

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

B E T W E E N:

**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 OF THE RECEIVER
(SALE APPROVAL AND VESTING ORDER
RETURNABLE SEPTEMBER 9, 2020)
VOLUME I OF III**

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in its capacity as Court-appointed Receiver

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TAB 1

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

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

B E T W E E N:

**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 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****

NOTICE OF MOTION

RSM CANADA LIMITED (“RSM”), in its capacity as Court-appointed receiver and manager (in this capacity, the “**Receiver**”) of the assets, undertakings and properties of Penady (Barrie) Ltd. (“**PBL**”) and certain of the assets of PRC Barrie Corp. (“**PRC Barrie**”) and Mady (Barrie) Inc. (“**MBI**”), will make a motion to a Judge of the Commercial List, on Wednesday, September 9, 2020, at 2:00 p.m. or as soon after that time as the motion can be heard, at 330 University Avenue, 8th Floor, 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. The Zoom conference call-in details are attached as **Schedule “A”** hereto.

THE MOTION IS FOR an Order:

1. if necessary, abridging the time for service of the Receiver's Motion Record and related Notice of Motion, validating service of the Motion Record and related Notice of Motion, and dispensing with further service thereof;
2. approving the Second Report of the Receiver dated August 31, 2020 (the "**Second Report**") and the activities and proposed activities of the Receiver described therein;
3. authorizing and directing the Receiver to carry out the Stalking Horse Agreement (as defined in the Order of Justice McEwen dated June 2, 2020) with Choice Properties Limited Partnership ("**CHP**") as purchaser for the sale of all of the right, title and interest of PBL, PRC Barrie and MBI (collectively, the "**Debtors**") in and to the Barrie Property (as defined in the Second Report);
4. approving the sale of the Barrie Property in accordance with the Stalking Horse Agreement and vesting in CHP all right, title and interest of the Debtors in and to the Barrie Property, free and clear of all encumbrances, estates, rights, title, liens, interest and claims (other than permitted encumbrances), upon delivery of a certificate by the Receiver;
5. approving and accepting the Receiver's Interim Statement of Receipts and Disbursements for the period from March 27, 2020, to August 21, 2020, as set out in Appendix "N" to the Second Report;
6. approving the professional fees of the Receiver and its counsel Blaney McMurtry LLP ("**Blaney**"); and
7. such further relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. pursuant to a receivership application issued herein by the Applicant on March 9, 2020, and an Order issued March 25, 2020, RSM was appointed Receiver of all of the assets, undertakings and properties of PBL acquired for, or used in relation to a business carried on by PBL, including all proceeds thereof, and the interest of PRC Barrie in the Barrie Property (defined below) and all assets, undertakings and properties related thereto.
2. by way of Order issued May 15, 2020, an Amended and Restated Appointment Order was issued (the “**Appointment Order**”), adding MBI as a respondent, and appointing RSM as receiver and manager without security over MBI’s interest in the Barrie Property, and all assets, undertakings and properties related thereto;
3. the Respondent PBL is the registered owner of commercial rental property located at the intersection of Cundles Road and Duckworth Avenue in the City of Barrie, which forms part of the North Barrie Crossing Shopping Centre (defined as the “Barrie Property” in the First Report). PRC Barrie and MBI are the beneficial owners of the Barrie Property, and PBL holds the Barrie Property as nominee and bare trustee for the sole use, benefit and advantage of PRC Barrie and MBI, and for no other person or entity;
4. CHP is the senior secured lender to PBL. The security granted to CHP includes, *inter alia*, a limited recourse guarantee granted by PRC Barrie and MBI, limited to their beneficial interest in the Barrie Property;
5. CHP advanced funding to PBL to assist with the development of the Barrie Property. As at March 9, 2020, PBL was indebted to CHP for \$68,190,424. This amount included CHP’s repayment of PBL’s indebtedness in favour of Equitable Bank (the “**EQ Debt**”), which previously held a mortgage over the Barrie Property ranking in priority to that of CHP’s mortgage;

Stalking Horse Agreement and Sale Procedure

6. on June 2, 2020, Justice McEwen made an order (the “**Sale Procedure Approval Order**”), among other things, approving a Sale Procedure (as defined in that Order) and the retainer of Avison Young Commercial Real Estate (Ontario) Inc. (“**Avison Young**”) as the listing agent for the Barrie Property, and authorizing the Receiver to enter into the Stalking Horse Agreement with CHP;
7. the Sale Procedure contemplated a two-phase process. In the first phase, interested parties that executed a non-disclosure agreement and an acknowledgment of the Sale Procedure were provided with a confidential information memorandum and were given access to additional confidential information in a confidential data room. Phase 1 offers were to be made on a non-binding letter of intent. In the second phase, qualified bidders were to submit binding offers in the form of an executed mark-up of the Modified Stalking Horse Agreement (as defined in the Sale Procedure);
8. under the Sale Procedure, if the Receiver determined that there is no Qualified Phase I Bid other than the Stalking Horse Bid following the Phase I Bid Deadline on August 12, 2020, the Sale Procedure was to be terminated. In that event, the Stalking Horse Bid would be declared the Successful Bid and the Receiver would seek Court approval of, and authority to consummate, the Stalking Horse Agreement and the transaction provided for therein;
9. the minimum purchase price of any Phase II Bid was the sum of the Purchase Price (as defined in the Stalking Horse Agreement) plus the Expense Reimbursement of \$400,000, plus \$250,000. If the Receiver received one or more Qualified Phase II Bids (in addition to the Stalking Horse Bid) by the Phase II Bid Deadline, and the Receiver determined such Qualified Phase II Bid(s) to be greater than the Stalking Horse Bid, the Receiver was authorized to conduct an auction amongst the Qualified Phase II Bidders (including CHP), on terms to be determined by the Receiver and/or otherwise negotiate with the Qualified Phase II Bidders, on terms to be determined by the Receiver, in accordance with the Sales Procedure;

10. in his Endorsement arising from the Receiver's motion for the Sale Procedure Approval Order, Justice McEwen further directed the Receiver to make best efforts to obtain estoppel certificates from seven specified tenants of the Barrie Property, and to obtain an updated environmental report and a property condition assessment report;
11. on or about July 20, 2020, a Property Condition Assessment was posted to the data room. On or about July 29, 2020, an Environmental Phase 1 Site Assessment Update was posted to the data room;
12. although the Receiver sent an estoppel certificate to each of the seven tenants required by the Sale Procedure Approval Order, only five of the tenants returned executed certificates despite the Receiver's best efforts to obtain them for the two remaining tenants. These executed estoppel certificates were posted to the data room (among other things) on or about August 4, 2020;
13. as a result of the marketing efforts undertaken pursuant to the Sale Procedure approved by the Sale Procedure Approval Order, 19 parties expressed interest in the Barrie Property, and NDAs and Acknowledgments of Sale Procedure were signed by 14 potential purchasers (including CHP). However, as of the Phase 1 Bid Deadline, no offers, other than the offer in the Stalking Horse Agreement, were submitted for the Barrie Property;
14. accordingly, and pursuant to the Sale Procedure, the Sale Procedure was terminated, and the Stalking Horse Bid was declared the Successful Bid
15. extensive and reasonable efforts were made to obtain a price in excess of that in the Stalking Horse Agreement, and the Sale Process was conducted fairly. The offer in the Stalking Horse Agreement is the most advantageous to the creditors of the Debtors, given the COVID-19 pandemic and ongoing costs being incurred, including interest continuing to accrue on the Debtors' indebtedness to CHP;

16. it is the Receiver's recommendation that this Court confirm that the CHP is the Successful Bidder, authorize the Receiver to carry out the terms of the Stalking Horse Agreement, and grant an Order vesting title in the Barrie Property in CHP or its assignee upon the closing of the transaction;

Canada Emergency Commercial Rent Assistance ("CECRA")

17. on April 24, 2020, the Government of Canada (the "**Government**") announced an emergency rent assistance program to assist commercial tenants impacted by COVID-19;
18. while many of PBL's tenants appeared to meet the eligibility requirements of CECRA, CECRA was not available to property owners that were the subject of any actual or pending insolvency proceeding, or to property owners who had made any filing under bankruptcy or insolvency legislation;
19. nevertheless, the Receiver submitted its proposal to CMHC, and on August 19, 2020, CMHC provided its approval. As the Successful Bidder for the Barrie Property, CHP will, as part of the closing of the sale of the Barrie Property to CHP, receive an assignment of PBL's right and interest in the Receiver's CECRA program application and related agreements and documents;

Cash Security – City of Barrie

20. in 2015, an Irrevocable Standby Letter of Credit in the amount of \$500,000 was issued by Equitable Bank (the "**EQ LC**") on behalf of PBL to the City of Barrie as security for servicing and surface works, as well as parks planning and development landscape works to be completed by PBL at the Barrie Property. The EQ LC has not been released by the City of Barrie, but was replaced with cash security by Equitable Bank after Choice paid out the EQ Debt (the "**Cash Security**");
21. the Cash Security will only be released upon completion, inspection, and City of Barrie sign off, of certain infrastructure and landscaping works. The Receiver arranged for inspections, which revealed several deficiencies that will cost at least

\$250,000 to rectify. The Receiver is in the process of reviewing the summaries of deficiencies, and estimates to rectify same, and determining a course of action;

Letter of Credit – Gardiner Roberts LLP

22. on or about January 8, 2015, an Irrevocable Standby Letter of Credit for \$1,933,315.25 (the “**BMO LC**”) was issued by Bank of Montreal on behalf of CP REIT Ontario Properties Limited to Gardiner Roberts LLP (“**Gardiner**”) in favour of the Barrie Property. On January 22, 2015, the amount of the BMO LC was amended to \$1,774,416.25;
23. among other purposes, the BMO LC was held on behalf of PBL to secure PBL’s share of certain work to be completed relating to the Barrie Property, which work the Receiver was advised has been completed. The Receiver determined that the unclaimed balance outstanding under the BMO LC was \$889,495.00;
24. on or about August 5, 2020, Gardiner wrote to BMO making demand on the BMO LC in the amount of \$889,495. The funds to be received on the BMO LC will be forwarded to the Receiver upon receipt;

Receipts and Disbursements

25. the Interim Statement of Receipts and Disbursements of the Receiver attached as Appendix “N” to the Second Report is a fair and accurate representation of the funds received and disbursed directly by the Receiver since the Appointment Order herein. It sets out actual receipts over disbursements of approximately \$343,697;

Professional Fees

26. the Receiver retained Blaney as its counsel for legal matters that have arisen in respect of the Receivership;
27. the fees and disbursements of the Receiver and of Blaney that are sought to be approved on this motion are fair and reasonable in the circumstances;
28. Section 249 of the *Bankruptcy and Insolvency Act*; and

29. Rules 1.04, 2.01, 2.03, 3.02(1), and 16.08 of the *Rules of Civil Procedure*.

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

1. the First Report of the Receiver dated May 12, 2020;
2. the Supplemental Report to the First Report of the Receiver dated May 26, 2020;
3. the Second Report of the Receiver dated August 31, 2020;
4. the Affidavit of Daniel Weisz sworn August 28, 2020;
5. the Affidavit of Chad Kopach sworn August 31, 2020; and
6. such further and other material as counsel may advise and this Honourable Court may permit.

