should be impressed with a trust in favour of Chris.

86. Chris seeks such orders as may be necessary to trace such misappropriated funds, including any such funds or assets currently held by or transferred to any of the Defendants, or transferred to individuals or entities not yet known to Chris.

87. Chris further seek orders requiring the Defendants to disgorge and/or pay restitution in relation to any benefit obtained directly or indirectly as a consequences of the fraud, breach of fiduciary duty, self-dealing, oppression or other improper conduct as pleaded herein, including any assets obtained with funds originating with or that should have been paid to Chris as a shareholder of FEH.

#### **Fraudulent Concealment And Punitive Damages**

88. The Defendants fraudulently concealed the Illegal Agreement, which constituted the conspiracy or scheme from Chris. At all material times, they took steps to conceal their conduct from Chris. The Defendants' conduct was unconscionable and designed to hide their unlawful actions.

89. The Defendants' conduct warrants punitive damages. The conspiracy is sufficiently described above. However, for the sake of completeness, the Defendants entered into the Illegal Agreement to siphon millions of dollars away from Chris in the improvident sale of the FEH Lands or FEH Shares to Elena Salvatore, Vincent Salvatore, John Doe and/or XYZ Corp. The Defendants took active steps to conceal the conspiracy.

90. These actions, among the many others described in the Claim, are independent, actionable wrongs, which were carefully designed to defraud Chris. This calculated and fraudulent conduct should offend the court's sense of decency. Pure compensatory damages (i.e., making the Defendants simply pay back what they took and stopping or reversing the sale of the FEH Lands or FEH Shares to either Elena Salvatore, Vincent Salvatore, John Doe or XYZ Corp.) is not enough. Punitive damages are necessary to denounce the Defendants' conduct and deter future parties from devising and carrying out similar schemes.

The Plaintiffs propose that this action be tried on the Commercial List in Toronto.

DATE OF ISSUE: July \_\_\_\_\_, 2024

**GREG ROBERTS PC**  
1595 16<sup>th</sup> Avenue, Suite 301  
Richmond Hill, ON L3B 3N9

**Greg Roberts** (LSO# 29644N)  
Tel: 416-726-2099  
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Lawyer for the Plaintiffs

Schedule "A"

85 Crooks Street , Fort Erie and legally described as:

PIN 64233-0064 LT

BLK R W/S CROOKS ST PL 525 VILLAGE OF BRIDGEBURG; LT 84 W/S CROOKS ST PL  
525 VILLAGE OF BRIDGEBURG; PT BLK S W/S CROOKS ST PL 525 VILLAGE OF  
BRIDGEBURG; PT LT 8 CON 2 NIAGARA RIVER BERTIE AS IN RO461513; FORT ERIE

**CHRIS AGAGNIER**  
Plaintiff

- and -

**CBJ-FORT ERIE HILLS INC. et al.**  
Defendants

Court File No. CV-24-

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto  
(Commercial List)

---

**STATEMENT OF CLAIM**

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**GREG ROBERTS PC**  
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**Greg Roberts** (LSO# 29644N)  
Tel: 416-726-2099  
greg.roberts@roblaw.ca  
Lawyer for the Plaintiffs

**1180554 ONTARIO LIMITED**

Applicant

-

**CBJ DEVELOPMENTS INC. et al.**

Respondent

Court File No. CV-23-00707989-00CL

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto  
(Commercial List)

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**AFFIDAVIT OF CHRISTOPHER AGAGNIER**

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Lawyer for CBJ Developments

# **APPENDIX “D”**

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

B E T W E E N:

**1180554 ONTARIO LIMITED**

Applicant

**-and-**

**CBJ DEVELOPMENTS INC., CBJ – CLEARVIEW GARDEN ESTATES INC. and  
CBJ – BRIDLE PARK II INC.**

Respondent

**AIDE MEMOIRE OF THE RECEIVER RE. RELATED PROCEEDINGS**

April 12, 2025

**Paliare Roland Rosenberg Rothstein LLP**  
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Toronto ON M5V 3H1  
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**Lawyers for the Receiver, TDB Restructuring  
Limited**

**TO: Service List**

**A. Overview**

1. The Receiver has prepared this aide memoire to provide an update to the Court on events that have transpired since the last attendance in connection with the Receiver's motion for discharge, specifically in connection with:

- (a) the Alberta Action
- (b) the Ontario Action; and
- (c) the appointment of KSV Restructuring Inc. ("**KSV**") as receiver of certain entities that are related to the Debtors in the matter of *Fukiage et al. v. Clearview Garden Estates Inc. et al* (the "**Clearview Proceeding**").<sup>1</sup>

2. Given that the Receiver's mandate was to sell the Real Property and, in any event, there is no funding for the Receiver to pursue the Alberta Action and/or the Ontario Action, the Receiver's position is that neither of these ongoing proceedings should prevent the Receiver from being discharged.

**B. Alberta Action**

3. As set out in the Third Report, on February 24, 2025, the Receiver was advised for the first time that CBJ Developments had commenced the Alberta Action against several defendants, including Ursataur Capital Management L.P. (collectively, the "**Alberta Defendants**"). CBJ Developments commenced the Alberta Action without the Receiver's consent, contrary to the Receivership Order.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the definitions given to them in the Receiver's Factum, dated March 16, 2025, unless otherwise defined herein.

4. On February 28, 2025, counsel to the Receiver sent a letter to CBJ Developments advising that (1) the Alberta Action was commenced without the consent of the Receiver, contrary to the explicit terms of the Receivership Order and (2) the Receiver demanded that CBJ Developments refrain from taking any steps in the Alberta Action without the explicit consent of the Receiver.<sup>2</sup>

5. On March 10, 2025, the Alberta Defendants commenced an application before the Court of King's Bench of Alberta seeking an Order dismissing the Alberta Action (the "**Application**").<sup>3</sup> The Application was originally returnable March 17, 2025. On March 14, 2025, the Receiver sent a letter to counsel to CBJ Developments and the Alberta Defendants advising of the Receiver's position on the Alberta Action and the Application, being:

- (a) the Alberta Action was improperly commenced; and
- (b) any dismissal of the Alberta Action should be without prejudice to the rights of CBJ Developments to re-commence a properly constituted proceeding at a later date. In the Receiver's view, it would be unfair to the creditors and other stakeholders of CBJ Developments if its principals' improper commencement of the Action prejudiced CBJ Developments' potential future claims in respect of the subject matter of the Alberta Action.<sup>4</sup>

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<sup>2</sup> Letter from Jeffrey Larry to Kimberley Zacharias, February 28, 2025, Appendix I to the Third Report of the Receiver, March 7, 2025 (the "**Third Report**") ([E768](#)).

<sup>3</sup> See Application, Tab A hereto.

<sup>4</sup> See Letter from Receiver's Counsel re. Application, March 14, 2025, without enclosures ([B-1-714](#)).

6. The Receiver asked counsel to the parties to share this letter with the Court of King's Bench of Alberta in connection with the Application.

7. On March 17, 2025, the Court of King's Bench of Alberta adjourned the hearing of the Application to March 31, 2025.

**C. *Previous Ontario Hearing***

8. The Receiver's motion for its discharge was originally returnable on March 18, 2025. At this hearing, the Court was advised of the Alberta Action and the fact that it was commenced without the consent of the Receiver.

9. In light of the adjournment of the Application to March 31, 2025, the Alberta Defendants requested that the Court adjourn the Receiver's motion for discharge until after the March 31, 2025 hearing, which relief the Court granted. The Receiver's motion for discharge was subsequently re-scheduled for April 14, 2025.<sup>5</sup>

**D. *Outcome of the Application***

10. On March 31, 2025, the Application was heard by Farrington J. of the Court of King's Bench of Alberta.

11. The principal of CBJ Developments submitted an affidavit which explained that it was not his intention to "circumvent" the Receiver by filing the Alberta Action, that no steps have been taken in the Alberta Action other than commencing the claim and that

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<sup>5</sup> See Endorsement of Justice Osborne, March 18, 2025 at para. 17 ([E850](#)).

the purpose of the commencement of the claim was to ensure that the limitation period for the claim did not expire.<sup>6</sup>

12. Farrington J. dismissed the Application, finding that whether the Alberta Action should be permitted to continue under carriage of CBJ Developments is a matter properly decided by the Ontario Superior Court of Justice.

13. Further to that, Farrington J. made an order staying the Alberta Action pending:

- (a) CBJ Developments obtaining an Order from the Ontario Superior Court of Justice (Commercial List) granting leave *nunc pro tunc* to commence the Alberta Action; or
- (b) the discharge of the Receiver in a manner that contemplates continued carriage of the action by CBJ Developments (the “**Stay Order**”).<sup>7</sup>

**E. Receiver’s Position**

14. The Receiver is of the view that this Court should grant an Order:

- (a) granting leave *nunc pro tunc* to commence the Alberta Action; and
- (b) discharging the Receiver in a manner that contemplates continued carriage of the action by CBJ.

15. While it is true that the commencement of the Alberta Action was a breach of the Appointment Order, the Receiver is concerned that because it has not had an opportunity

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<sup>6</sup> Affidavit of Chris Agagnier, sworn March 27, 2025 at para. 12 ([F1843](#)).

<sup>7</sup> Order of Farrington J, April 9, 2025 ([B-1-753](#)).

to consider the merits of the Alberta Action, it would be unfair to CBJ Developments' stakeholders for the Alberta Action to remain permanently stayed (which would be the effect of the Court's decision not to grant the above requested relief).

16. The Receiver is of the view that the mere fact that the Alberta Action was commenced has not occasioned any prejudice to the Alberta Defendants. If the Alberta Action is regularized *nunc pro tunc*, as the Receiver recommends, the Alberta Defendants will remain entitled to respond to the claim on its merits and will be entitled to advance any other procedural or substantive arguments.

17. Conversely, if the Court does not regularize the Alberta Action *nunc pro tunc*, the Alberta Action will be permanently stayed. Given that the Receiver, as the party that possesses the rights to the Alberta Action, has not had the opportunity to consider the merits of the Alberta Action, a permanent stay would be premature and contrary to the interests of CBJ's stakeholders.

18. In a letter to the Court from counsel to the Alberta Defendants, the Alberta Defendants take the position that this Court should not regularize the Alberta Action because CBJ would be free to commence a new claim in Alberta once the Receiver is discharged and CBJ has the authority commence actions in its own name.<sup>8</sup>

19. The Receiver believes that this assertion is flawed for two reasons:

- (a) the Stay Order has stayed the Alberta Action and the Ontario Superior Court of Justice has no authority to dismiss the Alberta Action. If this Court does

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<sup>8</sup> Letter from Andrew Parley to the Court, April 10, 2025 ([F1827](#)).

not regularize CBJ Developments' commencement of the Alberta Action, it is unclear how CBJ Developments would be entitled to re-commence an action based on the facts underlying the Alberta Action without breaching the Stay Order; and

- (b) if it were indeed the case that CBJ Developments could merely re-commence an action in Alberta based on the facts underlying the Alberta Action (following the Receiver's discharge), then there would be no practical benefit to anyone, including the Alberta Defendants, as a result of the Court's refusal to regularize the Alberta Action.

**F. The Ontario Action**

20. On March 7, 2025, the Receiver was advised that CBJ Developments had commenced the Ontario Action against various defendants, including CBJ-Fort Erie Hills Inc. As with the Alberta Action, the Ontario Action was commenced without the consent of the Receiver.<sup>9</sup>

21. Later, on March 7, 2025, counsel to the Receiver sent a letter to CBJ Developments counsel in the Ontario Action which, again, reminded CBJ Developments of the impropriety of their commencement of the Actions and demanded that CBJ Developments refrain from taking any steps in the same without the explicit consent of the Receiver.<sup>10</sup>

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<sup>9</sup> Third Report at para. 23 ([E617](#)).

<sup>10</sup> Letter from Ryan Shah to Greg Roberts, March 7, 2025, Appendix L to the Third Report ([E804](#)).

22. On April 11, 2025, CBJ Developments delivered an affidavit in this proceeding requesting an order that:

- (a) discharge the Receiver in a manner which contemplates continued carriage of the Ontario Action by CBJ Developments; or
- (b) grants leave *nunc pro tunc* for CBJ Developments to commence the Ontario Action.<sup>11</sup>

23. The Receiver takes no position on the specific relief sought by CBJ Developments in connection with the Ontario Action. However, as with the Alberta Action, the Receiver is of the view that no order should be made in this proceeding which would prejudice CBJ Developments ability to proceed with the Ontario Action. Such an outcome would be unfair to the stakeholders of CBJ Developments.

**G. The Clearview Gardens Proceeding**

24. On March 6, 2025, KSV was appointed receiver of certain entities that are owned by Trans Global Partners HK Limited (“TGP”) by Order of the Honourable Justice Steele (the “**Clearview Order**”).<sup>12</sup> TGP is also a promoter and beneficial owner of the Debtors.

25. On March 11, 2025, counsel to KSV sent a letter to counsel to the Receiver requesting certain information related to the Debtors and various other parties to the within application (the “**Information Requests**”).

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<sup>11</sup> Affidavit of Christopher Agagnier, sworn April 11, 2025 at para. 10 ([E857](#)).

<sup>12</sup> *Fukiage et al. v. Clearview Garden Estates Inc. et al*, CV-25-00736577-00CL ([Order](#) and [Endorsement](#) of Justice Steele, March 6, 2025)

26. On March 17, 2025, counsel to the Receiver sent a letter to counsel to KSV responding to the Information Requests. Later, on March 17, 2025, KSV proposed to the Receiver that KSV would be willing to pay the Receiver's reasonable fees to fund the Receiver answering further information requests on behalf of KSV, as part of the Receiver fulfilling its "incidental duties" following the Receiver's formal discharge.

27. In the Receiver's view, KSV's proposal is the most efficient and cost-effective way to (1) enable the Receiver to respond to KSV's reasonable requests for information concerning the Debtors and (2) minimize the Receiver's costs of administering the Debtors' estate.

28. Further to this arrangement, KSV and the Receiver have agreed on language that they jointly request be included in the Court's endorsement in connection with this matter.

This language is as follows:

On March 6, 2025, KSV Restructuring Inc. ("KSV") was appointed receiver of certain entities (the "KSV Receivership Entities") including over proceeds of certain property that was previously owned by Clearview Garden Estates Inc., one of the KSV Receivership Entities. This property was subsequently transferred to one of the Debtors, CBJ – Clearview Garden Estates Inc., and sold in the within proceedings. In its capacity as receiver of the KSV Receivership Entities, KSV has made certain information requests of TDB, in TDB's capacity as receiver of the Debtors. Notwithstanding TDB's discharge as Receiver of the Debtors, should TDB be requested by KSV, as receiver of the KSV Receivership Entities, to provide further information after TDB's discharge, then TDB may provide such information to KSV subject to KSV paying TDB its reasonable fees incurred in connection with such information requests.

29. The Receiver respectfully requests that the Court include the above language in its endorsement.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of April, 2025.



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Jeffrey Larry/Ryan Shah



To do so, you must be in Court when the application is heard as shown below:

Date: ~~March 13, 2025~~ March 17, 2025

Time: 10:00 AM

Where: Calgary Courts Centre, 601 5th Street SW, Calgary, Alberta T2P 5P7

Before: The Presiding Applications Judge in Chambers

Go to the end of this document to see what you can do and when you must do it.

**Remedy Sought:**

1. The Applicants claim the following relief:
  - (a) An Order striking the Statement of Claim and dismissing the action bearing Court File No. 2401-18658, improperly commenced by the Respondent, CBJ Developments Inc., in breach of the January 26, 2024 Order of Justice Penny of the Ontario Superior Court of Justice (Commercial List);
  - (b) An Order directing the Alberta Registrar of Land Titles to remove the Certificate of Lis Pendens, improperly registered by CBJ Developments against the property at 801 Seventh Avenue SW, Calgary, Alberta, T2P 3P7, owned by the Applicants;
  - (c) Costs of this Application; and
  - (d) Such further and other relief as to this Honourable Court may seem just.

**Grounds for this Application:**

2. The Applicants apply under Rule 3.68 of the *Alberta Rules of Court*, Alta Reg 124/2010, and section 190(1) of the *Land Titles Act*, RSA 2000, c L-4, to ask this Court to strike the Statement of Claim and dismiss the action improperly commenced by the Respondent, CBJ Developments Inc. (“**CBJ Developments**”), in breach of the January 26, 2024 Order of Justice Penny of the Ontario Superior Court of Justice (Commercial List), which appointed a Receiver over CBJ

Developments and explicitly prohibited the company or its agents from commencing any proceedings without the written consent of the Receiver or leave of the Ontario Superior Court.

3. The Applicants also request that this Court direct the Alberta Registrar of Land Titles to remove the certificate of lis pendens (the “**CLP**”) improperly registered by CBJ Developments in conjunction with the unauthorized action.

### **The Parties**

4. The Applicant, Andrew Cockwell, is the Managing Partner of the Applicant, Ursataur Capital Management L.P., the President of the Applicant, Mutende Equities Ltd., and the sole director of the Applicant, Ursataur 801 Seventh Limited.

5. The Applicant, Ian Cockwell, is the sole director of the Applicant, Mutende Equities Ltd.

6. The Applicant, Ursataur Capital Management L.P. (“**Ursataur**”), is a limited partnership under the *Limited Partnerships Act*, RSO 1990, c L.16, with its principal place of business in Oakville, Ontario.

7. The Applicant, Mutende Equities Ltd. (“**Mutende**”), is a corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, with its registered office in Oakville, Ontario.

8. Ursataur 801 Seventh Limited (“**Ursataur 801**”), is a corporation incorporated under the *Business Corporations Act*, RSA 2000, c B-9, with its registered office in Calgary, Alberta. Ursataur 801 is the registered owner of a commercial property at 801 Seventh Avenue SW, Calgary, Alberta, T2P 3P7 (the “**Property**”).

9. The Respondent, CBJ Developments Inc., is a corporation incorporated under the *Business Corporations Act*, RSO 1990, c B.16, with its registered office in Toronto, Ontario.

10. Since January 26, 2024, CBJ Developments has been the subject of receivership proceedings under section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

### **Background**

#### **A. CBJ Developments is Prohibited from Commencing Litigation Pursuant to an Order of the Ontario Superior Court of Justice**

11. On January 26, 2024, Justice Penny of the Ontario Superior Court of Justice (Commercial List) heard a motion pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* to appoint a receiver and manager in respect of the Respondent, CBJ, and two related entities, CBJ – Clearview Garden Estates Inc., and CBJ – Bridle Park II Inc.

12. That same day, Justice Penny issued an Order appointing RSM Canada Limited (now TDB Advisory Limited) as Receiver, without security, of all of the assets, undertakings and properties of CBJ Developments.

13. The Order states, among other things, that the Receiver alone is authorized to initiate proceedings on behalf of CBJ Developments, and that any proceedings in respect of CBJ Developments cannot be commenced except with the written consent of the Receiver or with leave of the Court:

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

...

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to [CBJ Developments], the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgement pronounced in any such proceeding;

...

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

14. To date, the Receivership remains ongoing.

**B. CBJ Developments Breached the January 26, 2024 Order by Commencing an Action and Registering a Certificate of Lis Pendens**

15. In direct breach of the January 26, 2024 Order, on December 23, 2024, CBJ Developments commenced an action before the Court of King’s Bench of Alberta (Court File No. 2401-18658), in which various unfounded allegations are raised in connection with the purchase of the Property at 801 Seventh Avenue SW in Calgary, which is rightfully owned by the Applicants (the “**Action**”).

16. The Applicants Andrew Cockwell, Ian Cockwell, Ursataur, and Mutende are named as Defendants in the Action (the “**Defendants**”). Ursataur 801 was not named as a Defendant.

17. The Action was commenced by CBJ without notice to, or leave of, the Receiver or the Ontario Superior Court. The Action was accordingly commenced in breach of the January 26, 2024 Order.

18. The Action was also commenced apparently without the involvement of legal counsel, as the Statement of Claim lists no name of counsel for CBJ Developments. The name listed on the Statement of Claim as the contact for CBJ Developments is Kimberley Zacharias, who serves as Controller for the company.

19. The Statement of Claim filed by CBJ Developments has not been served on the Defendants. Rather, the Defendants became aware of the Action on February 4, 2024, when a reporter contacted corporate counsel to certain of the Applicants for comment on the allegations contained in the Statement of Claim.

20. On the same day that it filed its Statement of Claim (December 23, 2024), CBJ Developments also registered a Certificate of Lis Pendens against the Property. The registration appears to have been completed by a former lawyer, David Michael Goldenberg, who is disbarred in Alberta.

21. The CLP is currently listed on the Certificates of Title for the Property, which identifies the CLP as in the “Pending Registration Queue.”

**C. CBJ Developments Has Been Notified of its Breach, but Has Failed to Take Steps to Voluntarily Remedy the Issue**

22. On February 24, 2024, after litigation counsel had been retained by the Applicants, counsel for the Applicants wrote to counsel for the Receiver, notifying them of the Action and inquiring as to whether it had been commenced with the Receiver’s consent or involvement. Counsel to the Receiver confirmed that the Action had been commenced without their knowledge or authorization.

23. On February 28, 2025, counsel for the Receiver wrote to Ms. Zacharias to notify her that the Action was commenced improperly and in breach of the January 26, 2024 Order.

24. On March 5, 2024, counsel for the Applicants wrote to Ms. Zacharias to request that she confirm that CBJ would discontinue the Action and remove the CLP.

25. On March 6, 2025, counsel for the Applicants provided notice to counsel for the Receiver that the Applicants intended to take steps to have the Action dismissed and the CLP removed. Counsel for the Receiver took no issue with the Applicants' proposal.

26. On March 7, 2025, Christopher Agagnier, one of the directors of CBJ Developments responded to counsel for the Applicants' March 5, 2025 correspondence, forwarding a letter to counsel to the Receiver, dated March 2, 2025 (but seemingly sent to the Receiver's counsel on March 5, 2025) in which Mr. Agagnier states that he arranged for the filing of the Action and registration of the CLP, and claims that he "does not recall being served with" the January 26, 2024 Order.

27. As one of the directors of CBJ Developments and someone included on the Service List for the Receivership, Mr. Agagnier would have received a copy of the January 26, 2024 Order at the time it was issued by Justice Penny.

28. Mr. Agagnier provided no response to counsel for the Applicants' request regarding the Action or the CLP.

29. Also on March 7, 2025, counsel for the Receiver responded, providing the Receiver's consent for the Applicants to take steps to have the Action dismissed or discontinued on a without prejudice basis.

30. Counsel to the Receiver also provided a copy of a letter sent to counsel for CBJ Developments in connection with a separate proceeding commenced in Ontario. The letter states that this second action was commenced by Mr. Agagnier on behalf of CBJ Developments, again without the knowledge or authorization of the Receiver and in breach of the January 26, 2024 Order. It also states the Receiver has “already addressed a similar issue with Mr. Agagnier relating to an action commenced by Mr. Agagnier in Alberta, purportedly on behalf of CBJ Developments Inc.”

### **The Claim and CLP were Commenced Improperly and Should be Dismissed and Removed**

#### **A. The Action Should be Dismissed**

31. Under Rule 3.68 of the *Alberta Rules of Court*, this Court may order that all of a claim be struck out where it is “improper” or “constitutes an abuse of process.”

32. In the alternative, this Court’s inherent jurisdiction authorizes it to take steps to prevent abuse of process.

33. CBJ Developments commenced the Action without the knowledge or authorization of the Receiver, in direct contravention of the terms of the January 26, 2024 Order, which explicitly prohibits anyone, including CBJ Developments itself and all persons acting on its behalf, from commencing legal proceedings on behalf of CBJ Developments without the express, written consent of the Receiver or leave of the Ontario Superior Court of Justice.

34. The Action was also commenced by CBJ Developments without representation by a lawyer, contrary to Rule 2.22 of the *Alberta Rules of Court*.

35. The Action was accordingly commenced improperly and without authority. The Statement of Claim should be struck in its entirety and the Action dismissed.

**B. The CLP Should be Removed**

36. Under section 148 of the *Land Titles Act*, RSA 2000, c L-4, a person may register a certificate of lis pendens against a property where they have commenced an action claiming an interest in the land.

37. CBJ Developments registered the CLP against the Property on the basis of the Action, which it had no authority to commence.

38. Under section 190(1) of the *Land Titles Act*, the Court has the power to cancel a certificate of lis pendens:

**190(1)** In any proceeding respecting land or in respect of any transaction or contract relating to it, or in respect of any instrument, caveat, memorandum or entry affecting land, the judge by decree or order may direct the Registrar to cancel, correct, substitute or issue any certificate of title or make any memorandum or entry on it and otherwise to do every act necessary to give effect to the decree or order.

(a) Under section 152 of the *Land Titles Act*, the Registrar of Land Titles is required to cancel the registration of a certificate of lis pendens on receiving an order from the Court that the proceedings under which the certificate of lis pendens was granted has been discontinued or dismissed with no appeal:

**152** The Registrar shall cancel the registration of a certificate of lis pendens on receiving

(a) a certificate from the clerk of the court stating that the proceedings for which the certificate of lis pendens was granted are

(i) discontinued, or

(ii) dismissed and the time for commencing an appeal has expired and no appeal has been commenced, or if commenced, has been finally disposed of or discontinued,

...

39. Also, under section 14.1(6)(b) of the *Land Titles Act*, the Registrar may reject a certificate of lis pendens in the pending registration queue if it was submitted in bad faith:

**14.1(6)** If an instrument or caveat in the pending registration queue is found to be incomplete, not in the proper form or not fit for registration, the Registrar may

...

(b) reject the instrument or caveat if, in the Registrar's opinion, it was submitted in bad faith or its defects are such that they cannot reasonably be corrected, in which case the instrument or caveat shall be removed from the pending registration queue.

40. As the CLP was registered pursuant to an improper and unlawful action, this Court should exercise its authority under section 190(1) of the *Land Titles Act* to order the Registrar of Land Titles to remove the CLP registered against the Property.

**Affidavit or Other Evidence to be Used in Support of this Application:**

41. The affidavit of Andrew Cockwell, sworn March 7, 2025, and the exhibits attached thereto.

**Applicable Acts and Regulations:**

42. *Land Titles Act*, RSA 2000, c L-4;

43. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3; and

44. *Alberta Rules of Court*, Alta Reg 124/2010.

**Any Irregularity Complained of or Objection Relied On:**

45. None.

**How the Application is Proposed to be Heard or Considered:**

46. Before the Presiding Applications Judge in Chambers

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by an order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**1180554 ONTARIO LIMITED**

-and-

**CBJ DEVELOPMENTS INC. et al.**

Applicant

Respondents

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

(COMMERCIAL LIST)

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**AIDE MEMOIRE OF THE RECEIVER RE. RELATED  
PROCEEDINGS**

---

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

155 Wellington Street West  
35th Floor  
Toronto, ON M5V 3H1

**Jeffrey Larry** (LSO# 44608D)

Tel: 416.646.4330

[jeff.larry@paliareroland.com](mailto:jeff.larry@paliareroland.com)

**Ryan Shah** (LSO# 88250C)

Tel: 416.646-6356

[ryan.shah@paliareroland.com](mailto:ryan.shah@paliareroland.com)

Lawyers for the Receiver, TDB Restructuring Limited

# **APPENDIX “E”**



ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**ENDORSEMENT**

COURT FILE NO.: CV-23-00707989-00CL

DATE: April 14, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: 1180554 ONTARIO LIMITED v. CBJ DEVELOPMENTS INC. et al

BEFORE JUSTICE: OSBORNE

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Larry Ryan Shah	Counsel for the Receiver, TDB Restructuring Ltd.	<a href="mailto:Jeff.larry@paliarerland.com">Jeff.larry@paliarerland.com</a> <a href="mailto:Ryan.shah@paliarerland.com">Ryan.shah@paliarerland.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Dextin Zucchi	Counsel for CBJ Developments Inc.	<a href="mailto:Dextin.zucchi@codehunterllp.com">Dextin.zucchi@codehunterllp.com</a>
Andrew Parley Devon Kapoor	Counsel for the Alberta Defendants	<a href="mailto:aparley@litigate.com">aparley@litigate.com</a> <a href="mailto:dkapoor@litigate.com">dkapoor@litigate.com</a>
Jonathan Kulathungam	Counsel for 1180554 Ontario Ltd.	<a href="mailto:jkulathungam@teplitskyllp.com">jkulathungam@teplitskyllp.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Greg Roberts	Counsel for Chris Agagnier	<a href="mailto:Greg.roberts@roblaw.ca">Greg.roberts@roblaw.ca</a>

Adrienne Ho	Counsel for the Receiver, KSV	<a href="mailto:aho@airdberlis.com">aho@airdberlis.com</a>
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**ENDORSEMENT:**

1. The Receiver seeks an order for discharge and release, approval of the Third Report and the activities described therein, approval of its statement of receipts and disbursements for the period January 26, 2024 to February 28, 2025, and approval of its fees and those of its counsel (together with a fees estimate forward through the conclusion of the mandate of the Receiver) for the period from September 1, 2024 to February 28, 2025.
2. The Receiver relies on the Third Report dated March 7, 2025. The Receiver was appointed on January 26, 2024 over the assets and property of the Respondents, CBJ Developments Inc., CBJ-Clearview Garden Estates Inc. and CBJ -Bridal Park II Inc. (collectively, “CBJ”).
3. The Receiver first sought its discharge before this Court on March 18, 2025. On that date, and for the reasons set out in my Endorsement, the same date, I declined to grant the discharge at that time.
4. The Receiver returns today to seek that relief.
5. Some background and context is required to inform the positions of the parties.
6. The Applicant in this proceeding, 1180554 Ontario Limited (“554”), is also the plaintiff in two guarantee actions pending before this Court at Oshawa, Ontario (CV-23-00002045-0000 and CV-23-00002436-0000). 554 does not oppose the relief sought today, but seeks some clarity that the discharge of the Receiver does not affect its ability to pursue the relief sought in the above-noted two guarantee actions.
7. In my view, no relief in respect of those two guarantee actions is required or appropriate. Nothing in the relief sought by the Receiver today, including but not limited to a discharge, would affect those actions, which presumably can continue in the ordinary course.
8. I pause to observe that CBJ also commenced an action in this Court in Fort Erie (CV-24-00723362-00CL) on July 5, 2024 without authorization of the Receiver, consent or leave. The Defendants in that Ontario action are not before the Court today. It is not clear that they have been served with the materials or even that they are aware of the motion for discharge. Mr. Roberts advises the Court, and other counsel confirm, that that action may also be affected by another receivership application in respect of some or all of the defendants to that action recently commenced in this Court, which application may have the further effect of staying that Fort Erie action. In the circumstances, and in the absence of any materials and in the absence of the relevant parties, I make no order with respect to that proceeding.
9. With respect to the motion of the Receiver for discharge and other relief, Mr. Chris Agagnier, a director of CBJ, filed two affidavits sworn April 10 and April 11, 2025 (today), respectively. Mr. Agagnier is a director of CBJ. He is also one of the individual defendants in the first of the above-noted two actions pending before this Court at Oshawa, Ontario. The affidavits are not filed as part of a motion record. Mr. Roberts appears today as counsel for Mr. Agagnier and confirms that he acts for Mr. Agagnier personally, and not for CBJ.
10. Mr. Agagnier seeks an order imposing two terms on any discharge of the Receiver relating to an Alberta action described below. Specifically, he seeks an order granting leave to CBJ *nunc pro tunc* to commence

the Alberta action, or a discharge of the Receiver in a manner that contemplates the continued carriage of the action by CBJ. I cannot discern any basis for Mr. Agagnier seeking this relief in his personal capacity.

11. CBJ appears today as represented by Mr. Zucci. CBJ has filed no materials whatsoever, and nor has it filed a factum. However, CBJ places great reliance on the affidavits of Mr. Agagnier, which I pause to note were sworn before counsel to CBJ, and not Mr. Agagnier's own counsel. Relying on the affidavits of Mr. Agagnier, CBJ seeks the imposition of the two terms referred to above to any discharge of the Receiver in order that CBJ can continue the Alberta action described below, and which is already pending.
12. In addition to the Fort Erie action described above, CBJ commenced an action in the Alberta Court of King's Bench on December 23, 2024, also during the course of the receivership of CBJ, and also without the knowledge or consent of the Receiver or leave of this Court.
13. Today, CBJ and Mr. Agagnier acknowledge having commenced both actions (the Fort Erie action and the Alberta action). As set out in my earlier Endorsement made in this matter, CBJ had no authority to commence either action, given the clear and unequivocal terms of the Receivership Order made in this proceeding. CBJ does not argue otherwise, and nor could it. It does submit, however, that leaving aside for today's purposes the Fort Erie action, there is no prejudice to allowing the Alberta action to continue.
14. The defendants in the Alberta action, Andrew Cockwell, Ian Cockwell, Mutende Equities Ltd. and Ursataur Capital Management LP, were first before this Court on March 18, 2025, on which date, as noted above, I declined to discharge the Receiver. The Receiver had been advised of the commencement of the Alberta action, and indeed counsel to the Receiver had sent correspondence to CBJ advising and confirming that the Alberta action had been commenced without the consent of the Receiver, contrary to the express terms of the Receivership Order, and demanded that CBJ refrain from taking any steps without the consent of the Receiver, which had not been given.
15. The Alberta action had been adjourned by the Alberta Court of King's Bench on March 18 at the request of CBJ to March 31. Given that both of the above-noted Alberta and Ontario actions had been commenced by CBJ in direct breach of the Receivership Order, and given the uncertainty with the status of proceedings in Alberta, I determined it was not appropriate to discharge the Receiver and that my Endorsement and the surrounding circumstances should be brought to the attention of the Court of King's Bench in Alberta when the matter returned before that Court on March 31.
16. When the Alberta action came back before the Alberta Court on March 31, 2025, the Alberta Court dismissed the application for an order striking the Statement of Claim, but stayed the Alberta action pending either an order from this Court granting leave *nunc pro tunc* to CBJ to commence that action, or a discharge of the Receiver by this Court in a manner that contemplated continued carriage of the Alberta action by CBJ. The Alberta Court deferred to this Court as the most appropriate forum within which to determine whether and the extent to which such relief should be granted. Hence the return of this matter today.
17. The Alberta Defendants submit that this Court should decline to grant leave and should decline to grant the discharge of the Receiver in a manner that contemplates continued carriage of the Alberta action by CBJ, all on the basis that such be without prejudice to the right of CBJ to commence a new action once it has the authority to do so, or to seek whatever directions may be appropriate from the Alberta Court with respect to lifting the stay currently imposed.
18. They submit that the Alberta action was commenced in clear breach of the Receivership Order, of which Mr. Agagnier and CBJ were well aware (he is a director of CBJ), CBJ has taken no steps (even today) to attempt to rectify its breach of the order by seeking permission from the Receiver or leave from the Court, and CBJ will be free to commence a new claim in Alberta once it has the authority to do so. They submit

that declining to grant leave for discharge permitting a continuation of the Alberta action will not determine any rights of CBJ under the Alberta *Limitations Act*, so there is no prejudice to it.

19. CBJ submits that it will be prejudiced since it commenced the Alberta action as it did to protect against the then imminent expiry of the relevant Alberta limitation period, which has apparently now arguably expired.
20. It commenced the Alberta action and the Ontario action in direct and flagrant breach of the Receivership Order. Mr. Agagnier was a director and is a director of CBJ. He states in his affidavits, effectively, that he thought the activities of the Receiver were limited to those affecting the real property over which security had been granted to the senior creditor, 554. Mr. Agagnier states in his first affidavit that, in respect of the Alberta action, he did not recall being served with the Receivership Order or being made aware of any specific provisions that prohibited the commencement of legal proceedings on behalf of CBJ.
21. Yet, in his second affidavit sworn the very next day, on April 11, 2025, Mr. Agagnier states that with respect to the Ontario action commenced approximately six months earlier, he was in “constant communication with [the Receiver], that the Receiver advised his lawyer that they were going to issue the claim, and further that he (Mr. Agagnier) was advised by his counsel that the Receiver “did not take any issue with that course of action”.
22. Leaving aside the double hearsay nature of that evidence, it is difficult to reconcile that series of events as recalled by Mr. Agagnier in respect of the Ontario action with what happened six months later regarding the Alberta action.
23. His evidence is to the effect that with respect to the Ontario action, he and his counsel specifically discussed the potential action with the Receiver and (allegedly) obtained confirmation from the Receiver that it did not object to CBJ commencing the action itself (a position directly contradicted by the Reports of the Receiver and the correspondence appended thereto by which it challenged the right of CBJ to commence the actions). Yet, Mr. Agagnier’s evidence with respect to the very same situation he encountered six months later regarding the Alberta action is to the effect that he did not realize the Receivership Order prohibited the company from commencing the action without the consent of the Receiver or leave of the Court.
24. I continue to be concerned, as I was on March 18, 2025, by the blatant disregard of CBJ for orders of this Court, and by its failure or refusal to take any steps to rectify or regularize its actions in commencing these two proceedings once both the Defendants, and the Court-appointed Receiver, took issue with what had been done.
25. This Court expects and, if social and civil order is to be maintained, is entitled to expect, that its orders will be complied with. This principle was confirmed by the Court of Appeal for Ontario just a few weeks ago when it stated (ironically, specifically in respect of non-compliance with a receivership order) that:

It is a fundamental principle that orders of a court to be obeyed. They are not to be stalled, and they are not to be negotiated. Serious consequences are to be expected by anyone who wilfully fails to obey a court order.

See: *Canadian Western Bank v. Canadian Motor Freight Ltd.*, 2025 ONCA 263 at para. 22.
26. This Court certainly expects debtor respondents in receivership applications to comply with Receivership Orders and the authority and powers of the Receiver is appointed thereunder.

27. The Receiver is a Court officer. It is appointed with power over all assets and property of, in this case, CBJ. That includes the right to bring actions and purport to assert legal rights. During the course of the Receivership, which continues today, CBJ had no authority to commence the actions as it did on its own.
28. There were courses of action open to CBJ to address the situation properly had it elected to do so. It could have requested, at the time it unilaterally commenced the Alberta and Ontario actions, that the Receiver immediately do so on behalf of the estate or that the Receiver consent to CBJ commencing either or both actions. If the Receiver failed or declined to do so, CBJ could have sought leave from this Court authorizing CBJ to commence the actions or directing that the Receiver do so. The Receivership Order has the standard comeback clause expressly providing that any affected party can seek the advice and directions of the Court on an urgent basis. None of that was done.
29. Even today, and even with its late and improperly filed affidavits, it offers neither contrition nor explanation. Rather, it seeks retroactive (*nunc pro tunc*) relief simply regularizing and sanitizing its prior misconduct. Still, CBJ has not served a Notice of Motion with any prayer for relief (as noted above, CBJ has not filed any materials at all). In particular, it brings no motion for any such relief. Rather, it simply requests that the relief be granted, in practical terms, by way of the imposition of terms on the discharge order. I am not prepared to grant that relief today.
30. Moreover, there is no evidence upon which I can even conclude whether the Alberta action was otherwise properly commenced, leaving aside the fact that it was commenced in breach of the Receivership Order. It was not commenced by counsel acting for the Corporation, as is required absent leave. It was commenced by CBJ acting without counsel.
31. In his affidavit sworn April 10, 2025, Mr. Agagnier states simply that it was commenced by Kimberley Zacharias, CBJ's Controller, on his instructions "to preserve CBJ's claims against the defendants since [he] understood that the two-year deadline to commence the lawsuit was about to expire." There is no evidence about corporate authority to commence the proceeding, and even any knowledge of, let alone approval by, the Board of Directors of CBJ nor any explanation as to why the Corporation was not represented by counsel.
32. For all of these reasons, and had I been otherwise prepared to grant the discharge today, I would have declined to impose either of the two requested terms without prejudice to the rights of all parties to seek whatever relief they thought might be appropriate from the Alberta Court, including but not limited to the lifting of the stay imposed by that Court. In my view, the Alberta Court of King's Bench is best positioned to address the issue of whether and on what terms the stay should be lifted or other relief granted, given that issues such as whether the applicable limitation period has expired are issues of Alberta Law that flow from the application and interpretation of an Alberta statute (the *Limitations Act*) in respect of a pending Alberta action.
33. However, at the conclusion of argument on all of these issues, counsel for the Receiver suggested that the most appropriate course of action would be for the discharge motion to be adjourned. This suggestion followed submissions from Mr. Roberts to the effect that there may well be available evidence not yet in the record, relating to, among other things, communications between CBJ or its principals and the Receiver about the commencement of the Ontario action and possibly other issues, some of which is referenced above. Counsel for the Receiver was unable to reach the Receiver during the hearing.
34. In my view, an adjournment of the motion for discharge is appropriate for two reasons. First, I think it important in the circumstances of this case that the record be full and complete, particularly with respect to the issues referred to above. At present, there seems to be a dispute about what information was

conveyed to the Receiver (at least in respect of the Ontario action), when, and what if any position of the Receiver was conveyed to CBJ.

