

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

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**AREACOR INC.**

Respondent

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

**APPLICATION RECORD**

(returnable January 13, 2022)

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

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E-mail: harvey@chaitons.com

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**Lawyers for the Applicant**

TO: SERVICE LIST

**SERVICE LIST**

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<p><b>RSM CANADA LIMITED</b> 11 King Street West, Suite 700, Box 27 Toronto, ON M5H 4C7</p> <p><b>Bryan Tannenbaum</b> Tel: (416) 238-5055 Email: bryan.tannenbaum@rsmcanada.com</p> <p><b>Proposed Receiver</b></p>	<p><b>CITY OF HAMILTON</b> 71 Main Street West, City Hall, 1<sup>st</sup> Floor Hamilton, ON L8P 4Y5</p>
<p><b>AVIVA INSURANCE COMPANY OF CANADA</b> c/o Westmount Guarantee Suite 205, 600 Cochrane Drive Markham, ON L3R 5K3</p>	<p><b>FORD CREDIT CANADA LEASING, DIVISION OF CANADIAN ROAD LEASING COMPANY</b> PO Box 2400 Edmonton, AB T5J 5C7</p>
<p><b>HARRIS, SHEAFFER LLP</b> Yonge Corporate Centre 4100 Yonge Street, Suite 610 Toronto, ON M2P 2B5</p> <p><b>Gary Harris</b> Tel: (416) 250-2860 Email: gharris@harris-sheaffer.com</p>	<p><b>TARION WARRANTY CORPORATION</b> 5160 Yonge Street, 12th Floor Toronto, ON M2N 6L9</p> <p><b>Tim Schumacher, Vice President &amp; General Counsel</b> E-mail: Tim.Schumacher@Tarion.com</p> <p><b>Danielle Peck, Senior Legal Counsel</b> E-mail: Danielle.Peck@Tarion.com</p>
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<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE</b></p> <p>Insolvency Unit  33 King Street West, 6<sup>th</sup> floor  Oshawa, ON L1H 8H5</p> <p><b>Leslie Crawford</b>  Tel: (905) 433-5657  Email: leslie.crawford@ontario.ca</p> <p>Email: insolvency.unit@ontario.ca</p>	

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

B E T W E E N:

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Respondent

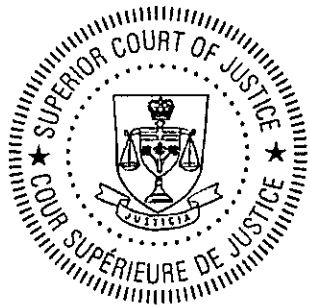
APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

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**TAB 1**



Electronically issued  
Délivré par voie électronique : 06-Jan-2022  
Toronto

Court File No.

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

**BETWEEN:**

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**AREACOR INC.**

Respondent

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

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

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

**THIS APPLICATION** will come on for a hearing

- In person
- By telephone conference
- By video conference

at the following location

Meeting ID: 883 9059 6331

Passcode: 664132

<https://us02web.zoom.us/j/88390596331?pwd=QWVITjFtZ2U4dkp0YUN6clZRZUFnUT09>

on **Thursday, January 13, 2022, at 10:30 a.m.**

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

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

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

Date January 6, 2022 Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue, 9th Floor  
Toronto, Ontario M5G 1R8 1R7

**TO: AREACOR INC.**  
Suite #270 - 2869 Bloor St West  
Etobicoke ON M8X 1B3

Attention: Roni Gilyana

## APPLICATION

1. The Applicant, MarshallZehr Group Inc. (“**MarshallZehr**”), makes application for:
  - (a) an order validating service of this Notice of Application and the Application Record in the manner effected, abridging the time for service thereof, and dispensing with service thereof on any party other than the parties served;
  - (b) an order, substantially in the form included in the Application Record, *inter alia*, appointing RSM Canada Limited (“**RSM**”) as receiver (“**Receiver**”) of the property, assets and undertaking of Areacor Inc. (the “**Debtor**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3 (the “**BIA**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”); and
  - (c) such further and other relief as this Honourable Court may deem just.
2. The grounds for the application are:

### *The Parties*

- (a) The Debtor is the registered owner of property municipally known as 15 Cannon Street West, Hamilton, Ontario (the “**Property**”).
- (b) The Debtor acquired the Property to develop it as a six-storey condominium project consisting of 40 residential units and commercial space on the ground floor, to be known as the Jamesville Lofts (the “**Development**”).

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- (c) MarshallZehr provides syndicated construction and development financing to commercial businesses. MarshallZehr is also a licensed mortgage brokerage and mortgage administrator.

***Loan to the Debtor***

- (d) Pursuant to a commitment letter dated May 15, 2018, as amended by letters dated June 27, 2018, December 3, 2018, and December 2, 2019 (collectively, the “**Commitment Letter**”), MarshallZehr agreed to provide a loan up to the maximum principal amount of \$11,885,000 (the “**Loan**”) to the Debtor to refinance the Debtor’s existing land loan and provide construction financing for the Development.
- (e) The term of the Loan originally matured on February 1, 2020. In December 2019, MarshallZehr agreed to extend the maturity date to September 1, 2021.
- (f) As security for the indebtedness, liabilities and obligations owed by the Debtor to MarshallZehr, the Debtor has granted in favour of MarshallZehr, *inter alia*, a first ranking charge/mortgage on the Property in the principal amount of \$13.5 million (the “**MarshallZehr Charge**”), and a general security agreement dated June 25, 2018 (the “**General Security Agreement**”).
- (g) Pursuant to a Deficiency and Completion Agreement dated June 15, 2018 (the “**Deficiency Agreement**”), the Debtor and Roni Gilyana, the principal of the Debtor, jointly and severally undertook to pay from their own resources any and all Cost Overruns (as defined in the Deficiency Agreement) with respect to the Development.

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- (h) The Deficiency Agreement provides that failure by the Debtor and Mr. Gilyana to comply with the provisions of the agreement constitutes a default by the Debtor under the Loan and all security given in connection with the Loan.
- (i) Pursuant to the terms of the Commitment Letter, the MarshallZehr Charge and the General Security Agreement, failure to pay an amount when due is an event of default.
- (j) The Debtor has agreed that, upon default, MarshallZehr is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver.

***Status of the Development***

- (k) It was originally estimated that construction of the Development would be completed by November 2019.
- (l) The Development experienced significant construction delays such that, by spring 2021, the superstructure of the Development was still not finished.
- (m) Construction on the Development effectively ceased in June 2021.
- (n) Given the delay in construction, MarshallZehr informed the Debtor that it would not consider an extension of the term of the Loan, or provide any additional financing, until a revised capital cost construction budget was provided for the Development.



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- (o) In early December 2021, the Debtor provided a revised budget that estimated that the cost to complete the Development had significantly increased and that the Debtor required an additional \$5.52 million to complete the Development.
- (p) MarshallZehr requested that the Debtor and Mr. Gilyana inject \$5.0 million to complete the Development by way of debt or equity, in accordance with the terms of the Deficiency Agreement.
- (q) Mr. Gilyana informed MarshallZehr that he did not have the ability to inject any further money into the Development.

***Demand***

- (r) The Loan matured on September 1, 2021.
- (s) On December 14, 2021, MarshallZehr demanded payment of \$6,841,475.63 for principal, interest and fees (excluding legal costs) owed by the Debtor to MarshallZehr under the Commitment Letter as of December 6, 2021 and delivered a notice of intention to enforce its security under the *BIA*.
- (t) MarshallZehr has received no payment from the Debtor since demand was made.

***Construction Lien***

- (u) Fusioncorp Developments Inc. (“**Fusioncorp**”) was the general contractor for the Development.
- (v) On or about October 27, 2021, Fusioncorp and the Debtor mutually agreed to terminate their construction agreement.

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- (w) On December 10, 2021, Fusioncorp registered a construction lien against the Property in the amount of \$2,436,674.66 for unpaid services and materials supplied to the Debtor in connection with the Development.
- (x) On December 21, 2021, Fusioncorp commenced an action against the Debtor, MarshallZehr, and the other mortgagees of the Property claiming, among other things, priority over the MarshallZehr Charge and the other charges/mortgages on the Property.

***Just and Convenient to Appoint a Receiver***

- (y) It is in the best interests of MarshallZehr and the Debtor's creditors generally, and is just and convenient, to appoint a Receiver to take control and realize on the Property.
- (z) RSM has agreed to accept the appointment as Receiver.

***Statutory and Other Grounds***

- (aa) Section 243 of the *BIA*, and Section 101 of the *CJA*.
  - (bb) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
  - (cc) Such further and other grounds as counsel may advise and this Honourable Court permits.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit of Murray Snedden sworn January 6, 2022 and the exhibits thereto;  
and

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- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

2022  
January 6, 2021

**CHAITONS LLP**  
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Toronto, Ontario M2N 7E9

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E-mail: samr@chaitons.com

**Lawyers for the Applicant**

-and-

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

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**Lawyers for the Applicant**

**TAB 2**

Court File No.

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

BETWEEN:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

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**AFFIDAVIT OF MURRAY SNEDDEN**  
(sworn January 6, 2022)

I, **MURRAY SNEDDEN**, of the Town of Aurora, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Financial Officer of the Applicant, MarshallZehr Group Inc. ("**MarshallZehr**"). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me from others. When matters deposed to herein are based upon information and advice from others, I have identified the source of the information and verily believe same to be true.

2. This affidavit is sworn in support of the application by MarshallZehr for the appointment of RSM Canada Limited (“RSM”) as receiver (“Receiver”) of the property, assets, and undertakings of the Respondent, Areacor Inc. (the “Debtor”).

## **THE PARTIES**

3. The Debtor is a corporation governed by the *Canada Business Corporations Act* and has its registered office located in Etobicoke, Ontario. Attached hereto and marked as Exhibit “A” is a copy of the Corporate Profile for the Debtor obtained on December 7, 2021.

4. The Debtor is the registered owner of property municipally known as 15 Cannon Street West, Hamilton, Ontario (the “Property”). A copy of the parcel register for the Property is attached hereto and marked as Exhibit “B”.

5. The Debtor acquired the Property to develop it as a six-storey condominium project consisting of 40 residential units and commercial space on the ground floor, to be known as the Jamesville Lofts (the “Development”).

6. MarshallZehr is an Ontario corporation that provides syndicated construction and development financing to commercial businesses. The financing is sourced from institutional and private lenders. MarshallZehr is also a licensed mortgage brokerage and mortgage administrator.

## **FINANCING FOR THE DEBTOR**

### Commitment Letter

7. Pursuant to a commitment letter dated May 15, 2018, as amended by letters dated June 27, 2018, December 3, 2018, and December 2, 2019 (collectively, the “Commitment Letter”), MarshallZehr agreed to provide a loan in the maximum principal amount of \$11,885,000 (the

“Loan”) to the Debtor to refinance the Debtor’s existing land loan and provide construction financing for the Development. A copy of the Commitment Letter is attached hereto and marked as **Exhibit “C”**.

8. The term of the Loan originally matured on February 1, 2020, but it was extended to September 1, 2021, as described below.

9. As of December 19, 2021, the Debtor was indebted to MarshallZehr in the amount of \$6,868,803.60 in principal and interest (excluding fees and other costs) in respect of the Loan.

#### Security

10. As security for the indebtedness, obligations and liabilities owed by the Debtor to MarshallZehr, the Debtor has granted, among other things, the following security documents in favour of MarshallZehr:

(a) a Charge/Mortgage registered on title to the Property on June 29, 2018 in the principal amount of \$12.0 million, which was increased to \$13.5 million pursuant to an Agreement Amending Charge/Mortgage of Land made as of March 11, 2019 and registered on title to the Property on March 22, 2019 (collectively, the “**MarshallZehr Charge**”), copies of which are collectively attached hereto and marked as **Exhibit “D”**; and

(b) a General Security Agreement dated June 25, 2018 (the “**General Security Agreement**”), a copy of which is attached hereto and marked as **Exhibit “E”**.

11. As additional security, MarshallZehr entered into a Deficiency and Completion Agreement dated June 15, 2018 (the “**Deficiency Agreement**”) with the Debtor and Roni Gilyana, the



principal of the Debtor, pursuant to which they jointly and severally undertook to pay from their own resources any and all Cost Overruns (as defined in the Deficiency Agreement) with respect to the Development. A copy of the Deficiency Agreement is attached hereto and marked as **Exhibit "F"**.

12. The Deficiency Agreement provides that failure by the Debtor and Mr. Gilyana to comply with the provisions of the agreement constitutes a default by the Debtor under the Loan and all security given in connection with the Loan.

13. Pursuant to the terms of the Commitment Letter, the MarshallZehr Charge, and the General Security Agreement:

- (a) failure to pay an amount when due is an event of default; and
- (b) upon an event of default, MarshallZehr is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver.

#### **OTHER CREDITORS**

14. In addition to the MarshallZehr Charge, the following charges are registered against title to the Property:

- (a) a \$3.5 million Charge/Mortgage in favour of Aviva Insurance Company of Canada ("Aviva") registered on November 23, 2017 (the "**Aviva Charge**"), a copy of which is attached hereto and marked as **Exhibit "G"**; and

- (b) a \$208,756 Charge/Mortgage in favour of the City of Hamilton (the “City”) registered on April 30, 2019 (the “City Charge”), a copy of which is attached hereto and marked as **Exhibit “H”**.

15. I am advised by Sam Rappos, a lawyer with Chaitons LLP, MarshallZehr’s legal counsel, that the following financing statements were registered against the Debtor under the *Personal Property Security Act* (Ontario) (“*PPSA*”) as of December 6, 2021:

- (a) Ford Credit Canada Leasing, Division of Canadian Road Leasing Company registered a financing statement on February 17, 2021 with respect to a 2021 Ford F150;
- (b) MarshallZehr registered two financing statements against the Debtor on June 29, 2018, one listing collateral classified as “accounts” and “other”, and the other listing collateral classified as “inventory”, “equipment”, “accounts”, “other”, and “motor vehicle included”; and
- (c) Aviva registered a financing statement against the Debtor on November 1, 2017 listing collateral classified as “accounts” and “other” and a general collateral description concerning a deposit trust agreement dated October 17, 2017.

Attached hereto and marked as **Exhibit “I”** is a copy of the *PPSA* search result for the Debtor.

Aviva

16. Pursuant to an agreement dated October 17, 2017 (the “**Aviva Agreement**”), Aviva agreed to provide an \$800,000 bond in favour of Tarion Warranty Corporation (“**Tarion**”) and a \$2.0 million deposit insurance facility with respect to the Development. Westmount Guarantee

Services Inc. is Aviva's agent with respect to the facilities provided to the Debtor. The Aviva Charge was granted as security for the Debtor's obligations to Aviva. A copy of the Aviva Agreement is attached hereto and marked as **Exhibit "J"**.

17. Pursuant to the Aviva Agreement, the Debtor, Aviva, and Harris, Sheaffer LLP (the "**Escrow Agent**") entered into a deposit trust agreement dated October 17, 2017 in connection with deposit monies received from purchasers of units in the Development ("**Deposits**").

18. Pursuant to a Priority Agreement dated June 28, 2018 (the "**Priority Agreement**"), Aviva agreed to subordinate the Aviva Charge in favour of the MarshallZehr Charge. A Postponement of Interest from Aviva to MarshallZehr was registered on title to the Property on July 5, 2018 (the "**Postponement**"). Copies of the Priority Agreement and the Postponement are respectively attached hereto and marked as **Exhibits "K" and "L"**.

19. Pursuant to the Priority Agreement, Aviva has priority over MarshallZehr with respect to any Deposits held by the Escrow Agent.

#### City of Hamilton

20. As set out in the City Charge, the Debtor is required to pay certain development charges to the City in connection with the Development. Pursuant to the Deferral Agreement entered into between the Debtor and the City, the City agreed to defer payment of \$208,755.90 in development charges for five years from the issuance of the building permit for the Development in consideration for the Debtor granting the City Charge to the City.

Fusioncorp

21. Fusioncorp Developments Inc. (“**Fusioncorp**”) was the general contractor for the Development and was hired by the Debtor to supply all labour, services, and materials for the Development pursuant to a contract entered into on or about January 30, 2019.

22. As set out in a letter dated June 25, 2021 from Fusioncorp’s lawyer, there were numerous disputes between the Debtor and Fusioncorp in connection with the Development. Fusioncorp had issued notices of default to the Debtor on May 6, 2020, July 10, 2020, May 12, 2021 and June 8, 2021. A copy of the letter, without enclosures, is attached hereto and marked as **Exhibit “M”**.

23. The letter indicates that on June 15, 2021, Fusioncorp provided formal notice to Areacor that it was suspending all trade work in accordance with the terms of the construction contract.

24. As detailed in Fusioncorp’s statement of claim described below, I understand that Fusioncorp and the Debtor entered into a mediation process as required under the construction contract. On or about October 27, 2021, the contract between Fusioncorp and the Debtor was mutually terminated pursuant to an agreement reached through the mediation process.

25. On December 10, 2021, Fusioncorp registered a construction lien against title to the Property in the amount of \$2,436,674.66 (the “**Construction Lien**”). On December 21, 2021, Fusioncorp commenced an action against the Debtor, MarshallZehr, Aviva and the City claiming, among other things, priority over the MarshallZehr Charge, the Aviva Charge, and the City Charge. Attached hereto and marked as **Exhibit “N”** is a copy of Fusioncorp’s statement of claim and Construction Lien.

## **SALE AGREEMENTS AND DEPOSITS**

26. The Debtor has entered into agreements of purchase and sale (“APS”) with respect to 29 of the 40 residential units to be constructed in the Development. A copy of a redacted sample APS (without schedules) is attached hereto and marked as **Exhibit “O”**.

27. It is my understanding that the terms of each APS are substantially the same in all material respects for the purposes of this application.

28. As set out in the APS, the purchaser agreed that it had not acquired any equitable or legal interest in the Property. The purchaser also agreed that the APS is subordinate to and postponed to any mortgages arranged by the Debtor and any advances thereunder.

29. MarshallZehr has been informed by Glynn Group Incorporated (“**Glynn Group**”), the quantity surveyor for the Development, that the Debtor has collected \$2,061,060 in deposits from 26 of the 29 purchasers, of which \$520,000 (\$20,000 per unit) are guaranteed by Tarion. \$1,786,294 of deposits has been released to the Debtor for use with respect to the Development.

## **STATUS OF THE DEVELOPMENT**

30. In June 2018, Glynn Group informed MarshallZehr that, based on the information provided to it by the Debtor, construction of the Development would be completed by November 2019, and the project budget was certified to be \$13.75 million.

31. By December 2018, the project budget had increased from \$13.75 million to \$15.32 million. By December 2019, the project budget had further increased from \$15.32 million to \$16.0 million, and the construction of the Development was materially delayed.

32. To address the growth in the project budgets and delay in completion of the Development:

- (a) the maximum principal amount of the Loan was increased from \$10,445,000 to \$11,445,000 in December 2018, and from \$11,445,000 to \$11,885,000 in December 2019; and
- (b) the maturity date for the Loan was extended from February 1, 2020 to September 1, 2021.

33. By April 2021, Glynn Group confirmed that the budget for the Development had increased to \$16.5 million.

34. MarshallZehr informed the Debtor that it would not consider an extension of the term of the Loan, or provide any additional financing, until a revised capital cost construction budget was completed for the Development.

35. As noted above, it is my understanding that Fusioncorp suspended all trade work on the Development in June 2021. MarshallZehr retained Roman Hergott to conduct site inspections for the Development. Mr. Hergott attended the Property on June 25, and October 1, 2021. On June 25, 2021, he reported that there was no activity at the site at the time of inspection and only a single person, a site supervisor, was at the Property. On October 1, 2021, Mr. Hergott reported that no one was at the site at the time of the inspection, the site was inactive, and no work had been completed since his last visit on June 25, 2021.

36. In early December 2021, the Debtor, with the assistance of Glynn Group, presented an updated capital cost budget to MarshallZehr that detailed the projected costs to complete construction of the Development.

37. The updated budget showed that the estimated cost to complete had increased from \$16.55 million to \$22.075 million, and as a result the Debtor required an additional \$5.52 million to complete the Development.

38. I understand from Glynn Group that it will take between nine (9) to twelve (12) months to complete construction of the Development.

39. In accordance with the Deficiency Agreement, on or about December 8, 2021, MarshallZehr requested that the Debtor and Mr. Gilyana inject \$5.0 million to complete the Development by way of debt or equity. Mr. Gilyana informed MarshallZehr, through communications between their respective lawyers, that he did not have the ability to inject any further money into the Development.

40. Due to the material cost overruns, construction delays and lack of liquidity, MarshallZehr has lost confidence in Mr. Gilyana's ability to complete the Development.

41. MarshallZehr is not prepared to extend the maturity date of the Loan or provide additional financing to the Debtor.

#### **DEMAND**

42. On December 14, 2021, MarshallZehr, through its lawyers, demanded payment of \$6,841,475.63 for principal, interest and fees (excluding legal costs) owed by the Debtor to MarshallZehr in respect of the Loan as of December 6, 2021, and delivered a notice of intention to enforce its security under the *Bankruptcy and Insolvency Act* (Canada) ("BIA"). A copy of the demand letter and BIA notice is attached hereto and marked as **Exhibit "P"**.

43. MarshallZehr has received no payment from the Debtor since demand was made.

**JUST AND CONVENIENT TO APPOINT A RECEIVER**

44. The Debtor owes in excess of \$6.85 million to MarshallZehr. The Loan has matured. MarshallZehr has demanded payment of the Loan and has sent a BIA notice. Fusioncorp has registered a \$2.43 million Construction Lien against the Property. Construction of the Development has gone significantly over budget and is materially delayed. The Debtor does not have available liquidity to repay MarshallZehr or to continue with construction of the Development.

45. In these circumstances, I believe it is in the best interests of MarshallZehr and the Debtor's creditors generally that a Receiver be appointed to take control over and realize on the Property.

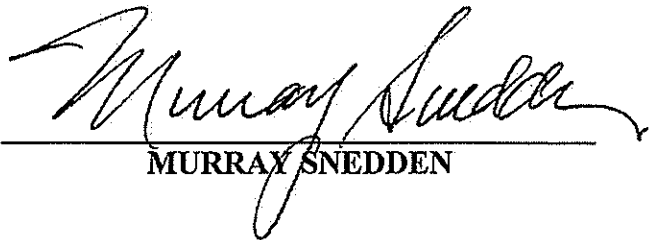
46. MarshallZehr proposes that RSM be appointed as Receiver. RSM has agreed to accept the appointment, and a copy of its consent is attached hereto as **Exhibit "Q"**.

47. This affidavit is sworn in support of MarshallZehr's application for the appointment of a Receiver and for no other or improper purpose.

**SWORN BEFORE ME** over videoconference on this 6<sup>th</sup> day of January, 2022. The affiant was located in the City of Waterloo and the commissioner was located in the City of Markham, each in the Province of Ontario. This affidavit was commissioned remotely in accordance O. Reg. 431/20, Administering Oath or Declaration Remotely



**Sam Rappos**  
Commissioner for Taking Affidavits  
(or as may be)



**MURRAY SNEDDEN**



MARSHALLZEHR GROUP INC.  
Applicant

-and-

AREACOR INC.  
Respondent

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
  
PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF MURRY SNEDDEN**  
(sworn January 6, 2022)

**CHATONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO No. 21592F)  
Tel: (416) 218-1129  
E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)  
**Sam Rappos** (LSO No. 51399S)  
Tel: (416) 218-1137  
E-mail: [samr@chaitons.com](mailto:samr@chaitons.com)

Lawyers for the Applicant

# TAB A

***THIS IS EXHIBIT "A" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
***A Commissioner Etc.***



## Corporate Profile / Profil corporatif

Date and time of Corporate Profile (YYYY-MM-DD)	2021-12-07 2:47 PM	(AAAA-MM-JJ) Date et heure du Profil corporatif
---	--------------------	---

CORPORATE INFORMATION	RENSEIGNEMENTS CORPORATIFS	
Corporate name	Dénomination	
	AREACOR INC.	
Corporation number	860884-9	Numéro de société ou d'organisation
Business number	844021030RC0001	Numéro d'entreprise
Governing legislation	Régime législatif	
	Canada Business Corporations Act (CBCA) - 2013-08-15	
	Loi canadienne sur les sociétés par actions (LCSA) - 2013-08-15	
Status	Statut	
	Active	
	Active	

REGISTERED OFFICE ADDRESS	ADRESSE DU SIÈGE
	Suite #270 - 2869 Bloor St West Etobicoke ON M8X 1B3 Canada

ANNUAL FILINGS	DÉPÔTS ANNUELS		
Anniversary date (MM-DD)	08-15	(MM-JJ) Date anniversaire	
Filing period (MM-DD)	08-15 to/au 10-14	(MM-JJ) Période de dépôt	
Status of annual filings	Statut des dépôts annuels		
	Filed	2021	Déposé
	Filed	2020	Déposé
	Filed	2019	Déposé
Date of last annual meeting (YYYY-MM-DD)	2021-07-31	(AAAA-MM-JJ) Date de la dernière assemblée annuelle	
Type	Type		
	Non-distributing corporation with 50 or fewer shareholders		
	Société n'ayant pas fait appel au public et comptant 50 actionnaires ou moins		

DIRECTORS		ADMINISTRATEURS
Minimum number	1	Nombre minimal
Maximum number	10	Nombre maximal
Current number	1	Nombre actuel
Roni Gilyana		Suite #270 - 2869 Bloor St West, Etobicoke ON M8X 1B3, Canada

CORPORATE HISTORY		HISTORIQUE CORPORATIF
Corporate name history (YYYY-MM-DD)		(AAAA-MM-JJ) Historique de la dénomination
2013-08-15 to present / à maintenant	AREACOR INC.	
Certificates issued (YYYY-MM-DD)		(AAAA-MM-JJ) Certificats émis
Certificate of Incorporation	2013-08-15	Certificat de constitution en société
Certificate of Dissolution	2016-06-13	Certificat de dissolution
Certificate of Revival	2016-06-30	Certificat de reconstitution
Amendments details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed.	Seuls les renseignements concernant les modifications effectuées après 2010-03-20 sont disponibles. Certains certificats émis avant 2000 pourraient ne pas être listés.	
Documents filed (YYYY-MM-DD)		(AAAA-MM-JJ) Documents déposés

The Corporate Profile sets out the most recent information filed with and accepted by Corporations Canada as of the date and time set out on the Profile.	Le Profil corporatif fait état des renseignements fournis et acceptés par Corporations Canada à la date et à l'heure indiquées dans le profil.
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**TAB B**

***THIS IS EXHIBIT "B" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

LAND  
REGISTRY  
OFFICE #62

17586-0153 (LT)

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PART OF LOT 13, BLOCK 6 PLAN 39, PART 1 ON 62R21575; SUBJECT TO AN EASEMENT AS IN WE1493193; CITY OF HAMILTON

FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2020/11/25.

RECENTLY:  
RE-ENTRY FROM 17586-0152

PIN CREATION DATE:  
2020/11/25

CAPACITY SHARE

INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
ADD DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2020/11/25 **			
ION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *			
L SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FOREFEITURE **			
OWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **			
3 INDICATOR IS IN EFFECT ON THIS PROPERTY			
37 TRANSFER	\$285,000	COOK, ARTHUR TERRANCE	AREACOR INC.
ANNING ACT STATEMENTS.			
10 TRANSFER		KILYANA, RONI	KILYANA, RONI AREACOR INC.
23 CHARGE	\$3,500,000	AREACOR INC.	AVIVA INSURANCE COMPANY OF CANADA
29 CHARGE	\$12,000,000	GILYANA, RONI AREACOR INC.	MARSHALLZEHR GROUP INC.
29 NO ASSGN RENT GEN		GILYANA, RONI AREACOR INC.	MARSHALLZEHR GROUP INC.
293837		AREACOR INC.	MARSHALLZEHR GROUP INC.
29 NO ASSGN RENT GEN		AREACOR INC.	MARSHALLZEHR GROUP INC.
293837		AREACOR INC.	MARSHALLZEHR GROUP INC.
29 RESTRICTION-LAND		GILYANA, RONI AREACOR INC.	MARSHALLZEHR GROUP INC.
CHARGE OF SUCH LANDS WITHOUT THE CONSENT OF MARSHALLZEHR GROUP INC.			
29 RESTRICTION-LAND		AREACOR INC.	
CHARGE OF SUCH LANDS WITHOUT THE CONSENT OF MARSHALLZEHR GROUP INC.			

E: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
E: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



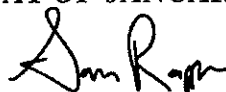
\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
05 POSTPONEMENT .252218 TO WE1293840		AVIVA INSURANCE COMPANY OF CANADA	MARSHALLZEHR GROUP INC.
16 TRANSFER ; CONSENT OF MARSHALLZEHR GROUP INC. HAS BEEN OBTAINED	\$305,350	GILYANA, RONI	AREACOR INC.
24 NOTICE	\$2	AREACOR INC.	CITY OF HAMILTON
22 NOTICE	\$2	AREACOR INC.	MARSHALLZEHR GROUP INC.
30 CHARGE	\$208,756	AREACOR INC.	CITY OF HAMILTON
19 APL CONSOLIDATE		AREACOR INC. AREACOR INC.	
30 CONSTRUCTION LIEN		*** DELETED AGAINST THIS PROPERTY *** 2236313 ONTARIO INC.	
25 PLAN REFERENCE		AREACOR INC.	
25 APL ABSOLUTE TITLE 1441385		AREACOR INC.	
17 CERTIFICATE		*** COMPLETELY DELETED *** 2236313 ONTARIO INC.	
08 APL DEL CONST LIEN 1465827.		*** COMPLETELY DELETED *** FUSIONCORP DEVELOPMENTS INC.	
25 TRANSFER EASEMENT	\$2	AREACOR INC.	BELL CANADA
25 POSTPONEMENT 1252218 TO WE1493193		AVIVA INSURANCE COMPANY OF CANADA	BELL CANADA
25 POSTPONEMENT 1293837 TO WE1493193		MARSHALLZEHR GROUP INC.	BELL CANADA

E: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
E: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

**TAB C**

***THIS IS EXHIBIT "C" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*



May 15, 2018

**Attention: Roni Gilyana**

Areacor Inc.  
3044 Bloor Street West Suite 270  
Etobicoke, ON  
M8X 2Y8

Dear Mr. Gilyana

**Re: Land, Servicing and Construction Loan for 11-15 Cannon Street West, Hamilton ON.**

**Project Name: 15 Cannon Street – MZGI 195 (the “Project”)**

This commitment letter confirms that MarshallZehr Group Inc. (the “Lender”) is prepared to provide financing (the “Loan”) for the Project conditional on the terms and conditions contained in this letter agreement (the “Commitment”).

THIS LETTER REPLACES AND RENDERS NULL AND VOID THE PREVIOUS COMMITMENT LETTERS DATED MAY 11, 2018.

**I. LOAN**

**Borrower:** Areacor Inc. (the “Borrower”)

**Guarantors:** Roni Gilyana together with such other related parties as the Lender may deem advisable (the “Guarantors”).

**Obligors:** Means, collectively, the Borrower and the Guarantors and the “Obligor(s)” means any one of them.

**Lender:** MarshallZehr Group Inc. (the “Lender”) and/or such other assignee or lenders as MarshallZehr Group Inc. may arrange to participate in the Loan.

**Project:** Those lands and premises described municipally as 11 and 15 Cannon Street West, Hamilton ON. and legally as PT LT 13 BLK 6 PL 39 AS IN HL269921 & PT LT 13 BLK 6 PL 39 AS IN VM97602.

**Loan Amount:** \$ 10,445,000 (the “Loan”).

**Purpose:** 1<sup>st</sup> Mortgage for Construction Loan.

The Lender understands that the Project is to consist of a six-storey condominium project consisting of 40 residential units on floors 2-6 and commercial space on the ground floor on 0.16 acres.

**Sources and  
Uses of Funds:**

**Uses**

<b>Land</b>	\$	1,700,000
<b>Hard Costs</b>	\$	7,966,000
<b>Soft Costs - Development</b>	\$	445,000
<b>Soft Costs - Other</b>	\$	336,000
<b>Admin &amp; Marketing</b>	\$	914,000
<b>Financing Costs</b>	\$	1,483,000
<b>Contingency</b>	\$	707,000
<b>Total Uses</b>	\$	<b>13,551,000</b>

**Sources**

<b>Facility 1</b>	\$	10,445,000
<b>Deposits</b>	\$	1,950,000
<b>Deferred Costs</b>	\$	556,000
<b>Equity</b>	\$	600,000
<b>Total Sources</b>	\$	<b>13,551,000</b>

**Syndication  
of the Loan:**

It is the Lender's intention to syndicate all or a portion of the Loan with other lenders on terms and conditions satisfactory to the Lender. All obligations of the Lender are conditional on successful syndication by the Lender. This Commitment shall be null and void if the Lender is unable to syndicate the Loan, and all fees less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower. The Lender shall notify the Borrower within 21 days from the date of the Borrower signing this Commitment that the Lender has successfully syndicated this Loan. If the Lender is unable to provide the Borrower written confirmation that the Loan has been successfully syndicated within this time, it will be the sole option of the Borrower to terminate this agreement, in which case this Commitment will be null and void and all fees less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower.

(this space intentionally left blank)

**Initial**

**Advance:** The Loan shall be advanced in multiple draws as follows:

The first draw (“Draw 1” or the “Initial Advance”) is anticipated to be in the principal amount of \$1,500,000 plus costs in place and advanced upon satisfaction of the conditions contained herein and accompanied by the applicable Notice(s) contemplated by the Borrower’s Draw Notice (see Appendix D – Borrower Draw Notice). The Initial Advance is expected to be advanced as follows:

Payout Existing Land Loan	\$ 1,213,000
Costs in Place	\$ TBD
Lender Fee	\$ 257,000
Lender’s Legal and Admin	\$ 30,000

**Lender**

**Advances:** A Lender Advance is defined as the transfer of funds from the participating Lender(s) to MarshallZehr’s Trust account. Interest shall become payable on these funds from the date of the deposit of the funds into the MarshallZehr Trust account, regardless of whether the funds are used in the project immediately, or later returned to the Lender without ever having been drawn by the Borrower.

Lender Advances shall be requested by the Borrower in advance of funds being required with a notice period as defined in Section 2.2, in the form provided in Appendix C.

**Borrower**

**Draws:** A Borrower Draw is defined as the request of funds from MarshallZehr’s Trust account to fund the Project bank account or to be directly applied against project expenses. A Borrower Draw will not be processed until such time as all the conditions related to the Draw are met, as outlined in Section 2.2.

Borrower Draws shall be processed and based upon the progress of construction or another Lender approved costs in place, as hereinafter provided and accompanied by the applicable form and Notices as provided in Appendix D.

**Term:** Nineteen (19) months (commencing from the Interest Adjustment Date or IAD). Interest from the date of the Initial Advance to the IAD shall be deducted by the Lender from the Initial Advance.

**Renewal:** Provided the Borrower is not in default of any of its obligations under this Commitment or under any Lender security, the Lender will offer one six (6) month extension option with 60 days written notice prior to the end of the Term (the “Renewal Term”). The interest will be calculated and compounded at the same rate as the original Term of this mortgage. The extension is open for repayment at any time, within the Renewal Term with 60 days’ notice. The Borrower shall pay a renewal fee (the “Renewal Fee”) of one (1.00%) percent of the borrowed amount, or of the outstanding balance if the Loan has been advanced and repayment has begun, and such shall not be effective unless the Renewal Fee is paid in full. A subsearch will be conducted by the Lender’s solicitor upon the acceptance of this renewal letter at the Borrower’s expense. The Borrower will be responsible for any reasonable costs associated with the extension.

**Interest Rate:** 10.0% per annum

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from Borrower Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

**Wrap Up**

**Period:** The final month of the Term, or the Renewal Term if renewed pursuant to the renewal provision contained herein, shall be the beginning of the Wrap Up Period, and bear interest at twice the Interest Rate, and if there are multiple Facilities or Tranches, calculated, compounded and payable in the same manner as prior to entering the Wrap Up Period for each applicable Facility or Tranche.

**Interest Adjustment**

**Date:** The "Interest Adjustment Date" or "IAD" shall be the 1st of the month following the Initial Advance.

**Standby**

**Interest:** In the event that:

- a) Draw 1 has not been fully advanced by June 20, 2018, or for any reason other than a default by the Lender; or
- b) the funding conditions for Borrower Draws provided for in Section 2.2 of this Commitment result in the Borrower being permitted to receive less than the Borrower Draw actually requested;

Interest will commence on the advance date established herein for such Draw 1 or a Borrower Draw as the case may be, in the form of standby interest ("Standby Interest") on any unadvanced portion of the Draw 1 or the Borrower Draw as the case may be and will become due and payable monthly at a rate equal to the applicable Interest Rate set out herein until the earlier of the applicable draw being fully advanced, or the termination of this Commitment Letter without any advances having been made. Any accrued and unpaid Standby Interest shall be payable at the time of the advance and deducted from the advance.

A standby fee shall be calculated from the date of the expected advance as mentioned herein to the IAD and shall be payable at the time of the advance and deducted from the advance.

**Advance**

**Deductions:** At the time of an advance, the Lender may at its sole discretion, deduct an amount equal to the applicable interest for such advance for the balance of the term of the Loan as an interest reserve (the "Interest Reserve").

The Interest Reserve shall be held in the Lender's trust account and be used to service the interest payments on the outstanding balance of the Loan. Any funds held in the Lender's trust account from an advance are considered to be and shall be deemed to be principal advanced to the Borrower and interest shall accrue on those funds as if they had been paid directly to the Borrower.

**Cancellation:** The Lender may on demand require immediate payment of all amounts outstanding or accrued in connection with this Commitment. The Lender may at any time, for any reason and without notice, cancel the undrawn portion of the Loan.

**Anniversary**

**Date:** The anniversary date is defined as one year from the Interest Adjustment Date (IAD). The Lender may request compliance deliverables based on anniversary dates of the mortgage, or as the lender deems necessary in their sole discretion.

**Time and**

**Place of**

**Payments:** Payments are to be made to the Lender at its offices at 206-465 Phillip Street, Waterloo, Ontario no later than 1:00 p.m. on the date scheduled for payment. Payments made after such time shall be treated as having been received on the next business day. Payments made after the date scheduled for payment must be made by certified cheque or bank draft. Whenever any payment is due on a day that is not a business day, then such payment will be due on the next business day, and interest will accrue to such business day. Any NSF Cheques will incur a fee of \$500.

**Principal**

**Payments:** There shall be no regularly scheduled principal repayments and the entire outstanding principal amount shall become due and payable at maturity.

**Partial**

**Discharges:** Provided that the Borrower is not in default, the Lender shall provide partial discharges of Project units on the closing of a unit sale transaction provided the Borrower pays the Lender Net Sales Proceeds of each sale. Net Sales Proceeds is defined as the sale price of the unit less deductions for deposits (used in the Project's financing) and any payments on account of principal required to be made to a permitted prior lender, if any, to obtain a partial discharge of its security, normal sales commissions, and legal costs. The Borrower will pay the Lender an administration fee of \$250 and its solicitor's reasonable legal fees in respect of the preparation of the discharge for each partial discharge requested by the Borrower. In the event of Default, the Lender shall not be obligated to provide partial discharges. The Net Sale Proceeds shall be dispersed as follows:

- a) Repayment of all accrued and unpaid interest;
- b) Repayment of the outstanding principal balance

**Prepayment:** Subject to any partial discharge provisions, the mortgage may be prepaid in whole or in part at any time or times on the following terms:

- a) At least 60 days prior written notice is given to the Lender in the form provided in Appendix E – Repayment Notice
- b) No pre-payment shall be in an amount of less than \$100,000 without consent of the Lender
- c) The Borrower shall pay the Lender an administration fee of \$500.00 and its solicitor's reasonable legal fees in respect to the discharge or repayment

**Fees:** The Borrower shall pay the following Lender fees to the transaction mortgage broker, MarshallZehr Group Inc.:



**Good Faith**

**Deposit:** \$25,000 non-refundable if Borrower fails to proceed based on the terms of this Commitment Letter and is full compensation to the Lender for its work and efforts in preparation of this Commitment Letter. The Borrower shall also be responsible for the Lender's legal and other, professional fees and out of pocket expenses if the Borrower fails to proceed with the Loan. This fee is accepted upon signing of the Commitment Letter and is payable to "MarshallZehr Group Inc. in Trust". The Good Faith Deposit will be credited to the Borrower against the Lender Fee payable on closing.

**Lender Fee:** \$257,000, the Lender Fee, less the Good Faith Deposit shall be deducted from the Initial Advance.

**Admin**

**Fee:** An additional fee of \$5,000 payable to MarshallZehr Group Inc. will be paid by the Borrower at closing of the Initial Advance in order to complete the FSCO required documentation.

**Draw Fee:** The Borrower agrees to pay \$250 to the Lender as an administrative fee (the "Draw Fee") in conjunction with each request for a Borrower Draw (the "Draw Request").

**Final**

**Discharge Fee:** The Borrower will pay the Lender an administration fee of \$500.00 and its solicitor's reasonable legal fees in respect of the preparation of the final discharge of this mortgage.

**Letters of  
Credit Annual**

**Fee:** The Borrower shall pay to the Lender a fee of 3.00% per annum (the "Letter of Credit Annual Fee") calculated on the Letter of Credit security value issued and active as at the date of issuance. Letters of Credit shall be available through a Letter of Credit facility (herein described as Tranche C) to be arranged by the Lender and is to be used only for works specific to the project and property registered on title per Section 3(a) of the Commitment Letter. The Letters of Credit Annual Fee will be payable to the Lender on every subsequent anniversary from the date of issuance. The Letters of Credit Annual Fee will be recalculated and applied based on the Letter of Credit security value remaining as at the anniversary date of its issuance. Any reductions, specific circumstances drawing down the security value, or cancellations of said Letters of Credit will be reflected as reductions to the security value of the Letters of Credit facilities, upon receipt of adequate supporting documentation, and Lender approval.

**Expenses:** All reasonable expenses of the Lender and the Borrower shall be paid by the Borrower including (but not limited to), the cost of any third party reports and all legal costs regardless of whether the Borrower proceeds with the transaction and any costs of recovery of unpaid amounts should that be necessary. Upon request the Lender shall provide an estimate of the legal fees to be incurred by the Lender. Regardless, the Borrower is responsible for all reasonable legal fees incurred by the Lender.

**Subordinate  
Financing:**

No additional financing will be permitted without the prior written consent of the Lender and in the event of a default under this restriction, the entire principal, interest, fees and all other amounts under the Commitment and security issued pursuant thereto shall become immediately due and payable.

Should additional subordinate financing be placed by the Borrower on the consent of the Lender, such consent will be conditional upon the secondary lender entering into a postponement, subordination and standstill agreement that requires the secondary lender to issue zero dollar discharges to the Lender and Borrower within 2 business days of being requested and requires complete cooperation in executing all postponements and consents as may be required to advance the development of the Project. Any discharge greater than zero shall require prior consent from the Lender. Failure to comply shall be considered a default by the Borrower.

**Right of  
First  
Refusal:**

The Borrower shall grant to the Lender:

- a) a right of first opportunity (the "Right of First Opportunity") and
- b) a right of first refusal ("Right of First Refusal") (collectively, the "Further Financing Rights"),

with respect to providing any further financing required for the Project, including without limitation arranging replacement or additional financing for the Project as contemplated herein, and financing for any further development of the Project or of any improvements thereon (any such financing being referred to herein as "Further Financing").

With respect to the Right of First Opportunity: prior to consulting with any other lender with respect to any Further Financing, the Borrower shall provide to the Lender in writing a request for such Further Financing with all information necessary for the Lender to process the request and the Lender shall have a period of sixty (60) days after receipt of same (the "Opportunity Period") to provide to the Borrower a mortgage commitment letter to provide the Further Financing. The Borrower hereby undertakes not to communicate with any other lender with respect to provision of the Further Financing during the Opportunity Period, and to fully cooperate with the Lender in good faith during the Opportunity Period to provide such further information as the Lender may require in pursuit of its Right of First Opportunity.

With respect to the Right of First Refusal: upon receipt by the Borrower of any written offer of financing received from any other party, including but not limited to term sheets, mortgage commitments, and funding agreements (the "Third-Party Funding Offer"), the terms of which the Borrower is prepared to accept, the Borrower shall provide to the Lender a copy of the Third-Party Funding Offer and all information relevant to it. Upon receipt of same, the Lender shall have a period of fourteen (14) days (the "Matching Period") to provide a mortgage commitment letter to the Borrower containing financing terms that are substantially the same or better as the Third-Party Funding Offer (the "Matching Offer"). The Borrower hereby undertakes, in the event that the Lender submits to the Borrower a Matching Offer within the Matching Period, to accept the Matching Offer and forthwith provide to the Lender such information and execute such documentation as is reasonably required by it in connection with that acceptance. In the event that the Lender fails to deliver to the Borrower a Matching Offer within the Matching Period, the Borrower shall be at liberty to accept the Third-Party Funding Offer.

The Borrower hereby undertakes to fully cooperate with the Lender in good faith during the Matching Period to provide such information as the Lender may require in pursuit of its Right of First Refusal.

In order to secure the Lender's Further Financing Rights, the Borrower hereby authorizes the Lender and its solicitors to register on title to the Project a notice pursuant to Section 118 of the Land Titles Act restricting the Borrower from further charging the Project except upon the consent of the Lender.

**Maximum  
Rate of  
Return:**

The parties agree that notwithstanding any agreement to the contrary, no interest on the credit advanced will be payable in excess of that permitted by the laws of Canada. If the effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles would exceed sixty (60) percent (or such other rate as the Parliament of Canada may deem from time to time as The Criminal Rate) on the credit advance, then (1) the amount of any fees, bonus, commissions or like charges payable in connection therewith will be reduced to the extent necessary to eliminate such excess; (2) any remaining excess that has been paid will be credited toward prepayment of the credit advanced; and (3) any overpayment that may remain after such crediting will be returned forthwith upon demand. In this paragraph the terms "interest", "Criminal Rate" and "credit advanced" have the meaning ascribed to them in Section 347 of The Criminal Code; and "credit advanced" has the same meaning as "Loan" referred to elsewhere in this Commitment.

**Administration  
Fee Payable  
on Default:**

In the event of a default by the Borrower or any Guarantor in their respective obligations under this Commitment, Loan or Security that is not cured within the timeframes set out herein, the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of \$5,000.00 for each month or part thereof that the Borrower and/or any Guarantor is in default of its obligations under the Commitment, Loan or Security. The said sum or sums are agreed to be liquidated damages to cover the Lender's administration and management costs and are not intended nor shall they be construed as a penalty. All such sums payable to the Lender shall be a charge upon the Project and its assets and interest shall accrue thereon as if they were Loan principal.

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## II. TERMS AND CONDITIONS

The Loan terms and conditions shall be such terms and conditions as the Lender may from time to time require and shall include, but not be limited to the following:

### 2.1 Initial Funding Conditions

The Lender shall not be required to advance any funds prior to the Borrower having fulfilled to the Lender's satisfaction the following conditions:

- a) All the Security and ancillary loan agreements and documents and opinions shall have been executed and delivered to the Lender or its solicitors and registered where and as required. Please refer to Section III. SECURITY TO BE DELIVERED for a complete listing.
- b) The Lender shall have satisfied itself with the financial performance and condition of the Borrower and each of the Guarantors in the Lender's sole discretion. Each of the Obligors shall provide within ten (10) business days of the date of execution of this Commitment, at a minimum, the following deliverables:
  - i. Corporate Obligors shall provide external accountant prepared financial statements (Review Engagement or Notice to Reader) for its two most recently ended fiscal years.
  - ii. Corporate Obligors shall provide Corporate Notice of Assessments for its two most recently ended fiscal years.
  - iii. Personal Obligors shall provide Notices of Assessment received from the Canada Revenue Agency for their two most recently ended taxation years, with respect to their income tax filings.
  - iv. Personal Obligors shall provide the Lender's form of Personal Net Worth Statement with supporting documentation.
  - v. All Obligors shall complete the Lender's form of Mortgage Application. To facilitate the Lender's due diligence regarding the creditworthiness of the Obligors, each of the Obligors shall authorize the Lender to conduct credit checks and authorize each of the financial institutions with which the Obligors deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each respectively.
- c) The Borrower shall deliver to the Lender within ten (10) business days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance the following:
  - i. A copy of the Purchase and Sale Agreement (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Project Lands confirming the purchase price satisfactory to the Lender.
  - ii. A soils-test/geotechnical report (load bearing capacity) by a professional engineer as is acceptable to the Lender demonstrating to the satisfaction of the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and with the recommendations, if any, which may be contained in such soils-test/geotechnical report.
  - iii. An appraisal, satisfactory to the Lender, of the Project confirming a fair market value of upon completion in the minimum amount of \$14,726,000 inclusive of HST, and land value as is of \$2,900,000 to be prepared at the Borrower's expense and paid in advance by a Lender approved appraiser. Such appraisal report must be addressed to the Lender or be accompanied by a Transmittal Letter from the appraiser to the Lender and shall confirm that the Lender can rely upon such appraisal for lending purposes.