Date: August 31, 2020

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Lawyers for RSM Canada Limited,
in its capacity as Court-appointed Receiver

TO: SERVICE LIST

TAB A

SCHEDULE "A"

Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://blaney.zoom.us/j/94514784221?pwd=RkxXOU1DSTFnMCtWSjZUTSt2RnF4UT09>

Meeting ID: 945 1478 4221

Passcode: 904140

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. and
MADY (BARRIE) INC.**

Respondents

**SECOND REPORT OF THE RECEIVER OF
PENADY (BARRIE) LTD., PRC BARRIE CORP. and
MADY (BARRIE) INC.**

AUGUST 31, 2020

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I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 25, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. (“**PBL**”) acquired for, or used in relation to a business carried on by PBL, including all proceeds thereof, and the interest of PRC Barrie Corp. (“**PRC Barrie**”) in the Barrie Property (defined below) and all assets, undertakings and properties related thereto (collectively, the “**Property**”). A copy of the Appointment Order and the related Endorsement of Justice McEwen made March 25, 2020, are attached as [Appendix “A”](#) and [Appendix “B”](#), respectively, to this report.
2. On May 8, 2020, the Applicant brought a motion for the purpose of seeking an Order amending the Appointment Order to include Mady (Barrie) Inc. (“**MBI**”) as a respondent, and to appoint RSM as receiver and manager without security over MBI’s interest in the Barrie Property, and all assets, undertakings and properties related thereto.
3. On May 12, 2020, the Receiver brought a motion, returnable on May 20, 2020 (the “**SISP Motion**”), for the purpose of, *inter alia*, seeking an Order:
 - i) authorizing the Receiver to conduct the Sale Procedure (as defined in the Receiver’s first report to the Court dated May 12, 2020 (the “**First Report**”));

-
- ii) authorizing the Receiver to enter into a listing agreement with Avison Young Commercial Real Estate (Ontario) Inc. (“**Avison Young**”); and
 - iii) authorizing the Receiver to enter into the Stalking Horse Agreement (as defined in the First Report) with Choice Properties Limited Partnership (“**CHP**”).

A copy of the First Report, without appendices, in support of the SISP Motion is attached to this report as [Appendix “C”](#).

4. On May 15, 2020, Justice McEwen issued an Order (the “**Amended and Restated Order (Appointing Receiver)**”) approving the amendments to the Appointment Order. A copy of the Amended and Restated Order (Appointing Receiver), and the related Order approving the amendments issued May 15, 2020, are attached to this report as [Appendix “D”](#).
5. The Receiver’s SISP Motion returnable on May 20, 2020, was rescheduled to June 2, 2020. A copy of the Endorsement of Justice McEwen made on May 19, 2020, rescheduling the SISP Motion is attached to this report as [Appendix “E”](#).
6. Prior to the return of the SISP Motion, the Debtors moved for leave to examine Cameron Lewis of Avison Young as a witness to that pending motion, pursuant to Rule 39.03 of the *Rules of Civil Procedure*. That motion was heard in a Case Conference on May 25, 2020, and Justice McEwen dismissed that motion in an Endorsement made that day (the “**May 25 Endorsement**”). A copy of the May 25 Endorsement is attached to this report as [Appendix “F”](#).

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7. On May 29, 2020, the Receiver served a supplementary motion record in support of its motion for approval of the Sale Procedure, which included the Supplemental Report to the First Report of the Receiver dated May 26, 2020 (the “**Supplemental First Report**”). The Supplemental First Report, without appendices, is attached to this report as [Appendix “G”](#).
 8. In a case conference heard on June 1, 2020, the Debtors sought an Order directing the Receiver to answer certain questions posed to the Receiver by the Debtors. The Endorsement of Justice McEwen made June 4, 2020, dismissing the Debtors’ request, is attached to this report as [Appendix “H”](#).
 9. On June 2, 2020, the Honourable Justice McEwen issued an Order (the “**Sale Procedure Approval Order**”), in which, *inter alia*, the Court:
 - i) approved the Sale Procedure and authorized the Receiver to carry out the Sale Procedure;
 - ii) approved the Receiver’s retainer of Avison Young as the Receiver’s listing agent;
 - iii) authorized the Receiver to enter the Stalking Horse Agreement;
 - iv) approved the obligation to pay the Expense Reimbursement pursuant to Section 8.2 of the Stalking Horse Agreement and Section 13 of the Sale Procedure; and

-
- v) directed the Receiver to use best efforts to obtain estoppel certificates from seven specified tenants of the Barrie Property, and arrange for a Property Condition Assessment and updated Phase 1 Environmental Report for the Barrie Property.

A copy of the Sale Procedure Approval Order issued June 2, 2020 and the related Endorsement of Justice McEwen made June 10, 2020, are attached as [Appendix “I”](#) and [Appendix “J”](#), respectively, to this report.

10. The Appointment Order, the Amended and Restated Order (Appointing Receiver), the Sale Procedure Approval Order, the First Report, the Supplemental First Report, and other Court documents have been posted on the Receiver’s website, which can be found at rsmcanada.com/penady-barrie-ltd.
11. The Receiver has retained the firm of Blaney McMurtry LLP (“**Blaney**”) to act as its independent legal counsel.
12. As set out in more detail below, despite extensive marketing efforts by the Receiver and Avison Young (which marketing efforts by Avison Young included efforts that predated the Appointment Order), no offers, other than the Stalking Horse Agreement, were submitted for the Barrie Property as of the Phase I Bid Deadline. As a result, the Stalking Horse Bid is the Successful Bid.
13. The Receiver is of the view that reasonable and sufficient efforts were made to obtain a price in excess of the Stalking Horse Bid, the marketing process was

comprehensive and conducted fairly, and the best outcome was achieved under the circumstances.

II. PURPOSE OF THE REPORT

14. The purpose of this second report of the Receiver (the “**Second Report**”) is to:
- (a) report to the Court on the activities of the Receiver since the date of the Supplemental First Report to August 28, 2020;
 - (b) provide the Court with information on the results of the Receiver’s Sale Procedure;
 - (c) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period from March 27, 2020 to August 21, 2020 (the “**R&D**”); and
 - (d) seek an Order:
 - (i) authorizing and directing the Receiver to carry out the terms of the Stalking Horse Agreement, together with any further minor amendments thereto deemed necessary by the Receiver;
 - (ii) approving the sale of the Barrie Property in accordance with the terms of the Stalking Horse Agreement and vesting in CHP, or as CHP may further direct in writing, all right, title and interest of the Respondents in and to the Barrie Property, free and clear of all encumbrances, estates, rights, title, liens, interest and claims (other than permitted encumbrances), upon closing of the transaction under

the Stalking Horse Agreement and the delivery of a Receiver's certificate to CHP;

- (iii) approving the fees of the Receiver for the period ending July 31, 2020;
- (iv) approving the fees of Blaney for the period ending July 31, 2020; and
- (v) approving the Second Report, the Receiver's conduct and activities described therein, and the R&D.

Terms of Reference

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

-
17. Defined terms in the Second Report have, unless indicated otherwise herein, the same meanings as set out in the First Report, the Supplemental First Report, the Sale Procedure and the Stalking Horse Agreement.

III. BACKGROUND

18. PBL is a corporation operating under the laws of Ontario having its registered head office in Toronto, Ontario. PBL is a subsidiary of PenEquity Realty Corporation ("**PenEquity**"), an Ontario-based real estate investment advisor that principally focuses on purchasing and developing real estate. A corporate profile report for PBL was attached as Appendix "B" to the First Report.
19. PBL is the registered owner of commercial rental property located at the intersection of Cundles Road and Duckworth Avenue in the City of Barrie, which forms part of the North Barrie Crossing Shopping Centre. More specifically, the Property is located at the following municipal addresses:
- 637-657 Cundles Road East;
 - 327 Cundles Road East; and
 - 507-527 Cundles Road East,
- (collectively referred to in this report as the "**Barrie Property**").
20. PRC Barrie and MBI are the beneficial owners (the "**Beneficial Owners**") of the Barrie Property.
21. PBL holds the Barrie Property as nominee and bare trustee for the sole use, benefit and advantage of the Beneficial Owners, and for no other person or entity.

Corporate profile reports for PRC Barrie and MBI were attached as Appendix “C” to the First Report.

22. Choice Properties GP Inc. (“**Choice GP**”) is the general partner of CHP, the Applicant in these proceedings. Choice GP is a subsidiary of Choice Real Estate Investment Trust (“**CH REIT**”). CH REIT is a diversified real estate investment trust primarily focused on retail, industrial, office and residential assets. The limited partners of CHP are CH REIT and George Weston Limited.
23. CHP is the beneficial owner of certain lands abutting the Barrie Property (the “**Barrie REIT Property**”). Penady (North Barrie) Ltd., an affiliate of PBL, is the registered owner of lands that are adjacent to the Barrie Property (the “**Penady Retail Lands**”). A site plan that identifies the Barrie Property, the Barrie REIT Property and the Penady Retail Lands is set out at page 15 of the Applicant’s Application Record.
24. CHP is the senior secured lender to PBL. The security granted to CHP includes, *inter alia*, a limited recourse guarantee granted by PRC Barrie and MBI.
25. CHP advanced funding to PBL to assist with the development of the Barrie Property. As at March 9, 2020, PBL was indebted to CHP for \$68,190,424 (the “**Indebtedness**”). The Indebtedness includes CHP’s repayment of PBL’s indebtedness to Equitable Bank (the “**EQ Debt**”). Equitable Bank previously held a first mortgage over the Barrie Property ranking in priority to that of CHP’s mortgage.

