

**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

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**")

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.

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

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

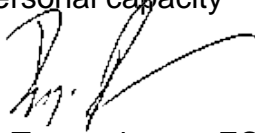
18. The Receiver respectfully requests that, in addition to the relief requested in the First Report, the Court grant an Order:

(a) sealing Confidential Appendix “AA” and Confidential Appendix “BB”.

All of which is respectfully submitted to this Court as of this 26th 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 "AA"

Duncan, Tim

From: Citak, S. Michael
Sent: March 9, 2020 6:01 PM
To: De Lellis, Michael; Irving, Shawn
Cc: Duncan, Tim
Subject: Listing Agreement
Attachments: Fully Executed Listing Agreement (North Barrie Crossing).pdf

416-865-6682 is Tim's direct dial.

S. Michael Citak | Partner

Gardiner Roberts LLP

Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3

T 416.865.6706 | F 416.865.6636 | E mcitak@grllp.com | <https://www.grllp.com/profile/S-MichaelCitak>

-----Original Message-----

From: David Johnston
Sent: February-24-20 2:14 PM
To: 'Adam Walsh' <Adam.Walsh@choicereit.ca>
Cc: Neil Miller <nmiller@penequity.com>
Subject: RE: Barrie

Adam,

I am back in the office today.

Please find attached the fully executed listing agreement for North Barrie.

We are in the process of setting a meeting this week with Edric and MZ to determine what their timeline is.

David

-----Original Message-----

From: Adam Walsh [<mailto:Adam.Walsh@choicereit.ca>]
Sent: February-21-20 8:28 AM
To: David Johnston <DJohnston@penequity.com>
Cc: Neil Miller <nmiller@penequity.com>
Subject: RE: Barrie

David,

Thanks for the update. We will have to circle with EB on the process and the best way to recover the loans.

Let's speak when you are back.

This is Exhibit "C" referred to in the
affidavit of Neil Miller
sworn before me, this 20th
day of March 20 20

A Commissioner, etc.

Thanks,

AW

-----Original Message-----

From: David Johnston <DJohnston@penequity.com>

Sent: February 21, 2020 6:39 AM

To: Adam Walsh <Adam.Walsh@choicereit.ca>

Cc: Neil Miller <nmliller@penequity.com>

Subject: Re: Barrie

CAUTION: External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I'm out of country and can talk first thing Monday morning. That being said, we met with EB earlier in the week and are running a parallel process:

1) Although Edric continues to work through their process with Marshall Zehr (Engagement Letter and retainer fee executed and paid) assisting them to complete, we will not have an update on them until Monday/Tuesday.

2) We have engaged Avison Young to market the property. They are putting their process and timeline on paper today and we will be providing to EB and I will have Neil send it to you also.

It will be first past the post for completion and repaying both the EB and Choice debt.

Should Edric be in a position to provide the \$3.5m deposit and execute the APS, as previously advised, we would move on that and get your interest current before closing.

David

Sent from my iPhone

> On Feb 20, 2020, at 10:12 AM, Adam Walsh <Adam.Walsh@choicereit.ca> wrote:

>

> When works for you to discuss

>

>> On Feb 19, 2020, at 7:54 PM, David Johnston <DJohnston@penequity.com> wrote:

>>

>> *CAUTION: External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.*

>>

>>

>> Hi Adam...I'm currently traveling...there are things happening, but I want to be in a position for a timely/useful update.

>>

>> DJ

>>

>> Sent from my iPhone

>>

>>> On Feb 19, 2020, at 3:17 PM, Adam Walsh <Adam.Walsh@choicereit.ca> wrote:

>>>

>>> David

>>>

>>> Checking in on Barrie. Any movement. As you can appreciate, I am being asked daily.

>>>

>>> Thanks

>>>

>>> AW

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EXCLUSIVE AUTHORITY TO SELL

TO: AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO) INC.

Suite 400, 18 York Street

Toronto, Ontario M5J 2T8

J. J. J.
PRC Barrie Corp.

RE: NORTH BARRIE CROSSING, BARRIE, ONTARIO (THE "PROPERTY")

1. In consideration of Avison Young Commercial Real Estate (Ontario) Inc. ("Avison Young") representing that it will agree to use its best efforts to sell the Property, ~~PenEquity Realty Corporation~~ *J* (the "Vendor") hereby authorizes and empowers Avison Young as its exclusive agent to offer the Property for sale on an un-priced basis and on such other terms as the Vendor may approve.
2. The commission rate to be determined. A sale shall be deemed to be made and a commission shall be deemed earned and shall be paid by the Vendor on the completion of the sale of the Property. On the date on which the sale closes, the commission payable shall be deducted from the deposit monies with any balance payable from sale proceeds or, at the discretion of the Vendor, a separate cheque will be made payable to Avison Young from the sale proceeds. In the event of a sale, all necessary documents shall be prepared at the Vendor's expense.
3. It is understood and agreed that the Vendor shall pay Avison Young the amount required under the Harmonized Sales Tax legislation as applicable to commissions and consulting fees payable herein.
4. In the event of a sale of a partial interest in the Property, the sale price achieved in such circumstances shall be grossed-up to reflect the total price payable assuming 100% interest is sold, and the commission payable shall then be calculated as outlined in paragraph 2 above, multiplied by the percentage interest sold.
5. The Vendor agrees that it is responsible and shall pay for all claims, disputes, litigation, judgements, costs and reasonable solicitors' fees incurred by Avison Young in connection therewith, arising from any incorrect information supplied by the Vendor, or from material fact known by the Vendor concerning the Property which the Vendor fails to disclose. The Vendor represents that they are the owners of the Property.

