

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

BETWEEN:

**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner CHOICE
PROPERTIES GP INC.**

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

Respondents

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

MOTION RECORD

May 8, 2020

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Counsel for the Moving Party

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10 Dundas Street East, Suite 1002
Toronto, Ontario M5B 2G9

Attention: David V. Johnston

AND TO: Mady (Barrie) Inc.
8791 Woodbine Avenue, Suite 100
Markham, Ontario L3R 0P4

Attention: Charles Mady

AND TO: SERVICE LIST

SERVICE LIST
(March 22, 2020)

TO:	<p>OSLER, HOSKIN & HARCOURT LLP P.O. Box 50, 1 First Canadian Place Toronto, ON M5X 1B8</p> <p>Michael De Lellis (LSO#48038U) Email: mdelellis@osler.com Tel: (416) 862-5997</p> <p>Shawn Irving (LSO#50035U) Email: sirving@osler.com Tel: (514) 904-4733</p> <p>Alexander Hay (LSO#72242T) Email: shay@osler.com Tel: (416) 862-4252 Fax: (416) 862-6666</p> <p><i>Counsel for the Applicant</i></p>
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AND TO:	<p>PRC Barrie Corp. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4</p> <p>Attention: David V. Johnston - djohnston@penequity.com</p>
AND TO:	<p>Gardiner Roberts LLP 40 King Street West, Suite 3100 Toronto, ON M5H 3Y2</p> <p>S. Michael Citak Email: mcitak@grllp.com Tel: (416) 865-6706</p> <p>Tim Duncan Email: tduncan@grllp.com Tel: (416) 865-6682</p> <p><i>Counsel for the Respondents</i></p>

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AND TO:	<p>RSM CANADA LIMITED 11 King Street West, Suite 700, Box 27 Toronto ON M5H 4C7</p> <p>Bryan A. Tannenbaum Email: bryan.tannenbaum@rsmcanada.com Tel.: (416) 238-5055</p> <p>Daniel Weisz Email: daniel.weisz@rsmcanada.com Tel.: (416) 646-8778</p> <p><i>Court-Appointed Receiver and Manager of Penady (Barrie) Ltd. and certain of the assets of PRC Barrie Corp.</i></p>
AND TO:	<p>Blaney McMurtry LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>Eric Golden Email: egolden@blaney.com Tel: (416) 593-3927</p> <p><i>Counsel for RSM Canada Limited, the Court-Appointed Receiver and Manager</i></p>
AND TO:	<p>DEPARTMENT OF JUSTICE CANADA Ontario Regional Office 120 Adelaide Street West I, Suite 400 Toronto, ON M5H 1T1</p> <p>Diane Winters Email: diane.winters@justice.gc.ca Tel: (416) 973-3172</p>

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TAB 1

Court File No: CV-20-00637682-00CL

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

BETWEEN:

**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner
CHOICE PROPERTIES GP INC.**

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

Respondents

NOTICE OF MOTION

Choice Properties Limited Partnership (“**CHP**”), by its general partner Choice Properties GP Inc., will make a Motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on May 20, 2020 at 10 a.m., or as soon after that time as the Motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom at Toronto, Ontario, in accordance with the Changes to Commercial List operations in light of COVID-19 and the Notice to the Profession updated April 2, 2020, issued by Chief Justice Morawetz or, alternatively, in writing if there is no opposition. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Sandy Hay at shay@osler.com.

THE MOTION IS FOR

1. An Order substantially in the form attached at Tab 3 of the Motion Record, inter alia:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
 - (b) amending and restating the Appointment Order (as defined below) granted in these proceedings in order to appoint the Receiver (as defined below) over Mady (Barrie) Inc.'s ("**Mady**") interest in the Barrie Property (as defined below), and all of Mady's assets, undertakings and properties related thereto, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, as amended (the "**BIA**"), and section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**");
 - (c) amending the style of cause of these proceedings to add Mady as a Respondent; and
 - (d) such further and other relief as counsel may request and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

2. Penady (Barrie) Ltd. ("**PBL**") is the registered owner of a property located in the City of Barrie, at the intersection of Cundles Road and Duckworth Avenue (the "**Barrie Property**");

3. PRC Barrie Corp. (“**PRC Barrie**”) and Mady are the beneficial owners of the Barrie Property
4. Mady is an affiliate of PRC Barrie;
5. As at March 9, 2020, PBL was indebted to CHP in the approximate amount of \$68.2 million (the “**Indebtedness**”) pursuant to (a) a secured credit agreement (the “**CHP Credit Agreement**”) between PBL and CHP, and (b) the repayment of PBL’s indebtedness in favour of Equitable Bank in accordance with CHP’s right under a demand debenture;
6. The CHP Credit Agreement matured on January 31, 2020. As of that date, all principal, interest and other obligations to CHP were due and payable;
7. As security for PBL’s obligations to CHP under the CHP Credit Agreement, CHP was granted a limited recourse guarantee from PRC Barrie and Mady pursuant to which PRC Barrie and Mady guaranteed PBL’s performance under the CHP Credit Agreement, which guarantee was limited to PRC Barrie and Mady’s interest in the Barrie Property;
8. In addition, pursuant to a Beneficial Owners Agreement, PRC Barrie and Mady also agreed to pay to CHP the principal sum under the CHP Credit Agreement and confirmed the charging of their interest in the Barrie Property and all related personal property;
9. Following the maturity of the CHP Credit Agreement, CHP sent demand letters to PBL and PRC Barrie (the “**Demand Letters**”), among others, demanding repayment

of the Indebtedness. Each of the Demand Letters enclosed a notice of intention to enforce security pursuant to section 244 of the *BIA*;

10. At the time, a demand letter and section 244 notice (the “**Mady Demand and 244 Notice**”) was not sent to Mady, as it was understood by CHP that Mady was inactive;
11. On March 9, 2020, CHP commenced an application (the “**Application**”) seeking an Order (the “**Appointment Order**”) appointing RSM Canada Limited as Receiver, without security, of (i) all of the assets, undertakings and properties of PBL, including all proceeds thereof, and (ii) PRC Barrie’s interest in the Barrie Property and all of PRC Barrie’s assets, undertakings and properties related thereto, pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*;
12. PBL and PRC Barrie opposed the Application;
13. On March 25, 2020, the Honourable Justice McEwen granted the Appointment Order;
14. The Appointment Order did not extend to Mady’s interest in the Barrie Property;
15. Since the issuance of the Appointment Order, the Receiver has been carrying out its mandate;
16. During the course of discussions with the Receiver, it has become apparent that the Appointment Order should be extended to Mady’s interest in the Barrie Property so as to facilitate any conveyance of the Barrie Property pursuant to a court-approved sales process;
17. The Mady Demand and 244 Notice was sent by CHP to Mady on March 9, 2020;

18. RSM Canada has consented to act as Receiver over Mady's interest in the Barrie Property if appointed by this Honourable Court;
19. Section 243 of the *BIA* and section 101 of the *CJA*;
20. Rules 1.04, 2.03, 3.02, 5.03, 16.08 and 37 of the *Rules of Civil Procedure*; and
21. Such further grounds as this Court may permit.