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26. CHP's secured facility matured on January 31, 2020. As (i) the amounts owing to by PBL to CHP were not repaid, (ii) PBL's efforts to sell or refinance the Barrie Property over the past 12-16 months were not successful, and (iii) the unpaid realty taxes for the Barrie Property for 2018, 2019 and 2020 had accumulated to approximately \$2.2 million, on March 9, 2020, the Applicant made an application, returnable on March 10, 2020, for the appointment of a receiver over PBL and the interest of PRC Barrie in the Barrie Property. On March 10, 2020, the application was adjourned to March 25, 2020.
27. On March 25, 2020, Justice McEwen, after hearing the contested application, issued an Endorsement confirming that it was both just and convenient, when reviewing all the relevant factors, that an order appointing a Receiver be granted.
28. After the terms of the Order were finalized, following discussions between the Applicant and the Respondents, on March 27, 2020, Justice McEwen issued the Appointment Order dated March 25, 2020, appointing RSM as the Receiver of PBL and PRC Barrie's interest in the Barrie Property.
29. As set out above, on May 8, 2020, the Applicant served a motion record seeking to amend and restate the Appointment Order. One of the amendments sought was to include MBI's interest in the Barrie Property in the definition of "Property". On May 15, 2020, Justice McEwen issued the Amended and Restated Order (Appointing Receiver) (see Appendix "D").

IV. INSURANCE

30. As noted in the First Report, the insurance coverage relating to the Barrie Property is part of PenEquity's overall insurance package, and the current policy term was to expire at 12:01 a.m. on August 31, 2020.
31. As PenEquity's renewal of its policy was not going to include the Barrie Property, the Receiver requested that Mitchell Sandham, the insurance broker retained by PenEquity, source new coverage for the Barrie Property.
32. As of August 27, 2020, Mitchell Sandham informed the Receiver that it had secured a policy providing liability coverage, but it had not secured property coverage. The Receiver was concerned that it might not be able to obtain insurance coverage for the Barrie Property upon the expiry of the PenEquity policy, and requested that CHP enquire of its insurer as to whether the insurer might provide a policy to the Receiver.
33. On August 27, 2020, CHP informed the Receiver that CHP's insurer could provide property coverage for the Barrie Property, and property coverage for the Barrie Property was placed prior to the expiry of the current policy over the Barrie Property.
34. In June 2020, Mitchell Sandham advised the Receiver that there was an outstanding insurance invoice for \$8,072 that had been issued in November 2019 and had not been paid by PBL, and that if payment was not made, then the insurance coverage would be cancelled. Given the amount in issue, the Receiver

agreed to pay this pre-receivership account in order to maintain existing insurance coverage for the Barrie Property, and not have to source alternate insurance.

V. PROPERTY TAXES

35. On June 26, 2020, the Receiver paid \$641,193 to the City of Barrie, representing the 2020 property tax instalments due June 30, 2020.
36. The Receiver received the 2020 Final Property Tax bills from the City of Barrie indicating that instalments of \$362,291 and \$362,286 are payable August 31, 2020 and October 30, 2020, respectively. Since the sale of the Barrie Property will not be completed before August 31, 2020, the Receiver, after receiving an advance of \$200,000 from CHP on August 26, 2020, paid that day the property taxes payable on August 31, 2020.

VI. TENANTS OF THE BARRIE PROPERTY

37. As noted in the First Report, due to operating restrictions and/or the reduction in business arising from the COVID-19 pandemic, many tenants temporarily suspended operations or offered limited services and requested some form of rent deferral or accommodation effective from the rental payment due on April 1, 2020. As of the date of this report, all the tenants of the Barrie Property have re-opened for business.
38. To accommodate the financial circumstances of certain tenants, as of August 14, 2020, the Receiver had negotiated and entered into rent deferral/rent abatement

agreements with three tenants which provided for deferral of two or three months' rent to be paid over 12 or 18 monthly instalments.

39. The Receiver's activities in connection with the Canada Emergency Commercial Rent Assistance program established by the Government of Canada is set out further below in this report.

Prospective Leases

40. The Receiver has authorized the Property Manager to proceed with finalizing the terms of leases for two prospective tenants proposed by the Property Manager. As of the date of this report, the leases have either not been finalized or signed.

VII. MARKETING OF THE PROPERTY

41. The Receiver's plan to market the Barrie Property, including the engagement of Avison Young, was set out in the First Report and approved in the Sales Procedure Approval Order. The marketing plan set out in the Sales Procedure was approved by Justice McEwen on the SISP Motion, over the objection of the Debtors.
42. The Avison Young Listing Agreement (the "**Listing Agreement**") was executed on June 8, 2020.
43. As noted in the First Report, Avison Young had, prior to the issuance of the Appointment Order, been engaged by the Debtors in January, 2020, to market the Barrie Property for sale and had commenced certain marketing activities following that engagement, including discussions with interested parties. Furthermore,

following the execution of the Listing Agreement, Avison Young reached out to 1,375 potential purchasers through e-mail.

44. As part of the Sale Procedure, Avison Young established a data room that was made available, as of June 11, 2020, to parties that executed a Confidentiality and Non-Disclosure Agreement (the “**NDA**”) as well as an Acknowledgement acknowledging receipt of, and the party’s agreement with, the Sale Procedure (the “**Acknowledgment of Sale Procedure**”).
45. Included in the data room established by Avison Young were various documents relating to the Barrie Property including:
- i) floor plans;
 - ii) site plans;
 - iii) surveys;
 - iv) architectural drawings;
 - v) audited expense statements;
 - vi) realty tax bills;
 - vii) property financial model and lease documentation;
 - viii) reciprocal easement and operating agreements; and
 - ix) zoning information.
46. In connection with certain requests made by the Debtors at the June 2, 2020 SISF Motion, the Receiver arranged for the following documents to be obtained and then be posted to the data room:
- i) Property Condition Assessment (posted on July 20, 2020);

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- ii) Environmental Phase 1 Site Assessment Update (posted on July 29, 2020); and
 - iii) Estoppel certificates obtained from five of seven tenants. Although the Property Manager sent an estoppel certificate for execution to the seven tenants referenced in the Sale Procedure Approval Order, Tim Hortons and LA Fitness did not provide estoppel certificates prior to the Phase 1 Bid Deadline (as defined in the Sale Procedure). The Receiver used best efforts to follow up with Tim Hortons and LA Fitness, but was unsuccessful. The five estoppel certificates received were posted to the data room on August 4, 2020.
47. Interested parties were informed that the Phase 1 Bid Deadline for offers for the Barrie Property to be received was 10:00 a.m. on August 12, 2020. Offers made in connection with the Phase 1 Bid Deadline were to be made on a non-binding letter of intent. The form of non-binding letter of intent, as well the form of the Receiver's baseline Agreement of Purchase and Sale to be used by parties qualified to make a Phase II Bid (as defined in the Sale Procedure), were posted to the Avison Young data room.
48. Additional steps taken by the Receiver/Avison Young in connection with the marketing of the Barrie Property include the following:
- i) a brochure (the "**Brochure**") was prepared and provided to interested parties who clicked on the link in the email blast distributed by Avison Young on June 8, 2020 (see para. 43 above). The brochure was

downloaded by 113 parties and the NDA and Acknowledgment of Sale Procedure were downloaded by 24 parties;

- ii) on June 16, 18, 23, and 25, 2020, an advertisement of the acquisition opportunity was published in the Globe and Mail newspaper (the “**Globe Advertisement**”); and
- iii) between June 8, 2020 and August 7, 2020, Mr. Lewis of Avison Young held discussions with interested parties.

Copies of the Brochure and the Globe Advertisement are attached collectively to this report as [Appendix “K”](#).

- 49. Avison Young’s final Progress Report dated August 14, 2020, which includes the names of the 19 parties that expressed interest in the Barrie Property, (the “**Avison Marketing Report**”) is attached to this report as [Appendix “L”](#). 14 parties signed an NDA and an Acknowledgement of Sale Procedure.

VIII. NO OTHER OFFERS RECEIVED

- 50. As of the Phase I Bid Deadline, despite the extensive marketing efforts described above, no offers, other than the Stalking Horse Agreement, were submitted for the Barrie Property.
- 51. The Sale Procedure provides that “[i]f no qualified Phase I Bid other than the Stalking Horse Bid is received by the Phase I Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder”, and the Receiver shall as soon as reasonably practical seek

approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Approval Hearing.

52. As no offers were submitted for the Barrie Property other than the Stalking Horse Agreement, the Stalking Horse Agreement is the Successful Bid.

IX. THE STALKING HORSE AGREEMENT

53. Capitalized terms used in this section of the Second Report are as defined in the Stalking Horse Agreement unless otherwise defined.
54. The Stalking Horse Agreement is a “credit bid” (the “**Stalking Horse Bid**”) by CHP, PBL’s primary secured lender (the “**Purchaser**” or the “**Stalking Horse Bidder**”).
55. The Sale Procedure Approval Order authorized the Receiver to enter into the Stalking Horse Agreement. The Stalking Horse Agreement has been executed by the Receiver. The key provisions of the Stalking Horse Agreement are set out below.
56. The Stalking Horse Agreement provides that the Purchaser will acquire the Subject Assets for the price set out in the Stalking Horse Bid (the “**Stalking Horse Price**”) to be satisfied by:
- i) providing a credit to the Debtor in the amount of the Credit Agreement Bid Amount, against the Debtor’s obligations under the Credit Agreement; and
 - ii) providing a credit to the Receiver in the amount of the Receiver’s Certificate Obligations, inclusive of the amount equal to the Wind-Down Estimate, as evidenced by Receiver’s Certificates.

57. The Stalking Horse Agreement includes the following material provisions:

- (i) all applicable taxes and registration fees, including land transfer taxes, are to be paid by the Purchaser on the Closing;
- (ii) the Subject Assets are the right, title and interest of the Receiver and PBL, PRC Barrie and MBI (collectively, the “**Debtors**”), in and to the tangible and intangible properties, assets, interests, rights and claims related to the Barrie Property and/or the Business, wherever located, as of the Closing Date, including without limitation the following assets, if any:
 - (a) the Barrie Property;
 - (b) the Leases;
 - (c) the Assumed Contracts;
 - (d) the Permitted Encumbrances;
 - (e) the Chattels;
 - (f) the Accounts Receivable, which includes all accounts receivable of PBL, and the accounts receivable of PRC and MBI related to the Barrie Property, as well as any rents and other amounts owing to the Debtors (or any of them) under the Leases, including without limitation any amounts owing as a result of the deferral of rents and other amounts due to the Debtors (or any of them) thereunder; and
 - (g) all other personal property not contemplated by the foregoing, but excludes the right, title and interest of the Receiver and the Debtors in and to the Excluded Assets and the Excluded Contracts;

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- (iii) the Purchaser will fund all accrued but unpaid fees and disbursements of the Receiver and its counsel subject to the Receiver's Charge as at the Closing Date. The Purchaser will also fund the costs to wind down and complete the Receivership Proceeding after the Closing Date (referred to as the Wind-Down Amount); and
 - (iv) any Secured Debt owing by PBL and the Beneficial Owners to the Purchaser (including accrued interest and Receiver borrowings) that is in excess of the Purchase Price (being \$50,000,000) will remain owing by PBL and the Beneficial Owners to the Purchaser from and after the Closing Date, with the Purchaser reserving with respect thereto all of its rights, powers, and remedies under its loan documents and applicable law.
58. Pursuant to the Stalking Horse Agreement, the obligation of the Purchaser to complete the Transaction is subject to certain conditions being fulfilled or performed on the Closing Date including, *inter alia*:
- (i) there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that the Stalking Horse Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;

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- (ii) the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
 - (iii) the Receiver shall have determined in accordance with the Sale Procedure that the Stalking Horse Agreement is the Successful Bid.