- iv. The Borrower shall have pre-sold residential units, with firm and binding purchase and sale agreements including satisfactory deposits, sufficient to generate \$9,000,000 of revenue. Each purchase and sale agreement shall be on terms and with purchasers acceptable to the Lender. The Lender reserves the right to disregard agreements with purchasers buying for investment or who are directly or indirectly related to the Borrower or Guarantors (non-arms-length purchasers). All purchaser deposits shall have been paid in full and held in a separate escrow account for the sole benefit of the Project.
- v. A satisfactory Phase 1 Environmental Site Assessment Report (and further Environmental Site Assessment Reports, Environmental Remediation Plans or a Record of Site Condition, if necessary) conducted and prepared by a consultant approved by the Lender together with a Letter of Transmittal from the consultant permitting the Lender to rely on the Assessment Report (and the subsequent environmental reports, if any). If deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate environmental professional engaged by the Lender at the Borrower's expense and the Borrower will provide an appropriate Emergency Response Plan for the Project and related activities.
- vi. A survey of the Project by an Ontario licensed land surveyor showing the relationship of the lands to public thoroughfares for access purposes; and indicating no encroachments, easements or rights of way, save and except those that do not encroach or hinder the Borrower's ability to construct the project in accordance with the proposed site plan which the Lender may specifically accept. If no survey is available at the time of the Initial Advance, the Lender in its sole discretion may rely upon the title insurance policy to be obtained in connection with the Loan.
- vii. Mortgage or Discharge Statement from Current Mortgagee, if any confirming the outstanding principal balance does not exceed \$1,250,000 and is in good standing.
- viii. Receipt of copy of the Current Mortgage Security, if any commitment.
- ix. MZG or a related party may post two MZG signs (on each main street).
- x. Satisfactory proof of \$600,000 in equity in the Project and means to cover any potential closing costs, if required.
- xi. A Project budget prepared by the Lender's Quantity Surveyor satisfactory to the Lender. The Lender and its Quantity Surveyor, in their sole discretion, shall be satisfied
  - a) that the budgeted hard and soft Project costs (including financing and contingency costs) shall be sufficient to complete the Project as planned;
  - b) all sources and uses of cash are acceptable;
  - c) the terms of the contract with the general contractor/project manager are satisfactory. A minimum of 50% of Project construction costs shall be supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender.
- xii. A detailed planning letter from a third-party planner outlining the time to complete the various stages and phases of the Project, acceptable to the Lender.
- xiii. Copy of the most recent Disclosure Statement and attachments as required by the Condominium Act, 1998 to be provided to prospective unit purchasers.
- xiv. The Borrower's Tarion Warranty application and confirmation a Tarion Warranty certificate for the Project will be issued within 30 days of posting the required security deposit.

- d) The initial Loan to Value ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 73%. For the purpose of calculating the Loan to Value ratio in the absence of current market values;
  - i. The Loan amount shall include all debt obligations including all senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
  - ii. Value shall be calculated by utilizing the Appraised Value at the time of the Initial Advance as per the Appraisal provided per the initial transaction underwriting unless otherwise agreed to by the Lender. In the case of unsold lots, the value shall be calculated as per the methodology used by the Appraisal. For units under construction, the Appraised Value shall be the Estimated Value of the unit upon completion less the cost to complete including financing costs as per the methodology used by the Appraisal less the expected profit margin.
- e) The initial Loan to Cost ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 79%. For the purpose of calculating the Loan to Cost ratio in the absence of current market values;
  - i. The Loan amount shall include all debt obligations including senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
  - ii. Cost shall be determined by utilizing the Net Cost to Date per the Lender approved Quantity Surveyor's report unless otherwise adjusted and agreed to by the Lender.
- f) Confirmation satisfactory to the Lender that all property taxes for the Project are current and have been paid.
- g) Officers' Certificate and Loan Compliance Certificate in the form provided in Appendix A and B.
- h) Anti-Money Laundering Compliance documentation to be completed; Agent Examination of Identification Form will be provided to the Borrower's lawyer with the closing documents. (to be completed by the Borrower and each Guarantor, the identification of all authorized signatories as outlined on the Director's Resolution, to a maximum of three must be obtained).
- i) Evidence of the existence, details and signing authorities related to a separate Project specific bank account through which all Project related transactions will flow.
- j) Such other matters as the Lender may deem appropriate and necessary to satisfy itself of the Project's viability, the Borrower's creditworthiness and the ability of the Borrower and Guarantors to fulfil their obligations herein.

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## 2.2 Funding Conditions for Borrower Draws

The Lender shall not be required to advance any Borrower Draws to the Borrower prior to the Borrower having fulfilled to the Lender's satisfaction the following conditions at the time of each and every advance:

- a) It is agreed that the Lender shall retain the services of a professional Quantity Surveyor to monitor progression of the Project. The Borrower agrees to assist and cooperate with such a surveyor in order to allow for timely reporting to the Lender. A detailed report shall be provided to the Lender a minimum of ten (10) business days prior to funding. This reporting will be at the expense of the Borrower.
- b) The Lender shall have a period of not less than ten (10) business days from the date that a Borrower Draw is requested to fund and process the Borrower Draw.
- c) The Borrower shall complete and sign an Officer's Certificate in the form provided in Appendix A certifying that no default has occurred and is continuing at the time of any advance and a Compliance Certificate provided in Appendix B providing details on financial calculations necessary to determine compliance with the terms of the Agreement.
- d) A title search will be conducted with each advance of the Loan. The title search and solicitors' fees and expenses applicable thereto are at the Borrower's expense and shall be deducted from the Borrower Draw by the Lender.
- e) Confirmation that the Borrower's Tarion Warranty is still in effect
- f) If applicable, the Borrower shall sign a Statutory Declaration indicating it is in compliance with the requirements of the Construction Lien Act and that all funds provided by the Borrower shall be used to pay Project expenses as outlined in the draw request.
- g) Each Draw Request shall be provided to the Lender in a form outlined in Appendix C and shall be provided to the Lender with a minimum of ten (10) business days' notice prior to expected payment.
- h) Borrower Draws are to be made by way of progress advances no more frequently than monthly and shall reference the original budget agreed to in Section 2.1., the funds paid to date, and any revisions to the original budget and shall only be used to pay Project specific costs provided for in the approved Project Budget as follows:
  - i. For drawdowns against soft costs, each draw would be supported by a monthly summary of costs to date.
  - ii. Each Borrower Draw shall be in an amount not less than \$100,000.
  - iii. For drawdowns against hard costs, each draw would be supported by the Lender's Quantity Surveyor acting as Project Quantity Surveyor, which indicates the amount of work in place, the cost to complete and that the work in place is in accordance with approved plans and specifications. The Lender shall deduct an amount from each Borrower Draw equal to the Quantity Surveyor's invoiced amount associated with preparing their report for the Borrower Draw.
  - iv. Applicable holdbacks equal to 10% of the hard construction costs will be withheld in accordance with the Construction Lien Act of Ontario.
  - v. Subsearches will be conducted by the Lender's solicitor in conjunction with every Borrower Draw.
  - vi. Borrower Draws in the aggregate (plus Draw 1) shall total the Loan Amount.
  - vii. The undrawn portion of the Loan will exceed the Borrower's cost to complete, including holdbacks and expected financing costs.
  - viii. The Borrower will ensure compliance with all aspects of the Construction Lien Act and any other governmental requirements.
  - ix. The Borrower will immediately infuse, upon the Lender's request, funds required to cover any and all cost overruns beyond the original budget.

- x. The Lender at its sole discretion may fund Borrower Draws on behalf of the Borrower to fund the interest obligations of the Project.
- xi. The Lender at its sole discretion, may hold back Borrower Draws until the Borrower has fulfilled all obligations of this Commitment; should any deliverables be outstanding as per Section 4.1 the Borrower is expected to submit all items prior to receiving funds.

The Lender will be under no obligation to advance further Borrowings if any of the funding conditions and timelines outlined in 2.2 are not met.

The Borrower and the Guarantors will be jointly and severally liable to immediately cover any such deficiency as soon as it arises or is identified by the Lender. As used herein "Potential Prior Ranking Claim" means all amounts owing or required to be paid, where the failure to pay such amount could give rise to a claim pursuant to any law, statute, regulation or otherwise, which ranks or is capable of ranking in priority to the lender's security or otherwise in priority to any claim by the Lender for repayment of any amounts owing under this Commitment letter.

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### III. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the "Security") duly registered where applicable and all in the form and on the terms acceptable to the Lender's solicitors:

- a) **Mortgage** – A 1<sup>st</sup> Mortgage in the amount of \$12,000,000 on the 15 Cannon Street Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being 20.0%.
- b) **Collateral Mortgage** - A collateral ~~XX~~<sup>3rd</sup> mortgage on the Guarantor's primary residence in the amount of \$1,000,000 located at 4 Royaleigh Avenue, Toronto, Ontario.
- c) **GSA** – General Security Agreement over all of the assets and undertaking of the Borrower and each Guarantor, if any.
- d) **General Assignment of all leases and rents with respect to this project.**
- e) **Guarantees** – Unlimited joint and several guarantees from each of the guarantors.
- f) **Environmental** – An Environmental Undertaking and Indemnity and Checklist from the Borrower in such form as the Lender shall require.
- g) **Security Opinion** – A favourable Letter of Opinion from the Lender's solicitor confirming the validity and enforceability of the Lender's security.
- h) **Insurance** – Proof of appropriate insurance and an assignment of insurance satisfactory to an insurance professional engaged on behalf of the Lender. In addition, a certificate of insurance showing the Lender as additional insured and loss payee on any required insurance, and Commercial Liability coverage of not less than the amount deemed appropriate by the Lender's Insurance Consultant.
- i) **Title Insurance** – Satisfactory title insurance.
- j) **Taxes** – Borrower provides satisfactory proof that taxes are current.
- k) **Postponement** – Postponement, Subrogation and Assignment from the shareholders of the Borrower (and such other creditors as the Lender may require upon completion of its due diligence) of all indebtedness owed by and claims against the Borrower to and by the shareholders to the indebtedness and claims of the Lender.
- l) **General Assignment** – General Assignment and Transmittal Letters from the authors of all project plans, specifications, drawings and permits, all architectural, engineering, general contractor and construction contracts and copies of all third party purchase and sale agreements and deposits for individual units sold together with any other rights, interests and obligations of any kind respecting the Project and reasonably necessary for the completion of the Project as contemplated by the Lender on a default by the Borrower.
- m) **Preauthorized Payment** – If required by the Lender such preauthorized payment documentation necessary to authorize the Lender to debit directly from the Borrower's account amounts due under the Commitment and Loan.
- n) **Deficiency Agreement** – Joint and Several Deficiency Agreement executed by the Borrower and the Guarantors agreeing to fund costs not included or in excess of forecasted expenditure.
- o) **Assignment of Purchaser Deposits** – Such assignments of purchaser's deposits as the Lender and its solicitor's may reasonably require provided, the Borrower shall be permitted to inject the deposit funds into the Project in respect of direct Project construction costs.
- p) **Further Security** – Such further security, guarantors and ancillary documents and agreements as the Lender or its solicitors may, acting reasonably, deem necessary to adequately secure the Loan obligations and complete and perfect the Security.

#### IV. BORROWERS COVENANTS

The Borrower and, where applicable, each of the Guarantors covenants as follows and a breach of any covenant shall be a default under the terms of the Security:

##### 4.1 Affirmative Covenants

So long as any amount under the Loan is outstanding or available, the Borrower covenants and agrees with the Lender that unless the Lender otherwise consents in writing:

- a) **Punctual Payment** – The Borrower shall duly and punctually pay the principal of all Advances made to it under the Loan, all interest thereon and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.
- b) **Corporate Existence and Conduct of Business** – The Borrower shall, and the Borrower shall cause the Guarantors to, maintain their respective corporate existences in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licences and qualifications to carry on business in any jurisdiction in which it or they carry on business and each of the Borrowers shall, and the Borrower shall cause the Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
- c) **Compliance with Legislation** – The Borrower shall do or cause to be done, and the Borrower shall cause the Guarantors to do or cause to be done, all acts necessary or desirable to comply with all material Applicable Laws, including, without limitation, all Requirements of Environmental Law and to preserve and keep in full force and effect all franchises, licences, rights, privileges and permits necessary to enable each of the Obligor to operate and conduct their respective businesses in accordance with standard industry practice and to advise the Lender of any anticipated changes, loss or sale of such franchises, licences, rights, privileges and permits.
- d) **Material Litigation** – The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting it or any of the other Obligor if the result might, in such Borrower's bona fide opinion, have a material adverse effect on the financial condition or operations of any of the Obligor or any of its Subsidiaries and from time to time furnish to the Lender all reasonable information requested by the Lender concerning the status of any such litigation, proceeding or dispute.
- e) **Financial Statements and Other Information** – The Borrower shall deliver, or cause to be delivered, to the Lender:
  - i. **Annual Financial Statements of the Borrower** – as soon as available and, in any event, within ninety (90) days after the end of each of its Fiscal Years, copies of the Borrower's externally professional accountant prepared (Review Engagement or Notice to Reader) annual financial statements on a consolidated basis in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such year, together with the notes thereto, all prepared in accordance with Generally Accepted Accounting Principals ("GAAP") consistently applied;
  - ii. **Quarterly Financial Statements of the Borrower** – as soon as available and, in any event within thirty (30) days after the end of each of its first, second and third Fiscal Quarters, copies of the Borrower's internally prepared quarterly financial statements on a consolidated basis, in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such period all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous Fiscal Year prepared and certified by its Chief Executive Officer or Chief Financial Officer, without personal liability;

- iii. **Quarterly Officers' & Compliance Certificates** – as soon as available, and in any event, within thirty (30) days of the end of each Fiscal Quarter, an Officer's Certificate and a Loan Compliance Certificate as provided in Appendix A and B of this agreement are to be provided to the Lender. This requirement may be waived at the Lenders sole discretion should frequent Borrower Draws occur over the term of the Loan.
  - iv. **Quarterly Property Taxes** - The Borrower shall ensure that all property taxes and any other taxes applicable to the Project have been paid at all times when due except if such taxes are Permitted Encumbrances. On each tax instalment date, the Borrower will provide to the Lender proof that all taxes are current.
  - v. **Monthly Project Specific Bank Account Statements** - as soon as available, and in any event, within five (5) days after the end of each calendar month, the bank statement detailing the activity in the Project specific bank account which will only contain activity relating to the Project;
  - vi. **Project Bank Account Control** - at the Lender's discretion, the Borrower may be required to open a Bank Account which provides access and controls to ensure that only Lender approved activity flows through the account.
  - vii. **Project Budget** - as soon as available, and in any event, within ninety (90) days prior to the end of each Fiscal Year a Project Budget for the immediately following two Fiscal Years for the Project;
  - viii. **Insurance** – 30 days prior to the insurance expiry date(s), the Borrower will provide to the Lender, a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lender is adequate and still in effect. Refer to Section 4.1 h) for further details.
  - ix. **Personal Net Worth Statements** – On each anniversary date of the mortgage, the personal Obligors will provide to the Lender, an updated personal net worth statement with supporting documentation.
  - x. **Corporate Notice of Assessment** – Corporate Obligors, shall provide the Lender with their respective Notice of Assessments within 60 days of filing their income tax or no later than August 31<sup>st</sup> of each year, for the most recently ended taxation year.
  - xi. **Personal Notice of Assessment** – Personal Obligors, shall provide the Lender with their respective Notice of Assessments by June 30<sup>th</sup> of each year, for the most recently ended taxation year.
  - xii. **Other** – The Lender may reasonably request such other financial information, reporting, certificates, projections of income and cash flow, and any information affecting the financial condition of the Project, the Property Interest, or the Obligor's business. This list is not exhaustive and the Lender may also reasonably request such other qualitative information including expected pre-sales, expected closings and associated timing, closed transactions, and editorial updates including project status, and photos showing progress at a reporting frequency prescribed at the time of request. Should such a request be made please refer to Appendix F.
- f) **Rights of Inspection** – At any reasonable time and from time to time upon reasonable prior notice, the Borrower shall permit and cause each of the other Obligors to permit, the Lender or any representative(s) thereof, at the expense and risk of the Borrower, to examine and make copies of and abstracts from the records and its physical and computer books of account with respect to the Project and the Property Interests and to visit and inspect the Project and to discuss the affairs, finances and accounts of it with any of its officers, senior employees or managers (but not tenants, if applicable).

**g) Project Specific – The Borrower shall:**

- i. comply in all relevant aspects with the provisions of the Construction Lien Act;
- ii. as and when requested by the Lender, provide to the Lender complete bank records relating to all holdbacks including cancelled cheques, bank statements and completion certificates as the Lender may reasonably require;
- iii. grant to the Lender the right and authority for the Lender to obtain all information relative to the holdback account(s) from the financial institution(s) where the holdback(s) is/are retained;
- iv. provide a covenant that the Borrower will supply to the Lender a statutory declaration in conjunction with each advance under the mortgage, confirming the status of the holdback account(s) as at the date of the statutory declaration;
- v. substantially complete the Project in accordance with Lender approved plans, specifications, project budget and construction schedule, pay its taxes, protect its properties by contest of adverse claims, maintain required insurance, perform its obligations under contracts and agreements, obtain all necessary approvals for construction and use of the Project, comply with all governmental rules and regulations, permit reasonable inspections, by the Lender and its agents of the Project and all records pertaining to the Project. It is agreed that the Lender shall retain the services of a quantity surveyor to monitor the Project at the expense of the Borrower and the Borrower covenants to assist and cooperate with such surveyor.
- vi. shall make and ensure that all payments due to the architect, general contractor, all contractors, sub-contractors and all other suppliers of materials and services of any kind to the Project are made when and as they become due in compliance with the terms of their respective contracts and the provisions of the Construction Lien Act.
- vii. shall ensure that no liens are registered against the Project or its assets and will immediately move to have same vacated if registered

**h) Insurance**

- i. The Borrower shall maintain or shall cause to be maintained appropriate insurance coverage as agreed with the Lender or any Insurance consultant engaged by the Lender to assess the required coverage during the Project. The following shall be provided with respect to insurance on the Project:
  - a) Proof of appropriate Commercial Liability Insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured and loss payee, and coverage of not less than the amount deemed adequate by the Lender's Insurance Consultant.
  - b) Builders' all risks property insurance in connection with the Project, including rental loss insurance (if applicable) with responsible and reputable insurance companies in such amounts equal to 100% of replacement value
  - c) If applicable, boiler and pressure vessel insurance including rental loss, for such amount as may be acceptable to the Lender, all with such deductibles as are customary in the case of businesses of established reputation engaged in the same or similar businesses and in any event as are acceptable to the Lender. The Lender shall be added as an additional insured to the liability policies.
  - d) Other insurance as the Lender's Insurance Consultant may deem necessary given the nature of the Project. The amount of coverage required shall be reasonably determined by the Lender's Insurance Consultant.

- ii. All such insurance policies shall:
  - a) name the Lender as a mortgagee thereunder as its interest may appear;
  - b) name MarshallZehr Group Inc. as additional insured and loss payee;
  - c) have attached the Insurance Bureau of Canada standard mortgage clause;
  - d) provide that no cancellation, termination or adverse amendment thereof shall take effect unless the insurer concerned has given the Lender not less than thirty (30) days prior written notice of such proposed action;
  - e) provide that proceeds of all insurance for physical damage and rental losses shall be payable to the Lender or as it may direct; and
  - f) otherwise be in such form as the Lender shall reasonably require.
- iii. So long as no Event of Default has occurred and is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be, with the approval of the Lender:
  - a) applied in reduction of amounts outstanding hereunder; or
  - b) released to the Borrower subject to compliance with such conditions as the Lender may require.
- iv. If an Event of Default has occurred or is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be payable to the Lender to be applied by it in reduction of the amounts outstanding hereunder.
- v. The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Borrower as aforesaid, constitute continuing collateral security for the Borrower's obligations and liabilities in respect of amounts outstanding hereunder. The Lender shall place such funds in an interest-bearing account and interest thereon shall accrue to the benefit of the Borrower.
- vi. In the event that the Lender shall not be obligated hereunder to apply the proceeds of insurance to pay for the cost of repairing the damage or destruction to or replacement of the property in respect of which the insurance is payable and the Lender elects to apply the proceeds of insurance to amounts owing by the Borrower hereunder, each of the Borrower (on its own behalf and on behalf of each of the Guarantors), hereby irrevocably waives any and all statutory provisions which may require that proceeds of insurance be used to restore or rebuild the Property.
- vii. The Borrower shall deliver or cause to be delivered to the Lender, certificates of insurance signed by the insurers, or other evidence satisfactory to the Lender, acting reasonably, of the insurance coverage required hereunder, including certificates of renewal as soon as they are available.
- viii. **Insurance Consultant:** The Borrower acknowledges that all policies of insurance shall be subject to review and approval by an **insurance consultant** acting on behalf of the Lender and the Borrower agrees to pay for the consultant's fees in connection with such review upon registration of the mortgage and for each insurance renewal throughout the term of the mortgage.
- i) **Notices** – The Borrower shall promptly give notice to the Lender of:
  - a) any fire or other casualty or any notice of expropriation, action or proceeding materially affecting any Project;
  - b) all claims, proceedings, suits, actions or litigation in respect of any Obligor or the Project (whether or not any such claim, proceeding, suit, action or litigation is covered by insurance) which, if determined adversely, could have a Material Adverse Effect; the occurrence of any Default or Event of Default;
  - c) any other matter or event that has a Material Adverse Effect.
- j) **Use of Advances** - The Borrower shall use all Advances made to it for the specific purposes set out in the Loan.
- k) **Taxes** – On each anniversary date of the mortgage, the Borrower will provide to the Lender proof

that the taxes are current

- l) **Payment of Taxes, etc.** - The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:
- i. pay or cause to be paid all rents, Taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, lawfully levied, assessed or imposed upon any Obligor or any of the assets of any Obligor, as and when the same become due and payable;
  - ii. withhold, deduct and collect all Taxes required to be withheld, deducted and collected by it, and remit such Taxes to the appropriate Governmental Authority at the time and in the manner required; and
  - iii. pay and discharge all obligations incidental to any trust imposed upon it, by statute which, if unpaid, might become an Encumbrance upon any of the Properties,
- except when and so long as any such rents, Taxes, rates, levies, assessments, fees, dues or obligations constitute a Permitted Encumbrance and the validity thereof is in good faith being contested by such Obligor.
- m) **Material Documents, Leases and Permitted Encumbrances** - The Borrower shall ensure that all Material Documents and Permitted Encumbrances are kept in good standing in all material respects and will advise the Lender forthwith after being so notified of a material breach or alleged material breach of any Material Documents or Permitted Encumbrances. It will ensure that it does not default under any Major Lease related to any Property and will advise the Lender forthwith after being so notified of a material breach of any Major Lease.
- n) **New Material Documents** – The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a Material Document and shall provide a copy of such agreement to the Lender.
- o) **Security** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, provide the Security contemplated hereunder, perfected to the satisfaction of the Lender.
- p) **Environmental Law** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:
- i. notify the Lender promptly of any event or occurrence that will, or is likely to, give rise to an inquiry or investigation, or any legal proceeding, relating to, or a violation of, the Requirements of Environmental Law;
  - ii. provide the Lender, on request, such information, certificates or statutory declarations, and shall conduct such environmental audits or site assessments, as may be reasonably necessary to ensure the compliance with all Requirements of Environmental Law; and
  - iii. execute, and cause each of the Guarantors to execute, all consents, authorizations and directions to appropriate Governmental Authorities that are required to permit the inspections mandated by law of each of the Properties or the property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Borrower hereby irrevocably constitutes and appoints, and the Borrower shall cause each Guarantor to irrevocably constitute and appoint, the Lender the true and lawful attorney of the such Borrower or such Guarantor, as the case may be, with full power of substitution, to execute any of the foregoing consents, authorizations and directions; provided however that such power of attorney shall only be exercised during the continuance of an Event of Default.

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- q) **Maintain Security** – The Borrower will fully and effectually maintain and keep the Security valid and effective at all times during the continuance of this Agreement, and it will not permit or suffer the registration of any debt, lien, privilege or Encumbrance whatsoever other than Permitted Encumbrances and the Security (including the Existing Security), whether of workmen, builders, contractors, engineers, architects or suppliers of material, on or in respect of any Property (except such liens which only affect or purport to affect a tenant’s interest in the Property), provided that the registration of any construction lien or privilege shall not be deemed to be a breach of this covenant if the Borrower shall contest same and shall if the Lender so requires, give security to the satisfaction of the Lender for the due payment of the amount claimed in respect thereof and provided further that nothing herein will require the Borrower to renew or amend financing statements filed under personal property security statutes.
- r) **Operation and Repair** – Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of each of the Properties and repair and keep in repair and good order and condition, or cause to be so repaired and kept in repair and good order and condition, all buildings, structures, plant, machinery and equipment used in or in connection with each of the Properties and which are necessary in connection with the efficient operation of such business and undertaking up to a modern standard of usage and, subject to the provisions of this Agreement, renew and replace, or cause to be renewed or replaced all and any of the same which may be worn, dilapidated, unserviceable, inconvenient or destroyed, even by a fortuitous event, fire or other cause, and at all reasonable times allow, and cause the Guarantors to allow, the Lender or its representative access to each of the Properties in order to review the state and condition the same are in.
- s) **Payment of Preferred Claims** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time pay or cause to be paid, all amounts related to taxes, wages, workers’ compensation obligations, government royalties or pension fund obligations and any other amount which may result in an Encumbrance against the assets of any Obligor arising under Applicable Law.
- t) **Maintain and Operate** – The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Property Interest and the Project, in a proper and efficient manner so as to preserve and protect the Property Interest and each of the Properties.
- u) **Lease Attornment** – Subject to the requirements, if any, within any Leases for the Lender to execute and deliver non-disturbance agreements, the Borrower agrees, at the written request of the Lender, to use all reasonable commercial efforts to obtain from the tenants under such Leases and deliver to the Lender such instruments of attornment, postponement or subordination as the tenants under such Leases are required to provide and as the Lender may reasonably request in a form acceptable to the Lender, acting reasonably, and which is otherwise consistent with the terms of such Leases.
- v) **Expropriation** – Any awards or payments received by an Obligor for expropriation of any Project Lands, or any part thereof, which are, in respect of any single payment or award, equal to or greater than \$1,000 shall, unless the Lender otherwise agrees, be forthwith paid to the Lender to repay amounts outstanding up to the amount outstanding hereunder at such time.

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#### 4.2 Financial Covenants

So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Borrower covenants and agrees with the Lenders that, unless the Lender otherwise consents in writing:

- a) **Project Net Equity** – The Borrower and Guarantors must have and maintain throughout the term of the loan a minimum combined net equity in the Project equal to \$600,000.
  - i. For the purposes of this paragraph net equity shall be equal to the sum of the cost of the raw land as determined by the Lender (to a maximum value of \$1,700,000) plus the cost of the Project completed to date (exclusive of land value) as determined by the Lender's quantity surveyor, net of all payables, purchaser deposits paid into the Project, construction holdbacks, unsubordinated Project financing, amounts advanced by the Lender and all Recoveries (Recoveries being defined as all recaptured Project expenses including, HST, previously funded by the construction lender or the proceeds of the Loan herein).
- b) **Project Loan to Value Ratio (LTV)** – The Borrower shall, at all times, maintain an LTV Ratio of less than 73.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;
- c) **Project Loan to Cost Ratio (LTC)** – The Borrower shall, at all times, maintain an LTC Ratio of less than 79.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;
- d) **Maximum Borrowing** – The Borrower shall ensure that outstanding Advances under the Commitment Letter do not exceed the most current calculation of the Maximum Total Amount Available (Loan Amount less estimated costs to complete). The Loan Amount is the total credit approved as outlined in Section I.

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#### 4.3 Negative Covenants

So long as any amount payable hereunder is outstanding or the Loan Facilities are available hereunder, each of the Borrower (with respect to itself and each of the other Obligor(s)) covenants and agrees with the Lender that, unless the Lender otherwise consents in writing:

- a) **Sale of Guarantors** – The Borrower shall not, and shall cause every other Person with an ownership interest in a Guarantor (other than the Borrower) not to, sell, transfer, assign, convey or otherwise dispose of its ownership interest in any of the Guarantors (other than the Borrower) to any Person except another Affiliate of the Borrower (but only if such Guarantor remains a direct or indirect wholly-owned Subsidiary of the Borrower) or except with the prior written consent of the Lenders, such consent not to be unreasonably withheld or delayed.
- b) **No Merger, Amalgamation, Etc.** – Except as otherwise permitted hereunder, no Obligor shall enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise).
- c) **No Sale, etc. of Property Interest** – No Obligor shall sell, transfer, assign or otherwise dispose of all or any portion of any Property Interest except pursuant to a Permitted Encumbrance.
- d) **No Dissolution** – No Obligor shall liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith, provided, however, that a Guarantor (other than the Borrower) may enter into a transaction designed to wind-up or dissolve such Guarantor into the Borrower, but not without the Lender's consent, such consent not to be unreasonably withheld or delayed; the parties agree that the Lender's consent will not have been unreasonably withheld if, in the Lender's sole discretion, the Lenders' credit risk or the Security will be adversely affected by the proposed transaction.
- e) **Non-Arm's Length Transactions** – No Obligor shall enter into any contract relating in any manner to the Property Interest with an Affiliate (e.g. any related entity with a related ownership interest held directly or indirectly) for the sale, purchase, lease or other dealing in any property other than at a consideration which is no more than the fair market value of such property or other than at a fair market rental as regards leased property.
- f) **Negative Pledge** – Except for Permitted Encumbrances, no Obligor shall create, issue, incur, assume or permit to exist any mortgage, charge, lien or other Encumbrance on the Property Interest other than Permitted Encumbrances.
- g) **No Changes to Material Document** – No Obligor shall amend, surrender or terminate any Material Document without the prior written consent of the Lender which consent is not to be unreasonably withheld or delayed.
- h) **No Changes to Major Leases** – No Obligor shall terminate or accept a surrender of, or agree to any material amendment to, any Major Lease without the consent of the Lender which consent is not to be unreasonably withheld or delayed. For the sake of clarification, amendments related to the term, rent or premises to be rented shall be considered material.
- i) **Dealing with Leases** – None of the Obligor(s) shall enter into any Leases or amend, renew, terminate, forfeit or cancel any Leases unless:
  - i. such Leases, amendments, renewals, terminations, forfeitures or cancellations are made on arm's length terms and in good faith; and
  - ii. such Leases, amendments, renewals, terminations, forfeitures or cancellations reflect good business practice.

- j) **Concerning Leases Generally** – Except in the ordinary course of business and provided such action is prudent in the circumstances, none of the Obligors shall accept or require payment of rent or other moneys payable by a tenant under any Lease that would result in more than three months of such rent or other moneys being prepaid under such Lease other than:
- i. prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such Lease; or
  - ii. amounts representing a bona fide pre-calculation of any amount (which is required to be paid under such Lease) in addition to basic rent, including amounts payable with respect to taxes and maintenance of the applicable Property and overage and percentage rents; or
  - iii. lease surrender payments made by the tenant under such Lease; and
  - iv. except for any renewals or extensions of existing Leases pursuant to the terms thereof, each of the Obligors shall not hereafter enter or purport to enter into or suffer to exist any Lease in respect of any Project except if the Security shall have priority over such Lease and such Lease shall provide that such Lease is subordinated to the Security and contain a covenant of the tenant thereunder obligating such tenant if and whenever required by the Lender to attorn to and become the tenant of the Lenders or any purchaser from the Lenders in the event of an exercise by the Lenders of their remedies under the Documents, for the then unexpired residue of the term of, and upon all of the terms and conditions of such Lease.
- k) **No Waiver** – Except as otherwise provided pursuant to Section 5, no Obligor shall waive, or agree to waive, any failure of any party to any Permitted Encumbrance, Material Document or Lease to perform any material obligation thereunder or suffer or permit anything allowing any party thereto to terminate any such agreement or consent to any assignment thereof by any party thereto unless the same is in the ordinary course of business, is in accordance with good business practice and the same would not have a Material Adverse Effect.
- l) **Ground Leases** – No Obligor will agree with the landlords under any of the Ground Leases to terminate, forfeit, cancel, alter, amend or modify any Ground Lease or provide a surrender of any Ground Lease prior to the end of the term of such Ground Lease unless such surrender occurs concurrently with the acquisition of the freehold interest in the applicable Property and the applicable Obligor concurrently provides a Mortgage of such freehold interest to the Lender together with such legal opinions and other documents and agreements as the Lender may reasonably require in connection therewith. No Obligor shall exercise any right of termination it may have under any Ground Lease.
- m) **Freehold Interest in the Property** – Unless the Lender otherwise expressly consents in writing, which consent shall not be unreasonably withheld or delayed, the freehold estate in the Property and the leasehold estate demised by the Ground Leases, respectively, shall not merge but shall always remain, respectively, separate and distinct notwithstanding the union of such estates either in the respective landlords or, any Obligor.
- n) **Name Change** – No Obligor shall change its name without first giving notice to the Lender of its new name and the date when such new name is to become effective.
- o) **Change of Chief Executive Office** – No Obligor shall change its chief executive office or the location of the offices where it keeps its records respecting receivables and rents or move any of the inventory, securities or equipment from the present locations thereof without prior written notice to the Lender.

## V. DEFAULT PROVISIONS

The content of this Default Provisions section shall be subject to the restrictions of any priority agreement(s) between the Lender and any other permitted encumbrance holders.

### 5.1 Events of Default

The occurrence of any one or more of the following events (each such event being herein referred to as an "Event of Default") shall constitute an Event of Default under this Agreement:

- a) **Payment of Principal** – if the Borrower defaults in the payment of the principal of any Advance under any Credit Facility when due and payable, without any requirement by the Lender to provide notice of the same;
- b) **Payment of Interest and Fees** – if the Borrower defaults in the payment of:
  - i. any interest (including, if applicable, default interest) due on any Advance under this Commitment;
  - ii. any fee with respect to this Commitment, including Lender Fee, Renewal Fee, etc.
  - iii. any other amount not specifically referred to herein payable by the Borrower to the Mortgage Administrator or the Lenders (or any of them) hereunder when due and payable; and such default continues for three (3) Business Days after notice of such default has been given by the Lender to the Borrower;
- c) **Covenants or Obligations** – if any Obligor neglects to observe or perform any covenant or obligation contained in any Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 5.0) and, such Obligor shall fail (in the case of those defaults which can be rectified by such Obligor) to remedy such default within a period of thirty (30) days after the giving of notice, unless the Lender (having regard to the subject matter of the default) shall have agreed to a longer period and, in such event, within the period agreed to by the Lender;
- d) **Cross Default** – if a default or an event of default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of any Obligor or of any Associate (as that term is defined in the Business Corporations Act R.S.O. 1990) of any Obligor has occurred and is continuing; provided, however, that if such default or event of default under such indenture or instrument shall be remedied or cured by such Obligor or Associate of such Obligor or be waived by the holders of such indebtedness before any judgment or decree for the payment of the money due shall have been obtained or entered, then the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action on the part of the Lender;
- e) **Priority Encumbrance Cross Default** – if an event of default as defined in any indenture or instrument which is an Encumbrance on any Property in priority to the Security shall have occurred and be continuing and all applicable cure periods have expired;
- f) **Bankruptcy or Insolvency Order** – if a decree or order of a court of competent jurisdiction is entered adjudging any Obligor a bankrupt or insolvent, or approving as properly filed a petition seeking the winding-up of such Obligor, under the Companies' Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) or the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against, or against any substantial part of the assets of any Obligor or Material Subsidiary or ordering the winding up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of ten (10) business days;

- g) **Insolvency** – if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the Bankruptcy and Insolvency Act (Canada) or any comparable law, seeks relief under the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency;
- h) **Trustee or Receiver Appointed** – if any proceedings are commenced against, or steps are taken by, any Obligor for the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of such Obligor or of all or any substantial portion of its assets, or seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights and in the case of any such proceedings commenced against such Obligor, such proceedings are not stayed or dismissed within ten (10) days after the commencement thereof;
- i) **Material Provision or Agreement Null and Void** – if any material provision of this Agreement or of any Material Document ceases to be in full force and effect (other than through the normal expiration of the stated term of such Material Document pursuant to the terms thereof) or is declared null and void or invalid or any breach or default shall occur under any Material Document that has a Material Adverse Effect and such breach or default is not remedied within ten Business Days of such occurrence or such longer or shorter cure period as may be allowed the applicable Obligor pursuant to the terms of such Material Document;
- j) **Judgements** – if a judgment or decree for payment of money due in an amount of \$5,000 or more (in any single instance or in the aggregate for all such judgments and decrees against each of the Obligors) shall have been obtained or entered against any Obligor (except in the case of any such judgment or decree in respect of which recourse is limited to property which is not subject to the Security hereunder) and such judgment or decree shall not have been, and remain, vacated, discharged or stayed pending appeal within the applicable appeal period;
- k) **Incorrect Representation or Warranty** – if any representation or warranty made or deemed to be made by any Obligor in any Document or in any certificate or other document at any time delivered in connection with this Agreement to the Lender shall prove to have been incorrect or misleading in any material respect on and as of the date thereof and with respect to any such incorrect or misleading representation or warranty that is capable of being cured, such incorrectness or misleading aspect continues for a period of ten (10) Business Days or more;
- l) **Invalid Security** – if any of the Security shall cease to be a valid and perfected first priority security interest as against third parties subject only to Permitted Encumbrances and such state continues for more than two business (2) days;
- m) **Material Adverse Change** – if the Lenders determine, in their sole discretion acting reasonably, that there has been a material adverse change in the financial condition of the Borrower or if there is a qualification in any report of the auditors or in the Borrower's annual financial statements that materially adversely affects the credit risk of the Lenders hereunder;
- n) **Creditor Seized Property** – if the property of any Obligor or a part thereof which is, in the opinion of the Lender, a substantial portion thereof, is seized or otherwise attached by creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied or enforced against any Obligor and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of thirty (30) days or such shorter period as would permit any Property or any part thereof to be sold thereunder;
- o) **Dissolution, Liquidation or Wind-Up Proceedings** – if proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor, unless such proceedings are stayed or dismissed within thirty (30) days of the commencement thereof;

- p) **Assignment, Disposition or Conveyance** – if any Obligor makes or agrees to make an assignment, disposition or conveyance, whether by sale or otherwise, of all its assets (or a material portion thereof) in bulk;
- q) **Default Under Permitted Encumbrance or Material Document** – if there is a default by any Obligor under any Permitted Encumbrance, or Material Document in respect of the Project and such default has a Material Adverse Effect and is not rectified within five business days; or
- r) **Financial Covenant Default** – if there is a default by the Borrower of any of the Financial Covenants outlined in Section 4.2;
- s) **Merger or Amalgamation** – if any transaction occurs (whether by reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise) whereby all or substantially all of an Obligor's undertaking, property and assets, or any interest therein becomes the property of any other person, or in the case of any amalgamation, of the continuing company resulting therefrom, or if any Obligor is dissolved; or
- t) **Environmental** – if any Obligor violates or breaches any Requirements of Environmental Law applicable to the Project (or, in the case of the Guarantor, applicable to all or any material part of its property and assets) or if any Obligor violates or breaches any other Applicable Law and such breach or violation of Applicable Law has or could reasonably be expected to have a Material Adverse Effect and continues for the shorter of a period of 30 days or 10 business days less than any such period as would permit the property in question to escheat to the Crown or be sold or otherwise forfeited; or

For greater certainty, none of the foregoing events shall constitute an Event of Default hereunder if the default is cured or remedied within the time limited therefor pursuant to the applicable provision of this Section 5.1.

## 5.2 Acceleration and Demand

Upon the occurrence of any Event of Default that has not been cured within the timelines set out herein, the Lender by written notice to the Borrower (an "Acceleration Notice") shall be entitled to:

- a) declare the Loan and the right of the Borrower to apply for further Advances to be terminated; and
- b) declare all Obligations (whether matured or unmatured, drawn or undrawn) of the Borrower to the Lender (including, without limitation, the all unpaid fees whether or not deemed earned) to be immediately due and payable (or to be due and payable at such later time as may be stated in such notice) without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by Borrower;

but upon the occurrence of an Event of Default specified in Section 5.1(a), the Loan shall automatically terminate and all Obligations specified in Section I shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower. Immediately upon the occurrence of an Event of Default specified in Section 5.1 or at the time stated in an Acceleration Notice, the Borrower shall pay to the Lender all amounts owing or payable in respect of all Obligations of such Borrower specified in Section I, failing which all rights and remedies of the Lender under the Documents, at law, in equity or otherwise shall thereupon become enforceable and shall be enforced by the Lender.

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### 5.3 Appointment of Receiver

- a) Upon any default under this Commitment or the Security, that is not cured within the time frames set out herein, the Lender may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their instead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Project or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Borrower. Any such receiver or receivers so appointed shall have power to take possession of the Project or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Project or any part thereof, and to further charge the Project in priority to the security constituted by this Commitment as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Project on such terms and conditions and in such manner as he shall determine. In exercising any powers, any such receiver or receivers shall act as agent or agents for the Borrower and the Lender shall not be responsible for his or their actions.
- b) In addition, the Lender may enter upon the applicable premises and lease or sell the whole or any part or parts of the Project. The Borrower agrees that it will be commercially reasonable to sell such part of the Project:
  - i. as a whole or in various units;
  - ii. by a public sale or call for tenders by advertising such sale; and
  - iii. by private sale.
- c) Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.
- d) No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this letter includes a receiver and manager.

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#### **5.4 Application of Payments Following Demand and Acceleration**

Except as otherwise agreed to by the Lender in its' sole discretion, any sum received by the Lender at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 which the Lender is obliged to apply in or towards the satisfaction of sums due from the Borrower under any Document shall be applied by the Lender in accordance with amounts owed to the Lender by the Borrower in respect of each category of amounts set forth below, each such application to be made in the following order with the balance remaining after application in respect of each category to be applied to the next succeeding category:

- a) in or towards payment of any expenses and fees then due and payable to the Lender hereunder and owing by the Borrower (including, without limitation, in the case of the Borrower, any such fees and expenses owing whether or not deferred or contingent);
- b) in respect of amounts due and payable by such Borrower to the Lenders by way of interest and fees (including, without limitation, in the case of the Borrower, any such interest and fees owing whether or not deferred or contingent);
- c) in respect of any other amount (other than Advances) not hereinbefore referred to in this Section 5.4 which are then due and payable by the Borrower hereunder such Borrower under any Document (including, without limitation, in the case of the Borrower, any such other amounts owing whether deferred or contingent);
- d) in or towards repayment to the Lender of the Principal Advances to such Borrower then outstanding hereunder; and
- e) any remaining amounts to be released to the Borrower or as required by the loan.

For certainty, unless otherwise agreed by the Lender, all amounts owing by the Borrower in each of the above-noted categories (whether directly or indirectly by virtue of Guarantees) shall, within each category, rank pari passu and be applied pro rata to the Obligations owing by the Borrower within such category based on the respective outstanding amounts.

#### **5.5 Remedies Cumulative**

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Lender under the Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement therein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled for the same default or breach, and any waiver by the Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement therein contained, and any indulgence granted thereby, shall be deemed not to be a waiver of any subsequent default. The Lender may, to the extent permitted by Applicable Law, bring suit at law, in equity or otherwise for any available relief or purpose including but not limited to:

- 1) the specific performance of any covenant or agreement contained in the Documents;
- 2) enjoining a violation of any of the terms of the Documents;
- 3) aiding in the exercise of any power granted by the Documents or by law; or
- 4) obtaining and recovering judgment for any and all amounts due in respect of the Advances or amounts otherwise due hereunder or under the Documents.

To the extent permitted by applicable law, Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which may limit or modify any of the Lender's rights or remedies under the Documents.

**5.6 Set-Off**

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Lender is authorized at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 which has not theretofore been waived or rescinded by the Lender and from time to time thereafter without notice to Borrower or to any other person, any such notice being expressly waived by the Borrower, to set-off and to appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing to the Lender for the account of the Borrower against and on account of the obligations and liabilities of the such Borrower to the Lender or such Lender under this Agreement, including, without limitation, contingent or deferred obligations of the Lenders.

**5.7 Cash Collateral Accounts**

Upon delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 and in addition to any other rights or remedies of the Lenders hereunder, the Lender shall thereafter be entitled to deposit and retain in an account to be maintained by the Lender, and which for the purposes hereof shall be considered to be the Lender's account and not the Borrower's account bearing interest for the Borrower at the rates of interest of the Lender as may be applicable in respect of other deposits of similar amounts for similar terms, amounts which are received by the Lender from the Borrower to the extent that and for so long as such amounts either may be required to satisfy any Obligations of such Borrower or are actually used to satisfy any such Obligations; provided that if such amounts are no longer required or not so used, the Lender shall forthwith return the same together with interest accrued thereon to the Borrower.

**5.8 Lender May Perform Covenants**

If the Borrower shall fail to perform any covenant on its part herein contained, the Lender may, upon prior notice to the Borrower, perform any of the said covenants capable of being performed by the Lender and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds and shall be entitled to reimbursement of any such expenditure. All amounts so paid by the Lender hereunder shall be repaid by the Borrower on demand therefor, and shall bear interest at the rate set forth in Section I from the date paid by the Lender hereunder to and including the date such amounts are repaid in full by the Borrower.

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## VI. GENERAL PROVISIONS

- a) The Lender shall have no obligation to advance funds unless and until all of the above terms and conditions have been deemed by the Lender to be complete, true and otherwise in all respects satisfactory, in the Lender's sole discretion.
- b) No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by the Borrower and Guarantor.
- c) The Lenders solicitors shall be:

Chaitons LLP  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9  
Attention: Robert Miller

- d) The Borrower's solicitor shall be:

Harris Sheaffer LLP  
Suite 610-4100 Yonge Street  
Toronto, Ontario, M2P 2B5  
Attention: Stephen M. Karr

The Borrower shall bear any and all reasonable legal costs of the Lender.

- e) Time is of the essence in this Commitment.
- f) The Borrower and Guarantors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- g) The waiver by the Lender of any breach or default by the Borrower of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
- h) The representations, warranties, covenants and obligations herein set out shall not merge or be extinguished by the execution or registration of the Security but shall survive until all obligations under this Commitment and the Security have been duly performed and the Loan, interest thereon and any other moneys payable to the Lender are repaid in full. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the Lender shall choose which provisions that will prevail.
- i) Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment Letter shall not merge with the delivery and/or registration of the Security and shall remain in full force and effect. Any default under the terms of this Commitment Letter shall be deemed a default under the Security and any default under the terms of the Security shall be deemed a default under the terms hereof. In the event of a conflict between the terms of the Security and the terms of this Commitment Letter, the Lender, in its sole discretion may determine which shall take precedence and govern.

- j) This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

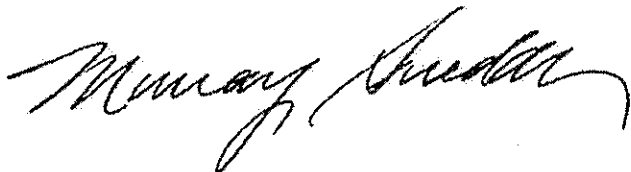
If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement together with the \$25,000 Good Faith Deposit payable to MarshallZehr Group Inc. in Trust. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

By signing this Commitment Letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

**Unless this Commitment Letter is accepted by the Borrower and all required Guarantors within five (5) business days of the date hereof by delivery of a fully executed copy to the Lender, along with the Good Faith Deposit, then, at the Lender's sole option, the Commitment shall be terminated.**

This Commitment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Yours truly,



**MZ Marshall  
Zehr**

Financing Efficiency = Opportunity

**Murray Snedden** CPA, CMA, CMC  
Chief Financial Officer & Principal Broker

T 519 342 1000 X 232  
C 416 996 1778

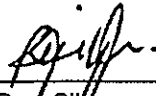
marshallzehr.com | email

Broker  
MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453


Acknowledged and agreed at 1pm this 16th day of May, 2018.

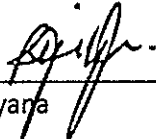
Borrower:

Areacor Inc.

Per:   
Name: Roni Gilyana  
Title: President  
I have authority to bind the corporation

The following parties execute this Commitment letter in their capacities as guarantors only.

  
Witness: Harrison Wood

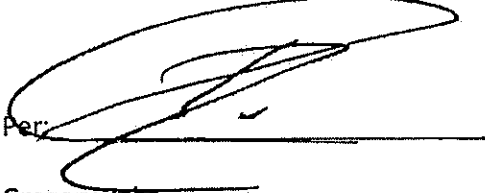
 /s  
Roni Gilyana

**Lender:**

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 18<sup>th</sup> day of May, 2018.

MarshallZehr Group Inc. "in Trust"

Per: 

Gregory Zehr  
CEO & Co-Founder

"I/We have the authority to bind the Corporation"

**APPENDIX A – OFFICERS’ CERTIFICATE & STATUTORY DECLARATION**

*(This document may be updated from time to time and confirms the Obligor(s) are in full compliance with the terms of the Commitment Letter. It further provides details on how funds provided will be used and details on any amounts the could rank in priority to the security registered to secure this Loan).*

Date of Letter

Borrower

Borrower Address

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: MZ Contact

**Re: Officers’ Certificate for Project Name Funding # or Quarterly Update**

I/we, Officer #1 of Borrower, being respectively the Officer #1 Title of Borrower in my capacity as an officer of Borrower and not in my personal capacity, do hereby certify that:

1. This Certificate is being delivered pursuant to Section 2.1 for Initial Funding, 2.2 for Borrower Draws or 4.1 for Quarterly Certificates of the Commitment dated as of DAY day of MONTH, YEAR made among Borrower and MarshallZehr Group Inc. (“MZG”).
2. To the best of our knowledge and belief, no Event of Default exists as of the date of this Certificate.
3. The representations and warranties contained in Section 4.1 of the Commitment are true and correct as though made on the date hereof, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4.1 and any representation and warranty which is stated to be made as of a certain date.
4. We hereby confirm that the Financial Covenants set out in Section 4.2 of the Loan Agreement are in full compliance as of the date of execution of this Certificate.
5. We hereby acknowledge that we have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Borrower in performance of the work required to complete the Project, and for which the Borrower(s) and/or Owner(s) of the Borrower(s) might in any way be held responsible, have been paid in full as required by the Commitment up to and including the latest progress payment received, being on the DAY day of MONTH, YEAR, except for
  - a. Holdback monies properly retained amounting to \$•
  - b. Payments deferred by agreement amounting to \$•, or
  - c. Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld amounting to \$•.

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the DAY day of MONTH, YEAR

Name of Borrower

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

Name:

Title:

I have authority to bind the corporation

**APPENDIX B – COMPLIANCE CERTIFICATE**

*(This document may be updated from time to time and confirms full compliance with the terms contained within the Commitment Letter and provides details of the calculations confirming same)*

Date of Letter

Borrower

Borrower Address

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: MZ Contact

**Re: Compliance Certificate for Project Name Funding #1 or Quarterly Update**

The undersigned, Borrower, refers to the Commitment Letter dated as of MONTH DAY, YEAR (as amended, supplemented, replaced or restated from time to time, the "Commitment", the terms defined therein being used herein as therein defined) among the Obligor and the Lender party thereto.

I/we, Officer #1 of Borrower, being respectively the Officer #1 Title of Borrower in my capacity as an officer of Borrower and not in my personal capacity, do hereby certify that:

1. This Compliance Certificate is delivered pursuant to Section 2.1 for Initial Funding or 4.1 for Quarterly Certificates of the Loan Agreement for Funding #1 dated DAY MONTH, YEAR (the "Initial Funding Period") or the Financial Fiscal Quarter/Year ending on DAY MONTH, YEAR (the "Fiscal Period").
2. I am familiar with and have examined the provisions of the Commitment.
3. The financial statements most recently delivered pursuant to Section 4.1 of the Commitment present fairly the financial position, results of operations and changes in financial position of the persons specified therein in accordance with GAAP (subject to normal year-end adjustments and the absence of any required notes to such financial statements).
4. As of the date hereof, Borrower is not in breach of any of the covenants contained in Sections 4 and 5 of the Commitment, and no Default or Event of Default has occurred and is continuing as at the date hereof.
5. As of DAY MONTH, YEAR, the Initial Funding or Fiscal Period:
  - a. Total Net Project Costs to Date: \$•
  - b. Estimated Cost to Complete Project (incl. lien holdback): \$•
  - c. Total Advanced Loan (incl. current/previous funding #): \$•
  - d. Estimated Current Project Value: \$•
  - e. Last Appraised Value as of MONTH DAY, YEAR: \$•

6. The Financial Covenants outlined in Section 4.2 of the Commitment have been calculated below as of the initial Funding or Fiscal Period:

<b><u>FINANCIAL COVENANTS:</u></b> Guideline only, refer to Commitment for Covenants that are required.	<b><u>CALCULATIONS:</u></b> Guideline only, refer to Commitment on how to calculate Covenants and update accordingly.	<b><u>AMOUNT:</u></b>
Project Net Equity	Project Costs to Date (a) Less Advanced Loan (c)	\$
Maximum Borrowing	Loan Amount Less Costs to Complete (b)	\$
Estimated Loan to Value Ratio	Loan Advanced to Date (c) Divided by Estimated Current Value (d)	%
Estimated Loan to Cost Ratio	Loan Advanced to Date (c) Divided by Project Costs to Date (a)	%

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the DAY day of MONTH, YEAR

Name of Borrower

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

Name:

Title:

I have authority to bind the corporation



**APPENDIX C – REQUEST FOR LENDER ADVANCE NOTICE**

*(This document may be updated from time to time and is used to request funds from the Lender(s) that will be advanced to the Mortgage Administrator and start interest charges to the Borrower).*

Date of Letter  
Borrower  
Borrower Address

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: MZ Contact

**Re: Request for Advance of Funds for Project Name Funding Number #**

I hereby formally request the advance of CAD Advance Amount from the Commitment dated Commitment Date (the "Commitment") and secured against the lands described as Municipal Address and legally known as Legal Address as well as all other security issued pursuant to the Commitment (the "Security").

I hereby acknowledge according to the Commitment Letter that the Borrower must give at least # day's written notice of an advance, and wish to receive acknowledgement from MarshallZehr as to the date of the advance. I understand and acknowledge that the interest will begin on the date of the advance regardless of if funds are released or held in Trust by MarshallZehr.

Furthermore, a Borrower Draw will not be processed until such time as all the conditions related to the Draw are met, as outlined in Section 2.2, and the Borrower has provided the applicable form and Notices as provided in Appendix D.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower, and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

Name of Borrower

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

Name:

Title:

I have authority to bind the corporation

**APPENDIX D – BORROWER DRAW NOTICE**

*(This document may be updated from time to time and is required for funds to be delivered to the Borrower from funds held by the Mortgage Administrator in accordance with the terms of the Commitment Letter)*

Date of Letter

Borrower

Borrower Address

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: MZ Contact

Re: Request for Draw of Funds for Project Name Funding Number #

I hereby formally request the advance of CAD Advance Amount from the Commitment dated Commitment Date (the "Commitment") and secured with the instrument registered as Instrument Number, and secured against the lands described as Municipal Address and legally known as Legal Address as well as other security issued pursuant to the Commitment (the "Security").

I hereby acknowledge according to the Commitment Letter that the Borrower must give at least # day's written notice of an advance, and wish to receive acknowledgement from MarshallZehr as to the date of the advance.

I hereby certify, represent and warrant that all conditions and covenants of the Commitment and Security are met, and that the Borrower and the guarantors have not violated any of the conditions or covenants of the Commitment or Security. Specifically, the Borrower and Guarantors certify, represent and warrant:

- There are no liens on the Property
- No subordinate financing has been placed on the Property without prior written consent
- No party has committed any waste on the Property
- At this time Property taxes are current
- There have been no sales or purchases of shares, or payments of dividends from the Borrower to any party without prior written consent of the Lender
- The owner of the Borrower has not changed
- The Borrower where applicable is in compliance with the Construction Lien Act, and there are no Liens on the Property
- The Borrower has informed the Lender of all changes to the Project schedule and the budget

The hereby gives you notice pursuant to Section 2.2 of the Commitment Letter that the undersigned hereby requests a Draw under the Commitment Letter, and, in that connection sets forth below the information relating to such Draw as required by:

- a. The date of the Draw, being a Business Day, is •.
- b. The aggregate amount of the Draw is \$•.

The undersigned hereby certifies and confirms that on the date of this Notice and the date of the corresponding Draw, and immediately after giving effect thereto and to the application of any proceeds therefrom, the representations and warranties contained in Section 4 of the Commitment Letter are true and correct on and as of each such date, all as though made on and as of each such date, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4. Any representation and warranty which is stated to be made as of a certain date shall confirm:

- a. no event or condition has occurred and is continuing, or would result from such Borrowing or giving effect to this Borrowing Notice, which constitutes a Default or an Event of Default; and
- b. such Borrowing, or otherwise giving effect to this Borrowing Notice, will not violate any Applicable Law now in effect.

The undersigned further confirms and certifies to each Lender that the proceeds of the proposed Borrowing will be used solely for the purposes permitted by the Credit Agreement.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower, and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

Borrower:

Name of Borrower

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

Name:

Title:

I have authority to bind the corporation

**APPENDIX E – REPAYMENT NOTICE**

*(This document may be updated from time to time and is to be provided in advance of any repayment in accordance with the terms of the Commitment Letter)*

DATE

**Borrower:**

Borrower Name  
Borrower Address

**Lender:**

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: MZ Contact

**Re: Notice of Repayment for PROJECT NAME**

I hereby formally inform MarshallZehr Group Inc. of the repayment of the PROJECT NAME Loan as per the Commitment Letter dated DATE, and as further amended DATE and per the renewal dated DATE. This repayment is inclusive of all principal, interest and fees.

I hereby acknowledge the Borrower must provide 60 days' written notice of repayment as per the Commitment Letter. With this notice, we would request a Discharge Statement contemplating the stated repayment date.

The maturity date on this Loan is DATE, (however or and) the anticipated date of repayment will be DATE.

I hereby acknowledge according to the Commitment Letter that the Borrower must pay the Lender an administration fee of \$500.00 and its solicitor's reasonable legal fees in respect to the preparation of the discharge or repayment.

**Borrower:**

Borrower Name

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

Name: Name

Title: Title

I have authority to bind the corporation

**APPENDIX F – PROJECT OPERATING REPORT**

*(This document may be updated from time to time and is to be provided upon request by the Borrower to the Lender providing detail on the items outlined below)*

(Borrower/Developer letterhead)

Date of Letter

Borrower

Borrower Address

MarshallZehr Group Inc.

206-465 Phillip St

Waterloo ON N2L 6C7

Attention: MZ Contact

**Re: Compliance Project Operating Report for Project Name**

Project Magnitude – Total Units/Acres/Construction Costs/ Expected Gross Receipts

Sales Activity - Pre-Sales Order Book/Homes under Construction/Closed, Expected Closings & Closing Schedule

Project Completion Status – Status of Approvals, Completion Schedule, Cost to Date, Expected Costs to Complete/Budget

Current Project Debt and Description of Debt and related Liens

Estimated Current Project Value

Project Site Pictures





Wednesday June 27, 2018

**PRIVATE AND CONFIDENTIAL**

Areacor Inc.  
3044 Bloor Street West, Suite 270  
Etobicoke, ON  
M8X 2Y8

**Attention: Roni Gilyana**

<b>RE:</b>	<b>Project:</b>	<b>15 Cannon Street – MZGI 195 – First (1<sup>st</sup>) Amendment</b>
	<b>Borrower:</b>	<b>Areacor Inc.</b>
	<b>Property Address:</b>	<b>11 &amp; 15 Cannon Street West, Hamilton ON</b>

---

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "First Amendment") to the above noted mortgage pursuant to the Commitment Letter dated May 15, 2018:

Delete (Original):

**2.1 Initial Funding Conditions**

- c) xi. A Project budget prepared by the Lender's Quantity Surveyor satisfactory to the Lender. The Lender and its Quantity Surveyor, in their sole discretion, shall be satisfied
  - c) the terms of the contract with the general contractor/project manager are satisfactory. A minimum of 50% of Project construction costs shall be supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender.

Insert (New):

**2.2 Funding Conditions for Borrower Draws**

**Specific to Draw #2 only:**

- i) A Project budget prepared by the Lender's Quantity Surveyor satisfactory to the Lender. The Lender and its Quantity Surveyor, in their sole discretion, shall be satisfied that
  - a) the terms of the contract with the general contractor/project manager are satisfactory. A construction budget prepared by the general contractor/project manager. A minimum of 50% of Project construction costs shall be in place for the Second draw and supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender.
- j) The Borrower agrees to register the account with Positive Pay service, with the Lender being an approver of payments from the project specific bank account.
- k) The Borrower agrees to defer management fees until such time that 50% of Project construction costs shall be supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender.



All other terms of the Commitment shall survive, unamended.

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter, the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitor.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement no later than Wednesday June 27th, 2018.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Sincerely,

A handwritten signature in black ink, appearing to read 'Murray Snedden', written in a cursive style.



Financing Efficiency = Opportunity

**Murray Snedden** CPA, CMA, CMC  
Chief Financial Officer & Principal Broker

T 519 342 1000 X 232  
C 416 996 1778

[marshallzehr.com](http://marshallzehr.com) | [email](mailto:)

Broker  
MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453





By signing below, I/we agree to the amendment of the above-noted Loan and accept the terms and conditions as stated herein.

DATED this 27th day of June, 2018.

**Borrower:**

Areacor Inc.

Per: 

Name: Roni Gilyana

Title:

I have authority to bind the corporation

The following parties execute this Commitment letter in their capacities as Guarantors only:

Witness:



  
Roni Gilyana

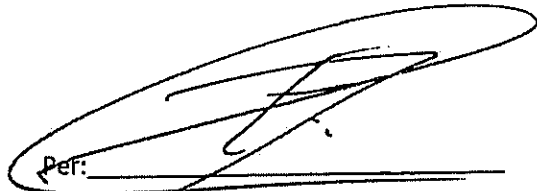


**Lender:**

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 27 day of June, 2018.

MarshallZehr Group Inc. "in Trust"

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

Gregory Zehr  
CEO & Co-Founder

"I/We have the authority to bind the corporation"





Monday December 3, 2018

**PRIVATE AND CONFIDENTIAL**

Areacor Inc.  
3044 Bloor Street West, Suite 270  
Etobicoke, ON  
M8X 2Y8

**Attention: Roni Gilyana**

<b>RE:</b>	<b>Project:</b>	<b>15 Cannon Street – MZGI 195</b>
	<b>Purpose:</b>	<b>Second (2<sup>nd</sup>) Amendment</b>
	<b>Borrower:</b>	<b>Areacor Inc.</b>
	<b>Property Address:</b>	<b>11 &amp; 15 Cannon Street West, Hamilton ON</b>
	<b>Maturity:</b>	<b>February 1, 2020</b>

---

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "Second Amendment") to the above noted mortgage pursuant to the Commitment Letter dated May 15, 2018 and 1<sup>st</sup> amendment dated June 27, 2018 :

Delete (Original):

**Loan Amount:** \$ 10,445,000 (the "Loan").

Insert (New):

**Loan Amount:** \$ 11,645,000 (the "Loan")

Facility # 1:	\$ 10,445,000
Facility # 2:	<u>\$ 1,200,000</u>
	<b>\$ 11,645,000</b>

Facility # 2 shall be fully subordinate and postponed to Facility # 1 and shall be fully advanced prior to any advance from Facility # 1.

(this space intentionally left blank)



Delete (Original):  
Sources and  
Uses of Funds:

Uses		
Land	\$	1,700,000
Hard Costs	\$	7,966,000
Soft Costs - Development	\$	445,000
Soft Costs - Other	\$	336,000
Admin & Marketing	\$	914,000
Financing Costs	\$	1,483,000
Contingency	\$	707,000
<b>Total Uses</b>	<b>\$</b>	<b>13,551,000</b>
Sources		
Facility 1	\$	10,445,000
Deposits	\$	1,950,000
Deferred Costs	\$	556,000
Equity	\$	600,000
<b>Total Sources</b>	<b>\$</b>	<b>13,551,000</b>

Insert (New):  
Sources and  
Uses of Funds

Uses		
Land	\$	1,751,594
Hard Costs	\$	8,954,176
Soft Costs - Development	\$	621,435
Soft Costs - Other	\$	340,535
Admin & Marketing	\$	941,782
Financing Costs	\$	2,232,247
Contingency	\$	568,577
Offsetting Income	\$	(95,000)
<b>Total Uses</b>	<b>\$</b>	<b>15,315,346</b>



**Sources**

Facility 1	\$	10,445,000
Facility 2	\$	1,200,000
Deposits	\$	2,250,000
Deferred Costs	\$	621,298
Equity	\$	799,048
<b>Total Sources</b>	<b>\$</b>	<b>15,315,346</b>

Delete (Original):

**Interest Rate:** 10.0% per annum

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from Borrower Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

Insert (New):

**Interest Rate:** Facility # 1 - 10.0% per annum

Facility # 2 - 14.0% per annum

**Facility # 1**

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from Borrower Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

**Facility # 2**

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from the Interest Reserve fund. Once the Interest Reserve has been fully utilized, interest payments will come from the Borrower and/or the Guarantor's own resources.



Delete (Original):

**Partial**

**Discharges:** Provided that the Borrower is not in default, the Lender shall provide partial discharges of Project units on the closing of a unit sale transaction provided the Borrower pays the Lender Net Sales Proceeds of each sale. Net Sales Proceeds is defined as the sale price of the unit less deductions for deposits (used in the Project's financing) and any payments on account of principal required to be made to a permitted prior lender, if any, to obtain a partial discharge of its security, normal sales commissions, and legal costs. The Borrower will pay the Lender an administration fee of \$250 and its solicitor's reasonable legal fees in respect of the preparation of the discharge for each partial discharge requested by the Borrower. In the event of Default, the Lender shall not be obligated to provide partial discharges. The Net Sale Proceeds shall be dispersed as follows:

- a) Repayment of all accrued and unpaid interest;
- b) Repayment of the outstanding principal balance

Insert (New):

**Partial**

**Discharges:** Provided that the Borrower is not in default, the Lender shall provide partial discharges of Project units on the closing of a unit sale transaction provided the Borrower pays the Lender Net Sales Proceeds of each sale. Net Sales Proceeds is defined as the sale price of the unit less deductions for deposits (used in the Project's financing) and any payments on account of principal required to be made to a permitted prior lender, if any, to obtain a partial discharge of its security, normal sales commissions, and legal costs. The Borrower will pay the Lender an administration fee of \$250 and its solicitor's reasonable legal fees in respect of the preparation of the discharge for each partial discharge requested by the Borrower. In the event of Default, the Lender shall not be obligated to provide partial discharges. The Net Sale Proceeds shall be dispersed as follows:

- a) Repayment of all accrued and unpaid interest;
- b) Repayment of the outstanding principal balance of Facility # 1; and
- c) Repayment of the outstanding principal balance of Facility # 2

Delete (Amendment # 1)

## **2.2 Funding Conditions for Borrower Draws**

**Specific to Draw #2 only:**

- i) A Project budget prepared by the Lender's Quantity Surveyor satisfactory to the Lender. The Lender and its Quantity Surveyor, in their sole discretion, shall be satisfied that
  - a) the terms of the contract with the general contractor/project manager are satisfactory. A construction budget prepared by the general contractor/project manager. A minimum of 50% of Project construction costs shall be in place for the Second draw and supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender.
- j) The Borrower agrees to register the account with Positive Pay service, with the Lender being an approver of payments from the project specific bank account.



- k) The Borrower agrees to defer management fees until such time that 50% of Project construction costs shall be supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender.

Insert (New):

## 2.2 Funding Conditions for Borrower Draws

Specific to Funding #3 only:

- i) A Project budget prepared by the Lender's Quantity Surveyor satisfactory to the Lender. The Lender and its Quantity Surveyor, in their sole discretion, shall be satisfied that
  - a) the terms of the contract with the general contractor/project manager are satisfactory. A construction budget prepared by the general contractor/project manager. A minimum of 50% of Project construction costs shall be in place for the Second draw and supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender.
- j) The Borrower agrees to register the account with Positive Pay service, with the Lender being an approver of payments from the project specific bank account.
- k) The Borrower agrees to defer management fees until such time that 50% of Project construction costs shall be supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender. Additionally, the Borrower agrees to defer \$50,000 until project completion.

Delete (Original):

### III. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the "Security") duly registered where applicable and all in the form and on the terms acceptable to the Lender's solicitors:

- a) **Mortgage** – A 1<sup>st</sup> Mortgage in the amount of \$12,000,000 on the 15 Cannon Street Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being 20.0%.

Insert (New):

### III. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the "Security") duly registered where applicable and all in the form and on the terms acceptable to the Lender's solicitors:

- b) **Mortgage** – A 1<sup>st</sup> Mortgage in the amount of \$13,500,000 on the 15 Cannon Street Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being 28.0%.





The following provisions shall be included in the Amendment and were not originally contemplated in the Commitment:

**Amendment**

**Fee:** Upon execution of the Second Amendment, the Borrower shall pay a fee of \$48,000.00 (the "Amendment fee") to the Lender. The Amendment Fee shall be fully earned by the Lender as of the date of execution of the Second Amendment and shall be deducted from the advance of Facility # 2.



All other terms of the Commitment shall survive, unamended.

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter, the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitor.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement no later than Thursday December 6th, 2018.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Cecil Hayes', written over a horizontal line.



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**Cecil Hayes** CIM  
CHIEF OPERATING OFFICER

T 519 342 1000 X 233

C 519 590 3810

[marshallzehr.com](http://marshallzehr.com) | [email](mailto:)

Broker

MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453

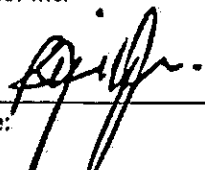


By signing below, I/we agree to the amendment of the above-noted Loan and accept the terms and conditions as stated herein.

DATED this 3rd day of December, 2018.

**Borrower:**

Areacor Inc.

Per:   
Name: \_\_\_\_\_  
Title:  
I have authority to bind the corporation

**The following parties execute this Commitment letter in their capacities as Guarantors only:**

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Roni Gilyana



**Lender:**

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 4th day of December, 2018.

MarshallZehr Group Inc. "in Trust"

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

A large, stylized handwritten signature in black ink, written over a horizontal line.

Gregory Zehr  
CEO & Co-Founder

"I/We have the authority to bind the corporation"





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MarshallZehr Group Inc.  
465 Phillip Street, Suite 206  
Waterloo ON N2L 6C7 Canada

Monday, December 2, 2019

PRIVATE AND CONFIDENTIAL

Areacor Inc.  
3044 Bloor Street West, Suite 270  
Etobicoke, ON  
M8X 2Y8

Attention: Roni Gilyana

RE:	Project:	15 Cannon Street – MZGI 195
	Purpose:	Third (3 <sup>rd</sup> ) Amendment
	Borrower:	Areacor Inc.
	Property Address:	11 & 15 Cannon Street West, Hamilton, ON
	Maturity Date:	February 1, 2020

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "Third Amendment") to the above noted mortgage (the "Amendment") and Commitment Letter dated May 15, 2018, amended June 27, 2018, and December 3, 2018:

Delete (2<sup>nd</sup> Amendment):

Loan Amount: \$ 11,645,000 (the "Loan")

Facility # 1:	\$ 10,445,000
Facility # 2:	<u>\$ 1,200,000</u>
	\$ 11,645,000

Facility # 2 shall be fully subordinate and postponed to Facility # 1 and shall be fully advanced prior to any advance from Facility # 1.

Insert (New):

Loan Amount: \$ 11,895,000 (the "Loan")

Facility # 1:	\$ 10,445,000
Facility # 2:	<u>\$ 1,450,000</u>
	\$ 11,895,000

Facility # 2 shall be fully subordinate and postponed to Facility # 1 and shall be fully advanced prior to any advance from Facility # 1.

Delete (Original):

Term: Nineteen (19) months (commencing from the Interest Adjustment Date or IAD). Interest from the date of the Initial Advance to the IAD shall be deducted by the Lender from the Initial Advance.

Insert (New): Thirty Eight (38) months *38*

Term: ~~Thirty one (37) months~~ (commencing from the Interest Adjustment Date or IAD). Interest from the date of the Initial Advance to the IAD shall be deducted by the Lender from the Initial Advance. The new maturity date is ~~August 1, 2021.~~

September 1st, 2021 *38*

Delete (2<sup>nd</sup> Amendment):

SOURCES AND  
USES OF FUNDS:

Uses

Land	\$	1,751,594
Hard Costs	\$	8,954,176
Soft Costs - Development	\$	621,435
Soft Costs - Other	\$	340,535
Admin & Marketing	\$	941,782
Financing Costs	\$	2,232,247
Contingency	\$	568,577
Offsetting Income	\$	(95,000)
<b>Total Uses</b>	<b>\$</b>	<b>15,315,346</b>

Sources

Facility 1	\$	10,445,000
Facility 2	\$	1,200,000
Deposits	\$	2,250,000
Deferred Costs	\$	621,298
Equity	\$	799,048
<b>Total Sources</b>	<b>\$</b>	<b>15,315,346</b>

Insert (New):  
SOURCES AND  
USES OF FUNDS:

Uses

Land	\$	1,779,252
Hard Costs	\$	9,421,541
Soft Costs - Development	\$	488,316
Soft Costs - Other	\$	564,370
Admin & Marketing	\$	909,117
Financing Costs	\$	2,554,213
Contingency	\$	419,796
Offsetting Income	\$	(142,500)
<b>Total Uses</b>	<b>\$</b>	<b>15,994,105</b>

Sources

Facility 1	\$	10,445,000
Facility 2	\$	1,450,000
Deposits	\$	2,596,105
Deferred Costs	\$	703,952
Equity	\$	799,048
<b>Total Sources</b>	<b>\$</b>	<b>15,994,105</b>

The following provisions shall be included in the Amendment and were not originally contemplated in the Commitment:

A subsearch will be conducted by the Lender's solicitor upon the acceptance of this Amendment at the Borrower's expense

**Amendment Fee:**

Upon execution of the Third Amendment, the Borrower shall pay a fee of \$257,000.00 (the "Amendment fee") to the Lender. The Amendment Fee shall be fully earned by the Lender as of the date of execution of the Third Amendment and shall be deducted from the advance of Facility # 2.





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MarshallZehr Group Inc.  
465 Phillip Street, Suite 206  
Waterloo ON N2L 6C7 Canada

All other terms of the Commitment shall survive, unamended.

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

If you are in agreement with the above terms, please indicate such agreement pertaining to 15 Cannon MZGI 195 by signing and forwarding to the undersigned a copy of this agreement, along with the Amendment Fee, by December 4, 2019.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Cecil Hayes', written over a horizontal line.



Financing Efficiency = Opportunity

**Cecil Hayes** CIM  
Chief Operating Officer

T 519 342 1000 X 233  
C 519 590 3810

[marshallzehr.com](http://marshallzehr.com) | [email](mailto:)

Broker  
MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453

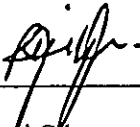
By signing below, I agree to the extension of the above-noted mortgage.

Borrower:

I HEREBY accept the terms and conditions as stated herein.

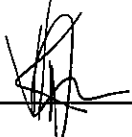
DATED this 11 day of December, 2019.

Areacor Inc.

Per:   
Name: \_\_\_\_\_  
Title: Roni Gilyana, ASO

I have authority to bind the corporation

The following parties execute this Commitment letter in their capacities as guarantors only.

  
\_\_\_\_\_  
Witness:

  
\_\_\_\_\_/s  
Roni Gilyana



Financing Efficiency = Opportunity

MarshallZehr Group Inc.  
465 Phillip Street, Suite 206  
Waterloo ON N2L 6C7 Canada

**Lender:**

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 14th day of December, 2019.

MarshallZehr Group Inc. "in Trust"

Per. \_\_\_\_\_

Gregory Zehr  
CEO & Co-Founder

"I/We have the authority to bind the Corporation"

15 Cannon MZGI - 195

**TAB D**

***THIS IS EXHIBIT "D" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

*Description* PT LT 13 BLK 6 PL 39 AS IN VM97002, CITY OF HAMILTON  
*Address* 11 CANNON STREET WEST  
HAMILTON  
*PIN* 17586 - 0003 LT *Interest/Estate* Fee Simple  
*Description* PT LT 13 BLK 6 PL 39 AS IN HL269921; CITY OF HAMILTON  
*Address* 15 CANNON ST W  
HAMILTON

### Chargor(s)

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

*Name* GILYANA, RONI  
*Address for Service* 4 Royaleigh Avenue  
Etobicoke, Ontario  
M9P 2J5

I am at least 18 years of age.

The property is not designated under the Family Law Act as a matrimonial home by me and my spouse, but there is such a designation of another property as our matrimonial home which has been registered and which has not been cancelled.

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

*Name* AREACOR INC.  
*Address for Service* 270-2869 Bloor Street West  
Toronto,  
Ontario M8X 1B3

I, Roni Gilyana, President, have the authority to bind the corporation.

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

### Chargee(s)

*Capacity*

*Share*

*Name* MARSHALLZEHR GROUP INC.  
*Address for Service* 206-465 Phillip Street  
Waterloo, Ontario N2L 6C7

### Statements

Schedule: RONI GILYANA and AREACOR INC. are the registered owners of PIN 17586-0002 (LT). Areacor Inc. is the registered owner of PIN 17586-0003 (LT).

### Provisions

<i>Principal</i>	\$12,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	Interest only payments		
<i>Balance Due Date</i>	2020/02/01		
<i>Interest Rate</i>	20%		
<i>Payments</i>			
<i>Interest Adjustment Date</i>	2018 07 01		
<i>Payment Date</i>	1st day of each and every month		
<i>First Payment Date</i>	2018 08 01		
<i>Last Payment Date</i>	2020 02 01		
<i>Standard Charge Terms</i>	200033		
<i>Insurance Amount</i>	Full insurable value		
<i>Guarantor</i>	Roni Gilyana		

### Additional Provisions

Tel 416-222-8888

Fax 416-218-1860

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

**Submitted By**

CHAITONS LLP

5000 Yonge Street, 10th Floor  
Toronto  
M2N 7E9

2018 06 29

Tel 416-222-8888

Fax 416-218-1860

**Fees/Taxes/Payment**

Statutory Registration Fee \$63.65

Total Paid \$63.65

**File Number**

Chargee Client File Number : 42606

In this Charge, unless the context requires otherwise:

- (a) **"Act"** means the *Condominium Act 1998*, S.O. 1998, c.19, as amended.
- (b) **"Applicable Taxes"** means any goods and services tax levied under Part IV of the *Excise Tax Act* (Canada), the provincial portion of harmonized sales tax, value-added tax or any similar tax applicable thereon.
- (c) **"Business Day"** means any day, other than a Saturday or Sunday, on which Canadian chartered banks are open for domestic and foreign exchange business in Ontario.
- (d) **"Charge"** means this charge/mortgage of land (including the attached charge/mortgage form, this schedule and all other schedules to this charge) as it may be amended, restated or replaced from time to time.
- (e) **"Chargee"** means MarshallZehr Group Inc.
- (f) **"Chargor"** means, with respect to the portion of the Real Property comprising those lands described in (i) PIN 17586-0003 (LT), Areacor Inc., and (ii) PIN 17586-0002 (LT), Areacor Inc. and the Covenantor.
- (g) **"Commitment"** means the commitment letter issued by the Chargee to the Chargor dated May 15, 2018, as same may be amended from time to time.
- (h) **"Condominium Corporation"** means the proposed condominium corporation which may be created on any portion of the Real Property upon registration of a declaration and description by the Chargor.
- (i) **"Costs"** means all fees, costs, charges and expenses of the Chargee of and incidental to:
  - (i) the collection of any amounts payable hereunder, enforcement of any covenants contained herein and the realization of the security herein contained;
  - (ii) procuring or attempting to procure payment of any portion of the outstanding principal sum secured hereunder or any other amounts due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Chargee or any other party;
  - (iii) the Chargee having to go into possession of the Real Property and secure, complete and equip any buildings or improvements situate thereon in any way in connection therewith;
  - (iv) an administrative fee in the amount of Five Hundred (\$500.00) Dollars (exclusive of Applicable Taxes thereon) for any cheque delivered to the Chargee and returned due to those being "non sufficient funds" or a "stop payment order";
  - (v) the exercise of any of the powers of a Receiver contained herein; and
  - (vi) all solicitor's costs, charges and expenses relating to any of the foregoing and any necessary examination of title to the Real Property.

For greater certainty, Costs shall:

- (i) extend to and include legal costs incurred by the Chargee on a substantial indemnity basis;
  - (ii) be payable forthwith by the Chargor;
  - (iii) bear interest at the Interest Rate; and
  - (iv) be a charge on the Real Property.
- (j) **"Covenantor"** means Roni Gilyana.
  - (k) **"Dwelling"** means any portion of the Lands (i) designated or intended for use as a single family residential dwelling in accordance with the provisions of the *Planning Act* (Ontario) and/or (ii) consisting of an individual condominium unit created in accordance with the provisions of the *Condominium Act 1998* (Ontario) and **"Dwellings"** means more than one (1) Dwelling



- (m) **"Hazardous Substance"** means any hazardous waste or substance, pollutant, contaminant, waste or other substance, whether solid, liquid or gaseous in form, which when released into the natural environment may immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing:
- (i) any such substance as defined or designated under any applicable laws and regulations for the protection of the environment or any living thing;
  - (ii) asbestos, urea formaldehyde, poly-chlorinated biphenyl ("PCB's") and materials manufactured with or containing the same; and
  - (iii) radioactive and toxic substances.
- (n) **"Interest Adjustment Date"** means July 1, 2018.
- (o) **"Interest Rate"** means the rate of ten (10.00%) percent per annum, as increased to twenty (20.00%) percent per annum during the Wrap Up Period.
- (p) **"Maturity Date"** means February 1, 2020.
- (q) **"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, and the executors, administrators or other legal representatives of an individual in such capacity.
- (r) **"Project"** means the proposed residential project intended to be developed by the Chargor on the Real Property, consisting of the Dwellings together with ancillary amenities.
- (s) **"Real Property"** means the real property described in the attached charge/mortgage form, together with all of the present and future interest of the Chargor in the Real Property including, all rights, benefits, agreements, rights-of-way, easements, privileges and right to use or occupy now or hereafter to such real property; and, all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property (including all such property now or in the future owned, leased, licensed, possessed or acquired by the Chargor, or in which the Chargor now or in the future has any interest or to which the Chargor is now or may in the future become entitled).
- (t) **"Requirements of Environmental Law"** means all requirements of the common law or the statutes, regulations, by-laws, ordinances, treaties, judgments and decrees and (whether or not they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives and the like, of any Governmental Authority relating to environmental, health, fire or safety matters, or any of them and the Real Property and the activities carried out therein (whether in the past, present or the future), including, but not limited to, all such requirements relating to Hazardous Substances.
- (u) **"Taxes"** means all taxes, rates and assessments of whatever nature or kind and to whomever imposed, levied, collected, withheld or assessed as of the date of this Charge or at any time in the future charged or payable with respect to the Real Property by any Governmental Authority having jurisdiction, including local improvement rates and any and all interest, fines and penalties in connection therewith.
- (v) **"Term"** means the term of this Charge, to expire on the Maturity Date.
- (w) **"Wrap Up Period"** means the final month of the Term.

#### 1. NON-MERGER

Notwithstanding the registration of this Charge and the advance of funds secured hereunder, the Chargor hereby acknowledges that the terms, conditions, obligations, liabilities, warranties and representations

## 2. LOAN FACILITY EXTENDED TO THE CHARGOR AND SECURED HEREIN

Whereas pursuant to the terms of the Commitment, the Chargee has agreed to extend a loan facility to the Chargor in the aggregate principal amount of Ten Million Four Hundred Forty Five Thousand (\$10,445,000) Dollars (the "Loan"), for the purposes set out in the Commitment. Subject to the provisions hereinafter set out, an initial advance of the Loan in the principal amount of One Million Five Hundred Thousand (\$1,500,000) Dollars (the "Initial Advance") shall be extended to the Chargor upon the satisfaction of the conditions set out in the Commitment to be allocated in accordance with the provisions thereof. Subsequent draws of the Loan shall be funded and extended to the Chargor in progress draws (each a "Progress Draw") in accordance with the terms and conditions of the Commitment provided that no such Progress Draw shall be less than One Hundred Thousand (\$100,000) Dollars. Provided further that in addition to any fees or other costs which shall be deducted from the Initial Advance and/or any Progress Draw in accordance with the terms of the Commitment, the Chargee shall be entitled to holdback an amount equal to the applicable interest on such advance for the balance of the Term (the "Interest Reserve"). The Interest Reserve shall be deemed to be principal advanced to the Chargor as part of the Initial Advance and/or Progress Draw, as applicable, with interest to accrue thereon at the Interest Rate.

And the Chargor hereby charges the Real Property in favour of the Chargee with the indebtedness owing from time to time pursuant to the Loan up to the principal amount of Twelve (\$12,000,000) Dollars, together with interest thereon at the Interest Rate as hereinafter set out, and Costs and other amounts thereon as provided herein.

Provided this Charge to be void upon payment to the Chargee of the aggregate of the unpaid balance advanced to the Chargor by the Chargee by the Initial Advance and any subsequent Progress Draws in accordance with the terms hereof in lawful money of Canada with interest thereon at the Interest Rate, and, which interest shall be calculated and compounded monthly not in advance as hereinafter set forth, as well after as before maturity and both before and after default and judgment as follows:

Interest calculated and compounded monthly, not in advance, at the Interest Rate on the amount advanced from time to time shall become due and payable monthly on the first (1<sup>st</sup>) day of each and every month from and including the first (1<sup>st</sup>) day of the month immediately following the Interest Adjustment Date to and including the first (1<sup>st</sup>) day of the month in which the Maturity Date takes place. The aggregate sum advanced to the Chargor by the Chargee by the Initial Advance and any subsequent Progress Draws in accordance with the terms hereof, together with interest thereon at the Interest Rate shall become due and payable on the Maturity Date. The first payment of interest to be computed from the Interest Adjustment Date shall be due and payable on the first (1<sup>st</sup>) day of the month immediately following such date. Monthly interest payments may be deducted by the Chargee from the Interest Reserve, to the extent applicable, up to the amount budgeted by the Chargee therefor. Should there be insufficient funds in the Interest Reserve to meet the interest obligations of the Loan, payments shall come from the resources of the Chargor and/or the Covenantor.

Notwithstanding any other provision hereof or rule of law or equity to the contrary, and notwithstanding the existing of any subsequent encumbrance, the Chargee shall be permitted to revolve the Loan to the Chargor and at any time and from time to time increase or decrease the principal amount of the Loan secured hereunder provided that at no time shall the principal amount of the Loan exceed the sum of Twelve (\$12,000,000) Dollars plus interest and Costs thereon as provided above.

And Costs and Taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

## 3. COMPOUND INTEREST

It is hereby agreed that in case default shall be made in payment of any sum in respect of the Loan to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in one (1) month from the time of default a rest shall be made, and compound interest at the Interest Rate shall be payable

and same to the principal amount of the Loan and to treat it as part thereof and charge interest thereon. Such capitalized interest and interest thereon shall at all times be secured under the security granted by the Chargor to the Chargee pursuant to this Loan in first priority in the same manner as accrued interest. The Chargee at its sole option shall have the right to treat such capitalized interest as principal or accrued interest. Notwithstanding anything contained herein to the contrary, the principle of deemed reinvestment of interest shall not apply to any interest calculation in respect of this Charge.

5. **PREPAYMENT**

The Chargor, when not in default hereunder, the Commitment, and/or any other Additional Security, and upon at least sixty (60) days prior written notice to the Chargee, may at any time immediately following the Interest Adjustment Date, prepay the whole or any part of the outstanding principal sum secured hereunder together with accrued interest thereon at the Interest Rate, without notice or bonus, provided that no such prepayment shall be in an amount of less than One Hundred Thousand (\$100,000) Dollars, without the Chargee's prior written consent.

6. **PRE-AUTHORIZED DEBIT**

If so requested by the Chargee from time to time, all or a portion of the payments to be made by the Chargor to the Chargee hereunder shall be made by way of automatic monthly debit withdrawals by the Chargee from a designated bank account of the Chargor, as the Chargor may notify the Chargee in writing. In this regard, the Chargor hereby authorizes and directs the Chargee to automatically debit any bank account designated by the Chargor for amounts payable hereunder. The Chargor hereby further agrees to do, make and execute, or cause to be done, made and executed, all such documents, acts, matters and things as may be reasonably required by the Chargee to give effect to the foregoing, including, without limitation, executing the Chargee's Pre-Authorized Debit Form.

Alternatively (or in addition), if so requested by the Chargee, the Chargor shall deliver to the Chargee a series of post-dated cheques from time to time at any time during the Term following the delivery to the Chargor by the Chargee of the final advance to be made under the Loan, representing all or a portion of monthly payments on account of interest due and owing on account thereof throughout the then-remaining Term.

In the event that any pre-authorized debit withdrawals and/or cheques are not honoured by the bank or trust company on which they are drawn, or should the Chargor fail to provide a monthly payment to the Chargee when due, the Chargor shall pay to the Chargee for each such returned or non-payment(s), a late payment penalty of Five Hundred (\$500.00) Dollars plus Applicable Taxes per occurrence, which late payment penalty shall be a charge upon the Real Property and bear interest at the rate hereinbefore stated.

7. **PAYMENTS AFTER 1:00 P.M.**

Any payment received by the Chargee after 1:00 P.M. (local time) on any Business Day, shall be deemed for the purpose of calculation of interest, to have been made and received on the immediately following Business Day. For greater certainty, if funds are received (or deemed received) on a Friday after 1:00 P.M. (local time), interest shall be calculated to the following Business Day.

8. **SALE OR CHANGE OF CONTROL**

In the event that the Chargor directly or indirectly sells, conveys, transfers, assigns or exercises a power of appointment with respect to the Real Property or any portion thereof to a purchaser, transferee or assignee, other than a sale or transfer of individual Dwellings to a purchaser thereof as contemplated by Section 14 hereof, or in the event of a change of shareholders of the Chargor which results in a change of control of the Chargor, or in the event of a change in the legal or beneficial ownership of the Real Property or any portion thereof, other than a sale or transfer of individual Dwellings to a purchaser thereof as contemplated by Section 14 hereof, the Chargee may, at the Chargee's sole option, declare all of the sums secured by this Charge to be immediately due and payable and invoke any remedies permitted by this Charge or law, unless the written consent of the Chargee is first obtained, which consent may be arbitrarily or unreasonably withheld. The right of the Chargee pursuant to this provision shall not be affected or limited in any way by

an covenants, terms and provisions herein or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the moneys hereby secured. No dealing between the Chargee and the Chargor or the owner of the equity of redemption, including extending or renewing this Charge, shall in any way affect, change or prejudice the liability of the Chargor for the observance, fulfilment and maintaining of all covenants, terms, provisos, conditions, agreements and stipulations in this Charge or any amendment or extension thereof or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the moneys hereby secured, and the Chargor expressly waives all notice of such dealings between the Chargee with the owner of the right equity of redemption, including extending or renewing this Charge.

9. **MATERIAL ADVERSE CHANGES**

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of this Charge, the Chargee discovers that there is or has been any material adverse change, discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Chargee by or on behalf of the Chargor and/or any Covenantor concerning the Real Property or the financial condition and responsibility of the Chargor or any Covenantor, or in the event of default by the Chargor or any Covenantor, then, in the event of such default, or if such material change, discrepancy or inaccuracy cannot be rectified or nullified by the Chargor or such Covenantor within thirty (30) days after written notification thereof by the Chargee to the Chargor or such Covenantor, the Chargee shall be entitled forthwith to withdraw and cancel its obligations hereunder or decline to advance any further funds, as the case may be, and to declare any funds which have been advanced, together with interest, to be forthwith due and repayable in full.

10. **RESTRICTIONS ON FURTHER FINANCING**

The Chargor covenants and agrees that it will not enter into, create, incur, assume, suffer or permit to exist any other charge, pledge or other form of financing against the Real Property and/or in respect of any chattels or other equipment directly related to the Real Property, and not to further encumber same in any manner without the prior written consent of the Chargee, which approval may be unreasonably withheld by the Chargee.

11. **CONSENT TO REGISTRATION OF A PLAN OF CONDOMINIUM**

Provided that the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee hereby agrees that it will consent to the Chargor registering a plan of condominium and declaration (the "Condominium") pursuant to the Act with respect to a portion of the Real Property provided that the Chargee has received and approved the draft plan of condominium and the declaration.

12. **NON-APPORTIONMENT**

Dwellings into which the Real Property is or may hereafter be divided do and shall stand charged with the whole of the principal amount of this Charge and interest and all other amounts payable under this Charge, and no Person shall have any right to require the principal amount of this Charge or interest or such other amounts to be apportioned upon or in respect of any such Dwelling, other than as provided for in the Act.

13. **DEVELOPMENT PROVISIONS**

Provided that the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee shall, on written request from the Chargor, execute and deliver within five (5) Business Days of written request therefore, without the requirement of payment of any principal or interest under this Charge, all plans, agreements, consents, postponements, releases and other documents so that the Chargor may develop the Real Property, including, without limitation the following:

- (a) engineering, financial, condominium, subdivision, servicing, site plan, development, cost-sharing and reciprocal agreements required by the Governmental Authorities;
- (b) consents or authorizations required to have the Real Property or any part thereof rezoned or divided or to comply with the provisions of the *Planning Act* (Ontario);

- (d) consents or partial discharges for or relating to parts of the Real Property required by the Governmental Authorities for the purpose of granting or dedicating roads, road widenings, walkways, reserves, parklands, recreation sites, school sites, drainage areas, buffer strips or other public purposes, provided such conveyances do not negatively impact on continued access to the Real Property; and
- (e) consents for the registration of the Condominium relating to the Real Property.

Provided, however, that the Chargee shall not be required to undertake or assume any financial or other obligation as a result thereof and provided further, that with respect to partial discharges or consents required for any of the purposes referred to herein, an amount shall be paid for a partial discharge for such portion of the Real Property equal to the amount if any, received by the Chargor from any third party for the transfer or dedication of any such lands as set out in Section 14 herein.

In addition, the Chargor, its agents, employees, and parties authorized by it may conduct development and construction operations on the Real Property, including, without limitation, demolition and removal of existing structures, survey work, grading and excavation operations, installation of services, construction of a sales pavilion and all other acts incidental to the development of the Project without the same being deemed acts of waste.

The Chargor hereby covenants and agrees that it will:

- (a) indemnify the Chargee and save it harmless from any losses, claims, actions or damages arising as a result of its agreement to execute any of the documentation referred to above; and
- (b) bear the reasonable costs of the Chargee's solicitors and consultants in connection with the review of such documentation.

#### 14. PARTIAL DISCHARGE PROVISIONS

The following provisions shall apply in respect of each and every partial discharge of this Charge from any part of the Real Property as may be requested by the Chargor and/or given by the Chargee pursuant to the terms of this Charge:

- (a) notwithstanding anything otherwise contained herein, the Chargor shall not be entitled to request or receive any partial discharge when there is any outstanding material default by the Chargor hereunder;
- (b) in addition to all amounts on account of principal required to be paid by the Chargor to the Chargee in respect of any part of the Real Property to be partially discharged, the Chargor shall also pay to the Chargee:
  - (i) accrued and unpaid interest on such principal amounts to the date of partial discharge;
  - (ii) the reasonable legal and other costs incurred by the Chargee in connection with each such partial discharge; and
  - (iii) any and all other charges due and owing by the Chargor pursuant to the provisions of this Charge;
- (c) the Chargor shall not be entitled to request and the Chargee shall not be obliged to give any partial discharge if doing so and registration of the same would result in any of the following:
  - (i) a violation of the *Planning Act* (Ontario);
  - (ii) any undischarged parts of the Real Property becoming landlocked;

connection with any partial discharge(s) of this Charge (collectively, the **Discharge Documents** ) contemplated to be registered at any time during the Term, in respect of any portion of the Real Property designated or intended for use as a Dwelling, provided that any such Discharge Documents so delivered to the Chargor by the Chargee pursuant to this subsection (d) shall be held in escrow by the Chargor's solicitors (provided that the Chargor's solicitors are acceptable to the Chargee) pending (i) the successful sale of any such Dwelling to a third party purchaser for value and delivery of the applicable Net Closing Proceeds (as hereinafter defined) to the Chargee (or as it may otherwise direct) together with payment of the Chargee's reasonable administrative and legal costs incurred with respect to preparation and delivery of such partial discharge(s), and (ii) written notice from the Chargee or its solicitors that any such Discharge Documents may be so released. Any other request for partial discharge shall be made by the Chargor upon not less than five (5) Business Days' prior written notice to the Chargee accompanied by execution copies of all Discharge Documents required to be executed by the Chargee in connection therewith; and

- (e) all monies payable to the Chargee in respect of each partial discharge shall be paid by certified cheque, in lawful money of Canada.

When and if pursuant to exercise of the partial discharge provisions set forth in this Charge, the Chargor has paid to the Chargee all amounts secured by this Charge, then the Chargee acknowledges and agrees that, notwithstanding anything otherwise contained herein, the Chargor shall be entitled to request and obtain from the Chargee one or more partial discharges of this Charge from all parts of the Real Property then remaining undischarged without further payment on account of principal, but subject always to the provisions set forth in this Section 14.

Notwithstanding the foregoing, but subject always to the provisions set forth in this Section 14(a)-(e), the Chargor shall be entitled to request and obtain from the Chargee a partial discharge of any portion of the Real Property designated or intended for use as a Dwelling upon payment to the Chargee for each such Dwelling an amount on account of principal which is equal to one hundred (100%) percent of the Net Closing Proceeds from the sale of each such Dwelling. For the purposes herein, "Net Closing Proceeds" shall mean the sale price of such Dwelling (which sale price shall be approved by the Chargee) less, the aggregate of:

- (a) approved legal costs in respect of such sale;
- (b) approved sales commission in respect of such sale; and
- (c) any Applicable Taxes payable in respect of the sale of such Dwelling.

## 15. CONDOMINIUM PROVISIONS

Provided that if all or any part of the Real Property is or becomes a Dwelling pursuant to the provisions of the Act, the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in this Charge:

- (a) for the purposes of all parts of the Real Property comprising one or more such Dwelling, all references in this Charge to the Real Property shall include the Chargor's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;
- (b) the Chargor shall at all times comply with the Act;
- (c) the Chargor shall pay, when due, all monies payable by the Chargor or with respect to the Real Property in accordance with the provisions of the Act and the declaration, by-laws and rules of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Chargee upon request; and if the Chargor fails to make any such payment, the Chargee may do so at its option and all amounts so paid by the Chargee shall be secured by this Charge and shall be payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided.

liability on the part of the Chargee,

- (f) the Chargor hereby authorizes and directs the Condominium Corporation to permit the Chargee to inspect the records of the Condominium Corporation at any reasonable time;
- (g) in addition to and notwithstanding any other provisions of this Charge, the outstanding principal amount and all accrued interest and other charges secured by this Charge shall, at the Chargee's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:
  - (i) the government of the Condominium Corporation or the government of the Real Property by the Condominium Corporation is terminated;
  - (ii) a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Real Property;
  - (iii) the Condominium Corporation fails to comply with any provision of the Act or its declaration or any of its by-laws and rules; and/or
  - (iv) the Condominium Corporation fails to insure its assets, including the Real Property, in accordance with the Act and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same;
- (h) the Chargee is hereby irrevocably authorized and empowered to exercise all rights of the Chargor (in its capacity as an owner of any particular Dwelling forming a part of the condominium development (the "Condominium")) to vote or to consent in all matters relating to the affairs of the Condominium Corporation (collectively, the "Rights") provided that:
  - (i) the Chargee may at any time or from time to time give notice in writing to the undersigned and the Condominium Corporation that the Chargee does not intend to exercise the Rights until such time as the Lender revokes same and the undersigned may exercise its respective Rights. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter; and
  - (ii) the Chargee shall not by virtue of the assignment to the Chargee of the Rights be under any obligation to vote or consent or to protect the interest of the undersigned;
- (i) the foregoing assignment is made pursuant to the (i) *Land Registration Reform Act*, R.S.O. 1990, Chapter L.4 and (ii) Act.

## 16. ENVIRONMENTAL PROVISIONS

The Chargor represents and warrants that:

- (a) it has not caused or permitted, and to the best of its knowledge, information and belief after making due inquiry, no other person has caused or permitted, any Hazardous Substance to be manufactured, refined, traded, transported or transformed to or from, handled, produced, processed, placed, stored, located or disposed of on, under or at the Real Property;
- (b) it has no knowledge that any owner or occupier of any abutting or neighbouring properties has done any one or more of the matters or things prohibited by subsection (a) hereof;
- (c) it and its tenants, invitees and other occupiers of the Real Property have and will at all times carry out, and to the best of their respective knowledge, information and belief after making due inquiry, all prior owners and occupiers of the Real Property have at all times carried out, all business and other activities upon the Real Property in compliance with all applicable laws intended to protect

- (e) all of the representations and warranties set out herein shall remain true and accurate in all respects until all amounts secured hereunder are paid in full; and
- (f) the Chargee may delay or refuse to make any advance to the Chargor if the Chargee believes that any of the representations and warranties set out herein were not true and accurate when made or at any time thereafter.

The Chargee or agent of the Chargee may, at any time, before and after default of this Charge, and for any purpose deemed necessary by the Chargee, enter upon the Real Property to inspect the Real Property and buildings thereon. Without in any way limiting the generality of the foregoing, the Chargee (or its respective agents) may enter upon the Real Property to conduct any and all tests, inspections, appraisals and environmental audits of the Real Property deemed necessary by the Chargee so as to determine and ensure compliance with the provisions of this Charge including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Real Property or the businesses and other activities conducted thereon at any time and from time to time. The reasonable cost of such testing, assessment, investigation or study, as the case may be, with interest at the Interest Rate, shall be payable by the Chargor forthwith and shall be a charge upon the Real Property. The exercise of any of the powers enumerated in this clause shall not deem the Chargee or its respective agents to be in possession, management or control of the Real Property.

In consideration of the advance of funds by the Chargee, the Chargee and the Covenantor by way of separate guarantee, hereby agree that, in addition to any liability imposed on the Chargor and the Covenantor under any instrument evidencing or securing the Loan indebtedness, the Chargee and the Covenantor shall be jointly and severally liable for any and all of the costs, expenses, damages or liabilities of the Chargee, its directors and officers (including, without limitation, all reasonable legal fees) directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Real Property of any Hazardous Substances and such liability shall survive foreclosure of the security for the Loan and any other existing obligations of the Chargor and Covenantor to the Chargee in respect of the Loan and any other exercise by the Chargee of any remedies available to it for any default under the Charge.

The Chargor covenants that it will:

- (a) remedy forthwith, at its own expense, any environment damage that may occur or be discovered on the Real Property in the future;
- (b) comply with and monitor, on a regular basis, its compliance and the compliance of any tenant, subtenant, assignee or other occupant of the Real Property with all Requirements of Environmental Law;
- (c) notify the Chargee promptly of any event or occurrence that has given, or is likely to give, rise to a report, order, inquiry or investigation relating to a matter that may have an adverse effect on the financial position of the Chargor or the Real Property or any action, suit or proceeding against the Chargor or others having an interest in the Real Property relating to, or a violation of, the Requirements of Environmental Law, including any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Substances into, on or under the Real Property, air and surface and ground water, and will also notify the Chargee promptly of any such above-mentioned information of which the Chargor has or receives knowledge relating to lands adjacent to the Real Property;
- (d) not lease or content to any sublease or assignment of any part of the Real Property to a tenant, subtenant or assignee who may engage in, nor permit any tenant, subtenant, assignee or occupant of the Real Property to engage in a business involving the generation of environmental contamination or the storing, handling, processing, manufacturing or disposing of Hazardous Substances in, or, under or from the Real Property save and except in accordance with the Requirements of Environmental Law, and any lease, sublease or assignment of any part of the Real Property shall preserve as against any lessee, sublessee or assignee all of the rights of the Chargee



Law, any Hazardous Substances from the Real Property forthwith upon their discovery and advise the Chargee forthwith in writing of the procedures taken;

- (f) provide to the Chargee upon request such information, certificates or statutory declarations as to compliance with the provisions hereof and all Requirements of Environmental Law and conduct such environmental audits or site assessments as may be reasonably necessary to ensure compliance with the Requirements of Environmental Law, and to provide to the Chargee copies of any environmental, soils, safety or health reports or studies in respect of the Real Property that it receives or possesses from time to time; and
- (g) permit the Chargee to conduct such inspections and appraisals of all of any of its records, business and property relating to the Real Property at any time and from time to time to monitor compliance with the Requirements of Environmental Law.

The Chargor and Covenantor further covenant that they will be liable for and fully indemnify and save harmless the Chargee and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, costs and expenses of any and every nature and kind whatsoever (including legal fees on a substantial indemnity basis and any environmental remediation costs included by the Chargee) which at any time or from time to time may be paid or incurred by or asserted against any of them as a direct or indirect result of:

- (a) a breach of any of the representations, warranties or covenants hereinbefore set out;
- (b) the presence of any Hazardous Substance in, on or under the Real Property; or
- (c) the discharge, emission, spill or disposal of any Hazardous Substance from the Real Property into or upon any property, the atmosphere, any watercourse, body of water or wetland;

and such losses, damages, costs and expenses include, without limitation:

- (a) the costs of defending, counterclaiming or claiming over against one or more third parties in respect of any action or matter; and
- (b) any settlement of any action or proceeding entered into by the Chargee with the consent of the Chargor (which consent shall not be unreasonably withheld);

and the provisions of all representations, warranties, covenants and indemnifications set out herein shall survive the release and discharge of this Charge and any other security held by the Chargee and repayment and satisfaction of the Loan. The provisions of this indemnity shall enure to the benefit of the Chargee and its successors and assigns including, without limitation, any assignees of this Charge.

## 17. TAXES

The Chargor covenants and agrees that in the event the Chargee does not elect to collect the realty taxes imposed for the Real Property that the Chargor shall pay all instalments as they become due and shall provide proof of payment by way of a receipt to the Chargee on or before the due date for each such payment. In the event the Chargee elects to collect the realty taxes levied for the Real Property together with the monthly interest payment hereunder, and subsequently the monthly realty tax payments collected from the Chargor are insufficient to pay any realty tax bill when due, the Chargor covenants to pay all arrears, insufficiencies and instalments to the Chargee within fourteen (14) days of written notice from the Chargee's solicitors to make such payment. In the event that the Chargor fails to provide proof of payment as set out above, the Chargor agrees that the Chargee's solicitors may obtain verbal information from the applicable Governmental Authority, or for those Governmental Authorities which do not provide verbal information pertaining to realty tax accounts, by obtaining a tax certificate, and the Chargor agrees that the cost of obtaining such information shall be Two Hundred and Fifty (\$250.00) Dollars, plus disbursements and Applicable Taxes which cost will be determined by the Chargee and will be added to the principal amount secured by the Charge. In all other respects, the Chargor covenants and agrees with the Chargee that it will comply strictly with every requirement of any Governmental Authority including without

review and approval of the insurance consultant of the Chargee as contemplated in the Commitment.

19. **ACKNOWLEDGEMENT ON ASSIGNMENT**

In the event that the Chargee assigns, transfers or otherwise conveys its interest hereunder, and upon the delivery of notice of same to the Chargor, the Chargor, if so requested, shall without cost, at any time and from time to time, execute an acknowledgment with respect to the terms and conditions of this Charge and the amount outstanding thereunder. Failure to execute the acknowledgment shall be deemed to be default by the Chargor hereunder.

20. **INSPECTION OF REAL PROPERTY**

The Chargee shall be entitled to inspect the Real Property periodically and/or to appoint a monitor to conduct such inspections. The Chargee and/or any monitor when so appointed shall have the power to:

- (a) inspect physical status of the Real Property and to make or cause to be made such tests and inspections in connection therewith as it may deem advisable; and
- (b) review the management and financial position of the business being conducted at the Real Property, and for such purpose shall have full access to all books and records relating to same.

The Chargee will not, by virtue of the exercise of the foregoing rights, or in exercising any of the rights given to the Chargee in this Charge, be deemed to be a mortgagee-in-possession of the Real Property.

21. **EXPROPRIATION**

If the Real Property or any part of it is expropriated by any Governmental Authority having powers of expropriation, all money payable in respect of such expropriation shall be paid to the Chargee and, if received by the Chargor, shall be received in trust for the Chargee and forthwith paid over to the Chargee subject to the rights of any prior chargee pursuant to the terms of its charge provided such charge is permitted by this Charge. Such money shall, at the option of the Chargee, be applied against the obligations hereunder or such part of them as the Chargee may determine, or be held unappropriated in a collateral account as continuing security for the full payment and performance of the obligations hereunder. The Chargor shall forthwith deliver to the Chargee a copy of any notice of expropriation or proposed expropriation received by the Chargor in respect of the Real Property.

22. **LIENS**

The Chargor shall provide such additional security, information, documentation and assurances as may be required from time to time by the Chargee during the currency of this Charge to determine and to establish and preserve, in all respects, the priority of this Charge and all advances made hereunder over any rights of lien claimants pursuant to the provisions of the *Construction Lien Act* (Ontario). If the Chargee makes any payment, in connection with the determination, establishment or preservation of its priority, whether such payment is made to a lien claimant or other Person claiming an interest in the Real Property or is paid into court, then the amount or amounts so paid and all costs, charges and expenses incurred in connection therewith shall be forthwith payable to the Chargee by the Chargor and shall be a charge on the Real Property and shall be added to the debt hereby secured and shall bear interest at the applicable rate and, in default of payment, the powers of sale and other remedies hereunder may be exercised. It is further agreed that the Chargee shall not become a mortgagee in possession by reason only of exercising any of the rights given to it under this Section 22 or in making any payment to preserve, protect or secure the Real Property.

23. **ADDITIONAL SECURITY**

A General Assignment of Rents, General Security Agreement and other collateral security documents contemplated by the Commitment (collectively, the "Additional Security") are being given as further security to this Charge, which Additional Security is being granted by the Chargor to the Chargee and any

It is agreed that the Chargee's rights hereunder shall in no way merge or be affected by any proceedings the Chargee may take under the Additional Security and the Chargee shall not be required to take proceedings under such Additional Security or any part thereof before proceeding under this Charge, and conversely, no proceedings under this Charge shall in any way affect the rights of the Chargee under such Additional Security and the Chargee shall not be required to take proceedings under this Charge before proceeding under the Additional Security or any part thereof.

Upon request from the Chargee, the Chargor agrees forthwith upon delivery from time to time of any chattels in which it has an ownership interest (including replacements thereof) relating to the Real Property, it shall promptly notify the Chargee, and its solicitors, of such delivery and shall forthwith supply the Chargee with all serial numbers and a description which shall include make and model. The Chargor agrees to provide written evidence of proof of purchase of the chattels, free of encumbrances, and of insurance of same, both in the form and content satisfactory to the Chargee.

#### 24. UNDERTAKINGS

In the event the Chargor or any Covenantor default with respect to any undertakings delivered to the Chargee in consideration of the advance of funds under this Charge or with respect to any covenant contained in the terms and provisions contained in this Charge or the Additional Security, such default will be an event of default under this Charge.

#### 25. SALE ON TERMS

In the event power of sale proceedings are taken, the Chargee, as vendor, may sell the Real Property on terms and if the result is that any mortgages taken back are at a rate lower than the rate for first and/or second mortgages in the industry then the Chargee shall be entitled to sell these charges at a discount and the discount shall form part of the loss incurred by the Chargee and be recoverable against the Chargor.

#### 26. COSTS

It is agreed that all Costs of the Chargee incurred in endeavouring to collect any money overdue under this Charge, including all legal costs on a substantial indemnity basis, whether legal proceedings are instituted or not, shall be added to the principal and be payable forthwith by the Chargor. Furthermore, and in addition to any Costs payable by the Chargee as aforesaid, upon default under this Charge resulting in the Chargee entering into or taking possession of the Real Property or any part of it, the Chargee or any Person appointed on its behalf shall be entitled to a management fee equal to five (5%) percent of the outstanding principal indebtedness hereunder plus Applicable Taxes thereon, which fee shall be added to the mortgage indebtedness and shall bear interest at the rate herein set forth.

#### 27. FINANCIAL AND OPERATING STATEMENTS

In the event the Real Property produce income or cash flow, either through rental or sale proceeds, the Chargor shall deliver monthly operating statements in respect of the Real Property setting forth the monthly gross rents or sales, the costs and expenses of operation and maintenance of the Real Property and such other information and explanations in respect of the same as may be required by the Chargee from time to time.

The Chargor covenants that, within one hundred and twenty (120) days after either the end of each fiscal year of operation of the Real Property, or of the relevant party, as the case may be, or within such other of time as may be specified by the Commitment or required by the Chargee, the Chargor shall deliver or cause to be delivered to the Chargee the following:

- (a) an annual operating statement in respect of the Real Property setting forth the gross rents or gross sales and other income derived from the Real Property, the cost and expenses of operation and maintenance of the Real Property and such other information and explanations in respect of the same as may be required by the Chargee for the immediately preceding fiscal period;

(b) with respect to the Chargee, the annual financial statements of the Chargee including, without

- (c) with respect to each Covenantor, an annual updated net worth statement of each Covenantor in such form and including such content and other information and explanations as may be required by the Chargee.

All such operating and financial statements shall be prepared at the expense of the Chargor and in accordance with generally accepted accounting principles applied on a consistent basis by a duly qualified chartered accountant or certified public accountant acceptable to the Chargee, and shall be submitted in audited form if so required by the Chargee at its option, and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the Chargor.

The Chargor hereby covenants to provide from time to time upon the request of the Chargee any and all business records relating to the Real Property including, without limitation, operating statements, leases, rent rolls, contracts, management agreements, bank statements and any other documents or reports requested by the Chargee.

## 28. MORTGAGE STATEMENT

The Chargor shall pay to the Chargee or its agent an administrative fee of Two Hundred and Fifty (\$250.00) Dollars plus Applicable Taxes in advance for processing and providing each and every mortgage statement requested by or on behalf of the Chargor. Any request for a mortgage statement shall be made in writing allowing the Chargee five (5) Business Days to respond.

## 29. EVENTS OF DEFAULT

At the option of the Chargee, it shall constitute default hereunder if the Chargor or any Covenantor shall become insolvent or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation or any transaction or series of transactions which results in a change in control of the Chargor, reorganization, or any liquidation, winding-up, dissolution or receivership or without the Chargee's consent, seeks continuation under the laws of any other jurisdiction. In the event of a default by the Chargor under this Charge, the Chargor will, if required by the Chargee, establish a separate bank account for the Project.

Provided and without in any way limiting anything herein contained, in the event that:

- (a) the Chargor makes default in the payment of any principal or interest or any other monies required to be paid by the Chargor hereunder;
- (b) the Chargor fails to observe or perform any other covenant or agreement herein contained and/or the Commitment;
- (c) any representation or warranty made herein and/or in the Commitment by the Chargor is at any time while this Charge is outstanding not true;
- (d) any construction lien is registered against any portion of the Real Property and is not removed within ten (10) Business Days;
- (e) an order is made or a resolution is passed for the winding up of the Chargor, or if a petition is filed for the winding up of the Chargor;
- (f) the Chargor becomes insolvent or makes an unauthorized assignment or bulk sale of the Chargor's assets or if a bankruptcy petition is filed or presented against the Chargor;
- (g) any proceedings with respect to the Chargor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or other debtor relief legislation;
- (h) an execution, sequestration, extent or any other process of any court becomes enforceable against the Chargor or if a distress or analogous process is levied against the Real Property or any portion thereof, provided such execution, sequestration, extent, process of court, distress or analogous

be or remain unpaid,

- (j) any charge or encumbrance created or issued by the Chargor having the nature of a fixed and/or floating charge shall become enforceable, whether ranking in priority to, or pari passu with this Charge; and/or
- (k) the Chargor ceases or threatens to cease to carry on its business or if the Chargor commits or threatens to commit any act of bankruptcy;

then, and in any such event, this Charge shall, at the option of the Chargee, be deemed to be in default.

### 30. REMEDIES ON DEFAULT

Upon the occurrence and during the continuance of default the Chargee may, personally or by agent, at such time or times as the Chargee in its discretion may determine to exercise any one or more of the remedies in and by this Charge or conferred by law in case of default, including the following remedies:

- (a) Possession. Entry into possession and use of the Real Property or any part or parts of it with power, among other things, to exclude the Chargor therefrom, to preserve and maintain the Real Property and to make such repairs, replacements, alterations and additions to the whole or any part of the Real Property that the Chargee may think advisable, to satisfy the whole or any part of any prior charge or any other prior claim or encumbrance then affecting the Real Property, to receive rents, income and profits of all kinds owing to the Chargor in respect of the Real Property and to pay from it all expenses of maintaining, preserving, protecting and operating the Real Property, including payments which may be due for insurance, Taxes, assessments, charges or liens prior to the charge of this Charge upon the Real Property and for the services of lawyers, agents and other Persons, and all costs, charges and expenses incurred in connection with the execution of the powers contained in this Charge; and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including the power to advance its own money (with interest payable on it at the Interest Rate) and to enter into contracts and to undertake obligations for the foregoing purposes upon the security of this Charge;
- (b) Court Receiver. Proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Real Property, and removal or replacement from time to time of any such receiver;
- (c) Private Receiver. Appointment by instrument in writing of a receiver of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it, and removal or replacement from time to time of any such receiver;
- (d) Distress. The Chargee may distress for arrears of payments in respect of the principal amount of this Charge, interest or any other amount payable under this Charge;
- (e) Sale or Lease. Sale, lease or other disposition of all or any part of the Real Property whether before or after entry into possession of the Real Property or any part of it;
- (f) Foreclosure. Proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Real Property, with or without entry into possession of it;
- (g) Action on Covenant. Taking any action or proceeding to enforce the performance of any covenant in favour of the Chargor contained in this Charge, whether before or after entry into possession of the Real Property or any part of it;
- (h) Proof of Claim. Filing of proofs of claim and other documents to establish the claims of the Chargee in any proceeding relating to the Chargor; and
- (i) Other. Any other remedy or proceeding authorized or permitted by this Charge or at law or in equity.

Upon the occurrence of any one or more events of default, the Chargee may, in its discretion, by writing appoint a receiver (which term shall include a receiver and manager) (a "Receiver") of the Real Property or any part of it and of the rents and profits from it and may from time to time remove any Receiver and appoint another in his place, and in making any such appointment or appointments the Chargee shall be deemed to be acting as the attorney for the Chargor unless the Chargee indicates in writing a contrary intention. The following provisions shall apply in respect of the appointment of any Receiver:

- (a) such appointment may be made either before or after the Chargee shall have entered into or taken possession of the Real Property or any part of it;
- (b) such Receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee and shall have the power to borrow on the security of the Real Property;
- (c) the Chargee may from time to time fix the remuneration of such Receiver and direct the payment of such remuneration from out of the proceeds of the Real Property;
- (d) such Receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent of the Chargor and in no event the agent of the Chargee and the Chargee in making or consenting to such appointment shall not incur any liability to the Receiver for his remuneration or otherwise howsoever;
- (e) such Receiver shall from time to time have the power to collect, realize, sell or otherwise deal with the Real Property in such manner, upon such terms and conditions and at such time or times as may seem to the Receiver to be advisable and without notice to the Chargor;
- (f) such Receiver shall from time to time have the power to lease any portion of the Real Property which may become vacant for such term and subject to such provisions as the Receiver may deem advisable or expedient and, in so doing, such Receiver shall act as the attorney or agent for the Chargor (unless specifically appointed by the Chargee as the agent of the Chargee) and such Receiver shall have authority to execute, under seal or otherwise, any leases of any such premises in the name of and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever any such Receiver may do on the Real Property; and
- (g) such Receiver shall have full power to manage, operate, amend, repair, alter or extend the Real Property or any part of it in the name of the Chargor for the purpose of securing the payment of rental from the Real Property or any part of it, including the power to:
  - (i) take proceedings in the name of the Chargor or otherwise and to make any arrangement or compromise;
  - (ii) borrow or raise money on all or any part of the Real Property in priority to this Charge or otherwise for such purposes as may be approved by the Chargee;
  - (iii) give any and all notices to be given by the Chargor under any leases and exercise any and all rights of the Chargor under them;
  - (iv) do or cause to be done any and all acts and things under any lease and adjust and settle all matters relating to such performance; and
  - (v) institute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Real Property, defend all suits, proceedings and actions against the Chargor or the Receiver, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action.

the Real Property ranking in priority to the Charge from the Chargor, or to sell, lease or otherwise dispose of the Real Property of the Chargor. The balance of such proceeds, if any, may, at the sole discretion of the Chargee, be held as security for the obligations of the Chargor hereunder or be applied to such of the obligations (whether or not they are due and payable) in such manner and at such times as the Chargee considers appropriate (including in such manner as may be required to comply with any priority, subordination or security sharing arrangements between any one or more of those for whom the Chargee is the chargee) and thereafter will be accounted for as required by law.

33. **ATTORNEY OF THE CHARGOR**

- (a) **Under Leases.** The Chargee, as attorney or agent for the Chargor and in its name, may at any time and from time to time after default, exercise any of the rights, powers, authorities and discretion which under the terms of any of the leases could be exercised by the Chargor.
- (b) **On Sale.** In case of any sale under this Charge, whether by the Chargee or by a Receiver or under any judicial proceedings, the Chargor agrees that it will, forthwith upon request, execute and deliver to the purchaser such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the Real Property or any part or parts of it sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such Receiver may execute and deliver to the purchaser of the Real Property or any part or parts of it such deeds, assurances, conveyances and receipts as may be necessary to transfer good and sufficient title to it, the Chargee or, if appointed, the Receiver being hereby irrevocably constituted the attorney of the Chargor for the purpose of making such sale and executing all deeds, assurances, conveyances, receipts and documents pertaining thereto.

34. **LIMITATION OF OBLIGATIONS**

The Chargee shall not, nor shall any Receiver appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by it or for salaries during any period during which the Chargee or such Receiver is managing the Real Property or any part or parts of it upon or after entry, as provided for in this Charge, nor shall the Chargee nor the Receiver be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable.

35. **CHARGEES COSTS**

The Chargee may (but shall not be obliged to) pay all costs, charges and expenses (including agents' charges and solicitors' fees and disbursements on a solicitor and his own client basis) incurred from time to time in taking, recovering and keeping possession of the Real Property or in performing work in respect of the buildings, erections, structures and improvements situate on it or in inspecting it and generally in any other proceedings taken to realize the money secured by this Charge or in protecting the security for such money, whether any action or other judicial proceeding to enforce such payment has been taken or not. Any and all amounts so paid shall be added to the obligation and shall be payable forthwith by the Chargor to the Chargee with interest at the Interest Rate from the date of payment by the Chargee.

The Chargor shall immediately pay to the Chargee all amounts paid or incurred by or on behalf of the Chargee and all costs and expenses of preparing, executing and registering the Charge and any other related instruments, inspecting, protecting, repairing, completing, insuring, taking, keeping possession of and managing all or any part of the Real Property, preparing the Real Property for sale or lease, selling or leasing the Real Property, collecting all or any part of the Principal amount of this Charge, the exercise of any of the rights of a Receiver appointed pursuant to the provisions of this Charge and such Receiver's fees and expenses, agents' costs and expenses, legal fees and disbursements on a solicitor and his own client basis, and any other costs and expenses of exercising or protecting the Chargee's rights (under this Charge or otherwise) or all or any part of the Real Property.

36. **ADDITIONAL REMEDIES**

property under the court's supervision. Such rights, powers and remedies shall not be capable of being waived or varied except by virtue of an expressed waiver or variation in writing signed by an officer of the Chargee. In particular, any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy, any defective or partial exercise of any of such rights shall not preclude any other or future exercise of that or any other such right or remedy and no act or course of conduct or negotiation on the part of the Chargee or on its behalf shall in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

37. **CONSENT TO PERSONAL INFORMATION AS PER PRIVACY POLICY**

The Chargor and each Covenantor agrees that any information, personal or otherwise, either that the Chargor and each Covenantor has provided or will provide to the Chargee or that the Chargee has on file about the Chargor and each Covenantor shall be retained and may be used as the Chargee deems necessary in its sole discretion for the mortgage placement herein, collection of any arrears or deficiencies in the event of a default and any renewals or extensions of same. The Chargor and each Covenantor also agree to any credit bureau search being carried out by the Chargee from time to time as the Chargee deems necessary in its sole and unfettered discretion. By signing this Charge, the Chargor and each Covenantor agree that the Chargee shall have the right to seek any information from any Governmental Authority at any time either before or after the registration of the Charge and before and after default including to request site inspections or any information on file about the Chargor and each Covenantor and/or the Real Property and the Chargee shall have the right to retain such information which may be used as the Chargee deems necessary in its sole and unfettered discretion. The Chargor and each Covenantor also agree that the Chargee may retain all information provided to it in accordance with the provisions of this Section 37 on file for as long as the Chargee deems appropriate.

38. **RIGHT OF FIRST OPPORTUNITY AND RIGHT OF FIRST REFUSAL**

The Chargor shall grant the Chargee a right of first opportunity (the "**Right of First Opportunity**") and right of first refusal (the "**Right of First Refusal**") with respect to providing any further financing required for the Project, including, without limitation, arranging replacement or additional financing for the Project as contemplated by the Commitment, and/or financing for any further development of the Project or of any improvements thereon (the "**Further Financing**").

The Right of First Opportunity shall be governed as follows:

- (a) prior to consulting with any other lender with respect to any Further Financing, the Chargor shall deliver to the Chargee a written request for such Further Financing, in such form as may be requested by the Chargee, together with all information necessary for the Chargee to process such request;
- (b) following the receipt by the Chargee of such request and ancillary information, the Chargee shall have a period of sixty (60) days therefrom (the "**Opportunity Period**") in which to deliver a written commitment letter or term sheet to the Chargor in respect of the Further Financing; and
- (c) the Chargor shall not communicate with any other lender with respect to provision of the Further Financing during the Opportunity Period, to fully cooperate with the Chargee in good faith during the Opportunity Period, and to provide such further information as the Chargee may require in its exercise of the Right of First Opportunity.

The Right of First Refusal shall be governed as follows:

- (a) the Chargor shall deliver to the Chargee a copy of any written offer of financing received from any other party, including, without limitation, term sheets, mortgage commitments and/or any other type of funding agreement (a "**Third Party Funding Offer**"), the terms of which the Chargor is prepared to accept, immediately upon receipt of same, which Third Party Funding Offer shall be accompanied by any relevant information relating thereto;



- (c) in the event that the Chargee submits a Matching Offer to the Chargor in accordance with the aforesaid provisions, the Chargor shall be required to accept the Matching Offer and forthwith provide to the Chargee such information and documentation as may be required by it in connection therewith;
- (d) in the event that the Chargee fails to submit a Matching Offer to the Chargor in accordance with the aforesaid provisions, the Chargor shall be at liberty to accept the Third Party Funding Offer, provided that in the event that the Chargor fails to do so and/or the terms of the Third Party Funding Offer are subsequently modified in any material respect, the provisions hereof shall remain binding on the Chargor with respect to any new and/or materially modified Third Party Funding Offer; and
- (e) the Chargor shall fully cooperate with the Chargee in good faith during the Matching Period to provide such information as the Chargee may require in the exercise of its Right of First Refusal.

In order to secure the Right of First Opportunity and the Right of First Refusal, the Chargor hereby authorizes the Chargee and its solicitors to register on title to the Real Property, a notice pursuant to Section 118 of the *Land Titles Act* (Ontario), restricting the Chargor from Further Financing, except upon the consent of the Chargee.

#### 39. RENEWAL

Provided that the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargor shall be entitled to renew the Term for one (1) additional six (6) month period (the "Renewal Term"), upon delivery of at least sixty (60) days' prior written notice to the Chargee accordingly. Interest during the Renewal Term shall be calculated and compounded at the Interest Rate in accordance with the provisions hereof. The exercise by the Chargor of the aforesaid right to renew shall be subject to and conditional upon (i) payment by the Chargor to the Chargee of a renewal fee equal to one (1.00%) percent of the Loan, or such portion of the Loan that remains outstanding hereunder, (ii) receipt by the Chargee or its solicitors of a clear subsearch of the Real Property, (iii) delivery to the Chargee of any renewal documentation required by it or its solicitors in connection therewith, and (iv) payment by the Chargor to the Chargee of any associated costs and expenses, including, without limitation, the Chargee's legal fees.

#### 40. SEVERABILITY OF ANY INVALID PROVISIONS

If in the event that any covenant, term or provision contained in this Charge is held to be invalid, illegal or unenforceable in whole or in part, then the validity, legality and enforceability of the remaining covenants, provisions and terms shall not be affected or impaired thereby, and all such remaining covenants, provisions and terms shall continue in full force and effect. All covenants, provisions and terms hereof are declared to be separate and distinct covenants, provisions or terms as the case may be.

#### 41. INDEMNIFICATION OF CHARGE

In the event the Chargee shall, without fault on its part, be made a party to any litigation commenced by or against the Chargor, the Chargor shall protect and hold the Chargee harmless therefrom and shall pay all costs, expenses and solicitors' fees on a substantial indemnity basis. Such costs shall be a charge on the Real Property and may be added to the Loan.

#### 42. HEADINGS

The headings herein are not to be considered part of this Charge and are included solely for the convenience of reference and are not intended to be full or accurate descriptions of the contents of the paragraphs to which they relate.

#### 43. BREACH OF COVENANT

A breach of any covenant contained in this Charge shall constitute a default hereunder and at the option of the Chargee, it may avail itself of the remedies contained in this Charge or available at law.

45. **GOVERNING LAW**

This Charge shall be governed by the laws of the Province of Ontario.

46. **SUCCESSORS AND ASSIGNS**

This Charge shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

47. **AGREEMENTS IN WRITING**

No agreement for modification to this Charge or to any other security agreement provided to the Chargee, including any renewals hereof for extension of the time for payment of the indebtedness due hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the Maturity Date, or of any subsequent term agreed to in writing between the Chargor and the Chargee, and that no modification, amendment, renewal hereof of extension of the time for payment of any indebtedness due hereunder shall result from, or be implied from, any other act, matter or thing, save only an express agreement in writing between the Chargor and the Chargee.

48. **CURRENCY REFERENCES**

All dollar amounts referred to in this Charge are stated in lawful money of Canada.

49. **CONFLICT/AMBIGUITY**

In the event of any inconsistency between the terms of this schedule to this Charge and the terms of Standard Charge Terms 200033, the terms of this schedule to this Charge shall prevail and the inclusion of any term in Standard Charge Terms 200033 that is not set out in this schedule to this Charge shall not be an inconsistency.

50. **CROSS-DEFAULT**

The Chargor acknowledges and agrees that the charge/mortgage of land granted by (ii) Roni Gilyana and Maria Gomes registered against title to the lands and premises legally described in PIN 07376-0031 (LT) and municipally known as 4 Royaleigh Avenue, Toronto, Ontario (the "Additional Charge"), as same may be amended from time to time, forms part of the Additional Security. Any default under the Additional Charge shall entitle the Chargee to exercise any and all remedies under this Charge and any default under this Charge shall entitle the Chargee to exercise any and all remedies under the Additional Charge.



Description 1 PT LT 13 BLK 6 PL 39 AS IN HL269921; CITY OF HAMILTON  
Address 11 CANNON STREET WEST  
HAMILTON  
PIN 17586 - 0003 LT  
Description PT LT 13 BLK 6 PL 39 AS IN HL269921; CITY OF HAMILTON  
Address 15 CANNON ST W  
HAMILTON

### Consideration

Consideration \$2.00

### Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name AREACOR INC.  
Address for Service 270-2869 Bloor Street West  
Toronto, Ontario M8X 1B3

I, Roni Gilyana, President, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

### Party To(s)

Capacity

Share

Name MARSHALLZEHR GROUP INC.  
Address for Service 206-465 Phillip Street  
Waterloo, Ontario N2L 6C7

I, Jana Mirt, Authorized Signing Officer, have the authority to bind the corporation  
This document is not authorized under Power of Attorney by this party.

### Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, WE1293837 registered on 2018/06/29 to which this notice relates is deleted

This notice is for an indeterminate period

Schedule: See Schedules

In accordance with registration WE1293840 registered on 2018/06/29, the consent of MarshallZehr Group Inc. has been obtained for the registration of this document.

The registration of this document is not prohibited by registration WE1293841 registered on 2018/06/29.

### Signed By

Alexandra Mary Ann Krancevic 5000 Yonge Street, 10th Floor acting for Signed 2019 03 11  
Toronto Applicant(s)  
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

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

### Submitted By

CHAITONS LLP 5000 Yonge Street, 10th Floor  
Toronto  
M2N 7E9

2019 03 22

Tel 416-222-8888

**File Number**

Applicant Client File Number : 42606

Party To Client File Number : 42606

AMONG:

**AREACOR INC.**  
(hereinafter called the "Chargor")

- and -

**RONI GILYANA**  
(hereinafter called "Gilyana")

- and -

**MARSHALLZEHR GROUP INC.**  
(hereinafter called the "Chargee")

**WHEREAS:**

- A. By a certain charge/mortgage of land (the "Charge") registered in the Land Registry Office for Wentworth (No. 62) (the "Registry Office") on the 29<sup>th</sup> day of June, 2018, as Instrument No. WE1293837, the Chargor and Gilyana did charge in favour of the Chargee, those lands legally described in PINs 17586-0002 (LT) (the "0002 Property") and 17586-0003 (LT) (the "0003 Property", which together with the 0002 Property shall hereinafter be collectively referred to as the "Property") to secure payment of the principal sum stipulated therein, together with interest and upon other terms and conditions as set out in the Charge;
- B. By a certain transfer/deed of land registered in the Registry Office on the 16<sup>th</sup> day of August, 2018, as Instrument No. WE1303020, Gilyana did transfer all of his right title and interest in and to the 0002 Property to the Chargor;
- C. The Chargor is the present registered owner of the equity of redemption in the Property;
- D. Gilyana agreed to guarantee, as principal debtor and not as surety, the obligations of the Chargor under the Charge, pursuant to a guarantee and postponement of claim dated as of the 25<sup>th</sup> day of June, 2018 (the "Guarantee"); and
- E. The parties hereto have agreed to amend the Charge upon and subject to the terms and conditions hereinafter set forth.

**NOW THEREFORE IN CONSIDERATION OF THE SUM OF TWO (\$2.00) DOLLARS** and other good and valuable consideration now paid by each of the parties hereto to the other (the receipt and sufficiency whereof are hereby acknowledged by each of the parties hereto), the parties hereto hereby agree as follows:

1. The foregoing recitals are true and accurate both in substance and in fact.
2. In this Agreement, all capitalized terms shall have the same meanings ascribed thereto in the Charge, except and only to the extent as amended by or as required by the context of this Agreement Amending Charge/Mortgage of Land. In this Agreement, "Amended Charge" means the Charge as amended by this Agreement.
3. From and after the date of this Agreement, the Charge is hereby amended as follows:
  - (a) the "Principal" under the heading of "Provisions" set forth on Page 1 of the Charge is hereby amended by deleting reference to "\$12,000,000.00" and substituting in its place reference to "\$13,500,000.00";
  - (b) the "Interest Rate" under the heading of "Provisions" set forth on Page 1 of the Charge is hereby amended by deleting reference to "20.00%" and substituting in its place reference to "28.00%";

- (d) Subsection 1(p) of the Schedule attached to the Charge is hereby amended by deleting it in its entirety and replacing it with:
- (p) "Interest Rate" means, with respect to (i) Facility 1, the rate of 10.0% and (ii) Facility 2, the rate of 14.0%, per annum, in each instance, as increased by a factor of two (2) during the Wrap Up Period.
- (e) Section 2 of the Schedule attached to the Charge is hereby amended by deleting it in its entirety and replacing it with:

## **2. LOAN FACILITY EXTENDED TO THE CHARGOR SECURED HEREIN**

Whereas pursuant to the terms of the Commitment, the Chargee has agreed to extend a loan facility to the Chargor in the aggregate principal amount of Eleven Million Six Hundred and Forty Five Thousand (\$11,645,000) Dollars (the "Loan"), for the purposes set out in the Commitment. It is intended for the Loan to be advanced in two (2) facilities, the (i) first facility in the principal amount of Ten Million Four Hundred and Forty Five Thousand (\$10,445,000) Dollars ("Facility 1"), and (ii) second facility in the principal amount of One Million Two Hundred Thousand (\$1,200,000) Dollars ("Facility 2"). Facility 2 shall be fully subordinate and postponed to Facility 1. Subject to the provisions hereinafter set out, an initial advance of the Loan in the principal amount of One Million Nine Hundred Seventy Eight Thousand Five Hundred and Fifty Eight (\$1,978,558) Dollars (the "Initial Advance") shall be extended to the Chargor upon the satisfaction of the conditions set out in the Commitment to be allocated in accordance with the provisions thereof. Subsequent draws of the Loan shall be funded and extended to the Chargor in progress draws (each, a "Progress Draw") in accordance with the terms and conditions of the Commitment provided that no such Progress Draw shall be less than One Hundred Thousand (\$100,000) Dollars. Provided further that in addition to any fees or other costs which shall be deducted from the Initial Advance and/or any Progress Draw in accordance with the terms of the Commitment, the Chargee shall be entitled to holdback an amount equal to the applicable interest on such advance for the balance of the Term (the "Interest Reserve"). The Interest Reserve shall be deemed to be principal advanced to the Chargor as part of the Initial Advance and/or Progress Draw, as applicable, with interest to accrue thereon at the Interest Rate.

And the Chargor hereby charges the Real Property in favour of the Chargee with the indebtedness owing from time to time pursuant to the Loan in the principal amount of up to Eleven Million Six Hundred and Forty Five Thousand (\$11,645,000) Dollars, together with interest thereon at the Interest Rate as set out herein, and Costs and other amounts thereon as provided for herein.

Provided this Charge to be void upon payment to the Chargee of the aggregate of the unpaid balance advanced to the Chargor by the Chargee in accordance with the terms hereof in lawful money of Canada with interest thereon at the Interest Rate, and, which interest shall be calculated and compounded monthly not in advance as hereinafter set forth, as well after as before maturity and both before and after default and judgment as follows:

Interest calculated and compounded monthly, not in advance, at the Interest Rate on the amount advanced from time to time shall become due and payable monthly on the first (1<sup>st</sup>) day of each and every month from and including the first (1<sup>st</sup>) day of the month immediately following the Interest Adjustment Date to and including the first (1<sup>st</sup>) day of the month in which the Maturity Date takes place. The aggregate sum advanced to the Chargor by the Chargee by the Initial Advance and any subsequent Progress Draws in accordance with the terms hereof together with interest thereon at the Interest Rate shall

be insufficient funds to meet the interest obligations in respect of the Loan, payments shall come from the resources of the Chargor and/or the Covenantor.

Notwithstanding any other provision hereof or rule of law or equity to the contrary, and notwithstanding the existing of any subsequent encumbrance, the Chargee shall be permitted to revolve the Loan to the Chargor and at any time and from time to time increase or decrease the principal amount of the Loan secured hereunder provided that at no time shall the principal amount of the Loan exceed the sum of Thirteen Million Five Hundred Thousand (\$13,500,000) Dollars plus interest and Costs thereon as provided above.

And Costs and Taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

- (e) Section 14 of the Schedule attached to the Charge is hereby amended by inserting the following provision as the last paragraph thereof:

All amounts to be paid by the Chargor to the Chargee in respect of any part of the Real Property to be partially discharged shall be applied as follows:

- (a) First, to the repayment of all accrued and unpaid interest on such principal amounts to the date of partial discharge;
- (b) Second, to the repayment of all principal amounts then outstanding to the date of partial discharge in respect of Facility 1; and
- (c) Third, to the repayment of all principal amounts then outstanding to the date of partial discharge in respect of Facility 2.

4. This Agreement shall be read and construed with the Charge and be treated as a part thereof, and for such purpose and so far as may be necessary to effectuate the true intent and meaning of this Agreement, the Charge is hereby amended. Except as specifically amended or varied hereby, this Agreement does not and shall not be construed as revoking, amending, limiting, restricting or otherwise varying any other terms or provisions of the Charge, which, except as specifically amended or varied hereby, shall remain in full force and effect; and, for greater clarity, in no event shall this Agreement be construed so as to in any way restrict or limit the rights given to the Chargee to enforce payment under the Amended Charge and/or realize upon the property charged thereby.
5. Nothing herein contained shall in any way affect or prejudice the rights of the Chargee as against the Chargor, its successors and assigns, or as against any party to the Charge or as against any surety, guarantor, covenantor or other indemnifier of the Charge or any part thereof or as against any collateral which the Chargee may now or hereafter hold in respect of the whole or any part of the monies secured by the Charge.
6. Gilyana hereby consents to the amendments to the Charge as contemplated herein in his capacity as covenantor under the Guarantee.
7. The Chargor and/or Gilyana, to the extent applicable, hereby covenant and agree that they will each execute such further assurances with respect to this Agreement, the Amended Charge and/or the Property as may be required to evidence the true intent and meaning of this Agreement.
8. This Agreement shall be read and construed with all changes of gender and number of the party or parties referred to in each case as required by the context. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the parties hereto hereby attorn to the jurisdiction of the Province of Ontario. This Agreement, together with all schedules annexed hereto and forming a part hereof, shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective heirs, legal personal representatives.



*[remainder of this page intentionally left blank]*



MARSHALLZHR INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have authority to bind the Corporation.

Witness:

)

)

)

\_\_\_\_\_  
Name:

)

\_\_\_\_\_  
Roni Gilyana

)

MARSHALLZHR GROUP INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Handwritten Signature]*  
Sara Mitt  
A.S.O.

I have authority to bind the Corporation.

# T A B L E

***THIS IS EXHIBIT "E" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

## GENERAL SECURITY AGREEMENT

TO: MARSHALLZEHR GROUP INC.

WHEREAS:

- A. Areacor Inc. (the "Debtor") is, or may become, indebted or liable to MarshallZehr Group Inc. (the "Creditor"); and
- B. To secure the payment and performance of the Liabilities (this term, and other capitalized terms used in this Agreement, have the meanings set forth in Section 1), the Debtor has agreed to grant to the Creditor security interests in respect of the Collateral in accordance with the terms of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the Debtor, the Debtor agrees with and in favour of the Creditor as follows:

1. **Definitions.** Capitalized terms used in this Agreement have the respective meanings ascribed thereto in this section:

- (a) "Accessions", "Account", "Chattel Paper", "Consumer Goods", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory" and "Proceeds" have the meanings given to them in the PPSA;
- (b) "Books and Records" means all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the Collateral which are at any time owned by the Debtor or to which the Debtor (or any Person on the Debtor's behalf) has access;
- (c) "Business Day" means any day other than a Saturday, Sunday or statutory holiday in the province referred to in the "Governing Law" section of this Agreement;
- (d) "Collateral" means all of the present and future undertaking, Personal Property (including any Personal Property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Creditor in connection with this Agreement) and real property (including any real property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Creditor in connection with this Agreement and including all fixtures and all buildings placed, installed or erected from time to time on any such real property) of the Debtor (including all such property at any time owned, leased or licensed by the Debtor, or in which the Debtor at any time has any interest or to which the Debtor is or may at any time become entitled) and all Proceeds thereof, wherever located;
- (e) "Contracts" means all contracts, licences and agreements to which the Debtor is at any time a party or pursuant to which the Debtor has at any time acquired rights, and includes (i) all rights of the Debtor to receive money due and to become due to it in connection with a contract, licence or agreement, (ii) all rights of the Debtor to damages arising out of, or for breach or default in

respect of, a contract, licence or agreement, and (iii) all rights of the Debtor to perform and exercise all remedies in connection with a contract, licence or agreement;

- (f) "Default" means the occurrence of any of the following events or conditions:
- (i) the Debtor does not pay any of the Liabilities when due;
  - (ii) the Debtor does not observe or perform any of the Debtor's obligations under this Agreement or any other agreement or document existing at any time between the Debtor and the Creditor;
  - (iii) any representation, warranty or statement made by or on behalf of the Debtor to the Creditor, in this Agreement or otherwise, is untrue in any material respect when made;
  - (iv) the Debtor ceases or threatens to cease to carry on in the normal course all or any material part of the Debtor's business;
  - (v) the Debtor becomes insolvent or bankrupt, or makes or files a proposal, a notice of intention to make a proposal or an assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act* (Canada) or comparable legislation in Canada or any other jurisdiction; a petition in bankruptcy is filed against the Debtor; or, if the Debtor is a corporation, proceedings are initiated under any legislation by or against the Debtor seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;
  - (vi) a Receiver, trustee, custodian or other similar official is appointed in respect of the Debtor or any of the Collateral;
  - (vii) any Person holding a Security Interest in respect of any part of the Collateral takes possession of all or any material part of the Collateral, or a distress, execution or other similar process is levied against all or any material part of the Collateral;
  - (viii) the Debtor challenges or threatens to challenge the validity or enforceability of this Agreement or the Security Interests created by this Agreement; or
  - (ix) the Creditor, acting in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance of any of the Liabilities is or is about to be impaired or that all or any material part of the Collateral is or is about to be placed in jeopardy;
- (g) "Intellectual Property Rights" means all industrial and intellectual property rights, including copyrights, patents, trade-marks, industrial designs, know how and trade secrets and all Contracts related to any such industrial and intellectual property rights;
- (h) "Liabilities" means all present and future indebtedness, liabilities and obligations of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Debtor to the Creditor, wherever and however incurred, and any unpaid balance thereof;

- (i) "Money" has the meaning given to it in the PPSA or, if there is no such meaning given in the PPSA, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency;
- (j) "PPSA" means the *Personal Property Security Act* of the province referred to in the "Governing Law" section of this Agreement, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation);
- (k) "Permits" means all permits, licences, authorizations, approvals, franchises, rights-of-way, easements and entitlements that the Debtor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business;
- (l) "Person" will be broadly interpreted and includes an individual, a corporation, a limited liability company, a partnership, a trust, a joint venture, an association, an unincorporated organization, the government of a country or any political subdivision thereof, any agency or department of any such government, a regulatory agency or any other juridical entity and the heirs, executors, administrators or other legal representatives of an individual;
- (m) "Personal Property" means personal property and includes Accounts, Books and Records, Chattel Paper, Contracts, Documents of Title, Equipment, Goods, Instruments, Intangibles (including Intellectual Property Rights and Permits), Inventory, Money and Securities;
- (n) "Receiver" means a receiver, a manager or a receiver and manager;
- (o) "Securities" has the meaning given to it in the PPSA, or if there is no such meaning given in the PPSA but the PPSA defines "security" instead, it means the plural of that term; and
- (p) "Security Interest" means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, finance lease, title retention agreement or arrangement, security interest or other encumbrance or adverse claim of any nature, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property.

2. **Grant of Security Interest.** As general and continuing collateral security for the due payment and performance of the Liabilities, the Debtor mortgages, charges and assigns to the Creditor, and grants to the Creditor a security interest in, the Collateral.

3. **Limitations on Grant of Security Interest.** If the grant of any Security Interest in respect of any Contract, Intellectual Property Right or Permit under Section 2 would result in the termination or breach of such Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit will not be subject to any Security Interest under Section 2 but will be held in trust by the Debtor for the benefit of the Creditor and, on exercise by the Creditor of any of its rights under this Agreement following Default, assigned by the Debtor as directed by the Creditor. In addition, the Security Interests created by this Agreement do not extend to the last day of the term of any lease or agreement for lease of real property. Such last day will be held by the Debtor in trust for the Creditor and, on the exercise by the Creditor of any of its rights under this Agreement following Default, will be assigned by the Debtor as directed by the Creditor.



4. Attachment; No Obligation to Advance. The Debtor confirms that value has been given by the Creditor to the Debtor, that the Debtor has rights in the Collateral (other than after-acquired property) and that the Debtor and the Creditor have not agreed to postpone the time for attachment of the Security Interests created by this Agreement to any of the Collateral. The Security Interests created by this Agreement will have effect and be deemed to be effective whether or not the Liabilities or any part thereof are owing or in existence before or after or upon the date of this Agreement. Neither the execution of this Agreement nor any advance of funds shall oblige the Creditor to advance any funds or any additional funds.

5. Representations and Warranties. The Debtor represents and warrants to the Creditor that:

(a) Places of Business, Name, Location of Collateral. The Debtor's principal place of business and chief executive office, and the place where it keeps its Books and Records, is at the address specified on the signature page of this Agreement, and its full legal name, and any other name under which it conducts its business, is specified on the signature page of this Agreement.

(b) Title; No Other Security Interests. Except for (i) the Security Interests created by this Agreement, and (ii) any other Security Interests permitted in writing by the Creditor, the Debtor owns (or, with respect to any leased or licensed property forming part of the Collateral, holds a valid leasehold or licensed interest in) the Collateral free and clear of any Security Interests. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings in favour of, or permitted in writing by, the Creditor.

(c) Amount of Accounts. The amount represented by the Debtor to the Creditor from time to time as owing by each account debtor or by all account debtors in respect of the Accounts will at such time be the correct amount so owing by such account debtor or debtors and, unless disclosed in writing by the Debtor to the Creditor at that time, will be owed free of any dispute, set-off or counterclaim.

(d) Authority; Consents. The Debtor has full power and authority to grant to the Creditor the Security Interests created by this Agreement and to execute, deliver and perform its obligations under this Agreement, and such execution, delivery and performance does not contravene any of the Debtor's constating documents or by-laws or any agreement, instrument or restriction to which the Debtor is a party or by which the Debtor or any of the Collateral is bound. Except for any consent that has been obtained and is in full force and effect, no consent of any party (other than the Debtor) to any Contract or any obligor in respect of any Account is required, or purports to be required, for the execution, delivery and performance of this Agreement. Except as disclosed in writing by the Debtor to the Creditor, neither the Debtor nor (to the best of the Debtor's knowledge) any other party to any Account or Contract is in default or is likely to become in default in the performance or observance of any of the terms of such Account or Contract.

(e) Execution and Delivery; Enforceability. This Agreement has been duly authorized, executed and delivered by the Debtor and is a valid and binding obligation of the Debtor enforceable against the Debtor in accordance with its terms, subject only to bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws generally affecting the enforcement of creditors' rights, and to the fact that equitable remedies (such as specific performance and injunction) are discretionary remedies.

(f) Motor Vehicles. A description of all motor vehicles and other "serial number" goods (i.e. trailers, mobile homes, aircraft, aircraft engines and vessels) (including vehicle identification numbers) presently owned by the Debtor and classified as Equipment is set out in Schedule A to this Agreement.

(g) No Consumer Goods. The Debtor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Debtor.

(h) Intellectual Property Rights. All Intellectual Property Rights owned by the Debtor, and all rights of the Debtor to the use of any Intellectual Property Rights, are described in Schedule A to this Agreement. To the best of the Debtor's knowledge, each such Intellectual Property Right is valid, subsisting, unexpired, enforceable and has not been abandoned. Except as set out in such Schedule, none of such Intellectual Property Rights has been licensed or franchised by the Debtor to any Person.