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

22. the Affidavit of Mario Barrafato, sworn May 8, 2020;
23. the consent of RSM Canada to act as the Receiver;
24. the First Report of the Receiver (to be filed); and
25. such other material as is required and this Court may permit.

May 8, 2020

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Counsel for the Moving Party

Schedule A**Conference Details to Join Motion via Zoom****Join Zoom Meeting**

<https://zoom.us/j/2132233950?pwd=c2FmTVN3M1lHVVBrdUFiOGs0dnpTQT09>

Meeting ID: 213 223 3950

Password: 198097

One tap mobile

+14388097799,,2132233950#,,1#,198097# Canada

+15873281099,,2132233950#,,1#,198097# Canada

Dial by your location

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

Meeting ID: 213 223 3950

**CHOICE PROPERTIES LIMITED
PARTNERSHIP, by its general
partner CHOICE PROPERTIES GP
INC.**

**PENADY (BARRIE) LTD. and PRC
BARRIE CORP.**

Court File No: CV-20-00637682-00CL

Applicant

Respondents

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

NOTICE OF MOTION

OSLER, HOSKIN & HARCOURT LLP

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Counsel for the Moving Party

Our Matter No. 1165915

TAB 2

Court File No. CV-20-00637682-00CL

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

BETWEEN:

**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner CHOICE
PROPERTIES GP INC.**

Applicant

– and –

PENADY (BARRIE) LTD., PRC BARRIE CORP.

Respondents

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

**AFFIDAVIT OF MARIO BARRAFATO
(sworn May 8, 2020)**

I, Mario Barrafato, of the City of Toronto, in the province of Ontario, Canada, **MAKE OATH AND SAY:**

1. I am the Chief Financial Officer of Choice Properties GP Inc. (“**Choice GP**”). Choice GP is the general partner of the Moving Party, Choice Properties Limited Partnership (“**CHP**”). CHP is the senior secured lender to the respondent borrower, Penady (Barrie) Ltd. (“**PBL**”), and a party to the Beneficial Ownership Agreement (as defined below) with PBL, PRC Barrie Corp. (“**PRC Barrie**”) and Mady (Barrie) Inc. (“**Mady**”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true.

2. I swear this affidavit in support of a motion by CHP to amend and restate the Appointment Order (defined below) issued in these proceedings in order to appoint the Receiver over Mady's interest in the Barrie Property and all of Mady's assets, undertakings and properties related thereto, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, as amended (the "**BIA**"), and section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**") (the "**Amended and Restated Appointment Order**").

A. Background

3. PBL is the registered owner of a property located in the City of Barrie, at the intersection of Cundles Road and Duckworth Avenue (the "**Barrie Property**").

4. PRC Barrie and Mady are the beneficial owners of the Barrie Property.

5. Mady is an affiliate of PRC Barrie.

6. As at March 9, 2020, PBL was indebted to CHP in the approximate amount of \$68.2 million pursuant to (a) a secured credit facility which matured on January 31, 2020 and (b) the repayment of PBL's indebtedness in favour of Equitable Bank in accordance with CHP's right under the Demand Debenture, which loan had also matured. As at that date, all principal, interest and other obligations owing to CHP were due and payable.

7. On March 9, 2020, CHP commenced an application (the "**Application**") seeking an order (the "**Appointment Order**") appointing RSM Canada Limited ("**RSM Canada**") as receiver (the "**Receiver**"), without security, of (i) all of the assets, undertakings and properties of PBL, including all proceeds thereof, and (ii) PRC Barrie's interest in the Barrie Property and all assets, undertakings and properties related thereto, pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*.

8. On March 25, 2020, the Honourable Justice McEwen granted the Appointment Order. A copy of the Appointment Order is attached to this Affidavit as Exhibit A.

9. Since the Appointment Order was granted, the Receiver has been carrying out its mandate.

10. Further information with respect to the background of these proceedings is provided in the affidavits I swore on March 9, 2020 (the “**First Barrafato Affidavit**”) and March 22, 2020 (the “**Second Barrafato Affidavit**”). Additional information is available on the Receiver’s Website currently at: <https://rsmcanada.com/penady-barrie-inc>.

11. Capitalized terms not defined herein shall have the meaning ascribed to them in the First Barrafato Affidavit or Second Barrafato Affidavit, as applicable.

B. CHP has Security over Mady’s Interest in the Barrie Property

12. As noted in the First Barrafato Affidavit, as security for PBL’s obligations to CHP under the CHP Credit Agreement, CHP was granted a number of security interests with respect to the Barrie Property, including charges on PBL’s interest in the Barrie Property, a demand debenture, and a general security agreement.

13. In addition, CHP is party to an agreement (the “**Beneficial Owner Agreement**”) with PBL, PRC Barrie and Mady pursuant to which PRC Barrie and Mady agreed to, *inter alia*, pay to CHP the principal sum under the CHP Credit Agreement and confirmed the charging of their interest in the Barrie Property and all related personal property. A copy of the Beneficial Owner Agreement is attached to this Affidavit as Exhibit B.

14. CHP was also granted a limited recourse guarantee from PRC Barrie and Mady pursuant to which PRC Barrie and Mady guaranteed PBL’s performance under the CHP Credit Agreement,

limited to PRC Barrie and Mady's respective interests in the Barrie Property. A copy of the limited recourse guarantee provided by PRC Barrie and Mady is attached to this affidavit as Exhibit C.

C. CHP Delivers Demand Letters and 244 Notices

15. Also as noted in the First Barrafato Affidavit, following the maturity of the CHP Credit Agreement, but prior to commencing the Application, demand letters were sent by CHP to PBL and PRC Barrie (among others) (the "**Demand Letters**"). Each of the Demand Letters enclosed a notice of intention to enforce security pursuant to section 244 of the *BIA* (the "**244 Notices**").

16. At the time, a demand letter and 244 notice was not sent to Mady, as it was understood by CHP that Mady was inactive.

17. Out of an abundance of caution, on March 9, 2020, CHP, through its counsel, sent a demand letter, attaching a notice of intention to enforce security pursuant to section 244 of the *BIA*, to Mady (the "**Mady Demand and 244 Notice**"). A copy of the Mady Demand and 244 Notice is attached to this Affidavit as Exhibit D.

18. In response to the Application, the respondents filed an affidavit sworn by Mr. Neil Miller of PenEquity on March 20, 2020 (the "**Miller Affidavit**"). Among other things, the Miller Affidavit states that PenEquity had acquired Mady from the receiver of DMI Inc. for \$150,000. This was purportedly done in order to facilitate a clean transfer of the beneficial interest in the Barrie Property to a third party purchaser.

D. Need to Appoint Receiver over Mady's Interest in the Barrie Property

19. Given that the Mady Demand and 244 Notice had not been delivered to Mady prior to the issuance of the Notice of Application, the Appointment Order did not extend to Mady's interest in the Barrie Property.