59. A copy of the executed Stalking Horse Agreement is attached to this report as [Appendix “M”](#).

X. APPROVAL OF THE SALE

60. The marketing process that the Receiver undertook was extensive and appropriate for the type of property in question and provided sufficient market exposure to the Barrie Property. The Barrie Property was initially exposed to the market by Avison Young as part of its earlier engagement by the Debtor, and then by the Receiver since at least June 8, 2020. Notice of the sale of the Barrie Property was sent to more than 1,300 parties, and the Barrie Property was advertised four times in the Globe and Mail newspaper.

61. As a result of the marketing efforts undertaken, 14 parties (including CHP) executed the NDA and Acknowledgment of the Sale Procedure. These 14 parties received a copy of the Offering Memorandum and had access to the Avison Young data room. In addition, there were 5 parties that signed the NDA but not the Acknowledgment of Sale Procedure and were therefore not provided with access the data room.

62. The Receiver is of the view that sufficient efforts were made to obtain a price in excess of the Stalking Horse Bid and that the marketing process was conducted fairly and the best outcome was achieved under the circumstances . The Receiver regards the Stalking Horse Bid as the offer received for the Barrie Property which is the most advantageous to the creditors of the Debtors, taking into account the current economic climate in light of the COVID-19 pandemic, and ongoing costs being incurred, including the interest continuing to accrue on the Debtors' indebtedness to CHP. The length of the marketing process was appropriate. The Receiver therefore recommends that this Court confirm that CHP is the Successful Bidder, authorize the Receiver to carry out the terms of the Stalking Horse Agreement and grant an Order vesting title in the Subject Assets in CHP or its assignee upon the closing of the Transaction.

XI. CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE (“CECRA”)

63. On April 24, 2020, the Government of Canada (the “**Government**”) announced an emergency rent assistance program to help commercial tenants impacted by COVID-19. Under the initial terms of CECRA, the Government would (i) provide forgivable loans to qualifying commercial property owners to cover 50% of three monthly rent payments that were payable by eligible small business tenants who were experiencing financial hardship during April, May and June, 2020, (ii) require the property owner to not pursue collection and write off 25% of the rent due for those months, and (iii) require the tenant to pay 25% of the rent due for those

months. CECRA was later extended to cover rent payments in July and August as well.

64. While many of PBL's tenants appeared to meet the eligibility requirements of CECRA, CECRA was not available to property owners that were the subject of any actual or pending insolvency proceeding or to property owners who had made any filing under bankruptcy or insolvency legislation. However, in August 2020, Canada Mortgage and Housing Corporation ("**CMHC**") (the provider of funding for CECRA) and MCAP (one of the parties administering the program for CMHC), advised the Receiver that, if the Receiver wanted to avail itself of the benefits of CECRA for the tenants of the Barrie Property, it should submit a proposal to CMHC for its consideration.
65. On August 12, 2020, the Receiver submitted its proposal to CMHC. On August 13, 2020, CMHC advised the Receiver that CMHC was supportive of the Receiver participating in the CECRA program with respect to the Barrie Property. Following negotiations between CMHC and the Receiver, by letter dated August 19, 2020, CMHC provided its approval.
66. CHP, the Successful Bidder for the Barrie Property, informed the Receiver that CHP wished to be appointed as the Receiver's agent for the limited purpose of making an application under CECRA in respect of the Barrie Property and ancillary matters relating thereto. The Receiver agreed to CHP's request and the Receiver will, as part of the closing of the sale of the Barrie Property to CHP, assign to CHP PBL's right and interest in the Receiver's CECRA program application and related

agreements and documents. On August 20, 2020, the Receiver entered into an Agency Agreement with CHP setting out the terms agreed to between CHP and the Receiver.

67. On August 25, 2020, the Receiver submitted CECRA applications on behalf of 11 tenants that qualified for the CECRA program. The total amount claimed by the Receiver under the program is \$235,565.

XII. LETTERS OF CREDIT

Letter of Credit held by City of Barrie

68. In 2015, an Irrevocable Standby Letter of Credit in the amount of \$500,000 was issued by Equitable Bank (the “**EQ LC**”) on behalf of PBL to the City of Barrie as security for servicing and surface works, as well as parks planning and development landscape works to be completed by PBL at the Barrie Property. The EQ LC has not been released by the City of Barrie, but was replaced with cash security by Equitable Bank after Choice paid out the EQ Debt (the “**Cash Security**”).
69. The Property Manager for the Barrie Property had advised the Receiver that the majority of the “civil” works (public infrastructure works such as surface works, sanitary, storm, etc.) and landscaping work secured by the EQ LC had been completed, except for approximately \$25,000 to \$30,000 of civil work and potentially an amount of landscaping work that would need to be determined. In order to be in a position to seek the release from the City of Barrie of the Cash

Security it is holding in respect of the EQ LC, it was necessary for a civil engineer and landscape architect to be retained, and to request inspections and reviews of the onsite conditions with City of Barrie staff.

70. The Receiver retained the services of a civil engineer who arranged for City of Barrie staff to attend on August 6, 2020.
71. The Receiver retained a landscape architect to inspect the Barrie Property and report on the outstanding landscaping work secured by the EQ LC. On August 21, 2020, the Receiver received the results of the civil and landscaping inspections. The civil engineer has estimated that it will cost \$25,000 to \$28,000 in hard costs to remedy the civil deficiencies, while the landscape architect has estimated approximately \$230,000 to remedy soft landscape deficiencies (which figure does not include the deferral of Phased street furniture).
72. The Receiver is in the process of reviewing the summaries of deficiencies and estimates provided, and determining a course of action.

Letter of Credit held by Gardiner Roberts LLP

73. On January 8, 2015, an Irrevocable Standby Letter of Credit for \$1,933,315.25 (the “**BMO LC**”) was issued by Bank of Montreal on behalf of CP REIT Ontario Properties Limited to Gardiner Roberts LLP (“**Gardiner**”) in respect of the Barrie Property. On January 22, 2015, the amount of the BMO LC was amended to \$1,774,416.25.

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74. As at the commencement of the receivership proceedings, Gardiner was holding the BMO LC as escrow agent under an Omnibus Holdback Agreement dated July 4, 2006, between 362216 Ontario Corporation, Loblaw Properties Limited, Home Depot of Canada Inc., Home Depot Holdings Inc., Mady Development Corporation and Miller Thomson LLP.
 75. The purpose of the Omnibus Holdback Agreement was for the parties to the agreement to post letters of credit securing their share of financial commitments with respect to works on the Barrie Property (among other properties).
 76. The Receiver understands that the BMO LC was held on behalf of PBL to secure PBL's share of the work to be completed under the Omnibus Holdback Agreement relating to the Barrie Property. PenEquity advised the Receiver that this work is completed.
 77. Upon further inquiry and review, the Receiver determined that the unclaimed balance outstanding under the BMO LC was \$889,495.
 78. The Receiver corresponded with Gardiner to determine the requirements for the release of the BMO LC. Gardiner provided the Receiver with the list of documents required to be executed by various parties including the Debtors, CP REIT and Equitable Bank.
 79. The documents required to be signed by the various parties were executed and forwarded to Gardiner Roberts.

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80. On August 5, 2020, Gardiner wrote to BMO making demand on the BMO LC in the amount of \$889,495. Gardiner was requested by BMO to amend certain documents, and Gardiner is dealing with BMO regarding same. The funds to be received on the BMO LC will be forwarded to the Receiver upon receipt.

XIII. SECURED OR PRIORITY CLAIMS

Claims of Canada Revenue Agency

81. Canada Revenue Agency (“**CRA**”) has advised the Receiver that the amount of \$43,842.39 in respect of HST is owed by PRC Barrie for the periods December 1 to 31, 2019, and February 1 to 29, 2020. CRA has asserted that the amount of \$43,842.39 represents property of the Crown held in trust and does not form part of PRC Barrie’s property, business or estate (the “**Deemed Trust Claim**”). A copy of CRA’s correspondence is attached to this report as [Appendix “N”](#).
82. PenEquity has advised that all HST payments that were due on or before February 29, 2020 were paid to CRA. However, while the HST return for the period ended February 29, 2020 was filed, payment was due March 31, 2020. As a result of the issuance of the Appointment Order effective March 25, 2020, the payment was not made.
83. PRC Barrie has not yet filed the HST return for the month of March 2020. PenEquity has advised that its preliminary calculation of PRC Barrie’s March 2020 HST liability is \$43,694.59, which would increase PRC Barrie’s total HST liability to approximately \$87,500. As noted in the First Report, the rental income and input

tax credits generated by the operations of the Barrie Property were included with the other activity that PRC Barrie reported under its own HST account.

84. The Receiver has requested Blaney's view as to whether the Deemed Trust Claim has priority to the security held by CHP and would therefore be payable to CRA in priority to amounts owing to CHP under its security.
85. The Receiver has opened an HST account for PBL and has reported sales, HST collected, and input tax credits generated by the operations of the Barrie Property for the period April 1 to July 31, 2020. Based on the returns filed for that period, the Receiver is in a net refund position of approximately \$4,300. The Receiver has not yet filed a return for the period March 25 to 31, 2020, as it is waiting for PRC Barrie to file its return for March 2020 in order to determine the revenues that are reported by PRC Barrie to ensure that the return to be filed by the Receiver does not duplicate revenues reported by PRC Barrie.

XIV. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

86. Attached to this report as [Appendix "O"](#) is the Receiver's R&D. As set out in the R&D, the excess of cash receipts over disbursements is \$343,697.
87. During this period, receipts were \$3,740,794, consisting primarily of advances of \$3,000,000 from CHP under Receiver Certificates No. 1 and 2, and rent of \$627,533. Disbursements were \$3,397,096, which included payment of \$2,589,791 in respect of 2018, 2019 and 2020 property taxes for the Barrie Property.

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88. The above-noted advances from CHP, plus accrued interest thereon, will be repaid/addressed by the Receiver upon the sale of the Barrie Property.

XV. PROFESSIONAL FEES

89. The Receiver's accounts for the period ending July 31, 2020 total \$238,496.00 in fees, plus HST of \$31,004.48 for a total amount of \$269,500.48 (the "**Receiver's Accounts**"). Copies of the Receiver's Accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, are set out in the Affidavit of Daniel Weisz sworn August 28, 2020 attached hereto as [Appendix "P"](#).
90. The accounts of the Receiver's counsel, Blaney, total \$227,084.26 in fees and disbursements and \$29,459.14 in HST for a total of \$256,543.40 for the period ending July 31, 2020 (the "**Blaney Accounts**"). Copies of the Blaney Accounts, together with a summary of the personnel, hours and hourly rates described in the Blaney Accounts, are set out in the Affidavit of Chad Kopach sworn August 31, 2020 attached to this report as [Appendix "Q"](#).

XVI. CONCLUSION

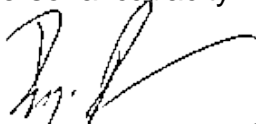
91. The Receiver respectfully requests that the Court grant an Order:
- i) authorizing and directing the Receiver to carry out the terms of the Stalking Horse Agreement, together with any further minor amendments thereto deemed necessary by the Receiver in its sole opinion;

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- ii) approving the sale of the Barrie Property in accordance with the terms of the Stalking Horse Agreement and vesting in CHP, or as CHP may further direct in writing, all right, title and interest of the Respondents in and to the Barrie Property, free and clear of all encumbrances, estates, rights, title, liens, interest and claims (other than permitted encumbrances), upon closing of the transaction under the Stalking Horse Agreement and the delivery of a Receiver's certificate to CHP;
 - iii) approving the fees of the Receiver for the period ending July 31, 2020;
 - iv) approving the fees of Blaney for the period ending July 31, 2020; and
 - v) approving the Second Report, the Receiver's conduct and activities described therein, and the R&D.

All of which is respectfully submitted to this Court as of this 31st day of August, 2020

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver and Manager
of Penady (Barrie) Ltd. and of certain of the assets,
of PRC Barrie Corp. and Mady (Barrie) Inc.
and not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

APPENDIX A

Court File No. CV-20-00637682-OOCL

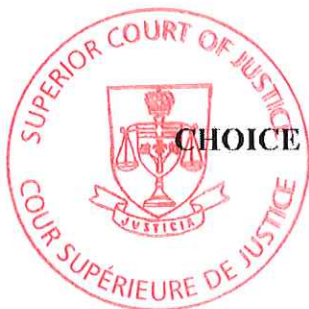
ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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 'McEust', 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 'PER / PAR:' label.

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

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Counsel for the Applicant

Our Matter No. 1165673

APPENDIX B

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Choice Properties Limited Partnership
Plaintiff(s)

AND

Penalty (Barrie) Ltd and PRC Barrie Corp
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
(as per counsel slip)		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows):

I heard this Application today via teleconference in accordance with the Notice to Profession issued by Chief Justice Morawetz and the resulting Commercial List Advisory created in light of the COVID-19 crisis.

Materials were provided to me via email, although I retained a paper copy of the two volume Application Record.

25 March 20
Date

McEWT
Judge's Signature

Additional Pages _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The Applicant seeks, primarily, an order appointing RSM Canada Limited (RSM) as receiver over the described Property of the Respondents, along with the usual charges.

The Respondents do not dispute that there is a debt owing (approximately \$68,200,000.00), nor do they dispute the Applicant's legal right to pursue a receivership.

The Respondents do submit, however, that in the facts of this case, it is neither just nor convenient to appoint a receiver.

Insofar as the law is concerned both the Bankruptcy and Insolvency Act and the Courts of Justice Act provide this Court with the authority to appoint a receiver where it is just or convenient to do

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

so.

In making this determination the Court should look at all the circumstances of the case including - the nature of the Property, the rights and interests of all parties in relation to the Property and whether the secured creditor has the right under the security agreement to privately appoint a receiver:

Bank of Nova Scotia v Firestone Village on Clair Creeb 1996 CarswellOnt 2328 (Gen Div), Callidus Capital Corp vs Concept Inc, 2012 ONSC 163. The Court is also to consider and balance the competing interests of the various economic stakeholders: Romspen Investment Corp v. 6711162 Canada Inc 2014 ONSC 2781.

A list of the relevant Parties are set out in The Annotated Bankruptcy

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

and Insolvency Act (Toronto: Thomson Reuters, 2019) at p. 1153.

For the reasons that follow, I am granting the relief sought by the Applicant, subject to working out the terms of the proposed order.

I have come to this conclusion, primarily, for the following reasons:

- ① The loan has matured;
- ② PBL has tried unsuccessfully to sell the Property for approximately 18 months;
- ③ The Applicant has granted a number of extensions and PBL has defaulted on several occasions;
- ④ Without advising the Applicant PBL stopped paying its property taxes in late 2018. The Applicant learned of this earlier this year.
- ⑤ Given the valuations prepared by the parties & given the current COVID-19

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

crisis, the Property is worth less than the amount owing.

⑥ PBL has a demonstrated inability, to service its debt

⑦ I accept that there is no evidence that the Applicant has acted in bad faith. As I will outline below while the Respondents complain of certain of the Applicants positions taken pursuant to their agreement they concede that the Applicant had never breached any terms of the agreement entered into between them

Based on the above, and other lesser arguments raised by the Applicant I accept that it is reasonable for them to have lost faith in PBL and its principals.

In all of these circumstances, it is just and convenient to grant the requested Appointment ordered subject

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

to terms.

The Respondents raised a number of objections and submitted that I ought to adjourn the Application for approximately 2 months and allow the Commercial real estate agent it retained earlier this year, Arsen Young, to continue on with its sales process.

In this regard, the Respondents primarily submit the following:

- ① The relationship between the Applicant and PBI is significant and more in keeping with a partnership than a creditor/debtor given the three properties they were involved in together and the different nature of their relationship in each. Also, the Applicant operates as a competing neighbour to the Property and steps were taken by the Applicant in this

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

regard to the detriment of PBL.

None of this in my view assists the Respondents. As noted, the Applicant (as conceded by the Respondents) never breached any terms of the agreements between them. The fact they participated in three separate properties does also not assist the Respondents.

The three properties were completely separate transactions (except for collateral security) and the one in question in this matter involved a significant loan.

(2) Steps taken by the Applicant to enforce certain terms, although allowed, ^{in were} ~~are~~ unfair to PBL and ought to militate against a finding that a receiver ought to be appointed.

I disagree. As noted, the enforced terms were allowable and I see

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

nothing untoward in the Applicant insisting they be complied with to the benefit of their own unit holders.

③ Respondents also argue that the Applicant could have paid the outstandings, prepaid taxes to prevent the accrual of interest.

I see little merit to this argument, as it is not the Applicant's obligation to do so, and PBL stopped payment without notice to the Applicant.

④ Respondents further submit that based on the Arsen Tany findings there is equity in the Property taking into account the debt to the Applicant. The Applicant's own report disputes this. In my view the report of the Applicant is far more detailed and likely more accurate. Unfortunately, given the COVID-19 crisis, little new time on this dispute given the negative

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

impact the crisis will have on the commercial real estate market. Both sides agree that the impact will be negative. In these circumstances I accept that there is a negative equity position, even if all three properties are considered.

(5) The Respondents also take issue with the costs associated with the receivership. Again given the circumstances of this case, I do not find this argument to be persuasive. PBL have been unable to sell the property. Costs will now be incurred but that is inevitable in any receivership and the receiver may be able to leverage savings either through the proposed Stralking lease (if approved) or other Commission savings. There is nothing preventing the receiver from working with Avisan Young and

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

a sales process will have to be approved.
The Respondents accept that RSM is a suitable and capable receiver.

In all of the above circumstances the Respondents cannot insist that the Applicant continue to finance and take most if not all of the risk in a declining market.

Overall, the Applicant has acted reasonably. None of the arguments above, and other related arguments made by the Respondents are persuasive.

As noted above it is in my view that it is both just and convenient, when reviewing all of the relevant factors, that the Appointment Order be granted.

~~If~~ The parties cannot agree on the terms of the Order another appearance can be scheduled.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

A sealing order shall go over
the confidential documents as the
Sierra Club criteria have been met.
As I advised counsel when the
materials are ultimately filed with
the Court it is their obligation to
ensure this occurs.

I will remain seized of this
matter.

MET

Counsel Slip

Choice Properties Limited Partnership

v.

Penady (Barrie) Ltd. and PRC Barrie Corp.

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

Shawn Irving and Michael De Lellis for the Applicant

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APPENDIX C

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

**FIRST REPORT OF THE RECEIVER OF
PENADY (BARRIE) LTD. and PRC BARRIE CORP.**

MAY 12, 2020

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I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 25, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. (“**PBL**”) acquired for, or used in relation to a business carried on by PBL, including all proceeds thereof, and the interest of PRC Barrie Corp. (“**PRC Barrie**”) in the Barrie Property (defined below) and all assets, undertakings and properties related thereto (collectively, the “**Property**”). A copy of the Appointment Order is attached to this report as **Appendix “A”**.
2. By way of motion returnable May 20, 2020, the Applicant is seeking an Order amending the Appointment Order to, *inter alia*, include Mady (Barrie) Inc. (“**MBI**”) as a respondent, and to appoint RSM as receiver and manager without security over MBI’s interest in the Barrie Property, and all assets, undertakings and properties related thereto.
3. The Appointment Order authorizes the Receiver to, among other things:
 - (a) take possession and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of, or from, the Property;
 - (b) manage, operate, and carry on the business of PBL and PRC Barrie, 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

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- to carry on all or any part of the business, or cease to perform, modify or terminate any contracts of either PBL and/or PRC Barrie;
- (c) 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; and
- (d) 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 the 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 the 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.
4. The Appointment Order and other Court documents have been posted on the Receiver's website, which presently can be found at rsmcanada.com/penady-barrie-inc.
5. The Receiver has retained the firm of Blaney McMurtry LLP ("**Blaney**") to act as its independent legal counsel.

II. PURPOSE OF THE REPORT

6. The purpose of this first report of the Receiver (the “**First Report**”) is to:
- (a) report to the Court on the activities of the Receiver since the date of its appointment to May 12, 2020;
 - (b) provide the Court with information on the Receiver’s proposed sale process (the “**Sale Procedure**”) for the sale of the Barrie Property;
 - (c) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period from March 27, 2020 to April 30, 2020 (the “**R&D**”); and
 - (d) seek an order:
 - (i) authorizing the Receiver to conduct the Sale Procedure;
 - (ii) authorizing the Receiver to enter into a listing agreement with Avison Young Commercial Real Estate (Ontario) Inc. (“**Avison Young**”);
 - (iii) authorizing the Receiver to enter into the Stalking Horse Agreement (defined later herein); and
 - (iv) approving the First Report, the Receiver’s conduct and activities described therein, and the R&D.

