

**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

THIRD REPORT OF THE RECEIVER

December 2, 2021

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I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 25, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”) was appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. (“**PBL**”) acquired for, or used in relation to a business carried on by PBL, including all proceeds thereof, and the interest of PRC Barrie Corp. (“**PRC Barrie**”) in the Barrie Property (defined below) and all assets, undertakings and properties related thereto. A copy of the Appointment Order and the related Endorsement of Justice McEwen made March 25, 2020, are attached as **Appendix “A”** and **Appendix “B”**, respectively, to this report.
2. PBL was the owner of commercial rental property (the “**Barrie Property**”) located at the intersection of Cundles Road and Duckworth Avenue in Barrie, which forms part of the North Barrie Crossing Shopping Centre in Barrie, Ontario.
3. On May 8, 2020, the Applicant brought a motion for the purpose of seeking an Order amending the Appointment Order to include Mady (Barrie) Inc. (“**MBI**”) as a respondent, and to appoint RSM as receiver and manager without security over MBI’s interest in the Barrie Property, and all assets, undertakings and properties related thereto (together with the interests of PBL and PRC Barrie in the Barrie Property, the “**Property**”).
4. On May 12, 2020, the Receiver brought a motion, returnable on May 20, 2020 (the “**SISP Motion**”), for the purpose of, *inter alia*, seeking an Order:

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- i) authorizing the Receiver to conduct the Sale Procedure (as defined in the Receiver's first report to the Court dated May 12, 2020 (the "**First Report**"));
 - ii) authorizing the Receiver to enter into a listing agreement with Avison Young Commercial Real Estate (Ontario) Inc. ("**Avison Young**"); and
 - iii) authorizing the Receiver to enter into the Stalking Horse Agreement (as defined in the First Report) with Choice Properties Limited Partnership ("**CHP**").

A copy of the First Report, without appendices, in support of the SISP Motion is attached to this report as **Appendix "C"**.

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

an Endorsement made that day (the “**May 25 Endorsement**”). A copy of the May 25 Endorsement is attached to this report as **Appendix “F”**.

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

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- iv) approved the obligation to pay an expense reimbursement to CHP pursuant to Section 8.2 of the Stalking Horse Agreement and Section 13 of the Sale Procedure; and
 - v) directed the Receiver to use best efforts to obtain estoppel certificates from seven specified tenants of the Barrie Property, and arrange for a property condition assessment and an updated Phase 1 environmental report for the Barrie Property.

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

11. On August 31, 2020, the Receiver brought a motion, returnable on September 9, 2020, for the purpose of, *inter alia*, seeking an Order:

- i) authorizing and directing the Receiver to carry out the terms of the Stalking Horse Agreement, together with any further minor amendments thereto deemed necessary by the Receiver; and
- ii) approving the sale of the Barrie Property in accordance with the terms of the Stalking Horse Agreement and vesting in CHP, or as CHP may further direct in writing, all right, title and interest of the Respondents in and to the Barrie Property, free and clear of all encumbrances, estates, rights, title, liens, interest and claims (other than permitted encumbrances), upon closing of the transaction under the Stalking Horse Agreement and the delivery of a Receiver’s Certificate to CHP.

A copy of the Receiver's second report to the Court dated August 31, 2020 (the "**Second Report**"), without appendices, in support of the Receiver's motion is attached to this report as **Appendix "K"**.

12. On September 9, 2020 the Receiver's motion was heard, and Justice McEwen issued:

- i) an Approval and Vesting Order authorizing the Receiver to complete the Stalking Horse Agreement and, upon the completion of the sale transaction and the issuance of a Receiver's Certificate, vesting title in and to the Barrie Property in CHP (the "**Sale Approval and Vesting Order**"); and
- ii) an Order, among other things, approving the Second Report and the activities of the Receiver described therein (the "**September 9 Approvals Order**").

Copies of the Sale Approval and Vesting Order and the September 9 Approvals Order are attached to this report as **Appendix "L"** and **Appendix "M"**, respectively.

13. The Appointment Order, the Amended and Restated Order (Appointing Receiver), the Sale Procedure Approval Order, the First Report, the Supplemental First Report, the Second Report, the Sale Approval and Vesting Order, the September 9 Approvals Order and other Court documents have been posted on the Receiver's website, which can be found at rsmcanada.com/penady-barrie-ltd.

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14. The Receiver has retained the firm of Blaney McMurtry LLP ("**Blaney**") to act as its independent legal counsel.

II. PURPOSE OF THE REPORT

15. The purpose of this third report of the Receiver (the "**Third Report**") is to:
- (a) report to the Court on the activities of the Receiver since the Second Report (August 29, 2020) to December 1, 2021;
 - (b) report to the Court on the completion of the sale of the Barrie Property;
 - (c) report to the Court on PRC Barrie's HST obligations to Canada Revenue Agency ("**CRA**"), and the request of the Receiver for the Court's approval for the Receiver to pay the Deemed Trust Amount (as defined below) in full and final satisfaction of any CRA deemed trust claims against the Respondents relating to the Property;
 - (d) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period from March 27, 2020 to November 30, 2021 (the "**R&D**"); and
 - (e) seek an Order:
 - (i) approving the Receiver's payment to CRA of the Deemed Trust Amount in full and final satisfaction of any CRA deemed trust claims against the Respondents relating to the Property;
 - (ii) authorizing the Receiver to pay to CHP the CHP Distribution (as defined below) as a reduction of the Receiver's Certificate Obligations (as defined below);

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- (iii) approving the Third Report, the Receiver's conduct and activities described therein, and the R&D;
 - (iv) approving the fees of the Receiver from August 1, 2020 to November 30, 2021, and estimated to completion;
 - (v) approving the fees of Blaney from August 1, 2020 to November 30, 2021, and estimated to completion;
 - (vi) releasing the Receiver and RSM from the Remaining Receiver's Certificate Obligations;
 - (vii) discharging the Receiver upon the Receiver filing a certificate with the Court confirming that the Receiver has completed the Remaining Duties defined later herein (the "**Receiver's Discharge Certificate**") and authorizing the Receiver to complete certain administrative matters following the discharge of the Receiver; and
 - (viii) authorizing the Receiver to pay to CHP any additional funds the Receiver may receive in respect of the receivership administration, whether prior to or following the Receiver's discharge, provided that the total amounts paid to CHP do not exceed the Respondents' indebtedness to CHP and the Remaining Receiver's Certificate Obligations.

Terms of Reference

16. In preparing this Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in this report may refer to, or is based on, the

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

17. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.
18. Defined terms in the Third Report have, unless indicated otherwise herein, the same meanings as set out in the First Report, the Supplemental First Report, the Second Report, the Sale Procedure and the Stalking Horse Agreement.

III. BACKGROUND

19. A detailed description of the parties to this matter, and the events leading up to the appointment of the Receiver, is set out in the Second Report.
20. In summary:
 - i) PBL is a subsidiary of PenEquity Realty Corporation (“**PenEquity**”), an Ontario-based real estate investment advisor that principally focuses on purchasing and developing real estate;

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- ii) PBL was, prior to its sale by the Receiver, the registered owner of the Barrie Property;
 - iii) PRC Barrie and MBI were, until the sale of the Barrie Property by the Receiver, the beneficial owners (the “**Beneficial Owners**”) of the Barrie Property;
 - iv) PBL held the Barrie Property as nominee and bare trustee for the Beneficial Owners;
 - v) Choice Properties GP Inc. (“**Choice GP**”) is the general partner of CHP, the Applicant in these proceedings. Choice GP is a subsidiary of Choice Real Estate Investment Trust;
 - vi) CHP is the senior secured lender to PBL. The security granted to CHP included, *inter alia*, a limited recourse guarantee granted by PRC Barrie and MBI;
 - vii) CHP advanced funding to PBL to assist with the development of the Barrie Property. CHP also paid out PBL’s indebtedness to Equitable Bank, which previously held a first mortgage over the Barrie Property (the “**EQ Debt**”) ranking in priority to that of CHP’s mortgage;
 - viii) CHP’s secured facility matured on January 31, 2020. For various reasons, including that the amounts owing by PBL to CHP were not repaid and the unpaid realty taxes for the Barrie Property for 2018, 2019 and 2020 had accumulated to approximately \$2.2 million, on March 9,

2020, the Applicants made an application (the “**Application**”), returnable on March 10, 2020, for the appointment of a receiver over PBL and the interest of PRC Barrie in the Barrie Property;

- ix) the Application was adjourned to March 25, 2020 and, on that day, Justice McEwen issued an Endorsement confirming that an Order appointing a Receiver be issued;
- x) after the terms of the Order appointing a Receiver were finalized, on March 27, 2020, Justice McEwen issued the Appointment Order dated March 25, 2020, appointing RSM as the Receiver of PBL and PRC Barrie’s interest in the Barrie Property; and
- xi) on May 8, 2020, Justice McEwen issued the Amended and Restated Order (Appointing Receiver) to include MBI’s interest in the Barrie Property in the definition of “Property” subject to the receivership.

IV. COMPLETION OF THE SALE OF THE BARRIE PROPERTY

- 21. Following the issuance of the Approval and Vesting Order, the Receiver proceeded to close the sale transaction with CHP on September 23, 2020.
- 22. Pursuant to the terms of the Stalking Horse Agreement, the consideration paid by CHP was a reduction in PBL’s indebtedness to CHP in respect of the Barrie Property, and no cash consideration was paid to the Receiver on closing.

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23. A copy of the Receiver's Certificate filed on September 24, 2020 with the Court confirming the completion of the sale of the Barrie Property is attached as **Appendix "N"** to this report.
 24. As a result of the sale of the Barrie Property, the Receiver effected the cancellation of the liability insurance for the Barrie Property on September 24, 2020.
 25. In the Second Report, the Receiver indicated that leases with two prospective new tenants were in the process of being finalized or signed. The leases were not signed prior to the sale of the Barrie Property and CHP assumed responsibility for dealing with those prospective tenants.

V. CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE ("CECRA")

26. On April 24, 2020, the Government of Canada (the "**Government**") announced an emergency rent assistance program to help commercial tenants impacted by COVID-19. Under the terms of CECRA, the Government would provide forgivable loans to qualifying commercial property owners to cover 50% of three monthly rent payments that were payable by eligible small business tenants who were experiencing financial hardship during April, May and June 2020. CECRA was later extended to cover rent payments in July, August and September 2020.
27. The total amount claimed and received by the Receiver under the CECRA program for the months of April 2020 through September 2020 was \$282,679. Of this amount, \$47,113 was received in respect of September 2020 rent and was

subsequently transferred to CHP in accordance with the terms of the sale transaction.