35. Second, in my view, it is important for the Receiver, as a Court officer, to take a position and advise the Court with respect to the value, if any, to the estate of either or both of the Ontario and Alberta actions. Today, the Receiver, supported by 554, takes the position that it has no further available funding and therefore has not investigated the merits (or value) of either action. This could be important, as the record suggests that all creditors (secured and unsecured) will not recover all amounts owing. I am uncomfortable considering the appropriateness of a discharge of the Receiver without the record being clear as to the value of any and all available assets for the benefit of creditors and what, if anything, should be done in that regard.
36. For all of these reasons, the motion for discharge of the Receiver is adjourned to a date to be fixed through the Commercial List office. It follows that the motion for companion relief (approval of activities and fees of the Receiver) should also be adjourned to be considered at the same time as the discharge.



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Justice Osborne

Date: April 14, 2025

# **APPENDIX “F”**

## Ryan Shah

---

**From:** Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>  
**Sent:** July 3, 2024 1:36 PM  
**To:** Greg Roberts; Chris Agagnier  
**Cc:** davgold17@gmail.com  
**Subject:** CBJ Developments Inc., CBJ - Clearview Garden Estates Inc., and CBJ - Bridle Park II Inc. - Receiverships  
**Attachments:** Signed Receivership Order of J. Penny dated Jan 26 2024 (00649206xC0375).PDF; Endorsement of J. Penny dated Jan 26 2024 (00648404xC0375).pdf  
**Sensitivity:** Confidential

Greg

Attached please find the Endorsement and Court Order dated January 26th 2024.

Further information relating to the receivership can be found on our website at:

<https://tdbadvisory.ca/insolvency-case/cbj-developments-inc-cbj-clearview-garden-estates-inc-and-cbj-bridle-park-ii-inc/>

Bryan



### TDB Restructuring Limited

**Bryan A. Tannenbaum**, FCPA, FCA, FCIRP, LIT  
Managing Director

✉ [btannenbaum@tdbadvisory.ca](mailto:btannenbaum@tdbadvisory.ca)

☎ 416-238-5055

📠 416-915-6228

📍 11 King St. West, Suite 700  
Toronto, ON M5H 4C7

**tdbadvisory.ca**

Integrity. Leadership. Excellence.

---

**From:** Greg Roberts <greg.roberts@roblaw.ca>  
**Sent:** Wednesday, July 3, 2024 1:10 PM  
**To:** Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Chris Agagnier <chrisa@cbjdevelopments.com>  
**Cc:** davgold17@gmail.com  
**Subject:** Re: CBJ - RE: introduction  
**Sensitivity:** Confidential

External sender

Hi Bryan - further to our discussion, please send me the receivership order. Greg

Kind Regards,

**Greg Roberts, B.A., B.Comm., LL.B., J.D.**

**Lawyer**

**Greg Roberts Professional Corporation**

Suite 301-1595 16<sup>th</sup> Avenue

Richmond Hill, ON L4B 3N9

**Direct Phone:** 416-726-2099

**Web:** [www.roblaw.ca](http://www.roblaw.ca)

**Email:** [greg.roberts@roblaw.ca](mailto:greg.roberts@roblaw.ca)

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**From:** Bryan Tannenbaum <[btannenbaum@tdbadvisory.ca](mailto:btannenbaum@tdbadvisory.ca)>

**Sent:** July 3, 2024 10:54 AM

**To:** Chris Agagnier <[chrisa@cbjdevelopments.com](mailto:chrisa@cbjdevelopments.com)>; Greg Roberts <[greg.roberts@roblaw.ca](mailto:greg.roberts@roblaw.ca)>

**Cc:** [davgold17@gmail.com](mailto:davgold17@gmail.com) <[davgold17@gmail.com](mailto:davgold17@gmail.com)>

**Subject:** CBJ - RE: introduction

Thanks Chris.

Happy to speak with Greg at his convenience so that I can get informed as to whatever legal proceedings are being contemplated.

Bryan



**TDB Restructuring Limited**

**Bryan A. Tannenbaum**, FCPA, FCA, FCIRP, LIT  
Managing Director

✉ [btannenbaum@tdbadvisory.ca](mailto:btannenbaum@tdbadvisory.ca)

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📠 416-915-6228

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Toronto, ON M5H 4C7

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---

**From:** Chris Agagnier <[chrisa@cbjdevelopments.com](mailto:chrisa@cbjdevelopments.com)>

**Sent:** Wednesday, July 3, 2024 9:24 AM

**To:** Greg Roberts <[greg.roberts@roblaw.ca](mailto:greg.roberts@roblaw.ca)>; Bryan Tannenbaum <[btannenbaum@tdbadvisory.ca](mailto:btannenbaum@tdbadvisory.ca)>

**Cc:** [davgold17@gmail.com](mailto:davgold17@gmail.com)

**Subject:** introduction

**Sensitivity:** Confidential

External sender

Gentlemen I would like to introduce Greg to Bryan. Bryan has been and is still the receiver on our former Stayner properties ( which are supposed to close today ). Greg is my corporate and personal counsel recently engaged. Dave is my personal business consultant. Greg you may call Bryan when convenient at 416-238-5055, Greg' number is 416-726-2099. Thank you gents.

Best regards,

Chris Agagnier

Co-Founder

Direct Tel: (403) 827-5415



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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

THE HONOURABLE

)

FRIDAY, THE 26<sup>th</sup> DAY

JUSTICE PENNY

)

OF JANUARY, 2024

)

**1180554 ONTARIO LIMITED**

**Applicant**

**and**

**CBJ DEVELOPMENTS INC., CBJ – CLEARVIEW GARDEN ESTATES INC.,  
CBJ – BRIDLE PARK II INC.**

**Respondents**

**ORDER  
(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of the Respondents, CBJ - Clearview Garden Estates Inc. ("**CBJ - Clearview**"), CBJ Bridle Park II Inc. ("**CBJ - II**"), CBJ Developments Inc. ("**CBJ**") (hereinafter CBJ – Clearview, CBJ – II, and CBJ collectively referred to as the "**CBJ**" or "**Debtors**"), acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavits of Matthew Castelli sworn October 20, 2023, November 16, 2023, and January 24, 2024, the Affidavit of Serafino Paul Mantini sworn December 5, 2023, the Affidavits filed by the Respondents being the Affidavits of Jeffrey Burrell sworn November 29, 2023, and December 5, 2023, and the Affidavit of Scott Metcalfe sworn January 24, 2024, and the Affidavit sworn by Randy Hoffner on January 25, 2024, filed by the parties holding a subsequent charge (“Subsequent Lenders”) as it relates to the Properties that are the subject matter of this Receivership, the Factum of the Applicants, the Factum of the Respondents and on hearing submissions for counsel for the Applicants, Respondents and the Subsequent Lenders and on reading the consent of RSM Canada Limited to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

### **RECEIVER'S POWERS**

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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

shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the

Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including

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

### **RECEIVER TO HOLD FUNDS**

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

### **EMPLOYEES**

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

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed

\$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

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

orders that a Case Website shall be established in accordance with the Protocol with the following URL [www.rsmcanada.com/CBJ-developments-inc-et-al](http://www.rsmcanada.com/CBJ-developments-inc-et-al).

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

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

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
\_\_\_\_\_

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of CBJ - Clearview, CBJ – II and CBJ acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_ 202\_\_.

RSM Canada Limited solely in its capacity  
as Receiver of the Debtors, and not in its  
personal capacity

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

Name:

Title:



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00707989-00CL

DATE: 26 January 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: 1180554 ONTARIO LIMITED v. CBJ DEVELOPMENTS INC. et al.

BEFORE: JUSTICE PENNY

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**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Jonathan Kulathungam	1180554 ONTARIO LIMITED	<a href="mailto:jkulathungam@teplitskyllp.com">jkulathungam@teplitskyllp.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	CBJ DEVELOPMENTS INC. et al	<a href="mailto:mspence@airdberlis.com">mspence@airdberlis.com</a>
Samantha Hans		<a href="mailto:shans@airdberlis.com">shans@airdberlis.com</a>
Rosemary Fisher	Niagara Estates, Bridle Park et. al.	<a href="mailto:fisherr@simpsonwagle.com">fisherr@simpsonwagle.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Bryan A. Tannenbaum	Proposed receiver	<a href="mailto:bryan.tannenbaum@rsmcanada.com">bryan.tannenbaum@rsmcanada.com</a>
Jeff Berger		<a href="mailto:jeff.berger@rsmcanada.com">jeff.berger@rsmcanada.com</a>

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## **ENDORSEMENT OF JUSTICE PENNY:**

- [1] The applicant, 1180554 Ontario Limited, is the first in priority secured creditor of the respondent debtors (CBJ), holding \$16 million of registered mortgages against three parcels of land owned by CBJ in the area of Stayner, Ontario. These mortgages bear interest at the rate of 13%. The applicant seeks the appointment of a receiver over these properties for the purposes of realization and payment of the outstanding mortgages.
- [2] This application was before Justice Steele on December 19, 2023. At that time, the debtor sought, and obtained, an adjournment of 118's receivership application. The basis for the adjournment was to enable the debtor some time to proceed with a sales process it had already undertaken with Royal LePage. Although the debtor asked for a six-month adjournment, Justice Steele granted the adjournment to January 26, 2024, a period of a little over five weeks. At the new return date, the debtor was to report on likely buyers as a result of the Royal LePage sales and marketing program and the status of any prospective sale transactions.
- [3] On the return, the debtor and the second and third mortgagees (the Niagara lenders) now seek a further adjournment.
- [4] The Niagara lenders served notices of default under their mortgages on January 8, 2024. These notices make demand for payment of over \$55 million owed under second and third mortgages. Further, these defaults triggered increases in interest payable under the terms of the Niagara lenders' mortgages to 24% per annum, compounded monthly.
- [5] Since December 19, 2023, there have been no letters of intent and no offers. The properties were not listed on the MLS. There is no evidence of any pending transactions or even serious interest. The listing has just been reduced from \$70 million to \$60 million. Thus, the proposed listing price is now less than the amount of debt now claimed to be owed by 118 and the Niagara lenders.
- [6] The Niagara lenders ask for "a few weeks" to come up with a deal or a refinancing plan. There is no evidence offered of what that might be or of any prospects. There is certainly no indication of any willingness to assume the 118 debt. Further, the Niagara lenders had counsel who attended on the December 19 motion before Justice Steele. The Niagara lenders were well aware of the issues and the limited scope of the adjournment. The fact that they recently chose to retain new counsel does not assist them. They too have had months to come up with a plan or an alternative to the evolving and deteriorating financial situation which is now upon them, and five weeks since the attendance before Justice Steele. Their first attempt to file material was effectively the morning of the hearing.
- [7] In my view, this latest adjournment request is based on nothing more than a wing and a prayer and must be denied.
- [8] The debtor has not been transparent with the applicant and has provided no information or updates on the Royal LePage marketing program. It has changed the listing price without consultation. The debtor clearly has no capacity whatsoever to sustain the heavily leveraged properties and service the mortgages. The debtor itself filed no new evidence for the January 26, 2024 hearing. The only new evidence CBJ offers is the opinion of Royal LePage, to the effect that it would be detrimental to ongoing marketing efforts to cut

Royal LePage loose at this point. Notably, Royal LePage offers no evidence of imminent deals or even likely prospects.

- [9] There is no doubt the applicant's loans are in default. There is no dispute that 118 has first in priority security. While there is a dispute about the enforceability of certain "participation payments", this dispute is relevant to priority and distribution issues, not whether there are grounds for the appointment of a receiver in the first instance. The 118 loan documentation provides for the appointment of a receiver. The debtor has not been transparent or co-operative with 118 since December 19. The time given to the debtor by Justice Steele has not proven effective or fruitful. As noted, the situation has gotten worse, a lot worse, not better. Ongoing interest accumulation has skyrocketed as a result of the default notices delivered by the Niagara lenders. For good reason, the applicant has lost all confidence in the debtor.
- [10] Given the size and value of the properties, the amount of the debts, the complexity of the required process of orderly realization and distribution, and the number of stakeholders and mortgagees, it is appropriate to have a court appointed officer take charge. This will ensure transparency and the opportunity for stakeholders to be heard. The application for the appointment of RSM Canada Limited as Receiver is granted.
- [11] The Niagara lenders also asked, in the alternative, for the appointment of their own choice of receiver. No motion was brought for this relief. There was a vague and unspecified concern raised about "conflict of interest". I give no credence to this argument. The alleged concern over a conflict concerns 118 and its relationship to the law firm of Bennett Jones. This has nothing to do with the proposed receiver, Mr. Tannenbaum of RSM. On the record before me, there is no basis for making any findings concerning conflicts (the applicant has also raised conflict issues about Mr. Hoffman, the deponent for the Niagara lenders, and his relationship to CBJ), and certainly none in respect of RSM.
- [12] No black line to the Model Order was circulated. The applicant is required to do so. I expect all counsel to work co-operatively to sort out any issues with the form of the order. This is not, obviously, an invitation to re-litigate issues already dealt with or to seek tactical or other collateral advantages.
- [13] The appropriate order as approved by all counsel shall be delivered to my attention through my registrar (if it is ready during business hours on January 26, 2024) or through the Commercial List office if it is not. If counsel are not able to resolve the form of the order, I may be spoken to.
- [14] Finally, the debtor has suggested that it would not be financially prudent to jettison Royal LePage's efforts at this stage, in favour of a completely new solicitation and sale process, which could take months and involve time consuming and costly court attendances. RSM is well aware of its obligations to the court and to the stakeholders to maximize value for the benefit of all. It is not my role, at the outset, to direct the Receiver as to what course of action it must take. I am sure (and have been assured that) RSM will carefully consider all proposals for how to achieve the highest value in any realization plans, including whether the ongoing work of Royal LePage is sufficient and appropriate in all the circumstances.



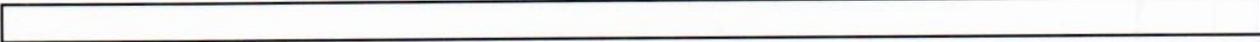
Penny J.

# **APPENDIX “G”**

Original & Entered



\$250



[Rule 3.25]

COURT FILE NUMBER **2401-18658**

COURT **COURT OF KING'S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

PLAINTIFF **CBJ DEVELOPMENT INC.**

DEFENDANTS **URSATAUR CAPITAL MANAGEMENT L.P., ANDREW COCKWELL, IAN COCKWELL and MUTENDE EQUITIES LTD.**

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **c/o CBJ DEVELOPMENTS INC. 100 CARR CRESCENT, OKOTOKS AB T1S1E2 ATTENTION: K. ZACHARIAS EMAIL: [kimberleyz@cbjdevelopments.com](mailto:kimberleyz@cbjdevelopments.com)**

**NOTICE TO DEFENDANT(S)**

**You are being sued. You are a defendant.**

**Go to the end of this document to see what you can do and when you must do it.**

**Note: State below only facts and not evidence ( Rule 13.6)**

**Statement of facts relied on:**

12/23/2024 12:20:45 PM YD  
 DOCUMENT #: 2401-18658  
 COMMENCEMENT FEES \$250.00

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TOTAL \$250.00  
 Debit \$250.00  
 Item count: 1  
 Trans: 85879 050101660-001001

1. The Plaintiff CBJ Developments Inc. (hereinafter referred to as the "Plaintiff") is an Ontario Body Corporate which carries on, inter alia, a land and building acquisition and development business throughout Canada and the United States.
2. The Defendant Ursataur Capital Management L.P. ("Ursataur") is an Ontario Body Corporate which represents itself as a "Private Lender" and to the Plaintiff's best knowledge, information and belief is in the business of facilitating the financing and/or acquisition of commercial, industrial and residential projects.
3. The Defendant Andrew Cockwell ("Andrew") is, to the Plaintiff's best knowledge, information and belief, a managing partner/director of Ursataur, a resident of Oakville, Ontario and from June 2022 to and including January 2023 was actively engaged with the Plaintiff on all matters relating to the subject matter of this legal action;
4. The Defendant Ian Cockwell ("Ian") is, to the Plaintiff's best knowledge, information and belief, a shareholder and manager of Ursataur, a resident of Oakville, Ontario and from June 2022 to and including January 2023 participated on an ongoing basis with Andrew and the Plaintiff on all matters relating to the subject matter of this legal action;
5. The Defendant Mutende Equities Ltd. ("Mutende") is a private financial lender incorporated pursuant to the Canada Business Corporations Act and maintains its head office in the Province of Ontario; Public corporate records disclose that Ian Cockwell is the sole director of Mutende.
6. Except as the context otherwise requires, all of the named Defendants shall hereinafter collectively be referred to as the "Defendants".

**A. THE FACTS / CHRONOLOGY**

7. This Action relates to the proposed purchasing, financing and redevelopment, marketing and sales/rental of a vacant office tower located in downtown Calgary at 801- Seventh Ave. S.W. Calgary, Alberta, and is hereinafter referred to as "Tower 37" and whose legal description is:

DESCRIPTIVE PLAN 9210939  
 BLOCK 46  
 LOT 15 'A'  
 EXCEPTING THEREOUT ALL MINES AND MINERALS

and

PLAN "A1"  
 BLOCK 34  
 LOTS 21 TO 26 INCLUSIVE  
 EXCEPTING THEREOUT: (AS TO SURFACE ONLY)  
 THE ROAD WIDENING AND CORNER CUTS ON PLAN 8111565

The lands upon which Tower 37 is situated shall hereinafter be referred to as the "Tower 37 Lands".

8. The Plaintiff entered into a conditional written Purchase and Sale Agreement (the "PSA") with the various registered and beneficial owners of Tower 37 (collectively the "801-7th Ave Owners") on Jan 5, 2022 to purchase Tower 37 for a total purchase price of 65 Million Dollars with a March 15, 2022 closing date (the "Closing Date").
9. From the time that the Plaintiff entered into the PSA, it's intention and concept for the development and use of Tower 37 was unique and to the best of the Plaintiff's knowledge, information and belief, had never been considered or proposed by any previous 3rd party, including any of the Defendants who, in prior dealings with the 801-7th Ave Owners and their representatives, attempted to purchase Tower 37 and were therefore very familiar with the building itself, the Tower 37 Lands and the challenges related to the purchase and redevelopment thereof.
10. Because of the unique nature of Tower 37, including:
  - a) Its location, being directly on the LRT line in downtown Calgary;
  - b) Steel/concrete construction with open span construction;
  - c) No post tensioning;
  - d) Q-deck under slab grid plenums;
  - e) Floors being slab on grade; and
  - f) Size

the Plaintiff determined that it could redevelop Tower 37 from an empty office tower into a residential/office/commercial mixed-use property which would align with the City of Calgary's Downtown Calgary Development Incentive Program to support redevelopment of the City of Calgary's downtown by converting empty office space into attractive, affordable and usable residential with mixed retail/office space available for rental and ownership.

11. Based on the above, the Plaintiff developed the following redevelopment plan for Tower 37 which included some or all of the following:
  - a) Conversion of Tower 37 from office space into (primarily) residential and live/workspace units;
  - b) Creating a separate strata title for each floor in Tower 37 so that each floor in the building would have a separate legal title and could be dealt with separately as its own unique condominium unit;
  - c) Renovations to several floors in Tower 37 into residential units, some with combined office space for professional services such as medical, dental or "work at home" businesses;
  - d) Sale and/or lease of up to 31-34 floors in Tower 37, on a floor by floor basis to owner occupants, tenants and/or investors;
  - e) Development of two upscale amenity floors for use by all owners and occupants;

- f) Applying for all municipal, provincial and/or federal grants, loans and loan guarantees available for conversion of downtown Calgary office buildings into residential units to offset some of the conversion and redevelopment costs;
- g) Creating a "Hive" concept consisting of a collection of innovative companies to be grouped as "communities" within Tower 37 (tech, clean energy, services etc.) in which they could collaborate and thrive; The "Hive" would also include supporting business services as well as medical and food availability to become a one-stop eco system;
- h) Creating a "University of Calgary (or other post-secondary school) Common" being a distinct community including Tower 37, Century Gardens, nearby buildings and a future building for the northwest corner of Century Gardens; Tower 37 would have lecture rooms, labs, shopping, living and administration offices complete with a large supermarket and food court which would occupy space on the first 2 floors of Tower 37; Further amenities would include private rooms, shared amenities, quiet study spaces, lab facilities, conference rooms and screening theatres;
- i) Providing for a mixed use of commercial usage on the first 2 floors of Tower 37 potentially including a large grocery store chain location and other related retail and food services;
- j) Such further and other particulars as the Plaintiff shall provide to the Defendant prior to trial and prove before this Honorable Court at trial.

(those matters set out in (a) – (j) above are hereinafter collectively referred to throughout this Statement of Claim as the "Plaintiff's Tower 37 Unique Concept")

12. The PSA included, inter alia, the following provisions:

- a) A Purchaser's Condition Precedent (the "Purchasers Condition") that stated as follows:

*"on or before 5:00 p.m. (MDT) on the Condition Date, the Purchaser shall give the Vendor written notice confirming that the Purchaser's board of directors has approved the transactions contemplated by this Agreement and the Purchaser is satisfied, in its sole and absolute discretion, with all legal, physical and financial aspects of the Property, including but not limited to, its inspections thereof, the development and redevelopment or repurposing potential thereof, the title thereto and condition thereof, and all documents and materials delivered by the Vendor or made available to the Purchaser pursuant to sections 5.1 and 5.2 hereof."*

- b) A specific Vendor's representation and warranty that there was no outstanding or threatened litigation relating to Tower 37 other than the CNOOC Litigation (the "CNOOC Litigation") of which the Plaintiff was aware. The specific representation and warranty read as follows:

*... except for the CNOOC Litigation, or as otherwise disclosed in writing by the Vendor, to the best of the Vendor's knowledge there are no claims, actions or proceedings which are pending or threatened with respect to the Property or arising from the Vendor's ownership interest in the Property;*

(hereinafter the "801-7th Ave Owners Litigation Representation and Warranty").

13. The Condition Date for the Plaintiff to waive the Purchasers Condition referred to in the PSA was February 7, 2022 (the "Condition Date");
14. The PSA further required the Plaintiff to post a deposit of \$2 Million Dollars (the "Deposit") with its solicitor to be held in trust and forfeited in full to the 801-7th Ave Owners upon waiver of the Purchasers Condition if the Plaintiff failed to complete the purchase, failing which it would be returned in full to the Plaintiff.
15. As agreed, the full Deposit was placed in trust with the Plaintiff's solicitor at the time of the signing of the PSA;
16. The PSA was then amended by the Plaintiff and the 801-7th Ave Owners by way of Amending Agreement dated February 7, 2022 (the "Amending Agreement").
17. The Amending Agreement provided that:
  - a) The Closing Date was changed to March 31, 2022;
  - b) The Condition Date was changed to March 15, 2022;
  - c) The Deposit that the Plaintiff was required to pay was changed as follows:
    - (i) of the 2 Million Dollars deposited with the Plaintiff's solicitor as required in the PSA, 1 Million was unconditionally releasable to the 801-7th Ave Owners on February 7, 2022 to be applied against the Purchase Price or forfeited to the 801-7th Ave Owners in the event that the Plaintiff waived the Purchasers Condition and failed to complete;
    - (ii) payment by the Plaintiff of a further deposit of \$500,000 to its solicitor in trust on February 7, 2022 on the same terms and conditions as set out in (i) above;
    - (iii) payment by the Plaintiff of a further deposit of \$500,000 to its solicitor in trust on February 28, 2022 on the same terms and conditions as set out in (i) above.
  - d) Accordingly, the Deposit was increased from 2 Million Dollars to 3 Million Dollars.
18. As required by the Amending Agreement, the Plaintiffs solicitor forwarded 1 Million Dollars to the 801-7th Ave Owners' solicitor Bennett Jones ("Bennett Jones") on February 17, 2022 for unconditional release to the 801-7th Ave Owners.
19. At the time that the Plaintiff unconditionally released the 1 Million Dollar deposit to the 801-7th Ave Owners via Bennett Jones, it was not aware of the Ayrshire Litigation (as described in paragraphs 20-22 below) although the 801-7th Ave Owners were certainly aware of the existence of the Ayrshire Litigation as described in paragraph 20 below.
20. While in the process of conducting its due diligence pursuant to the Purchasers Condition, the Plaintiff ultimately discovered that a previous conditional purchaser of Tower 37, namely Ayrshire Real Property Corporation ("Ayrshire") had commenced an Alberta Court of King's Action (Action

no. 22012-01470) on February 1, 2022 naming the 801- 7th Ave SW Owners as Defendants (the "Ayrshire Litigation").

21. Ayrshire was claiming, inter alia, that the 801-7th Ave Owners had breached certain "exclusivity" provisions in a Letter of Intent it had entered into with the 801-7th Ave Owners for the purchase of Tower 37.
22. As part of the Ayrshire Litigation, Ayrshire was seeking judgment of at least 5 Million Dollars in damages from the 801-7th Ave Owners plus an "Attachment Order" of any funds to be received by the 801-7th Ave Owners on their sale of Tower 37 to any other 3rd party.
23. The 801-7th Ave SW Owners became aware of the Ayrshire Litigation on or shortly after February 1, 2022 but did not disclose same to the Plaintiff.
24. These events all took place prior to the entering into by the Plaintiff and the 801-7th Ave SW Owners of the Amending Agreement.
25. The Plaintiff only became aware of the existence of the Ayrshire Litigation on or about March 6, 2022. Specifically, but without limiting the generality of the foregoing, throughout the period of time between February 1, 2022 and March 6, 2022, the 801 – 7th Ave Owners did not disclose the existence of the Ayrshire Litigation to the Plaintiff or its agents or representatives.
26. When it became aware of the Ayrshire Litigation, the Plaintiff's position was that the 801-7th Ave Owners had deliberately and intentionally failed to disclose the Ayrshire Litigation and that this was a material breach of the Tower 37 Owner's Litigation Representation and Warranty.
27. The result and effect of said material breach was that it became impossible for the Plaintiff to waive the Purchasers Condition or consider completing the purchase of Tower 37 pursuant to the terms set out in the PSA as amended, for a number of reasons including:
  - a) The existence of the Ayrshire Litigation created a serious issue as to whether or not the 801-7th Ave Owners were in position to complete a sale of Tower 37 to the Plaintiff;
  - b) The existence of the Ayrshire Litigation would deter potential investors or lenders from becoming involved in the acquisition/redevelopment of Tower 37 until same was completely resolved;
  - c) Ayrshire had the right to register a Certificate of Lis Pendens against title to the Tower 37 Lands as part of the Ayrshire Litigation which would have made it impossible to transfer title or register financing to complete the registration of title into the Plaintiff's name subject to its new financing free and clear of all prior encumbrances;
  - d) Ayrshire in fact did register its Certificate of Lis Pendens on title to the Tower 37 Lands in late April / early May 2022; and
  - e) Such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove to this Honorable Court at trial.

28. The existence of the Ayrshire Litigation resulted in additional negotiations between the Plaintiff and the 801-7th Ave Owners who, through their agents, represented to the Plaintiff that there was no merit to the Ayrshire Litigation and that the 801-7th Ave Owners would be prepared to indemnify the Plaintiff from any claims made against the Plaintiff and its lenders or investors by any party to the Ayrshire Litigation with respect to the Plaintiff's Tower 37 purchase and redevelopment.
29. As a result of said verbal representations and the indemnification offer made by the 801-7th Ave Owners regarding the Ayrshire Litigation, the Plaintiff and the 801-7th Ave Owners agreed to some additional amendments to the PSA which were then set out in a Second Amending Agreement dated March 23, 2022 (the "Second Amending Agreement").
30. The Second Amending Agreement provided for the following:
  - a) A full indemnification in favor of the Plaintiff and its lenders/investors on all matters relating to the Ayrshire Litigation and the CNOOC litigation up to a maximum of \$3 Million Dollars in total;
  - b) The Closing Date was changed from March 31, 2022 to April 15, 2022 with the option for the Plaintiff to extend that Closing Date to April 30, 2022 if the Plaintiff paid a substantial per diem penalty payment to the 801-7th Ave Owners for each day of such extension.
  - c) The Condition Date was changed from March 15, 2022 to March 31, 2022;
    - (i) The "Deposit Provisions" were amended as follows:
      - (i) An acknowledgment that 1 Million dollars of the Deposit had been unconditionally released to the 801-7th Ave Owners January 17, 2022;
      - (ii) An additional \$500,000 of the Deposit deposited with its solicitor would be released to the 801-7th Ave Owners on March 22, 2022;
      - (iii) Prior to the Condition Date, the Plaintiff had the option to release up to 1 Million Dollars out of the balance of the Deposit held in trust with its solicitor directly to "its lending sources for the purpose of paying required commitment fees".
  - d) If the Purchasers Condition was not satisfied by the Condition Date, the Plaintiff would forfeit those funds released as per c) (i) and (ii) above and only be entitled to a return of the balance of the Deposit that was being held by the Plaintiff's solicitor.
31. In accordance with the terms of the Second Amending Agreement, the Plaintiff caused its solicitor to release \$500,000 representing the payment referred to in paragraph 30 (c)(ii) above to Bennett Jones.
32. In further reliance on the verbal representations made to the Plaintiff by or on behalf of the 801-7th Ave Owners to the Plaintiff regarding the Ayrshire Litigation and the indemnification set out in the Second Amending Agreement, the Plaintiff waived the Purchasers Condition by written notice to the 801-7th Ave Owners on April 1, 2022, thereby placing at risk the Deposit of \$1.5 Million

Dollars already released, plus the balance of the Deposit it had paid into trust with its solicitor, if it did not complete the terms of the PSA as amended, on or before April 30, 2022.

33. Despite its best efforts, the Plaintiff was not in a position to complete the purchase of Tower 37 on or before April 30, 2022 for a number of reasons all beyond its control, including:
- a) notwithstanding the indemnification provision set out in the Second Amending Agreement, there was significant reluctance by lenders and investors to commit to equity participation or confirm financing in light of the ongoing existence of both the CNOOC and Ayrshire Litigation;
  - b) ongoing discussions and negotiations with the City of Calgary on matters relating to:
    - (i) obtaining preliminary approvals for the strata title conversion of the Tower 37 floors;
    - (ii) the “grant” application process to access funds that the City of Calgary was making available for downtown office building conversions to residential housing;
    - (iii) Redesignation of Tower 37 from office to residential or mixed residential or mixed residential, educational or other purposes;
    - (iv) Specific renovations/ remedial work to portions of Tower 37- interior and exterior and the Tower 37 Lands to meet City of Calgary requirements for those items set out in (i) – (iii) above; and
    - (v) Such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before this Court at trial;
  - c) Delays as a result of Covid restrictions which delayed physical inspections of various aspects and systems of the building itself, the Tower 37 Lands and adjoining lands which were to have formed part of the “Hive” collective and/or the post-Secondary community as per the Plaintiffs Tower 37 Unique Concept;
  - d) Ongoing breaches of the PSA by the 801 7th Ave Owners of their various common law, statutory and equitable obligations to the Plaintiff including:
    - (i) failing to take reasonable or best efforts to comply with and allow the Plaintiff to comply with the PSA as amended;
    - (ii) failing to take reasonable or best efforts to meet and allow the Plaintiff to meet the terms and conditions of the PSA as amended;
    - (iii) failing to exercise its discretion reasonably and in good faith; and
    - (iv) failing to perform its obligations under the PSA as amended in honesty and good faith;

all as more particularly specified in the CBJ Litigation referred to in paragraph 36 below.

34. By April 30, 2022, the Plaintiffs had released 1.5 Million Dollars of the Deposit to the 801-7th Ave Owners and were highly motivated to complete a purchase of Tower 37 in order to:

- a) proceed with what it considered to be a project which, because of the Plaintiff's Tower 37 Unique Concept, would generate millions of dollars in net revenue and net profit; and
- b) preserve the Deposit funds already released;

and took the position that as a result of those ongoing breaches of the PSA as set out in paragraph 33(d) above, together with verbal statements, conduct and actions of the 801-7th Ave Owners to the Plaintiff and its agent and representatives that the 801 7th Ave Owners had in fact expressly or impliedly agreed to an extension of the closing date of the PSA beyond April 30, 2022 (the "Extended PSA");

35. Accordingly, from and after April 30, 2022, the Plaintiff and the 801-7th Ave Owners, initially through their agents and representatives and then via direct communications with the 801-7th Ave Owners that took place as late as December 2022, continued to negotiate and work together towards completion of the purchase of Tower 37, which CBJ intended to include a credit to the Plaintiff of the aforescribed \$1.5 Million Dollar Deposit previously released to the 801-7th Ave Owners as aforescribed as the 801-7th Ave Owners were highly motivated to complete a sale of Tower 37 to the Plaintiff.

36. In addition, to preserve its legal and equitable rights against the 801-7th Ave Owners in the event that the ongoing negotiations with the 801 7th Ave Owners might not be successful or enable the Plaintiff to finalize the Extended PSA or any other agreement with the Tower 37 Owners for the purchase of Tower 37, the Plaintiff commenced Court of Queen's Bench Action #2201 04995 on May 2, 2022 against the 801-7th Ave Owners (the "CBJ Litigation") seeking inter alia:

- a) specific performance of the PSA as amended;
- b) a Certificate of Lis Pendens against title to the Tower 37 Lands giving notice to all third parties of the existence of the CBJ Litigation;
- c) substantial damages; and
- d) an order for an interim injunction restraining the sale of Tower 37 to other 3rd parties pending resolution of said action.

37. CBJ instructed its solicitor not to serve the CBJ Litigation commencement documents on the 801-7th Ave Owners pending further instructions.

38. Concurrent with the filing of the CBJ Litigation, the Plaintiff did file and register a Certificate of Lis Pendens against title to the Tower 37 Lands;

39. At this same time, the Plaintiff continued its efforts to finalize both equity investment and loan financing for the Tower 37 Purchase, and which included, but was not limited to those specific matters referred to in paragraph 65 below;

40. On or about early June 2022, by way of an introduction from an independent third party, the Plaintiff was introduced to the Defendants Ian and Andrew as knowledgeable and experienced lenders with many viable financial contacts who could provide or facilitate the necessary financing required by the Plaintiff to complete the purchase and redevelopment of Tower 37 and that said financing and other related assistance (including potential equity participation) could be provided through their private lending firm Ursatur and/or related entities.
41. From the time the Plaintiff was first introduced to the Defendants, and at no time until the Defendants Loan Offer (as described under 47 below) was agreed to by the Plaintiff on July 7, 2022, did the Plaintiff represent to the Defendants that it had a current written Purchase and Sale Agreement in place with the 801-7th Ave Owners, but simply advised the Defendants that they had a legal 'angle' on the purchase of Tower 37 (which included the CBJ Litigation and the Extended PSA) and were in ongoing negotiations with the 801-7th Ave Owners, their lawyers and representatives, who were highly motivated to work with the Plaintiff and who they considered a serious buyer, to come up with a viable final, binding and enforceable agreement for the purchase of Tower 37.
42. On June 17 2022 as requested by the Plaintiff, Ian and Andrew caused Ursatur to enter into the Plaintiff's standard form Non-Disclosure Agreement (the "NDA"), it being understood and agreed that the NDA would apply not only to Ursatur but also to Ian, Andrew and all other parties associated with them who would be involved in dealings with the Plaintiff on Tower 37, which ultimately included Mutende.
43. The NDA contained several provisions which restricted both the use by the Defendants of "Confidential Information" regarding Tower 37 developed and generated by the Plaintiff as well as potential action which the Plaintiff could take against the Defendants in the event of the Defendants attempting to acquire any form of ownership interest in Tower 37 or having other dealings relating to Tower 37 other than in conjunction with the Plaintiff.
44. Specifically, the NDA included the following provisions:
  6. *Recipient agrees they will not engage in any transaction or disclose any Confidential Information that will deprive or interfere with business opportunities disclosed by CBJ pursuant to this Agreement...*
  7. *A breach of this Agreement shall render the Recipient liable to CBJ for any and all damages and injuries incurred by CBJ as a result thereof, and shall obligate the Recipient to account to CBJ and turn over to CBJ any and all monies, profits, and other direct or indirect consideration or benefits which the Recipient derives from any unauthorized Disclosure, use or exploitation of the Confidential Information, without prejudice to other legal or equitable rights or remedies that CBJ may have as a result of a violation of the terms hereof...*
  9. *In the event of any breach or threatened breach of any of the terms of this Agreement by the Recipient, CBJ is entitled to recover their reasonable attorneys' fees and costs incurred in connection with any action or proceeding arising out of or relating to any such breach or threatened breach...*

12. Notwithstanding any provision to the contrary set out in this Agreement or any other agreement entered into CBJ and the Recipient, in the event that CBJ does not proceed with the Project(s), the Recipient covenants, undertakes and agrees:

a) Should CBJ terminate its interest in the Project(s) while this Agreement is in effect or for a period of one(1) year from the date that CBJ formally terminates its interest in the Project(s), whichever comes later, Recipient agrees they shall not initiate any direct or indirect communications with any third parties introduced to Recipient by CBJ under this Agreement ( including without limitation any listing agents or third party project owners if applicable) for the potential acquisition of an interest or further participation in the Project(s) without Recipient first receiving written approval from CBJ. Such approval shall include an agreement between the parties on mutually acceptable compensation to CBJ for first introducing the Recipient to the Project(s); and

b) Recipient agrees they shall not use any Confidential Information previously provided to Recipient by CBJ or its Representatives without first obtaining CBJ's prior written consent.

45. Once the NDA was in place and executed by and on behalf of the Defendants, the Plaintiff made available to the Defendants all of the information it had both prepared/created or developed including:

- a) all Information relating to Tower 37 and the Plaintiff's Tower 37 Unique Concept;
- b) Tower 37 documentation, reports, financial projections, appraisals, development plans, reports regarding the alleged accumulation of asbestos in the building and other information relating to the CNOOC Litigation, building structure and ability to strata title individual floors in the building, City of Calgary information regarding transitioning empty downtown office buildings into residential and/or mixed use buildings, designs, costing information and all marketing material relating to the above, including videos;
- c) its own financial status as from time to time requested by the Defendants, including profiles of its owners and management team;
- d) proof of the Deposit payments made at the time of the entering into of the PSA together with particulars of all steps it was taking to confirm that it had sufficient other funds available for closing on the PSA;
- e) details of both the Ayrshire Litigation and the CBJ Litigation;
- f) such further and other information and documentation, details of which the Plaintiff shall provide to the Defendants prior to trial and prove before this Honorable Court at trial.