Terms of Reference

7. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained

from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

III. BACKGROUND

9. PBL is a corporation operating under the laws of Ontario having its registered head office in Toronto, Ontario. PBL is a subsidiary of PenEquity Realty Corporation (“**PenEquity**”), an Ontario-based real estate investment advisor that principally focuses on purchasing and developing real estate. A corporate profile report for PBL is attached to this report as **Appendix “B”**.
10. PBL is the registered owner of commercial rental property located at the intersection of Cundles Road and Duckworth Avenue in the City of Barrie, which forms part of the North Barrie Crossing Shopping Centre. More specifically, the Property is located at the following municipal addresses:
 - 637-657 Cundles Road East;
 - 327 Cundles Road East; and

- 507-527 Cundles Road East,

(collectively referred to in this report as the “**Barrie Property**”).

11. PRC Barrie and MBI are the beneficial owners (the “**Beneficial Owners**”) of the Barrie Property.
12. PBL holds the Barrie Property as nominee and bare trustee for the sole use, benefit and advantage of the Beneficial Owners, and for no other person or entity. Corporate profile reports for PRC Barrie and MBI are attached to this report as **Appendix “C”**.
13. Choice Properties GP Inc. (“**Choice GP**”) is the general partner of Choice Properties Limited Partnership (“**CHP**”), the Applicant in these proceedings. Choice GP is a subsidiary of Choice Real Estate Investment Trust (“**CH REIT**”). CH REIT is a diversified real estate investment trust primarily focused on retail, industrial, office and residential assets. CH REIT’s portfolio is comprised of approximately 726 properties spanning approximately 65.8 million square feet. The limited partners of CHP are CH REIT and George Weston Limited.
14. CHP is the beneficial owner of certain lands abutting the Barrie Property (the “**Barrie REIT Property**”). Penady (North Barrie) Ltd., an affiliate of PBL, is the registered owner of lands that are adjacent to the Barrie Property (the “**Penady Retail Lands**”). A site plan that identifies the Barrie Property, the Barrie REIT Property and the Penady Retail Lands is set out at page 15 of the Applicant’s Application Record.

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15. CHP is the senior secured lender to PBL. The security granted to CHP includes, *inter alia*, a limited recourse guarantee granted by PRC Barrie and MBI.
 16. CHP advanced funding to PBL to assist with the development of the Barrie Property. As at March 9, 2020, PBL was indebted to CHP for \$68,190,424 (the “**Indebtedness**”). The Indebtedness includes CHP’s repayment of PBL’s indebtedness to Equitable Bank (the “**EQ Debt**”). Equitable Bank previously held a first mortgage over the Barrie Property ranking in priority to that of CHP’s mortgage.
 17. CHP’s secured facility matured on January 31, 2020. As (i) the amounts owing to by PBL to CHP were not repaid, (ii) PBL’s efforts to sell or refinance the Barrie Property over the past 12-16 months were not successful, and (iii) the unpaid realty taxes for the Barrie Property for 2018, 2019 and 2020 had accumulated to approximately \$2.2 million, on March 9, 2020, the Applicant made an application, returnable on March 10, 2020, for the appointment of a receiver over PBL and the interest of PRC Barrie in the Barrie Property. On March 10, 2020, the application was adjourned to March 25, 2020.
 18. On March 25, 2020, Justice McEwen, after hearing the contested application, issued an Endorsement (the “**March 25 Endorsement**”) confirming that it was both just and convenient, when reviewing all the relevant factors, that an order appointing a Receiver be granted, and requested that counsel for the Applicant and Respondents agree on the terms of the Order. A copy of the March 25 Endorsement is attached hereto as **Appendix “D”**.

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19. Subsequently, after the terms of the order were finalized, on March 27, 2020, Justice McEwen issued the Appointment Order dated March 25, 2020, appointing RSM as the Receiver of PBL and PRC Barrie's interest in the Barrie Property.
 20. On May 8, 2020, the Applicant served a motion record in which the Applicant is seeking to amend and restate the Appointment Order. One of the amendments being sought is to include MBI's interest in the Barrie Property in the definition of "Property".

IV. RECEIVER'S ACTIVITIES TO DATE

Property Manager

21. Following its appointment, the Receiver contacted PenEquity who was acting as property manager for the Barrie Property.
22. Due to PenEquity's familiarity with the Barrie Property, with the concurrence of Choice GP, the Receiver entered into a property management agreement with PenEquity (the "**Property Manager**") for it to continue to manage the Barrie Property. A copy of the property management agreement is attached as **Confidential Appendix "A"** to the First Report. The Receiver is requesting that the property management agreement be sealed, until the sale of the Barrie Property, as certain of the Information contained therein, such as the Property Manager's compensation and other rights and obligations of the Property Manager, may be prejudicial to the receivership administration if the property management agreement was in the public domain.

Banking

23. The Receiver has opened a trust account at Bank of Montreal (the “**BMO Account**”) for the receivership.
24. The Property Manager is maintaining an operating account in the name of PBL at TD Canada Trust (the “**TD Account**”), solely relating to the Barrie Property. As of March 27, 2020, there was a balance of \$31,647 in the TD Account. The Receiver has not closed the TD Account as the Receiver is of the view that it is more efficient for tenants to continue to deposit rent to the TD Account than for the Property Manager to try to contact tenants and ask them to redirect rent payments to the BMO Account.
25. In order for the Receiver to monitor the activity in the TD Account, the Receiver has requested that PenEquity provide to the Receiver on a daily basis a copy of an online printout of the activity in the TD Account. In addition, the Receiver has arranged for TD Canada Trust to provide directly to the Receiver on a weekly basis a copy of an online printout of the TD Account’s activity.

Insurance

26. The Receiver obtained from PenEquity a copy of the insurance documents in respect of the current insurance coverage for the Barrie Property. After reviewing the insurance documents, the Receiver determined that the coverage was satisfactory. As the insurance coverage relating to the Barrie Property is part of PenEquity’s overall insurance package, the Receiver has confirmed with PenEquity that the policy is in full force and effect and that premium payments are

up-to-date. The Receiver has been added as an additional named insured and loss payee to the policies in respect of the Barrie Property. The current policy term expires on August 31, 2020.

27. Commencing effective from March 25, 2020, the Receiver is paying to PenEquity approximately \$8,900 per month representing the portion of PenEquity's monthly insurance premium allocable to the Barrie Property.

Statutory Notices

28. On April 6, 2020, the Receiver sent via e-mail and fax to the known creditors of PBL a Notice and Statement of Receiver pursuant to Section 245(1) of the *Bankruptcy and Insolvency Act* (the "**245 Notice**"). The known creditors were identified through a title search of the Property, a search conducted of PBL on the Personal Property Security Registration System ("**PPSA**"), and from a list of creditors provided by the Property Manager. A copy of the 245 Notice is attached hereto as **Appendix "E"**.

Property Taxes

29. As of the date of the Receiver's appointment, the property taxes owing to the City of Barrie totaled approximately \$2,500,000. Included in this amount, was \$1,948,598.36 in respect of arrears for 2018 and 2019, plus accrued interest and penalties to April 1, 2020. The Receiver confirmed with the City of Barrie that the property tax deferral offered by the City of Barrie in light of the COVID-19 pandemic did not apply to taxes owing prior to 2020. Accordingly, as interest would continue to accrue on the 2018 and 2019 property tax arrears, and those arrears would

have to be paid upon a sale of the Barrie Property, the Receiver received an advance from CHP in order for the Receiver to pay the 2018 and 2019 arrears.

30. On April 21, 2020, the Receiver paid \$1,948,598.36 to the City of Barrie representing the property tax arrears relating to 2018 and 2019.
31. The City of Barrie has advised that it will not charge, due to the COVID-19 pandemic, interest or penalties from April 1 to June 30, 2020, on the two 2020 tax instalments. The Receiver has not yet date paid the 2020 property tax instalments and will reassess its position in mid-June 2020.

V. TENANTS OF THE BARRIE PROPERTY

32. As of March 25, 2020, there were 27 tenants at the Barrie Property and two vacant units. Due to operating restrictions and/or the reduction in business arising from the COVID-19 pandemic, 16 tenants temporarily suspended operations, and six tenants are offering limited services.
33. To date, 21 tenants have requested some form of rent deferral or similar form of accommodation effective from the rental payment due on April 1, 2020. The Receiver reviewed with the Property Manager the requests of the individual tenants to assist the Receiver determine its position in response to the requests received.

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34. In addition to the information provided by the Property Manager, the Receiver also sought the input of CHP as CHP is, as mentioned earlier herein, a landlord of numerous properties and the primary secured creditor of PBL.
35. After consideration of the information received, the Property Manager is in the process of dealing with each of the tenants taking into account the parameters agreed with the Receiver in relation to the requests of the individual tenants.
36. Upon its appointment, PenEquity and one tenant were in the process of terminating that tenant's lease as was mutually agreed between the tenant and PenEquity. The Receiver reviewed with Blaney the documentation relating to the termination. Blaney prepared a Termination and Mutual Release that was subsequently executed by the tenant and the Receiver. One of the terms of the Termination and Mutual Release was that the tenant forfeited its deposit of approximately \$102,000.
37. The Receiver has been advised by PBL that a total of approximately \$208,000 of deposits were received from tenants of the Barrie Property, however, the deposits were not held separate and apart. Included in the \$208,000 was the deposit of approximately \$102,000 from the tenant whose lease was terminated as noted above.

VI. LETTERS OF CREDIT

Letter of Credit held by City of Barrie

38. In 2015, an Irrevocable Standby Letter of Credit in the amount of \$500,000 was issued by Equitable Bank (the "EQ LC") on behalf of PBL to the City of Barrie as

security for servicing and surface works, as well as parks planning and development landscape works to be completed by PBL at the Barrie Property. The EQ LC has not been released by the City of Barrie, but was replaced with cash security by Equitable Bank after Choice paid out the EQ Debt (the “**Cash Security**”).

39. PenEquity has advised the Receiver that the majority of the Civil (surface works, sanitary, storm, etc.) and landscaping work secured by the EQ LC has been completed, except for approximately \$25,000 to \$30,000 of Civil work and potentially an amount of landscaping work that will need to be determined. It will be necessary to retain a civil engineer and landscape architect, and request inspections and reviews of the onsite conditions with City of Barrie staff.
40. Once the cost of the outstanding work has been determined and confirmed by the City of Barrie, the Receiver will request the release of the Cash Security that replaced the EQ LC. On April 29, 2020, Blaney corresponded with the City of Barrie to advise that, to the extent the position of the City of Barrie is that Penady still has any remaining interest in the Cash Security, payment of the surplus Cash Security is to be directed to the Receiver who will determine the party entitled to the funds. The Applicant’s position is that, in view of its security over PBL’s assets, the Applicant is entitled to the Cash Security as long as the amount outstanding under the Indebtedness is greater than the Cash Security.