20. Following the issuance of the Appointment Order, CHP and its counsel have had discussions with the Receiver regarding the process contemplated by the Receiver to realize on the assets of PBL, including the Barrie Property. It is my understanding that the Receiver intends to bring a motion in the coming days to seek approval of a sale and investment solicitation process in respect of the Barrie Property.


21. During the course of the discussions with the Receiver, it has become apparent that the Appointment Order should be extended to Mady's interest in the Barrie Property so as to facilitate any conveyance of the Barrie Property pursuant to a court-approved sales process.

22. RSM Canada has consented to act as Receiver over Mady's interest in the Barrie Property if appointed by this Honourable Court. A copy of the consent is attached to this Affidavit as Exhibit E.

E. Conclusion

23. For the reasons set out above, I believe that it is just and equitable that the Appointment Order be amended and restated to appoint the Receiver over Mady's interest in the Barrie Property, and any assets, undertakings and properties related thereto.

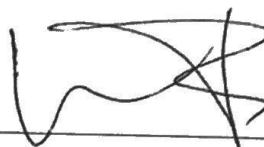
SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario this 8th
day of May, 2020



Commissioner for Taking Affidavits

Jessica Fauber
Barrister & Solicitor
in the Province of Ontario
LSO # 68163D

}



Mario Barrafato

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF MARIO BARRAFATO
SWORN BEFORE ME THIS
8th DAY OF MAY, 2020



Notary Public

Court File No. CV-20-00637682-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

WEDNESDAY, THE 25TH

JUSTICE MCEWEN)

DAY OF MARCH, 2020



**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner CHOICE
 PROPERTIES GP INC.**

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

Respondents

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

ORDER
(appointing Receiver)

THIS APPLICATION made by Choice Properties Limited Partnership (“**Choice**” or the “**Applicant**”), by its general partner Choice Properties GP Inc., for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing RSM Canada Limited as receiver and manager (“**RSM**” and, in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. and certain of the assets, undertakings and properties of PRC Barrie Corp. (together with Penady (Barrie) Ltd., the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mario Barrafato sworn March 9, 2020 and the Exhibits thereto, the affidavit of Cameron Lewis sworn March 19, 2020 and the Exhibits thereto, the affidavit of Neil Miller sworn March 20, 2020 and the Exhibits thereto and the affidavit of Mario Barrafato sworn March 22, 2020 (the "**Supplemental Affidavit**"), and on hearing the submissions of counsel for the Applicant, counsel for the Receiver and counsel for the Respondents, no one else appearing although duly served as appears from the affidavit of service of Alexander Hay sworn March 9, 2020 and on reading the consent of RSM to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM is hereby appointed Receiver, without security, of (i) all of the assets, undertakings and properties of Penady (Barrie) Ltd. acquired for, or used in relation to a business carried on by Penady (Barrie) Ltd., including all proceeds thereof, and (ii) PRC Barrie Corp.'s interest in the real property having the legal description set out in Schedule "A" hereto and all assets, undertakings and properties related thereto (collectively, the "**Property**").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements (including any amendments and modifications thereto), repudiate or disclaim any agreement, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify or terminate any contracts of either of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of either of the Debtors, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from one or more Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be

opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and

encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

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

SEALING ORDER

28. THIS COURT ORDERS that Exhibit "D" to the Supplemental Affidavit, the Respondent's Confidential Application Record dated March 20, 2020, and the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, shall each be and is hereby sealed, kept confidential and shall not form part of the public record.

GENERAL

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
33. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

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

A handwritten signature in black ink, appearing to be "McGee", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 27 2020

PER / PAR:

A handwritten signature in blue ink, appearing to be "e", written next to the text "PER / PAR:".

SCHEDULE "A"

PRC BARRIE CORP. REAL PROPERTY DESCRIPTION

58830-0092 (LT)

PART OF LOT 21 CONCESSION 3 (VESPra) BEING PARTS 5, 6 & 7 ON PLAN
51R35759; BARRIE

58830-0096 (LT)

PART OF LOT 21 CONCESSION 3 (VESPra) BEING PARTS 22 & 23 ON PLAN
51R35759; BARRIE

58830-0106 (LT)

PT LT 21 CON 3 VESPra BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE

58830-0109 (LT)

PT LT 21 CON 3 VESPra BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE

58830-0111 (LT)

PT LT 21 CON 3 VESPra BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO
EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties of Penady (Barrie) Ltd. and PRC Barrie Corp. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of March, 2020 (the "**Order**") made in an application having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to nine percent (9.0%).
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 2020.

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

Per: _____

Name:

Title:

CHOICE PROPERTIES LIMITED
PARTNERSHIP, by its general
partner **CHOICE PROPERTIES GP**
INC.

PENADY (BARRIE) LTD. and PRC
BARRIE CORP.

Court File No: CV-20-00637682-OOCL

and

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT: TORONTO

ORDER (Appointing a Receiver)

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

Michael De Lellis (LSO#48038U)
Email: mdelellis@osler.com
Tel: (416) 862.5997

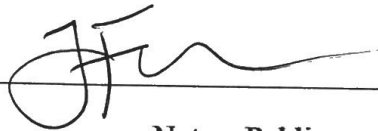
Shawn Irving (LSO#50035U)
Email: sirving@osler.com
Tel: (416) 862.4733

Alexander Hay (LSO#72242T)
Email: shay@osler.com
Tel: (416) 862.4252
Fax: (416) 862.6666

Counsel for the Applicant

Our Matter No. 1165673

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF MARIO BARRAFATO
SWORN BEFORE ME THIS
8th DAY OF MAY, 2020



Notary Public

BENEFICIAL OWNER AGREEMENT

THIS AGREEMENT is made as of December 24 2014 (the "Agreement").

AMONG:

CHOICE PROPERTIES LIMITED PARTNERSHIP
(the "Lender")

- and -

PENADY (BARRIE) LTD.
(the "Chargor")

- and -

PRC BARRIE CORP. and MADY (BARRIE) INC.
(together, the "Beneficial Owner")

RECITALS:

- A. Pursuant to a credit agreement between the Lender and the Chargor dated December __, 2014, (the "Credit Agreement"), the Lender has agreed to make a loan (the "Loan") to the Chargor on the terms and subject to the conditions set forth therein.
- B. It is a condition precedent to the borrowing under the Credit Agreement by the Covenantor that this Agreement shall have been entered into.
- C. Unless otherwise defined herein, all capitalized terms and expressions used in this Agreement shall have the same meaning as defined in the Credit Agreement

NOW THEREFORE in consideration of the Lender making the Loan to the Chargor and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties hereto agree as follows:

- 1. The Chargor and the Beneficial Owner jointly and severally represent and warrant to the Lender that the Chargor holds the Barrie Property as nominee and bare trustee for the sole use, benefit and advantage of the Beneficial Owner and for no other person or entity.
- 2. The Beneficial Owner hereby consents to and irrevocably authorizes and directs the Chargor to execute the following documents:
 - (a) the Credit Agreement; and
 - (b) the Security.

