

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

MARSHALL ZEHR GROUP INC., AS ADMINISTRATOR

Applicant

- and -

12252856 CANADA INC.

Respondent

**RESPONDING RECORD OF 12252856 CANADA INC.**

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Lawyer for Marshall Zehr Group Inc.

**AND TO:**

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- and -

12252856 CANADA INC.

Respondent

**AFFIDAVIT OF ANDREW HARDIE BALLANTYNE**

(sworn June 13, 2023)

I, **ANDREW HARDIE BALLANTYNE** of the City of Toronto in the Province of Ontario  
**MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer in good standing with the Law Society of Ontario. I share office space with counsel for the Respondent.
2. For purpose of this Affidavit, I have reviewed counsel's file including but not limited to the Endorsements of the Court. As well, I have assisted counsel with this file from time to time and am, therefore, familiar with its facts and issues. I have also been advised by and/or received information from counsel which I verily believe to be true. Where so informed or advised, I have duly set out such particulars below. As such, therefore, I have knowledge, information and belief as to the matters to which I hereinafter depose.

**PRELIMINARY OBJECTION**

3. The Respondent objects that the Applicant's motion proceed on June 15, 2023 because not all proper parties have been served with the Motion Record.




- 4. That is, on **February 1, 2023** the Respondent entered into an Agreement of Purchase and Sale (the “APS”) and a Purchase Agreement for the premises municipally known as 201, 227, 235 King Road, Richmond Hill, Ontario (the “Premises”). Attached hereto as **Exhibit “A”** is a true copy of the APS and Purchase Agreement.
- 5. On **February 28, 2023** the parties executed a Waiver to the APS whereby the conditional period was waived. Attached hereto as **Exhibit “B”** is a true copy of the Waiver.
- 6. On **March 27, 2023**, counsel for the Purchaser under the APS registered a Caution on title bearing Instrument Number YR3535469. Attached hereto as **Exhibit “C”** is a true copy of the Caution.
- 7. On **June 5, 2023**, counsel for the Purchaser exchanged emails with counsel for the Applicant. Such email confirms that the Purchaser had not yet been served. To date, the Purchaser has not been served. Counsel for the Purchaser has advised and confirmed that the Purchaser now has an interest in land; and, therefore is a proper party to the Motion. Attached hereto as Exhibit “D” is a true copy of the email exchanges.

**PAYOUT STATEMENTS**

- 8. On **December 20, 2022** the parties entered into a Settlement Agreement. Attached hereto as Exhibit “E” is a true copy of this Settlement Agreement.
- 9. Clause 2 therein stipulates that if payment in full is not made on or before January 30, 2023 then the amount of indebtedness as calculated by the Applicant in its discharge statement dated December 14, 2022.
- 10. Clause 2 carves out an exception for the Respondent to challenge the quantum of a) the alleged failure by the Applicant to pay \$145,000.00 as an overpayment on the purchase of the Premises and b) whether wrap up interest may be claimed. This clause also prescribes a due date by which negotiations on these two items must be resolved; failing which the Respondent shall pay the discharge amount in the discharge statement dated December 14, 2022. Attached hereto as **Exhibit “F”** is a true copy of this discharge statement.

11. As full set out in the factum prepared by William Friedman, filed, wrap up interest violates Section 8 of the *Interest Act*. The Applicant is prevented, as a matter of law, to claim wrap up interest. Yet, contrary to the discharge statement of December 14, 2022 and following the execution of the Settlement Agreements, the Applicant provided its discharge statement dated February 15, 2023 wherein wrap up interest is claimed at \$929,088.61 for the first tranche of \$12,000,000.00; and 486,680.33 for tranche B in the sum of \$6,000,000.00. The Settlement Agreement dated December 14, 2022 does not set out any claim for wrap up interest. If the December 14, 2022 payout statement is the basis of payment then the February 15, 2023 discharge statement is incorrect.
12. Similarly, the discharge statements respectively dated January 25, 2023; February 15, 2023; February 24, 2023 and May 31, 2023 all charge a "Deferred Lender Fee Forbearance" in the sum of \$150,000.00. This fee and amount does not appear on the December 14, 2022 discharge statement. Attached hereto as **Exhibit "G"** are true copies of the aforementioned discharge statements. All of these discharge statements are at variance with the one dated December 14, 2022. The discharge statement dated May 31, 2023 also now contains the sums of \$64,939.44 for legal fees and \$45,000.00 for a default administration fee.
13. The Respondent has obtained several offers to finance. On June 7, 2023 true copies of the refinancing documents were provided to the Applicant. To secure the financing, the Respondent requires a fixed amount for which only per diem interest may be applied.
14. The Respondent's proposed lenders will not take further steps until a proper payout statement is obtained. The repeated failure by the Applicant to provide a proper discharge statement renders the Respondent's ability to refinance impossible. Now produced as **Exhibit "H"** are true copies of the respective lenders proposals from People's Group; Benson Capital.
15. The Respondent requests that the Motion be dismissed so that the APS may be allowed to close without incurring ongoing additional fees that were apparently not addressed in the discharge statement of December 14, 2022.

Sworn before me at the City of Toronto )  
in the Province of Ontario this 13<sup>th</sup> day )  
of June 2023 )

  
\_\_\_\_\_  
A Commissioner, etc.

  
\_\_\_\_\_  
ANDREW HARDIE BALLANTYNE

5

This is Exhibit "A" to the affidavit of  
Andrew Hardie Ballantyne  
Sworn June 13, 2023



---

A Commissioner, etc

# Agreement of Purchase and Sale

## Form 100

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 1st day of February, 2023

**BUYER:** ZORAN BAKICH IN TRUST for a new corporation to be formed, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER:** 12252856 CANADA INC., the following  
(Full legal names of all Sellers)

### REAL PROPERTY:

Address 201, 227, 235 King Road, Richmond Hill, Ontario

fronting on the \_\_\_\_\_ side of \_\_\_\_\_

in the City of Richmond Hill

and having a frontage of \_\_\_\_\_ more or less by a depth of \_\_\_\_\_ more or less

and legally described as 201 KING RD; PIN 031960039 and legally described PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264; CITY OF RICHMOND HILL, 227 KING RD; PIN 031960038 and legally described as LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B; RICHMOND HILL, 235 KING RD; PIN 031960037 and legally described as LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B; RICHMOND HILL.

(Legal description of land including easements not described elsewhere)

(the "property")

### PURCHASE PRICE:

Dollars (CDN\$) 34,000,000.00

Thirty Four Million

Dollars

### DEPOSIT: Buyer submits

Six Hundred Thousand

(Herewith/Upon Acceptance/as otherwise described in this Agreement)

as specified in Schedule A

Dollars (CDN\$) 600,000

by negotiable cheque payable to Seller "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A** ..... **attached hereto form(s) part of this Agreement.**

1. **IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 11:59 on the 3rd day of February, 2023, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.  
(Seller/Buyer) (a.m./p.m.)

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 30th day of May, 2023. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

ZB

INITIALS OF SELLER(S):

[Signature]

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: ..... (For delivery of Documents to Seller) FAX No.: ..... (For delivery of Documents to Buyer)

Email Address: Prem@consortia-na.ca (For delivery of Documents to Seller) Email Address: zbakich1@gmail.com (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be ..... **in addition to** ..... the Purchase Price. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): Z.B

INITIALS OF SELLER(S): [Signature]

**8. TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 7th day of February, 2023, (Requisition Date) to examine the title to the property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding work orders or deficiency notices affecting the property, and that its present use ( ) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

**9. FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

**10. TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

**11. CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

**12. DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act [Canada], Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

**13. INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.**

**14. INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S): ZIB

INITIALS OF SELLER(S): [Signature]



- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 20. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 28. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S): Z.B

INITIALS OF SELLER(S): [Signature]



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**29. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

*[Handwritten signature]*  
55 Babcombe Dr Thornhill

(Buyer)

*[Handwritten signature]*

(Seal)

1st February, 2023

(Date)

(Witness)

(Buyer)

(Seal)

(Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Seller)

*[Handwritten signature: P. Jackson]*

(Seal)

1st February, 2023

(Date)

(Witness)

(Seller)

(Seal)

(Date)

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

(Date)

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at Ontario this 1st day of February, 2023.

(a.m./p.m.)

*[Handwritten signature: P. Jackson]*  
(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage .....	(Tel. No.)
(Salesperson/Broker/Broker of Record Name)	
Co-op/Buyer Brokerage .....	(Tel. No.)
(Salesperson/Broker/Broker of Record Name)	

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Seller) *[Handwritten signature: Prem Yachamanani]* 1st February, 2023 (Date)

(Buyer) Zoran Bakich 1st February, 2023 (Date)

(Seller) (Date)

(Buyer) (Date)

Address for Service ..... (Tel. No.)

Address for Service ..... (Tel. No.)

Seller's Lawyer ..... (Tel. No.)

Buyer's Lawyer ..... (Tel. No.)

Address .....

Address .....

Email .....

Email .....

(Tel. No.) (Fax. No.)

(Tel. No.) (Fax. No.)

FOR OFFICE USE ONLY	COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:	
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.	
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by:	
..... (Authorized to bind the Listing Brokerage)	..... (Authorized to bind the Co-operating Brokerage)

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**Schedule A**  
**Agreement of Purchase and Sale**

11

**Form 100**  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** ZORAN BAKICH IN TRUST for a new corporation to be formed ..... and

**SELLER:** 12252856 CANADA INC. ....

for the purchase and sale of 201, 227, 235 King Road, Richmond Hill, Ontario .....

..... dated the 1st day of February, 20 23 .....

Buyer agrees to pay the balance as follows:

Please refer to the "Purchase Agreement" attached to this Schedule A herein.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):** Z.B

**INITIALS OF SELLER(S):** [Signature]

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**PURCHASE AGREEMENT**

**THIS PURCHASE AGREEMENT** (the "Agreement") is dated the 1<sup>st</sup> day of February 2023.

**BETWEEN:**

**ZORAN BAKICH IN TRUST** for a new corporation to be formed and resides at 65 Misty Moor Drive, Richmond Hill, Ontario L4C 6P9.

(the "PURCHASER")

**AND**

**12252856 CANADA INC.** is an Ontario company with its address MAG Centre, 155 Commerce Valley Dr. E., Markham, ON L3T 7T2.

(the "VENDOR")

**WHEREAS** the Vendor has an approximate 3.875-acre property located at 201, 227, 235 King Road, Richmond Hill, Ontario;( the "Property"), and the Purchaser is interested in purchasing said property;

**NOW THEREFORE, THIS AGREEMENT WITNESSES** that in consideration of the sum of Ten (\$10.00) Dollars now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties hereby agree as hereinafter set out.

**1.0 PURCHASE PRICE**

The Purchase Price of \$34.0 Million (\$34,000,000.00) shall be satisfied by the Purchaser:

- (i) Paying the deposit of Six Hundred Thousand Dollars (\$600,000.00) as set out in Section 2.0 of this Agreement;
- (ii) A First Mortgage not to exceed Eighteen Million Dollars (\$18,000,000.00);
- (iii) A VTB of Ten Million Dollars (\$10,000,000.00); and
- (iv) The balance of Five Million Four Hundred Thousand Dollars (\$5,400,000.00).

subject to the usual adjustments set out in Section 12.0 of this Purchase Agreement, by wire transfer to the Vendor's Solicitors on Closing.

**2.0 DEPOSIT**

Within 5 business days after the date of acceptance of this Agreement, the Purchaser shall pay to the Vendor a deposit of One Hundred Thousand Dollars (\$100,000.00) (the "First Deposit").

The Deposit shall be paid to the Vendor on account of the Purchase Price pending the completion of this transaction, and failing such completion, the Deposit shall, without deduction, be returned

ZB [Signature]

to the Purchaser unless this Agreement was not completed due to the default of the Purchaser, in which event the Deposit shall be forfeited to the Vendor as liquidated damages without prejudice to any other rights the Vendor may have at law or in equity.

The remaining balance of Five Hundred Thousand Dollars (\$500,000.00) (the "Second Deposit") shall be due and payable upon the Purchaser notifying the Vendor that conditions have been satisfied as set out in section 7.0 of this Purchase Agreement.