Letter of Credit held by Gardiner Roberts LLP

41. On January 8, 2015, an Irrevocable Standby Letter of Credit for \$1,933,315.25 (the “**BMO LC**”) was issued by Bank of Montreal on behalf of CP REIT Ontario Properties Limited to Gardiner Roberts LLP (“**Gardiner**”). On January 22, 2015, the amount of the BMO LC was amended to \$1,774,416.25.
42. Gardiner is holding the BMO LC as escrow agent under an Omnibus Holdback Agreement dated July 4, 2006.
43. The Receiver understands that the BMO LC is held on behalf of PBL and its purpose was to secure work to be completed under the Omnibus Holdback Agreement. PenEquity has advised the Receiver that this work is completed.
44. The Receiver is currently reviewing the status of the BMO LC and will provide the result of its review in the Receiver’s next report to the Court.

VII. PROPOSED SALE PROCESS

45. The Appointment Order authorizes the Receiver to market the Property for sale, including advertising and soliciting offers in respect of the Barrie Property.
46. The Receiver is now in a position to commence the marketing process for the Barrie Property, and is seeking the Court’s approval of the sale procedure described in the following paragraphs (the “**Sale Procedure**”).
47. The Sale Procedure contemplates the marketing of the Barrie Property by Avison Young. In order to set a floor price and ensure that only serious offers are received

for the purchase of the Barrie Property, Choice GP has submitted a stalking horse credit bid offer (the “**Stalking Horse Offer**”). The Receiver is seeking an Order of the Court authorizing the Receiver to accept the Stalking Horse Offer (once accepted, the “**Stalking Horse Agreement**”). The Stalking Horse Agreement is described below.

VIII. THE STALKING HORSE AGREEMENT

48. Capitalized terms used in this section of the First Report are as defined in the Stalking Horse Agreement unless otherwise defined. A copy of the Stalking Horse Agreement is attached hereto as **Appendix “F”**.
49. The Stalking Horse Agreement is a “credit bid” (the “**Stalking Horse Bid**”) by CHP, PBL’s primary secured lender) (the “**Purchaser**” or the “**Stalking Horse Bidder**”). The key provisions of the Stalking Horse Agreement are set out below.
50. The Purchaser will acquire the Subject Assets for the price set out in the Stalking Horse Bid (the “**Stalking Horse Price**”) to be satisfied by:
- i) providing a credit to the Debtor in the amount of the Credit Agreement Bid Amount, against the Debtor’s obligations under the Credit Agreement; and
 - ii) providing a credit to the Receiver in the amount of the Receiver’s Certificate Obligations, inclusive of the amount equal to the Wind-Down Estimate, as evidenced by Receiver’s Certificates;
51. The Stalking Horse Bid includes the following material provisions:

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- (i) all applicable taxes and registration fees, including land transfer taxes, are to be paid by the Purchaser on the Closing;
 - (ii) the Subject Assets are the right, title and interest of the Receiver and PBL, PRC Barrie and MBI (collectively, the “**Debtors**”), in and to the tangible and intangible properties, assets, interests, rights and claims related to the Barrie Property and/or the Business, wherever located, as of the Closing Date, including without limitation the following assets, if any:
 - (a) the Property;
 - (b) the Leases;
 - (c) the Assumed Contracts;
 - (d) the Permitted Encumbrances;
 - (e) the Chattels;
 - (f) the Accounts Receivable, which includes all accounts receivable of PBL, and the accounts receivable of PRC and MBI related to the Barrie Property, as well as any rents and other amounts owing to the Debtors (or any of them) under the Leases, including without limitation any amounts owing as a result of the deferral of rents and other amounts due to the Debtors (or any of them) thereunder; and
 - (g) all other personal property not contemplated by the foregoing, but excludes the right, title and interest of the Receiver and the Debtors in and to the Excluded Assets and the Excluded Contracts;
 - (iii) the Purchaser will fund all accrued but unpaid fees and disbursements of the Receiver and its counsel subject to the Receiver’s Charge as at the

Closing Date. The Purchaser will also fund the costs to wind down and complete the Receivership Proceeding after the Closing Date (referred to as the Wind-Down Amount); and

- (iv) any Secured Debt owing by PBL and the Beneficial Owners to the Purchaser that is in excess of the Credit Agreement Bid Amount will remain owing by PBL and the Beneficial Owners to the Purchaser from and after the Closing Date, with the Purchaser reserving with respect thereto all of its rights, powers, and remedies under its loan documents and applicable law.

52. The Stalking Horse Agreement has no due diligence conditions and provides for an expense reimbursement of \$400,000 (the “**Expense Reimbursement**”), in the event the Purchaser is not the Successful Bidder, to reimburse the Purchaser for the Purchaser’s expenses in connection with the Transaction. It is the Receiver’s view that the Expense Reimbursement is a fair and reasonable amount. The Receiver supports the Expense Reimbursement because of the value the Stalking Horse Agreement brings to the Sale Procedure, including the enhanced certainty of a base bid.

53. Pursuant to the Stalking Horse Agreement, the obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed on the Closing Date:

- (i) all of the terms, covenants and conditions of the Stalking Horse Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;

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- (ii) all of the representations and warranties of the Vendor set out in Section 5.2 of the Stalking Horse Agreement shall be true and accurate in all material respects as if made as of the Closing (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by the Stalking Horse Agreement);
 - (iii) receipt of all deliveries to be made by the Vendor as set out in Section 6.2 of the Stalking Horse Agreement;
 - (iv) there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that the Stalking Horse Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;
 - (v) the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
 - (vi) the Receiver shall have determined in accordance with the Sale Procedure that the Stalking Horse Agreement is the Successful Bid.

54. The obligation of the Receiver to complete the Transaction is subject to the following conditions being fulfilled or performed on the Closing Date:

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- (i) on the Closing Date, all of the terms, covenants and conditions of the Stalking Horse Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
 - (ii) all of the representations and warranties of the Purchaser set out in Section 5.1 of the Stalking Horse Agreement shall be true and accurate in all material respects as if made as of the Closing;
 - (iii) receipt of all deliveries to be made by the Purchaser as set out in Section 6.1 of the Stalking Horse Agreement;
 - (iv) there shall be no order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;
 - (v) the Receiver shall have determined in accordance with the Sale Procedure that the Stalking Horse Agreement is the Successful Bid; and
 - (vi) the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

55. The Sale Procedure, described later in this Report, is intended to provide for a fair and transparent marketing process that will allow the Receiver to maximize

realizations from the Barrie Property by seeking superior offers for the Subject Assets. The Stalking Horse Agreement sets a “floor price” for the Subject Assets and provides stability for the ongoing operations of the Barrie Property by giving assurance that there will be a new owner regardless of the outcome of the Sale Procedure.

56. The Receiver intends to seek a vesting order to transfer title to the Barrie Property to (i) CHP if the Sale Procedure does not result in a bid that is sufficiently higher than the Stalking Horse Bid, or (ii) to the Successful Bidder if the Sale Procedure does result in a bid that is higher than the Stalking Horse Bid.

IX. THE SALE PROCEDURE

57. Capitalized terms used in this section of this Report are as defined in the Sale Procedure that is attached hereto as **Appendix “G”**, unless otherwise defined.
58. The Receiver seeks approval to implement the Sale Procedure that, if approved, will set the parameters of the sales and marketing process pursuant to which the Receiver will seek offers superior to the Stalking Horse Agreement for the Barrie Property, and will set out the requirements for the submission of offers by interested parties.
59. The Sale Procedure contemplates a two-phase process. In the first phase, Interested Parties that meet the preliminary participant requirements set out therein, being (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure, will be provided with the Confidential

Information Memorandum and will be given access to additional confidential information in the Confidential Data Room.

60. In order for the Receiver to determine whether an Interested Party is a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Receiver, the following information/documents on or before the Phase I Bid Deadline: (i) identification of the Phase I Bidder, (ii) a non-binding expression of interest, (iii) proof of corporate authority and (iv) proof of financial ability to perform the non-binding expression of interest.
61. Phase I Bidders that are determined by the Receiver to be Qualified Phase I Bidders will be invited to participate in Phase II.
62. For purposes of the Sale Procedure, the Stalking Horse Bidder is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder.
63. The Sale Procedure provides that a Phase I Bid, being a non-binding letter of intent attached as Schedule "C" to the Sale Procedure, must be submitted by the Phase I Bid Deadline of 10:00 a.m. (Eastern Time) on July 15, 2020, and that a Phase II Bid, being a binding offer in the form of an executed mark-up of the Modified Stalking Horse Agreement attached as Schedule "B" to the Sale Procedure, must be submitted by the Phase II Bid Deadline of 10:00 a.m. (Eastern Time) on July 29, 2020.
64. The Sale Procedure also requires, for parties other than the Stalking Horse Bidder, the submission of a deposit of 3% of the proposed purchase price with the Phase 1 Bid, and 7% of the purchase price with a Phase II Bid.

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65. If the Receiver determines that there is no Qualified Phase I Bid other than the Stalking Horse Bid following the Phase I Bid Deadline, the Sale Procedure will be terminated. In that event, the Stalking Horse Bid will be declared the Successful Bid and the Receiver will seek Court approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein, and obtain a vesting order to transfer title to the Barrie Property.
66. The minimum purchase price of any Phase II Bid must be the sum of the Purchase Price (as defined in the Stalking Horse Agreement) plus the Expense Reimbursement of \$400,000, plus \$250,000. The additional amount of \$250,000 takes into account additional third party disbursements including interest on the Indebtedness and property taxes, as well the Receiver's fees resulting from the extension of the Sale Procedure.
67. If one or more Qualified Phase II Bids (in addition to the Stalking Horse Bid) is received by the Phase II Bid Deadline, and the Receiver determines such Qualified Phase II Bid(s) to be sufficiently greater than the Stalking Horse Bid, the Receiver will conduct an auction by August 14, 2020 amongst the Qualified Phase II Bidders (including the Stalking Horse Bidder), on terms to be determined by the Receiver in accordance with the Sale Procedure to determine the Successful Bid and the Back-up Bid, and/or otherwise negotiate by August 14, 2020 with the Qualified Phase II Bidders on terms to be determined by the Receiver in accordance with the Sale Procedure, so as to determine the Successful Bid and the Back-up Bid, and obtain a vesting order to transfer title to the Barrie Property.

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68. If no Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, then the Sale Procedure will be terminated and the Stalking Horse Bid will be declared the Successful Bid. In that event, the Receiver will seek Court approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein, and obtain a vesting order to transfer title to the Barrie Property.
69. Following the determination of the Successful Bid, the Receiver will seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein.
70. The Sale Procedure will be posted to the Receiver's website. Any potential interested party that contacts the Receiver or Avison Young will be invited to participate in the Sale Procedure.
71. In the Receiver's view, the Sale Procedure:
- (a) is consistent with market practice;
 - (b) provides a reasonable opportunity for competing bidders to submit offers superior to the Stalking Horse Agreement;
 - (c) enables the Receiver to maximize realizations from the Barrie Property; and
 - (d) is reasonable and appropriate in the circumstances.

X. THE AVISON YOUNG LISTING AGREEMENT

72. Capitalized terms used in this section of the First Report are as defined in the Avison Young Listing Agreement (the "**Listing Agreement**") unless otherwise

defined. A redacted copy of the proposed Listing Agreement is attached hereto as **Appendix “H”** and an unredacted copy as **Confidential Appendix “B”**.

73. Pursuant to the terms of the Listing Agreement, with the concurrence of CHP and subject to Court approval, the Receiver has engaged Avison Young to act as listing agent in the Sale Procedure.
74. Avison Young is one of the world’s largest commercial real estate services firms. Prior to the receivership, PBL had engaged Avison Young to conduct a marketing process for the sale of the Barrie Property. Based on Avison Young’s knowledge of the Barrie Property, and the work that it had done prior to the issuance of the Appointment Order, the Receiver has not sought listing proposals from other commercial realtors. As set out below, the Receiver is seeking the approval of the Court to enter into the Listing Agreement with Avison Young.
75. The salient terms of the Listing Agreement are as follows:
- (a) the term of the agreement is for a period of six months following the date of execution of the Listing Agreement. If an offer is accepted during the period of the Listing Agreement but the due diligence or closing process has not yet been completed, then the term of the Listing Agreement will be extended to accommodate such offer; and
 - (b) Avison Young will earn a commission based on the gross purchase price should a third party purchaser acquire the Barrie Property, or a fixed fee should the Stalking Horse Bidder, or a person related to it, acquire the Barrie Property. As discussed later in this Report, the Receiver is seeking to

maintain the confidentiality of the commission structure as it is commercially sensitive.

76. A summary of Avison Young's Recommended Marketing Strategy and Disposition Timeline is set out in the Listing Agreement (the "**Avison Young Strategy**"). Based on the Avison Young Strategy, the timeline for the Sales Procedure is set out below:

- (a) by May 25, 2020 – premarketing including review of documents, compiling of marketing material and preparation of data room;
- (b) May 26, 2020 to July 14, 2020 - mailing of "teaser", placement of advertisement in the Globe & Mail newspaper, providing confidential information to parties which executed a confidentiality agreement, conduct of tours;
- (c) July 15, 2020 - receipt of Letters of Intent (Phase I Bids);
- (d) July 16, 2020 to July 22, 2020 – evaluation of Letters of Intent, shortlist parties, request Phase II Bids;
- (e) July 29, 2020 – receipt of Phase II Bids;
- (f) July 30, 2020 to August 14, 2020 – review of Phase II Bids and conduct auction (if required);
- (g) August 14, 2020 - select the Successful Bid;
- (h) August 15, 2020 to September 1, 2020 – application to the Court for approval of the sale of the Barrie Property; and
- (i) September 30, 2020 or earlier - complete the closing of the sale of the Barrie Property.

-
77. The Receiver is of the view that the engagement of a commercial brokerage to market the Barrie Property in the implementation of the Sale Procedure is, in the circumstances of this receivership, beneficial to stakeholders of this receivership and to the efforts to maximize realizations from the Barrie Property.
78. The Receiver is also of the view that the compensation to be paid to Avison Young by the Receiver upon the sale of the Barrie Property is fair and reasonable.

Sealing of Commercial Sensitive Terms

79. The Receiver is of the view that disclosure of the terms of the commission structure set out in the Listing Agreement could potentially have an adverse influence on the Sale Procedure. The Receiver is therefore requesting that the Court make a sealing order in respect of such commission structure in order to avoid any potential adverse impact on the Sale Procedure.

XI. SECURED OR PRIORITY CLAIMS

80. The following is a list of secured claims registered against: (i) PBL in the Personal Property Security Registration System ("**PPSA**") as of March 8, 2020 and in the Land Registry ("**PIN**") as of February 26, 2020, (ii) PRC Barrie as of March 4, 2020 in the PPSA, and (iii) MBI as of May 4, 2020 in the PPSA :

	PPSA	PIN
PBL		
Choice Properties GP Inc.		X
Choice Properties Limited Partnership	X	
Equitable Bank	X	X
PRC Barrie		
Equitable Bank	X	
MarshallZehr Group Inc.	X	
MBI		
Equitable Bank	X	

81. The registrations on the PPSA and PIN do not reflect that CHP paid out PBL's indebtedness to Equitable Bank on March 4, 2020.
82. Attached hereto as **Appendices "I" and "J"**, respectively, are copies of the PPSA and PIN searches.
83. The Receiver has requested Blaney's opinion on the validity and enforceability of the security held by CHP against the Barrie Property, and will include that opinion in a supplementary report to the Court to be filed in advance of the Receiver's application for approval of the Sale Procedure.
84. In addition to the above security interests, as set out earlier herein, as at the date of the First Report, approximately \$650,000 is owed to the City of Barrie on account of 2020 property taxes.

Claims of Canada Revenue Agency

85. The Property Manager has advised that PBL did not file HST returns on behalf of the operations of the Barrie Property. Instead, the rental income and input tax credits generated by the operations of the Barrie Property were included with the

other activity that PRC Barrie reported under its own HST account. The Property Manager has advised that PBL would have been in a HST payable position as the HST collected on rental income exceeded input tax credits claimed on expenses.

86. The Receiver has notified Canada Revenue Agency (“**CRA**”) of the receivership and will be contacting CRA to determine CRA’s position on PBL’s HST liability.
87. The Receiver has requested that CRA open an HST account for PBL in order that HST collected, and available input tax credits, are reported to CRA in respect of the receivership administration.

XII. RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

88. Attached to this report as Appendix “**K**” is the Receiver’s Interim Statement of Receipts and Disbursements for the period March 27, 2020 to April 30, 2020 (“**R&D**”). As set out in the R&D, the excess of cash receipts over disbursements is \$199,114.
89. During this period, receipts were \$2,248,688, consisting primarily of an advance of \$2,100,000 from CHP under Receiver Certificate No. 1, and rent of \$103,546. Disbursements were \$2,049,574, which included payment of \$1,948,598 in respect of the 2018 and 2019 property tax arrears for the Barrie Property.
90. The above-noted advance from CHP, plus accrued interest thereon, will be repaid/addressed by the Receiver upon the sale of the Barrie Property.

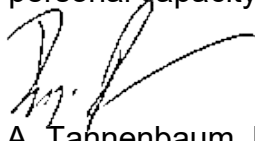
XIII. CONCLUSION

91. The Receiver respectfully requests that the Court grant an Order:
- (a) authorizing the Receiver to conduct the Sale Procedure;
 - (b) authorizing the Receiver to enter into the Listing Agreement;
 - (c) authorizing the Receiver to enter into the Stalking Horse Agreement; and
 - (d) approving the First Report, the Receiver's conduct and activities described therein, and the R&D.

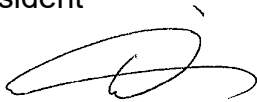
All of which is respectfully submitted to this Court as of this 12th day of May, 2020

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver and Manager
of Penady (Barrie) Ltd. and of certain of the assets,
undertakings and properties of PRC Barrie Corp.
and not in its personal capacity



Per: Bryan A. Tahnenbaum, FCPA, FCA, FCIRP, LIT
President



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

APPENDIX D

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST



THE HONOURABLE MR.)

JUSTICE MCEWEN)

WEDNESDAY, THE 25TH

DAY OF MARCH, 2020

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

**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**”) was heard this day 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, 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 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 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 PBL and, solely as it relates to the Property, of the 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 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 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 PBL and, solely as it relates to the Property, by the Beneficial Owners;

- (g) to settle, extend or compromise any indebtedness owing to 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 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 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 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 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 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 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 PBL, the Beneficial Owners (solely as it relates to the Property), or the Property or any assets located on premises belonging to 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 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 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 PBL shall remain the employees of PBL until such time as the Receiver, on 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-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 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.

McE T.



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

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., including all proceeds thereof, and (b) the interests of PRC Barrie Corp. 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, as amended and restated by a further Order of the Court dated ●, 2020, each made in the proceedings having Court file number 20-00637682-00CL (as amended and restated, the "Order"), has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, 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

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

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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.**

**PENADY (BARRIE) LTD., PRC
BARRIE CORP., and MARY
and (BARRIE) INC.**

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

Applicant

Respondents

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

**AMENDED AND RESTATED ORDER
(appointing 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)
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Counsel for the Applicant

Our Matter No. 1165673

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	FRIDAY, THE 15 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 by judicial teleconference at Toronto, Ontario, due to the COVID-19 crisis. The motion was unopposed.

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, 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.

A handwritten signature in black ink, appearing to read 'McE T.', is positioned above a horizontal line.

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-~~OOCL~~OOCL

Respondents

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

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

Our Matter No. 1165673

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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/Moving Party

Respondents/Responding Parties

**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

APPENDIX E

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Choice Properties Plaintiff(s)
AND
Penad et al Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
E. Golden - RSM	S. Irviney - Choice Properties	
T. Dineen, M. Citak - Reeps		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows):

I conducted a case conference in this matter via teleconference on May 15/20 in accordance with the Notices to the Profession created in light of the COVID-19 CR3B.

A copy of this endorsement will be provided to the parties via the Commercial List Office.

At the case conference, agreeing

19 May 20
Date

[Signature]
Judge's Signature

Additional Pages one

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

date was canvassed and the parties ultimately agreed upon June 2/20 - confirmed 3 hours.

Another case conference is scheduled for May 25/20 to deal with any issues concerning the delivery of materials/examinations. Counsel will advise in due course as to whether this is necessary.

Last at the case conference, on an unopposed basis, I granted the Amended and Restated Order (appointing Receiver) as per the draft filed & signed. The order is effective from that date and is enforceable without the need for entry and filing.

[Handwritten signature]

CHOICE PROPERTIES LIMITED PARTNERSHIP
Applicant

-and- PENADY (BARRIE) LTD. and PRC BARRIE CORP.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]
Proceeding commenced at Toronto

MOTION RECORD
(SALE APPROVAL AND VESTING ORDER
RETURNABLE SEPTEMBER 9, 2020)
VOLUME I OF III

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Barristers & Solicitors
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Lawyers for RSM Canada Limited,
in its capacity as Court-appointed Receiver