3. The Beneficial Owner hereby ratifies, confirms and authorizes the entering into by the Chargor of all of the Credit Documents which may heretofore have been, or hereafter will be, executed or entered into by the Chargor, including, without limitation, the Credit Agreement.

4. The Beneficial Owner hereby agrees that its beneficial interest in the Collateral as such term is defined in the Limited Recourse Guarantee executed by the Beneficial Owners in favour of the Lender as of the date hereof and further represents and warrants that it has authority to ratify, confirm and authorize the execution and delivery by the Chargor of the Security and that there is no agreement, written or oral, whereby it is prohibited or restricted from so doing.

5. The Beneficial Owner covenants, promises and agrees, to and with the Lender that it will pay or cause to be paid to the Lender, the principal sum under the Credit Agreement plus interest at the rate set out in the Credit Agreement and all other monies secured by the Security, on the days and times and in the manner provided in the Credit Agreement and the Security and will observe and keep all the covenants, provisos, conditions, agreements and stipulations set out in the Credit Agreement and the Security according to the true intent and meaning thereof and these covenants shall be binding upon the Beneficial Owner notwithstanding the giving of time for payment of amounts owing under the Credit Agreement or the Security or the varying of terms of payment thereof or the rate of interest thereon.

6. The Beneficial Owner hereby confirms that all its right, title and interest in and to the Barrie Property and all personal property relating thereto is charged by the Security, but by way of confirmation of and in supplement to the Security, and for the better assuring, granting, conveying, assigning, transferring, mortgaging, pledging and charging the Barrie Property and all personal property relating thereto unto the Bank, the Beneficial Owner does hereby grant, convey, assign, transfer, mortgage, pledge, grant a security interest in and charge as and by way of a fixed and specific mortgage and charge to and in favour of the Lender, all the right, title, estate and interest which the Beneficial Owner may have in and to the Barrie Property and all personal property relating thereto subject to the terms of the Security.

7. For the better securing of the Lender the repayment, in the manner aforesaid of the principal sum and interest, the Beneficial Owner hereby mortgages to the Lender the Beneficial Owner's estate and interest in the Barrie Property.

8. The Chargor and Beneficial Owner shall, from time to time, promptly take such action and execute and deliver such further documents as may be reasonably necessary or appropriate to give effect to the provisions and the intent of this agreement.

9. Any notice, demand or other communication to be made or given to the Beneficial Owner may be made or given by personal delivery, by registered mail or by facsimile transmission addressed to the Beneficial Owner as follows:

PRC BARRIE CORP. and MADY (BARRIE) INC.
10 Dundas Street East, Suite 1002
Toronto, Ontario M5B 2G9

(or to the last known address of the Beneficial Owner as shown in the Lender's records). Any demand, notice or communication given by personal delivery shall be conclusively deemed to

have been given on the day of actual delivery thereof, and if given by registered mail, on the third Business Day following the deposit thereof in the mail, and if given by facsimile transmission, on the first Business Day following the transmittal thereof.

10. This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF this Agreement has been executed by the Chargor and Beneficial Owner as of the date first set out above.

CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner, CHOICE PROPERTIES GP INC.

By:

Name:
Title:

By:

Name:
Title:

I/We have authority to bind the Partnership.

PENADY (BARRIE) LTD.

By:

Name: CHARLES MAOY
Title: PRESIDENT

By:

Name: DAVID JOHNSTON
Title: SECRETARY

I/We have authority to bind the Corporation

PRC BARRIE CORP.

By:

Name: DAVID JOHNSTON
Title: PRESIDENT

By:

Name:
Title:

I/We have authority to bind the Partnership.

MADY (BARRIE) INC.

By:

Name: DAVID MAOY
Title: PRESIDENT

By:

Name:
Title:

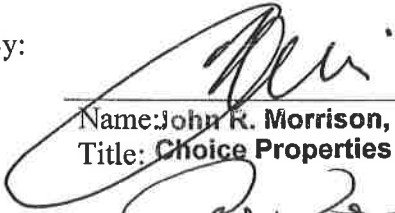
I/We have authority to bind the Partnership.

IN WITNESS WHEREOF this Agreement has been executed by the Chargor and Beneficial Owner as of the date first set out above.

CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner, CHOICE PROPERTIES GP INC.

PENADY (BARRIE) LTD.

By:



Name: **John R. Morrison, President & CEO**
Title: **Choice Properties REIT**

By:

Name:
Title:

By:



Name:
Title: **Adam Walsh**
VP, General Counsel & Secretary

By:

Name:
Title:

I/We have authority to bind the Partnership.

I/We have authority to bind the Corporation

PRC BARRIE CORP.

MADY (BARRIE) INC.

By:

Name:
Title:

By:

Name:
Title:

By:

Name:
Title:

By:

Name:
Title:

I/We have authority to bind the Partnership.

I/We have authority to bind the Partnership.

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF MARIO BARRAFATO
SWORN BEFORE ME THIS
8th DAY OF MAY, 2020

A handwritten signature in black ink, appearing to be 'J. Fer', is written over a horizontal line. The signature is cursive and stylized.

Notary Public

LIMITED RECOURSE GUARANTEE

THIS GUARANTEE is made as of the 24 day of December, 2014

TO: Choice Properties Limited Partnership (the "**Lender**")

BY: PRC Barrie Corp. and Mady (Barrie) Inc. (each a "**Guarantor**" and together, the "**Guarantors**") joint and severally

RECITALS:

- A. Pursuant to a credit agreement between the Lender and the Chargor dated December 24, 2014, (the "**Credit Agreement**"), the Lender has agreed to make a loan (the "**Loan**") to the Chargor on the terms and subject to the conditions set forth therein.
- B. It is a condition precedent to the borrowing under the Credit Agreement by the Covenantor that this Agreement shall have been entered into.
- C. Unless otherwise defined herein, all capitalized terms and expressions used in this Agreement shall have the same meaning as defined in the Credit Agreement

NOW THEREFORE in consideration of the Lender making the Loan to the Chargor and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Guarantors agree as follows:

ARTICLE 1
GUARANTEE

1.1 Guarantee

Subject to the provisions hereof, the Guarantors hereby jointly and severally unconditionally and irrevocably guarantees the payment and performance by the Borrower to the Lender of all the debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender or remaining unpaid or unsatisfied by the Borrower to the Lender arising pursuant to, out of or related to the Credit Agreement or any other Credit Document (collectively, the "**Obligations**"), together with any interest thereon as provided in Section 4.1.

1.2 Limited Recourse

Notwithstanding any provision contained in this Guarantee or in any other Loan Document to the contrary, the maximum liability of the Guarantors to the Lender under this Guarantee shall be limited to the interest of the Guarantors in the Barrie Property and all rights relating thereto including but not limited to the interest of the Guarantors in all collateral subject to the Security (collectively, the "**Collateral**") and no other recourse will be had, judgment

issued or execution or other process levied against the Guarantors or against any assets of the Guarantors other than the Collateral (for greater certainty, nothing herein will limit or restrict the right of the Lender to name any Guarantor as a party in any action, proceeding or other remedial or enforcement proceeding so long as no monetary judgment or claim is sought or enforced against its property or assets, other than the Collateral), except as set forth in this provision.