**3.0 DELIVERIES ON ACCEPTANCE**

The Vendor shall deliver (which delivery may include providing hard or electronic copies) to the Purchaser within two (2) Business Days after the date of acceptance of this Purchase Agreement, the following documents and information to the extent in the Vendor's possession or control (the confidential Documents"):

- (a) copies of all tax bills, including, but not limited to, realty taxes, business taxes, occupancy taxes appeals and special assessments for the previous two (2) years;
- (b) copies of all agreements affecting the Property, including all service contracts, utility contracts and signed contracts, with a list of all suppliers and addresses;
- (c) copies of all encumbrances registered against the Property;
- (d) copies of all warranties and guarantees relating to the Property;
- (e) all architectural, mechanical and engineering plans and specifications, as-built drawings, development agreements, building and development permits, soil tests, engineering or environmental studies, maintenance or inspection reports, traffic studies, appraisal reports and all other relevant information in the Vendor's possession, with respect to the improvements and the Lands;
- (f) all other written materials concerning the Property which would materially affect the approval of the Property by the Purchaser; and
- (g) copies of all existing leases.

The Purchaser will receive, treat and retain in confidence, and will cause its employees, principals, representatives and agents to treat and retain in confidence, the Confidential Documents, all information contained therein or otherwise provided by the Vendor in connection with the Property and the information obtained in connection with any inspections, investigations and tests, except that the Purchaser may use such information to obtain financing for its acquisition of the Property. The Purchaser acknowledges that it shall be bound by the provisions of this Section 3.0 until the transaction contemplated herein closes or is terminated pursuant to the terms of this Agreement.

**4.0 SERVICES**

The Vendor will confirm in writing to the Purchaser what utilities and services are available to the Property lot line and warrant there is adequate capacity for the contemplated development.

**5.0 DESCRIPTION**

The Purchaser is purchasing the Property:

14

201 KING RD; PIN 031960039 and legally described PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264; CITY OF RICHMOND HILL

227 KING RD; PIN 031960038 and legally described as LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B; RICHMOND HILL

235 KING RD; PIN 031960037 and legally described as LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B; RICHMOND HILL.

**6.0 ASSIGNMENT**

This Agreement may be assigned by the Purchaser prior to the Closing Date, with the notification to the Vendor, provided that the Purchaser discloses the organizational structure of the assignee and such assignee is in compliance with the Vendor's standard anti-terrorism and anti-money-laundering requirements. The assignee shall be deemed to assume all of the Purchaser's rights and obligations hereunder to the same extent and in the same manner as if such assignee had executed this Agreement as the Purchaser. However, the Purchaser shall remain obligated and liable to the Vendor for the performance of all the terms and conditions in this Agreement until the occurrence of Closing. It is further agreed that the Purchaser may direct title on Closing to any Person provided the Purchaser retains beneficial title to the Property or otherwise complies with the assignment provision set out in this Section 6.0

**7.0 PURCHASER'S DILIGENCE CONDITIONS**

This Agreement shall be conditional until 5:00 pm 28 days after the Vendor executes this Agreement (the "Due Diligence Date") upon the following conditions:

- (a) The Purchaser shall be satisfied in its sole and absolute discretion with respect to all matters concerning the Property, including, without limitation, the documents delivered in accordance with Section 3.0 of this Agreement, the contents of the existing leases, subleases, environmental and soil conditions, title, the economic feasibility of the Property, and zoning; and
- (b) The Purchaser shall have obtained all necessary internal approvals as to the transactions contemplated by this Agreement, such approvals to be given or withheld in the sole, absolute and subjective discretion of the entity required to provide the same.

These conditions have been inserted for the sole benefit of the Purchaser and may be waived by it at any time in the manner set out below.

The Purchaser may, by notice in writing, notify the Vendor that the foregoing conditions have been satisfied. If no such notice is delivered on or before the Due Diligence Date, the Purchaser will be deemed to have satisfied itself with respect to all conditions set out in this Section 7.0 and the First Deposit shall be deemed earned by the Vendor. Furthermore, the Purchaser had provided an intercorporate loan of Five Hundred Thousand Dollars (\$500,000.00) to the Vendor through an affiliated corporation on 18<sup>th</sup> August 2022. This loan will be credited by the Vendor as payment toward the Second Deposit of Five Hundred Thousand Dollars (\$500,000.00) and

shall hereby be applied toward the Purchase Price as set out in Section 1.0 of this Purchase Agreement.

If any of the conditions set out in this Section 7.0, for any reason whatsoever, have not been satisfied in the Purchaser's absolute and sole discretion or waived in the manner set out above, then this Agreement shall be at an end, and the First Deposit paid shall be immediately returned to the Purchaser and any arrangement/agreement pertaining to the Second Deposit with respect to this Purchase Agreement shall be deemed null and void. The Purchaser shall return forthwith the Confidential Documents provided to the Purchaser by the Vendor, and neither party shall have any further rights or obligations hereunder, except for obligations specifically stated in this Agreement to survive termination of this Agreement. In no event shall the Vendor be held accountable to reimburse the Purchaser for the cost of due diligence conducted by the Purchaser pursuant to this Agreement.

**8.0 CLOSING CONDITIONS**

(a) The Vendor's obligation to carry out the transactions contemplated herein is subject to fulfillment of each of the following on or before Closing unless waived by the Purchaser:

- (i) at the Closing, title to the Property will be free of all encumbrances except as agreed to by the Purchaser and Vendor;
- (ii) at Closing, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects; and
- (iii) at Closing, all the representations and warranties of Vendor in Section 22.0 of this Agreement are true in all material respects as if made on the Closing Date.

(b) The Purchaser's obligation to carry out the transactions contemplated herein is subject to fulfillment of each of the following on or before the date set out below unless waived by the Vendor:

- (i) at Closing, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects at the times contemplated herein; and
- (ii) at Closing, all the representations and warranties of Purchaser in Section 20.0 of this Agreement are true in all material respects as if made on the Closing Date.

**9.0 ACCESS**

(a) At any time within the conditional period, the Purchaser, its agents, consultants, and advisors (the "Representatives") shall be permitted, at any reasonable time or times on a Business Day, after the date of the acceptance of this Agreement, on not less than 24-hour prior notice to Vendor to inspect the Property, for the purposes of taking measurements, soil tests (including compaction studies), surveys, or making such other inspections as the Purchaser may require, at the expense of the Purchaser. The Purchaser hereby indemnifies the Vendor against



any and all claims arising out of any act or omission by the Purchaser or its Representatives during and with respect to its utilization of the right of access and inspection of the Property in this Section 9.0 (a). The Purchaser agrees forthwith to repair in a good and workmanlike manner any damage to the Property arising from such access or inspection at the Purchaser's sole cost and expense.

(b) This Section 9.0 shall survive Closing and any termination of this Agreement.

**10.0 HARMONIZED SALES TAX ELECTION**

With respect to the Harmonized Sales Tax ("HST") payable pursuant to the Excise Tax Act (Canada) (the Act") and notwithstanding anything else contained in the pre-set portion of this Agreement, the Parties covenant and agree as follows:

- (a) in accordance with the Act, HST is payable in respect of this transaction:
- (b) the Purchaser is liable for the payment of HST herein; and
- (c) notwithstanding sub-clause 10.0 (b), the Vendor shall be exempted from collecting the HST from the Purchaser in this transaction if the Purchaser has, on or before Closing, provided the Vendor with a certificate and indemnity as set out herein (the "HST Certificate"). Such certificate and indemnity shall disclose the Purchaser's and any beneficial Purchaser's (if applicable) HST registration numbers and sufficient information to relieve the Vendor from any obligation to collect HST on the sale of the Property pursuant to the Excise Tax Act (Canada). Such certificate shall: (i) confirm that the Purchaser and any applicable beneficial Purchasers shall, pursuant to Subsection 228(4) of the Excise Tax Act, self-assess and remit directly to the appropriate governmental authority, within the prescribed time and manner, the HST applicable on the purchase of the Property; and (ii) indemnify and save harmless the Vendor from all Claims incurred, suffered or sustained as a result of a failure: (A) of the Purchaser and any applicable beneficial Purchaser to pay any HST or self-assess and/or remit the HST payable in connection with the transfer of the Property in the prescribed time and manner; or (B) the Vendor to collect and remit HST applicable on the sale of the Property as a result of the Vendor relying on such certificate and indemnity.

**11.0 DELIVERIES ON CLOSING**

The Vendor (and where noted below, the Purchaser) shall deliver the following documents on Closing in a form to be agreed upon by the Purchaser and Vendor acting reasonably:

- (a) A statutory declaration confirming that the Vendor is not a non-resident of Canada within the meaning and purpose of Section 116 of the Income Tax Act.
- (b) Statement of adjustments in accordance with Section 12.0.
- (c) Purchaser's written direction re-title, if applicable.
- (d) Certificate confirming the truth and accuracy of Purchaser's representations and warranties contained in this Agreement as if made on the Closing Date.

- (e) Mutual undertaking to re-adjust all items on the statement of adjustments in accordance with this Agreement.
- (f) Purchaser's HST Certificate.
- (g) Such other documents as may be reasonably required by the Purchaser or Vendor, provided same is customary to a transaction of this nature, are in accordance with this Agreement and are in form and substance satisfactory to the Purchaser and Vendor acting reasonably, to authorize this Agreement and the carrying out of the transactions contemplated herein.

**12.0 STATEMENT OF ADJUSTMENTS**

- (a) The Vendor shall provide a statement of adjustments in accordance with this Section no later than 5 Business Days prior to Closing. Adjustments shall be made as of 11:59 p.m. the day prior to Closing (the Adjustment Date"). The Vendor shall be responsible for all expenses and entitled to all revenue accrued from the Property, if any, for that period ending on the Adjustment Date.
- (b) If the final cost or amount of any item which is to be adjusted on Closing cannot be determined at Closing, then an initial Adjustment for such item shall be made at Closing, such amount to be estimated by the Vendor and the Purchaser, each acting reasonably, on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Vendor or the Purchaser, as the case may be, shall within 30 days (or such other period of time as the parties may agree) thereafter provide a complete statement of such final determination to the other and within 30 days thereafter an adjustment shall be made subject to any dispute between the parties. No party may claim any adjustment or readjustment following the Survival Period.
- (c) The Vendor and the Purchaser hereby acknowledge and agree that:
  - (i) in the event that there are any realty or business tax appeals for the calendar year prior to the calendar year in which the Closing Date occurs, the Vendor shall, at its option, be entitled to continue such appeals and shall be entitled to receive from the Purchaser or directly from the municipality any payment resulting therefrom, subject to any applicable reconciliation obligations with tenants. In the event there are realty or business tax appeals for the calendar year in which the Closing occurs, the Vendor may, at its option, continue such appeals, and any payments received resulting therefrom shall be paid to the Vendor and Purchaser on a per diem basis determined by reference to the periods of their respective ownership of the applicable Property during such calendar year. after reimbursement to the Vendor of its out-of-pocket costs relating to such appeals and subject to any applicable reconciliation obligations with tenants, which shall be effected by the Purchaser. The Purchaser agrees to cooperate with the Vendor with respect to all such appeals. To the extent the Purchaser receives any of the aforementioned payments from the taxing authority on



or after the Closing Date, it shall forthwith pay the same to the Vendor for disposition in accordance with this Section. To the extent the Vendor receives any of the aforementioned payments on or after the Closing Date, it shall hold said payments in trust for the Purchaser and the Vendor as their respective interests are set out in this Section and forthwith remit the Purchaser's share of such payments to the Purchaser (subject to any applicable reconciliation obligations with tenants, which shall be effected by the Purchaser); and

(d) Section 12.0 of this Agreement shall survive Closing.

**13.0 COUNTERPARTS AND ELECTRONIC DELIVERY**

This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be original and such counterparts together shall constitute one and the same instrument. This Agreement may be delivered by facsimile transmission and/or by email PDF copy sent by electronic mail, (or by a similar system reproducing the original, which is generally accepted and used in the Province of Ontario), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto.

**14.0 CONFLICTS**

If there is a conflict between the provisions of this Agreement and the provisions of the printed form to which it is attached, if applicable, the provisions of this Agreement shall prevail.