46. Because the Defendants:

- a) were very familiar with Tower 37 having previously attempted to purchase same in 2021;
- b) had therefore previously completed its own due diligence on the building and the Tower 37 Lands; and

- c) were still very interested in both providing financing for this acquisition and redevelopment and also potentially taking an equity position in Tower 37,

there were verbal discussions between the Plaintiff and the Defendants to the effect that in exchange for the Defendants facilitating the necessary financing required by the Plaintiff on a simplified and expedited basis without delays or protracted due diligence requirements, the Plaintiff would agree to grant the Defendants a minority 20% ownership and equity position in the purchase and redevelopment of Tower 37 thoroughly enhancing the Defendants' position and significantly increasing the Defendants' return on its financing investment;

- 47. Based on the above, the Defendants presented a "Loan Offer" letter to the Plaintiff through Mutende on July 4, 2022 (the "Defendants Loan Offer") which was a simple document offering 55 Million Dollars in financing to the Plaintiff subject only to some very basic pre-conditions that were easily satisfiable and devoid of any extensive complex or onerous pre-conditions or "up front" fees or commissions that were standard for any other potential financings that the Plaintiff was negotiating at that time.
- 48. Specifically, the Defendants Loan Offer:
  - a) required the Plaintiff to pay a fee to Mutende equal to 2% of the gross amount of the loan in the amount of 1.1 Million Dollars that was only payable on closing of the purchase of Tower 37;
  - b) required the Plaintiff to pay, inter alia, all of the Defendants "reasonable out of pocket expenses associated with the financing, the preparation, negotiation, execution and administration of the loan documents including the reasonable fees of one primary counsel engaged by the Lender";
  - c) granted Mutende a 20% equity position in the project (as had been previously verbally agreed); and
  - d) required the Plaintiff to provide evidence that it has received an equity contribution in a minimum amount of 20 Million Dollars for the equity down payment for the purchase of Tower 37, which the Plaintiff had previously advised the Defendants it was in the process of arranging;
- 49. The Defendants Loan Offer did not include any specific restriction which prevented the Plaintiff from placing secondary financing in place against the Tower 37 Lands (either freehold or leasehold title) either to secure equity investment or debt financing.
- 50. The Defendants Loan Offer also included the following statement:
 

*We have conducted significant work to date and have intimate knowledge of your business and prospects. We value our relationship with you and look forward to working together to finance the Acquisition.*
- 51. The Plaintiff accepted the Defendants Loan Offer and signed off on it on July 7, 2022 thereby making it valid, binding and legally enforceable as to its terms and which became an integral part of the Plaintiff/Defendants Agreement as described in Section "C" below;

52. The Plaintiff states and the fact is that from and after the date that the Defendants executed the NDA and signed off on the Defendants Loan Offer, all communications and negotiations between the Plaintiff and the Defendants were open, complete and transparent as to the status of the Plaintiff's negotiations with the 801-7th Ave Owners for the completion of the purchase of Tower 37 pursuant to the Extended PSA and/or the verbal agreement made with the 801-7th Ave Owners to purchase Tower 37 at a lower purchase price;
53. Specifically, but without limiting the generality of the foregoing:
- a) In July 2022 on request by the Defendants, the Plaintiff for a second time, specifically disclosed to the Defendants the chronological history of its dealings with the 801-7th Ave Owners commencing with the initial entering into of the PSA, the Amending Agreement, the Second Amending Agreement and all subsequent developments after the alleged expiry of the PSA on April 30, 2022;
  - b) the Plaintiff kept the Defendants fully abreast, on a current real time basis of all of the steps it was taking to:
    - (i) negotiate and finalize an agreement with the 801- 7th Ave Owners and their representatives to complete an agreement between them for the purchase of Tower 37 at a price equal to or lower than the original 65 Million Dollar purchase price pursuant to the Extended PSA or other verbal agreement; and
    - (ii) secure its equity requirements necessary to meet the terms of the Defendants Loan Offer;
  - c) the Plaintiff advised the Defendants of the commencement of the CBJ Litigation and the registration of the CBJ Certificate of Lis Pendens on title to the Tower 37 Lands and the fact that, as stated in the CBJ Litigation Commencement Document, it took the position that the Defendants had by their ongoing communications and actions extended the Closing Date of the PSA or alternatively, had verbally agreed with the Plaintiff to sell it Tower 37 on terms and conditions that were equal to or better than those set out in the PSA;
  - d) Such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before this Honorable Court at trial.
54. As a specific example of the statement set out in paragraph 53 (b) above, in contemplation of how the Defendants proposed to provide the business structure and necessary financing for the purchase, Andrew sent the following email to the Plaintiff on July 3, 2022:

*Jeff*

*Ian and I were working through the modelling and thinking about structure today. Wondering if you would have an aversion to holding the building in a flow through entity (a limited partnership etc).*

*The reason being, our respective analysis (and the modelling) envisions no taxes which isn't quite right if the building owner is a corp ( unless we are mistaken)...*

*Just flagging that this is something that may need some thinking and certainly welcome your thoughts.*

55. On or about July 23, 2022 the Defendants forwarded a draft loan agreement to the Plaintiff with Mutende as lender and the Plaintiff as borrower (the "Mutende Loan Agreement") providing for the 55 Million Dollars in debt financing in accordance with the terms of the Defendants Loan Offer, by which time the Defendants were in possession of the information as described in paragraph 53 above.
56. Between the date of receipt of the Mutende Loan Agreement on July 22, 2022. and including January 2023, the Plaintiff in good faith, and at considerable expense, attempted to finalize the terms of said Mutende Loan Agreement into an unconditional, final, binding and mutually acceptable funding agreement as part of the Plaintiff/Defendants Agreement as hereinafter defined in Section "C" below, which would have allowed them to finalize the purchase of Tower 37.
57. Despite the fact that they were well aware that the Plaintiff did not have had a final and definitive written purchase agreement in place with the 801-7th Ave Owners for the purchase of Tower 37, there were ongoing and continuous discussions and communications between representatives of the Plaintiff and all Defendants during this process predicated on the basis of the Extended PSA or alternatively, that there was a verbal agreement with the 801-7th Ave Owners to purchase Tower 37 at a lower purchase price;
58. The Defendants continued to work closely with the Plaintiff pursuant to the Plaintiff/Defendants Agreement including finalizing the terms and conditions in the Mutende Loan Agreement, structuring their mutual business arrangement for maximum tax benefit, assisting with introductions to parties for equity participation funding, and generally taking a very active role in all matters relating to the acquisition, financing, redevelopment and marketing of Tower 37.
59. This is evidenced by a number of communications between the Plaintiff and the Defendants at that time including the following emails from the Defendants to the Plaintiff:
  - a) an email from the Defendants dated August 22, 2022 to the Plaintiff stating:

*You should have a revised loan agreement and mortgage doc today from Torys;  
We are also generating a short issues list of outstanding items, which I should have for you this aft.*
  - b) an email from the Defendants to the Plaintiff dated September 14, 2022 stating:

*Jeff/Chris*

*Thanks for your time today. Attached is an approach to move forward more quickly. I've tried to build it in the same way for the original structure and the go-forward; essentially we are prepared to plug the equity hole.*
  - c) an email from the Defendants dated October 12 which states in part:

*As to the latter, we are willing to explore a reduction in equity given a reduced purchase price.*

60. Further, in accordance with the Defendants Loan Offer, the Purchaser/Defendants Agreement and as a show of good faith and commitment to working with the Defendants to complete the purchase of Tower 37, on or about August 15, 2022 the Plaintiff paid the sum of \$50,000 to the Tory's law firm (retained by the Defendants to represent them as specifically arranged by the Plaintiff) as a retainer to cover their fees and disbursements.
61. In what the Plaintiff considers to be a blatant conflict of interest, Tory's then represented the Defendants on the Defendants Tower 37 Purchase as described below notwithstanding the fact that the Plaintiff went to considerable effort and expense to identify Tory's as a law firm that could represent the Defendants because many other major law firms were unable to do so due to potential conflicts of interest.
62. At this same time the Plaintiff:
  - a) continued to seek out equity participation and secondary debt financing; and
  - b) met directly with one of the 801-7th Ave Owners on at least two occasions in September 2022 to discuss terms and conditions to finalize a new purchase and sale agreement between them; and
  - c) with the Defendants' knowledge and consent, advised the 801-7th Ave Owners at that time (or perhaps even earlier in time) that the Defendants were its funding partners, and they were working together on the purchase of Tower 37.
63. As a result of those negotiations, the Plaintiff states and the fact is that it had a verbal agreement with the 801-7th Ave Owners to purchase Tower 37 at a revised purchase price of 55 Million Dollars;
64. As at September 2, 2022 the Plaintiff had either secured by letter of intent or otherwise, or were negotiating equity investment/ participation from a number of sources and had communicated same to the Defendants, some of the particulars of which included:
  - a) 5 Million Dollars from a 3rd party investor (Lakefront Developments Ltd.) which funds were being held in trust and to be part of CBJ's equity contribution;
  - b) Approximately 4 Million Dollars in fees, deposits, legals, preparation and reports expended to that date by the Plaintiff itself on this Project (acquisition and redevelopment);
  - c) 5 Million dollar verbal offer on one of the Plaintiff's Ontario properties with a written offer to be provided within a week;
  - d) 20 Million Dollar term sheet from individuals who were experienced real estate lenders, with the loan having been arranged by a partner of the Plaintiff's law firm and who had previously provided multi-million dollar financing to the Plaintiff for its land acquisitions in Ontario;

- e) 20 Million Dollar revised loan offer for financing from a third party international lender;
  - f) 10 Million Dollar private loan offer raised from financing on the Plaintiff's Ontario properties;
  - g) 20 Million Dollar private loan from a Western Canadian group;
  - h) Verbal agreement in place with Ayrshire (with written agreements ready to be signed) to have them assist in construction matters relating to the redevelopment of Tower 37 in exchange for their withdrawing or working out a mutually acceptable settlement of the Ayrshire Litigation;
65. Further, the Defendants had also indicated to the Plaintiff that they would if necessary be prepared to consider an equity contribution to "top off" the Plaintiff's equity requirements.
66. All of these updates and information on its sources of financing were provided by the Plaintiff to the Defendants throughout the months of September and into late October;
67. However, despite the Defendants original representations to the Plaintiff that they would simplify and expedite the loan approval process because of their prior knowledge of, and its interest in Tower 37 and the projected profitability of the Plaintiff's Tower 37 Unique Concept, the Defendants rejected the various options for equity funding that the Plaintiffs had presented to the Defendants as set out in paragraph 64 above, thereby unnecessarily extending and delaying the process for finalizing the Mutende Loan Agreement and making it impossible for the Plaintiff to have formalized either the Extended PSA or a new verbal agreement with the 801 7th Ave Owners as referred to in paragraph 63 above at the 55 Million Dollar purchase price.
68. The Plaintiff states and the fact is that the Defendants adopted their position on or about September 15 because:
- a) The Defendants were attempting to force the Plaintiffs to give them a better return on their financing investment potentially including a larger equity position in the Joint Project with the Plaintiff pursuant to the Plaintiff/Defendants Agreement as hereinafter defined; and/or
  - b) Once they heard that the 801-7th Ave Owners had verbally agreed to a reduction in the purchase price from 65 Million Dollars to 55 Million Dollars, they determined that they would attempt to buy Tower 37 themselves at a reduced purchase price without involvement by the Plaintiff.
69. Based on those motives and intentions set out in paragraph 68 above or other possible motives unknown to the Plaintiff, the Defendants rejected the Plaintiff's funding and financing options as set out in paragraph 64 (even though they clearly complied with the pre-conditions set out in the Defendants Loan Agreement) and began making unreasonable demands of the Plaintiff, knowing that by so doing it would likely make it impossible for the Plaintiff to finalize a formal agreement with the 801- 7th Ave Owners to buy Tower 37.
70. For example, on September 14, 2022 the Defendants provided the Plaintiff with a new proposal for the purchase and financing of Tower 37 entitled "Reduced Price and Accelerated Close" and set out three different options for a joint purchase of Tower 37 by the Plaintiff and the

Defendants, all including the Defendants increasing their equity position from 20% to 47% but without committing to provide either:

- a) an expedited approval of the terms and conditions of the Mutende Loan Agreement; or
  - b) specified funds as an equity contribution for the purchase;
71. Based on previous negotiations and communications between the Plaintiff and the Defendants, the Defendants were well aware at that time that the Plaintiff would reject these proposals, but by submitting the proposals would induce the Plaintiff to continue to believe and rely upon the fact that the terms, covenants and Defendants' representations and warranties that formed part of the Plaintiff/Defendants Agreement (as described in Section "C" below), including full compliance with the NDA, remained in full force and effect.
72. A further indication of the Defendant's intention to purchase Tower 37 without involving the Plaintiff is evident in an email communication dated October 13, 2022 from the Defendants to the Plaintiff:
- I think you had an idea like this earlier- same issue now as then, we would look at it from a worst case (there is no more equity) and thus the building is alarmingly thinly equitized 5 of 40, 50 or 60 or whatever).*
- With so little equity we'd be better off doing the deal ourselves as we proposed last year before we met you guys.*
73. In fact, said October 13, 2022 communication referred to in paragraph 72 above was the last substantive communication from the Defendants to the Plaintiff until December 22, 2022.
74. To the Plaintiff's best knowledge, at the same time as the Defendants were communicating with the Plaintiff including the email as set out above on October 13, 2022, the Defendants were privately negotiating a unilateral purchase of Tower 37 with the 801 7th Ave SW Owners to the exclusion of the Plaintiff.
75. Between October 13, 2022 and December 22, 2023, the Plaintiff continued:
- a) its verbal and written attempts to communicate with the Defendants to finalize the terms of the Mutende Loan Agreement and other matters relating to the purchase of Tower 37 pursuant to the Plaintiff/Defendants Agreement but the Defendants intentionally or willfully failed to respond to the Plaintiff until January 18, 2023 with the exception of the December 22, 2022 email referred to in paragraph 77 below;
  - b) its ongoing communications and negotiations with the 801-7th Ave Owners via their representatives;
  - c) to seek out other equity investors and debt financing from third parties including entering into a Letter of Intent with Ayrshire to become an equity participant in the purchase of Tower 37 because of its expertise in building renovations;

- d) Such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before the Court at trial.
76. On or about December 22, 2022, the Plaintiff communicated with the Defendants and again advised the Defendants that it had secured the 20 Million Dollars equity participation it was required to provide for the down payment and provided details thereof to the Defendants including proof of funds held by their equity funders as was independently verified by the Plaintiff's law firm.
77. In response (which was the first and only communication from the Defendants to the Plaintiff since October 13, 2022) the Defendants wrote to the Plaintiff on December 28, 2022 again rejecting this proposal by the Plaintiff and improperly alleged that the Plaintiff's proposal was "transparently nothing" thereby continuing their pattern of conduct preventing the Plaintiff from moving forward to finalize a purchase agreement with the 801-7th Ave Owners while still causing the Plaintiff to believe that the Defendants were honoring the Plaintiff/Defendants Agreement.
78. On or about January 18, 2023, without prior notice and in material and substantive breach of the Plaintiff/Defendants Agreement including the NDA and the Defendants Fiduciary Duties and Obligations (as hereinafter defined) , the Defendants advised the Plaintiff that it had purchased Tower 37 from the Tower 37 Owners (the "Defendants Tower 37 Purchase") but did not provide any details of said purchase to the Plaintiff nor offer the Plaintiff either an equity position in its Tower 37 purchase nor compensation for the costs, expenses and ongoing losses of Net Revenue and Net Profit (as hereinafter defined in Section "F" below) which the Defendants knew or should have known that the Plaintiff had and would incur as a result of their improper and illegal actions.
79. To the Plaintiff's best knowledge, information and belief:
- a) the Defendants' purchase price for Tower 37 was \$39 Million Dollars; and
  - b) the Defendants are currently negotiating with the University of Calgary to own or otherwise occupy space in Tower 37 relying in whole or in part on various aspects of the Plaintiffs Tower 37 Unique Concept;
80. At no time until January 18, 2023 did the Defendants verbally or in writing advise the Plaintiff that they:
- a) were negotiating a purchase of Tower 37 directly or indirectly with the 801-7th Ave SW Owners or their representatives;
  - b) had entered into a purchase and sale agreement for the purchase of Tower 37 from the 801-7th Ave SW Owners;
  - c) were terminating or withdrawing the Defendant Loan Agreement or the Plaintiff/Defendants Agreement with the Plaintiff (for cause or otherwise);
81. Other than the written communication referred to in paragraph 78 above and up to the date of the filing of this Claim, the Defendants have not:

- a) Offered or paid any funds to the Plaintiff as reimbursement to the Plaintiff of the Plaintiff's Out of Pocket Expenditures (as defined in Section "F" below) including a refund of all funds paid by the Plaintiff to the Defendants to cover the Defendants legal expenses;
- b) Offered compensation to the Plaintiff for lost Net Revenue and lost Net Profit (as defined in Section "F" below);
- c) Offered the Plaintiff an equity position in their ownership of Tower 37;
- d) offered the Plaintiff any other form of revenue and/or profit-sharing arrangement in Tower 37;

**B. THE AGREEMENT BETWEEN THE PLAINTIFF AND THE DEFENDANTS**  
**(THE "PLAINTIFF/DEFENDANTS AGREEMENT")**

- 82. The Plaintiff states and the fact is that as a result of, and based on the ongoing dealings, communications, conduct and activities between the Defendants and the Plaintiff relating to their joint and mutual intention to participate in a financing and business arrangement for the purchase, financing, redevelopment, marketing, sale and/or lease of separate floors of Tower 37 pursuant to the Plaintiff's Tower 37 Unique Concept ( the "Joint Project"), the Plaintiff and the Defendants did or are in law deemed to have entered into a valid, binding and legally enforceable agreement referred to throughout this Statement of Claim as the "Plaintiff/Defendants Agreement".
- 83. The Plaintiff/Defendants Agreement commenced in June 2022 and continued in full force and effect, subject to modifications mutually agreed upon between the Plaintiff and the Defendants between June 2022 and January 2023, until January 18, 2023 at which time said Plaintiff/Defendants Agreement was unilaterally, illegally and improperly terminated by the Defendants.
- 84. The Plaintiff/Defendants Agreement included those specific representations and warranties made by the Defendants to the Plaintiff (as set out in paragraph 85 below) which the Defendants knew or ought to have known that the Plaintiff was relying upon;
- 85. Without in any manner limiting the generality of the statement set out in paragraphs 82-84 above, the Plaintiff/Defendants Agreement included the following:
  - a) The Plaintiff and the Defendants would join forces and enter into a financing and business relationship for the purpose of acquiring Tower 37 and then redeveloping it in accordance with the Plaintiff's Tower 37 Unique Concept (the "Joint Project");
  - b) Details of the Plaintiff's Tower 37 Unique Concept, which was proprietary to the Plaintiff and could only be used by the Defendants as part of the Joint Project;
  - c) The Defendants had the financial ability to, and had immediate access to the necessary financing to arrange for and facilitate the financing required to complete the purchase of

Tower 37 and finance the Tower 37 redevelopment costs to facilitate the Plaintiffs Tower 37 Unique Concept plans;

- d) In exchange and in addition to the rate of return on the financing totaling 14% per annum, the Defendants would acquire a twenty (20%) per cent equity position in the ownership of Tower 37 and an entitlement to twenty (20%) per cent of all Net Revenue and Net Profit (as defined in Section "F" below) with the Plaintiff retaining the remaining 80% thereof;
- e) The Plaintiff, on behalf of both the Plaintiff and the Defendants, would continue its negotiations with the 801-7th Ave Owners to finalize the terms of the Extended PSA or a new purchase agreement for Tower 37 at a purchase price of 65 Million Dollars or less, if possible;
- f) For tax minimization purposes, the Plaintiff and the Defendants would structure a limited partnership to finance, acquire, and redevelop Tower 37;
- g) The terms and conditions of the NDA were incorporated by reference into the Plaintiff/Defendants Agreement;
- h) The terms and conditions of the Defendants Loan Offer as subsequently amended or modified by the parties were incorporated by reference into the Plaintiff/Defendants Agreement;
- i) From the outset, the Defendants were advised by the Plaintiff that it did not have a written purchase and sale agreement in place with the 801-7th Ave Owners but relied upon the Extended PSA and ongoing representations from the 801- 7th Ave Owners that they were highly motivated and committed to finalizing an agreement with the Plaintiff to complete the purchase and sale of Tower 37;
- j) The Plaintiff was obligated to raise 20 Million Dollars as the equity component for the Joint Project which could be done by a combination of some or all of the following:
  - (i) the Plaintiff's own resources;
  - (ii) other equity investors arranged for by the Plaintiff who would acquire a portion of the Plaintiff's equity ownership position;
  - (iii) Vendor takeback financing;
  - (iv) Contribution by the Defendants -- on terms and conditions mutually satisfactory to the Plaintiff and the Defendants;
  - (v) Such further particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before the Court at trial, including those specific items set out in paragraph 65 above;
- k) Given that:
  - (i) the Defendants had previously attempted to purchase Tower 37 from the 801 – 7th Ave Owners; and

- (ii) were also associated and involved with some or all of the 801 – 7th Ave Owners in a personal capacity and in other business and charitable projects (including but without limitation Wilmington Capital Management Inc.)

which created the potential for a conflict of interest situation, and the fact that the Plaintiff had been dealing with the 801 7<sup>th</sup> Ave Owners for several months prior to meeting the Defendants, both the Plaintiff and the Defendants represented and warranted to the other from the outset, and it was clearly, unconditionally and unequivocally agreed between them that:

- (i) they would work together on the Joint Project on an exclusive basis;
- (ii) neither side would have any ongoing communications, negotiations or enter into any agreements with the 801 – 7th Ave Owners other than for the benefit of their mutual business relationship relating to the Joint Project and in accordance with the terms of the Plaintiff/Defendants Agreement; and
- (iii) neither party would do or say anything involving the 801-7th Ave Owners or their representatives that would place either of them in an actual or potential conflict of interest position.

l) Given that:

- (i) the Defendants were acquiring an equity position in the Joint Project as aforescribed;
- (ii) the Defendants had previously attempted to purchase Tower 37 and were therefore very familiar with Tower 37 and the Tower 37 Lands the building itself; and
- (iii) the Defendants had already completed their due diligence on the Plaintiff as indicated by the Defendants in the Defendant Loan Agreement with the following statement:

*“We have conducted significant work to-date and have intimate knowledge of your business and prospects”*

the terms and conditions relating to the debt financing they were providing or arranging for and as set out in the Defendants Loan Offer would not be unnecessarily or unduly restrictive so as to ensure that said financing would be expeditiously approved by the Defendants and would be available as and when required for the closing of the purchase of Tower 37 as part of the Joint Project;

- m) The Defendants represented and warranted that they had immediate access to all necessary funds required to supply all of the debt financing as and when required for the Joint Project and would also consider either providing equity investment or even potentially arranging for third party equity investment if so required;
- n) Based on the relationships that the Plaintiff had developed with the 801-7th Ave Owners and their representatives, the City of Calgary and other 3rd parties key to the purchase and redevelopment of Tower 37 pursuant to the Plaintiffs Tower 37 Unique Concept, coupled

with the fact that the Defendants had already attempted to purchase Tower 37 on their own without success, it was agreed that the Plaintiff would take the lead for the Joint Project and would handle all direct communications, negotiations and contractual matters with the 801-7th Ave Owners, the City of Calgary and other 3rd parties in consultation with the Defendants as and when required, provide full and current disclosure thereof to the Defendants and that the Defendants would have no direct contact with the 801-7th Ave Owners without the Plaintiff's prior consent or approval;

- o) The Defendants would, either by providing a written NDA or by virtue of a verbal representation and warranty to the Plaintiff, retain in strict confidence on an ongoing basis all information and documentation (hard copy, digital, video or otherwise) of any type or kind whatsoever, either exchanged between them or created jointly by them relating to the Joint Project including without limitation all information involved in the Plaintiff's Tower 37 Unique Concept;
  - p) Without in any manner limiting the generality of the foregoing, the Defendants impliedly or expressly represented and warranted to the Plaintiff that in the event that the Plaintiff and the Defendants were not successful in completing or finalizing the purchase of Tower 37 pursuant to the Joint Project, they would not utilize or attempt to implement all or any portion of the Plaintiffs Tower 37 Unique Concept for their own benefit or with other 3rd parties to attempt to purchase Tower 37 except with the Plaintiff's prior knowledge and approval and only after negotiating a mutually acceptable compensation / remuneration package for the Plaintiff's benefit;
  - q) Subject to material breach of the terms of the Plaintiff/Defendants Agreement not rectified within a reasonable period of time and to the reasonable satisfaction of the party not in default, neither party would be entitled to terminate the Plaintiff/Defendants Agreement without the consent of the other and only upon such terms and conditions as the parties would agree upon at that time including providing for fair and reasonable compensation to the aggrieved party.
  - r) Such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before this Court at trial;
86. The Plaintiff states and the fact is that notwithstanding the business arrangement between the Plaintiff and the Defendants which granted the Defendants an equity position in the ownership of Tower 37, said business arrangement was primarily that of a financing agreement and the equity position granted to the Defendants was merely reflective of a portion of the loan return that the Defendants required as their conditions for agreeing to the financing.
87. Specifically, the loan agreement, based on the terms of the Mutende Loan Agreement, demanded from the Plaintiff a minimum 34% annualized return on their loan, consisting of:

Placement fee	two (2) percent
Annual Interest rate	twelve (12%) percent
Equity Participation	<u>twenty (20%) percent</u>



- f) Duty to have taken such steps as were legally required to terminate the Plaintiff/Defendants Agreement and the NDA before commencing any negotiations with the 801- 7th Ave Owners including but without limitation, negotiating a mutually acceptable compensation package for the Plaintiff or offering the Plaintiff a right to participate in said purchase;
- g) As part of their duty to act in good faith, a duty not to deceive the Plaintiff into believing that it was still acting and operating in good faith with the Plaintiff to complete the terms of the Mutende Loan Agreement and the Plaintiff/Defendants Agreement when in fact, the Defendants were actually doing the exact opposite by circumventing its agreements with the Plaintiff and negotiating and contracting directly with the 801-7th Ave Owners;
- h) As part of their duty to act in good faith in compliance upon their previous representations and warranties to the Plaintiff to the effect that given their previous knowledge of all aspects of Tower 37 and their previous vetting of the Plaintiff and its business activities, that the approval process for the financing would be simplified and expedited;
- i) Such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before this Court at trial.

**C. RESULTANT EFFECT ON THE PLAINTIFF/PARTICULARS OF THE DEFENDANTS' BREACHES AND MISREPRESENTATIONS of the PLAINTIFF/DEFENDANTS AGREEMENT, THE NDA AND THE DEFENDANTS' FIDUCIARY DUTIES and OBLIGATIONS:**

92. By its actions, conduct, agreements and communications as hereinbefore described, the Plaintiff states and the fact is that the Defendants and each of them jointly and severally:
- a) materially, substantially and intentionally breached the terms of the Plaintiff/Defendants Agreement;
  - b) materially, substantially and intentionally breached the terms of the NDA and the Defendant Loan Agreement; and
  - c) willfully, negligently or intentionally made numerous, ongoing and fundamental misrepresentations to the Plaintiff or willfully, negligently or intentionally failed to disclose material information or omitted to provide certain material information to the Plaintiff;
  - d) significantly breached or failed to abide by the Defendants Fiduciary Duties and Obligations;
93. The Plaintiff states and the fact is that the said breaches, misrepresentations and material omissions, and failure to abide by said Defendants Fiduciary Duties and Obligations are based on:
- a) those facts set out in Section "B" of this Statement of Claim as set out above;
  - b) the terms of the Plaintiff/Defendants Agreement;
  - c) the terms of the NDA;
  - d) the Defendant's Tower 37 Purchase;

- e) the Defendants Fiduciary Duties and Obligations as hereinbefore set out; and
- f) such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before the Court at trial,

and as a result thereof, it has incurred substantial damages and has had its business reputation significantly and negatively impacted, thereby prejudicing its ability to proceed with similar types of project developments in the future and is therefore entitled to legal and equitable relief jointly and severally against all of the Defendants, including substantial punitive damages from the Defendants all as set out in Sections "F" and "G" below;

94. Particulars of the Defendants' illegal conduct and misrepresentations include, but are not limited to the following:

**a) Substantial and material breaches of the NDA:**

- (i) The Defendants are in breach of, without limitation, paragraphs 6, 12(a) and 12(b) of the NDA;
- (ii) In accordance therewith, the Defendants illegally and improperly utilized the CBJ Confidential Information (as therein defined) for their own benefit in:
  - aa. securing the purchase of Tower 37 pursuant to the Defendants Tower 37 Purchase;
  - bb. purchasing Tower 37 at a purchase price substantially lower than the 55 Million Dollar purchase price that had been verbally agreed upon between the Plaintiff (on behalf of the Plaintiff and the Defendants pursuant to the Plaintiff/Defendants Agreement) and the 801-7th Ave Owners;
  - cc. incorporating some or all of the Plaintiff's Tower 37 Unique Concept into its redevelopment of Tower 37;
  - dd. such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before the Court at trial;

**b) Substantive and material breaches of the Defendant Loan Agreement:**

- (i) Failed to accept the Plaintiff's confirmations that it had received sufficient equity contributions to satisfy the terms of the Defendant Loan Agreement;
- (ii) Demanding that the Plaintiff advance \$50,000 to the Tory's law firm to cover the Defendants' alleged "legal" expenses without refunding all or a significant portion thereof when it became clear to the Plaintiff that the actual value of the legal services provided by Tory's on matters relating to the Joint Project and the Plaintiff/Defendants Agreement was worth substantially less than \$50,000;
- (iii) In breach of the intent of the Defendant Loan Agreement coupled with the language therein, the Mutende Loan Agreement presented to the Plaintiff on July 4, 2022 was complex, included several onerous pre-conditions and due diligence

requirements, obligated the Plaintiff to incur substantial upfront costs before funding and included several "out" provisions that would unilaterally enable the Defendants to terminate the potential debt financing at its option regardless of compliance by the Plaintiff with its terms and pre-conditions;

(iv) Failure to have:

- aa. accepted or even seriously considered the business agreement it had entered into and reduced into writing with Joe Bressi on behalf of Global Financial Services (the "Global Agreement") and failed to accept proof submitted by the Plaintiff to the Defendants that in conjunction with said Global Agreement, it had secured the necessary 20 Million Deposit and provided proof thereof to the Plaintiff and its counsel who independently verified the availability of said funds;
- bb. accepted the proposed financing to be secured against the leasehold interest of three floors of Tower 37, notwithstanding the fact that said financing would in no way have impacted or impaired the first charge security over the freehold title(s) to Tower 37 that was required as security for the Mutende Loan; and
- cc. accepted or even seriously considered any of the Plaintiff's other financing / equity options as listed in paragraph 64 above;
- dd. such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before this Court at trial;

**c) Substantial and material breaches of other provisions of the Plaintiff/Defendants Agreement:**

- (i) The Defendants jointly and severally, substantially and materially breached the Plaintiff/Defendants Agreement by, without limitation:
  - aa. Despite its initial representations and warranties to the contrary, making the approval and unconditional commitment for the debt financing through Mutende unnecessarily restrictive and delaying approval thereof, thereby preventing the Plaintiff from finalizing either the Extended PSA or a new verbal agreement with the 801 – 7th Ave Owners to purchase Tower 37 at a reduced price and forcing the Plaintiff to expend considerable resources in an attempt to satisfy the Defendants that it had raised the 20 Million Dollars in equity funding and alternate or back-up debt financing;
  - bb. Dealing/negotiating with the 801-7th Ave Owners and their representatives for the purchase of Tower 37 without advising, involving or including the Plaintiff, or without entering into a mutual termination of the Plaintiff/Defendants Agreement with compensation payable to the Plaintiff;
  - cc. Unilaterally purchasing Tower 37 (pursuant to the Defendants Tower 37 Purchase) without the Plaintiff's prior knowledge or participation;

dd. Such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before the Court at trial.

**d) Intentionally or Grossly Negligent Misrepresentations:**

- (i) By virtue of their written and verbal communications coupled with their actions as described above vis a vis the Plaintiff, the Defendants:
  - aa. intentionally, improperly or in a grossly negligent manner made a number of misrepresentations to the Plaintiff; and
  - bb. intentionally, improperly or in a grossly negligent manner failed to disclose material information to the Plaintiff;
  - cc. knew or should have known that the Plaintiff would be relying upon such misrepresentations and/or material omissions and which the Plaintiff in fact relied upon to its significant detriment.
- (ii) Particulars of said misrepresentations and material omissions include, without limitation, the Defendants willful, intentional or grossly negligent communications and actions that:
  - aa. The Defendants would only seek and be awarded an equity position in Tower 37 as an "equity participation bonus" for being the primary lender in the Plaintiff's acquisition of Tower 37, which provided significantly higher returns than a conventional loan arrangement, in accordance with and pursuant to the terms of the Plaintiff/Defendants Agreement;
  - bb. In exchange for a 20% equity position in the ownership of Tower 37 and the right to 20% of the Net Revenue from operations and Net Profit from the sale of floors in Tower 37, the Defendants would, without unnecessary or overly stringent pre-conditions, provide in full all debt financing required to both complete the purchase of Tower 37 and the redevelopment of Tower 37 in accordance with the Plaintiff's Tower 37 Unique Concept and at their option contribute or "top off" a portion of the equity investment required to complete the purchase and redevelopment of Tower 37 to satisfy 801-7th Ave Owners and their down payment pre-condition;
  - cc. Written communications coupled with ongoing verbal communications between some or all of the Defendants and the Plaintiff, particularly in October 2022, to the effect that the Defendants were totally committed to the terms of the Plaintiff/Defendants Agreement and were acting in accordance therewith;
  - dd. By not communicating with the Plaintiff from and after Oct 13, 2022 to and including January 18, 2023 ( or at any time previously) that it was negotiating a purchase of Tower 37 with the 801-7th Ave Owners and their representatives, and had in fact purchased Tower 37, lead the Plaintiff to believe that the Defendants were in full compliance with the terms of the Plaintiff/Defendants Agreement including the NDA both of which remained in full force and effect;

ee. By its actions and/or lack of any communication (except a non-substantive communication sent to the Plaintiff in late Dec 2022) to the Plaintiff between October 2022 and January 2023, causing the Plaintiff to reasonably assume that the Defendants continued to be committed to the terms of the Plaintiff/Defendants Agreement and were fully supportive of:

- the Plaintiff's efforts to finalize its negotiations with the 801-7th Ave Owners for the purchase of Tower 37 at a favorable purchase price; and
- providing the necessary debt financing (and supplement or "top up" of equity contributions if required) to finalize whatever final agreement was made between the 801-7th Ave Owners and the Plaintiff for the purchase and redevelopment of Tower 37, when in fact it had or was in the process of completing the Defendants Tower 37 Purchase.

**e) Breaches of the Defendants Fiduciary Duties and Obligations as per the terms of the Plaintiff/Defendants Agreement including the NDA and the Defendants Loan Agreement;**

95. The Plaintiff relies upon those items set out in paragraph 94 (a) – (d) above to support its position that the Defendants breached their ongoing fiduciary duties and obligations to the Plaintiff as specifically itemized in paragraph 91 above.

**f) Such further and other particulars of the Defendants' breaches of the Plaintiff/Defendants Agreement, the NDA, the Defendants Loan Agreement and the Defendants Fiduciary Duties and Obligations as the Plaintiff shall provide to the Defendants prior to trial and prove before this Court at trial.**

96. As a result of the aforescribed substantive breaches and misrepresentation, the Plaintiff states and the fact is that it has the following legal and equitable causes of action against the Defendants as detailed in Section "E" below.

**D. THE PLAINTIFF'S CAUSES OF ACTION**

97. The Plaintiff relies upon and pleads those causes of action described in this section of the Statement of Claim plus such further and other causes of action it will present to the Court at trial, to support its position in law and in equity that it is entitled to those damages set out in Section "F" below plus all such further and other remedies as set out in Section "G" of this Statement of Claim.

**(i). Fraud/Deceit and Willful Misconduct by the Defendants against the Plaintiff**

98. The actions of the Defendants in intentionally and deliberately deceiving the Plaintiff by failing to disclose that they were negotiating and then purchasing Tower 37 from the 801-7th Ave Owners pursuant to the Defendants Tower 37 Purchase at a purchase price substantially lower than the 55

Million Dollar purchase price that the Plaintiff had verbally agreed upon (on a "without prejudice" basis) with the 801-7th Ave Owners were carried out in a deliberately fraudulent and deceitful manner as detailed in Section "B" above.

99. Specifically, but without limiting the generality of the foregoing, by acting and conducting themselves in this fraudulent and deceitful manner, the Defendants knew or should reasonably have known that they would:
- a) deprive the Plaintiff of any right or opportunity to purchase Tower 37;
  - b) cause the Plaintiff to incur significant losses including the Plaintiff's Out of Pocket Disbursements (as detailed in Section "F") including 1.5 Million Dollars in released (unrecoverable) Deposits to the 801-7th Ave Owners and other portions of the Deposit it expended as part of its efforts to purchase Tower 37 pursuant to the Plaintiff/Defendants Agreement;
  - c) cause the Plaintiff to incur significant anticipatory losses in Net Revenue and Net Profit as more particularly described in Section "F" below;
  - d) otherwise harm the Plaintiff's ongoing business reputation in its business operation in the Calgary business community, with the City of Calgary and the Province of Alberta and with all potential and actual investment parties with whom the Plaintiff had associated or contracted with as part of the Joint Project.;
  - e) breach the Defendants' fiduciary Duties and Obligations;
100. As a result of such indisputable intentional fraudulent / deceitful and willful misconduct by the Defendants towards the Plaintiff, particulars of which have been previously set out in this Statement of Claim, the Plaintiff states and the fact is that it is entitled not only to the damages set out in Section "F" below but is also entitled to a payment of substantial punitive damages jointly and severally from the Defendants.

**(ii). Constructive Trust/ Residual Claimant**

101. Pursuant to the terms of the Plaintiff/Defendants Agreement and the Defendants Fiduciary Duties and Obligations, the Plaintiff takes the position that:
- a) in purchasing Tower 37 pursuant to the Defendants Tower 37 Purchase; and
  - b) as a result of the breach by the Defendants of the specific terms and conditions of the Plaintiff/Defendants Agreement as hereinbefore set out,
- the Defendants are or should be deemed by this Court to be holding as constructive trustee for and on behalf of the Plaintiff as residual claimant/beneficiary an equity ownership interest in Tower 37 in such amount or percentage as may be determined by the Court at trial;
102. In the alternative to paragraph 101 above, the Plaintiff states and the fact is that it is entitled to a declaration that it is entitled to an ongoing specific percentage of all Net Revenue and Net Profit

(as hereinafter defined) generated (or to be generated) from Tower 37 and that the Defendants hold said interest or percentage of Net Revenue and Net Profit as constructive trustee for and on behalf of the Plaintiff as residual claimant/ beneficiary;

103. The Plaintiff further states that the actual percentage of the equity ownership or percentage of Net Revenue and Net Profit should be determined by the Court at trial taking into account the terms of the Plaintiff/Defendants Agreement and all such further and other factors as the Court deems relevant, appropriate and applicable in the circumstances.

**(iii). Unjust Enrichment**

104. The Plaintiff states and the fact is that by their joint and several actions in purchasing Tower 37 pursuant to the Defendants Tower 37 Purchase, the Defendants have been unjustly enriched at the expense of the Plaintiff.
105. Specifically, but without limitation:
- a) The Defendants received a benefit as a result of acquiring One Hundred (100%) legal and equitable ownership in Tower 37 and the entitlement to One Hundred (100%) per cent of all Net Revenue and Net Profit from all sources related to the ownership and operation of Tower 37, notwithstanding the Plaintiff/Defendants Agreement, of which the Plaintiff should have been entitled to 80% thereof;
  - b) The Plaintiff has and will continue to incur and suffer a corresponding loss both of its entitlement to its share of the legal ownership in Tower 37 and its share of the Net Revenue and Net Profit relating thereto;
  - c) There are no legal or juristic reasons for either the Defendants to have obtained those benefits set out in (a) above nor for the Plaintiff to have incurred or to incur the losses set out in (b) above;
  - d) Accordingly, any such portion of ownership, Net Revenue and/or Net Profit in the name of or otherwise claimed by the Defendants that is determined by the Court as due and owing to the Plaintiff shall be deemed to be held by the Defendants as constructive trustee for and on behalf of the Plaintiff.

**(iv). Equitable Proprietary Claim/ Knowing Receipt/Tracing**

106. The Plaintiff takes the position that if the Court determines that the Defendants are holding a percentage of the legal and equitable ownership of Tower 37 in a constructive trust for and on behalf of the Plaintiff or are otherwise accountable in law or equity to the Plaintiff for a portion of the Net Revenue and Net Profit on all funds generated from Tower 37, it follows that the Plaintiff shall be deemed to have a proprietary ownership claim in Tower 37 in such amount as determined by this Court together with a corresponding proprietary claim to all Net Revenue and Net Profit .

107. In conjunction with the above, the Plaintiff shall be entitled to the equitable right and remedy to “trace” the receipt of all Net Revenue, Net Profit and other benefits from Tower 37 received by any of the Defendants to the date of trial together with a direction from the Court requiring the Defendants to provide:

- a) a full and complete accounting of all funds (including all Net Revenue and Net Profit) received or due and owing from all sources in any manner related to their purchase and operation of Tower 37 from the date of acquisition to the date of trial; and
- b) where and to whom those funds were paid,

together with an Order of this Court directing the recipient(s) or potential recipients or payors of all such funds to forthwith deliver up said funds to the Plaintiff or as otherwise directed by the Court;

**(v). Intentional Tortious Interference with Contractual Relations and Inducing Breach of Contract**

108. The Plaintiff states and the fact is that as a result of the Defendants purchase of Tower 37 pursuant to the Defendants Tower 37 Purchase, each Defendant is jointly and severally liable to the Plaintiff for damages arising from their tortious interference with the Extended PSA and/or the verbal agreement that the Plaintiff had entered into with the 801-7th Ave Owners for the Plaintiff to purchase Tower 37 in accordance with the terms of the Plaintiff/Defendants Agreement and the Defendants Fiduciary Duties and Obligations;

109. Specifically, but without limitation:

- a) As previously alleged, the closing date of the PSA had been verbally extended as per the Extended PSA;
- b) In the alternative to (a) above, the Plaintiff had negotiated a “Without Prejudice” verbal agreement with the 801-7th Ave Owners to purchase Tower 37 at a purchase price of \$55 Million dollars and had advised the Defendants at that time that the 801-7th Ave Owners were highly motivated to sell and wanted to sell quickly;
- c) At all times material hereto, the Defendants were fully informed of the information related to both (a) and (b) above;
- d) The Defendants intentionally and improperly interfered with both scenarios set out in both (a) and (b) above by going behind the back of the Plaintiff and purchasing Tower 37 from the 801-7th Ave Owners pursuant to the Defendants Tower 37 Purchase without informing the Plaintiff, terminating the Plaintiff/Defendants Agreement or paying any form of agreed upon compensation to the Plaintiff;
- e) By their actions in:

- circumventing the Plaintiff/Defendants Agreement, the NDA and the Defendants Fiduciary Duties and Obligations as previously set out in this Statement of Claim;
- refusing to accept the Global Agreement as proof that it had obtained the necessary 20 Million Dollar equity amount to finalize the Mutende Loan agreement or any of the other forms of equity participation as set out in paragraph 64 above; and
- such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before this Court at trial

the Defendants prevented the Plaintiff from formalizing the purchase agreement with the 801-7<sup>th</sup> Ave Owners referred to in (b) above;

- f) The Plaintiff has accordingly suffered significant damages and loss as a result of such interference and has also had its business reputation negatively impacted with other lenders and third parties in the industry, the effect of which will continue to cause the Plaintiff significant hardship, losses and potential both short and long term damages;

110. Full particulars of the aforescribed interference shall, in addition to the information previously set out in this Statement of Claim, be provided to the Defendants prior to trial and proven before this Court at trial.