6. Survival of Representations and Warranties. All agreements, representations, warranties and covenants made by the Debtor in this Agreement are material, will be considered to have been relied on by the Creditor and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Creditor and any disposition or payment of the Liabilities until repayment and performance in full of the Liabilities and termination of all rights of the Debtor that, if exercised, would result in the existence of Liabilities.

7. Covenants. The Debtor covenants and agrees with the Creditor that:

(a) Further Documentation. The Debtor will from time to time, at the expense of the Debtor, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Creditor may request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests created by this Agreement). The Debtor acknowledges that this Agreement has been prepared based on the existing laws in the province referred to in the "Governing Law" section of this Agreement and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, the Debtor agrees that the Creditor will have the right to require that this Agreement be amended, supplemented or replaced, and that the Debtor will immediately on request by the Creditor authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if the Debtor merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Creditor Security Interests similar to, and having the same effect as, the Security Interests created by this Agreement.

(b) Delivery of Certain Collateral. Promptly upon request from time to time by the Creditor, the Debtor will deliver (or cause to be delivered) to the Creditor, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Creditor may reasonably request, any and all Instruments, Securities, Documents of Title and Chattel Paper included in or relating to the Collateral as the Creditor may specify in its request.

(c) Payment of Expenses; Indemnification. The Debtor will pay on demand, and will indemnify and save the Creditor harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and own client basis and any sales, goods and services or other similar taxes payable to any governmental authority with respect to any such liabilities, costs and expenses) (i) incurred by the Creditor in the preparation, registration, administration or enforcement of this Agreement, (ii) with respect to, or resulting from, any failure or delay by the Debtor in performing or observing any of its obligations under this Agreement, or (iii) incurred by the Creditor in performing or observing any of the other covenants of the Debtor under this Agreement.

(d) Maintenance of Records. The Debtor will keep and maintain accurate and complete records of the Collateral, including a record of all payments received and all credits granted with respect to the Accounts and Contracts. At the written request of the Creditor, the Debtor will mark any Collateral specified by the Creditor to evidence the existence of the Security Interests created by this Agreement.

(e) Right of Inspection. The Creditor may, at all times during normal business hours, without charge, examine and make copies of all Books and Records, and may discuss the affairs, finances and accounts of the Debtor with its officers and accountants. The Creditor may also, without charge, enter the premises of the Debtor where any of the Collateral is located for the purpose of inspecting the Collateral, observing its use or otherwise protecting its interests in the Collateral. The Debtor, at its expense, will provide the Creditor with such clerical and other assistance as may be reasonably requested by the Creditor to exercise any of its rights under this paragraph.

(f) Limitations on Other Security Interests. The Debtor will not create, incur or permit to exist, and will defend the Collateral against, and will take such other action as is necessary to remove, any and all Security Interests in and other claims affecting the Collateral, other than the Security Interests created by this Agreement or as permitted in writing by the Creditor, and the Debtor will defend the right, title and interest of the Creditor in and to the Collateral against the claims and demands of all Persons.

(g) Limitations on Dispositions of Collateral. The Debtor will not, without the Creditor's prior written consent, sell, lease or otherwise dispose of any of the Collateral, except that Inventory may be sold, leased or otherwise disposed of, and subject to Section 17, Accounts may be collected, in the ordinary course of the Debtor's business. Following Default, all Proceeds of the Collateral (including all amounts received in respect of Accounts) received by or on behalf of the Debtor, whether or not arising in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Creditor and will be immediately paid to the Creditor.

(h) Limitations on Modifications, Waivers, Extensions. Other than as permitted by paragraph (i) below, the Debtor will not (i) amend, modify, terminate or waive any provision of any Permit, Contract or any document giving rise to an Account in any manner which is or could reasonably be expected to be materially adverse to the Debtor or the Creditor, or (ii) fail to exercise promptly and diligently its rights under each Contract and each document giving rise to an Account if such failure is or could reasonably be expected to be materially adverse to the Debtor or the Creditor.

(i) Limitations on Discounts, Compromises, Extensions of Accounts. Other than in the ordinary course of business of the Debtor consistent with previous practices, the Debtor will not (i) grant any extension of the time for payment of any Account, (ii) compromise, compound or settle any Account

for less than its full amount, (iii) release, wholly or partially, any Person liable for the payment of any Account, or (iv) allow any credit or discount of any Account.

(j) Maintenance of Collateral. The Debtor will maintain all tangible Collateral in good operating condition, ordinary wear and tear excepted, and the Debtor will provide all maintenance, service and repairs necessary for such purpose.

(k) Insurance. The Debtor will keep the Collateral insured with financially sound and reputable companies to its full insurable value against loss or damage by fire, explosion, theft and such other risks as are customarily insured against by Persons carrying on similar businesses or owning similar property within the vicinity in which the Debtor's applicable business or property is located. The applicable insurance policies will be in form and substance satisfactory to the Creditor, and will (i) contain a breach of warranty clause in favour of the Creditor, (ii) provide that no cancellation, material reduction in amount or material change in coverage will be effective until at least 30 days after receipt of written notice thereof by the Creditor, (iii) contain by way of endorsement a mortgagee clause in form and substance satisfactory to the Creditor, and (iv) name the Creditor as loss payee as its interest may appear. The Debtor will, from time to time at the Creditor's request, deliver the applicable insurance policies (or satisfactory evidence of such policies) to the Creditor. If the Debtor does not obtain or maintain such insurance, the Creditor may, but need not, do so, in which event the Debtor will immediately on demand reimburse the Creditor for all payments made by the Creditor in connection with obtaining and maintaining such insurance, and until reimbursed any such payment will form part of the Liabilities and will be secured by the Security Interests created by this Agreement. Neither the Creditor nor its correspondents or its agents will be responsible for the character, adequacy, validity or genuineness of any insurance, the solvency of any insurer, or any other risk connected with insurance.

(l) Further Identification of Collateral. The Debtor will promptly furnish to the Creditor such statements and schedules further identifying and describing the Collateral, and such other reports in connection with the Collateral, as the Creditor may from time to time reasonably request, including an updated list of any motor vehicles or other "serial number" goods owned by the Debtor and classified as Equipment, including vehicle identification numbers.

(m) Notices. The Debtor will advise the Creditor promptly, in reasonable detail, of (i) any Security Interest (other than the Security Interests created by this Agreement and any Security Interest permitted in writing by the Creditor) on, or claim asserted against, any of the Collateral, (ii) the occurrence of any event, claim or occurrence that could reasonably be expected to have a material adverse effect on the value of the Collateral or on the Security Interests created by this Agreement, (iii) any change in the location of any place of business (including additional locations) or the chief executive office of the Debtor, (iv) any change in the location of any of the tangible Collateral (including additional locations), (v) any acquisition of real property by the Debtor, (vi) any change in the name of the Debtor, (vii) any merger or amalgamation of the Debtor with any other Person, (viii) any additional jurisdiction in which material accounts debtors of the Debtor are located, and (ix) any material loss of or damage to any of the Collateral. The Debtor agrees not to effect or permit any of the changes referred to in clauses (iii) to (viii) above unless all filings have been made and all other actions taken that are required in order for the Creditor to continue at all times following such change to have a valid and perfected Security Interest in respect of all of the Collateral.

(n) Delivery of Agreements re Intellectual Property Rights. The Debtor will promptly, following demand from time to time by the Creditor, authorize, execute and deliver any and all

agreements, instruments, documents and papers that the Creditor may request to evidence the Creditor's Security Interests in any Intellectual Property Rights and, where applicable, the goodwill of the business of the Debtor connected with the use of, and symbolized by, any such Intellectual Property Rights.

(o) Limitation on Loans and Guarantees. The Debtor will not, without the Creditor's prior written consent, lend money to or guarantee the obligations of any other third party.

(p) Limitation on Investments or Acquisitions. The Debtor will not, without the Creditor's prior written consent, make any investments or acquisitions other than in the normal course of business.

8. Rights on Default. On Default, all of the Liabilities will, at the option of the Creditor, become immediately due and payable and the security constituted by this Agreement will become enforceable, and the Creditor may, personally or by agent, at such time or times as the Creditor in its discretion may determine, do any one or more of the following:

(a) Rights under PPSA, etc. Exercise all of the rights and remedies granted to secured parties under the PPSA and any other applicable statute, or otherwise available to the Creditor at law or in equity.

(b) Demand Possession. Demand possession of any or all of the Collateral, in which event the Debtor will, at the expense of the Debtor, immediately cause the Collateral designated by the Creditor to be assembled and made available and/or delivered to the Creditor at any place designated by the Creditor.

(c) Take Possession. Enter on any premises where any Collateral is located and take possession of, disable or remove such Collateral.

(d) Deal with Collateral. Hold, store and keep idle, or operate, lease or otherwise use or permit the use of, any or all of the Collateral for such time and on such terms as the Creditor may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person in respect of any of the Collateral.

(e) Carry on Business. Carry on, or concur in the carrying on of, any or all of the business or undertaking of the Debtor and enter on, occupy and use (without charge by the Debtor) any of the premises, buildings, plant and undertaking of, or occupied or used by, the Debtor.

(f) Enforce Collateral. Seize, collect, receive, enforce or otherwise deal with any Collateral in such manner, on such terms and conditions and at such times as the Creditor deems advisable.

(g) Dispose of Collateral. Realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Creditor or elsewhere, on such terms and conditions as the Creditor may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.

(h) Court-Approved Disposition of Collateral. Apply to a court of competent jurisdiction for the sale or foreclosure of any or all of the Collateral.

(i) Purchase by Creditor. At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and, upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Debtor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Creditor, the Creditor may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Liabilities then due and payable to it as a credit against the purchase price.

(j) Collect Accounts. Notify the account debtors or obligors under any Accounts of the assignment of such Accounts to the Creditor and direct such account debtors or obligors to make payment of all amounts due or to become due to the Debtor in respect of such Accounts directly to the Creditor and, upon such notification and at the expense of the Debtor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Creditor deems appropriate in the circumstances.

(k) Transfer of Securities. Transfer any Securities forming part of the Collateral into the name of the Creditor or its nominee, with or without disclosing that the Securities are subject to the Security Interests arising under this Agreement.

(l) Exercise of Rights. Exercise any and all rights, privileges, entitlements and options pertaining to any Securities forming part of the Collateral as if the Creditor were the absolute owner of such Securities.

(m) Payment of Liabilities. Pay any liability secured by any Security Interest against any Collateral. The Debtor will immediately on demand reimburse the Creditor for all such payments.

(n) Borrow and Grant Security Interests. Borrow money for the maintenance, preservation or protection of any Collateral or for carrying on any of the business or undertaking of the Debtor and grant Security Interests on any Collateral (in priority to the Security Interests created by this Agreement or otherwise) as security for the money so borrowed. The Debtor will immediately on demand reimburse the Creditor for all such borrowings.

(o) Appoint Receiver. Appoint by instrument in writing one or more Receivers of the Debtor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Creditor under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Creditor will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of the Debtor and not of the Creditor.

(p) Court-Appointed Receiver. Apply to a court of competent jurisdiction for the appointment of a Receiver of the Debtor or of any or all of the Collateral.

(q) Consultants. Require the Debtor to engage a consultant of the Creditor's choice, or engage a consultant on its own behalf, such consultant to receive the full cooperation and support of the Debtor and its employees, including unrestricted access to the premises, books and records of the Debtor; all reasonable fees and expenses of such consultant shall be for the account of the Debtor and the Debtor

hereby authorizes any such consultant to report directly to the Creditor and to disclose to the Creditor any and all information obtained in the course of such consultant's employment.

The Creditor may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on the Debtor or any other Person, and the Debtor by this Agreement waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Without prejudice to the ability of the Creditor to dispose of the Collateral in any manner which is commercially reasonable, the Debtor acknowledges that a disposition of Collateral by the Creditor which takes place substantially in accordance with the following provisions will be deemed to be commercially reasonable:

- (i) Collateral may be disposed of in whole or in part;
- (ii) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (iii) any purchaser or lessee of Collateral may be a customer of the Creditor;
- (iv) a disposition of Collateral may be on such terms and conditions as to credit or otherwise as the Creditor, in its sole discretion, may deem advantageous; and
- (v) the Creditor may establish an upset or reserve bid or price in respect of Collateral.

9. **Grant of Licence.** For the purpose of enabling the Creditor to exercise its rights and remedies under Section 8 when the Creditor is entitled to exercise such rights and remedies, and for no other purpose, the Debtor grants to the Creditor an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Debtor) to use, assign or sublicense any or all of the Intellectual Property Rights, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same.

10. **Sale of Securities.** The Creditor is authorized, in connection with any offer or sale of any Securities forming part of the Collateral, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Securities. The Debtor further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Creditor will not be liable or accountable to the Debtor for any discount allowed by reason of the fact that such Securities are sold in compliance with any such limitation or restriction.

11. **Application of Proceeds.** All Proceeds of Collateral received by the Creditor or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other

expenses of enforcing the Creditor's rights under this Agreement), Security Interests in favour of Persons other than the Creditor, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Creditor or the Receiver to protect, preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Security Interests on the Collateral ranking in priority to any of the Security Interests created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds may, at the sole discretion of the Creditor, be held as collateral security for the Liabilities or be applied to such of the Liabilities (whether or not the same are due and payable) in such manner and at such times as the Creditor considers appropriate and thereafter will be accounted for as required by law.

12. **Continuing Liability of Debtor.** The Debtor will remain liable for any Liabilities that are outstanding following realization of all or any part of the Collateral and the application of the Proceeds thereof.

13. **Creditor's Appointment as Attorney-in-Fact.** The Debtor constitutes and appoints the Creditor and any officer or agent of the Creditor, with full power of substitution, as the Debtor's true and lawful attorney-in-fact with full power and authority in the place of the Debtor and in the name of the Debtor or in its own name, from time to time in the Creditor's discretion after a Default, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released. Nothing in this Section affects the right of the Creditor as secured party or any other Person on the Creditor's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as the Creditor or such other Person considers appropriate.

14. **Performance by Creditor of Debtor's Obligations.** If the Debtor fails to perform or comply with any of the obligations of the Debtor under this Agreement, the Creditor may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Creditor incurred in connection with any such performance or compliance will be payable by the Debtor to the Creditor immediately on demand, and until paid, any such expenses will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.

15. **Interest.** If any amount payable to the Creditor under this Agreement is not paid when due, the Debtor will pay to the Creditor, immediately on demand, interest on such amount from the date due until paid, at a nominal annual rate equal at all times Seventeen (17.0%) percent. All amounts payable by the Debtor to the Creditor under this Agreement, and all interest on all such amounts, compounded monthly on the last Business Day of each month, will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.

16. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.



17. Rights of Creditor; Limitations on Creditor's Obligations.

(a) Limitations on Creditor's Liability. The Creditor will not be liable to the Debtor or any other Person for any failure or delay in exercising any of the rights of the Debtor under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral, or to preserve rights against prior parties). Neither the Creditor, a Receiver nor any agent of the Creditor (including, in Alberta or British Columbia, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. Neither the Creditor nor any Receiver will be liable for any, and the Debtor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Creditor or any Receiver) caused for any reason other than the gross negligence or willful misconduct of the Creditor or such Receiver.

(b) Debtor Remains Liable under Accounts and Contracts. Notwithstanding any provision of this Agreement, the Debtor will remain liable under each of the documents giving rise to the Accounts and under each of the Contracts to observe and perform all the conditions and obligations to be observed and performed by the Debtor thereunder, all in accordance with the terms of each such document and Contract. The Creditor will have no obligation or liability under any Account (or any document giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Creditor of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Creditor will not be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any Account (or any document giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any document giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

(c) Collections on Accounts and Contracts. The Creditor hereby authorizes the Debtor to collect the Accounts and payments under the Contracts in the normal course of the business of the Debtor and for the purpose of carrying on the same. If required by the Creditor at any time, any payments of Accounts or under Contracts, when collected by the Debtor, will be forthwith (and, in any event, within two Business Days) deposited by the Debtor in the exact form received, duly endorsed by the Debtor to the Creditor if required, in a special collateral account maintained by the Creditor, and until so deposited, will be held by the Debtor in trust for the Creditor, segregated from other funds of the Debtor. All such amounts while held by the Creditor (or by the Debtor in trust for the Creditor) and all income in respect thereof will continue to be collateral security for the Liabilities and will not constitute payment thereof until applied as hereinafter provided. If a Default has occurred and is continuing, the Creditor may apply all or any part of the amounts on deposit in said special collateral account on account of the Liabilities in such order as the Creditor may elect. At the Creditor's request, the Debtor will deliver to the Creditor any documents evidencing and relating to the agreements and transactions which gave rise to the Accounts and Contracts, including all original orders, invoices and shipping receipts.

(d) Analysis of Accounts. The Creditor will have the right to analyze and verify the Accounts in any manner and through any medium that it reasonably considers advisable, and the Debtor will furnish all such assistance and information as the Creditor may require in connection therewith. The Creditor may in its own name or in the name of others (including the Debtor) communicate with account debtors on the Accounts and parties to the Contracts to verify with them to its satisfaction the existence,

status, amount and terms of any Account or any Contract. At any time and from time to time, upon the Creditor's reasonable request and at the expense of the Debtor, the Debtor will furnish to the Creditor reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts.

18. **Dealings by Creditor.** The Creditor will not be obliged to exhaust its recourse against the Debtor or any other Person or against any other security it may hold in respect of the Liabilities before realizing upon or otherwise dealing with the Collateral in such manner as the Creditor may consider desirable. The Creditor may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Debtor and any other Person, and with any or all of the Collateral, and with other security and sureties, as the Creditor may see fit, all without prejudice to the Liabilities or to the rights and remedies of the Creditor under this Agreement. The powers conferred on the Creditor under this Agreement are solely to protect the interests of the Creditor in the Collateral and will not impose any duty upon the Creditor to exercise any such powers.

19. **Communication.** Any communication required or permitted to be given under this Agreement will be in writing and will be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by facsimile transmission or other similar means of electronic communication, in each case to the address or facsimile number of the Debtor or Creditor set out in this Agreement. Any communication so given will be deemed to have been given and to have been received on the day of delivery if so delivered, or on the day of facsimile transmission or sending by other means of recorded electronic communication provided that such day is a Business Day and the communication is so delivered or sent prior to 4:30 p.m. (local time at the place of receipt). Otherwise, such communication will be deemed to have been given and to have been received on the following Business Day. Any communication sent by mail will be deemed to have been given and to have been received on the fifth Business Day following mailing, provided that no disruption of postal service is in effect. The Debtor and the Creditor may from time to time change their respective addresses or facsimile numbers for notice by giving notice to the other in accordance with the provisions of this Section.

20. **Release of Information.** The Debtor authorizes the Creditor to provide a copy of this Agreement and such other information as may be requested of the Creditor by Persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Debtor.

21. **Waivers and Indemnity.** To the extent permitted by applicable law, the Debtor unconditionally and irrevocably waives (i) all claims, damages and demands it may acquire against the Creditor arising out of the exercise by the Creditor or any Receiver of any rights or remedies under this Agreement or at law, and (ii) all of the rights, benefits and protections given by any present or future statute that imposes limitations on the rights, powers or remedies of a secured party or on the methods of, or procedures for, realization of security, including any "seize or sue" or "anti-deficiency" statute or any similar provision of any other statute. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Creditor. The Creditor will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Creditor, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Creditor of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Creditor would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of

the Debtor to pay the Liabilities, nor will the same operate as a merger or any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any novation. The Debtor agrees to indemnify the Creditor from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (except by reason of the gross negligence or willful misconduct of the Creditor or any of its agents or employees) which may be imposed on, incurred by, or asserted against the Creditor and arising by reason of any action (including any action referred to in this Agreement) or inaction or omission to do any act legally required by the Debtor. This indemnification will survive the satisfaction, release or extinguishment of the Liabilities and the Security Interests created by this Agreement.

22. **Amalgamation.** If the Debtor is a corporation, the Debtor acknowledges that if it amalgamates with any other corporation or corporations, then (i) the Collateral and the Security Interests created by this Agreement will extend to and include all the property and assets of the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (ii) the term "Debtor", where used in this Agreement, will extend to and include the amalgamated corporation, and (iii) the term "Liabilities", where used in this Agreement, will extend to and include the Liabilities of the amalgamated corporation.

23. **Governing Law; Attornment.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario. Without prejudice to the ability of the Creditor to enforce this Agreement in any other proper jurisdiction, the Debtor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such province. To the extent permitted by applicable law, the Debtor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province.

24. **Interpretation.** Unless otherwise expressly provided in this Agreement, if any matter in this Agreement is subject to the consent or approval of the Creditor or is to be acceptable to the Creditor, such consent, approval or determination of acceptability will be in the sole discretion of the Creditor. If any provision in this Agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. The division of this Agreement into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Agreement, the word "including" (or includes) means "including (or includes) without limitation". Any reference in this Agreement to a "Section" means the relevant Section of this Agreement. If more than one Debtor executes this Agreement, their obligations under this Agreement are joint and several.

25. **Successors and Assigns.** This Agreement will enure to the benefit of, and be binding on, the Debtor and its successors and permitted assigns, and will enure to the benefit of, and be binding on, the Creditor and its successors and assigns. The Debtor may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Creditor. If the Debtor or the Creditor is an individual, then the term "Debtor" or "Creditor", as applicable, will also include his or her heirs, administrators and executors.

26. Acknowledgment of Receipt/Waiver. The Debtor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.

*[remainder of this page intentionally left blank]*

DATED as of the 25 day of June, 2018.

AREACOR INC.

Per: 

Name: Roni Gilyana

Title: President

I have authority to bind the Corporation.

Address: 3044 Bloor Street West Suite 270  
Toronto, Ontario  
M8X 2Y8

Attention: Roni Gilyana  
Telecopier: \_\_\_\_\_  
E-mail: Roni@areacor.com

**SCHEDULE A**

**Locations of Collateral (Paragraph 5(a))**

Those lands and premises legally described in PINs:

- (a) 17586-0002 (LT); and
- (b) 17586-0003 (LT).

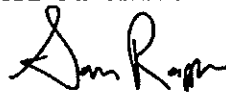
**Locations of Real Property (Paragraph 5(a))**

Those lands and premises legally described in PINs:

- (a) 17586-0002 (LT); and
- (b) 17586-0003 (LT).

# TAB F

***THIS IS EXHIBIT "F" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
***A Commissioner Etc.***



DEFICIENCY AND COMPLETION AGREEMENT

THIS AGREEMENT made as of the 25 day of June, 2018.

BY:

AREACOR INC. and RONI GILYANA  
(hereinafter collectively called the "Borrower")

IN FAVOUR OF:

MARSHALLZEHR GROUP INC.  
(hereinafter called the "Lender")

WHEREAS:

- A. The Lender has agreed to extend a loan (the "Loan") in favour of the Borrower on the terms and subject to the conditions set out in a letter of commitment dated as of May 15, 2018, issued by the Lender with respect to the Loan, as amended from time to time (collectively, the "Commitment");
- B. The Borrower intends to redevelop those lands and premises municipally known as 11 and 15 Cannon Street West, Hamilton, Ontario and legally described in PINs 17586-0002 (LT) and 17586-0003 (LT) (collectively, the "Property"); and
- C. Pursuant to the terms of the Commitment and as security for amounts owing to the Lender on account of the Loan, the Borrower has agreed to execute and deliver this Agreement in favour of the Lender.

NOW THEREFORE in consideration of the Lender making the initial advance under the Loan and in consideration of the sum of Two (\$2.00) Dollars paid by the Lender to each of the undersigned, the receipt and sufficiency of which is hereby acknowledged by each of them, the undersigned hereby jointly and severally undertake, covenant and agree as follows:

- 1. The undersigned will commence, carry out and complete the development of the Property and construction of the contemplated improvement thereon (the "Improvements") in accordance with the plans, specifications and other material approved by the Lender, all with due diligence, in a good and workmanlike manner and in accordance with all agreements made with, undertakings given to, and all statutory and regulatory requirements of, all governmental authorities having jurisdiction.
- 2. The undersigned will pay, from their own resources, all amounts incurred or arising on account of any of the following (collectively, the "Cost Overruns"):
  - (a) the amount, if any, by which the aggregate of all hard and soft costs incurred and required to be incurred in order to complete the Improvements exceeds the amount allocated therefor in the budget for the Improvements approved by the Lender; and
  - (b) any and all amounts, as determined in the reasonable opinion of the Lender in consultation with the architect, engineer or other consultant engaged in connection with the Property, required to pay the unpaid costs associated with the Improvements so that, after making such payment, the aggregate hard and soft costs required to be incurred in

order to complete same will not exceed the unadvanced portion of the Loan.

3. The undersigned will pay all Cost Overruns when and if the same arise and, in any event, on demand for same by the Lender or by its authorized agent. If any Cost Overruns are not promptly paid by the undersigned forthwith after demand therefor, the Lender may, at its option, make any such payment on behalf of the undersigned and any amount so paid shall become immediately due and payable to the Lender together with interest thereon at the rate prescribed by the Loan calculated from the date of payment by the Lender until the date of repayment.
4. The undersigned will promptly satisfy any and all amounts owing to any trades or lien claimants with respect to the Property, will promptly take all necessary steps at their cost to discharge or vacate any and all applicable construction liens and will at all times keep the Property free and clear from all liens and other claims.
5. Failure by the undersigned to comply with the provisions of this Agreement shall constitute default by the Borrower under the Loan and all security given in connection therewith, whereupon the Lender shall be entitled, at its option, to enforce all remedies applicable to it in and by this Agreement, any security given in connection therewith or conferred by law.
6. The obligations of the undersigned pursuant to this Agreement are joint and several and are in addition to and not in substitution for any other obligations, security documents or guarantees given by any of the undersigned to the Lender.
7. This Agreement shall enure to the benefit of the Lender and its successors and assigns, and shall be binding upon the undersigned and their heirs, personal representatives, successors and assigns. The term "successors" shall include, without limitation, any corporation resulting from the amalgamation of a corporation with another corporation and any trustee in bankruptcy.
8. The covenants, undertakings and agreements of the undersigned in this Agreement shall survive the execution and delivery of this Agreement and any advances made by the Lender to the Borrower, and shall continue in full force and effect until the Loan is repaid in full.
9. This Agreement shall be governed by and interpreted in all respects by the laws of the Province of Ontario and the laws of Canada applicable thereto.
10. This Agreement may be signed in counterparts and by facsimile or other form of electronic transmission, each of which shall for all purposes be deemed to be an original, and all such separate counterparts shall together constitute one and the same instrument.

*[remainder of this page intentionally left blank]*

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

AREACOR INC.

Per: \_\_\_\_\_  
Name: Roni Gilyana  
Title: President

I have authority to bind the Corporation.

Witness: \_\_\_\_\_  
Name: \_\_\_\_\_

)  
)  
) \_\_\_\_\_  
) Roni Gilyana  
)  
)

**TAB G**

***THIS IS EXHIBIT "G" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

*Description* PT LT 13 BLK 6 PL 39 AS IN HL269921; CITY OF HAMILTON  
*Address* 11 CANNON STREET WEST  
HAMILTON  
*PIN* 17586 - 0003 LT *Interest/Estate* Fee Simple  
*Description* PT LT 13 BLK 6 PL 39 AS IN HL269921; CITY OF HAMILTON  
*Address* 15 CANNON ST W  
HAMILTON

### Chargor(s)

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

*Name* AREACOR INC.  
*Address for Service* Suite 207, 3044 King Street West  
Toronto, ON M8X 2Y8

I, Roni Gilyana, President, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

*Name* GILYANA, RONI  
*Address for Service* 4 Royaleigh Avenue  
Toronto, ON M9P 2J5

I am at least 18 years of age.  
The property is not ordinarily occupied by me and my spouse, who is not separated from me, as our family residence.  
This document is not authorized under Power of Attorney by this party.

### Chargee(s)

*Capacity*

*Share*

*Name* AVIVA INSURANCE COMPANY OF CANADA  
*Address for Service* c/o Suite 205  
600 Cochrane Drive  
Markham, ON L3R 5K3

### Statements

Schedule: The owners of PIN 17586-0002(LT) are Roni Gilyana and Areacor Inc. and the owner of PIN 17586-0003 (LT) is Areacor Inc.

### Provisions

<i>Principal</i>	\$3,500,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	See Standard Charge Terms		
<i>Balance Due Date</i>	On Demand		
<i>Interest Rate</i>	See Standard Charge Terms		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>	See Standard Charge Terms		
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>	200909		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>			

Fax 416-250-5300

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

**Submitted By**

HARRIS, SHEAFFER LLP

610-4100 Yonge St.  
Toronto  
M2P 2B5

2017 11 23

Tel 416-250-5800

Fax 416-250-5300

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$63.65

*Total Paid* \$63.65

**File Number**

*Chargor Client File Number :* 170339

*Chargee Client File Number :* 170929

**TAB H**



***THIS IS EXHIBIT "H" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

Address 11 CANNON STREET WEST  
HAMILTON

PIN 17586 - 0003 LT Interest/Estate Fee Simple  
Description PT LT 13 BLK 6 PL 39 AS IN HL269921; CITY OF HAMILTON

Address 15 CANNON ST W  
HAMILTON

### Chargor(s)

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

Name AREACOR INC.  
Address for Service 2869 Bloor Street West, Suite 270  
Etobicoke, Ontario M8X 1B3

I, Roni Gilyana, President, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

### Chargee(s)

Capacity

Share

Name CITY OF HAMILTON  
Address for Service 71 Main Street West  
Hamilton, Ontario L8P 4Y5

### Statements

Schedule: See Schedules

I Roger M. Vinayagalingam solicitor make the following law statement Registration of this document is not prohibited by registration number WE1293841 registered on 2018/06/29, which prevents dealings against charge number WE1293837 registered on 2018/06/29. In accordance with registration WE1293841 registered on 2018/06/29, the consent of Marshallzehr Group Inc. has been obtained for the registration of this document. The registration of this document is not prohibited by registration WE1293841 registered on 2018/06/29.

Registration of this document is not prohibited by registration number WE1293840 registered on 2018/06/29, which prevents dealings against charge number WE1293837 registered on 2018/06/29.

In accordance with registration WE1293840 registered on 2018/06/29, the consent of Marshallzehr Group Inc. has been obtained for the registration of this document.

The registration of this document is not prohibited by registration WE1293840 registered on 2018/06/29.

### Provisions

Principal	\$208,755.90	Currency	CDN
Calculation Period			
Balance Due Date	ON DEMAND		
Interest Rate	See Schedule "A" - DC Deferral Agreement		
Payments			
Interest Adjustment Date			
Payment Date	See Schedule "A" - DC Deferral Agreement		
First Payment Date			
Last Payment Date			
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor	Roni Gilyana		

### Additional Provisions

The mortgage is security for the amounts payable pursuant to the DC Deferral Agreement attached hereto as Schedule "A".

Fax 416-250-5300

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

**Submitted By**

HARRIS, SHEAFFER LLP

610-4100 Yonge St.  
Toronto  
M2P 2B5

2019 04 30

Tel 416-250-5800

Fax 416-250-5300

**Fees/Taxes/Payment**

Statutory Registration Fee \$64.40

Total Paid \$64.40

**File Number**

Chargee Client File Number : 18-0923

(the Applicant)

and

**CITY OF HAMILTON**  
(the "City")

**1. WHEREAS** the Development Charges Act, 1997, S.O.1997, Chapter 27 (the "Act") authorizes municipalities to pass a by-law for the imposition of development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies.

**2. AND WHEREAS** the Council of the City, pursuant to the Act, passed By-Law 14-153, which imposes development charges and also provide for the payment of development charges;

**3. AND WHEREAS** a municipality may, as authorized by Section 27 of the Act, permit, on such terms as its Council may require, an Applicant to pay the applicable development charge at a date later than it would otherwise be payable, upon and in accordance with the terms of an agreement entered to by the Applicant with the municipality;

**4. AND WHEREAS**, pursuant to Section 31 of the said By-law 14-153 the payment of development charges may be deferred over a maximum period of five (5) years from the date of the payment deferral agreement;

**5. AND WHEREAS** the Applicant is the registered owner of the property known municipally, as of the date of this Agreement, as **11-15 Cannon Street West, Hamilton** in the City of Hamilton and more particularly described in Schedule "A" attached to this Agreement (the "Property");

**6. AND WHEREAS** the Applicant proposes to develop the Property for a **40 Residential Condo Suites + 1 Retail Development** (the "Development");

**7. AND WHEREAS** all of the shares of the Applicant are owned by **Roni Gilyana**;

**8. AND WHEREAS** by application number **193** and dated **September 28, 2018** (the "Application"), has applied to the City for a building permit with permit **2018 129017 000 00 R3 Part 3** (the "Building Permit") for the Development;

**9. AND WHEREAS** the issuance of the Building Permit requires development charges and the Applicant has applied for approval to defer the payment of the development charges to the City with respect of the Development over a period of five (5) years;

**10. AND WHEREAS** the City's General Manager, Finance & Corporate Services (the "General Manager") on **October 1, 2018**, as authorized by Council, approved such Application subject to and upon the terms of this Agreement;

**NOW THEREFORE**, in consideration of the matters referred to, the Parties agree as follows:

**1. INTERPRETATION**

**(1) Definitions**

In this Agreement and the recitals hereto unless something in the subject matter or

and all amendments made to it in accordance with its provisions as amended, revised, replaced, supplemented or restated from time to time;

- (d) **“Applicable Law”** means, in respect of a Person, property, transaction, event or other matter, as applicable, all present or future Law relating or applicable to that Person, property, transaction, event or other matter, including any interpretation of Law by any Governmental Authority;
- (e) **“Application”** has the meaning ascribed to in Recital 8;
- (f) **“BIA”** has the meaning ascribed to it in Section 10(1)(h);
- (g) **“Business Day”** means a day other than a Saturday, Sunday or any holiday and another day on which the City’s City Hall is not open to the public;
- (h) **“Building Code”** means any regulations made by the Lieutenant Governor General in Council governing the standards for the construction and demolition of buildings pursuant to the Building Code Act, S.O. 1992 c.23, as amended, including but not limited to Ontario Regulation 332/12, as amended;
- (i) **“Building Permit”** has the meaning ascribed to it in Recital 8;
- (j) **“CCAA”** has the meaning ascribed to in Section 10(1)(j);
- (k) **“Commencement Date”** has the meaning ascribed to in Section 4;
- (l) **“Credit Documents”** means this Agreement, the Security, and all other documents, certificates and instruments executed or delivered or to be executed or delivered by any Obligor to the City pursuant hereto or thereto, as the same may be modified, amended, extended, restated or supplemented from time to time and **“Credit Document”** shall mean anyone of the Credit Documents;
- (m) **“Deferral”** has the meaning ascribed to it in Section 2(2);
- (n) **“Development”** has the meaning ascribed to it in Recital 6;
- (o) **“Development Charge”** has the meaning ascribed to it in Section 2(1);
- (p) **“Encumbrance”** means, in respect of the Applicant, any right to, claim or in interest in the Property including but not limited to: easement, mortgage, debenture, pledge, hypothec, lien, charge, encumbrance, assignment by way of security, hypothecation or security interest granted or permitted by the Applicant or arising by operation of law, in respect of any of the Property, or any consignment or lease of the Property by the Applicant as consignee or lessee or any other security agreement, trust or arrangement having title effect of security for the payment of any debt, liability or obligation, and **“Encumbrances”**, **“Encumbrancer”**, **“Encumber”** and **“Encumbered”** shall have corresponding meanings;
- (q) **“Event of Default”** has the meaning ascribed to that term in Section 10(1);
- (r) **“Governmental Authority”** means the government of Canada, province

- (t) **Information** has the meaning ascribed to it in Section 13(1)(i);
- (u) **"Interest Rate"** has the meaning ascribed to it in Section 3(1);
- (v) **"Law"** means all laws, (including the common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, decrees, judgments and decrees, and all official directives, rules, guidelines, notices, approvals, orders, policies and other requirements of any Governmental Authority whether or not they have force of law;
- (w) **"Material Adverse Effect"** means:
  - (i) a material adverse effect on the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Applicant;
  - (ii) an adverse effect on the legality, validity or enforceability of the Credit Documents which could reasonably be considered material having regard to the Credit Documents considered as a whole, including the validity, enforceability, perfection or priority of any Encumbrance created or intended to be created under any of the Security which could reasonably be considered material having regard to the Security considered as a whole;
  - (iii) an adverse effect on the right, entitlement or ability of the Applicant to pay the Development Charge or other amounts payable under this Agreement or any of the other Credit Documents or perform any of its obligations under this Agreement or any of the other Credit Documents which could reasonably be considered material having regard to the Applicant as a whole; or
  - (iv) an adverse effect on the right, entitlement or ability of the City to enforce any of the amounts owing by the Applicant under this Agreement or any other Credit Documents which could reasonably be considered material having regard to the Applicant, or to exercise or enforce any of its rights, entitlements, benefits or remedies under any of the Credit Documents;
- (x) **"Mortgage"** has the meaning ascribed to it in Section 8(1)(a);
- (y) **"MFIPPA"** has the meaning ascribed to it in Section 25;
- (z) **"Obligors"** means, collectively, the Applicant, the Personal Guarantor and their respective heirs and assigns and "Obligor" means any one of them;
- (aa) **"Parties"** means the Applicant, the City, and any other Person that may become a party to this Agreement;
- (bb) **"Pending Event of Default"** means an event which, but for the requirement for the giving of notice, lapse of time, or both, or but for the satisfaction of any other condition subsequent to that event, would constitute an "Event of Default";
- (cc) **"Person"** is to be broadly interpreted and includes an individual, a corporation, a limited liability company, an unlimited liability company, a

- (dd) **"Personal Guarantor"** has the meaning ascribed to it in Section 8(1)(c);
- (ee) **"Property"** has the meaning ascribed to it in Recital 5;
- (ff) **"Security"** has the meaning ascribed to it in Section 8(1);
- (gg) **"Taxes"** means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, royalties, duties, deductions, compulsory loans or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any installments, and any interest, fines and penalties, imposed by any Governmental Authority, whether disputed or not;
- (hh) **"Tax Rolls"** has the meaning ascribed to it in Section 5(4);

## (2) **Headings, Sections, Recitals, Schedules**

The division of this Agreement into articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The term "this Agreement" refers to this Agreement in its entirety and not to any particular article, Section or other portion of this Agreement and includes any agreement supplemental to this Agreement. Unless otherwise indicated, references in this Agreement to Sections, Recitals or Schedules are to, Sections, Recitals and Schedules of this Agreement.

## (3) **Gender and Number**

If the context of this Agreement requires changes of gender and number, this Agreement shall be read such that words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa.

## (4) **Best Knowledge**

All provisions contained herein or under any other Credit Document requiring the Applicant to make a determination or assessment of any event or circumstance or other matter to the best of its knowledge shall be deemed to require the Applicant to make all due inquiries and investigations as may be necessary or prudent in the circumstances before making any such determination or assessment.

## (5) **Conflicts**

In the event of a conflict or inconsistency between the application of any of the provisions of this Agreement and the application of any of the provisions of any of the other Credit Documents the provisions giving the City greater rights or remedies shall govern (to the maximum extent permitted by Applicable Law), it being understood that the purpose of this Agreement and any other Credit Document is to add to, and not detract from the rights granted to the City under the Credit Documents.

## (6) **Non-Business Days**

taken on, or (except with respect to the calculation of interest or fees) any period of time is stated or scheduled to commence or terminate on, a day other than a Business Day, the action will be taken or the period of time will commence or terminate, as the case may be, on the immediately preceding Business Day.

(7) **Statutory References**

Any reference in this Agreement to any Law, or to any section of or any definition in any Law, shall be deemed to be a reference to such Law or section or definition as amended, supplemented, substituted, replaced or re-enacted from time to time.

(8) **Schedules**

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule "A" - Legal Description of the Property

Schedule "B" - Certificate of Independent Legal Advice or Waiver

The Schedules are attached to and form a part of this Agreement in the same manner and with the same effect whether or not they are included in the body hereof.

(9) **Recitals**

All of the recitals preceding Section 1 of this Agreement are true and correct.

(10) **References to City Staff and Administrative Units**

Any reference to the title or position of a member of City staff in this Agreement shall include any change to the title or position or any successor title or position or any new title or position which assumes the responsibilities of the title or position referenced in the Agreement. Any reference to a City administrative unit shall include any change to the name or any administrative unit which assumes the responsibilities of the administrative unit referenced herein.

2. **PAYMENT**

(1) **Development Charge**

The Applicant covenants to pay to the City, in respect of the Development, a total development charge in the amount of **TWO HUNDRED AND EIGHT THOUSAND, SEVEN HUNDRED AND FIFTY-FIVE DOLLARS, AND NINETY CENTS (\$208,755.90)** or a revised amount as approved by the Council of the City, (the "Development Charge").

(2) **Payment Five Years from Building Initial Building Permit Issuance**

The payment of the Development Charge as required in Section 2(1), plus such interest as is imposed, due and payable in accordance with Section 3 of this Agreement, shall be made to the City, in full, **NO LATER THAN** five (5) years from the Commencement Date, except where, pursuant to the terms of this Agreement, the said payment is required and due in full prior to the said date (the "Deferral").

(3) **Payable To**

The Applicant shall submit the Development Charge payment(s) payable to City



compliance with Section 10(2).

### **3. INTEREST**

#### **(1) Interest**

The Applicant also covenants to pay to the City, as permitted by section 27 of the Act, interest, on the Development Charge, calculated from the Commencement Date. The rate of interest on the Development Charge shall be the City's Five (5) year Serial Debenture Rate as of the month in which the Commencement Date falls plus

- (a) Three Point Two Five (3.25%) while the Mortgage is in first or second position on title ("Interest Rate");
- (b) Four Point Seven Five (4.75%) while the Mortgage is in third position on title ("Interest Rate");
- (c) Six Point Two Five (6.25%) while the Mortgage is in fourth position on title ("Interest Rate")

Interest will be calculated in advance and be compounded semi-annually from the Commencement Date. It is the Applicant's responsibility to contact the City and obtain the applicable Interest Rate on the Commencement Date and to provide support if the Mortgage moves up on title. The reduced rate that applies when the Mortgage moves up on title will be effective from the time supporting documentation has been received; any increase in rate will be effective the date the postponement is registered.

#### **(2) Interest On Other Amounts**

If any fee or other amount owed by any Obligor to the City under any of the Credit Documents is not paid when due and payable, and there is no other provision in any Credit Document specifying the interest payable on that overdue amount, that overdue amount shall bear interest at the Interest Rate. Interest as aforesaid shall be accrued from day to day and until it is paid in full.

### **4. TERM**

The Deferral commences as of the date of initial issuance of the Building Permit (the "Commencement Date"), and the Deferral continues until the earlier of five (5) years from the Commencement Date or, such earlier date payment in full is made, with interest, in accordance with the terms of this Agreement. This Agreement shall remain in force and effect until the Development Charge is repaid and the Applicant has performed all of its obligations under this Agreement.

### **5. THE DEVELOPMENT CHARGE**

The Applicant acknowledges and agrees that:

- (1) that the said amount of the deferred Development Charge (or a revised amount as approved by the Council of the City) is the correct amount calculated and applied to the Applicant's Application with the City for the Development.
- (2) that the Applicant has not and will not file a complaint pursuant to the Act with the City or in any other forum with respect to the determination and application of the

does not apply.

- (4) that the Property is recorded under the following tax roll number(s) **020 123 56520 0000 & 020 123 56490 0000** ("Tax Rolls") and that in the event the deferred Development Charge with accrued interest becomes payable and remains unpaid, in whole or in part, or, on its due date remains unpaid, then in addition to any other remedy available to the City at law or in this Agreement, the amount of unpaid Development Charge and interest accrued thereon may be added to the Tax Rolls and to any tax roll number which the City may in its sole and unfettered discretion determine applies to the Property ("Additional Tax Roll") and collected as realty taxes.
- (5) that it is the Applicant's responsibility to obtain all necessary approvals and all necessary zoning for purposes of the Development and use of the Property and that by entering into this Agreement the City is making no representation regarding same and the Applicant acknowledges that nothing herein limits the City's discretion regarding same.

## **6. EFFECTIVE DATE OF AGREEMENT**

This Agreement shall take effect once it is fully executed, **FIRSTLY**, by the Applicant; and **SECONDLY**, by the City.

## **7. COVENANTS**

### **(1) Covenants**

The Parties agree that all obligations or agreements contained in this Agreement shall be deemed to be covenants.

### **(2) Covenants of the Applicant**

- (a) the Applicant shall remain a valid and existing corporation in accordance with the laws of Canada or the Province of Ontario, as the case may be;
- (b) the Applicant shall supply to the City, in a form satisfactory to the City, such information relating to the ownership of its shares as the City may from time to time require;
- (c) the Applicant shall pay all amounts owing (including interest, costs and other charges) under this Agreement and the Security required hereunder;
- (d) the Applicant shall pay in full prior to the issuance of the Building Permit and remain in good standing throughout the term of this Agreement, all outstanding real property taxes and amounts added to the municipal tax roll for the Property, including any additional fees associated therewith;
- (e) the Applicant shall comply with all Applicable Law that pertains to the Property and the Development;
- (f) Throughout the term of the Agreement (including any renewal thereof), the Applicant shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance:

or Hamilton as additional insured.

- (ii) All risk property insurance to insure the property, on a replacement cost basis with limits equal to the value of the property. The City shall be named as a loss payee as their interest may appear.

The Applicant shall deposit with the City a certificate of insurance. Certificate shall provide that at least 30 days prior written notice (10 days in the event of non-payment of premiums) shall be given to the City by the Insurer before the Insurer or Applicant takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof. Certificate Holder will be addressed as the City Of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 attn; Finance & Corporate Services. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address

- (g) in the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property or a part of it then the Development Charge together with accrued interest and all monies owing hereunder, shall forthwith become due and payable in accordance with the provisions of Sections 2 and 3 unless if only a part of the Property is sold, conveyed, transferred or offered for sale or transfer the City consents, in its sole and unfettered discretion to a partial payment of the Development Charge in accordance with Section 10(6). If a partial payment is made the balance of the Development Charge shall remain deferred and payable in accordance with the provisions of this Agreement and no change to the time period of the Deferral shall occur;
- (h) in addition to and without any prejudice to any rights of inspection the City has pursuant to any Applicable Law, the Applicant shall, during normal business hours and from time to time upon reasonable notice, permit representatives of the City to inspect any real property owned or occupied by the Applicant including the Property and the Development and to examine and take extracts from the Applicant's financial books, accounts and records including but not limited to accounts and records stored electronically;
- (i) the Applicant shall promptly notify the City of any Event of Default or Pending Event of Default;
- (j) the Applicant shall promptly notify the City of any Material Adverse Effect that would apply to it or any other Obligor, or any event or circumstance that is likely to give rise to a Material Adverse Effect;
- (k) the Applicant shall promptly notify the City of the occurrence or threatened occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which, if determined adversely, would be a judgment or award against it or other Obligors or that would result in a Material Adverse Effect to it or other Obligors, and from time to time provide the City with all information requested by the City concerning any such proceeding;
- (l) the Applicant shall promptly give notice to the City of:
  - (i) any notice of expropriation, or material action or proceeding affecting: the Property or the business of the Applicant or business

- (m) the Applicant shall keep and maintain the Property in good repair and in compliance with the provisions of the City's Property Standards By-law.
- (n) prior to registration of the Mortgage the Applicant shall pay registration and search fees in an amount as advised by the City Legal Services Division and in addition the Applicant shall pay promptly all other fees and disbursements (including Taxes) incurred or paid by the City in connection with the preparation, delivery, maintenance, amendment, registration on title to the Property and enforcement (including any workouts in connection with or in lieu of any enforcement) of the Credit Documents, and in connection with the consummation of the transactions contemplated by the Credit Documents, and including, without limitation, all court costs and all fees and disbursements of lawyers, auditors, consultants and accountants; and
- (o) no Obligor shall change its legal or operating name without providing the City with thirty (30) days prior written notice thereof.

## 8. SECURITY

### (1) **Security**

As continuing collateral security for Development Charge and any amount that may become due and payable for any reason whatsoever hereunder, the Applicant shall execute and deliver to the City in form and content satisfactory to the City the following (collectively referred to as the "Security"):

- (a) a collateral charge/mortgage of land payable on demand in the principal amount of **TWO HUNDRED AND EIGHT THOUSAND, SEVEN HUNDRED AND FIFTY-FIVE DOLLARS, AND NINETY CENTS (\$208,755.90)** given by the Applicant, which shall be registered against title to the Property (the "Mortgage"), this Agreement will be added as a schedule to the Mortgage and the Mortgage shall contain a statement that the Mortgage is security for all amounts payable to the City pursuant to this Agreement;
- (b) assignment of any proceeds of Insurance required pursuant to Section 7(2)(f);
- (c) the personal guarantee of **Roni Gilyana** (the "Personal Guarantor"); and
- (d) any and all such other and further documents, agreements and other instruments, and do such other and further things, as the City may require to give effect to this Agreement and cause the City to hold valid and enforceable Security for the Principal Amount advanced together with any amount that may become payable for any reason hereunder.

### (2) **Registration**

The Applicant shall, at its expense, cause the Security to be registered, filed or recorded in all offices in each relevant jurisdiction where such registration, filing or recording is necessary or of advantage to the creation, perfection and preserving of the Security. The Applicant shall renew such registrations, filings and recordings from time to time as and when required to keep them in full force and effect and shall, from time to time as reasonably required, provide to the City an opinion of the Applicant's counsel that all such registrations, filings and recordings have been made and perfect the security interests

enter into such agreements and other instruments as may be necessary to discharge the Security.

**(4) Postponements**

Provided the Applicant is not in default under this Agreement, the Mortgage registered against the Property and any additional or future Security related to the foregoing, the City, agrees to postpone the Mortgage to permit: an increase in any mortgage registered on title prior to the Mortgage; or to permit additional Mortgages to be registered in priority to the City Mortgage. The postponement shall be in a form satisfactory to the City in its sole and unfettered discretion.

**9. TIME IS OF THE ESSENCE**

The Applicant agrees that time shall be of the essence and any dates or deadlines set out in this Agreement are to be strictly adhered to.

**10. EVENTS OF DEFAULT**

**(1) Events of Default**

The occurrence of any one or more of the following events (each, an "Event of Default") shall constitute a default under this Agreement:

- (a) where the Property is sold or otherwise transferred or disposed of by the Applicant;
- (b) where a part of the Property is sold, transferred, conveyed or offered for sale as a lot or a severed parcel;
- (c) where a mortgage, charge, lien, execution or other Encumbrance affecting the Property becomes enforceable against the Property; or
- (d) where the Applicant becomes bankrupt, whether voluntary or involuntary, or becomes insolvent or a receiver/manager is appointed with respect to the Property; or
- (e) where the Applicant's certificate of incorporation is cancelled or the Applicant is otherwise wound up or dissolved as a corporation or there is any other change in the ownership or corporate status of the Applicant not approved by the City in advance;
- (f) the Applicant fails to make, when due, whether on demand or at a fixed payment date, by acceleration or otherwise, any payment of interest, Development Charge, fees or other amounts payable to the City under this Agreement;
- (g) there is a breach by the Applicant of any other term, covenant or condition contained in the Agreement or the Security;
- (h) the insolvency of an Obligor, or the making by an Obligor of an assignment in bankruptcy or any other assignment for the benefit of creditors or, any proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-13, as amended ("BIA") or any other comparable law, or any other bankruptcy, insolvency, or analogous law;

- (j) an Obligor files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition, compromise, winding-up, readjustment, restructuring or any similar proceeding for action of any kind whatsoever under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law including but not limited to: the BIA *the Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("CCAA"), as amended, affecting creditor's rights or consents to, acquiesces in, the filing of such a petition;
- (k) a receiver is appointed over any property of any Obligor or any judgment or order or any process of any court becomes enforceable against any Obligor or any property of any Obligor or any creditor takes possession of any property of any Obligor;
- (l) the filing or instituting of any proceeding against an Obligor seeking to have an order for relief entered against that Obligor as debtor or to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, compromise, arrangement, adjustment, composition restructuring or any similar proceeding or action of any kind whatsoever under any law relating to bankruptcy, insolvency, reorganization or relief of debtors including without limitation, the BIA and CCAA, or seeking appointment of a receiver, trustee, custodian or other similar official for such Obligor or for any substantial part of its properties or assets unless the same is dismissed, vacated or permanently stayed within thirty (30) days of institution;
- (m) the loss by any of the Security of its status as a valid and perfected security interest subject only to Encumbrances permitted by the City, if the Applicant has failed to remedy this default within the earlier of ten (10) days from the date: the Applicant becomes aware, using reasonable due diligence of such default; and the City delivers written notice of the default to the Applicant;
- (n) a writ of execution against the Applicant is or becomes binding against the Property;
- (o) any material adverse change occurs in the financial condition of the Applicant in the absolute discretion of the City;
- (p) any adverse change, determined by the City in its sole, unfettered and absolute discretion, occurs in the environmental condition of the Property;
- (q) any representation, warranty, statement, declaration or information provided to the City by any Obligor in connection with this Agreement or any other Credit Document or in this Agreement or any other Credit Document is incorrect, false, misleading or erroneous in any material respect as of the time it was made or given;
- (r) the enactment of any legislation or the entering or obtaining of any decree or order of a court, statutory board or commission which renders any of the Credit Documents or any material provision of any of them unenforceable, unlawful or otherwise changed, if any Obligor does not, within ten (10) days of receipt of notice of the Credit Document or material provision becoming unenforceable, unlawful or otherwise changed, replace the Credit Document with a new agreement that is in form and substance satisfactory to the City in its sole and unfettered discretion or amend the Credit

failure to, pay its debts generally;

- (u) the denial by any Obligor of its obligations under any of the Credit Documents, or the claim by any Obligor that any of the Credit Documents are invalid or have been withdrawn in whole or in part;
- (v) the failure of an Obligor to observe or perform any covenant or obligation applicable to it under any of the Credit Documents;
- (w) an assignment of this Agreement or any of the other Credit Documents without the prior written consent of the City which may be arbitrarily withheld by the City;
- (x) without the written consent of the City first had and obtained:
  - i) the Applicant issues or redeems any of its shares or transfers any of its shares;
  - ii) there is a sale or sales of the shares of the Applicant which result in the transfer of the legal or beneficial interest of any of the shares of the Applicant; or
  - iii) the Applicant amalgamates, merges or consolidates with any other corporation;
- (y) where a grant or funds are provided by the City to a person other than the Applicant in respect of the Development to which the Development Charge applies; and;
- (z) any change in the ownership or corporate status of the Applicant not approved by the City including but not limited to: the Applicant's certificate of incorporation is cancelled, or the Applicant is otherwise wound up or dissolved as a corporation.

## **(2) Acceleration and Termination of Rights**

Upon the occurrence of an Event of Default, and for so long as the Event of Default shall continue the Development Charges, together with interest at the Interest Rate and any other monies owing hereunder shall become due and payable IMMEDIATELY, and payment shall be made to the City, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Applicant.

In addition, if any Event of Default occurs, the amount of unpaid Development Charge and interest accrued thereon may be added to the Tax Rolls and Additional Tax Roll and collected as realty taxes all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Applicant. The Development Charge and interest accrued thereon when added to the Tax Rolls and Additional Tax Roll shall accrue interest and penalties, commencing on the date the unpaid amount is placed on the tax roll, in the same manner and amount as arrears of property taxes.

In addition, if any Event of Default occurs, the Security shall become immediately enforceable and the City may, in its sole and unfettered discretion, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against

exercised independently or in combination.

**(3) Remedies Cumulative**

For greater certainty, it is expressly understood and agreed that the rights and remedies of the City under this Agreement or under any other Credit Document are cumulative and are in addition to, and not in substitution for, any rights or remedies provided by Law or by equity; and any single or partial exercise by the City of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or other Credit Document shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the City may be lawfully entitled for such default or breach. No delay or omission by the City in exercising any such right or remedy shall operate as a waiver of them or any other right or remedy.

**(4) Saving**

The City shall have no obligation to the Obligors or any other Person to realize any collateral or enforce the Security or any part thereof or to allow any of the collateral to be sold, dealt with or otherwise disposed of. The City shall not be responsible or liable to the Obligors or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the collateral or any part thereof or the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that the City may be responsible or liable for any loss or damage arising from the wilful misconduct or gross negligence of the City.

**(5) Perform Obligations**

If an Event of Default has occurred and is continuing, and if the Applicant has failed to perform any of its covenants or agreements in the Credit Documents, the City may, but shall be under no obligation to, perform any such covenants or agreements in any manner deemed fit by the City without thereby waiving any rights to enforce the Credit Documents. The expenses (including any legal costs) incurred by the City in respect of the foregoing shall be debt owing to the City and shall be secured by the Security.

**(6) Partial Payment If Sale of Part of Property or Severance**

Prior to an Event of Default as provided for in Section 10(1)(b) occurring, the City in its sole and unfettered discretion may permit the Applicant to make a partial payment of the Development Charge in an amount determined by the City in its sole and unfettered discretion. If a partial payment is permitted by the City and made by the Applicant the unpaid portion of the Development Charge remains payable pursuant to the provisions of the Agreement and the Deferral shall continue with no change to its time period and no Event of Default will be deemed to have occurred if the events in Section 10(1)(b) occur. Any permission granted by the City pursuant to this Section 10(6) shall only be effective if given in writing and signed by the General Manager of Finance and Corporate Services.

**(7) Set-Off or Compensation**

In addition to, and not in limitation of, any rights now or hereafter granted under Applicable Law if repayment is accelerated pursuant to Section 10(2) the



unmatured.

**(8) Application of Payments**

Notwithstanding any other provisions of this Agreement, after the occurrence and during the continuance of an Event of Default, all payments made by the Applicant under this Agreement, or from the proceeds of realization of any Security, or otherwise collected or received by the City on account of amounts outstanding with respect to any amounts owing under this Agreement, shall be paid over or delivered to make the following payments (as the same become due at maturity, by acceleration or otherwise):

- (a) first, to payment of any fees owed to the City hereunder or under any other Credit Document;
- (b) second, to the payment of all out-of-pocket costs and expenses (including without limitation legal fees) of the City in connection with enforcing the rights of the City under the Credit Documents;
- (c) third, to the payment of all default interest;
- (d) fourth, to the payment of the Development Charge and any accrued interest thereon payable to the City hereunder; and
- (e) fifth, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

**11. COSTS**

**(1) Costs and Expenses Preparation and Administration**

The Applicant shall pay an application fee of \$750.00 to the City prior to issuance of the Building Permit. Prior to the issuance the Building Permit, the Applicant shall pay all the costs and expenses including but not limited to legal fees, professional fees, registration fees incurred by or behalf of the City in connection with the preparation, execution and delivery of this Agreement and the preparation, execution, registration and delivery of the other Credit Documents and the other instruments, certificates and documents to be delivered under this Agreement or the other Credit Documents. The aforesaid costs and expenses shall not include the costs of City staff time spent in the preparation of this Agreement. The aforesaid costs and expenses shall be due and payable on demand by the City. If the costs and expenses are not paid within 10 Business Days from notice, interest, as provided for in Section 3 will accrue and be payable from the date of demand from the City. Such costs and expenses shall be payable whether or not the Building Permit has been issued.

The Applicant agrees that all fees and costs incurred by or on behalf of the City throughout the term of this Agreement, including but not limited to legal, professional, registration, escrow agent, appraisal and survey costs and fees, independent engineer costs and independent insurance advisor costs, are payable by the Applicant and shall be payable on demand.

**(2) Additional Costs and Expenses**

Without limiting any of its covenants and obligations set out elsewhere in this Agreement the Applicant agrees to pay all costs and expenses incurred by or on behalf of the City (including without limitation legal fees):

under this Agreement or the Security;

- (c) of the City in connection with enforcing the rights of the City under the Credit Documents; and
- (d) in connection with questions of interpretation of this Agreement and in connection with the establishment of the validity and enforceability of this Agreement,

together with interest at the Interest Rate per annum from and after the 10th Business Day of having been given notice from the City if payment is not made by that time.

### **(3) Environmental Indemnification**

In addition to any liability of the Applicant to the City under any other provision of this Agreement, the Applicant covenants to defend and indemnify and hold harmless the City and its officers, employees, elected officials, agents and representatives at all times from all and against any and all losses, damages and costs (including legal fees and expenses) resulting from any legal action commenced or claim made by a third party, or administrative order issued by a Governmental Authority against the City, related to or as a result of actions on the part of the Applicant related to, or as a consequence of, environmental matters or a failure to comply with any requirements of any law that applies to any environmental matter.

### **(4) Indemnification**

In addition to any liability of the Applicant to the City under any other provision of this Agreement, the Applicant covenants to defend, indemnify and hold harmless the City and its officers, employees, elected officials, agents and representatives from and against any and all actions, causes of action proceedings, claims, demands, assessments in respect of required withholding losses, damages, liabilities, expenses and obligations of any kind that may at any time be incurred by, or asserted against, any of them by any third party, including any Governmental Authority, as a result of, or in connection with, or by reason of, the entering into of this Agreement or the other Credit Documents or the transactions therein contemplated, the Development, or in connection with the operations, activities or business of the Applicant. For the purposes hereof, matters arising from the operation, activities or business of the Applicant shall extend to any matter, directly or indirectly relating to the Applicant, including, without limitation, injuries suffered by any Person while completing the Development or using the Property, damage to property, and claims arising from the act or omission of any employee, contractor or agent of the Applicant. A certificate of the City as to the amount of any such loss or expense shall be prima facie evidence as to the amount thereof, in the absence of manifest error.

### **(5) Indemnification by Applicant**

In addition to any liability of the Applicant to the City under any other provision of this Agreement, the Applicant covenants to defend and indemnify the City and hold the City harmless from and to reimburse the City for all costs, fees, expenses and liabilities incurred by the City or for which the City becomes obligated in connection with or arising out of this Agreement or pursuant to any of the Security. A certificate of the City as to the amount of any such loss or expense shall be prima facie evidence as to the amount thereof, in the absence of manifest error.

### **(6) Survival**

The agreements in Section 11 shall survive the termination of this Agreement and

Enhancement (ERASE) Program. (the Grant Money), the Development Charge plus any interest (due under this Agreement or otherwise) that would otherwise be payable on the Commencement Date or thereafter, shall be due and payable on the date the Grant Money is payable to the Applicant. The City shall have the right to set-off the Development Charge plus any interest from the Grant Money. Interest shall accrue on any and all unpaid portions of the Development Charge from the Commencement Date until the Development Charge is paid in full. The City's right to set-off shall expire five (5) years after the Commencement Date. Any and all portions of the Development Charge plus interest that have not been paid within five (5) years of the Commencement Date shall be immediately payable in full (5) years after the Commencement Date, and interest shall continue to accrue. For clarity, if the Grant Money is paid in multiple payments, the City's right to set-off in this Section 12 applies to all payments of the Grant Money, except and provided that any Grant Money payments received 5 years after the Commencement Date cannot be set off against the Development Charge

### **13. REPRESENTATIONS AND WARRANTIES**

#### **(1) Representations and Warranties**

The Applicant represents and warranties that:

- (a) the Applicant is not a party to any agreement under the terms of which the Applicant is prohibited or restricted from entering into any of the Applicant's obligations, liabilities, or restrictions under this Agreement;
- (b) no Event of Default has occurred, or appears reasonably likely to occur as of the date of this Agreement;
- (c) to the best of the Applicant's information and belief and after making diligent inquiries the Applicant is not aware of any material facts or circumstances which have not been disclosed to the City;
- (d) there are no outstanding judgments, injunctions, or administrative or regulatory directives, writs of execution, encroachments, rights-of-way, deed restrictions, leases or tenancies or other agreements, mortgages work orders, against the Applicant or the Property that might reasonably be seen to have a materially adverse impact upon the Applicant's prospects or the condition or value as security of the Property or affecting the use of the Property;
- (e) the execution, delivery and performance of each of the Credit Documents to which each Obligor is a party, and every other instrument or agreement delivered by an Obligor pursuant to any Credit Document, has been duly authorized, and each of such documents has been duly executed and delivered;
- (f) none of the execution or delivery of, the consummation of the transactions contemplated in, or compliance with the terms, conditions and provisions of any of the Credit Documents or any of the agreements or documents delivered in connection therewith, by any Obligor, conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Law;
- (g) each Obligor has obtained, made, or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required (except for registrations or filings which may be

Obligor (with regard to each agreement or instrument to which it is a party) enforceable in accordance with their respective terms;

- (i) the Applicant has good and marketable fee simple title to the Property subject to no Encumbrances other than those permitted by the City. Applicant enjoys peaceful and undisturbed possession of the Property and there is no pending or, to the knowledge of the Applicant, threatened condemnation or expropriation proceeding relating to any such real property.
- (j) The Property and the structures thereon are:
  - (i) structurally sound with no known material defects; and
  - (ii) in conformity with all Applicable Law and other requirements (including applicable zoning, Building Code, environmental, motor vehicle safety, occupational safety and health laws and regulations) relating thereto;
- (k) None of the Obligors:
  - (i) has committed any act of bankruptcy;
  - (ii) is insolvent, or has proposed or given notice of its intention to propose, a compromise or arrangement to their creditors generally;
  - (iii) has had any petition for a receiving order in bankruptcy filed against any to them,
  - (iv) has made a voluntary assignment in bankruptcy,
  - (v) has taken any proceeding with respect to any compromise or arrangement;
  - (vi) has taken any proceeding to have itself declared bankrupt or wound-up;
  - (vii) has taken any proceeding to have a receiver appointed of any part of its assets;
  - (viii) has had any Encumbrancer take possession of any of its property; or
  - (ix) has had an execution or distress become enforceable or become levied on any of its property including the Property.
- (l) all information, representations, statements and declarations (collectively referred to as the "Information") furnished by or on behalf of the Obligors to the City for purposes of, or in connection with, this Agreement or any of the other Credit Documents, or any other transaction contemplated by this Agreement is or will be true and accurate in all material respects on the date as of which the Information is given and not incomplete by omitting to state any material fact necessary to make the Information not misleading at such time in light of then-current circumstances. There is no fact now known to any of the Applicants which has had or could reasonably be expected to

and of the other Credit Documents prior to execution or declined seeking such independent legal advice. Nevertheless, the Applicant herein acknowledges that they have read this Agreement and the other Credit Documents, understand the terms and conditions and the Applicant's rights and obligations under this Agreement and the other Credit Documents and agree to be bound by same. The Applicant acknowledges and agrees that this Agreement and the other Credit Documents. The executed Certificate of Independent Legal Advice or waiver of same attached hereto as Schedule "B" shall constitute prima facie evidence of aforesaid legal consultation and independent legal advice or that the Applicant declined to do obtain same.

**(2) Supporting Documentation**

Upon request, the Applicant shall provide the City with proof of the matters referred to in Section 13(1).

**14. SURVIVAL AND REPETITION OF REPRESENTATIONS AND WARRANTIES**

The representations, warranties and covenants contained in this Agreement, including any schedule hereto, and in the Credit Documents to be executed and delivered pursuant to this Agreement shall be considered to be relied upon by the City and shall not merge and shall survive the execution and delivery of this Agreement and notwithstanding any investigations made by or on behalf of the City shall survive continue in full force and effect for the term of this Agreement.

**15. FURTHER ASSURANCES**

The Applicant and the City shall promptly cure any default by it in the execution and delivery of this Agreement and any of the other Credit Documents or any other agreements provided for in this Agreement to which it is a party. The Applicant, at its own expense, shall promptly execute and deliver to the City, upon request by the City, all further documents, agreements, opinions, certificates and instruments in compliance with, or accomplishment of the covenants and agreements of the Applicant under this Agreement or other Credit Documents, or more fully to state the obligations of the Applicant as set forth in this Agreement or other Credit Documents or to make any recording, file any notice or obtain any consent, all as may be reasonably necessary or appropriate in connection with this Agreement or any of the other Credit Documents from time to time. The City reserves its right to require financial disclosure respecting any Obligor and the Property, as it may be applicable.

**16. AGREEMENT NOT WAIVER**

This Agreement is made entirely for the convenience and benefit of the Applicant and is in no way to be construed as a waiver or surrender of any rights or remedies that the City may have to recover the Development Charge by any lawful means from present and future owners of the Property or as taxes upon the Property.

**17. OBLIGATIONS JOINT AND SEVERAL**

The obligations and liabilities of the Applicant, if more than one, under this Agreement shall be both joint and several.

personally or mailed by registered mail to:

- (i) City of Hamilton  
71 Main St. West, City Hall, 1<sup>st</sup> Floor  
HAMILTON, Ontario  
L8P 4Y5  
Attention: General Manager Finance & Corporate Services
  
- (ii) to the Applicant:  
Areacor Inc.  
#270 – 2869 Bloor St. W.  
Etobicoke, Ontario  
M8X 1B3  
  
Attention: Roni Gilyana
  
- (iii) or to such other address which the Parties to be notified shall have given written notice to the other Parties.

**(2) From General Manager Finance & Corporate Services**

For the purpose of this Agreement, written notice from the General Manager Finance & Corporate Services shall be deemed to be written notice from the City. Further, if there is more than one Applicant, written notice by or to one of the Applicants shall be deemed to be written notice by or to all of the Applicants, as the case may be.

**(3) Time**

Any notice given or delivered pursuant to this paragraph shall be deemed to have been given and received on the day on which it was received.

**(4) Title of Staff Person**

The Applicant acknowledges that the title and address for the staff person at City to which notice must be provided may change from time to time and that it is the responsibility for the Applicant to obtain the correct information prior to any notice being provided to the City to ensure that notice is provided in compliance with this Agreement.

**(5) Change of Address**

Any Party may at any time change its address for service from time to time by giving notice to the other Parties in accordance with Sections 18(1), 18(2), 18(3) and 18(4).

**19. ENTIRE AGREEMENT**

This Agreement contains the entire and only understanding between the Parties relating to the subject matter of this Agreement and supersedes all prior agreements, arrangements, promises, representations or other understandings, whether written or oral, between them.

waived or consented to by the City, unless such waiver or consent is in writing and signed by the authorized representative of the City. No Event of Default shall be deemed waived or consented to by the City, unless such waiver or consent is in writing and signed by an authorized representative of the City. Any waiver granted by the City, shall be effective for the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the City under this Agreement or any other Credit Document or instrument executed pursuant to this Agreement as a result of any other default or breach under this Agreement or any other Credit Document. No waiver of a provision of this Agreement or any other Credit Documents shall operate as a waiver of any other provision or of the same provision on a future occasion.

## **21. SEVERABILITY**

If any of the provisions of this Agreement or their application to any person or circumstance are to any extent illegal, invalid or unenforceable, the remainder of this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained in it.

## **22. GOVERNING LAW**

This Agreement is made and shall be governed and construed in accordance with the laws of the Province of Ontario, Canada.

## **23. SUCCESSORS AND ASSIGNS**

This Agreement and the Credit Documents shall be binding upon and shall ensure to the benefit of the City and the Applicant and their respective successors and assigns. The Applicant may not assign or transfer its rights and obligations under this Agreement or any of the other Credit Documents without the prior written consent of the City and the City's consent may be arbitrarily withheld. The Applicant shall not dispute the City withholding any consent to assign the Agreement or the other Credit Documents. The City may assign or transfer its rights and obligations under this Agreement or any of the other Credit Documents without the Applicant's consent.

## **24. DISCHARGE and PARTIAL DISCHARGES**

If part of the Property is severed and conveyed as a separate parcel or lot or as a condominium unit a partial discharge of the Mortgage for the part severed and conveyed may be permitted under this Agreement, on payment of the Development Charge or a portion of the Development Charge as determined by the City in its sole and unfettered discretion, together with the accrued interest, provided:

- (1) there are no arrears owing under this Agreement; and
- (2) the Applicant's lawyer prepares, at the Applicant's expense,
  - (i) the discharge or partial discharge in a form satisfactory to the municipality incorporating a current legal description of the applicable land;
  - (ii) a lawyer's certificate to the municipality in a form satisfactory to the City's Solicitor that the discharge or partial discharge has been prepared as required by the municipality and registered at the Applicant's expense and a duplicate registered copy thereof or evidence of its electronic registration has been provided to the Finance Department: and.

The Applicant acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended ("MFIPPA") and that the Agreement and any information provided to the City in connection with the Development or otherwise in connection with this Agreement may be subject to disclosure in accordance with MFIPPA.

**26. NO RELATIONSHIP**

No partnership is created by the Agreement. Nothing contained in the Agreement shall or shall be deemed to constitute the City and the Applicant partners, agents, joint venturers, employees or any other relationship whereby either could be held liable for any act or omission of the other. The Applicant shall not take any actions that could imply one of the foregoing relationships. Neither the City nor the Applicant shall have any authority to act for the other or incur any obligation or responsibility on behalf of the other.

**27. TAXES**

All payments to be made to the City pursuant to the Credit Documents shall be made free and clear of, and without reduction for or on account of, any present or future Taxes; provided, however, if any Taxes are required by Applicable Law or the interpretation or application thereof by any court or Government Authority to be withheld from any interest or other amount payable to the City under any Credit Document, the amount so payable to the City shall be increased to the extent necessary to yield to the City, on a net basis after payment of all Taxes (including all Taxes imposed on any additional amounts payable under this subsection), interest or any such other amount payable under such Credit Document at the rate or in the amount specified in such Credit Document. Each Obligor shall be fully liable and responsible for and shall, promptly following receipt of a request from the City, pay to the City on its behalf or on behalf of the other Obligors, any and all Taxes in the nature of sales, use, and goods and services Taxes payable under the laws of Canada or any Province of Canada, or payable under the laws of any other country or jurisdiction with respect to any and all goods and services made available under the Credit Documents to any Obligor by the City. Whenever any Taxes are payable by an Obligor, as promptly as possible thereafter that Obligor shall send or cause to be sent to the City, a certified copy of an original official receipt showing payment of such Taxes. If an Obligor fails to pay any Taxes when due or if an Obligor fails to remit to the City the required documentary evidence of such payment, the Applicant shall indemnify and save harmless the City from any Taxes or other liabilities that may become payable by the City or to which the City may be subjected as a result of any such failure. A certificate of the City as to the amount of any such Taxes and containing reasonable details of the calculation of such Taxes shall be, absent manifest error, prima facie evidence of the amount of such Taxes.

**28. ILLEGALITY**

If, after the date of this Agreement, the adoption of or change to any Applicable Law, or any change in the interpretation or application thereof by any court or by any Governmental Authority, now or hereafter makes it unlawful or impossible for the City to continue or maintain the or to give effect to its obligations in respect of the, the City may, by written notice to the Applicant, declare its obligations under this Agreement to be terminated, whereupon the same shall forthwith terminate, and the Applicant shall prepay within the time required by such Law (or at the end of such longer period as the City at its sole absolute and unfettered discretion has agreed) the amount of the



reasonably, severable from the remainder of this Agreement, so that the remainder of this Agreement may be continued in full force and effect without otherwise affecting any of the obligations of the City or the Applicant under this Agreement, the City shall solely declare its obligations under that portion so terminated.

**29. FURTHER ASSURANCES**

The Applicant and the City shall promptly cure any default by it in the execution and delivery of this Agreement, the Credit Documents or any other agreements provided for in this Agreement to which it is a party. The Applicant at its own expense, shall promptly execute or cause to be made, done or executed, and delivered to the City all further and lawful acts, deeds, things, devices, conveyances, documents, agreements, opinions, certificates, instruments, consents, notices and assurances whatsoever for effecting the intent of this Agreement the Credit Documents or any other agreements provided for in this Agreement to which it is a party as the City shall advise or request. The City reserves its right to require financial disclosure respecting both the Applicant and the Property, as it may be applicable.

**30. TIME**

Time shall be of the essence in this Agreement.

**31. CONSENT**

The City may impose, in sole and unfettered discretion, any terms and/or conditions on any consent the City may grant pursuant to the Agreement.


**IN WITNESS WHEREOF** the Parties have hereunto affixed their corporate seals under the hands of the proper officers duly appointed in that behalf.

SIGNED, SEALED & DELIVERED  
in the presence of:

  
Approved  
Finance Department

APPROVED  
AS TO FORM  
  
LEGAL SERVICES

CITY OF HAMILTON

per.   
Brian McMullen, Acting General  
Manager of Finance and  
Corporate Services

Date of Execution

AREACOR INC.

per.   
Name: Roni Gilyana  
Title: President

I/We have authority to bind the corporation

0002 (LI)

Part of Lot 13, Block 6, Plan 39, as in HL269921, City of Hamilton, being all of PIN 17586-0003 (LT)

of the DC Deferral Agreement between the City of Hamilton and the Applicant named below.

**Independent Legal Advice**

The Applicant represents, which representation the City is relying upon, that it:

- (a) hereby acknowledges and agrees that it has been advised by the City of Hamilton or its appointed representative to obtain independent legal advice with respect to the above-referenced Agreement.
- (b) has had an opportunity to obtain independent legal advice and has obtained same or having had the opportunity to obtain independent legal advice has refused or declined same;
- (c) has read this Agreement in its entirety and has full knowledge of its contents;
- (d) understand its respective rights and obligations under this Agreement, the nature and the consequences of this Agreement and agree to be bound by the terms of this Agreement;
- (e) acknowledge that the terms of this Agreement are fair and reasonable;
- (f) are subject to no coercion or undue influence; and
- (g) are signing this Agreement voluntarily.

**AREACOR INC.**

Per:



---

Name: Roni Gilyana  
Title: President

---

Name:  
Title:

I/We have authority to bind the Corporation

Date of Signature:

# TAB I

***THIS IS EXHIBIT "I" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

RUN NUMBER : 341  
RUN DATE : 2021/12/07  
ID : 20211207140603.53

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 2587)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : AREACOR INC.

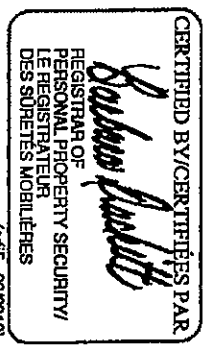
FILE CURRENCY : 06DEC 2021

ENQUIRY NUMBER 20211207140603.53 CONTAINS 10 PAGE(S), 4 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQURIES BE MADE AGAINST THOSE NAMES.

CHATONS LLP - LYNDIA CHRISPODOULOU  
5000 YONGE STREET, 10TH FLOOR  
TORONTO ON M2N 7E9

CONTINUED... 2



RUN NUMBER : 341  
 RUN DATE : 2021/12/07  
 ID : 20211207140603.53

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENDUITY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 2  
 ( 2588 )

TYPE OF SEARCH: BUSINESS DEBTOR  
 SEARCH CONDUCTED ON: AREACOR INC.  
 FILE CURRENTLY: 06DEC 2021

FORM 116 FINANCING STATEMENT / GAIN FOR BEN

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 REGISTRATION PERIOD UNDER P PSSA 02

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DEBTOR NAME: AREACOR INC.  
 BUSINESS NAME: AREACOR INC.  
 ADDRESS: 270-2869 BLOOR STREET WEST  
 ETOBICOKE  
 ONTARIO CORPORATION NO. 18X1B3

DEBTOR NAME: [REDACTED]  
 BUSINESS NAME: [REDACTED]  
 ADDRESS: [REDACTED]  
 ONTARIO CORPORATION NO. [REDACTED]

SECURED PARTY: FORD CREDIT CANADA LEASING, DIVISION OF CANADIAN ROAD LEASING COMPANY  
 ADDRESS: PO BOX 2400  
 EDMONTON AB T5J 5C7

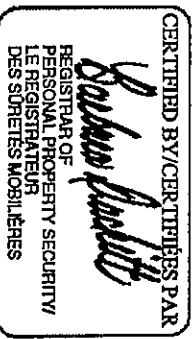
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 CONSUMER: [REDACTED]  
 GOODS: INVENTORY EQUIPMENT ACCOUNTS OTHER  
 HONOR VEHICLE AMOUNT: [REDACTED]  
 DATE OF MATURITY OR EXPIRATION DATE: [REDACTED]  
 NO. RECORDED: [REDACTED]

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MOTOR VEHICLE: 2021 FORD  
 GENERAL: [REDACTED]  
 COLLATERAL DESCRIPTION: [REDACTED]

16  
 17  
 REGISTERING AGENT: [REDACTED]  
 ADDRESS: 2 ROBERT SPECK PARKWAY, 15TH FLOOR  
 MISSISSAUGA ON L4Z 1H8

CONTINUED... 3



RUN NUMBER : 341  
 RUN DATE : 2021/12/07  
 ID : 20211207440603.53

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 3  
 ( 2589)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH COMPLETED ON : AREACOR INC.  
 PRINT CURRENTLY : 06DEC 2021

FOR THE DEMANDING STATEMENT / CLAIM FOR LITEN

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 741075075

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02 DEBTOR NAME DAVID OF BERGH  
 BUSINESS NAME AREACOR INC.

FIRST GIVEN NAME INITIAL SURNAME

03 ADDRESS 270-2869 BLOOR STREET WEST TORONTO

ONTARIO CORPORATION NO. ON M8X 1B3

04 DEBTOR NAME DAVID OF BERGH  
 BUSINESS NAME AREACOR INC.

FIRST GIVEN NAME INITIAL SURNAME

05 ADDRESS 4 ROYALHIGH AVENUE ETOBICOKE

ONTARIO CORPORATION NO. ON M9P 2J5

06 SECURED PARTY / DEBTOR NAME MARSHALLZEHR GROUP INC.

07 ADDRESS 465 PHILIP STREET, SUITE 206 WATERLOO ON N2L 6C7

08 SECURED PARTY / DEBTOR NAME GENERAL CLASSIFICATION  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MOTOR VEHICLE NO. 10

09 MOTOR VEHICLE NO. 10  
 MOTOR VEHICLE NO. 10

10 MOTOR VEHICLE NO. 10  
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11 MOTOR VEHICLE NO. 10  
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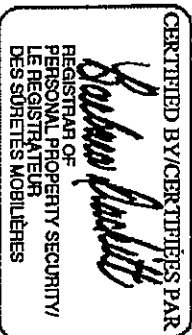
12 MOTOR VEHICLE NO. 10  
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13 GENERAL DESCRIPTION  
 GENERAL DESCRIPTION

14 REGISTERING AGENT  
 REGISTERING AGENT

CHAITONS LLP / CINDY #42606 - GAR  
 5000 YONGE STREET, 10TH FLOOR TORONTO ON M2N 7E9

FOR FURTHER INFORMATION CONTACT THE SECURED PARTY  
 CONTINUED... 4





RUN NUMBER : 341  
 RUN DATE : 2021/12/07  
 ID : 20211207140603.53

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENDUITY RESPONSE  
 CERTIFICATE

REPORT : PPSR060  
 PAGE : 4  
 ( 2590 )

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : AREACOR INC.  
 FIRST CONCERN : 06DEC 2021

FOR REG. FINANCING STATEMENT / CLAIM FOR LITEN  
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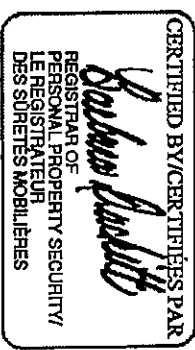
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 04 ADDRESS 270-2869 BLOOR STREET WEST TORONTO  
 DEBTOR COMPANY NAME AND ADDRESS  
 05 NAME BUSINESS NAME FIRST GIVEN NAME INITIAL SURNAME  
 25 JAN 1986 KONTI SURIYANA  
 06 NAME BUSINESS NAME ADDRESS ENOBI COKE  
 07 4 ROYAL LEIGH AVENUE  
 08 MARSHALZEHR GROUP INC. ONTARIO CORPORATION NO. ON M9P 2U5  
 09 ADDRESS 465 PHILIP STREET, SUITE 206 WATERLOO ON N2L 6C7  
 10 COLLATERAL CLASSIFICATION MOTOR VEHICLE ANGNM DATE OF NO. TISSER  
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11 MOTOR YEAR MAKE MOTOR MAKE  
 12 VEHICLE

13 GENERAL  
 14 COBALT  
 15 DESCRIPTION

16 REGISTERING CHATONS LLP / CINDY #42606 - GSA  
 17 AGENT ADDRESS 5000 YONGE STREET, 10TH FLOOR TORONTO ON M2N 7E9

\*\*\*FOR FURTHER INFORMATION CONTACT THE REGISTERED PARTY\*\*\*  
 CONTINUED... 5



TYPE OF SEARCH BUSINESS DEBTOR  
 SEARCH COMPLETED ON AREACOR INC.  
 FIRST CERTIFICATES 06DEC 2021

FOR THE FINANCING STATEMENT / CLAIM FOR THEM

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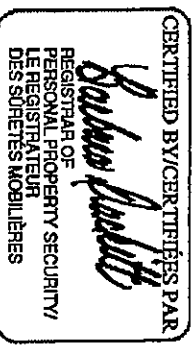
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SECURITY INTEREST IN THOSE ITEMS SET OUT IN A DEPOSIT TRUST AGREEMENT  
 DATED OCTOBER 17, 2017 WITH RESPECT TO THE PROJECT KNOWN AS  
 JAMESVILLE LOFTS LOCATED AT 11-15 CANNON STREET WEST, HAMILTON,  
 HARRIS SHAPIRO LLP (GHH/LP - MATTER NO. 1709229)  
 610-4100 YONGE STREET TORONTO ON M2P 2B5

CONTINUED... 6



RUN NUMBER : 341  
 RUN DATE : 2021/12/07  
 ID : 20211207140603.53

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 6  
 ( 2592)

BUSINESS DEBTOR  
 AREACOR INC.  
 06DEC 2021

FOR THE MANAGING SHAREHOLDER / PARTNER FOR ITEM

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03 DEBTOR NAME BUSINESS NAME ADDRESS ONTARIO CORPORATION NO.

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07 DEBTOR NAME BUSINESS NAME ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY /  
 TRUST COMPANY /  
 ADDRESS

09 GOVERNMENT CLASSIFICATION  
 CONSISTENT INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MARCHING OR MARCHING DATES

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13 GENERAL ONTARIO

14 CONTAINER DISSEMINATION

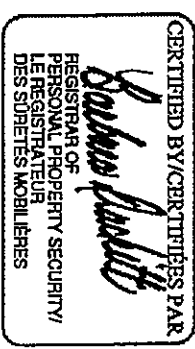
15 REGISTERING ADDRESS

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\*\*\*FOR FURTHER INFORMATION CONTACT THE BROKER PARTY\*\*\*

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RUN NUMBER : 341  
RUN DATE : 2021/12/07  
ID : 20211207140603.53

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PPSR060  
PAGE : 7  
( 2593)

SEARCH CONDUCTED ON: AREACOR INC.  
FILE NUMBER: 06DEC 2021  
BUSINESS DEBTOR

REGISTRATION / CHANGE STATEMENT / CHANGE STATEMENT

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SCHEDULE: 20171102 1320 1590 5669

01 RECORD NUMBER: 733551183  
PAGE-AMENDED: 1  
NO-SPECIFIC-PAGE-AMENDED: 1  
CHANGE-REQUIRED: A  
RENEWAL YEARS: 1  
CORRECT PERIOD: 1

22 DEBTOR/TRANSFEE: AREACOR INC.  
FIRST GIVEN NAME: AREACOR INC.  
FIRST SURNAME: AREACOR INC.

23 DEBTOR/TRANSFEE: TO ADD A DEBTOR

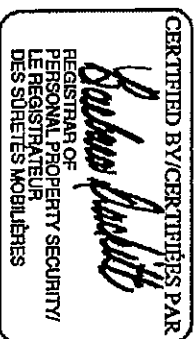
02/03/04/07 DEBTOR/TRANSFEE: 23MART1986  
FIRST GIVEN NAME: RONI  
SURNAME: GILYANA  
ADDRESS: 4 ROYALHIGH AVENUE  
TORONTO  
ONTARIO CORPORATION NO: ON M9P-2J5

08/09 ASSTGNOR-SECURED PARTY/ALIEN-GUARANTEE/ASSIGNEE  
ADDRESS: COLLATERAL CLASSIFICATION

10 MOTOR-VEHICLE: NO-FIXED  
YEAR: 11  
MAKE: 12  
MODEL: V I N  
DATE-OF-MAINTENANCE ON: 13  
MOTOR-VEHICLE: 14  
MOTOR-VEHICLE: 15  
MOTOR-VEHICLE: 16  
MOTOR-VEHICLE: 17

HAROLD SHEPHERD LLP (GHE/LFP)  
610-4100 YONGE STREET  
TORONTO ON M2P 2B5

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*  
CONTINUED... 8





RUN NUMBER : 341  
 RUN DATE : 2021/12/07  
 ID : 20211207140603.53

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENDUSER RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 9  
 ( 2595)

BUSINESS DEBTOR  
 SEARCH CONDUCTED ON AREACOR INC.  
 FILE PERIOD 06DEC 2021

FORM 26 (FINANCING CHARGE STATEMENT) / CHANGE STATEMENT

ENTIRE PAGE NO. OF PAGES TOTAL MONTHS VEHICLE REGISTRATION NUMBER REGISTERED UNDER  
 001 1 733551183 20180501 1343 1590 9081

21 RECORDS AMENDED  
 22 PAGE AMENDED NO SPECIFIC PAGE AMENDED CHANGE-REQUIRED A AMENDMENT RENEWAL YEARS CORRECT PERIOD

23 DEBTOR/ TRANSFEROR BUSINESS NAME AREACOR INC.  
 24 DEBTOR/ TRANSFEROR BUSINESS NAME AREACOR INC.

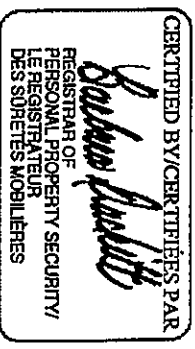
25 OTHER CHANGE TO CHANGE THE ADDRESS OF ONE OF THE DEBTORS  
 26 REASON/ DESCRIPTION  
 27  
 28

02/ DRESSER/ TRANSFEROR NAME OF BIRTH FIRST-GIVEN-NAME INITIAL SURNAME  
 03/ TRANSFEROR PREVIOUS-NAME AREACOR INC.  
 04/07 ADDRESS SUITE 270, 2869 BLOOR STREET WEST TORONTO ONTARIO CORPORATION, NO. 183

29 ASSIGNOR  
 08 SECURED PARTY/LEAS-GUARANTEE/ASSIGNEE  
 09 COLLATERAL CLASSIFICATION ADDRESS  
 10 CONSUMER INVENTORY CONTAINING ACCOUNTS OTHER INCLUDED AMOUNT POSITIONED ON MATURITY DATE NO. FILED

11 MOTOR YEAR MAKE MODEL V T N  
 12 VEHICLE  
 13 GENERAL  
 14 COLLATERAL DESCRIPTION  
 15 RISK-SUGGESTING AGENT OR ADDRESS HARRIS SHEPPER LLP (GHH/LLP - MATTER NO. 1709229)  
 16 SECURED PARTY/LEAS-GUARANTEE/ASSIGNEE ADDRESS 610-4100 YONGE STREET TORONTO ON M2P 2B5  
 17 LEAS-GUARANTEE/ASSIGNEE

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*  
 CONTINUED... 10



RUN NUMBER : 341  
RUN DATE : 2021/12/07  
ID : 20211207140603.53

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

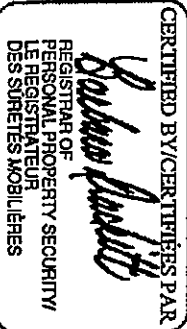
REPORT : PSSR060  
PAGE : 10  
( 2596 )

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : ARBACOR INC.  
FILE CURRENCY : 06DEC 2021

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
769932048	20210217 1359 1532 4862			
741075075	20180629 0927 1590 3652			
741075111	20180629 0927 1590 3653			
733551183	20171101 1346 1590 5548	20171102 1320 1590 5669	20171102 1441 1590 5687	20180501 1343 1590 9081

7 REGISTRATIONS(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(c/s 08/2019)



# TAB J



***THIS IS EXHIBIT "J" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
***A Commissioner Etc.***



**TIMELY. TRUSTED. TAILORED.**

October 12, 2017

Areacor Inc.  
3044 Bloor Street West, Suite 1114  
Hamilton, ON L8N 1G6

Dear Roni Kilyana:

**Re: Tarion Bond and Deposit Insurance Facility**  
**For: Areacor Inc.**  
**Project: A 40 unit Tarion Type D condominium located at 11-15 Cannon Street West in Hamilton and known as "Jamesville Lofts" (Hereinafter referred to as the "Project")**

---

Subject to your acceptance, and to the terms and conditions held within this letter (the Commitment Letter"), Westmount Guarantee Services Inc. ("Westmount") is pleased to confirm that it will provide a Tarion Bond and Deposit Insurance Facility as detailed below:

**ENTITY BONDED:**

- Areacor Inc. (hereinafter referred to as the "Principal").

**FACILITIES APPROVED:**

- Tarion Bond: \$800,000
- Deposit Insurance Facility: \$2,000,000

**PURPOSE:**

- To assist with the registration of the Principal and Project with Tarion and provide a source of project financing.

**FEES & PREMIUM:**

- Commitment fee payable upon acceptance of these terms: ~~€5,000~~ \$2500 ~~€~~
- Annual premium rate for Tarion Bond: 1.50%
- Annual premium for deposits insured above Tarion coverage: ~~1.50%~~ 1.25% ~~€~~

**INSURING ENTITY:**

By executing this Commitment Letter, The Principal acknowledges and accepts that the insurer/surety under the Tarion Bond and/or deposit insurance policies issued under the Commitment Letter will be Aviva Insurance Company of Canada (hereinafter referred to as the "Surety"). Westmount, as agent for the Surety, shall manage all aspects of the Tarion Bond and/or deposit insurance facility detailed in this Commitment Letter, including but not limited to security, premiums and fees, and deposit releases. Westmount may, from time to time, provide the Surety with information with respect to the Principal, Project, indemnitors, security, or any other information provided to or obtained by Westmount with respect to this Commitment Letter or the Project.

The Principal further acknowledges that all security required under the Commitment Letter will be held by the Surety and/or Westmount, jointly or independently.

**LEGAL REPRESENTATION AND SECURITY REQUIREMENTS:**

The Principal acknowledges and accepts that the law firm selected to act for Westmount and the Surety with respect to registration of the security, the role of Escrow Agent and other matters shall be Harris Sheaffer LLP, attention: Gary Harris.

The Principal shall be responsible for full payment of all legal fees and disbursements when invoiced by this firm, and shall pay all costs with respect to preserving the Surety's rights under its mortgage security including all defense costs of any construction lien actions incurred by or on behalf of Westmount or the Surety.

**Aviva Security**

As general and continuing security for the payment of present and future indebtedness, obligations and liabilities of the Principal to the Surety, Westmount and the Surety shall require the registration and/or execution of the following security (the "Surety Security"). This offer for a Bond and/or Deposit Insurance Facility shall expire should the Surety Security not be registered by January 31, 2018 (the "Expiration Date"). Westmount may extend the Expiration Date at its sole discretion.

**Indemnity Agreement**

The Principal consents to provide the unlimited, joint and several indemnities of the following corporations and people to the Surety in Westmount's Standard form, along with all other resolutions, etc. deemed necessary by Westmount's solicitor:

- Areacor Inc.
- Roni Kilyana, in a personal capacity
- Any additional indemnities provided to the construction lender shall also be provided to the Surety

Should the company from which title to purchasers will be transferred not be the Principal Company or an indemnitor noted on page one of the Commitment Letter ("Declarant"), the Principal further consents to provide the indemnity of the Declarant under the same terms noted above.

(Declarant company: \_\_\_\_\_)

The Principal and each of the Indemnitors listed above agree to provide Westmount with year-end financial statements as they are produced but not later than 180 days after their fiscal year end. If applicable, personal indemnitors shall arrange to supply Westmount with updated net worth statements annually.

**Trust Account Agreement**

The Principal shall execute a Deposit Trust Agreement in Westmount's standard form between the Principal, the Surety and the Escrow Agent with respect to the control and operation of the trust account. Westmount shall require a first charge and security interest in favour of the Surety over the account and in those deposits contained within that account and will require a PPSA Financing statement registered in first position for a term not less than 10 years.

### **Collateral Mortgage**

The Principal consents to providing the Surety with a collateral second mortgage on the subject project and property in the amount of \$3,500,000. Westmount will require an opinion from its Solicitor that the Surety has a valid and enforceable charge over the project and property.

The Surety will fully postpone its mortgage position to a Construction lender providing project financing that has been approved by Westmount. The Principal shall not further encumber the project unless approval is given in writing by Westmount.

The Surety will discharge its collateral mortgage upon the final closing of units and the discharge will be provided at no charge to the Principal, other than legal fees associated with the preparation and discharge of the Surety's security, which shall be the Principal's responsibility. The Surety shall require evidence of transfer of title from the Principal/Declarant to purchasers that have been insured as a condition of discharge.

Upon full payment of any prior encumbrances to the Surety's mortgage, and at the Surety's sole discretion, the Surety may require as a condition of executing further partial discharges of additional sold and/or unsold units, the sale revenues from those units to be retained in trust as added security for any outstanding bonds and/or policies.

**Prior to the execution of a partial discharge for any of the last remaining units in the Project after the full payment of any prior encumbrances to the Surety's mortgage, the Surety will require payment equal to the Tarion Bond amount, currently \$800,000, which in the deposit release section below, will be held as security against any warranty obligations under the Tarion Bond. All amounts retained by the Surety shall be returned to the Principal upon return of the Tarion Bond to the Surety for cancellation, less any costs incurred by the Surety, Westmount or its solicitor on behalf of the Principal.**

### ***Insurance Requirements***

The Principal shall provide evidence of all risk insurance including course of construction, business interruption, earthquake and flood. The policy(s) shall provide for full replacement cost on all buildings, equipment, and inventory owned by the Principal and located at the project or located elsewhere and reasonably necessary for the effective implementation, management and administration of the project. Insurance is to include public liability coverage at least equal in scope to commercial general liability form as well as a soft cost endorsement. The Certificate of Insurance evidencing both Builder's Risk and Wrap-up Liability shall note the construction lender as First Mortgagee and loss payee, then the Surety as Second Mortgagee and loss payee as per the Standard Mortgage Clause.

### **Additional Security**

The Principal consents to provide the Surety and/or Westmount with all such other certificates, documents and opinions as the Surety, Westmount or its solicitors shall reasonably require.

#### **DEPOSIT RELEASE TERMS:**

Subject to the registration of the Surety's Security and adherence by the Principal to all terms and conditions held within this Commitment Letter, Westmount shall authorize the release of purchaser deposits from trust in the following manner:

- Deposits of \$1,000,000 shall be made available to fund project costs, as recommended by the cost consultant, upon confirmation that the construction lender has advanced no less than \$3,000,000 and the project has achieved sales of \$9,000,000
- All remaining deposits shall be made available to fund project costs upon confirmation that project has achieved sales of \$10,000,000, and as recommended by the cost consultant.

#### **GENERAL CONDITIONS:**

##### **Fees and Premiums:**

All premiums and fees detailed below our throughout this Commitment Letter shall be payable to Westmount Guarantee Services Inc., and are due upon receipt of the invoice, unless stipulated otherwise. Any premiums that remain outstanding longer than 60 days shall accrue interest at a rate of 1% per month.

The Principal shall pay to Westmount the non-refundable Commitment Fee as directed on page one of this Commitment Letter. The Commitment Fee shall be deemed earned upon the acceptance of this Commitment Letter.

Premium for the Tarion Bond will be based on the annual rate outlined in this Commitment Letter. The first, one year term will be payable on or prior to the date the Bond is released to the Principal for delivery to Tarion. All future premium terms will be billed at this rate unless stipulated otherwise, and will be deemed payable as of the invoice date.

After condominium registration and at the expiry of the next bond invoice term, Westmount will entertain reducing the premium term to a minimum four (4) month term. Should any further reductions in the Bond take place during the reduced term, adjustments will be considered at the next premium term renewal.

The premium charged for all deposit insurance will be at the annual rate outlined in this Commitment Letter. Premium for deposit insurance shall be billed quarterly and payable upon receipt of invoice.

Westmount reserves the right to deduct outstanding premiums and/or fees from future deposits releases.

##### **Tarion:**

The Principal shall continue to maintain registration with Tarion so long as there are unsold units and it shall comply with all aspects of the Ontario New Home Warranties Plan Act, its regulations and bulletins issued pursuant thereto until such time Tarion returns the Surety's Bond to Westmount.

If the project is governed under Tarion Builder Bulletin #19, the Principal undertakes and agrees to execute a direction authorizing the Field Review Consultant to provide Westmount with copies of all reports.

Westmount's authorization to release funds from trust shall be conditional upon the Escrow Agent receiving Tarion Deposit Receipts.

The Principal and/or its Solicitor agree to provide upon final closing of sales, information to Tarion, with a copy to Westmount to facilitate the release/reduction of the Bond in accordance with Tarion Builder Bulletin's #19 and #28.

**Tarion Authorization to Provide Project Information**

The Principal shall execute an Authorization directing Tarion to provide Westmount with any information that may alter Westmount's exposure under the Bond and/or Policies.

The Principal shall provide Westmount with access to the Principal's on-line Tarion files, and any related electronic information from Tarion, through the Principal's Builder Portal. The Principal shall provide Westmount with a user ID and password to access the Builder Portal.

(User ID: \_\_\_\_\_ Password: \_\_\_\_\_ )

**Tarion Builder Bulletin #47**

The Principal shall provide Westmount with the following information in respect to the required addendum to the agreement of purchase and sale called "Statement of Critical Dates":

- the date the Vendor has obtained formal zoning approval for the building;
- the actual date of commencement of construction, which is to be provided at the same time the Vendor provides notice to purchasers;
- the date established as the Final Tentative Closing Occupancy Date, which date is to be set no later than 30 days after completion of the roof slab or the roof trusses and sheathing of the building;
- the Principal and/or its Solicitor undertakes and agrees to provide any required statutory declarations and undertakings with respect to compliance to Tarion Bulletin #47;
- the Principal and/or its Solicitor undertakes to provide information prior to either interim or final closing regarding whether delayed closing compensation is owing or was paid to each purchaser.

**Alternative Tarion Bond Provider:**

The Surety may require at its sole discretion that all or a portion of the Tarion Bond to be provided under this Commitment Letter be issued by another surety or bonding company. Should an alternative Tarion Bond provider be utilized, the terms and conditions of this Commitment Letter shall remain in force and effect and all security including the Deposit Trust Agreement, the Collateral Charge and other related security shall continue to be administered by Westmount on behalf of Aviva, and if required, the Alternative Tarion Bond Provider. Premium for the total Tarion Bond requirement will be invoiced entirely by and due to Westmount.

**The Condominium Act:**

The Principal covenants and agrees to comply at all times with the provisions and requirements of the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder.

**Master Deposit Insurance Policy:**

All Deposits to be insured under the Deposit Insurance Facility shall be held in Trust by a prescribed Trustee as required under the Act.

The Principal shall provide Westmount or its authorized representative with all information necessary and in a format acceptable to Westmount to prepare the schedule of insured purchasers that will form part of the Master Deposit Insurance Policy.

**Purchaser Release, Assignment and/or Default:**

The Principal, when allowing a purchaser to cancel a deal, shall require the purchaser to execute a Mutual release and Termination Agreement in Westmount's prescribed format as a condition of requesting the deposit to be released from the Trust Account. Should the purchaser deposit be already insured and released from trust to the Principal, the Principal shall be solely responsible for paying the deposit refund and shall supply Westmount with a copy of the negotiated refund cheque.

For purchasers of units who are in default, the Principal shall notify Westmount of the default and request permission to remarket the unit. All deposits from the defaulting party shall remain in trust until Westmount is satisfied the dispute has been settled. If the deposit monies from the defaulting purchaser have been released to the Principal, deposit monies from new purchasers shall remain in trust until Westmount is satisfied the dispute has been settled with the original purchaser.

Should the Principal permit the assignment of a purchase and sale agreement to another party, the Principal agrees to obtain a release in favour of Tarion, the Surety and Westmount and provide details of the assignment to Westmount as a condition of insuring the new party's deposit. Additional premium shall be charged should the new deposit be insured and released from trust.

**Project Financing:**

The Principal shall provide Westmount with copies of all discussion papers and the final accepted construction loan financing commitment. The terms of those commitments shall be satisfactory to Westmount and permit the project to be completed in a timely matter. If the terms of the said commitment do not contemplate the facility provided by Westmount or do not compliment the facility provided by Westmount, all terms in this facility shall either be re-negotiated or terminated.

The Principal shall take full responsibility to advise and obtain consent from any construction lender of the involvement and/or security requirements by Westmount on this project.

**Cost Overruns:**

Westmount's authorization to release funds shall be conditional upon the Principal dealing with cost overruns to the satisfaction of both the construction lender and Westmount and that construction of the subject project proceed without any major construction problems identified by any consultant that could ultimately affect Westmount's exposure under the bond and/or policies.

**Project Construction and Bonding of Major Trades:**

The Principal shall notify Westmount of any key construction staff changes and/or changes in plans regarding retention of a General Contractor or Construction Manager from those that were contemplated and revealed to Aviva prior to these terms being offered.

The Principal acknowledges that under its Tarion Builder Agreement, it shall indemnify Tarion for all claims relating to the building envelope, mechanical and electrical systems for two years after condominium registration. Westmount highly recommends that any major trades involved in these areas provide the Principal contract performance and labour and material bonds with a two year maintenance period to offset any liability for deficiencies that may be discovered in the first year condominium performance audit.

**Project Monitoring:**

The Principal agrees to authorize the cost consultant to provide copies of all reports to Westmount as and when provided to the construction lender. Both the Cost consultant firm and the content of the report shall be acceptable to Westmount for the purposes of fulfilling its obligations under this bonding facility.

Occasionally, Westmount may request its own "Project Status Report", which is to be completed with basic sales, closing and construction information. The Principal undertakes to complete and return those reports on a timely basis.

Representatives of Westmount shall be entitled to, subject to reasonable prior notice, attend and inspect the bonded project.

**Material Change in the Information Supplied to Westmount:**

If at any time prior to the execution and/or release of any bond or policy or release of deposits from trust, Westmount determines there is a material adverse change or implication to the information that the Principal had previously supplied to Westmount, including, but not limited to: project viability, ownership of the project or financial ability of the Principal and/or the Indemnitors, Westmount may suspend the issuance of bonds, policies or release of monies from Trust until the matter is resolved to the satisfaction of Westmount.

The Principal shall notify Westmount immediately of any material change in respect of the project or its financial condition.

**Consent and Acknowledgement to Collection, Use and Disclosure of Information:**

The Principal and all Indemnitors consent to Westmount obtaining from any person or company, including Credit Reporting Agencies, any information, including personal information, that Westmount may require at any time to facilitate the delivery of bonds and policies contemplated under this surety facility. The Principal and all Indemnitors further consent to the disclosure of this information to any credit grantor or re-insurer by Westmount or the Surety if Westmount or the Surety is requested to do so.

**Electronic Execution of Documents:**

It is expressly acknowledged and agreed that the execution of this Commitment Letter may be made or manifested by way of an electronic signature (as such term is defined in The Electronic Commerce Act 2000, S.O. 2000, as amended), undertaken by or through a computer program or any other electronic means, as



expressly provided or contemplated by (and in accordance with the provisions of) The Electronic Commerce Act 2000, S.O. 2000, as amended.

Each of the parties hereto further acknowledges and agrees that the Commitment Letter may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the parties that have signed the Commitment Letter shall have the same force and effect as if same were originally executed), and that a photocopy or telefaxed copy of the Commitment Letter may be relied upon by all of the parties that have signed the Commitment Letter to the same extent as if it were an original executed version addressed specifically to each of them.

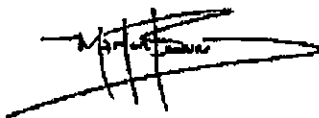
***All the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written or verbal consent of Westmount. Failure to observe this condition may result in either Westmount withdrawing or altering this commitment.***

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter and returning it together with any applicable fees, on or before October 27, 2017.

**Westmount Guarantee Services Inc.**



**Jim Emanoilidis  
President**

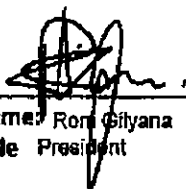


**Marlon Brown  
Senior Underwriter, Developer Solutions**

I have the authority to bind the Corporation.

Accepted this 16 day of October, 2017.

**AREACOR INC.**



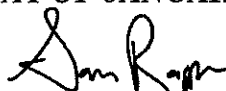
**Name: Ron Gilyana  
Title: President**

**Name:  
Title:**

I/We have the authority to bind the Corporation

# TAB K

***THIS IS EXHIBIT "K" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
***A Commissioner Etc.***

BETWEEN:

AVIVA INSURANCE COMPANY OF CANADA  
(hereinafter called the "Surety")

- and -

MARSHALL/ZEHR GROUP INC.

(hereinafter collectively called "the Lender")

WHEREAS:

1. Areacor Inc. (hereinafter called the "Principal") and Roni Gilyana ("Roni") have executed and delivered certain security to the Lender, including without limitation a Charge/Mortgage of Land (the "First Charge") in the principal amount of \$12,000,000.00 and certain other security (all present and future security granted to the Lender by the Principal and Roni in respect of the Project (as hereinafter defined) collectively referred to herein as the "Lender Security").
2. The First Charge was registered in the Land Titles Division of the Hamilton Wentworth Registry Office (No. 62) (the "LRO") on the \_\_\_\_\_ day of June, 2018 as Instrument No. WE \_\_\_\_\_ against the lands described therein (the "Property").
3. The Principal has requested the Surety to provide a Bond to Tarion Warranty Corporation and/or deposit insurance policies in connection with the Principal's proposed development of a condominium project (the "Project") on the Property.
4. The Principal has entered into a deposit trust agreement dated as of the 17th day of October, 2017 (the "DTA") with the Surety and Harris, Sheaffer LLP (the "Escrow Agent") in connection with deposit monies received from time to time from purchasers of units in the Project and accrued interest thereon (collectively the "Deposit Monies").
5. By a mortgage (the "Surety Mortgage") made between the Principal and Roni as mortgagor and the Surety as mortgagee which was registered on the 23rd day of November, 2017 in the LRO as Instrument No. WE1252218, the Principal and Roni did mortgage the Property to the Surety to secure payment of the sum of \$3,500,000.00 and interest as set out in the Surety Mortgage.
6. The Principal and Roni have granted to the Surety, pursuant to the provisions of the Surety Mortgage and the DTA, security interests in the Property and in certain of their personal property, including the Deposit Monies (all present and future security granted by the Principal and Roni to the Surety in respect of the Project, including such security pursuant to the Surety Mortgage and the DTA hereinafter referred to as the "Surety Security").
7. The parties hereto wish to record their agreement as to the priorities of the Lender Security and the Surety Security.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Lender agree as follows:

- (a) The First Charge and all amounts secured thereby (including all costs, charges, fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender in connection therewith) but including advances made or to be made thereunder only to the extent of \$12,000,000.00 plus interest thereunder and secured thereby shall be an encumbrance upon the Property prior to the Surety Mortgage, and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Mortgage to the First Charge, to all amounts secured thereby (including all costs, charges, fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith) and all advances made or to be made thereunder to the extent noted above and to all interest accruing thereunder and secured thereby. In order to give effect to this postponement and subordination, the Surety releases to the Lender all of its rights and claims to priority with respect to the Surety Mortgage to the extent noted above.
- (b) Subject to the provisions of paragraph (a) above in respect of the First Charge and the Surety Mortgage, the Surety Security shall at all times be postponed to and rank subordinate to the Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Lender Security for only so long as, and to the extent that, such

affect the priorities set out herein.

- (d) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal and Roni in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Principal and Roni except in respect of the Project, while any amounts under the Lender Security remain unpaid.
- (e) The Surety and the Lender consent to the granting of the security by the Principal and Roni referred to herein, and shall at all times and from time to time execute and deliver to the other all such further documents, agreements or other assurances as may be necessary to give effect to this agreement and to carry out the intent hereof.
- (f) Nothing herein shall affect the rights of the Surety and the Lender respectively against the Principal and Roni. The provisions of this agreement shall enure to the benefit of and be binding upon the Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (g) The Surety hereby covenants, agrees and undertakes to and with the Lender to:
  - (i) execute and deliver any usual documentation required in connection with the development and registration of the Project as a Condominium; and
  - (ii) execute and deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold in order to complete the sale of same.
- (h) This Priority Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together shall constitute one and the same instrument.
- (i) This Priority Agreement may be executed and transmitted by facsimile and/or email and shall in such event be effective and binding on the undersigned and their successors and assigns as if originally executed and delivered.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**AVIVA INSURANCE COMPANY OF CANADA**

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: **Brian Argue**  
           **Authorized Signing Officer**

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

I/We have authority to bind the Corporation

**MARSHALLZEHR GROUP INC.**

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

I/We have authority to bind the Corporation

# TAB L

***THIS IS EXHIBIT "L" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

*Description* PT LT 13 BLK 6 PL 39 AS IN VM97602, CITY OF HAMILTON  
*Address* 11 CANNON STREET WEST  
HAMILTON  
*PIN* 17586 - 0003 LT  
*Description* PT LT 13 BLK 6 PL 39 AS IN HL269921; CITY OF HAMILTON  
*Address* 15 CANNON ST W  
HAMILTON

### Source Instruments

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
WE1252218	2017 11 23	Charge/Mortgage

### Party From(s)

*Name* AVIVA INSURANCE COMPANY OF CANADA  
*Address for Service* 600 Cochrane Drive, Suite 205  
Markham,  
Ontario L3E 5K3

I, Brian Argue, A.S.O., have the authority to bind the corporation.

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

### Party To(s)

*Capacity*

*Share*

*Name* MARSHALLZEHR GROUP INC.  
*Address for Service* 206-465 Phillip Street  
Waterloo, Ontario N2L 6C7

### Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number WE1293837 registered on 2018/06/29

The registration of this document is not prohibited by registration WE1293840 registered on 2018/06/29.

### Signed By

Sherri Nicole Lavine	5000 Yonge Street, 10th Floor Toronto M2N 7E9	acting for Party From(s)	Signed	2018 07 05
----------------------	---	-----------------------------	--------	------------

Tel 416-222-8888

Fax 416-218-1860

I have the authority to sign and register the document on behalf of the Party From(s).

### Submitted By

CHAITONS LLP	5000 Yonge Street, 10th Floor Toronto M2N 7E9	2018 07 05
--------------	---	------------

Tel 416-222-8888

Fax 416-218-1860

### Fees/Taxes/Payment

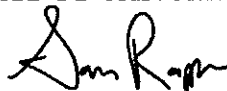
<i>Statutory Registration Fee</i>	\$63.65
<i>Total Paid</i>	\$63.65

### File Number



**TAB M**

***THIS IS EXHIBIT "M" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

June 25, 2021

**Via Email: [schmuckd@simpsonwiggles.com](mailto:schmuckd@simpsonwiggles.com)**  
**SimpsonWigle LAW LLP**  
200-1 Hunter Street East  
Hamilton, ON L8N 3W1

**Via Email: [rick@lintack.com](mailto:rick@lintack.com)**  
**Lintack Architects Incorporated**  
244 James Street, South  
Hamilton, ON L8P 3B3

**Attention: Derek Schmuck**

**Attention: Rick Lintack**

Dear Messrs. Schmuck and Lintack:

**Re: Fusioncorp Developments Inc. ('Fusioncorp')  
CCDC 5B 2010 dated January 30, 2019, as amended (the "Contract")  
Jamesville Lofts, 11-15 Cannon Street W., Hamilton (the "Project")  
Your Client: Areacor Inc. ("Areacor")  
Re: Our File No.: 73/20**

---

We are writing with respect to several issues on the Project, both on-going and recent, which are frustrating the performance of the Contract and which must be addressed before Fusioncorp's Work can continue.

**Payment Issues**

Late payment to Fusioncorp by Areacor has been a re-occurring issue on the Project. On at least 4 separate occasions, Fusioncorp has been forced to issue formal Notices of Default to obtain payment from Areacor. I am attaching copies of Fusioncorp's Notices that were delivered on May 6, 2020, July 10, 2020, May 12, 2021, and June 8, 2021, for ease of reference.

With respect to Areacor's latest payment default, on June 8, 2021 we delivered a formal Notice in Writing pursuant to the Contract advising that Areacor was in default of its contractual obligations for failing to pay Fusioncorp its April 2021 progress draw ("**April Draw**").

Notwithstanding its obligations to cure the said default within five (5) Working Days, Areacor failed to cure the default as is required by GC 7.2.4. As a result of Areacor's default, on June 15, 2021, Fusioncorp provided formal notice that it was suspending all trade Work in accordance with the Contract, and without prejudice to any other rights or remedies that it has under the

Contract. At that time, and in the interest of the Project, Fusioncorp confirmed that while trade Work was being suspended, it would continue to ensure that the Project site was secured and kept in a safe state and has continued to do so.

On the afternoon of Friday June 18, 2021, our client received an email from Mr. Gilyana advising that payment for the April Draw was in the mail. For reasons unbeknownst to Fusioncorp, Areacor is inconsistent with its payment methods, choosing on some occasions to deliver funds electronically, and on other occasions delivering funds by mail. This creates confusion between the parties and often results in unacceptable delay. For example, the funds delivered on June 18, 2021, while Areacor was in breach of the Contract for delayed payment, were delivered by mail and not received by Fusioncorp until four days later on June 22, 2021.

In addition to being late, at the time that payment was received by Fusioncorp it became clear that two cheques were delivered by Areacor:

1. **Cheque No.1** : Made payable to Fusioncorp in the amount of \$31,404.81; and
2. **Cheque No. 2**: Made payable to 911 Construction o/a 2236313 Ontario Inc. in the amount of \$59,945.53.

**("April Draw Payment")**

First, with respect to the April Draw Payment, it must be noted that the cheques are dated June 10, 2021, being a date within the cure period. Despite this, Areacor disregarded the Contract and withheld delivering those funds until June 18, 2021 when the funds were put in the mail. Payment delays, including the days that the funds are in transit, are affecting Fusioncorp's relationship with its subtrades and are resulting in issues on site, including delays to the performance of work. This pattern of late payment is a clear breach of the Contract and is unacceptable.

Second, Article A-9.1.3 of the Contract, as amended by the Supplemental Conditions, states as follows with respect to payment:

"Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the Place of Work. **The Owner shall pay the Construction Manager** . . . payments on account of the Contract Price when due in the amount certified by the Consultant together with such Value Added Taxes as may be applicable to such payment."

Further, General Conditions 5.4.1 and 5.4.7, as amended by the Supplemental Conditions, go on to state that:

"Applications for payment on account as provided in Article A-9 of the Agreement – PAYMENT - may be made monthly as the Work progresses" (GC 5.4.1); and

"After receipt by the Consultant of an application for payment for the Work submitted by the Construction Manager in accordance with paragraph 5.4.1 to 5.4.6 . . . **the Owner shall make payment to the Construction Manager** on account as provided in Article A-9 of the Agreement . . ." (GC 5.4.7).

Read together, Articles A-9.1.3 and GCs 5.4.1 and 5.4.7 of the Contract make clear that Areacor is to pay Fusioncorp directly. Payment was/is not to be paid directly to Fusioncorp's subcontractors, as was the case with the April Draw Payment. Simply put, the Contract does not allow Areacor to manage payment to Fusioncorp's subtrades and the Project cannot be managed as such. If Areacor wishes to manage payment to subcontractors, the parties ought to consider entering a CCDC 5A to complete the Project as has been recommended by Fusioncorp as part of a Project "reset" on several occasions.

Accordingly, Areacor remains in breach of the Contract and the suspension of the Work on the Project will continue.

### **Consultant's Role**

As you know, we have previously addressed Fusioncorp's concerns that the Consultant appears to have aligned its position on the Project with Areacor, notwithstanding its contractual obligations to act impartially.

We have recently had the opportunity to reviewed Ms. Cran's email of June 9, 2021 with respect to payment which suggests that an update to the Project's budget is required from Fusioncorp for the Consultant to certify future payment amounts. Following Ms. Cran's email, Fusioncorp did provide supplemental budget information and is awaiting response from the lender, as discussed further below.

In any event, nowhere in the Contract is there a requirement for Fusioncorp to provide an updated Project budget to the Consultant. Fusioncorp expects that the Consultant will comply with its contractual obligations and will perform its duties impartially, including certifying any required payment applications as per its mandate under the Contract.

### **The Notice of Appointment**

We have received a copy of the Notice of Appointment ("**Notice**") dated June 24, 2021, providing notice that Areacor has retained the GeoFocus Group ("**GeoFocus**") to assist in carrying out its responsibilities under the Contract.

At no time prior to the delivery of the Notice did Areacor advise Fusioncorp of its intention to appoint a Project representative nor did it consult with Fusioncorp prior to the appointment.

General Condition ("**G.C.**"), Article 1.6.1 of the Contract states that

#### **GC 1.6 PROJECT REPRESENTATIVES**

*1.6.1 The Owner, Construction Manager and Consultant may appoint one or more project representatives to assist in carrying out their responsibilities under this Contract. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.*

The Contract language is clear that "the Owner, Construction Manager and Consultant" may appoint a Project representative. Mutual agreement is required. To read the clause otherwise would allow even the Consultant to unilaterally appoint a Project representative, a commercially absurd result, which cannot be what the parties intended when entering the Contract.

If Areacor is desirous of appointing a representative to assist with the Project, please provide sufficient particulars as to what role GeoFocus intends to occupy on the Project so that Fusioncorp can consider same. At this time, and without such particulars, Fusioncorp rejects the appointment.

**The Lender's Meeting**

For months, Fusioncorp has attempted to work with Areacor to establish a Project "reset" in the best interest of the Project but Areacor has insisted on maintaining the status quo. The status-quo is no longer maintainable.

On June 17, 2021, Areacor and Fusioncorp met with the Project lenders to discuss the Project schedule, budget and the various other unresolved issues encountered on the Project in the hopes that a clear path forward could be established that would benefit the parties and, more importantly, the interests of the Project. We note that at no time during this meeting, which Fusioncorp approached as a good faith attempt to resolve the problems with this Project, did Areacor even mention the impending appointment of GeoFocus.

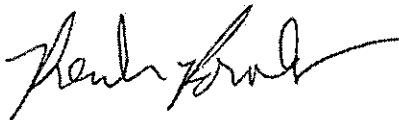
Despite that meeting, and the lenders advising that they would get back to the parties with their recommendations and comments on moving forward, Fusioncorp has heard nothing back from Areacor or the lenders. Instead Areacor has attempted to unilaterally appoint a Project representative and has continued to insist upon updated Project budgets and schedules.

As clearly set out by Fusioncorp at the June 17, 2021 meeting, without the various Project issues being addressed, realistic and practical budgets and schedules cannot be provided and performance of the Contract Work cannot continue.

We look forward to a substantive response to the above letter so that the parties may get this Project back on track.

Yours very truly,

**GLAHOLT BOWLES LLP**



Brendan D. Bowles

BB/jp

Encls.

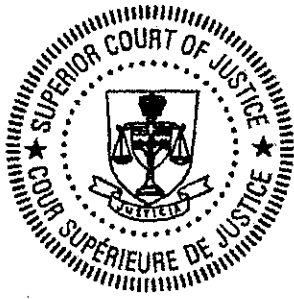
**TAB N**

***THIS IS EXHIBIT "N" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*





Electronically Issued  
Délivré par voie électronique : 21-Dec-2021  
Hamilton

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

In the matter under the *Construction Act*, R.S.O. 1990, c. C.30, as amended

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

(Court Seal)

**FUSIONCORP DEVELOPMENTS INC.**

Plaintiff

and

**AREACOR INC., MARSHALLZEHR GROUP INC., AVIVA INSURANCE COMPANY OF  
CANADA/AVIVA, COMPAGNIE D'ASSURANCE DU CANADA and CITY OF  
HAMILTON also known as THE CORPORATION OF THE CITY OF HAMILTON**

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.

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 December 21, 2021 Issued by \_\_\_\_\_  
Local Registrar

Address of court office: 45 Main Street E.  
Hamilton ON L8N 2B7

TO: AREACOR INC.  
2869 Bloor Street West  
Suite No. 270  
Etobicoke ON  
M8X 1B3

AND TO: CITY OF HAMILTON also known as  
THE CORPORATION OF THE CITY OF HAMILTON  
71 Main Street West  
Hamilton, Ontario  
L8P 4Y5

AND TO: MARSHALLZEHR GROUP INC.  
465 Phillip Street, Suite 206  
Waterloo, Ontario  
N2L 6C7

AND TO: AVIVA INSURANCE COMPANY OF CANADA/  
AVIVA, COMPAGNIE D'ASSURANCE DU CANADA  
10 Aviva Way, Suite 100  
Markham, Ontario  
L6G 0G1

-3-

### CLAIM

1. The Plaintiff, Fusioncorp Developments Inc. ("**Fusioncorp**"), claims as against the defendant Areacor Inc. ("**Areacor**"):

- (a) payment of the sum of \$2,436,674.66 (inclusive of HST) for the supply of labour, material and services with respect to the Jamesville Lofts project (the "**Project**"), an improvement located on the lands and premises described in Fusioncorp's claim for lien, attached hereto as Schedule "A" (the "**Premises**");
- (b) a declaration that Fusioncorp is entitled to a lien in the amount of \$2,436,674.66 (inclusive of HST), upon all of the estate, title, and interest of Areacor in the Premises, pursuant to the provisions of the *Construction Act*, R.S.O. 1990, c. C.30, as amended (the "**Act**");
- (c) in addition, or in the alternative, damages of \$2,436,674.66 (inclusive of HST) for breach of contract in respect of the labour, material and construction management services supplied for which Fusioncorp is entitled to a lien pursuant to the provisions of the Act;
- (d) in addition, or in the further alternative, a declaration that the plaintiff is entitled to a charge upon the holdbacks which were or ought to have been retained by Areacor pursuant to the provisions of the Act;

-4-

- (e) in the further alternative, damages of \$2,436,674.66 (inclusive of HST), on an unjust enrichment, or *quantum meruit* basis; and,
- (f) a declaration that Fusioncorp is entitled to a charge against any additional contract funds owing pursuant to the provisions of the Act.

2. The Plaintiff, Fusioncorp, claims as against the defendants MarshallZehr Group Inc. ("**MarshallZehr**"), Aviva Insurance Company of Canada/Aviva, Compagnie D'Assurance du Canada ("**Aviva**") and City of Hamilton also known as the Corporation of the City of Hamilton ("**Hamilton**"):

- (a) a declaration that Fusioncorp is entitled to priority over the mortgages of the defendants MarshallZehr, Aviva, and Hamilton, or, alternatively, priority over the mortgages to the extent of any holdbacks Areacor has failed to maintain, or in the further alternative priority over the mortgages to the extent that any portion of the mortgages advanced exceeded the actual value of the Premises at the time when the lien arose, or in the further alternative, priority over the mortgages to the extent of any unadvanced portions thereof.

3. The Plaintiff, Fusioncorp, claims as against all defendants:

- (a) a declaration that Fusioncorp is entitled to priority over all other conveyances, mortgages or other agreements affecting the ownership interest in the Premises;

-5-

- (b) a declaration that Fusioncorp's lien attaches to any security posted in respect of Fusioncorp's lien;
- (c) that in default of payment of \$2,436,674.66 (inclusive of HST), plus interests and costs, that Fusioncorp's claim be paid out of any security posted in respect of the same, pursuant to the Act;
- (d) for the purposes aforesaid and for all other purposes, that all proper directions be given, inquiries made and accounts taken;
- (e) pre and post-judgment interest on all outstanding amounts at the contractual rate of interest or, in the alternative, pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (f) the costs of this proceeding, plus applicable taxes; and
- (g) such further and other relief as this Honorable Court may deem just.

-6-

#### **THE PARTIES**

4. Fusioncorp is a corporation federally incorporated in accordance with the laws of Canada. Fusioncorp was the Construction Manager in respect of the Project. In that role, Fusioncorp, *inter alia*, supplied labour, materials and construction management services to the Project.

5. The defendant, Areacor, is a corporation federally incorporated in accordance with the laws of Canada and was, at all material times, the registered owner of the Premises. Areacor is the "Owner" of the Premises as defined by the Act.

6. The defendant, MarshallZehr, is a company incorporated in accordance with the laws of Ontario. MarshallZehr has a registered mortgage on the Premises. MarshallZehr intended to and did finance the construction of the Project.

7. The defendant, Aviva, is an extra-provincial federal corporation incorporated in accordance with the laws of Canada. Aviva has a registered mortgage on the Premises.

8. The defendant, Hamilton, is a municipal corporation. Hamilton has a registered mortgage on the Premises.

#### **THE PROJECT AND CONTRACT**

9. On or about January 30, 2019, Fusioncorp and Areacor entered into a CCDC 5B, Construction Management Contract between Owner and Construction Manager for Construction Management Services (the "**Contract**") in respect of the Project. The Contract was a standard form "construction manager at risk" form of CCDC agreement, modified by supplementary

-7-

conditions. Pursuant to the Contract, Fusioncorp was hired by Areacor to supply all labour, services and materials for the Project.

#### **DELIVERY AND PERFORMANCE BY FUSIONCORP**

10. Fusioncorp's work and services on the Project commenced on or around January 7, 2019.

11. In addition to its Contract work and services, Fusioncorp also performed extra work and services on the Project at the request of Areacor or its representatives.

12. In accordance with its Contract, Fusioncorp completed its Contract work and services, including any extra work and services in a good and workmanlike manner.

13. On October 27, 2021, the Contract was mutually terminated by agreement between Fusioncorp and Areacor, pursuant to an agreement reached through a mediation process engaged in pursuant to the Project Mediation process provided for in the Contract.

14. By reason of supplying its labour, materials, and services to the Project, Fusioncorp became and is entitled to a lien upon all of the estate, title and interest of the defendants, or any one of them, in the Premises in the amount of \$2,436,674.66 (inclusive of HST), together with interest and costs of this action pursuant to the provisions of the Contract and the Act.

15. On December 10, 2021, pursuant to and in accordance with the Act, Fusioncorp registered a claim for lien, as Instrument No. WE1567387 in the amount of \$2,436,674.66 (inclusive of HST) against the Premises ("**Claim for Lien**").

-8-

16. A copy of the Claim for Lien as registered is attached hereto as Schedule "A".

**CLAIM FOR PRIORITY OVER REGISTERED MORTGAGES**

17. On November 23, 2017, Aviva registered a mortgage on title of the Premises in the amount of \$3,500,000 as Instrument No. WE1252218.

18. On June 29, 2018, MarshallZehr registered a mortgage on title of the Premises in the amount of \$12,000,000 as Instrument No. WE1293837.

19. On April 30, 2019, Hamilton registered a mortgage on title of the Premises in the amount of \$208,755.90 as Instrument No. WE1351712.

20. Fusioncorp's lien has full priority over the mortgages of Aviva, MarshallZehr and Hamilton (collectively the "**Mortgagees**") to the full extent of the mortgages pursuant to section 78 (1) of the Act.

21. Alternatively, Fusioncorp's lien has priority over the Mortgagees to the extent of any holdbacks the Owner has failed to maintain pursuant to the Act.

22. In the further alternative, Fusioncorp is entitled to priority over the Mortgagees to the extent of any amounts advanced in excess of the actual value of the Premises at the time when the first lien arose.



-9-

23. In the further alternative, Fusioncorp is entitled to priority over the Mortgagees to the extent of any amounts advanced subsequent to the Mortgagees receiving notice of Fusioncorp's lien. Fusioncorp pleads and relies on section 78 of the Act.

**BREACH OF CONTRACT, UNJUST ENRICHMENT AND QUANTUM MERUIT**

24. Fusioncorp states that it has supplied its labour, materials and services to the Project and remains unpaid in the amount of \$2,436,674.66 (inclusive of HST), thereby improving the value of the Project at the request of and to the benefit of Areacor who is in breach of contract by failing to pay Fusioncorp all amounts due under the Contract. Alternatively, Areacor has been unjustly enriched in the amount of \$2,436,674.66 (inclusive of HST).

25. Fusioncorp therefore claims from Areacor the sum of \$2,436,674.66 (inclusive of HST), as damages for breach of contract, or alternatively, on a *quantum meruit* basis as the reasonable value and reasonable benefit of Fusioncorp's supply of labour, material and services to the Project, for which it remains unpaid.

26. Fusioncorp proposes that this action be tried at Hamilton, Ontario.

-10-

*(Date of issue)*

**GLAHOLT BOWLES LLP**  
141 Adelaide Street West  
Suite 800  
Toronto ON M5H 3L5

**BRENDAN D. BOWLES** LSO No.: 42802I

[BrendanBowles@glaholt.com](mailto:BrendanBowles@glaholt.com)

Tel: 416-368-8280 ext. 221

**JOHN PAUL VENTRELLA** LSO No.: 64269R

[JohnPauVentrella@glaholt.com](mailto:JohnPauVentrella@glaholt.com)

Tel: 416-368-8280 ext. 250

Fax: 416-368-3467

Lawyers for the Plaintiff,  
Fusioncorp Developments Inc.

**SCHEDULE "A"**

LRO # 62 Construction Lien

Received as WE1567387 on 2021 12 10 at 10:54

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

yyyy mm dd Page 1 of 1

**Properties**

**PIN** 17586 - 0153 LT  
**Description** PART OF LOT 13, BLOCK 6 PLAN 39, PART 1 ON 62R21575; SUBJECT TO AN EASEMENT AS IN WE1493193; CITY OF HAMILTON  
**Address** HAMILTON

**Consideration**

**Consideration** \$2,436,674.66

**Claimant(s)**

**Name** FUSIONCORP DEVELOPMENTS INC.  
**Address for Service** c/o Glaholt Bowles LLP  
 800-141 Adelaide Street West  
 Toronto ON M5H 3L5  
 Attention: Mr. Brendan D. Bowles  
 BrendanBowles@Glaholt.com

I, Nick Ainis, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Nick Ainis, have the authority to bind the corporation.

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

**Statements**

Name and Address of Owner AREACOR INC., Suite #270 - 2869 Bloor Street, West Etobicoke ON M8X 1B3 Canada Name and address of person to whom lien claimant supplied services or materials AREACOR INC., Suite #270 - 2869 Bloor Street, West Etobicoke ON M8X 1B3 Canada Time within which services or materials were supplied from 2019/01/07 to 2021/10/27 Short description of services or materials that have been supplied construction management services, labour and materials pertaining to the new construction of a 6 story condominium consisting of 40 units and commercial and basement areas Contract price or subcontract price \$8,916,878.00 (excluding HST) Amount claimed as owing in respect of services or materials that have been supplied \$2,436,674.66 (inclusive of HST)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Justyne Alexia Escujuri	141 Adelaide St. W. Toronto M5H 3L5	acting for Applicant(s)	Signed	2021 12 10
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Tel 416-368-8280

Fax 416-368-3467

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

**Submitted By**

GLAHOLT LLP	141 Adelaide St. W. Toronto M5H 3L5	2021 12 10
-------------	---	------------

Tel 416-368-8280

Fax 416-368-3467

**Fees/Taxes/Payment**

<b>Statutory Registration Fee</b>	\$66.30
<b>Total Paid</b>	\$66.30

FUSIONCORP DEVELOPMENTS INC  
Plaintiff

-and- AREACOR INC., et al  
Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

In the matter under the *Construction Act*, R.S.O. 1990, c. C.30,  
as amended

PROCEEDING COMMENCED AT  
HAMILTON

**STATEMENT OF CLAIM**

**GLAHOLT BOWLES LLP**  
141 Adelaide Street West  
Suite 800  
Toronto ON M5H 3L5

**BRENDAN D. BOWLES** LSO No.: 428021  
BrendanBowles@glaholt.com  
Tel: 416-368-8280 ext. 221

**JOHN PAUL VENTRELLA** LSO No.: 64269R  
JohnPaulVentrella@glaholt.com  
Tel: 416-368-8280 ext. 250

Fax: 416-368-3467

Lawyers for the Plaintiff,  
Fusioncorp Developments Inc.

**TAB 0**

***THIS IS EXHIBIT "O" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*



the *Condominium Act, 1998*, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the "Act") and other terms used herein shall have ascribed to them the definitions in the Condominium Documents unless otherwise provided for as follows:

- (a) "Agreement" means this Agreement of Purchase and Sale including all Schedules attached hereto and made a part hereof;
- (b) "Condominium" means the condominium which will be registered against the Property pursuant to the provisions of the Act;
- (c) "Condominium Documents" means the Creating Documents, the by-laws and rules of the Condominium, the disclosure statement and budget statement together with all other documents and agreements which are entered into by the Vendor on behalf of the Condominium or by the Condominium directly prior to the turnover of the condominium, as may be amended from time to time;
- (d) "CRA" means the Canada Revenue Agency or its successors;
- (e) "Creating Documents" means the declaration and description which are intended to be registered against title to the Property and which will serve to create the Condominium, as may be amended from time to time;
- (f) "Interim Occupancy" shall mean the period of time from the Occupancy Date to the Title Transfer Date;
- (g) "Occupancy Licence" shall mean the terms and conditions by which the Purchaser shall occupy the Unit during Interim Occupancy as set forth in Schedule "C" hereof;
- (h) "Occupancy Fee" shall mean the sum of money payable monthly in advance by the Purchaser to the Vendor and calculated in accordance with Schedule "C" hereof;
- (i) "Property" shall mean the lands and premises upon which the Condominium is constructed or shall be constructed and legally described in the Condominium Documents; and
- (j) "TWC" means Taron Warranty Corporation or its successors.

#### Features and Finishes

4. The Purchase Price shall include those items listed on Schedule "B" attached hereto. The Purchaser acknowledges that only the items set out in Schedule "B" are included in the Purchase Price and that model suite/vignette furnishings and appliances, decor, upgrades, artist's renderings, scale model(s), improvements, millwork, mirrors, drapes, tracks and wall coverings are for display purposes only and are not included in the Purchase Price unless specified in Schedule "B". The Purchaser agrees to attend and notify the Vendor of his/her choice of finishes within fifteen (15) days of being requested to do so by the Vendor. At the Vendor's discretion, some finishes may only be available through pre-selected packages. In the event colours and/or finishes subsequently become unavailable, the Purchaser agrees to re-attend at such time or times as requested by the Vendor or its agents, to choose from substitute colours and/or finishes. If the Purchaser fails to choose colours or finishes within the time periods requested, the Vendor may irrevocably choose the colours and finishes for the Purchaser and the Purchaser agrees to accept the Vendor's selections.

#### Deposits

5. (a) The Vendor shall credit the Purchaser with interest at the prescribed rate on either the Occupancy Date or Title Transfer Date at the Vendor's sole discretion on all money received by the Vendor on account of the Purchase Price from the date of deposit of the money received from time to time by the Vendor's Solicitor or the Trustee until the Occupancy Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(6) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser noted in the Taron Addendum. The Purchaser further acknowledges and agrees that any cheques provided to the Vendor on account of the Purchase Price will not be deposited and accordingly interest as prescribed by the Act will not accrue thereon, until after the expiry of the ten (10) day rescission period as provided for in section 73 of the Act (or any extension thereof as may be agreed to in writing by the Vendor). The Purchaser represents and warrants that the Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act of Canada (the "ITA"). If the Purchaser is not a resident of Canada for the purposes of the ITA the Vendor shall be entitled to withhold and remit to CRA the appropriate amount of interest payable to the Purchaser on account of the deposits paid hereunder, under the ITA.
- (b) All deposits paid by the Purchaser shall be held by the Escrow Agent in a designated trust account, and shall be released only in accordance with the provisions of subsection 81(7) of the Act and the regulations thereto, as amended. Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that with respect to any deposit monies received from the Purchaser the Escrow Agent shall be entitled to withdraw such deposit monies from said designated trust account prior to the Title Transfer Date if and only when the Vendor obtains a Condominium Unit Deposit Receipt from TWC for deposit monies up to Twenty Thousand (\$20,000.00) Dollars and with respect to deposit monies in excess of Twenty Thousand (\$20,000.00) Dollars, one or more excess condominium deposit insurance policies (issued by any insurer as may be selected by the Vendor, authorized to provide excess condominium deposit insurance in Ontario) insuring the deposit monies so withdrawn (or intended to be withdrawn), and delivers the said excess condominium deposit insurance policies (duly executed by or on behalf of the insurer and the Vendor) to the Escrow Agent holding the deposit monies for which said policies have been provided as security, in accordance with the provisions of section 21 of O. Reg. 48/01. Furthermore and without limiting the generality of the foregoing, the Escrow Agent shall be permitted, upon written instructions from the Vendor



no further obligations to the Purchaser in its capacity as the escrow agent of the deposits and shall automatically be released from further liability as escrow agent of such deposits.

### Adjustments

6. (a) Commencing as of the Occupancy Date, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect to the Unit:
- (i) all utility costs including electricity, gas, energy and water (unless included as part of the common expenses); and
  - (ii) the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Title Transfer Date (if applicable).
- (b) The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed from the Title Transfer Date, with that day itself apportioned to the Purchaser:
- (i) realty taxes (including local improvement charges pursuant to the *Local Improvement Charges Act*, if any) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority for the calendar year in which the transaction is completed as well as for the following calendar year, notwithstanding the same may not have been levied or paid on the Title Transfer Date. The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Title Transfer Date, provided all amounts so collected shall either be remitted to the relevant taxing authority on account of the Unit or held by the Vendor pending receipt of final tax bills for the Unit, following which said realty taxes shall be readjusted in accordance with subsections 80(8) and (9) of the Act; and
  - (ii) common expense contributions attributable to the Unit, with the Purchaser being obliged to provide the Vendor on or before the Title Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Title Transfer Date as determined by the Vendor (but in no event for more than one year).
- (c) Interest on all money paid by the Purchaser on account of the Purchase Price, shall be adjusted and credited to the Purchaser in accordance with paragraph 5 of this Agreement.
- (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
- (i) any new taxes imposed on the Unit or on the sale of the Unit by the federal, provincial, or municipal government or any increases to existing taxes currently imposed on the Unit or on the sale of the Unit by such level of government;
  - (ii) the amount of any increase in development charge(s) and/or education development charge(s) and/or impost fees (the "Levies") assessed against or attributable to the Unit (or assessed against the Property or any portion thereof, and attributable to the Unit by pro-rating same in accordance with the proportion or percentage of common interests attributable thereto), pursuant to the *Development Charges Act 1997*, S.O. 1997, as amended from time to time, and the *Education Act*, S.O. 1997, as amended from time to time, over the amount of such charges that would be exigible as of December 1, 2017, and the amount of any new Levies that were not exigible as of December 1, 2017 with respect to the Property and were subsequently assessed against the Property or attributable to the Unit, and the amount of any reduction of waivers and/or grants with respect to the Levies which occurs after December 1, 2017 and results an increase in the Levies which would have been paid prior to December 1, 2017, in an amount not to exceed the sum of Three Thousand Five Hundred (\$3,500.00) Dollars plus applicable taxes, if the residential Unit purchased is less than two (2) bedrooms; or the sum of Five Thousand Five Hundred (\$5,500.00) Dollars plus applicable taxes, if the residential Unit purchased contains two (2) or more bedrooms. In the event that after the Title Transfer Date, any Levies paid by the Vendor are refunded to the Purchaser, the Purchaser shall forthwith deliver the amount of such refund to the Vendor. The Purchaser hereby assigns any such refund to the Vendor and agrees, at the Vendor's request, to sign any further documents required by the Vendor confirming the Vendor's right to receive such refund;
  - (iii) the amount of any park levy or similar contribution(s) or charges levied, charged, imposed, or assessed against or attributable to the Unit or a portion thereof or assessed against the Property or a portion thereof and attributable to the whole or part of the Unit by pro-rating same in accordance with the proportion of common interests attributable thereto, which have been paid or are payable to the City of Hamilton or any other relevant governmental authority or agency thereof with respect to or in connection with the development of the Condominium, including the obtaining of any approvals for such development, in an amount not to exceed Nine Hundred and Fifty (\$950.00) Dollars plus applicable taxes.
  - (iv) an amount equal to the percentage contribution of the Unit set forth in Schedule "D" to the Declaration of the contribution(s) or charges assessed against or attributable to the Unit or which has been paid or are payable to the City of Hamilton or any other relevant governmental authority or agency thereof including any charges pursuant to a section 37 Agreement (pursuant to the Planning Act), levied, charged or otherwise imposed with respect to or in connection with the

- (vi) any amounts which remain unpaid and owing to the Vendor on account of upgrades and/or changes and/or changes ordered by the Purchaser;
- (vii) the cost of water meter or check meter/submeter installations, water and sewer service connection charges; the cost of hydro and gas meter or check meter/submeter installations; the cost of heating and cooling/BTU meter or check meter/submeter installations, if applicable; and hydro and gas connection or energization charges for the Condominium and/or the Unit; the Purchaser's portion of such charges and costs to be calculated by dividing the total amount of such charges and costs by the number of residential dwelling units in the Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges and costs, in an amount not to exceed Eight Hundred and Fifty (\$850.00) Dollars plus applicable taxes. A letter from the Vendor's engineers or architects specifying such costs shall be final and binding on the Purchaser;
- (viii) the charge imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a Transfer/Deed of Land or Charge/Mortgage of Land or any other instrument;
- (ix) a sum of Fifty (\$50.00) Dollars for each cheque tendered pursuant to paragraph 1(a) and 1(b) of this Agreement and for any cheque tendered for upgrades or any other monies paid on account of the Purchase Price up to, but not including the Title Transfer Date representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfillment of the requirements of subsection 81(6) of the Act;
- (x) the Purchaser agrees to pay Three Hundred (\$300.00) Dollars towards the cost of fees payable by the Vendor to its lenders including the cost of obtaining (partial) discharges of mortgages not intended to be assumed by the Purchaser;
- (xi) the Purchaser shall deliver to the Vendor a certified cheque payable to the Condominium Corporation in the amount equal to one (1) month's common expenses to be credited to the reserve fund of the Condominium Corporation; and
- (xii) any other additional or further adjustments agreed to in writing between the Vendor and Purchaser subsequent to the execution of this Agreement.
- (e) In the event that the Purchaser desires to increase the amount to be paid to the Vendor's solicitors on the Occupancy Date at any time after the expiry of the initial ten (10) day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested to take title to the Property, or wishes to add or change any unit(s) being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitor's the legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to implement any of the foregoing changes so requested by the Purchaser (with the Vendor's Solicitors' legal fees for implementing any such changes to any of the interim closing and/or final closing documents so requested by the Purchaser and agreed to by the Vendor being \$350.00 plus HST), but without there being any obligation whatsoever on the part of the Vendor to approve of, or to implement, any of the foregoing changes so requested. Notwithstanding the foregoing, save as permitted by the Act or this Agreement, the Purchaser specifically acknowledges and agrees that the Vendor will not accept any requests to increase the amount to be paid on the Occupancy Date or to change the manner in which the Purchaser shall take title to the Property or to make any other changes to the Agreement of Purchase and Sale or with respect to the Unit after the date which is thirty (30) days prior to the Occupancy Date.
- (f) Intentionally deleted.
- (g) The Purchaser acknowledges that it may be required to enter into an agreement with one or more suppliers of utility services, including hydro and/or water and/or heating and cooling to the Condominium (the "Utility Suppliers") on or before the Occupancy Date. Furthermore, the Purchaser acknowledges that such agreements may require the Purchaser to deliver a security deposit(s) to the Utility Suppliers prior to the Occupancy Date and the Purchaser agrees to deliver such security deposit(s) to the Vendor on the Occupancy Date.
- (h) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and the provincial portion of the harmonized goods and services tax exigible with respect to this purchase and sale transaction less the Rebate as defined below (hereinafter referred to as the "HST"), and that the Vendor shall remit the HST to CRA on behalf of the Purchaser forthwith following the completion of this transaction. The Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the federal and provincial new housing rebates applicable pursuant to the *Excise Tax Act* (Canada), as may be amended, (collectively, the "Rebate") and further warrants and represents that the Purchaser is a natural person who is acquiring the Property with the intention of being the sole beneficial owner thereof on the Title Transfer Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Occupancy Date the Purchaser or one or more of the Purchaser's relations (as such term is defined in the *Excise Tax Act*) shall personally occupy the Unit as his primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Unit. The Purchaser further warrants and represents that he has not claimed (and hereby covenants that the Purchaser shall not hereafter claim), for the Purchaser's own account, any part of the Rebate in connection with the Purchaser's acquisition of the Unit, save as may be otherwise hereinafter expressly provided or contemplated. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims or

limitation, the GST/HST New Housing Rebate Application for Houses Purchased from a Builder or other similar form as prescribed from time to time (the "Rebate Forms"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his interest in the Unit with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:

- (i) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's solicitors request for same (and in any event on or before the Title Transfer Date) the Rebate Forms duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or
- (ii) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Title Transfer Date;

then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Purchaser shall be obliged to pay to the Vendor (or to whomsoever the Vendor may in writing direct), by certified cheque delivered on the Title Transfer Date, an amount equivalent to the Rebate, in addition to the Purchase Price and in those circumstances where the Purchaser maintains that he is eligible for the Rebate despite the Vendor's belief to the contrary, the Purchaser shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to pursue the procurement of the Rebate directly from CRA. It is further understood and agreed that in the event that the Purchaser intends to rent out the Unit before or after the Title Transfer Date, the Purchaser shall not be entitled to the Rebate, but may nevertheless be entitled to pursue, on his own after the Title Transfer Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to Section 256.2 of the *Excise Tax Act*, as may be amended, and other applicable legislation to be enacted relating to the provincial new rental housing rebate.

- (i) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the Excise Tax Act.
- (j) An administration fee of THREE HUNDRED AND FIFTY (\$350.00) DOLLARS shall be charged to the Purchaser for any cheque payable hereunder delivered to the Vendor or to the Vendor's Solicitors and not accepted by the Vendor's or the Vendor's Solicitor's bank for any reason. At the Vendor's option, this administration fee can be collected as an adjustment on the Title Transfer Date or together with the replacement cheque delivered by the Purchaser.