EXCLUSIVE AUTHORITY TO SELL – NORTH BARRIE CROSSING, BARRIE, ONTARIO

6. Should a sale be closed during the currency hereof, or within One hundred and Eighty (180) days of this agreement's expiry or earlier termination, as a result of negotiations originating during such currency, subject to the limitations described below, the full commission shall be payable to Avison Young. In connection therewith and within fourteen (14) days following expiry of this agreement, Avison Young shall provide a list of such parties which it has introduced and with which negotiations are taking place.
7. Avison Young will report bi-weekly to the Vendor and provide in written form a prospect report outlining the current state of any and all negotiations and the marketing activity undertaken since the last report and its recommendations regarding future sales and marketing activity or pricing including further parties that may be approached to affect a sale.
8. It is understood that Avison Young shall be responsible for the development of all support materials that will be required for the effective marketing of the Property for sale. All such materials shall be subject to the Vendor's approval prior to distribution.
9. For greater certainty, Avison Young is not authorized to sign any agreement or document as agent for the Vendor and all proposed offers for sale and agreements for sale shall be submitted to the Vendor for its consideration and, if appropriate, its signature.
10. This agreement shall be interpreted and governed by the laws of the Province of Ontario.
11. This listing shall remain in full force and effect for five (5) months from the date of execution of this Agreement. Notwithstanding this period, should an offer be accepted during the currency hereof but the due diligence or closing process has not yet been completed, then this period will be extended to accommodate such offer.
12. The Vendor acknowledges that Avison Young, as required by the Real Estate and Business Brokers Act (REBBA) and Regulations, has provided the Vendor with written information (See Schedule "A") explaining agency relationships, including information on Seller Representation, Buyer Representation, Multiple Representation and Customer Service, and that Avison Young shall be representing the interests of the Vendor.

EXCLUSIVE AUTHORITY TO SELL – NORTH BARRIE CROSSING, BARRIE, ONTARIO

13. Avison Young confirms that Cameron Lewis and the salespersons assigned to this transaction are insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

Dated at Toronto, Ontario this 24th day of February, 2020.

~~PENEQUITY REALTY CORPORATION~~
PRC Barrie Corp.

Per: [Signature] c/s
Authorized Signatory

Per: _____ c/s
Authorized Signatory

Dated at Toronto, Ontario, this 20th day of Feb, 2020.

AVISON YOUNG COMMERCIAL REAL ESTATE (ONTARIO) INC.

Per: [Signature] c/s
Authorized Signatory

Schedule "A"

Working With A Commercial REALTOR® The Agency Relationship

In real estate, there are different possible forms of agency relationship:

1. Seller representation

- When a real estate brokerage represents a seller, it must do what is best for the seller of a Property.
- A written contract, called a listing agreement, creates an agency relationship between the seller and the brokerage and establishes seller representation. It also explains services the brokerage will provide, establishes a fee arrangement for the Commercial REALTORS® services and specifies what obligations a seller may have.
- A seller's agent must tell the seller anything known about a buyer. For instance, if a seller's agent knows a buyer is willing to offer more for a Property, that information must be shared with the seller.
- Confidences a seller shares with a seller's agent must be kept confidential from potential buyers and others.
- Although confidential information about the seller cannot be discussed, a buyer working with a seller's agent can expect fair and honest service from the seller's agent and disclosure of pertinent information about the Property.

2. Buyer's representation

- A real estate brokerage representing a buyer must do what is best for the buyer.
- A written contract, called a buyer representation agreement, creates an agency relationship between the buyer and the brokerage, and establishes buyer representation. It also explains services the brokerage will provide, establishes a fee arrangement for the Commercial REALTOR®'s services and specifies what obligations a buyer may have.
- Typically, buyers will be obliged to work exclusively with that brokerage for a period of time.
- Confidences a buyer shares with the buyer's agent must be kept confidential.
- Although confidential information about the buyer cannot be disclosed, a seller working with a buyer's agent can expect to be treated fairly and honestly.

3. Multiple representation

- Occasionally a real estate brokerage will represent both the buyer and the seller. The buyer and seller must consent to this arrangement in writing. Under this multiple representation arrangement, the brokerage must do what is best for both the buyer and the seller.
- Since the brokerage's loyalty is divided between the buyer and the seller who have conflicting interests, it is absolutely essential that a multiple representation relationship be properly documented. Representation agreements specifically describe the rights and duties of everyone involved and any limitations to those rights and duties.

4. Customer service

- A real estate brokerage may provide services to buyers and Seller without creating buyer or seller representation. This is called “customer service.”
- Under this arrangement, the brokerage can provide many valuable services in a fair and honest manner. This relationship can be set out in a buyer or seller customer service agreement.
- Real estate negotiations are often complex and a brokerage may be providing representation and/or customer service to more than one seller or buyer. The brokerage will disclose these relationships to each buyer and seller.

Who’s working for you?

- It is important that you understand who the Commercial REALTOR® is working for. For example, both the seller and the buyer may have their own agent which means they each have a Commercial REALTOR® who is working for them.
- Or, some buyers choose to contact the seller’s agent directly. Under this arrangement the Commercial REALTOR® is working for the seller, and must do what is best for the seller, but may provide many valuable customer services to the buyer.
- A Commercial REALTOR® working with a buyer may even be a “sub-agent” of the seller. Under sub-agency, both the listing brokerage and the co-operating brokerage must do what is best for the seller even though the sub-agent may provide many valuable customer services to the buyer.
- If the brokerage represents both the seller and the buyer, this is multiple representation.

Code of Ethics

- Commercial REALTORS® believe it is important that the people they work with understand their agency relationship. That’s why requirements and obligations for representation and customer service are included in a Code of Ethics which is administered by the Real Estate Council of Ontario.
- The Code requires Commercial REALTORS® to disclose in writing the nature of the services they are providing, and encourages Commercial REALTORS® to obtain written acknowledgement of that disclosure. The Code also requires Commercial REALTORS® to submit written representation agreements for any Seller or buyers they are representing.

EXCLUSIVE AUTHORITY TO SELL - NORTH BARRIE CROSSING, BARRIE, ONTARIO

Acknowledgement by Seller/Vendor

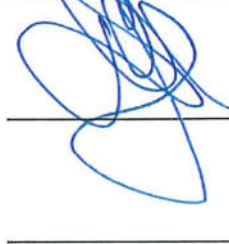
I/we have read and understand the *Working with a COMMERCIAL REALTOR® - The Agency Relationship* form.

As Seller/Vendor I/we understand that Avison Young Commercial Real Estate (Ontario) Inc., Brokerage represents my interests, as document in the attached Listing Agreement, and I understand that the brokerage may represent and/or provide customer service to other Seller and buyer.

PRC Barrie Corp.