**(vi) Intentional interference with the Plaintiff's prospective economic advantage**

111. In the alternative to the cause of action set out in section (v) above, the Plaintiff states and the fact is that the Defendants, as a third party, illegally and improperly interfered with its business relationship or expected business transaction with the 801-7th Ave Owners thereby making each Defendant jointly and severally liable to the Plaintiff for the Plaintiff's damage claims as set out in Section "F" below.

112. Specifically, but without limitation:

- a) The Plaintiff had a clearly established business relationship with the 801-7th Ave Owners;
- b) Said business relationship was reasonably likely to provide substantial financial benefit to the Plaintiff in the form of Net Revenue and Net Profit based on the financial projections which formed part of the Plaintiff's Tower 37 Unique Concept and the PSA Extension or its without prejudice verbal agreement with the 801-7th Ave Owners;
- c) The Defendants knew about and actively supported the relationship between the Plaintiff and the 801-7th Ave Owners which was a fundamental aspect of the Plaintiff/Defendants Agreement;
- d) The Defendants intentionally and improperly interfered with said business relationship by unilaterally and without mutual agreement or the payment or negotiation of compensation to the Plaintiff, terminating the Plaintiff/Defendants Agreement, breaching the Defendants

Fiduciary Duties and Obligations and failing to involve the Plaintiff as an equity participant in the purchase of Tower 37 pursuant to the Defendants Tower 37 Purchase;

- e) in approaching, negotiating and ultimately purchasing Tower 37 from the 801-7th Ave Owners pursuant to the Defendants Tower 37 Purchase, the Defendants' conduct and actions caused the 801-7th Ave Owners to terminate their business relationship with the Plaintiff, thereby resulting in the Plaintiff incurring substantial actual losses including the Plaintiff's Out of Pocket Expenditures as well as anticipatory damages from Net Revenue and Net Profit it would otherwise have received had the Plaintiff and the Defendants finalized the purchase of Tower 37 pursuant to the Plaintiff/Defendants Agreement;
113. The Plaintiff has also suffered significant damages and loss as a result of such interference by virtue of the fact that its business reputation and standing in this industry has been significantly negatively impacted with other lenders and third parties, the effect of which will continue to cause the Plaintiff ongoing significant losses and damages;
114. Therefore, In addition to the actual losses and the anticipatory damages from Net Revenue and Net Profit, the actions of the Defendants in the intentional and improper interference referred to in this Cause of Action and in the Cause of Action set out in paragraphs 109-111 above entitle the Plaintiff to significant damages including damages both for loss of business reputation and punitive damages jointly and severally from the Defendants, in such additional amounts as may be determined by the Court;

**(vii) Self-Dealing**

115. The Plaintiff further states and the fact is that by virtue of the Defendants' unilateral breach and termination of the Plaintiff/Defendants Agreement and breach of the Defendants Fiduciary Duties and Obligations, the Defendants are jointly and severally liable to the Plaintiff as a result of their illegal and improper self-dealing with the 801-7th Ave Owners.
116. Specifically:
- a) While a party to the Plaintiff/Defendants Agreement and as a result of the ongoing business relationship between the Defendants and the Plaintiff, the Defendants were or should be deemed to be fiduciaries to and in favor of the Plaintiff;
  - b) As fiduciaries, the Defendants had certain legal, ethical and moral obligations to and in favor of the Plaintiff including the Defendants Fiduciary Duties and Obligations;
  - c) One of those fiduciary obligations was a duty not to place themselves in a position whereby their actions, deliberate or otherwise, would have the effect of inappropriately enriching themselves at the expense of the Plaintiff or at the expense of the mutual rights of the Plaintiff and the Defendants in the Plaintiff/Defendants Agreement;
  - d) By unilaterally negotiating and then purchasing Tower 37 pursuant to the Defendants Tower 37 Purchase, particularly at a purchase price substantially below the Extended PSA price of 65 Million Dollars or the 55 Million Dollar purchase price that formed the basis of the verbal

agreement and understanding between the Plaintiff and the 801-7th Ave Owners, the Defendants deliberately and intentionally enriched themselves at the expense of the Plaintiff not only for the difference between the purchase price they paid for Tower 37 and either \$65 Million Dollars or \$55 Million Dollars but also for the Plaintiff's share of lost equity ownership, Net Revenue and Net Profit.

**(viii) Civil Conspiracy**

117. In the alternative to those causes of action set out in (i) – (vii) above, the Plaintiff states and the fact is that it is entitled to damages and other relief from the Defendants based on the tort of Civil Conspiracy.
118. Specifically, given the circumstances of the Plaintiff/Defendants Agreement, the Defendants Fiduciary Duties and Obligations and the ongoing business relationship between the Plaintiff and the Defendants, the Defendants by initially negotiating and ultimately completing the Defendants Tower 37 Purchase without involving or informing the Plaintiff, whether or not the predominant purpose of said actions were designed to cause financial or economic injury to the Plaintiff, the Defendants knew or should (through the concept of constructive intent) have known that the Plaintiff would incur significant economic and financial damage and losses resulting from those actions;
119. The Plaintiff states and the fact is that this specific cause of action arises regardless of whether or not the Defendants' conduct is entering into the Defendants Tower 37 Purchase was illegal or not on the basis that the Defendant knew or should have known in the circumstances that such conduct was likely to and would result in the Plaintiff incurring significant losses and damages.

**(ix) Conflict of Interest**

120. While a party to the Plaintiff/Defendants Agreement and as a result of the ongoing business relationship between the Defendants and the Plaintiff, the Defendants were or should be deemed to be fiduciaries to and in favor of the Plaintiff;
121. As fiduciaries, the Defendants had certain legal, ethical and moral obligations to and in favor of the Plaintiff as previously specifically set out and identified as the "Defendants Fiduciary Duties and Obligations" in paragraph 91;
122. One of those obligations was a duty not to place themselves in a position whereby their actions, deliberate or otherwise, would have the effect of placing all or any of the Defendants in a conflict of interest position.
123. The Plaintiff's determined "after the fact" that the Defendants and certain owners of Tower 37 had an ongoing personal and business relationship both before and during the time that the Plaintiff/Defendants Agreement was in full force and effect.

124. At no time did the Defendants disclose this potential conflict of interest to the Plaintiff nor make any specific covenants with the Plaintiff that they would not place any of the Defendants in a conflict of interest position on matters relating to the purchase of Tower 37 pursuant to the Plaintiff/Defendants Agreement.
125. Specifically, but without limitation, as fiduciaries of the Plaintiff, the Defendants:
- a) should not have had any contact or communications with any of the 801-7th Ave Owners without either involving the Plaintiff or without the prior knowledge and consent of the Plaintiff;
  - b) should not have divulged to the 801 7th Ave Owners any information regarding the terms of the Plaintiff/ Defendants Agreement including matters relating to the anticipated financing of the Joint Project or details of the Plaintiffs Tower 37 Unique Concept;
  - c) should not have negotiated the purchase of Tower 37 pursuant to the Defendants Tower 37 Purchase without first informing and obtaining the Plaintiff's consent, mutually terminating the Plaintiff/Defendants Agreement and agreeing to compensate the Plaintiff as mutually agreed between the parties;
  - d) given that it had full access to all of the information that the Plaintiff had provided to the Defendants as outlined in paragraph 45 above, should not have retained Torys as their lawyer to represent them on the Defendants Tower 37 Purchase which created an automatic conflict of interest situation;
  - e) should have required that any of the 801-7th Ave Owners who had a personal or business relationship with Ian or Andrew, including but without limitation Joe Kiely and Marc Sardachuk, exclude themselves from either meeting with the Plaintiff or obtaining any information regarding the ongoing negotiations between the Plaintiff and the remaining 801-7th Ave SW Owners;
  - f) such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before this Court at trial.
126. Notwithstanding their status as fiduciaries of the Plaintiff and therefore subject to those equitable restrictions as set out in paragraph 125 above, the Plaintiff states that the Defendants breached some or all of those equitable restrictions by:
- a) failing to disclose to the Plaintiff at any time between June 2022 and January 2023 the conflict of interest or potential conflict of interest between themselves and the 801-7th Ave Owners or provide any form of representation or warranty to the Plaintiff that they would not have any direct or indirect contact or communications of any type or kind with the 801-7th Ave Owners whatsoever relating to the Joint Project, Tower 37 or the Plaintiff/Defendants Agreement;
  - b) providing the 801-7<sup>th</sup> Ave Owners with some or all of the following information:

- (i) some or all of the details of the Plaintiffs implementation of the Plaintiffs Tower 37 Unique Concept and its plans to implement same;
- (ii) some or all of the details of the Plaintiff/Defendants Agreement;
- (iii) status from time to time of the Plaintiff's efforts to obtain the down payment and financing to complete the purchase of Tower 37;
- (iv) the existence of the CBJ Litigation;
- (v) the Plaintiff/Defendants' strategy to negotiate a lower purchase price for Tower 37;
- (vi) disparaging the Plaintiff and its directors and leading the 801- 7th Ave Owners to believe that the Plaintiff did not have the ability or resources to ever close on the purchase of Tower 37;
- (vii) such further and other particulars as the Plaintiff shall provide to the Defendants prior to trial and prove before the Court at trial.

127. As a result of the breach of the Defendants Fiduciary Duties and Obligations and by:

- a) placing themselves in a clear and unequivocal conflict of interest position with the 801-7th Ave Owners so far as it affected the Plaintiff as a party to the Plaintiff/Defendants Agreement; and
- b) taking advantage of their ongoing personal and business relationship with some or all of the 801-7th Ave Owners to have facilitated the purchase of Tower 37 pursuant to the Defendants Tower 37 Purchase, which was substantially lower than 65 or 55 Million Dollars,

the Plaintiff incurred significant damages and losses, particulars of which are set out in Section "F" below.

128. Further, because of the intentionally willful misconduct and blatant disregard for the terms of the Plaintiff/Defendants Agreement and the Defendants Fiduciary Duties and Obligations to the Plaintiff as aforescribed, the Plaintiff states and the fact is that the Court should impose additional pecuniary damages jointly and severally against the Defendants.

**(x). Other Causes of Actions**

129. The Plaintiff reserves the right to raise additional causes of actions as part of its Claim against the Defendants and shall provide full particulars thereof to the Defendants prior to trial and prove same before the Court at trial.

**E. PLAINTIFF'S DAMAGES**

**(i) Out of Pocket Expenditures**

130. The Plaintiff has to date expended considerable amounts in out of pocket expenses and payment on matters relating to the Tower 37 Purchase as part of the Plaintiff/Defendants Agreement (the "Plaintiff's Out of Pocket Expenditures") and claims repayment of same jointly and severally from the Defendants.
131. The Plaintiff's Out of Pocket Expenditures consist of, but are not limited to:
- a) Deposits paid and released by CBJ to the 801-7th Ave Owners as previously described in this Statement of Claim;
  - b) Non-refundable deposits and other payments paid to various lenders, brokers and their representatives for securing equity investment and debt financing;
  - c) \$50,000 paid to the Tory's law firm as retainer pursuant to the requirement set out in the Defendants Loan Offer;
  - d) Legal fees and disbursements paid to the Plaintiff's legal advisors, consultants and lawyers for all matter relating to Tower 37, including but not limited to the PSA, verbal arrangements with the 801-7th Ave Owners and their representatives, dealings with the Defendants, the CBJ Litigation, vetting and reviewing various potential equity investments and debt financing proposals, the Ayrshire Litigation, title reviews, analysis of the CNOOC Litigation, all dealings with the City of Calgary and all other related matters;
  - e) Plaintiff expenses relating to the physical vetting and inspection of Tower 37 and its various building operating systems, exterior and interior structure, parkade roof, access points, asbestos and other potential environmental hazards together with expenses relating to vetting of the Tower 37 Lands and adjoining lands;
  - f) Plaintiff expenses involved in the management, administration, cost of employees, consultants, travel and other related expenses and other professional fees including accounting, architectural, survey, and appraisal related in any manner to those matters set out above;
  - g) Plaintiff's costs and expenses relating to the preparation of the Plaintiffs Tower 37 Unique Concept including the preparation of all material (hard copy, digital, photo, digital and otherwise) relating to:
    - sales and marketing material and the circulation thereof; and
    - all communications, meetings and interactions with the City of Calgary regarding subdivision/ strata title conversion, office building conversion grants and funding programs available from the City of Calgary, the Province of Alberta and/or the Federal Government;
  - h) Interest charges paid by the Plaintiff to 3rd parties on funds borrowed to cover some or all of the Plaintiff's Out of Pocket Expenses;
  - i) Such further and other out of pocket expenses and paid amounts and disbursements as the Plaintiff shall provide to the Defendants prior to trial and prove before the Court at trial.

132. Full particulars of the Plaintiff's Out of Pocket Expenses shall be provided to the Defendants prior to trial and proven before the Court at trial but as at the date of the filing of this Statement of Claim, the total amount of the Plaintiff's Out of Pocket Expenses is \$ 3,955,872.05.

**(ii) Loss of Net Revenue**

133. In addition to a claim for repayment of the Plaintiff's Out of Pocket Expenses, the Plaintiff claims damages jointly and severally from the Defendants for lost net revenue relating to Tower 37 resulting from the Defendants' breaches as described in Section "D" above as follows:
- a) Net revenue from leasing up to 7,156 sf of office space in the North Annex Building. Assuming \$22/sf triple net going market rate and 7,156 sf of leased space, this equates to \$157,432 annually or \$314,864 over a 2 year period;
  - b) Net revenue from leasing 4,540 sf of space on the first two floors of Tower 37 for retail use. Assuming \$45/sf net going market rate, this equates to \$204,300 annually or \$408,600 over a 2 year period;
  - c) Net lease revenue from other sources in Tower 37 including lease or use of amenity floors and other floors in Tower 37 temporarily retained for rental purposes, estimated to be approximately \$100,000 annually or \$200,000 over a 2 year period;
  - d) Other rental income or net revenue generated from ongoing operations of Tower 37, particulars of which shall be provided to the Defendants prior to trial and proven before the Court at trial;

all relating to and in accordance with the Plaintiffs Tower 37 Unique Concept and estimated to be in the minimum annual amount of \$461,732;

134. The ongoing net revenue generated from business operations of Tower 37 for those matters set out in paragraph 134 above is collectively referred to throughout this Statement of Claim as "Net Revenue".

**(iii) Loss of Net Profit**

135. In addition to a claim for repayment of the Plaintiff's Out of Pocket Expenses and Net Revenue, the Plaintiff claims damages jointly and severally from the Defendants for lost profit relating to Tower 37 resulting from the Defendants' breaches as described in Section "D" above particulars of which include the following:
- a) Unit Sales -- sale of up to 31 strata title converted floors in Tower 37;
  - b) Parking Stall Sales;
  - c) Storage Locker Sales;
  - d) Retail Spaces Net Leases & Sales;

e) Other miscellaneous Sales;

136. Pursuant to its detailed projections relating to the net profit to be generated from the aforescribed sales in Tower 37 and based on a \$65 Million Dollar Purchase Price, the Plaintiff had projected total net profits of between \$75.568 Million Dollars and \$90.431 Million Dollars.
137. Full details of these projections and the back-up financial information related thereto had been provided to the Defendants in June 2022 after the NDA was executed by the Defendants as part of the Plaintiffs Tower 37 Unique Concept and shall be provided to the Court prior to trial.
138. Based on an 80% equity ownership in Tower 37, with the Defendants owning the remaining 20% equity ownership interest as per the terms of the Plaintiff/Defendants Agreement, the Plaintiffs portion of the Net Profit ranged between \$60.453 Million Dollars and \$72.34 Million Dollars not including the Rebates as per paragraphs 141-143 below;
139. Based on a lower \$55 Million Dollar purchase price for Tower 37 as per the verbal agreement that had been entered into between the Plaintiff and the 801-7th Ave Owners in September 2022, the Plaintiff's portion of the net profit (as 80% equity owners) is increased and ranged between \$68.45 Million Dollars and \$81.71 Million Dollars;
140. The net profit anticipated to be generated from those items referred to in paragraphs 135-139 above is referred to throughout this Statement of Claim as the "Net Profit".

**(iv) City of Calgary Rebates**

141. Specific rebates-were available from the City of Calgary for residential conversions of empty downtown office buildings into residential mixed-use buildings in the estimated amount of \$75.00 per square foot for every square foot of space converted for residential or residential live/work uses (the "Rebate");
142. As part of the Joint Project and in accordance with the terms of the Plaintiff/Defendants Agreement, the Plaintiff had made a confidential preliminary application and received preliminary conditional approvals from the City of Calgary which would have qualified the Plaintiff to receive the Rebate.
143. Based on 465,000 square feet of converted residential space in Tower 37 as per the Plaintiffs Unique Tower 37 Concept, the Rebate would have been \$34.875 Million Dollars. Assuming 80% equity ownership, the Plaintiffs portion would have been \$27.9 Million Dollars which the Plaintiff would have used as reimbursement of all or a portion of its down payment for the purchase of Tower 37 and/or to pay down a portion of the financing it was acquiring from the Defendants.
144. Accordingly, the Plaintiff claims damages jointly and severally from the Defendants for lost Net Profit in such amount as may be awarded by the Court for loss of the Rebate;

**F. SUMMARY OF REMEDIES SOUGHT BY THE PLAINTIFF JOINTLY AND SEVERALLY AGAINST ALL OF THE DEFENDANTS:**

145. Damages jointly and severally against the Defendants for the full amount of the Plaintiffs Out of Pocket Expenditures in the amount of \$3,955,872.05 plus such further and other amounts as the Plaintiff shall prove to the Court at trial;
146. Damages jointly and severally against the Defendants for the Plaintiff's share of the Net Revenue projected over the first two years of ownership of Tower 37 in the minimum amount of \$923,464 or in such further or other amount as may be determined by this Court;
147. Damages jointly and severally against the Defendants for the Plaintiff's share of the Net Profit in such amount as may be determined by this Court in the minimum amount of \$60.453 Million Dollars;
148. Damages jointly and severally against the Defendants for the Rebates in such amount as may be determined by this Court in the minimum amount of \$27.9 Million Dollars;
149. Damages jointly and severally against the Defendants for loss of business and business reputation in such amount as may be determined by this Court;
150. Punitive Damages jointly and severally against all Defendants in the minimum amount of \$1 Million Dollars or such further or other amount as may be awarded by this Court;
151. Judgment in the form of a Declaration from the Court that the Defendants are joint and several Constructive Trustees for and on behalf of the Plaintiff for an 80% equity ownership in Tower 37 or in such further or other proportion or percentage as shall be determined by this Court at trial;
152. A further judgment in the form of a Declaration from the Court that the Defendants are joint and several Constructive Trustees for and on behalf of the Plaintiff for such percentage of the Net Revenue, the Net Profit and the Rebates as shall be determined by this Court at trial;
153. All necessary Orders from this Court which require the Defendants to provide a full accounting of all Net Revenue and Net Profit they hold or will hold as constructive trustees for and on behalf of the Plaintiff in any manner relating to Tower 37 as determined by this Court together with "Tracing Orders" and "Attachment Orders" which direct the Defendants and all affected 3<sup>rd</sup> party recipients of all or any portion of said Net Revenue, Net Profit or Rebates from the Defendants to forthwith deliver up and pay said amounts to the Plaintiff or in such other manner as may be determined by this Court;
154. Approving the retaining of a Certificate of Lis Pendens to be registered against title to the Tower 37 Lands for and on behalf of the Plaintiff;
155. Such further and other Orders or Interim Orders and this Honorable Court deems necessary, appropriate or equitable in the circumstances;
156. Costs in favor of the Plaintiff on a full indemnity basis, including payment of all of the Plaintiff's consultant, legal fees and disbursements incurred by the Plaintiff in this Action on a solicitor and client basis;

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of KING's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

# **APPENDIX “H”**

## AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made as of the 5<sup>th</sup> day of January, 2022,

**BETWEEN:**

**801 SEVENTH INC.**

(the “Vendor”)

**AND:**

**OPTRUST OFFICE INC., QUANTICO CAPITAL CORP., WESTHILLS DEVELOPMENT CORPORATION, CENTURION HOLDINGS LTD., CANADIAN INCOME FUND GROUP INC. AND TOKAY CAPITAL CORP.**

(collectively, the “Beneficial Owners”)

**AND:**

**CBJ DEVELOPMENTS INC.**

(the “Purchaser”)

**WHEREAS:**

- A. The Purchaser has agreed to purchase and the Vendor and the Beneficial Owners have agreed to sell the Property on the terms and conditions herein contained.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement, the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

### **1. INTERPRETATION**

**1.1 Definitions.** In this Agreement, the following terms have the following meanings unless the subject matter or context otherwise requires:

- (a) “**Applicable Laws**” means the statutes, regulations, orders, judgments, decrees, rules or other lawful requirements of Governmental Authorities which are applicable to the Property or any of the parties hereto;
- (b) “**best of the Vendor’s knowledge**” means the actual knowledge of Mr. Marc Sardachuk, an officer of the Vendor, without further investigation into the relevant subject matter other than inquiry of the Vendor’s property manager responsible for the management of the Property;
- (c) “**Buildings**” means, collectively, all buildings, improvements, structures, fixtures, appurtenances and attachments to the Lands, whether or not attached thereto and forming part thereof, including all systems on the Lands of a mechanical nature

and, without limiting the generality of the foregoing, all heating, lighting, air-conditioning, plumbing, electrical, ventilation, water, elevator or other mechanical lifting devices and drainage systems and all window coverings, awnings, fixed carpeting, boilers and fittings;

- (d) **"Business Day"** means Monday to Friday inclusive of each week, excluding days which are statutory holidays in the Province of Alberta;
- (e) **"Chattels"** means equipment, furniture, inventory, including without limitation all replacement parts in respect of the Operating Systems, appliances and chattels, if any, on the Lands and the Buildings;
- (f) **"Closing"** means the completion of the purchase and sale of the Property pursuant to Article 8 hereof;
- (g) **"Closing Date"** means February 15, 2022, or such other date as the parties agree to;
- (h) **"CNOOC Lease"** means the amended and restated lease agreement between the Vendor, as landlord, and Nexen Energy ULC, as tenant, in respect of the Buildings, as amended, supplemented, restated or replaced from time to time;
- (i) **"CNOOC Litigation"** means the litigation between the Vendor and CNOOC Petroleum North America ULC pursuant to Albert Court of Queen's Bench Action No. 1901-06261;
- (j) **"Condition Date"** means February 7, 2022;
- (k) **"Deposit"** means the amount paid by the Purchaser pursuant to subsection 2.4(a) hereof;
- (l) **"Environmental Laws"** means all applicable federal, provincial, municipal or local laws, bylaws, statutes or ordinances, including without limitation the *Environmental Protection Act* (Canada), the *Environmental Protection and Enhancement Act* (Alberta) and other applicable laws relating to the environment, occupational safety, health, product liability and transportation from time to time in force, all applicable orders, decisions or the like rendered by any ministry, department or administrative or regulatory agency in respect thereof from time to time in force, and all rules, regulations or the like promulgated under or pursuant thereto from time to time in force;
- (m) **"Execution Date"** means the date that this Agreement has been executed and delivered by the Vendor, the Beneficial Owners and the Purchaser;
- (n) **"Excluded Reports"** means any information, documents or reports that: (i) the Vendor has obtained from the counterparty in connection with the CNOOC Litigation, (ii) has been prepared by or for the Vendor in response thereto for use in the CNOOC Litigation; and (iii) are otherwise prepared by or for the Vendor in connection with the CNOOC Litigation;
- (o) **"Existing Leases"** means the agreements to lease, binding offers to lease, leases, renewal agreements and other rights or licences set out in Schedule B that are in

effect as of the date hereof, together with all security, guarantees and indemnities of the respective Tenant's obligations thereunder, and all amendments and modifications thereof in existence as of the Execution Date and which for greater certainty shall not include the CNOOC Lease;

- (p) **"Final Adjustment Date"** has the meaning set out in section 12.7 hereof;
- (q) **"Governmental Authority"** means any government, regulatory authority, government department, agency, utility, commission, board, tribunal or court or other law, rule or regulation making entity having jurisdiction with respect to any matter referred to in this Agreement;
- (r) **"GST"** means federal Goods and Services Tax;
- (s) **"Lands"** means the lands legally and municipally described in Part I of Schedule A hereto;
- (t) **"Leases"** means the Existing Leases and any New Lease;
- (u) **"New Lease"** means all agreements to lease, binding offers to lease, leases and renewals of Existing Leases made by the Vendor in accordance with section 8.2 hereof;
- (v) **"Operating Systems"** means all operating, mechanical or utility systems within the Property, including municipal utilities and services, plumbing, drainage, electrical, heating, ventilating, air-conditioning, fire protection and security, and includes all compactors, movators, escalators and lifting devices comprised in the Property;
- (w) **"Other Property"** means the other assets or rights, if any, relating exclusively to the Property, to the extent assignable without consent, including:
  - (i) any trademark, logo, symbol, domain name or business name or other intangible asset exclusive to the Property and used in connection with the ownership or operation of the Property;
  - (ii) operating manuals or software relating to any of the Chattels or Operating Systems;
  - (iii) any Permits;
  - (iv) any Plans and Specs; and
  - (i) any Warranties;
- (x) **"Permitted Encumbrances"** means the charges, encumbrances, caveats and implied conditions described in Part II of Schedule A hereto and the Leases;
- (y) **"Permits"** means all transferable licences, permits, authorizations and approvals issued by any Governmental Authority pertaining to the use, possession, ownership or operation of the Property or the Operating Systems;

- (z) “**person**” includes individuals, corporations, partnerships, governments, government agencies and departments and all other organizations or entities whatsoever;
- (aa) “**Plans and Specs**” includes all "as-built" or other plans, specifications, surveys or drawings with respect to the Property, including civil engineering, architectural, mechanical and electrical drawings and specifications;
- (bb) “**Property**” means the Lands, the Buildings, the Leases, the Chattels and the Other Property;
- (cc) “**Property Documents**” has the meaning set out in section 5.1 hereof;
- (dd) “**Purchase Price**” means the amount set out in section 2.2 hereof;
- (ee) “**Purchaser’s Acknowledgement and Release**” has the meaning set out in section 5.5 hereof;
- (ff) “**Purchaser’s Closing Conditions**” has the meaning set out in section 4.2 hereof;
- (gg) “**Purchaser’s Condition**” has the meaning set out in section 3.1 hereof;
- (hh) “**Purchaser’s Solicitors**” means such firm of solicitors as the Purchaser shall notify the Vendor of no later than four (4) Business Days following the Execution Date;
- (ii) “**Readjustment Agreement**” has the meaning set out in section 12.7 hereof;
- (jj) “**Statement of Adjustments**” has the meaning set out in section 12.2 hereof;
- (kk) “**Tenant**” means a tenant pursuant to a Lease;
- (ll) “**Toxic Material**” includes without limitation:
  - (i) asbestos;
  - (ii) poly-chlorinated biphenyls; and
  - (iii) any substance or material which falls within the definition of “waste”, “special waste”, “hazardous chemicals”, “hazardous waste”, “dangerous goods”, “toxic substances”, any variation of such terms or any terms of similar import in the *Environmental Protection and Enhancement Act* (Alberta), the *Canadian Environmental Protection Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), or in any other applicable Environmental Laws.
- (mm) “**Transfer**” means registrable transfer of land transferring the Lands and the Buildings in fee simple to the Purchaser or, subject to section 14.9 hereof, its permitted assignee or nominee;
- (nn) “**Vendor’s Closing Conditions**” has the meaning set out in section 4.1 hereof;

- (oo) **"Vendor's Solicitors"** means Bennett Jones LLP, Attention: Jeremy Russell;
- (pp) **"Warranties"** mean all warranties, guarantees or contractual obligations, if any, which entitle the Vendor to any rights against any contractor, manufacturer or supplier with respect to the Property, including the Operating Systems; and
- (qq) **"WHS Reports"** means, collectively, the following reports, each as prepared by Western Health & Safety in respect of the Buildings and addressed to either the Vendor or Centurion Holdings Ltd.: (i) W7300 - Nexen Building Fire Spray Debris Survey Report Phase 1 20190620; (ii) W7300 - Nexen Building Fire Spray Debris Survey Phase 2 Report DRAFT 20190707R1; (iii) W7496 - 801 Tenant Assessment Observations Report 20200203 DRAFT; (iv) W7500 - 801 Seventh Ceiling Space Cleaning Report DRAFT; (v) W8001 - 801 Building Annual Inspection 20210722; and (vi) ASBESTOS MANAGEMENT PLAN (AMP v.2.0) - 801 BUILDING -801 - 7 Avenue SW -Calgary, Alberta.

**1.2 References.** Wherever the singular or masculine is used in this Agreement, the same shall be deemed to include references to the plural, feminine or body corporate or politic, as the context may require.

**1.3 Schedules.** The schedules attached hereto are hereby incorporated into this Agreement and form a part hereof. All terms defined in this Agreement shall have the same meaning in such schedules. The schedules to this Agreement are as follows:

**Schedule A** Lands and Permitted Encumbrances  
**Schedule B** Leases

## **2. AGREEMENT OF PURCHASE AND SALE AND PURCHASE PRICE**

**2.1 Purchase and Sale.** At Closing and subject to each of the terms, conditions, provisions and limitations contained in this Agreement, the Vendor and the Beneficial Owners, as applicable, shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor and the Beneficial Owners, as applicable, the Property in exchange for the Purchase Price, free and clear of any and all encumbrances, except for Permitted Encumbrances.

**2.2 Purchase Price.** The Purchase Price for the Property shall be the sum of SIXTY FIVE MILLION DOLLARS (\$65,000,000.00), subject to the adjustments provided for herein.

**2.3 Allocation of Purchase Price.** The Purchaser and the Vendor and the Beneficial Owners agree that the Purchase Price shall be allocated for income tax purposes as follows:

Lands	\$ 13,000,000
Buildings	\$ 52,000,000
Total:	\$ 65,000,000

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The Purchaser and the Vendor and the Beneficial Owners agree to use these allocations in their respective materials to be filed with the Canada Revenue Agency and all other applicable authorities concerning the transaction contemplated by this Agreement.

**2.4 Payment of Purchase Price.** The Purchaser shall pay the Purchase Price as follows:

- (a) by payment of TWO MILLION DOLLARS (\$2,000,000) (the “**Deposit**”) by the Purchaser to the Purchaser's Solicitors within one (1) Business Day of the Execution Date, to be held in trust until paid or released as provided herein; and
- (b) the balance of the Purchase Price, subject to the adjustments provided for herein, shall be paid on Closing as provided herein.

**2.5 Deposit.** The Deposit shall be held by the Purchaser's Solicitors in an interest bearing trust account, pursuant to the terms of this Agreement. Interest earned on the Deposit shall be for the credit of the Purchaser, unless otherwise stated herein, and the Deposit and any interest accrued thereon shall be dealt with as follows:

- (a) if the Purchaser's Condition is not satisfied or waived as provided in this Agreement by the Condition Date, the Deposit, together with the accrued interest thereon, shall be paid to the Purchaser forthwith; or
- (b) on the Closing Date, the Deposit, together with accrued interest, shall be credited on account of the Purchase Price; or
- (c) if, after the waiver or satisfaction of the Purchaser's Condition, the purchase and sale of the Property in accordance herewith is not completed due to the default by the Purchaser in the performance of any of its obligations under this Agreement, the Deposit together with the accrued interest thereon, shall be forfeited to the Vendor as liquidated damages as a genuine pre-estimate of its damages in full and final settlement of any claim which the Vendor may have against the Purchaser and shall be paid to the Vendor forthwith upon demand by the Vendor; or
- (d) if, after the waiver or satisfaction of the Purchaser's Condition, the purchase and sale of the Property in accordance herewith is not completed other than due to the default by the Purchaser in the performance of any of its obligations under this Agreement, then the Deposit together with accrued interest thereon shall be paid to the Purchaser forthwith upon demand by the Purchaser, without prejudice to any other rights and remedies which the Purchaser may have at law or in equity.

**2.6 Public Announcements.** No press release, public statement or announcement or other public disclosure (a “**Public Statement**”) with respect to this Agreement or the transaction contemplated hereunder may be made prior to Closing except with the prior written consent and joint approval of the Vendor and the Purchaser or if required by Applicable Law or a Governmental Authority. Where the Public Statement is required by Applicable Law or a Governmental Authority, the party required to make the Public Statement will use its commercially reasonable efforts to obtain the approval of the other Party as to the form, nature and extent of the disclosure.

### 3. PURCHASER'S CONDITION

**3.1 Purchaser's Condition.** The Purchaser's obligation to complete the purchase of the Property pursuant to this Agreement shall be subject to and conditional upon the fulfillment of the following condition (the "**Purchaser's Condition**"):

- (a) on or before 5:00 p.m. (MDT) on the Condition Date, the Purchaser shall give the Vendor written notice confirming that the Purchaser's board of directors has approved the transactions contemplated by this Agreement and the Purchaser is satisfied, in its sole and absolute discretion, with all legal, physical and financial aspects of the Property, including but not limited to, its inspections thereof, the development and redevelopment or repurposing potential thereof, the title thereto and condition thereof, and all documents and materials delivered by the Vendor or made available to the Purchaser pursuant to sections 5.1 and 5.2 hereof.

**3.2 Removal of Purchaser's Condition.** The Purchaser's Condition is for the sole and exclusive benefit of the Purchaser and may be unilaterally waived in writing in whole or in part by the Purchaser at any time on or before 5:00 p.m. (MDT) on the Condition Date. In the event that any of the Purchaser's Condition is not satisfied or waived by the Purchaser within the time provided in Section 3.1(a), the Deposit and all accrued interest thereon shall be returned to the Purchaser, this Agreement shall be terminated and each of the parties hereto shall have no further obligations to, nor rights against, the other in respect of this Agreement, except for the obligations of the Purchaser under section 4.2 hereof.

### 4. CLOSING CONDITIONS

**4.1 Closing Conditions for Vendor and Beneficial Owners.** The Vendor's and Beneficial Owners' obligation to complete the sale of the Property pursuant to this Agreement on the Closing Date is subject to the following conditions precedent being satisfied or waived as at the Closing Date:

- (a) all documents or copies of documents required to be executed or delivered by or on behalf of the Purchaser to the Vendor and the Beneficial Owners, pursuant to this Agreement, shall have been so executed or delivered or both when required pursuant to this Agreement;
- (b) all of the material terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser will have been complied with or performed in all material respects; and
- (c) the representations and warranties of the Purchaser referred to section 7.1 will be true and accurate in all material respects.

The conditions set forth in this section 4.1 (collectively, the "**Vendor's Closing Conditions**") are for the exclusive benefit of the Vendor and the Beneficial Owners and may be waived in whole or in part by the Vendor and the Beneficial Owners by notice to the Purchaser prior to Closing.

**4.2 Closing Conditions for Purchaser.** The Purchaser's obligation to complete the purchase of the Property on the Closing Date is subject to the following conditions precedent being satisfied or waived as at the Closing Date:

- (a) on or before the Condition Date, the Purchaser will have given notice to the Vendor that the Purchaser's Condition has been satisfied or waived in accordance with section 3;
- (b) all documents or copies of documents required to be executed or delivered by or on behalf of the Vendor and the Beneficial Owners to the Purchaser pursuant to this Agreement, shall have been so executed or delivered or both when required pursuant to this Agreement;
- (c) all of the material terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor and the Beneficial Owners, as applicable, will have been complied with or performed in all material respects; and
- (d) the representations and warranties of the Vendor and the Beneficial Owners, as applicable, referred to section 6.1 will be true and accurate in all material respects.

The conditions set forth in this section 4.2 (collectively, the "**Purchaser's Closing Conditions**") are for the benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by notice to the Vendor prior to Closing.

**4.3 Satisfaction of Closing Conditions.** If any of the Purchaser's Closing Conditions or any of the Vendor's Closing Conditions, as applicable, have not been satisfied on or before Closing, the party for whose benefit the conditions have been included shall be entitled, to terminate this Agreement by notice in writing to the other in accordance with and subject to the terms of this Agreement and the Deposit, with accrued interest, shall be forfeited or returned in accordance with section 2.5. In such event, the parties shall be released from all further obligations hereunder unless such non-satisfaction is as a result of the breach of this Agreement by the Purchaser or the Vendor, as the case may be, in which case the other party shall, subject to any limitations set out herein (including the limitations set out in section 2.5(c)), be entitled to exercise all of the rights and remedies that it has pursuant to this Agreement or otherwise in law or equity as a result of such breach.

## **5. DELIVERIES, INSPECTION AND AUTHORIZATIONS**

**5.1 Delivery of Property Documents.** If not previously delivered to the Purchaser, the Vendor shall deliver to the Purchaser by 5:00 p.m. within two (2) Business Days of the Execution Date, via an electronic data room, the following if in the possession of the Vendor (collectively, the "**Property Documents**"): (i) historical operating statements indicating income and expenses relating to the Property and year-to-date 2021; (ii) all contracts and reports relevant to the operation, redevelopment and maintenance of the Property; (iii) any surveys; (iv) real property reports; (v) environmental reports; (vi) asbestos management plans and related documentation; (vii) building condition reports; (viii) engineering reports; (ix) mechanical reports; (x) blue-prints; (xi) drawings; (xii) roof reports; (xiii) any third-party professional reports relating to the Property or condition of the Property (xiv) all Leases; and (xv) such reasonable, non-litigation privileged or confidential, disclosure in respect of the CNOOC Lease and the CNOOC Litigation as a prudent purchaser of commercial real estate in the City of Calgary would require in connection with an arms' length purchase of commercial real estate. Notwithstanding the foregoing the Purchaser acknowledges that the Property Documents do not include the Excluded Reports.

**5.2 Access.** From and after the Execution Date, until and including the Condition Date, and thereafter until Closing in the event the Purchaser's Conditions are satisfied or waived, the Purchaser, through its representatives, consultants and agents shall upon twenty-four (24) hours prior written notice, be given reasonable access to the Lands and the Buildings (subject to the rights of the Tenants) for the purpose of inspecting, sampling and examining the state and condition thereof (including undertaking engineering, geotechnical and environmental tests and surveys). The Purchaser shall use all reasonable efforts not to disturb or unduly interfere with the business or operations of the Vendor or the Tenants at the Property. The Purchaser will forthwith repair any damage to the Lands or Buildings caused by the testing, inspections or surveys of the Property by the Purchaser and its representatives, consultants and agents and the Purchaser will indemnify and save the Vendor harmless from all losses, costs, claims, third party actions, damages and expenses which the Vendor suffers as a result of said tests and inspection.

**5.3 Investigative Authorization.** The Vendor hereby authorizes the Purchaser and its representatives, consultants and agents to meet with or correspond with the appropriate statutory or governmental authorities for the purpose of conducting its due diligence searches and investigations with respect to the Property and verifying the accuracy of the warranties and representations of the Vendor contained in this Agreement, including, without limitation, compliance with laws, regulations, bylaws and assessments. The Vendor shall promptly at the Purchaser's request execute and deliver any authorizations reasonably required by the Purchaser to authorize the statutory or governmental authority to release such information to the Purchaser, provided that such authorizations shall not allow for any inspections of the Property to be undertaken.

**5.4 Reliance Letters.** The Vendor shall deliver a letter of reliance from Western Health & Safety addressed to the Purchaser and its lender in respect of the WHS Reports not later than ten (10) Business Days prior to the Closing Date.

**5.5 Lender Approval.** The Vendor shall have received written confirmation from its lenders that such lenders are satisfied with the form of this Agreement not later than January 15, 2022 or such later date as may be agreed to by the Purchaser and Vendor, acting reasonably.