1.3 Limited Indemnity

The Guarantors will, as a separate and distinct obligation, indemnify and save harmless the Lender from and against all losses, damages, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from the fraud of the Borrower, any misrepresentation of the Borrower in the Credit Agreement, and any breach of Article 11 of the Credit Agreement. For greater certainty, notwithstanding the foregoing, the liability of the Guarantors pursuant to this Section 1.3 shall be limited as set out in Section 1.2 of this Guarantee.

1.4 Primary Obligation

If any or all of the Obligations are not duly performed by the Borrower or under this Guarantee or the Lender is not indemnified under Section 1.3, in each case, for any reason whatsoever, such Obligations will, as a separate and distinct obligation, be performed by the Guarantors as primary obligor. For greater certainty, notwithstanding the foregoing, the liability of the Guarantors pursuant to this Section 1.4 shall be limited as set out in Section 1.2 of this Guarantee.

1.5 Guarantee Absolute

The liability of the Guarantors hereunder shall be absolute and unconditional and shall not be affected by:

- (a) any lack of validity or enforceability of the Credit Agreement or any other agreements between the Lender and the Borrower, including any of the Credit Documents, or any change in the time, manner or place of payment of or in any other term of such agreements or the failure on the part of the Borrower to carry out any of its obligations under such agreements;
- (b) any impossibility, impracticability, frustration of purpose, illegality, force majeure or act of government;
- (c) the bankruptcy, winding-up, liquidation, dissolution or insolvency of the Borrower;
- (d) any lack or limitation of power, incapacity or disability on the part of the Borrower or the Lender or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of the Borrower in its obligations to the Lender;
- (e) any other law, regulation or other circumstance which might otherwise constitute a defence available to, or a discharge of, the Borrower in respect of any or all of the Obligations;

- 3 -

(f) any amendment, supplement, restatement, extension, renewal or replacement of this Guarantee, any other Loan Document or any provision or term of this Guarantee or any other Loan Document;

(g) whether any other Person or Persons (each an "**Additional Guarantor**") shall become in any other way responsible to the Lender for, or in respect of, all or any part of the Obligations;

(h) whether the Guarantors or any Additional Guarantor shall cease to be responsible for all or any part of the Obligations; or

(i) any failure by any Person, other than the Lender, to perform or comply with any of the provisions of the Credit Documents or to provide the Guarantors with notice of any such failure.

The liability of the Guarantors under this Guarantee shall be for that amount of the Obligations, as limited by Section 1.2, without apportionment, limitation or restriction of any kind. If more than one person is named as or otherwise becomes liable for or assumes the obligations and liabilities of the Guarantors hereunder, then the obligations and liabilities of all such persons shall be joint and several.

ARTICLE 2

DEALINGS WITH BORROWER AND OTHERS

2.1 No Release

The liability of the Guarantors hereunder shall not be released, discharged, limited or in any way affected by anything done, suffered or permitted by the Lender in connection with any duties or liabilities of the Borrower to the Lender or any security therefor including any loss of or in respect of any security received by the Lender. Without limiting the generality of the foregoing and without releasing, discharging, limiting or otherwise affecting in whole or in part the Guarantor's liability hereunder, the Lender may:

(a) make any change in the time, manner or place of payment under, or in another term of, any agreement between the Lender and the Borrower;

(b) grant time, renewals, extensions, indulgences, releases and discharges to the Borrower;

(c) take or abstain from taking or enforcing security or collateral from the Borrower or perfecting security or collateral from the Borrower;

(d) accept compromises from the Borrower;

(e) apply all money at any time received from the Borrower or from security upon such part of the Obligations as the Lender may see fit or change any such application in whole or in part from time to time as the Lender may see fit; and

- 4 -

(f) otherwise deal with the Borrower and all other persons and security as the Lender may see fit.

ARTICLE 3 **CONTINUING GUARANTEE**

3.1 Continuing Guarantee

This Guarantee shall be a continuing guarantee of the Obligations and shall apply to and secure any ultimate balance due or remaining due to the Lender and shall not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Lender. The Guarantors shall not be released or discharged from any of their obligations hereunder except upon the later of (i) the payment of the total amount guaranteed hereunder together with any interest thereon as provided in Section 4.1 and (ii) the termination of the Lender's obligations to advance funds under the Credit Agreement. This Guarantee shall continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Lender upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payment had not been made. Any account settled or stated in writing by or between the Lender and the Borrower shall be *prima facie* evidence that the balance or amount thereof appearing due to the Lender is so due.

ARTICLE 4 **DEMAND AND INTEREST**

4.1 Demand and Interest

The Lender shall be entitled to make demand upon the Guarantors at any time upon the occurrence and continuation of any Event of Default and upon such Event of Default the Lender may treat all Obligations as due and payable and may forthwith collect from the Guarantors the total amount guaranteed hereunder whether or not such Obligations are yet due and payable at the time of demand for payment hereunder. The Guarantors shall make payment to the Lender of the total amount guaranteed hereunder forthwith after demand therefor is made to the Guarantors. The Guarantors shall pay interest to the Lender at the Interest Rate on the unpaid portion of all amounts payable by the Guarantors under this Guarantee, such interest to accrue from and including the date of demand by the Lender to the Guarantors. The Lender shall not be bound or obligated to exhaust its recourse against the Borrower or other persons or any security or collateral it may hold or take any other action before being entitled to demand payment from the Guarantors hereunder. In any claim by the Lender against the Guarantors, the Guarantors may not assert any set-off or counterclaim that either the Guarantors or the Borrower may have against the Lender. The Guarantors shall pay all reasonable costs and expenses incurred by the Lender in enforcing this Guarantee.

ARTICLE 5
ASSIGNMENT, POSTPONEMENT AND SUBROGATION

5.1 Assignment, Postponement and Subrogation

All debts and liabilities, present and future, of the Borrower to the Guarantors are hereby assigned to the Lender and postponed to the Obligations, and all money received by the Guarantors in respect thereof shall be held in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, the whole without in any way lessening or limiting the liability of the Guarantors hereunder and this assignment and postponement is independent of the Guarantee and shall remain in full force and effect until, in the case of the assignment, the liability of the Guarantors under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Obligations are performed and paid in full. The Guarantors will not be entitled to subrogation until the Obligations are performed and paid in full. Notwithstanding the foregoing, until an Event of Default has occurred and is continuing, the Guarantors shall be entitled to receive income from the Property and deal with such income in the normal course of business without such income being required to be held in trust or paid to the Lender as set out above.

ARTICLE 6
GENERAL

6.1 Representation - Authority and Enforceability

The Guarantors represent and warrant to the Lender that each has obtained all authorizations, consents and approvals necessary for the granting and performance of this Guarantee and that this Guarantee is enforceable against the Guarantors in accordance with its terms.