(Seller/Vendor Name)

Seller/Vendor Signature



Date:

Feb 24/20

APPENDIX "BB"

May 26, 2020

RSM Canada Limited
11 King St. W., Suite 700
Toronto, Ontario
M5H 4C7

Dear Sirs:

Re: Opinion to RSM Canada Limited ("RSM") as Court-Appointed Receiver and Manager of all of the assets, undertakings and properties of Penady (Barrie) Ltd. (the "Borrower") and certain of the assets, undertakings and properties of PRC Barrie Corp. and Mady (Barrie) Inc. regarding the validity and enforceability of security held by Choice Properties Limited Partnership by its general partner Choice Properties GP Inc. (the "Lender") over the real property having the legal description set out in Schedule "D" (the "Real Property"), the personal property of the Borrower (the "Personal Property"), and any interest of the Beneficial Owners (as defined below) in the Real Property and the Personal Property

We have been provided with (i) a copy of an order (the "**Appointment Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made March 25, 2020, as amended on May 15, 2020, appointing RSM as Receiver and Manager of all of the assets, undertakings and properties of the Borrower acquired for, or used in relation to a business carried on by the Borrower, including the Real Property and the Personal Property (collectively, the "**Property**"), and the interest of PRC Barrie Corp. and Mady (Barrie) Inc. in the Property, pursuant to proceedings (the "**Proceedings**") commenced by the Lender, and (ii) a copy of the Lender's Application Record dated March 9, 2020, in support of the Appointment Order (the "**Application**"), that includes a Notice of Application issued by the Court on March 9, 2020 and the Affidavit of Mario Barrafato sworn March 9, 2020, attached as Tab "2" of the Application (the "**Affidavit**").

We have also been provided with copies of the following documents:

1. the Lender's Supplemental Application Record dated on March 22, 2020 (the "**Supplemental Application**"), including the Supplemental Affidavit of Mario Barrafato sworn March 22, 2020 attached as Tab "1" of the Supplemental Application;
2. the Responding Application Record of the Borrower dated March 24, 2020;
3. the Lender's Motion Record dated May 8, 2020, including the Supplemental Affidavit of Mario Barrafato sworn May 8, 2020 attached as Tab "2" thereof, in support of the Lender's motion to amend the Appointment Order;
4. the Order of the Court made May 15, 2020, adding the interest of Mady (Barrie) Inc. in the Property to the property over which RSM has been appointed Receiver and Manager; and

5. the First Report of RSM as Receiver and Manager of the Property dated May 12, 2020 (the “**First Report**”)

(collectively, the “**Documents**”).

You have asked us to provide you with an opinion in connection with the security set out in Schedule "A" relating to the Property (the "**Security**"). Specifically, you have asked us to opine on the enforceability of the Security in the Province of Ontario, and on the validity and perfection of the security interests (the "**Security Interests**") in the personal property collateral (the "**Collateral**") to which the *Personal Property Security Act* (Ontario) ("**PPSA**") applies, as granted under the Security or any of it in the Province of Ontario. We do not act for the Borrower or either of PRC Barrie Corp. and Mady (Barrie) Inc. (the "**Beneficial Owners**") or the Lender in this matter and did not act in the preparation of the Security or the registration of it.

Examination of Documents

For the purposes of the opinions set out herein, we have examined:

- (a) copies of the Security;
- (b) copies of search results conducted in the Province of Ontario against the Borrower and the Beneficial Owners with the Ministry of Consumer and Business Services (Ontario) and under the following statutes:
 - (i) the *Bank Act* (Canada);
 - (ii) the *Bankruptcy and Insolvency Act* (Canada);
 - (iii) the *Execution Act* (Ontario); and
 - (iv) the *Personal Property Security Act* (Ontario) ("**PPSA**"),the results and currency of which are set out in Schedule “B”;
- (c) subsearch of title against the Real Property, the results of which are set out in Schedule "C". Please note that a subsearch of title is not a full search of title upon which a title opinion can be given. Our subsearch also did not include a search of adjoining lands to confirm *Planning Act* (Ontario) compliance nor did we confirm whether there was access to the real property; and
- (d) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied without independent

verification or investigation on all statements as to matters of fact contained in the certificates, documents and records we examined.

Assumptions and Reliances

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

- (a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;
- (b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;
- (c) the accuracy of the description of the Collateral set out in the Security;
- (d) that:
 - (i) the Borrower and the Beneficial Owners have rights in the Collateral;
 - (ii) value, as that term is defined in the PPSA, has been given to the Borrower and the Beneficial Owners; and
 - (iii) the Borrower and the Beneficial Owners have not agreed to postpone the time for attachment of the Security Interests;
- (e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;
- (f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lender;
- (g) that each of the Borrower and the Beneficial Owners:
 - (i) was at the time of authorization, execution and delivery of the Security to which it is a party, and is now, validly constituted and existing under the laws pursuant to which it was constituted;
 - (ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security to which it is a party;

- (iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security to which it is a party; and
- (iv) has duly executed and delivered the Security to which it is a party;
- (h) that each of the parties to the Security other than the Borrower and the Beneficial Owners is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;
- (i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower and the Beneficial Owners, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;
- (j) that the Security executed by the Borrower and the Beneficial Owners (as applicable) has not been amended, restated, replaced, terminated or released, and remains in full force and effect;
- (k) that there are no:
 - (i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security and/or the various principal obligations for which the Security is granted; or
 - (ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with, the execution, delivery and performance by the Borrower and the Beneficial Owners of the Security (to the extent each of them is a party thereto) and/or the various principal obligations with respect to which the Security is granted;which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;
- (l) that the execution and delivery by the Borrower and the Beneficial Owners of the Security (to the extent each of them is a party thereto), and the performance by each of its rights and obligations under the Security (to the extent each of them is a party thereto) did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to it or any other agreement to which it is a party;
- (m) that the execution, delivery and performance of obligations under the Security by the Borrower and the Beneficial Owners (to the extent each of them is a party thereto) did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under

sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any similar provincial legislation relating to those issues;

- (n) that the Lender did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which any of the Borrower and the Beneficial Owners or its property or assets were bound, if there was such a contravention;
- (o) that the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the Security or the indebtedness, liabilities and obligations secured by the Security or any of it;
- (p) that the Borrower holds title to the Property as bare trustee and nominee for the Beneficial Owners, and the Beneficial Owners have directed and authorized the Borrower to provide the Security to the Lender;
- (q) on or about March 4, 2020, the Lender repaid the full amount of \$43,759,318.85 secured by the First Charge and became entitled to either a discharge or an assignment of the First Charge (see Exhibit DD of the Affidavit); and
- (r) municipal property taxes and penalties owing with respect to the Property up to December 31, 2019 have been paid in full, as referred to in the First Report.