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

**6.1 Representations and Warranties.** Each of the Vendor and each Beneficial Owner, in each case on their own behalf and not on behalf of any other party, as applicable, hereby represents and warrants to the Purchaser, and acknowledges that the Purchaser has relied thereon in entering into this Agreement and in concluding the purchase and sale herein, that as of the date hereof and on the Closing Date, unless made as of a specified date:

- (a) the Vendor and each Beneficial Owner is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the power and capacity to own and dispose of its interest in Property, to enter into this Agreement and to carry out its terms, all of which has been, or by the Closing Date shall have been, duly authorized and will not result in the violation of any provisions of the Vendor's or the Beneficial Owners' respective constating documents or bylaws;
- (b) the Vendor is the sole registered owner of such Property and has registered title to the Property free and clear of all caveats and instruments except the Permitted

Encumbrances and those financial charges, if any, to be paid out or released on Closing as provided in this Agreement;

- (c) the Beneficial Owners are all of the beneficial owners of such Property, as applicable, and each such Beneficial Owner holds its beneficial title to the Property free and clear of all caveats and instruments except the Permitted Encumbrances and those financial charges, if any, to be paid out or released on Closing as provided in this Agreement;
- (d) neither the entering into nor delivery of this Agreement nor the completion by the Vendor and the Beneficial Owners of the sale of the Property will conflict with or constitute a default by the Vendor or any Beneficial Owner under any Applicable Laws; and no approval or consent of any Governmental Authority is required (other than a consent, if any, required from a party to any Permitted Encumbrance, which the Vendor shall obtain prior to Closing) in connection with the execution and delivery of this Agreement by the Vendor and the Beneficial Owners and the consummation of the sale of the Property;
- (e) neither the Vendor nor any Beneficial Owner is a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (f) except for this Agreement there are no agreements, options, or other rights, including any right of first refusal, option or other right to purchase the Property or any part thereof to which the Vendor or any Beneficial Owner is, or may become, obligated to sell the Property or any part thereof;
- (g) the Vendor has not received written notice from any Governmental Authority having jurisdiction and is not otherwise aware of any actual or contemplated expropriation of all or any part of any Property;
- (h) except for the CNOOC Litigation, or as otherwise disclosed in writing by the Vendor, to the best of the Vendor's knowledge there are no claims, actions or proceedings which are pending or threatened with respect to the Property or arising from the Vendor's ownership interest in the Property;
- (i) the CNOOC Litigation is not reasonably expected to affect or restrict the ability of the Vendor to convey or transfer the Property to the Purchaser, or to interfere with the Vendor's or the Beneficial Owners' ability to do so;
- (j) with respect to the Property, to the best of the Vendor's knowledge and except as otherwise disclosed in the Property Documents:
  - (i) the Vendor has not received any written notice from any Governmental Authority of non-compliance with respect to Applicable Laws which is not otherwise being rectified as required by any applicable Governmental Authority at the sole cost and expense of the Vendor prior to Closing (or following Closing pursuant to an undertaking to be delivered on Closing in favour of the Purchaser); and
  - (ii) the Vendor has not received any notice from any Governmental Authority that the Vendor is required to conduct any remedial action or undertake

any works with respect to such environmental contamination of the Lands and Building;

- (k) there are no employees of the Vendor employed in connection with the Property in respect of which the Purchaser will incur any liabilities whatsoever as a result of the completion of this Agreement;
- (l) the Vendor is not bound by or subject to any agreement or arrangement either directly or by operation of law with any labour union or employee association including any collective agreement relating to any of the employees utilized in the management of the Property;
- (m) this Agreement is a legal, valid and binding obligation of each of the Vendor and the Beneficial Owners, enforceable against each such party by the Purchaser in accordance with its terms, except only as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally or by general equitable principles;
- (n) with respect to the Building:
  - (i) to the best of the Vendor's knowledge and except as may be set out in the Property Documents, the Vendor has received no notice from any authority that it is in breach of any Environmental Laws; and
  - (ii) to the best of the Vendor's knowledge and except as may be set out in the Property Documents, there has been no migration of any Toxic Materials from or on to the Lands and/or the Building or from or on to any adjoining properties;
- (o) the Vendor has not received any notice nor, to the best of the Vendor's knowledge, does it have any knowledge of any intention of the applicable municipality to alter its zoning by-law, official community plan or land use plan, if any, so as to affect or potentially affect the Lands and/or any of the Buildings or the present or future operation thereof;
- (p) there are no accepted offers to lease, agreements to lease, leases, renewals of leases or other rights and licenses granted by the Vendor or its predecessors in title to possess or occupy any portion of the Property, other than the Leases;
- (q) there are no contracts relating to the servicing of the Property that will remain in effect after the Closing Date;
- (r) with respect to the Leases:
  - (i) the Leases delivered and/or provided to the Purchaser constitute all leases, agreements to lease and other rights in existence on the date of this Agreement in respect of which any person, firm or corporation has the right to lease, use or occupy any portion of the Lands or Building in the nature of a tenancy or license and the Leases have not been modified, extended, renewed, or assigned by any Tenant;

- (ii) except as otherwise disclosed in the Property Documents, there is no litigation commenced by any of the Tenants against or in respect of the Property or the Vendor's interest in the Property;
- (iii) except as otherwise disclosed in the Property Documents, no written notice has been received from any Tenant alleging default by the Vendor in the performance of its obligations as landlord pursuant to any of the Leases or alleging any defect in the condition or state of repair or state of completion of its demised premises; and
- (iv) except as otherwise disclosed in the Property Documents or as set forth in the Leases, the Vendor is not obliged to alter, repair or improve or otherwise expend money on the premises demised to any Tenant pursuant to any written notice from or written agreement with any such Tenant;
- (s) the CNOOC Lease has been terminated, and there are no trailing liabilities thereunder that would be reasonably expected to bind the Purchaser following Closing; and
- (t) as of the Execution Date, the Property Documents comprise all reports in the possession or control of the Vendor, other than the Excluded Reports, that would reasonably be expected to materially affect the Vendor's ability to perform its obligations hereunder or which would reasonably be expected to materially adversely affect the market value of the Property, the ability of the Purchaser to own, occupy and obtain revenue from the Property, the ability of the Purchaser to obtain mortgage financing in respect of the Property, or the Purchaser's liability as owner of the Property (collectively, the "**Material Reports**"). As of the Closing Date, the Vendor has provided to the Purchaser all additional Material Reports that it has received between the Execution Date and the Closing Date, other than any additional Excluded Reports received during such time.

**6.2 Acknowledgement of Purchaser as to Condition of the Property.** The Purchaser acknowledges and agrees that, subject to the representations and warranties of the Vendor contained in section 6.1:

- (a) in entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Property, including without limitation, the physical and environmental condition of the Property and a review of the documentation delivered or made available to the Purchaser pursuant to this Agreement, and, the Purchaser acknowledges it is not relying on the accuracy and completeness of any information or documentation furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor in connection therewith; and
- (b) the Purchaser acknowledges and agrees that the Property is being purchased and assumed by the Purchaser on an "as is, where is basis" without any express or implied agreement, representation or warranty whatsoever by the Vendor or Beneficial Owners other than as specifically set forth in section 6.1, and that except as specifically provided herein neither the Vendor nor any Beneficial Owner is obligated to perform any work or incur any expenditure with respect to the Property before or after the Closing Date. On the Closing Date the Purchaser shall deliver

to the Vendor a release pursuant to which the Purchaser acknowledges that the Property has been acquired by the Purchaser on an "as is, where is basis" and that the Purchaser has no claim against the Vendor in respect of the Property or the condition thereof, including, without limitation, the environmental condition of the Property (except for claims arising under this Agreement as a result of any misrepresentation or breach of warranty by the Vendor) and releases the Vendor and the Beneficial Owners from any and all liability to the Purchaser in respect of the Property and the condition thereof (the "**Purchaser's Acknowledgement and Release**").

**6.3 Survival of Representations and Warranties.** The representations and warranties contained in section 6.1 shall survive the Closing Date and shall continue in full force and effect for the benefit of the Purchaser for a period of one (1) year thereafter, provided that written notification of any alleged misrepresentation or breach of warranty must be given by the Purchaser to the Vendor on or before the expiry of such one (1) year period.

## **7. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

**7.1 Representations and Warranties.** The Purchaser hereby represents and warrants to the Vendor and the Beneficial Owners, and acknowledges that the Vendor and the Beneficial Owners have relied thereon in entering into this Agreement and in concluding the purchase and sale herein, that as of the date hereof (unless otherwise specified or disclosed in writing to the Vendor prior to the Condition Date) and on the Closing Date:

- (a) the Purchaser is a corporation duly incorporated and validly existing under the laws of Ontario and has the power and capacity to own and purchase the Property, to enter into this Agreement and to carry out its terms, all of which has been, or by the Closing Date shall have been, duly authorized;
- (b) neither the entering into nor delivery of this Agreement nor the completion by the Purchaser of the purchase of the Property will conflict with or constitute a default by the Purchaser under any Applicable Laws; and no approval or consent of any Governmental Authority is required in connection with the execution and delivery of this Agreement by the Purchaser and the consummation of the purchase of the Property;
- (c) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and
- (d) this Agreement is a legal, valid and binding obligation of the Purchaser, enforceable against it by the Vendor in accordance with its terms, except only as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally or by general equitable principles.

**7.2 Survival of Representations and Warranties.** The representations and warranties contained in section 7.1 shall survive the Closing Date and shall continue in full force and effect for the benefit of the Vendor and the Beneficial Owners for a period of one (1) year thereafter, provided that written notification of any alleged misrepresentation or breach of warranty must be provided by the Vendor to the Purchaser on or before the expiry of such one (1) year period.

## 8. ADDITIONAL COVENANTS OF THE VENDOR

**8.1 Covenants.** The Vendor hereby covenants and agrees with the Purchaser as follows:

- (a) to continue to operate, manage and maintain the Property until the Closing Date in the current manner, which is consistent with a careful and prudent owner in The City of Calgary;
- (b) to maintain the existing (or substantially similar) insurance coverage in respect of the Property in full force and effect up to and including the Closing Date;
- (c) will not incur any capital expenditure with respect to the Property without the prior written consent of the Purchaser, which consent may be withheld in the Purchaser's sole and absolute discretion, unless such capital expenditure is necessary due to an emergency or life or safety issues, and such capital expenditure is paid for in its entirety by the Vendor; and
- (d) forthwith until the Closing, notify the Purchaser if it becomes aware that after the date hereof any of its representations or warranties become untrue or incorrect in any material respect.

**8.2 New Leases.** The Vendor will not, from and after the date of this Agreement, enter into any agreement or contract affecting any of the Property or any agreement to lease or lease or any modification of any of Permitted Encumbrances or new Permitted Encumbrance or any mortgage or charge relating to the Property (other than agreements relating to the release and discharge of same) without the prior written approval of the Purchaser, which approval may be withheld in its sole discretion.

## 9. CLOSING DATE AND PROCEDURE

**9.1 Closing Date.** The Closing of the purchase and sale of the Property as herein contemplated shall take place at the offices of the Vendor's Solicitors in Calgary, Alberta at 2:00 p.m. (MDT) on the Closing Date or at such other place and time as the parties may mutually agree.

**9.2 Vendor's Closing Documents.** The Vendor shall cause the Vendor's Solicitor deliver to the Purchaser's Solicitors, on reasonable solicitor trust conditions for similar transactions in the City of Calgary, the following documents duly executed by the Vendor and/or the Beneficial Owners, as applicable, and in registrable form whenever appropriate five (5) Business Days prior to the Closing Date:

- (a) the Transfer;
- (b) a beneficial conveyance from the Beneficial Owners which sells, transfers, assigns, sets over and conveys to and in favour of the Purchaser all of its beneficial right, title and interest in and to the Property and confirms the authorization and direction to the Vendor to execute and deliver this Agreement, the transfer and any other Closing Documents which are to be delivered by the Vendor in accordance with this Agreement;
- (c) a bill of sale with respect to the Chattels, if any;

- (d) an assignment to the Purchaser of the interest of the Vendor in the Leases that are in effect as of the Closing Date, which shall include an assumption and indemnity by the Purchaser in favour of the Vendor with respect to all obligations under such Leases arising from and after the Closing Date and the agreement of the Vendor to be responsible for, and indemnify the Purchaser with respect to, any obligations under such Leases arising prior to the Closing Date;
- (e) notices of assignments to the Tenants under the Leases that are in effect as of the Closing Date;
- (f) estoppel certificates from all Tenants under Existing Leases that are in effect as of the Closing Date in forms to be agreed to by the Condition Date by the parties, each acting reasonably, which (where required by such Existing Leases) will be in the forms contemplated by such Existing Leases, completed and executed by such Tenants without material adverse amendments or (including any assertion of default by the landlord);
- (g) the Statement of Adjustments approved by the Vendor and the Purchaser, acting reasonably, a draft of which will be delivered by the Vendor to the Purchaser not less than ten (10) Business Days prior to the Closing Date;
- (h) discharges in registrable form of all liens, mortgages, charges, encumbrances, caveats, and any other claims and interests, if any, not constituting Permitted Encumbrances, or undertakings from the Vendor's Solicitors, satisfactory to the Purchaser's Solicitors, acting reasonably, to discharge such mortgages, liens, charges, encumbrances, caveats, and any other claims and interests, if any;
- (i) the Readjustment Agreement pursuant to section 12.4 hereof;
- (j) certificates of an officer of the Vendor and each Beneficial Owner certifying that the Vendor and each Beneficial Owner, as applicable, is not a non-resident of Canada for the purpose of the *Income Tax Act* (Canada);
- (k) an assignment to the Purchaser of all Permits and licences as may be necessary to operate and occupy the Property to the extent that such Permits and licences have been issued to the Vendor and can be assigned;
- (l) an indemnity from the Vendor and the Beneficial Owners against any and all Claims made against the Purchaser or its lenders in the future (i) by any party to the CNOOC Litigation with respect to the subject matter of the CNOOC Litigation, including against any costs and expenses incurred to defend against same should the Purchaser or its lender be made party thereto; and (ii) under the CNOOC Lease, provided that the aggregate liability of the Vendor and the Beneficial Owners on a combined basis under such indemnity shall not exceed \$1,000,000;
- (m) a specific assignment and assumption of any Permitted Encumbrance to the extent specifically required thereunder;
- (n) a certificate of an officer of the Vendor (in his or her capacity as an officer and not in his or her personal capacity) certifying that the representations and warranties of the Vendor contained in this Agreement are true and correct in all material

Vendor's knowledge, without personal liability of such officer and addressed to the title insurer regarding such matters with respect to title to the Property as are known to the Vendor and reasonably requested by the title insurer.

## 10. COSTS AND TAXES

**10.1 Registration Fees.** The fees for the registration of the Transfers in the Alberta Land Titles Office shall be paid by the Purchaser.

**10.2 Cost to Clear Title.** The cost of obtaining and registering any documents required to clear title to the Property of any mortgages, charges, liens, encumbrances, caveats and other claims and interests not constituting Permitted Encumbrances shall be borne by the Vendor.

**10.3 GST.** The Purchaser is responsible for any GST in respect of the purchase and sale of the Property. The Purchaser shall, on or before the Closing Date, provide the Vendor and the Beneficial Owners with a certificate and indemnity certifying: (i) that the Purchaser is a registrant under the *Excise Tax Act* (Canada) under a stated registration number; (ii) that the Purchaser shall account for GST in respect of the purchase and sale transaction in accordance with the *Excise Tax Act* (Canada); and (iii) indemnifying the Vendor and the Beneficial Owners in relation to all GST in respect of the purchase and sale of the Property.

## 11. POSSESSION

**11.1 Possession.** The Purchaser shall be entitled to have vacant possession of the Property, subject only to the Leases and the Permitted Encumbrances, on the Closing Date.

## 12. ADJUSTMENTS

**12.1** Adjustments shall be made as of the Closing Date for prepaid rents and any other amounts prepaid by Tenants under the Leases, security deposits paid by Tenants to the Vendor pursuant to the Leases, rents other than rental arrears of 30 days or more (such tenant in arrears being a "**Delinquent Tenant**"), realty taxes, current portion of local improvement levies and charges, water and assessment rates, utilities, fuel, licences necessary for the operation of the Property and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Property. Provided, however, there shall be no adjustment in respect of, and the Purchaser shall assume responsibility for all payments and obligations pursuant to any and all onsite and offsite local improvement levies, development cost charges, acreage assessments, boundary charges, deferred maintenance and service obligations and other similar levies, assessments and charges payable to the City of Calgary in respect of the Property in the period following Closing, and the Purchaser agrees that the Vendor will have no further liability therefor after the Closing Date.

**12.2** A statement of adjustments (the "**Statement of Adjustments**") shall be delivered to the Purchaser by the Vendor ten (10) Business Days prior to the Closing Date. The Vendor shall give the Purchaser's representatives access to the Vendor's working papers and backup materials in order to confirm the Statement of Adjustments.

**12.3** The Purchaser shall receive all income and pay all expenses in respect of the Property for the Closing Date itself.

**12.4** All tenant inducements, internal or external real estate or leasing commissions and landlord's costs of tenant improvements shall if unpaid at Closing be adjusted for in favour of the

Purchaser with respect to all Leases other than in respect of any New Leases, which if approved by the Purchaser in accordance with this Agreement shall be for the account of the Purchaser.

**12.5** The parties agree that with respect to the expenses recoverable from the Tenants under the Leases including, without limitation, operating costs, property taxes and other similar expenses (the “**Recoveries**”), the undertaking to readjust any post-closing adjustments contemplated by section 12.7 shall include the following:

- (a) the Vendor shall provide to the Purchaser, together with the Statement of Adjustments, a statement outlining in reasonable detail the amounts of the Recoveries collected from the Tenants in monthly installments on the basis of the landlord’s estimates (the “**Recoveries Estimates**”) as well as the amounts expended on account of the Recoveries by the Vendor since the beginning of the current fiscal year for the Property;
- (b) if such statement indicates that the Vendor has collected pursuant to the Recoveries Estimates more than it has expended or accrued on account of the Recoveries for such period, the amount of such difference shall be credited to the Purchaser on the Closing Date and the Purchaser shall be responsible for, and make, the required adjustments with the Tenants in respect of such over-collection in accordance with the terms of the Leases;
- (c) if such statement indicates that the Vendor has collected pursuant to the Recoveries Estimates less than it has expended or accrued on account of the Recoveries for such period, the amount of such difference shall be credited to the Vendor on the Closing Date and the Purchaser shall be entitled to the amount to be collected from the Tenants in respect of such difference, provided that the Vendor shall not be entitled to a credit in respect of the amount of such difference with respect to a Lease that has terminated prior to the Closing Date, which amounts shall remain the property of the Vendor on Closing;
- (d) the Purchaser shall be responsible to conclude all reconciliations and to make all payments and satisfy all obligations with all Tenants relating to the Recoveries for the current fiscal year once the reconciliation of the Recoveries has been finally determined pursuant to the provisions of the Leases; and
- (e) the Purchaser and Vendor shall do a full accounting and reconciliation of the Recoveries for their respective periods of ownership in compliance with the obligation of the landlord pursuant to the Leases, and shall re-adjust any amount which either the Purchaser or Vendor determine, acting reasonably, prior to the Final Adjustment Date, which was incorrectly or inaccurately adjusted between the Purchaser or Vendor pursuant to the terms hereof. Such re-adjustment of Recoveries actually recovered from Tenants will be done on a pro rata basis between the Vendor and the Purchaser with such proration to be based on the number of days in each reporting period that are attributable to the ownership of the Property by the Vendor and the Purchaser, respectively. For greater certainty, the Purchaser assumes the risk of non-payment by a Tenant of any Recoveries accruing from and after the Closing Date (including year-end adjustments in respect thereof), and the Vendor assumes the risk of non-payment by a Tenant of that portion of any year-end operating cost or property tax adjustment which relates to the period from the start of the current fiscal period to the Closing Date.

**12.6** The Vendor shall have the right to pursue any Delinquent Tenant for payment of outstanding receivables, rent or other charges for the period prior to the Closing Date, other than any right of distress or right to terminate a lease. If the Purchaser receives any amounts from a Delinquent Tenant allocated to receivables, rent or other charges for the period prior to the Closing Date, the Purchaser shall receive such amounts in trust for the Vendor and, subject to first applying such amounts to rent and charges invoiced and unpaid by such Tenant with respect to the period after Closing which may be retained by the Purchaser, shall remit same to the Vendor promptly.

**12.7** If the final cost or amount of an item which is to be adjusted (other than Recoveries from Tenants) cannot be determined as at the Closing Date, then an initial adjustment for such item shall be made as at the Closing Date, such amount to be estimated by the Vendor acting reasonably as of the Closing Date on the basis of the best evidence available on the Closing Date as to what the final cost or amount of such item will be. All adjustments shall be allocated on a pro rata basis between the Vendor and the Purchaser with such proration to be based on the number of days in each reporting period that are attributable to the ownership of the Property by the Vendor and the Purchaser, respectively. In each case, when all such costs or amounts are determined or on the Final Adjustment Date, whichever is earlier, the Vendor shall provide a complete statement thereof, together with particulars relating thereto in reasonable detail, to the Purchaser and within thirty (30) days thereafter the parties shall make a final adjustment as of the Closing Date for such costs or amounts. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by auditors appointed jointly by the Vendor and the Purchaser, with the cost of such auditor's determination being shared equally between the parties. All re-adjustments shall be completed on or before that date which is one (1) year following Closing (the "**Final Adjustment Date**"), after which time neither party shall have any right to request re-adjustments. The parties shall enter into a readjustment agreement (the "**Readjustment Agreement**") on the Closing Date in respect of those items specified to be re-adjusted in this section 12.7 and for the re-adjustment of any errors, omissions or changes in the Statement of Adjustments delivered on the Closing Date.

### **13. RISK**

**13.1 Risk.** The Property shall be at the risk of the Vendor until the completion of the Closing of the purchase and sale herein contemplated and thereafter at the risk of the Purchaser.

**13.2 Damage or Expropriation before Closing.** If before the Closing Date, the Property is expropriated in whole or in part or materially damaged (as hereinafter defined), the Purchaser may, within seven (7) days after having received notice of such event, elect in writing:

- (a) not to complete the purchase contemplated herein in which case the Deposit, together with all accrued interest thereon, shall be returned to the Purchaser, this Agreement shall be terminated and each of the parties hereto shall have no further obligations to, nor rights against, the other in respect of this Agreement, except for obligations of the Purchaser under section 4.2 hereof; or
- (b) to complete the purchase contemplated herein in which case completion shall be on the following terms and conditions insofar as they are applicable:
  - (i) in the case of expropriation, all expropriation proceeds or compensation shall be assigned and shall be payable to the Purchaser and that part of the Property not so expropriated shall be sold to the Purchaser and shall

be the subject of the representations and warranties herein contemplated;  
or

- (ii) in the case of material damage, the representations and warranties herein contained shall be limited to exclude the effect of such damage and the benefit of any existing insurance policies, the Vendor shall pay all deductibles and co-insurance payments, and all proceeds of such insurance shall be assigned and shall be payable to the Purchaser.

The Purchaser shall have seven (7) days after having received notice that the Property has been expropriated or materially damaged, to make the election even if the event occurs within seven (7) Business Days of the Closing Date, and if the Purchaser elects as permitted herein, the Closing Date shall thereafter be the Closing Date as otherwise provided in this Agreement or the Business Day next following the day which is ten (10) days after such election, whichever is the later. "materially damaged" or any variation thereof means damage to the Property, which will cost in excess of \$3,000,000.00 to repair as determined by a professional quantity surveyor chosen by the Vendor. If there is damage that is less than \$3,000,000 to repair as determined by such quantity surveyor, then the transaction shall close, and the purchase price shall be reduced by 110% of such estimated amount required to repair such damage.

#### **14. MISCELLANEOUS**

**14.1 Currency.** All dollar amounts referred to in this Agreement are Canadian dollars.

**14.2 Tender.** Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by certified cheque, certified solicitor's trust cheque, wire transfer or bank draft.

**14.3 Time of Essence.** Time is of the essence of this Agreement, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor, the Beneficial Owners and the Purchaser or by their respective solicitors who are hereby expressly appointed in this regard.

**14.4 Binding Agreement.** The Vendor, the Beneficial Owners and the Purchaser acknowledge and agree that although the obligations of the parties to complete the purchase and sale contemplated by this Agreement are subject to the waiver or satisfaction of the Purchaser's:

- (a) the Purchaser's Conditions are not conditions to this Agreement being a binding agreement of purchase and sale; and
- (b) this Agreement is not void, voidable, revocable or otherwise capable of being terminated by either party until the time limited for the satisfaction or waiver of the Purchaser's Condition has expired, unless otherwise expressly provided herein or otherwise agreed by the Vendor, the Beneficial Owners and the Purchaser in writing.

**14.5 Construction.** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

**14.6 Notices.** Any notice to be given under this Agreement shall be in writing and shall be validly given if delivered, emailed or mailed in Alberta by prepaid registered post to the parties as follows:

To the Purchaser at:

CBJ Developments Inc.

Attention: Jeff Burrell

Email: [jeff@cbjdevelopments.com](mailto:jeff@cbjdevelopments.com)

To the Vendor and the Beneficial Owners at:

200, 801 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 3P7

Attention: Marc Sardachuk

Email: [msardachuk@centurionholdings.ca](mailto:msardachuk@centurionholdings.ca)

With a copy to:

Bennett Jones LLP  
4500 Bankers Hall East  
855 2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

Attention: Jeremy Russell

Email: [russellj@bennettjones.com](mailto:russellj@bennettjones.com)

or to such other address or email address as a party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid shall be deemed to have been given on the day of delivery or transmission via email if a Business Day and if not a Business Day, then on the next Business Day or if mailed, on the third Business Day following the posting thereof, provided that if there is a postal strike, dispute or slowdown, notices shall only be effective if delivered or transmitted by telecopy or electronically transmitted.

**14.7 Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the purchase and sale of the Property and supersedes all prior agreements, negotiations and discussions, whether oral or written, of the Vendor and the Purchaser, and there are no agreements, covenants, representations or warranties, express, implied, statutory, collateral or otherwise, save as set forth or referred to herein.

**14.8 Survival.** All representations, warranties, covenants, agreements and indemnities contained in this Agreement shall survive the completion of the sale of the Property and shall not be merged in the Transfers or otherwise, subject to the limitations on survival of representations and warranties set out in sections 6.3 and 7.2 hereof.

**14.9 Assignment.** The Purchaser may, without the consent of the Vendor, but on written notice to the Vendor and subject to the terms of an assignment and assumption agreement in a form acceptable to the Vendor and the Purchaser acting reasonably, assign, in whole or in

part, this Agreement or direct the transfer of any of the Property to an affiliate of the Purchaser. Upon such assignment the Purchaser will be released of its obligation hereunder. Any other assignment or direction with respect to the transfer of any assets by the Purchaser will not be permitted without the prior written consent of the Vendor which consent may be arbitrarily withheld.

**14.10 Real Estate Commission.** The Vendor confirms that it will be responsible for any real estate commissions payable to Colliers International as a result of the sale of the Property to the Purchaser. The Purchaser confirms that it has not dealt with any agent in connection with the purchase of the Property. The Purchaser shall indemnify the Vendor for any costs, including solicitor and its own client costs, claims or damages arising from any claim for commission for any broker retained by the Purchaser. The Vendor shall indemnify the Purchaser for any costs, including solicitor and its own client costs, claims or damages arising from any claim for commission other than that for which the Purchaser is responsible. The provisions of this section 14.10 will survive the Closing or termination of this Agreement.

**14.11 Costs and Expenses.** Each of the parties shall bear their own costs and expenses incurred or to be incurred in negotiating and preparing this Agreement and in the Closing of this transaction.

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

**14.13 Severability.** If any term or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Agreement and the application of that term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**14.14 Further Assurances.** Each of the parties shall at all times hereafter execute and deliver, at the request of another party, all such further documents and instruments and shall do and perform all such further acts as may be reasonably required by that other party to give full effect to the intent and meaning of this Agreement.

**14.15 Governing Law.** This Agreement shall be exclusively governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The Vendor and the Purchaser agree to submit to the exclusive jurisdiction and the courts of the Province of Alberta with respect to any dispute relating to this Agreement or the purchase and sale transaction contemplated herein and to appoint respective agents for the receipt and service of process in Alberta.

**14.16 Binding Effect.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**14.17 Execution by Electronic Means.** This Agreement may be executed by the parties and transmitted by facsimile or other electronic means, including DocuSign, and if so executed

and transmitted, this Agreement shall be for all purposes as effective as if the parties had delivered an executed original Agreement.

**14.18 Confidentiality.** Neither of the parties will disclose prior to Closing the contents of this Agreement without the prior written consent of the other party, not to be withheld in case of disclosure required by law. The Purchaser will instruct its agents, employees, advisers and consultants to comply with the provisions of this section 14.18. Notwithstanding the foregoing, the Purchaser may disclose all information obtained with respect to the Property to its advisors, lawyers, accountants, bankers, joint venture partners, prospective capital partners, prospective tenants potential investors and representatives as long as such persons agree to keep the information confidential until such time as the Transaction is completed. This section 14.18 does not apply to public information or information in the public domain at the time that such information is obtained by the Purchaser, information in the possession of the Purchaser not provided by the Vendor or information received in good faith from a third party lawfully in possession of the information and not in breach of any confidentiality obligation.

**14.19 No Solicitation.** The Vendor agrees that unless this Agreement is terminated, the Vendor will not (and will not authorize or permit any of the Vendor's employees or agents to) directly solicit any offer or accept any possible proposal from any other third party with respect to the Property.

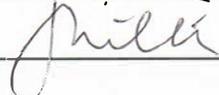
**14.20 Obligations Not Joint and Several.** Notwithstanding anything to the contrary in this Agreement, the Purchaser agrees and acknowledges that all representations, warranties, covenants, liabilities or other obligations of the Vendor and the Beneficial Owners hereunder, and under all closing documents delivered pursuant hereto, shall be several, and not joint and several, in accordance with each such party's *pro rata* interest in the Property.

**14.21 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK**

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the year and date first above written.

**801 SEVENTH INC.**

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

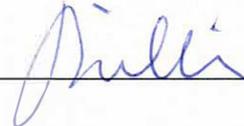
**OPTRUST OFFICE INC.**

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

**QUANTICO CAPITAL CORP.**

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

**WESTHILLS DEVELOPMENT CORPORATION**

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

**CENTURION HOLDINGS LTD.**

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

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the year and date first above written.

**801 SEVENTH INC.**

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

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

**OPTRUST OFFICE INC.**

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

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

**QUANTICO CAPITAL CORP.**

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

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

**WESTHILLS DEVELOPMENT CORPORATION**

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

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

**CENTURION HOLDINGS LTD.**

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

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

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the year and date first above written.

**801 SEVENTH INC.**

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

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

**OPTRUST OFFICE INC.**

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

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

**QUANTICO CAPITAL CORP.**

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

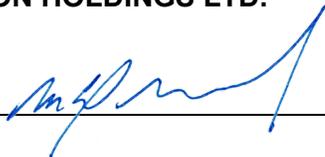
Per: \_\_\_\_\_

**WESTHILLS DEVELOPMENT CORPORATION**

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

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

**CENTURION HOLDINGS LTD.**

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

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

**CANADIAN INCOME FUND GROUP INC.**

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

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

**TOKAY CAPITAL CORP.**

Per: *S. VandenBrink*

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

**CANADIAN INCOME FUND GROUP INC.**

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

Per: K. MACINTYRE

**TOKAY CAPITAL CORP.**

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

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

**CBJ DEVELOPMENTS INC.**

DocuSigned by:

*Jeff Burrell*

1E1AF911CDD1488...

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

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

## SCHEDULE A

### LANDS AND PERMITTED ENCUMBRANCES

#### Part I: Description of Lands

**Civic Address:** 801 7 Avenue SW, Calgary, Alberta and the North Annex

**Legal Description:** DESCRIPTIVE PLAN 9210939  
BLOCK 46  
LOT 15'A'  
EXCEPTING THEREOUT ALL MINES AND MINERALS

and

PLAN "A1"  
BLOCK 34  
LOTS 21 TO 26 INCLUSIVE  
EXCEPTING THEREOUT: (AS TO SURFACE ONLY)  
THE ROAD WIDENING AND CORNER CUTS ON PLAN 8111565

#### Part II: Permitted Encumbrances

##### General

1. Agreements registered as of the Execution Date with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including, without limitation, subdivision agreements, development agreements, site control agreements, engineering, grading or landscaping agreements and similar agreements provided that same are in good standing and have been complied with in all material respected.
2. the rights reserved to or vested in any municipality, governmental or other public authority by statutory provisions, including without limitation, the right to acquire portions of the lands for road widening or interchange construction, and the right to complete or remedy improvements, landscaping or deficiencies in any pedestrian walkways or traffic control or monitoring.
3. reservations, limitations, appropriations, provisos and conditions in the original grants from the crown, native land claims and conditions to title contained in Section 61(a), (c), (e) and (f) of the Land Titles Act (Alberta) and reservations or exceptions of mines and minerals;
4. any inchoate lien for rates, taxes or assessments, local improvement rates, governmental charges or levies, or public utility charges, provided that such liens are related to obligations not yet due or delinquent.

5. Any encumbrances, liens or charges arising through the Purchaser and those for whom it is responsible at law. (Alberta).

**Specific**

1. Instrument number 811 033 087 being a caveat registered on February 23, 1981
2. Instrument number 821 064 078 being a caveat registered on April 15, 1982
3. Instrument number 871 173 898 being a caveat registered on September 23, 1987
4. Instrument number 871 173 899 being a caveat registered on September 23, 1987
5. Instrument number 991 168 283 being a caveat registered on June 16, 1999
6. Instrument number 991 174 463 being a caveat registered on June 23, 1999
7. Instrument number 001 099 615 being a caveat registered on April 14, 2000
8. Instrument number 001 099 616 being a caveat registered on April 14, 2000
9. Instrument number 001 213 256 being a caveat registered on August 1, 2000
10. Instrument number 001 213 265 being a caveat registered on August 1, 2000
11. Instrument number 011 314 448 being a caveat registered on October 24, 2001
12. Instrument number 121 186 188 being a caveat registered on July 24, 2012
13. Instrument number 151 142 227 being a caveat registered on June 9, 2015

Provided, in each case, that same are in good standing and have been complied with in all material respects.

## **SCHEDULE B**

### **LEASES**

1. Service Agreement dated October 15, 2019 between the Vendor and Imperial Parking Canada Corporation in respect of parking facility;
2. Lease Agreement dated • between the Vendor and 2025045 Alberta Ltd. in respect of Omnigiri Japan food court restaurant;
3. Lease Agreement dated • between the Vendor and 2029084 Alberta Ltd. in respect of Peppino Gourmet Foods food court restaurant;
4. Lease Agreement dated • between the Vendor and Pizza On The Fly Inc. in respect of Pizza On The Fly food court restaurant; and
5. Lease Agreement dated • between the Vendor and Quesada Restaurant Leasing Corp. in respect of Quesada Burritos and Tacos food court restaurant.

# **APPENDIX “F”**

## AMENDING AGREEMENT

THIS AMENDING AGREEMENT made effective the 7<sup>th</sup> day of February, 2022

BETWEEN:

**801 SEVENTH INC.**  
(the "Vendor")

AND:

**OPTRUST OFFICE INC., QUANTICO CAPITAL CORP., WESTHILLS  
DEVELOPMENT CORPORATION, CENTURION HOLDINGS LTD., CANADIAN  
INCOME FUND GROUP INC. AND TOKAY CAPITAL CORP.**  
(collectively, the "Beneficial Owners")

AND:

**CBJ DEVELOPMENTS INC.**  
(the "Purchaser")

WHEREAS:

- A. By an Agreement of Purchase and Sale dated the 5<sup>th</sup> day of January, 2022 (the "Agreement"), the Vendor and Beneficial Owners agreed to sell, and the Purchaser agreed to purchase, the Property (as set forth and defined in the Agreement);
- B. The Vendor, the Beneficial Owners and the Purchaser have agreed to amend the Agreement as set out herein.

**THEREFORE**, this Agreement witnesses that in consideration of the agreements, promises, covenants and assurances as herein provided for by each of the parties to and in favour of each other, the sufficiency of which is hereby acknowledged, it is expressly agreed as follows:

1. Unless otherwise defined in this Amending Agreement, all phrases or terms herein requiring definition or meaning shall have the definitions ascribed thereto in the Agreement.

2. The Agreement is hereby amended by deleting Section 1.1(g) in its entirety and replacing it with the following:

**"Closing Date"** means March 31, 2022, or such other date as the parties may agree to;"

3. The Agreement is hereby amended by deleting Section 1.1(j) in its entirety and replacing it with the following:

**"Condition Date"** means March 15, 2022;"

4. The Agreement is hereby amended by deleting Section 1.1(k) in its entirety and replacing it with the following:

**"Deposit"** means, collectively, the Initial Deposit, Amendment Deposit #1 and Amendment Deposit #2;"

5. The Agreement is hereby amended by deleting Section 2.4 in its entirety and replacing it with the following:

**"2.4 Payment of Purchase Price.** The Purchaser shall pay the Purchase Price as follows:

- (a) by payment of TWO MILLION DOLLARS (\$2,000,000) (the "**Initial Deposit**") by the Purchaser to the Purchaser's Solicitors within one (1) Business Day of the Execution Date, to be held in trust until paid or released as provided herein;
- (b) by payment of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) (the "**Amendment Deposit #1**") by the Purchaser to the Purchaser's Solicitors on February 7, 2022, to be held in trust until paid or released as provided herein;
- (c) by payment of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) (the "**Amendment Deposit #2**") by the Purchaser to the Purchaser's Solicitors on or before February 28, 2022, to be held in trust until paid or released as provided herein; and
- (d) the balance of the Purchase Price, subject to the adjustments provided for herein, shall be paid on Closing as provided herein."

6. The Agreement is hereby amended by deleting Section 2.5 in its entirety and replacing it with the following:

**"2.5 Deposit.** The Deposit shall be held by the Purchaser's Solicitors in an interest bearing trust account, pursuant to the terms of this Agreement. Interest earned on the Deposit shall be for the credit of the Purchaser, unless otherwise stated herein, and the Deposit and any interest accrued thereon shall be dealt with as follows:

- (a) the amount of ONE MILLION DOLLARS (\$1,000,000) out of the Deposit shall be unconditionally released to the Vendor and the Beneficial Owners on February 7, 2022; or
- (b) if the Purchaser's Condition is not satisfied or waived as provided in this Agreement by the Condition Date, the Deposit (less the amount released pursuant to Section 2.5(a)), together with the accrued interest thereon, shall be paid to the Purchaser forthwith; or
- (c) on the Closing Date, the Deposit, together with accrued interest, shall be credited on account of the Purchase Price; or
- (d) if, after the waiver or satisfaction of the Purchaser's Condition, the purchase and sale of the Property in accordance herewith is not completed due to the default by the Purchaser in the performance of any of its obligations under this Agreement, the balance of the Deposit together with the accrued interest thereon, shall be forfeited to the Vendor as liquidated damages as a genuine pre-estimate of its damages in full and final

settlement of any claim which the Vendor may have against the Purchaser and shall be paid to the Vendor forthwith upon demand by the Vendor; or

- (e) if, after the waiver or satisfaction of the Purchaser's Condition, the purchase and sale of the Property in accordance herewith is not completed other than due to the default by the Purchaser in the performance of any of its obligations under this Agreement, then the Deposit (less the amount released pursuant to Section 2.5(a)) together with accrued interest thereon shall be paid to the Purchaser forthwith upon demand by the Purchaser, without prejudice to any other rights and remedies which the Purchaser may have at law or in equity."

7. The Agreement is hereby amended by deleting Section 3.2 in its entirety and replacing it with the following:

**"3.2 Removal of Purchaser's Condition.** The Purchaser's Condition is for the sole and exclusive benefit of the Purchaser and may be unilaterally waived in writing in whole or in part by the Purchaser at any time on or before 5:00 p.m. (MDT) on the Condition Date. In the event that any of the Purchaser's Condition is not satisfied or waived by the Purchaser within the time provided in Section 3.1(a), the Deposit (less the amount released pursuant to Section 2.5(a)) and all accrued interest thereon shall be returned to the Purchaser, this Agreement shall be terminated and each of the parties hereto shall have no further obligations to, nor rights against, the other in respect of this Agreement, except for the obligations of the Purchaser under section 5.2 hereof."

8. The Agreement is hereby amended by deleting Section 13.2(a) in its entirety and replacing it with the following:

- "(a) not to complete the purchase contemplated herein in which case the Deposit (less the amount released pursuant to Section 2.5(a)), together with all accrued interest thereon, shall be returned to the Purchaser, this Agreement shall be terminated and each of the parties hereto shall have no further obligations to, nor rights against, the other in respect of this Agreement, except for obligations of the Purchaser under section 4.2 hereof; or"

9. The Agreement, and all covenants, provisions, powers and matters and things contained therein shall be, and are hereby, incorporated herein and shall continue in full force and effect except as amended by this Amending Agreement and the Agreement shall be read and construed as though the above provisions had been inserted therein.

