

**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 II OF III**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**Eric Golden LSO #38239M**  
(416) 593-3927 (Tel)  
(416) 593-5437 (Fax)  
Email: egolden@blaney.com

**Chad Kopach LSO #48084G**  
(416) 593-2985 (Tel)  
(416) 593-5437 (Fax)  
Email: ckopach@blaney.com

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

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# APPENDIX F

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Choice Properties Limited Partnership  
Plaintiff(s)

AND

Penady (Barrie) Ltd. et al  
Defendant(s)

Case Management  Yes  No by Judge: McBew T

Counsel	Telephone No:	Facsimile No:
(see attached 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 conducted a case conference in this matter today. The issue to be dealt with, was whether the Respondents could conduct a sub 39.03 examination of Cam Lewis, the real estate broker that the Receiver has selected for the sales and marketing process.

As I noted at the conclusion of submission on this issue,

25 May 20  
Date

McBew T  
Judge's Signature

Additional Pages 4

1. The other examination issue regarding the Receiver was resolved, with the Respondents not pursuing an examination.

**Superior Court of Justice  
Commercial List**

**FILE/DIRECTION/ORDER**

**Judges Endorsment Continued**

I am not granting the Respondents an Order allowing them to conduct the examination.

I have come to this conclusion for the following reasons:

① I agree with the Receiver that this would allow the Respondents to do indirectly what they cannot do directly. Typically a Receiver is not subject to cross-examination - Mortgage Ins. Co v. Innisfil Landfill Corp 1998 CanLII 7366 (ON SC); Re Big Sky Living Inc (Bankrupt) 2007 ABCB 249

② The basis for which the examination of Mr Lewis is necessary is set out in the ~~in~~<sup>in</sup> brief affidavit of Neil Miller (in para 9) and is based on double hearsay and provides no basis for the stated "concerns" allegedly expressed by Mr. Lewis

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

③ Ironically, Mr Lewis earlier swore an affidavit on behalf of the Respondents who opposed the appointment of the Receiver. Nonetheless the Receiver retained Mr. Lewis and his company to act as the broker. The Respondents would they in part at least, be cross-examining Mr Lewis on an affidavit prepared for them. It bears noting that the timeline for the sales process set by the Receiver is actually longer than that which was envisaged by the Respondents when they sought to control the sales process.

④ The Respondents have made no attempt to obtain evidence from Mr Lewis (as they did before) or at least no evidence is before the Court in this regard.

In all of the above



Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

Circumstances it would be an abuse of process to allow the examination and the Respondents, in this regard, have failed to provide a basis for conducting the examination.

After hearing argument and rendering my oral decision, with reasons to follow, counsel for the Respondents submitted (for the first time) that the material before me today did not deal with the Rule 39.05 examination, including Mr Miller's affidavit. I do not accept this submission. It was not made during submissions and it was well-known to the parties that the case conference today was to deal with the issue of examination - including Mr Lewis's examination. The entire hearing schedule allowed for this issue, a possible examination and the

**Superior Court of Justice  
Commercial List**

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

hearing date.

mejs

**From:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List  
**Sent:** May 25, 2020 1:05 PM  
**To:** McEwen, Mr. Justice Thomas John (SCJ)  
**Subject:** FW: Choice v. Penady et al Court File No. CV-20-00637682-00CL - Chambers May 25

**From:** Eric Golden <egolden@blaney.com>  
**Sent:** May 25, 2020 1:04 PM  
**To:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>  
**Subject:** RE: Choice v. Penady et al Court File No. CV-20-00637682-00CL - Chambers May 25

**CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.**

Hi again Alsou,

Justice McEwen asked for the counsel sheet for today's attendance.

Counsel on the Chambers attendance were:

Eric Golden for the Receiver RSM Canada Limited  
 Michael De Lellis and Shawn Irving for the Applicant Choice Properties  
 Michael Citak and Tim Duncan for the Respondents

Daniel Weisz of RSM also attended

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
<b>Party</b>	RSM Canada Inc., Receiver	<b>Party</b>	Choice Properties/Applicant
<b>Counsel</b>	Eric Golden (LSO #38239M)	<b>Counsel</b>	Michael De Lellis Shawn Irving
<b>Address</b>	BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto ON M5C 3G5	<b>Address</b>	Oslers, Hoskin & Harcourt 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto ON M5X 1B8
<b>Phone</b>	(416) 593-3927	<b>Phone</b>	(416) 862-5997/(416) 862-4733
<b>Fax</b>	(416) 593-5437	<b>Fax</b>	(416) 862-6666
<b>E-Mail</b>	egolden@blaney.com	<b>E-Mail</b>	sirving@osler.com mdellelis@osler.com
COUNSEL FOR OTHER PARTY		COUNSEL FOR OTHER PARTY	
<b>Party</b>	Respondents/Mady (Barrie) Inc.		
<b>Counsel</b>	Tim Duncan/Michael Citak		
<b>Address</b>	Gardiner Roberts LLP Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3		

# APPENDIX G

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

**SUPPLEMENTAL REPORT TO THE FIRST REPORT OF THE RECEIVER**

**MAY 26, 2020**

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## I. INTRODUCTION

1. By Amended and Restated Order of the Ontario Superior Court of Justice (Commercial List) dated March 25, 2020, RSM Canada Limited was appointed receiver and manager, without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. acquired for, or used in relation to a business carried on by PBL, including all proceeds thereof, and the interest of each of PRC Barrie Corp. and Mady (Barrie) Inc. in the Barrie Property and all assets, undertakings and properties related thereto.

## II. PURPOSE OF SUPPLEMENTAL REPORT

2. The First Report of the Receiver dated May 12, 2020 (the “**First Report**”) was filed in connection with a motion by the Receiver (the “**SISP Motion**”) to, *inter alia*:
  - (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 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; 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.;

- 
- (iii) authorizing the Receiver to enter into the Stalking Horse Agreement and approving the Expense Reimbursement as defined therein; and
  - (iv) approving the First Report, the Receiver's conduct and activities described therein, and the R&D.
3. The purpose of this Supplemental Report is to provide the Court with additional information in connection with the Receiver's request that the Court authorize the Receiver to conduct the Sale Procedure and enter into the Stalking Horse Agreement.
  4. This Supplemental Report should be read in conjunction with the First Report, including the Terms of Reference referred to therein.
  5. Unless defined herein, capitalized terms herein have the same meaning as in the First Report.

### III. APPRAISAL OF THE BARRIE PROPERTY

6. Prior to the appointment of the Receiver, CHP had engaged Cushman & Wakefield ULC ("**C&W**") to provide an appraisal of the Barrie Property. At the time of the Receiver's appointment, C&W had not completed the appraisal.
7. The Receiver contacted C&W and by letter of engagement dated April 8, 2020, accepted by the Receiver on April 13, 2020, the Receiver engaged C&W to prepare the appraisal of the Barrie Property for the Receiver (the "**C&W**")

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**Engagement Letter**”). A copy of the C&W Engagement Letter is attached hereto as **Confidential Appendix “AA”**.

8. On May 15, 2020, C&W provided its appraisal dated March 25, 2020 to the Receiver (the **“C&W Appraisal”**). A copy of the C&W Appraisal is attached hereto as **Confidential Appendix “BB”**.
9. A copy of the C&W Appraisal (unredacted) was recently provided to two lawyers from Osler Hoskin & Harcourt LLP (counsel to CHP) and two lawyers from Gardiner Roberts LLP (counsel to the Respondents), after they each provided their undertaking to not disclose the appraisal or its contents to anyone else, including their clients, and even other lawyers in their own firms (unless those other lawyers provided a similar undertaking to the Receiver). The Receiver also offered to provide the C&W Appraisal to certain representatives of PBL in return for a Non-Disclosure Agreement, but PBL’s counsel advised the Receiver’s counsel as follows: “Hold off on the NDA at this time for Pen. Will advise if they will want to see the CW appraisal”.
10. The Receiver is of the view that disclosure of the terms of the C&W Appraisal would impact the integrity of the Sale Procedure. The Receiver is therefore requesting that the Court make a sealing order in respect of the C&W Appraisal and the C&W Engagement Letter.



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#### IV. Avison Young (“AY”)

11. The Respondents have included as part of their Responding motion record to the Receiver’s SISP Motion the affidavit of Cameron Lewis of AY sworn March 19, 2020 (the “**Lewis Affidavit**”). The Lewis Affidavit references the listing agreement entered into between PRC Barrie Corp. (“**PRC**”) and AY on or about February 24, 2020 (the “**PRC/AY Listing Agreement**”), as part of a retainer “to market and sell the North Barrie Crossing Property...on an expedited basis”. The PRC/AY Listing Agreement was not attached to the Lewis Affidavit as an Exhibit, but it was included as Exhibit “C” to the affidavit of Neil Miller sworn March 20, 2020, in response to the CHP receivership application herein, and that Exhibit “C” is attached hereto as **Appendix “AA”**.
12. Exhibit “A” to the Lewis Affidavit is the AY Strategy Advisory Presentation that AY provided to PenEquity (“**AY-Pen SAP**”).
13. The AY-Pen SAP provides (at p. 10) a “Recommended Marketing Strategy/Disposition Timeline” that includes in week 1 “review current BCA and enviro reports”. The Receiver is advised by Mr. Lewis that this reference to “review current BCA [Building Condition Assessment] and enviro reports” was in respect of any existing such documents, and that he did not ask PenEquity to obtain a new Building Condition Assessment or an updated environmental report for the purposes of his marketing campaign at that time. Furthermore, the Receiver notes that there is a Phase 1 Environmental report dated September 2018 (the “**2018 Phase 1**”) for the Barrie Property which is to be included in the Data Room to be

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maintained by AY as part of the Receiver's Sale Procedure. Finally, the Receiver has no information that PBL/PRC had commissioned a Building Condition Assessment, or arranged for an update to the 2018 Phase 1 as part of the sales process AY was to conduct for the Respondents.

## V. LEGAL OPINION ON THE CHP SECURITY

14. In the First Report, the Receiver set out that the Receiver had requested Blaney's opinion on the validity and enforceability of the security held by CHP against the Barrie Property, and would include that opinion in a supplementary report to the Court.
15. Now that MBI has been added as a Respondent herein, Blaney has provided to the Receiver its opinion on the security held by CHP against the Barrie Property (the "**Opinion**"), which is attached hereto as **Appendix "BB"**.
16. Blaney has concluded, subject to standard qualifications and limitations, that the security held by CHP against the Barrie Property is valid and enforceable.

## VI. RESPONDENTS' MOTION RECORD

17. The Receiver is in receipt of a responding motion record delivered by the Respondents in connection with the SISP Motion that raises certain concerns and purported deficiencies in regards to the Sale Procedure. As will be set out in the Receiver's factum to be delivered on the SISP Motion, the Receiver strongly disagrees with the points raised. The Receiver also notes that in the proposed Sale

Procedure (Term 18), the Receiver maintains the ability to modify or amend the Sale Procedure, provided that if such modification or amendment materially deviates from the Sale Procedure, such modification or amendment may only be made by order of the Court.

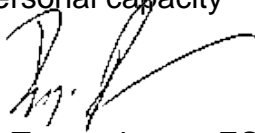
## VII. CONCLUSION

18. The Receiver respectfully requests that, in addition to the relief requested in the First Report, the Court grant an Order:
- (a) sealing Confidential Appendix "AA" and Confidential Appendix "BB".


All of which is respectfully submitted to this Court as of this 26<sup>th</sup> 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 Mady (Barrie) Inc. and not in its personal capacity



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



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

# APPENDIX H

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Choice Properties Limited Partnership  
Plaintiff(s)

AND

Penady (Barrie) Ltd et al  
Defendant(s)

Case Management  Yes  No by Judge: McBrien

Counsel	Telephone No:	Facsimile No:
(see attached)		

- 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):

This matter appeared before me again on June 1/20 on very short notice to, once again, deal with the issue of pre-hearing discovery.

Once again it proceeded by way of Zoom videoconference in accordance with the Notices to the Profession and the Commercial List advisory material were provided to me via email. A

4 June 20  
Date

McBrien  
Judge's Signature

Additional Pages 3

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

Copy of this endorsement will be provided to the parties by email via the Commercial List office.

On May 25/20 I refused to allow the Rule 39.03 examination of Mr Cam Lewis for the reasons given in that endorsement

On June 1/20, the day before the motion I heard another request from the Respondents for discovery - this time to compel the Receiver to answer written questions - many of which were directed to Mr. Lewis. The request was made on the evening of May 27/20

I refused to grant the request. First, granting the request at this time, would almost certainly have lead to an adjournment of the motion that had already been

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

adjourned on a prior occasion.

There was ample opportunity to deal with this before May 27 June 1/20. The Respondents conceded it could have been dealt with earlier.

Further, it is largely an attempt to obtain information from Mr Lewis, whose examination I previously denied.

At that time however, I advised Receiver's counsel that if at the hearing I was of the view that some of the questions posed ought to have been answered I may draw an adverse inference.

In closing, I pause to note, that there was an error in my my 25/20 endorsement at Footnote #1. Where I refer to the "Receiver" I ought to have said "Choice". Nothing turns on this in my view but I ought

**Superior Court of Justice  
Commercial List**

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

to correct the error

meant



**From:** Eric Golden <egolden@blaney.com>  
**Sent:** June 1, 2020 8:42 AM  
**To:** Anissimova, Alsou (MAG); McEwen, Mr. Justice Thomas John (SCJ)  
**Cc:** Tim Duncan; 'Irving, Shawn'; 'De Lellis, Michael'; 'Tannenbaum, Bryan'; 'Weisz, Daniel'; Chad Kopach; mcitak@grllp.com  
**Subject:** Choice v. Penady et al Court File No. CV-20-00637682-00CL - Chambers June 1 and SISP Motion June 2  
**Attachments:** Endorsement of McEwen J May 25 2020 highlited.pdf

Good morning Your Honour,

I am counsel for the Receiver RSM on the Chambers attendance at 9 a.m. this morning

I have set out below the anticipated counsel sheet, and have attached a highlited version of your most recent Endorsement

Counsel on the Chambers attendance this morning will be:

Eric Golden for the Receiver RSM Canada Limited  
 Michael De Lellis and Shawn Irving for the Applicant Choice Properties  
 Michael Citak and Tim Duncan for the Respondents

In addition, the Bryan Tannenbaum of RSM will attend.

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
<b>Party</b>	RSM Canada Inc., Receiver	<b>Party</b>	Choice Properties/Applicant
<b>Counsel</b>	Eric Golden (LSO #38239M)	<b>Counsel</b>	Michael De Lellis Shawn Irving
<b>Address</b>	BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto ON M5C 3G5	<b>Address</b>	Oslers, Hoskin & Harcourt 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto ON M5X 1B8
<b>Phone</b>	(416) 593-3927	<b>Phone</b>	(416) 862-5997/(416) 862-4733
<b>Fax</b>	(416) 593-5437	<b>Fax</b>	(416) 862-6666
<b>E-Mail</b>	egolden@blaney.com	<b>E-Mail</b>	sirving@osler.com
			mdellelis@osler.com
COUNSEL FOR OTHER PARTY		COUNSEL FOR OTHER PARTY	
<b>Party</b>	Respondents/Mady (Barrie) Inc.		
<b>Counsel</b>	Tim Duncan/Michael Citak		
<b>Address</b>	Gardiner Roberts LLP Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3		
<b>Phone</b>	(416) 865-6682; (416)865-6706		

# APPENDIX I

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

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

THE HONOURABLE	)	TUESDAY, THE 2 <sup>ND</sup>
	)	
JUSTICE THOMAS McEWEN	)	DAY OF JUNE, 2020

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

**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**

**ORDER  
(Sale Procedure Approval)**

**THIS MOTION**, made by RSM Canada Limited, in its capacity as the Court-appointed receiver and manager (the "**Receiver**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* 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**") for, *inter*

*alia*, an order (i) if necessary, abridging the time for service of the Receiver’s Notice of Motion, Supplementary Notice of Motion, Motion Record and Supplementary Motion Record herein, (ii) approving the First Report of the Receiver dated May 12, 2020 (the “**First Report**”) and the activities described therein, the Supplemental Report to the First Report dated May 26, 2020, (the “**Supplementary First Report**”) and the activities described therein, (iii) approving the sale procedure, substantially in the form attached as Schedule “A” hereto (the “**Sale Procedure**”) including approving the Expense Reimbursement (as defined in the Stalking Horse Agreement), (iv) authorizing the Receiver to enter into an asset purchase agreement by way of credit bid (the “**Stalking Horse Agreement**”) with Choice Properties Limited Partnership (“**CHP**”) as purchaser, (v) approving the Receiver’s retainer of Avison Young Commercial Real Estate (Ontario) Inc. as its listing agent to assist in carrying out the Sale Procedure (vi) sealing and treating as confidential Confidential Appendices “A” and “B” to the First Report, Confidential Appendices “AA” and “BB” to the Supplementary First Report, and the unredacted factum of the Receiver dated May 29, 2020, delivered in respect of the herein motion and (vii) approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period from March 27, 2020, to April 30, 2020, as set out in Appendix “K” to the First Report, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

**ON READING** the First Report, the Supplementary First Report, the Application Record of CHP dated March 9, 2020, including the affidavit of Mario Barrafato sworn March 9, 2020, the Supplementary Application Record of CHP dated March 22, 2020,

including the supplementary affidavit of Mario Barrafato sworn March 22, 2020, the Responding Motion Record of the Respondents including the affidavit of Neil Miller sworn May 22, 2020, the affidavit of Josh Thiessen sworn May 22, 2020, the affidavit of Neil Miller sworn March 20, 2020, and the affidavit of Cameron Lewis sworn March 19, 2020, the Respondents' Confidential Application Record dated March 20, 2020, the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, and CHP's reply affidavit of David Muallim sworn May 25, 2020, on hearing the submissions of counsel for the Receiver, counsel for CHP, and counsel for the Respondents, and other than counsel for MarshallZehr Group Inc. who did not make any submissions, no one appearing for any other person on the Service List although properly served as appears from the affidavit of Eric Golden sworn June 1, 2020, filed:

#### **DEFINITIONS**

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings set out in the Sale Procedure.

#### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion dated May 12, 2020 and Supplementary Notice of Motion dated May 26, 2020 (collectively, the "NOM"), and related motion material filed in support of that NOM, including the Receiver's Motion Record dated May 12, 2020 and Supplementary Motion Record dated May 26, 2020, and the First Report and Supplementary First Report

(collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

### **SALE PROCEDURE AND RETAINER OF AGENT**

3. **THIS COURT ORDERS** that the Sale Procedure in the form attached as **Schedule “A”** hereto is hereby approved.

4. **THIS COURT ORDERS** that the Receiver use best efforts to obtain estoppel certificates from the following tenants at the Barrie Property (as defined in the First Report): Cineplex, Dollarama, L.A. Fitness, McDonald’s, State & Main, TD Canada Trust and Tim Horton’s.

5. **THIS COURT ORDERS** that the Receiver’s retainer of Avison Young Commercial Real Estate (Ontario) Inc. as its listing agent to assist in carrying out the Sale Procedure be and is hereby approved.

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.

**STALKING HORSE AGREEMENT**

7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to enter into the Stalking Horse Agreement, provided that the approval of any sale of the Subject Assets (as defined therein) by the Court will be subject to a subsequent motion to be held in accordance with the Sale Procedure.

8. **THIS COURT ORDERS** that the obligation to pay the Expense Reimbursement pursuant to Section 8.2 of the Stalking Horse Agreement and Section 13 of the Sale Procedure be and is hereby approved.

**APPROVAL OF RECEIVER'S REPORTS**

9. **THIS COURT ORDERS** that the First Report, and the activities of the Receiver described therein, are hereby approved.

10. **THIS COURT ORDERS** that the Supplementary First Report, and the activities of the Receiver described therein, are hereby approved.

**SEALING OF CONFIDENTIAL INFORMATION**

11. **THIS COURT ORDERS** that Confidential Appendices "A" and "B" to the First Report be and are hereby sealed pending further Order of the Court.

12. **THIS COURT ORDERS** that Confidential Appendices "AA" and "BB" to the Supplementary First Report be and are hereby sealed pending further Order of the Court.

13. **THIS COURT ORDERS** that the unredacted Receiver's Factum dated May 29, 2020, served in respect of the motion herein, be and is hereby sealed pending further Order of the Court.

14. **THIS COURT ORDERS** that the unredacted Factum of the Respondents dated June 1, 2020, served in respect of the motion herein, and the Respondents' Confidential Application Record dated March 20, 2020 and the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, served in respect of the Application for the Appointment Order, be and are hereby sealed pending further Order of the Court.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

15. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements for the period from March 27, 2020 to April 30, 2020, as set out in Appendix "K" to the First Report, is hereby approved.

#### **GENERAL**

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



**MISCELANEOUS**

17. **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.

18. **THIS COURT ORDERS** that this Order is effective from today's date, and is not required to be entered.

  
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## Schedule "A" Sale Procedure

Pursuant to a receivership Application issued on March 9, 2020 by Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc. (the "**Applicant**"), in the matter bearing Court file No. CV-20-00637682-00CL (the "**Receivership Proceeding**"), and an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") therein dated March 25, 2020, as amended on May 15, 2020, and as may in the future be supplemented, amended or restated from time to time (the "**Appointment Order**"), RSM Canada Limited (the "**Receiver**") was appointed receiver and manager, without security, of (i) the assets, undertakings and properties of the respondent Penady (Barrie) Ltd. ("**Penady**"), including but not limited to the real property in the City of Barrie, Ontario, having the legal description set out in Schedule "A" to the Appointment Order (the "**Lands**"), (ii) the interest of PRC Barrie Corp. ("**PRC**") in the NBC Shopping Centre, and (iii) the interest of Mady (Barrie) Inc. ("**MBI**") in the NBC Shopping Centre.

On June 2, 2020, the Court made an order (the "**Sale Procedure Order**") among other things, approving (a) the Receiver entering into an asset purchase agreement, dated May 20, 2020, as may in the future be supplemented, amended or restated from time to time (the "**Stalking Horse Agreement**"), relating to the NBC Shopping Centre with Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc., as purchaser (the "**Stalking Horse Bidder** ") so as to set a minimum floor price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers or proposals (each a "**Bid**") for the acquisition of the NBC Shopping Centre.

Accordingly, the following Sale Procedure shall govern the proposed sale of all of the NBC Shopping Centre pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the NBC Shopping Centre that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

### 1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

**"Acknowledgement of Sale Procedure"** means an acknowledgement of the Sale Procedure in the form attached as Schedule A hereto;

**"Acquisition Entity"** means an entity specially formed for the purpose of effectuating the contemplated transaction;

**"Applicant"** means the Applicant in its capacity as the senior secured lender of Penady, and a creditor of PRC and MBI;

**"Back-up Bid"** means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

**"Back-up Bidder"** means the Bidder that submits the Back-up Bid;

**"Bidder"** means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

**"Confidential Data Room"** means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the NBC Shopping Centre;

**"Confidential Information"** means the confidential information in the Confidential Data Room;

**"Confidential Information Memorandum"** means a confidential information memorandum prepared by the Receiver or the Listing Agent providing certain confidential information in respect of or related to the NBC Shopping Centre;

**"Confidentiality Agreement"** means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel Blaney McMurtry LLP;

**"Debtors"** means, collectively, Penady, PRC and MBI;

**"Encumbrances"** means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

**"Expense Reimbursement"** means as defined in Section 13 below;

**"Good Faith Deposit"** means a cash deposit equal to three (3%) percent of the total purchase price contemplated under the applicable Modified APA;

**"Interested Party"** means a party participating in this Sale Procedure;

**"Listing Agent"** means Avison Young Commercial Real Estate (Ontario) Inc. in its capacity as marketing and listing agent to the Receiver pursuant to an engagement agreement-executed by Avison Young Commercial Real Estate (Ontario) Inc. on April 23, 2020, and by the Receiver on or after June 2, 2020;

**"Modified APA"** means an executed mark-up of the Modified Stalking Horse Agreement reflecting the applicable Qualified Phase I Bidder's proposed changes to the Modified Stalking Horse Agreement;

**"Modified Stalking Horse Agreement"** means the Stalking Horse Agreement as modified by the Receiver for the purposes of a non-credit bid for the Purchased Assets;

**"NBC Shopping Centre"** means the Subject Assets, as defined in the Stalking Horse Agreement;

**"Notice Parties"** means the Receiver, its counsel Blaney McMurtry LLP, and the Listing Agent;

**"Participant Requirements"** means, collectively, the requirements set out in Section 4(a) through 4(d)(iv) hereof;

**"Permitted Encumbrances"** means the encumbrances set out in Schedule "B" of the Stalking Horse Agreement;

**"Phase I Bid"** means an initial Bid submitted by an Interested Party pursuant to Section 4 hereof;

**"Phase I Bid Deadline"** means 10:00 a.m. (Eastern time) on August 12 2020;

**"Phase I Bidder"** means a bidder submitting a Phase I Bid;

**"Phase I Participant Requirements"** has the meaning given to it in Section 4 hereof;

**"Phase II Bid"** means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 8 hereof;

**"Phase II Bid Deadline"** means 10:00 a.m. (Eastern time) on August 26, 2020;

**"Principals"** means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

**"Qualified Phase I Bidder"** means a Phase I Bidder that delivers the documents described in paragraphs (a) through (d) in Section 4, and that the Receiver determines is reasonably likely to submit a binding *bona fide* offer that would have an aggregate purchase price for the NBC Shopping Centre that exceeds the minimum purchase price referred to in Section 11 below and would be able to consummate a transaction if selected as a Successful Bidder;

**"Qualified Phase II Bid"** means a Phase II Bid that satisfies the conditions set out in Section 8 hereof;

**"Qualified Phase II Bidder"** means a bidder submitting a Qualified Phase II Bid;

**"Sale Hearing"** means a Court hearing on motion by the Receiver for an Order to approve the sale of the NBC Shopping Centre to the Successful Bidder;

**"Stalking Horse Purchase Price"** means \$50,000,000;

**"Successful Bid"** means the highest and best Qualified Phase II Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale; and

**"Successful Bidder"** means the Bidder that submits the Successful Bid.

## **2. Assets for Sale**

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to the NBC Shopping Centre.

For the purposes of this Sale Procedure, Bids may be submitted only for the entire property comprising the NBC Shopping Centre.

## **3. Sale Procedure Structure and Bidding Deadlines**

The Sale Procedure shall consist of two phases.

In the first phase, Interested Parties that meet the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement, shall be provided the Confidential Information Memorandum in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline and be given access to the Confidential Information in the Confidential Data Room. Phase I Bidders that are determined by the Receiver to be Qualified Phase I Bidders shall be invited to participate in the second phase to submit a Phase II Bid.

The Receiver will be engaging the Listing Agent as marketing and listing agent to assist the Receiver with the implementation of the Sale Procedure. Interested Parties wishing to obtain information about the Sale Procedure, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the Listing Agent, Attn. Cam Lewis, [cam.lewis@avisonyoung.com](mailto:cam.lewis@avisonyoung.com), with a copy to the Receiver c/o Attn. Brenda Wong ([brenda.wong@rsmcanada.com](mailto:brenda.wong@rsmcanada.com)).

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline.

All Phase II Bids must be submitted to the Notice Parties by email or facsimile in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase II Bid Deadline.

A Bid received after the Phase 1 Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

#### **4. Participant Requirements**

##### **Phase I Participant Requirements.**

To participate in Phase I of the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following prior to being provided with the Confidential Information Memorandum and access to the Confidential Information: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the "**Phase I Participant Requirements**").

##### **Phase II Participant Requirements**

Only Qualified Phase 1 Bidders shall be allowed to participate in Phase II of the Sale Procedure.

In order for the Receiver to determine whether an Interested Party is a Qualified Phase I Bidder, and qualified to participate in Phase II, the Interested Party must provide, in form and substance satisfactory to the Receiver, each of the following on or before the Phase I Bid Deadline:

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof, who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding Expression of Interest. An executed non-binding letter of intent, in the form of the document attached as Schedule "C" hereto, satisfactory to the Receiver, that must reasonably identify the contemplated transaction, the proposed purchase price, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the approval of the Phase I Bid by the Phase I Bidder's directors; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must also furnish written evidence reasonably acceptable to the Receiver of the approval of the Phase I Bid by the Acquisition Entity's Principals; and
- (d) Proof of Financial Ability to Perform. Written evidence upon which the Receiver may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

- (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements and latest audited financial statements;
- (ii) contact names and numbers for verification of financing sources;
- (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
- (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Receiver shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

## **5. Designation as Qualified Bidder**

As set out above, only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Procedure. Following the Phase I Bid Deadline, the Receiver shall determine which Phase I Bidders are Qualified Phase I Bidders. The Receiver shall notify each Phase I Bidder of its determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline, but no later than August 19, 2020.

Following the Phase II Bid Deadline, the Receiver shall determine which Phase II Bidders are Qualified Phase II Bidders. The Receiver shall notify each Phase II Bidder of its determination as to whether the Phase II Bidder is a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder for all purposes of this Sale Procedure.

If 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. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

## **6. Access to Due Diligence Materials**

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum and access to the Confidential Information. If the Receiver determines that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive any additional due diligence access, any non-public information or any access to the Confidential Information.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Qualified Phase I Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Receiver nor the Listing Agent shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the NBC Shopping Centre.

## **7. Information from Interested Parties**

Each Interested Party shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Receiver to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

## **8. Phase II Bid Requirements**

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Receiver, a Phase II Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Modified Stalking Horse Agreement), which must constitute a written and binding commitment to close on the terms and conditions set forth therein;
- (b) Irrevocable. A Phase II Bid must be received by the Phase II Bid-Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- (c) Conditions. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Phase II Bid may not, in



aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;

- (d) **Financing Sources.** A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- (e) **No Fees payable to Qualified Phase II Bidder.** A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break fee, expense reimbursement or similar type of payment, subject to Section 13;
- (f) **Good-Faith Deposit.** Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the First Deposit under the Modified Stalking Horse Agreement; and
- (g) **Purchase Price.** The purchase price in a Phase II Bid must be in accordance with Section 11 below.

The Receiver shall be entitled to seek additional information and clarifications from Phase II Bidders in respect of their Phase II Bids at any time.

#### **9. Furthers Bid by the Stalking Horse Bidder**

The Stalking Horse Bidder, or a person related thereto, shall be entitled to make a Phase II Bid.

#### **10. Determination of Successful Bid**

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 any of such Qualified Phase II Bid(s) to have a Purchase Price equal to or greater than the Purchase Price under the Stalking Horse Bid, the Receiver shall conduct an auction amongst the Qualified Phase II Bidders (including the Applicant), on terms to be determined by the Receiver, to determine the Successful Bid and the Back-up Bid by September 11, 2020, and/or otherwise negotiate with the Qualified Phase II Bidders, on terms to be determined by the Receiver, to as to determine the Successful Bid and the Back-up Bid by September 11, 2020.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Successful Bid and the transactions provided for therein at the Sale Hearing and the

Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established in connection with the Receivership Proceeding.

If no Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

#### **11. Minimum Purchase Price for Phase II Bids**

The minimum purchase price of any Phase II Bid must be the sum of the Stalking Horse Purchase Price plus the Expense Reimbursement plus \$250,000.

#### **12. Acceptance of Successful Bid**

The Receiver shall complete the sale transaction with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

#### **13. Expense Reimbursement**

In consideration for the Applicant's expenditure of time and money in acting as the initial bidder in this Sale Procedure and the preparation and negotiation of the Stalking Horse Agreement and subject to the terms and conditions of that agreement and of the Sale Procedure Order, upon termination of the Stalking Horse Agreement by the Receiver or the closing of a sale and a transfer of the NBC Shopping Centre to one or more parties other than the Applicant or a person related thereto (an "**Alternative Transaction**"), the Receiver agrees to reimburse the Applicant for its expenses in connection with this transaction (the "**Expense Reimbursement**") in an amount of \$400,000.00 from the proceeds of an Alternative Transaction. Payment of the Expense Reimbursement shall be made by the Receiver to the Applicant upon consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Applicant, the Applicant and Applicant's Acquisition Entity and the Receiver shall have no further obligations under the Stalking Horse Agreement.

#### **14. "As Is, Where Is"**

The sale of any of the NBC Shopping Centre pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the NBC Shopping Centre prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the NBC Shopping Centre in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the NBC Shopping Centre, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or in (a) as to the Stalking Horse Bidder, the Stalking Horse Agreement, or (b) as to another Successful Bidder, the applicable Modified APA.

#### **15. Free Of Any And All Encumbrances**

Except as otherwise provided in each Successful Bid, the NBC Shopping Centre shall be sold free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with a vesting order of the Court, with all Encumbrances on or against the NBC Shopping Centre, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of the NBC Shopping Centre after completion of such sale under a Successful Bid.

#### **16. Back-up Bid**

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

#### **17. Return of Good Faith Deposit**

Good Faith Deposits of all Qualified Phase II Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Phase II Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder. Good Faith Deposits of the

Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the purchase agreement of the Back-up Bidder at closing.

#### **18. Modifications and Reservations**

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

**CHOICE PROPERTIES LIMITED PARTNERSHIP** -and- **PENADY (BARRIE) LTD. et al**  
Applicant Respondents

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

**ORDER  
(Sale Procedure Approval)**

**BLANEY McMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**Eric Golden LSO #38239M**  
(416) 593-3927 (Tel)  
(416) 593-5437 (Fax)  
Email: egolden@blaney.com

**Chad Kopach LSO #48084G**  
(416) 593-2985 (Tel)  
(416) 593-5437 (Fax)  
Email: ckopach@blaney.com

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

# APPENDIX J

**CITATION:** Choice Properties Limited Partnership v. Penady (Barrie) Ltd., 2020 ONSC 3517  
**COURT FILE NO.:** CV-20-00637682-00CL  
**DATE:** 20200610

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
) )  
CHOICE PROPERTIES LIMITED ) *Michael De Lellis and Shawn Irving, for the*  
PARTNERSHIP, by its general partner, ) Applicant  
CHOICE PROPERTIES GP INC. )  
) )  
Applicant )  
) )  
**– and –** )  
) )  
PENADY (BARRIE) LTD., PRC BARRIE ) *Tim Duncan and Michael Citak, for the*  
CORP. and MADY (BARRIE) INC. ) Respondents  
) )  
Respondents ) *Eric Golden and Chad Kopach, for RSM*  
) *Canada Limited, in its capacity as Court-*  
) *appointed Receiver*  
) )  
) )  
) **HEARD:** June 2, 2020

**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**

**ENDORSEMENT**

**MCEWEN J.**

[1] This motion is brought by RSM Canada Limited (the “Receiver”), in its capacity as the Court-appointed Receiver of all of the rights, title and interest of Penady (Barrie) Ltd. (“Penady”), PRC Barrie Corp. (“PRC”) and Mady (Barrie) Inc. (“MBI”) (collectively, the “Respondents”) for an order, amongst other things, approving the Sale Procedure outlined in the First Report of the Receiver which features an asset purchase agreement by way of a credit bid (the “Stalking Horse Agreement”) with the Applicant.

[2] The Applicant, Choice Properties Limited Partnership (“CHP”), by its general partner, Choice Properties GP Inc. (“Choice GP”), supports the Receiver’s motion. The Respondents oppose.

[3] The asset in question primarily consists of commercial rental property known as the North Barrie Crossing Shopping Centre (the “Barrie Property”). Penady is the registered owner of the Barrie Property. PRC and MBI are the beneficial owners. The Barrie Property essentially consists of a shopping centre with 27 tenants.

[4] Due to the COVID-19 crisis, the motion proceeded by way of Zoom video conference. It was held in accordance with the Notices to Profession issued by Morawetz C.J. and the Commercial List Advisory.

## **INTRODUCTION**

[5] Choice GP is the general partner of CHP. CHP is the senior secured lender to Penady. PRC and MBI provided a limited recourse guarantee, limited to their beneficial interest in the Barrie Property.

[6] CHP advanced funding to Penady to assist with the development of the Barrie Property. It subsequently assumed Penady’s indebtedness to the Equitable Bank, which previously held a first mortgage over the Barrie Property.

[7] Currently, Penady is indebted to CHP in the amount of approximately \$70 million with interest accruing monthly at the rate of approximately \$550,000.

[8] As a result of the foregoing, as noted, the Receiver brings this motion seeking approval of the Stalking Horse Agreement and Sale Procedure along with other related relief.

[9] I heard the motion on June 2, 2020 and granted, primarily, the relief sought by the Receiver. I incorporated some changes into the Order, with respect to the Sale Procedure, and approved a Sale Procedure, Stalking Horse Agreement, Receiver’s Reports and inserted a Sealing Order. At that time, I indicated that reasons would follow. I am now providing those reasons.

## **PRELIMINARY ISSUES**

[10] I begin by noting that I granted the Sealing Order sought by the Receiver, on an unopposed basis, with respect to the Unredacted Receiver’s Factum dated May 29, 2020 and Respondents’ Factum dated June 1, 2020, as well as the Respondents’ Confidential Application Record dated March 20, 2020 and the Supplemental Evaluation Information of Cameron Lewis dated March 23, 2020. The test for a sealing order is set out in the well-known decision of *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, at para. 53. The test is met in this case since the Sealing Order relates to appraisals concerning the Barrie Property and thus it is important that they remain confidential during the Sale Procedure.



[11] I also wish to deal with the issue of the affidavit filed by the Respondents that was prepared by Mr. Josh Thiessen. Mr. Thiessen is a Vice-President, in client management, at MarshallZehr Mortgage Brokerage. As I noted at the motion, the Respondents, in my view, were putting forward Mr. Thiessen as an expert witness to provide evidence on the issue of the Sale Procedure. The Respondents failed, however, to provide a curriculum vitae so that I could determine whether Mr. Thiessen had any experience in sale procedures in distress situations or insolvency proceedings. Further, no attempt was made to comply with the requirements of r. 53 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, concerning experts' reports. Mr. Thiessen was also involved in a previous attempt to sell the Barrie Property and had a financial interest in that potential transaction. The Applicant submits that Mr. Thiessen's involvement makes him a partial witness.

[12] In all of the circumstances I advised the parties that while I had reviewed Mr. Thiessen's affidavit, I was giving it very limited weight. In short, however, I do not believe that much turns on Mr. Thiessen's affidavit since I granted relief to the Respondents with respect to most of Mr. Thiessen's concerns, for my own reasons.

[13] Last, the Respondents, in support of their position, sought to draw comparisons between the Barrie Property and a Brampton Property in which CHP has a 70 percent controlling interest. I accept the Receiver's argument that such a comparison is of little, if any, use given that the Brampton Property is vacant land, currently zoned as commercial, but being marketed with a potential to rezone for residential use. Further, it bears noting, that CHP has a sales process well underway with respect to the Brampton Property, which refutes the Respondents' submission that CHP has meaningfully delayed that sale.

## THE LAW

[14] The issue on this motion is whether the Sale Procedure is fair and reasonable.

[15] The parties agree that the criteria to be applied are set out in the well-known case of *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.), as follows:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been an unfairness in the working out of the process.

[16] As further explained by D. Brown J. (as he then was) in *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, 90 C.B.R. (5th) 74, the approval of a particular form of Sale Procedure must keep the *Soundair* principles in mind and assess:

- (a) the fairness, transparency and integrity of the proposed process;

- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

## **ANALYSIS**

### **Introduction**

[17] Before I begin my review of the Sale Procedure, it bears noting that the Sale Procedure is being contemplated during the COVID-19 crisis. In this regard, however, it further bears noting that the financial difficulties encountered by Penady pre-date the COVID-19 pandemic. Prior to the Receivership Order being granted, Penady had been attempting to sell or refinance the Barrie Property for approximately 16 months. It was in default on its indebtedness to CHP. There were also substantial unpaid realty taxes on the Barrie Property from late 2018 up until the time of the Receivership.

[18] At the time the COVID-19 crisis hit, there were 27 tenants at the Barrie Property. Since COVID-19, 16 tenants have temporarily suspended operations, with another 6 tenants offering limited services. The major Barrie Property tenants include TD, Tim Hortons, McDonalds, Dollarama, Cineplex, LA Fitness, and State & Main.

[19] It also bears noting that Penady had previously retained Mr. Cameron Lewis of Avison Young Commercial Real Estate (Ontario) Inc. (“AY”) to market and sell the Barrie Property. The Receiver agreed to retain Mr. Lewis to continue to market the Barrie Property. Mr. Lewis is well experienced in the area and his previous involvement will allow him to utilize the information he has gathered, including potential bidders. Similarly, the Receiver has retained the existing property manager, Penn Equity, to continue to manage the Barrie Property during the Receivership.

### **The Disputes Between the Parties**

[20] I will now deal with the various disputes between the parties, first dealing with the objections that the Respondents have with respect to the Stalking Horse Agreement and then with the Respondents’ complaints concerning the Sale Procedure.

#### The Stalking Horse Agreement

[21] The first complaint of the Respondents concerns the credit bid contained in the Stalking Horse Agreement as being significantly below appraisals obtained for the Barrie Property by the Respondents (all amounts are subject to the Sealing Order).

[22] I do not accept this argument. The Receiver has obtained an estimate on the Barrie Property from a reputable commercial real estate company, Cushman & Wakefield ULC (“CW”). The valuation was prepared by CW on March 25, 2020. It is comprehensive and expressly factors into the valuation difficulties in collecting rental income due to the COVID-19 crisis, which rent

collection issues have now materialized. Further, the credit bid contained in the Stalking Horse Agreement will be paid during the Sale Procedure while the valuation placed upon the Barrie Property by CW anticipates a marketing process which will culminate in a sale in approximately 12-18 months. Thus, there is the obvious benefit of having the quicker Sale Procedure undertaken, without the continued, approximately \$550,000 per month interest being incurred for another 12-18 months.

[23] The Respondents rely upon the two appraisals that they have received which place higher valuations on the Barrie Property. The difficulty with those appraisals is that neither deals with the ramifications of the COVID-19 crisis. Furthermore, it bears noting that Penady was unable to sell the Barrie Property over a protracted period of time leading up to the Receivership, which suggests, partially at least, that the price it was asking was too high.

[24] It also strikes me that if CW's valuation is, in fact, on the low-side, it could generate an auction in which the Applicant and others can bid, thus, driving up the price.

[25] The second issue that the Respondents have with the Stalking Horse Agreement is the \$400,000 Expense Reimbursement payable to the Applicant if it is unsuccessful, while an unsuccessful third-party bidder will receive no reimbursement for participating in the process.

[26] In my view, the Expense Reimbursement is very reasonable. It constitutes just 0.8 percent of the purchase price, which is well within the range that is typically accepted by this court. The Respondents submit that they require a breakdown of exactly what the Expense Reimbursement would cover. In light of the modest amount of the Expense Reimbursement and the opinion of the Receiver, it is my view that such an accounting is not required in this case. Expense reimbursement payments compensate Stalking Horse Agreement purchasers for the time, resources and risk taken in developing a Stalking Horse Agreement. In addition to the time spent, the payments also represent the price of stability and thus some premium over simply providing for expenses may be expected. Thus, the Expense Reimbursement claim of 0.8 percent is, in my view, justifiable.

[27] Third, the Respondents object to the required deposits of 3 percent and 7 percent at Phase I and II, respectively. They also object to a requirement that potential bidders secure financing at the end of Phase I. In my view, these are entirely reasonable requirements so that only legitimate would-be purchasers are engaged.

[28] Fourth, the Respondents object to the Minimum Overbid of \$250,000. In my view, the \$250,000 Minimum Overbid is reasonable and within the range that is typically allowed by this court concerning properties of significant value. I can see no detriment of having a modest overbid amount in place given the amount of the Applicant's credit bid. It is supported by the Receiver and will generate a sensible bidding process.

[29] Last, the Respondents object to the Applicant being involved in the proposed auction if a superior bid is obtained. Again, I disagree. Such auctions are commonplace and ensure a robust bidding process. In this regard, the Respondents also make vague complaints about the auction process. I do not accept these arguments. The auction process proposed is in keeping with those generally put before this court.

### The Sale Procedure

[30] First, the Respondents complain that the Receiver is prepared to undertake the Sale Procedure without obtaining a valid environmental report, a valid building condition assessment report or any tenant estoppel certificates.

[31] The Receiver responds by submitting that there is an existing environmental report that is approximately one and one-half years old, the Barrie Property was recently constructed (2016), and that tenant estoppel certificates will be very difficult to obtain, given the current economic climate and the fact that some tenants are not operating and are seeking rent abatements. The Receiver further points out that Penady had neither an environmental report or building condition assessment when it attempted to sell the Barrie Property.

[32] While there is some merit in the submissions of the Receiver, it is my view that it would be preferable to obtain an environmental report, valid building condition assessment and tenant estoppel certificates from the seven major tenants. The Receiver, in an alternative submission, agreed to obtain the environmental report and building condition assessment report. It has recently determined that the environmental assessment report can be obtained in three to four weeks and the building condition assessment report in two to three weeks. Both can be obtained at a very modest cost. Normally such reports may not be necessary, given what I have outlined above. It is my view, however, that given the current economic condition, it is best to err on the side of caution and ensure that this information, which may enhance the Sale Procedure, is available to bidders. These reports can be obtained for a modest price, in short order.

[33] Similarly, it is reasonable to obtain tenant estoppel certificates from the seven major tenants. Bidders would likely be interested in this information. I accept that it would be more difficult to obtain the certificates from the minor tenants, many of whom are not fully operating at this time. The Receiver shall therefore use best efforts to obtain the tenant estoppel certificates from the seven major tenants as soon as reasonably possible.

[34] Second, the Respondents submit that a Sale Procedure should not be undertaken at this time given the COVID-19 crisis. While I have sympathy with the situation the Respondents now face, I do not agree.

[35] As noted above, this insolvency was not generated by the COVID-19 crisis. Penady was in financial difficulty for several months preceding the pandemic and had been unsuccessfully attempting to sell the Barrie Property for some time. I do not accept the argument that we should adopt a “wait and see” approach to determine if and when the economic crisis abates. The Applicant continues to see interest accrue, as noted, at approximately \$550,000 per month. There is no certainty that the economic situation will improve in any given period of time and it may continue to ebb and flow before it gets better. The Respondents did not adduce any evidence to suggest when the economy may improve, nor likely could they, given the uncertainty surrounding the COVID-19 crisis.

[36] In fairness, the Respondents did not propose an indefinite period, but perhaps a 2-3 month pause. Without some certainty, however, I do not agree that this is reasonable given the accruing interest and the risk that the economy may not improve and could worsen.

[37] Alternatively, the Respondents seek to extend the timeline in the Sale Procedure. In my view, the timeline proposed by the Receiver for the Sale Procedure is a reasonable one and superior to the timeline Penady had in place when it attempted to sell the Barrie Property before the Receivership. The Receiver Sale Procedure includes a quicker ramp-up, a robust process, including the creation of a data room (which has been done), and overall provides for a longer marketing period than was included in the previous Penady sales process.

[38] In light of the fact, however, that I have ordered production of the aforementioned environmental and building condition assessment reports, as well as the tenant estoppel certificates, and in order to ensure that a fair timeline is put in place so as to maximize the chances of competitive bids being obtained (including bidders having an opportunity to secure financing), I am extending the Sale Procedure by two weeks. It is my view, though, that obtaining the aforementioned documentation will result in little, if any, delay in implementing the marketing process.

[39] It also bears repeating that the Receiver has acted reasonably in retaining Mr. Lewis of AY. Mr. Lewis has been in contact with prospective bidders given his previous retainer by Penady. The Receiver's retainer of Mr. Lewis allows him to continue on with his work as opposed to having a new commercial real estate agent embark on a learning process with respect to the Barrie Property. Further, Mr. Lewis's commission structure is designed so that he earns a larger commission if a buyer, other than the Applicant, is successful, thus incentivizing Mr. Lewis to ensure that a robust Sale Procedure is undertaken.

[40] The extension of the Phase I Bid Deadline to August 12, 2020 and the extension of the Phase II Bid Deadline to August 26, 2020, constitutes a fair and reasonable timetable which is longer than those usually sought and granted by this court. Further, and in any event, the Receiver can and should reappear before the court, if necessary.

## **DISPOSITION**

[41] It is my view that the above Sale Procedure complies with the principles set out in both *Soundair* and *CCM Master*. The Stalking Horse Agreement and Sale Procedure strike the necessary balance to move quickly and to address the deterioration of the value of the business, while at the same time setting a realistic timetable that will support the process.

[42] Based on the foregoing, at the conclusion of the hearing, with the above noted amendments, I granted the Receiver's Order authorizing the Stalking Horse Agreement and the Sale Procedure, and authorizing the Receiver to enter into the proposed listing agreement. Furthermore, I approved the First Report and the Supplementary First Report, the Receiver's conduct and activities described, as well as granted the Sealing Order.

[43] The parties approved the form and content of the Order which I signed on June 3, 2020.

A handwritten signature in cursive script, appearing to read "McEwen J.", positioned above a horizontal line.

**McEwen J.**

**Released:** June 10, 2020

**CITATION:** Choice Properties Limited Partnership v. Penady (Barrie) Ltd., 2020 ONSC 3517  
**COURT FILE NO.:** CV-20-00637682-00CL  
**DATE:** 20200610

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**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

**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**

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**ENDORSEMENT**

---

**McEwen J.**

**Released:** June 10, 2020

# APPENDIX K





# NORTH BARRIE CROSSING<sup>1</sup>

BARRIE, ONTARIO

## A DOMINANT SHOPPING CENTRE IN A VIBRANT MARKET

### INVESTMENT SUMMARY

1 - PRC BARRIE CORP. AND MARY (BARRIE) INC. PROPERTY ONLY



# The Offering

Avison Young Commercial Real Estate (Ontario) Inc. (the "Advisor") has been retained on an exclusive basis by RSM Canada Limited, solely in its capacity as receiver and manager of Penady (Barrie) Ltd. and the interest of each of PRC Barrie Corp. and Mady (Barrie) Inc. in the Property as defined below and not in its personal capacity ("RSM" or the "Vendor"), to arrange the sale of PRC Barrie Corp.'s and Mady (Barrie) Inc.'s 100% interest in North Barrie Crossing, Barrie, ON, as delineated in the aerial on the opposite page (the "Property"). This offering presents an opportunity to acquire a dominant retail shopping centre in a major and growing Ontario market that is a bedroom community to the Greater Toronto Area.

Built in 2015-2017, the Property is located on the cloverleaf at Highway 400 & Duckworth Street and its site plan approved for 218,880 sf. Currently improved with 156,460 sf and containing approximately 62,420 sf of excess density, the Property is anchored by Cineplex, LA Fitness and Dollarama and touts a destination and service-based tenant mix that appeals to Barrie's populace and drives daily visits. Other tenants include TD Bank, McDonald's, Montana's, Boston Pizza, Tim Hortons, State and Main, Sherwin Williams, Symposium Café as well as quick-service restaurants, personal care providers and a dental practitioner. The Property is shadow-anchored by Zehrs, Shoppers Drug Mart and LCBO located in the adjacent property that is owned and managed by Choice REIT. Both properties operate in a synergistic fashion with reciprocal easement and operating agreements.

The Property has been professionally developed and managed by PenEquity Realty Corporation who continues to manage the Property. As a result, a purchaser will benefit from the high standards that govern its current management.





**The Property**

### Leasing Overview

Tenant	Area (sf)		WAVG Years	
	GLA (sf)	Share	Remaining	Expiry Date
LA Fitness	37,000	24%	5.8	Jun-26
Cineplex	31,255	20%	10.9	Jul-31
Dollarama	10,088	6%	8.5	Feb-29
<b>Anchors/Majors</b>	<b>78,343</b>	<b>50%</b>	<b>8.2</b>	
Leased CRU	32,659	21%	7.3	-
Leased Pads	21,868	14%	11.0	-
<b>Total Leased</b>	<b>132,870</b>	<b>85%</b>	<b>8.4</b>	
Vacant CRU	23,590	15%		
<b>Property Total</b>	<b>156,460</b>	<b>100%</b>		

# Investment Highlights

207

## Vibrant & Growing Community, High Traffic Location

- The City of Barrie is located approximately 85 kilometres north of Toronto and has a census metropolitan area population of 199,000
- Barrie serves as a bedroom community to Toronto given its close proximity and integrated Metrolinx transit system with frequent all-day Go Train and GO Bus Service to and from Toronto
- Attractive 2019 demographics within a 5 km radius - population of approximately 73,450 is expected to increase 4.8% to approximately 77,000 by 2024 and average household income of approximately \$94,700 is forecasted to increase 16.2% to approximately \$110,000 by 2024
- Property has “cloverleaf” access at Highway 400 and Duckworth Street and is exposed to over 100,000 vehicles per day along this 400-series highway

## Durable Income Stream

- Anchored by Cineplex, LA Fitness and Dollarama, the Property’s national tenant mix has a powerful trade area presence and generates an extremely high quality income stream that is derived from a complementary mix of destination, service and convenience retail
- National tenants account for 86% of Year 1 in-place gross rent; collectively, the tenants have an attractive weighted average lease term to maturity of 8.4 years

## Future Development Potential

- Situated on approximately 21.47 acres and site plan approved for a total GLA of 218,880 sf
- Expanding trade area that is conducive to continued development opportunities. Existing improvements total 156,460 sf with approximately 62,420 sf of remaining excess density
- Seven prospective tenants totalling 19,380 sf have executed leases or offers to lease that may potentially add approximately \$608,200 to total minimum rent







For more information please contact:

Capital Markets Group

Cameron Lewis+, Principal  
416.673.4021  
cam.lewis@avisonyoung.com

+Sales Representative

Avison Young Commercial Real Estate (Ontario) Inc.  
18 York Street, Toronto, ON M5J 2T8  
Phone: 416.955.0000 Fax: 416.955.0724

avisonyoung.com  
avisonyoungcapitalmarkets.com






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The information contained herein was obtained from sources deemed reliable and is believed to be true; it has not been verified and as such, cannot be warranted nor form any part of any future contract.



Platinum member

# Globe and Mail Ad

The following ad appeared in the Globe and Mail on June 16th, 18th, 23rd and 25th, 2020.

	<h2>For Sale</h2> <h3>NORTH BARRIE CROSSING, BARRIE, ON</h3>
	<ul style="list-style-type: none"> <li>• Vibrant community, 400-series highway location</li> <li>• 156,460 sf with 62,420 sf of remaining excess density</li> <li>• Cineplex, LA Fitness, Dollarama, TD Bank, McDonald's, Tim Hortons, Montana's, Boston Pizza</li> <li>• 86% of gross rent from national covenant tenants</li> <li>• Shadow-anchored by Zehrs, Shoppers Drug Mart &amp; LCBO</li> </ul> <p><b>Cameron Lewis</b><sup>†</sup>, Principal 416.673.4021 cam.lewis@avisonyoung.com</p>
<p><a href="http://avisonyoung.ca">avisonyoung.ca</a> Avison Young Commercial Real Estate (Ontario) Inc, Brokerage</p>	<p><sup>†</sup>Sales Representative</p>  <p>Platinum member</p>

# APPENDIX L





# NORTH BARRIE CROSSING<sup>1</sup>

BARRIE, ONTARIO

A DOMINANT SHOPPING CENTRE IN A VIBRANT MARKET

FINAL PROGRESS REPORT PREPARED FOR RSM CANADA LIMITED - AUGUST 14, 2020

1 - PRC BARRIE CORP. AND MARY (BARRIE) INC. PROPERTY ONLY



## Prospect Summary

CA#	Company	First Name	Last Name	CA Execution Date	Acknowledgment Execution Date
1	Armel Corporation	Will	Christie	June 8, 2020	June 20, 2020
2	CC Capital Group	Gary	Chaudhary	June 8, 2020	June 10, 2020
3	Choice REIT	David	Muallim	July 8, 2020	July 8, 2020
4	D.G.F. Management Ltd.	Dean	Feltham	June 8, 2020	June 11, 2020
5	Forgestone Capital	Jackson	Safрата	June 22, 2020	June 22, 2020
6	JD Developments	Julia	Zhang	June 12, 2020	-
7	LaSalle Investment Management	Stephen	Robertson	June 8, 2020	June 22, 2020
8	NA Realty Acquisition Corp.	Michael	Cooperman	June 8, 2020	-
9	PBM Realty Holdings Inc.	Phillip	Moore	June 15, 2020	-

CA #	Company	First Name	Last Name	CA Execution Date	Acknowledgment Execution Date
10	Private Investor	Jennifer	Yoo	June 12, 2020	-
11	Private Investor	Jaspal	Dhillon	June 8, 2020	June 11, 2020
12	Private Investor	Zoran	Cocov	June 8, 2020	June 10, 2020
13	Private Investor	Ravinder	Arora	June 8, 2020	June 11, 2020
14	Royal Courtyards	Oleg	Rudnitsky	June 8, 2020	June 11, 2020
15	Serruya Private Equity	Michael	Serruya	June 8, 2020	June 10, 2020
16	Sky Developments	Natasha	Porter	June 10, 2020	-
17	Southside Group	Vito	Frijia	June 29, 2020	June 29, 2020
18	Strathallen Acquisitions Inc.	Brian	Spence	June 12, 2020	July 6, 2020
19	Virtus Asset Management	Aurelio	Baglione	June 8, 2020	June 10, 2020

# Eblast Statistics

For Sale Eblast Sent on		June 8, 2020 at 11:00 am EST	
Total Investors Contacted	1,375		
Opened The Email	626	48.6%	
Avison Young Average Opens		34%	
Clicked Through To Content	116	18.5%	
Downloaded the Brochure	113	18%	
Downloaded the CA	24	3.8%	

# Data room (Opened June 11th, 2020)

Name	Date First accessed
Will Christie	11 June 2020
Jaspal Dhillon	11 June 2020
Dean Feltham	11 June 2020
Hareesh Bhargav	12 June 2020
Oleg Rudnitsky	22 June 2020
Jackson Safrata	23 June 2020
Stephen Robertson	23 June 2020
Dylan Rappel	6 July 2020
Aaron Fisch	9 July 2020
Benjamin Ng (TD Bank)	20 July 2020

# Globe and Mail Ad

The following ad appeared in the Globe and Mail on June 16th, 18th, 23rd and 25th, 2020.



## For Sale

NORTH BARRIE CROSSING, BARRIE, ON



- Vibrant community, 400-series highway location
- 156,460 sf with 62,420 sf of remaining excess density
- Cineplex, LA Fitness, Dollarama, TD Bank, McDonald's, Tim Hortons, Montana's, Boston Pizza
- 86% of gross rent from national covenant tenants
- Shadow-anchored by Zehrs, Shoppers Drug Mart & LCBO

**Cameron Lewis**, Principal  
416.673.4021  
cam.lewis@avisonyoung.com

avisonyoung.ca     Sales Representative

Avison Young Commercial Real Estate (Ontario) Inc., Brokerage


Platinum member

North Barrie Crossing, Barrie, ON
View in Browser




Capital Markets Group

## For Sale

### North Barrie Crossing, Barrie, ON


#### A Dominant Shopping Centre In a Vibrant Market




North Barrie Crossing is a dominant open format retail centre fronting onto a 400-series highway in the growing market of Barrie, Ontario. Anchored by Cineplex, LA Fitness and Dollarama, the Property is 85% leased with a weighted average lease term of 8.4 years and national tenants comprising 86% of in-place gross rent. Site plan approved for 218,880 sf, the Property is currently improved with 156,460 sf and provides future development potential of approximately 62,420 sf.




Vibrant Market



Durable Income Stream



High Traffic Location



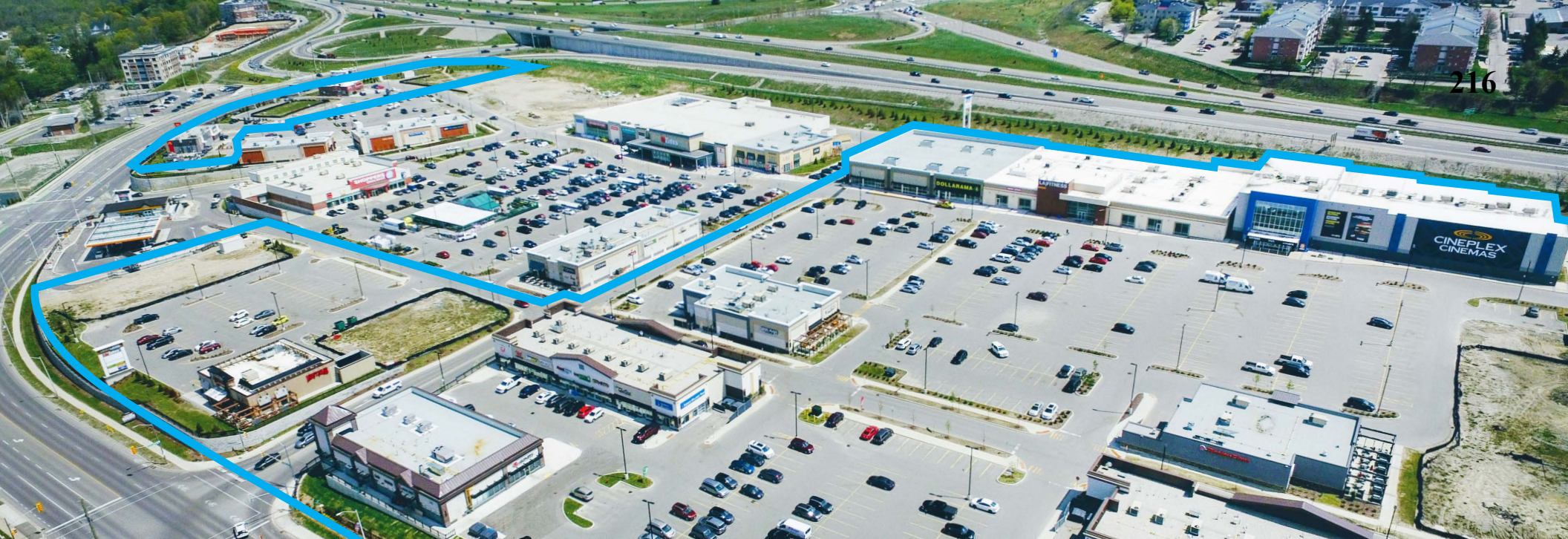
Future Development Potential

Investment Summary

Confidentiality Agreement

For more information, please contact:

**Cameron Lewis**  
Principal, Sales Representative  
O: 416.673.4021  
M: 905.467.2276  
cam.lewis@avisonyoung.com



For more information please contact:

Capital Markets Group

Cameron Lewis+, Principal  
416.673.4021  
cam.lewis@avisonyoung.com

+Sales Representative

Avison Young Commercial Real Estate (Ontario) Inc.  
18 York Street, Toronto, ON M5J 2T8  
Phone: 416.955.0000 Fax: 416.955.0724

avisonyoung.com  
avisonyoungcapitalmarkets.com

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The information contained herein was obtained from sources deemed reliable and is believed to be true; it has not been verified and as such, cannot be warranted nor form any part of any future contract.



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# APPENDIX M

**RSM CANADA LIMITED, solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PENADY (BARRIE) LTD. and certain of the assets, undertakings and properties of PRC BARRIE CORP. and MADY (BARRIE) INC. and not in its personal capacity and without personal or corporate liability**

- and -

**CHOICE PROPERTIES LIMITED PARTNERSHIP**

---

**AGREEMENT OF PURCHASE AND SALE**

**CUNDLES ROAD AND DUCKWORTH AVENUE  
BARRIE, ONTARIO**

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**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** made as of May 20, 2020 (the “**Execution Date**”).

**B E T W E E N:**

**RSM CANADA LIMITED, solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PENADY (BARRIE) LTD. and certain of the assets, undertakings and properties of PRC BARRIE CORP. and MADY (BARRIE) INC. and not in its personal capacity and without personal or corporate liability**

(the “**Vendor**” or “**Receiver**”)

- and -

**CHOICE PROPERTIES LIMITED PARTNERSHIP**

(the “**Purchaser**”)

**RECITALS:**

- A. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 25, 2020 (as amended by order of the Court dated May 20, 2020, and as may in the future be supplemented, amended or restated from time to time, collectively the “**Appointment Order**”), the Receiver was appointed receiver and manager, without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. (“**PBL**”) and of certain assets, undertakings and properties of PRC Barrie Corp. (“**PRC**”) and Mady (Barrie) Inc. (“**MBI**”), including the interest of PRC and MBI in the Subject Assets.
- B. At the time of the making of the Appointment Order, the Debtor owned the lands and premises located at the intersection of Cundles Road and Duckworth Avenue, Barrie, Ontario, and more particularly described on Schedule A attached hereto (the “**Lands**”) and which were being developed and are used for commercial purposes (the “**Project**”).
- C. The Appointment Order authorizes the Receiver to market any or all of the Subject Assets, including advertising and soliciting offers in respect of the Subject Assets, or any part or parts thereof and to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- D. The Purchaser has agreed to act as a “stalking horse bidder” by way of a credit bid in connection with the sale of all of the right, title and interest of the Debtor in and to the Subject Assets, meaning that, in the absence of the Receiver’s acceptance of a bid for the Subject Assets made in accordance with the Sale Procedure which is superior to this Agreement (as determined by the Receiver in accordance with the Sale Procedure), the Purchaser has agreed to purchase on an “as is, where is” basis all of the right, title and

interest of the Debtor in and to the Subject Assets on the terms and subject to the conditions set forth in this Agreement, in accordance with the Sale Procedure and subject to obtaining the Vesting Order.

- E. The Receiver intends to seek the Sale Procedure Order authorizing and directing the Receiver to enter into this Agreement and to carry out the Sale Procedure.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of \$10.00 paid by each of the Vendor and the Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree and declare as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

**“Accounts Receivable”** means (i) all accounts receivable, trade receivables, bills receivable, trade accounts, book debts, notes receivable, rebates, refunds, and other receivables of PBL, in each case, whether current or overdue, with all interest accrued on such items; and (ii) all accounts receivable, trade receivables, bills receivable, trade accounts, book debts, notes receivable, rebates, refunds, and other receivables of PRC and MBI related to the Lands, in each case, whether current or overdue, with all interest accrued on such items. For greater certainty, Accounts Receivable includes any rents and other amounts owing to the Debtor (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 Debtor thereunder.

**“Agreement”** means this agreement of purchase and sale and the schedules attached hereto, as amended from time to time; **“Article”** and **“Section”** mean and refer to the specified article and section of this Agreement.

**“Alternative Transaction”** has the meaning ascribed thereto in Section 8.1(b).

**“Applicable Laws”** means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to the Subject Assets, such Person, property, transaction, event or other matter.

**“Appointment Order”** has the meaning ascribed thereto in the Recitals.

**“Assignment and Assumption of Contracts”** means an assignment and assumption of the Assumed Contracts to be delivered on Closing pursuant to Sections 6.1 and 6.2, in form acceptable to the Vendor and Purchaser, each acting reasonably.

“**Assignment and Assumption of Leases**” means an assignment and assumption of the Leases to be delivered on Closing pursuant to Sections 6.1 and 6.2, in form acceptable to the Vendor and Purchaser, each acting reasonably.

“**Assignment and Assumption of Permitted Encumbrances**” means an assignment and assumption of all of the right, title and interest, and all liability, covenants and obligations, of the Debtor in, to and under any Permitted Encumbrances not already subject to an Assignment and Assumption of Leases or an Assignment and Assumption of Contracts, to be delivered on Closing pursuant to Sections 6.1 and 6.2, in form acceptable to the Vendor and Purchaser, each acting reasonably.

“**Assumed Contracts**” has the meaning ascribed thereto in Section 7.1.

“**Back-up Bid**” has the meaning ascribed thereto in the Sale Procedure.

“**Books and Records**” means, collectively, the books and records of the Debtor relating to the Subject Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media.

“**Buildings**” means, individually or collectively, as the context requires, all of the buildings, structures and fixed improvements located on, in or under the Lands, and improvements and fixtures contained in or on such buildings and structures used in the operation of same, but excluding those improvements and fixtures owned and used by any Tenant in carrying on its business and those improvements and fixtures which, in each case, are removable by any Tenant pursuant to its Lease; and “**Building**” means any one of the Buildings.

“**Business**” means the business of owning, operating, marketing, developing and selling the Property, carrying out the Project, and all such other commercial activities incidental and ancillary thereto.

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“**Chattels**” means the right, title and interest of the Vendor and the Debtor in all of the tools, machinery, equipment, inventory and supplies located at the Property and used exclusively in connection with the operation, use, enjoyment, maintenance or management of the Property, if any (including, without limitation, all elevating devices and equipment, furniture, telephones and other equipment, electric light fixtures, equipment, plumbing fixtures, furnace burner equipment, oil tanks, heating and ventilating and air-conditioning equipment, air handling equipment, boiler machinery and equipment, sprinklers, drainage, mechanical and electrical systems, janitorial equipment and supplies, any office furniture, computers and all computer diskettes used for information storage relating to the operation and management of the Property, management records used in the leasing and operation of the Buildings and any other chattels or tangible personal property), but excluding the Excluded Assets and any such items owned by Tenants, licensees or independent contractors.

“**Claims**” means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever, whether known or unknown, and “**Claim**” means any one of the foregoing.

“**Closing**” means the closing and consummation of the Transaction, including, without limitation, the payment of the Purchase Price and the delivery of the Closing Documents.

“**Closing Date**” means the first to occur of (a) a Business Day to be designated by the Purchaser and reasonably acceptable to the Receiver after the satisfaction or waiver of all conditions set out in Sections 4.1(e) and (f) and 4.2(e) and (f) on notice of not less than 5 Business Days, and (b) the date that is 15 Business Days after the satisfaction or waiver of the conditions set out in Sections 4.1(e) and (f) and 4.2(e) and (f), unless otherwise agreed to by the Parties.

“**Closing Documents**” means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser pursuant to Section 6.1 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor pursuant to Section 6.2.

“**Closing Certificate**” has the meaning ascribed thereto in Section 2.6.

“**Confidential Information**” has the meaning ascribed thereto in Section 2.4.

“**Consent**” means any approval, authorization, consent, order, license, permission, permit (including any environmental permit), qualification, exemption or waiver by any Governmental Authority or other Person.

“**Contract Notice Date**” has the meaning ascribed thereto in Section 7.1(a).

“**Contracts**” means, collectively, all contracts and agreements relating to the Property entered into by the Debtor or any manager or agent on behalf of the Debtor, or which have been assigned to the Debtor, or which otherwise bind and/or benefit the Debtor as owner of the Property, and includes, without limitation, the Warranties, but excludes the Leases and any contracts or agreements which are not assignable without the consent of the counterparty thereto.

“**Court**” has the meaning ascribed thereto in the Recitals.

“**Credit Agreement**” means the credit agreement dated December 24, 2014 between, among others, PBL, as borrower, and the Secured Creditor, as lender, as amended from time to time.

“**Credit Agreement Bid Amount**” means the portion of the Secured Creditor’s Secured Debt equal to \$50,000,000 less the amount of the Receiver’s Certificate Obligations owing to the Purchaser as of the Closing Date, if any, inclusive of the amount equal to the Wind-Down Estimate, as evidenced by the Receiver’s Certificates, and as adjusted in accordance with Section 3.4.

“**Debtor**” means (i) PBL, and (ii) PRC and MBI to the extent of their respective interests in the Subject Assets.

“**Encumbrances**” means all mortgages, pledges, charges, including the Receiver’s Borrowings Charge and the Receiver’s Charge, liens, construction liens, debentures, hypothecs, trust deeds, assignments by way of security, security interests, options, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, or against title to, the Subject Assets or any part thereof or interest therein, including any Leases, easements, servitudes, rights of way, restrictions, any subdivision, site plan, development or other agreements with a Governmental Authority affecting the Property, executions or other charges or encumbrances (including notices or other registrations in respect of any of the foregoing) which encumber title to the Subject Assets or any part thereof or interest therein.

“**Environmental Laws**” means all Applicable Laws including written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Property, as well as the common law and any judicial or administrative order, consent decree or judgment, now in existence or which may come into existence from the Execution Date until Closing, governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to Hazardous Materials or intended to protect the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Governmental Authority in respect thereof, and equivalent or similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.

“**Excluded Assets**” means the assets listed in Schedule C.

“**Excluded Contracts**” means all Contracts other than the Assumed Contracts.

“**Execution Date**” means the date noted on page 1 of this Agreement.

“**Expense Reimbursement**” has the meaning set ascribed thereto in Section 8.2(b).

“**Final Order**” means, in respect of any order, such order after (i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or appellate tribunal.

“**Governmental Authority**” means any government, regulatory authority, government department, agency, utility, commission, board, tribunal, court or other rule making entity having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof, or having jurisdiction over the relevant circumstances, or any person acting under the authority of any of the foregoing (including, without limitation, the Electrical Safety Authority, Municipal Property Assessment Corporation, or any arbitrator).

“**GST/HST**” has the meaning ascribed thereto in Section 5.3(b).

“**Hazardous Materials**” means any contaminant, substance, pollutant, waste, hazardous material, toxic substance, radioactive substance, petroleum, its derivatives, by-products and other hydrocarbons, dangerous substance or dangerous goods or material that is: (i) deemed hazardous or toxic under Environmental Laws; (ii) prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Laws; or (iii) present to a degree or in an amount in excess of thresholds regulated under Environmental Laws.

“**HST Act**” has the meaning ascribed thereto in Section 5.2(f).

“**Lands**” has the meaning ascribed thereto in the Recitals.

“**Leases**” means all offers to lease, sublease or sub-sublease, binding letters of intent and agreements to lease or sublease, leases, subleases, renewals and/or extensions of leases or subleases, amendments to any of the foregoing and other rights (including licences, concessions or occupancy agreements, parking and/or storage agreements and licences, telecom and/or satellite agreements and licences and solar panel leases or licences, but excluding rights in the nature of easements) granted by or on behalf of, or which bind, PBL or its predecessors in title as lessor and which entitle any other Person as lessee to possess or occupy any space within the Property together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed, extended or otherwise varied from time to time, and “**Lease**” means any one of the Leases.

“**Notice**” has the meaning ascribed thereto in Section 9.19.

“**Outside Date**” means September 30, 2020, or such later date as agreed to by the Parties.

“**Parties**” means the Vendor and the Purchaser, collectively, and “**Party**” means any one of them.

“**Permitted Encumbrances**” means all those Encumbrances described in Schedule B attached hereto.

“**Person**” means an individual, partnership (limited or general), corporation, trust, unincorporated organization, government or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

“**Project**” has the meaning ascribed thereto in the Recitals.

“**Property**” means the Lands and the Buildings.

“**Purchase Price**” has the meaning ascribed thereto in Section 3.1.

“**Purchaser**” has the meaning ascribed thereto in the Recitals.

“**Purchaser’s GST/HST Certificate**” has the meaning ascribed thereto in Section 5.3(f).

“**Purchaser’s Solicitors**” means Osler, Hoskin & Harcourt LLP or such other firm or firms of solicitors or agents as are retained by the Purchaser from time to time and Notice of which is provided to the Vendor.

“**Receiver**” has the meaning ascribed thereto in the Recitals.

“**Receiver’s Borrowings Charge**” has the meaning given in paragraph 22 of the Appointment Order and used therein.

“**Receiver’s Certificate**” has the meaning given in paragraph 24 of the Appointment Order and used therein.

“**Receiver’s Certificate Obligations**” means all outstanding obligations of any kind pursuant to the Receiver’s Certificate, and secured by the Receiver’s Borrowings Charge.

“**Receiver’s Charge**” has the meaning given in paragraph 19 of the Appointment Order and used therein.

“**Receiver’s Website**” means <https://rsmcanada.com/penady-barrie-ltd>.

“**Receivership Proceeding**” means the receivership proceeding with respect to the Debtor commenced by the Appointment Order.

“**Sale Procedure**” means the sale procedure approved by the Court substantially in the form attached hereto as Schedule D, authorizing the Receiver to enter into this Agreement, approving the sale of the Subject Assets to the Purchaser as contemplated by this Agreement and, in particular, the Purchase Price, as a baseline or “stalking horse” bid, and setting out the terms and conditions of a timetable for a sale process with respect to the Subject Assets, with such amendments as are satisfactory to the Receiver and Purchaser acting reasonably.

“**Sale Procedure Order**” means an order of the Court substantially in the form attached as Schedule E hereto;

“**Secured Debt**” means as of May 12, 2020, \$71,181,964 which represents the debt outstanding and interest accrued under the Credit Agreement as of that date, plus interest that shall continue to accrue from and after that date, together with all costs, expenses and charges and any other amounts recoverable by the Purchaser under the terms of the Credit Agreement.

“**Secured Creditor**” means the Purchaser.

“**Subject Assets**” means all the right, title and interest of the Receiver, and the Debtor, in and to the tangible and intangible properties, assets, interests, rights and claims related to the 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; and
- (g) all other personal property not contemplated by the foregoing,

but excludes the right, title and interest of the Receiver and the Debtor in and to the Excluded Assets and the Excluded Contracts.

“**Successful Bid**” has the meaning given to it in the Sale Procedure.

“**Successful Bidder**” has the meaning given to it in the Sale Procedure.

“**Surplus Funds**” means any and all funds held by the Receiver in respect of the Receivership Proceeding as of the Closing Date.

“**Tenants**” means all Persons or parties having a right to occupy any rentable area of the Property pursuant to a Lease; and “**Tenant**” means any one of such Tenants.

“**Transaction**” means the purchase and sale of the Subject Assets provided for in this Agreement.

“**Vendor**” means the Receiver.

“**Vendor’s Solicitors**” means Blaney McMurtry LLP or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and Notice of which is provided to the Purchaser.

“**Vesting Order**” means the order of the Court approving the sale by the Receiver to the Purchaser of the Subject Assets, and vesting all right, title and interest of the Debtor in the Subject Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), substantially in the form attached hereto as Schedule F, with such amendments as are satisfactory to the Receiver and Purchaser acting reasonably.

“**Vesting Order Motion**” means a motion by the Receiver seeking the granting of the Vesting Order.

“**Warranties**” means any existing warranties and guarantees in favour of the Debtor in connection with the construction, condition or operation of the Buildings or any component thereof or any improvements made to the Buildings or any component thereof which are assignable without the consent of the counterparty thereto.

“**Wind-Down Amount**” means an amount in excess of any Surplus Funds necessary to fund: (a) all accrued but unpaid fees and disbursements of the Receiver and its counsel subject to the Receiver’s Charge as at the Closing Date, and (b) the costs to wind down and complete the Receivership Proceeding after the Closing Date, which amount shall be subject to the Receiver’s Charge.

“**Wind-Down Estimate**” means an estimate of the Wind-Down Amount that is prepared by the Receiver, in form and substance satisfactory to the Purchaser, acting reasonably.

## **1.2 Schedules**

The following schedules attached hereto form part of this Agreement:

- Schedule A - Lands
- Schedule B - Permitted Encumbrances
- Schedule C - Excluded Assets
- Schedule D - Sale Procedure
- Schedule E - Sale Procedure Order
- Schedule F - Form of Vesting Order

## **1.3 Computation of Time Periods**

Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day.

# **ARTICLE 2 AGREEMENT OF PURCHASE AND SALE**

## **2.1 Purchase and Sale of the Subject Assets**

Upon and subject to the terms and conditions of this Agreement, the Vendor agrees to sell, and the Purchaser agrees to purchase, the Subject Assets, pursuant to the Vesting Order, in consideration of the payment of the Purchase Price. This Agreement shall be completed on the Closing Date at the offices of the Vendor's Solicitors subject to the terms and conditions of this Agreement, which conditions, for greater certainty, include the issuance of the Sale Procedure Order, the determination by the Receiver that this Agreement is the Successful Bid, and the issuance of the Vesting Order.

## **2.2 Binding Agreement**

The agreements of the Vendor and the Purchaser set forth in Section 2.1 create and constitute a binding agreement of purchase and sale for the Subject Assets in accordance with and subject to the terms and conditions of this Agreement.

## **2.3 Acknowledgement of Purchaser as to Condition of the Subject Assets**

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) The Subject Assets are being sold and purchased and the Transaction is being effected, on an "as-is, where-is" basis, without any representation, warranty or

covenant by the Vendor or any other Person concerning the Subject Assets, or the Receiver's or the Debtor's right, title or interest in or to the Subject Assets, or the uses or applications of the Subject Assets, whether express or implied, statutory or collateral, arising by operation of law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, the existence or non-existence of Hazardous Materials, compliance with any or all Environmental Laws, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Land Registration Reform Act* (Ontario) or the *Sale of Goods Act* (Ontario) do not apply to the sale of the Subject Assets and are hereby waived by the Purchaser.

- (b) The Purchaser acknowledges that it will perform due diligence, inquiries and investigations in respect of the Subject Assets and shall rely solely upon its own findings resulting therefrom and not upon any information, documentation, statement or opinion, written or oral, provided by the Vendor or any agent of the Vendor other than and only to the extent of the representations and warranties set out in Section 5.1.
- (c) The Vendor makes no representations or warranties, other than and only to the extent of the representations and warranties set out in Section 5.1, of any nature whatsoever, including with respect to any Confidential Information or documentation disclosed to the Purchaser, nor with respect to the Subject Assets (including, without limitation, title thereto and/or the state of any Encumbrances) or the Transaction.
- (d) As part of the Purchaser's agreement to purchase the Subject Assets and to accept the Subject Assets in "as-is, where-is" condition, and not as a limitation on such agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, express or implied, of any kind or type relating to the Subject Assets or any other assets, the Property conditions or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects or the existence or non-existence of Hazardous Materials, whether or not discoverable, Claims pertaining to compliance with any Environmental Laws, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights.
- (e) The Vendor shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever or failure to investigate the Subject Assets on the part of any broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Vendor or any third party.

- (f) The Vendor shall not be required to produce any abstract of title, deed or documents or copies thereof or any evidence as to title.
- (g) The transfer of title to the Subject Assets may be subject to certain work orders, municipal requirements, including building or zoning by-laws and regulations, easements for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority.

The provisions of this Section 2.3 shall not merge on, but shall survive, Closing.

## 2.4 Confidentiality

- (a) Except as may be required in connection with the Receivership Proceeding, until Closing (and in the event this Agreement is terminated for any reason other than its completion, then also from and after such termination), the Purchaser and its consultants, agents, representatives, advisors, partners, solicitors, lenders and prospective lenders and their respective solicitors shall keep confidential all information, documentation and records obtained from the Vendor or its consultants, agents, representatives, advisors or solicitors with respect to the Subject Assets, as well as any information arising out of the Purchaser's access to the Vendor's and the Debtor's records and the Subject Assets and the Purchaser's own due diligence with respect thereto (collectively, the "**Confidential Information**"). The Purchaser shall not use any Confidential Information for any purposes not related to this Transaction or in any way detrimental to the Debtor or the Vendor. Nothing herein contained shall restrict or prohibit the Purchaser from disclosing the Confidential Information to its consultants, agents, representatives, advisors, partners, solicitors, lenders and prospective lenders and their respective solicitors so long as the Purchaser instructs such parties to keep such information confidential.
- (b) The Confidential Information referred to in this Section shall not include:
  - (i) public information or information in the public domain at the time of receipt by the Purchaser or its consultants, agents, advisors, partners and solicitors;
  - (ii) information which becomes public through no fault or act of the Purchaser or its consultants, agents, advisors, partners and solicitors;
  - (iii) information required to be disclosed by law;
  - (iv) information received in good faith from a third party lawfully in possession of the information and not in breach of any confidentiality obligations; or
  - (v) information made available in connection with the Credit Agreement.

- (c) If this Agreement is terminated for any reason, the Purchaser shall promptly return to the Vendor, or destroy (and provide a certificate of an officer of the Purchaser certifying such destruction), all Confidential Information (other than the Purchaser's notes and due diligence materials) and similar material including all copies, and shall destroy all of the Purchaser's notes and due diligence materials in hard or soft copy containing Confidential Information related to this Transaction (and provide a certificate of an officer of the Purchaser certifying such destruction). The Purchaser shall also cause all of its consultants, agents, representatives, advisors, partners, solicitors, lenders and prospective lenders and their respective solicitors to comply with the terms of this Section 2.4(c) and to certify such compliance to the Vendor.
- (d) Notwithstanding anything herein to the contrary, the Receiver shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, to the parties in interest to the proceedings in connection with the receivership of the Debtor, and to any parties entitled to access in accordance with the Sale Procedure, and to publish this Agreement on the Receiver's Website.

## **2.5 Sale Procedure Order, Vesting Order**

- (a) The Receiver and the Purchaser acknowledge that (i) this Agreement is subject to Court approval, and (ii) Closing of the Transaction is subject to this Agreement being determined by the Receiver to be the Successful Bid, and to the issuance of the Vesting Order.
- (b) The Receiver shall use its commercially reasonable efforts to obtain the Sale Procedure Order on or before June 1, 2020, or such other date on which the Parties may agree.
- (c) If this Agreement is determined to be the Successful Bid pursuant to the Sale Procedure, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Motion, on notice to the necessary parties.
- (d) The Purchaser shall provide all information, if any, and take such actions as may be reasonably requested by the Receiver to assist the Receiver in obtaining the Sale Procedure Order, and if the Purchaser is the Successful Bidder, the Vesting Order, and any other order of the Court reasonably necessary to consummate the Transaction.
- (e) From and after the Execution Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser into any such filings).

## 2.6 Closing Certificate

The Parties hereby acknowledge and agree that the Receiver shall be entitled to file with the Court a certificate, substantially in the form attached to the Vesting Order (the “**Closing Certificate**”) upon receiving written confirmation from the Purchaser that all conditions to Closing under this Agreement have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

## 2.7 Receiver’s Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to the Sale Procedure, this Agreement, including in its execution, the Receiver has acted and is acting solely in its capacity as receiver and manager of the Property pursuant to the Appointment Order and not in its personal, corporate, or any other capacity and the Receiver and its agents, officers, directors, employees and representatives will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

# ARTICLE 3 PURCHASE PRICE

## 3.1 Purchase Price

- (a) The Purchase Price for the Subject Assets, exclusive of GST/HST where applicable, shall be equal to \$50,000,000.00 (the “**Purchase Price**”).
- (b) The Purchaser shall satisfy the Purchase Price, subject to adjustment in accordance with Section 3.4, 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 the Receiver’s Certificates.

## 3.2 Purchase Price Allocation

The allocation of the Purchase Price in respect of each of the Subject Assets shall be made by each of the Purchaser and the Vendor, both acting reasonably, for itself, on or before Closing.

## 3.3 Wind-Down Amount

No later than 10 Business Days prior to the Closing Date, the Receiver will deliver to the Purchaser the Wind-Down Estimate.

At Closing, if the Receiver is not holding Surplus Funds to fully fund the Wind-Down Amount, the Purchaser shall deliver to the Receiver the amount required to satisfy the Wind-Down Estimate by way of funds advanced by the Purchaser in its capacity as “Lender” to the Receiver as evidenced by Receiver's Certificates, which amount shall be subject to the Receiver’s Charge and applied by

the Receiver to fund the reasonable fees and disbursements of the Receiver and its counsel, in each case at their standard rates and charges. Any portion of the Wind-Down Estimate that is not required to fund the Wind-Down Amount and that has not been applied in accordance with this Section on the date of the Receiver's discharge shall be returned by the Receiver to the Purchaser on such date. If the Wind-Down Amount exceeds the Wind-Down Estimate, the Purchaser shall deliver to the Receiver, within 3 Business Days of written request by the Receiver to the Purchaser, such additional funds as are required to fund the Wind-Down Amount. If the Wind-Down Amount is lower than the Wind-Down Estimate, the Receiver shall (i) notify the Purchaser of such excess and (ii) deliver to the Purchaser, within 3 Business Days of written request by the Purchaser to the Receiver, all excess funds held by the Receiver.

### 3.4 Adjustments

- (a) The Purchase Price will be adjusted as of the Closing Date (with the Closing Date being allocated to the Purchaser) for all items that are adjusted in accordance with usual commercial practice for adjustment between a vendor and purchaser with respect to the purchase and sale of a comparable property in Ontario, including, without limitation, rent, realty taxes and utilities, and payments under equipment rental agreements, the Vendor being responsible for all expenses and entitled to all income related to the Property in respect of the period prior to the Closing Date and the Purchaser being responsible for all expenses and entitled to all income related to the Property in respect of the period from and including the Closing Date, in each case except as otherwise provided herein.
- (b) The Vendor shall prepare a statement of adjustments in accordance with this Section 3.4 and deliver it to the Purchaser at least five (5) Business Days prior to the Closing Date and shall have annexed to it the calculations used by the Vendor to arrive at all debits and credits on the statement of adjustments. The Vendor shall give the Purchaser's representatives reasonable access to the Vendor's working papers and backup materials in order to confirm the statement of adjustments.
- (c) If the adjustment amount for any item was an initial adjustment or was omitted from the statement of adjustments at Closing, such item will be re-adjusted or adjusted, as the case may be, after Closing on or before the date that is the first to occur of (i) six (6) months after the Closing Date and (ii) ten (10) days before the date on which the Receiver is discharged by the Court as receiver and manager of all of the assets, undertakings and properties of PBL and of the interest of PRC and MBI in the Subject Assets (the "**Final Adjustment Date**"). There shall be no adjustments after the Final Adjustment Date.
- (d) Any refund or rebate of realty tax relating to the Property in respect of the period before the Closing Date (each, a "**Property Tax Refund**") received by the Vendor after Closing shall be paid to the Purchaser and constitute a credit to the Debtor in the amount thereof against the Debtor's obligations under the Credit Agreement, subject to, firstly, reimbursement to the Purchaser of its reasonable out-of-pocket costs relating to such appeals and, secondly, payment to Tenants in possession who have overpaid realty tax contributions as shown by the outcome of the appeals. Any

refund or rebate of realty tax relating to the Property in respect of the period after the Closing Date will be the property of the Purchaser.

- (e) Notwithstanding the foregoing provisions, on Closing, if the adjustments are a credit in favour of the Purchaser (that is, the amount payable on Closing would be less than the Purchase Price), the amount of such adjustment shall be deducted from the Credit Agreement Bid Amount, and if the adjustments are a credit in favour of the Vendor (that is, the amount payable on Closing is more than the Purchase Price), such amount shall be added to the Credit Agreement Bid Amount.

## **ARTICLE 4 CONDITIONS**

### **4.1 Conditions for Vendor**

The obligation of the Vendor to complete the Transaction shall be subject to the following conditions:

- (a) on the Closing Date, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (b) on the Closing Date, all of the representations and warranties of the Purchaser set out in Section 5.2 shall be true and accurate in all material respects as if made as of the Closing;
- (c) on Closing, receipt of all deliveries to be made by the Purchaser as set out in Section 6.2;
- (d) on the Closing Date, 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;
- (e) on the Closing Date, the Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid; and
- (f) on the Closing Date, 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.

The conditions set forth in this Section 4.1 are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor by Notice in writing to the Purchaser prior to the applicable date set forth above for their respective waiver or satisfaction.



#### **4.2 Conditions for Purchaser**

The obligation of the Purchaser to complete the Transaction shall be subject to the following conditions:

- (a) on the Closing Date, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) on the Closing Date, all of the representations and warranties of the Vendor set out in Section 5.1 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 this Agreement or the Sale Procedure);
- (c) on Closing, receipt of all deliveries to be made by the Vendor as set out in Section 6.1;
- (d) on the Closing Date, 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;
- (e) on the Closing Date, 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
- (f) on the Closing Date, the Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid.

The conditions set forth in this Section 4.2 are for the sole benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by Notice to the Vendor prior to the applicable date set forth above for the waiver or satisfaction of each such condition.

#### **4.3 Satisfaction of Conditions**

Each Party agrees to proceed in good faith, with promptness and reasonable diligence to attempt to satisfy those conditions contained in Sections 4.1 and 4.2, as applicable, that are within its control, acting reasonably. The Parties shall cooperate with each other and the Purchaser shall provide the Vendor with information in its possession or control necessary to seek the Sale Procedure Order and the Vesting Order. Each Party shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Section 4.1 or Section 4.2 not being satisfied.

#### 4.4 Non-Satisfaction of Conditions

- (a) If any of the conditions set out in Section 4.1 are not satisfied or waived on or before the Closing Date, the Vendor may terminate this Agreement by Notice in writing to the Purchaser given on the Closing Date in which event this Agreement shall be terminated and of no further force or effect whatsoever, and each of the Parties shall be released from all of its liabilities and obligations under this Agreement save for those specified to survive termination. However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 in whole or in part.
- (b) If any of the conditions set out in Section 4.2 are not satisfied or waived on or before the Closing Date, the Purchaser may terminate this Agreement by Notice in writing to the Vendor given on or before the Closing Date, in which event this Agreement shall be terminated and of no further force or effect whatsoever, and each of the Parties shall be released from all of its liabilities and obligations under this Agreement save for those specified to survive termination. However, the Purchaser may waive compliance with any of the conditions set out in Section 4.2 in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.2 in whole or in part.
- (c) All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

#### 5.1 Representations and Warranties of Vendor

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

- (a) Status. The Vendor has been appointed by the Court as receiver and manager of all of the assets, undertakings and properties of Penady (Barrie) Ltd. and certain of the assets, undertakings and properties of PRC Barrie Corp. and Mady (Barrie) Inc. pursuant to the Appointment Order, a copy of which is available on the Receiver's Website.
- (b) Authorization. Subject to the issuance of the Sale Procedure Order, the Receiver has all necessary power and authority to enter into this Agreement.
- (c) Enforceability. Subject to the issuance of the Vesting Order, this Agreement constitutes a valid and binding obligation of the Receiver enforceable against it in accordance with its terms subject to any limitations imposed by Applicable Laws, and the Receiver has the necessary power and authority to carry out its obligations hereunder.

- (d) Residence. The Vendor is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

## 5.2 Representations and Warranties of Purchaser

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

- (a) Status. The Purchaser is duly organized and subsisting under the laws of its jurisdiction of organization. The Purchaser has all necessary power, authority and capacity to enter into this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement.
- (b) Authorization. The execution and delivery of this Agreement and all other agreements contemplated by this Agreement by the Purchaser and the consummation of the Transaction contemplated by this Agreement by the Purchaser have been duly authorized by all necessary corporate action on the part of the Purchaser.
- (c) Enforceability. This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms subject to any limitations imposed by Applicable Laws.
- (d) No Breach. Neither the entering into nor the delivery of this Agreement nor the completion by the Purchaser of the Transaction contemplated hereby will conflict with, or constitute a default under, or result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Purchaser; or (ii) any Applicable Laws.
- (e) No Bankruptcy. The Purchaser: (i) is not an insolvent Person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada); (ii) has not made an assignment in favour of its creditors or a proposal to its creditors or any class thereof; (iii) has not had any application for a bankruptcy order filed or presented in respect of it; and (iv) has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution.
- (f) GST/HST. The Purchaser will on Closing be a GST/HST registrant, as the case may be, under the *Excise Tax Act* (Canada) (the “**HST Act**”) and be the sole “recipient” of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date.
- (g) Residence. The Purchaser is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

## 5.3 GST/HST

The Purchaser hereby represents and warrants to the Vendor as follows:

- (a) the Purchaser shall be purchasing the Subject Assets on the Closing Date, as principal for its own account and not as an agent, trustee or otherwise on behalf of another person;
- (b) the Purchaser shall be registered under subdivision d of Division V of Part IX of the HST Act for the purposes of collection and remittance of harmonized sales tax or goods and services tax, as the case may be (“**GST/HST**”);
- (c) the Purchaser shall be liable, shall self-assess and remit to the appropriate governmental authority all GST/HST which is payable under the HST Act in connection with the transfer of the Subject Assets made pursuant to the Agreement, all in accordance with the HST Act;
- (d) the Vendor shall not collect GST/HST on Closing regarding the Subject Assets and shall allow the Purchaser to self-assess and remit GST/HST to the Receiver General in accordance with the HST Act;
- (e) the Purchaser shall indemnify and save harmless the Vendor from and against any and all GST/HST, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of the Transaction or any inaccuracy, misstatement or misrepresentation made by the Purchaser on the Closing Date in connection with any matter raised in this Section 5.3 or contained in any declaration referred to herein; and
- (f) the Purchaser shall tender on Closing a certificate and indemnity including verification of its registration number issued by Canada Revenue Agency under the HST Act or *Income Tax Act* (Canada) (the “**Purchaser’s GST/HST Certificate**”).

## **ARTICLE 6 CLOSING DOCUMENTS**

### **6.1 Vendor’s Closing Documents**

At Closing, the sale, transfer, assignment, and conveyance by the Vendor of the Subject Assets to the Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, shall be effected by the issued and entered Vesting Order. On or before Closing, subject to the provisions of this Agreement, the Vendor shall prepare and execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

- (a) a true and complete copy of the Vesting Order;
- (b) the Closing Certificate;
- (c) the Assignment and Assumption of Leases, and such other assignment, assumption and other documents as are required by the terms of the Leases;
- (d) the Assignment and Assumption of Contracts, and such other assignment, assumption and other documents as are required by the terms of the Assumed Contracts;

- (e) the Assignment and Assumption of Permitted Encumbrances, and such other assignment, assumption or other documents as are required by the terms of the Permitted Encumbrances;
- (f) a notice to all Tenants advising of the sale of the Property and directing that all rents payable after Closing be paid to the Purchaser or as the Purchaser directs;
- (g) a notice to the account debtors of the purchased Accounts Receivable (but not including Tenants), if any, notifying such account debtors of the transfer of the purchased Accounts Receivable, and directing such account debtors to pay, after Closing, the Accounts Receivable to the Purchaser or as the Purchaser directs;
- (h) a certificate of an officer of the Vendor (in such capacity and without personal liability) confirming that the representations and warranties set out in Section 5.1 are true and accurate in all material respects;
- (i) to the extent in the Vendor's possession or control, all keys to the Buildings, all security cards relating to the Property, and all combinations to vaults and combination locks located at the Property;
- (j) to the extent in the Vendor's possession or control, original copies of all Leases, all Assumed Contracts, if any, Building records and Tenant files;
- (k) to the extent in the Vendor's possession or control, all post-dated rental cheques endorsed (without recourse) in favour of the Purchaser;
- (l) any plans and specifications in the Vendor's possession or control relevant to the construction of the Buildings;
- (m) the statement of adjustments;
- (n) an undertaking by the Vendor to re-adjust the adjustments in accordance with Section 3.4(b); and
- (o) an undertaking by the Vendor to re-adjust the Wind-Down Estimate.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

## **6.2 Purchaser's Closing Documents**

On or before Closing, subject to the provisions of this Agreement, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor, as applicable, the following:

- (a) for and on behalf of the Debtor, a fully executed release and waiver with respect of the amount outstanding under the Credit Agreement equal to the Credit Agreement Bid Amount;
- (b) a fully executed release and waiver with respect to the Receiver's Certificate Obligations outstanding to the Purchaser on Closing;
- (c) funds equal to the Wind-Down Estimate, if any;
- (d) a document setting out the allocation of the Purchase Price;
- (e) the Assignment and Assumption of Leases, and such other assignment, assumption and other documents as are required by the terms of the Leases;
- (f) the Assignment and Assumption of Contracts, and such other assignment, assumption and other documents as are required by the terms of the Assumed Contracts;
- (g) the Assignment and Assumption of Permitted Encumbrances, and such other assignment, assumption and other documents as are required by the terms of the Permitted Encumbrances;
- (h) a certificate of an officer of the Purchaser (in such capacity and without personal liability) confirming that the representations and warranties set out in Section 5.2 are true and accurate in all material respects;
- (i) the Purchaser's GST/HST Certificate;
- (j) an acknowledgement in favour of the Vendor confirming that each of the Purchaser's conditions as set out in Section 4.2 have been satisfied or waived;
- (k) an undertaking by the Vendor to re-adjust the adjustments in accordance with Section 3.4(b);
- (l) an undertaking by the Purchaser to re-adjust the Wind-Down Estimate; and
- (m) such other documents as may be reasonably required by the Vendor to complete the purchase and sale of the Subject Assets.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

### **6.3 Registration and Other Costs**

- (a) The Vendor shall be responsible for the costs of the Vendor's Solicitors in respect of this Transaction. The Purchaser shall be responsible for the costs of the Purchaser's Solicitors in respect of this Transaction. The Purchaser shall be

responsible for and pay any land transfer taxes payable on the transfer of the Property, all registration fees payable in respect of registration by it of any documents on Closing and all federal and provincial sales and other taxes payable by a purchaser upon or in connection with the conveyance or transfer of the Subject Assets, including provincial retail sales tax, goods and services tax and Harmonized Sales Tax.

- (b) The Purchaser shall indemnify and save harmless the Vendor and its shareholders, directors, officers, employees, advisors, representatives and agents from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses incurred, suffered or sustained as a result of a failure by the Purchaser:
  - (i) to pay any federal, provincial or other taxes payable by the Purchaser in connection with the conveyance or transfer of the Subject Assets whether arising from a reassessment or otherwise, including provincial retail sales tax, goods and services tax and Harmonized Sales Tax, if applicable; and/or
  - (ii) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Subject Assets.
- (c) This Section shall survive and not merge on Closing.

#### **6.4 Closing Escrow**

All Closing Documents and the funds equal to the Wind-Down Estimate, if any, shall be delivered into escrow at the place of Closing on or before the Closing Date. Such Closing Documents and the funds equal to the Wind-Down Estimate, if any, shall be held by the Vendor's Solicitors in escrow until both Parties, acting reasonably, are satisfied that all conditions set forth in Sections 4.1 and 4.2 to be satisfied on or before Closing have been satisfied (or waived).

Upon successful registration of the Vesting Order, the Closing Documents and the funds equal to the Wind-Down Estimate, if any, shall be released from escrow.

#### **6.5 Post-Closing Receipt of Rent Arrears**

From and after the Closing Date until the completion of the Receivership Proceeding, the Vendor shall promptly transfer any cash, cheques or other instruments of payment to the Purchaser that it receives payable to the Debtor, or payable to the Receiver, in respect of the Subject Assets, including rent arrears under any Leases.

**ARTICLE 7  
ASSUMED CONTRACTS**

**7.1 Contracts**

- (a) On Closing, the Purchaser shall assume those Contracts that the Purchaser advises the Vendor it wants to assume (the “**Assumed Contracts**”) by Notice delivered to the Vendor no later than ten (10) Business Days prior to the return date of the Vesting Order Motion (the “**Contract Notice Date**”). At any time on or prior to the Contract Notice Date, the Purchaser may elect to exclude any Contracts from the Subject Assets, and add such Contracts to the Excluded Contracts list by giving written notice to the Vendor of its intention to do so.
- (b) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contract, to the extent such Contract is not assignable under Applicable Law without the consent of any other Person or party thereto where the Consent of such Person has not been given or received.
- (c) The Vendor shall terminate on or before the Closing Date, all Contracts other than the Assumed Contracts.
- (d) At or prior to Closing, the Purchaser, with the Vendor’s assistance as may be reasonably required, shall use commercially reasonable efforts to obtain all necessary Consents to assign the Assumed Contracts to the Purchaser. The Purchaser shall assume the Assumed Contracts, to the extent they are assignable and in force on Closing, pursuant to the Assignment and Assumption of Contracts.

**ARTICLE 8  
TERMINATION**

**8.1 Termination**

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either the Vendor to the Purchaser or the Purchaser to the Vendor, immediately (i) if the Sale Procedure Order is not granted by the Court by June 1, 2020, or such other date on which the parties may agree, (ii) upon the selection by the Receiver of a Successful Bid if this Agreement is neither the Successful Bid nor the Back-up Bid selected at such time, or (iii) upon the Closing of the Successful Bid if this Agreement is the Back-up Bid;
- (b) subject to any approvals required from the Court, if any, by mutual written consent of the Vendor and the Purchaser;
- (c) by notice from the Vendor to the Purchaser or from the Purchaser to the Vendor, following the issuance of an order or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Subject Assets as contemplated hereby;



- (d) automatically and without any action by either the Vendor or the Purchaser if Closing has not occurred on or before the Outside Date;
- (e) by the Vendor, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth this Agreement and such violation or breach has not been waived by the Vendor or cured, unless the Vendor is in material breach of its obligations under this Agreement; and
- (f) by the Purchaser, if there has been a material violation or breach by the Vendor of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in this Agreement and such violation or breach has not been waived by the Purchaser or cured, unless the Purchaser is in material breach of its obligations under this Agreement.

## 8.2 Effects of Termination

- (a) If this Agreement is terminated pursuant to Section 8.1:
  - (i) all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other, subject to the Expense Reimbursement set out in Section 8.2(b); and
  - (ii) the Purchaser shall return to the Receiver all documents, work papers and other material of the Receiver and the Debtor, as the case may be, relating to the Transaction, whether obtained before or after the execution hereof.
- (b) In consideration for the Purchaser's expenditure of time and money in acting as the initial bidder in the stalking horse bid and the preparation and negotiation of this Agreement and subject to the terms and condition of this Agreement and of the Sale Procedure Order, upon termination of this Agreement by the Receiver (except any termination pursuant to Subsection 8.1(e)) or the closing of a sale and a transfer of the Subject Assets to a Person other than the Purchaser (an "**Alternative Transaction**"), the Receiver shall pay to the Purchaser the amount of \$400,000 (the "**Expense Reimbursement**") in order to reimburse the Purchaser for the Purchaser's expenses in connection with the Transaction, provided that the Receiver's obligation to make such payment is conditional upon an Alternative Transaction being completed, whereupon such payment may be made from the proceeds of the Alternative Transaction.
- (c) Payment of the Expense Reimbursement shall be made by the Receiver upon Court approval of said payment after consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Purchaser, the Parties shall have no further obligations under this Agreement.

## **ARTICLE 9 GENERAL**

### **9.1 Gender and Number**

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

### **9.2 Captions and Table of Contents**

The captions, headings and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation.

### **9.3 Obligations as Covenants**

Each agreement and obligation of any of the Parties in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

### **9.4 Applicable Law**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

### **9.5 Currency**

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars.

### **9.6 Invalidity**

If any immaterial covenant, obligation, agreement or part thereof or the application thereof to any Person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any Person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

### **9.7 Amendment of Agreement**

Except as expressly provided otherwise in this Agreement, no supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Parties in the same manner as the execution of this Agreement.

### **9.8 Time of the Essence**

Time shall be of the essence of this Agreement.

### **9.9 Further Assurances**

Each of the Parties shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

### **9.10 Entire Agreement**

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties constitute the entire agreement between the Parties pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the Parties in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement or the Schedules attached hereto.

### **9.11 Waiver**

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

### **9.12 Solicitors as Agents and Tender**

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement (including, without limitation, any agreement to amend this Agreement) may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of Closing Documents may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

### **9.13 Merger**

Except as otherwise expressly set out herein, this Agreement shall merge with the Closing of the Transaction contemplated herein.

### **9.14 Successors and Assigns**

All of the covenants and agreements in this Agreement shall be binding upon the Parties and their respective successors and permitted assigns and shall enure to the benefit of and be enforceable by the Parties and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

### **9.15 Residual Credit Agreement Debt and Continued Liability of Guarantors**

The execution, delivery and effectiveness of this Agreement shall **NOT** directly or indirectly: (a) be construed as a waiver or release of the Secured Creditor's right, title and interest in and to the Secured Creditor's Secured Debt that does not form part of the Credit Agreement Bid Amount,

and such indebtedness will remain owing by the Debtor and the guarantors under the Credit Agreement to the Secured Creditor and continue to accrue to the Secured Creditor from and after the Closing Date, (b) constitute a consent or waiver of any past, present or future violations of any provisions of any of the Credit Agreement and/or any Secured Creditor loan documents related thereto or this Agreement, and (c) amend, modify or operate as a waiver of any provision(s) of any of the Credit Agreement and/or any Secured Creditor's loan documents related thereto or any right, power or remedy of the Secured Creditor under the Credit Agreement and/or any Secured Creditor loan documents related thereto. Except as expressly set forth herein, the Secured Creditor reserves all of its rights, powers, and remedies under the Credit Agreement and any Secured Creditor loan documents related thereto, and Applicable Law.

#### **9.16 Access of Receiver to Books and Records**

The Vendor shall, for a period of six (6) years from the completion of the Transaction, have access to the Books and Records relating to the Business and the Subject Assets which are transferred and conveyed to the Purchaser pursuant to this Agreement, and the right to copy such material at its own cost, to the extent necessary or useful in connection with the completion of the administration of the Receivership Proceeding.

#### **9.17 Tax Matters**

The Purchaser and the Vendor agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Subject Assets as is reasonably necessary for the preparation and filing of any tax return, claim for refund or other required or optional filings relating to tax matters, for the preparation for and proof of facts during any tax audit, for the preparation for any tax protest, for the prosecution of any suit or other proceedings relating to tax matters and for the answer to any governmental or regulatory inquiry relating to tax matters.

#### **9.18 Assignment**

The Purchaser shall have the right to assign this Agreement, without the consent of the Vendor but on written notice to the Vendor upon such assignment taking place, which assignment must take place not less than five (5) days before the issuance of the Vesting Order, to an affiliate (as such term is defined in the *Canada Business Corporations Act*) of the Purchaser, provided in the case of such assignment that the assignee executes and delivers an agreement in favour of the Vendor agreeing to be bound by all obligations of the Purchaser hereunder. The Purchaser shall not otherwise assign its rights and/or obligations hereunder without the prior written consent of the Vendor, which consent may be unreasonably withheld in the Vendor's sole discretion. Notwithstanding any assignment, the Purchaser shall not be released or relieved from any of its obligations hereunder until Closing and shall be jointly and severally liable with the assignee hereunder until Closing.

#### **9.19 Notice**

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (a "**Notice**") to be given under or in connection with this Agreement shall be in writing and shall be given by telecopier, facsimile transmission or other electronic communication

which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) Vendor: RSM Canada Limited.  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7  
  
Attention: Bryan A. Tannenbaum and Daniel Weisz  
Facsimile: 416-480-2646  
Email: [bryan.tannenbaum@rsmcanada.com](mailto:bryan.tannenbaum@rsmcanada.com) and  
[daniel.weisz@rsmcanada.com](mailto:daniel.weisz@rsmcanada.com)

(b) with a copy to the Vendor's Solicitors:

Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, ON M5C 3G

Attention: Eric Golden  
Facsimile: (416) 593.5437  
Email: [egolden@blaney.com](mailto:egolden@blaney.com)

(c) Purchaser: Choice Properties Limited Partnership

Attention: Legal Department  
Email: [legalchoicereit@choicereit.ca](mailto:legalchoicereit@choicereit.ca)

(d) with a copy to the Purchaser's Solicitors:

Osler, Hoskin & Harcourt LLP  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Attention: Dave Rosenblat  
Facsimile: (416) 862.6666  
Email: [drosenblat@osler.com](mailto:drosenblat@osler.com)

Any Notice, if sent by telecopier, facsimile transmission or other electronic communication with confirmation of transmission prior to 5:00 p.m. (Toronto time), shall be deemed to have been validly and effectively given and received on the Business Day it was sent, unless the confirmation of transmission was after 5:00 p.m. (Toronto time), in which case it shall be deemed to have been received on the next following Business Day.

## **9.20 Effect of Termination of Agreement**

Notwithstanding the termination of this Agreement for any reason, the confidentiality provisions contained in Section 2.4, the Expense Reimbursement provisions contained in Section 8.2 and all other provisions that state they survive termination shall survive termination and shall remain in full force and effect.

### **9.21 Planning Act of Ontario**

This Agreement and the transactions reflected herein are subject to compliance with the *Planning Act* (Ontario).

### **9.22 No Registration of Agreement**

The Purchaser covenants and agrees not to register this Agreement or any notice of this Agreement on title to the Lands or any part thereof or interest therein.

### **9.23 Announcements**

Except as otherwise required by Applicable Laws or a Governmental Authority, or as may be required in connection with the Receivership Proceeding or Sale Procedure, no press release or public announcement with respect to this Agreement or the Transaction may be made except with the prior written consent and joint approval of the Vendor and the Purchaser. Where the public disclosure is required by Applicable Laws, a Governmental Authority or in connection with the Receivership Proceeding, the Party required to make the public disclosure will use its reasonable commercial efforts to obtain the approval of the other Party as to the form, nature and extent of the disclosure.

### **9.24 Commissions**

The Purchaser is solely responsible to pay all other fees and/or commissions claimed and/or otherwise owing to any other Person with whom the Purchaser had any communications and/or dealings in respect of the Subject Assets and the Purchaser shall indemnify and save the Vendor harmless from all Claims with respect to same. This Section shall survive and not merge on Closing.

### **9.25 No Personal Liability of the Vendor**

The Vendor is executing this Agreement solely in its capacity as Court-appointed receiver and manager of the assets, undertakings and properties of Penady (Barrie) Ltd. and certain of the assets, undertakings and properties of PRC Barrie Corp. and Mady (Barrie) Inc. and not in its personal or corporate capacity and neither the Vendor nor its directors, officers, agents, representatives, servants or employees shall have any personal or corporate liability hereunder or at common law, or by statute, or equity or otherwise as a result hereof.


### **9.26 Counterparts; Electronic Transmission**

This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument. The Parties agree that this Agreement may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email will be treated as though such reproduction were executed originals and each Party, if required by the other Party, undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

*[Signature page follows]*

IN WITNESS WHEREOF the Vendor and Purchaser have executed this Agreement as of the Execution Date.


**RSM CANADA LIMITED**, solely in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of PENADY (BARRIE) LTD. and certain of the assets, undertakings and properties of PRC BARRIE CORP. and MADY (BARRIE) INC. and not in its personal capacity and without personal or corporate liability


By:   
Name: Bryan A. Tannenbaum  
Title: President

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

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

By:   
Name: Rael Diamond, President & CEO  
Title:

By:   
Name: Doris L. Baughan, SVP, General Counsel & Secretary  
Title:

I/We have authority to bind the Corporation and the Limited Partnership.

**SCHEDULE A****LANDS****PIN 58830-0092 (LT) (“0092”)**

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 58830-0096 (LT) (“0096”)**

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 58830-0106 (LT) (“0106”)**

PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 58830-0109 (LT) (“0109”)**

PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 58830-0111 (LT) (“0111”)**

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; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE



**SCHEDULE B****PERMITTED ENCUMBRANCES****GENERAL ENCUMBRANCES**

1. The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other Person.
2. Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Government Authorities or private or public utilities affecting the development or use of the Property, provided same have been complied with.
3. Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements, provided same have been complied with.
4. The Leases and any charges of a Tenant's or sub-Tenant's interest therein and which do not encumber the interest of the landlord thereunder.
5. Any easements or rights of way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner which in the aggregate do not materially impair the current use, operation or marketability of the Property, provided same have been complied with.
6. Any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Laws.
7. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
8. Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that, in either case, do not materially and adversely impair the current use, operation or marketability of the Property.
9. The provisions of all Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property, provided same have been complied with and there are no breaches of same.
10. Security given to a public utility or any Governmental Authority when required by the operations of the Property in the ordinary course of business.

11. Any statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Property and of which the Vendor does not have notice, claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario or by any other Governmental Authority under or pursuant to any Applicable Laws, provided the Purchaser at law cannot become responsible to satisfy same.
12. Any lien, together with any certificate of action (collectively the “**Lien**”) registered in respect thereof, a claim for which, although registered or of which notice has been given, relates solely to work done by or on behalf of a Tenant, and all Encumbrances affecting the Tenant’s interest in the Property and the Vendor has not assumed payment of same, is not named in the Lien or is not responsible for payment of same pursuant to the particular construction lien act.

**SPECIFIC ENCUMBRANCES**

1. Instrument No. RO183788 registered on 1964/05/06, being a BYLAW.
2. Instrument No. RO1001170 registered on 1988/05/13, being an AGREEMENT (not on 0096, 0109, 0111).
3. Instrument No. RO1169034 registered on 1991/11/07, being an AGREEMENT with THE CORP. OF THE CITY OF BARRIE (not on 0096, 0109, 0111).
4. Instrument No. RO1169379 registered on 1991/11/13, being aa AGREEMENT with THE CITY OF BARRIE (not on 0092, 0106, 0109).
5. Instrument No. RO1200481 registered on 1992/09/24, being an AGREEMENT with THE CITY OF BARRIE (not on 0096, 0109, 0111).
6. Instrument No. SC612948 registered on 2007/12/20, being a NOTICE of an Agreement between THE CORPORATION OF THE CITY OF BARRIE and HOME DEPOT HOLDINGS INC. (not on 0109).
7. Instrument No. SC859961 registered on 2010/10/19, being a NOTICE of an Agreement between THE CORPORATION OF THE CITY OF BARRIE and PENADY (BARRIE) LTD. (0111 only).
8. Instrument No. SC1028712 registered on 2012/12/04, being a NOTICE of an Agreement between THE CORPORATION OF THE CITY OF BARRIE, PENADY (BARRIE) LTD., HOME DEPOT HOLDINGS INC. and LOBLAW PROPERTIES LIMITED.
9. Instrument No. SC1028755 registered on 2012/12/04, being a NOTICE of an Agreement between THE CORPORATION OF THE CITY OF BARRIE, PENADY (BARRIE) LTD., HOME DEPOT HOLDINGS INC. and LOBLAW PROPERTIES LIMITED.
10. Instrument No. SC1031847 registered on 2012/12/18, being an Application to ANNEX Restrictive Covenant by PENADY (BARRIE) LTD. (not on 0106, 0109, 0111).

11. Instrument No. SC1051680 registered on 2013/04/18, being a NOTICE by PENADY (BARRIE) LTD.
12. Instrument No. SC1061856 registered on 2013/06/10, being a NOTICE of an Agreement between THE CORPORATION OF THE CITY OF BARRIE and PENADY (BARRIE) LTD. (0111 only).
13. Instrument No. SC1186008 registered on 2015/01/07, being a NOTICE by LOBLAW PROPERTIES LIMITED.
14. Instrument No. SC1253500 registered on 2015/10/20, being a NOTICE by THE CORPORATION OF THE CITY OF BARRIE.
15. Instrument No. SC1353259 registered on 2016/10/19, being a NOTICE by PENADY (BARRIE) LTD.
16. Instrument No. SC1368395 registered on 2016/12/05, being a NOTICE by MCDONALD'S RESTAURANTS OF CANADA LIMITED.
17. Instrument No. SC1368396 registered on 2016/12/05, being a NOTICE by MCDONALD'S RESTAURANTS OF CANADA LIMITED relating to Instrument No. SC1210287.
18. Instrument No. SC1508910 registered on 2018/05/07, being a NOTICE OF SITE PLAN AGREEMENT with THE CORPORATION OF THE CITY OF BARRIE (not on 0096, 0106, 0109, 0111).
19. Instrument No. SC1508915 registered on 2018/05/07, being a NOTICE by THE CORPORATION OF THE CITY OF BARRIE (0111 only).
20. Instrument No. SC1068837 registered on 2013/07/10, being a NOTICE OF LEASE between PENADY (BARRIE) LTD. and MCDONALD'S RESTAURANTS OF CANADA LIMITED (on 0106 and 0109).
21. Instrument No. SC1194350 registered on 2015/02/23, being a NOTICE OF LEASE between THE TDL GROUP CORP. and PENADY (BARRIE) LTD.
22. Instrument No. SC1210520 registered on 2015/05/14, being a NOTICE OF LEASE in favour of LAF CANADA COMPANY as Tenant.
23. Instrument No. SC1368394 registered on 2016/12/05, being a NOTICE OF LEASE between MCDONALD'S RESTAURANTS OF CANADA LIMITED and PENADY (BARRIE) LTD.
24. Instrument No. SC1368727 registered on 2016/12/06, being a NOTICE OF LEASE between PENADY (BARRIE) LTD. and 1541396 ONTARIO INC. This is subject to a NOTICE OF CHARGE OF LEASE registered as Instrument No. SC1370879 on 2016/12/13 for \$1,300,000 in favour of THE BANK OF NOVA SCOTIA.
25. Instrument No. SC1518508 registered on 2018/06/19, being a NOTICE OF LEASE by PENADY (BARRIE) LTD. to THE SHERWIN-WILLIAMS COMPANY.

26. Instrument No. RO1200479 registered on 1992/09/24, being a TRANSFER of EASEMENT in favour of THE CORPORATION OF THE CITY OF BARRIE (PIN 0111 only).
27. Instrument No. SC1271000 registered on 2015/12/18, being a TRANSFER of EASEMENT by PENADY (BARRIE) LTD., PENADY (NORTH BARRIE) LIMITED and CP REIT ONTARIO PROPERTIES LIMITED to ENBRIDGE GAS DISTRIBUTION INC.
28. Instrument No. SC1272955 registered on 2015/12/30, being a TRANSFER of EASEMENT by PENADY (BARRIE) LTD. to POWERSTREAM INC.
29. Instrument No. SC1275252 registered on 2016/01/13, being a POSTPONEMENT by LAF CANADA COMPANY to POWERSTREAM INC. relating to Instruments No. SC1210520 and SC1272955.
30. Instrument No. SC1279390 registered on 2016/01/29, being a POSTPONEMENT by MCDONALD'S RESTAURANTS OF CANADA LIMITED to POWERSTREAM INC. relating to Instruments No. SC1068837 and SC1272955 (on 0106 and 0109 only).
31. Instrument No. SC1282197 registered on 2016/02/11, being a POSTPONEMENT by THE TDL GROUP CORP. to POWERSTREAM INC. relating to Instruments No. SC1194350 and SC1272955.

**SCHEDULE C****EXCLUDED ASSETS**

1. \$500,000 cash collateral held by the City of Barrie to secure obligations of PBL under agreements between PBL and the City of Barrie.
2. Letter of credit dated January 8, 2015, issued by Bank of Montreal in favour of Gardiner Roberts LLP in the original amount of \$1,933,315.25 and subsequently reduced to \$1,774,416.25 by amendment dated January 22, 2015, in respect of an Omnibus Holdback Agreement made as of July 4, 2006, as amended.

**SCHEDULE D**  
**SALE PROCEDURE**

### Schedule “A” Sale Procedure

Pursuant to a receivership Application issued on March 9, 2020 by Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc. (the “**Applicant**”), in the matter bearing Court file No. CV-20-00637682-00CL (the “**Receivership Proceeding**”), and an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) therein dated March 25, 2020, as amended on May 15, 2020, and as may in the future be supplemented, amended or restated from time to time (the “**Appointment Order**”), RSM Canada Limited (the “**Receiver**”) was appointed receiver and manager, without security, of (i) the assets, undertakings and properties of the respondent Penady (Barrie) Ltd. (“**Penady**”), including but not limited to the real property in the City of Barrie, Ontario, having the legal description set out in Schedule “A” to the Appointment Order (the “**Lands**”), (ii) the interest of PRC Barrie Corp. (“**PRC**”) in the NBC Shopping Centre, and (iii) the interest of Mady (Barrie) Inc. (“**MBI**”) in the NBC Shopping Centre.

On June 2, 2020, the Court made an order (the “**Sale Procedure Order**”) among other things, approving (a) the Receiver entering into an asset purchase agreement, dated May 20, 2020, as may in the future be supplemented, amended or restated from time to time (the “**Stalking Horse Agreement**”), relating to the NBC Shopping Centre with Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc., as purchaser (the “**Stalking Horse Bidder**”) so as to set a minimum floor price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the NBC Shopping Centre.

Accordingly, the following Sale Procedure shall govern the proposed sale of all of the NBC Shopping Centre pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the NBC Shopping Centre that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

#### 1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Procedure**” means an acknowledgement of the Sale Procedure in the form attached as Schedule A hereto;

“**Acquisition Entity**” means an entity specially formed for the purpose of effectuating the contemplated transaction;

**"Applicant"** means the Applicant in its capacity as the senior secured lender of Penady, and a creditor of PRC and MBI;

**"Back-up Bid"** means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

**"Back-up Bidder"** means the Bidder that submits the Back-up Bid;

**"Bidder"** means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

**"Confidential Data Room"** means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the NBC Shopping Centre;

**"Confidential Information"** means the confidential information in the Confidential Data Room;

**"Confidential Information Memorandum"** means a confidential information memorandum prepared by the Receiver or the Listing Agent providing certain confidential information in respect of or related to the NBC Shopping Centre;

**"Confidentiality Agreement"** means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel Blaney McMurtry LLP;

**"Debtors"** means, collectively, Penady, PRC and MBI;

**"Encumbrances"** means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

**"Expense Reimbursement"** means as defined in Section 13 below;

**"Good Faith Deposit"** means a cash deposit equal to three (3%) percent of the total purchase price contemplated under the applicable Modified APA;

**"Interested Party"** means a party participating in this Sale Procedure;

**"Listing Agent"** means Avison Young Commercial Real Estate (Ontario) Inc. in its capacity as marketing and listing agent to the Receiver pursuant to an engagement agreement-executed by Avison Young Commercial Real Estate (Ontario) Inc. on April 23, 2020, and by the Receiver on or after June 2, 2020;

**"Modified APA"** means an executed mark-up of the Modified Stalking Horse Agreement reflecting the applicable Qualified Phase I Bidder's proposed changes to the Modified Stalking Horse Agreement;



**"Modified Stalking Horse Agreement"** means the Stalking Horse Agreement as modified by the Receiver for the purposes of a non-credit bid for the Purchased Assets;

**"NBC Shopping Centre"** means the Subject Assets, as defined in the Stalking Horse Agreement;

**"Notice Parties"** means the Receiver, its counsel Blaney McMurtry LLP, and the Listing Agent;

**"Participant Requirements"** means, collectively, the requirements set out in Section 4(a) through 4(d)(iv) hereof;

**"Permitted Encumbrances"** means the encumbrances set out in Schedule "B" of the Stalking Horse Agreement;

**"Phase I Bid"** means an initial Bid submitted by an Interested Party pursuant to Section 4 hereof;

**"Phase I Bid Deadline"** means 10:00 a.m. (Eastern time) on August 12 2020;

**"Phase I Bidder"** means a bidder submitting a Phase I Bid;

**"Phase I Participant Requirements"** has the meaning given to it in Section 4 hereof;

**"Phase II Bid"** means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 8 hereof;

**"Phase II Bid Deadline"** means 10:00 a.m. (Eastern time) on August 26, 2020;

**"Principals"** means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

**"Qualified Phase I Bidder"** means a Phase I Bidder that delivers the documents described in paragraphs (a) through (d) in Section 4, and that the Receiver determines is reasonably likely to submit a binding *bona fide* offer that would have an aggregate purchase price for the NBC Shopping Centre that exceeds the minimum purchase price referred to in Section 11 below and would be able to consummate a transaction if selected as a Successful Bidder;

**"Qualified Phase II Bid"** means a Phase II Bid that satisfies the conditions set out in Section 8 hereof;

**"Qualified Phase II Bidder"** means a bidder submitting a Qualified Phase II Bid;

**"Sale Hearing"** means a Court hearing on motion by the Receiver for an Order to approve the sale of the NBC Shopping Centre to the Successful Bidder;

**"Stalking Horse Purchase Price"** means \$50,000,000;

**"Successful Bid"** means the highest and best Qualified Phase II Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale; and

**"Successful Bidder"** means the Bidder that submits the Successful Bid.

## **2. Assets for Sale**

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to the NBC Shopping Centre.

For the purposes of this Sale Procedure, Bids may be submitted only for the entire property comprising the NBC Shopping Centre.

## **3. Sale Procedure Structure and Bidding Deadlines**

The Sale Procedure shall consist of two phases.

In the first phase, Interested Parties that meet the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement, shall be provided the Confidential Information Memorandum in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline and be given access to the Confidential Information in the Confidential Data Room. Phase I Bidders that are determined by the Receiver to be Qualified Phase I Bidders shall be invited to participate in the second phase to submit a Phase II Bid.

The Receiver will be engaging the Listing Agent as marketing and listing agent to assist the Receiver with the implementation of the Sale Procedure. Interested Parties wishing to obtain information about the Sale Procedure, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the Listing Agent, Attn. Cam Lewis, [cam.lewis@avisonyoung.com](mailto:cam.lewis@avisonyoung.com), with a copy to the Receiver c/o Attn. Brenda Wong ([brenda.wong@rsmcanada.com](mailto:brenda.wong@rsmcanada.com)).

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline.

All Phase II Bids must be submitted to the Notice Parties by email or facsimile in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase II Bid Deadline.

A Bid received after the Phase 1 Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

#### **4. Participant Requirements**

##### **Phase I Participant Requirements.**

To participate in Phase I of the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following prior to being provided with the Confidential Information Memorandum and access to the Confidential Information: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the "**Phase I Participant Requirements**").

##### **Phase II Participant Requirements**

Only Qualified Phase 1 Bidders shall be allowed to participate in Phase II of the Sale Procedure.

In order for the Receiver to determine whether an Interested Party is a Qualified Phase I Bidder, and qualified to participate in Phase II, the Interested Party must provide, in form and substance satisfactory to the Receiver, each of the following on or before the Phase I Bid Deadline:

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof, who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding Expression of Interest. An executed non-binding letter of intent, in the form of the document attached as Schedule "C" hereto, satisfactory to the Receiver, that must reasonably identify the contemplated transaction, the proposed purchase price, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the approval of the Phase I Bid by the Phase I Bidder's directors; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must also furnish written evidence reasonably acceptable to the Receiver of the approval of the Phase I Bid by the Acquisition Entity's Principals; and
- (d) Proof of Financial Ability to Perform. Written evidence upon which the Receiver may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

- (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements and latest audited financial statements;
- (ii) contact names and numbers for verification of financing sources;
- (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
- (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Receiver shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

## **5. Designation as Qualified Bidder**

As set out above, only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Procedure. Following the Phase I Bid Deadline, the Receiver shall determine which Phase I Bidders are Qualified Phase I Bidders. The Receiver shall notify each Phase I Bidder of its determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline, but no later than August 19, 2020.

Following the Phase II Bid Deadline, the Receiver shall determine which Phase II Bidders are Qualified Phase II Bidders. The Receiver shall notify each Phase II Bidder of its determination as to whether the Phase II Bidder is a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder for all purposes of this Sale Procedure.

If 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. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

## **6. Access to Due Diligence Materials**

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum and access to the Confidential Information. If the Receiver determines that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive any additional due diligence access, any non-public information or any access to the Confidential Information.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Qualified Phase I Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Receiver nor the Listing Agent shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the NBC Shopping Centre.

## **7. Information from Interested Parties**

Each Interested Party shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Receiver to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

## **8. Phase II Bid Requirements**

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Receiver, a Phase II Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Modified Stalking Horse Agreement), which must constitute a written and binding commitment to close on the terms and conditions set forth therein;
- (b) Irrevocable. A Phase II Bid must be received by the Phase II Bid-Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- (c) Conditions. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Phase II Bid may not, in

aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;

- (d) **Financing Sources.** A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- (e) **No Fees payable to Qualified Phase II Bidder.** A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break fee, expense reimbursement or similar type of payment, subject to Section 13;
- (f) **Good-Faith Deposit.** Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the First Deposit under the Modified Stalking Horse Agreement; and
- (g) **Purchase Price.** The purchase price in a Phase II Bid must be in accordance with Section 11 below.

The Receiver shall be entitled to seek additional information and clarifications from Phase II Bidders in respect of their Phase II Bids at any time.

#### **9. Furthers Bid by the Stalking Horse Bidder**

The Stalking Horse Bidder, or a person related thereto, shall be entitled to make a Phase II Bid.

#### **10. Determination of Successful Bid**

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 any of such Qualified Phase II Bid(s) to have a Purchase Price equal to or greater than the Purchase Price under the Stalking Horse Bid, the Receiver shall conduct an auction amongst the Qualified Phase II Bidders (including the Applicant), on terms to be determined by the Receiver, to determine the Successful Bid and the Back-up Bid by September 11, 2020, and/or otherwise negotiate with the Qualified Phase II Bidders, on terms to be determined by the Receiver, to as to determine the Successful Bid and the Back-up Bid by September 11, 2020.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Successful Bid and the transactions provided for therein at the Sale Hearing and the

Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established in connection with the Receivership Proceeding.

If no Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

#### **11. Minimum Purchase Price for Phase II Bids**

The minimum purchase price of any Phase II Bid must be the sum of the Stalking Horse Purchase Price plus the Expense Reimbursement plus \$250,000.

#### **12. Acceptance of Successful Bid**

The Receiver shall complete the sale transaction with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

#### **13. Expense Reimbursement**

In consideration for the Applicant's expenditure of time and money in acting as the initial bidder in this Sale Procedure and the preparation and negotiation of the Stalking Horse Agreement and subject to the terms and conditions of that agreement and of the Sale Procedure Order, upon termination of the Stalking Horse Agreement by the Receiver or the closing of a sale and a transfer of the NBC Shopping Centre to one or more parties other than the Applicant or a person related thereto (an "**Alternative Transaction**"), the Receiver agrees to reimburse the Applicant for its expenses in connection with this transaction (the "**Expense Reimbursement**") in an amount of \$400,000.00 from the proceeds of an Alternative Transaction. Payment of the Expense Reimbursement shall be made by the Receiver to the Applicant upon consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Applicant, the Applicant and Applicant's Acquisition Entity and the Receiver shall have no further obligations under the Stalking Horse Agreement.

**14. "As Is, Where Is"**

The sale of any of the NBC Shopping Centre pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the NBC Shopping Centre prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the NBC Shopping Centre in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the NBC Shopping Centre, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or in (a) as to the Stalking Horse Bidder, the Stalking Horse Agreement, or (b) as to another Successful Bidder, the applicable Modified APA.

**15. Free Of Any And All Encumbrances**

Except as otherwise provided in each Successful Bid, the NBC Shopping Centre shall be sold free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with a vesting order of the Court, with all Encumbrances on or against the NBC Shopping Centre, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of the NBC Shopping Centre after completion of such sale under a Successful Bid.

**16. Back-up Bid**

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

**17. Return of Good Faith Deposit**

Good Faith Deposits of all Qualified Phase II Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Phase II Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder. Good Faith Deposits of the



Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the purchase agreement of the Back-up Bidder at closing.

#### **18. Modifications and Reservations**

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

**SCHEDULE E**  
**SALE PROCEDURE ORDER**

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

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

THE HONOURABLE	)	TUESDAY, THE 2 <sup>ND</sup>
	)	
JUSTICE THOMAS McEWEN	)	DAY OF JUNE, 2020

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

**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**

**ORDER  
(Sale Procedure Approval)**

**THIS MOTION**, made by RSM Canada Limited, in its capacity as the Court-appointed receiver and manager (the "**Receiver**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* 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**") for, *inter*

*alia*, an order (i) if necessary, abridging the time for service of the Receiver’s Notice of Motion, Supplementary Notice of Motion, Motion Record and Supplementary Motion Record herein, (ii) approving the First Report of the Receiver dated May 12, 2020 (the “**First Report**”) and the activities described therein, the Supplemental Report to the First Report dated May 26, 2020, (the “**Supplementary First Report**”) and the activities described therein, (iii) approving the sale procedure, substantially in the form attached as Schedule “A” hereto (the “**Sale Procedure**”) including approving the Expense Reimbursement (as defined in the Stalking Horse Agreement), (iv) authorizing the Receiver to enter into an asset purchase agreement by way of credit bid (the “**Stalking Horse Agreement**”) with Choice Properties Limited Partnership (“**CHP**”) as purchaser, (v) approving the Receiver’s retainer of Avison Young Commercial Real Estate (Ontario) Inc. as its listing agent to assist in carrying out the Sale Procedure (vi) sealing and treating as confidential Confidential Appendices “A” and “B” to the First Report, Confidential Appendices “AA” and “BB” to the Supplementary First Report, and the unredacted factum of the Receiver dated May 29, 2020, delivered in respect of the herein motion and (vii) approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period from March 27, 2020, to April 30, 2020, as set out in Appendix “K” to the First Report, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

**ON READING** the First Report, the Supplementary First Report, the Application Record of CHP dated March 9, 2020, including the affidavit of Mario Barrafato sworn March 9, 2020, the Supplementary Application Record of CHP dated March 22, 2020,

including the supplementary affidavit of Mario Barrafato sworn March 22, 2020, the Responding Motion Record of the Respondents including the affidavit of Neil Miller sworn May 22, 2020, the affidavit of Josh Thiessen sworn May 22, 2020, the affidavit of Neil Miller sworn March 20, 2020, and the affidavit of Cameron Lewis sworn March 19, 2020, the Respondents' Confidential Application Record dated March 20, 2020, the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, and CHP's reply affidavit of David Muallim sworn May 25, 2020, on hearing the submissions of counsel for the Receiver, counsel for CHP, and counsel for the Respondents, and other than counsel for MarshallZehr Group Inc. who did not make any submissions, no one appearing for any other person on the Service List although properly served as appears from the affidavit of Eric Golden sworn June 1, 2020, filed:

#### **DEFINITIONS**

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings set out in the Sale Procedure.

#### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion dated May 12, 2020 and Supplementary Notice of Motion dated May 26, 2020 (collectively, the "NOM"), and related motion material filed in support of that NOM, including the Receiver's Motion Record dated May 12, 2020 and Supplementary Motion Record dated May 26, 2020, and the First Report and Supplementary First Report

(collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

### **SALE PROCEDURE AND RETAINER OF AGENT**

3. **THIS COURT ORDERS** that the Sale Procedure in the form attached as **Schedule “A”** hereto is hereby approved.

4. **THIS COURT ORDERS** that the Receiver use best efforts to obtain estoppel certificates from the following tenants at the Barrie Property (as defined in the First Report): Cineplex, Dollarama, L.A. Fitness, McDonald’s, State & Main, TD Canada Trust and Tim Horton’s.

5. **THIS COURT ORDERS** that the Receiver’s retainer of Avison Young Commercial Real Estate (Ontario) Inc. as its listing agent to assist in carrying out the Sale Procedure be and is hereby approved.

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.

**STALKING HORSE AGREEMENT**

7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to enter into the Stalking Horse Agreement, provided that the approval of any sale of the Subject Assets (as defined therein) by the Court will be subject to a subsequent motion to be held in accordance with the Sale Procedure.

8. **THIS COURT ORDERS** that the obligation to pay the Expense Reimbursement pursuant to Section 8.2 of the Stalking Horse Agreement and Section 13 of the Sale Procedure be and is hereby approved.

**APPROVAL OF RECEIVER'S REPORTS**

9. **THIS COURT ORDERS** that the First Report, and the activities of the Receiver described therein, are hereby approved.

10. **THIS COURT ORDERS** that the Supplementary First Report, and the activities of the Receiver described therein, are hereby approved.

**SEALING OF CONFIDENTIAL INFORMATION**

11. **THIS COURT ORDERS** that Confidential Appendices "A" and "B" to the First Report be and are hereby sealed pending further Order of the Court.

12. **THIS COURT ORDERS** that Confidential Appendices "AA" and "BB" to the Supplementary First Report be and are hereby sealed pending further Order of the Court.

13. **THIS COURT ORDERS** that the unredacted Receiver's Factum dated May 29, 2020, served in respect of the motion herein, be and is hereby sealed pending further Order of the Court.

14. **THIS COURT ORDERS** that the unredacted Factum of the Respondents dated June 1, 2020, served in respect of the motion herein, and the Respondents' Confidential Application Record dated March 20, 2020 and the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, served in respect of the Application for the Appointment Order, be and are hereby sealed pending further Order of the Court.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

15. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements for the period from March 27, 2020 to April 30, 2020, as set out in Appendix "K" to the First Report, is hereby approved.

#### **GENERAL**

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



**MISCELANEOUS**

17. **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.

18. **THIS COURT ORDERS** that this Order is effective from today's date, and is not required to be entered.

  
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## Schedule "A" Sale Procedure

Pursuant to a receivership Application issued on March 9, 2020 by Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc. (the "**Applicant**"), in the matter bearing Court file No. CV-20-00637682-00CL (the "**Receivership Proceeding**"), and an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") therein dated March 25, 2020, as amended on May 15, 2020, and as may in the future be supplemented, amended or restated from time to time (the "**Appointment Order**"), RSM Canada Limited (the "**Receiver**") was appointed receiver and manager, without security, of (i) the assets, undertakings and properties of the respondent Penady (Barrie) Ltd. ("**Penady**"), including but not limited to the real property in the City of Barrie, Ontario, having the legal description set out in Schedule "A" to the Appointment Order (the "**Lands**"), (ii) the interest of PRC Barrie Corp. ("**PRC**") in the NBC Shopping Centre, and (iii) the interest of Mady (Barrie) Inc. ("**MBI**") in the NBC Shopping Centre.

On June 2, 2020, the Court made an order (the "**Sale Procedure Order**") among other things, approving (a) the Receiver entering into an asset purchase agreement, dated May 20, 2020, as may in the future be supplemented, amended or restated from time to time (the "**Stalking Horse Agreement**"), relating to the NBC Shopping Centre with Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc., as purchaser (the "**Stalking Horse Bidder** ") so as to set a minimum floor price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers or proposals (each a "**Bid**") for the acquisition of the NBC Shopping Centre.

Accordingly, the following Sale Procedure shall govern the proposed sale of all of the NBC Shopping Centre pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the NBC Shopping Centre that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

### 1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"**Acknowledgement of Sale Procedure**" means an acknowledgement of the Sale Procedure in the form attached as Schedule A hereto;

"**Acquisition Entity**" means an entity specially formed for the purpose of effectuating the contemplated transaction;

**"Applicant"** means the Applicant in its capacity as the senior secured lender of Penady, and a creditor of PRC and MBI;

**"Back-up Bid"** means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

**"Back-up Bidder"** means the Bidder that submits the Back-up Bid;

**"Bidder"** means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

**"Confidential Data Room"** means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the NBC Shopping Centre;

**"Confidential Information"** means the confidential information in the Confidential Data Room;

**"Confidential Information Memorandum"** means a confidential information memorandum prepared by the Receiver or the Listing Agent providing certain confidential information in respect of or related to the NBC Shopping Centre;

**"Confidentiality Agreement"** means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel Blaney McMurtry LLP;

**"Debtors"** means, collectively, Penady, PRC and MBI;

**"Encumbrances"** means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

**"Expense Reimbursement"** means as defined in Section 13 below;

**"Good Faith Deposit"** means a cash deposit equal to three (3%) percent of the total purchase price contemplated under the applicable Modified APA;

**"Interested Party"** means a party participating in this Sale Procedure;

**"Listing Agent"** means Avison Young Commercial Real Estate (Ontario) Inc. in its capacity as marketing and listing agent to the Receiver pursuant to an engagement agreement-executed by Avison Young Commercial Real Estate (Ontario) Inc. on April 23, 2020, and by the Receiver on or after June 2, 2020;

**"Modified APA"** means an executed mark-up of the Modified Stalking Horse Agreement reflecting the applicable Qualified Phase I Bidder's proposed changes to the Modified Stalking Horse Agreement;

**"Modified Stalking Horse Agreement"** means the Stalking Horse Agreement as modified by the Receiver for the purposes of a non-credit bid for the Purchased Assets;

**"NBC Shopping Centre"** means the Subject Assets, as defined in the Stalking Horse Agreement;

**"Notice Parties"** means the Receiver, its counsel Blaney McMurtry LLP, and the Listing Agent;

**"Participant Requirements"** means, collectively, the requirements set out in Section 4(a) through 4(d)(iv) hereof;

**"Permitted Encumbrances"** means the encumbrances set out in Schedule "B" of the Stalking Horse Agreement;

**"Phase I Bid"** means an initial Bid submitted by an Interested Party pursuant to Section 4 hereof;

**"Phase I Bid Deadline"** means 10:00 a.m. (Eastern time) on August 12 2020;

**"Phase I Bidder"** means a bidder submitting a Phase I Bid;

**"Phase I Participant Requirements"** has the meaning given to it in Section 4 hereof;

**"Phase II Bid"** means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 8 hereof;

**"Phase II Bid Deadline"** means 10:00 a.m. (Eastern time) on August 26, 2020;

**"Principals"** means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

**"Qualified Phase I Bidder"** means a Phase I Bidder that delivers the documents described in paragraphs (a) through (d) in Section 4, and that the Receiver determines is reasonably likely to submit a binding *bona fide* offer that would have an aggregate purchase price for the NBC Shopping Centre that exceeds the minimum purchase price referred to in Section 11 below and would be able to consummate a transaction if selected as a Successful Bidder;

**"Qualified Phase II Bid"** means a Phase II Bid that satisfies the conditions set out in Section 8 hereof;

**"Qualified Phase II Bidder"** means a bidder submitting a Qualified Phase II Bid;

**"Sale Hearing"** means a Court hearing on motion by the Receiver for an Order to approve the sale of the NBC Shopping Centre to the Successful Bidder;

**"Stalking Horse Purchase Price"** means \$50,000,000;

**"Successful Bid"** means the highest and best Qualified Phase II Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale; and

**"Successful Bidder"** means the Bidder that submits the Successful Bid.

## **2. Assets for Sale**

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to the NBC Shopping Centre.

For the purposes of this Sale Procedure, Bids may be submitted only for the entire property comprising the NBC Shopping Centre.

## **3. Sale Procedure Structure and Bidding Deadlines**

The Sale Procedure shall consist of two phases.

In the first phase, Interested Parties that meet the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement, shall be provided the Confidential Information Memorandum in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline and be given access to the Confidential Information in the Confidential Data Room. Phase I Bidders that are determined by the Receiver to be Qualified Phase I Bidders shall be invited to participate in the second phase to submit a Phase II Bid.

The Receiver will be engaging the Listing Agent as marketing and listing agent to assist the Receiver with the implementation of the Sale Procedure. Interested Parties wishing to obtain information about the Sale Procedure, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the Listing Agent, Attn. Cam Lewis, [cam.lewis@avisonyoung.com](mailto:cam.lewis@avisonyoung.com), with a copy to the Receiver c/o Attn. Brenda Wong ([brenda.wong@rsmcanada.com](mailto:brenda.wong@rsmcanada.com)).

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline.

All Phase II Bids must be submitted to the Notice Parties by email or facsimile in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase II Bid Deadline.

A Bid received after the Phase 1 Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

#### **4. Participant Requirements**

##### **Phase I Participant Requirements.**

To participate in Phase I of the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following prior to being provided with the Confidential Information Memorandum and access to the Confidential Information: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the "**Phase I Participant Requirements**").

##### **Phase II Participant Requirements**

Only Qualified Phase 1 Bidders shall be allowed to participate in Phase II of the Sale Procedure.

In order for the Receiver to determine whether an Interested Party is a Qualified Phase I Bidder, and qualified to participate in Phase II, the Interested Party must provide, in form and substance satisfactory to the Receiver, each of the following on or before the Phase I Bid Deadline:

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof, who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding Expression of Interest. An executed non-binding letter of intent, in the form of the document attached as Schedule "C" hereto, satisfactory to the Receiver, that must reasonably identify the contemplated transaction, the proposed purchase price, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the approval of the Phase I Bid by the Phase I Bidder's directors; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must also furnish written evidence reasonably acceptable to the Receiver of the approval of the Phase I Bid by the Acquisition Entity's Principals; and
- (d) Proof of Financial Ability to Perform. Written evidence upon which the Receiver may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

- (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements and latest audited financial statements;
- (ii) contact names and numbers for verification of financing sources;
- (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
- (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Receiver shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

## **5. Designation as Qualified Bidder**

As set out above, only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Procedure. Following the Phase I Bid Deadline, the Receiver shall determine which Phase I Bidders are Qualified Phase I Bidders. The Receiver shall notify each Phase I Bidder of its determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline, but no later than August 19, 2020.

Following the Phase II Bid Deadline, the Receiver shall determine which Phase II Bidders are Qualified Phase II Bidders. The Receiver shall notify each Phase II Bidder of its determination as to whether the Phase II Bidder is a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder for all purposes of this Sale Procedure.

If 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. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

## **6. Access to Due Diligence Materials**

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum and access to the Confidential Information. If the Receiver determines that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive any additional due diligence access, any non-public information or any access to the Confidential Information.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Qualified Phase I Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Receiver nor the Listing Agent shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the NBC Shopping Centre.

## **7. Information from Interested Parties**

Each Interested Party shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Receiver to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

## **8. Phase II Bid Requirements**

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Receiver, a Phase II Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Modified Stalking Horse Agreement), which must constitute a written and binding commitment to close on the terms and conditions set forth therein;
- (b) Irrevocable. A Phase II Bid must be received by the Phase II Bid-Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- (c) Conditions. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Phase II Bid may not, in



aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;

- (d) **Financing Sources.** A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- (e) **No Fees payable to Qualified Phase II Bidder.** A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break fee, expense reimbursement or similar type of payment, subject to Section 13;
- (f) **Good-Faith Deposit.** Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the First Deposit under the Modified Stalking Horse Agreement; and
- (g) **Purchase Price.** The purchase price in a Phase II Bid must be in accordance with Section 11 below.

The Receiver shall be entitled to seek additional information and clarifications from Phase II Bidders in respect of their Phase II Bids at any time.

#### **9. Furthers Bid by the Stalking Horse Bidder**

The Stalking Horse Bidder, or a person related thereto, shall be entitled to make a Phase II Bid.

#### **10. Determination of Successful Bid**

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 any of such Qualified Phase II Bid(s) to have a Purchase Price equal to or greater than the Purchase Price under the Stalking Horse Bid, the Receiver shall conduct an auction amongst the Qualified Phase II Bidders (including the Applicant), on terms to be determined by the Receiver, to determine the Successful Bid and the Back-up Bid by September 11, 2020, and/or otherwise negotiate with the Qualified Phase II Bidders, on terms to be determined by the Receiver, to as to determine the Successful Bid and the Back-up Bid by September 11, 2020.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Successful Bid and the transactions provided for therein at the Sale Hearing and the

Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established in connection with the Receivership Proceeding.

If no Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

#### **11. Minimum Purchase Price for Phase II Bids**

The minimum purchase price of any Phase II Bid must be the sum of the Stalking Horse Purchase Price plus the Expense Reimbursement plus \$250,000.

#### **12. Acceptance of Successful Bid**

The Receiver shall complete the sale transaction with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

#### **13. Expense Reimbursement**

In consideration for the Applicant's expenditure of time and money in acting as the initial bidder in this Sale Procedure and the preparation and negotiation of the Stalking Horse Agreement and subject to the terms and conditions of that agreement and of the Sale Procedure Order, upon termination of the Stalking Horse Agreement by the Receiver or the closing of a sale and a transfer of the NBC Shopping Centre to one or more parties other than the Applicant or a person related thereto (an "**Alternative Transaction**"), the Receiver agrees to reimburse the Applicant for its expenses in connection with this transaction (the "**Expense Reimbursement**") in an amount of \$400,000.00 from the proceeds of an Alternative Transaction. Payment of the Expense Reimbursement shall be made by the Receiver to the Applicant upon consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Applicant, the Applicant and Applicant's Acquisition Entity and the Receiver shall have no further obligations under the Stalking Horse Agreement.

**14. "As Is, Where Is"**

The sale of any of the NBC Shopping Centre pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the NBC Shopping Centre prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the NBC Shopping Centre in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the NBC Shopping Centre, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or in (a) as to the Stalking Horse Bidder, the Stalking Horse Agreement, or (b) as to another Successful Bidder, the applicable Modified APA.

**15. Free Of Any And All Encumbrances**

Except as otherwise provided in each Successful Bid, the NBC Shopping Centre shall be sold free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with a vesting order of the Court, with all Encumbrances on or against the NBC Shopping Centre, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of the NBC Shopping Centre after completion of such sale under a Successful Bid.

**16. Back-up Bid**

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

**17. Return of Good Faith Deposit**

Good Faith Deposits of all Qualified Phase II Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Phase II Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder. Good Faith Deposits of the

Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the purchase agreement of the Back-up Bidder at closing.

#### **18. Modifications and Reservations**

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

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

**ORDER  
(Sale Procedure Approval)**

**BLANEY McMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**Eric Golden LSO #38239M**  
(416) 593-3927 (Tel)  
(416) 593-5437 (Fax)  
Email: egolden@blaney.com

**Chad Kopach LSO #48084G**  
(416) 593-2985 (Tel)  
(416) 593-5437 (Fax)  
Email: ckopach@blaney.com

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

**SCHEDULE F**  
**FORM OF VESTING ORDER**

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

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

THE HONOURABLE	)	DAY, THE
	)	
JUSTICE McEWEN	)	DAY OF , 2020

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

**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**

**SALE APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by RSM Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* of the assets, undertakings and properties of Penady (Barrie) Ltd. ("**PBL**"), and of certain of the assets, undertakings and properties of PRC Barrie Corp. ("**PRC Barrie**") and Mady (Barrie) Inc. ("**MBI**"), *inter alia*, for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**APA**") between the Receiver and Choice Properties Limited Partnership (the "**Purchaser**") dated \_\_\_\_, 2020, vesting in the Purchaser, all right, title and interest of PBL, PRC Barrie and MBI (collectively, the "**Debtors**") in and to the assets and real property described in the APA (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of the Receiver dated \_\_\_\_\_, 2020 and on hearing the submissions of counsel for the **Receiver, the Applicant and the Respondents**, no one appearing for any other person on the service list, although properly served as appears from the affidavit of \_\_\_\_\_ sworn \_\_\_\_\_, 2020, filed,

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

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the APA, and Schedule "B" hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated March 25, 2020, and the Order of the Honourable Justice \_\_\_\_\_ dated May 20, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all



of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Titles Division for the Land Registry Office of Simcoe (No. 51) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "B" hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable

transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **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.

9. **THIS COURT ORDERS** that notwithstanding Rule 59.05, this order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rule 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

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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

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Superior Court**”) dated March 25, 2020, as subsequently amended by an Order of the Honourable Justice McEwen dated May 20, 2020, RSM Canada Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Penady (Barrie) Ltd., and certain of the undertaking, property and assets of PRC Barrie Corp. and Mady (Barrie) Inc. (collectively, the “**Debtors**”).

C. Pursuant to an Order of the Superior Court dated \_\_\_\_\_, 2020, the Superior Court approved the asset purchase agreement made as of \_\_\_\_\_, 2020 (the “**APA**”) between the Receiver and Choice Properties Limited Partnership (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the APA have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the APA;
2. The conditions to Closing as set out in the APA have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ on \_\_\_\_\_, 2020.

**RSM CANADA LIMITED., in its capacity as  
Court-appointed Receiver of the assets,  
undertakings and properties of Penady  
(Barrie) Ltd., and of certain of the assets,  
undertakings and properties of PRC Barrie  
Corp. and Mady (Barrie) Inc., and not in its  
personal or corporate capacity**

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

**SCHEDULE B****REAL PROPERTY****PIN 58830-0092 (LT)**

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 58830-0096 (LT)**

PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 58830-0106 (LT)**

PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 58830-0109 (LT)**

PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**PIN 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; SUBJECT TO AN EASEMENT AS IN SC1271000; SUBJECT TO AN EASEMENT IN GROSS AS IN SC1272955; CITY OF BARRIE

**SCHEDULE C****ENCUMBRANCES TO BE DELETED FROM TITLE****All PINS****Charges and Postponements**

1. Instrument No. SC1210287 registered May 14, 2015, being a Charge/Mortgage in favour of Equitable Bank.
2. Instrument No. SC1210288 registered May 14, 2015, being a Notice of General Assignment of Rents in favour of Equitable Bank.
3. Instrument No. SC1184716 registered December 24, 2014, being a Charge/Mortgage in favour of Choice Properties GP Inc.
4. Instrument No. SC1184717 registered December 24, 2014, being a Notice of General Assignment of Rents in favour of Choice Properties GP Inc.
5. Instrument No. SC1210395 registered May 14, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184716 to Equitable Bank's Charge/Mortgage registered as Instrument No. SC1210287.
6. Instrument No. SC1210396 registered May 14, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184717 to Equitable Bank's Charge/Mortgage registered as Instrument No. SC1210287.
7. Instrument No. SC1210397 registered May 14, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184716 to Equitable Bank's Notice of General Assignment of Rents registered as Instrument No. SC1210288.
8. Instrument No. SC1210398 registered May 14, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184717 to Equitable Bank's Notice of General Assignment of Rents registered as Instrument No. SC1210288.

**Other Encumbrances**

9. Instrument No. SC1253501 registered October 20, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184717 to Instrument No. SC1253500 in favour of The Corporation of the City of Barrie.
10. Instrument No. SC1253502 registered October 20, 2015, being a Postponement by Equitable Bank of Instrument No. SC1210287 to Instrument No. SC1253500 in favour of The Corporation of the City of Barrie.

11. Instrument No. SC1253503 registered October 20, 2015, being a Postponement Equitable Bank of Instrument No. SC1210288 to Instrument No. SC1253500 in favour of The Corporation of the City of Barrie.
12. Instrument No. SC1368396 registered 2016/12/05 being a Notice by McDonald's Restaurants of Canada Limited regarding Instrument No. SC1210287.
13. Instrument No. SC1253504 registered October 20, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184716 to Instrument No. SC1253500 in favour of The Corporation of the City of Barrie.
14. Instrument No. SC1508911 registered May 7, 2018, being a Postponement by Equitable Bank of Instrument No. SC1210287 to Instrument No. SC1508910 in favour of The Corporation of the City of Barrie.
15. Instrument No. SC1508912 registered May 7, 2018, being a Postponement by Equitable Bank of Instrument No. SC1210288 to Instrument No. SC1508910 in favour of The Corporation of the City of Barrie.
16. Instrument No. SC1508913 registered May 7, 2018, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184716 to Instrument No. SC1508910 in favour of The Corporation of the City of Barrie.
17. Instrument No. SC1508914 registered May 7, 2018, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184717 to Instrument No. SC1508910 in favour of The Corporation of the City of Barrie.
18. Instrument No. SC1508916 registered May 7, 2018, being a Postponement by Equitable Bank of Instrument No. SC1210287 to Instrument No. SC1508915 in favour of The Corporation of the City of Barrie.
19. Instrument No. SC1508917 registered May 7, 2018, being a Postponement by Equitable Bank of Instrument No. SC1210288 to Instrument No. SC1508915 in favour of The Corporation of the City of Barrie.
20. Instrument No. SC1508918 registered May 7, 2018, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184716 to Instrument No. SC1508915 in favour of The Corporation of the City of Barrie.
21. Instrument No. SC1508919 registered May 7, 2018, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184717 to Instrument No. SC1508915 in favour of The Corporation of the City of Barrie.
22. Instrument No. SC1272956 registered December 30, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184716 to Instrument No. SC1272955 in favour of Powerstream Inc.

23. Instrument No. SC1272957 registered December 30, 2015, being a Postponement by Choice Properties GP Inc. of Instrument No. SC1184717 to Instrument No. SC1272955 in favour of Powerstream Inc.
24. Instrument No. SC1272958 registered December 30, 2015, being a Postponement by Equitable Bank of Instrument No. SC1210287 to Instrument No. SC1272955 in favour of Powerstream Inc.
25. Instrument No. SC1272959 registered December 30, 2015, being a Postponement by Equitable Bank of Instrument No. SC1210288 to Instrument No. SC1272955 in favour of Powerstream Inc.
26. Instrument No. SC1671250 registered March 30, 2020, being an Application to register Court Order Ontario Superior Court of Justice RSM Canada Limited.

**PINs 58830-0092 (LT) and 58830-0111 (LT) only**

27. Instrument No. SC1586826 registered April 11, 2019, being a Certificate of Concord Plumbing & Heating Ltd. relating to Instrument No. SC1585811.



**SCHEDULE D****ENCUMBRANCES TO REMAIN ON TITLE****All PINs**

1. Instrument No. RO183788 registered May 6, 1964, being a Bylaw.
2. Instrument No. SC1028712 registered December 4, 2012, being Notice of an Agreement between The Corporation of the City of Barrie, Penady (Barrie) Ltd., Home Depot Holdings Inc. and Loblaw Properties Limited
3. Instrument No. SC1028755 registered December 4, 2012, being Notice of an Agreement between The Corporation of the City of Barrie, Penady (Barrie) Ltd., Home Depot Holdings Inc. and Loblaw Properties Limited
4. Instrument No. SC1051680 registered April 18, 2013, being Notice by Penady (Barrie) Ltd.
5. Instrument No. SC1186008 registered January 7, 2015, being Notice by Loblaw Properties Limited
6. Instrument No. SC1253500 registered October 20, 2015, being a Notice by The Corporation of the City of Barrie.
7. Instrument No. SC1353259 registered October 19, 2016, being a Notice by Penady (Barrie) Ltd.
8. Instrument No. SC1368395 registered December 5, 2016, being a Notice by McDonald's Restaurants of Canada Limited.
9. Instrument No. SC1194350 registered 2015/02/23, being a Notice of Lease relating to a lease between The TDL Group Corp. as Tenant and the Borrower as Landlord.
10. Instrument No. SC1210520 registered 2015/05/14 is a Notice of Lease relating to a lease in favour of LAF Canada Company as Tenant.
11. Instrument No. SC1368394 registered December 5, 2016, being a Notice of Lease by McDonald's Restaurants of Canada Limited from Penady (Barrie) Ltd.
12. Instrument No. SC1368727 registered December 6, 2016, being a Notice of Lease by Penady (Barrie) Ltd. to 1541396 Ontario Inc.
13. Instrument No. SC1370879 registered December 13, 2016, being a Notice of Charge of Lease in favour of The Bank of Nova Scotia.
14. Instrument No. SC1518508 registered June 19, 2018, being a Notice of Lease by Penady (Barrie) Ltd. to The Sherwin-Williams Company.

15. Instrument No. SC1271000 registered December 18, 2015, being a Transfer of Easement by Penady (Barrie) Ltd., Penady (North Barrie) Limited and CP REIT Ontario Properties Limited to Enbridge Gas Distribution Inc.
16. Instrument No. SC1272955 registered December 30, 2015, being a Transfer of Easement by Penady (Barrie) Ltd. to Powerstream Inc.
17. Instrument No. SC1275252 registered January 13, 2016, being a Postponement by LAF Canada Company of Instrument No. SC1210520 to Instrument No. SC1272955 in favour of Powerstream Inc.
18. Instrument No. SC1282197 registered February 11, 2016, being a Postponement by The TDL Group Corp. of Instrument No. SC1194350 to Instrument No. SC1272955 in favour of Powerstream Inc.

**PINs 58830-0092 (LT) and 58830-0106 (LT) only**

19. Instrument No. RO1001170 registered My 13, 1988, being an Agreement.
20. Instrument No. RO1169034 registered November 7, 1991, being an Agreement with The Corporation of the City of Barrie.
21. Instrument No. RO1169379 registered November 13, 1991, being an Agreement with The Corporation of the City of Barrie.
22. Instrument No. RO1200481 registered September 24, 1992, being an Agreement with The Corporation of the City of Barrie.
23. Instrument No. SC1031847 registered December 18, 2012, being an Application to Annex Restrictive Covenant by Penady (Barrie) Ltd.

**PINs 58830-0092 (LT), 58830-0096 (LT), 58830-0106 (LT) and 58830-0111 (LT) only**

24. Instrument No. SC612948 registered December 20, 2007, being Notice of an Agreement between The Corporation of the City of Barrie and Home Depot Holdings Inc.

**PINs 58830-0106 (LT) and 58830-0109 (LT) only**

25. Instrument No. SC1068837 registered July 10, 2013, being a Notice of Lease between Penady (Barrie) Ltd. and McDonald's Restaurants of Canada Limited.
26. Instrument No. SC1279390 registered January 29, 2016, being a Postponement by McDonald's Restaurants of Canada Limited of Instrument No. SC1068837 to Instrument No. SC1272955 in favour of Powerstream Inc.

**PIN 58830-0111 (LT) only**

27. Instrument No. SC859961 registered October 19, 2010, being Notice of an Agreement between The Corporation of the City of Barrie and Penady (Barrie) Ltd.
28. Instrument No. SC1061856 registered June 10, 2013, being Notice of an Agreement between The Corporation of the City of Barrie and Penady (Barrie) Ltd.
29. Instrument No. SC1508915 registered May 7, 2018, being a Notice by The Corporation of the City of Barrie.
30. Instrument No. RO1200479 registered September 24, 1992, being a Transfer of Easement by The Corporation of the City of Barrie.

**PIN 58830-0092 (LT) only**

31. Instrument No. SC1508910 registered May 7, 2018, being a Notice of Site Plan Agreement with The Corporation of the City of Barrie.

# APPENDIX N



Canada Revenue Agency  
Agence du revenu du Canada

RSM CANADA LTD.  
11 KING STREET WEST, STE 700  
TORONTO ON M5H 4C7

Dear Sir or Madam:

Subject: PRC BARRIE CORP.  
Estate # 31-458952  
Account #: 83116 1526 RT0001

We understand that you have been appointed receiver or receiver-manager (receiver) for the above GST/HST registrant. Currently, the registrant owes goods and services tax / harmonized sales tax (GST/HST) of \$43,842.39.

Period outstanding	GST/HST payable	Penalty & interest	Total
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19-12-01 to 19-12-31	1,486.03	792.50	2,278.53
20-02-01 to 20-02-29	41,563.86	00.00	41,563.86

Under the Excise Tax Act, \$43,049.89 of the above totals represents property of the Crown held in trust and does not form part of PRC BARRIE CORP.'s property, business, or estate. This is the case whether or not those funds are kept separate and apart from the registrant's own money or from the estate's assets.

You must pay the Receiver General for Canada \$43,049.89 out of the realization of any property subject to the trust created by subsection 222(3) of the Act before paying any other creditor. Please send us your payment right away. If this is not possible, please tell us when you will make the payment. Also, please tell us when you will pay the remaining balance of \$792.50.

As a receiver, you must collect and remit the registrant's GST/HST for the period you are acting as a receiver. You also must file the registrant's returns for any periods ending while you were acting as receiver. This includes any returns the registrant did not file for a period ending in or immediately before the fiscal year you became receiver.

For more information or clarification, please call us at  
(905) 572-4426.

Yours truly,

*Brian Clements*

Brian Clements 1213  
Revenue Collections Division

# APPENDIX O

**RSM Canada Limited as  
Court Appointed Receiver and Manager of  
Penady (Barrie) Ltd. and of certain of the assets,  
undertakings and properties of PRC Barrie Corp. and Mady (Barrie) Inc.**

**Interim Statement of Receipts and Disbursements  
For the period March 27, 2020 to August 21, 2020**

Receipts	
Advances from secured lender (1) & (2)	\$ 3,000,000
Cash on hand & bank	31,647
Rent	627,533
HST collected	81,579
Interest income	35
Total receipts	\$ <u>3,740,794</u>
Disbursements	
Appraisal fees	\$ 6,955
Consultants' reports	8,280
Insurance	50,590
Landscaping/Lot Maintenance	15,838
Legal Fees and disbursements	227,084
Miscellaneous	1,915
Other professional fees	5,326
Property Management fees	77,204
Property taxes	2,589,791
Receiver's fees	238,496
Repairs and Maintenance	13,439
Snow removal	20,724
Utilities - Hydro	11,066
Utilities - Water	31,289
Waste Removal/Disposal	11,852
HST/PST paid	87,246
Total disbursements	\$ <u>3,397,096</u>
<b>Excess of Receipts over Disbursements</b>	<b>\$ <u><u>343,697</u></u></b>

Note

- (1) The amount of \$2,100,000 represents funds advanced by Choice Properties Limited Partnership under Receiver Certificate No. 1.
- (2) The amount of \$900,000 represents funds advanced by Choice Properties Limited Partnership under Receiver Certificate No. 2.

*This Appendix forms part of the Second Report of the Receiver dated August 31, 2020 and should only be read in conjunction therewith.*



**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 II OF III**

**BLANEY McMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**Eric Golden LSO #38239M**  
(416) 593-3927 (Tel)  
(416) 593-5437 (Fax)  
Email: [egolden@blaney.com](mailto:egolden@blaney.com)

**Chad Kopach LSO #48084G**  
(416) 593-2985 (Tel)  
(416) 593-5437 (Fax)  
Email: [ckopach@blaney.com](mailto:ckopach@blaney.com)

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