Laws Addressed

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Province of Ontario. In particular, without limiting the preceding statement, we express no opinion:

- (a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests as a result of the conflict of laws rules of the Province of Ontario; or
- (b) whether, under the conflict of laws rules of the Province of Ontario, the laws of the Province of Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

It is our understanding that the Borrower and the Beneficial Owners only have assets in the Province of Ontario, so as instructed by you we have limited our review to Ontario law.

Opinions

Based upon the assumptions and reliances stated above, and subject to the qualifications and limitations stated below, we are of the opinion that:

1. The Second Charge (as defined in Schedule "A") constitutes a legal, valid and binding

obligation of the Borrower, enforceable against the Borrower in accordance with its terms, and would be valid and enforceable against a trustee in bankruptcy of the Borrower.

2. With respect only to the mortgages that are registered against title to the Real Property, assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title to the Real Property other than those that appear on the parcel register of the Real Property as of May 25, 2020, we confirm that the Second Charge is the second ranking mortgage registered against title to the Real Property.
3. The Security creates valid Security Interests in favour of the Lender as described in that security under the laws of the Province of Ontario in any Collateral to which the PPSA applies, other than Collateral expressly excluded by the Security, to secure payment and performance of the obligations secured by the Security.
4. Registration has been made in all public offices provided for under the laws of the Province of Ontario where registration is necessary to perfect the Security Interests in favour of the Lender and such Security Interests would be valid and enforceable against a trustee in bankruptcy of the Borrower.
5. As of May 25, 2020, the only other registrations under the PPSA against the Borrower and the Beneficial Owners are those set out in the summary attached as Schedule "B", and described in Qualifications 13 and 14 below, which other registrations may give priority to the secured parties referred to in such registrations over the Lender in the personal property of the Borrower and the Beneficial Owners referred to in such registrations.

Qualifications and Limitations

The opinions in the letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.
2. The enforceability of the obligations of the Borrower and the Beneficial Owners under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.
3. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.

4. We express no opinion regarding the existence of, or the right, title or interest of the Borrower or the Beneficial Owners in and to, any real or personal property. There is no title registry system in the Province of Ontario with respect to personal property, and no office of public record in which the title to personal property situate in the Province of Ontario may be examined.
5. We express no opinion regarding the priority of the Security or other interests expressed to be created by the Security, subject to Opinion no. 2 above on the ranking of the mortgages registered against title to the Property.
6. We express no opinion with respect to any equitable mortgage or any unregistered postponements or other agreements not disclosed by the registered title of the Property.
7. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lender would not have a valid security interest in federal Crown debts unless that Act is complied with.
8. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001*, patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.
9. We express no opinion as to the enforceability of any provision of the Security which requires the Borrower or the Beneficial Owners to pay, or to indemnify the Lender for, the costs and expenses of the Lender in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.
10. We express no opinion on any provision in the Security which:
 - (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;
 - (b) limits rights of set-off otherwise than in accordance with applicable law;
 - (c) states that amendments or waivers of or with respect to the Security that are not in writing will be ineffective;
 - (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;

- (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or
 - (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.
11. The enforceability of any provision in the Security which:
- (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;
 - (b) stipulates or limits the level of damages to which a party is entitled; or
 - (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;
- is subject to the discretion of a court.
12. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario).
13. The following is a mortgage registered against title to the Property that has priority to the Second Charge (as a result of the postponement described below):
- (a) Instrument No. SC1210287 registered May 14, 2015, being a Charge/Mortgage to and in favour of Equitable Bank in the original principal amount of \$49,125,739 (the “**First Charge**”). The Second Charge was postponed to the First Charge on May 14, 2015 pursuant to Instrument no. SC1210395.

In addition, the summary of PPSA registrations attached hereto as Schedule “B” confirms that Equitable Bank has PPSA registrations against the Borrower that were registered prior to the PPSA registration of the Lender. As a result of the repayment on or about March 4, 2020, by the Lender of the full amount of \$43,759,318.85 secured by the First Charge, the Lender became entitled to (i) either a discharge or an assignment of the First Charge and any other security held by Equitable Bank for such indebtedness and (ii) under section 20 of the debenture attached to and forming part of the Second Charge, add the amount of \$43,759,318.85 to the amount secured by the Second Charge and to have interest accrue on that amount at the rate provided for in the Second Charge.

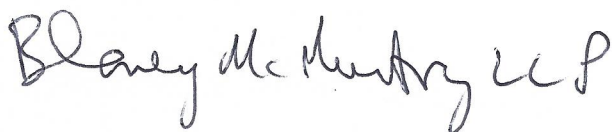
14. Paragraph 47 of the Affidavit notes that MarshallZehr Group Inc. holds a security interest in the personal property of PRC Barrie Corp. The summary of PPSA registrations attached hereto as Schedule “B” confirms that MarshallZehr Group Inc. has a PPSA registration against one of the Beneficial Owners (PRC Barrie Corp). Since the Lender has no PPSA registration against either of the Beneficial Owners, MarshallZehr Group Inc. may have priority over the Security to the extent of any interest of PRC Barrie Corp in the Personal Property. Although Equitable Bank’s PPSA registration against both Beneficial Owners was registered prior to that MarshallZehr Group Inc.’s registration over PRC Barrie Corp., the Equitable Bank registration is only against collateral classifications of “Accounts and Other”. As a result, MarshallZehr Group Inc.’s security interest in the personal property of

PRC Barrie Corp. may have priority over Equitable Bank's security interest in the personal property of PRC Barrie Corp. to the extent of any collateral classifications other than "Accounts and Other".

15. The Assignment of Rents does not contain an assignment of leases entered into by the Borrower as landlord with respect to space in the Real Property. The debenture attached to the Second Charge does contain a floating charge on all of the undertaking, property and assets of the Borrower, which would include such leases, and the GSA contains a grant of a security interest in all of the undertaking, property, rights and assets of the Borrower of every nature and kind comprising or related to the "Property" (see qualification 16(b) below).
16. In the GSA:
 - (a) In section 2.1, in which the security interest is granted, the section commences with the words "Subject to 2.5". We assume that this means "Subject to section 2.5";
 - (b) In section 2.1, a security interest is granted in "all of [Penady (Barrie) Ltd.'s] undertaking, property, rights and assets of every nature and kind comprising or related to the Property". The term "Property" is not defined in the GSA, although the term "Properties" is. Elsewhere in the GSA, the term "Properties" is used;
 - (c) In section 2.2(a)(ii), the term "Secured Party" is used but not defined; and
 - (d) In section 3.5(b), the term "Lender Agent" is used but not defined.
17. In the Beneficial Owner Agreement:
 - (a) The first clause of section 4 appears to be incomplete;
 - (b) In section 6, the term "Bank" is used but not defined; and
 - (c) In section 6, the Beneficial Owner (as defined therein) grants a security interest in all personal property relating to the Barrie Property (as defined therein) subject to the terms of the Security (as defined therein), but no registration under the PPSA has been made against the Beneficial Owner.

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent, other than being filed with the Court as part of the Proceedings.

Yours very truly,



SCHEDULE "A"

SECURITY

1. Instrument No. SC1184716 registered December 24, 2014, being a Charge/Mortgage in favour of Choice Properties GP Inc., securing the original principal sum of \$30,000,000 (the "**Second Charge**").
2. Instrument No. SC1184717 registered December 24, 2014, being a Notice of General Assignment of Rents in favour of Choice Properties GP Inc.
3. General Security Agreement in favour of Choice Properties Limited Partnership dated December 24, 2014 (the "**GSA**").
4. Assignment of insurance between Choice Properties Limited Partnership and the Borrower dated December 24, 2014.
5. Beneficial owner agreement made as of December 24, 2014, between Choice Properties Limited Partnership, the Borrower, PRC Barrie Corp. and Mady (Barrie) Inc. (the "**Beneficial Owner Agreement**").

SCHEDULE "B"

(see attached)

MADY (BARRIE) INC.

A. *Profile Report*

The corporation profile report obtained from the Ministry of Government Services on **May 11, 2020** against the name **Mady (Barrie) Inc.** shows that it is an active Ontario corporation, incorporated **December 7, 2006** with registered office at **8791 Woodbine Avenue, Suite # 100, Markham, Ontario, L3R 0P4.**

According to the profile report, the director(s) of the corporation is/are: **Charles N. Mady**

According to the profile report, the officer(s) of the corporation is/are: **Charles N. Mady – President, Vice-President, Secretary**

The profile report discloses that the corporation does not have a registered tradename.

B. *PPSA Search Results (certified) – current to May 25, 2020*

A search was made in the records of the central office of the Personal Property Security Registration System in the Province of Ontario. As at **May 25, 2020** the following registrations were found with respect to **Mady (Barrie) Inc.:**

	File No.	Registration No.	Reg'n Period	Debtor	Secured Party	Collateral
1.	706104513	20150514 1051 1590 5615	3 years	Mady (Barrie) Inc. 1875 Leslie Street, Unit 11 Toronto, ON M3B 2M5 PRC Barrie Corp. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4	Equitable Bank 30 St. Clair Avenue West, Suite 700 Toronto, ON M1V 3A1	Accounts, Other <u>General Collateral Description:</u> Guarantee and postponement of claim in respect of the obligations of Penady (Barrie) Ltd. relating to property known as North Barrie Crossing Shopping Centre, located at the corner of Duckworth Street and Highway 400, Barrie, Ontario being property identifier numbers 58830-0092, 58830-0096, 58830-0106, 58830-0109 and 53380-0111 (loan nos. 186380, 190112 and 189510).
		20180105 1702 1462 9024 Renewal	10 years	Penady (Barrie) Ltd		

		20180109 1706 1462 0048 Amendment: Correction to name of Debtor.		Mady (Barrie) Inc.		
		20180427 1410 1462 0880 Renewal	5 years	Mady (Barrie) Inc.		

C. s. 427 Bank Act Search

A search was made of the notices of intention to give security under the *Bank Act* registered in the Province of Ontario. As at **May 26, 2020**, no matches were found with respect to **Mady (Barrie) Inc.**

D. Insolvency Search

A search against **Mady (Barrie) Inc.** was conducted at the Office of the Superintendent of Bankruptcy of the public record kept by the Superintendent of Bankruptcy for all the Districts and Divisions in Canada and the public record was found to contain the following reference to the aforementioned name from **1978 to May 22 2020**:

BIA Estate No. 31-458994; BIA Estate Name: Mady (Barrie) Inc.; Province: Ontario; Address: 33 Yonge St., Unit 901, Toronto, Ontario, M5E 1G4; Estate Type: Receivership; Date of Proceeding: March 25, 2020; Total Assets: \$0; Total Liabilities: \$0. Appointed Licensed Insolvency Trustee is RSM Canada Limited.

E. Execution Act

A Clear Certificate against **Mady (Barrie) Inc.** was obtained from the Sheriff of the County of Simcoe (Barrie) on **May 25, 2020** certifying that there are no active writs of execution, orders or certificates of lien filed within the electronic database maintained by their office in accordance with section 10 of the *Execution Act* as of **May 25, 2020**.

PENADY (BARRIE) LTD.

A. *Profile Report*

The corporation profile report obtained from the Ministry of Government Services on **February 25, 2020** against the name **Penady (Barrie) Ltd.** shows that it is an active Ontario corporation, incorporated **December 13, 2006** with registered office at **33 Yonge Street, Suite # 901, Toronto, Ontario, M5E 1G4.**

According to the profile report, the director(s) of the corporation is/are: **David V. Johnston**
Charles Mady
Glenn A. Miller

According to the profile report, the officer(s) of the corporation is/are: **Charles Mady – President**
David V. Johnston – Secretary

The profile report discloses that the corporation does not have a registered tradename.

B. *PPSA Search Results (certified) – current to May 25, 2020*

A search was made in the records of the central office of the Personal Property Security Registration System in the Province of Ontario. As at **May 25, 2020** the following registrations were found with respect to **Penady (Barrie) Ltd.:**

	File No.	Registration No.	Reg'n Period	Debtor	Secured Party	Collateral
1.	706104324	20150514 1049 1590 5614	3 years	Penady (Barrie) Ltd. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4	Equitable Bank 30 St. Clair Avenue West, Suite 700 Toronto, OH M1V 3A1	Inventory, Equipment, Accounts, Other <u>General Collateral Description:</u> Security documentation relating to property known as North Barrie Crossing Shopping Centre, located at the corner of Duckworth Street and Highway 400, Barrie, Ontario being property identifier numbers 58830-0092, 58830-0096, 58830-0106, 58830-0109 and 53380-0111 (loan nos. 186380, 190112 and 189510).
		20180105 1702 1462 9023 Renewal	10 years			

		20180427 1410 1462 0879 Renewal	5 years			
2.	706104513	20150514 1051 1590 5615	3 years	Mady (Barrie) Inc. 1875 Leslie Street, Unit 11 Toronto, ON M3B 2M5 PRC Barrie Corp. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4	Equitable Bank 30 St. Clair Avenue West, Suite 700 Toronto, ON M1V 3A1	Accounts, Other <u>General Collateral Description:</u> Guarantee and postponement of claim in respect of the obligations of Penady (Barrie) Ltd. relating to property known as North Barrie Crossing Shopping Centre, located at the corner of Duckworth Street and Highway 400, Barrie, Ontario being property identifier numbers 58830-0092, 58830-0096, 58830-0106, 58830-0109 and 53380-0111 (loan nos. 186380, 190112 and 189510).
		20180105 1702 1462 9024 Renewal	10 years	Penady (Barrie) Ltd		
		20180109 1706 1462 0048 Amendment: Correction to name of Debtor.		Mady (Barrie) Inc.		
		20180427 1410 1462 0880 Renewal	5 years	Mady (Barrie) Inc.		
3.	760701816	20200306 1407 1590 8766	5 years	Penady (Barrie) Ltd. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4	Choice Properties Limited Partnership 22 St. Clair Avenue East, Suite 500 Toronto, ON M4T 2S5	Inventory, Equipment, Accounts, Other, Motor Vehicle Included

C. s. 427 Bank Act Search

A search was made of the notices of intention to give security under the *Bank Act* registered in the Province of Ontario. As at **May 26, 2020**, no matches were found with respect to **Penady (Barrie) Ltd.**

D. Insolvency Search

Searches against **Penady (Barrie) Ltd.** were conducted at the Office of the Superintendent of Bankruptcy of the public record kept by the Superintendent of Bankruptcy for all the Districts and Divisions in Canada. This search obtained on May 11, 2020, revealed the following information for 1978 to **May 22, 2020**:

BIA Estate No. 31-458952; BIA Estate Name: Penady (Barrie) Ltd.; Province: Ontario; Address: 33 Yonge St., Unit 901, Toronto, Ontario, M5E 1G4; Estate Type: Receivership; Date of Proceeding: March 27, 2020; Total Assets: \$0; Total Liabilities: \$0. Appointed Licensed Insolvency Trustee is RSM Canada Limited.

E. Execution Act

A Clear Certificate against **Penady (Barrie) Ltd.** was obtained from the Sheriff of the County of Simcoe (Barrie) on **May 25, 2020** certifying that there are no active writs of execution, orders or certificates of lien filed within the electronic database maintained by their office in accordance with section 10 of the *Execution Act* as of **May 25, 2020**.

PRC BARRIE CORP.

A. *Profile Report*

The corporation profile report obtained from the Ministry of Government Services on **February 25, 2020** against the name **PRC Barrie Corp.** shows that it is an active Ontario corporation, incorporated **December 13, 2006** with registered office at **33 Yonge Street, Suite # 901, Toronto, Ontario, M5E 1G4.**

According to the profile report, the director(s) of the corporation is/are:

David V. Johnston
Glenn A. Miller

According to the profile report, the officer(s) of the corporation is/are:

Glenn A. Miller – Secretary
David V. Johnston – President

The profile report discloses that the corporation does not have a registered tradename.

B. *PPSA Search Results (certified) – current to May 25, 2020*

A search was made in the records of the central office of the Personal Property Security Registration System in the Province of Ontario. As at **May 10, 2020** the following registrations were found with respect to **PRC Barrie Corp.:**

	File No.	Registration No.	Reg'n Period	Debtor	Secured Party	Collateral
1.	706104513	20150514 1051 1590 5615	3 years	Mady (Barrie) Inc. 1875 Leslie Street, Unit 11 Toronto, ON M3B 2M5 PRC Barrie Corp. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4	Equitable Bank 30 St. Clair Avenue West, Suite 700 Toronto, ON M1V 3A1	Accounts, Other <u>General Collateral Description:</u> Guarantee and postponement of claim in respect of the obligations of Penady (Barrie) Ltd. relating to property known as North Barrie Crossing Shopping Centre, located at the corner of Duckworth Street and Highway 400, Barrie, Ontario being property identifier numbers 58830-0092, 58830-0096, 58830-0106, 58830-0109 and 53380-0111 (loan nos. 186380, 190112 and 189510).
		20180105 1702 1462 9024 Renewal	10 years	Penady (Barrie) Ltd		

		20180109 1706 1462 0048 Amendment: Correction to name of Debtor.		Mady (Barrie) Inc.		
		20180427 1410 1462 0880 Renewal	5 years	Mady (Barrie) Inc.		
2.	743795478	20180917 1030 1862 2238	5 years	PRC Barrie Corp. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4	Marshallzehr Group Inc. 465 Phillip Street, Suite 206 Waterloo, ON N2L 6C7	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
3.	745748091	20181109 1631 1862 6367	5 years	PRC Barrie Corp. 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4	Marshallzehr Group Inc. 465 Phillip Street, Suite 206 Waterloo, ON N2L 6C7	Inventory, Equipment, Accounts, Other, Motor Vehicle Included

C. s. 427 Bank Act Search

A search was made of the notices of intention to give security under the *Bank Act* registered in the Province of Ontario. As at **May 26, 2020**, no matches were found with respect to **PRC Barrie Corp.**

D. Insolvency Search

A search against **PRC Barrie Corp.** was conducted at the Office of the Superintendent of Bankruptcy of the public record kept by the Superintendent of Bankruptcy for all the Districts and Divisions in Canada and the public record was found to contain no facts nor any reference to the aforementioned name from **1978 to May 22, 2020**.

E. Execution Act

A Clear Certificate against **PRC Barrie Corp.** was obtained from the Sheriff of the County of Simcoe (Barrie) on **May 25, 2020** certifying that there are no active writs of execution, orders or certificates of lien filed within the electronic database maintained by their office in accordance with section 10 of the *Execution Act* as of **May 25, 2020**.

SCHEDULE "C"

(see attached)

TITLE SUMMARY

RSM CANADA LIMITED

Receivership of assets of

PENADY (BARRIE) LTD.,

including the real property described below (the "Property")

File No.: 097779-0041

We have reviewed the PINs for the Property and note as follows:

REGISTERED OWNER:

The current registered owner of the Property is Penady (Barrie) Ltd. (the "Borrower"). Registered title to PINs 0092 and 0096 was acquired pursuant to a Transfer from Home Depot Holdings Inc. registered as Instrument No. SC1031846 on December 18, 2012, for consideration of \$6,374,152. Registered title to PINs 0106, 0109 and 0111 were acquired pursuant to a Transfer from Home Depot Holdings Inc. registered as Instrument No. SC614148 on 2007/12/24 for consideration of \$12,857,931 (SEVERANCE CONSENT given in respect of this Transfer).

CHARGES/MORTGAGES:

Our review of title has disclosed that the Property is subject to the following Charges/Mortgages:

1. Instrument No. SC1210287 registered May 14, 2015, being a first Charge/Mortgage in favour of EQUITABLE BANK (the "First Chargee"), securing the original principal sum of \$49,125,739.

As collateral security to this Charge/Mortgage, the First Chargee has been granted a General Assignment of Rents registered as Instrument No. SC1210288 on the same date.

2. Instrument No. SC1184716 registered December 24, 2014, being a second Charge/Mortgage in favour of CHOICE PROPERTIES GP INC. (the "Second Chargee"), securing the original principal sum of \$30,000,000.

As collateral security to this Charge/Mortgage, the Second Chargee has been granted a General Assignment of Rents registered as Instrument No. SC1184717 on the same date.

As the Second Charge was registered first, it postponed to the First Charge as follows:

- (a) SC1210395 2015/05/14 POSTPONEMENT CHOICE PROPERTIES GP INC. to EQUITABLE BANK - REMARKS: SC1184716 TO SC1210287
- (b) SC1210396 2015/05/14 POSTPONEMENT CHOICE PROPERTIES GP INC. EQUITABLE BANK - REMARKS: SC1184717 TO SC1210287
- (c) SC1210397 2015/05/14 POSTPONEMENT CHOICE PROPERTIES GP INC. EQUITABLE BANK - REMARKS: SC1184716 TO SC1210288

- (d) SC1210398 2015/05/14 POSTPONEMENT CHOICE PROPERTIES GP INC.
EQUITABLE BANK - REMARKS: SC1184717 TO SC1210288

ENCUMBRANCES:

The Property is subject to the following registered Encumbrances:

1. RO183788 1964/05/06 BYLAW
2. RO1001170 1988/05/13 AGREEMENT (not on 0096, 0109, 0111)
3. RO1169034 1991/11/07 AGREEMENT THE CORP. OF THE CITY OF BARRIE (not on 0096, 0109, 0111)
4. RO1169379 1991/11/13 AGREEMENT THE CITY OF BARRIE (not on 0092, 0106, 0109)
5. RO1200481 1992/09/24 AGREEMENT THE CITY OF BARRIE (not on 0096, 0109, 0111)
6. SC612948 2007/12/20 NOTICE \$2 THE CORPORATION OF THE CITY OF BARRIE HOME DEPOT HOLDINGS INC. (not on 0109)
7. SC859961 2010/10/19 NOTICE \$2 THE CORPORATION OF THE CITY OF BARRIE PENADY (BARRIE) LTD. (0111 only)
8. SC1028712 2012/12/04 NOTICE \$2 THE CORPORATION OF THE CITY OF BARRIE PENADY (BARRIE) LTD., HOME DEPOT HOLDINGS INC. AND LOBLAW PROPERTIES LIMITED
9. SC1028755 2012/12/04 NOTICE \$2 THE CORPORATION OF THE CITY OF BARRIE PENADY (BARRIE) LTD., HOME DEPOT HOLDINGS INC. AND LOBLAW PROPERTIES LIMITED
10. SC1031847 2012/12/18 APL ANNEX REST COV PENADY (BARRIE) LTD. (not on 0106, 0109, 0111)
11. SC1051680 2013/04/18 NOTICE \$1 PENADY (BARRIE) LTD.
12. SC1061856 2013/06/10 NOTICE \$2 THE CORPORATION OF THE CITY OF BARRIE PENADY (BARRIE) LTD. (0111 only)
13. SC1186008 2015/01/07 NOTICE LOBLAW PROPERTIES LIMITED
14. SC1253500 2015/10/20 NOTICE \$2 THE CORPORATION OF THE CITY OF BARRIE. This had Postponements registered in respect of it as follows:
 - (a) SC1253501 2015/10/20 POSTPONEMENT CHOICE PROPERTIES GP INC. THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1184717, SC1253500

- (b) SC1253502 2015/10/20 POSTPONEMENT EQUITABLE BANK THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1210287, SC1253500
 - (c) SC1253503 2015/10/20 POSTPONEMENT EQUITABLE BANK THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1210288, SC1253500
 - (d) SC1253504 2015/10/20 POSTPONEMENT CHOICE PROPERTIES GP INC. THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1184716 TO SC1253500
15. SC1353259 2016/10/19 NOTICE \$2 PENADY (BARRIE) LTD.
16. SC1368395 2016/12/05 NOTICE \$2 MCDONALD'S RESTAURANTS OF CANADA LIMITED
17. SC1368396 2016/12/05 NOTICE \$2 MCDONALD'S RESTAURANTS OF CANADA LIMITED - REMARKS: SC1210287 (the charge in favour of the First Chargee)
18. SC1508910 2018/05/07 NOTICE OF SITE PLAN AGREEMENT with THE CORPORATION OF THE CITY OF BARRIE. (not on 0096, 0106, 0109, 0111) This had Postponements registered in respect of it as follows:
- (a) SC1508911 2018/05/07 POSTPONEMENT EQUITABLE BANK to THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1210287 TO SC1508910
 - (b) SC1508912 2018/05/07 POSTPONEMENT EQUITABLE BANK THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1210288 TO SC1508910
 - (c) SC1508913 2018/05/07 POSTPONEMENT CHOICE PROPERTIES GP INC. THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1184716 TO SC1508910
 - (d) SC1508914 2018/05/07 POSTPONEMENT CHOICE PROPERTIES GP INC. THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1184717 TO SC1508910
19. SC1508915 2018/05/07 NOTICE \$2 THE CORPORATION OF THE CITY OF BARRIE (0111 only). This had Postponements registered in respect of it as follows:
- (a) SC1508916 2018/05/07 POSTPONEMENT EQUITABLE BANK THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1210287 TO SC1508915
 - (b) SC1508917 2018/05/07 POSTPONEMENT EQUITABLE BANK THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1210288 TO SC1508915

(c) SC1508918 2018/05/07 POSTPONEMENT CHOICE PROPERTIES GP INC. THE CORPORATION OF THE CITY OF BARRIE - REMARKS: SC1184716 TO SC1508915

(d) SC1508919 2018/05/07 POSTPONEMENT CHOICE PROPERTIES GP INC. THE CORPORATION OF CITY OF BARRIE - REMARKS: SC1184717 TO SC1508915

20. SC1586826 2019/04/11 CERTIFICATE CONCORD PLUMBING & HEATING LTD. - REMARKS: SC1585811. This appears to relate to a Claim for Lien registered as SC1585811 that has been deleted from title, so this Instrument should be deleted from title (see Instrument No. SC1600362, being the Application to Delete registered in respect of SC1585811). (not on 0096, 0106, 0109)

NOTICES OF LEASE:

The Property is subject to the following Notices of Lease:

1. SC1068837 2013/07/10 NOTICE OF LEASE \$2 PENADY (BARRIE) LTD. MCDONALD'S RESTAURANTS OF CANADA LIMITED (on 0106 and 0109)
2. 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.
3. Instrument No. SC1210520 registered 2015/05/14 is a Notice of Lease relating to a lease in favour of LAF CANADA COMPANY as Tenant.
4. SC1368394 2016/12/05 NOTICE OF LEASE \$2 MCDONALD'S RESTAURANTS OF CANADA LIMITED from PENADY (BARRIE) LTD.
5. SC1368727 2016/12/06 NOTICE OF LEASE PENADY (BARRIE) LTD. 1541396 ONTARIO INC. This is subject to a NO CHARGE LEASE registered as Instrument No. SC1370879 on 2016/12/13 for \$1,300,000 in favour of THE BANK OF NOVA SCOTIA.
6. SC1518508 2018/06/19 NOTICE OF LEASE \$2 PENADY (BARRIE) LTD. to THE SHERWIN-WILLIAMS COMPANY - REMARKS: EXPIRY DATE: MARCH 31, 2027.

RIGHTS-OF-WAY/EASEMENTS:

The Property is subject to the following registered Rights-of-Way/Easements:

1. RO1200479 1992/09/24 TRANSFER EASEMENT THE CORPORATION OF THE CITY OF BARRIE (PIN 0111 only)
2. SC1271000 2015/12/18 TRANSFER EASEMENT by PENADY (BARRIE) LTD., PENADY (NORTH BARRIE) LIMITED and CP REIT ONTARIO PROPERTIES LIMITED to ENBRIDGE GAS DISTRIBUTION INC.
3. SC1272955 2015/12/30 TRANSFER EASEMENT \$2 PENADY (BARRIE) LTD. POWERSTREAM INC. This had Postponements registered in respect of it as follows:

- (a) SC1272956 2015/12/30 POSTPONEMENT CHOICE PROPERTIES GP INC. POWERSTREAM INC. - REMARKS: SC1184716 TO SC1272955
- (b) SC1272957 2015/12/30 POSTPONEMENT CHOICE PROPERTIES GP INC. POWERSTREAM INC. - REMARKS: SC1184717 TO SC1272955
- (c) SC1272958 2015/12/30 POSTPONEMENT EQUITABLE BANK POWERSTREAM INC. - REMARKS: SC1210287 TO SC1272955
- (d) SC1272959 2015/12/30 POSTPONEMENT EQUITABLE BANK POWERSTREAM INC. - REMARKS: SC1210288 TO SC1272955
- (e) SC1275252 2016/01/13 POSTPONEMENT LAF CANADA COMPANY POWERSTREAM INC. - REMARKS: SC1210520 TO SC1272955
- (f) SC1279390 2016/01/29 POSTPONEMENT MCDONALD'S RESTAURANTS OF CANADA LIMITED POWERSTREAM INC. - REMARKS: SC1068837 TO SC1272955 (on 0106 and 0109 only)
- (g) SC1282197 2016/02/11 POSTPONEMENT THE TDL GROUP CORP. POWERSTREAM INC. - REMARKS: SC1194350 TO SC1272955.

EXECUTIONS:

We have searched executions against the Borrower with the Sheriff's Office of the City of Barrie and, as of May 25, 2020, there are no executions.

ADJOINING LANDS/PLANNING ACT:

We have not conducted a search under the *Planning Act* (Ontario) against the lands adjoining the Property.

LEGAL DESCRIPTION:

The Property is registered under the *Land Titles System* and under the *Land Registration Reform Act* (Ontario) and has been given a Fee Simple, LT Conversion Qualified Status. The current legal description of the Property is as follows:

“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”

SURVEY v. DESCRIPTION:

We do not have a Survey of the Property to allow us to review the boundaries of the Property. The foregoing comments are qualified to the extent to which having an up-to-date plan of survey may disclose any rights, further encroachments, interests, claims or discrepancies relating to same.

Dated: May 25, 2020

SCHEDULE "D"

Legal Description of 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