10. Save as expressly herein provided, the provisions of the Agreement shall remain in full force and effect.

11. Time is, and shall remain, of the essence of this Amending Agreement and the Agreement as hereby amended.

12. This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

13. This Amending Agreement shall be exclusively governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

14. This Amending Agreement may be executed and delivered in counterparts with the same effect as if all parties had executed and delivered the same copy, and when each party has executed and delivered a counterpart, all counterparts together shall constitute one Amending Agreement.

**<SIGNATURE PAGES FOLLOW>**

**IN WITNESS WHEREOF** the Vendor and the Beneficial Owners have executed this Amending Agreement effective as of the year and date first written above.

**801 SEVENTH INC.**

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

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

**OPTRUST OFFICE INC.**

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

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

**QUANTICO CAPITAL CORP.**

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

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

**WESTHILLS DEVELOPMENT CORPORATION**

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

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

**CENTURION HOLDINGS LTD.**

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

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

**CANADIAN INCOME FUND GROUP INC.**

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

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

**TOKAY CAPITAL CORP.**

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

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

**IN WITNESS WHEREOF** the Purchaser has executed this Amending Agreement effective as of the year and date first written above.

**CBJ DEVELOPMENTS INC.**

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


## SECOND AMENDING AGREEMENT

**THIS SECOND AMENDING AGREEMENT** made effective the 23<sup>rd</sup> day of March, 2022 (the "Amending Agreement")

BETWEEN:

**801 SEVENTH INC.**  
(the "Vendor")

**AND:**

**OPTRUST OFFICE INC., QUANTICO CAPITAL CORP., WESTHILLS  
DEVELOPMENT CORPORATION, CENTURION HOLDINGS LTD., CANADIAN  
INCOME FUND GROUP INC. AND TOKAY CAPITAL CORP.**  
(collectively, the "Beneficial Owners")

**AND:**

**CBJ DEVELOPMENTS INC.**  
(the "Purchaser")

**WHEREAS:**

- A. By an Agreement of Purchase and Sale dated the 5<sup>th</sup> day of January, 2022, as amended by an amending agreement made effective February 7, 2022 (as so amended, the "**Agreement**"), the Vendor and Beneficial Owners agreed to sell, and the Purchaser agreed to purchase, the Property (as set forth and defined in the Agreement);
- B. The Vendor, the Beneficial Owners and the Purchaser have agreed to amend the Agreement as set out herein.

**THEREFORE**, this Agreement witnesses that in consideration of the agreements, promises, covenants and assurances as herein provided for by each of the parties to and in favour of each other, the sufficiency of which is hereby acknowledged, it is expressly agreed as follows:

1. Unless otherwise defined in this Amending Agreement, all phrases or terms herein requiring definition or meaning shall have the definitions ascribed thereto in the Agreement.
2. The Agreement is hereby amended by adding the following definition to Section 1.1 in alphabetical order:

**""Ayrshire Litigation"** means the litigation between the Vendor and Ayrshire Real Property Corp. pursuant to Alberta Court of Queen's Bench Action No. 2201-01470;"

3. The Agreement is hereby amended by deleting Section 1.1(g) in its entirety and replacing it with the following:

**""Closing Date"** means, subject to Section 3.3, April 15, 2022, or such other date as the parties may agree to;"

4. The Agreement is hereby amended by deleting Section 1.1(j) in its entirety and replacing it with the following:

""**Condition Date**"" means March 31, 2022;""

5. The Agreement is hereby amended by deleting Section 2.5 in its entirety and replacing it with the following:

**"2.5 Deposit.** The Deposit shall be held by the Purchaser's Solicitors in an interest bearing trust account, pursuant to the terms of this Agreement. Interest earned on the Deposit shall be for the credit of the Purchaser, unless otherwise stated herein, and the Deposit and any interest accrued thereon shall be dealt with as follows:

- (a) the amount of ONE MILLION DOLLARS (\$1,000,000) out of the Deposit shall be unconditionally released to the Vendor and the Beneficial Owners on February 7, 2022;
- (b) the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) out of the Deposit shall be unconditionally released to the Vendor and the Beneficial Owners on March 22, 2022;
- (c) prior to the Condition Date, the Purchaser's Solicitors may, upon written notice to the Vendor together with documentation substantiating the same, release an amount of up to ONE MILLION DOLLARS (\$1,000,000) out of the Deposit directly to its lending sources for the purpose of paying required commitment fees. The Purchaser's Solicitors shall promptly provide the Vendor with wire confirmations evidencing any such release;
- (d) if the Purchaser's Condition is not satisfied or waived as provided in this Agreement by the Condition Date, the Deposit (less the amount released pursuant to Sections 2.5(a), (b) and (c)), together with the accrued interest thereon, shall be paid to the Purchaser forthwith; or
- (e) on the Closing Date, the Deposit (less the amount released pursuant to Section 2.5(c)), together with accrued interest, shall be credited on account of the Purchase Price; or
- (f) if, after the waiver or satisfaction of the Purchaser's Condition, the purchase and sale of the Property in accordance herewith is not completed due to the default by the Purchaser in the performance of any of its obligations under this Agreement, the balance of the Deposit together with the accrued interest thereon, shall be forfeited to the Vendor as liquidated damages as a genuine pre-estimate of its damages in full and final settlement of any claim which the Vendor may have against the Purchaser and shall be paid to the Vendor forthwith upon demand by the Vendor; or
- (g) if, after the waiver or satisfaction of the Purchaser's Condition, the purchase and sale of the Property in accordance herewith is not completed other than due to the default by the Purchaser in the performance of any of its obligations under this Agreement, then the Deposit (less the amount released pursuant to Sections 2.5(a), (b) and (c)) together with accrued

interest thereon shall be paid to the Purchaser forthwith upon demand by the Purchaser, without prejudice to any other rights and remedies which the Purchaser may have at law or in equity."

6. The Agreement is hereby amended by adding the following section immediately after Section 3.2:

**"3.3 Per Diem.** If the Closing does not occur on or prior to the Closing Date, the Purchaser may extend the Closing Date, upon providing written notice to the Vendor, until April 30, 2022; provided, however, that the Purchaser shall pay to the Vendor and the Beneficial Owners the amount of \$15,000 per day from April 15, 2022 until the Closing has occurred, which payments shall be payable in arrears upon Closing. Such payments shall not be credited to the Purchase Price."

7. The Agreement is hereby amended by deleting Section 9.2(l) in its entirety and replacing it with the following:

"(l) an indemnity from the Vendor and the Beneficial Owners against any and all Claims made against the Purchaser or its lenders in the future (i) by any party to the CNOOC Litigation or Ayrshire Litigation with respect to the subject thereof, including against any costs and expenses incurred to defend against same should the Purchaser or its lender be made party thereto; and (ii) under the CNOOC Lease, provided that such indemnity shall extend for a period of 36 months after Closing and thereafter will no longer be in effect and the aggregate liability of the Vendor and the Beneficial Owners on a combined basis under such indemnity shall not exceed \$3,000,000;"

8. The Agreement is hereby amended by deleting Section 13.2(a) in its entirety and replacing it with the following:

"(a) not to complete the purchase contemplated herein in which case the Deposit (less the amount released pursuant to Sections 2.5(a), (b) and (c)), together with all accrued interest thereon, shall be returned to the Purchaser, this Agreement shall be terminated and each of the parties hereto shall have no further obligations to, nor rights against, the other in respect of this Agreement, except for obligations of the Purchaser under section 4.2 hereof; or"

9. The Agreement, and all covenants, provisions, powers and matters and things contained therein shall be, and are hereby, incorporated herein and shall continue in full force and effect except as amended by this Amending Agreement and the Agreement shall be read and construed as though the above provisions had been inserted therein.

10. Save as expressly herein provided, the provisions of the Agreement shall remain in full force and effect.

11. Time is, and shall remain, of the essence of this Amending Agreement and the Agreement as hereby amended.

12. This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

13. This Amending Agreement shall be exclusively governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

14. This Amending Agreement may be executed and delivered in counterparts with the same effect as if all parties had executed and delivered the same copy, and when each party has executed and delivered a counterpart, all counterparts together shall constitute one Amending Agreement.

**<SIGNATURE PAGES FOLLOW>**

**IN WITNESS WHEREOF** the Vendor and the Beneficial Owners have executed this Amending Agreement effective as of the year and date first written above.

**801 SEVENTH INC.**

Per: 

Per: 

**OPTRUST OFFICE INC.**

Per: 

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

**QUANTICO CAPITAL CORP.**

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

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

**WESTHILLS DEVELOPMENT CORPORATION**

Per: 

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

**CENTURION HOLDINGS LTD.**

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

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

**IN WITNESS WHEREOF** the Vendor and the Beneficial Owners have executed this Amending Agreement effective as of the year and date first written above.

**801 SEVENTH INC.**

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

Per: Phillips

**OPTRUST OFFICE INC.**

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

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

**QUANTICO CAPITAL CORP.**

Per: [Signature]

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

**WESTHILLS DEVELOPMENT CORPORATION**

Per: Phillips

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

**CENTURION HOLDINGS LTD.**

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

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

**IN WITNESS WHEREOF** the Vendor and the Beneficial Owners have executed this Amending Agreement effective as of the year and date first written above.

**801 SEVENTH INC.**

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

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

**OPTRUST OFFICE INC.**

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

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

**QUANTICO CAPITAL CORP.**

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

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

**WESTHILLS DEVELOPMENT CORPORATION**

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

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

**CENTURION HOLDINGS LTD.**

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

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

**CANADIAN INCOME FUND GROUP INC.**

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

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

**TOKAY CAPITAL CORP.**

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

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

**IN WITNESS WHEREOF** the Purchaser has executed this Amending Agreement effective as of the year and date first written above.

**CBJ DEVELOPMENTS INC.**

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

**CANADIAN INCOME FUND GROUP INC.**

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

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

**TOKAY CAPITAL CORP.**

Per: *L. Vanden Brink*

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

**IN WITNESS WHEREOF** the Purchaser has executed this Amending Agreement effective as of the year and date first written above.

**CBJ DEVELOPMENTS INC.**

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

**CANADIAN INCOME FUND GROUP INC.**

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

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

**TOKAY CAPITAL CORP.**

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

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

**IN WITNESS WHEREOF** the Purchaser has executed this Amending Agreement effective as of the year and date first written above.

**CBJ DEVELOPMENTS INC.**

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



# **APPENDIX “J”**

## Non-Disclosure Agreement

This Non-Disclosure Agreement (the "Agreement") is entered into and effective as of June 17, 2022, 2022 by and between CBJ Developments Inc. ("CBJ" or the "Discloser"), an Ontario Corporation having an address at 150 King Street, Suite 278, Toronto ON M5H 1J9, and: Ursataur Capital Management L.P. (the "Recipient"), a business or individual(s) having an address at; 105 Robinson St., Oakville ON L6J 1G1.

WHEREAS, the parties wish to evaluate a possible business or financial opportunity relating to TOWER 37, a CBJ real estate concept, development, acquisition or construction opportunity which may extend to other opportunities as may be mutually agree to in writing by the parties (hereinafter the "Project(s)").

WHEREAS CBJ wishes to privately discuss, communicate and provide certain Confidential Information to the Recipient ("the Disclosure") for the purpose of evaluating a potential business and/or financial transaction relating to the Project(s) (the "Proposed Transaction").

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. In connection with the Project(s) and the Proposed Transaction, confidential and/or proprietary information (hereinafter "Confidential Information") is intended to be disclosed by CBJ to the Recipient. The Recipient shall have a duty to protect Confidential Information which is, (a) disclosed by CBJ in writing and marked as confidential (or with other similar designation) at the time of disclosure; and (b) disclosed by CBJ in any other manner whether disclosed orally, electronically or by any other means and identified as confidential at the time of disclosure which may be confirmed as confidential in a written follow up to Recipient within ten (10) days of the disclosure.
2. Confidential Information to be disclosed by CBJ under this Agreement can generally be described as, but is not necessarily limited to the Project(s) existence, concept, design, structure, format, technical details, processes, construction or production methodology, business, financial or marketing plans, customer, client and third-party contact information, affiliate or partner information and other information relating to the Project(s) which may extend to other affairs of CBJ which shall be identified as being confidential at time of Disclosure.
3. Recipient shall limit disclosure of Confidential Information to himself or herself, themselves, or within an organization or business to its directors, officers, partners, shareholders, members, employees, affiliates, agents, consultants or other persons having a specific need to know which unless otherwise identified in writing by Recipient to CBJ shall be limited to retained legal counsel and financial advisors (hereinafter "Representatives"). Recipient shall not disclose Confidential Information to any other third party whether an individual, corporation, or other entity ("Third Party or Third Parties") without first receiving the prior written consent of CBJ. Recipient agrees to guard the Confidential Information in a manner consistent with the protection of their own most valuable information and shall take affirmative measures to ensure compliance with the confidentiality obligations in this Agreement by its Representatives.
4. Confidential Information shall not include information which (i) was publicly known and made generally available in the public domain prior to the time of Disclosure; (ii) becomes publicly known and made generally available after Disclosure through no action of the Recipient; (iii) becomes available to a receiving Third Party on a non-confidential basis from a source other than the Recipient, provided that such source is not bound by a confidentiality agreement with CBJ or is otherwise prohibited from transferring the information by a contractual, legal or fiduciary obligation; (iv) was already in the possession of the Recipient at the time of Disclosure as can be evidenced by the Recipient's files and records prior to the time of Disclosure; (v) is required by law to be Disclosed by the Recipient, provided that the Recipient gives CBJ prompt written notice of such requirement prior to such Disclosure; and (vi) is independently developed by the Recipient without use of or reference to CBJ's

## Non-Disclosure Agreement

Confidential Information as can be clearly evidenced by the Recipient's files and records.

5. Recipient acknowledges that CBJ has substantial and valuable rights and other proprietary interests in the Confidential Information and acknowledges that any unauthorized Disclosure to any Third Parties of the Confidential Information without the prior written approval of CBJ shall constitute a serious and material breach of the terms herein.
6. Recipient agrees they will not engage in any transaction or disclose any Confidential Information that will deprive or interfere with business opportunities disclosed by CBJ pursuant to this Agreement. Recipient agrees they shall not circumvent or attempt to circumvent CBJ for the purpose of realizing a gain or profit from the Confidential Information.
7. A breach of this Agreement shall render the Recipient liable to CBJ for any and all damages and injuries incurred by CBJ as a result thereof, and shall obligate the Recipient to account to CBJ and turn over to CBJ any and all monies, profits, and other direct or indirect consideration or benefits which the Recipient derives from any unauthorized Disclosure, use or exploitation of the Confidential Information, without prejudice to other legal or equitable rights or remedies that CBJ may have as a result of a violation of the terms hereof.
8. Recipient acknowledges and agrees that unauthorized Disclosure of CBJ's Confidential Information to any Third Parties may cause irreparable harm to CBJ, which damages and injuries may not be measurable or susceptible to calculation. Recipient acknowledges and agrees that any breach or threatened breach of this Agreement which includes unauthorized Disclosure or threatened Disclosure by the Recipient to Third Parties of any Confidential Information, shall entitle the CBJ to immediately seek and obtain, without bond, an ex parte restraining order, preliminary injunction and permanent injunction preventing unauthorized use and/or further Disclosure of the Confidential Information.
9. In the event of any breach or threatened breach of any of the terms of this Agreement by the Recipient, CBJ is entitled to recover their reasonable attorneys' fees and costs incurred in connection with any action or proceeding arising out of or relating to any such breach or threatened breach.
10. The parties agree that unless and until a formal agreement or agreements (hereafter "Definitive Agreement(s)") are fully executed, if at all, no further contract or agreement shall be deemed to exist between them, except that this Agreement shall continue to be in full force and effect. Without limiting the generality of the foregoing, Recipient acknowledges and agrees that: (i) no representation or warranty, express or implied, is or has been made by CBJ or any of its Representatives as to the accuracy or completeness of the Confidential Information; and (ii) each party shall be entitled to rely only on those representations and warranties that are expressly set forth in future Definitive Agreement(s) (if any), which are executed and delivered by each party to the other party.
11. Neither CBJ nor any of its Representatives shall have any liability on any basis (including, without limitation, in contract, tort, under federal or provincial securities law or otherwise), and the Recipient agrees not to make any claims against CBJ or any of its Representatives with respect to or arising out of: the participation of the Recipient in evaluating a Proposed Transaction; the review or use of any Confidential Information or any errors therein or omissions therefrom; or any action taken or not taken in reliance on the Confidential Information, except and solely to the extent that such liability or claim (whether arising in contract, tort, under federal or provincial securities law or otherwise) arises out of or in connection with the breach or alleged breach by CBJ of any representation, covenant, warranty or agreement made by such party in the Definitive Agreement(s), if any, it being understood and agreed that nothing herein shall be deemed to preclude or prevent a claim being made by CBJ that the Recipient is in breach of this Agreement. The parties further acknowledge and agree that CBJ has the right, in its sole discretion, to reject any and all further proposals made by the Recipient and to unilaterally terminate further discussions and negotiations at any time.
12. Notwithstanding any provision to the contrary set out in this Agreement or any other agreement entered into between CBJ and the Recipient, in the event that CBJ does not proceed with the Project(s), the Recipient covenants, undertakes and agrees;
  - a. Should CBJ terminate its interest in the Project(s) while this Agreement is in effect or for a period of one

Non-Disclosure Agreement

(1) year from the date that CBJ formally terminates its interest in the Project(s), whichever comes later, Recipient agrees they shall not initiate any direct or indirect communications with any third parties introduced to Recipient by CBJ under this Agreement (including without limitation any listing agents or third party project owners if applicable) for the potential acquisition of an interest or further participation in the Project(s) without Recipient first receiving written approval from CBJ. Such approval shall include an agreement between the parties on mutually acceptable compensation to CBJ for first introducing the Recipient to the Project(s); and

b. Recipient agrees they shall not use any Confidential Information previously provided to Recipient by CBJ or its Representatives without first obtaining CBJ’s prior written consent.

13. This Agreement contains the entire understanding of the parties in connection with subject matter herein and supersedes and replaces all prior negotiations, proposed agreements, and agreements, written and oral, relating thereto, and cannot be changed or terminated except by a written instrument signed by both parties. This Agreement shall be for the benefit of and shall be binding upon the parties and their respective successors, licensees, assigns, heirs, executors and administrators. Any waiver of any term of this Agreement in a particular instance shall not be a waiver of such term for the future. The invalidity or unenforceability of any term of this Agreement shall in no way affect the validity or enforceability of any of the remainder of this Agreement.

14. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties. The parties may execute this Agreement by signatures and initials obtained through facsimile or e-mail PDF, and such signatures and initials may be relied upon by each party as valid as if this Agreement had been signed and initialed in the presence of the other party (i.e. facsimile or e-mail PDF signatures and initials shall be deemed original for all purposes).

15. The term of this Agreement shall be five (5) years from the date of execution of this Agreement or the date that Confidential Information is first provided by CBJ to the Recipient after execution; whichever is later.

16. This Agreement shall remain in full force and effect between the parties until termination notwithstanding any other agreements, written or verbal, subsequently entered into between them except as may be expressly modified or amended by both parties pursuant to any such subsequent agreement. Further, this Agreement remains in full force and effect even if CBJ and the Recipient terminate their involvement relating to the Project(s) unless CBJ, in its sole discretion, agrees in writing to terminate this Agreement.

AGREED TO AND ACCEPTED:

CBJ Developments Inc.  
("Discloser")

**Ursataur Capital Management L.P.**  
("Recipient" Company or Business Entity Name)

By: Bill Walton  
Bill Walton (Jun 17, 2022 18:08 MDT)  
(signature)

By: Andrew Cockwell  
Andrew Cockwell (Jun 17, 2022 19:55 EDT)  
(signature)

**Bill Walton**  
(print name)

**Andrew Cockwell**  
(print name)

Title: CFO

Title: Managing Partner

Email: billw@cbjdevelopments.com

Email: awwc@ursataur.com

Phone: 403-873-9537

Phone: 416-640-2595

# NDA (Tower 37)

Final Audit Report

2022-06-18

Created:	2022-06-17
By:	CBJ Developments (finance@cbjdevelopments.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAaw1yiXemWk0Pvj4KccuLsv81v0crjzNPe

## "NDA (Tower 37)" History

-  Document created by CBJ Developments (finance@cbjdevelopments.com)  
2022-06-17 - 2:06:49 PM GMT
-  Document emailed to awwc@ursataur.com for signature  
2022-06-17 - 2:09:15 PM GMT
-  Email viewed by awwc@ursataur.com  
2022-06-17 - 6:02:53 PM GMT
-  Document e-signed by Andrew Cockwell (awwc@ursataur.com)  
Signature Date: 2022-06-17 - 11:55:08 PM GMT - Time Source: server
-  Document emailed to billw@cbjdevelopments.com for signature  
2022-06-17 - 11:55:10 PM GMT
-  Email viewed by billw@cbjdevelopments.com  
2022-06-17 - 11:56:34 PM GMT
-  Document e-signed by Bill Walton (billw@cbjdevelopments.com)  
Signature Date: 2022-06-18 - 0:08:35 AM GMT - Time Source: server
-  Agreement completed.  
2022-06-18 - 0:08:35 AM GMT

# **APPENDIX “K”**

July 4<sup>th</sup>, 2022

**CBJ Developments**

Attention: Jeff Burrell

**Re: Financing by Mutende Equities Ltd. to CBJ Developments in respect of the purchase of 801 Seventh Avenue S.W., Calgary, Alberta (the "801 7th")**

Ladies and Gentlemen:

We are pleased to provide this letter as acknowledgement that Mutende Equities Ltd. ("*Lender*") desires to proceed, subject to conditions set forth below, with funding Cdn. \$55,000,000 senior secured credit facilities (the "*Acquisition Financing*") to support the proposed acquisition (the "*Acquisition*") of **801 7th** 801 7th Ave. from its existing owners (the "*Seller*") by CBJ Developments ("*CBJ*" or "*you*"). The financing would be used solely to fund a portion of the purchase price of the Acquisition.

Notwithstanding anything set forth herein, this letter shall not constitute a binding commitment, as additional steps are required to consummate our proposed financing transaction. You understand that our ability to provide the Acquisition Financing is subject to: (i) satisfactory finalization of the terms and documentation of the Acquisition, (ii) satisfactory negotiation and documentation of the Acquisition Financing, substantially on the terms set out herein and (iii) the absence of any material adverse change in the business, assets, liabilities, operations or operating results of (a) CBJ and (b) 801 7th.

Subject to the foregoing and to other customary conditions precedent, the Acquisition Financing is proposed to be on the following terms:

<b>Loan:</b>	Senior secured non-revolving term facility in the principal amount of up to \$55,000,000.
<b>Borrower:</b>	A single purpose entity to be formed by CBJ (the " <b>Borrower</b> ")
<b>Closing Date:</b>	To be determined, but no later than August 31, 2022.
<b>Documentation:</b>	The Acquisition Financing will be established upon negotiation and completion of usual credit, security and related documentation customary for financing transactions of this nature, including the definitive credit agreement, including, without limitation, a mortgage and general security agreement granted by the Borrower on terms and conditions satisfactory to Lender (collectively, the " <b>Loan Documents</b> ").
<b>Interest:</b>	12% per annum, payable quarterly in arrears.
<b>Fees:</b>	Lender shall receive: <ol style="list-style-type: none"><li>1. an upfront fee equal to 2% of the principal amount of the loan payable on closing; and</li><li>2. equity interest in the Borrower equal to 20% of the total issued and outstanding equity interests of the Borrower (the "<b>Mutende Equity</b>"),</li></ol>

	such interest burdened by a 12% annual return on the non-Mutende Equity; interest shall be paid quarterly and to be calculated based on the average balance outstanding during the quarter.
<b>Purpose of Acquisition Financing:</b>	For completing the Acquisition on the Closing Date.
<b>Security:</b>	First priority mortgage on the 801 7th property and first priority lien over all of the Borrower's assets and cash flow related to the 801 7 <sup>th</sup> property
<b>Conditions Precedent to Initial Draw:</b>	<p>Usual and customary for this type of financing transaction, including without limitation:</p> <ol style="list-style-type: none"> <li>1. execution of definitive Loan Documents satisfactory to Lender;</li> <li>2. evidence satisfactory to Lender that the Borrower shall have received an equity contribution in an amount equal to no less than \$20,000,000 from CBJ (the "Equity Injection");</li> <li>3. satisfactory review by Lender of the purchase agreement in respect of the Acquisition and evidence satisfactory to it that all conditions thereunder have been satisfied without waiver or amendment and no material adverse change will have occurred thereunder;</li> <li>4. evidence satisfactory to Lender that the 801 7th is free and clear of all liens (other than permitted liens);</li> <li>5. receipt of an up-to-date real property report in respect of the 801 7th with a certificate of compliance endorsed thereon by the City of Calgary;</li> <li>6. a Tax Certificate confirming that the property taxes and any local improvement levies and similar charges have been paid in full for 2022;</li> <li>7. satisfactory completion of all business, environmental, survey, title and legal due diligence;</li> <li>8. payment of all fees and expenses up to a maximum amount to be agreed upon by both parties;</li> <li>9. receipt of customary officer's certificates and opinions in form and substance satisfactory to Lender;</li> <li>10. evidence that all Security has been registered in a manner satisfactory to Lender (or, in respect of any mortgage, is subject to customary title insurance satisfactory to Lender);</li> <li>11. no default or event of default;</li> </ol>

	<p>12. all representations and warranties shall be true and accurate; and</p> <p>13. no event shall have occurred, nor shall Lender otherwise become aware of any fact, which Lender shall determine has had or would reasonably be expected to have, a material adverse effect on the Borrower's business or assets (including the 801 7th) or on its ability to meet its obligations to Lender.</p>
<b>Repayments:</b>	<p>The Borrower will repay the loan and all interest, fees and other obligations in respect thereof, in full, in cash, on the two-year anniversary of funding (the "<b>Maturity Date</b>")</p> <p>The Borrower will be required to prepay the loan prior to the Maturity Date (which prepaid amounts cannot be re-borrowed):</p> <ol style="list-style-type: none"> <li>1. in full upon the occurrence of a change of control of the Borrower;</li> <li>2. with 80% of the net cash proceeds from the sale of the 801 7th (or any portion thereof);</li> <li>3. with 100% of the net cash proceeds from the incurrence or issuance of any indebtedness by the Borrower not otherwise permitted under the Loan Documents; and</li> <li>4. 100% of the net cash proceeds received by the Borrower from insurance, condemnation or expropriation awards paid on account of any loss in respect of the 801 7th (unless such insurance proceeds are expended or committed for the repair or replacement of the 801 7th on customary terms),</li> </ol> <p>subject, in the case of each of the foregoing mandatory prepayments, to customary exceptions to be agreed upon.</p>
<b>Representations and Warranties:</b>	Usual and customary for this type of financing transaction.
<b>Financial Covenants:</b>	None.
<b>Affirmative Covenants:</b>	Usual and customary for this type of financing transaction.
<b>Negative Covenants:</b>	Usual and customary for this type of financing transaction.
<b>Events of Default:</b>	Usual and customary for this type of financing transaction.



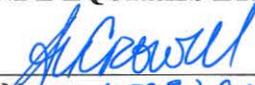
<b>Expenses and Indemnification:</b>	CBJ shall pay (i) all reasonable out-of-pocket expenses of Lender associated with the Acquisition Financing and the preparation, negotiation, execution, delivery and administration of the documents in respect thereof and any amendment or waiver with respect thereto (including the reasonable fees, disbursements and other charges of one primary counsel engaged by Lender) and (ii) all reasonable out-of-pocket expenses of the Lender (including the fees, disbursements and other charges of counsel) in connection with the enforcement of such documents (including the security).
<b>Governing Law:</b>	Province of Alberta.

This letter is confidential and, except for disclosure on a confidential basis to the Seller and its legal counsel and financial advisors, the monitor under the court proceedings related to the Seller, your accountants, legal counsel and other professional advisors retained by you in connection with the Acquisition Financing or as otherwise required by law, may not be disclosed in whole or in part to any person or entity without Lender's prior written consent. This letter does not confer any rights and remedies on any person that is not an addressee hereto, including person to whom this letter is disclosed.

We have conducted significant work to-date and have intimate knowledge of your business and prospects. We value our relationship with you and look forward to working together to finance the Acquisition.

Very truly yours,

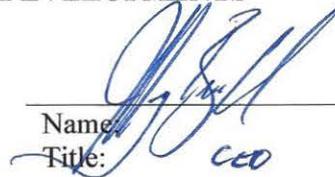
**MUTENDE EQUITIES LTD.**

By:   
 Name: Andrew Cockwell  
 Title: President

By: \_\_\_\_\_  
 Name:  
 Title:

Agreed and Accepted by:

**CBJ DEVELOPMENTS**

By:   
 Name:  
 Title: CEO

Date: July 6/2022

# **APPENDIX “L”**

COURT FILE NUMBER 2201-04995  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF (DEFENDANT TO THE COUNTERCLAIM) CBJ DEVELOPMENTS INC.  
DEFENDANTS (PLAINTIFFS BY COUNTERCLAIM) 801 SEVENTH INC., QUANTICO CAPITAL CORP., WESTHILLS DEVELOPMENT CORPORATION, CENTURION HOLDINGS LTD., CANADIAN INCOME FUND GROUP INC. and TOKAY CAPITAL CORP.



DOCUMENT **ORDER GRANTING SUMMARY DISMISSAL AND PARTIAL SUMMARY JUDGMENT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **JENSEN SHAWA SOLOMON DUGUID HAWKES LLP**  
800, 304 - 8 Avenue SW  
Calgary, Alberta T2P 1C2  
  
William M. Katz  
Tel: 403 571 1541  
Fax: 403 571 1528  
katzw@jssbarristers.ca  
File: 15734-001

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**DATE ON WHICH ORDER WAS PRONOUNCED:** October 27, 2023

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**NAME OF APPLICATIONS JUDGE WHO MADE THIS ORDER:** Applications Judge J.T. Prowse

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**LOCATION OF HEARING:** **Calgary, Alberta**

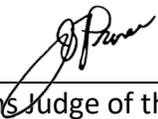
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**UPON THE APPLICATION** of the Defendants/Plaintiffs by Counterclaim, 801 Seventh Inc., Quantico Capital Corp., Westhills Development Corporation, Centurion Holdings Ltd., Canadian Income Fund Group Inc. and Tokay Capital Corp. (collectively, the "**Applicants**"), for an Order *inter alia*, directing that the Plaintiff/Defendant by Counterclaim, CBJ Developments Inc. (the "**Respondent**" or "**CBJ**"), serve its responses to Undertakings provided on August 15, 2023 (the "**Scheduling Application**"); AND UPON NOTING the underlying application of the Applicants, against the Respondent for summary judgment dismissing the claim filed by CBJ on May 2, 2022

(the “**CBJ Claim**”) in its entirety (the “**Summary Dismissal Application**”) and for partial summary judgment for the relief sought at paragraphs 26(a) and 26(b) of the Applicants’ Counterclaim filed on September 22, 2022 (the “**Counterclaim**”) (the “**Partial Summary Judgment Application**”); AND UPON NOTING the Order of Applications Judge Mason dated June 19, 2023 (the “**Litigation Plan**”); AND UPON READING the Affidavit of Joanne McAndrew affirmed on October 18, 2023; AND UPON NOTING the Respondent has not complied with the Litigation Plan; AND UPON NOTING the Respondent did not attend the hearing of the Scheduling Application; **AND UPON HEARING** submissions of counsel for the Applicants;

**IT IS HEREBY ORDERED THAT:**

1. The Applicants’ Summary Dismissal Application is granted and the CBJ Claim is hereby dismissed in its entirety.
2. The Applicants’ Partial Summary Judgment Application is granted and the Applicants are hereby awarded Judgment against the Plaintiff for the amounts of the Per Diem, Initial Deposits, and Additional Deposits (as defined in the Partial Summary Judgment Application) in the total amount of **\$1,382,877.13**, calculated as follows:
  - (a) \$1,157,877.13 for the balance of the Initial Deposits, and Additional Deposits; and
  - (b) \$225,000.00 for the Per Diem.
3. CBJ will conduct and provide a complete accounting of the Initial Deposit and Additional Deposits (as defined in the Counterclaim) and provide a full record of all funds it has received or provided in this regard.

  
\_\_\_\_\_  
Applications Judge of the Court of King’s Bench of Alberta

# **APPENDIX “M”**



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**CHRIS AGAGNIER and CBJ DEVELOPMENTS INC.**

Plaintiffs

and

**CBJ-FORT ERIE HILLS INC., FORT ERIE HILLS INC., JEFFREY BURRELL,  
RANDY HOFFNER, JOSEPH BRESSI, TRANS GLOBAL PARTNERSHIP,  
SALVATORE ROMEO as trustee for the ROMEO FAMILY TRUST, JEFFREY  
BURRELL as trustee for the BURRELL FAMILY TRUST, RON BURRELL ELENA  
SALVATORE, VICENT SALVATORE JR., JOHN DOE and XYZ CORP.**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

**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.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$2,500.00 or 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 \$400 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: July 2024

Issued by:.....

Local registrar

Address of Court office:

330 University Avenue, 7th Floor  
Toronto M5G 1R7  
Fax: (416) 327-6228

TO: **CBJ-FORT ERIE HILLS INC.,**  
801 Lawrence Avenue East, Suite Ph5  
Toronto, Ontario, M3C 3W2

**FORT ERIE HILLS INC.**  
77 City Centre Drive, Unit 602  
Mississauga, Ontario, L5B 1M5

**JEFFREY BURRELL**  
72 Babcombe Drive  
Thornhill, Ontario L3T 1N1

**RANDY HOFFNER**  
77 City Centre Drive, Unit 602  
Mississauga, Ontario, L5B 1M5

**JOSEPH BRESSI**  
675 Cochrane Drive  
6th Floor, East Tower  
Markham, Ontario L3R 0B9

**TRANS GLOBAL PARTNERSHIP**

**c/o RANDY HOFFNER**

77 City Centre Drive, Unit 602

Mississauga, Ontario, L5B 1M5

**SALVATORE ROMEO**

947 Blind Creek Drive

Shuniah, Ontario P7A 0C6

**RON BURRELL**

72 Babcombe Drive

Thornhill, Ontario L3T 1N1

**ELENA SALVATORE**

801 Lawrence Avenue East, Suite Ph5

Toronto, Ontario, M3C 3W2

**VICENT SALVATORE JR.**

801 Lawrence Avenue East, Suite Ph5

Toronto, Ontario, M3C 3W2

**JOHN DOE**

**XYZ CORP.**

## CLAIM

1. The Plaintiff Chris Agagnier (“**Chris**”) claims against CBJ-Fort Erie Hills Inc. (“**FEH**”) and Jeffrey Burrell (“**Jeff**”):

- (a) a declaration that Chris is a “complainant” for the purposes of advancing an oppression claim under section 248 of the *OBCA*;
- (b) relief pursuant to section 248 of the *OBCA* that this Honourable Court deems fit;
- (c) an interim and final declaration pursuant to sections 161(2)(b) and 248 of the *OBCA* that:
  - (i) the business of CBJ-Fort Erie Hills Inc. (“**FEH**”) has been and is being carried on with intent to defraud Chris to affect a result;
  - (ii) the business or affairs of FEH is or has been carried on or conducted, or the powers of Jeff, as one of the former directors of FEH and now by the Defendants Elena Salvatore (“**Elena**”) and the Defendant Vincent Salvatore Jr. (“**Vincent**”), the current directors of FEH, is or has been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of Chris; or
  - (iii) Jeff, a former director of FEH and Elena and Vincent, the current directors of FEH have acted fraudulently or dishonestly;
  - (iv) the acts and omissions of Jeff, Elena and Vincent effected a result;
  - (v) the business and affairs of FEH were carried on or conducted at all material times by Jeff and then by Elena and Vincent in a manner; and
  - (vi) the powers of Jeff, then Elena and Vincent, the former and the current directors of FEH at the time were exercised in a manner, that was oppressive of, unfairly prejudicial to, and that unfairly disregarded the interests of the Plaintiffs;
- (d) an interim and final declaration pursuant to section 161(2)(a) of the *OBCA* that the business of FEH was and is carried on by Jeff and now by Elena and Vincent, the current directors of FEH, with intent to defraud Chris;
- (e) an interim and final declaration that Chris is an aggrieved person as that term is used in section 248(3)(j) of the *OBCA*;
- (f) an order compensating Chris as an aggrieved person;
- (g) an interim order that Chris is at liberty to obtain a certificate of pending litigation in respect of the FEH Lands more particularly described in Schedule A attached hereto;
- (h) an interim injunction preventing the sale of the FEH Lands and the FEH Shares, as defined below;

- (i) an interim order appointing a Monitor over the FEH Lands on such terms and conditions as this Honourable Court shall establish including without limitation, an interim order preventing any further dealings by any party to this Action with the FEH Lands except with the approval of the Monitor and an order relating thereto; and
- (j) an interim order appointing a Receiver Manager over the FEH Lands on such terms and conditions as this Honourable Court shall establish including without limitation, an interim order preventing any further dealings by any party to this Action with the FEH Lands except with the approval of the Receiver Manager and an order relating thereto.

2. Chris claims against all of the Defendants:

- (a) a declaration that the Restated Loan Agreement, the Share Pledge Agreement and the Illegal FEH Land Sale Agreement or Illegal FEH Share Agreement, as defined below, are illegal, null and void, invalid and unenforceable;
- (b) an interim order that all of the issued FEH Shares, as defined below, be forthwith surrendered to the Monitor or the Receiver Manager, once appointed, pending the outcome of the trial of this Action and that no party be entitled to vote or otherwise deal with said FEH Shares without prior order from this Honourable Court;
- (c) damages in the amount of \$25,000,000 for fraud, conspiracy, breach of fiduciary duty and oppression;
- (d) further damages in an amount to be particularized before trial, for damages, lost profits and lost opportunity with respect to the Fort Erie Project (defined below), which is unable to proceed through the real estate development process as a result of the defendants' actions;
- (e) punitive damages in the amount of \$1,000,000;
- (f) orders for restitution, an accounting and disgorgement of all assets, properties and funds belonging to FEH and improperly diverted by or to any of the Defendants or any person, corporation or other entity on such Defendant's behalf;
- (g) a declaration that the Plaintiffs are entitled to trace the assets, properties and funds of FEH into the hands of any of the Defendants, and a declaration that such Defendants hold those assets, properties and funds as constructive trustee for the Plaintiffs;
- (h) a constructive trust and tracing or following order in respect of all assets, properties and funds belonging to the Plaintiffs and improperly diverted by or to any of the Defendants or any person, corporation or entity on such defendant's behalf, and in respect of all the traceable products thereof;
- (i) a declaration the Defendants are jointly and severally responsible to provide full and complete indemnification for and on behalf of Chris for all amounts that he may be obliged to pay to third parties for any amounts due and owing by CBJ or

FEH to third parties that he has guaranteed or is otherwise personally liable to pay;

- (j) prejudgment and post-judgment interest accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (k) costs of this proceeding on a substantial indemnity basis, or alternatively, on a partial indemnity basis; and
- (l) such further and other relief as this Honourable Court may deem just.

3. The Plaintiff CBJ Developments Inc. claims against the Defendant CBJ-Fort Erie Hills Inc.:

- (a) damages in the amount of \$3,000,000 on account of fees and expenses paid in accordance with the Management Agreement, as explained below;
- (b) further damages in an amount to be particularized before trial, for damages, lost profits and lost opportunity with respect to the Fort Erie Project (defined below), which is unable to proceed through the real estate development process as a result of the defendants' actions;
- (c) prejudgment and post-judgment interest at the prime rate quoted by the Royal Bank of Canada plus 2% or in the alternative, in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) costs of this proceeding on a substantial indemnity basis, or alternatively, on a partial indemnity basis; and
- (e) such further and other relief as this Honourable Court may deem just.

4. The Plaintiff CBJ Developments Inc. claims against the Defendants Fort Erie Hills Inc., Randy Hoffner and Trans Global Partnership:

- (a) damages in the amount of \$375,000 for repayment of their share of the FEH Remediation Expenses, as defined below;
- (b) prejudgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) costs of this proceeding on a full or substantial indemnity basis; and
- (d) such further and other relief as the lawyers for the Plaintiffs may advise or this Honourable Court may deem just.