6.2 Benefit of the Guarantee

The Guarantors acknowledge and agree that the Lender holds the Loan Agreement, this Guarantee and the other Loan Documents as custodian and agent for all persons having an ownership interest in the Loan from time to time and this Guarantee shall enure to the benefit of the Lender and each such person and their respective successors and assigns. The Guarantors agree that all enforcement actions or proceedings may be brought by the Lender under the Loan Agreement and this Guarantee on behalf of all persons having an ownership interest in the Loan and waives any requirement that any such person be a party thereto. This Guarantee shall be binding upon the Guarantors and its heirs, legal representatives, successors and assigns. Where any reference is made in this Guarantee to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference shall be construed and applied for all purposes as if referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or

existence of the trust) by or with respect to, the trustee(s) of the trust. This Guarantee may be transferred or assigned by the Lender without restriction and without notice to or the consent of the Guarantors provided that such transfer or assignment is part of a transfer or assignment of the Loan Agreement and all other Loan Documents as may be permitted pursuant thereto.

6.3 Limitation Periods

No limitation period under the *Limitations Act, 2002* (Ontario) shall expire earlier than the second anniversary of the date on which demand for payment of the Obligations under this Guarantee is made in accordance with the provisions of this Guarantee.

6.4 Entire Agreement

This Guarantee constitutes the entire agreement between the Guarantors and the Lender with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between such parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties with respect to the subject matter of this Guarantee except as expressly set forth herein.

6.5 Amendments and Waivers

No amendment or waiver of any provision of this Guarantee will be valid or binding unless set forth in writing and duly executed by the Lender. No waiver of any provision of this Guarantee shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Guarantee constitute a continuing waiver unless otherwise expressly provided.

6.6 Severability

If any provision of this Guarantee is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

6.7 Notices

Any notice, consent or approval required or permitted to be given in connection with this Guarantee shall be in writing and shall be sufficiently given if delivered in accordance with the Loan Agreement.

6.8 Governing Law

This Guarantee will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in the Province of Ontario applying to this Guarantee; and the Guarantors consent to the jurisdiction of the courts of the Province of Ontario and irrevocably agrees that, subject to the Lender's election in its sole discretion, all actions or proceedings arising out of or relating to this Guarantee shall

be litigated in such courts and the Guarantors unconditionally accept the non-exclusive jurisdiction of the courts of the Province of Ontario and waives any defense of *forum non conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Guarantee, provided nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of the Lender to bring proceedings against the Guarantors or the Borrower in the courts of any other jurisdiction.

6.9 General

The Guarantors acknowledge having received and reviewed a copy of the Loan Agreement and each of the other Loan Documents.

[the remainder of this page is intentionally left blank; signature page follows]

IN WITNESS WHEREOF the Guarantors have executed this Guarantee as of the date first written above.

PRC BARRIE CORP.

MADY (BARRIE) INC.

By:

By:

Name: DAVID JOHNSON
Title: PRESIDENT

Name: DAVID MADY
Title: PRESIDENT

By:

By:

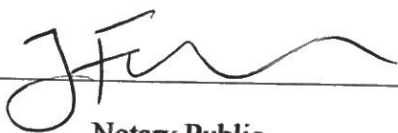
Name: _____
Title: _____

Name: _____
Title: _____

I/We have authority to bind the Partnership.

I/We have authority to bind the Partnership.

THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF MARIO BARRAFATO
SWORN BEFORE ME THIS
8th DAY OF MAY, 2020



Notary Public

March 9, 2020

Dave Rosenblat
Direct Dial: 416.862.5673
drosenblat@osler.com
Our Matter Number: 1155673

SENT BY EMAIL

Attention: David V. Johnston
Mady (Barrie) Inc.
10 Dundas Street East, Suite 1002
Toronto, Ontario M5B 2G9

Attention: Charles Mady
Mady (Barrie) Inc.
8791 Woodbine Avenue, Suite 100
Markham, Ontario L3R 0P4

Attention: Robert Schwartz
Gardiner Roberts LLP
40 King Street West, Suite 3100
Toronto, Ontario M5H 3Y2

Dear Sis:

Re: Credit Agreement Among Penady (Barrie) Ltd. (the “Borrower”) and Choice Properties Limited Partnership (the “Lender”)

We are writing to you as counsel to the Lender in connection with the Credit Agreement dated as of December 24, 2014 (as modified, amended, supplemented, revised, restated and replaced from time to time, collectively the “**Credit Agreement**”) between the Lender and the Borrower. Capitalized terms used but not otherwise defined in this letter shall have the meaning given to them in the Credit Agreement.

As set out in the Notice of Default dated February 11, 2020 (the “**Notice**”), an Event of Default has occurred pursuant to Section 16.1(a) of the Credit Agreement as the Borrower has failed to pay the Principal and unpaid interest outstanding under the Mezzanine Facility.

According to the Lender’s records, the Borrower is indebted or otherwise liable to the Lender in the aggregate principal amount as at March 9, 2020 of \$67,972,190.45 in respect of the Mezzanine Facility, together with interest, fees, costs and other allowable charges accrued to the date hereof in the amount of \$218,234.00 and continuing to accrue

pursuant to the terms of the Credit Documents (collectively, the “**Indebtedness**”). PL Ventures Ltd., PRC Fernbank Corp, Mady (Barrie) Inc. and PRC Barrie Corp. (the “**Guarantors**”) have guaranteed the repayment of the Indebtedness.

Pursuant to the Notice, the Lender has demanded payment in full of the Indebtedness from the Borrower and the Guarantors. The Notice constituted a demand for payment under the terms and conditions of the Credit Agreement and the terms and conditions of all security (the “**Security**”) held by the Lender directly or indirectly for any of the Indebtedness, including all loan agreements, promissory notes, guarantees and other agreements governing the Indebtedness, and under all security instruments held for the Indebtedness, and is made without prejudice to the Lender’s rights to make such further and other demands as it shall see fit for any other indebtedness or under any other security.

Unless immediate payment or arrangements satisfactory to the Lender for payment of the Indebtedness are made, the Lender may take any further steps that it deems necessary to recover payment of the Indebtedness. These steps shall include the enforcement of the Security.

We enclose a notice of intention to enforce security issued to you by the Lender under Section 244 of the *Bankruptcy and Insolvency Act* (Canada).

The Lender expressly reserves its rights and remedies with respect to any defaults that shall now exist or hereafter arise under the Credit Agreement or Security, and at law, equity or otherwise.