**15.0 NOTICE**

Any notice to be given hereunder shall be deemed to be properly given if hand-delivered or faxed to the parties or to their solicitors at the following addresses or fax numbers, and any notice provided for hereunder shall be sufficiently given if hand-delivered or sent by facsimile reproduction on the day of delivery. In the event that any date established by or in accordance with this Agreement or any date of termination for a period of time set from or referred to in this Agreement shall fall upon a non-Business Day, then such date shall be deemed to be the next following Business Day.

**Purchaser:**

Zoran Bakich In Trust  
65 Misty Moor Drive,  
Richmond Hill, Ontario L4C 6P9  
Cell: 416-888-8396  
Email: [zbakich1@gmail.com](mailto:zbakich1@gmail.com)

**Vendor:**

12252856 Canada Inc  
155 Commerce Valley Drive E.

Markham, Ontario L3T 7T2  
Cell: (416) 795-2999  
Email: [prem@consortia-na.ca](mailto:prem@consortia-na.ca)

**16.0 CLOSING**

This Agreement shall be completed by May 30<sup>th</sup>, 2023, at the offices of the Purchaser's Solicitor, subject to any real property registrations being electronically registered in the appropriate land registry office where the Property is located, unless mutually extended by the Vendor and Purchaser.

**17.0 COSTS**

The Vendor shall be responsible for the costs of the Vendor's solicitors in respect of this transaction. The Purchaser shall be responsible for the costs of the Purchaser's solicitors in respect of this transaction. The Purchaser shall be responsible for and pay any land transfer taxes payable on the transfer of the Property, all registration fees payable in respect of registration by it of any documents on Closing, and all federal and provincial sales and other taxes payable by a Purchaser upon or in connection with the conveyance or transfer of the Property, including provincial retail sales tax and HST. This Section 17.0 shall survive Closing.

**18.0 DEFINITIONS**

The following terms shall have the following meanings for the purposes of this Agreement:

- (a) "Business Day" means a day of the week other than a Saturday, Sunday, statutory or civic holiday in the Province of Ontario;
- (b) "Claims" means any and all debts, dues, accounts, claims, costs, charges, losses, liabilities, obligations, fees, fines, penalties, interest, deficiencies, expenses, damages of any and every nature and kind whatsoever and howsoever arising, at law or equity, together with any and all actions, causes of action, suits, proceedings, demands, claims, costs, legal and other expenses related or incidental thereto, including legal expenses on a substantial indemnity basis and any amounts paid to settle an action or a claim or to satisfy a judgment (provided that no Claims made hereunder shall include indirect, consequential or special damages) "Claim" has a corresponding meaning.
- (c) "Closing", "closing", "Closing Date", "closing date", "Completion" and "Completion Date" means the date set out in Section 16 of this Agreement; and
- (d) "Person" means an individual, partnership, corporation, trust or unincorporated organization, a government or agency or political subdivision thereof or any combination of the foregoing.

**19.0 AUTHORIZATIONS**

The Vendor, upon the request of the Purchaser, shall forthwith deliver in the Vendor's standard form, consents and/or authorizations addressed to such governmental or other authorities as may

be requested by the Purchaser or its solicitors authorizing each such authority to release to the Purchaser such information as to compliance matters that the authority may have with respect to the Property. The Purchaser shall not request, and such authorizations will not request any inspections of the Property by any such authorities.

**20.0 PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Purchaser represents, warrants and covenants to and in favour of the Vendor, that, as of the date hereof:

- (a) The Purchaser is duly existing under the laws of its jurisdiction and has all necessary rights, power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder. The entry into, execution and delivery of this Agreement and the performance by the Purchaser of its obligations hereunder has been duly authorized and approved by all necessary action on the part of the Purchaser.
- (b) the Property is being transferred pursuant to this Agreement and is being purchased by the Purchaser as principal for its own account and is not being purchased by the Vendor as an agent, trustee or otherwise on behalf of or for another person;
- (c) the Purchaser is not a non-resident of Canada within the meaning of the Investment Canada Act (Canada); and
- (d) the Purchaser is not engaging in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any person, group, entity or nation which would contravene the provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada). The Purchaser is not engaging in this transaction, directly or indirectly, in violation of any laws relating to drug trafficking, money laundering or predicate crimes to money laundering. None of the funds of the Purchaser have been or will be derived from any unlawful activity with the result that the investment of direct or indirect equity owners in the Purchaser is prohibited by law or that the transaction or this Agreement is or will be in violation of the law. The Purchaser has and will continue to implement procedures and has consistently and will continue to consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times prior to Closing.

**21.0 SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

The representations and warranties of the Vendor and the Purchaser contained in this Agreement or contained in any closing documents shall not merge at Closing and shall survive for a period of 12 months after Closing (the "Survival Period"). This Section 21.0 shall survive Closing.

**22.0 VENDOR'S REPRESENTATIONS**

The Vendor hereby represents and warrants to and in favour of the Purchaser that as of the date of this Agreement:

- (a) it is a corporation existing under the laws of Canada and has the necessary corporate authority, power and capacity to own its interest in the Properties and to enter into this Agreement and to carry out the Purchase Agreement constituted on the execution and delivery of this Agreement and the documents and transactions contemplated herein on the terms and conditions herein contained;
- (b) the Purchase Agreement constituted on the execution and delivery of this Agreement and its obligations hereunder, and the documents and transactions contemplated herein, have been authorized by all requisite corporate proceedings and constitute legal, valid and binding obligations of it enforceable against it in accordance with their terms;
- (c) it is not a non-resident of Canada within the meaning of Section 116 of the Income Tax Act (Canada);
- (d) except as disclosed to the Purchaser in writing it is not aware of any pending or threatened expropriation proceedings relating to any Property;
- (e) except as disclosed to the Purchaser in writing, to the knowledge of the Vendor, there is, as of the date of this Agreement, no litigation or proceeding, including appeals (other than real property tax appeals) and applications for review, in progress and no litigation or claim threatened against or relating to the Vendor affecting any Property which materially adversely affects this Property;
- (f) save as set forth in the Leases, there are no options to purchase or rights of first refusal or other purchase rights with respect to any Property or any part thereof that has not expired or been waived; and
- (g) there are no employees employed by the Vendor or by anyone on behalf of the Vendor for whom the Purchaser will incur any liabilities whatsoever as a result of the purchase of the Property, and the Vendor is not bound by or a party to any collective bargaining agreement relating to the Property.

### 23.0 ELECTION

The Purchaser may elect to purchase the shares of the Vendor holding the Property as described in Section 5 above, provided a 15-day written notice of such election prior to Closing is delivered to the Vendor.

### 24.0 VTB

The VTB, as contemplated in Section 1 (iii), of Ten Million Dollars (\$10,000,000.00) with a payment of Five Million Dollars (\$5,000,000.00) payable by November 30, 2023, with the remaining balance of \$5 million due at occupancy.


The VTB will postpone to construction financing, and in lieu of interest, a bonus of 25% of the profits to be paid to the Vendor at occupancy.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the 1<sup>st</sup> day of February, 2023.

Witness:

ZORAN BAKICH IN TRUST - PURCHASER

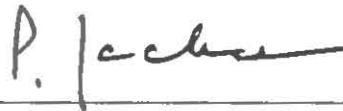
  
85 Balscomb Dr Thornhill ON

  
Zoran Bakich

Witness:

12252856 CANADA INC. - VENDOR

\_\_\_\_\_

PER:   
Prem Yachamanani - Director

This is Exhibit "B" to the affidavit of

Andrew Hardie Ballantyne

Sworn June 13, 2023

A handwritten signature in blue ink, appearing to read "Alvin [unclear]", is written over a horizontal line.

A Commissioner, etc

**THIS WAIVER TO THE AGREEMENT OF PURCHASE AND SALE** is dated for reference as at the 28th day of February, 2023 (this "**Agreement**").

**BETWEEN:**

**12252856 Canada Inc.**  
(the "**Vendor**")

OF THE FIRST PART,

- and -

**Zoran Bakich, in trust for a new corporation to be formed.**  
(the "**Buyer**")

OF THE SECOND PART.

**WHEREAS** the Buyer and the Seller entered into an agreement of purchase and sale dated February 1<sup>st</sup>, 2023 (the "**Purchase Agreement**"), whereby the Vendor agreed to sell and the Buyer agreed to purchase the property municipally known as 201, 227, 235 King Road, Richmond Hill, ON (the "**Property**");

**AND WHEREAS** the Purchase Agreement has a conditional period of 28 days upon execution of the Purchase Agreement expiring on March 1<sup>st</sup>, 2023 (the ("**Conditional Period**") as specified in **Schedule "A"** in the Purchase Agreement;

**AND WHEREAS** the Buyer and Seller are entering into this Agreement so that the parties can waive conditions as set out in the Purchase Agreement, in each case, on the terms and conditions set out herein.

**NOW THEREFORE IN CONSIDERATION** of the payment of the sum of TWO DOLLARS (\$2.00) and good and valuable consideration (the receipt and sufficiency of which is hereby mutually acknowledged), the parties agree as follows:

1. The foregoing recitals are true and accurate.
2. The Purchase Agreement is hereby considered waived as follows:
  - (a) Conditional Period – The Buyer confirm that the Conditional Period set forth in **Schedule "A"** of the Purchase Agreement is hereby considered as waived and conditions fulfilled.
  - (b) Deposit - The Buyer and Vendor confirm that the Deposits set forth in **Schedule "A"** of the Purchase Agreement is hereby considered as earned by the Vendor.
3. This Agreement shall be read together with the Purchase Agreement and any subsequent amendments thereto, and the parties confirm that, except as modified herein, all of the terms and conditions in the Purchase Agreement remain unchanged, unmodified and in full force and effect and time shall be and remain of the essence.

ZB 

- 4. The parties agree, from time to time, to do or cause to be done all such things, and shall execute and deliver all such documents, agreements and instruments reasonably requested by the other party, as may be necessary or desirable to complete the amendments contemplated by this Agreement and to carry out its provisions and intention.
- 5. This Agreement shall enure to the benefit of and be binding upon the parties and their successors and permitted assigns, as the case may be.
- 6. This Agreement may be executed in one or more counterparts all of which shall be considered one and the same document, and may be executed and delivered by facsimile, electronic mail (PDF) or other electronic transmission.

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

**12252856 CANADA INC,**

Per: P. Yachamanani c/s  
 Name: Prem Yachamanani  
 Title: Director  
*I have authority to bind the Corporation*

**Zoran Bakich. in trust**

Per: Zoran Bakich c/s  
 Name: Zoran Bakich  
 Title:  
*I/We have authority to bind the Corporation*



This is Exhibit "C" to the affidavit of  
Andrew Hardie Ballantyne  
Sworn June 13, 2023

A handwritten signature in blue ink, appearing to read "M. A. ...", is written over a horizontal line.

A Commissioner, etc

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

yyyy mm dd Page 1 of 20

**Properties**

PIN 03196 - 0037 LT Interest/Estate Fee Simple  
 Description LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL  
 Address 235 KING RD  
 RICHMOND HILL

PIN 03196 - 0038 LT Interest/Estate Fee Simple  
 Description LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL  
 Address 227 KING RD  
 RICHMOND HILL

PIN 03196 - 0039 LT Interest/Estate Fee Simple  
 Description PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL  
 Address 0 KING ROAD  
 RICHMOND HILL

**Consideration**

Consideration \$1.00

**Owner(s)**

Name 12252856 CANADA INC.  
 Address for Service 201, 227, 235 King Road, Richmond Hill

**Cautioneer(s)**

Capacity

Share

Name BAKICH, ZORAN  
 Address for Service 65 Misty Moor Drive, Richmond Hill, ON L4C 6P9

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

**Statements**

The applicant is entitled to register a caution to prevent any dealing with the land without the applicant's consent. The nature of the interest is the Cautioneer entered into an Agreement of Purchase and Sale to purchase the land. The Cautioneer still intends to purchase the Owner to own the subject lands. The Cautioneer is commencing an application/action against the vendor and the Owner to enforce the terms of the Agreement of Purchase and Sale.

The Land Registrar is authorized to delete this caution 60 days from the date of registration.

Schedule: See Schedules

**Signed By**

Natalie Mary M. Damiano 4275 Innes Road, Suite 208 acting for Signed 2023 03 27  
 Ottawa Cautioneer(s)  
 K1C 1T1

Tel 613-837-7408

Fax 613-837-8015

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

**Submitted By**

SICOTTE GUILBAULT LLP 4275 Innes Road, Suite 208 2023 03 27  
 Ottawa  
 K1C 1T1

Tel 613-837-7408

Fax 613-837-8015

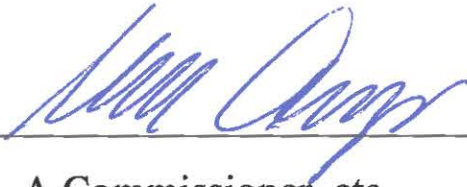
**Fees/Taxes/Payment**

Statutory Registration Fee \$69.00  
 Total Paid \$69.00

**File Number**

Cautioneer Client File Number : 150180

This is Exhibit "D" to the affidavit of  
Andrew Hardie Ballantyne  
Sworn June 13, 2023

A handwritten signature in blue ink, appearing to read "M. C. [unclear]", is written over a horizontal line.

A Commissioner, etc

**Nicolas Canizares**

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**From:** Stephane Hutt [shutt@sicotte.ca]  
**Sent:** June-05-23 2:47 PM  
**To:** Nicolas Canizares  
**Cc:** "Consortia N.A. "; ZORAN BAKICH  
**Subject:** FW: MarshallZehr Group Inc., as Administrator v. 12252856 Canada Inc. / Court File No. CV-22-00691528-00CL - Motion Record returnable June 6, 2023  
**Attachments:** KING APS WAIVER EXECUTED .pdf

Dear Mr. Canizares,

This is further to our recent conference call.

We have a scheduling conflict tomorrow and request that you act as our agent to seek an adjournment of the hearing tomorrow, for which we were just made aware about.

As you are aware, our client (Zoran Bakish) was not served with the Motion Record. You will see from email exchange with Mr. Chaiton, below, we have made it clear that our client has a valid interest in this property, agreeing to purchase the subject properties. The APS was registered on title in in late March 2023 with a closing date for late May 2023. As our client necessitated further time to close the transaction, the vendor and purchaser agreed to an extension, with our office requesting an extension of the Caution from the Land Registrar. We have made this clear to Mr. Chaiton.

Please require an adjournment of tomorrow's Motion hearing as we were not served with the Motion materials, and proceeding with this hearing will cause irreparable harm to our client who has paid deposit (confirmation of Waiver attached) and has invested time and resources to proceed with closing of this transaction. The new closing date is scheduled of July 31, 2023.

We require an extension to get properly served and to allow our client to bring a cross-motion to oppose the receiver's sale process, which is absent an Agreement of Purchase and Sale.

The APS, extension and Caution was provided to your gmail account. Please advise if you require any further information.

Yours truly,

**STÉPHANE HUTT**

Partner - Associé

T 613.751-4448  
[shutt@sicotte.ca](mailto:shutt@sicotte.ca)

5925 Jeanne D'Arc Boulevard, Unit 1  
Ottawa, ON K1C 6V8



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autorisé de ce message est interdit. Si cette communication vous a été acheminée par erreur, veuillez en aviser l'expéditeur.

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**From:** Stephane Hutt  
**Sent:** Monday, June 5, 2023 2:36 PM  
**To:** 'Harvey G. Chaiton' <Harvey@chaitons.com>  
**Cc:** Nicolas Canizares <equinoxgroup@bellnet.ca>; Nicolas Canizares <equinoxgroup@bellnet.ca>; William Brook Askin <Baskin97@gmail.com>; mirali@consortia-na.ca; irving@ontlaw.com; azin@aglawfirm.ca; rhosseini@cambridgellp.com; jkasozi@cambridgellp.com; dfrank@cambridgellp.com; emoore@moorelawyers.ca; diane.winters@justice.gc.ca; Leslie.Crawford@ontario.ca; Insolvency.Unit@ontario.ca  
**Subject:** RE: MarshallZehr Group Inc., as Administrator v. 12252856 Canada Inc. / Court File No. CV-22-00691528-00CL - Motion Record returnable June 6, 2023

Mr. Chaiton,

I have yet to receive any response with respect to our email correspondence of earlier today.

As we have a conflict in scheduling, having to appear on a separate court matter, Mr. Canizares will appear as our agent to seek an adjournment of the matter for reasons indicated in our previous correspondence.

Yours truly,

**STÉPHANE HUTT**

Partner - Associé

T 613.751-4448  
[shutt@sicotte.ca](mailto:shutt@sicotte.ca)

5925 Jeanne D'Arc Boulevard, Unit 1  
Ottawa, ON K1C 6V8



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This communication is intended to be received by the individual or entity to whom or to which it is addressed and contains information that is privileged, confidential and subject to copyright. Any unauthorized use, copying, review or disclosure is prohibited. If received in error, please contact the sender.

**From:** Stephane Hutt  
**Sent:** Monday, June 5, 2023 12:04 PM  
**To:** 'Harvey G. Chaiton' <Harvey@chaitons.com>  
**Cc:** 'Nicolas Canizares' <equinoxgroup@bellnet.ca>; Nicolas Canizares <equinoxgroup@bellnet.ca>; William Brook Askin

31

<Baskin97@gmail.com>; 'mirali@consortia-na.ca' <mirali@consortia-na.ca>; 'irving@ontlaw.com'  
<irving@ontlaw.com>; 'azin@aglawfirm.ca' <azin@aglawfirm.ca>; 'rhosseini@cambridgellp.com'  
<rhosseini@cambridgellp.com>; 'jkasoz@cambridgellp.com' <jkasoz@cambridgellp.com>; 'dfrank@cambridgellp.com'  
<dfrank@cambridgellp.com>; 'emoore@moorelawyers.ca' <emoore@moorelawyers.ca>; 'diane.winters@justice.gc.ca'  
<diane.winters@justice.gc.ca>; 'Leslie.Crawford@ontario.ca' <Leslie.Crawford@ontario.ca>;  
'Insolvency.Unit@ontario.ca' <Insolvency.Unit@ontario.ca>

**Subject:** RE: MarshallZehr Group Inc., as Administrator v. 12252856 Canada Inc. / Court File No. CV-22-00691528-00CL -  
Motion Record returnable June 6, 2023

**Importance:** High

Mr. Chaiton,

We represent Mr. Bakich relating to the purchase of the Subject Properties. We understand that you have been appointed as the Court receiver.

In February of this year, our client entered into an APS for the purchase of the Subject Properties. Subsequently to this, the APS was registered on title to safeguard our client's interest upon the subject lands. The closing was set to close by end of May 2023, and has since been extended to July 31, 2023, to address our client's financing requirements. We have requested an extension of the Caution to the Land Registrar. Upon quick review of your Motion Record, the Parcel Abstracts that you have provided in evidence are dated (Nov. 2022) and would evidently not capture our client's interest within the Subject Properties; this would appear as to be the reason our client was not served with the Motion Record.

Within this transaction, every mortgagee will be paid, subject to payout being duly calculated and substantiated.

Our client has a real interest in the Subject Properties, having committed fees and expenses to see this transaction to close. Interfering with this transaction would result in significant damages to our client, as well as to the mortgagees.

Having not been served with your Motion materials, the Motion schedule for tomorrow cannot proceed, as our client's interest in presenting its Cross Motion will not be present before the Court. We therefore request your consent to postponing your Motion in order for all matters and interest be appropriately before the Court.

Yours truly,

**STÉPHANE HUTT**

Partner - Associé

T 613.751-4448

[shutt@sicotte.ca](mailto:shutt@sicotte.ca)

5925 Jeanne D'Arc Boulevard, Unit 1

Ottawa, ON K1C 6V8



**SICOTTE  
GUILBAULT**

LEGAL SERVICES  
SERVICES EN DROIT

Cette communication doit être reçue seulement par le/la ou les destinataire(s) et l'information contenue est de nature privilégiée, confidentielle et sujette au droit d'auteur. Tout emploi non autorisé de ce message est interdit. Si cette communication vous a été acheminée par erreur, veuillez en aviser l'expéditeur.

This communication is intended to be received by the individual or entity to whom or to which it

This is Exhibit "E" to the affidavit of

Andrew Hardie Ballantyne

Sworn June 13, 2023

A handwritten signature in blue ink, appearing to read "M. A. ...", is written over a horizontal line.

A Commissioner, etc

**SETTLEMENT AGREEMENT**

THIS AGREEMENT made the 20<sup>th</sup> day of December, 2022,

BETWEEN:

**MARSHALLZEHR GROUP INC.**  
(“MarshallZehr”)

– and –

**12252856 CANADA INC.**  
(the “Company”)

**RECITALS:**

- A. Pursuant to a commitment letter dated August 18, 2020, as amended, MarshallZehr, for a syndicate of lenders (collectively, “MarshallZehr”), made a loan of \$18.0 million to the Company (the “Loan”). MarshallZehr is a lender and the administrator of the Loan.
- B. The Loan matured on September 1, 2022.
- C. On September 9, 2022, MarshallZehr demanded payment of the Company’s indebtedness, liabilities and obligations to MarshallZehr under the Loan and delivered its notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada).
- D. On December 9, 2022, MarshallZehr as Loan administrator commenced an application bearing Court File No. CV-22-00691528-00CL for the appointment of RSM Canada Limited as receiver of the Company’s property, assets and undertakings (the “Receiver”). The application is scheduled to be heard on December 21, 2022.
- E. As of December 14, 2022, the Company was indebted to MarshallZehr under the Loan in the amount of \$19,844,290.51 for principal, interest, fees and costs, excluding interest accrued, and additional fees and costs incurred, to date of payment (the “Indebtedness”).
- F. MarshallZehr and the Company have agreed to settle the receivership application on the terms and conditions set forth herein.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), the parties agree as follows:

- 1. Subject section 2 hereof, the parties hereto acknowledge and agree that each of the foregoing recitals is true and accurate both in substance and in fact. In particular, the Company hereby acknowledges that the Indebtedness is due and owing to MarshallZehr



without set-off, counterclaim, or deduction whatsoever and, as of the date hereof, the Company has no defence or claim for set-off, counterclaim, damages or otherwise on any basis whatsoever against MarshallZehr, and if there are any such defences or claims, they are hereby expressly forever released and discharged.

2. Notwithstanding anything to the contrary contained herein, the Company reserves the right to challenge the quantum of the Indebtedness solely with respect to: (a) MarshallZehr's alleged failure to apply a \$145,000 overpayment on closing of the Company's purchase of the property municipally known as 201, 227 and 235 King Road, Richmond Hill, to the calculation of the outstanding balance of the Indebtedness; and (b) whether MarshallZehr may charge wrap-up interest in calculating the quantum of the Indebtedness. Any dispute must be resolved by agreement of the parties or order of the Court by no later than January 30, 2023, failing which, the Company shall pay the Indebtedness as calculated by MarshallZehr in accordance with the discharge statement provided by MarshallZehr dated December 14, 2022.
3. Upon execution of this agreement, the Company shall pay \$190,000 to MarshallZehr or its lawyers by wire transfer, to be applied by MarshallZehr on account of the Indebtedness in such manner as MarshallZehr sees fit.
4. The Company shall pay to MarshallZehr a non-refundable fee of \$150,000 (the "Fee"), which shall be fully earned on execution of this Agreement. The Fee shall form part of the Indebtedness and shall be secured by the documents and agreements held by MarshallZehr as security for the Indebtedness and other obligations and liabilities owed by the Company to MarshallZehr.
5. MarshallZehr agrees to adjourn the hearing of the receivership application to January 31, 2023.
6. The Company hereby consents to the issuance of the receivership order in the form included in the application record in the event the Company has not indefeasibly repaid the Indebtedness to the MarshallZehr by 2:00 pm on January 30, 2023. If the Company has indefeasibly repaid the Indebtedness to MarshallZehr by 2:00 pm on January 30, 2023, the receivership application shall be withdrawn on a without costs basis.
7. This Agreement and all other documents to be executed and delivered pursuant to this Agreement constitute the entire agreement between the parties hereto as to the matters dealt with herein or therein and supersede all prior negotiations, understandings and agreements. Any amendment to this Agreement or waiver of any provision of this Agreement must be in writing and signed by the parties hereto.
8. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
9. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.