## **PARTIES**

5. The Plaintiff CBJ Developments Inc. (“**CBJ**”) is an Ontario corporation with its head office located at Ridgeway Ontario.
6. The Plaintiff Chris Agagnier (“**Chris**”), a resident of Ridgeway Ontario.
7. The Defendant CBJ-Fort Erie Hills Inc. (“**FEH**”) is an Ontario corporation with its head office located at Thornhill, Ontario.
8. The Defendant Jeffrey Burrell (“**Jeff**”) is a resident of Thornhill, Ontario. Jeff was a director of CBJ and FEH, and the trustee of the Burrell Family Trust.
9. Chris and Jeff were equal shareholders of CBJ and FEH.
10. The Defendant Trans Global Partnership (“**TGP**”) is a partnership of overseas Japanese investors who collectively were the owners of those lands which form the subject matter of this Action and other lands which comprise the “Land Acquisitions” as hereinafter defined.
11. The Defendant Fort Erie Hills Inc. (“**Hills**”) is an Ontario corporation with its head office located at Burlington Ontario. Hills acted as bare trustee and Canadian agent for TGP.
12. The Defendant Randy Hoffner (“**Randy**”) is a resident of Burlington Ontario. At all material times, Randy was the principal of Hills, and the authorized agent and trustee for TPG.
13. The Defendant Salvatore Romeo (“**Romeo**”) is a resident of Shuniah Ontario and at all material times, Romeo was the trustee for the Romeo Family Trust.
14. The Defendant Joseph Bressi (“**Bressi**”) currently resides in Markham Ontario.
15. The Defendant Elena Salvatore (“**Elena Salvatore**”) resides in the City of Toronto, Ontario.

16. The Defendant Vincent Salvatore Jr. (“**Vincent Salvatore**”) resides in the City of Toronto, Ontario.

17. The Defendant XYZ Corp., is a corporation that has entered into an agreement of purchase and sale to purchase the FEH Lands or the FEH Shares.

18. The Defendant John Doe is the principal of the XYZ Corp. or is the purchaser of the FEH Lands or the FEH Shares.

### **FACTS**

19. On incorporation, Chris and Jeff were appointed the directors of CBJ. Chris and Jeff were each originally issued 50% of the shares of CBJ.

20. In or about December 2023 to January 2024, Jeff advised CBJ that he was relinquishing his duties as director of CBJ and wanted nothing further to do with CBJ effectively leaving Chris as its sole managing director. From and after that date, Jeff has continuously reiterated that position and from that time forward Jeff has been inactive in managing CBJ.

21. Given Jeff’s improper and illegal conduct, as described below, Chris seeks an order pursuant to s. 248(3)(e) of the OBCA removing Jeff as a director of CBJ.

22. Chris and Jeff acquired four parcels of development lands in Fort Erie and Stayner, Ontario (the “**Land Acquisitions**”) from Hills, acting as Canadian agent for TPG, which beneficially owned these lands. To acquire the Land Acquisitions, CBJ purchased one parcel and Chris and Jeff incorporated three special purpose vehicles to purchase the other three properties (the “**CBJ Affiliates**”) including the FEH Lands.

23. All of the shares of the CBJ Affiliates were owned by Chris and Jeff, including the shares of FEH (the “**FEH Shares**”).

24. On November 1, 2021, one of these parcels was acquired by FEH (the “**FEH Lands**”). The FEH Lands consist of eighty-five acres of raw development land located in Fort Erie, Ontario, municipally described as 85 Crooks Street, Fort Erie, Ontario and legally described on Schedule “A” hereto (the “**Fort Erie Project**”).

25. TGP authorized Hills to be its Canadian representative with full authority to represent them on all matters relating to the Land Acquisitions, including the closing of the purchase of the FEH Lands. Randy was the sole director, officer and shareholder of Hills and the trustee for TPG.

26. The other three parcels were purchased using the other special purpose vehicles (including FEH, the “**CBJ Affiliates**”).

27. The main purpose for the structuring of the CBJ Affiliates including FEH was to:

- (a) establish separate legal ownership for each of the Land Acquisitions so as to maximize the potential for return on each investment and minimize potential exposure or liability relating to the ongoing financing and development of each of the four CBJ Land Acquisitions;
- (b) oversee and manage the Land Acquisitions including negotiating the terms of each purchase, securing financing for each purchase and managing and administering the closing for each separate parcel of land, including the FEH Lands;
- (c) on an ongoing basis, manage and administer all aspects of the development of each parcel of land, including obtaining all permitting and rezoning approvals as and when required, infrastructure installation/construction, subdivision and development and all financing from time to time required for each development; and
- (d) ultimately, facilitate the marketing and sale of single and multi-family residential homes to both builders and end users.

28. The original purchase price paid by FEH to Hills (on behalf of TGP) for the FEH Lands was \$15,950,000 plus assumption of an existing first mortgage to 2703738 Ontario Limited on title with an approximate \$600,000 principal balance ( the “**First Mortgage**”) less fifty (50%)

per cent of all costs required to remediate the FEH Lands (the “**Remediation Cost**”) and is hereinafter referred to as the “**FEH Purchase Price**”.

29. The total Remediation Cost was \$750,000; therefore, FEH’s share was \$375,000. This amount has never been repaid to CBJ from Hills/TGP and remains due and owing as an outstanding indebtedness owing by them to CBJ plus interest.

30. The FEH Purchase Price was satisfied by:

- (a) \$1,053,000 million borrowed from Jeffrey Burrell as trustee for the “Burrell Family Trust”, which loan was secured by a mortgage registered on November 1, 2021 as instrument number SN698784 in the Land Registry Office No. 59;
- (b) \$621,000 borrowed from Salvatore Romeo as trustee for the “Romeo Family Trust” which loan was secured by a mortgage registered on November 1, 2021 as instrument number SN698785 in the Land Registry Office No. 59;
- (c) \$13,152,383.87 by a Vendor Take Back Mortgage in favor of Hills (on behalf of Hills and TGP) registered against the FEH Lands as a third secured charge in the original principal amount of registered on November 1, 2021 as instrument number SN698786 in the Land Registry Office No. 59 ( the “**Hills VTB**”); and
- (d) Assumption of the First Mortgage to 270378 Ontario Limited in the approximate amount of \$600,000; and
- (e) Equity from CBJ.

31. CBJ agreed to provide management services (the “**CBJ Management Services**”) and fund payment of certain of the CBJ Affiliates ongoing expenses, including:

- (a) payments due and owing relating to financing obtained for the initial purchase of the FEH Lands, including the Hills VTB and other loans obtained from time to time for FEH’s direct or indirect benefit; and
- (b) all payments to cover ongoing development expenses for the FEH Lands which, inter alia, included substantial payments made by CBJ to cover remediation as well as archeology expenses required for the FEH Lands (collectively the “**FEH Payments**”).

32. The advance and repayment of the FEH Payments and payment arrangements for the CBJ Management Services were subject to the terms of an agreement (which was partially in

writing and partially verbal), entered into between CBJ and FEH (the “**Management Agreement**”) concurrent with the purchase by FEH of the FEH Lands, which included:

- (a) all of the FEH Payments would to be repaid on demand with interest at a commercial rate of interest based on the Royal Bank of Canada (“**RBC**”) prime rate (as from time to time determined) plus 2%;
- (b) CBJ Management Services would be charged out to FEH at rates prevailing in the market by comparable management/administrative service companies;
- (c) all of the FEH Payments together with the fees due and owing for the CBJ Management Services would be repaid in priority to any other secured or unsecured FEH indebtedness, subject only to:
  - (i) any secured financing from time to time registered against title to the FEH Lands; or
  - (ii) as otherwise agreed from time to time between CBJ and FEH in writing;
- (d) as security for repayment of the FEH Payments and the CBJ Management Services, FEH granted CBJ an ongoing and continuing charge against the FEH Lands (the “**CBJ Charge**”) and the right, at its option, to secure said CBJ Charge by registering same against title to the FEH Lands; and
- (e) if it registered the CBJ Charge, CBJ would postpone the CBJ Charge to any present or future secured financing that it would arrange to be charged against the FEH Land.

33. As at the date of the filing of this Claim, the total amount due and owing by FEH to CBJ pursuant to the Management Agreement is \$2,314,000.00 plus interest (the “**FEH to CBJ Indebtedness**”).

34. Subsequent to the closing of the purchase of the FEH Lands, Chris arranged for a further private mortgage for \$2,500,000 from 2703738 Ontario Limited (“**270 Corp**”) registered on February 25, 2022 as instrument number SN714863 in the Land Registry Office No. 59 (the “**Elena Loan**”). The Elena Loan was used for costs and expenses for the initial phases of the remediation and development of the FEH Lands. With Hills consent, the Elena Loan was secured as a third charge against title to the FEH Lands.

35. The charges referred to above are hereinafter collectively referred to as the “**FEH Charged Debt**” and the FEH secured creditors referred to above are hereinafter referred to as the “**FEH Secured Creditors.**”

36. In addition to the FEH Secured Debt, Chris arranged a \$500,000 unsecured loan from Ron Burrell, administered by Jeffrey Burrell (the “**Ron Burrell Loan**”) and a further loan from Niagara Estates of Chippawa II Inc. (“**Niagara**”) for \$5,250,000 (the “**Niagara Loan**”) for use, in part, for the development of the FEH Lands.

37. CBJ retained Colliers International Realty Advisors Inc. (“**Colliers**”) to appraise the FEH Lands. Hadley Duncan, AACI, P. App., Colliers’ Executive Director, completed his appraisal in March 2023, which estimated its as is current market value of the FEH Lands at March 17, 2023 to be \$49,460,000.

38. Acting in good faith, CBJ decided not to register the CBJ Charge because:

- (a) the fair market value of the FEH Lands provided substantial comfort to CBJ that the FEH to CBJ Indebtedness could easily be repaid on the sale of the FEH Lands; and
- (b) Hills advised CBJ that the CBJ Charge should not be registered on title to the FEH Lands until the Hills VTB had been substantially paid down or paid out in full.

39. Although interest was accruing on some of the outstanding FEH Charged Debt and other unsecured indebtedness referred to above, no demand for payment to FEH had been made nor had any of FEH creditors (secured or unsecured) issued a notice of default or taken any other steps to enforce repayment of any funds due and owing to them.

40. In or about October 2023, in accordance with CBJ’s obligations under the Management Agreement, Chris arranged for financing against the FEH Lands from a third party lender Hillmount Capital Inc. (“**Hillmount**”) in the principal amount of \$8 million (the “**Hillmount**

**Financing**”). On October 25, 2023, Hillmount registered a mortgage on the FEH Lands as instrument number SN783192 in the Land Registry Office No. 59 for \$8 million.

41. In conjunction with the Hillmount Financing, Chris negotiated a payout of the Elena Loan with 270 Corp., in exchange for Niagara Estates of Chippawa II Inc. agreeing to advance a new \$5.25 million loan to FEH plus an additional \$330,000 loan arranged by Jeff and Randy (collectively the “**New Niagara Loan**”) to be secured on other lands.

42. The primary purposes for the Hillmount Financing and the New Niagara Loan as negotiated by Chris were for payment of:

- (a) ongoing development expenses relating to the FEH Lands;
- (b) payout to 270 Corp.;
- (c) payment of some outstanding interest payments due and owing to various FEH creditors include those holding some of the FEH Charged Debt; and
- (d) payment of funds due and owing to CBJ pursuant to the Management Agreement to be paid out in part to CBJ and in part to Chris and the other management as management fees/bonuses.

43. One of the pre-conditions to the Hillmount Financing was that Hillmount would have a first charge on the FEH Lands and that no secondary financing would be allowed on the FEH Lands at any time while the Hillmount Loan was outstanding. This required Chris to negotiate new loan agreements with the FEH Secured Creditors and 270 Corp. which included, without limitation:

- (a) negotiating lump sum payments to each of the FEH Secured Creditors to be paid from the Hillmount Financing in order to get their agreement to discharge their respective security off title to the FEH Lands;
- (b) payout in full of the second and third mortgages to the Burrell Family Trust and Romeo Family Trust;
- (c) negotiating a specific repayment date for the payment of the balance of all funds due and owing on the FEH Secured Debt together with a “Standstill” arrangement

to prevent any of the FEH Secured Creditors from taking any enforcement steps on their respective date until said date; and

- (d) providing alternate and acceptable security to the FEH Secured Creditors.

44. At this same time Jeff insisted that a significant advance from the Hillmount Financing be paid against first and second mortgages to the Burrell Family Trust and the Romeo Family Trust and that Ron Burrell participate in any restructured security package that Chris was negotiating, failing which, in his capacity as both a CBJ and FEH director and shareholder, he would not approve the Hillmount Financing and threatened to demand repayment in full of the Ron Burrell Loan then due and owing by FEH.

45. Having no choice, Chris agreed to this demand from Jeff.

46. This resulted in Chris negotiating and approving a revised omnibus security arrangement with the FEH secured creditors and Ron Burrell (the “**Revised FEH Security Package**”) which provided, *inter alia*, for the following:

- (a) A new “Amended and Restated Loan Agreement” which was dated November 17, 2023 and entered into between CBJ as Borrower and 270 Corp., Niagara and Hills as Lenders (the “**Restated Loan Agreement**”);
- (b) Forbearance and Standstill Agreement (the “**Forbearance Agreement**”) entered into between Hills and FEH dated and effective Oct 23, 2023 and acknowledged by CBJ which obligated:
  - (i) FEH to make a payment to Hills of \$1.2 million from the Hillmount Financing;
  - (ii) FEH to pay Hills \$4.7 million on Dec 31, 2023 as per the terms of the Restated Loan Agreement;
  - (iii) FEH to pay Hills the balance owing on the Hills VTB on or before February 28, 2024;
  - (iv) Chris and Jeff as the two registered FEH shareholders, to enter into a Share Pledge Agreement with FEH, Niagara, the Burrell Family Trust and the Romeo Family Trust and Ron Burrell (the “**Share Pledge Agreement**”) to pledge their FEH shares to Hills if all amounts due and owing to Hills were not paid in full by February 28, 2024;

- (v) Chris and Jeff to provide unlimited personal guarantees for the payment of the all indebtedness due and owing under the Forbearance Agreement and the Restated Loan Agreement (the “**Restated Loan Indebtedness**”); and
- (vi) FEH, Jeff and Chris to provide and execute a “Consent to Judgment” for the Restated Loan Indebtedness if same was not paid in full by February 28, 2024.

47. During this same period of time, Bressi had been working with CBJ on various projects and had continuously represented to Chris that his company “Global Financial” had a “Bonding” business which raised several millions of investment capital through the sale of bonds.

48. Bressi further continuously represented to Chris that on condition that CBJ proceed with the Hillmount Financing, he would provide up to a minimum of \$70 Million dollars in financing from his bonding business to cover all of the payments that would be due and owing pursuant to the Restated Loan Agreement, the Forbearance Agreement, the Share Pledge Agreement and all other amounts relating thereto, pay out other financing due and owing by another CBJ Affiliate owing on another parcel of land in Stayner Ontario (the “**Stayner Indebtedness**”) plus provide significant other funding for the ongoing development of the FEH Lands, in exchange for his acquiring a significant equity position in CBJ and the CBJ Affiliates.

49. Bressi, however, refused to document the terms of the Bressi Funding Agreement in writing and it therefore remained as a verbal agreement between CBJ, Bressi, the CBJ Affiliates and the CBJ principals including Chris and Jeff.

50. During this time:

- (a) the Stayner Indebtedness had resulted in the commencement of legal action against a CBJ Affiliate, thereby increasing the pressure on Chris to proceed with the Hillmount Financing in order to access funds from Bressi pursuant to the Bressi Funding Agreement and resolve the Stayner litigation;
- (b) Randy and Jeff, in conjunction with Bressi, made every effort to prevent Chris from arranging alternate financing from other sources, which effectively resulted

in Chris having no alternative, but do whatever he could to finalize the Hillmount Financing.

51. Just prior to the advance of funds from the Hillmount Financing, and in exchange for providing the funding pursuant to the Bressi Funding Agreement, Bressi demanded that CBJ pay him (through another corporation he owned/controlled named Monaco Street Ltd.) a funding fee of \$1,000,000 (in U.S. Funds) from the Hillmount Financing (the “**Bressi Fee**”).

52. Chris initially refused to approve the Bressi Fee because Bressi had previously failed to provide funding for other projects even though CBJ had paid him millions of dollars in upfront fees for same. However, Jeff and Randy not only actively supported payment of the Bressi Fee but, specifically (without in any manner limiting the generality of the foregoing):

- (a) Jeff made it clear that he would not allow the Hillmount Financing to proceed unless the Bressi Fee was paid; and
- (b) Randy made it clear that he would not cause Hills to agree to the Revised FEH Security Package and would commence immediate action on behalf of Hills for repayment of all funds due and owing under the Hills VTB unless the Bressi Fee was paid.

53. As a result, and fearful that without the Hillmount Financing and the implementation of the Revised FEH Security Package:

- (a) Randy and Hills, as threatened, could trigger enforcement proceedings pursuant to the Hills VTB which would jeopardize both FEH’s ownership and development of the FEH Lands;
- (b) said enforcement proceedings would potentially cause FEH to lose untold millions of dollars in anticipated revenue;
- (c) Chris would be placed in severe financial jeopardy because of previous personal guarantees that they had provided on the VTB and other FEH security;
- (d) the Stayner Indebtedness and resulting litigation would proceed thereby causing additional losses to CBJ and Chris pursuant to the security granted to the Stayner lenders, including a personal guarantees from Chris;
- (e) by their actions Randy, Jeff and Bressi had made it impossible for Chris to arrange other financing; and

- (f) Bressi, Jeff and Randy all confirmed and represented to Chris, both individually and collectively, that the funding pursuant to the Bressi Funding Agreement would take place as and when agreed upon so as to ensure that:
- (i) there would be sufficient funds available to meet all of the payment requirements set out in the Revised FEH Security Package;
  - (ii) reimburse the payment of the Bressi Fee;
  - (iii) payout the Stayner Indebtedness in full;
  - (iv) repay all funds due and owing by FEH to CBJ pursuant to the FEH Agreement; and
  - (v) provide sufficient working capital to cover all ongoing CBJ and CBJ Affiliate expenses, specifically including the development of the FEH Lands.

54. Chris had no alternative but to finalize the requirements necessary for the Hillmount Financing to be funded including executing approvals for payment of the Bressi Fee.

55. Accordingly, in October 2023, funds from the Hillmount Financing were advanced and distributed as follows:

Payment of the Bressi Fee:	\$1.4 million
Payment to Hills: (Restated Loan Agreement)	\$1.2 million
Payment in full to Burrell Family Trust	\$1.45 million
Payment to in full Romeo Family Trust	\$600,000
Payment to 270 Corp. (Elena Loan)	the original Elena Loan of 2.25 Million plus outstanding interest was repaid and Elena (through Chris' efforts ) then lent CBJ / FEH 5.25 Million Dollars ( less pre-paid interest)
Legal Fees	\$200,000
Retained by Hillmount for future advances and to cover interest payments	\$1,000,000
Retained by Bennett Jones LLP in trust by FEH's lawyers earmarked to cover ongoing development expenses for the FEH Lands ( the	\$200,000

“Bennett Jones Holdback”);	
Dennis Blain (Niagara)	\$200,000

56. The Plaintiffs state and the fact is that the aforesaid payment of \$1.4 million to Jeffrey Burrell and Salvatore Romeo by Jeff was not authorized or approved by Chris.

57. Notwithstanding the Bressi Funding Agreement and Bressi’s ongoing and continuous representations and assurances (as supported by both Jeff and Randy) that he would provide or facilitate the necessary funding required by CBJ, Bressi did not provide any funding.

58. Bressi’s representations of funding were false representations of fact. Bressi made these representations with a knowledge of their falsehood, or recklessly, without belief in their truth, with the intention that they should be acted upon by Chris. Bressi’s false representations did in fact induce Chris to act. Chris suffered damages as a result of Bressi’s fraudulent misrepresentations. Jeff, Randy, and Romeo knew of or ought to have known that Bressi’s representations were false and fraudulent.

59. In February 2024 and facing the February 28, 2024 deadline for payment of funds, pursuant to the Revised FEH Security Package, and after:

- (a) Jeff had *de facto* relinquished or had been removed from his role as director and CEO of CBJ; and
- (b) Chris had completed his own internal inquiries and investigations into Bressi’s business history and learned about “private” meetings held between Bressi, Jeff and Randy in the Bahamas which took place at the same time as the Revised FEH Security Package was being negotiated, it became clear to Chris that:
  - (i) Bressi had a long history of swindling other business partners out of millions of dollars;
  - (ii) Bressi never intended nor had the means to fund any monies to CBJ or FEH and entered into the Bressi Funding Agreement for the sole purpose of creating a situation where Chris and the other CBJ beneficial

shareholders would be coerced by undue duress (and fear of massive potential personal liability) from Bressi, Randy and Jeff into agreeing to the terms of the Revised FEH Security Package and agreeing to the payment of the Bressi Fee; and

- (iii) Bressi, Jeff, Randy, Romeo, TGP, Elena Salvatore and Vincent Salvatore (and potentially other parties currently unknown to the Plaintiffs) had clandestinely and intentionally entered into an illegal and improper agreement between themselves (the “**Illegal Agreement**”) to maneuver Chris and FEH into such a position where they had no alternative but to agree to the onerous terms of the Revised FEH Security Package, knowing that both CBJ and FEH would inevitably end up in default of same; and
- (iv) said default would then lead to the loss by Chris of any interest or entitlement that he had ( directly or indirectly) to the value and equity and all benefits (present or future) in the FEH Lands;

60. The Plaintiffs state and the fact is that the terms of the Illegal Agreement were to be implemented by Bressi, Jeff, Randy, Romeo, TGP, Elena Salvatore and Vincent Salvatore with their joint and mutual intention to achieve the following specific goals:

- (a) Bressi, on his own behalf and on behalf of Jeff, Randy, Romeo, TGP, Elena Salvatore and Vincent Salvatore, would convince Chris that through his “bonding” company, he could and would supply all the funding required by FEH, always knowing that he had no intention nor ability to provide said funds;
- (b) extorting Chris to agree to the payment of the Bressi Fee (portions of which may have been split amongst the parties to the Illegal Agreement) prior to Chris signing off on the Hillmount Financing;
- (c) Randy and TGP, on their own behalf and on behalf of Jeff and Bressi, would induce and effectively coerce Chris into agreeing to the terms of the Revised FEH Security Package by not approving, scuttling or otherwise making it impossible for Chris to raise or secure financing from any third parties other than Hillmount;
- (d) convincing Chris, through their material, intentional and fraudulent misrepresentations to Chris that there would be sufficient funding pursuant to the Bressi Funding Agreement to “solve” all of CBJ’s and FEH’s financial needs;
- (e) taking all other steps, through threats (verbal and in writing), intimidation and restriction of payments due and owing to Chris (based on actions taken by Jeff in intentionally failing to approve said payments to him) into coercing Chris to agree to the terms of the Revised FEH Funding Package knowing that by doing so both CBJ and FEH would default with the end result that Hills (i.e. TGP), Niagara, the Burrel Family Trust, the Romeo Family Trust and Ron would end up owning all of the FEH shares and in sole position to deal with the FEH Lands as they so

choose and without having to go through a Power of Sale or other judicially monitored process to do so;

- (f) once they had control of the FEH Lands through the implementation of the Share Pledge Agreement, Hills (i.e. TGP), Niagara, the Burrel Family Trust, the Romeo Family Trust and Ron would facilitate an immediate private sale of the FEH Lands or the FEH Shares, either directly or indirectly to themselves (through an affiliate, related corporation or “straw” buyer”) or to a “friendly” third party at a price substantially below market value, but sufficiently high enough to cover all of the FEH Indebtedness plus provide them with additional funds as negotiated, with the specific intent to:
  - (i) deprive CBJ, Chris and other members of the CBJ Management team of any of the funds due and owing to them, including all funds due and owing pursuant to the Management Agreement; and
  - (ii) Deprive FEH (and by extension, Chris and other members of the CBJ Management team) of their entitlement to the funds they should have received had the FEH Lands or FEH Shares had been sold on the open market at fair market value;
- (g) place Chris at risk of being personally liable for certain CBJ and FEH debt that he had either personally guaranteed or which he had personally incurred for and on behalf of CBJ or FEH;
- (h) ensure that Hills, Randy and TGP received all funds due and owing to them pursuant to the original Hills VTB plus additional payments and benefits to them;
- (i) ensure that Jeff received all funds due and owing to the Family Trusts, the Ron Burrell Loan plus additional payments and benefits to Jeff; and
- (j) ensure that Bressi receives the Bressi Fee plus additional payments and benefits to him.

61. By those actions and statements set out in (a) – (f) above, induced Chris to:

- (a) agree to the very onerous terms of the Revised FEH Financing Plan; and
- (b) at this same time inducing Chris not to pursue the sale of the FEH Lands on the open market;
- (c) not to pursue the refinancing of the FEH Lands (other than through Hillmount);
- (d) not to register the CBJ Charge against title to the FEH Lands; or
- (e) take any other reasonable and prudent steps to ensure that there would be sufficient funds available when the terms of the Revised FEH Security Package became enforceable so as not lose their strong equity position in the FEH Lands through their respective ownership of the FEH shares.

62. As planned and as part of the Illegal Agreement, both CBJ and FEH defaulted on the repayment obligations set out in the Revised FEH Security Package resulting on February 28, 2024 with Hills, on behalf of the FEH Secured Creditors and other parties to the Revised FEH Security Package, initiating enforcement proceedings under the Share Pledge Agreement and have, to the Plaintiffs' best knowledge, information and belief, now taken possession and ownership of the FEH Shares.

63. The Defendants have entered or are about to enter into a sale of the FEH Lands or have sold the FEH Shares as contemplated pursuant to the Illegal Agreement to a "friendly" third party: Elena Salvatore and Vincent Salvatore Jr., John Doe or XYZ Corp. (the "**Illegal FEH Sale**") at a purchase price which is substantially below its actual market value for the FEH Lands of the FEH Shares.

64. The Defendants Elena Salvatore and Vincent Salvatore Jr., John Doe or XYZ Corp., are purchasing the FEH Lands or have purchased the FEH Shares, and are fully aware of, and are acting in concert with the Defendants' illegal activities and actions as previously described.

65. Chris states and the fact is that their agreements to approve and proceed with:

- (a) the Revised FEH Security Package;
- (b) payment of the Bressi Fee;
- (c) the Hillmount Financing; and
- (d) such further and other approvals, agreements and authorizations as may be proven at trial were made:
  - (i) in reliance on the intentional and fraudulent misrepresentations that had been made to them by Jeff, Randy and Bressi as aforesaid together with such further and other evidence relating thereto as the Plaintiffs shall present to this Honorable Court at trial;
  - (ii) under duress, and induced because of the coercive actions of Jeff, Randy and Bressi as hereinbefore set out in this Claim together with such further

and other evidence relating thereto, as the Plaintiffs shall present to this Honorable Court at trial; and

- (iii) in accordance with the terms of the Illegal Agreement which by its very nature is null and void, against public policy and should be subject to sanction by this Court;

66. Accordingly, the Plaintiffs state and the fact is that the Illegal Agreement and Illegal FEH Sale is illegal, improper and will constitute a conveyance of real property made with the intent to defeat, hinder, delay or defraud creditors or others of their lawful action are void as against such persons and therefore constitutes a fraudulent conveyance in breach of the provisions of the *Fraudulent Conveyances Act*, RSO 1990 Ch. F29.

67. In the alternative, Chris states and the fact is that based on those matters set out above relating to the Illegal Agreement, the Share Pledge Agreement is null and void and unenforceable and accordingly any attempts by any or all of the Defendants to take control, possession or ownership of the FEH Shares from Chris and Jeff (who acquiesced) pursuant to said Share Pledge Agreement are therefore also illegal and unenforceable.

68. The oppressive conduct includes, without limitation:

- (a) unilaterally and without authority entering into agreements for and on behalf of both CBJ and FEH that are nullities, void ab initio, against public policy, illegal and based on willful neglect and/or are fraudulent;
- (b) completely ignoring Chris and others in their capacity as legal and beneficial shareholders of CBJ and FEH, by committing both corporations to those agreements referred to in (a) above despite their ongoing and continuous objections and dissent to same;
- (c) failing to provide Chris with full disclosure of all matters relating to, *inter alia*, the Bressi Funding Agreement, the Revised FEH Security Package, the terms and conditions of the Share Pledge Agreement, the Illegal Agreement and the Illegal FEH Sale;
- (d) obtaining funds from the Hillmount Loan for their own personal benefit without payment of any of those funds to Chris;
- (e) unilaterally and without authority preventing Chris or other members of the CBJ Management team from being paid funds due and owing to them from CBJ and

FEH thereby depriving them of any source of funding to retain counsel or other professional advisors to contest steps taken pursuant to the enforcement of the Share Pledge Agreement or prevent the implementation thereof; and

(f) such further and other particulars as Chris shall provide prior to trial.

69. As previously stated, if the Illegal Agreement and Illegal FEH Sale closes with title and beneficial ownership of the FEH Lands or the FEH Shares have been or are transferred to Elena Salvatore, Vincent Salvatore, John Doe or XYZ Corp., CBJ may have no recourse against FEH for payment of the Management Fee or any other amounts that are currently due and owing to CBJ and will further deprive Chris and others of substantial value arising from their legal and/or beneficial share ownership in those corporations based on the actual and true market value of the FEH Lands.

70. In the further alternative, Chris states and the fact is that the actions taken by Jeff, Elena Salvatore and Vincent Salvatore Jr. constitute material and substantial “oppressive conduct” towards Chris in his capacity as a CBJ and FEH shareholder which permits judicial relief as per the provisions set out in the *OBCA*.

71. Accordingly, Chris is seeking an interim injunction to enjoin the Defendants from selling or otherwise dealing with the FEH Lands or FEH Shares or to any other parties pending the outcome of this Action. Chris states that:

- (a) there is a serious issue to be tried – the alleged conspiracy to defraud Chris
- (b) damages alone will not provide an adequate remedy, in that irreparable harm will be created if the interim injunction is not granted. No fair and reasonable redress would be available after trial if the FEH Lands are sold to a third party; and
- (c) the balance of convenience favours the granting of the interim injunction.

72. Further, the Plaintiffs collectively state and the fact is that they are entitled to immediately charge the FEH Lands by way of a Certificate of Pending Litigation to secure the

FEH Lands and prevent the sale, financing or transfer of the FEH Lands and are further entitled to an order enjoining the transfer of the FEH shares pending the outcome of this Action.

## CLAIMS

### A. Conspiracy

73. The Defendants engaged in a conspiracy. Each of the individual Defendants conspired to profit from and harm Chris. The particulars of the Defendants' conduct in entering into the Illegal Agreement and the Share Pledge Agreement are described above.

74. The Defendants acted with the predominant purpose of harming Chris. They:

- (a) mapped out the conspiracy and reached the Illegal Agreement on how to maximize the profits from the conspiracy, while minimizing the chances of getting caught;
- (b) acted with the predominant purpose of harming Chris by stripping his interest in FEH; and
- (c) if the sale of the FEH Lands or FEH Shares is not enjoined, they will have caused actual damage to Chris.

75. Similarly, the Defendants' orchestrated unlawful conduct which constituted a conspiracy.

They:

- (a) came to an agreement on how to proceed with the conspiracy and acted in combination with a common design of harming Chris, while profiting themselves;
- (b) acted unlawfully, as set out above by entering into and carrying out the Illegal Agreement;
- (c) directed their unlawful conduct toward Chris;
- (d) knew they were harming Chris; and
- (e) unless the sale of the FEH Lands or the FEH Shares is enjoined, the Defendants will in fact harm Chris.

76. Each of the Defendants played key roles in the conspiracy. While Jeff and Bressi were the puppeteers, the other Defendants played important roles and are accordingly, jointly and severally liable for all damages resulting from the conspiracy.

### **Breach of Fiduciary Duty and Knowing Assistance**

77. Chris was at Jeff's mercy. Jeff had the ability to orchestrate the conspiracy. In his role as a director or FEH and as the trustee of the Burrell Family Trust, Jeff had the obligation to act in the best interests of FEH as well as make full and frank disclosure to Chris. Instead, Jeff acting with the other Defendants, developed a scheme to defraud Chris of more than \$25 million, while destroying the Fort Erie Project, and leaving it with no cash to continue development.

78. FEH was insolvent at the time of Bressei's false promises to fund. Jeff knew that Bressi's representation regarding funding were false and that the Bressi Funding Agreement would never provide the necessary funding to FEH. None of the actions taken by Jeff were in the best interests of FEH and the Plaintiffs. They were purely self-motivated.

79. The remaining Defendants knew or ought to have known that Jeff was acting in breach of his fiduciary duties to FEH. Again, they assisted Jeff in his breaches and profited from that assistance.

### **Oppression**

80. As a shareholder of FEH, Chris is a "complainant" for the purposes of section 248 of the OBCA.

81. Jeff's actions, as one of the directors of FEH, and the actions of Elena Salvatore and Vincent Salvatore as the current directors of FEH, were oppressive and have unfairly disregarded Chris' interests. FEH's business was the development of the FEH Lands and he always had the reasonable expectation that Jeff would act in his best interest toward the development of the FEH Lands.

82. Instead, Jeff used his position as a director or controlling mind of FEH to permit Jeff and the other Defendants to profit from the improvident sale the FEH Shares. Jeff has acted solely in his own interests, to Chris' detriment.

### **Restitution and Tracing**

83. Chris pleads that all the Defendants have been unjustly enriched at Chris' expense and are liable to Chris for all amounts by which they have been unjustly enriched. Chris has been correspondingly deprived of the benefit of these amounts, and there is no juristic reason for the Defendants' enrichment. Chris pleads and rely upon the doctrine of unjust enrichment and claims that he is entitled to restitution from all the Defendants.

84. Chris pleads that the Defendants hold any amounts by which they have been unjustly enriched and the FEH Lands (by Elena Salvatore and Vincent Salvatore) as trust funds or trust assets pursuant to a constructive trust, and that Chris is the beneficiary of those funds and/or assets. Chris further pleads that, given the circumstances, there are no factors that would render the imposition of a constructive trust in favour of Chris unjust.

85. Any funds originating with or that should have been paid to Chris and obtained by any of the Defendants by way of fraud, breach of fiduciary duty, self-dealing, oppression or other improper conduct should be impressed with a trust in favour of Chris.

86. Chris seeks such orders as may be necessary to trace such misappropriated funds, including any such funds or assets currently held by or transferred to any of the Defendants, or transferred to individuals or entities not yet known to Chris.

87. Chris further seek orders requiring the Defendants to disgorge and/or pay restitution in relation to any benefit obtained directly or indirectly as a consequences of the fraud, breach of fiduciary duty, self-dealing, oppression or other improper conduct as pleaded herein, including any assets obtained with funds originating with or that should have been paid to Chris as a shareholder of FEH.

### **Fraudulent Concealment And Punitive Damages**

88. The Defendants fraudulently concealed the Illegal Agreement, which constituted the conspiracy or scheme from Chris. At all material times, they took steps to conceal their conduct from Chris. The Defendants' conduct was unconscionable and designed to hide their unlawful actions.

89. The Defendants' conduct warrants punitive damages. The conspiracy is sufficiently described above. However, for the sake of completeness, the Defendants entered into the Illegal Agreement to siphon millions of dollars away from Chris in the improvident sale of the FEH Lands or FEH Shares to Elena Salvatore, Vincent Salvatore, John Doe and/or XYZ Corp. The Defendants took active steps to conceal the conspiracy.

90. These actions, among the many others described in the Claim, are independent, actionable wrongs, which were carefully designed to defraud Chris. This calculated and fraudulent conduct should offend the court's sense of decency. Pure compensatory damages (i.e., making the Defendants simply pay back what they took and stopping or reversing the sale of the FEH Lands or FEH Shares to either Elena Salvatore, Vincent Salvatore, John Doe or XYZ Corp.) is not enough. Punitive damages are necessary to denounce the Defendants' conduct and deter future parties from devising and carrying out similar schemes.

The Plaintiffs propose that this action be tried on the Commercial List in Toronto.