Yours very truly,



David Rosenblat

c: *Choice Properties Limited Partnership*
Rod Davidge, Osler, Hoskin & Harcourt LLP
Michael De Lellis, Osler, Hoskin & Harcourt LLP

NOTICE OF INTENTION TO ENFORCE SECURITY

(Rule 124)

Section 244(1)

BANKRUPTCY AND INSOLVENCY ACT

TO: Mady (Barrie) Inc., an insolvent person (the “**Debtor**”)

Attention: David V. Johnston

TAKE NOTICE THAT:

- a) Choice Properties Limited Partnership, by its general partner, Choice Properties GP Inc., (the “**Lender**”), a secured creditor, intends to enforce its security on the real and personal property of the insolvent person charged by the security granted by the insolvent person to the Lender, including the real property described on Schedule “A”.
- b) The security that is to be enforced is in the form of the following:
 - (a) Limited Recourse Guarantee, dated as of December 24, 2014, between PRC Barrie Corp. and the Debtor, as guarantors, and the Lender and
 - (b) Beneficial Owner Agreement, dated as of December 24, 2014, between Penady (Barrie) Ltd., as chargor, PRC Barrie Corp. and the Debtor, as beneficial owners, and the Lender.
- c) According to the Lender’s records, Penady (Barrie) Ltd. (the “**Borrower**”) is indebted or otherwise liable to the Lender in the aggregate principal amount as at March 9, 2020 of \$67,972,190.45 in respect of the Mezzanine Facility (as defined in the Credit Agreement dated as of December 24, 2014 between the Borrower and the Lender, being the “**Credit Agreement**”), together with interest, fees, costs and other allowable charges accrued to the date hereof in the amount of \$218,234.00 and continuing to accrue pursuant to the terms of the Credit Documents (as defined in the Credit Agreement) (the “**Indebtedness**”), which Indebtedness is secured by the security.
- d) The Lender will not have the right to enforce the security granted by the Debtor until after the expiry of the 10-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at Toronto, this 9th day of March, 2020.

**CHOICE PROPERTIES LIMITED
PARTNERSHIP, by its general partner,
CHOICE PROPERTIES GP INC.**

By: 

Name:

Title:

By: 

Name:

Title:

Adam Walsh

VP, General Counsel & Secretary

SCHEDULE "A"**58830-0092 (LT)**

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN 51R35759; BARRIE

58830-0096 (LT)

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN 51R35759; BARRIE

58830-0106 (LT)

PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE

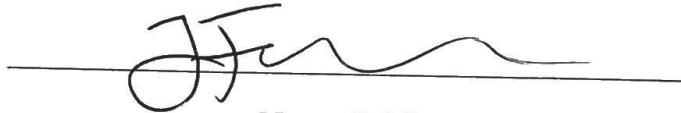
58830-0109 (LT)

PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE

58830-0111 (LT)

PT LT 21 CON 3 VESPRA BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF MARIO BARRAFATO
SWORN BEFORE ME THIS
8th DAY OF MAY, 2020

A handwritten signature in black ink, appearing to be 'J. J.', is written over a horizontal line. The signature is stylized and cursive.

Notary Public

Court File No.

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

BETWEEN:

CHOICE PROPERTIES LIMITED PARTNERSHIP

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

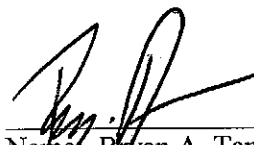
Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3, AS AMENDED AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C 43, AS AMENDED**

CONSENT TO ACT AS RECEIVER

RSM Canada Limited hereby consents to act as the court-appointed receiver and manager of Mady (Barrie) Inc.'s interest in the real property having the legal description set out in Schedule "A" to the Appointment Order dated March 25, 2020, made in these proceedings, and all assets, undertakings and properties related thereto.

May 1, 2020

RSM CANADA LIMITED

Name: Bryan A. Tannenbaum

Title: President

**CHOICE PROPERTIES LIMITED
PARTNERSHIP, by its general
partner CHOICE PROPERTIES GP
INC.**

**PENADY (BARRIE) LTD. and PRC
BARRIE CORP.**

Court File No: CV-20-00637682-00CL

and

Applicant

Respondents

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

AFFIDAVIT OF MARIO BARRAFATO

OSLER, HOSKIN & HARCOURT LLP

100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

Michael De Lellis (LSO#48038U)

Email: mdelellis@osler.com

Tel: (416) 862.5997

Shawn Irving (LSO#50035U)

Email: sirving@osler.com

Tel: (416) 862.4733

Alexander Hay (LSO#72242T)

Email: shay@osler.com

Tel: (416) 862.4252

Fax: (416) 862.6666

Counsel for the Moving Party

Our Matter No. 1165915

TAB 3

Court File No. CV-20-00637682-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	WEDNESDAY, THE 20 TH
)	
JUSTICE MCEWEN)	DAY OF MAY, 2020

**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner CHOICE
PROPERTIES GP INC.**

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

Respondents

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

ORDER
(Re: Amended and Restated Order (Appointing Receiver))

THIS MOTION made by Choice Properties Limited Partnership (the “**Applicant**”), by its general partner Choice Properties GP Inc., pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, was heard this day [**in writing / by judicial videoconference via Zoom**] in Toronto, Ontario, due to the COVID-19 crisis.

affidavit of Neil Miller sworn March 20, 2020 and the Exhibits thereto, the affidavit of Mario Barrafato sworn March 22, 2020, the affidavit of Mario Barrafato sworn May 8, 2020 and on hearing the submissions of counsel for the Applicant, counsel for RSM Canada Limited as receiver and manager of the Respondents (“**RSM**”, and in such capacities, the “**Receiver**”) and counsel for the Respondents and Mady (Barrie) Inc., no one else appearing although duly served as appears from the affidavit of service of Alexander Hay sworn May 8, 2020 and on reading the consent of RSM to act as the Receiver.

SERVICE

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

AMENDED AND RESTATED ORDER (APPOINTING RECEIVER)

2. **THIS COURT ORDERS** that the amendments to the Order (appointing Receiver) of this Court dated March 25, 2020 granted in these proceedings, as set out in the blackline comparison of the Amended and Restated Order (appointing Receiver) attached as Schedule “A” to this Order, are approved.

3. **THIS COURT ORDERS** that the Applicant is authorized to issue a clean copy of the Amended and Restated Order (appointing Receiver).

STYLE OF CAUSE

4. **THIS COURT ORDERS** that the title of these proceedings is hereby changed to:

CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner CHOICE
PROPERTIES GP INC.

Applicant

- and -

PENADY (BARRIE) LTD., PRC BARRIE CORP., and MADY (BARRIE) INC.

Respondents

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

GENERAL

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

SCHEDULE "A"

(see attached)

Court File No. CV-20-00637682-~~00CL~~00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	WEDNESDAY, THE 25 TH
)	
JUSTICE MCEWEN)	DAY OF MARCH, 2020

CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner CHOICE PROPERTIES GP INC.

Applicant

- and -

PENADY (BARRIE) LTD. ~~and~~, PRC BARRIE CORP., and MADY (BARRIE) INC.

Respondents

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

AMENDED & RESTATED ORDER
(appointing Receiver)

THIS APPLICATION made by Choice Properties Limited Partnership (“**Choice**” or the “**Applicant**”), by its general partner Choice Properties GP Inc., for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”)-~~appointing RSM Canada Limited as receiver and manager (“**RSM**” and, in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. and certain of the assets, undertakings and properties of PRC Barrie Corp. (together with Penady (Barrie) Ltd., the “**Debtors**”) acquired for, or used in relation to a business carried on by~~

~~the Debtors~~, was heard this day ~~at 330 University Avenue~~, via telephone conference in Toronto, Ontario.