#### Title

7. The Vendor or the Vendor's Solicitors shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "Notification Date"). The Purchaser shall be allowed twenty (20) days from the Notification Date (the "Examination Period") to examine title to the Unit at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Unit, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors; and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

#### Direction Re: Title

8. The Purchaser hereby agrees to submit to the Vendor or the Vendor's Solicitors no less than sixty (60) days prior to the Occupancy Date, a written direction as to how the Purchaser intends to take title to the Unit, including, the date(s) of birth and marital status and the Purchaser shall be required to close the transaction in the manner so advised unless the Vendor otherwise consents in writing, which consent may be arbitrarily withheld. If the Purchaser does not submit such

9. (a) The Purchaser agrees to accept title subject to the following:
- (i) the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Disclosure Statement delivered to the Purchaser as set out in Schedule "D";
  - (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Title Transfer Date;
  - (iii) easements, rights-of-way, crane swing agreements, tie back agreements and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities; and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities and/or for limiting distance purposes with adjacent or neighbouring property owners, provided that any such easement and cost-sharing agreements or reciprocal agreements or other agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Title Transfer Date;
  - (iv) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, public art, storm/sanitary discharge, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto), (with all of such agreements being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Title Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder;
  - (v) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Title Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction; and
  - (vi) the proposed Shared Facilities Agreement as described in the Condominium Documents;
  - (vii) the proposed Reciprocal Easement and Cost Sharing Agreement as described in the Condominium Documents;
  - (viii) registered agreements and/or easements in favour of the owners of the adjoining property forming part of the overall building, both vertically and horizontally, which may include a freehold commercial or condominium property; and
  - (ix) any notice of security interest in respect of any building automation system and equipment relating thereto, and any other personal property contemplated by this Agreement or the Condominium Documents.
- (b) It is understood, acknowledged and agreed that the Vendor shall not be obliged to obtain or register on title to the Property a release of (or an amendment to) any of the aforementioned easements, Development Agreements, reciprocal agreements or restrictive covenants or any of the other aforementioned agreements or notices, nor shall the Vendor be obliged to have any of same deleted from the title to the Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants and all other agreements registered on title. The Purchaser further acknowledges and agrees that the retention by the local municipality within which the Property is situate (the "Municipality"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities) intended to guarantee the fulfilment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier, or by a company associated, affiliated with or related to the Vendor.
- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 9(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Title Transfer

- (e) The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

#### Vendor's Lien

10. The Purchaser agrees that the Vendor shall have a Vendor's Lien for unpaid purchase monies on the Title Transfer Date and shall be entitled to register a Notice of Vendor's Lien against the Unit any time after the Title Transfer Date.

#### Partial Discharges

11. The Purchaser acknowledges that the Unit may be encumbered by mortgages (and collateral security thereto) which are not intended to be assumed by the Purchaser and that the Vendor shall not be obliged to obtain and register (partial) discharges of such mortgages insofar as they affect the Unit on the Title Transfer Date. The Purchaser agrees to accept the Vendor's Solicitors' undertaking to obtain and register (partial) discharges of such mortgages in respect of the Unit, as soon as reasonably possible after the Title Transfer Date subject to the Vendor or its solicitors providing to the Purchaser or the Purchaser's Solicitor the following:
- (a) a mortgage statement or letter from the mortgagee(s) (or from their respective solicitors) confirming the amount, if any, required to be paid to the mortgagee(s) to obtain (partial) discharges of the mortgages with respect to the Unit;
  - (b) a direction from the Vendor to the Purchaser to pay such amounts to the mortgagee(s) (or to whomever the mortgagees may direct) on the Title Transfer Date to obtain a (partial) discharge of the mortgage(s) with respect to the Unit; and
  - (c) an undertaking from the Vendor's Solicitors to deliver such amounts to the mortgagees and to obtain and register the (partial) discharge of the mortgages with respect to the Unit upon receipt thereof and within a reasonable time following the Title Transfer Date and to advise the Purchaser or the Purchaser's Solicitor concerning registration particulars by posting same on the internet.

#### Construction Lien Act

12. The Purchaser covenants and agrees that he/she is a "home buyer" within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.C.30. and will not claim any lien holdback on the Occupancy Date or Title Transfer Date. The Vendor shall complete the remainder of the Condominium according to its schedule of completion and neither the Occupancy Date nor the Title Transfer Date shall be delayed on that account.

#### The Planning Act

13. This Agreement and the transaction arising therefrom are conditional upon compliance with the provisions of section 50 of the *Planning Act*, R.S.O. 1990, c.P.13 and any amendments thereto on or before the Title Transfer Date.

#### Title Transfer Date

14. (a) The provisions of the Tarion Addendum reflect the TWC's policies, regulations and/or guidelines on extensions of the First Tentative Occupancy Date, but it is expressly understood and agreed by the parties hereto that any failure to provide notice(s) of the extension(s) of the First Tentative Occupancy Date, Subsequent Tentative Occupancy Dates or Firm Occupancy Date, in accordance with the provisions of the Tarion Addendum shall only give rise to a damage claim by the Purchaser against the Vendor up to a maximum of \$7,500.00, as more particularly set forth in the Regulations to the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, as amended (the "ONHWPA"), and under no circumstances shall the Purchaser be entitled to terminate this transaction or otherwise rescind this Agreement as a result thereof, other than in accordance with the Tarion Addendum.
- (b) The Vendor's Solicitors shall designate a date not less than twenty (20) days after written notice is given to the Purchaser or his or her solicitor of the registration of the Creating Documents as the Title Transfer Date. The Title Transfer Date once designated may be extended from time to time by the Vendor's Solicitors provided that it shall not be more than thirty-six (36) months following the Occupancy Date.

#### Purchaser's Covenants, Representations and Warranties

15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph. The Purchaser hereby consents to the Vendor and its designated or proposed construction lenders obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor, from time to time, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Title Transfer Date, including without limitation, written

acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Title Transfer Date or other evidence of an ability to close satisfactory to the Vendor in its sole discretion and satisfactory to the Vendor's construction lender. If the Purchaser fails to provide the financial and personal information or the mortgage approval as aforesaid, or if the Vendor or the Vendor's construction lender is not satisfied as aforesaid, then the Purchaser shall be deemed to be in default under this Agreement. The Vendor may, in its sole discretion, elect to accept in the place of such mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have sufficient funds to pay the balance due on the Title Transfer Date.

16. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Unit or the Condominium. Should the Purchaser be in default of his or her obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 25 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a full indemnity basis).
17. The Purchaser covenants and agrees with the Vendor not to list for sale, advertise for sale, offer for lease, offer for sale, sell, lease, transfer or assign his interest under this Agreement or in the Unit, at any time prior to the Title Transfer Date without first: (i) obtaining the written consent of the Vendor, in the Vendor's standard form, which consent will not be unreasonably withheld and which consent will not be considered unless and until the Vendor determines that sixty (60) days have passed after no less than ninety (90%) percent of the units in the Condominium are sold, which determination shall be made by the Vendor in its sole and unfettered discretion; (ii) obtaining confirmation from the Vendor that all units of the same type, style or model have been sold; (iii) obtaining the confirmation of the Vendor that all of the Purchaser's deposits have been paid to the Vendor in accordance with the terms of the Agreement of Purchase and Sale and such cheques have cleared the Vendor's Solicitor's bank; (iv) acknowledging in writing, in the Vendor's standard form, that the Purchaser, among other things, shall remain fully responsible for the Purchaser's covenants, agreements and obligations contained in this Agreement; (v) obtaining an assignment and assumption agreement from the transferee/assignee in a form acceptable to the Vendor acting reasonably; (vi) remitting payment of the sum of Two Thousand Five Hundred (\$2,500.00) Dollars (plus applicable HST) by certified cheque representing an administration fee payable to the Vendor for processing and for allowing such transfer or assignment, together with payment of the sum of Three Hundred and Fifty (\$350.00) Dollars (plus applicable HST) representing the Vendor's Solicitor's legal fees in respect of such assignment; (vii) confirming that the listing of such sale, transfer or assignment is not, never was and will not be listed on the Toronto Real Estate Board, Multiple Listing Service ("MLS"); and (viii) obtaining the written consent or approval from any lending institution or mortgagee providing any financing to the Vendor, construction or otherwise, for the development and construction of the Condominium, in the event such consent or approval is required to be obtained by the Vendor as a condition for the advance or continued advance of any funds in respect of such financing. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy License, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply. Subject to the foregoing, the Purchaser shall be entitled to direct that title to the Unit be taken in the name of an assignee. Notwithstanding the foregoing, the Purchaser shall be entitled to direct that title to the Unit be taken in the name of his or her spouse, or a member of his or her immediate family only, being limited to parents, siblings or children over the age of eighteen (18) years, and shall not be permitted to direct title to any other third parties. Any request to direct title to such immediate family member shall be made directly to the Vendor's Solicitor from the Purchaser's solicitor.
18. The Purchaser covenants and agrees that he/she shall not directly nor indirectly object to nor oppose any official plan amendment(s), rezoning application(s), severance application(s), minor variance application(s) and/or site plan application(s), nor any other applications ancillary thereto relating to the development of the Property, or any neighbouring or adjacent lands. The Purchaser further acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto. The Purchaser acknowledges that the Vendor is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Property (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as well as a site plan approval/development application/draft plan of condominium approval with respect to the Property, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or siting of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of units comprising the Condominium) may vary, and the location of the Condominium's proposed amenities may likewise be altered, without materially adversely affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned zoning, minor variance and site plan/development applications, nor any other applications ancillary thereto, including without limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.



### Termination without Default

20. In the event this Agreement is terminated through no fault of the Purchaser, all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser, provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser as an Occupancy Fee. The Vendor shall be entitled to require the Purchaser to execute a release of any surety, lender or any other third party requested by the Vendor in its discretion prior to the return of such monies. In no event shall the Vendor or its agents be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any loss of bargain, for any relocating costs, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor as a complete defence to any such claim.

### Tarion Warranty Corporation

21. The Vendor represents and warrants to the Purchaser that the Vendor is a registered vendor/builder with the TWC. The Purchaser acknowledges and agrees that any warranties of or liabilities for workmanship or materials, in respect of any aspect of the construction of the Condominium including the Unit, whether implied by this Agreement or at law or in equity or by any statute or otherwise, including without limitation breach of contract, breach of warranty, negligence or breach of duty, shall be limited to the monetary limits provided for in the ONHWPA and to only those warranties deemed to be given by the Vendor under the ONHWPA and shall extend only for the time period and in respect of those items as stated in the ONHWPA, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement, or condition precedent to, concurrent with or in any way affecting this Agreement, the Condominium or the Unit, other than as expressed herein. The Vendor and the Purchaser agree that all disputes, if any, respecting any aspect of construction of the Unit or the common elements of the Condominium, including without limitation, disputes alleging negligence, breach of contract, breach of duty or breach of warranty, shall be limited solely to the dispute resolution mechanisms available under the ONHWPA as administered by TWC, which resolution thereunder shall be binding and conclusive on all parties and further that the Purchaser's only remedy shall be pursuant to the ONHWPA. The Purchaser hereby irrevocably appoints the Vendor his/her agent to complete and execute the TWC Certificate of Deposit and any excess condominium deposit insurance documentation in this regard, as required, both on its own behalf and on behalf of the Purchaser.

### Right of Entry

22. Notwithstanding the Purchaser occupying the Unit on the Occupancy Date or the closing of this transaction and the delivery of title to the Unit to the Purchaser, as applicable, the Vendor or any person authorized by it shall be entitled at all reasonable times and upon reasonable prior notice to the Purchaser to enter the Unit and the common elements in order to make inspections or to do any work or replace therein or thereon which may be deemed necessary by the Vendor in connection with the Unit or the common elements and such right shall be in addition to any rights and easements created under the Act. A right of entry in favour of the Vendor for a period not exceeding seven (7) years similar to the foregoing may be included in the Transfer/Deed provided on the Title Transfer Date and acknowledged by the Purchaser at the Vendor's sole discretion.

### Occupancy

23. (a) Except where the Purchaser and the Vendor have agreed that the Purchaser shall be responsible for certain conditions of occupancy and subject to paragraph 9 of the Tarion Addendum, the Unit shall be deemed to be substantially completed when the interior work of the Residential Unit has been finished to the minimum standards allowed by the Municipality so that the Residential Unit may be lawfully occupied notwithstanding that (i) there remains other work within the Unit and/or the common elements to be completed and/or (ii) any parking unit(s), locker unit(s) and/or other ancillary units, as and if applicable, have not been completed or are not available for occupancy. Except where the Purchaser is responsible for certain conditions of occupancy, the Purchaser shall not occupy the Unit until the Municipality has permitted same or consented thereto, if such consent is required and the Occupancy Date shall be postponed until such required consent is given. The Purchaser shall not require the Vendor to provide or produce an occupancy permit, certificate or authorization from the Municipality other than the documentation required by paragraph 9 of the Tarion Addendum. Provided that the Vendor complies with paragraph 9 of the Tarion Addendum, the Purchaser acknowledges that the failure to complete the common elements before the Occupancy Date shall not be deemed to be failure to complete the Unit, and the Purchaser agrees to complete this transaction notwithstanding any claim submitted to the Vendor and/or to the TWC in respect of apparent deficiencies or incomplete work provided, always, that such incomplete work does not prevent occupancy of the Unit as, otherwise, permitted by the Municipality.
- (b) The Vendor shall complete the construction of the Unit and the building in which the Unit is proposed to form a part of (the "Building") as soon as reasonably practicable, but the failure of the Vendor to fully complete such construction to the standards required in this Agreement by the Occupancy Date, or to fully complete or correct all outstanding, incomplete or deficient matters relating to the Unit and the Building, shall in no event entitle the Purchaser to refuse to take possession of the Unit on the Occupancy Date or to complete this transaction or to remit to Vendor the entire amount of the Purchase Price on the Title Transfer Date, or to maintain any holdback, set-off or deduction of any part thereof. The construction of the Unit shall be deemed to be completed when the Vendor's finishings have been substantially completed, notwithstanding that there remains work outside the Unit to be completed, including but not limited to painting, grading, paving, sodding and landscaping. The Vendor agrees to fully complete the construction of the Unit, the Building and any outstanding, incomplete or deficient items and any other matters relating to the Unit and the Building which are required by Tarion, within a reasonable period of time after the Title Transfer Date, having regard to weather conditions and the availability of equipment, supplies and labour, and Purchaser agrees that its only recourse against Vendor (and the declarant of the Condominium if not the Vendor) for a final and binding resolution of all such matters shall be through the processes administered by Tarion, who Purchaser and Vendor hereby appoint and constitute to be the sole and final arbiter of all such matters.

- (c) The Purchaser agrees that it and the Condominium shall have no rights as against the Vendor (and the declarant of the Condominium if not the Vendor) beyond those that are specifically granted to it under the Condominium Act or the *Ontario New Home Warranties Plan Act* or by Tarion. The Purchaser further agrees that its Condominium's only recourse against Vendor (and the declarant of the Condominium if not the Vendor) for a final and binding resolution of any outstanding, incomplete or deficient items and any other matters relating to the Unit and the Building shall be through the processes established for and administered by Tarion, who the Purchaser and the Vendor hereby appoint and constitute as the sole and final arbiter of all such matters. The Purchaser hereby indemnifies and saves the Vendor (and the declarant of the Condominium if not the Vendor) harmless from all actions, causes of actions, claims and demands for damages or loss which are brought by the Condominium in contravention of this provision, including without limitation, any claim against any third party that has the right of contribution or indemnity against the Vendor (and the declarant of the Condominium if not the Vendor).
- (d) If the Unit is substantially complete and fit for occupancy on the Occupancy Date, as provided for in subparagraph (a) above, but the Creating Documents have not been registered, (or in the event the Condominium is registered prior to the Occupancy Date and closing documentation has yet to be prepared), the Purchaser shall occupy the Unit on the Occupancy Date pursuant to the Occupancy Licence attached hereto as Schedule "C".

### Inspection

24. (a) The Purchaser or the Purchaser's designate as hereinafter provided agrees to meet the Vendor's representative at the date and time designated by the Vendor, prior to the Occupancy Date, to conduct a pre-delivery inspection of the Unit (the "PDI") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Unit, on the TWC Certificate of Completion and Possession (the "CCP") and the PDI Form, in the forms prescribed from time to time by, and required to be completed pursuant to the provisions of the ONHWPA. The said CCP and PDI Forms shall be executed by both the Purchaser or the Purchaser's designate and the Vendor's representative at the PDI and shall constitute the Vendor's only undertaking with respect to incomplete or deficient work and the Purchaser shall not require any further undertaking of the Vendor to complete any outstanding items. In the event that the Vendor performs any additional work to the Unit in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations hereunder.
- (b) The Purchaser acknowledges that the Homeowner Information Package as defined in TWC Bulletin 42 (the "HIP") is available from TWC and that the Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.
- (c) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (d) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Vendor may, at its option, complete the within transaction but not provide the keys to the Unit to the Purchaser until the CCP and PDI Forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI Forms.
- (e) The Vendor may request that the Purchaser and/or the Purchaser's designate execute a Confirmation of Receipt of the HIP and in the event such Purchaser and/or Purchaser's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.

### Purchaser's Default

25. (a) In the event that the Purchaser is in default with respect to any of his or her obligations contained in this Agreement (other than paragraph 2(d) hereof) or in the Occupancy License on or before the Title Transfer Date and fails to remedy such default forthwith, if such default is a monetary default and/or pertains to the execution and delivery of documentation required to be given to the Vendor on the Occupancy Date or the Title Transfer Date, or within five (5) days of the Purchaser being so notified in writing with respect to any other non-monetary default, then the Vendor, in addition to (and without prejudice to) any other rights or remedies available to the Vendor (at law or in equity) may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained herein (including without limitation, the right to make colour and finish selections with respect to the Unit as hereinbefore provided or contemplated), and/or unilaterally declare this Agreement and the Occupancy License to be terminated and of no further force or effect. All monies paid hereunder (including the deposit monies paid or agreed to be paid by the Purchaser pursuant to this Agreement which sums shall be accelerated on demand of the Vendor), together with any interest earned thereon and monies paid or payable for extras or upgrades or changes ordered by the Purchaser, whether or not installed in the dwelling, shall be forfeited to the Vendor. The Purchaser agrees that



to forthwith vacate the Unit (or cause same to be forthwith vacated) if same has been occupied (and shall leave the Unit in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser), and shall execute such releases and any other documents or assurances as the Vendor may require, in order to confirm that the Purchaser does not have (and the Purchaser hereby covenants and agrees that he/she does not have) any legal, equitable or proprietary interest whatsoever in the Unit and/or the Property (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor or the Vendor's solicitors as hereinbefore provided, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his or her lawful attorney in order to execute such releases, documents and assurances in the Purchaser's name, place and stead, and in accordance with the provisions of the *Substitute Decisions Act*, S.O. 1992, as amended, the Purchaser hereby declares that this power of attorney may be exercised by the Vendor during any subsequent legal incapacity on the part of the Purchaser. In the event the Vendor's Solicitors or an Escrow Agent is/are holding any of the deposits in trust pursuant to this Agreement, then in the event of default as aforesaid, the Purchaser hereby releases the said solicitors or Escrow Agent from any obligation to hold the deposit monies, in trust, and shall not make any claim whatsoever against the said solicitors or Escrow Agent and the Purchaser hereby irrevocably directs and authorizes the said solicitors or Escrow Agent to deliver the said deposit monies and accrued interest, if any, to the Vendor.

- (b) Notwithstanding subparagraph (a) above, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which are due and payable by the Purchaser to the Vendor pursuant to this Agreement are not made and/or paid on the date due, but are subsequently accepted by the Vendor, notwithstanding the Purchaser's default, then such amount, payment and/or adjustment shall, until paid, bear interest at the rate equal to twenty-four (24%) percent per annum, calculated monthly. In addition, in the event that the Purchaser delays the Occupancy Date or the Title Transfer Date, the Vendor shall have the right to charge Two Hundred Dollars (\$200.00) per day as liquidated damages for each day of the delay plus a legal/administrative fee of Five Hundred Dollars (\$500.00) towards the administration of a delayed occupancy or closing, as applicable, and to amend and/or create documentation. Furthermore, the Purchaser shall pay the Vendor's solicitor's fees in the amount of Two Hundred and Fifty Dollars (\$250.00), plus applicable taxes and disbursements, for each letter or other form of notice sent to the Purchaser or the Purchaser's solicitor relating to any default by the Purchaser.

#### Common Elements

26. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the foregoing may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his/her successors in title against the Vendor. The Vendor may, from time to time, change, vary or modify in its sole discretion or at the instance of any governmental authority or mortgagee, any elevations, building specifications or site plans of any part of the Condominium, to conform with any municipal or architectural requirements related to building codes, official plan or official plan amendments, zoning by-laws, committee of adjustment and/or land division committee decisions, municipal site plan approval or architectural control. Such changes may be to the plans and specifications existing at inception of the Condominium or as they existed at the time the Purchaser entered into this Agreement, or as illustrated on any sales material, including without limitation, brochures, renderings, models or otherwise. With respect to any aspect of construction, finishing or equipment, the Vendor shall have the right, without the Purchaser's consent, to substitute materials, for those described in this Agreement or in the plans or specifications, provided the substituted materials are in the judgment of the Vendor's architect, whose determination shall be final and binding, of equal or better quality. The Purchaser shall have no claim against the Vendor for any such changes, variances or modifications nor shall the Vendor be required to give notice thereof. The Purchaser hereby consents to any such alterations and agrees to complete the sale notwithstanding any such modifications.

#### Executions

27. The Purchaser agrees to provide to the Vendor's Solicitors on the Occupancy Date a clear and up-to-date Execution Certificate confirming that no executions are filed at the local Land Titles Office against the individual(s) in whose name title to the Unit is being taken.

#### Risk

28. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date, subject to the terms of the Occupancy Licence attached hereto as Schedule "C". If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may in its sole discretion either:

- (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted in the Tarion Addendum;
- (b) terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor, with interest payable under law if the damage to the Condominium has frustrated this Agreement at law; or
- (c) apply to a court of competent jurisdiction for an order terminating the Agreement in accordance with the provisions of subsection 79(3) of the Act,

it being understood and agreed that all insurance policies and the proceeds thereof are to be for the benefit of the Vendor alone.

until 5:00 p.m. and is ready, willing and able to complete the transaction. The Purchaser agrees that keys may be released to the Purchaser at the construction site or sales office or the Condominium building on the Occupancy Date or the Title Transfer Date, as applicable. The Vendor's advice that the keys are available shall be valid tender of possession of the Property to the Purchaser. In the event the Purchaser or his or her solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative (which includes the Vendor's Solicitors) shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank; and

- (b) It is further provided that, notwithstanding subparagraph 29 (a) hereof, in the event the Purchaser or his or her solicitor advise the Vendor or its Solicitors, on or before the Occupancy Date or Title Transfer Date, as applicable, that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his or her solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.

30. As the electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or "TERS") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's solicitor, the following provisions shall prevail:

- (a) The Purchaser shall be obliged to retain a solicitor, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction. The Purchaser shall authorize such solicitor, at the option of the Vendor's Solicitors, to either execute an escrow closing agreement with the Vendor's Solicitor on the standard form recommended by the Law Society of Upper Canada (hereinafter referred to as the "Escrow Document Registration Agreement"), establishing the procedures and timing for completing this transaction or otherwise agree to be bound by the procedures set forth in the Escrow Document Registration Agreement.
- (b) The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:
- (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registrable documentation); and
  - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.
- (c) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the Vendor's Solicitor (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
- (d) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Unit may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
- (e) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
- (i) delivered all closing documents and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement and keys are made available for the Purchaser to pick up at the Vendor's sales or customer service office;
  - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
  - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's solicitor;

without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

#### General

31. The Vendor shall provide a statutory declaration on the Title Transfer Date that it is not a non-resident of Canada

affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.

34. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.
35. The Purchaser acknowledges that the suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, or which appear in any sales material is approximate only, and is generally measured to the outside of all exterior, corridor and stairwell walls, and to the centre line of all party walls separating one unit from another. NOTE: For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by the TWC. Actual useable floor space may (therefore) vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. In addition, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium building for each suite type, such that units on lower floors may have less floor space due to thicker structural members, mechanical rooms, etc., while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Unit is measured from the upper surface of the concrete floor slab (or subfloor) to the underside surface of the concrete ceiling slab (or joists). However, where ceiling bulkheads are installed within the Unit, and/or where dropped ceilings are required, then the ceiling height of the Unit will be less than that represented, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.
36. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
37. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
38. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. The Purchaser and the Vendor acknowledge and agree that this Agreement and all amendments and addenda thereto shall constitute an agreement made under seal.
39. (a) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Property is registered, and a duplicate registered copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked) shall be delivered to the Vendor along with such documents.
- (b) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for another person or corporation for a disclosed or undisclosed beneficiary or principal (including, without limitation, a corporation to be incorporated), the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust as the case may be, shall be deemed and construed to constitute the personal indemnity of such person or persons so signing with respect to the obligations of the Purchaser herein and shall be fully liable to the Vendor for the Purchaser's obligations under this Agreement and may not plead such agency, trust relationship or any other relationships as a defence to such liability.

#### Notice

40. (a) Any notice required to be delivered under the provisions of the Tarion Addendum shall be delivered in the manner required by the terms of the Tarion Addendum. The Purchaser is hereby advised that the Vendor shall be entitled to send notices or communications to the Purchaser to the address, fax number and/or email address set out on the Tarion Addendum and that any such notice or communication is valid under the terms of this Agreement unless the Purchaser provides written notice of any change of address, fax number or email address to the Vendor in the manner contemplated by the terms of the Tarion Addendum.
- (b) Any other notice given pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post, facsimile transmission or electronic mail to the attention of the Purchaser or to the Purchaser's solicitor to their respective addresses indicated herein or to the address of the Unit after the Occupancy Date and to the Vendor at 3044 Bloor Street West, Suite 270, Toronto ON M8X 2Y8 or to the Vendor's Solicitors at the address indicated in this Agreement or such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand, by electronic mail or by facsimile transmission and upon the third day following posting, excluding Saturdays, Sundays and statutory holidays. This agreement or any amendment or addendum thereto may, at the Vendor's option, be properly delivered if it delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party.

#### Material Change

41. The Purchaser acknowledges and agrees that the Vendor may, from time to time in its sole discretion, due to site conditions or constraints, or for marketing considerations, or for any other legitimate reason, including without limitation any request or requirement of any of the governmental authorities or any request or requirement of the Vendor's architect or other design consultants,

- (b) add levels to the building, in which case, all levels above the new levels will be raised accordingly, and/or remove levels from the building, in which case, all levels above the eliminated levels will be lowered accordingly;
- (c) change, vary or modify the plans and specifications pertaining to the Unit or the Condominium, or any portion thereof (including architectural, structural, engineering, landscaping, grading, mechanical, electrical, plumbing, site servicing and/or other plans and specifications) from the plans and specifications existing at the inception of the project, or existing at the time that the Purchaser has entered into this Agreement, or as same may be illustrated in any sales brochure(s), model(s) in the sales office, rendering(s) or otherwise, including without limitation, making any change to the total number of dwelling, parking, locker and/or other ancillary units intended to be created within the Condominium, and/or any change to the total number of levels or floors within the Condominium, as well as any changes or alterations to the design, style, size and/or configuration of any dwelling or other ancillary units within the Condominium;
- (d) change, vary, or modify the number, size and location of any windows, column(s), bulkhead(s), fan coil units, and/or service connections servicing the Unit within or adjacent to (or comprising part of) the Unit, from the number, size and/or location of same as displayed or illustrated in any sales brochure(s), model(s), rendering(s) or floor plan(s) previously delivered or shown to the Purchaser, including the insertion or placement of any window(s), column(s), bulkhead(s) and/or service connections servicing the Unit in one or more locations within the Unit which have not been shown or illustrated in any sales brochure(s), renderings(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser (regardless of the extent or impact thereof), as well as the removal of any window(s), column(s), bulkhead(s) and/or service connections servicing the Unit from any location(s) previously shown or illustrated in any sales brochure(s), rendering(s), model(s) in the sales office or otherwise; and/or
- (e) change the layout of the Unit such that same is a mirror image of the layout shown to the Purchaser (or a mirror image of the layout illustrated in any sales brochure or other marketing material(s) delivered to the Purchaser);

and that the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its sales representatives (whether based or founded in contract, tort or in equity) for any such changes, deletions, alterations or modifications, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever as a consequence thereof, nor any notice thereof (unless any such change, deletion, alteration or modification to the said plans and specifications is material in nature (as defined by the Act) and significantly affects the fundamental character, use or value of the Unit and/or the Condominium, in which case the Vendor shall be obliged to notify the Purchaser in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Vendor proposes to implement same, or otherwise becomes aware of same), and where any such change, deletion, alteration or modification to the said plans and specifications is material in nature, then the Purchaser's only recourse and remedy shall be the termination of this Agreement prior to the Title Transfer Date (and specifically within 10 days after the Purchaser is notified or otherwise becomes aware of such material change), and the return of the Purchaser's deposit monies, together with interest accrued thereon at the rate prescribed by the Act.

#### Cause of Action/Assignment

- 42. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties. Furthermore, the Purchaser and the Vendor acknowledge that this Agreement shall be deemed to be a contract under seal.
- (b) At any time prior to the Title Transfer Date, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation registered as a vendor pursuant to the ONHWP and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the Vendor named herein shall be automatically released from all obligations and liabilities to the Purchaser arising from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and stead of the Vendor.

#### Non-Merger

- 43. The covenants and agreements of each of the parties hereto shall not merge on the Title Transfer Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled in accordance with the provisions of this Agreement. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

#### Notice/Warning Provisions

- 44. The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed

documents required by the Vendor acknowledging, that and, that the Purchaser is aware of the requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction. Notwithstanding the generality of the foregoing, the Purchaser agrees to be bound by the following warranties:

- (a) Each Residential Unit has conduit(s) for the provision of internet, telephone and television service. These services are to be paid for directly by the owner.
- (b) The Condominium may be subject to various easements in the nature of a right of way in favour of adjoining and/or neighbouring land owners for utilities, construction and to permit ingress and egress to those properties.
- (c) The Purchaser hereby acknowledges that noise levels caused by the Condominium's mechanical equipment, the loading and unloading of vehicles in the adjacent Commercial Units may occasionally cause noise and inconvenience to Unit occupants.
- (d) The Purchaser is hereby advised that the Declarant's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Occupancy Date, all at the Purchaser's sole cost and expense.
- (e) The Purchasers are hereby advised and acknowledge that:
  - (i) noise levels caused by the Condominium's cooling tower, emergency generator, bank of elevators, garbage chutes, mechanical equipment, move-in bays and ancillary moving facilities and areas, and by the Condominium's indoor recreation facilities, may occasionally cause noise and inconvenience to the residential occupants;
  - (ii) as and when the Condominium is still under construction and when other residential units in the Condominium are being completed and/or moved into, excessive levels of noise, vibration, dust and/or debris are possible, and same may accordingly temporarily cause noise and inconvenience to the residential occupants; and
  - (iii) certain businesses which are permitted in the Commercial Units, including, but not limited to restaurants, may produce noises and/or odours that may cause inconvenience to the residential occupants.
- (f) Purchasers are hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after occupancy, all at the Purchaser's sole cost and expense.
- (g) The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed from time to time by any of the City of Hamilton and the Region and any other governmental authorities or agencies having jurisdiction over the development of the Project, and that the proximity of the Lands to transit operations of the City of Hamilton and the Region result in emissions including smoke and other particulate matter, noise, vibration, electromagnetic interference, and stray current transmissions (collectively referred to as "Interferences") to the Lands and despite the inclusion of control features within the Condominium, interferences from transit operations may continue to be of concern, occasionally interfering with some activities of the dwelling occupants in the Condominium. Notwithstanding the above, the Purchaser agrees to indemnify and save harmless the City of Hamilton and Region from all claims, losses, judgments or actions arising or resulting from any and all Interferences. Furthermore, the Purchaser acknowledges and agrees that an electromagnetic, stray current and noise-warning clause similar to the one contained herein shall be inserted into any succeeding lease, sublease, or sales agreement and that this requirement shall be binding not only on the parties hereto but also their respective successors and assigns and shall not die with the closing of this transaction.
- (h) Purchasers are advised and acknowledge that one or more of the development agreements with the City of Hamilton may require the Condominium to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines or airports. Purchasers hereby agree to be bound by the contents of any such notice(s), whether given to the Purchasers at the time that this Agreement has been entered into, or at any time thereafter up to the Occupancy Date, and the Purchasers further covenant and agree to execute, forthwith upon the Condominium's request, an express acknowledgment confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the Development Agreement(s), if and when required to do so by the Condominium.
- (i) Purchasers are further advised that the Declarant (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after occupancy and/or final closing, from time to time, in order to enable the Declarant to correct outstanding deficiencies or incomplete work for which the Declarant is responsible, and to enable the

number of Residential Units, Commercial Units, Parking Units, and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the Residential Units ultimately comprised within the Condominium which have not yet been sold by the Vendor to any unit purchaser(s), all in the Vendor's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the Residential Units, Parking Units, and/or other ancillary unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the Residential Units, Commercial Units and/or Parking Units and/or Locker Units sold by the Vendor to the Purchaser. Without limiting the generality of the foregoing, Purchasers further acknowledge and agree that one or more Residential Units and/or Commercial Units situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined Unit, and the overall Residential Unit and/or Commercial Units count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchasers.

- (k) The Purchaser hereby acknowledges and agrees that the Declarant cannot guarantee (and will not be responsible for) the arrangement of a suitable move-in time for purposes of accommodating the Purchaser's occupancy of the residential unit on the Occupancy Date, (or any acceleration or extension thereof as hereinbefore provided), and that the Purchaser shall be solely responsible for directly contacting the Declarant's customer service office or property management office in order to make suitable booking arrangements with respect to the Condominium's service elevator, if applicable (with such booking being allotted on a "first come, first served" basis), and under no circumstances shall the Purchaser be entitled to any claim, refund, credit, reduction/abatement or set-off whatsoever against any portion of the Purchase Price, or against any portion of the common expenses or other adjustments with respect thereto (nor with respect to any portion of the monthly occupancy fees so paid or payable, if applicable) as a result of the service elevator not being available to accommodate the Purchaser moving into the Condominium on (or within any period of time after) the Occupancy Date, (or any acceleration or extension thereof, as aforesaid).
- (l) Purchasers are advised that although the fan coils servicing the Residential Units are owned by, and are the responsibility of, the individual unit owners, the Board may elect to implement a program of repair and maintenance which costs will become the obligation of owners.
- (m) The Purchaser acknowledges that the snow removal for the site will not be completed by the local municipality. The Purchaser acknowledges that the property will be subject to an agreement addressing snow removal and the cost of same will be included in the common expense fees.
- (n) Purchasers are advised that noise and/or odour levels from surrounding commercial (including the Commercial Units) and/or industrial businesses in the vicinity, may be of concern and occasionally interfere with some activities of the Unit occupants as the sound levels may exceed the Municipality's and the Ministry of Environment's noise criteria.
- (o) Purchasers are advised that their individual Parking Unit, Storage Unit may contain structural obstructions such as a wall(s) and/or column(s) and/or pipes or drains within the boundaries of such Parking Unit and/or Storage Unit.
- (p) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after the Title Transfer Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Declarant is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
- (q) The Purchaser acknowledges and agrees that the Vendor reserves the right to add or relocate certain mechanical equipment within the Unit, including but not limited to, a fan coil or heat pump system and ancillary equipment, to be located and placed along either the interior of an outside wall or an interior denising wall, in accordance with engineering and/or architectural requirements.
- (r) The Declarant shall have the right to substitute any level in the Condominium with an alternative floor plate containing a modified design of units and/or number of units on the level. In the event that such modification becomes necessary, there shall be a reallocation of each purchaser's proportionate percentage and the Budget shall be modified accordingly and the units and level numbers shall be re-numbered accordingly. The Purchaser acknowledges that none of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- (s) Purchasers are advised that typical noise associated with the use of the amenity space and mechanical facilities may occasionally interfere with some activities within the Unit. Purchasers acknowledge that they have reviewed the draft condominium plan provided to them within the Disclosure Book and, in consideration of both their location on a particular level and their location beneath or above certain amenities and mechanical facilities, are satisfied with respect to their proximity to the proposed amenities and mechanical facilities located on their respective level.

- (u) Purchasers are advised that there may be noise to the exterior vehicle roadways, bicycle lanes, vehicle elevator, and external business activity within proximity to the condominium, as well as outdoor patio noises from the common and/or main floor commercial units outdoor business activity.
- (v) Despite the best efforts of the Hamilton District School Board, sufficient accommodation might not be locally available for all students anticipated from the development area. Students may be accommodated in facilities outside the area, and may later be transferred.
- (w) Purchasers agree for the purpose of transportation to school, if bussing is provided by the Hamilton District School Board in accordance with the Board's policy, that students will not be bussed home to school, but will meet the bus at designated locations in or outside of the area.
- (x) The Hamilton Catholic District School Board has plans to accommodate Catholic students from this development area in a Catholic school. If no Catholic school is located in the development area, students will be accommodated in a Catholic school in the adjacent area.
- (y) The purchaser or tenant acknowledges that school bus service for students, if required, will be from designated school bus stops located within or outside the development area.
- (z) The Commercial Units are intended to be used for any such retail/commercial/ancillary uses as may be permitted from time to time pursuant to the applicable municipal and zoning requirements in effect from time to time, respectively.

**Purchaser's Consent to the Collection and Limited Use of Personal Information**

45. The Purchaser hereby consents to the Vendor's collection, use and disclosure of the Purchaser's personal information for the purpose of enabling the Vendor to proceed with the Purchaser's purchase of the Unit, completion of this transaction, and for post-closing and after-sales customer care purposes. Such personal information includes the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, marital and residency status, social insurance number (only with respect to subparagraph (b) below), financial information, desired suite design(s), ancillary units purchased and colour/finish selections. In particular, but without limiting the foregoing, the Vendor may disclose such personal information to:

- (a) any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and the Canada Revenue Agency (i.e. with respect to HST);
- (b) Canada Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the ITA, as amended;
- (c) the Condominium for the purposes of facilitating the completion of the Condominium's voting, leasing and/or other relevant records and to the Condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions;
- (d) any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;
- (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, with respect to the Unit, including without limitation, the Vendor's construction lender(s), the quantity surveyor monitoring the Project and its costs, the Vendor's designated construction lender(s), the Tarion Warranty Corporation and/or any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
- (f) any insurance companies of the Vendor providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, and any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Condominium (collectively, the "Utilities"), unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the

Vendor prior notice in writing not to disclose the Purchaser's personal information to said third party data processing companies;

- (i) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

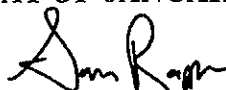
Any questions or concerns of the Purchaser with respect to the collection, use or disclosure of his or her personal information may be delivered to the Vendor at the address set out in the Tarion Addendum, Attention: Privacy Officer.

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**TAB P**

***THIS IS EXHIBIT "P" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*

**PRIVATE & CONFIDENTIAL**

December 14, 2021

**VIA EMAIL, REGULAR MAIL AND REGISTERED MAIL**

Areacor Inc.  
Suite #270 - 2869 Bloor St West  
Etobicoke ON M8X 1B3

Attention: Roni Gilyana

**Re: *Indebtedness of Areacor Inc. (the "Borrower") to MarshallZehr Group Inc. (the "Lender")***

Dear Sirs,

We are lawyers for the Lender. Pursuant to the commitment letter dated May 15, 2018, as amended by letters dated June 27, 2018, December 3, 2018 and December 2, 2019 (collectively, the "**Commitment Letter**"), the Lender agreed to make a loan in the maximum amount of \$11,895,000 (the "**Loan**") to the Borrower. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Commitment Letter.

The Loan is secured by, *inter alia*, a Charge/Mortgage in the principal amount of \$13.5 million registered on lands municipally known as 11-15 Cannon Street West, Hamilton, Ontario, and a General Security Agreement dated June 25, 2018 (collectively, the "**Security**").

We are advised by the Lender that the Borrower is indebted to the Lender in the amount of \$6,841,475.63 for principal, interest and fees (excluding legal costs) as of December 6, 2021 under the Commitment Letter, as detailed in the discharge statement enclosed herewith.

We are further advised by the Lender that the Borrower is in default of its obligations under the Commitment Letter, including, without limitation, as a result of its failure to make the required interest payments that were due to the Lender on September 1, October 1, November 1 and December 1, 2021. As a result, an Event of Default has occurred under the Commitment Letter, and the Lender is entitled to declare all Obligations to be immediately due and payable.

On behalf of the Lender, we hereby demand payment of the Borrower's indebtedness to the Lender. Unless payment of the amount set out above, together with additional interest accrued and fees and costs incurred to the date of payment are paid forthwith, the Lender shall take such steps as it deems necessary to recover payment of the Borrower's indebtedness in full, which may include enforcement of the Security.

Enclosed please find the Lender's Notice of Intention to Enforce Security, which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Yours truly,  
CHAITONS LLP

A handwritten signature in black ink, appearing to read "Harvey Chaiton". The signature is fluid and cursive, with the first name "Harvey" written in a larger, more prominent script than the last name "Chaiton".

Harvey G. Chaiton  
PARTNER  
Encl.

Cc: MarshallZehr Group Inc.  
Roni Gilyana  
Ian Aversa, Aird & Berlis LLP



**DISCHARGE STATEMENT AT DECEMBER 6, 2021**

*Prepared on December 3, 2021*

**Terms:** \$11,895,000 First (1st) Mortgage for Construction Loan.  
 Facility #1: \$10,445,000 10% per annum  
 Facility #2: \$1,450,000 14% per annum

**15 Cannon Street - MZGI 195**

11 & 15 Cannon Street West, Hamilton, ON

	<u>Facility 1</u>		<u>Facility 2</u>		<u>Total</u>
Principal Amount Outstanding	\$ 5,198,241.00	\$	1,450,000.00	\$	6,648,241.00
Unpaid Monthly Interest	\$ 137,980.59	\$	54,081.23	\$	192,061.82
MarshallZehr Cost Recovery					\$672.81
Final Discharge Admin Fee				\$	500.00
Less: Cash held in Trust				\$	-
<b>Balance due on DECEMBER 6, 2021</b>				\$	<b>6,841,475.63</b>
Per Diem	\$ 1,459.98	\$	575.79	\$	2,035.77

*Payment must be received by 1:00 p.m. December 6, 2021 or per diem interest will be added up to the next business day.*

You are authorized and directed to make the balance due payable to our solicitor; Chaitons LLP "In Trust", OR as they may further direct.

**MARSHALLZEHR GROUP INC.**

DocuSigned by:

*Murray Snedden*

Per: \_\_\_\_\_  
 SD7B047774B943F...  
 Mortgage Administrator #: 11955

E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid until December 31, 2021. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the Proposed Settlement Date are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

MarshallZehr Group Inc.  
 465 Phillip Street, Suite 206, Waterloo ON, N2L 6C7

**NOTICE OF INTENTION TO ENFORCE A SECURITY**  
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: **Areacor Inc.**, an insolvent person

Take notice that:

1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of Areacor Inc.
2. The security that is to be enforced includes, *inter alia*, a Charge/Mortgage in the principal amount of \$13.5 million registered on lands municipally known as 11-15 Cannon Street West, Hamilton, Ontario (the "**Property**") on June 29, 2018 as instrument number WE1293837, Assignments of Rents registered on the Property on June 29, 2018 as instrument numbers WE1293838 and WE129383, and a General Security Agreement dated June 25, 2018 (collectively, the "**Security**").
3. The total amount of indebtedness secured by the Security as at the close of business on December 6, 2021 is \$6,841,475.63 inclusive of principal, interest and fees (excluding costs), with respect to a loan made to the Borrower pursuant to the commitment letter dated May 15, 2018, as amended by letters dated June 27, 2018, December 3, 2018 and December 2, 2019.
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 14<sup>th</sup> day of December, 2021.

**MARSHALLZEHR GROUP INC.**,  
by its lawyers, Chaitons LLP



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

**TAB Q**

***THIS IS EXHIBIT "Q" TO THE  
AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 6<sup>TH</sup>  
DAY OF JANUARY, 2022.***



.....  
*A Commissioner Etc.*



Court File No.

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

BETWEEN:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**AREACOR INC.**

Respondent

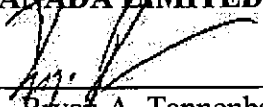
APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**CONSENT**

**RSM CANADA LIMITED** ("RSM") hereby consents to act as Court-appointed receiver, without security, of all of the assets, undertakings and properties of the Respondent pursuant to subsection 243(1) of *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, in accordance with an order substantially in the form requested by the Applicant, or as such order may be amended in a manner satisfactory to RSM.

DATED this 30<sup>th</sup> day of December, 2021

**RSM CANADA LIMITED**

By:   
Name: Bryan A. Tannenbaum  
Position: President

I have authority to bind the corporation

**TAB 3**

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

THE HONOURABLE MR.

)

THURSDAY, THE 13<sup>th</sup>

JUSTICE CAVANAGH

)

DAY OF JANUARY, 2022

)

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**AREACOR INC.**

Respondent

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

**ORDER  
(appointing Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing RSM Canada Limited as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Areacor Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via videoconference due to the COVID-19 pandemic.

**ON READING** the affidavit of Murray Snedden sworn January 6, 2022 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one appearing for the parties listed on the service list although duly served as appears from the affidavit of service of Lynda Christodoulou sworn January 6, 2022 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 Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

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

### **RECEIVER'S POWERS**

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

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

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; 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 Debtor, and without interference from any other Person.

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

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that



nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that 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 DEBTOR OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

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

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

### **RECEIVER TO HOLD FUNDS**

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

## **PIPEDA**

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 Debtor, 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 (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 "B" 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.

#### **RETENTION OF LAWYERS**

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

#### **SERVICE AND NOTICE**

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

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any



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

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

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

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

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

35. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with

Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

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## SCHEDULE "A"

**Municipal Address:** 15 Cannon Street West, Hamilton, Ontario

**PIN:** 17586-0153 (LT)

**Property Description:** Part of Lot 13, Block 6 Plan 39, Part 1 ON 62R21575; subject to an easement as in WE1493193; City of Hamilton

## SCHEDULE "B"

### RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties Areacor Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 13<sup>th</sup> day of January, 2022 (the "**Order**") made in an application 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 Property, and not in its personal capacity

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

Name:

Title:

**TAB 4**

Court File No.

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

THE HONOURABLE — MR. ) WEEKDAY THURSDAY, THE #13<sup>th</sup>  
 )  
JUSTICE — CAVANAGH ) DAY OF MONTH JANUARY, 20YR 2022

BETWEEN:

**PLAINTIFF<sup>‡</sup>**

Plaintiff

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**DEFENDANT**

Defendant

**AREACOR INC.**

Respondent

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

**ORDER**  
**(appointing Receiver)**

<sup>‡</sup> The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.  
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.



**THIS MOTION**~~APPLICATION~~ made by the Plaintiff<sup>2</sup>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 [RECEIVER'S NAME]RSM Canada Limited as receiver ~~[and manager]~~ (in such capacities, ~~the "Receiver"~~) without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME]Areacor Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at ~~330 University Avenue, Toronto, Ontario~~via videoconference due to the COVID-19 pandemic.

**ON READING** the affidavit of [NAME]Murray Snedden sworn [DATE]January 6, 2022 and the Exhibits thereto and on hearing the submissions of counsel for [NAMES]the Applicant, no one appearing for [NAME]the parties listed on the service list although duly served as appears from the affidavit of service of [NAME]Lynda Christodoulou sworn [DATE]January 6, 2022 and on reading the consent of [RECEIVER'S NAME]RSM Canada Limited to act as the Receiver,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~Application and the MotionApplication Record is hereby abridged and validated<sup>2</sup> so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, [RECEIVER'S NAME]RSM Canada Limited is hereby appointed Receiver, without

<sup>2</sup> Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

<sup>3</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property"), including, without limitation, the real property described in Schedule "A" attached hereto.

### RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever

basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> 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;

<sup>4</sup>~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (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 \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, {or section 31 of the Ontario *Mortgages Act*, as the case may be,<sup>5</sup> 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;

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; 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 Debtor, and without interference from any other Person.

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

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

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

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

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

7. **THIS COURT ORDERS** that 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 DEBTOR OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

**NO INTERFERENCE WITH THE RECEIVER**

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

### **RECEIVER TO HOLD FUNDS**

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

## **PIPEDA**

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 Debtor, 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.<sup>6</sup>

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.

<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

## 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 (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 "AB" 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.

### **RETENTION OF LAWYERS**

25. THIS COURT ORDERS that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

### **SERVICE AND NOTICE**

26. 25. THIS COURT ORDERS that the E-Service Protocol Guide of the Commercial List (the "Protocol Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 2113 of the Protocol Guide, service of documents in accordance with the Protocol Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol Guide with the following URL: <http://www.rsmcanada.com/areacor-inc.>

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

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

29. ~~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.

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

31. ~~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.

32. ~~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.

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

34. ~~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.



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

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**SCHEDULE "A"**

**Municipal Address:** 15 Cannon Street West, Hamilton, Ontario

**PIN:** 17586-0153 (LT)

**Property Description:** Part of Lot 13, Block 6 Plan 39, Part 1 ON 62R21575; subject to an easement as in WE1493193; City of Hamilton

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ RSM Canada Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ Areacor Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 13<sup>th</sup> day of January, ~~20~~ 2022 (the "**Order**") made in an ~~action~~ application 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 \_\_\_\_\_, ~~2020~~ 2020.

~~[RECEIVER'S NAME]~~ **RSM CANADA LIMITED**, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

Document comparison by Workshare Compare on Thursday, January 6, 2022  
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Document 1 ID	file://C:\Users\SamR\OneDrive - Chaitons LLP\Precedents\receivership-order-EN.doc
Description	receivership-order-EN
Document 2 ID	PowerDocs://DOCS/5325328/1
Description	DOCS-#5325328-v1-MZ/Areacor - _Receivership_Order
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Deletions	87
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	169

MARSHALLZEHR GROUP INC.  
Applicant

-and-

AREACOR INC.  
Respondent

Court File No. CV-00674747-00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
PROCEEDING COMMENCED AT  
TORONTO

**APPLICATION RECORD**

**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton (LSO #21592F)**  
Tel: (416) 218-1129  
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**Lawyers for the Applicant**