10. This Agreement may be signed in counterparts and exchanged via facsimile transmission or e-mail and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

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

12252856 CANADA INC.

Per: Mir Ali  
Name: Mir Ali  
Title Authorized Signing Officer

I have authority to bind the corporation.

MARSHALLZEHR GROUP INC.

Per: \_\_\_\_\_  
Name:  
Title

I have authority to bind the corporation.

This is Exhibit "F" to the affidavit of

Andrew Hardie Ballantyne

Sworn June 13, 2023

A handwritten signature in blue ink, appearing to read "M. C. [unclear]", is written over a horizontal line.

A Commissioner, etc



**DISCHARGE STATEMENT AT: December 14th, 2022**

*Prepared on December 14th, 2022*

**Terms:** \$18,000,000 1st mortgage for Acquisition Loan with a term of 13 months.  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum  
 Tranche B: \$8,000,000: Interest at 13% per annum

As of August 1st, 2022 the loan entered the Wrap Up Period where the applicable rates are as follows:  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum x 2 (Prime + 14.10%)  
 Tranche B: \$8,000,000: Interest at 13% per annum x 2 (26%)

Both tranches are calculated daily, compounded and payable monthly with interest only payment made from the

**201 King Road Bridge - MZGI 329**  
 201-235 King Road, Richmond Hill ON

	Tranche A	Tranche B	Total
Principal Amount Outstanding	\$ 12,000,000.00	\$ 6,000,000.00	\$ 18,000,000.00
Unpaid Monthly Interest	\$ 1,071,955.77	\$ 570,643.36	\$ 1,642,599.13
Deferred Lender Fee			\$ 180,000.00
Cost Recovery - Site Visits			\$ 250.75
Cost Recovery - Legal Fees*			\$ 24,195.97
Final Discharge Admin Fee			\$ 500.00
Less: Cash held in Trust			\$ 3,255.34
<b>Balance due on December 14th, 2022</b>			<b>\$ 19,844,290.51</b>
Per Diem	\$ 9,226.09	\$ 4,637.51	\$ 13,863.60

*Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day*

**\*total outstanding legal fees to be provided at time of payout**

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: \_\_\_\_\_ 5D7B047774B043F...

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 31st, 2022. 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.

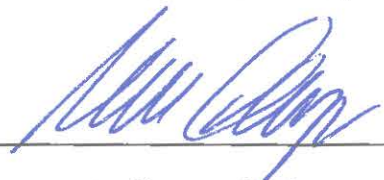
MarshallZehr Group Inc.

412 Albert Street, Suite 100, Waterloo ON, N2L 3V3

This is Exhibit "G" to the affidavit of

Andrew Hardie Ballantyne

Sworn June 13, 2023



---

A Commissioner, etc



**DISCHARGE STATEMENT AT: January 25th, 2023**

Prepared on January 20th, 2023

ID#:

DS202301251MZGI329

**Terms:** \$18,000,000 1st mortgage for Acquisition Loan with a term of 13 months.  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum  
 Tranche B: \$6,000,000: Interest at 13% per annum

As of August 1st, 2022 the loan entered the Wrap Up Period where the applicable rates are as follows:  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum x 2 (Prime + 14.10%)  
 Tranche B: \$6,000,000: Interest at 13% per annum x 2 (26%)

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.

**201 King Road Bridge - MZGI 329**  
 201 - 235 King Road, Richmond Hill ON

	Tranche A	Tranche B	Total
Principal Amount Outstanding	\$ 12,000,000.00	\$ 6,000,000.00	\$ 18,000,000.00
Unpaid Monthly Interest	\$ 1,289,280.74	\$ 772,616.54	\$ 2,061,897.28
Deferred Lender Fee - Initial Funding			\$ 180,000.00
Deferred Lender Fee Forbearance			\$ 150,000.00
Cost Recovery - Site Visits			\$ 250.75
Cost Recovery - Legal Fees**			\$ 38,636.01
Final Discharge Admin Fee			\$ 500.00
Less: Cash held in Trust			\$ 3,255.34
<b>Total Balance on January 25th, 2023</b>			<b>\$ 20,428,028.70</b>
Per Diem	\$ 9,651.93	\$ 4,739.92	\$ 14,391.85

Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

\*\*Legal fees included are those up to December 31st, 2022. All unbilled legal fees to be provided at time of payout

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:  
  
 9D7B04774B943F...  
 Murray Snedden, Principal Broker  
 Mortgage Administrator #: 11955

DocuSigned by:  
  
 F7F40E6466004E2...  
 Lisa Evans, Manager - Project Management

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 for a period of 30 days from the Proposed Settlement Date. 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.

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**DISCHARGE STATEMENT AT: February 15th, 2023**

Prepared on January 25th, 2023

ID#:

DS202302151MZGI329

**Terms:** \$18,000,000 1st mortgage for Acquisition Loan with a term of 13 months.  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum  
 Tranche B: \$6,000,000: Interest at 13% per annum

As of August 1st, 2022 the loan entered the Wrap Up Period where the applicable rates are as follows:  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum x 2 (Prime + 14.10%)  
 Tranche B: \$6,000,000: Interest at 13% per annum x 2 (26%)

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.

**201 King Road Bridge - MZGI 329**  
 201 - 235 King Road, Richmond Hill ON

	Tranche A	Tranche B	Total
Principal Amount Outstanding	\$ 12,000,000.00	\$ 6,000,000.00	\$ 18,000,000.00
Total Interest Outstanding	\$ 1,487,977.72	\$ 868,880.32	\$ 2,356,858.04
Non Wrapup	\$ 558,889.11	\$ 382,199.99	\$ 941,089.10
Wrapup	\$ 929,088.61	\$ 486,680.33	\$ 1,415,768.94
Less, 75% Credit to Wrapup if repaid by February 15, 2023	-\$ 696,816.46	-\$ 365,010.24	-\$ 1,061,826.70
<b>Sub-Total</b>	<b>\$ 12,791,161.26</b>	<b>\$ 6,503,870.08</b>	<b>\$ 19,295,031.34</b>
Deferred Lender Fee - Initial Funding			\$ 180,000.00
Deferred Lender Fee Forbearance			\$ 150,000.00
Cost Recovery - Site Visits			\$ 250.75
Cost Recovery - Legal Fees**			\$ 38,636.01
Final Discharge Admin Fee			\$ 500.00
Less: Cash held in Trust			\$ 3,255.34
<b>Total Balance on February 15th, 2023</b>			<b>\$ 19,661,162.76</b>

Payment must be received by 1:00 p.m. on February 15, 2023. If payment is not received a new discharge statement will be issued to include all outstanding interest and the applicable per diem

**\*\*Legal fees included are those up to December 31st, 2022. All unbilled legal fees legal fees to be provided at time of payout**

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*

Murray Snedden, Principal Broker

Mortgage Administrator #: 11955

DocuSigned by:

*Lisa Evans*

Lisa Evans, Manager - Project Management

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 February 15th, 2023. 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.

FSRA Mortgage Brokerage #12453 | FSRA Mortgage Administrator #11955 | BCFSA Mortgage Broker #MB600627  
 412 Albert Street, Suite 100, Waterloo ON, N2L 3V3

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**DISCHARGE STATEMENT AT: February 24th, 2023**

Prepared on January 27th, 2023

ID#:

DS202302241MZGI329

**Terms:** \$18,000,000 1st mortgage for Acquisition Loan with a term of 13 months.  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum  
 Tranche B: \$6,000,000: Interest at 13% per annum

As of August 1st, 2022 the loan entered the Wrap Up Period where the applicable rates are as follows:  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum x 2 (Prime + 14.10%)  
 Tranche B: \$6,000,000: Interest at 13% per annum x 2 (26%)

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.

**201 King Road Bridge - MZGI 329**  
 201 - 235 King Road, Richmond Hill ON

	Tranche A	Tranche B	Total
Principal Amount Outstanding	\$ 12,000,000.00	\$ 6,000,000.00	\$ 18,000,000.00
Total Interest Outstanding	\$ 1,578,482.62	\$ 912,481.63	\$ 2,490,964.25
Non Wrapup	\$ 604,141.56	\$ 404,000.65	\$ 1,008,142.21
Wrapup	\$ 974,341.06	\$ 508,480.98	\$ 1,482,822.04
Less, 75% Credit to Wrapup if repaid by February 24, 2023	-\$ 730,755.80	-\$ 381,360.74	-\$ 1,112,116.53
<b>Sub-Total</b>	<b>\$ 12,847,726.83</b>	<b>\$ 6,531,120.89</b>	<b>\$ 19,378,847.72</b>
Deferred Lender Fee - Initial Funding			\$ 180,000.00
Deferred Lender Fee Forbearance			\$ 150,000.00
Cost Recovery - Site Visits			\$ 250.75
Cost Recovery - Legal Fees**			\$ 38,636.01
Final Discharge Admin Fee			\$ 500.00
Less: Cash held in Trust			\$ 3,255.34
<b>Total Balance on February 24th, 2023</b>			<b>\$ 19,744,979.14</b>

Payment must be received by 1:00 p.m. on February 24, 2023. If payment is not received a new discharge statement will be issued to include all outstanding interest and the applicable per diem

\*\*Legal fees included are those up to December 31st, 2022. All unbilled legal fees legal fees to be provided at time of payout

You are authorized and directed to make the balance due payable to our solicitor; **Chaltons LLP "In Trust"**, OR as they may further direct.

**MARSHALLZEHR GROUP INC.**

DocuSigned by:

*Murray Snedden*

3078047748943F  
 Murray Snedden, Principal Broker

Mortgage Administrator #: 11955

DocuSigned by:

*Lisa Evans*

F7740E0406094E2...  
 Lisa Evans, Manager - Project Management

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 February 24th, 2023. 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.

FSRA Mortgage Brokerage #12453 | FSRA Mortgage Administrator #11955 | BCFS Mortgage Broker #MB800627  
 412 Albert Street, Suite 100, Waterloo ON, N2L 3V3



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**DISCHARGE STATEMENT AT: May 31st, 2023**

Prepared on May 31st, 2023

ID#: AS202305311MZGI329

**Terms:** \$18,000,000 1st mortgage for Acquisition Loan with a term of 13 months.  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum  
 Tranche B: \$6,000,000: Interest at 13% per annum

As of August 1st, 2022 the loan entered the Wrap Up Period where the applicable rates are as follows:  
 Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum x 2 (Prime + 14.10%)  
 Tranche B: \$6,000,000: Interest at 13% per annum x 2 (26%)

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.

**201 King Road Bridge - MZGI 329**  
 201 - 235 King Road, Richmond Hill ON

	Receiver Financing	Tranche A	Tranche B	Total
Principal Amount Outstanding	\$ 200,000.00	\$ 12,000,000.00	\$ 6,000,000.00	\$ 18,200,000.00
Unpaid Monthly Interest	\$ 1,972.50	\$ 2,584,688.37	\$ 1,396,139.49	\$ 3,982,800.36
Deferred Lender Fee - Initial Funding				\$ 180,000.00
Deferred Lender Fee - Forbearance				\$ 150,000.00
Cost Recovery - Site Visits				\$ 250.75
Cost Recovery - Legal Fees*				\$ 64,939.44
Default Administration Fee - \$5000 per month**				\$ 45,000.00
Final Discharge Admin Fee				\$ 500.00
Less: Cash held in Trust				\$ 13,230.84
<b>Total Balance on May 31st, 2023</b>				<b>\$ 22,610,259.71</b>

Per Diem \$ 65.75 \$ 10,745.58 \$ 5,158.25 \$ 15,969.58

Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

\*Legal fees are inclusive of fees billed up to and including March 31st, 2023. All unbilled legal fees and receiver fees to be provided at time of payout

\*\*Default Administration Fee charged since September 1st, 2022 the maturity date of the loan

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:  
  
 5D7B0477F4B849F...  
 Murray Snedden, Principal Broker  
 Mortgage Administrator #: 11955

DocuSigned by:  
  
 F7F40E646800452...  
 Lisa Evans, Manager - Mortgage Operations

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 May 31st, 2023. 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.

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This is Exhibit "H" to the affidavit of  
Andrew Hardie Ballantyne  
Sworn June 13, 2023

  
\_\_\_\_\_  
A Commissioner, etc



**Michael Gonzalez, MBA**  
**Assistant Vice President,**  
**Commercial Banking – Eastern Canada**

**Peoples Trust, part of Peoples Group**  
 95 Wellington Street West, Suite 1310  
 Toronto, Ontario, M5J 2N7  
 Tel. 416-368-3266  
 Cell. 647-464-5579  
[michaelgo@peoplestrust.com](mailto:michaelgo@peoplestrust.com)

**Private & Confidential**

April 27, 2023

**SPE to be formed (Incept Development Inc. & City Core Consortia Limited)**

C/O Oakbank Capital Group (Jonah Brown)  
 2 St. Clair Avenue E, Suite 700  
 Toronto, ON, M4T 2T5

Dear Jonah:

**Re: Land financing for the refinancing of a 3.89-acre site for the development of 178 stacked townhomes with a total GFA of +/- 165,400 square feet to be located at 201, 227 & 235 King Road, Richmond Hill, ON.**

Further to our recent conversations and based on the preliminary information provided thus far, Peoples Trust Company is prepared to consider for credit approval a commercial mortgage application for financing for the subject property, on the following general terms and conditions.

This is not a commitment to fund and is provided for discussions purposes only.

**Borrower**

SPE to be formed.

**Covenantors**

The loan is to be guaranteed on a several basis by the following: Mir Ali (80% of the loan amount) and Geranium related corporate entity illustrating +/- \$~~1,000,000~~ of net asset value (20% of the loan amount).

**Loan**

\$21,635,000 loan to be secured by a first mortgage charge against 201, 227 & 235 King Road, Richmond Hill, ON.

**Source and Use of Funds**

Sources			Uses		
PTC 1st Mortgage	\$ 21,635,000	100%	Refinance (MarshallZehr)	\$ 19,500,000	90%
			Interest Reserve	\$ 1,918,650	9%
			Lender Fees	\$ 216,350	1%
<b>Total</b>	<b>\$ 21,635,000</b>	<b>100%</b>	<b>Total</b>	<b>\$ 21,635,000</b>	<b>100%</b>

**Interest Rate:**

Floating Prime plus 2.15% (floor rate of 8.85%).

**Term**

12 months, with one 6-month extension option at the Lender's discretion.

**Monthly payments**

Interest-only.

**Interest Reserve**

Establishment of interest reserve is required in order to sufficiently cover interest payments.

**Prepayment**

The loan is closed for the first 6 months of the term and then open thereafter for prepayment.

**Partial Discharges**

No Partial discharges will be permitted throughout the duration of the loan term.

**Subsequent Charges**

Any subsequent charge on title is to be pre-approved by the lender at its sole discretion.

**Security**

The Loan will be evidenced or secured by the following documents (the "Security") with PTC in first priority position, which will be prepared and, where necessary registered, by the Lender's solicitor at the Borrower's expense:

- First mortgage charge in the amount of \$21,635,000 against 201, 227 & 235 King Road, Richmond Hill, ON;
- Commitment Letter;
- Covenants: several guarantees from Mir Ali for 80% of the loan amount and a Geranium related corporate entity (with +/- ~~2000,000,000~~ of net asset value) for 20% of the loan amount;
- Mortgage of beneficial interest if the Borrower is comprised of a separate legal and beneficial owners;
- General assignment of rents and/or leases, if applicable;
- General assignment of all insurance proceeds;
- Assignment of plans and specifications;
- Assignment of Rights under contracts;
- Environmental Liability Indemnity Agreement signed by the Borrowers and Covenantors/Guarantors;
- Title insurance, when applicable, is acceptable from Chicago Title unless otherwise agreed to by the Lender;
- Full title opinion by the Lender's solicitor, at a cost to the Borrower;
- All borrower(s) and covenantor(s) are required to sign a statutory declaration confirming that all applicable holding payments and remittances required to be made under provincial and federal legislation, including all remittances of GST/HST and Payroll Source deductions, have been made to date and will be made on time going forward;
- Such other security as required by the Lender or its Solicitor.

**Conditions Precedent to Approval of this Application**

In addition to the return of an accepted copy of Peoples' Application Letter and the Application Fee, the Borrower shall provide the following, which must be satisfactory to Peoples Trust:

- Confirmation of the ownership structure of the Borrower and beneficial ownership;
- Draft version of updated land appraisal, confirming a minimum "as-is" value of \$34,710,000 for the subject property;
- List of past projects completed by Consortia Developments and Geranium Homes;
- Resume on Mir Ali demonstrating past professional experience;
- Details on the framework on the JV structure;

- Detailed breakdown of +/- \$8,000,000 of cash equity injected by the Borrower into the site/project to date;
- Confirmation of the covenantors' net worth including personal net worth statements, corporate financial statements, and credit reports;
- Financial statements and credit reports for the Borrower, if available;
- Preliminary budget for the proposed development, if available;
- Any other such documentation as required by the Lender.

#### **Conditions Precedent to Initial Advance**

The Borrower shall provide the following to the Lender's satisfaction prior to the advance of funds:

- Receipt of a final version satisfactory updated appraisal confirming the "as-is" subject property value of a minimum of \$34,710,000, together with a transmittal letter from the appraiser allowing the lender to rely on the appraisal for mortgage underwriting purposes;
- Satisfactory Phase 1, and if applicable, Phase 2, environmental report and transmittal letter from the environmental consultant confirming that the environmental report(s) may be relied upon by the lender for mortgage underwriting purposes;
- Approval of the Borrower's insurance policy by Peoples' insurance consultant at a cost to the Borrower;
- Satisfactory planning letter;
- Receipt and satisfactory review of current site survey for the subject property or title insurance in lieu of current survey;
- Satisfactory site inspection;
- Confirmation of payment of property taxes;
- Geotechnical report with reliance letter;
- Executed JV agreement;
- Completion of all Anti Money Laundering Schedules (to be provided by Peoples Trust) and provision of supporting documentation thereof;
- Any other such documentation as required by the Lender.

#### **Application Fee**

\$55,000 which is non-refundable, and earned by Peoples Trust, upon acceptance of the Application Letter by same. If this Application is not approved substantially in accordance with this Application Letter, the Application Fee will be refunded to the Borrower less incurred expenses.

#### **Commitment Fee**

\$161,350 additional to the above non-refundable portion of the Application Fee will have been earned by Peoples Trust upon approval of this Application and payable at the time of acceptance of the commitment letter by the Borrower or deducted from the advance.

#### **Advance Fee**

An advance fee of \$400 will be charged for processing each Tranche of funds.

#### **Costs**

The Borrower and Covenantors shall be responsible for all costs relating to the processing of the Application, including legal fees and costs of any appraisals, environmental reports, insurance, inspection, credit checks, HST and similar fees and expenses, whether the Application is approved or not.

#### **Confidentiality**

This Application Letter is delivered to the Borrower on the understanding that neither it nor its contents shall be disclosed except to counsel, accountants, employees and agents of the Borrower who are specifically involved in the proposed transaction.

**Credit Reports and References**

The Borrower and Covenantors consent to the obtaining from any credit-reporting agency, or from any other party, such information as Peoples Trust may require at any time.

**Not a Commitment to Finance**

This Application Letter does not constitute a commitment to provide financing by Peoples Trust. It is an expression of interest in making a loan substantially in accordance with the terms and provisions hereof and is subject to approval. Please be advised that any subsequent Commitment Letter may contain additional terms and conditions normally associated with a loan of this type.

**Acceptance**

Please execute this Application Letter and return it with a cheque for the Application Fee of \$55,000 to the undersigned by April 17, 2023.

Should you wish to proceed with this application, please sign and return this letter to our offices, together with the application fee. Peoples Trust Company will use every effort to proceed with your application in a prompt and professional manner when all of the requested information is received.

**THIS LETTER SHOULD NOT BE CONSTRUED AS A COMMITMENT ON BEHALF OF PEOPLES TRUST COMPANY BUT RATHER AN INDICATION OF OUR INTEREST IN PROVIDING FIRST MORTGAGE FINANCING ON THE ABOVE NOTED PROPERTY/PROJECT.**

We trust the enclosed letter is satisfactory and look forward to the return of the signed application. Should you have any questions or comments, please feel free to contact me directly.

Yours truly,

**PEOPLES TRUST COMPANY**



Michael Gonzalez, MBA  
Assistant Vice President, Commercial Banking - Eastern Canada

WE HEREBY AGREE to the above terms and conditions and submit the application fee of \$55,000 in this regard. We also authorize Peoples Trust Company to obtain credit information on the Borrower and Covenantors from sources they deem necessary and covenant to promptly provide such further information requested by Peoples Trust Company to process this loan.

DATED this 5th day of May, 2023.



Notes:

1) This Lol is subject to formation of a JV between Consortia & Geranium Group company.

**SPE to be formed**

2) Geranium Group company to provide satisfactory guarantees which are to be negotiated.

3) Application fees of \$25,000 to be paid now & balance upon signing JV.



**GERANIUM**

*From the ground up™*

**LETTER OF INTENT**

April 14, 2023

Consortia N. A. Limited and  
City Core Consortia Limited  
2425 Matheson Blvd.,  
Suite 800  
Mississauga, ON L4W 5K4

**ATTENTION: Mr. Mir Ali**

Dear Sir:

**RE: BDF DEVELOPMENT CORPORATION PROPOSED MANAGEMENT AGREEMENT TO MANAGE SALES DEPOSITS AND CONSTRUCTION (the "Management Agreement") OF ABOUT 180 DRAFT PLAN APPROVED BUILDING LOTS IN A STANDARD CONDOMINIUM – STACKED TOWNHOUSE DEVELOPMENT (the "Project") AT 201, 227 & 235 KING ROAD TOWN OF RICHMOND HILL (the "Property")**

Further to our ongoing discussions, we propose to enter into a Joint Venture and Management Agreement between our companies and/or their associated or nominee company(ies), for us to manage the sales, marketing and construction of the dwellings ("Units") within the Project upon the Property. We have previously circulated our form of draft agreement. Before re-issuing our draft management agreement, we wish to record and agree-upon the pertinent business terms, as follows:

**Property:** The Property is municipally described above. It will be more particularly defined by way of your survey which will be described in a subdivision, site plan or other development agreement which you will enter into with the Town of Richmond Hill.

**Joint Venture (JV):** Incept Development Inc. and City Core Consortia Limited will enter into a Joint Venture to develop the above-mentioned property; ownership, guarantees and profit distribution percentages are noted below. Incept would provide additional guarantee over 10% based on further negotiations.

**JV percentages:** Incept Development Inc. – 10%  
City Core Consortia Limited – 90%





**Management Duties:** We will be responsible for the duties in relation to each of the sales and marketing and of the construction of the building units within the Project. The detailed particulars of each of those services are as referred to in our draft management agreement and will be reviewed and agreed to upon execution of the Management Agreement.

**Fees - Construction:** We will earn and be paid a fee of \$25,000 per Unit for each Stacked Unit constructed, as follows:

- (i) The total fees earned and paid will not exceed \$25,000 per Unit times the number of Units allowed for within the Project zoning;
- (ii) If the product type changes from Stacked Units to Low Rise units, management fees will be calculated as 4% of Net Sales Revenue of each unit;
- (iii) Management fees will be earned and paid on a straight line basis from execution of the Management Agreement to completion of the units.

**Guaranteed Fee:** You have the right to stop the project and end the Management Agreement for issues arising from issues beyond our collective control, which will be referred to in the Management Agreement, such as a material, negative change in market prices or financing conditions, or a sale of the Project property to an arm's-length third-party. In such an event, you will guarantee that we are paid that sum of money, which, together with cumulative management fees paid up to such date which is not less than \$500,000.00 and, if necessary, will top up the fees already paid to that minimum amount, plus HST. This will be a minimum guarantee and will not have any effect on the total amount earned under the Management Agreement.

**Fax/Counterparts:** This Letter of Intent may be executed and delivered by facsimile transmission and/or pdf email, and may be signed in counterparts. Any copy of this letter, containing all proper signatures, whether by fax, pdf, email and/or in counterparts, shall constitute a binding agreement, as if it contained all original signatures within one document.

Once these business terms have been agreed upon, the Joint Venture and Management Agreement will be drafted and delivered for review, approval and execution by the parties, with the assistance of their respective lawyers.

The parties shall have 20 days from date of execution hereof within which to enter into the Management and Joint Venture Agreement.

If you are in agreement with the foregoing terms execute the endorsement, below and return this to us.

**Clarifications:** This Lol shall be read in conjunction with the emails dated April 14 & 19, 2023 (attached), between Geranium & Consortia





Yours very truly,

**BDF DEVELOPMENT CORPORATION**    **INCEPT DEVELOPMENT INC.**

Per: [Signature]  
Boaz Feiner, A.S.O.

Per: [Signature]  
Luke Giampietri, A.S.O.

I have authority to bind the corporation

I have authority to bind the corporation

**ENDORSEMENT:**

We hereby agree to the foregoing business terms and look forward to entering into an Agreement of Purchase and Sale containing such terms, after review by our respective lawyers.

Dated this 26<sup>th</sup> day of April, 2023.

**CONSORTIA N.A. LIMITED**

**CITY CORE CONSORTIA LIMITED**

Per: [Signature]  
Mir Ali, A.S.O.

Per: [Signature]  
Mir Ali, A.S.O.

I have authority to bind the corporation

I have authority to bind the corporation

Hi Mir,

My responses below

Thanks,

Moshin Sheri CPA, CA  
VP Finance & Business Development

T: [905-477-1177 Ext. 250](tel:905-477-1177) | C: [437-217-9627](tel:437-217-9627)  
F: [905-477-7733](tel:905-477-7733)

[3190 Steeles Avenue East, Suite 300](#)  
Markham, ON L3R 1G9



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**From:** Mir Ali <[mirali@consortia-na.ca](mailto:mirali@consortia-na.ca)>  
**Sent:** Wednesday, April 19, 2023 3:36 PM  
**To:** Moshin Sheri <[moshins@geranium.com](mailto:moshins@geranium.com)>  
**Cc:** Mario Giampietri <[mariog@geranium.com](mailto:mariog@geranium.com)>; Prem Yachamanani <[prem@consortia-na.ca](mailto:prem@consortia-na.ca)>; Jeff Shankman <[jps@jpscounsel.com](mailto:jps@jpscounsel.com)>  
**Subject:** Re: King Road Lol

CAUTION: \*ATTENTION: This email originated from outside of this organization. Please use caution when clicking links or opening attachments\*

Without Prejudice

Hello Moshin,

Further to our telephone conversation yesterday evening, my WhatsApp message to you little while ago today, these are the points we like to have clarity for both of us.

1. Geranium Group stated that because of their credibility in the banking sector, they will be able to leverage cheaper financing for land and construction in a shorter timeframe.  
MS – we would assist with attaining financing based on our relations with financial institutions, I gave you examples of rates we have received in the past ie. Prime + 1% or Prime + 1.25%; we would work to get similar rates, not guaranteed
2. Geranium agreed to provide 10% corporate guarantees acceptable to financing institutions.

MS – confirmed Geranium would provide 10% guarantee for 10% profit in the project

- 3. This Lol is non-binding and subject to a mutually acceptable JV agreement within 30 days after signing this Lol.

MS – note at the bottom of the Lol stated we would have 20 days to enter into a JV from date of signing the Lol

- 4. After this Lol is signed both parties are free to source land financing from our sources.

MS – not sure what this means, Geranium would help assist with financing the project once we have a signed JV agreement

- 5. Construction management fees are capped at 3.5% of hard construction costs.

MS – our fees are based on fixed rate of \$25k per door, we cannot accept 3.5% of hard construction costs

- 6. Sales and marketing to be executed by Consortia.

MS – we are fine with Hunter Millborne conducting sales

- 7. Contingencies are capped at 5%

MS – contingency is a place holder on our proforma, if not required we can reduce to 5%

- 8. Parking to be sold at \$50k per door.

MS – we can update proforma to show \$50k revenue per parking spot

- 9. 50% of Development charges to be recovered.

MS – we can update proforma to show recovery

- 10. Underground parking construction costs capped at \$100/SFT

MS – we cannot cap construction costs, they will be based on tendered contracts approved by Management committee designates (1 from Consortia and 1 from Incept). We will calculate our own construction costs based on information we have and site conditions

- 11. Above ground hard cost should be capped at \$190/SFT

MS – same note as #10 above

- 12. This Lol has to be approved our current lenders as our loan is matured and we consented for a receivership. Otherwise we were in very good standing with our lender for entire duration of loan. In 27 months we never missed a single payment. We had a commitment from First Source which was not closed at last minute and ended up loan in default. We offered our lender upfront interest reserves for extension but they cited they are in need of funds and they can not extend. Now we have other financing arranged to close in April or early May. Hence we like to finalize the Lol. We have already informed you this over WhatsApp. We like to be totally transparent and provide full disclosure to the best of our knowledge.

Based on the above points, we can sign back the Lol today.

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**Mir Ali**

*M.Eng., Former P.Eng., MCSCE*

*Senior Fellow, Infrastructure Protection & International Security, Carleton University  
Liaison Officer, International Affairs Committee, Canadian Society of Civil Engineers*

E: [mirali@consortia-na.ca](mailto:mirali@consortia-na.ca)

D: +1 (613) 899-4556

**MAGCentre**

155 Commerce Valley Drive East

Markham, Ontario

L3T 7T2

Canada

On Apr 14, 2023 at 4:52 PM, <[Moshin.Sheri](mailto:Moshin.Sheri)> wrote:

Hi Mir,

Further to our discussion today, please find update Lol attached. Changes noted below

1. Incept would provide guarantee of 10% in exchange for 10% of project profit
2. Incept would be open to providing additional guarantee based on further negotiations and concessions provided to Incept for higher guarantees

Please sign and return a copy back to us so we can proceed with a formal JV agreement.  
Please send me your legal council information so we can connect them with Jeff.

As discussed this Lol is not to be shared with anyone (including financial institutions) until we have our JV signed off.

Summary of our discussions

- Geranium would build 178 stacked units utilizing Geranium brand as the constructor with Geranium tarion number
- Sales would be done by Hunter Millborne
- Geranium would lead all activities post JV signature and will provide direction on all aspects of the site including attaining financing

Thank you,

Moshin Sheri CPA, CA

VP Finance & Business Development

T: [905-477-1177](tel:905-477-1177) Ext. 250 | C: [437-217-9627](tel:437-217-9627)

F: [905-477-7733](tel:905-477-7733)

3190 Steeles Avenue East, Suite 300

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Markham, ON L3R 1G9



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**From:** Moshin Sheri  
**Sent:** Friday, March 24, 2023 11:40 AM  
**To:** Mir M. Ali <mirali@consortia-na.ca>; Prem Yachamanani <prem@consortia-na.ca>  
**Cc:** Mario Giampietri <mariog@geranium.com>  
**Subject:** King Road Lol

Hi Mir/Prem,

Please find attached King Road Lol, which includes JV and management agreement proposals. Please review and let me know if you have questions. We can proceed to formal JV agreement once Lol is signed off and we are in agreement with structure and management proposal.

If you have any questions please give me a call.

Thank you,

Moshin Sheri CPA, CA  
VP Finance & Business Development

T: [905-477-1177](tel:905-477-1177) Ext. 250 | C: [437-217-9627](tel:437-217-9627)  
F: [905-477-7733](tel:905-477-7733)

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# TERM SHEET

**BENSON** CAPITAL  
Ontario Lic #12350

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DATE: April 17, 2023  
BORROWER(S): 12252856 Canada Inc  
GUARANTOR(S): Mir Ali and Consortia North America Ltd.  
PROPERTY: 201, 227, and 235 King Road, Richmond Hill, ON  
SECURITY: First mortgage against 201, 227, and 235 King Road, Richmond Hill, ON  
LOAN AMOUNT: \$10,000,000  
TERM: One year  
INTEREST/PAYMENTS: 10.99% interest; Monthly interest-only payments of \$91583.33  
FEES: Lender Fee of \$250,000  
Broker Fee of  
Processing Fee of \$7,999  
NOTE: The lender's legal costs shall be for the account of the borrower, and shall be deducted from the advance amount and paid to the lender's solicitor at closing. The lender's legal counsel will be:  
*Lawyer's Name:* Leonard Susman

Upon acceptance of this conditional commitment, the Borrower shall provide a NON-REFUNDABLE initial retainer fee in the amount of **\$25,000.00** to cover initial administrative and/or legal costs which will be credited to the Borrower on the completion of this transaction.

CONDITIONS Appraisal of 201, 227, and 235 King Road, Richmond Hill, ON – Value no less than \$32,000,000 as is  
A 3.88 acre parcel of land that is vacant and zoned for the development of 178 stacked townhomes. Zoning bylaws have been amended since acquisition to permit the proposed development (zoned Residential Medium Density RM4)  
Application review  
Financials for Holdco  
Zoning report  
Independent Planning report  
Environmental  
Cost consulting report  
Interest reserve to be deducted from advance  
Property tax arrears to be paid out from closing proceeds  
Additional 50,000 retainer upon issuing the commitment

This Term Sheet is for discussion purposes only, and does not represent a binding commitment to fund. This Term Sheet is open for acceptance **until April 24, 2023**, following which date it shall be void.

**BENSON CUSTODIAN CORPORATION**

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

I/we hereby accept this Term Sheet.

**BENSON** CAPITAL

10370 Yonge Street, Unit 200  
Richmond Hill, ON L4C 3B8, Canada

Tel: 647 505 5077  
Fax: 647 436 2117

BensonCapital.ca  
info@BensonCapital.ca  
Mortgage Administrator Licence # 12350

# TERM SHEET

(Borrower/Guarantor)

Date \_\_\_\_\_

**BENSON** CAPITAL  
Ontario Lic.#12350

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**BENSON** CAPITAL

10378 Yonge Street, Unit 209  
Richmond Hill, ON L4C 3B8, Canada

Tel: 905-882-5077  
Fax: 905-882-7117

[BensonCapital.ca](http://BensonCapital.ca)  
5660 BensonCapital.ca  
Mortgage Administrator License # 12350

### Commitment Letter

April 28, 2023

Re: Kyko Global Inc. (the "Lender") second mortgage loan in the amount of \$9,500,000 (the "Loan") to Consortia Equity Capital Limited (the "Borrower") to assist with re-financing & pre-development of the Property with Municipal address (the "Property") of 201,227-235 King Rd, Richmond Hill, Ontario, L4E 2W2 (the "Property")

Subject to additional due diligence and verification of documentation, to the unfettered satisfaction to the Lender, the Lender is prepared to provide to the Borrower second mortgage financing on the security of the Property in accordance with the following terms and conditions.

- 1. **Borrower:** Consortia Equity Capital Limited
- 2. **Lender:** Kyko Global Inc.
- 3. **Amount:** \$9,500,000
- 4. **Security:** Registered second mortgage against the Property in the face amount of \$9,500,000
- 5. **Guarantors:** 100% Personal Guarantee provided by Mr. Mir Ali
- 6. **Amortization:** Not Applicable, Interest only mortgage
- 7. **Purpose of Loan:** To provide re-financing & pre-development for the Property
- 8. **Interest:** Interest at 15% per annum calculated and compounded, payable monthly, principal being repayable no later than May 15, 2024
- 9. **Term:** 12 months
- 10. **Application Fee:** The Borrower will pay to the Lender an Application Fee of 3% of the loan amount, payable at disbursement from funding proceeds
- 11. **Arrangement Fee:** The Borrower will sign a Letter of Direction to pay a 1.5% + HST Arrangement fee to Preserve Capital Inc., payable by the Lender at disbursement from the funding proceeds
- 12. **Closing Date:** The Loan will be made in a single advance on May 15, 2023
- 13. **Prepayment Options:** The Loan will be open for prepayment after 6 months. Early prepayment of the loan will incur a three month interest penalty

**Professional Fees:** The Borrower shall pay all of the Lender's professional costs incurred with completing this transaction

14. **Conditions Precedent:**

- (a) The Borrower shall provide its corporate solicitor's opinion letter that all of the security documentation required hereunder has been properly authorized and executed and all of the obligations of the Borrower are valid, binding and enforceable and further that all documents were executed in the office of the Borrower's solicitor and all of the parties are who they purport to be;
- (b) The Lender is to receive no adverse financial information with respect to the Borrower prior to closing or thereafter;



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- (c) Borrower is to execute all of the security documentation provided for herein including the Lender's standard charge terms and any other documentation required by the Lender or its solicitors to further secure the repayment of the indebtedness;
- (d) Title to the Property to be satisfactory to the Lender and its solicitors in their absolute discretion;
- (e) The Borrower shall provide to the Lender evidence that, as of the closing date, the Property will comply with all provincial regulations and there will be no outstanding work orders affecting the Property;
- (f) The Lender is to receive all due diligence documentation including:
  - (i) Recently completed AACI Appraisal confirming minimum land value of \$34,700,000;
  - (ii) Provide a signed Organizational chart of the Borrower;
  - (iii) Last 2 years Financial Statements of the Borrower;
  - (iv) Confirmation that all property taxes owing have been paid and are current;
  - (v) Receipt of satisfactory and recent Phase 1 Environmental & Geotechnical report;
  - (vi) Benson Capital executed Offer of Finance;
  - (vii) PNW statement & verification of liquidity & material assets for the Personal Guarantor;
  - (viii) Copy of all the existing Zoning approvals and Site plan agreement;
  - (ix) A copy of the redevelopment Project Renderings;
- (g) Confirmation that the first mortgage on the Property has been registered & amended to a maximum of \$10,000,000 in favour of the Benson Capital ("Benson");
- (h) Approval by the Receiver and the Court, together with any other approvals that may be required, for the transactions contemplated herein, to the satisfaction of the Lender;
- (i) Receipt by the Lender of the deposit of \$100,000;
- (j) Any other conditions precedent as required by Benson in connection with the first mortgage on the Property, as set out in the Commitment Letter attached hereto as Schedule A (the "Commitment Letter").

15. **Security:**

The liability and indebtedness of the Borrower under the Loan shall be evidenced, governed and secured, as the case may be, by the following documents (the "Security Documents") completed in form and manner satisfactory to the Lender and its solicitors:

- (a) Registered second mortgage in the amount of \$9,500,000 (the "Charge") against the Property which charge shall contain the additional mortgage terms as set out in standard charge terms 200033;
- (b) Second position General Security Agreement in favour of the Lender registered under the Personal Property Security Act providing a floating charge over the assets of the Borrower and Beneficial owner of the Property being pledged;
- (c) **Guarantees:** 100% personal Guarantee issued by Mr. Mir Ali;
- (d) Title Insurance at the expense of the Borrower;
- (e) Environmental indemnity executed by the Borrower & the Guarantor;
- (f) The Lender will execute a Subordination, Postponement and Priorities Agreement in favour of Benson;
- (g) Consortia Equity Capital Ltd and all other secured creditors will execute a Subordination, Postponement and Priorities Agreement in favour of the Lender;
- (h) All supporting certificates, opinions and other documentation as the Lender or its solicitors may reasonably require;
- (i) Such other security as the Lender or its solicitor may reasonably request, including any other security as may be set out on the Transaction Outline, as applicable.

16. **Sales Clause:**

If the Borrower, at any time, shall sell, transfer, convey or otherwise dispose of the herein described lands and building(s) without the prior consent of the Lender, at the Lender's option, the within mortgage shall immediately

become due and payable in full including interest to the maturity date of the mortgage herein set forth. Provided further that nothing herein shall be construed so as to permit the Borrower the privilege of prepaying the said mortgage in whole or in part.

**17. Realty Taxes:**

The Borrower shall pay all realty taxes when due and provide to the Lender proof of payment within 10 days of the final date of each final payment of realty taxes in any year of the term of the Charge, if requested. Default in payment of realty taxes may, at the Lender's discretion, be considered a default under this Charge.

**18. Interest Calculation:**

For the purpose of calculation of interest, any payment of principal received after 2:00 p.m. shall be deemed to have been received on the next following banking day.

**19. Events of Default:**

All of the standard Lender events of default shall be deemed included in the security documentation including but not limited to the following:

- (a) The Borrower ceasing to carry on all or a substantial part of its business;
- (b) The winding up, liquidation, bankruptcy, assignment into bankruptcy, or receivership of the Borrower or the levying of distress against the Borrower;
- (c) The transfer of title to the Property or the change of ownership or control of the Borrower;
- (d) Re-organization, amalgamation, or transfer of ownership of the Borrower (if applicable) or the Property without the prior written consent of the Lender;
- (e) Failure of the Borrower to maintain adequate insurance coverage against the Real Property;
- (f) Failure of the Borrower to repair the Property or any other assets secured under this commitment following notice from the Borrower;
- (g) Failure of the Borrower to keep the Property free of environmental contaminants;
- (h) Failure of the Borrower to pay real property taxes as they fall due;
- (i) Further encumber the Property without the Lender's written consent;
- (j) The occurrence of an event of default under any security document referred to in this commitment letter shall be an event of default under all other security documents referred to herein.

**20. Insurance:**

The Borrower shall provide proof of insurance by a copy of the insurance policy or a certificate thereof confirmed by the insuring company, satisfactory to the Lender and subject to review by the Lender's insurance consultant. Assignment of Insurance with Loss payable to the Lender.

**21. Financial Statements:**

If requested by the Lender, the Borrower is to provide property specific financial statements within 120 days of its fiscal year end.

**22. Access to Property:**

The Lender, if required, shall have access to the Property at any time during the Loan term with 24 hours notice.

**23. Independent Legal Advice:**

The Borrower acknowledges and agrees that they have received independent legal advice prior to executing this Commitment and confirm that they have not looked to the Lender or the Lender's solicitor for any legal advice in connection with this transaction.

Dated this 28<sup>th</sup> day of April, 2023 in Mississauga, Ontario.

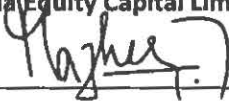
**Kyko Global Inc.**



**Kiran Kulkarni, Authorized Signatory**

This Commitment Letter shall be open for acceptance until 3:00 pm ET on May 2, 2023, after which it shall expire and be of no further force or effect. If acceptable, please execute where indicated below and return together with the wire remittance for the \$100,000 deposit.

**Consortia Equity Capital Limited**

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

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

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

< A. S. O. >


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

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

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

< A. S. O. >

**Personal Guarantor**

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

**Mir Ali**

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**Schedule A**  
**Benson Capital – Commitment letter**



**Kyko Global Inc ("Lender")**  
1 Wilkinson Road, Brampton, ON, L6T 4M6

&

C/O Mr. Mir Ali  
**Consortia Equity Capital Limited ("Borrower")**  
MAG Centre, 155 Commerce Valley Drive E, Markham, ON, L3T 7T2

&

**C/O Sonal Thomas, Partner**  
Thomas Law Professional Corporation ("**Lender's Council**")  
1 Wilkinson Road, Brampton, ON, L6T 4M6

Tuesday May 2, 2023 ("**Effective Date**")

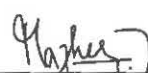
Attn: Sonal Thomas, Partner

Re: **Letter of Direction** – 2<sup>nd</sup> mortgage Financing of 201, 227-235 King Rd, Richmond Hill, ON (the "**Property**")

We hereby and authorize the Lender's Council (*Thomas Law Professional Corporation*) to make payment of \$161,025 (Inclusive of HST) to Preserve Capital as per the Fee owed in connection to the Property.

Please consider this as an official authorization to you to make the payment on behalf of us, the Borrower, to the following bank accounts:

Payment Details for 2543577 Ontario Inc O/A Preserve Capital	
Account:	5309613
Transit:	1890
Bank:	004
Swift Code:	TDOMCATTOR
Financial Institution:	TD Bank
Financial Institution Address:	#7 - 4499 Highway 7, Vaughan, ON, L4L 9A9
Beneficiary Name:	2543577 Ontario Inc O/A Preserve Capital
Beneficiary Address:	7200 Martin Grove, Woodbridge, ON, L4L 9J3

Signature: 

**Name: Mir Ali**  
**Title: Director**

< I have authority to bind the Corporation >

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**Payment Instructions for electronic Fund Transfer**

**To our account at Royal Bank of Canada**

Company Name: **Kyko Global Inc**  
Company Address: **1 Wilkinson Road  
Brampton, Ontario L6T 4M6**

Account Number: **101-378-8**  
Branch Transit Number: **00482**  
Institution Number: **003**  
Swift Code: **ROYCCAT2**

# TERM SHEET

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DATE: April 18, 2023  
BORROWER(S): TBA  
GUARANTOR(S): TBA  
PROPERTY: 261 HILL STREET, 262 SOUTH STREET, 91, 93, 97 & 101 WELLINGTON STREET CITY OF LONDON, ONTARIO  
SECURITY: First mortgage against 261 HILL STREET, 262 SOUTH STREET, 91, 93, 97 & 101 WELLINGTON STREET CITY OF LONDON, ONTARIO  
LOAN AMOUNT: \$2,500,000  
TERM: One year  
INTEREST/PAYMENTS: 10.99% interest; Monthly interest-only payments of \$22895.83  
FEES: Lender Fee of \$75,000  
Broker Fee of  
Processing Fee of \$5,699  
NOTE: The lender's legal costs shall be for the account of the borrower, and shall be deducted from the advance amount and paid to the lender's solicitor at closing. The lender's legal counsel will be:

*Lawyer's Name:* Leonard Susman

Upon acceptance of this conditional commitment, the Borrower shall provide a NON-REFUNDABLE initial retainer fee in the amount of **\$20,000.00** to cover initial administrative and/or legal costs which will be credited to the Borrower on the completion of this transaction.

CONDITIONS Appraisal of 261 HILL STREET, 262 SOUTH STREET, 91, 93, 97 & 101 WELLINGTON STREET CITY OF LONDON, ONTARIO – Value no less than \$20,000,000 ordered by the lender  
Zoning Review  
Independent Planning review  
Environmental  
Articles of incorporation for HoldCO  
Unlimited guarantees of shareholders  
Property tax arrears to be paid out from closing proceeds  
Interest reserve to be deducted from advance .  
Interest reserve to be paid for King Cite in Richmond Hill

This Term Sheet is for discussion purposes only, and does not represent a binding commitment to fund. This Term Sheet is open for acceptance **until April 25, 2023**, following which date it shall be void.

## BENSON CUSTODIAN CORPORATION

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

I/we hereby accept this Term Sheet.

# TERM SHEET

(Borrower/Guarantor)

Date \_\_\_\_\_

**BENSON** CAPITAL  
Ontario Lic #12950

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**BENSON** CAPITAL

10370 Yonge Street, Unit 209  
Richmond Hill, ON, L4C 3B8, Canada

Tel: 647.805.8677  
Fax: 647.438.7117

BensonCapital.ca  
info@BensonCapital.ca  
Mortgage Administrator License # 12950



MARSHALL ZEHR GROUP INC., AS ADMINISTRATOR

v. 12252856 CANADA INC.

Applicant

Respondents

Court File No.: CV-22-00691528-00CL

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced in  
Toronto

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**AFFIDAVIT OF ANDREW HARDIE BALLANTYNE**

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Nicolas C. Canizares  
Barrister & Solicitor  
3500 Dufferin Street  
Suite 400  
Toronto, Ontario  
M3K 1N2  
LSO: 21967J  
Tel: 416-256-5885  
Fax: 416-256-9119  
Email: [equinoxgroup@bellnet.ca](mailto:equinoxgroup@bellnet.ca)

Lawyer for Respondent

MARSHALL ZEHR GROUP INC., AS ADMINISTRATOR

v. 12252856 CANADA INC.

Applicant

Respondents

Court File No.:CV-22-00691528-00CL

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced in  
Toronto

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**RESPONDING RECORD OF 12252856 CANADA INC.**

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Nicolas C. Canizares  
Barrister & Solicitor  
3500 Dufferin Street  
Suite 400  
Toronto, Ontario  
M3K 1N2  
LSO: 21967J  
Tel: 416-256-5885  
Fax: 416-256-9119  
Email: [equinoxgroup@bellnet.ca](mailto:equinoxgroup@bellnet.ca)

Lawyer for Respondent