

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

THE HONOURABLE) WEDNESDAY, THE 9th DAY
)
JUSTICE McEWEN) OF SEPTEMBER, 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 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 of certain of the assets, undertakings and properties of PRC Barrie Corp. ("**PRC Barrie**") and Mady (Barrie) Inc. ("**MBI**"), for an order, among other things, authorizing and directing the Receiver to carry out the asset purchase agreement (the "**APA**") with Choice Properties Limited Partnership (the "**Purchaser**") as purchaser for the sale of all of the right, title and interest of PBL, PRC Barrie and MBI (collectively, the "**Debtors**") in and to the assets and real property described in the APA (the "**Purchased Assets**"), approving the sale transaction (the "**Transaction**") contemplated by the

APA, and vesting in the Purchaser the right, title and interest of the Debtors in and to the Purchased Assets, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Second Report of the Receiver dated August 31, 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 Eric Golden sworn September 8, 2020, filed,

1. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to carry out the APA with the Purchaser for the sale of all of the right, title and interest of the Debtors in and to the Purchased Assets.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APA 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 as the beneficial owner thereof with legal title to the Purchased Assets to be transferred to CP REIT Ontario Properties Limited, 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 McEwen dated May 15, 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 CP REIT Ontario Properties Limited 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 AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof, by sending it by e-mail to Dora.Charalambous@ontario.ca.

6. **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 each or all of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of each or all of the Debtors;

the vesting of the Purchased Assets in the Purchaser and CP REIT Ontario Properties Limited 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 each or all 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.

7. **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.

8. **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.



Schedule A – Form of Receiver’s Certificate

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

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**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its
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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 15, 2020, RSM Canada Limited was appointed as the receiver and manager (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**”).

B. Pursuant to an Order of the Superior Court dated September 9, 2020, the Superior Court approved the asset purchase agreement made as of May 20, 2020 (the “**APA**”) between the Receiver and Choice Properties Limited Partnership (the “**Purchaser**”) and provided for the vesting of the Debtors’ right, title and interest in and to the Purchased Assets in the Purchaser as

the beneficial owner thereof with legal title to the Purchased Assets to be transferred to CP REIT Ontario Properties Limited, 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.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

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

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

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

CHOICE PROPERTIES LIMITED PARTNERSHIP, ET AL.
Applicant

-and-

PENADY (BARRIE) LTD., ET AL.

Respondents

9 Sept 20

The Sale Approval and Vesting Order shall go, on an unopposed basis, as per the draft filed and signed.

I have reviewed the materials and heard submissions of counsel.

The Soundair principles have been met. The relief sought is fair and reasonable.



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

SALE APPROVAL AND VESTING ORDER

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in its capacity as Court-appointed Receiver