ON READING the affidavit of Mario Barrafato sworn March 9, 2020 and the Exhibits thereto, the affidavit of Cameron Lewis sworn March 19, 2020 and the Exhibits thereto, the affidavit of Neil Miller sworn March 20, 2020 and the Exhibits thereto ~~and~~, the affidavit of Mario Barrafato sworn March 22, 2020 (the “**Supplemental Affidavit**”), the affidavit of Mario Barrafato sworn May 8, 2020 and on hearing the submissions of counsel for the Applicant, counsel for ~~the RSM Canada Limited as receiver and manager of the Respondents (“RSM”, and in such capacities, the “Receiver”)~~ and counsel for the Respondents (collectively, the “Debtors”), no one else appearing although duly served as appears from the affidavits of service of Alexander Hay sworn March 9, 2020 and May 8, 2020 and on reading the consent of RSM to act as the Receiver.

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM is hereby appointed Receiver, without security, of (i) all of the assets, undertakings and properties of Penady (Barrie) Ltd. (“PBL”) acquired for, or used in relation to a business carried on by Penady (Barrie) Ltd., including all proceeds thereof, and (ii) each of PRC Barrie Corp.’s (“PBC”) and Mady (Barrie) Inc.’s (together with PBC, the “Beneficial Owners”) interest in the real property having the legal description set out in Schedule “A” hereto and all of their respective assets, undertakings and properties related thereto (collectively, the “**Property**”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of ~~the Debtors~~PBL and, solely as it relates to the Property, of the Beneficial Owners, including the powers to enter into any agreements (including any amendments and modifications thereto), repudiate or disclaim any agreement, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify or terminate any contracts of ~~either~~PBL and, solely as it relates to the Property, of the ~~Debtors~~Beneficial Owners;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of ~~the Debtors~~PBL and, solely as it relates to the Property, of the Beneficial Owners, or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to ~~the Debtors~~PBL and, solely as it relates to the Property, to the Beneficial Owners, and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by ~~the Debtors~~PBL and, solely as it relates to the Property, by the Beneficial Owners;
- (g) to settle, extend or compromise any indebtedness owing to ~~the Debtors~~PBL and, solely as it relates to the Property, to the Beneficial Owners;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of ~~either~~any or all of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to ~~the Debtors~~PBL, the Beneficial Owners (solely as it relates to the Property), the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of ~~either~~any or all of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any or all of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (q) to exercise any shareholder, partnership, joint venture or other rights which ~~the Debtors~~ PBL and, solely as it relates to the Property, the Beneficial Owners may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of ~~the Debtors~~ PBL and, solely as it relates to the Property, the Beneficial Owners, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to

Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property or any assets located on premises belonging to the Debtors shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of ~~the Debtors~~PBL, the Beneficial Owners (solely as it relates to the Property), or the Property or any assets located on premises belonging to ~~the Debtors~~PBL and, solely as it relates to the Property, the Beneficial Owners are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized

banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from one or more Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

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

EMPLOYEES

15. THIS COURT ORDERS that all employees of ~~the Debtors~~PBL shall remain the employees of ~~the Debtors~~PBL until such time as the Receiver, on ~~the Debtors~~PBL's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in

section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental

Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

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

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be

valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: ~~www.rsmcanada.com/penady-barrie-inc~~ www.rsmcanada.com/penady-barrie-ltd.

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

SEALING ORDER

28. THIS COURT ORDERS that Exhibit "D" to the Supplemental Affidavit, the Respondent's Confidential Application Record dated March 20, 2020, and the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, shall each be and is hereby sealed, kept confidential and shall not form part of the public record.

GENERAL

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

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

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

SCHEDULE "A"

~~PRC BARRIE CORP.~~ REAL PROPERTY DESCRIPTION**58830-0092 (LT)**

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN 51R35759; BARRIE

58830-0096 (LT)

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN 51R35759; BARRIE

58830-0106 (LT)

PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE

58830-0109 (LT)

PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE

58830-0111 (LT)

PT LT 21 CON 3 VESPRA BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver ~~(and manager (in such capacity, the "Receiver") of (a) the assets, undertakings and properties of Penady (Barrie) Ltd. and, including all proceeds thereof, and (b) the interests of PRC Barrie Corp. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors and Mady (Barrie) Inc., respectively, in the real property having the legal description set out in Schedule "A" hereto and all of their respective assets, undertakings and properties related thereto,~~ including all proceeds thereof (collectively, the "**Property**")~~,~~ appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 25th day of March, 2020 ~~(the "Order"), as amended and restated by a further Order of the Court dated ●, 2020, each made in an application the proceedings having Court file number 20-CL-00637682-00CL (as amended and restated, the "Order"),~~ has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, ~~being part of the total principal sum of \$ _____~~ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ first day of each month after the date hereof at a notional rate per annum equal to nine percent (9.0%).

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

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2020.

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

Per: _____
Name:
Title:

SCHEDULE "A"REAL PROPERTY DESCRIPTION

58830-0092 (LT)

PART OF LOT 21 CONCESSION 3 (VESPra) BEING PARTS 5, 6 & 7 ON PLAN
51R35759; BARRIE

58830-0096 (LT)

PART OF LOT 21 CONCESSION 3 (VESPra) BEING PARTS 22 & 23 ON PLAN
51R35759; BARRIE

58830-0106 (LT)

PT LT 21 CON 3 VESPra BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE

58830-0109 (LT)

PT LT 21 CON 3 VESPra BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE

58830-0111 (LT)

PT LT 21 CON 3 VESPra BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO
EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE

CHOICE PROPERTIES LIMITED
PARTNERSHIP, by its general partner
CHOICE PROPERTIES GP INC.
 Applicant

and

PENADY (BARRIE) LTD. ~~and~~, PRC
BARRIE CORP., and MADY
(BARRIE) INC.

Court File No: CV-20-00637682-~~00CL~~00CL

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
 PROCEEDING COMMENCED AT: TORONTO

AMENDED AND RESTATED ORDER
(~~Appointing a~~ appointing Receiver)

Our Matter No. 1165673

OSLER, HOSKIN & HARCOURT LLP
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**CHOICE PROPERTIES LIMITED
PARTNERSHIP, by its general
partner CHOICE PROPERTIES GP
INC.**

**PENADY (BARRIE) LTD. and PRC
BARRIE CORP.**

Court File No: CV-20-00637682-00CL

and

Applicant

Respondents

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

**ORDER
(Re: Amended and Restated Order (Appointing Receiver))**

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Counsel for the Moving Party

Our Matter No. 1165673

**CHOICE PROPERTIES LIMITED
PARTNERSHIP, by its general
partner CHOICE PROPERTIES GP
INC.**

Applicant

**PENADY (BARRIE) LTD. and PRC
BARRIE CORP.**

and

Respondents

Court File No: CV-20-00637682-00CL

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

MOTION RECORD OF THE MOVING PARTY

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Counsel for the Moving Party

Our Matter No. 1165915