DATE OF ISSUE: July \_\_\_\_\_, 2024

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Lawyer for the Plaintiffs

Schedule "A"

85 Crooks Street , Fort Erie and legally described as:

PIN 64233-0064 LT

BLK R W/S CROOKS ST PL 525 VILLAGE OF BRIDGEBURG; LT 84 W/S CROOKS ST PL  
525 VILLAGE OF BRIDGEBURG; PT BLK S W/S CROOKS ST PL 525 VILLAGE OF  
BRIDGEBURG; PT LT 8 CON 2 NIAGARA RIVER BERTIE AS IN RO461513; FORT ERIE

**CHRIS AGAGNIER**  
Plaintiff

- and -

**CBJ-FORT ERIE HILLS INC. et al.**  
Defendants

Court File No. CV-24-

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto  
(Commercial List)

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**STATEMENT OF CLAIM**

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Lawyer for the Plaintiffs

# APPENDIX “N”

# CBJ Developments Inc

## Transaction Report

All Dates

DATE	TRANSACTION # TYPE	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE	
01/04/2021	Deposit	Fort Erie Hills International	Loan from FEH Int Can Incn (1.2M loan)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$50,000.00	50,000.00	
01/11/2021	Expense	2029	Province of Ontario	RBCI Transfer from trust account to Teraview account re: land transfer tax /2029	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1040 BJ Trust account - Toronto (100)	\$ -315,475.00	-265,475.00
31/12/2021	Journal Entry	AJE16		reclass closing costs paid for Fort Erie	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -5,000.00	-270,475.00
31/12/2021	Journal Entry	AJE40		the soft costs needs to be reduced because the charge is shared by all 4 companies	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -25,000.00	-295,475.00
31/12/2021	Journal Entry	AJE24		to reclass legal fees paid on behalf of other companies and capitalize the legal fees for BPI	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -26,994.90	-322,469.90
31/12/2021	Journal Entry	AJE17		to reclass Fort Erie payment for loan	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -75,000.00	-397,469.90
31/12/2021	Journal Entry	13			2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -164,028.31	-561,498.21
31/12/2021	Journal Entry	AJE8		To record deposit on Fort Erie property	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -	-
						1,000,000.00	1,561,498.21	
01/01/2022	Bill	T131726-16	J.D. Barnes Limited	Boundary Survey for Absolute Title. Reference Plan for Record of Site Conditions east of Buffer Zone. Work-to-date - June 14 through December 13, 2021.	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -16,712.70	-
							1,578,210.91	
01/01/2022	Bill	2020-206B	Detritus Consulting Limited	Stage 4 archaeological Assessment - Rio VistaAfGr-88 2nd month of excavation	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -89,103.89	-
							1,667,314.80	
01/01/2022	Bill	2020-206C	Detritus Consulting Limited	Stage 4 archaeological Assessment - AfGr-88 3rd month of excavation	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -89,385.26	-
							1,756,700.06	
01/01/2022	Bill	2020-207	Detritus Consulting Limited	Stage 4 archaeological Assessment - P2 AfGr-89	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -109,045.00	-
							1,865,745.06	
13/01/2022	Bill	T132620-16	J.D. Barnes Limited	Preparation & registration of reference for record of site conditions on west portion	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -5,155.91	-
							1,870,900.97	
15/01/2022	Bill	16779	Upper Canada Consultants Engineers/Planners	1530 - Engineering fees for FEH to December 31, 2021 (UC 54.69 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -475.40	-
							1,871,376.37	
15/01/2022	Bill	16782	Upper Canada Consultants Engineers/Planners	1530 - Engineering fees for FEH to December 31, 2021 (UC 288.48 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -2,507.58	-
							1,873,883.95	
16/01/2022	Cheque Expense	etransfer	National Holdings Inc	5605 - renewing mortgage loan no. 9077 (National)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -450.00	-
							1,874,333.95	
25/01/2022	Expense	00985579/4ZCRU	HG Law	Deposit to Helen Gladych to renew mortgage FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -10,000.00	-
							1,884,333.95	
06/02/2022	Expense		Intuit Canada ULC	5370 - INTUIT *QuickBooks Onl (1.30 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2130 Credit card payable	\$ -11.30	-
							1,884,345.25	
09/02/2022	Bill	1438465	Bennett Jones LLP	1540 - review FEH project and loan agreements (2792.99 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -24,277.49	-
							1,908,622.74	
09/02/2022	Expense		Oncorp	5350 - DYE & DURHAM (25.24 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2130 Credit card payable	\$ -219.37	-
							1,908,842.11	
11/02/2022	Expense	X5A9W7	Town of Fort Erie	5900 - 87 Crooks	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -16.64	-
							1,908,858.75	
11/02/2022	Expense	X5A9Y4	Town of Fort Erie	5900 - 87 Crooks	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -993.31	-
							1,909,852.06	
11/02/2022	Expense	X5A9R2	Town of Fort Erie	5900 - Thompson	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -1,350.88	-
							1,911,202.94	
15/02/2022	Bill	17124	Upper Canada Consultants Engineers/Planners	1530 - Engineering fees for FEH to January 31, 2022 (UC 215.78 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -158.48	-
							1,911,361.42	
15/02/2022	Bill	17079	Upper Canada Consultants Engineers/Planners	1530 - Engineering fees for FEH to January 31, 2021 (UC 215.78 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,875.63	-
							1,913,237.05	
15/02/2022	Bill	Feb2022	National Holdings Inc	February 2022 payment	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -4,480.00	-
							1,917,717.05	
18/02/2022	Expense		Intuit Canada ULC	5370 - INTUIT *QuickBooks Onl (.89 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2130 Credit card payable	\$ -7.75	-
							1,917,724.80	
22/02/2022	Bill	1440159	Bennett Jones LLP	1540 - review joint venture term sheet (111.15 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -966.15	-
							1,918,690.95	
28/02/2022	Bill	10217302	MNP	Preparation of 2021 corporate income tax return	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -2,906.92	-
							1,921,597.87	
01/03/2022	Deposit		2703738 Ontario Limited	220301S4961400WIRE	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$1,016,430.29	-905,167.58
06/03/2022	Expense		Intuit Canada ULC	5370 - INTUIT *QuickBooks Onl (2.86 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2130 Credit card payable	\$ -24.86	-905,192.44

# CBJ Developments Inc

## Transaction Report

All Dates

DATE	TRANSACTION TYPE	#	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
15/03/2022	Cheque Expense	wire	Gowling WLG	Legal fees for National Trust loan renewal	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -4,289.00	-909,481.44
15/03/2022	Cheque Expense	0064	National Holdings Inc	5600 - Interest on mortgage loan no. 9077	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -4,480.00	-913,961.44
15/03/2022	Bill	17529	Upper Canada Consultants Engineers/Planners	1530 - Engineering fees for FEH to February 28, 2022 (UC 215.78 HST)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -156.36	-914,117.80
15/03/2022	Bill	17381	Upper Canada Consultants Engineers/Planners	1530 - Planning fees for FEH to February 28, 2022	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,024.12	-915,141.92
21/03/2022	Bill	GF2481	Wood Environment & Infrastructure Solutions	Soil remediation	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -347.96	-915,489.88
21/03/2022	Bill	GF2482	Wood Environment & Infrastructure Solutions	Soil remediation	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -479.12	-915,969.00
21/03/2022	Bill	GF2480	Wood Environment & Infrastructure Solutions	Soil remediation	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -6,725.03	-922,694.03
22/03/2022	Bill	1444210	Bennett Jones LLP	1540 - professional services re refinancing for 600K 1st mortgage w/National Holdings	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -9,893.72	-932,587.75
22/03/2022	Bill	1444213	Bennett Jones LLP	1540 - professional services re refinancing and increase of FEH 2nd mortgage to 2.5M	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -20,963.39	-953,551.14
29/03/2022	Cheque Expense	0091	Niagara Peninsula Conservation Authority	Draft plan extension	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -570.00	-954,121.14
29/03/2022	Cheque Expense	0090	Town of Fort Erie	Draft plan extension	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -1,110.00	-955,231.14
29/03/2022	Cheque Expense	0092	Niagara Region	Draft Plan extension	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -1,345.00	-956,576.14
31/03/2022	Bill	31032022	Town of Fort Erie	5460 - 2022 water sewer (701)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1.44	-956,577.58
31/03/2022	Bill	31032022	Town of Fort Erie	5460 - 2022 water sewer - (501)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1.44	-956,579.02
06/04/2022	Expense		Intuit Canada ULC	INTUIT *QuickBooks Onl	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2130 Credit card payable	\$ -24.86	-956,603.88
15/04/2022	Cheque Expense	0065	National Holdings Inc	5600 - Interest on mortgage loan no. 9077	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -4,480.00	-961,083.88
15/04/2022	Bill	17892	Upper Canada Consultants Engineers/Planners	1530 - Planning fees for FEH to March 31, 2022	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -765.13	-961,849.01
15/04/2022	Bill	17673	Upper Canada Consultants Engineers/Planners	1530 - Planning fees for FEH to March 31, 2022	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -2,022.30	-963,871.31
19/04/2022	Bill	1448322	Bennett Jones LLP	review cross indemnity agreement	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,376.34	-965,247.65
19/04/2022	Bill	1448323	Bennett Jones LLP	draft guarantor indemnity agreement, second mortgage refinance transaction for FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -9,404.03	-974,651.68
30/04/2022	Bill	30042022	Town of Fort Erie	5460 - 2022 water sewer (501)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -67.56	-974,719.24
30/04/2022	Bill	30052022	Town of Fort Erie	5460 - 2022 water sewer (701)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -67.56	-974,786.80
06/05/2022	Expense		Intuit Canada ULC	INTUIT *QuickBooks Onl	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2130 Credit card payable	\$ -37.69	-974,824.49
10/05/2022	Transfer			transfer funds to open new BMO account	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$ -1,000.00	-975,824.49
15/05/2022	Cheque Expense	0066	National Holdings Inc	5600 - Interest on mortgage loan no. 9077	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -4,480.00	-980,304.49
15/05/2022	Bill	18187	Upper Canada Consultants Engineers/Planners	Frenchmans Creek Study	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,154.81	-981,459.30
26/05/2022	Bill	May expenses	Len Walker Consulting	Got Junk Expenses	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -875.24	-982,334.54
30/05/2022	Bill	GF2664	Wood Environment & Infrastructure Solutions	Soil remediation	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -5,833.41	-988,167.95
31/05/2022	Bill	May 2022	Town of Fort Erie	5460 - 2022 water sewer (701)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -68.55	-988,236.50
31/05/2022	Bill	May 2022	Town of Fort Erie	5460 - 2022 water sewer (501)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -68.55	-988,305.05
31/05/2022	Bill	IN003049	Haudenosaunee Development Institute	5054 - archeological monitoring	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -9,203.40	-997,508.45

# CBJ Developments Inc

## Transaction Report

All Dates

DATE	TRANSACTION TYPE	#	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
01/06/2022	Bill	17996	Upper Canada Consultants Engineers/Planners	1530 - Planning fees for FEH to April 30, 2022	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,846.19	-999,354.64
02/06/2022	Bill	2022TAX	Town of Fort Erie	2022 Final Residential Tax bill - 87 Crooks Street	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,090.83	-
02/06/2022	Bill	2022TAX	Town of Fort Erie	2022 Final Residential Tax bill - 0 Thompson Road ES	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -44,368.53	-
06/06/2022	Bill	2022TAX	Town of Fort Erie	2022 Final Capped Tax bill - 87 Crooks Street	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,028.61	-
06/06/2022	Expense		Intuit Canada ULC	QBO monthly	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2130 Credit card payable	\$ -49.72	-
15/06/2022	Cheque Expense	0067	National Holdings Inc	5600 - Interest on mortgage loan no. 9077	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -4,480.00	-
15/06/2022	Bill	18465	Upper Canada Consultants Engineers/Planners	1530 - Planning fees for FEH to May 31, 2022	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -327.39	-
15/06/2022	Bill	18319	Upper Canada Consultants Engineers/Planners	1530 - Planning fees for FEH to May 31, 2022	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -1,895.01	-
17/06/2022	Bill	IN003112	Haudenosaunee Development Institute	5054 - archeological monitoring	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -8,669.38	-
30/06/2022	Bill	June 2022	Town of Fort Erie	5460 - 2022 water sewer (501)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -67.55	-
30/06/2022	Bill	June 2022	Town of Fort Erie	5460 - 2022 water sewer (701)	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -67.55	-
30/06/2022	Bill	IN003182	Haudenosaunee Development Institute	HDI invoice IN003182 - Archeological Monitoring -June 11-24-2022	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	2110 Accounts Payable	\$ -11,858.30	-
01/09/2022	Expense		CBJ - Fort Erie Hills Inc	Loan to pay Upper Canada invoices	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -3,134.14	-
30/09/2022	Journal Entry	23		Invoice 1036	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -16,147.43	-
31/10/2022	Journal Entry	26		Invoice 1039	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -4,649.71	-
31/10/2022	Journal Entry	27		to adjust expense to each company	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -10,000.00	-
31/10/2022	Journal Entry	29		ADJ for expenses paid by CBJ	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -20,000.00	-
31/10/2022	Journal Entry	30		ADJ for expenses paid by CBJ	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -20,000.00	-
31/10/2022	Journal Entry	28		ADJ for expenses paid by CBJ	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -20,000.00	-
31/10/2022	Journal Entry	31		ADJ for expenses paid by CBJ	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -21,500.00	-
07/11/2022	Expense			AEH Security invoice 1513	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -1,692.00	-
30/12/2022	Journal Entry	44		Move loan to CBJ Fort Erie Hills	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$601,787.90	-588,592.89
30/12/2022	Journal Entry	36		To move tax bill to FEH A/P	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$44,368.53	-544,224.36
30/12/2022	Journal Entry	40		Invoice 1045	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -	-
30/12/2022	Deposit		CBJ - Fort Erie Hills Inc:Fort Erie Hills	transfer from FEH to cover MNP retainer invoice	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$1,000.00	-
31/12/2022	Journal Entry	45		Reclassify loan to FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$842,500.00	-756,682.29
31/12/2022	Journal Entry	46		Reclassify loan to FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$575,000.00	-181,682.29
31/12/2022	Journal Entry	41		Invoice 1047	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -60,000.00	-241,682.29
31/12/2022	Journal Entry	86		AJE13 - To record \$60,000 interest paid on behalf of FEH Inc	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -60,000.00	-301,682.29
31/12/2022	Journal Entry	81		AJE7 - To adjust guarantee recorded on land cost	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -601,787.90	-903,470.19
03/01/2023	Cheque Expense	0156	CBJ - Fort Erie Hills Inc	loan from CBJ to FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -66,000.00	-969,470.19

# CBJ Developments Inc

## Transaction Report

All Dates

DATE	TRANSACTION #	TYPE	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
25/01/2023	Cheque Expense	0165	CBJ - Fort Erie Hills Inc	loan from CBJ to FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -13,000.00	-982,470.19
31/01/2023	Journal Entry	50		Invoice 1051	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -90,967.50	-
09/02/2023	Expense		CBJ - Fort Erie Hills Inc:Fort Erie Hills	Transfer funds	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$ -100.00	-
21/02/2023	Transfer			[TF]2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$ -300.00	-
22/02/2023	Transfer			[TF]2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$ -3,500.00	-
27/02/2023	Expense		CBJ - Fort Erie Hills Inc:Fort Erie Hills	[TF]2949-1954-704 3587 - Loan to FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$ -3,000.00	-
28/02/2023	Journal Entry	57		Invoice 1055	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -15,483.50	-
09/03/2023	Deposit		CBJ - Fort Erie Hills Inc:Fort Erie Hills	[TF]2949-1954-704 3587 - repaid loan from FEH	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$3,000.00	-
01/04/2023	Journal Entry	58		Invoice 1058	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -68,276.94	-
18/04/2023	Transfer			View more SEND E-TFR *UJ6 INTC View more SEND E-TFR *UJ6 INTC	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$ -4,500.00	-
19/04/2023	Journal Entry	71		EFT payment to WIRE - FORT ERIE HILLS INTERNATIONAL CANADA WIRE MAT41176 Payment A45508 INC. - RELEASE OF FUNDS/PARTIAL PAYMENT ON FORT ERIE VTB	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -	-
30/04/2023	Journal Entry	66		Invoice 1062	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -14,636.00	-
31/05/2023	Journal Entry	69		Invoice 1066	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -15,201.00	-
30/06/2023	Journal Entry	74		Invoice 1070	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -15,201.00	-
30/06/2023	Deposit		CBJ - Fort Erie Hills Inc	Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$5,000.00	-
11/07/2023	Deposit		CBJ - Fort Erie Hills Inc	Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$14,700.00	-
26/09/2023	Deposit		CBJ - Fort Erie Hills Inc	View more E-TRANSFER ***k3J View more E-TRANSFER ***k3J	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1020 TD Chequing	\$8,500.00	-
30/09/2023	Journal Entry	98		Invoice 1076	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -39,111.00	-
31/10/2023	Journal Entry	103		Invoice 1081	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -29,199.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$30,214.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$21,154.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$20,200.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$20,000.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$12,600.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$11,620.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$9,166.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$6,600.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$6,531.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$4,068.00	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$2,255.35	-
31/10/2023	Transfer			Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$1,000.00	-

# CBJ Developments Inc

## Transaction Report

All Dates

DATE	TRANSACTION # TYPE	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
31/10/2023	Transfer		Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$91.46	-
							2,405,246.32
06/11/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 for MNP invoices	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$15,424.50	-
							2,389,821.82
09/11/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 - Ariel invoice	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$847.50	-
							2,388,974.32
17/11/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 for November 15 payroll	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$14,000.00	-
							2,374,974.32
17/11/2023	Transfer		Transfer of Funds , 2949-1954-704 3587- for Arcadis Invoices	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$7,417.32	-
							2,367,557.00
17/11/2023	Transfer		Transfer of Funds , 2949-1954-704 3587- for Dave Goldenberg October invoices	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$450.00	-
							2,367,107.00
28/11/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 for Aird Retainer	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$20,000.00	-
							2,347,107.00
30/11/2023	Journal Entry	104	Invoice 1084	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -10,352.88	-
							2,357,459.88
04/12/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 - November Payroll	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$26,762.30	-
							2,330,697.58
04/12/2023	Transfer		Transfer of Funds , 2949-1954-704 3587- for MNP invoices	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$15,000.00	-
							2,315,697.58
04/12/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 - For Ron Burrell Loan payment	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$9,166.00	-
							2,306,531.58
04/12/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 - Dave Goldenberg invoices	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$2,380.00	-
							2,304,151.58
04/12/2023	Transfer		Transfer of Funds , 2949-1954-704 3587 - VISA bill	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$1,189.05	-
							2,302,962.53
19/12/2023	Transfer		Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$21,778.00	-
							2,281,184.53
19/12/2023	Transfer		Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$5,000.00	-
							2,276,184.53
31/12/2023	Journal Entry	113	Invoice 1091	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -58,879.40	-
							2,335,063.93
02/01/2024	Transfer		Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$11,500.00	-
							2,323,563.93
16/01/2024	Transfer		Transfer of Funds , 2949-1954-704 3587	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	1001 BMO - CBJ	\$23,673.58	-
							2,299,890.35
26/03/2024	Journal Entry	116	Invoice 1094	2320 Due to/from related parties:Due from CBJ - Fort Erie Hills Inc	-Split-	\$ -14,157.00	-
							2,314,047.35
<b>TOTAL</b>						<b>\$ -</b>	<b>2,314,047.35</b>

# **APPENDIX “O”**



**TDB Restructuring Limited**  
Licensed Insolvency Trustee

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**IN THE MATTER OF THE RECEIVERSHIP OF**

**CBJ – Fort Erie Hills Inc.**

**FIRST REPORT OF THE RECEIVER**

**APRIL 10, 2025**

# Contents

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>1.1</b>	<b>Purpose of Report.....</b>	<b>1</b>
<b>1.2</b>	<b>Terms of Reference.....</b>	<b>3</b>
<b>2.0</b>	<b>BACKGROUND .....</b>	<b>4</b>
<b>3.0</b>	<b>RECEIVER’S ACTIVITIES .....</b>	<b>5</b>
<b>3.1</b>	<b>Receiver’s Preliminary Inquiries .....</b>	<b>5</b>
<b>3.2</b>	<b>Insurance.....</b>	<b>6</b>
<b>3.3</b>	<b>Possession, Security, Conservative and Protective Measures .....</b>	<b>6</b>
<b>3.4</b>	<b>Statutory Notices .....</b>	<b>7</b>
<b>3.5</b>	<b>Property Taxes.....</b>	<b>7</b>
<b>3.6</b>	<b>Other Activities .....</b>	<b>8</b>
<b>4.0</b>	<b>MARKETING AND SALE PROCESS.....</b>	<b>9</b>
<b>4.1</b>	<b>The Sale Process .....</b>	<b>9</b>
<b>4.2</b>	<b>Marketing efforts.....</b>	<b>9</b>
<b>4.3</b>	<b>Offers Received.....</b>	<b>10</b>
<b>4.4</b>	<b>The Agreement of Purchase and Sale.....</b>	<b>11</b>
<b>4.5</b>	<b>Approval of Sale of Real Property .....</b>	<b>12</b>
<b>5.0</b>	<b>RECEIVER’S BORROWINGS.....</b>	<b>13</b>
<b>6.0</b>	<b>SECURED CREDITOR.....</b>	<b>14</b>
<b>6.1</b>	<b>Real Property Secured Creditors .....</b>	<b>14</b>
<b>7.0</b>	<b>PROPOSED INTERIM DISTRIBUTION .....</b>	<b>15</b>
<b>7.1</b>	<b>Distribution of Real Property Proceeds .....</b>	<b>15</b>
<b>8.0</b>	<b>RECEIPTS AND DISBURSEMENTS.....</b>	<b>15</b>
<b>9.0</b>	<b>SEALING.....</b>	<b>16</b>
<b>10.0</b>	<b>PROFESSIONAL FEES .....</b>	<b>16</b>
<b>11.0</b>	<b>RECEIVER’S REQUEST OF THE COURT .....</b>	<b>18</b>

**APPENDICES**

Appointment Order ..... A

Affidavit of Itzhak (Yitz) Levinson..... B

Endorsement of Justice Kimmel dated December 11, 2024..... C

Payout Statement..... D

Agreement of Purchase and Sale (redacted)..... E

Title Search Report ..... F

Interim Statement of Receipts and Disbursements..... G

Fee Affidavit of Jeffrey Berger ..... H

Fee Affidavit of D. J. Miller..... I

Fee Affidavit of Joseph Fried ..... J

Fee Affidavit of Matthew Himmel ..... K

**CONFIDENTIAL APPENDICIES**

Summary of Offers ..... 1

Agreement of Purchase and Sale ..... 2

## 1.0 INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued December 19, 2024 (the “**Appointment Order**”), TDB Restructuring Limited was appointed as receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of CBJ – Fort Erie Hills Inc. (the “**Debtor**”), including, without limitation, the real property municipally known as 85-87 Crooks Street and o Thompson Road, Fort Erie, Ontario (the “**Real Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order permitted the Receiver to retain counsel to the Applicant, Thornton Grout Finnigan LLP (“**TGF**”) and Fogler Rubinoff LLP (“**Foglers**”), as counsel to the Receiver. The Receiver retained TGF as insolvency counsel and Foglers as real estate counsel. As TGF and Foglers had represented the Applicant on the receivership application, the Receiver engaged Loopstra Nixon LLP (“**Loopstra**”) to provide an independent legal opinion to the Receiver with respect to the validity and enforceability of the registered security of the first mortgagee.
3. The Appointment Order, together with other relevant Court documents related to the receivership proceeding, has been posted on the Receiver’s website, at <https://tdbadvisory.ca/insolvency-case/cbj-fort-erie-hills-inc/>

### 1.1 Purpose of Report

4. The purpose of this first report to Court (the “**First Report**”) is to:
  - (a) provide the Court with a brief background leading up to the receivership proceedings;
  - (b) provide the Court with information about the Receiver’s activities since the issuance of the Appointment Order to the date of this First Report;
  - (c) report to the Court on the results of the Receiver’s sale process (the “**Sale Process**”) and activities leading to offers for the Real Property;

- (d) provide to the Court support for the relief sought by the Receiver, namely the request for an approval and vesting order in respect of the Real Property, and the sealing of certain confidential documents pending completion of the sale transaction for the Real Property (the “**Transaction**”). In addition to the information contained herein for the benefit of the creditors and other stakeholders, the First Report is also intended to provide the Court with the following confidential information, for which a sealing Order is sought:
  - i. a summary of the terms of all offers received for the Real Property; and,
  - ii. an unredacted copy of the executed Agreement of Purchase and Sale for the Real Property dated and accepted on March 28, 2025 (the “**APS**”) between the Receiver and Dunsire Homes Inc. (the “**Purchaser**”);
- (e) provide the Court with information relating to the Receiver’s Borrowings Charge (as defined below);
- (e) provide the Court with information relating to the secured creditors in respect of the Real Property;
- (f) provide the Court with a summary of the Receiver’s cash receipts and disbursements in respect of the Real Property for the period December 19, 2024, to March 31, 2025 (the “**Interim R&D**”); and
- (g) request that the Court grant orders:
  - i. approving the First Report and the activities of the Receiver set out herein;
  - ii. authorizing and directing the Receiver to enter into and carry out the terms of the APS, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and

vesting title to the Real Property in the Purchaser upon the closing of the Transaction contemplated in the APS;

- iii. approving the Proposed Interim Distribution of Proceeds (as defined below) from the sale of the Real Property;
- iv. approving the Interim R&D;
- v. sealing Confidential Appendices 1 and 2; and
- vi. approving the fees and disbursements of the Receiver and of the Receiver's counsel for the period of December 19, 2024 to March 31, 2025.

## **1.2 Terms of Reference**

- 5. In preparing the First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in the First Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
- 6. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

## 2.0 BACKGROUND

7. The Debtor is a company incorporated pursuant to laws of the Province of Ontario, whose principal asset consists of the Real Property.
8. The Debtor is the registered owner of the Real Property. The Real Property has not been developed and is vacant land. The lands were formerly operated as a golf course.
9. The Real Property received draft plan approval by the Town of Fort Erie (the “**Town**”) for the construction of a low-density subdivision development consisting of 79 single family detached homes, 102 single family semi-detached homes, 200 townhomes and 800 apartment units.
10. The applicant in this matter, Hillmount Capital Mortgage Holdings Inc. (“**Hillmount**” or the “**Applicant**”) is a secured creditor of the Debtor. Pursuant to a commitment letter between the Debtor and Hillmount dated August 8, 2023 and an amending agreement dated October 24, 2023, Hillmount provided a secured mortgage loan to the Debtor (the “**Loan**”).
11. The Loan is secured by, among other things, a first-ranking mortgage on title to the Real Property and a general security agreement in favour of Hillmount granted by the Debtor.
12. Due to the Debtor being in default of its obligations under the Loan with Hillmount, the Applicant made an application for the appointment of the Receiver (the “**Application**”) on November 29, 2024.
13. Further information regarding the background for the Application can be found in the Affidavit of Itzhak (Yitz) Levinson dated November 29, 2024, attached hereto as **Appendix “B”**.
14. The Application was initially scheduled to be heard on December 11, 2024, however, the Court adjourned the hearing to permit other parties to a separate action involving the Real Property to be served with the application materials. A

copy of the related Endorsement of Justice Kimmel dated December 11, 2024 (the “**December 11 Endorsement**”) is attached hereto as **Appendix “C”**.

15. The Receiver requested and received a payout statement from the Applicant (the “**Payout Statement**”). The amount owing to the Applicant in respect of its first charge / mortgage is \$7,923,102.54 as of April 25, 2025, with a per diem interest amount of \$2,714.14 thereafter. A copy of the Payout Statement is attached as **Appendix “D”** to this report.

### **3.0 RECEIVER’S ACTIVITIES**

#### **3.1 Receiver’s Preliminary Inquiries**

16. Following the Appointment Order being granted, the Receiver undertook efforts to engage with the representatives of the Debtor and its counsel, for the purpose of obtaining information relevant to the Real Property (i.e. bank account details, insurance policies, HST status, property tax statements, information for the data room, etc.).
17. As the Debtor failed to respond to the Receiver’s multiple requests for information, it was not until January 7, 2025, that the Debtor’s counsel, Mr. David Badham, provided a response to the Receiver. Mr. Badham advised that the request was forwarded to his client, but given the holiday season during which it was sent, he had not received a complete response back. Mr. Badham stated that he would follow up with his client and forward the materials as he receives them. The Receiver has not received any update or information as of the date of this First Report.
18. The Receiver also contacted Hillmount representatives, who furnished a voluminous amount of materials relating to the Real Property. The information assisted the Receiver’s understanding of the Real Property and supported the implementation of a sale and marketing process.

19. In parallel with the above efforts, the Receiver contacted various departments within the Town, including the planning department, tax department, and municipal services department, to obtain information concerning the Real Property. These inquiries related to, among other things, zoning information, draft plans, utility accounts, and various reports that had previously been submitted by the Debtor as part of the development approval process. The Town was very accommodating in responding to the Receiver's requests and provided all requested documentation in a timely manner.

### **3.2 Insurance**

20. Pursuant to the December 11 Endorsement, the Debtor was ordered to renew the certificate of insurance for the Real Property, prior to the expiry of the then-existing policy on December 13, 2024. The Debtor did not comply, and the certificate of insurance was not renewed by the required deadline.
21. Following its appointment, the Receiver took steps to secure insurance coverage for the Real Property by obtaining a new policy through the incumbent broker.
22. The policy obtained by the Receiver is a Commercial General Liability insurance for the Real Property with a coverage limit of approximately \$5,000,0000.
23. The existing insurance coverage is due to expire on December 30, 2025.

### **3.3 Possession, Security, Conservative and Protective Measures**

24. The Receiver relied on Lennard Realty Group ("**Lennard**"), the real estate brokerage retained to sell the Real Property, to conduct an initial site visit and provide photographs to assist in assessing the general condition of the Real Property.
25. The Receiver contacted the Town to obtain information relating to the Real Property. During the course of these inquiries, the Town advised the Receiver of recent by-law enforcement activity on the site. The Receiver subsequently obtained copies of the relevant by-law orders, which confirmed that garbage had

been unlawfully dumped on the site. Additionally, the Receiver was further advised by local residents that children had been observed accessing the roof of one of the structures located on the site. The Receiver addressed all outstanding orders, to be in compliance with applicable by-laws.

26. Due to potential safety hazards and liability, the Receiver retained Richmond Advisory Services Inc. (“**RAS**”) to provide property management services including attending on site to mitigate potential risks such as unauthorized access.
27. In consultation with RAS, the Receiver installed fencing around the perimeter of the Real Property.

### **3.4 Statutory Notices**

28. On December 28, 2024, the Receiver prepared and issued the Notice and Statement of Receiver pursuant to section 245 (1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) to the known creditors of the Debtor and in respect of the Real Property.

### **3.5 Property Taxes**

29. The Receiver contacted the Town to ascertain the outstanding property taxes for the Real Property. Subsequently, the Receiver received the interim tax bill from the Town dated February 3, 2025, for two roll numbers associated with the Real Property:
  - a) 0 Thompson Road #020 026 12800 0000, and
  - b) 87 Crooks Steet #020 026 12800 0000.
30. On February 19, 2025, the Receiver paid property taxes in respect of 87 Crooks Street in the amount of \$69,264.73.
31. The Receiver did not pay the property taxes in respect of 0 Thompson Road as Foglers requested that payment be held pending confirmation that the tax

certificate issued by the Town corresponds with the PIN and legal description of the Real Property subject to the receivership. Foglers has now received confirmation from the Town that o Thompson Road is owned by the Debtor.

32. The Receiver intends to pay all outstanding property taxes for both roll numbers from the proceeds generated from the sale of the Real Property.

### **3.6 Other Activities**

33. Other activities performed by the Receiver since the issuance of the Appointment Order include (without limitation):

- a) arranging for a copy of the Appointment Order to be registered against title to the Real Property;
- b) requisitioning and reviewing a title search;
- c) maintaining regular communication with the secured lender and providing periodic updates regarding the Real Property and receivership proceedings;
- d) corresponding with potential financiers and/or purchasers regarding the Real Property;
- e) responding to inquiries from stakeholders, including counsel to the Court-appointed receiver in the matter of Mizue Fukiage et al. v. Clearview Garden Estates Inc. et al - Court File No. CV-25-00736577-00CL. This receivership was commenced by the application of certain equity investors who purportedly invested funds in, among others, the Respondent for the purchase of the Real Property;
- f) entering into a listing agreement with Lennard; and
- g) monitoring Lennard's weekly marketing activities.

## **4.0 MARKETING AND SALE PROCESS**

34. The Receiver engaged in a sale process for the Real Property as described below.

### **4.1 The Sale Process**

35. In or around January 2025, the Receiver was approached by a party who expressed interest in acquiring the Real Property as a potential stalking horse bidder; however, no formal offer was ever submitted, and the matter did not proceed further.

36. The Receiver requested listing proposals from three commercial real estate brokers for the marketing and the sale of the Real Property, including Lennard. Each of the brokers has considerable experience selling residential and commercial real estate in Ontario.

37. The Receiver received proposals from two of the three brokerages and ultimately selected Lennard, in consultation with Hillmount in its capacity as the senior secured creditor and first mortgagee of the Real Property.

38. On January 27, 2025, the Receiver entered into a multiple listing service (“MLS”) listing agreement with Lennard to market the Real Property.

39. After discussions with Lennard, the Receiver set an initial bid deadline date of March 25, 2025. Lennard advised the Receiver that it believed this would provide sufficient time to appropriately canvas the market.

### **4.2 Marketing efforts**

40. Lennard officially launched their marketing campaign on February 10, 2025, which included listings on major platforms, targeted outreach, and promotional materials.

41. The Receiver provided Lennard with a template form of APS to be used, which was uploaded to the online data room maintained by Lennard, to facilitate purchaser due diligence. The Receiver also provided a form of confidentiality

agreement for interested parties to execute, in order to be given access to a virtual data room and perform due diligence (the “**Confidentiality Agreement**”).

42. A summary of marketing activities undertaken by Lennard is set out below:
- a) Prepared a brochure / teaser letter that was mailed out along with the Confidentiality Agreement on a targeted basis;
  - b) posted on social media (LinkedIn) which received over 2,000 impressions in the first week;
  - c) delivered e-mails to Lennard’s distribution list of approximately 3,000 parties with 550 targeted developers;
  - d) conducted targeted outreach by calling approximately 175 active developers in Southwestern Ontario;
  - e) listed the Real Property on Lennard’s website and on MLS;
  - f) published advertisements in the *Novae Res Urbis - City of Toronto Edition* publication on February 26<sup>th</sup>, 2025, and *The Globe and Mail* published on February 20, 2025, and March 13, 2025; and
  - g) established an electronic data room to provide access to confidential information pertaining to the Real Property to parties who had executed a Confidentiality Agreement.

### **4.3 Offers Received**

43. As a result of these marketing efforts, Lennard received twenty-five (25) signed Confidentiality Agreements by prospective purchasers or brokers, all of whom were given access to the electronic data room.
44. On March 25, 2025, Lennard received four (4) offers for the Real Property. The Receiver reviewed the offers with Lennard and Hillmount. Based on the offers submitted, the Receiver determined that the offer from the Purchaser is the

highest and best available offer, given, among other things, current market conditions, and should be accepted. A summary of the offers received for the Real Property will be filed with the Court as **Confidential Appendix “1”**, under seal. Confidential Appendix “1” demonstrates that the accepted offer contained the highest and best value.

45. Subject to the terms thereof including a request for Court approval, the Receiver proceeded to execute the APS with the Purchaser on March 28, 2025 on substantially the same terms as the form posted to the electronic data room, as further described below.

#### **4.4 The Agreement of Purchase and Sale**

46. Salient terms of the APS and matters relating thereto include:
- (a) the “Purchased Assets” include the Real Property and other documents and property relating to the Real Property;
  - (b) the Purchaser was required to provide a deposit two (2) business days following the execution of the APS, which has been received by the Receiver;
  - (c) the APS is conditional on Court approval and the issuance of an order vesting the Purchased Assets (as defined in the APS) in the Purchaser free and clear of all claims and encumbrances, other than those specifically listed in the APS as permitted encumbrances (the “**AVO**”);
  - (d) there are no conditions to closing other than the issuance of the AVO;
  - (e) the Purchaser is buying the Real Property on an “as is, where is” basis; and
  - (f) closing of the sale provided for in the APS is scheduled to occur within the earlier of: (i) forty-five (45) calendar days after acceptance of the APS, and (ii) two (2) Business Days immediately following the date upon which

the AVO is granted, or such other date as the Receiver and Purchaser may mutually agree upon.

47. A copy of the APS, with the purchase price and deposit amount redacted, is attached hereto as **Appendix “E”**. An unredacted copy will be filed as **Confidential Appendix “2”** with the Court, under seal.

#### **4.5 Approval of Sale of Real Property**

48. The Receiver believes that the marketing process undertaken by Lennard and the Receiver was appropriate considering the nature of the Real Property. The Sale Process allowed for sufficient market exposure for the Real Property, for, among others, the following reasons:
  - a) notice of the sale was sent to more than 3,000 parties;
  - b) the Real Property was listed for sale on MLS;
  - c) the Real Property was listed on Lennard’s website;
  - d) the Real Property was marketed in two different publications on two separate dates;
  - e) twenty-five (25) parties executed a Confidentiality Agreement, and four (4) parties submitted offers;
  - f) the Real Property was exposed to the market on MLS for a period of approximately eight weeks, based on Lennard’s recommendation, and consistent with other sales processes in this province for vacant lands in receivership proceedings.
49. Accordingly, based on the above, the Receiver is satisfied that the marketing process was conducted in a commercially reasonable manner and provided a sufficient and fair opportunity for interested parties to participate in the process.
50. The Receiver recommends the approval of the Transaction as:

- (a) the market was widely canvassed and there was significant interest generated in the Real Property;
  - (b) the purchase price of the Transaction is the highest and best price for the Real Property, is superior to the other offers received for the Real Property and is reasonable in the circumstances;
  - (c) the first mortgagee is supportive of the Transaction; and
  - (d) there is no indication that further exposure to the market will result in an offer superior to the Purchaser's offer.
51. The Receiver therefore recommends the approval of the APS by the Court. The Transaction contemplated by the APS provides for the greatest recovery available in the circumstances. The Receiver is advised that Hillmount supports the AVO, and the completion of the Transaction as contemplated in the APS.

## **5.0 RECEIVER'S BORROWINGS**

52. Pursuant to paragraph 21 of the Appointment Order, the Receiver was empowered to borrow up to \$250,000 at any time for the purpose of funding the exercise of the Receiver's powers and duties. The Appointment Order charged the Real Property with the Receiver's Borrowings Charge as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but is subordinate in priority to the Receiver's Charge (defined below) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
53. To date, the Receiver has borrowed and has issued Receiver's certificates to the Applicant totaling \$250,000 against the Real Property. The Receiver issued Receiver's certificates to the Applicant in respect of these borrowings.

## 6.0 SECURED CREDITOR

### 6.1 Real Property Secured Creditors

54. A copy of the parcel register searches for the Real Property was obtained from the Ontario Land Registry Office (collectively, the “**Title Search Report**”). A copy of the Title Search Report, dated March 31, 2025, is attached hereto as **Appendix “F”**.
55. A summary of the charges and notices registered against the Real Property as set out in the Title Search Report is as follows:

<b>Date of Registration</b>	<b>Nature of Registration</b>	<b>Registrant</b>	<b>Amount</b>
2023/10/25	Charge	Hillmount Capital Mortgage Holdings Inc.	\$8,000,000
2024/02/13	Notice	Dennis Blain / Lakefront Developments Inc.	\$5,000,000
2024/10/29	Charge	1001045239 Ontario Inc.	\$49,000,000

56. The Receiver has obtained an independent legal opinion from Loopstra Nixon LLP, opining that, subject to the usual assumptions and qualifications, Hillmount’s charge / mortgage constitutes a valid and enforceable first ranking charge / mortgage against the Real Property.
57. Following the closing of the sale transaction, the Receiver intends to obtain and review the underlying security documentation in respect of the subsequent \$5,000,000 notice registered in favour of Mr. Dennis Blain and Lakefront Developments Inc. and the further subsequent \$49,000,000 charge registered in favour of the 1001045239 Ontario Inc., to assess the validity and enforceability of these charges. Any further distribution of funds following the Receiver’s review of documentation supporting subsequent encumbrances as set out above will be subject to a future motion on notice to all parties on the Service List. All charges

and encumbrances listed above will be vested off title if the AVO requested on this motion is granted, with the proceeds standing in place of such registrations.

## **7.0 PROPOSED INTERIM DISTRIBUTION**

### **7.1 Distribution of Real Property Proceeds**

58. The Receiver seeks to distribute the proceeds of sale upon closing the Transaction for the Real Property as follows (the “**Proposed Interim Distribution of Proceeds**”):

- (a) payment to the Town for the property taxes owing on the Real Property of approximately \$114,252.51, plus any further interest or fees at the time of closing;
- (b) payment to Lennard of the commissions owed to it upon the successful sale of the Real Property and closing of the Transaction;
- (c) payment of the unpaid fees and disbursements of the Receiver, Foglers, and TGF;
- (d) repayment to Hillmount of the Receiver’s borrowings of \$250,000 plus interest thereon to the date of payment under the Receiver’s Borrowings Charge in respect of the Real Property; and
- (e) payment to Hillmount of all amounts owing by the Debtor to Hillmount pursuant to Hillmount’s first-ranking mortgage to the date of payment.

59. The balance of the proceeds from the Transaction will be held in trust by the Receiver pending further order of the Court.

## **8.0 RECEIPTS AND DISBURSEMENTS**

60. The Interim R&D for the period from December 19, 2024, to March 31, 2025 sets out cash receipts of \$250,471 and cash disbursements of \$155,978 resulting in an

excess of receipts over disbursements of \$94,493, excluding the purchase deposit which is separately held in trust. A copy of the Interim R&D is attached hereto as **Appendix “G”**.

## **9.0 SEALING**

61. The Receiver respectfully requests that the Court seal Confidential Appendices 1 and 2 to this report, being the offer summary relating to the Real Property and an unredacted copy of the APS, respectively. The Receiver believes that the summary of the offers received, and the purchase price and deposit amounts contained in the APS for the Real Property should be kept confidential until the completion of the Transaction with respect to the Real Property.
62. The inclusion in the public record of the offer summary and an unredacted copy of the APS (which discloses the purchase price and deposit amount) would be prejudicial to, among other things, the integrity of the sale process and any additional marketing efforts that may be needed for the Real Property if the Transaction for the Real Property fails to close for any reason.
63. The sealing order sought is limited in time and will automatically expire upon the closing of the Transaction contemplated in the APS or further order of the Court. This will ensure that the offers and purchase price provided in the APS remain confidential until all sale efforts are completed. This is necessary and sufficient to reasonably protect the legitimate stakeholder interests in the circumstances.
64. A full copy of the APS is being publicly filed as **Appendix “E”** to this report, with the purchase price and deposit amounts redacted. As a result, the sealing order’s effect on the completeness of the public record, if any, will be minimal.

## **10.0 PROFESSIONAL FEES**

65. The Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing

of accounts, and that the Receiver and counsel to the Receiver were granted a charge (the “**Receiver's Charge**”) on the Real Property, as security for such fees and disbursements. The Receiver's Charge is a first charge on the Real Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

66. The Receiver’s accounts for the period from November 11, 2024, to March 31, 2025 total \$103,027.81 in fees and disbursements, plus HST of \$13,393.63, for a total amount of \$116,421.44. A copy of the Receiver’s interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Jeffrey Berger sworn on April 9, 2025 and attached as **Appendix “H”** to this report.
67. The accounts of the Receiver’s insolvency counsel, TGF, for the period from December 20, 2024, to March 31, 2025 total \$21,892.50 in fees and disbursements, plus HST of \$2,846.03 for a total amount of \$24,738.53. A copy of TGF’s interim accounts (redacted only for privilege), together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of D. J. Miller sworn on April 9, 2025 and attached as **Appendix “I”** to this report.
68. The accounts of the Receiver’s real estate counsel, Foglers, for the period from December 20, 2024, to March 31, 2025 total \$27,083.50 in fees and disbursements, plus HST of \$3,511.63 for a total amount of \$30,595.13. A copy of Foglers’ interim accounts (redacted only for privilege), together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Joseph Fried sworn on April 9, 2025 and attached as **Appendix “J”** to this report.
69. The accounts of Loopstra, retained by the Receiver to provide an independent legal opinion regarding the priority and validity of Hillmount’s registered security, for the period from February 24, 2025, to April 7, 2025 total \$4,562.50 in fees and disbursements, plus HST of \$593.13 for a total amount of \$5,155.63.

A copy of Loopsta's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Matthew Himmel sworn on April 7, 2025 and attached as **Appendix "K"** to this report.

## **11.0 RECEIVER'S REQUEST OF THE COURT**

70. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 4(g) above.

All of which is respectfully submitted to this Court as of this April 10, 2025.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Court-appointed Receiver and Manager of CBJ – Fort Erie Inc. and not in its personal or corporate capacity

Per:



Jeffrey Berger, CPA, CA, CIRP, LIT  
Managing Director

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

**HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.** - and  
Applicant

**CBJ – FORT ERIE HILLS INC.**  
Respondent

Court File No. CV-24-00730993-00CL

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

Proceedings commenced at Toronto, Ontario

**FIRST REPORT OF THE COURT-APPOINTED  
RECEIVER, TDB RESTRUCTURING LIMITED**

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