VI. LETTERS OF CREDIT

Letter of Credit held by City of Barrie

28. In 2015, an Irrevocable Standby Letter of Credit in the amount of \$500,000 was issued by Equitable Bank (the “**EQ LC**”) on behalf of PBL to the City of Barrie as security for servicing and surface works, as well as parks planning and development landscape works to be completed by PBL at the Barrie Property. The EQ LC was not released by the City of Barrie, but was replaced with cash security by Equitable Bank after Choice paid out the EQ Debt.

29. In the Second Report, the Receiver reported that the estimated cost to remedy the civil deficiencies was \$25,000 to \$28,000 in hard costs and approximately \$230,000 to remedy soft landscape deficiencies.

30. As a result of the sale of the Barrie Property, CHP assumed responsibility for addressing the outstanding work and dealing with the City of Barrie to obtain the release of the EQ LC.

Letter of Credit held by Gardiner Roberts LLP

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

Property. Upon further inquiry and review, the Receiver determined that the unclaimed balance outstanding under the BMO LC was \$889,495.

32. On August 5, 2020, Gardiner wrote to BMO making demand on the BMO LC in the amount of \$889,495. This amount was received by Gardiner and forwarded to the Receiver on September 10, 2020.

VII. CLAIM OF CANADA REVENUE AGENCY

33. As set out in the Second Report, Canada Revenue Agency (“**CRA**”) advised the Receiver that the amount of \$43,842.39 in respect of HST was owed by PRC Barrie for the periods December 1 to 31, 2019, and February 1 to 29, 2020. CRA asserted that the amount of \$43,842.39 represented property of the Crown held in trust which did not form part of PRC Barrie’s property, business or estate.
34. On October 9, 2020, CRA issued a Notice of Assessment (the “**October 9 NOA**”) against PRC Barrie, assessing it an additional \$94,134.91 for the period March 1 to March 27, 2020, and \$44,451.48 for prior periods, for a total HST liability of \$138,586.39.
35. On December 22, 2020, CRA issued an updated demand letter advising the Receiver that PRC Barrie’s HST liability was now \$136,373.17, of which the amount of \$134,522.87 represented property of the Crown held in trust which did not form part of PRC Barrie’s property, business or estate (the “**Deemed Trust Amount**”).

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36. In January 2021, CRA advised the Receiver that CRA would be conducting a trust exam to audit HST returns for the 12-month period prior to the date of receivership. The CRA audit was completed in October 2021 and, on October 7, 2021, CRA wrote to PRC Barrie advising that it had completed its audit and no re-assessment of the prior return(s) was necessary.
 37. On October 21, 2021, CRA issued an updated demand letter advising the Receiver that PRC Barrie's HST liability was now \$145,926.51, with no change to the Deemed Trust Amount.
 38. The Receiver did not previously seek its discharge because of a concern that if the Receiver made its final distribution to CHP without deemed trust amounts being finalized, CRA could at a later date take the position that the proceeds from the sale of the Barrie Property were subject to CRA's deemed trust claim, and that CRA could choose to pursue the Receiver and CHP for payment of any unpaid deemed trust amounts.
 39. CHP entered into negotiations with the Respondents regarding payment of the Deemed Trust Amount by the Receiver.
 40. Following negotiations between counsel for CHP, the Respondents and Crown Capital Private Credit Management Inc. (a secured creditor of PRC Barrie), a settlement was reached which provides for, among other things, that \$100,000 be paid by PRC Barrie to the Receiver in respect of the Deemed Trust Amount (the "**Settlement Amount**").

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41. The Receiver is not aware of any further deemed trust claims against PBC Barrie, and the Receiver is not aware of any deemed trust claims against PBL, or to MBI's interest in the Barrie Property.
 42. The Receiver is seeking the Court's approval to pay to CRA the Deemed Trust Amount in full and final satisfaction of any deemed trust claims against the Respondents relating to the Property.

VIII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

43. Attached to this report as **Appendix "O"** is the Receiver's R&D as of November 30, 2021.
44. As set out in the R&D, receipts are \$5,392,177, consisting primarily of advances of \$3,200,000 from CHP under Receiver Certificates No. 1, 2 and 3 (together with interest accrued thereon, the "**Receiver's Certificate Obligations**"), rent of \$888,174, proceeds from the BMO LC of \$889,495, and net payments from CECRA of \$235,566. Disbursements are \$4,261,267, which includes payment of \$2,952,082 in respect of 2018, 2019 and 2020 property taxes for the Barrie Property.
45. As set out on the R&D, the excess of cash receipts over disbursements as of November 30, 2021 is \$1,130,911 (the "**Remaining Funds**").

IX. PROFESSIONAL FEES

46. The Receiver's accounts for the period August 1, 2020 to November 30, 2021 total \$161,647.50 in fees, plus HST of \$21,014.22 for a total amount of \$182,661.72 (the "**Receiver's Invoices**"). The Receiver estimates that its fees from December 1, 2021 to finalization of the receivership administration will be \$25,000.00 inclusive of HST (together with the Receiver's Invoices, the "**Receiver's Accounts**"). A copy of the Receiver's Invoices, together with a summary of the Receiver's Invoices, the total billable hours charged per the Receiver's Invoices, and the average hourly rate charged per the Receiver's Invoices, is set out in the Affidavit of Daniel Weisz sworn December 1, 2021 attached hereto as Appendix "**P**".
47. The accounts of the Receiver's counsel, Blaney, total \$104,150.88 in fees and disbursements and \$13,525.56 in HST for a total of \$117,676.44 for the period August 1, 2020 to November 30, 2021 (the "**Blaney Invoices**"). Blaney estimates that its fees from December 1, 2021 to finalization of the receivership administration will be \$25,000 inclusive of HST (together with the Blaney Invoices, the "**Blaney Accounts**"). Copies of the Blaney Invoices, together with a summary of the personnel, hours and hourly rates described in the Blaney Invoices, are set out in the Affidavit of Chad Kopach sworn December 2, 2021 attached to this report as Appendix "**Q**".

X. PAYMENT OF FUNDS IN THE RECEIVER'S POSSESSION

48. As set out on the R&D, there were net funds on hand of \$1,130,911 as at November 30, 2021. The remaining payments to be made by the Receiver are:

- i) the Deemed Trust Amount;
- ii) the unpaid Receiver's Accounts in the amount of \$33,841.69 (including estimate to completion); and
- iii) the unpaid Blaney Accounts in the amount of \$35,845.18 (including estimate to completion).

49. Following payment of the above amounts from the Remaining Funds, the Receiver estimates that the funds that will be in the possession of the Receiver will be approximately \$1,026,000, including the Settlement Amount of \$100,000 to be received, (the "**CHP Distribution**"). This amount is exclusive of HST refunds of \$405.09 which the Receiver has claimed and future HST refunds of up to approximately \$8,000 that the Receiver would be eligible to claim on future expenses. CRA has advised the Receiver that HST refunds will not be released unless the outstanding 2020 corporate tax return for PBL is filed.

50. The Receiver estimates that the cost of preparing the 2020 corporate tax return will be greater than the potential HST refunds that might be received. Accordingly, the Receiver does not intend to file PBL's outstanding 2020 corporate tax return. The Receiver notes that expenses exceeded income during the period of the

receivership and, as a result, the Receiver is not aware of any taxable net income generated by PBL in 2020 after the date of receivership.

51. The amount owing to CHP by PBL as at November 30, 2021 is \$18,664,190.82, including the Receiver Certificate Obligations of \$3.2 million, plus accrued interest, that CHP funded (the “**PBL Indebtedness**”). Attached herein as **Appendix “R”** is a copy of the CHP payout statement as of November 30, 2021.
52. CHP has advised the Receiver that following payment to CHP of the CHP Distribution and any further HST refunds (which based on the above are not expected to materialize), CHP will still incur a substantial shortfall on the PBL Indebtedness, even after realization on guarantees and collateral security CHP is holding for the CHP Indebtedness.
53. After payment of the CHP Distribution, the Receiver will not have fully repaid the Receiver’s Certificate Obligations. The Receiver estimates that the unpaid balance of the Receiver’s Certificate Obligations will be more than \$2,100,000 plus interest (the “**Remaining Receiver’s Certificate Obligations**”). The Receiver is seeking an Order releasing the Receiver and RSM from the Remaining Receiver’s Certificate Obligations.

XI. DISCHARGE OF THE RECEIVER

54. As of the date of this Third Report, the Receiver’s remaining activities (the “**Remaining Duties**”) are:

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- i) paying to CRA the Deemed Trust Amount in full and final satisfaction of any CRA deemed trust claims against the Respondents relating to the Property;
 - ii) paying the unpaid portion of the Receiver's Accounts and the Blaney Accounts;
 - iii) following the above noted payments, paying to CHP the CHP Distribution;
 - iv) filing the Receiver's HST returns; and
 - v) preparing and filing the Final Statement of Receiver pursuant to section 246(3) of the *Bankruptcy and Insolvency Act*.

55. As the Receiver's administration is substantially complete, and in order to avoid the costs of making a further motion to the Court to obtain the Receiver's discharge, the Receiver is presently seeking an order discharging RSM from the powers, duties and obligations attendant to its appointment as Receiver (the "**Discharge Order**") upon the filing of the Receiver's Discharge Certificate, with the proviso that RSM may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, but not limited to, the Remaining Duties.

56. The Receiver is also seeking an Order authorizing the Receiver to pay to CHP any additional funds that the Receiver may receive in respect of the receivership administration, whether prior to or following the Receiver's discharge, provided that the total amounts paid to CHP do not exceed (i) the Respondents' indebtedness to CHP and (ii) the Remaining Receiver's Certificate Obligations. In making this

request, the Receiver notes that Blaney provided to the Receiver Blaney's opinion that subject to standard qualifications, and limitations, the security held by CHP against the Barrie Property is valid and enforceable. A copy of Blaney's opinion was attached as Appendix BB to the Supplemental First Report.

XII. CONCLUSION

57. The Receiver respectfully requests that the Court grant an Order:

- i) approving the Receiver's payment to CRA of the Deemed Trust Amount in full and final satisfaction of any CRA deemed trust claims against the Respondents relating to the Property;
- ii) authorizing the Receiver to make the CHP Distribution as a reduction of the Receiver's Certificate Obligations;
- iii) approving the Third Report, the Receiver's conduct and activities described therein, and the R&D;
- iv) approving the Receiver's Accounts;
- v) approving the Blaney Accounts;
- vi) releasing the Receiver and RSM from the Remaining Receiver's Certificate Obligations;
- vii) discharging the Receiver upon the Receiver filing the Receiver's Discharge Certificate and authorizing the Receiver to complete certain administrative matters following the discharge of the Receiver; and
- viii) authorizing the Receiver to pay to CHP any additional funds the Receiver may receive in respect of the receivership administration,

whether prior to or following the Receiver's discharge, provided that the total amounts paid to CHP do not exceed the Respondents' indebtedness to CHP and the Remaining Receiver's Certificate Obligations.

All of which is respectfully submitted to this Court as of this 2nd day of December, 2021

RSM CANADA LIMITED

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



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

Appendix A

Court File No. CV-20-00637682-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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



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

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

Respondents

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

ORDER
(appointing Receiver)

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

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

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

SEALING ORDER

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

GENERAL

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

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

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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


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

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

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

MAR 27 2020

PER / PAR: 

SCHEDULE "A"**PRC BARRIE CORP. REAL PROPERTY DESCRIPTION****58830-0092 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN 51R35759; BARRIE****58830-0096 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN 51R35759; BARRIE****58830-0106 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE****58830-0109 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE****58830-0111 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE**

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Penady (Barrie) Ltd. and PRC Barrie Corp. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of March, 2020 (the "Order") made in an application having Court file number ~~___-CL-~~_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 2020.

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

Per: _____

Name:

Title:

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

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

and

Court File No: CV-20-00637682-OOCL

Applicant

Respondents

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

ORDER (Appointing a Receiver)

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

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Counsel for the Applicant

Our Matter No. 1165673

Appendix B

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Choice Properties Limited Partnership
Plaintiff(s)

AND

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

Case Management Yes No by Judge: _____

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

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
 Adjourned to: _____
 Time Table approved (as follows):

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

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

25 March 20
Date

McEWT
Judge's Signature

Additional Pages _____

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

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

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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

50.

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

Bank of Nova Scotia v Frewer Village on Clair Creek 1996 CarswellOnt 2328 (Gen Div), Callidus Capital Corp vs Concept Inc, 2012 ONSC 163. The Court is

also to consider and balance the competing interests of the various economic stakeholders: Romspen Investment Corp v. 6711162 Canada Inc 2014 ONSC 2781.

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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

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

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

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

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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

⑥ PBL has demonstrated inability to service its debt

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

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

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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

to terms.

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

In this regard, the Respondents submit the following:

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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

regard to the detriment of PBL.

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

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

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

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

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Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

③ Respondents also argue that the Applicant could have paid the ~~withheld~~ ^{proper} taxes to prevent the accrual of interest. I see little merit to this argument, as it is not the Applicant's obligation to do so, and PBL stopped payment without notice to the Applicant.

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

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Judges Endorsment Continued

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

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

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

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

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

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

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

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

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

I will remain seized of this
matter.

M&T

Counsel Slip

Choice Properties Limited Partnership

v.

Penady (Barrie) Ltd. and PRC Barrie Corp.

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

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 Sandy Hay (Osler)

Brian Tannenbaum - proposed receiver
 Eric Golden - Blane's proposed receiver
 David Johnston - PRC
 Robert Swartz - Candine Roberts
 Neil Miller - Pen Equity

Appendix C

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

Respondents

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

MAY 12, 2020

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I. INTRODUCTION

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

-
- to carry on all or any part of the business, or cease to perform, modify or terminate any contracts of either PBL and/or PRC Barrie;
- (c) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
 - (d) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause.
4. The Appointment Order and other Court documents have been posted on the Receiver's website, which presently can be found at rsmcanada.com/penady-barrie-inc.
5. The Receiver has retained the firm of Blaney McMurtry LLP ("**Blaney**") to act as its independent legal counsel.

II. PURPOSE OF THE REPORT

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

Terms of Reference

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

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

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

III. BACKGROUND

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

- 507-527 Cundles Road East,

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

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

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

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

IV. RECEIVER'S ACTIVITIES TO DATE

Property Manager

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

Banking

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

Insurance

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

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

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

Statutory Notices

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

Property Taxes

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

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

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

V. TENANTS OF THE BARRIE PROPERTY

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

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

VI. LETTERS OF CREDIT

Letter of Credit held by City of Barrie

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

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

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

Letter of Credit held by Gardiner Roberts LLP

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

VII. PROPOSED SALE PROCESS

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

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

VIII. THE STALKING HORSE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

IX. THE SALE PROCEDURE

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

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

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

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

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

X. THE AVISON YOUNG LISTING AGREEMENT

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

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

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

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

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

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

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

Sealing of Commercial Sensitive Terms

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

XI. SECURED OR PRIORITY CLAIMS

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

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

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

Claims of Canada Revenue Agency

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

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

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

XII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

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

XIII. CONCLUSION

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

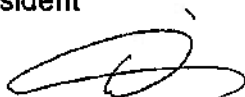
All of which is respectfully submitted to this Court as of this 12th day of May, 2020

RSM CANADA LIMITED

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



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



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

Appendix D

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



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
 JUSTICE MCEWEN

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WEDNESDAY, THE 25TH
 DAY OF MARCH, 2020

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

Applicant

- and -

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

Respondents

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

**AMENDED & RESTATED ORDER
 (appointing Receiver)**

THIS APPLICATION made by Choice Properties Limited Partnership (“Choice” or the “Applicant”), by its general partner Choice Properties GP Inc., for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) was heard this day via telephone conference in Toronto, Ontario.

ON READING the affidavit of Mario Barrafato sworn March 9, 2020 and the Exhibits thereto, the affidavit of Cameron Lewis sworn March 19, 2020 and the Exhibits thereto, the affidavit of Neil Miller sworn March 20, 2020 and the Exhibits thereto, the affidavit of Mario

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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monies, including, without limitation, to enforce any security held by PBL and, solely as it relates to the Property, by the Beneficial Owners;

- (g) to settle, extend or compromise any indebtedness owing to PBL and, solely as it relates to the Property, to the Beneficial Owners;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any or all of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to PBL, the Beneficial Owners (solely as it relates to the Property), the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any or all of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any or all of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which PBL and, solely as it relates to the Property, the Beneficial Owners may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto

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paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

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NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

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

EMPLOYEES

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

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such

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information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

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shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the

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monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by

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forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

SEALING ORDER

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

GENERAL

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

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

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

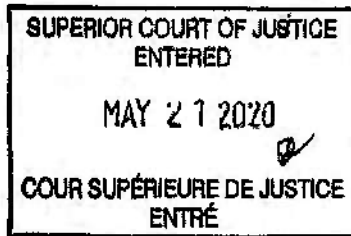
- 14 -

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

McE T.



SCHEDULE "A"**REAL PROPERTY DESCRIPTION****58830-0092 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN
51R35759; BARRIE****58830-0095 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN
51R35759; BARRIE****58830-0106 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE****58830-0109 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE****58830-0111 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 20, 21, 25, 35 & 36 51R35759. SUBJECT TO
EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE**

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SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

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to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 2020.

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

Per: _____

Name:

Title:

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SCHEDULE "A"**REAL PROPERTY DESCRIPTION****58830-0092 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN
51R35759; BARRIE****58830-0096 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN
51R35759; BARRIE****58830-0106 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE****58830-0109 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE****58830-0111 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO
EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE**

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

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

Applicant

Respondents

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

**AMENDED AND RESTATED ORDER
(appointing Receiver)**

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

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

Counsel for the Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

| | | |
|--------------------|---|------------------------------|
| THE HONOURABLE MR. |) | FRIDAY, THE 15 TH |
| |) | |
| JUSTICE MCEWEN |) | DAY OF MAY, 2020 |

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

Applicant

- and -

PENADY (BARRIE) LTD. and PRC BARRIE CORP.

Respondents

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

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

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

ON READING the affidavit of Mario Barrafato sworn March 9, 2020 and the Exhibits thereto, the affidavit of Cameron Lewis sworn March 19, 2020 and the Exhibits thereto, the affidavit of Neil Miller sworn March 20, 2020 and the Exhibits thereto, the affidavit of Mario

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

SERVICE

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

AMENDED AND RESTATED ORDER (APPOINTING RECEIVER)

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

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

STYLE OF CAUSE

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

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

Applicant

- and -

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

Respondents

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

GENERAL

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

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

SCHEDULE "A"

(see attached)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicant

- and -

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

Respondents

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

AMENDED & RESTATED ORDER
(appointing Receiver)

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

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

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

EMPLOYEES

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

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

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

SEALING ORDER

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

GENERAL

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

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

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

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

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

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

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

SCHEDULE "A"**PRC BARRIE CORP. REAL PROPERTY DESCRIPTION****58830-0092 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN 51R35759; BARRIE****58830-0096 (LT)****PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN 51R35759; BARRIE****58830-0106 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE****58830-0109 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE****58830-0111 (LT)****PT LT 21 CON 3 VESPRA BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE**

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

DATED the ____ day of _____, 2020.

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

Per: _____
Name:
Title:

SCHEDULE "A"
REAL PROPERTY DESCRIPTION

58830-0092 (LT)
PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 5, 6 & 7 ON PLAN
51R35759; BARRIE

58830-0096 (LT)
PART OF LOT 21 CONCESSION 3 (VESPRA) BEING PARTS 22 & 23 ON PLAN
51R35759; BARRIE

58830-0106 (LT)
PT LT 21 CON 3 VESPRA BEING PTS 12,13 & 14 PL 51R35759; CITY OF BARRIE

58830-0109 (LT)
PT LT 21 CON 3 VESPRA BEING PTS 28 & 30 PL 51R35759; CITY OF BARRIE

58830-0111 (LT)
PT LT 21 CON 3 VESPRA BEING PTS 20, 21, 25, 35 & 36 51R35759, SUBJECT TO
EASEMENT OVER PTS 35 & 36 51R35759 AS IN RO1200479; CITY OF BARRIE

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

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

and

Court File No: CV-20-00637682-00CL00CL

Respondents

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

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

Our Matter No. 1165673

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

Michael De Lellis (LSO#48038U)
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Alexander Hay (LSO#72242T)
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Fax: (416) 862.6666

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

PENADY (BARRIE) LTD. and PRC
BARRIE CORP.

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

and

Applicant/Moving Party

Respondents/Responding Parties

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

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

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

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Fax: (416) 862.6666

Counsel for the Moving Party

Appendix E

Court File Number: CV-20-00637682-000¹⁴⁶

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

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

Case Management Yes No by Judge: _____

| Counsel | Telephone No: | Facsimile No: |
|----------------------------------|-------------------------------------|---------------|
| <u>E. Golden - RSM</u> | <u>S. Irvine - Chore Properties</u> | |
| <u>T. Dineen, M. Citak - RSM</u> | | |

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows): _____

I conducted a case conference in
this matter via teleconference on May 15/20
in accordance with the Notice to the
Profession created in light of the COVID-
19 crisis.
A copy of this endorsement will be
provided to the parties via the
Commercial List Office.
At the case conference, a hearing

19 May 20
Date

[Signature]
Judge's Signature

Additional Pages one

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

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

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

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

[Handwritten signature]

Appendix F

Court File Number: CV-20-00637682-00CL

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: McBurt

| 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

McBurt
Judge's Signature

Additional Pages 4

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

Court File Number: _____

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 1995 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 ~~original~~TM 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

Court File Number: _____

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 then 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

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement 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 39.09 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

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

hearing date.

mejs

McEwen, Mr. Justice Thomas John (SCJ)

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

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.

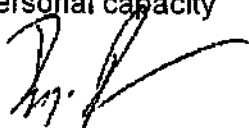
VII. CONCLUSION

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 H

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Choice Properties Limited Partnership
Plaintiff(s)

AND

Penndly (Barrie) Ltd et al
Defendant(s)

Case Management Yes No by Judge: McEwen

| Counsel | Telephone No: | Facsimile No: |
|-----------------------|---------------|---------------|
| <u>(see attached)</u> | | |
| | | |

- 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

McEwen
Judge's Signature

Additional Pages 3

Court File Number. _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

Copy of Mine 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 - Mine 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

Court File Number: _____

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 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 May 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

Court File Number: _____

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

Judges Endorsment Continued

to correct the error

melet

McEwen, Mr. Justice Thomas John (SCJ)

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

McE T.

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, with a copy to the Receiver c/o Attn. Brenda Wong (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 I 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 I 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)

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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 |) | <i>Michael De Lellis and Shawn Irving, for the</i> |
| PARTNERSHIP, by its general partner, |) | Applicant |
| CHOICE PROPERTIES GP INC. |) | |
| |) | |
| |) | Applicant |
| |) | |
| - and - |) | |
| |) | |
| PENADY (BARRIE) LTD., PRC BARRIE |) | <i>Tim Duncan and Michael Citak, for the</i> |
| CORP. and MADY (BARRIE) INC. |) | Respondents |
| |) | |
| |) | Respondents |
| |) | <i>Eric Golden and Chad Kopach, for RSM</i> |
| |) | 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 black ink, 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**

ENDORSEMENT

McEwen J.

Released: June 10, 2020

Appendix K

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

Applicant

- and -

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

Respondents

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

AUGUST 31, 2020

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I. INTRODUCTION

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

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

A copy of the First Report, without appendices, in support of the SISP Motion is attached to this report as **Appendix "C"**.

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

7. On May 29, 2020, the Receiver served a supplementary motion record in support of its motion for approval of the Sale Procedure, which included the Supplemental Report to the First Report of the Receiver dated May 26, 2020 (the “**Supplemental First Report**”). The Supplemental First Report, without appendices, is attached to this report as **Appendix “G”**.

8. In a case conference heard on June 1, 2020, the Debtors sought an Order directing the Receiver to answer certain questions posed to the Receiver by the Debtors. The Endorsement of Justice McEwen made June 4, 2020, dismissing the Debtors’ request, is attached to this report as **Appendix “H”**.

9. On June 2, 2020, the Honourable Justice McEwen issued an Order (the “**Sale Procedure Approval Order**”), in which, *inter alia*, the Court:
 - i) approved the Sale Procedure and authorized the Receiver to carry out the Sale Procedure;

 - ii) approved the Receiver’s retainer of Avison Young as the Receiver’s listing agent;

 - iii) authorized the Receiver to enter the Stalking Horse Agreement;

 - iv) approved the obligation to pay the Expense Reimbursement pursuant to Section 8.2 of the Stalking Horse Agreement and Section 13 of the Sale Procedure; and

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

A copy of the Sale Procedure Approval Order issued June 2, 2020 and the related Endorsement of Justice McEwen made June 10, 2020, are attached as **Appendix "I"** and **"Appendix "J"**, respectively, to this report.

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

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

II. PURPOSE OF THE REPORT

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

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

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

Terms of Reference

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

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

III. BACKGROUND

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

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

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

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

IV. INSURANCE

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

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

V. PROPERTY TAXES

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

VI. TENANTS OF THE BARRIE PROPERTY

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

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

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

Prospective Leases

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

VII. MARKETING OF THE PROPERTY

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

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

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

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

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

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

Copies of the Brochure and the Globe Advertisement are attached collectively to this report as **Appendix "K"**.

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

VIII. NO OTHER OFFERS RECEIVED

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

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

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

IX. THE STALKING HORSE AGREEMENT

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

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

- (iii) the Purchaser will fund all accrued but unpaid fees and disbursements of the Receiver and its counsel subject to the Receiver's Charge as at the Closing Date. The Purchaser will also fund the costs to wind down and complete the Receivership Proceeding after the Closing Date (referred to as the Wind-Down Amount); and
- (iv) any Secured Debt owing by PBL and the Beneficial Owners to the Purchaser (including accrued interest and Receiver borrowings) that is in excess of the Purchase Price (being \$50,000,000) will remain owing by PBL and the Beneficial Owners to the Purchaser from and after the Closing Date, with the Purchaser reserving with respect thereto all of its rights, powers, and remedies under its loan documents and applicable law.

58. Pursuant to the Stalking Horse Agreement, the obligation of the Purchaser to complete the Transaction is subject to certain conditions being fulfilled or performed on the Closing Date including, *inter alia*:

- (i) there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that the Stalking Horse Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;

- (ii) the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
 - (iii) the Receiver shall have determined in accordance with the Sale Procedure that the Stalking Horse Agreement is the Successful Bid.
59. A copy of the executed Stalking Horse Agreement is attached to this report as **Appendix "M"**.

X. APPROVAL OF THE SALE

60. The marketing process that the Receiver undertook was extensive and appropriate for the type of property in question and provided sufficient market exposure to the Barrie Property. The Barrie Property was initially exposed to the market by Avison Young as part of its earlier engagement by the Debtor, and then by the Receiver since at least June 8, 2020. Notice of the sale of the Barrie Property was sent to more than 1,300 parties, and the Barrie Property was advertised four times in the Globe and Mail newspaper.
61. As a result of the marketing efforts undertaken, 14 parties (including CHP) executed the NDA and Acknowledgment of the Sale Procedure. These 14 parties received a copy of the Offering Memorandum and had access to the Avison Young data room. In addition, there were 5 parties that signed the NDA but not the Acknowledgment of Sale Procedure and were therefore not provided with access the data room.

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

XI. CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE ("CECRA")

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

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

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

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

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

XII. LETTERS OF CREDIT

Letter of Credit held by City of Barrie

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

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

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

Letter of Credit held by Gardiner Roberts LLP

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

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

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

XIII. SECURED OR PRIORITY CLAIMS

Claims of Canada Revenue Agency

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

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

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

XIV. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

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

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

XV. PROFESSIONAL FEES

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

XVI. CONCLUSION

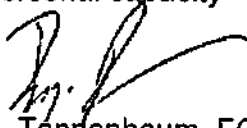
91. The Receiver respectfully requests that the Court grant an Order:
- i) authorizing and directing the Receiver to carry out the terms of the Stalking Horse Agreement, together with any further minor amendments thereto deemed necessary by the Receiver in its sole opinion;

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

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

RSM CANADA LIMITED

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



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

Appendix L

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

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

| | | |
|----------------|---|------------------------------------|
| THE HONOURABLE |) | WEDNESDAY, THE 9 th 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

**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 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. -and- PENADY (BARRIE) LTD., ET AL.
Applicant Respondents

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

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.

McEET

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

SALE APPROVAL AND VESTING ORDER

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 M

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

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

| | | |
|----------------|---|------------------------------------|
| THE HONOURABLE |) | WEDNESDAY, THE 9 th 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**


APPROVALS 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, (i) if necessary, abridging the time for service of the Receiver's Notice of Motion and Motion Record herein, (ii) approving the Second Report of the Receiver dated August 31, 2020 (the "**Second Report**") and the activities described therein, and (iii) approving the Receiver's Interim Statement of Receipts and Disbursements as of August 21, 2020, and the

professional fees of the Receiver and its counsel Blaney McMurtry LLP (“**Blaney**”), was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Second Report, 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 time for service of the Receiver’s Notice of Motion dated August 31, 2020 (the “**NOM**”), and related motion material filed in support of that NOM, including the Receiver’s Motion Record dated August 31, 2020 (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.
2. **THIS COURT ORDERS** that the Second Report, and the activities of the Receiver described therein, is hereby approved.
3. **THIS COURT ORDERS** that the Receiver’s Interim Statement of Receipts and Disbursements for the period from March 27, 2020 to August 21, 2020, as set out in Appendix “O” to the Second Report, be and is hereby accepted and approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from March 2, 2020 to July 31, 2020, and of Blaney from March 6, 2020 to July 23, 2020, be and are hereby approved.
5. **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.



CHOICE PROPERTIES LIMITED PARTNERSHIP, ET AL.
Applicant

-and-

PENADY (BARRIE) LTD., ET AL.
Respondents

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

9 Sept 20

The Order shall go as per the draft filed and signed, on an unopposed basis.
I have reviewed the materials and heard submissions of counsel.
The relief sought is fair and reasonable.



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

APPROVALS ORDER

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

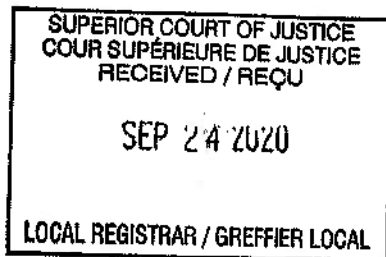
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Chad Kopach LSO #48084G
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(416) 593-5437 (Fax)
Email: ckopach@blaney.com

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

Appendix N

Schedule A – Form of Receiver’s Certificate



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 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 Toronto on September 23, 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: Daniel Weisz
Title: Senior vice-President

-and-

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

RECEIVER'S CERTIFICATE

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)
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Email: ckopach@blaney.com

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

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 November 30, 2021**

255

| | Penady (Barrie) Ltd. | Mady (Barrie) Inc. | Total |
|--|-------------------------|-----------------------|---------------------|
| Receipts | | | |
| Advances from secured lender (1) | \$ 3,200,000 | \$ - | \$ 3,200,000 |
| Transfer to/from other bank account | - | 381 | 381 |
| Cash on hand & bank | 31,647 | - | 31,647 |
| CECRA payment (2) | 235,566 | - | 235,566 |
| Letter of Credit (3) | 889,495 | - | 889,495 |
| Rent | 888,174 | - | 888,174 |
| HST collected | 115,463 | - | 115,463 |
| HST Refund | 28,926 | - | 28,926 |
| Interest income | 2,527 | - | 2,527 |
| Total receipts | \$ 5,391,796 | \$ 381 | \$ 5,392,177 |
| Disbursements | | | |
| Appraisal fees | \$ 6,955 | \$ - | \$ 6,955 |
| Auditor's fees | 5,088 | - | 5,088 |
| Commission (4) | 103,955 | - | 103,955 |
| Consultants fees | 15,349 | - | 15,349 |
| HST remitted | 5,896 | - | 5,896 |
| Insurance | 65,934 | - | 65,934 |
| Landscaping/Lot Maintenance | 30,768 | - | 30,768 |
| Legal Fees and disbursements to October 31, 2021 | 321,638 | - | 321,638 |
| Miscellaneous | 2,547 | 345 | 2,892 |
| Property Management fees | 90,686 | - | 90,686 |
| Property taxes | 2,952,082 | - | 2,952,082 |
| Receiver's fees to October 31, 2021 | 392,319 | - | 392,319 |
| Repairs and Maintenance | 20,002 | - | 20,002 |
| Snow removal | 20,724 | - | 20,724 |
| Utilities | 64,939 | - | 64,939 |
| Waste Removal/Disposal | 20,539 | - | 20,539 |
| HST/PST paid | 141,465 | 36 | 141,501 |
| Total disbursements | \$ 4,260,886 | \$ 381 | \$ 4,261,266 |
| Excess of Receipts over Disbursements | \$ 1,130,911 | \$ - | \$ 1,130,911 |

Notes

- (1) The amount of \$3,200,000 represents funds advanced by Choice Properties Limited Partnership under Receiver Certificates No. 1, 2 and 3.
- (2) This amount consists of payments received under the Canada Emergency Commercial Rent Assistance program for the period April 1 to September 30, 2020 and is net of \$47,113 that was received in respect of September 2020 rent that was transferred to the purchaser in accordance with the terms of the sale transaction.
- (3) The \$889,495 represents the unclaimed balance outstanding under a Letter of Credit that was released to the Receiver.
- (4) The commission of \$103,955 was paid to the real estate broker in respect of the closing of the sale of the real property owned by Penady (Barrie) Ltd.
- (5) This Interim Statement of Receipts and Disbursements does not reflect the sale to Choice Properties Limited Partnership ("CHP") of the Barrie Property (as defined in the Receiver's Third Report to the Court). The purchase price for the Barrie Property was, before consideration of adjustments at closing, \$50,000,000. The purchase price paid was a reduction in the indebtedness to CHP in respect of the Barrie Property, and no cash consideration was paid to the Receiver on closing.

This Appendix forms part of the Third Report of the Receiver dated December 2, 2021
and should only be read in conjunction therewith.

Appendix P

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

AFFIDAVIT OF DANIEL WEISZ
(Sworn December 1, 2021)

I, **DANIEL WEISZ**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Vice-President of RSM Canada Limited ("**RSM**") and as such I have personal knowledge of the matters to which I hereinafter depose, save and except those matters based upon information and belief, in which case I have stated the source of such facts, all of which I verily believe to be true.

2. Pursuant to the Amended and Restated Order of the Ontario Superior Court of Justice dated March 25, 2020, RSM Canada Limited was appointed as receiver and manager (the "Receiver") of Penady (Barrie) Ltd. and certain of the assets, undertakings and properties of PRC Barrie Corp. and Mady (Barrie) Inc.


3. Attached hereto and marked as Exhibit "A" to this my affidavit are copies of invoices (the "Invoices") issued by RSM for fees and disbursements incurred by the Receiver in respect of these proceedings for the period August 1, 2020 to November 30, 2021 (the "Period"). The total fees charged for the Period are \$161,647.50 plus HST of \$21,014.22 for a total of \$182,661.72. The average hourly rate charged during the Period was \$476.84.

4. The Invoices are a fair and accurate description of the services provided and the amounts charged by RSM for the Period.

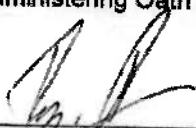
5. Attached hereto and marked as Exhibit "B" is a schedule summarizing the Invoices in Exhibit "A", the total billable hours charged, the total fees charged and the average hourly rate charged.

6. I make this affidavit in support of a motion for an Order approving the Receiver's fees and disbursements and for no other or improper purpose.

SWORN BEFORE ME remotely by)
Daniel Weisz, stated as being located at the)
City of Vaughan in the Province of Ontario,)
before me at the City of Toronto in the)
Province of Ontario, on December 1, 2021.)
in accordance with O. Reg 431/20,)
Administering Oath or Declaration Remotely)



DANIEL WEISZ



A Commissioner, etc.,
Bryan Allan Iannitelli,
a Commissioner, etc., Province of Ontario, for
RSM Canada LLP and RSM Canada Limited.
Expires February 4, 2024.

**THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF DANIEL WEISZ SWORN REMOTELY
BEFORE ME THIS 1st DAY OF DECEMBER, 2021**



A Commissioner, etc.

Bryan Allan Tannenbaum,
a Commissioner, etc., Province of Ontario, for
RSM Canada LLP and RSM Canada Limited.
Expires February 4, 2024.

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date September 8, 2020

Client File 7887424

Invoice 6

No. 6108218

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period August 1, 2020 to August 31, 2020.

| Date | Professional | Description |
|-------------|---------------------|---|
| 08/03/2020 | Brenda Wong | Review email from PenEquity Realty Corporation ("PenEquity") re payables for approval and email to D. Canham of PenEquity with questions on same; approve Alectra Utilities ("Alectra") invoices for payment; respond to email from PenEquity re tenant question on estoppel certificate. |
| 08/03/2020 | Anne Baptiste | Post disbursement to Ascend. |
| 08/04/2020 | Brenda Wong | Review status of estoppel certificates received to date and email summary and copies to D. Weisz; follow up with PenEquity re TD statement; call with L. Xavier of PenEquity re Cineplex and prospective leases; send signed estoppel certificates to Avison Young; draft Receiver's second report; discussion with E. Williams of Choice Properties Limited Partnership ("Choice") re Canada Emergence Commercial Rent Assistance program ("CECRA") and tenant rent relief; email to S. Bryant of PenEquity re tenant rent relief. |
| 08/04/2020 | Daniel Weisz | Review estoppel certificates received and email to S. Jeffery of Blaney McMurtry LLP ("Blaney") re same; review email from S. Jeffery; discussion with B. Wong re same and re call tomorrow with Choice; review B. Wong email to C. Lewis of Avison Young and email to C. Lewis re same. |
| 08/05/2020 | Brenda Wong | Emails with PenEquity re quotes for repairs to tenant unit caused by vehicle impact; call with Mitchell Sandham re status of insurance; email from Mitchell Sandham re its outstanding account; call with Choice re CECRA and gathering information for a new owner to apply; review cash on hand and expected cash requirements; review emails from A. Gravets of Choice re CECRA and respond; emails with PenEquity re MTO notice received; emails with D. Weisz |

| Date | Professional | Description |
|------------|------------------|--|
| | | and D. Canham re transfer of funds from TD to Receiver's bank account; email to S. Bryant re CECRA application; continue working on draft report. |
| 08/05/2020 | Daniel Weisz | Prepare for and attend conference call with J. Farber, D. Muallim, A. Gravets and B. Wong to discuss CECRA; review information sent by Choice; review B. Wong email re status of insurance renewal and the Receiver's cash position; review notification re work to be done and discussion with B. Wong on same; review exchange of emails with Canada Mortgage and Housing Corporation ("CMHC"). |
| 08/05/2020 | Bryan Tannenbaum | Email to Gardiner Roberts re status of the letter of credit issued by the Bank of Montreal (the "BMO LC"); receipt and review of Gardiner Roberts response. |
| 08/06/2020 | Daniel Weisz | Prepare for and attend conference call with D. Roy of CMHC, R. Wang of MCAP, A. Gravets and B. Wong to discuss the CECRA program and applicability in view of the receivership; review documents relating thereto; discussion with E. Golden of Blaney re HST and CECRA. |
| 08/06/2020 | Brenda Wong | Email to Mitchell Sandham re payment of its account; call with RSM, MCAP and Choice re CECRA; email to S. Bryant re tenant information needed for CECRA; review CECRA registration portal and terms and conditions; discussion with S. Bryant re information needed for CECRA and next steps; email to A. Gravets re status update on CECRA application. |
| 08/06/2020 | Bryan Tannenbaum | Receipt and review of Gardiner Roberts email confirming BMO LC request sent to BMO. |
| 08/06/2020 | Echa Odeh | Download Alectra invoice and send for approval. |
| 08/07/2020 | Bryan Tannenbaum | Receipt and review of Avison Young report; call with B. Wong and D. Weisz re CECRA, etc. |
| 08/07/2020 | Brenda Wong | Review email from S. Bryant re CECRA forms and information; review of July summary of activities; review McIntosh Perry invoice and email to obtain EFT instructions for payment of same, prepare cheque requisition; email to S. Bryant re PenEquity's fee for administering CECRA; send follow-up emails to D. Canham re information requested; continue drafting second report; call with Blaney and D. Weisz re CECRA. |
| 08/07/2020 | Daniel Weisz | Exchange emails with E. Golden; conference call with B. Tannenbaum and B. Wong to discuss the status of various matters; review Avison Young marketing update; conference call with E. Golden, M. Tapia and B. Wong re CECRA; draft letter to CMHC; subsequent discussion with E. Golden. |
| 08/07/2020 | Echa Odeh | Emails regarding outstanding information; email to D. Canham requesting deposit detail for bank deposits. |
| 08/10/2020 | Brenda Wong | Review emails from D. Canham re outstanding invoices and email to D. Canham re additional information required and instructions re cheques to be released; review property management agreement and leasing fees paid to date; discussion with S. Bryant re CECRA administration; discussion with D. Weisz re PenEquity's CECRA administration fee; review draft email to A. Gravets; review online statements from TD and PenEquity and emails with PenEquity re funds to be transferred to the Receiver; respond to creditor inquiry; respond to email from and discussion with A. Gravets re CECRA; review email from Blaney re CECRA letter and forms. |

| Date | Professional | Description |
|------------|---------------|--|
| 08/10/2020 | Echa Odeh | Phone call with Enbridge Gas; prepare letter to Enbridge Gas and email to Enbridge Gas to open a new account. |
| 08/10/2020 | Daniel Weisz | Review and update letter to CMHC; discussion with B. Wong re CECRA application; review email from A. Gravets and B. Wong on same; review email from E. Golden; work on report to court; discussion with E. Golden; discussion with B. Wong re CECRA and her discussion with PenEquity; review email from Choice. |
| 08/11/2020 | Echa Odeh | Emails with D. Canham regarding deposit slips for July. |
| 08/11/2020 | Daniel Weisz | Review documents re CECRA including Blaney amendments to proposed letter to CMHC; conference call with E. Golden, M. Tapia and B. Wong to discuss same; review emails from Choice; review and update draft documents and email to Choice re same. |
| 08/11/2020 | Brenda Wong | Prepare affidavit of fees for second report and start preparing report appendices; receipt and review of email from PenEquity re civil engineer's inspection report; call with D. Weisz and Blaney re CECRA application; review A/P submitted for approval this week; review revised draft letter to CMHC; follow up with S. Bryant re tenant data required for CECRA; review and approve Alectra invoice. |
| 08/12/2020 | Echa Odeh | Update summary of disbursements; review of TD bank statement to confirm cheques cleared and calculate available cash; prepare summary of rent received; email to D. Canham requesting general ledger and deposit slips for July; review of mail and save to the file; update tracking worksheet for HST returns filed; review of incoming mail and save to the file. |
| 08/12/2020 | Daniel Weisz | Discussion with E. Golden re results of Sale Procedure and matters relating thereto. |
| 08/12/2020 | Daniel Weisz | Review and respond to email from C. Lewis; discussion with B. Wong on status of report required re City of Barrie letter of credit; review email from A. Gravets; exchange emails with S. Irving; finalize letter to CMHC; work on report to court; review and update lender update; exchange emails with C. Lewis re the status of offers; email to E. Golden re status of Phase I Bids. |
| 08/12/2020 | Anne Baptiste | Prepare bank reconciliation. |
| 08/12/2020 | Brenda Wong | Prepare lender update; review voicemail from L. Xavier re landscape architect's request for a retainer, email to D. Weisz and emails with PenEquity re same; follow up with PenEquity re funds to be transferred from Penady's TD account to the Receiver's trust account; review email from Avison Young re Phase I bid deadline; review updated summary of disbursements and collections and make edits to lender update; emails with PenEquity re status of tenant rent relief. |
| 08/13/2020 | Brenda Wong | Review changes to lender update and make additional changes; call from S. Bryant and discussion re CECRA application, LA Fitness and closing transition; review emails re response from CMHC to Receiver's CECRA proposal. |
| 08/13/2020 | Anne Baptiste | Post receipt and disbursement to Ascend. |
| 08/13/2020 | Daniel Weisz | Review and finalize lender update; exchange emails with C. Lewis; review email from CMHC and email to Blaney in respect of same; review summary of |

| Date | Professional | Description |
|------------|--------------|--|
| | | activities; review emails from Blaney re email from CMHC; draft email to A. Gravets; process electronic payment. |
| 08/14/2020 | Brenda Wong | Review tenant information forms and information required to populate CECRA worksheet; make edits to worksheet, complete and obtain missing information; send follow up emails to PenEquity re contact information for tenants that did not return forms and missing information; send email to A. Gravets re CECRA worksheet; discussion with D. Weisz re draft report and CECRA; review changes to draft report; discussion with A. Gravets re CECRA application process, steps and timetable and email to D. Weisz and Blaney re same; call with Choice and counsel for Receiver and Choice re status update; emails with Mitchell Sandham re status of insurance. |
| 08/14/2020 | Daniel Weisz | Draft email to CMHC re CECRA and B. Wong on same; prepare and attend conference call with representatives of Choice, Osler Hoskin & Harcourt LLP ("Osler") and Blaney to discuss the status of the receivership; finalize and send email to CMHC; review Blaney account and email to Choice re Receiver accounts; review B. Wong summary of her discussion with A. Gravets and email to D. Rosenblat of Osler re same; review and update Receiver's draft report to court and forward draft to E. Golden; review email from CMHC and respond thereto; email to Blaney re correspondence to CMHC. |
| 08/17/2020 | Brenda Wong | Send email to tenants re CECRA documents to be sent to them for signing via DocuSign; review information form from a tenant and email to tenant re its eligibility re CECRA. |
| 08/17/2020 | Brenda Wong | Review outstanding information requests and emails to D. Canham re invoice to pay and request for copies of vendor invoices, March HST liability and July general ledger and cheque register and June and July bank reconciliations; review DocuSign sample documents and forward to D. Weisz; send emails to tenants that have not responded with CECRA information; review invoices for payment and follow up with PenEquity re insurance adjuster's account and additional work orders/invoices requested; review draft CMHC waiver letter; discussion with A. Gravets re status; call from tenant re eligibility for CECRA; preparing landlord's documentation for CECRA application; review email from PenEquity re Mr. Lube lease documents. |
| 08/17/2020 | Daniel Weisz | Discussion with B. Wong on filing of forms re CECRA; emails to M. Tapia and D. Rosenblat re status of documents being prepared; review draft letter from CMHC prepared by Blaney, B. Wong on same and email to Blaney re the letter; review draft form of agency agreement re CECRA and email to E. Golden re same; review E. Golden comments on letter to CMHC, update letter and send; exchange emails re call to discuss insurance status. |
| 08/18/2020 | Brenda Wong | Emails with PenEquity re tenant lease assignment and emails to D. Weisz and Choice re same; review tenant CECRA information and emails with tenant to clarify revenues; review and approve invoices submitted for payment; review and respond to creditor email; call with D. Weisz, Choice and its insurance broker re the Receiver's insurance requirements for the property, review email from Choice and review information on hand and respond to Choice; update CECRA worksheet and email worksheet and June rent roll to Choice; emails with D. Canham re insurance invoice; emails with A. Gravets re CECRA worksheet. |

| Date | Professional | Description |
|------------|--------------|--|
| 08/18/2020 | Daniel Weisz | Review various emails; discussion with B. Wong on various matters; prepare for and attend conference call with representatives of Choice, Choice's insurance broker and the Receiver to discuss the status of insurance coverage for the property; review comments on letter received from CMHC, discussion with E. Golden on same and reply to CMHC; review E. Golden comments on draft report; review Choice request for information re insurance and B. Wong re same; exchange emails with A. Gravets; review Blaney comments on agency agreement and exchange emails with E. Golden re same; update report to court and email to C. Lewis re same; email to A. Gravets. |
| 08/18/2020 | Echa Odeh | Phone call with Alectra regarding entry to the property; email to B. Wong to arrange for keys to be provided. |
| 08/19/2020 | Brenda Wong | Review emails and discussion with D. Weisz re agency agreement re CECRA; review email from A. Gravets re tenant names; review email from tenant re updated sales numbers and update CECRA worksheet and send email to A. Gravets re same; prepare paperwork for processing of payment for outstanding invoices; discussion with A. Nantais re insurance renewal and email to S. Bryant re continuing coverage under PenEquity's policy; discussion with A. Gravets re status and follow-up re tenant's business number and head/sub tenants; emails with HUB International Insurance Brokers ("HUB") and Mitchell Sandham re quotes for insurance; create registration for Penady on CECRA portal. |
| 08/19/2020 | Daniel Weisz | Review C. Lewis comments re report to court and update report and email to C. Lewis re same; send follow up email to CMHC; review Osler amendments to proposed agency agreement and discussion with E. Golden re same; review final letter from CMHC and compile attachments and send to CMHC. |
| 08/20/2020 | Daniel Weisz | Review and sign Property Owner's Attestation re CECRA and B. Wong on same; email to counsel re CECRA agency agreement and review emails re same; work on finalizing agreement; E. Golden on same; review final version and sign; email to CMHC re Landlord Attestation; update report to court and email to E. Golden re same; email to Gardiner Roberts re BMO LC; review Gardiner Roberts email to BMO; exchange emails with Osler re Agency Agreement; exchange emails with A. Gravets re status of agency agreement. |
| 08/20/2020 | Brenda Wong | Review email from L. Xavier re prospective tenant and respond re lease commencement date; email to N. Miller re landlord's attestation; review emails re CECRA application and follow up with tenant re missing information; call with A. Gravets and review CECRA application; follow up with PenEquity re outstanding Alectra account; review changes to Receiver's draft report; review and approve CECRA application forms and emails with A. Gravets re same. |
| 08/20/2020 | Echa Odeh | Review of invoices and update tracking spreadsheet for expenses paid by property manager; review of report and reference to source. |
| 08/21/2020 | Brenda Wong | Review and sign CECRA DocuSign documents; update CECRA worksheet; email to N. Miller re outstanding accounting information requested from PenEquity; follow up with L. Xavier re MBHC and WMI reports/estimates and review emails re final estimates. |
| 08/21/2020 | Daniel Weisz | Email to Choice requesting funding re property taxes due; review and update fee affidavit. |

| Date | Professional | Description |
|------------|--------------|---|
| 08/24/2020 | Brenda Wong | Review email from tenant and forward to A. Gravets; check referencing of report to source documents and make edits to report; emails with A. Gravets re status of CECRA applications; follow up call and email to tenant re CECRA; follow up with S. Bryant re insurance renewal; follow up with D. Canham re information requested; discussion with D. Weisz re insurance; call to A. Nantais re status of insurance, email to HUB to request quote; review draft statement of receipts and disbursements ("R&D"); discussion with A. Gravets re status and send follow up email to tenant; discussion with S. Bryant re insurance, lease assignment and insurance adjuster's invoice. |
| 08/24/2020 | Daniel Weisz | Review status of insurance and email sent to PenEquity; email to D. Rosenblat re agency agreement; review email re insurance status; review further emails re insurance and discussion with B. Wong re same; email to E. Golden; review email from C. MacIntyre and respond thereto; exchange emails with S. Morra of Choice re wire information; review R&D and discussion with B. Wong on same; email to E. Golden re Receiver's report to court. |
| 08/24/2020 | Echa Odeh | Update tracking spreadsheet with expenses paid to date and cheques cleared, reconcile with bank statement and prepare R&D to August 21, 2020. |
| 08/25/2020 | Brenda Wong | Review and respond to emails from tenant re CECRA application; review and respond to emails re insurance; respond to tenant request for rent assistance; review and submit CECRA application; call and email to D. Canham re outstanding information requested; review and approve invoices for payment; follow up with Mitchell Sandham re insurance status and discussion with A. Nantais re same. |
| 08/25/2020 | Daniel Weisz | Review emails re status of CECRA application; discussion with B. Wong on status of insurance; review email from A. Nantais. |
| 08/25/2020 | Daniel Weisz | Exchange emails with C. MacIntyre re status of insurance coverage; review online bank account re receipt of funds from Choice and email to S. Morra re same. |
| 08/26/2020 | Brenda Wong | Prepare paperwork for processing of advance received from secured lender and payment of property taxes due August 31; prepare lender update, review changes and make additional updates; review and draft response to PenEquity re March HST return; review draft July HST calculation. |
| 08/26/2020 | Daniel Weisz | Review and sign Receiver Certificate #3 and email to Choice re same; review and update lender update and finalize. |
| 08/26/2020 | Echa Odeh | Calculate income and ITCs for July HST return and forward to B. Wong for review; phone call to Enbridge to obtain new account number. |
| 08/27/2020 | Daniel Weisz | Review emails re status of insurance and discussion with B. Wong on same; review E. Golden comments on draft report and update report; review liability insurance quote and discussion with B. Wong re same; review B. Wong changes re report; review terms of financing proposal re liability policy and discussion with B. Wong on same; email to Choice re update to yesterday's lender update; review email from insurance broker; exchange emails with M. Di Lellis of Osler re closing date; draft email to insurance broker; email to C. McIntyre; email to E. Golden re call for tomorrow re insurance status; exchange emails with E. Golden. |

| Date | Professional | Description |
|------------|------------------|---|
| 08/27/2020 | Brenda Wong | Follow up with Mitchell Sandham re insurance status and discussions with D. Weisz re same; email to D. Canham re Receiver's payment of property taxes; follow up with D. Canham re outstanding information; review email from CECRA re next step in application process and upload documents requested; review liability policy and premium financing documents, call to Mitchell Sandham re premium payments, email to Mitchell Sandham re changes to policies; review changes to draft report; email to Choice re update on insurance status; call with A. Nantais re property coverage. |
| 08/27/2020 | Daniel Weisz | Further emails with C. MacIntyre, T. Thompson of HUB and E. Golden re insurance status. |
| 08/28/2020 | Brenda Wong | Review and respond to emails re insurance; discussion with D. Weisz re insurance and finalizing report; review and respond to emails from S. Bryant re various matters; discussions and emails with Mitchell Sandham re binding liability coverage and complete financing form; call with D. Weisz and E. Golden to discuss insurance; review insurance binders, invoices and revised financing agreement and emails to Mitchell Sandham re questions on same; send report appendices to Blaney; submit payment information to insurance financing company; review additional changes to the report; email to D. Canham re March HST return; email to N. Miller re outstanding information. |
| 08/28/2020 | Daniel Weisz | Discussion with B. Wong re insurance and conference call with E. Golden, B. Wong and B. Tannenbaum re same; discussion with B. Wong re binding of liability insurance and email to C. MacIntyre re same; review and sign financing contract re payment of insurance premiums; review and update report to court; review Osler comments on draft report; B. Tannenbaum on same. |
| 08/28/2020 | Bryan Tannenbaum | Receipt and review of various emails regarding insurance; receipt and review of D. Weisz email re HST deemed trust; conference call with D. Weisz, B. Wong and E. Golden re insurance coverage. |
| 08/29/2020 | Daniel Weisz | Exchange emails with E. Golden re status of insurance and status of the Receiver's report to court. |
| 08/31/2020 | Bryan Tannenbaum | Various emails re insurance coverage extension/placement; final read and edits to draft notice of motion and Receiver's second report to court; discuss same with B. Wong. |
| 08/31/2020 | Daniel Weisz | Review draft notice of motion and email to E. Golden re same. |
| 08/31/2020 | Brenda Wong | Review emails re property insurance and status of Receiver's report; review email from D. Canham re filing of PRC Barrie's March HST return; review revisions to second report, review draft Notice of Motion. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|---------------------|-------------|---------------------|
| Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT | President | 4.8 | \$ 625 | \$ 3,000.00 |
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 50.7 | \$ 595 | 30,166.50 |
| Brenda Wong, CIRP, LIT | Senior Manager | 51.6 | \$ 485 | 25,026.00 |
| Echa Odeh | Senior Associate | 10.6 | \$ 250 | 2,650.00 |
| Anne Baptiste | Estate Administrator | 0.5 | \$ 110 | 55.00 |
| Total hours and professional fees | | <u>118.2</u> | | \$ 60,897.50 |
| HST @ 13% | | | | 7,916.68 |
| Total payable | | | | \$ 68,814.18 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date October 26, 2020

Client File 7887424

Invoice 7

No. 6147989

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period September 1, 2020 to September 30, 2020.

| Date | Professional | Description |
|-------------|---------------------|--|
| 09/01/2020 | Brenda Wong | Arrange for posting to the Receiver's website of motion record and Receiver's report; email to D. Canham of PenEquity Realty Corporation ("PenEquity") re information requested; review Bank of Montreal ("BMO") online statement and submit cheque requisition for processing of initial payment re liability insurance; emails with E Odeh re accounts payable and review email to PenEquity re same. |
| 09/01/2020 | Bryan Tannenbaum | Receipt and review of E. Golden of Blaney McMurtry LLP ("Blaney") email re Choice Properties Limited Partnership ("Choice"); review and respond to B. Wong email re disbursements; receipt and review of Osler Hoskin & Harcourt LLP ("Osler") email to Blaney re date for closing, etc. |
| 09/01/2020 | Echa Odeh | Update expense tracking sheet; reconcile payments to August bank statement; prepare calculations for August HST return and update rent collections spreadsheet; email to PenEquity to request information on unidentified payment; download Alectra Utilities ("Alectra") bills from online site. |
| 09/02/2020 | Brenda Wong | Review March 31 A/P; send email to PenEquity re outstanding information requested by the Receiver; review emails from S. Bryant of PenEquity re disbursements; review email from D. Canham and respond re same; discussion and email to N. Miller of PenEquity re outstanding information; review account ledger received from PenEquity and email to D. Canham re question on same and request for July G/L; call with B. Tannenbaum, Choice and Blaney re HST liability and letters of credit. |
| 09/02/2020 | Bryan Tannenbaum | Receipt and review of B. Wong email to PenEquity re outstanding information requested; receipt and review of PenEquity email regarding HST; receipt and |

| Date | Professional | Description |
|------------|------------------|--|
| | | review of E. Golden email and B. Wong response re HST; discuss with B. Wong re HST and PenEquity outstanding information; receipt and review of D. Canham email and B. Wong responses; conference call with J. Farber, D. Muallim, C MacIntyre, E. Golden and B. Wong re HST issue, and status of Letters of Credit ("LC"); email to Gardiner Roberts re LC status; receipt and review of Gardiner Roberts email re reply from BMO. |
| 09/02/2020 | Echa Odeh | Obtain outstanding balance for new Enbridge account from Enbridge website; email to B. Wong regarding payment made by PBL applied to old account; phone call to Enbridge to request payment be transferred. |
| 09/03/2020 | Brenda Wong | Review payables submitted by PenEquity for payment this week and email to D. Canham re same; review and respond to email from S. Bryant re contractor repair; review emails from Blaney re termination of property management agreement, draft letter and send to Blaney for review; update and send list of service contracts to Blaney; send payables approval to D. Canham; review correspondence from City of Barrie re bylaw infraction and forward to PenEquity to follow up; review and respond to email from L. Xavier of PenEquity re prospective leases. |
| 09/03/2020 | Daniel Weisz | Review draft letter re termination of property management agreement; email to E. Golden re same. |
| 09/03/2020 | Bryan Tannenbaum | Telephone call with B. Wong re termination of PenEquity property management agreement; receipt and review of B. Wong email to E. Golden; receipt and review of E. Golden's response; review and respond to R. Schwartz of Gardiner Roberts email re LC status. |
| 09/03/2020 | Echa Odeh | Download Alectra bill and email for payment approval; review of payment ledgers provided by PenEquity; phone call with Enbridge to transfer payment from old account to Receiver's account. |
| 09/04/2020 | Brenda Wong | Review email from B. Tannenbaum re cash position; review lease documents for prospective tenant from PenEquity and forward to Choice for review. |
| 09/08/2020 | Brenda Wong | Review and approve Alectra bills for payment and send to D. Canham; review calculation of available cash; email to D. Canham re transfer of funds; review and respond to email re funds held in PBL's TD account; update estimate of cash requirements; review correspondence and forward invoice to PenEquity for payment. |
| 09/08/2020 | Daniel Weisz | Review emails; exchange emails with C. MacIntyre of Choice re payment of insurance; review email from E. Golden re Gardiner Roberts position on motion; review and update summary of activities. |
| 09/08/2020 | Echa Odeh | Update expense tracking spreadsheet and reconcile with the bank statements; review of expenses approved in August and not yet paid, check account ledger for cheque number and email to D. Canham for update on outstanding expenses. |
| 09/08/2020 | Bryan Tannenbaum | Receipt and review of E. Golden email to Osler re PRC's HST liability; receipt and review of B. Wong email with HST analysis; receipt and review of B. Wong email re cash on hand; receipt and review of E. Golden email re HST liability. |

| Date | Professional | Description |
|------------|------------------|--|
| 09/09/2020 | Daniel Weisz | Review draft court orders and email to C. Kopach of Blaney re same; prepare for and attend in court re application for approval of sale of the property and other relief. |
| 09/09/2020 | Brenda Wong | Email to PenEquity re cheque to transfer surplus funds in TD account to Receiver's BMO account. |
| 09/09/2020 | Bryan Tannenbaum | Attend Court before Justice McEwen for approval of sale and Receiver's activities, etc. |
| 09/10/2020 | Brenda Wong | Follow up with PenEquity re cheques to be issued; emails with A. Gravets of Choice re Canada Emergency Commercial Rent Assistance ("CECRA") application extended to September, check online banking for receipt of CECRA payment and CECRA site re September application process; email to S. Bryant re posting of CECRA payment; emails with PenEquity re cheque for Receiver for pick-up; prepare paperwork for posting of receipt of BMO LC funds. |
| 09/10/2020 | Daniel Weisz | Review emails re CECRA and extension to September 30; email to C. MacIntyre re transition of property management; discussion with B. Wong re payment of expenses; review of email re BMO LC; review bank account to confirm receipt of funds and email to Gardiner Roberts re same; discussion with B. Wong on funds to be disbursed prior to closing; discussion with B. Tannenbaum on various matters; email to E. Golden. |
| 09/10/2020 | Bryan Tannenbaum | Receipt and review of B. Wong email to PenEquity re accounting and cheque issuance status; receipt and review of D. Weisz email to Choice re arrangements for transition of property management; receipt and review of B. Wong email re CECRA funds received; receipt and review of D. Canham email to B. Wong re cheque ready for pick up, etc.; email from R. Schwartz re LC funds wired; email to Choice/Osler re LC proceeds received; telephone call with D. Weisz re status; receipt and review of R. Schwartz email re fees. |
| 09/10/2020 | Echa Odeh | Print Alectra bill and email to B. Wong for approval; update rent collections spreadsheet. |
| 09/11/2020 | Brenda Wong | Send follow-up email to D. Canham re PRC's March 2020 HST liability; review August 31 A/R list and email to PenEquity re questions on same. |
| 09/11/2020 | Daniel Weisz | Review August account rendered by Blaney; review invoice for property insurance. |
| 09/13/2020 | Brenda Wong | Prepare list of matters to be addressed re transition to new owner; review status of Astley-Gilbert invoices. |
| 09/14/2020 | Brenda Wong | Prepare cheque requisitions for payment of accounts; review email from D. Canham re PRC March 2020 HST return, send response with questions on deposits included in PRC's reporting, email to B. Tannenbaum re increased HST liability; update estimate of costs to closing; update list of items to be addressed prior to closing; emails to E. Odeh to notify utilities; email to Blaney and Osler re HST liability; call with Choice re transition matters; prepare list of information to be requested from PenEquity; email to Astley-Gilbert to grant access to Choice to the portal; review email from Choice re contracts to be cancelled; review draft letter to utilities. |
| 09/14/2020 | Daniel Weisz | Discussion with B. Tannenbaum and B. Wong re status of HST liability; prepare for and attend call with B. Wong and representatives of Choice to |

| Date | Professional | Description |
|------------|------------------|---|
| | | discuss property management transition matters; review list of transition matters and email to C. MacIntyre re same. |
| 09/14/2020 | Brenda Wong | Review email from Choice, make updates to list of information requested by purchaser, and email to S. Bryant; emails with Choice re contact person for utility companies, update Enbridge letter and send to E. Odeh. |
| 09/14/2020 | Echa Odeh | Prepare letter to Enbridge to close account; file March HST returns; prepare cheque requisition for invoice to be paid. |
| 09/14/2020 | Bryan Tannenbaum | Call with B. Wong and D. Weisz to discuss HST liability and response to the lawyers and preparation for closing, etc.; receipt and review of turnover memo. |
| 09/15/2020 | Brenda Wong | Email to E. Odeh re letters to utilities to be sent; email to PenEquity re service contracts to be cancelled; email to D. Canham re status of cheques to be issued; call from tenant re rent relief; review email from D. Canham re A/P for payment, review and approve invoices; review calculation of August HST liability and update schedule of estimated costs to completion; email to E. Odeh re invoices to be paid; email to Astley-Gilbert re payment information. |
| 09/15/2020 | Echa Odeh | Make amendments to HST calculations; finalize letters to utility companies to close accounts and send. |
| 09/15/2020 | Daniel Weisz | Review emails re transition matters. |
| 09/16/2020 | Brenda Wong | Update tenant CECRA worksheet and email to tenants re September extension; call from tenant re rent cheques; review and approve cheque requisitions; review and respond to emails from PenEquity re contracts and leases. |
| 09/16/2020 | Echa Odeh | File HST return for August; prepare cheque requisition for invoices approved for payment; email and phone call with vendors to obtain EFT details. |
| 09/16/2020 | Anne Baptiste | Post receipt to Ascend; prepare bank reconciliations. |
| 09/17/2020 | Daniel Weisz | Review schedule re estimated costs to closing; discussion with B. Wong re email from unsecured creditor. |
| 09/18/2020 | Daniel Weisz | Discussion with B. Wong on estimated costs to completion of receivership administration; discussion with E. Golden on various matters relating to closing. |
| 09/18/2020 | Brenda Wong | Review Meadowbrook termination letter and email to Choice re service during notice period; email to S. Bryant re information requested by purchaser; email to North Country re its enquiry; review information provided by PenEquity and email re question on A/R, forward information to Choice; make updates to schedule of estimated costs; check CECRA portal for update on September application and email to A. Gravets re same. |
| 09/18/2020 | Anne Baptiste | Post disbursements to Ascend. |
| 09/21/2020 | Brenda Wong | Emails with A. Gravets re CECRA application for September and submit application for extension; review and respond re emails re closing and additional information requested by Choice. |
| 09/21/2020 | Daniel Weisz | Discussion with B. Tannenbaum re status of HST; review email from M. Tapia of Blaney re closing matters, review file and respond to M. Tapia; email to C. Lewis of Avison Young requesting Avison Young's account; review emails re CECRA program; review email from B. Vicano of Choice re documents |

| Date | Professional | Description |
|------------|------------------|---|
| | | required by Choice; review and respond to E. Golden re funds on hand and payment of same to Choice; review email from Choice re letters of direction on closing and email to Blaney re same. |
| 09/21/2020 | Bryan Tannenbaum | Receipt and review of Avison Young email re invoice date; receipt and review of Choice email re notice of sale to the tenants; receipt and review of Blaney email re cash on hand and D. Weisz response re same. |
| 09/22/2020 | Daniel Weisz | Discussion with E. Golden re status of closing; prepare calculations re statement of adjustments and email to S. Jeffery of Blaney re same; exchange emails with M. Tapia; exchange emails with S. Jeffery; calculate interest on Receiver Certificates; review and update schedule re estimated costs to completion; exchange emails with Blaney. |
| 09/22/2020 | Brenda Wong | Review emails re closing adjustments; review emails from PenEquity re information requested; emails to Choice re information provided by PenEquity and re other information requested but not provided. |
| 09/23/2020 | Brenda Wong | Review email from Blaney and provide comments re deliverables; email to Choice re Receiver access to PBL's records following closing; email to S. Bryant re keys and post-dated cheques etc.; check CECRA portal for status of September application; email to D. Canham re bank reconciliations, online statement and general ledger required. |
| 09/23/2020 | Daniel Weisz | Review and sign closing documents; S. Jeffery re same; exchange emails with Blaney. |
| 09/24/2020 | Brenda Wong | Review emails re closing documents; emails with Mitchell Sandham re cancellation of insurance; email to N. Vicano re Notice to Tenants; emails with PenEquity re information requested by Choice; review and approve payment requisition re August HST remittance. |
| 09/24/2020 | Daniel Weisz | Exchange emails with C. Lewis; exchange emails re status of Receiver Certificate re closing of the sale; review forms re cancellation of insurance, update and forward to Mitchell Sandham. |
| 09/24/2020 | Echa Odeh | Prepare cheque requisition for expense; review of mail from Alectra, email to PenEquity to obtain further information on invoices paid. |
| 09/25/2020 | Daniel Weisz | Review email from D. Muallim and provide information requested; exchange emails with M. Tapia re repayment to Choice; review Receiver's Certificate and forward copy to Avison Young; review email from D. Muallim and respond thereto. |
| 09/25/2020 | Echa Odeh | Review of outstanding invoices and ledger provided by PenEquity and email to PenEquity re cheque issued. |
| 09/28/2020 | Brenda Wong | Review Statement of Adjustments and Statement re Wind-Down Amount; email to Choice re Astley-Gilbert, rent collections and commissions; discussion with E. Odeh re outstanding information and email to PenEquity re outstanding information requested; emails to C. Da Silva of Choice re rent collections; review Avison Young invoice and email re payment, submit bill for payment; review Canada Revenue Agency Notice of Assessment for March and August HST returns. |
| 09/28/2020 | Echa Odeh | Reconcile spreadsheet tracking expenses. |
| 09/29/2020 | Echa Odeh | Download final bills for 9 of 10 hydro accounts. |

| Date | Professional | Description |
|------------|---------------|--|
| 09/29/2020 | Anne Baptiste | Post receipts and disbursement to Ascend. |
| 09/29/2020 | Brenda Wong | Review TD statement from PenEquity; email to C. Da Silva re TD rent payment received; emails with Choice and PenEquity re books and records; review rent collections in September and prior months; review additional information provided by PenEquity and forward documents to Choice. |
| 09/29/2020 | Daniel Weisz | Discussion with B. Wong on status of various matters; conference call with B. Tannenbaum and M. DeLellis re various matters; exchange emails with C. Lewis; process electronic payment; discussion with C. Lewis. |
| 09/30/2020 | Brenda Wong | Re-calculate Statement of Adjustments ("SOA") rent adjustment. |
| 09/30/2020 | Daniel Weisz | Email to C. Lewis; review potential adjustment to SOA and email to E. Golden re same; discussion with E. Golden re same. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|-------------|--------|---------------------|
| Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT | President | 8.9 | \$ 625 | \$ 5,562.50 |
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 20.2 | \$ 595 | 12,019.00 |
| Brenda Wong, CIRP, LIT | Senior Manager | 20.5 | \$ 485 | 9,942.50 |
| Echa Odeh | Senior Associate | 11.2 | \$ 250 | 2,800.00 |
| Anne Baptiste | Estate Administrator | 1.8 | \$ 110 | 198.00 |
| Total hours and professional fees | | 62.6 | | \$ 30,522.00 |
| HST @ 13% | | | | 3,967.86 |
| Total payable | | | | \$ 34,489.86 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date November 11, 2020

Client File 7887424
Invoice 8
No. 6168775

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period October 1, 2020 to October 31, 2020.

| Date | Professional | Description |
|-------------|---------------------|---|
| 10/01/2020 | Brenda Wong | Follow up with PenEquity Realty Corporation ("PenEquity") re current invoices for payment, review response and request A/P list in Excel format and follow up re Alectra Utilities cheque. |
| 10/01/2020 | Echa Odeh | Response email to debtor to cancel cheque for utilities. |
| 10/05/2020 | Brenda Wong | Review online banking, prepare paperwork for processing of SNAP payment and calculate balance of minimum retained premium payable; review summary of invoices for payment; review WMI accounts and compare to quote; review and respond to emails from Choice Properties Limited Partnership ("Choice") and S. Bryant of PenEquity re postdated rent cheques and rent cheque for deposit; review TD email re cash in account and forward to E. Odeh to update total of outstanding cheques. |
| 10/05/2020 | Anne Baptiste | Post receipt to Ascend; post disbursements to Ascend. |
| 10/05/2020 | Echa Odeh | Review of invoices received; summarize invoices to be paid and email B. Wong re same; email to City of Barrie regarding water bill; follow up for electronic payment information to make payments. |
| 10/06/2020 | Brenda Wong | Review email from E. Odeh re outstanding cheques for TD account; email to D. Canham of PenEquity to request transfer of funds from TD account; discussion with E. