

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

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**DUNSIRE (LANDSDOWN) INC.**

Respondent

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

**APPLICATION RECORD**

**(Appointment of Receiver Returnable December 1, 2017)**

November 24, 2017

**CHAITONS LLP**

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

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**Lawyers for the Applicant**

**TO: SERVICE LIST**

## SERVICE LIST

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<p><b>DUNSIRE (LANDSDOWN) INC.</b> 5100 South Service Road, suite #54 Burlington, Ontario L7L 6A5</p>	<p><b>SHAWN KEEPER</b> Email: shawn.keeper@dunsire.com</p>
<p><b>FORTRESS REAL DEVELOPMENTS INC.</b> 25 Brodie Drive, Suite #1 Richmond Hill, Ontario L4B 3K7</p>	<p><b>SORRENTI LAW PROFESSIONAL CORPORATION (TRUSTEE)</b> 3300 Highway 7, Suite 310 Vaughan, Ontario L4K 4M3</p>
<p><b>OLYMPIA TRUST COMPANY (TRUSTEE)</b> 125 9<sup>th</sup> Avenue SE, Suite 2200 Calgary, Alberta T2G 0P6</p>	<p><b>DEPARTMENT OF JUSTICE CANADA</b> Ontario Regional Office, Tax Law Services The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p> <p><b>Diane Winters</b> Tel: (416) 973-3172 Fax: (416) 973-0810 Email: Diane.Winters@justice.gc.ca</p> <p><b>Lawyers for Canada Revenue Agency</b></p>

**HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF  
FINANCE**

PO Box 620, 33 King Street West, 6th Floor  
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**APPLICATION RECORD**

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RÈGLE 26.02 ( A )

THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_

DATED / FAIT LE \_\_\_\_\_

Court File No. CV-17-587118-00CL

Maggie Sanka  
REGISTRAR  
SUPERIOR COURT OF JUSTICE

GREFFIER  
COUR SUPÉRIEURE DE JUSTICE

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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B E T W E E N:

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**DUNSIRE (LANDSDOWN) INC.**

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*COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED**

**FRESH AS AMENDED NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

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

**THIS APPLICATION** will come on for a hearing on Friday, December 1, 2017, at 10:00 a.m., before a Judge presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7.

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

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does

not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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

“  
Natacha Brown  
Registrar  
”

Date November 24, 2017

Issued by

\_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue, 7th Floor  
Toronto, Ontario M5G 1R7

**TO: DUNSIRE (LANDSDOWN) INC.**  
5100 South Service Road, suite #54  
Burlington, Ontario L7L 6A5

Attention: Shawn Keeper



## APPLICATION

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

### ***The Parties***

- (a) The Debtor is a corporation incorporated under the laws of the Province of Ontario and has its registered office located in Burlington, Ontario.
- (b) The Debtor was incorporated for the purpose of acquiring approximately 4.6 acres of land located on Landsdown Drive in Guelph, Ontario (the “**Property**”). The Debtor acquired the Property to develop it as a residential enclave of 27 single-detached bungalows and bungalofs on the Property, to be known as White Cedar Estates (the “**Development**”).

- (c) MarshallZehr provides financing to real estate developers, and is a mortgage brokerage and administrator that services syndicated mortgage financing for other lenders.

### ***Financing the Development***

- (d) Pursuant to a commitment letter dated May 25, 2016 (the “**Commitment Letter**”), MarshallZehr agreed to provide a loan of \$15,870,278 to the Debtor (the “**Loan**”), comprised of three facilities:
  - (i) Facility 1: \$6,847,465, which was to be used to refinance the existing MarshallZehr mortgage and provide financing for site servicing and soft costs. Facility 1 was broken down into two tranches:
    - (1) Tranche A in the amount of \$4,727,574; and
    - (2) Tranche B in the amount of \$2,119,891;
  - (ii) Facility 2: \$8,111,243, which was to be used to provide construction financing for the hard construction costs and development charges associated with completing the Development; and
  - (iii) Facility 3: \$911,570, which was to be used for letters of credit to be issued in favour of the City.
- (e) The Loan is payable on demand.
- (f) To date, \$4,535,160 has been advanced to the Debtor under Facility 1, which is comprised of \$2,415,289 under Tranche A and \$2,119,891 under Tranche B. No

funds have been advanced under Facility 2. A letter of credit initially in the amount of \$240,411.81 was issued in favour of Guelph Hydro.

- (g) MarshallZehr has completed a syndication of the Loan. Another lender is the sole lender under Tranche A. MarshallZehr is the sole lender under Tranche B.

### *Security*

- (h) As security for the advances made to the Debtor under the Commitment Letter, the Debtor granted, among other things, the following loan and security documents in favour of MarshallZehr:
  - (i) a Charge/Mortgage in the amount of \$16.0 million registered on title to the Property on June 27, 2016 as Instrument No. WC472869 (the “**MZ Charge**”); and
  - (ii) Security Agreement dated June 15, 2016.
- (i) Pursuant to the terms of the Commitment Letter, the MZ Charge and the Security Agreement, failure to pay principal or interest when due to MarshallZehr is an event of default.
- (j) The Debtor has agreed that, upon default, MarshallZehr is entitled to appoint a receiver in writing and/or make an application for the court appointment of a Receiver.
- (k) As a result of a postponement obtained from the existing mortgagee, the MZ Charge is the first-ranking mortgage registered against title to the Property.

*Status of the Development*

- (l) The Debtor has entered into agreements of purchase and sale (“APS”) with respect to 26 of the 27 units to be constructed in the Development. Under each APS, the purchaser has agreed that the APS is subordinated and postponed to any mortgages and charges registered against title to the Property.
- (m) The Debtor has collected \$1,040,000 in deposits from the 26 purchasers (\$40,000 per unit), which are guaranteed by Tarion, and a total amount of \$581,524.04 of upgrade deposits from the 26 purchasers, which are not guaranteed by Tarion, totalling \$1,621,524.04. The Debtor has used these deposits as a source of funds for the Development.
- (n) In July 2015, City Council approved a proposed Draft Plan of Vacant Land Condominium for the Development, subject to certain conditions.
- (o) The Debtor experienced a number of delays in clearing the necessary conditions. As of July 2017, the Debtor had obtained all necessary permits and satisfied all necessary conditions to proceed with earthworks and servicing.
- (p) Kieswetter Excavating Inc. (“**Kieswetter**”) was awarded the tender to complete site preparation, earthworks, and servicing for the Development, and started work in August 2017.
- (q) Kieswetter is owed between \$630,000 to \$1.0 million by the Debtor for work that it has performed on the Development to date.

- (r) Pursuant to the terms of the Commitment Letter, the Debtor was required to make an interest payment under the MZ Charge for the month of August 2017 by no later than September 1, 2017. The Debtor failed to make the required payment to MarshallZehr.
- (s) On September 22, 2017, MarshallZehr notified the Debtor that it was in default under the Commitment Letter as a result of its failure to make the required interest payment. To rectify the default, the August 2017 payment, along with the September 2017 payment, was to be received by no later than October 2, 2017.
- (t) The Debtor failed to make the required interest payments for the months of August and September 2017.
- (u) On October 4, 2017, MarshallZehr demanded payment from the Debtor and delivered its notice to enforce its security under the *BIA*.
- (v) On October 17, 2017, MarshallZehr issued a notice of sale under the MZ Charge.
- (w) To date, MarshallZehr has received no payments from the Debtor in response to the demands for payment.

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

- (x) MarshallZehr has demanded payment of the loan from the Debtor and has sent a *BIA* notice and a notice of sale under the MZ Charge.
- (y) The Debtor not been paying outstanding invoices to Kieswetter for servicing costs and, if they are not paid promptly, a construction lien may be registered against the Property.

- (z) The Debtor has admitted that it does not have available liquidity to make the required mortgage payments under the MZ Charge.
- (aa) It is in the best interests of MarshallZehr and the Debtor's creditors generally that a Receiver be appointed to take control over and realize on the Property on an as is basis, or otherwise.
- (bb) It is just and convenient in the circumstances to appoint a Receiver over the Debtor's property, with the power and discretion to complete the necessary steps to satisfy the conditions of Draft Plan of Vacant Land Condominium and thereafter register the Vacant Land Condominium, which would be for the benefit of all of the Debtor's creditors.
- (cc) MarshallZehr proposes that CBTL be appointed as Receiver. CBTL has agreed to accept the appointment.

***Statutory and Other Grounds***

- (dd) Section 243 of the *BIA*, and Section 101 of the *CJA*.
  - (ee) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
  - (ff) Such further and other grounds as counsel may advise and this Honourable Court permits.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit of Murray Snedden sworn November 24, 2017 and the exhibits thereto; and

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

November 24, 2017

**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
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E-mail: samr@chaitons.com

**Lawyers for the Applicant**

MARSHALLZEHR GROUP INC.  
Applicant

-and-

DUNSIRE (LANDSDOWN) INC.  
Respondent  
Court File No. CV-17-587118-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**FRESH AS AMENDED NOTICE OF  
APPLICATION**

**CHAITONS LLP**

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**Lawyers for the Applicant**



# **TAB 2**

Court File No.

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

BETWEEN:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

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*COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED**

**AFFIDAVIT OF MURRAY SNEDDEN**  
(sworn November 24, 2017)

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

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

2. This affidavit is sworn in support of the application by MarshallZehr for the appointment of Collins Barrow Toronto Limited (“CBTL”) as receiver (“Receiver”) of the property, assets and undertakings of the Respondent, Dunsire (Landsdown) Inc. (the “Debtor”).

### THE PARTIES

3. The Debtor is a corporation governed by the *Business Corporations Act* (Ontario) and has its registered office located in Burlington, Ontario. Attached hereto and marked as Exhibit “A” is a copy of the Corporate Profile Report for the Debtor obtained on November 20, 2017.

4. The Debtor was incorporated on July 9, 2013 for the purpose of acquiring approximately 4.6 acres of land located on Landsdown Drive in Guelph, Ontario (the “Property”). The Property is less than 5.0 km southeast of the University of Guelph campus and downtown Guelph. A copy of the parcel register for the Property is attached hereto and marked as Exhibit “B”.

5. The Debtor acquired the Property to develop it as a residential enclave of 27 single-detached bungalows and bungalofts on the Property, to be known as White Cedar Estates (the “Development”). The Development was to have 26 single-detached homes within a condominium fronting on a private road to be constructed, and one freehold single-detached home fronting on Landsdown Drive.

6. The Debtor is a subsidiary of Dunsire Inc. (“Dunsire”), a residential home developer with development projects throughout Southwestern Ontario.

7. Fortress Real Developments Inc. (“Fortress”), a real estate development company, is also involved with the Development as a partner with Dunsire. MarshallZehr was informed by Shawn Keeper, President of the Debtor, that he, along with Vince Petrozza, Chief Operating Officer of

Fortress, and Jawad Rathore, President and Chief Executive Officer of Fortress, have provided guarantees in connection with the Debtor's registration with Tarion Warranty Corporation ("Tarion").

8. MarshallZehr provides financing to real estate developers, and is a mortgage brokerage and administrator that services syndicated mortgage financing for other lenders.

### **FINANCING THE DEVELOPMENT**

#### Commitment Letter and Funding of the Loan

9. MarshallZehr initially provided financing to the Debtor in July 2013 to allow the Debtor to acquire the Property. As security for that financing, the Debtor granted a \$2.8 million first charge over the Property to MarshallZehr.

10. In the spring of 2016, the Debtor approached MarshallZehr to arrange financing to, among other things:

- (a) refinance the existing MarshallZehr mortgage;
- (b) provide financing for site servicing and soft costs;
- (c) provide construction financing for the hard construction costs and development charges associated with completing the Development; and
- (d) provide letters of credit to the City of Guelph (the "City").

11. At that time, the Debtor had already pre-sold 92% of the Development, a draft plan of vacant land condominium had been approved by the City (subject to the completion of a number of conditions), and the Debtor was prepared to start servicing the Property.

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12. Pursuant to a commitment letter dated May 25, 2016 (the "Commitment Letter"), MarshallZehr agreed to provide a loan of \$15,870,278 to the Debtor (the "Loan"). A copy of the Commitment Letter, as amended, is attached hereto and marked as Exhibit "C".

13. As set out in the Commitment Letter, the Loan was to be comprised of the following three facilities:

- (a) Facility 1: \$6,847,465, which was to be used to refinance the existing MarshallZehr mortgage and provide financing for site servicing and soft costs. Facility 1 was broken down into two tranches:
  - (i) Tranche A in the amount of \$4,727,574, with interest payable at 6.0% per annum; and
  - (ii) Tranche B in the amount of \$2,119,891, with interest payable at 14.0% per annum;
- (b) Facility 2: \$8,111,243, which was to be used to provide construction financing for the hard construction costs and development charges associated with completing the Development; and
- (c) Facility 3: \$911,570, which was to be used for letters of credit to be issued in favour of the City.

14. Pursuant to the terms of the Commitment Letter, the Loan was payable on demand, with an eighteen (18) month term from the initial advance date.

15. To date, \$4,535,160 has been advanced to the Debtor under Facility 1, which is comprised of \$2,415,289 advanced under Tranche A and \$2,119,891 advanced under Tranche B. No funds have been advanced to the Debtor under Facility 2. Additionally, a letter of credit in the original amount of have \$240,411.81 has been issued in favour of the Guelph Hydro under Facility 3.

16. As set out in the Commitment Letter, it was MarshallZehr's intention to syndicate all or a portion of the Loan with other lenders. MarshallZehr has completed a syndication of Tranche A of Facility 1 with another lender, such that the lender is the sole provider of the Tranche A financing to the Debtor.

#### Security

17. As security for the advances made to the Debtor under the Commitment Letter, the Debtor granted, among other things, the following loan and security documents in favour of MarshallZehr:

- (a) a Charge/Mortgage in the amount of \$16.0 million registered on title to the Property on June 27, 2016 as Instrument No. WC472869 (the "MZ Charge"), a copy of which is attached hereto and marked as **Exhibit "D"**; and
- (b) a General Assignment of Rents dated June 27, 2016 and registered as Notice of Assignment of Rents-General registered on title to the Property on June 27, 2016 as Instrument No. WC472870, a copy of which is attached hereto and marked as **Exhibit "E"**;
- (c) Security Agreement dated June 15, 2016, a copy of which is attached hereto and marked as **Exhibit "F"**; and

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- (d) Assignment of Material Contracts dated June 15, 2016, a copy of which is attached hereto and marked as **Exhibit "G"**.

18. As additional security, MarshallZehr entered into a deficiency agreement dated June 15, 2016 with the Debtor, Dunsire, and Fortress (the "**Deficiency Agreement**"), pursuant to which each of the parties jointly and severally undertook to personally fund any and all shortfall of costs with respect to the Development. A copy of the Deficiency Agreement is attached hereto and marked as **Exhibit "H"**.

19. Pursuant to the terms of the Commitment Letter, the MZ Charge and the Security Agreement, failure to pay principal or interest when due to MarshallZehr is an event of default.

20. The Debtor has also agreed that, upon default, MarshallZehr is entitled to appoint a receiver in writing and/or make an application for the court appointment of a Receiver.

#### **OTHER CREDITORS**

21. At the time of the completion of the financing, the Property was subject to a charge/mortgage originally in favour of Sorrenti Law Professional Corporation (now in favour of Sorrenti Law Professional Corporation and Olympia Trust Company) (the "**Sorrenti Charge**").

22. In connection with the financing, MarshallZehr obtained a postponement confirming that the Sorrenti Charge is subordinate to the MZ Charge. The postponement was registered on title to the Property on June 28, 2016 as Instrument No. WC472884, a copy of which is attached hereto and marked as **Exhibit "I"**.

23. As a result of the postponement, the MZ Charge is the first-ranking mortgage registered against title to the Property.

24. Based on discussions with representatives of the Debtor, MarshallZehr understands that the Sorrenti Charge represents a syndicated mortgage with a number of individual investors, and that the syndicated mortgagee is related or connected to Fortress.

25. I am advised by Sam Rappos, a lawyer with Chaitons LLP (“Chaitons”), MarshallZehr’s legal counsel, that MarshallZehr has the only financing statement registered against the Debtor under the *Personal Property Security Act (Ontario)* (“PPSA”). Attached hereto and marked as Exhibit “J” is the PPSA search result for the Debtor current as of November 20, 2017.

#### **STATUS OF THE DEVELOPMENT**

26. The Debtor has entered into agreements of purchase and sale (“APS”) with respect to 26 of the 27 units to be constructed in the Development. A copy of redacted APS is attached hereto and marked as Exhibit “K”.

27. As set out in the APS, the purchaser has agreed that the APS, any interest of the purchaser in the APS, and any and all deposits and any purchaser’s lien is subordinated and postponed to any mortgages, and charged registered against title to the Property.

28. MarshallZehr has been informed by Mr. Keeper that the Debtor has collected \$1,040,000 in deposits from the 26 purchasers (\$40,000 per unit), which are guaranteed by Tarion, and a total amount of \$581,524.04 of upgrade deposits from the 26 purchasers, which are not guaranteed by Tarion, totalling \$1,621,524.04. Mr. Keeper confirmed that the Debtor has used these deposits as a source of funds for the Development.

29. In July 2015, City Council approved a proposed Draft Plan of Vacant Land Condominium for the 26 condominium residential single-detached dwellings and the one freehold residential



single-detached dwelling to be constructed on the Property, subject to certain conditions, as listed in Attachment 1 to the minutes from the July 20, 2015 Guelph City Council Meeting, a copy of which is attached hereto and marked as **Exhibit "L"**.

30. At the time the financing was advanced in July 2016, the Debtor had advised MarshallZehr that it expected to have completed all site servicing for the Property within four to five months and was to commence hard construction on the Development in 2017.

31. However, this timeline has not been achieved, as the Debtor experienced a number of delays in clearing the necessary conditions. The Debtor informed MarshallZehr in July 2017 that it had obtained all necessary permits and satisfied all necessary conditions to proceed with earthworks and servicing. Kieswetter Excavating Inc. ("**Kieswetter**") was awarded the tender to complete site preparation, earthworks, and servicing for the Development.

32. Based on information received from Mr. Keeper and from a review of the Property conducted by MarshallZehr's site monitor/cost consultant, MarshallZehr understands that Kieswetter has commenced curb preparation and installation, is expected to begin and complete a waste stabilization pond and related storm sewers in November 2017, and is expected to build out retaining walls in December 2017.

33. On November 13, 2017 Mr. Keeper informed MarshallZehr that: (a) Kieswetter issued an invoice in the amount of \$35,106.94 for clearing and grubbing, tree protection, erosion control, etc. works completed by Kieswetter in August 2017; and (b) Kieswetter issued an invoice in the amount of for \$310,749.69 for earthworks, water/storm/sanitation servicing completed by Kieswetter in September 2017.

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34. Mr. Keeper confirmed that neither of the invoices had been paid by the Debtor.
35. Based on the review of the Development completed by its site monitor/consultant, MarshallZehr anticipates that Kieswetter is likely owed between \$635,000 and \$1.0 million with respect to services it has provided to the Development, none of which has been paid by the Debtor.
36. Pursuant to the terms of the Commitment Letter, the Debtor was required to make an interest payment on the MZ Charge for the month of August 2017 by no later than September 1, 2017. The Debtor failed to make the required payment to MarshallZehr.
37. As a result, on September 22, 2017, MarshallZehr sent a letter to the Debtor and Fortress, notifying them that the Debtor was in default under the Commitment Letter as a result of its failure to make the required interest payment. To rectify the default, the August 2017 payment, along with the September 2017 payment, was to be received by no later than October 2, 2017. A copy of the letter is attached hereto and marked as **Exhibit "M"**.
38. The Debtor failed to make the required interest payments for the months of August and September 2017. As a result, on October 4, 2017, MarshallZehr, by its lawyers Chaitons, issued a written demand for payment to the Debtor in the amount of \$4,757,511.86 as at October 16, 2017, and delivered its notice to enforce its security under the BIA. A copy of the demand letter and BIA notice is attached hereto and marked as **Exhibit "N"**.
39. On that same day, Chaitons, on behalf of MarshallZehr, also issued a written demand for payment to Fortress pursuant to the Deficiency Agreement. A copy of the letter is attached hereto and marked as **Exhibit "O"**.

40. Following the expiry of the ten (10) day BIA notice period, on October 17, 2017, Chaitons, on behalf of MarshallZehr, issued a notice of sale under the MZ Charge, a copy of which is attached hereto and marked as **Exhibit "P"**.

41. To date, MarshallZehr has received no payments from the Debtor or Fortress in response for the demands for payment.

#### **JUST AND CONVENIENT TO APPOINT A RECEIVER**

42. MarshallZehr has demanded payment of the Loan from the Debtor and has sent a BIA notice and a notice of sale under the MZ Charge, but has received no payment in response these demands and notices. The Debtor not been paying outstanding invoices to Kieswetter for servicing costs and, if they are not paid promptly, a construction lien may be registered against the Property. The Debtor has admitted that it does not have available liquidity to make the required mortgage payments under the MZ Charge.

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

44. Accordingly, it is just and convenient in the circumstances to appoint a Receiver over the Debtor's property, with the power, in its discretion, to complete the necessary steps to satisfy the conditions of Draft Plan of Vacant Land Condominium and thereafter register the Vacant Land Condominium, which would be for the benefit of all of the Debtor's creditors.

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

- 11 -

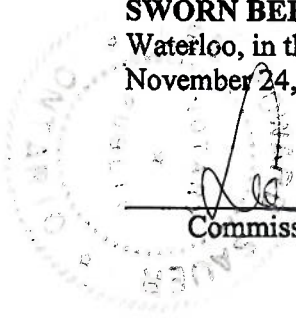
46. MarshallZehr has discussed the proposed appointment of a Receiver with the Tranche A lender. The Tranche A lender has confirmed that it does not oppose the relief being sought by MarshallZehr, provided that the Receiver is authorized by the Court to pay all interest arrears owed to the Tranche A lender and keep interest payments current throughout the receivership proceeding, and that any charge to be granted by the Court be subordinate to the MZ Charge with respect to repayment of the Tranche A indebtedness.

47. In the event that CBTL is appointed as Receiver, MarshallZehr will be requesting that the Court grant a charge over all of the Debtor's property to secure repayment of the Receiver's and its legal counsel's fees and disbursements (the "Receiver's Charge"), which will rank in priority to all other claims and encumbrances against the property other than the MZ Charge with respect to the indebtedness owed to the Tranche A lender.

48. MarshallZehr will also be requesting that the Court authorize the Receiver to borrow up to \$4,000,000, subject to further order of the Court, so that the Receiver will have funds available to, among other things, complete the necessary steps to complete registration of the Vacant Land Condominium, to make the interest payments to the Tranche A lender as described above, to pay Kieswetter for work performed prior to and after the appointment of the Receiver, and to pay professional fees. MarshallZehr has agreed to provide such financing to the Receiver. As security for the borrowings, MarshallZehr will request that the Court grant a charge over all of the Debtor's property, which will rank in priority to all other claims and encumbrances against the property other than the Receiver's Charge and the MZ Charge.

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

**SWORN BEFORE ME** at the City of  
Waterloo, in the Province of Ontario on  
November 24, 2017



*[Handwritten signature]*

\_\_\_\_\_  
**Commissioner for Taking Affidavits**  
*(or as may be)*

*[Handwritten signature]*

\_\_\_\_\_  
**MURRAY SNEDDEN**

**MARSHALLZEHR GROUP INC.**  
Applicant

-and-

**DUNSIRE (LANDSDOWN) INC.**  
Respondent

Court File No.

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

**PROCEEDING COMMENCED AT**  
**TORONTO**

**AFFIDAVIT OF MURRAY SNEDDEN**  
(sworn November 24, 2017)

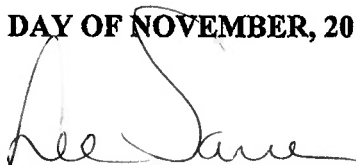
**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton (LSUC No. 21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
E-mail: harvey@chaitons.com

**Sam Rappos (LSUC No. 51399S)**  
Tel: (416) 218-1137  
Fax: (416) 218-1837  
E-mail: samr@chaitons.com

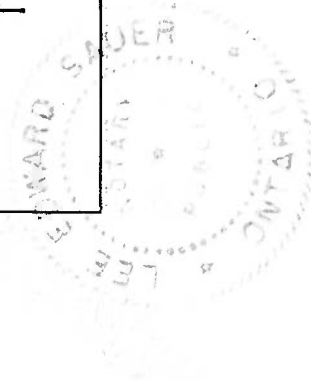
**Lawyers for the Applicant**

**THIS IS EXHIBIT "A" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



---

*A Commissioner etc.*



Request ID: 020959472  
 Transaction ID: 66290638  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/11/20  
 Time Report Produced: 09:33:43  
 Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2380067	DUNSIRE (LANDSDOWN) INC.	2013/07/09
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
SHAWN KEEPER 5100 SOUTH SERVICE ROAD		NOT APPLICABLE
<b>Suite # 54</b>		<b>New Amal. Number</b>
BURLINGTON		NOT APPLICABLE
ONTARIO		<b>Notice Date</b>
CANADA L7L 6A5		NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
SHAWN KEEPER 5100 SOUTH SERVICE ROAD		NOT APPLICABLE
<b>Suite # 54</b>		<b>Revival Date</b>
BURLINGTON		NOT APPLICABLE
ONTARIO		<b>Continuation Date</b>
CANADA L7L 6A5		NOT APPLICABLE
		<b>Transferred Out Date</b>
		NOT APPLICABLE
		<b>Cancel/Inactive Date</b>
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
	<b>Number of Directors</b>	<b>Date Commenced</b>
	<b>Minimum Maximum</b>	<b>in Ontario</b>
	00001 00010	NOT APPLICABLE
<b>Activity Classification</b>		<b>Date Ceased</b>
NOT AVAILABLE		<b>in Ontario</b>
		NOT APPLICABLE



Request ID: 020959472  
 Transaction ID: 66290638  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/11/20  
 Time Report Produced: 09:33:43  
 Page: 2

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2380067

**Corporation Name**

DUNSIRE (LANDSDOWN) INC.

**Corporate Name History**

DUNSIRE (LANDSDOWN) INC.

**Effective Date**

2013/07/09

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:  
 Name (Individual / Corporation)**

MISHA  
 ALLARD

**Address**

15 WINDERMERE AVE  
 Suite # 2606  
 TORONTO  
 ONTARIO  
 CANADA M6S 5A2

**Date Began**

2017/08/07

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

OTHER

**Resident Canadian**

Request ID: 020959472  
 Transaction ID: 66290638  
 Category ID: UNE

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/11/20  
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 Page: 3

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2380067

**Corporation Name**

DUNSIRE (LANDSDOWN) INC.

**Administrator:  
 Name (Individual / Corporation)**

SHAWN  
 KEEPER

**Address**

5100 SOUTH SERVICE ROAD  
 Suite # 54  
 BURLINGTON  
 ONTARIO  
 CANADA L7L 6A5

**Date Began**

2013/07/09

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type**

**Resident Canadian**

Y

**Administrator:  
 Name (Individual / Corporation)**

SHAWN  
 KEEPER

**Address**

5100 SOUTH SERVICE ROAD  
 Suite # 54  
 BURLINGTON  
 ONTARIO  
 CANADA L7L 6A5

**Date Began**

2013/07/09

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

Request ID: 020959472  
 Transaction ID: 66290638  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2017/11/20  
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 Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number

2380067

Corporation Name

DUNSIRE (LANDSDOWN) INC.

Administrator:  
 Name (Individual / Corporation)

SHAWN  
 KEEPER

Address

5100 SOUTH SERVICE ROAD  
 Suite # 54  
 BURLINGTON  
 ONTARIO  
 CANADA L7L 6A5

Date Began

2013/07/09

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

Administrator:  
 Name (Individual / Corporation)

SHAWN  
 KEEPER

Address

5100 SOUTH SERVICE ROAD  
 Suite # 54  
 BURLINGTON  
 ONTARIO  
 CANADA L7L 6A5

Date Began

2013/07/09

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

Request ID: 020959472  
Transaction ID: 66290638  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2017/11/20  
Time Report Produced: 09:33:43  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2380067

DUNSIRE (LANDSDOWN) INC.

### Last Document Recorded

Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2017/09/11

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

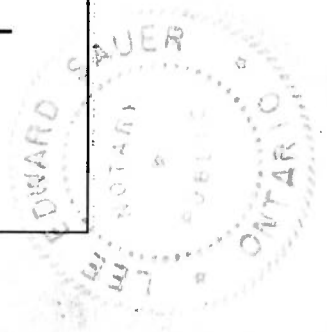
ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

**THIS IS EXHIBIT "B" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



*A Commissioner etc.*





Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND REGISTRY OFFICE #61

71505-0993 (L7)

PAGE 1 OF 3  
PREPARED FOR CL4418  
ON 2017/11/20 AT 11:10:38

PROPERTY DESCRIPTION:

PT LT 13 BL 488 PT 3, 61R20544; LT 10 BL 488 PT 4, 61R20544; PT LT 6 BL 488 PT 1 ON 61R20544; PT LT 9 BL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL. NO. 169 AS IN WC498323; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC492853; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC498736; SUBJECT TO AN EASEMENT AS IN WC500683; CITY OF GUELPH

PROPERTY REMARKS:

FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2015/02/25. PLANNING ACT CONSENT IN DOCUMENT WC394832. PLANNING ACT CONSENT IN DOCUMENT WC394831.

ESTATE/JURATILES:

FEE SIMPLE LT ABSOLUTE PLUS

RECENTLY CONSOLIDATION FROM 71505-0989, 71505-0990, 71505-0991, 71505-0992

EN CREATION DATE: 2015/03/12

OWNERS: NAMES

CAPACITY SHARE

DUNSIIE (LANDSDOWN) INC.

RGC. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **				
** SUBJECT	NO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *					
**	PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **					
**	TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **					
MS40365	1964/07/10	BYLAW				C
MS7023	1966/07/08	BYLAW				C
MS59544	1966/10/20	BYLAW				C
WC382040	2013/08/20	TRANSFER	\$430,000	NORTON, JEAN ISABEL	DUNSIIE (LANDSDOWN) INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
WC382442	2013/08/23	TRANSFER	\$500,000	2341540 ONTARIO LTD.	DUNSIIE (LANDSDOWN) INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
WC394831	2014/01/17	TRANSFER	\$650,000	HENRY, JOAN ELIZABETH HENRY, WESLEY WELSON	DUNSIIE (LANDSDOWN) INC.	C
WC394832	2014/01/17	TRANSFER	\$600,000	GM, DIANE GM, TIMOTHY ALLAN	DUNSIIE (LANDSDOWN) INC.	C
WC394834	2014/01/17	CHANGE	\$1,731,000	DUNSIIE (LANDSDOWN) INC.	SORRENTI LAW PROFESSIONAL CORPORATION	C
WC394839	2014/01/20	TRANSFER OF CHANGE		SORRENTI LAW PROFESSIONAL CORPORATION	SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	C
		REMARKS: WC394834.				
WC399284	2014/03/28	TRANSFER OF CHANGE		SORRENTI LAW PROFESSIONAL CORPORATION	SORRENTI LAW PROFESSIONAL CORPORATION	C

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



Ontario ServiceOntario

LAND REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER  
 REGISTRY OFFICE #61  
 71505-0993 (L7)  
 \* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PAGE 2 OF 3  
 PREPARED FOR CCL18118  
 ON 2017/11/20 AT 11:10:38

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
MC400369	2014/04/11	TRANSFER OF CHARGE		OLYMPIA TRUST COMPANY	OLYMPIA TRUST COMPANY	C
61R20544	2015/02/25	PLAN REFERENCE		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	C
MC427554	2015/02/25	APL ABSOLUTE TITLS		DUNSHIRE (LANDSDOWN) INC.		C
MC428169	2015/03/04	APL CONSOLIDATE		DUNSHIRE (LANDSDOWN) INC.		C
MC458365	2016/01/15	NOTICE	\$2	DUNSHIRE (LANDSDOWN) INC.	WELLINGTON VACANT LAND CONDOMINIUM CORPORATION NO. 169	C
MC472869	2016/06/27	CHARGE	\$16,000,000	DUNSHIRE (LANDSDOWN) INC.	MARSHALLZEHR GROUP INC.	C
MC472870	2016/06/27	NO ASSIGN RENT GEV		DUNSHIRE (LANDSDOWN) INC.	MARSHALLZEHR GROUP INC.	C
MC472884	2016/06/28	POSTPONEMENT		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	MARSHALLZEHR GROUP INC.	C
61R20870	2016/07/14	PLAN REFERENCE		THE CORPORATION OF THE CITY OF GUELPH THE CORPORATION OF THE CITY OF GUELPH		C
MC481971	2016/09/20	NOTICE		THE CORPORATION OF THE CITY OF GUELPH		C
MC481973	2016/09/20	NOTICE		THE CORPORATION OF THE CITY OF GUELPH		C
MC492853	2017/01/12	TRANSFER EASEMENT	\$2	DUNSHIRE (LANDSDOWN) INC.	GUELPH HYDRO ELECTRIC SYSTEMS INC.	C
MC492854	2017/01/12	POSTPONEMENT		MARSHALLZEHR GROUP INC.	GUELPH HYDRO ELECTRIC SYSTEMS INC.	C
MC492855	2017/01/12	POSTPONEMENT		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	GUELPH HYDRO ELECTRIC SYSTEMS INC.	C
MC498736	2017/03/23	TRANSFER EASEMENT	\$2	DUNSHIRE (LANDSDOWN) INC.	UNION GAS LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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**Ontario ServiceOntario**

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND REGISTRY OFFICE #61  
 71505-0993 (LT)

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

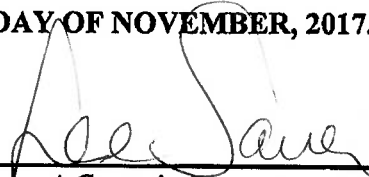
PAGE 3 OF 3  
 PREPARED FOR CCLAR18  
 ON 2017/11/20 AT 11:10:38

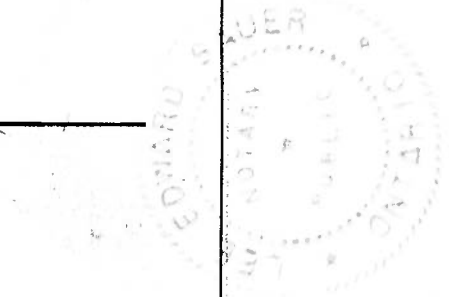
REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
MC498737	2017/03/23	POSTPONEMENT REMARKS: MC472869 TO MC498736		HANSHALIZHER GROUP INC.	UNION GAS LIMITED	C
MC498738	2017/03/23	POSTPONEMENT REMARKS: MC394834, MC394899, MC399284, MC400369 TO MC498736		SORRENTI LAW PROFESSIONAL CORPORATION OLYMPIA TRUST COMPANY	UNION GAS LIMITED	C
MC500683	2017/04/18	TRANSFER EASEMENT	\$2	DUNSTINE (LANDSDOWN) INC.	ROGERS COMMUNICATIONS INC.	C

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



**THIS IS EXHIBIT "C" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*



# MARSHALLZEHR

— REAL ESTATE CAPITAL —

Wednesday May 25, 2016

Dunsire (Lansdown) Inc.  
54-1000 South Service Road  
Burlington, ON  
L7L 6A5

Attention: Shawn Keeper

Dear Shawn,

**Re:** Servicing and Construction Financing for 27 single detached homes on Valley Road, Guelph, Ontario.

**Project Name:** White Cedar Estates MZGI-87 (the "Project")

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

**I. LOAN**

**Borrower:** Dunsire (Lansdown) Inc. (the "Borrower")

**Guarantors:** Dunsire Inc. and Shawn Keeper together with such other related parties as the Lender may deem advisable (the "Guarantors").

**Obligors:** Means, collectively, the Borrower and the Guarantors and the "Obligor" means any one of them.

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

**Project:** Those lands and premises described municipally as 24,26,28 and 32 Lansdown Drive, Guelph, Ontario and legally as PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; together with easement over common elements Condo LP. No 169 as in WC458323; City of Guelph.

**Loan Amount:** \$15,870,278 (the "Loan").

Facility 1: \$ 6,847,465

Tranche A: \$ 4,727,574

Tranche B: \$ 2,119,891

Facility 2: \$ 8,111,243

Facility 3: \$ 911,570 (Letters of Credit)

**Purpose:** 1st Mortgage for Servicing and Construction Financing.

The Lender understands that the Project is to consist of 27 single-detached bungalows on approximately 4.6 acres. Furthermore, the Lender understands that the Project is currently 92% presold, draft plan approved and is ready to begin servicing.

Facility 1 (Tranche A/B) will be used to refinance the existing 1<sup>st</sup> Mortgage currently held by MarshallZehr and provide financing for site servicing and soft costs.

Facility 2 will provide construction financing for 100% of the hard construction costs and development charges associated with the build out of 27 homes.

Facility 3 will provide Letters of Credit to the City of Guelph.

<b>Uses</b>	
Land	\$ 2,279,907
Servicing	\$ 1,667,065
Construction Costs	\$ 6,904,779
Land Consulting Fees	\$ 801,685
Design & Engineering	\$ 178,350
Legal & Administration	\$ 675,328
Development Fees	\$ 1,206,464
Marketing & Sales	\$ 1,554,457
Finance	\$ 2,039,145
Contingency	\$ 150,757
Offsetting Income	\$ (166,050)
Equity Interest	\$ 270,357
<b>Total Uses</b>	<b>\$ 17,562,244</b>

<b>Sources</b>	
Facility 1 – Tranche A (Servicing)	\$ 4,727,574
Facility 1 – Tranche B (Land)	\$ 2,119,891
Facility 2 – Construction	\$ 8,111,243
Purchasers Deposits	\$ 1,080,000
Cash Equity	\$ 1,580
Fortress Equity	\$ 1,125,000
Deferrals	\$ 396,956
<b>Total Sources</b>	<b>\$ 17,562,244</b>

**Syndication of the Loan:**

It is the Lender's intention to syndicate all or a portion of the Loan with other lenders on terms and conditions satisfactory to the Lender. All obligations of the Lender are conditional on successful syndication by the Lender. This Commitment shall be null and void if the Lender is unable to syndicate the Loan, and all fees less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower. The Lender shall notify the Borrower within 14 days from the date of the Borrower signing this Commitment that the Lender has successfully syndicated this Loan. If the Lender is unable to provide the Borrower written confirmation that the Loan has been successfully syndicated within this time, it will be the sole option of the Borrower to terminate this agreement, in which case this Commitment will be null and void and all fees less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower.

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

The first draw ("Draw 1") shall be in the principal amount of \$3,443,430 (SUBJECT TO CHANGE) and advanced upon satisfaction of the conditions contained herein and accompanied by the applicable Notice(s) contemplated by the Lender's Standard Form Documents.

Payout RW Fortress	\$ 300,000
Refinance MZ Loan:	\$ 2,800,000
Lender Fee:	\$ 316,430
Legal Fees:	\$ 24,000 = <del>\$ 27,000</del>
	<b>\$3,440,430</b> <del>\$3,443,430</del>

If applicable, subsequent draws (the "Progress Draws") shall be processed and based upon the progress of construction as hereinafter provided and accompanied by the applicable forms and Notices as attached hereto.

**Progress Draws:**

All Progress Draws shall be funded against costs-in place upon the progress of the Project, and may only be drawn upon in accordance with this Commitment and the following:

- a) The Borrower shall request Progress Draws from time to time, but no more frequently than monthly, as required to fund the progress of the Project;
- b) Each Progress Draw shall be in an amount not less than \$100,000;
- c) Progress Draws in the aggregate (plus Draw 1) shall total the Loan Amount;
- d) The Lender shall have a period of not less than thirty (30) days from the date that a Progress Draw is requested in accordance with the requirements of Section 2.2 of this Commitment to fund and process the Progress Draw; and
- e) The Lender at its sole discretion may fund Progress Draws on behalf of the Borrower to fund the interest obligations of the Project.

**Interest Adjustment Date:**

The "Interest Adjustment Date" or "IAD" shall be the 1<sup>st</sup> of the month the initial advance occurs by the 25<sup>th</sup> of the month prior. If the initial advance occurs after the 25<sup>th</sup> and on or before the 10<sup>th</sup> of the month, the IAD shall be the 15<sup>th</sup> of the current or following month of the initial advance, whichever is next.

**Standby  
Interest:**

In the event that:

- a) Draw 1 has not been fully advanced by June 15, 2016 or for any reason other than a default by the Lender; or
- b) the funding Conditions for Construction Progress Draws provided for in Section 2.2 of this Commitment result in the Borrower being permitted to receive less than the Progress Draw actually requested,

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

A standby fee shall be calculated from the date of the expected advance as mentioned herein to the IAD or the date of advance whichever is earlier, and shall be payable at the next regularly scheduled interest payment.

**Advance  
Margin:****Facility 1:****Tranche A: Servicing**

Loan advances based on hard and soft costs associated with the servicing of the project as well as financing fees, lender fees, marketing & sales and contingency. Draws will be permitted based on cost consultant reports.

**Tranche B: Land**

Tranche B will be fully advanced with the Initial Draw

**Facility 2: Construction**

Loan advances on the construction of single family detached homes will be permitted on a unit by unit basis upon receipt of fully executed agreements of Purchase and Sale for the units in question from a bona fide arm's length purchaser. All Agreements of Purchase and Sale are to be supported by a minimum received deposit of \$40,000 per unit with satisfactory evidence of pre-approval for takeout financing or evidence satisfactory to the Lender of liquid resources and/or equity sufficient to close the transaction. Unit advances are to be calculated at 100% of hard costs of construction as well as 100% of development charges inclusive of contingency, with Facility 1 responsible to pay 100% of soft costs.

The Borrower will be permitted to build out up to 3 units that have not been presold to third party arms-length purchasers in the subdivision under the following conditions

**Repayment**

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

**Maturity Date:** 18 months (the "Term") from the IAD. Interest from the date of the initial advance to the IAD shall be deducted by the Lender from the initial advance.

**Anniversary**

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

**Interest Rate:****Facility 1:****Tranche A:**

Interest shall accrue at 6.0% per annum commencing on the date of the first advance, calculated, compounded and payable monthly with interest only payments made from Progress Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

**Tranche B:**

Interest shall accrue at 14.0% per annum commencing on the date of the first advance, calculated, compounded and payable monthly with interest only payments made from Progress Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

**Facility 2:**

Interest shall accrue at 6.0% per annum commencing on the date of the first advance, calculated, compounded and payable monthly with interest only payments made from Progress Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

**Facility 3:**

Interest shall accrue at 3.0% per annum commencing on the date of the first advance, calculated, compounded and payable monthly with interest only payments made from Progress Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

**Wrap Up  
Period:****Facility 1:****Tranche A:**

The final month of the Term, or the Renewal Term if renewed pursuant to the renewal provision below, shall be the beginning of the Wrap Up Period, and bear interest at twice the Interest Rate, 12.0% per annum, calculated, compounded and payable monthly thereafter.

**Tranche B:**

The final month of the Term, or the Renewal Term if renewed pursuant to the renewal provision below, shall be the beginning of the Wrap Up Period, and bear interest at twice the Interest Rate, 28.0% per annum, calculated, compounded and payable monthly thereafter.

**Facility 2:**

The final month of the Term, or the Renewal Term if renewed pursuant to the renewal provision below, shall be the beginning of the Wrap Up Period, and bear interest at twice the Interest Rate, 12.0% per annum, calculated, compounded and payable monthly thereafter.

**Facility 3:**

The final month of the Term, or the Renewal Term if renewed pursuant to the renewal provision below, shall be the beginning of the Wrap Up Period, and bear interest at twice the Interest Rate, 6.0% per annum, calculated, compounded and payable monthly thereafter.

**Place of Payments:**

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

**Partial Discharges:**

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

**Facility 1&3:**

A partial discharge privilege will be provided on a per unit basis provided that any remaining proceeds still available from the Facility 2 discharge will be applied towards Facility 1 (Tranche A/B) pari-passu till the full repayment, followed by the full cash collateralization of Facility 3. After the cash collateralization of Facility 3, all proceeds will then be applied towards Facility 2.

**Facility 2:**

A partial discharge will be provided on a unit by unit basis based on full repayment of 100% of loan proceeds allocated to the particular unit being discharged, inclusive of interest and unpaid fees.

**Final Discharge**

**Fee:** The Borrower will pay the Lender an administration fee of \$250 and its solicitor's reasonable legal fees in respect of the preparation of the final discharge of this mortgage.

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

- a) At least 60 days prior written notice is given to the Lender in the form provided in Appendix E.
- b) No pre-payment shall be in an amount of less than \$100,000 without consent of the Lender

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

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

**Good Faith Deposit:** \$20,000 non-refundable if Borrower fails to proceed based on the terms of this Commitment Letter and is full compensation to the Lender for its work and efforts in preparation of this Commitment Letter. The Borrower shall also be responsible for the Lender's legal and other professional fees and out of pocket expenses if the Borrower fails to proceed with the Loan. This fee is accepted upon signing of the Commitment Letter and is payable to "MarshallZehr Group Inc. in Trust". The Good Faith Deposit will be credited to the Borrower against the Lender Fee payable on closing.

**Lender Fee:** **Facility 1 (Tranche A) and Facility 2**  
2.0% of the borrowed amount being \$ 256,776, the Lender Fee, less the Good Faith Deposit shall be deducted from the initial advance.

**Facility 1 (Tranche B)**  
3.0% of the borrowed amount being \$ 59,654, the Lender Fee.



**Admin**

**Fee:** An additional fee of \$1,250 payable to MarshallZehr Group Inc. will be paid by the Borrower at closing of the initial advance in order to complete the FSCO required documentation.

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

**Draw Request:** The Borrower agrees to pay \$250 to the Lender for each draw request.

**No Subordinate**

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

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

**Maximum  
Rate of**

**Return:** The parties agree that notwithstanding any agreement to the contrary, no interest on the credit advanced will be payable in excess of that permitted by the laws of Canada.

If the effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles would exceed sixty percent (or such other rate as the Parliament of Canada may deem from time to time as The Criminal Rate) on the credit advance, then (1) the amount of any fees, bonus, commissions or like charges payable in connection therewith will be reduced to the extent necessary to eliminate such excess; (2) any remaining excess that has been paid will be credited toward prepayment of the credit advanced; and (3) any overpayment that may remain after such crediting will be returned forthwith upon demand. In this paragraph the terms "interest", "Criminal Rate" and "credit advanced" have the meaning ascribed to them in Section 347 of The Criminal Code; and "credit advanced" has the same meaning as "Loan" referred to elsewhere in this Commitment.



**Administration****Fee Payable**

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

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## II. TERMS AND CONDITIONS

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

### 2.1 Initial Funding Conditions

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

- a) All the Security and ancillary loan agreements and documents and opinions shall have been executed and delivered to the Lender or its solicitors and registered where and as required.
- b) The Lender shall have satisfied itself with the financial performance and condition of the Borrower and each of the Guarantors in the Lender's sole discretion. Each of the Borrowers and Guarantors shall provide within five business days of the date of execution of this Commitment, at a minimum, financial statements for its two most recently ended fiscal years. To facilitate the Lender's due diligence regarding the creditworthiness of the Borrower and each of the Guarantors, each of the Guarantors and the Borrower shall authorize the Lender to conduct credit checks and each of the financial institutions with which the Borrower and the respective Guarantors deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each respectively. Each of the individual Guarantors shall complete the Lender's form of Personal Net Worth Statement.
- c) The Borrower shall deliver to the Lender within five business days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance the following:
  - i. A copy of the Purchase and Sale Agreement (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Project Lands confirming a purchase price of not less than \$2,180,000.
  - ii. A soils test report (load bearing capacity) by a professional engineer as is acceptable to the Lender demonstrating to the satisfaction of the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and with the recommendations, if any, which may be contained in such soils test report.
  - iii. The Borrower shall have pre-sold residential units, with firm and binding purchase and sale agreements including satisfactory deposits, sufficient to generate \$16,400,000 of revenue. Each purchase and sale agreement shall be on terms and with purchasers acceptable to the Lender. The Lender reserves the right to disregard agreements with purchasers buying for investment or who are directly or indirectly related to the Borrower or Guarantors. All purchaser deposits shall have been paid in full and held in a separate escrow account for the sole benefit of the Project.
  - iv. A preliminary Project Budget satisfactory to the Lender prepared at the expense of the Borrower by the Lender's quantity surveyors, Intrepid Quality Surveying.
  - v. Satisfactory Phase 1 Environmental Site Assessment Report (and Phase 2 Report if necessary) conducted and prepared by a consultant approved by the Lender together with a Letter of Transmittal from the consultant permitting the Lender to rely on the Assessment Report.
  - vi. Each of the individual Guarantors shall have provided Notices of Assessment received from the CRA with respect to their respective income tax filings for the two most recently ended taxation years.
  - vii. A survey of the Project by an Ontario licensed land surveyor showing the relationship of the

- lands to public thoroughfares for access purposes; and indicating no encroachments, easements or rights of way, save and except those that do not encroach or hinder the Borrower's ability to construct the project in accordance with the proposed site plan which the Lender may specifically accept. If no survey is available at the time of the advance the Lender in its sole discretion may rely upon the title insurance policy to be obtained in connection with the financing.
- viii. MZG or a related party may post two MZG signs (on each main street).
  - ix. Satisfactory proof of \$2,205,000 in invested capital in the Project.
  - x. An approved construction budget prepared by the Lender's quantity surveyor satisfactory to the Lender. The Lender and its quantity surveyor, in their sole discretion, shall be satisfied
    - a) that the budgeted hard and soft costs (including financing costs) shall be sufficient to complete the Project as planned;
    - b) all sources and uses of cash are acceptable;
    - c) the terms of the contract with the general contractor/project manager are satisfactory. A minimum of 70% of Project construction costs shall be supported by binding fixed price material supply and construction contracts satisfactory in all respects to the Lender, prior to release of Facility 2.
  - xi. A detailed project construction schedule outlining the time to complete the various construction stages and phases of the Project, acceptable to the Lender.
  - xii. The Borrower's Tarion Warranty application and confirmation a Tarion Warranty certificate for the Project will be issued within 30 days of posting the required security deposit.
- d) The initial Loan to Value ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 81%. For the purpose of calculating the loan to value ratio in the absence of current market values;
- a) The Loan amount shall include all debt obligations including all senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
  - b) Value shall be calculated by utilizing the Appraised Value at the time of the Initial Advance as per the Appraisal provided per the initial transaction underwriting unless otherwise agreed to by the Lender. In the case of unsold lots, the value shall be calculated as per the methodology used by the Appraisal. For [units] under construction, the Appraised Value shall be the Estimated Value of the [unit] upon completion less the cost to complete including financing costs as per the methodology used by the Appraisal less the expected profit margin.
- e) The initial Loan to Cost ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 86%. For the purpose of calculating the loan to cost ratio in the absence of current market values;
- a) The Loan amount shall include all debt obligations including senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
  - b) Cost shall be determined by utilizing the Net Cost to Date per the Lender approved Cost Consultant's report unless otherwise adjusted and agreed to by the Lender.
- f) Confirmation satisfactory to the Lender that all property taxes are current.
- g) Officers' Certificate in the form provided in the Lender's standard form documents.
- h) Anti-Money Laundering Compliance documentation to be completed; Agent Examination of Identification Form will be provided to the Borrower's lawyer with the closing documents. (to be completed by the Borrower and each Guarantor, the identification of all authorized signatories as outlined on the Director's Resolution, to a maximum of three must be obtained).
- i) Such other matters as the Lender may deem appropriate and necessary to satisfy itself of the Project's viability, the Borrower's creditworthiness and the ability of the Borrower and Guarantors to fulfil their obligations herein.

## 2.2 Funding Conditions for Progress Draws

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

- a) It is agreed that the Lender shall retain the services of a professional Cost Consultant, Quantity Surveyor and/or a Payment Certifier to monitor progression of the Project. The Borrower agrees to assist and cooperate with such a surveyor in order to allow for timely reporting to the Lender. A detailed report shall be provided to the Lender a minimum of five (5) business days prior to funding. This reporting will be at the expense of the Borrower.
- b) Officer's Certificate and a Loan Compliance Certificate in the form provided in Appendix A certifying that no default has occurred and is continuing at the time of any advance and a Compliance Certificate provided in Appendix B providing details on financial calculations necessary to determine compliance with the terms of the Agreement.
- c) A title search will be conducted with each advance of the Loan. The title search and solicitors' fees and expenses applicable thereto are at the Borrower's expense and shall be deducted from the Progress Draw by the Lender.
- d) Confirmation that the Borrower's Taron Warranty is still in effect
- e) The Borrower shall sign a Statutory Declaration indicating it is in compliance with the requirements of the Construction Lien Act and that all funds provided by the Borrower shall be used to pay Project expenses as outlined in the draw request.
- f) Each draw request shall be provided to the Lender in a form outlined in Appendix D and shall be provided to the Lender with a minimum of [thirty (30)] business days' notice prior to expected payment.
- g) Progress Draws are to be made by way of progress advances no more frequently than monthly and shall reference the original budget agreed to in Section 2.1., the funds paid to date, and any revisions to the original budget and shall only be used to pay Project specific costs provided for in the approved Project Budget as follows:
  1. For drawdowns against soft costs, each draw would be supported by a monthly summary of costs to date.
  2. For drawdowns against hard costs, each draw would be supported by the Lender's cost consultant acting as Project cost consultant, which indicates the amount of work in place, the cost to complete and that the work in place is in accordance with approved plans and specifications. The Lender shall deduct an amount from each Progress Draw equal to the Cost Consultant's invoiced amount associated with preparing their report for the Progress Draw.
  3. Applicable holdbacks equal to 10% of the hard construction costs will be withheld in accordance with the Construction Lien Act of Ontario.
  4. Subsearches will be conducted by the Lender's solicitor in conjunction with every Progress Draw.
  5. The undrawn portion of the Loan will exceed the Borrower's cost to complete, accounts payable including outstanding cheques and holdbacks and expected financing costs.
  6. The Borrower will ensure compliance with all aspects of the Construction Lien Act and any other governmental requirements.
  7. The Borrower will immediately infuse, upon the Lender's request, funds required to cover any and all cost overruns beyond the original budget.

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

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

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### III. SECURITY TO BE DELIVERED

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

- a) **Mortgage** – A 1<sup>st</sup> mortgage in the amount of \$16,000,000 on the White Cedar Estates project and property plus accrued bonus. The mortgage will be registered at the wrap up rate of 28.0% interest.
- b) **GSA** – General Security Agreement over all of the assets and undertaking of the Borrower and each corporate Guarantor, if any.
- c) **General Assignment of all leases and rents with respect to this project.**
- d) **Guarantees** – Unlimited joint and several guarantees from each of the guarantors. Cost overrun and completion guarantee from Fortress Real Developments.
- e) **Environmental** – An Environmental Undertaking and Indemnity and Checklist from the Borrower in such form as the Lender shall require.
- f) **Security Opinion** – A favourable Letter of Opinion from the Lender's solicitor confirming the validity and enforceability of the Lender's security.
- g) **Insurance** – Proof of appropriate Commercial Liability Insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured, and coverage of not less than \$5,000,000.
- h) **Title Insurance** – Satisfactory title insurance.
- i) **Taxes** – Borrower provides satisfactory proof that taxes are current.
- j) **Postponement** – Postponement, Subrogation and Assignment from the shareholders of the Borrower (and such other creditors as the Lender may require upon completion of its due diligence) of all indebtedness owed by and claims against the Borrower to and by the shareholders to the indebtedness and claims of the Lender.
- k) **General Assignment** – General Assignment and Transmittal Letters from the authors of all project plans, specifications, drawings and permits, all architectural, engineering, general contractor and construction contracts and copies of all third party purchase and sale agreements and deposits for individual units sold together with any other rights, interests and obligations of any kind respecting the Project and reasonably necessary for the completion of the Project as contemplated by the Lender on a default by the Borrower.
- l) **Preauthorized Payment** – If required by the Lender such preauthorized payment documentation necessary to authorize the Lender to debit directly from the Borrower's account amounts due under the Commitment and Loan.
- m) **Deficiency Agreement** Joint and Several Deficiency Agreement executed by the Borrower and the Guarantors agreeing to fund costs not included or in excess of forecasted expenditure which Agreement should also be signed by Fortress Real Developments Inc. limited to cost overruns and completion.
- n) **Assignment of Purchaser Deposits** – Such assignments of purchaser's deposits as the Lender and its solicitor's may reasonably require provided, the Borrower shall be permitted to inject the deposit funds into the Project in respect of direct Project construction costs.
- o) **Priorities Agreement with Primary Lender** satisfactory to the Lender.
- p) **Further Security** – Such further security, guarantors and ancillary documents and agreements as the Lender or its solicitors may, acting reasonably, deem necessary to adequately secure the Loan obligations and complete and perfect the Security.

#### IV. BORROWERS COVENANTS

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

##### 4.1 Affirmative Covenants

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

- a) **Punctual Payment** – The Borrower shall duly and punctually pay the principal of all Advances made to it under the Loan, all interest thereon and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.
- b) **Corporate Existence and Conduct of Business** – The Borrower shall, and the Borrower shall cause the Guarantors to, maintain their respective corporate existences in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licences and qualifications to carry on business in any jurisdiction in which it or they carry on business and each of the Borrowers shall, and the Borrower shall cause the Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
- c) **Compliance with Legislation** – The Borrower shall do or cause to be done, and the Borrower shall cause the Guarantors to do or cause to be done, all acts necessary or desirable to comply with all material Applicable Laws, including, without limitation, all Requirements of Environmental Law and to preserve and keep in full force and effect all franchises, licences, rights, privileges and permits necessary to enable each of the Obligor to operate and conduct their respective businesses in accordance with standard industry practice and to advise the Lender of any anticipated changes, loss or sale of such franchises, licences, rights, privileges and permits.
- d) **Material Litigation** – The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting it or any of the other Obligor if the result might, in such Borrower's bona fide opinion, have a material adverse effect on the financial condition or operations of any of the Obligor or any of its Subsidiaries and from time to time furnish to the Lender all reasonable information requested by the Lender concerning the status of any such litigation, proceeding or dispute.
- e) **Financial Statements and Other Information** – The Borrower shall deliver, or cause to be delivered, to the Lender:
  - i. **Annual Financials of the Borrower** – as soon as available and, in any event, within one hundred and twenty (120) days after the end of each of its Fiscal Years, copies of the Borrower's external professional accountant prepared annual financial statements on a consolidated basis in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such year, together with the notes thereto, all prepared in accordance with Generally Accepted Accounting Principals ("GAAP") consistently applied;
  - ii. **Annual Financials of each of the Guarantors** – as soon as available and, in any event within one hundred and twenty (120) days after the end of each fiscal year of each Guarantor, copies of such Guarantor's, as the case may be, externally professional accountant prepared annual financial statements on an unconsolidated basis, in each case consisting of the balance sheet, statement of profit and loss and surplus and statements of change in financial condition for each such period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year prepared and certified by such Guarantor's, Chief Executive Officer or Chief Financial Officer, without personal liability;



- iii. **Quarterly Financials of the Borrower** – as soon as available and, in any event within thirty (30) days after the end of each of its first, second and third Fiscal Quarters, copies of the Borrower's internally prepared quarterly financial statements on a consolidated basis, in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such period all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous Fiscal Year prepared and certified by its Chief Executive Officer or Chief Financial Officer, without personal liability;
- iv. **Quarterly Borrower/Project Operating Statements** – as soon as available, and in any event, within thirty (30) days after the end of each Fiscal Quarter, an internally prepared operating statement with respect of the Project, together, in each case, with such other information as the Lender may reasonably request, including costs to date, costs to complete, land held for development, pre-sales, homes under construction, expected closings and associated timing, closed transactions;
- v. **Quarterly Compliance Certificates** – as soon as available, and in any event, within thirty (30) days of the end of each Fiscal Quarter, an Officer's Certificate and a Loan Compliance Certificate as provided in Appendix A and B of this agreement, of the Borrower certifying as to:
  - a) the extent of compliance by the Borrower with the financial covenants set forth in Section 4.2, (together with the calculations and all supporting documentation relating thereto);
  - b) no Default or Event of Default having occurred and continuing; and
  - c) the representations and warranties contained in Article IV continuing to be true and accurate in all material respects;
- vi. **Quarterly Project Status Reports** – The Borrower shall provide updates including status updates on the project and photos showing the progress on the project within thirty (30) days after the end of each Fiscal Quarter. This will also include assistance and verbal updates for the Lender or any representative performing site visits at the Borrower's expense. If requested, the written status report should be in the form provided in Appendix F, with substance and detail satisfactory to the Lender, acting reasonably. Such report to be delivered in conjunction with the financial statements and certificates delivered pursuant to Section 4.1(e); and
- vii. **Quarterly Property Taxes** - The Borrower shall ensure that all property taxes and any other taxes applicable to the Project have been paid at all times when due except if such taxes are Permitted Encumbrances. On each tax installment date, the Borrower will provide to the Lender proof that all taxes are current.
- viii. **Monthly Project Specific Bank Account Statements** - as soon as available, and in any event, within five (5) days after the end of each calendar month, the bank statement detailing the activity in the Project specific bank account which will only contain activity relating to the Project;
  - i. **Project Bank Account Control** - at the Lender's discretion, the Borrower may be required to open a Bank Account which provides access and controls to ensure that only Lender approved activity flows through the account. Any fees related to this service will be to the account of the Borrower.
  - ii. **Project Budget** - as soon as available, and in any event, within ninety (90) days prior to the end of each Fiscal Year a Project Budget for the immediately following two Fiscal Years for the Project;
  - iii. **Insurance** – On each anniversary date of the mortgage, the Borrower will provide to the Lender, a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lenders and is still in effect and the related Insurance Policies.

- iv. **Personal Net Worth Statements** – On each anniversary date of the mortgage, the personal Obligors will provide to the Lender, an updated personal net worth statement with supporting documentation.
  - v. **Corporate Notice of Assessment** – Corporate Obligors, shall provide the Lender with their respective Notice of Assessments within 60 days of filing their income tax for the most recently ended taxation year.
  - vi. **Personal Notice of Assessment** – Personal Obligors, shall provide the Lender with their respective Notice of Assessments by June 30<sup>th</sup> of each year.
  - vii. **Other** - at the request of the Lender, such other financial statements, reports, certificates, projections of income and cash flow or other matters affecting any of the Project, the Property Interest, any Obligor's business, affairs or financial condition as the Lender may reasonably request.
- f) **Rights of Inspection** – At any reasonable time and from time to time upon reasonable prior notice, the Borrower shall permit and cause each of the other Obligors to permit, the Lender or any representative(s) thereof, at the expense and risk of the Borrower, to examine and make copies of and abstracts from the records and its physical and computer books of account with respect to the Project and the Property Interests and to visit and inspect the Project and to discuss the affairs, finances and accounts of it with any of its officers, senior employees or managers (but not tenants, if applicable).
- g) **Project Specific** – The Borrower shall:
- i. comply in all relevant aspects with the provisions of the Construction Lien Act;
  - ii. as and when requested by the Lender, provide to the Lender complete bank records relating to all holdbacks including cancelled cheques, bank statements and completion certificates as the Lender may reasonably require;
  - iii. grant to the Lender the right and authority for the Lender to obtain all information relative to the holdback account(s) from the financial institution(s) where the holdback(s) is/are retained;
  - iv. provide a covenant that the Borrower will supply to the Lender a statutory declaration in conjunction with each advance under the mortgage, confirming the status of the holdback account(s) as at the date of the statutory declaration;
  - v. substantially complete the Project in accordance with Lender approved plans, specifications, project budget and construction schedule, pay its taxes, protect its properties by contest of adverse claims, maintain required insurance, perform its obligations under contracts and agreements, obtain all necessary approvals for construction and use of the Project, comply with all governmental rules and regulations, permit reasonable inspections, by the Lender and its agents of the Project and all records pertaining to the Project. It is agreed that the Lender shall retain the services of a quantity surveyor to monitor the Project at the expense of the Borrower and the Borrower covenants to assist and cooperate with such surveyor.
  - vi. shall make and ensure that all payments due to the architect, general contractor, all contractors, sub-contractors and all other suppliers of materials and services of any kind to the Project are made when and as they become due in compliance with the terms of their respective contracts and the provisions of the Construction Lien Act.
  - vii. shall ensure that no liens are registered against the Project or its assets and will immediately move to have same vacated if registered

**h) Insurance**

- i. The Borrower shall maintain or shall cause to be maintained, with respect to the Project:
  - a) proof of appropriate Commercial Liability Insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured, and coverage of not less than [\$5,000,000].
  - b) builders' all risks property insurance in connection with the Project, including rental loss insurance (if applicable) with responsible and reputable insurance companies in such amounts equal to 100% of replacement value
  - c) If applicable, boiler and pressure vessel insurance including rental loss, for such amount as may be acceptable to the Lender, all with such deductibles as are customary in the case of businesses of established reputation engaged in the same or similar businesses and in any event as are acceptable to the Lender. The Lender shall be added as an additional insured to the liability policies.
- ii. All such insurance policies shall:
  - a) name the Lender as a mortgagee thereunder as its interest may appear;
  - b) have attached the Insurance Bureau of Canada standard mortgage clause;
  - c) provide that no cancellation, termination or adverse amendment thereof shall take effect unless the insurer concerned has given the Lender not less than thirty (30) days prior written notice of such proposed action;
  - d) provide that proceeds of all insurance for physical damage and rental losses aggregating \$1,000 or more shall be payable to the Lender or as it may direct; and
  - e) otherwise be in such form as the Lender shall reasonably require.;
- iii. So long as no Event of Default has occurred and is continuing, the proceeds of all insurance relating to physical damage and rental losses:
  - a) if the total amount thereof does not exceed \$1,000, shall be payable directly to the Borrower to be applied by the Borrower in repairing the damage or destruction or replacing property in respect of which the insurance is payable; and
  - b) if the total amount thereof exceeds \$1,000, shall be, with the approval of the Lender:
    1. applied in reduction of amounts outstanding hereunder; or
    2. released to the Borrower subject to compliance with such conditions as the Lender may require.
- iv. If an Event of Default has occurred or is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be payable to the Lender to be applied by it in reduction of the amounts outstanding hereunder.
- v. The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Borrower as aforesaid, constitute continuing collateral security for the Borrower's obligations and liabilities in respect of amounts outstanding hereunder. The Lender shall place such funds in an interest-bearing account and interest thereon shall accrue to the benefit of the Borrower.
- vi. In the event that the Lender shall not be obligated hereunder to apply the proceeds of insurance to pay for the cost of repairing the damage or destruction to or replacement of the property in respect of which the insurance is payable and the Lender elects to apply the proceeds of insurance to amounts owing by the Borrower hereunder, each of the Borrower (on its own behalf and on behalf of each of the Guarantors), hereby irrevocably waives any and all statutory provisions which may require that proceeds of insurance be used to restore or rebuild the Property.
- vii. The Borrower shall deliver or cause to be delivered to the Lender, certificates of insurance signed by the insurers, or other evidence satisfactory to the Lender, acting reasonably, of

the insurance coverage required hereunder, including certificates of renewal as soon as they are available.

**Insurance Consultant:** The Borrower acknowledges that all policies of insurance shall be subject to review and approval by an insurance consultant acting on behalf of the Lender and the Borrower agrees to pay for the consultant's fees in connection with such review upon registration of the mortgage and for each insurance renewal.

- i) **Notices** – The Borrower shall promptly give notice to the Lender of:
  - a) any fire or other casualty or any notice of expropriation, action or proceeding materially affecting any Project;
  - b) all claims, proceedings, suits, actions or litigation in respect of any Obligor or the Project (whether or not any such claim, proceeding, suit, action or litigation is covered by insurance) which, if determined adversely, could have a Material Adverse Effect; the occurrence of any Default or Event of Default;
  - c) any other matter or event that has a Material Adverse Effect.
- j) **Use of Advances** - The Borrower shall use all Advances made to it for the specific purposes set out in the Loan.
- k) **Taxes** – On each anniversary date of the mortgage, the Borrower will provide to the Lender proof that the taxes are current
- l) **Payment of Taxes, etc.** - The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:
  - i. pay or cause to be paid all rents, Taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, lawfully levied, assessed or imposed upon any Obligor or any of the assets of any Obligor, as and when the same become due and payable;
  - ii. withhold, deduct and collect all Taxes required to be withheld, deducted and collected by it, and remit such Taxes to the appropriate Governmental Authority at the time and in the manner required; and
  - iii. pay and discharge all obligations incidental to any trust imposed upon it, by statute which, if unpaid, might become an Encumbrance upon any of the Properties, except when and so long as any such rents, Taxes, rates, levies, assessments, fees, dues or obligations constitute a Permitted Encumbrance and the validity thereof is in good faith being contested by such Obligor.
- m) **Material Documents, Leases and Permitted Encumbrances** - The Borrower shall ensure that all Material Documents and Permitted Encumbrances are kept in good standing in all material respects and will advise the Lender forthwith after being so notified of a material breach or alleged material breach of any Material Documents or Permitted Encumbrances. It will ensure that it does not default under any Major Lease related to any Property and will advise the Lender forthwith after being so notified of a material breach of any Major Lease.
- n) **New Material Documents** – The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a Material Document and shall provide a copy of such agreement to the Lender.
- o) **Security** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, provide the Security contemplated hereunder, perfected to the satisfaction of the Lender.
- p) **Environmental Law** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:
  - i. notify the Lender promptly of any event or occurrence that will, or is likely to, give rise to an inquiry or investigation, or any legal proceeding, relating to, or a violation of, the Requirements of Environmental Law;

- ii. provide the Lender, on request, such information, certificates or statutory declarations, and shall conduct such environmental audits or site assessments, as may be reasonably necessary to ensure the compliance with all Requirements of Environmental Law; and
  - iii. execute, and cause each of the Guarantors to execute, all consents, authorizations and directions to appropriate Governmental Authorities that are required to permit the inspections mandated by law of each of the Properties or the property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Borrower hereby irrevocably constitutes and appoints, and the Borrower shall cause each Guarantor to irrevocably constitute and appoint, the Lender the true and lawful attorney of the such Borrower or such Guarantor, as the case may be, with full power of substitution, to execute any of the foregoing consents, authorizations and directions; provided however that such power of attorney shall only be exercised during the continuance of an Event of Default.
- q) **Maintain Security** – The Borrower will fully and effectually maintain and keep the Security valid and effective at all times during the continuance of this Agreement, and it will not permit or suffer the registration of any debt, lien, privilege or Encumbrance whatsoever other than Permitted Encumbrances and the Security (including the Existing Security), whether of workmen, builders, contractors, engineers, architects or suppliers of material, on or in respect of any Property (except such liens which only affect or purport to affect a tenant’s interest in the Property), provided that the registration of any construction lien or privilege shall not be deemed to be a breach of this covenant if the Borrower shall contest same and shall if the Lender so requires, give security to the satisfaction of the Lender for the due payment of the amount claimed in respect thereof and provided further that nothing herein will require the Borrower to renew or amend financing statements filed under personal property security statutes.
- r) **Operation and Repair** – Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of each of the Properties and repair and keep in repair and good order and condition, or cause to be so repaired and kept in repair and good order and condition, all buildings, structures, plant, machinery and equipment used in or in connection with each of the Properties and which are necessary in connection with the efficient operation of such business and undertaking up to a modern standard of usage and, subject to the provisions of this Agreement, renew and replace, or cause to be renewed or replaced all and any of the same which may be worn, dilapidated, unserviceable, inconvenient or destroyed, even by a fortuitous event, fire or other cause, and at all reasonable times allow, and cause the Guarantors to allow, the Lender or its representative access to each of the Properties in order to review the state and condition the same are in.
- s) **Payment of Preferred Claims** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time pay or cause to be paid, all amounts related to taxes, wages, workers’ compensation obligations, government royalties or pension fund obligations and any other amount which may result in an Encumbrance against the assets of any Obligor arising under Applicable Law.
- t) **Maintain and Operate** – The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Property Interest and the Project, in a proper and efficient manner so as to preserve and protect the Property Interest and each of the Properties.



- u) **Lease Attornment** – Subject to the requirements, if any, within any Leases for the Lender to execute and deliver non-disturbance agreements, the Borrower agrees, at the written request of the Lender, to use all reasonable commercial efforts to obtain from the tenants under such Leases and deliver to the Lender such instruments of attornment, postponement or subordination as the tenants under such Leases are required to provide and as the Lender may reasonably request in a form acceptable to the Lender, acting reasonably, and which is otherwise consistent with the terms of such Leases.
- v) **Expropriation** – Any awards or payments received by an Obligor for expropriation of any Project Lands, or any part thereof, which are, in respect of any single payment or award, equal to or greater than [\$1,000] shall, unless the Lender otherwise agrees, be forthwith paid to the Lender to repay amounts outstanding up to the amount outstanding hereunder at such time.

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## 4.2 Financial Covenants

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

- a) **Project Net Equity** – The Borrower and Guarantors must have and maintain throughout the term of the loan a minimum combined net equity in the Project equal to \$2,205,000  
For the purposes of this paragraph net equity shall be equal to the sum of the cost of the raw land as determined by the Lender (to a maximum value of \$2,180,000 plus the value of the Project completed to date (exclusive of land value) as determined by the Lender's quantity surveyor, net of all payables, purchaser deposits paid into the Project, construction holdbacks, unsubordinated Project financing, amounts advanced by the Lender and all Recoveries (Recoveries being defined as all recaptured Project expenses including, HST, previously funded by the construction lender or the proceeds of the Loan herein).
- b) **Project Debt to Value Ratio (LTV)** – The Borrower shall, at all times, maintain an LTV Ratio of less than 0.81; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(v);
- c) **Project Debt to Cost Ratio (LTC)** – The Borrower shall, at all times, maintain an LTC Ratio of less than 0.86; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(v);
- d) **Maximum Borrowing** – The Borrower shall ensure that outstanding Advances under the Commitment Letter do not exceed the most current calculation of the Maximum Total Amount Available (Maximum Loan Amount less estimated costs to complete). The Maximum Loan Amount is the total credit approved as outlined in Section I.

### 4.3 Negative Covenants

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

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



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

## V. DEFAULT PROVISIONS

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

### 5.1 Events of Default

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

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

unstayed and in effect for a period of ten (10) business days;

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



- (n) **Creditor Seized Property** – if the property of any Obligor or a part thereof which is, in the opinion of the Lender, a substantial portion thereof, is seized or otherwise attached by creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied or enforced against any Obligor and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of thirty (30) days or such shorter period as would permit any Property or any part thereof to be sold thereunder;
- (o) **Dissolution, Liquidation or Wind-Up Proceedings** – if proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor, unless such proceedings are stayed or dismissed within thirty (30) days of the commencement thereof;
- (p) **Assignment, Disposition or Conveyance** – if any Obligor makes or agrees to make an assignment, disposition or conveyance, whether by sale or otherwise, of all its assets (or a material portion thereof) in bulk;
- (q) **Default Under Permitted Encumbrance or Material Document** – if there is a default by any Obligor under any Permitted Encumbrance, or Material Document in respect of the Project and such default has a Material Adverse Effect and is not rectified within five business days; or
- (r) **Financial Covenant Default** – if there is a default by the Borrower of any of the Financial Covenants outlined in Section 4.2;
- (s) **Merger or Amalgamation** – if any transaction occurs (whether by reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise) whereby all or substantially all of an Obligor's undertaking, property and assets, or any interest therein becomes the property of any other person, or in the case of any amalgamation, of the continuing company resulting therefrom, or if any Obligor is dissolved; or
- (t) **Environmental** – if any Obligor violates or breaches any Requirements of Environmental Law applicable to the Project (or, in the case of the Guarantor, applicable to all or any material part of its property and assets) or if any Obligor violates or breaches any other Applicable Law and such breach or violation of Applicable Law has or could reasonably be expected to have a Material Adverse Effect and continues for the shorter of a period of 30 days or 10 business days less than any such period as would permit the property in question to escheat to the Crown or be sold or otherwise forfeited; or

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

## 5.2 Acceleration and Demand

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

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

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

## 5.3 Appointment of Receiver

- a) Upon any default under this Commitment or the Security, that is not cured within the time frames set out herein, the Lender may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their instead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Project or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Borrower. Any such receiver or receivers so appointed shall have power to take possession of the Project or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Project or any part thereof, and to further charge the Project in priority to the security constituted by this Commitment as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Project on such terms and conditions and in such manner as he shall determine. In exercising any powers, any such receiver or receivers shall act as agent or agents for the Borrower and the Lender shall not be responsible for his or their actions.
- b) In addition, the Lender may enter upon the applicable premises and lease or sell the whole or any part or parts of the Project. The Borrower agrees that it will be commercially reasonable to sell such part of the Project:
  - i. as a whole or in various units;
  - ii. by a public sale or call for tenders by advertising such sale; and
  - iii. by private sale.
- c) Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.

- d) No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this letter includes a receiver and manager.

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

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

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

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

#### **5.5 Remedies Cumulative**

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

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

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

#### **5.6 Set-Off**

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

#### **5.7 Cash Collateral Accounts**

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

#### **5.8 Lender May Perform Covenants**

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

**VI. GENERAL PROVISIONS**

- a) The Lender shall have no obligation to advance funds unless and until all of the above terms and conditions have been deemed by the Lender to be complete, true and otherwise in all respects satisfactory, in the Lender's sole discretion.
- b) No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by the Borrower and Guarantor.
- c) The Lenders solicitors shall be:
- Sorbara Schumacher McCann LLP  
31 Union Street East  
Waterloo, Ontario N2J 1B8
- d) The Borrower's solicitor shall be:
- Sorbara Schumacher McCann LLP  
31 Union Street East  
Waterloo, Ontario N2J 1B8  
ATTN: Seth Jutzl
- The Borrower shall bear any and all reasonable legal costs of the Lender.
- e) Time is of the essence in this Commitment.
- f) The Borrower and Guarantors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- g) The waiver by the Lender of any breach or default by the Borrower of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
- h) The representations, warranties, covenants and obligations herein set out shall not merge or be extinguished by the execution or registration of the Security but shall survive until all obligations under this Commitment and the Security have been duly performed and the Loan, interest thereon and any other moneys payable to the Lender are repaid in full. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the Lender shall choose which provisions that will prevail.
- i) Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment Letter shall not merge with the delivery and/or registration of the Security and shall remain in full force and effect. Any default under the terms of this Commitment Letter shall be deemed a default under the Security and any default under the terms of the Security shall be deemed a default under the terms hereof. In the event of a conflict between the terms of the Security and the terms of this Commitment Letter, the Lender, in its sole discretion may determine which shall take precedence and govern.
- j) This Agreement may be simultaneously executed in several counterparts, each of which when so



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executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement together with the \$20,000 Good Faith Deposit payable to MarshallZehr Group Inc. in Trust. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

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

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

Yours truly,

MarshallZehr Group Inc.

Per: 

Cecil Hayes

Chief Operating Officer

I have authority to bind the corporation



Acknowledged and agreed at BURLINGTON this 25 day of MAY, 2016.

**Borrower:**

Dunsire (Lansdown) Inc.

Per: 

Name: Shawn Keeper

Title: President

I have authority to bind the corporation

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

Dunsire Inc.

Per: 

Name:

Title:

I have authority to bind the corporation

  
is Witness:

  
Shawn Keeper

Lender:

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 26 day of May, 2016.

MarshallZehr Group Inc. "in Trust"

Per:

  
Greg Zehr

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



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

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

[Date of Letter]

[Borrower]

[Borrower Address]

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

**Re: Officers’ Certificate**

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

1. This Certificate is being delivered pursuant to Section [●] of Commitment dated as of [DAY] day of [MONTH, YEAR] made among [Borrower] and MarshallZehr Group Inc. (“MZG”). All capitalized terms used herein, unless otherwise indicated, have the meanings ascribed to those terms in the Loan Agreement.
2. To the best of our knowledge and belief, no Event of Default exists as of the date of this Certificate.
3. We hereby confirm that the Financial Covenants set out in Section 4.2 of the Loan Agreement have been complied with as of the end of the [Certification Date] in respect of which the Officers’ Certificate is being delivered. The calculations made at the end of such [Certificate Date] in determining compliance with such tests are attached hereto.
4. We hereby acknowledge that we have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Borrower in performance of the work required to complete the Project, and for which the Borrower(s) and/or Owner(s) of the Borrower(s) might in any way be held responsible, have been paid in full as required by the Commitment up to and including the latest progress payment received, being on the [DAY]<sup>th</sup> day of [MONTH], [YEAR], except for
  - a. Holdback monies properly retained amounting to [\$.]
  - b. Payments deferred by agreement amounting to [\$.], or
  - c. Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld amounting to [\$.].

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

Borrower:

[Name of Borrower]

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

Name:

Title:

I have authority to bind the corporation



**APPENDIX B – COMPLIANCE CERTIFICATE**

*(This document confirms full compliance with the terms contained within the Commitment Letter and provides details of the calculations confirming same).*

[Date of Letter]

[Borrower]

[Borrower Address]

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

Re: Compliance Certificate for [Project Name] Funding Number [#]

Ladies and Gentlemen:

The undersigned, [Borrower], refers to the Commitment Letter dated as of [MONTH] [DAY], [YEAR] (as amended, supplemented, replaced or restated from time to time, the "Commitment", the terms defined therein being used herein as therein defined) among the Obligors and the Lender party thereto. This Compliance Certificate is delivered pursuant to Section [●] of the Loan Agreement for the Financial Quarter/Year ending on [MONTH] [DAY], [YEAR] (the "Period").

I, [Officer Name], the [Officer Title] of [Borrower], in such capacity and not personally, hereby certify that: I am the duly appointed [Officer Title] of [Borrower] and as such I am providing this certificate for and on behalf of [Borrower] pursuant to the Commitment.

I am familiar with and have examined the provisions of the Commitment.

The financial statements most recently delivered pursuant to Section [●] of the Commitment present fairly the financial position, results of operations and changes in financial position of the persons specified therein in accordance with GAAP (subject to normal year-end adjustments and the absence of any required notes to such financial statements).

The representations and warranties contained in Section [●] of the Commitment are true and correct as though made on the date hereof, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section [●] and any representation and warranty which is stated to be made as of a certain date.

As of the date hereof, [Borrower] is not in breach of any of the covenants contained in Article IV of the Commitment, and no Default or Event of Default has occurred and is continuing as at the date hereof.

As of the last day of the Period:

MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453  
465 Phillip St., Suite 206, Waterloo, ON N2L 6C7 | p.519.342.1000 f.519.342.0851 | www.marshallzehr.com

- 1. Total Project Costs To Date through [MONTH] [DAY], [YEAR]: [XX,XXX,XXX]
- 2. Estimated Cost to Complete Project: [XX,XXX,XXX]
- 3. Total Advanced Loan for [MONTH] [DAY], [YEAR]: [XX,XXX,XXX]
- 4. Estimated Current Project Value as of [MONTH] [DAY], [YEAR]: [XX,XXX,XXX]
- 5. Last Appraised Value as of [MONTH] [DAY], [YEAR]: [XX,XXX,XXX]

Financial Covenants	Calculation	As of	Amount
Project Net Equity	Appraised Value (#5) Less Advanced Loan (#3)	[MONTH] [DAY], [YEAR]	\$
Maximum Borrowing	Maximum Loan Amount Less Costs to Complete (#2)	[MONTH] [DAY], [YEAR]	\$
Estimated Loan to Value Ratio	Loan Advanced to Date (#3) Divided by Appraised Value (#5)	[MONTH] [DAY], [YEAR]	%
Estimated Loan to Cost Ratio	Loan Advanced to Date (#3) Divided by Cost to Complete (#2)	[MONTH] [DAY], [YEAR]	%
Estimated Borrower Interest Coverage Ratio	Company's earnings before interest & taxes (EBIT) Divided by Company's interest expenses for the same period	[MONTH] [DAY], [YEAR]	%
Estimated Borrower Debt Service Coverage Ratio	Net Operating Income (NOI) Divided by Debt Service Requirements including interest and principal payments due in same period	[MONTH] [DAY], [YEAR]	%

Schedule A hereto also sets for the details of the calculations of the above ratios.

Dated this [●] day of [MONTH], [YEAR].

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name) [Officer Title]

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

*(This document will request funds from the Lender(s) be advanced to the Mortgage Administrator and start interest charges to the Borrower).*



[Date of Letter]

[Borrower]  
[Borrower Address]

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

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

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

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

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

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

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

Borrower:

[Name of Borrower]

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

Name:

Title:

I have authority to bind the corporation





**APPENDIX D – BORROWER DRAW NOTICE**

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

[Date of Letter]

[Borrower]

[Borrower Address]

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

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

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

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

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

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

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

- (a) The date of the Draw, being a Business Day, is [●].
- (b) The aggregate amount of the Draw is [●].

The undersigned hereby certifies and confirms that on the date of this Notice and the date of the corresponding Draw, and immediately after giving effect thereto and to the application of any proceeds therefrom, the representations and warranties contained in Article [7] of the Commitment Letter are true and correct on and as of each such date, all as though made on and as of each such date, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders

pursuant to Section 18.01 and any representation and warranty which is stated to be made as of a certain date (y) no event or condition has occurred and is continuing, or would result from such Borrowing or giving effect to this Borrowing Notice, which constitutes a Default or an Event of Default, and (z) such Borrowing, or otherwise giving effect to this Borrowing Notice, will not violate any Applicable Law now in effect.

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

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

**Borrower:**

[Name of Borrower]

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

Name:

Title:

I have authority to bind the corporation



**APPENDIX E – REPAYMENT NOTICE**

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

[DATE]

**Borrower:**

[Borrower Name]  
[Borrower Address]

**Lender:**

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

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

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

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

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

I hereby acknowledge according to the Commitment Letter that the Borrower must pay the Lender an administration fee of \$250.00 and its solicitor’s reasonable legal fees in respect to the preparation of the discharge or repayment.

**Borrower:**

[Borrower Name]

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

Name: [Name]

Title: [Title]

I have authority to bind the corporation

**APPENDIX F – PROJECT OPERATING REPORT**

*(This document is to be provided upon request by the Borrower to the Lender providing detail on the Items outlined below)*

(Borrower/Developer letterhead)

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7

Re: Compliance Project Operating Report for [Project Name]

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

[Sales Activity - Pre-Sales/Homes under Construction/Closed, Expected Closings & Closing Schedule]

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

[Current Project Debt and Description of Debt and related Liens]

[Estimated Current Project Value]

[Project Site Pictures]



# MARSHALLZEHR

— REAL ESTATE CAPITAL —

May 24, 2017

**PRIVATE AND CONFIDENTIAL**

Dunsire (Landsown) Inc.  
54-100 South Service Road  
Burlington, Ontario  
L7L 6A5

**Attention: Shawn Keeper**

**RE: Project:** White Cedar Estates- MZGI 87 First (1<sup>st</sup>) Amendment

**Borrower:** Dunsire (Landsown) inc.

**Property Address:** Those lands and premises described municipally as 24, 26, 28, 32 Landsdown Drive, Guelph, Ontario, and legally as PT LT 13 PL 488 PT 3, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; together with easement over common elements Condo LP No.169 as WC458323; City of Guelph

**Maturity Date:** January 1, 2018

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment to the above noted mortgage (the "Amendment") and Commitment Letter dated May 25, 2016:

**Purpose:** To amend Part I of the Commitment Letter to more accurately reflect the annual fees associated with the Tranche C, Letter of Credit Facility

**Delete (original):** Interest Rate Tranche C

Interest shall accrue at 3.00% per annum commencing on the date of the first advance, calculated, compounded and payable monthly with interest only payments made from Progress Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or guarantor's own resources.

**Insert (new):** Letter of Credit Fees Tranche C

The Borrower shall pay to the Lender a fee of 3.00% per annum (the "Letter of Credit Annual Fee") calculated on the Letter of Credit amount advanced from

# MARSHALLZEHR

— REAL ESTATE CAPITAL —

Tranche C, on the Letter of Credit's date of issuance. Letters of Credit shall be available through a Letter of Credit facility to be arranged by the Lender and is to be used only for works specific to the project and property registered on title per Section 3(a) of the Commitment Letter. The Letters of Credit Annual Fee will be payable on every subsequent anniversary date since the initial issuance of funds from Tranche C thereafter. The Letters of Credit Annual Fee will be recalculated and applied based on the respective Letter of Credit balance outstanding as at the anniversary date. Any reductions or cancellation of Letters of Credit will be reflected in reducing the outstanding balance of respective Letters of Credit within Tranche C.

**All other terms of the Commitment shall survive, unamended.**

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

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

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

**If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement and the documents requested above by May 31, 2017.**

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

Sincerely,

**Cecil Hayes**

Chief Operating Officer

**MarshallZehr**

*Real Estate Capital*

p. 519-342 1000 x233

c. 519-590-3810

f. 519-342-0851

465 Phillip St, Suite 206

Waterloo, ON, N2L6C7

[chaves@marshallzehr.com](mailto:chaves@marshallzehr.com)

[www.marshallzehr.com](http://www.marshallzehr.com)

# MARSHALLZEHR

— REAL ESTATE CAPITAL —

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

**Borrower:**

I HEREBY accept the terms and conditions as stated herein.

DATED this 26 day of MAY, 2017.

**Dunsire (Landsdown) Inc.**

Per: 

Name: Shawn Keeper

Title: President

I have authority to bind the corporation

**The following party) executes this commitment letter in its capacity as a guarantor only.**

**Dunsire Inc.**

Per: 

Name: Shawn Keeper

Title: President

I have authority to bind the corporation

(this space was intentionally left blank)



# MARSHALLZEHR

— REAL ESTATE CAPITAL —

**Lender:**

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 29th day of May, 2017.

**MarshallZehr Group Inc. Fin Trust**

Per: 

Name: Gregory Zehr

Title: Co-CEO & Founder

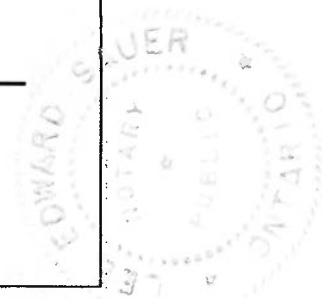
I/We have the authority to bind the Corporation

(this space was intentionally left blank)

**THIS IS EXHIBIT "D" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



*A Commissioner etc.*



LRO # 61 Charge/Mortgage

Received as WC472869 on 2016 06 27 at 16:12

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

yyyy mm dd Page 1 of 7

**Properties**

**PIN** 71505 - 0993 LT **Interest/Estate** Fee Simple

**Description** PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; CITY OF GUELPH

**Address** LANDSDOWN DRIVE  
GUELPH

**Chargor(s)**

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

**Name** DUNSIRE (LANDSDOWN) INC.

**Address for Service** 54 - 5100 South Service Road  
Burlington, ON, L7L 6A5

I, Shawn Keeper, President, have the authority to bind the corporation.

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

**Chargee(s)****Capacity****Share**

**Name** MARSHALLZEHR GROUP INC.

**Address for Service** 465 Phillip Street, Suite 206  
Waterloo, ON, N2L 6C7

**Statements**

Schedule: See Schedules

**Provisions**

**Principal** \$ 16,000,000.00 **Currency** CDN

**Calculation Period** See Schedule

**Balance Due Date** See Schedule

**Interest Rate** 28.0%

**Payments**

**Interest Adjustment Date**

**Payment Date** See Schedule

**First Payment Date**

**Last Payment Date**

**Standard Charge Terms** 200033

**Insurance Amount** full insurable value

**Guarantor**

LRO # 61 Charge/Mortgage

Received as WC472869 on 2016 06 27 at 16:12

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

yyyy mm dd Page 2 of 7

**Signed By**

Karen Grace Larocque	31 Union Street East Waterloo N2J 1B8	acting for Chargor(s)	Signed	2016 06 27
----------------------	---	--------------------------	--------	------------

Tel 519-576-0460

Fax 519-576-3234

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

**Submitted By**

SORBARA, SCHUMACHER, MCCANN LLP	31 Union Street East Waterloo N2J 1B8	2016 06 27
---------------------------------	---	------------

Tel 519-576-0460

Fax 519-576-3234

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.85

Total Paid \$62.85

**File Number**

Chargor Client File Number : 75044

Chargor Client File Number : 75044

**SCHEDULE "A"****1. Security**

This Charge is given as continuing collateral security for the due payment and performance by Dunsire (Landsdown) Inc. (the "Borrower") of all indebtedness, covenants, obligation and agreements of the Borrower set out in the mortgage commitment entered into among the Borrower, MarshallZehr Group Inc. as lender (the "Lender") and Dunsire Inc. and Shawn Keeper as guarantor (the "Guarantor") dated May 9, 2016, as amended from time to time (the "Commitment").

**2. Term and Payments**

Subject to any extension rights of the Borrower, the Charge is for a term of eighteen (18) months ending on December 14, 2017 (the "Term"), as may be extended pursuant to paragraph 6 of this Schedule "A" (the "Maturity Date"). There shall be no regularly scheduled principal repayments and the entire outstanding principal amount shall become due and payable on the Maturity Date.

**3. Interest**

Except as set out below interest shall be paid on all amounts outstanding under this Charge at the rate of 28.0% per annum, calculated and compounded monthly with interest only payments paid monthly.

Provided that, the final month of the Term, as may be extended as provided for herein, shall be the beginning of the "Wrap Up Period" and it shall bear interest at the rate of twenty-four (28.00%) percent per annum, compounded and payable monthly, thereafter.

**4. Partial Discharges**

Provided the Borrower is not in default, the Lender shall provide partial discharges on the closing of a sale transaction, provided the Borrower pays to the Lender the Net Sale Proceeds of each sale. Net Sales Proceeds is defined as the sale price, less deductions for deposits (used in the project financing) and any payments on account of principal required to be made to a permitted prior lender, if any, to obtain a partial discharge of its security, normal sales commissions and legal costs. The Borrower will pay the Lender an administration fee of \$250.00 and its solicitor's reasonable legal fees in respect of the preparation of the discharge for each partial discharge requested by the Borrower.

**5. Prepayment**

Subject to paragraph 4 and this paragraph 5, no prepayment on account of principal shall be permitted except in accordance with the prepayment privileges provided for in the Commitment and this Charge.

Provided the Borrower is not in default under this Charge, the Commitment or any other security issued pursuant thereto, the Borrower upon 60 days prior written notice to the Lender shall have the privilege of prepaying the principal amount of the Charge in whole or in part, without bonus or penalty. No pre-payment shall be in an amount of less than \$100,000.00 without the consent of the Lender.

## 6. Renewal

The Borrower, when not in default under this Charge, the Commitment or any security given pursuant thereto, may extend the Balance Due Date as set forth in the Provisions section of this Charge for a further six (6) months upon notice in writing to the Lender at least sixty days prior to the Maturity Date. The Borrower shall pay an additional Broker Fee of 1.00% of the total amount borrowed at the time of the renewal and shall pay any legal or other costs associated with such renewal. In such case the interest rates as set out in paragraph 3 above shall apply save that the Wrap Up Period interest rate shall then apply during and after the last month of the Term.

## 7. Borrower Covenants

The Borrower covenants as follows and a breach of any covenant shall be a default under the terms of the Commitment and this Charge:

- a) The Borrower shall not assign, transfer or otherwise dispose of the Commitment, the property charged by this Charge (the "Property") and/or any security given pursuant to the Commitment including but not limited to this Charge without the Lender's prior written consent. The Commitment, this Charge and any other security held by the Lender may be assigned by the Lender in whole or in part to another lender(s). Except as hereinafter provided, the Borrower consents to the disclosure by the Lender to any such prospective assignee or participant of all information and documents regarding the Property or Borrower within the possession or control of the Lender.
- b) Subject to paragraph 7(a) above, without the Lender's prior written consent having first been obtained, the Borrower shall not sell, transfer or convey the Property or its rights therein. In the event of a breach by the Borrower of this covenant then, at the sole option of the Lender, all monies outstanding, together with accrued and unpaid interest thereon and any other amounts due under the Commitment, this Charge or any other security held by the Lender, shall become due and payable.
- c) The Borrower shall not commit any waste on the lands.
- d) The Borrower shall not permit any transfer or issuance of shares in the share capital of the Borrower or any change in the officers and directors or a change in the terms or the termination of the shareholders agreement made between the Borrower and each of its shareholders, without the prior written consent of the Lender.
- e) The Borrower shall not further charge, mortgage, encumber or suffer any other encumbrance or lien to be registered upon the property.
- f) In the event of a breach of any of the foregoing covenants, or any other covenants contained herein, by the Borrower then, at the option of the Lender, all monies outstanding, together with all accrued unpaid interest thereon and all other amounts due under this Charge or the Commitment shall become due and payable.

## 8. Events of Default

In addition to the events of default set out in the Standard Charge Terms, each and every of the following events shall constitute an event of default hereunder ("Event of Default"):

- a) The Borrower shall neglect to carry out or observe any of the covenants or conditions contained in this Schedule or the Commitment;
- b) if the Borrower ceases, or threatens to cease carrying on business or an

order shall be made, or an effective resolution be passed by the Borrower for the winding-up or liquidation of the Borrower;

- c) if the Borrower shall become insolvent or shall make a bulk sale of its assets, or shall make a general assignment for the benefit of its creditors or shall file a notice of intention to make or shall make a proposal under bankruptcy legislation, or if a bankruptcy petition shall be filed or presented against the Borrower or if a custodian or a sequestrator or a receiver and manager or any other officer with similar powers shall be appointed of the Borrower its property or any part thereof which is, in the opinion of the Lender, a substantial part thereof;
- d) if any proceedings are commenced in respect of the Borrower under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, or similar legislation of any other jurisdiction;
- e) if an encumbrancer shall lawfully take possession of the Property of the Borrower or any part thereof or if a distress or execution or any similar process be levied or enforced there against;
- f) if the Borrower shall make default in observing or performing any covenant, including any covenant for the payment of money, contained in any deeds or instruments evidencing or securing indebtedness where such default results in the acceleration of the due date of payment of such indebtedness;
- g) if the Borrower shall make default in observing or performing any covenant contained in any document executed in connection with this Charge, including the Commitment Letter;
- h) if there shall be expropriated or taken by power of eminent domain the whole or any part of the Property and the Lender is of the opinion that such expropriation or taking is prejudicial to the Charge; or
- i) if the Borrower ceases to be controlled by the same parties as set out in the Commitment.

#### 9. Remedies Upon Event of Default

- a) Upon the occurrence of an Event of Default, the Lender may declare the principal and interest to be due and payable and the same shall forthwith become immediately due and payable and the Borrower shall forthwith pay to the Lender the principal together with all interest thereon at the rate from time to time in effect pursuant to the provisions of this Charge hereof from the date of the said declaration until payment is received by the Lender, such subsequent interest to be payable at the times and places and in the moneys mentioned herein.
- b) Upon the happening of any Event of Default, the Lender may exercise any rights, powers or remedies available to it at law or in equity or under applicable legislation and, in addition, shall have the following right, powers and remedies:
  - i) to enter upon and take possession of all or any part of the Property;
  - ii) to hold, use, repair, preserve and maintain all or any part of the Property and make such replacements thereof and additions thereto as the Lender shall deem advisable;
  - iii) to exercise all powers necessary to the performance of all functions provided for herein including without limitation the powers to purchase on credit, to borrow money in the Borrower's name or in its own name and to advance its own money to the Borrower at such rates of interest as it may deem reasonable;

- iv) to sell, for cash or credit or part cash and part credit, lease or dispose of or otherwise realize upon all or any part of the Property whether by public auction or by private sale or lease in such manner as the Lender in its absolute discretion may determine, provided that it shall not be incumbent on the Lender to sell, lease or dispose of the said Property but that it shall be lawful for the Lender peaceably to use and possess the same without hindrance or interruption by the Borrower, or any other person or persons whomsoever, and to receive income from such Property and to convey, transfer and assign to a purchaser or purchasers the title to any undertaking, property and assets so sold and provided further that in the case of a sale on credit the Lender shall only be liable to account to the Borrower, any subsequent encumbrancers and others for moneys actually received by the Lender;
  - v) to appoint by instrument in writing any person or persons to be a Receiver of all or any portion of the undertaking, property and assets hereby charged, to fix the Receiver's remuneration and to remove any Receiver so appointed and appoint another or others in his stead;
  - vi) to apply to any court of competent jurisdiction for the appointment of a Receiver of all or any portion of the undertaking, property and assets hereby charged; and
  - vii) to retain the Property in satisfaction of the monies owing hereunder.
- c) In addition, the Lender or Receiver or Receivers may enter upon the applicable premises and lease or sell the whole or any part or parts of the Property. The Borrower agrees that it will be commercially reasonable to sell such part of the Property:
- i) as a whole or in various units;
  - ii) by a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
  - iii) by private sale after the receipt by the Lender of at least two offers from prospective arms-length purchasers.
- d) Notwithstanding the above, the Lender or Receiver or Receivers must use all commercially reasonable efforts to sell the Property for the full market value.
- e) Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.
- f) No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "Receiver" as used in this schedule includes a receiver and manager.
- g) Any Receiver shall have all of the powers of the Lender set out in this Charge and, in addition, shall have the following powers:
- i. to carry on the business of the Borrower and to enter into any compromise or arrangement on behalf of the Borrower; and
  - ii. with the prior written consent of the Lender to borrow money in its name or in the Borrower's name, for the purpose of carrying on the business of the Borrower and for the preservation and realization of the undertaking, property and assets of the Borrower including, without limitation, the right to pay persons having prior charges or encumbrances on the properties on which the Borrower may have hold charges or encumbrances with any amount so borrowed and any interest thereon to be a charge upon the mortgaged property in priority to this Charge;
- h) Any Receiver appointed pursuant to the provisions hereof shall be deemed to be an agent of the Borrower for the purposes of:

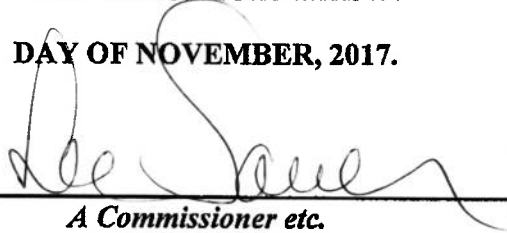


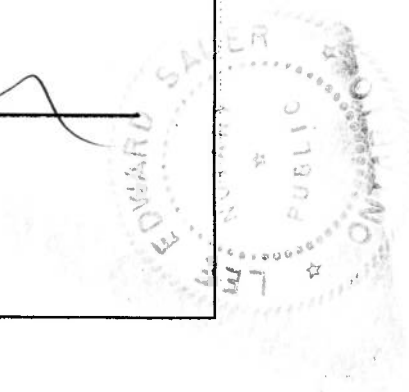
- i. carrying on and managing the business and affairs of the Borrower and
  - ii. establishing liability for all of the acts or omissions of the Receiver while acting in any capacity hereunder and the Lender shall not be liable for such acts or omissions, provided that, without restricting the generality of the foregoing, the Borrower irrevocably authorizes the Lender to give instructions to the Receiver relating to the performance of its duties as set out herein.
- j) In the event of default by the Borrower or any Guarantor in their respective obligations under the Commitment, this Charge or any other security issued in connection with the Commitment to the Lender then, the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of \$5,000.00 for each month or part thereof that the Borrower and/or any Guarantor is in default of its obligations under the Charge, Commitment or other security issued in connection with the Commitment. The said sum or sums are agreed to be liquidated damages in respect of the Lender's administration and management costs and are not intended nor shall they be construed as a penalty. All such sums payable to the Lender shall be added to and deemed to be outstanding principal and interest shall accrue thereon.

#### 10. Paramountcy

This Charge shall be subject to the terms and conditions of the Commitment and in the event of any conflict between the terms hereof and those contained in the Commitment, or the Standard Charge Terms incorporated herein, the Lender in its sole discretion, shall determine which provisions shall take precedence and prevail. The Commitment shall not be deemed to merge with the terms of this Charge but shall survive the delivery and registration of this Charge and any default under the terms of the Commitment shall be and be deemed a default under the terms of this Charge and a default under the terms of this Charge shall be deemed a default under the terms of the Commitment.

**THIS IS EXHIBIT "E" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*



LRO # 81 Notice Of Assignment Of Rents-General  
 The applicant(s) hereby applies to the Land Registrar.

Registered as WC472870 on 2016 06 27 at 16:12  
 yyyy mm dd Page 1 of 6

**Properties**

**PIN** 71505 - 0993 LT  
**Description** PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; CITY OF GUELPH  
**Address** LANDSDOWN DRIVE  
 GUELPH

**Applicant(s)**

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

**Name** DUNSIRE (LANDSDOWN) INC.  
**Address for Service** 54 - 5100 South Service Road  
 Burlington, ON, L7L 6A5

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

Party To(s)	Capacity	Share
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<b>Name</b>	MARSHALLZEHR GROUP INC.
<b>Address for Service</b>	465 Phillip Street, Suite 206, Waterloo, ON, N2L 6C7

**Statements**

The applicant applies for the entry of a notice of general assignment of rents.  
 This notice may be deleted by the Land Registrar when the registered instrument, WC472869 registered on 2016/06/27 to which this notice relates is deleted  
 Schedule: See Schedules

**Signed By**

Karen Grace Larocque	31 Union Street East Waterloo N2J 1B8	acting for Applicant(s)	Signed	2016 06 27
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Tel 519-576-0480  
 Fax 519-576-3234

I have the authority to sign and register the document on behalf of all parties to the document.

Karen Grace Larocque	31 Union Street East Waterloo N2J 1B8	acting for Party To (s)	Signed	2016 06 27
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Tel 519-576-0480  
 Fax 519-576-3234

I have the authority to sign and register the document on behalf of all parties to the document.

**Submitted By**

SORBARA, SCHUMACHER, MCCANN LLP	31 Union Street East Waterloo N2J 1B8			2016 06 27
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Tel 519-576-0480  
 Fax 519-576-3234

**Fees/Taxes/Payment**

Statutory Registration Fee	\$62.85
Total Paid	\$62.85

LRO # 61 Notice Of Assignment Of Rents-General  
The applicant(s) hereby applies to the Land Registrar.

Registered as WC472570 on 2018 08 27 at 16:12  
yyyy mm dd Page 2 of 6

**File Number**

Applicant Client File Number : 75044  
Party To Client File Number : 75044

GENERAL ASSIGNMENT OF LEASES AND RENTS

THIS INDENTURE dated this 27<sup>th</sup> day of June, 2016

BETWEEN:

DUNSIRE (LANDSDOWN) INC., with an address for service at 54-5100 South Service Road,  
Burlington, ON, L7L 6A5

(hereinafter called the "Borrower"),

OF THE FIRST PART;

-and-

MARSHALLZEHR GROUP INC., having a head office at 465 Phillip Street, Unit 206,  
Waterloo, Ontario, N2L 6C7

(hereinafter called "Assignee"),

OF THE SECOND PART.

WHEREAS by a certain charge (the "Charge") dated the 27<sup>th</sup> day of June, 2016 in the face amount of \$16,000,000.00, which Charge was registered in the Land Registry Office for the Land Registry Division of Wellington (No. 61) as the Instrument Number set out in the Statements section on the attached Notice of Assignment of Rents - General, the Borrower granted, mortgaged and charged to Assignee the lands and premises described therein, including those described in Schedule "A" annexed hereto (the said lands and premises together with the buildings, improvements and fixtures situate thereon being hereinafter referred to as the "Premises") to secure the payment to Assignee of the principal of, interest on and all other moneys which may become owing on or pursuant to the Charge (wherever in this Indenture reference is made to the Charge, it shall be deemed to include any renewals or extensions thereof and any Charges or mortgages taken in substitution therefor either in whole or in part); and

WHEREAS as security for the due performance by the Borrower of all the covenants contained in the Charge, the Borrower has agreed to assign, transfer, and set over unto Assignee all the Borrower's right, title and interest in any and all leases or agreements to lease (the "Leases"), now or hereafter existing, of any and all portions of the Premises and all rents, charges and other monies (the "Rents") now due and payable or hereafter to become due and payable under the Leases.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises and other good and valuable consideration the Borrower represents, covenants and agrees with Assignee as follows:

1. **Assignment.** The Borrower hereby irrevocably assigns, transfers and sets over unto Assignee, subject to no prior claim or assignment, the Leases and the Rents and all benefits and advantages to be derived therefrom, including any guarantees given to the Borrower in respect of the Leases and Rents, to hold and receive the same unto Assignee, its successors and assigns, with full power and authority to demand, collect, sue for, recover, receive receipts for the Rents and to enforce payment of the same in the name of the Borrower.
2. **Where Borrower not in Default.** Until the Borrower defaults under the covenants, terms and conditions contained in this Indenture or an event of default occurs under the Charge the Borrower may demand, receive, collect and enjoy the Rents only as the same fall due and payable and not in advance, but nothing shall permit or authorize the Borrower to collect or receive Rents contrary to the covenants contained herein.
3. **Remedies.** The Borrower, in the event of a default hereunder or under the Charge, hereby authorizes Assignee, at its option and in addition to any other rights it may have hereunder or under any other agreement or at common law or in equity, to deliver to any or all of the tenants, licensees or occupiers of the Premises notices to pay all Rents to Assignee and to collect such Rents and, in addition, enter upon the Premises by its officers, agents or employees for the purpose of collecting the Rents and/or operating and maintaining the Premises. The Borrower hereby authorizes Assignee generally to perform all such acts, including any acts by way of enforcement of the covenants and exercise of the rights contained in the Leases or otherwise, as may in the opinion of Assignee be necessary or desirable for the proper operation and maintenance of the Premises, which acts may be performed in the name of the Borrower or in the name of Assignee as in the absolute discretion of Assignee may seem proper or advisable. Assignee shall, after deduction of all collection charges and all expenses, which Assignee in its absolute discretion shall deem advisable to pay for the proper operation and maintenance of the Premises, credit the remainder of the moneys which it may receive in connection with the Premises on account of any amount or amounts due to Assignee from the Borrower in such manner as Assignee shall in its sole discretion determine. Notwithstanding anything herein, Assignee shall be liable to account only for such monies as shall actually come into its hands.
4. **Liability of Assignee.** In the exercise of the powers herein granted to Assignee, no liability shall be asserted or enforced against Assignee, all such liability being hereby expressly waived and released by the Borrower. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases, or under or by reason of this assignment, and the Borrower shall and does hereby agree to indemnify Assignee for and to hold it harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of agreements contained in the Leases. Should Assignee incur any such liability, loss or damage under the Leases or by reason of this assignment, or the defence of any such claims or demands, the amount thereof, including costs, expenses and all legal fees and disbursements, shall be secured hereby, and the Borrower shall reimburse Assignee therefore immediately upon demand.
5. **Receipts by Assignee.** The Borrower hereby agrees that all receipts given by Assignee to any lessee under the Leases on account of any Rents paid to Assignee in accordance with the terms of this Indenture shall constitute a good and valid discharge therefor to each lessee.

- 2 -

6. Not Mortgagee in Possession. Nothing herein contained shall be deemed to have the effect of making Assignee responsible for the collection of the Rents or any part thereof for the performance of any covenants, terms or conditions either by the lessor or any lessee contained in the Leases and Assignee shall not by virtue of this Indenture be deemed a mortgagee in possession of the Premises.

7. Perform Covenants of Landlord. The Borrower shall at all times perform all of the lessor's covenants and obligations contained in the Leases and any failure on the part of the Borrower thereunder shall constitute a default hereunder and shall be deemed to be default under the Charge. If so requested by Assignee, the Borrower will enforce the Leases and all remedies available to the Borrower against the lessees, in case of default under the Leases, or any of them, by the lessees.

8. Valid Leases. The Borrower hereby covenants with Assignee notwithstanding any act of the Borrower that the leases provided to the Assignee, if any, are good, valid and subsisting leases and that the Borrower now has good right, full power and absolute authority to assign each such lease according to the true intent and meaning of this Indenture.

9. No Prepayment of Rents. Except in the ordinary course of business and subject to the commitment, the Borrower will not accept payment from any lessee in advance and will not cause payment to be made in advance on its direction for a period longer than provided in the respective lease and breach of this covenant shall be deemed to be default under the Charge if not rectified within 30 days after receipt of written notice from the Assignee.

10. Covenants. Subject to the terms of the commitment letter dated May 25, 2016, as amended from time to time (the "Commitment") between inter alia the Borrower and the Assignee, the Borrower shall not without the written approval of Assignee first had and obtained, which approval shall not be unreasonably withheld or delayed:

- (a) do or omit to do any act having the effect of terminating, cancelling or accepting the surrender of the Leases or any of them;
- (b) amend, alter or vary the terms and conditions of the Leases or any of them;
- (c) waive, reduce or abate any of its rights or remedies under the Leases or the obligations of any other parties thereunder or in respect thereof;
- (d) permit any material default or breach of covenant by any lessee under the Leases; and
- (e) enter into any Leases for any part of the Premises that are not bona fide leases with lessees with whom the Borrower deals at arm's length. The terms of any future leases must be approved by Assignee prior to execution (such consent not to be unreasonably withheld or delayed) and shall be at rental rates and terms consistent with comparable space in the area of the Premises.

11. Waiver of Covenants. Assignee may waive any default or breach of covenant and shall not be bound to serve any notice upon any lessee under the Leases upon the happening of any default or breach of covenant, but any such waiver shall not extend to any subsequent default or breach of covenant.


12. Further Assurances. The Borrower covenants and agrees from time to time and at all times hereafter at the request of Assignee to execute and deliver at the expense of the Borrower such further assurances for better and more perfectly assigning to Assignee any Leases whether presently existing or hereafter created and the Rents payable thereunder in the manner aforesaid as Assignee may require and to execute, deliver and register, at the expense of the Borrower, all such documents as may be required to preserve, perfect and protect the security constituted hereby including all such renewals as may be required by relevant legislation, including the *Personal Property Security Act*.

13. Re-assignment. The assignment, transfer and setting over herein provided shall not be revoked or rescinded by any variation of the terms of the Charge or any extension of time for payment or otherwise but shall remain in full force and effect until the Borrower shall have performed all of its obligations under the Charge. A discharge of the Charge executed by Assignee shall operate as a re-assignment of the Leases and Rents without the need for any further conveyance, but Assignee shall, at the request and at the expense of the Borrower, execute and deliver a full re-assignment to the Borrower of the Leases and Rents and its all right, title and interest therein.

14. Binding Effect and Governing Law. This Indenture shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Indenture shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the Borrower has executed this Indenture.

DUNSIRE (LANDSDOWN) INC.

Per:   
Name: Shawn Keeper  
Title: President

*I have authority to bind the Corporation*

**SCHEDULE "A"**  
**DESCRIPTION OF PROPERTY**

**Location of Collateral:**

**Part Lot 13, Plan 488 being Part 3 on Ref. Plan 61R20544;**

**Lot 10, Plan 488 being Part 4 on Ref. Plan 61R-20544;**

**Part Lot 6, Plan 488 being Part 1 on Ref. Plan 61R-20544;**

**Part Lot 9, Plan 488 being Part 2 on Ref. Plan 61R-20544;**

**Together with an Easement over common elements Condo Plan No. 169 as in WC458323;**

**City of Guelph, County of Wellington**

**Municipally known as 24, 26, 28 & 32 Landsdown Drive, Guelph, ON**

**(known as the "Premises")**

**SCHEDULE "B"**  
**DETAILS OF LEASE**

**Lessor:**

**Lessee:**

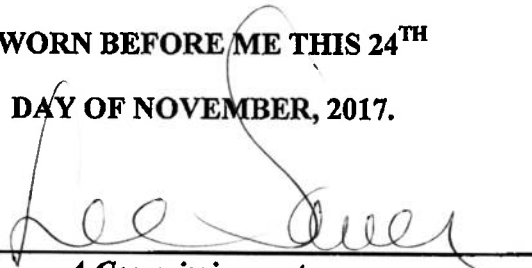
**Property:**

**Term:**

**Expiry:**



**THIS IS EXHIBIT "F" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



*A Commissioner etc.*



**MARSHALLZEHR GROUP INC.  
SECURITY AGREEMENT**

**To: MarshallZehr Group Inc. ("MZG")**  
**465 Phillip Street, Suite 206**  
**Waterloo, Ontario, N2L 6C7**  
**Facsimile No. (519-342-0851)**

**From: Dunsire (Landsdown) Inc. ("Debtor")**  
**54 - 5100 South Service Road**  
**Burlington, ON, L7L 6A5**  
**Fax: Fax: 1-888-540-1172**

1. **General Security Interest.** As security for the payment and performance of all present and future indebtedness, liabilities and obligations of the Debtor to MZG, whether direct or indirect, absolute or contingent, liquidated or unliquidated, as principal or as surety, alone or with others, of whatsoever nature or kind, in any currency or otherwise, under or in respect of agreements or dealings between the Debtor and MZG or agreements or dealings between the Debtor and others by which MZG may be or become in any manner whatsoever a creditor of the Debtor including, without limitation, Obligations under (i) any and all letter agreements and offers to finance/or offers to lease (the "Offers of Finance") entered into by the Debtor and MZG from time to time, (ii) any promissory notes, guarantees or indemnities executed by the Debtor in favour of MZG, and (iii) this Security Agreement (all such indebtedness, liabilities, obligations, expenditures, costs and expenses are hereinafter collectively referred to as the "Obligations"), the Debtor hereby assigns, charges, pledges, mortgages and grants to MZG a security interest in all of the undertaking, property and assets of the Debtor, both real and personal, immovable and moveable, tangible and intangible, legal and equitable, of whatsoever nature and kind situate on and used in connection with the Real Property described in Schedule "A" hereto, now owned or hereafter acquired by or on behalf of the Debtor or in respect of which the Debtor now or hereafter has any right, title or interest (all of which is hereinafter called the "Collateral"), including without limitation:

- (a) **Intangibles** - all intangible property including without limitation book debts and accounts, all contractual rights and insurance claims, licences, computer software, warranties, ownership certificates, patents, trademarks, trade names, goodwill, copyrights and other industrial property of the Debtor;
- (b) **Books & Records** - all of the Debtor's, manuals, publications, letters, deeds, documents, writings, papers, invoices, books of account and other books relating to or being records of debts, chattel paper or documents of title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (c) **Equipment** - all of the Debtor's tools, machinery, equipment, apparatus, furniture, plants, fixtures, vehicles and other tangible personal property, other than Inventory (as defined below), (collectively, the "Equipment") including, without limitation, the Equipment described in Schedule "A" hereto;
- (d) **Inventory** - all of the Debtor's tangible personal property held for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process, or materials used or consumed in a business or profession (collectively, the "Inventory");
- (e) **Real Property** - all of the Debtor's real and immovable property, both freehold and leasehold, now or hereafter owned, acquired or occupied by the Debtor, together with all buildings, erections, improvements and fixtures situate upon or used in connection therewith, including any lease, verbal or written or any agreement therefor, (collectively, the "Real Property") provided, however, the last day of any term of any such lease, verbal or written, or any agreement therefor now held or hereafter held by the Debtor, is excepted out of the Real Property charged by this Security Agreement, but should such charge become enforceable the Debtor shall thereafter stand possessed of the last day of such leasehold interest upon trust to assign and dispose thereof as MZG may direct;
- (f) **Other Property** - the Debtor's undertaking and all of the Debtor's other property and assets including, without limitation, uncalled capital, judgments, rights, franchises, chattel paper, documents of title, goods, instruments, money and securities (as those

terms are defined in the Personal Property Security Act governing this Security Agreement); and

- (g) **Proceeds** - all of the Debtor's property in any form derived directly or indirectly from any use or dealing with the Collateral or that indemnifies or compensates for loss of or damage to the Collateral (collectively, the "Proceeds").

2. **Attachment.** The security interest given hereunder will attach immediately upon the execution of this Security Agreement. The security interest granted hereby has not been postponed and will attach to any particular Collateral as soon as the Debtor has rights in such Collateral.

3. **Representations and Warranties of the Debtor.** The Debtor represents and warrants to MZG as follows:

- (a) The Debtor now owns or will own the Collateral, as the case may be, free and clear of any prior lien, security interest or encumbrance save and except for the security interest granted hereby and for those encumbrances as shown in Schedule "B" which have been validly perfected ("Permitted Encumbrances");
- (b) This Security Agreement has been properly authorized and constitutes a legally valid and binding obligation of the Debtor;
- (c) The authorization, creation, execution and delivery of this Security Agreement and compliance with its terms
- (i) does not and shall not contravene any applicable law, regulation, rule, order, judgment or injunction or the charter documents, by-laws or any unanimous shareholders' agreement of the Debtor; and
- (ii) does not and shall not result in a breach of or a default under any indenture, instrument, lease, agreement or undertaking to which the Debtor is a party or by which it or the Collateral is or may become bound.

4. **General Covenants.** The Debtor hereby declares, covenants and agrees that it:

- (a) **Pay Costs** - shall pay all costs and expenses (including legal fees and disbursements on a solicitor and own client basis) of MZG incidental to or which in any way relates to this Security Agreement or its enforcement, including (i) the preparation, execution and filing of this Security Agreement and any instruments postponing, discharging, amending, extending or supplemental to this Security Agreement or any security required by any Offer of Finance ("MZG's Security"); (ii) perfecting and keeping perfected MZG's Security; (iii) maintaining the intended priority of MZG's Security on all or any part of the Collateral; (iv) taking, recovering or possessing the Collateral; (v) taking any actions or other proceedings to enforce the remedies provided herein or otherwise in relation to this Security Agreement or the Collateral, or by reason of a default under MZG's Security or the Offer of Finance or the non-payment of the moneys hereby secured; (vi) taking proceedings, giving notices and giving responses required under any applicable law concerning or relating to MZG's Security, including compliance with the provisions of applicable bankruptcy, insolvency, personal property security and mortgage enforcement legislation; (vii) responding to or participating in proceedings in the nature of those described in Sections 14(d), (e) and (f) hereof; and (viii) obtaining the advice of counsel and other advisors in relation to the foregoing;

all such costs and expenses and other monies payable hereunder, together with interest at the highest rate chargeable by MZG from time to time on the Obligations, shall form part of the Obligations, shall be payable by the Debtor on demand and shall be secured hereby;

- (b) **To Pay Rents and Taxes** - shall pay all rents, taxes and assessments lawfully imposed upon the Real Property where the Collateral is located or any part thereof when the same become due and payable, and shall show to MZG on request receipts for such payment;
- (c) **To Maintain Corporate Existence and Security** - shall maintain its corporate existence, shall maintain the security hereby created as valid, effective and perfected security at all times, shall observe and perform all of its obligations under leases, licences

and other agreements to which it is a party so as to preserve and protect the Collateral and its value;

- (d) **Not to Sell** - shall not, except for Inventory sold in the ordinary course of business and except as otherwise permitted hereunder, remove, destroy, lease, sell or otherwise dispose or part with possession of any of the Collateral; provided that the Debtor may sell or otherwise dispose of furniture, machinery, equipment, vehicles and accessories which have become worn out or damaged or otherwise unsuitable for their purposes on condition that it shall substitute therefor, subject to the lien hereof and free from prior liens, security interests or encumbrances, property of equal value so that the security hereby constituted shall not thereby be in any way reduced or impaired;
- (e) **No Other Liens** - shall not create, assume or suffer to exist any charge, lien, federal or provincial government priority claim arising pursuant to statute including any deemed trust, security interest or encumbrance upon any Collateral other than Permitted Encumbrances. No provision hereof shall be construed as a subordination or postponement of the security interest created hereunder to or in favour of any other charge, lien, security interest or encumbrance, whether or not it is a Permitted Encumbrance, except that the Debtor may give security to its bankers on its Inventory or under assignments of its accounts receivable (except to the extent that such accounts receivable represent proceeds of the sale or disposition of Equipment or Real Property) and such security, if validly perfected, shall rank prior to the interest granted hereby on such Inventory and accounts receivable without further action by MZG;
- (f) **To Hold Proceeds of Unauthorized Sale in Trust** - in the event the Collateral or any part thereof is sold or disposed of prior to the full discharge of this Security Agreement by MZG, in any manner not authorized by this Security Agreement, shall hold all proceeds of such sale or disposition received by the Debtor as trustee for MZG until the Debtor has been fully released from this Security Agreement by MZG;
- (g) **To Insure** - shall keep insured the Collateral to its full insurable value or in such amounts as MZG may reasonably require against all risks, with insurers approved by MZG and will pay all premiums necessary for such purposes as the same shall become due; the proceeds under all policies of insurance are hereby assigned to MZG subject to Permitted Encumbrances as further security hereunder and shall be payable to MZG as its interest may appear and contain such mortgage clauses as MZG may require; such policies or contracts shall be in terms reasonably satisfactory to MZG and at the request of MZG shall be delivered to and held by MZG subject to the rights of the holders of Permitted Encumbrances;
- (h) **To Furnish Proofs** - shall forthwith on the happening of any loss or damage furnish at its expense all necessary proofs and do all necessary acts to enable MZG to obtain payment of the insurance moneys subject to the rights of the holders of Permitted Encumbrances;
- (i) **Inspection by MZG** - shall allow any employees or third parties retained by MZG at any reasonable time to enter the premises of the Debtor or others to inspect the Collateral and to inspect the books and records of the Debtor relating to the Collateral and make extracts therefrom, and shall permit MZG prompt access to such other persons, as MZG may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Collateral or the books and records of the Debtor relating to the Collateral, provided that any information so obtained shall be kept confidential, save as required by MZG in exercising its rights hereunder or pursuant to any applicable law or court order. The Debtor shall pay all costs and expenses of third parties (including legal fees and disbursements on a solicitor and own client basis) retained by MZG for purposes of inspection under this Section 4(i);
- (j) **Use and Maintenance** - shall cause the Equipment and Inventory to be operated in accordance with any applicable manufacturer's manuals or instructions, by competent and duly qualified personnel. Any and all additions and accessions to and parts and replacements for the Equipment or Inventory shall immediately become subject to the security interest created hereby. The Debtor shall not change the intended use of the

Collateral without the prior written consent of MZG which will not be unreasonably withheld or delayed;

- (k) **Location of Collateral** - shall keep the Collateral at the locations set forth in Schedule "A" hereto, except for goods in transit to such locations, or Inventory on lease or consignment, or with the prior written consent of MZG;
- (l) **No Affixation** - shall not permit the Collateral to be attached to or affixed to real or other personal property without the prior written consent of MZG which will not be unreasonably withheld or delayed. The Debtor shall obtain and deliver to MZG such waivers as MZG may reasonably request from any owner, landlord or mortgagee of premises on which the Collateral is located or to which the Collateral may become affixed or attached. The Debtor shall promptly do, execute and deliver all such further acts, documents, agreements or assurances as MZG may reasonably require for giving effect to the intent of this Security Agreement and shall register such notice or documents against the title to such premises as MZG may reasonably request to protect its interests hereunder and shall maintain plates or marks showing the name of MZG upon the Collateral as requested;
- (m) **Not to Remove** - prior to moving any of the Collateral from any location indicated in Schedule "A" hereto, or to leasehold property, the Debtor shall effect such further registrations and obtain such other consents and give such other security, at the sole cost and expense of the Debtor, as may be required or desirable to protect or preserve the security hereby created and to maintain the priority intended to be granted to MZG hereunder as against all others including landlords, and the Debtor shall forthwith notify MZG of the intended removal and the action proposed to be taken;
- (n) **Compliance with Environmental Laws**
  - (i) shall conduct and maintain its business, operations, Real Property and the Collateral so as to comply in all respects with all applicable Environmental Laws, including obtaining all necessary licenses, permits, consents and approvals required to own or operate the Collateral and the business carried out on, at or from the Real Property;
  - (ii) except as specifically permitted by MZG in writing, it shall not permit or suffer to exist, Contaminants or dangerous or potentially dangerous conditions in, on or below the Real Property including, without limitation, any polychlorinated biphenyls, radio-active substances, underground storage tanks, asbestos or urea formaldehyde foam insulation;
  - (iii) has no knowledge of the existence of Contaminants or dangerous or potentially dangerous conditions at, on or under the Real Property or any properties in the vicinity of the Real Property which could affect the Real Property or the market value thereof or in levels that exceed the standards in Environmental Laws;
  - (iv) has no knowledge of the Real Property, or any portion thereof, having been used for the disposal of waste;
  - (v) has not given or received, nor does it have an obligation to give, any notice, claim, communication or information regarding any past, present, planned or threatened treatment, storage, disposal, presence, release or spill of any Contaminant at, on, under or from the Real Property or any property in the vicinity of the Real Property, including any notice pursuant to any Environmental Laws or any environmental report or audit. The Debtor shall notify MZG promptly and in reasonable detail upon receipt of any such claim, notice, communication or information or if the Debtor becomes aware of any violation or potential violation of the Debtor of any Environmental Laws and shall describe therein the action which the Debtor intends to take with respect to such matter;

- (vi) shall at the Debtor's expense establish and maintain a system to assure and monitor continued compliance with, and to prevent the contravention of, Environmental Laws, which system shall include periodic reviews of such compliance system and the Debtor shall provide an annual report to MZG regarding the Debtor's environmental performance, and the effectiveness of such system;
- (vii) shall promptly advise MZG in writing of any material adverse change in the environmental or other legal requirements affecting the Debtor or the Collateral or the Real Property upon the Debtor becoming aware of any such change, and the Debtor shall provide MZG with a copy of any of the orders, by-laws, agreements or other documents pursuant to which any such change is effected or documented;
- (viii) shall at the Debtor's expense promptly take or cause to be taken any and all necessary remedial or clean-up action in response to the presence, storage, use, disposal, transportation, release or discharge of any Contaminant in, on, under or about any of the Real Property, or used by the Debtor, in compliance with all material laws including, without limitation, Environmental Laws, and in accordance with the orders and directions of all applicable federal, state, provincial, municipal and local governmental authorities;
- (ix) shall deliver to MZG a true and complete copy of all environmental audits, evaluations, assessments, studies or tests relating to the Real Property, the Collateral or the Debtor now in its possession or control or forthwith after the completion thereof, or upon such materials coming into the Debtor's possession or control;
- (x) shall at the Debtor's expense, if reasonably requested by MZG in writing, retain an environmental consultant acceptable to MZG, acting reasonably, to undertake environmental tests and to prepare a report or audit with respect to the Real Property and deliver same to MZG for its review; and
- (xi) shall indemnify and save harmless MZG, its officers, directors, employees, agents and shareholders from and against all losses, liabilities, damages or costs (including legal fees and disbursement on a solicitor and own client basis) suffered including, without limitation, the cost or expense of any environmental investigation, the preparation of any environmental or similar report, and the costs of any remediation arising from or relating to any breach of the foregoing covenants of this Section 4(n), any breach by the Debtor or any other person now or hereafter having an interest in the Collateral or the Real Property which is asserted or claimed against MZG; the presence, in any form, of any Contaminant on or under the Real Property, or the discharge, release, spill or disposal of any contaminant by the Debtor, which is asserted or claimed against any of these indemnified persons. This indemnity shall survive the payment in full of all amounts secured hereby and the discharge of this Security Agreement. MZG shall hold the benefit of this indemnity in trust for those indemnified persons who are not parties to this Security Agreement.
- (xii) For the purposes hereof:
  - a. "Contaminant" means any solid, liquid, gas, odour, heat, sound, smoke, waste, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause: (i) impairment of the quality of the natural environment for any use that can be made of it, (ii) injury or damage to property or to plant or animal life, (iii) harm or material discomfort to any person, (iv) an adverse affect on the health of any person, (v) impairment of the safety of any person, (vi) rendering any property or plant or animal life unfit for use by man, (vii) loss of enjoyment of normal use of property, or (viii) interference with the normal conduct of business, and includes any pollutant or contaminant as defined in any applicable Environmental Laws and any

biological, chemical or physical agent which is regulated, prohibited, restricted or controlled; and

- b. "Environmental Laws" means the common law and all applicable federal, provincial, local, municipal, governmental or quasi-governmental laws, rules, regulations, policies, guidelines, licences, orders, permits, decisions or requirements concerning Contaminants, occupational or public health and safety or the environment and any other order, injunction, judgment, declaration, notice or demand issued thereunder.
- (o) **Financial Statements** - shall deliver to MZG, in accordance with the terms of any Offers of Finance, its interim and annual financial statements, all of which financial statements shall be signed by an authorized officer of the Debtor and prepared in accordance with generally accepted accounting principles. The Debtor shall at the same time deliver to MZG copies of all management reports prepared by the accountants or auditors of the Debtor together with any other statements stipulated in any Offer of Finance;
- (p) **Offers of Finance** - shall comply with all provisions of the Offers of Finance, including executing and delivering all such documents as may be necessary to maintain in force the pre-authorized payment system specified in any Offer of Finance.

5. **Collection of Debts.** Upon the occurrence of an event of default hereunder, MZG may, without exercising any of its other rights or remedies hereunder, give notice of the security interest in, and the assignment to, MZG of any debt or liability forming part of the Collateral and may direct such person to make all payments on account of any such debt or liability to MZG.

6. **Waiver of Covenants.** MZG may waive in writing any breach by the Debtor of any of the provisions contained in this Security Agreement or any default by the Debtor in the observance or performance of any covenant or condition required to be observed or performed by the Debtor hereunder, provided that no such waiver or any other act, failure to act or omission by MZG shall extend to or be taken in any manner to affect any subsequent breach or default or the rights of MZG resulting therefrom. All rights and remedies of MZG granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.

7. **Performance of Covenants by MZG.** If the Debtor shall fail to perform any covenant on its part herein contained, MZG may in its absolute discretion perform any such covenant capable of being performed by it, but MZG shall be under no obligation to do so. If any such covenant requires the payment of money or if the Collateral or any part thereof shall become subject to any charge, lien, security interest or encumbrance ranking in priority to the security interest created hereby, MZG may in its absolute discretion make such payment and/or pay or discharge such charge, lien, security interest or encumbrance, but MZG shall be under no obligation to do so. All sums so paid by MZG, together with interest at the highest rate chargeable by MZG from time to time on the Obligations, shall be payable by the Debtor on demand and shall constitute a charge upon the Collateral. No such performance or payment shall relieve the Debtor from any default hereunder or any consequences of such default.

8. **Appointment of Monitor.** If in the opinion of MZG, acting reasonably, a material adverse change has occurred in the financial condition of the Debtor, or if MZG in good faith believes that the ability of the Debtor to pay any of its obligations to MZG or to perform any other covenant contained herein has become impaired or if an event of default has occurred, MZG may by written notice to the Debtor, appoint a monitor (the "Monitor") to investigate any or a particular aspect of the Collateral, the Debtor or its business and affairs for the purpose of reporting to MZG. The Debtor shall give the Monitor its full co-operation, including full access to facilities, assets and records of the Debtor and to its creditors, customers, contractors, officers, directors, employees, auditors, legal counsel and agents. The Monitor shall have no responsibility for the affairs of the Debtor nor shall it participate in the management of the Debtor's affairs and shall incur no liability in respect thereof or otherwise in connection with the Debtor, its business and affairs or the Collateral. The Monitor shall act solely on behalf of MZG and shall have no contractual relationship with the Debtor as a consultant or otherwise. The appointment of a Monitor shall not be regarded as an act of enforcement of this Security Agreement. All reasonable fees and expenses of the Monitor (including legal fees and disbursements on a solicitor and own client basis) shall be paid by the Debtor upon submission to it of a written invoice therefor. MZG may at its option upon the occurrence of an event of default appoint or seek to have appointed the

Monitor as receiver, receiver and manager, liquidator, or trustee in bankruptcy of the Debtor or the Collateral or any part thereof.

9. **Application of Insurance Proceeds.** Any insurance moneys received by MZG may at the option of MZG be applied to rebuilding or repairing the Collateral, or be paid to the Debtor, or any such moneys may be applied in the sole discretion of MZG, in whole or in part, to the repayment of the Obligations or any part thereof whether then due or not, with any partial payments to be credited against principal instalments payable thereunder in inverse order of their maturity dates.

10. **No Merger or Novation.** The taking of any judgment or the exercise of any power of seizure or sale shall not operate to extinguish the liability of the Debtor to perform its obligations hereunder or to pay the Obligations hereby secured, shall not operate as a merger of any covenant herein contained or affect the right of MZG to interest in effect from time to time hereunder and the acceptance of any payment or other security shall not constitute or create any novation. The execution and delivery of this Security Agreement or of any instruments or documents supplemental hereto shall not operate as a merger of any representation, warranty, term, condition or other provision contained in any other obligation or indebtedness of the Debtor to MZG or under any Offer of Finance.

11. **Security in Addition.** The security hereby constituted is in addition to any other security now or hereafter held by MZG. The taking of any action or proceedings or refraining from so doing, or any other dealings with any other security for the moneys secured hereby, shall not release or affect the security created hereby.

12. **Partial Discharges.** MZG may in its sole discretion grant partial discharges or releases of security in respect of any of the Collateral on such terms and conditions as it shall deem fit and no such partial discharges or releases shall affect the remainder of the security created hereby nor shall it alter the obligations of the Debtor under the Obligations or hereunder.

13. **Notice of Change.** The Debtor shall immediately notify MZG in writing of any proposed change and any actual change in the Debtor's name or address, the location of, and details of any loss or damage to, the Collateral, and the details of any claims or litigation affecting the Debtor or Collateral. The Debtor agrees to execute at the Debtor's expense, any instruments, notices or other documents required to effect any registration which MZG deems necessary to protect its interest in the Collateral in any jurisdiction.

14. **Events of Default.** Each of the following events shall constitute an "event of default":

- (a) the Debtor does not pay any of the Obligations when due;
- (b) the Debtor ceases or threatens to cease to carry on its business or defaults in the performance or observance of any of the covenants in Sections 4(d), (e), (i) or (m) or Section 8 hereof;
- (c) if the Debtor defaults in the performance or observance of any condition or covenant contained in this Security Agreement, other than as referred to elsewhere in this Section 14, in any other security previously, now or hereafter granted to MZG by the Debtor or in any other instrument or agreement (including any offer of finance) which the Debtor and MZG are parties to (whether alone or with others) or issued by either the Debtor or MZG to the other, and such default continues for ten (10) days after written notice thereof to the Debtor by MZG;
- (d) the Debtor becomes bankrupt or insolvent or commits an act of bankruptcy, or any proceeding is commenced against, by or affecting the Debtor:
  - (i) seeking to adjudicate it a bankrupt or insolvent;
  - (ii) seeking liquidation, dissolution, winding up, restructuring, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws (including, without limitation, any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation or organization); or



- (iii) seeking appointment of a receiver, receiver and manager, liquidator, trustee, agent, custodian or other similar official for it or for any part of its properties and assets, including the Collateral or any part thereof;
- (e) any order or judgment is issued by a court granting any of the relief referred to in Section 14(d) hereof;
- (f) if an encumbrancer or secured creditor shall appoint a receiver or agent or other similar official over any part of the Collateral, or take possession of any part of the Collateral or if any execution, distress or other process of any court becomes enforceable against any Collateral, or a distress or like process is levied upon any of such Collateral;
- (g) if the Debtor takes any proceedings for its dissolution, liquidation or amalgamation with another company or if the legal or corporate existence of the Debtor shall be terminated by expiration, forfeiture or otherwise;
- (h) if there is any material misrepresentation or misstatement contained in any certificate or document delivered by an officer or director of the Debtor in connection with any financing provided by MZG;
- (i) if any representation, warranty or statement made on behalf of the Debtor in any Offer of Finance or any Instrument made pursuant thereto is or becomes untrue in any material respect;
- (j) if any guarantor of the obligations of the Debtor to MZG defaults in the performance of any condition or covenant in favour of MZG or if any party to an instrument or agreement supplemental or collateral to this Security Agreement or the financing provided for herein defaults thereunder, and such default continues for ten (10) days after written notice thereof to the Debtor by MZG;
- (k) if MZG, in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance of any of the Obligations is or is about to be impaired or that the Collateral or any part thereof is or is about to be placed in jeopardy;
- (l) if voting control of the Debtor as provided for in any Offer of Finance or as subsequently effected with MZG's prior written consent, shall change without the prior written consent of MZG; or
- (m) if a default occurs under any agreement, promissory note, debt obligation, guarantee or otherwise now or hereafter granted to any other bank or financial institution by the Debtor.

15. **Enforcement.** Upon the happening of any event of default, the security granted herein shall become immediately enforceable and MZG may at its option declare this Security Agreement to be in default and may exercise any rights, powers or remedies available to MZG at law or in equity or under the Personal Property Security Act or other applicable legislation and, in addition, may exercise one or more of the following rights, powers or remedies, which rights, powers and remedies are cumulative:

- (a) to declare the full amount of the Obligations to be immediately due and payable;
- (b) to terminate the Debtor's right to possession of the Collateral, cause the Debtor to immediately assemble and deliver the Collateral at such place or places as may be specified by MZG, and enter upon the premises where the Collateral is located and take immediate possession thereof, whether it is affixed to the realty or not, and remove the Collateral without liability to MZG for or by reason of such entry or taking of possession, whether for damage to property caused by taking such or otherwise;
- (c) to enter upon and hold, possess, use, repair, preserve and maintain all or any part of the Collateral and make such replacements thereof and additions thereto as MZG shall deem advisable;

- (d) to sell, for cash or credit or part cash and part credit, lease or dispose of or otherwise realize upon the whole of any part of the Collateral whether by public or private sale as MZG in its absolute discretion may determine without notice to the Debtor or advertisement and after deducting from the proceeds of sale (including legal fees and disbursements on a solicitor and his own client basis) incurred in the repossession, sale, lease or other disposition of the Collateral apply the proceeds thereof to the Obligations in the manner and order to be determined by MZG, provided however that MZG shall only be liable to account to the Debtor, any subsequent encumbrancers and others for money actually received by MZG and provided that the Debtor shall pay any deficiency forthwith;
- (e) to appoint by instrument in writing any person or persons to be a receiver or receiver and manager of all or any portion of the Collateral, to fix the receiver's remuneration and to remove any receiver so appointed and appoint another or others in its stead;
- (f) to apply to any court of competent jurisdiction for the appointment of a receiver or receiver and manager for all or any portion of the Collateral; and
- (g) to retain the Collateral in satisfaction of the Obligations.

**16. Powers of Receiver.**

- (a) Any receiver (which term includes a receiver and manager) shall have all of the powers of MZG set forth in this Security Agreement and, in addition, shall have the following powers:
  - (i) to lease all or any portion of the Collateral and for this purpose execute contracts in the name of the Debtor, which contracts shall be binding upon the Debtor and the Debtor hereby irrevocably constitutes such receiver as its attorney for such purposes;
  - (ii) to take possession of the Collateral, collect all rents, issues, incomes and profits derived therefrom and realize upon any additional or collateral security granted by the Debtor to MZG and for that purpose may take any proceedings in the name of the Debtor or otherwise; and
  - (iii) to carry on or concur in carrying on the business which the Debtor is conducting and for that purpose the receiver may borrow money on the security of the Collateral in priority to this Security Agreement;
- (b) Any receiver appointed pursuant to the provisions hereof shall be deemed to be the agent of the Debtor for the purposes of:
  - (i) carrying on and managing the business and affairs of the Debtor, and
  - (ii) establishing liability for all of the acts or omissions of the receiver while acting in any capacity hereunder and MZG shall not be liable for such acts or omissions,

provided that, without restricting the generality of the foregoing, the Debtor irrevocably authorizes MZG to give instructions to the receiver relating to the performance of its duties as set out herein.

**17. Application of Moneys.** All moneys actually received by MZG or by the receiver pursuant to Sections 15 and 16 of this Security Agreement shall be applied:

- (a) first, in payment of those claims, if any, of secured creditors of the Debtor (including any claims of the receiver pursuant to Section 16(a), ranking in priority to the charges created by this Security Agreement as directed by MZG or the receiver;
- (b) second, in payment of all costs, charges and expenses of and incidental to the appointment of the receiver (including legal fees and disbursements on a solicitor and

own client basis) and the exercise by the receiver or MZG of all or any of the powers granted to them under this Security Agreement, including the reasonable remuneration of the Receiver or any agent or employee of the receiver or any agent of MZG and all outgoings properly paid by the receiver or MZG in exercising their powers as aforesaid;

- (c) third, in or towards the payment to MZG of all other obligations due to it by the Debtor in such order as MZG in its sole discretion may determine;
- (d) fourth, in or towards the payment of the obligation of the Debtor to persons if any, with security interests against Collateral ranking subsequent to those in favour of MZG; and
- (e) fifth, subject to applicable law any surplus shall be paid to the Debtor.

18. **Possession of Collateral.** The Debtor acknowledges that MZG or any receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law and the Debtor agrees upon request from MZG or any such Receiver to assemble and deliver possession of the Collateral at such place or places as directed.

19. **Deficiency.** The Debtor shall remain liable to MZG for any deficiency after the proceeds of any sale, lease or disposition of Collateral are received by MZG and applied in accordance with the provisions of Section 17(c) hereof.

20. **Assignment.** This Security Agreement may be assigned by MZG to any other person and, if so assigned, the assignee shall have and be entitled to exercise any and all discretions, rights and powers of MZG hereunder, and all references herein to MZG shall include such assignee. The Debtor may not assign this Security Agreement or any of its rights or obligations hereunder. This Security Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. In any action brought by an assignee of this Security Agreement and the security interest or any part thereof to enforce any rights hereunder, the Debtor shall not assert against the assignee any claim or defence which the Debtor now has or hereafter may have against MZG.

21. **Limited Power of Attorney.** The Debtor hereby appoints MZG as the Debtor's attorney, with full power of substitution, in the name and on behalf of the Debtor, to execute, deliver and do all such acts, deeds, leases, documents, transfers, demands, conveyances, assignments, contracts, assurances, consents, financing statements and things as the Debtor has agreed to execute, deliver and do hereunder, under any Offer of Finance or otherwise, or as may be required by MZG or any receiver to give effect to this Security Agreement or in the exercise of any rights, powers or remedies hereby conferred on MZG or any receiver, and generally to use the name of the Debtor in the exercise of all or any of the rights, powers or remedies hereby conferred on MZG or any receiver. This appointment, being coupled with an interest, shall not be revoked by the insolvency, bankruptcy, dissolution, liquidation or other termination of the existence of the Debtor or for any other reason.

22. **Severability.** Each of the provisions contained in this Security Agreement is distinct and severable and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Security Agreement.

23. **Notices.** Any notice required or desired to be given hereunder or under any Offer of Finance or under any instrument supplemental hereto shall be in writing and may be given by personal delivery, by facsimile or other means of electronic communication or by sending the same by registered mail, postage prepaid, to MZG or to the Debtor at their respective addresses set out above and, in the case of electronic communication, to the facsimile numbers set out above. Any notice so delivered shall be conclusively deemed given when personally delivered and any notice sent by facsimile or other means of electronic transmission shall be deemed to have been delivered on the Business Day following the sending of the notice, and any notice so mailed shall be conclusively deemed given on the third Business Day following the day of mailing, provided that in the event of a known disruption of postal service, notice shall not be given by mail. Any address for notice or payments herein referred to may be changed by notice in writing given pursuant hereto.

Notwithstanding the foregoing, if the Personal Property Security Act requires that notice be given in a special manner, then such notice or communication shall be given in such manner.

## 24. General.


- (i) The Debtor authorizes MZG to file such financing statements, notices of security interest, caveats and other documents and do such acts and things as MZG may consider appropriate to perfect its security in the Collateral, to protect and preserve its interest in the Collateral and to realize upon the Collateral.
- (ii) Nothing in this Security Agreement will in any way obligate MZG to advance any funds, or otherwise make or cause to make credit available to the Debtor, nor will MZG have any liability for any failure or delay in its part to exercise any rights hereunder.
- (iii) If more than one Debtor executes this Security Agreement, the obligations of such Debtors hereunder shall be joint and several.
- (iv) The division of this Security Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Security Agreement.
- (v) When the context so requires, the singular shall include the plural and vice versa and words importing gender include all genders; all rights, advantages, privileges, immunities, powers and things hereby secured to the Debtor shall be equally secured to and exercised by its successors and assigns.
- (vi) Time is of the essence in this Security Agreement.
- (vii) The Debtor, if a corporation, waives the rights, benefits and protection given by and agrees that The Limitation of Civil Rights Act and The Land Contracts (Actions) Act, both of Saskatchewan, shall not apply to this Security Agreement or to any agreement renewing or extending this Security Agreement or to the rights, powers or remedies of MZG under this Security Agreement or under any agreement renewing or extending this Security Agreement.
  - a. (viii) Without limiting any other right of MZG, whenever the security granted hereunder becomes enforceable or MZG has the right to declare the security granted hereunder to be immediately due and payable (whether or not it has so declared), MZG may, in its sole discretion, set off against the Obligations any and all amounts then owed to Debtor by MZG in any capacity, whether or not due, and MZG shall be deemed to have exercised such right to set off immediately at the time of making its decision to do so even though any charge therefor is made or entered on MZG's records subsequent thereto.
  - b. (ix) MZG may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with Debtor, debtors of Debtor, sureties and others and with Collateral and other security as MZG may see fit without prejudice to the liability of Debtor or MZG's right to hold and realize the security granted hereunder. Furthermore, MZG may demand, collect and sue on Collateral in either Debtor's or MZG's name, at MZG's option, and may endorse Debtor's name on any and all cheques, commercial paper, and any other Instruments (as defined in the Personal Property Security Act) pertaining to or constituting Collateral.
  - c. (x) This Security Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. In any action brought by an assignee of this Security Agreement and the security interest granted hereunder, or any part thereof, to enforce any rights hereunder, Debtor shall not assert against the assignee any claim or defence which Debtor now has or hereafter may have against MZG.
  - d. (xi) MZG may provide any financial and other information it has about Debtor, the security interest granted hereunder and the Collateral to anyone acquiring or who may acquire an interest in the security interest granted hereunder or the Collateral from MZG or anyone acting on behalf of MZG.

25. **Receipt.** The Debtor acknowledges that it has received an executed copy of this Security Agreement and, to the extent permitted by law, waives all rights to receive from MZG a copy of any financing statement or financing change statement filed, or any verification statement received, at any time in respect of this Security Agreement or any supplemental or collateral security granted to MZG.

26. **Governing Law.** This Security Agreement or any amendment or renewal thereof will be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and the Debtor hereby irrevocably attorns to the jurisdiction of the courts of such province.

The Debtor has duly executed this Security Agreement on the 15 day of June, 2016.

DUNSIRE (LANDSDOWN) INC.

Per:  c/s  
Name: Shawn Keeper  
Title: President

*I have authority to bind the Corporation*

**Schedule "A"****Location of Collateral:**

Part Lot 13, Plan 488 being Part 3 on Ref. Plan 61R20544;

Lot 10, Plan 488 being Part 4 on Ref. Plan 61R-20544;

Part Lot 6, Plan 488 being Part 1 on Ref. Plan 61R-20544;

Part Lot 9, Plan 488 being Part 2 on Ref. Plan 61R-20544;

Together with an Easement over common elements Condo Plan No. 169 as in WC458323;

City of Guelph, County of Wellington

Municipally known as 24, 26, 28 & 32 Landsdown Drive, Guelph, ON

Schedule "B"**PERMITTED ENCUMBRANCES**

- (i) liens for taxes, assessments, governmental charges or levies not at the time due;
- (ii) easements, rights of way or other similar rights in land which in the aggregate do not materially impair the usefulness in the business of the Debtor of the property subject thereto;
- (iii) rights reserved to or vested in any municipal, governmental or other public authority by the terms of any lease, licence, franchise, grant or permit, or by any statutory provision, to terminate the same or to require annual or other periodic payments as a condition to the continuance thereof;
- (iv) any charge, lien, security interest or encumbrance the validity of which is being contested by the Debtor in good faith and in respect of which either there shall have been deposited with MZG cash in an amount sufficient to satisfy the same or MZG shall be otherwise satisfied that its interests are not prejudiced thereby;
- (v) validly perfected security given by the Debtor to its bankers on its Inventory or under assignments of its accounts receivable, except to the extent that such accounts receivable represent proceeds of the sale or disposition of Equipment or Real Property; and
- (vi) purchase money security interests consisting of any validly perfected charge, lien, security interest or other encumbrance, created, assumed or arising by operation of law after the date hereof, to provide or secure the whole or any part of the consideration for the acquisition of tangible personal property other than Inventory, where
  - (A) the principal amount secured thereby does not exceed the cost to the Debtor of such property,
  - (B) the Debtor's obligation to repay is secured only by the property so acquired by the Debtor,
  - (C) the property is not being acquired as a replacement or substitution for property and assets which are specifically charged hereby, and
  - (D) such security includes the renewal or refinancing of any such purchase money security interest on the same property provided that the indebtedness secured and the security therefor is not increased and remains validly perfected.
- (vii) PPSA registrations
  - Debtor: Dunsire (Landsdown) Inc.  
54-5100 South Service Road  
Burlington, ON, L7L 6A5
  - Creditor: MarshallZehr Group Inc.  
465 Phillip Street, Suite 206  
Waterloo, ON, M2L 6C7
  - Term: 5 years
  - Collateral: GSA  
Inventory, Equipment, Accounts, Other, Motor Vehicle Included  
TO BE DISCHARGED

**THIS IS EXHIBIT "G" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*





ASSIGNMENT OF MATERIAL CONTRACTS

THIS AGREEMENT made as of the 12 day of June, 2016.

BETWEEN:

DUNSIRE (LANDSDOWN) INC.

(hereinafter called the "Assignor")

OF THE FIRST PART

- and -

MARSHALLZEHR GROUP INC.

(hereinafter called the "MZG")

OF THE SECOND PART

WHEREAS by an Offer of Finance (the "Offer") from MZG dated May 25, 2016, as such Offer may be further amended, supplemented, restated or replaced from time to time, MZG agreed to loan the sum of \$15,870,278.00 for 1<sup>st</sup> mortgage servicing and construction financing for 27 single detached bungalows, as contemplated therein;

AND WHEREAS as consideration therefore, MZG requires the Assignor to assign to MZG, *inter alia*, all of its rights, benefits, title and interest in, to and under all material agreements (the "Material Agreements") relating to the development of the lands described in Schedule "A" attached hereto, including, without limitation, all construction contracts, planning approvals, permits and licenses, development agreements and contracts, project plans and specifications and architects, engineers and land surveyors contracts and agreements (collectively the "Contracts"), all permits (the "Permits") relating to the Lands, all agreements of purchase and sale (the "Sale Agreements") and all deposits (the "Deposits") relating to the Sale Agreements.

NOW THEREFORE THIS ASSIGNMENT WITNESSES that in consideration of the sum of Ten Dollars (\$10.00) paid by MZG to the Assignor (the receipt and sufficiency of which are hereby acknowledged) the Assignor covenants and agrees as follows:

1. **Recital Correct:**

The Assignor confirms the validity and truth of the above-noted recitals, which have the same force and effect as if repeated herein at length.

2. **Assignment:**

As continuing and additional security for the payment to MZG of all amounts (the "Indebtedness") owing from time to time by the Assignor to MZG under, arising out of, from or in connection with the Offer and as continuing and additional security for the due performance of the Assignor's obligations under the Offer and any security documents (the "Security Documents") granted by the Assignor to MZG pursuant to the Offer, the Assignor hereby assigns, sets over and transfers to MZG all its rights, benefits, title and interest in and to, and all claims of whatsoever nature or kind which the Assignor now has or may hereafter have under or pursuant to:

- (a) all present and future builder's risks, hazard, damage, rental, income-loss and public liability insurance policies, now or hereafter obtained or maintained in connection with the Project (hereinafter collectively called the "Insurance Policies");
- (b) the Material Agreements;
- (c) the Contracts;
- (d) the Permits;

- (e) the Sale Agreements; and
- (f) the Deposits;  
and any amendments, extensions, renewals and replacements which have been made, or may hereafter be made, thereto including, without limitation:
- (g) all rights, benefits, powers and advantages which now are or may hereafter be derived therefrom;
- (h) all debts, demands, choses in action and claims which are now or may hereafter be or become due, owing or accruing due to the Assignor therefrom; and
- (i) all books, accounts, invoices, letters, papers and documents in any way evidencing or relating thereto;

All of the foregoing (together with the proceeds therefrom) described in subparagraphs 2(a) to (i), inclusive, are hereinafter collectively called the "Premises Hereby Assigned".

### 3. Acknowledgment of Assignor

The Assignor acknowledges that neither this Agreement nor the assignment set out herein:

- (a) shall in any way lessen or relieve the Assignor from:
  - (i) the obligation of the Assignor to observe, satisfy and perform each and every term, agreement, provision, condition, obligation and covenant set out in any of the Premises Hereby Assigned; and
  - (ii) any liability of the Assignor to the insurer under each of the Insurance Policies, to MZG or to any other person, firm or corporation;
- (b) imposes any obligation on MZG to assume any liability or obligation under, or to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in any of the Premises Hereby Assigned;
- (c) imposes any liability on MZG for any act or omission on its part in connection with this Agreement or the assignments constituted hereby including, without limitation, the fulfillment or non-fulfillment by MZG of the obligations, covenants and agreements of the Assignor set out in any of the Premises Hereby Assigned; and
- (d) obligates MZG to give notice of this Agreement and the assignments constituted hereby to any person, firm or corporation whatsoever; provided that MZG may, in its absolute discretion, give any such notice at any time or from time to time without further notice to the Assignor.

### 4. Positive Covenants of the Assignor

The Assignor covenants and agrees:

- (a) to observe, perform and satisfy each and every term, agreement, provision, condition, obligation and covenant set out in any of the Premises Hereby Assigned;
- (b) to deliver to MZG a copy of all written notices, demands or requests given under, in connection with or pursuant to the Premises Hereby Assigned that are:
  - (i) received by the Assignor, forthwith upon receipt of same; and
  - (ii) delivered by the Assignor, contemporaneously with the delivery of same;

- (c) to indemnify and save MZG harmless from and against any liabilities, losses, costs, charges, expenses (including legal fees and disbursements on a solicitor and his own client basis), damages, claims, demands, actions, suits, proceedings, judgments and forfeitures suffered or incurred by MZG in connection with, on account of or by reason of:
- (i) the assignment to MZG of the Premises Hereby Assigned or any part thereof;
  - (ii) any alleged obligation of MZG to observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant set out in any of the Premises Hereby Assigned;
  - (iii) any failure of the Assignor to observe, perform or satisfy each and every item, agreement, provision, condition, obligation and covenant set out in this Agreement;
  - (iv) any representation and warranty set out in this Agreement being or becoming false or inaccurate; and
  - (v) the enforcement by MZG of any of the assignments constituted by this Agreement;
- (d) to notify MZG in writing as soon as the Assignor becomes aware of any Dispute (as hereinafter defined), claim, proceeding or litigation in respect of any of the Premises Hereby Assigned or of any breach or default by the Assignor or any other person, firm or corporation in the observance, performance or satisfaction of any of the terms, agreements, provisions, conditions, obligations or covenants set out in any of the Premises Hereby Assigned;
- (e) to obtain such consent from third parties as may be necessary or required pursuant to any of the Premises Hereby Assigned in connection with the assignments constituted by this Agreement and, in addition, such other consents from third parties as MZG may require or desire;
- (f) that it will pay or cause to be paid to MZG or pursuant to MZG's direction, upon demand, all costs, charges, fees and expenses including, without limitation, legal fees and disbursements on a solicitor and his own client basis, court costs and any other out-of-pocket costs and expenses incurred by MZG in connection with or arising out of or with respect to this Agreement including, without limitation, any one or more of the following:
- (i) the negotiation, preparation, execution and enforcement of this Agreement and all documents, agreements and other writings incidental or ancillary hereto;
  - (ii) any act done or taken pursuant to this Agreement including, without limitation, recovering the Indebtedness and registering, discharging and reassigning this Agreement;
  - (iii) the collection, disposition, realization, preservation or enforcement of the Premises Hereby Assigned including, without limitation, retaking, holding, repairing, preparing for disposition and disposing of the Premises Hereby Assigned;
  - (iv) any action or other proceeding instituted by the Assignor, MZG or any other person, firm or corporation in connection with or in any way relating to:
    - (a) this Agreement or any part hereof;

- (b) the preservation, protection, enforcement or realization of the Premises Hereby Assigned; or
- (c) the recovery of the Indebtedness; and
- (v) all amounts incurred or paid by the Secured Party pursuant to paragraph 7 hereof.

together with interest thereon from the date of the incurring of such expenses at the rate of the Bank's Floating Base Rate (as defined in the Offer) plus a variance of 1% calculated and compounded monthly. Whether any action or any judicial proceedings to enforce the aforesaid payments has been taken or not, the amount owing to MZG under this Section shall be added to the Indebtedness; and

- (g) to cause the respective insurers under each of the Insurance Policies to name MZG as a loss payee under each of the Insurance Policies.

**5. Negative Covenants of Assignor:**

The Assignor covenants and agrees that it shall not:

- (a) sell, assign, transfer, dispose of, collect, receive or accept the Premises Hereby Assigned or any part thereof nor do, nor permit to be done, any act or thing whereby MZG may be prevented or hindered from so doing;
- (b) pledge, charge, mortgage, hypothecate, create a security interest in or otherwise encumber the Premises Hereby Assigned or any part thereof;
- (c) cancel or terminate any of the Premises Hereby Assigned or any part thereof;
- (d) waive, amend, modify or vary any of the terms, conditions or provisions set out in the Premises Hereby Assigned or any part thereof, or otherwise agree or consent to any waiver, amendment, modification or variation of any of them, whether by way of collateral agreement or otherwise;
- (e) waive or agree to waive any failure of any party to any of the Premises Hereby Assigned to observe, perform or satisfy any of the terms, agreements, provisions, conditions, obligations or covenants set out in the Premises Hereby Assigned or any part thereof;
- (f) give any consent or approval contemplated by, or required or permitted to be given pursuant to, any of the Premises Hereby Assigned or any part thereof; or
- (g) settle or resolve any Dispute (as hereinafter defined);

without the prior written consent of MZG which consent may be arbitrarily or unreasonably withheld at MZG's sole and absolute discretion notwithstanding any statutory or other provision of law inconsistent therewith.

**6. Representations and Warranties of the Assignor**

The Assignor represents and warrants to MZG that:

- (a) each of the Premises Hereby Assigned is valid and subsisting, is in full force and effect, unamended, and all of the parties thereto are in good standing thereunder and there are no defaults thereunder;
- (b) the Assignor has good, valid and legal right to absolutely assign and transfer to MZG the Premises Hereby Assigned, free and clear of all assignments, mortgages, charges, pledges, security interests and other encumbrances other than those in favor of MZG;

- (c) the Assignor has taken all necessary action, corporate or otherwise, to authorize the execution, delivery and performance of its obligations set out in each of the Premises Hereby Assigned and in this Agreement;
- (d) the execution, delivery and performance of this Agreement and the assignments constituted hereby will not conflict with, be in or contribute to a contravention, breach or default under the Assignor's constituting documents, by-laws, resolutions or the provisions of any indenture, instrument, agreement or undertaking to which the Assignor is a party or by which it is bound, or under any valid regulation, order, writ or decree of any court, tribunal, arbitration panel or governmental authority;
- (e) this Agreement has been duly executed and when delivered, will be in full force and effect and will constitute a legal, valid and binding obligation of the Assignor, enforceable in accordance with its terms;
- (f) there is no pending or threatened litigation, action, claim or fact known to the Assignor and not disclosed to MZG in writing which adversely affect or could adversely affect any of the Premises Hereby Assigned or the rights of the Assignor thereunder or the rights of MZG under this Agreement;
- (g) none of the Premises Hereby Assigned in existence on the date hereof is incapable of assignment to MZG in accordance with the provisions of this Agreement, nor is any of the Premises Hereby Assigned incapable of further assignment by MZG or by any receiver or receiver and manager, nor is the consent of any third party required for any assignment set out in this Agreement or in connection with any further assignment by MZG; and
- (h) no payments, proceeds, receipts or other distributions due or to become due on any date subsequent to the date of this Agreement have been collected in advance of the time when the same became due under the terms of any of the Premises Hereby Assigned.

**7. Enforcement Upon Default:**

Without limiting in any manner whatsoever MZG's rights, remedies and recourses pursuant to this Agreement, by operation of law or otherwise, if the Assignor has defaulted in the performance, fulfillment or satisfaction of any of the terms, agreements, provisions, conditions, obligations or covenants set out in this Agreement, the Offer or the Security Documents or if any other event of default occurs (hereinafter collectively called a "Default") MZG or any receiver or receiver and manager appointed by MZG or a court of competent jurisdiction may, from time to time and at any time, in its own name or in the name of the Assignor and without notice to the Assignor, do any one or more of the following:

- (a) observe, perform or satisfy any term, agreement, provision, condition, obligation or covenant which, pursuant to the Premises Hereby Assigned or any of them, could or should be observed, performed or satisfied by the Assignor;
- (b) exercise any of the rights, powers, authority and discretion which, pursuant to any of the Premises Hereby Assigned, by operation of law or otherwise, could be exercised, observed, performed or satisfied by the Assignor including, without limitation, amending or renewing any of the Premises Hereby Assigned or participating in all settlement negotiations and arbitration proceedings resulting from a dispute (the "Dispute") arising out of, in connection with or pursuant to any of the Premises Hereby Assigned; and
- (c) collect any proceeds, receipts or income arising from or out of the Premises Hereby Assigned including, without limitation, the institution of proceedings, whether in the name of the Assignor or MZG or both, for the collection of same;

and in the event that MZG does any one or more of the foregoing, for such period of time that MZG continues to do so, the rights, benefits, powers and advantages of the Assignor with respect thereto shall thereupon be extinguished.

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The Assignor acknowledges and agrees that all costs, charges and expenses incurred by or on behalf of MZG or any receiver or receiver and manager in connection with doing anything permitted in this paragraph 7 including, without limitation, legal fees and disbursements on a solicitor and his own client basis, shall be forthwith paid by the Assignor to MZG.

**8. MZG Not Liable:**

MZG shall not be bound to exercise any of the rights afforded to it hereunder, nor to collect, dispose of, realize, preserve or enforce any of the Premises Hereby Assigned. MZG shall not be liable or responsible to the Assignor or any other person for the fulfillment or non-fulfillment of this Agreement or the terms, agreements, provisions, conditions, obligations or covenants set out in the Premises Hereby Assigned or for any loss or damage incurred or suffered by the Assignor or any other person, firm or corporation as a result of:

- (a) any delay by, or any failure of, MZG to:
  - (i) exercise any of the rights afforded to it under this Agreement; or
  - (ii) collect, dispose of, realize, preserve or enforce any of the Premises Hereby Assigned; or
- (b) the negligence of any officer, servant, agent, counsel or other attorney or substitute employed by MZG in the exercise of the rights afforded to MZG hereunder, or in the collection, disposition, realization, preservation or enforcement of the Premises Hereby Assigned.

**9. Application of Funds:**

Any amount received by MZG arising out of or from the collection, disposition, realization, preservation or enforcement of any of the Premises Hereby Assigned, after all costs, charges and expenses incurred by MZG in connection therewith have been deducted therefrom, shall be applied in reduction of the Indebtedness. Notwithstanding the generality of the foregoing, MZG shall be entitled to apply all or any part of such amounts received by it on account of such part or parts of the Indebtedness, in such manner and at such times or from time to time, as MZG deems best and MZG may at any time and from time to time change any such application.

**10. Further Assurances:**

The Assignor covenants and agrees to execute all such further assignments and other documents and to do all such further acts and things including obtaining any consents which are required by MZG, from time to time, to more effectively assign, set over and transfer the Premises Hereby Assigned to MZG including, without limitation, execute and deliver one or more specific assignments of the Assignor's rights, benefits, title and interest in any of the agreements, documents, commitments and other writings that constitute the Premises Hereby Assigned in form, substance and execution satisfactory to MZG, to perfect and keep perfected the security interest constituted hereby and to assist in the collection, disposition, realization or enforcement thereof, and MZG is hereby irrevocably constituted the true and lawful attorney of the Assignor, with full power of substitution, to execute in the name of the Assignor any assignment or other document for such purposes.

**11. Information:**

The Assignor covenants and agrees that from time to time forthwith upon the request of MZG it shall furnish to MZG in writing all information requested by MZG relating to the Premises Hereby Assigned.

**12. Authority to Collect Monies:**

Until notice of a Default is given to the Assignor by MZG, and subject to Paragraph 5 hereof, the Assignor shall have the authority to exercise, in good faith, all of the rights, benefits, powers and advantages under the Premises Hereby Assigned and upon the occurrence of a Default such authority shall immediately cease without further notice.

**13. No Novation:**

This assignment and transfer to MZG of the Premises Hereby Assigned:

- (a) is continuing security granted to MZG, without novation or impairment of any other existing or future security held by MZG in order to secure payment to MZG of the Indebtedness and the due performance of the Assignor's obligations referred to in paragraph 2 hereof;
- (b) is in addition to and not in substitution for any other security now or hereafter granted to or held by MZG in connection with the Indebtedness; and
- (c) shall remain in full force and effect without regard to and shall not be affected or impaired by:
  - (i) any amendment or modification of or addition or supplement to the Offer or any other security or securities (the "Additional Securities") now or hereafter held by or on behalf of MZG in connection with the Indebtedness;
  - (ii) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement, the Offer or the Additional Securities;
  - (iii) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of this Agreement, the Offer or the Additional Securities;
  - (iv) any default by the Assignor under, or any invalidity or unenforceability of, or any limitation on the liability of the Assignor or on the method or terms of payment under, or any irregularity or other defect in, the Offer or the Additional Security;
  - (v) any merger, consolidation or amalgamation of the Assignor into or with any other corporation or company; or
  - (vi) any insolvency, Bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor.

**14. Re-assignment:**

Upon the Indebtedness being paid in full MZG shall, within a reasonable time following its receipt of a written request from the Assignor and at the sole cost and expense of the Assignor, reassign the Premises Hereby Assigned to the Assignor including, without limitation, all of MZG's rights, benefits, title and interest in and to the Premises Hereby Assigned.

**15. Enurement:**

This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

**16. Notices:**

Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if served personally upon the party for whom it is intended, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail:

- (a) if to the Assignor, addressed to it at:

54- 5100 South Service Road  
Burlington, ON, L7L 6A5

- (b) if to MZG, addressed to it at:

c/o MarshallZehr Group Inc.  
465 Phillip Street #206  
Waterloo Ontario N2L 6C7

with a copy to Mark W. Schumacher  
Sorbara, Schumacher, McCann LLP  
300 Victoria Street North  
Kitchener, Ontario N2H 6R9

Any of the parties hereto may, from time to time, change its address or stipulate another address from the address described above in the manner provided in this paragraph. The date of receipt of any such notice, demand, request, consent, agreement or approval, if served personally, shall be deemed to be the date of delivery thereof or if mailed as aforesaid, the third Business Day following the date of mailing. For the purposes hereof, personal service on the Assignor and personal service on MZG shall be effectively given by delivery to the President.

**17. Waiver:**

No consent or waiver, express or implied, by MZG to or of any breach or default by the Assignor in performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by the Assignor of its obligations hereunder. Failure on the part of MZG to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not constitute a waiver by MZG of its rights hereunder. The Assignor hereby waives its right to require a copy of any financing statement registered by or on behalf of MZG pursuant to the Personal Property Security Act of Ontario (the "Act") as same may be amended or re-enacted from time to time, relating to this Agreement, to be delivered to it as stipulated in section 46(6) of the Act.

**18. Amendments:**

This Agreement may not be modified or amended except with written consent of MZG and the Assignor.

**19. Entire Agreement:**

This Agreement constitutes the entire agreement between MZG and the Assignor pertaining to the assignment of the Premises Hereby Assigned and supercedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, relating thereto.

**20. Assignment:**

MZG may assign, transfer, negotiate, pledge or otherwise hypothecate this Agreement, any of the Premises Hereby Assigned, any of its rights hereunder or any part thereof and all rights and remedies of MZG in connection with the interest so assigned shall be enforceable against the Assignor as the same would have been by MZG but for such assignment.



**21. Rights, Powers and Remedies:**

Each right, power and remedy of MZG provided for herein or available at law or in equity or in any other agreement shall be separate and in addition to every other such right, power and remedy. Any one or more and/or any combination of such rights, remedies and powers may be exercised by MZG or preclude MZG from exercising any one or more of such rights, remedies and powers or any combination thereof from time to time thereafter or simultaneously.

**22. Survival:**

All covenants, undertakings, agreements, representations and warranties made by the Assignor in this Agreement and any certificates, reports, statements, information, data, documents or instruments delivered pursuant to or in connection herewith, shall survive the execution and delivery of this Agreement and any advanced under the Offer made by MZG to the Assignor, and shall continue in full force and effect until the Indebtedness is paid in full. All representations and warranties made by the Assignor shall be deemed to have been relied upon by MZG.

**23. Severability:**

Any term, condition or provision of this Agreement which is or is deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severable herefrom, be ineffective to the extent of such avoidance, prohibition or unenforceability without invalidating the remaining terms, conditions and provisions hereof any such avoidance, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

**24. Governing Law:**

This Agreement, and the interpretation, construction, application and enforcement of this Agreement, shall be governed by and construed, in all respects, exclusively in accordance with the laws of the Province of Ontario.

**25. Headings:**

The insertion in this Agreement of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**26. Number and Gender:**

All nouns and personal pronouns relating thereto shall be read and construed as the number and gender may require and the verb shall be read and construed as agreeing with the noun and pronoun.

**27. Extended Meanings:**

The words "the Agreement", "this Agreement", "hereby", "herein", "hereof", "hereto" and similar expressions used in any paragraph of this Agreement relate or refer to the whole of this Agreement and not to that paragraph only, unless otherwise expressly provided.

**28. Registrations:**

Neither the preparation, execution nor any registrations or filings with respect hereto, shall bind MZG to make an Advance under the Offer.

**29. Direction:**

The Assignor authorizes and directs the respective insurers under each of the Insurance Policies to pay MZG all of the proceeds payable under each of the Insurance Policies; and this shall serve as the insurers' good and sufficient irrevocable authority to do so.

**30. Receipt of Copy:**

The Assignor acknowledges receipt of a copy of this Agreement.

**31. Ordinary Course of Business:**

Nothing herein contained shall prevent the Assignor from carrying on its activities in the ordinary course of business unless and until the Assignor is in default hereunder.

IN WITNESS WHEREOF the Assignor has executed this assignment as of the date and year first above-written.

DUNSIRE (LANDSDOWN) INC.

Per:  \_\_\_\_\_ c/s  
Name: Shawn Keeper  
Title: President

*I have authority to bind the Corporation.*

**SCHEDULE "A"****Legal description of lands**

Part Lot 13, Plan 488 being Part 3 on Ref. Plan 61R20544;

Lot 10, Plan 488 being Part 4 on Ref. Plan 61R-20544;

Part Lot 6, Plan 488 being Part 1 on Ref. Plan 61R-20544;

Part Lot 9, Plan 488 being Part 2 on Ref. Plan 61R-20544;

Together with an Easement over common elements Condo Plan No. 169 as in WC458323; City of

Guelph, County of Wellington

Municipally known as 24, 26, 28 & 32 Landsdown Drive, Guelph, ON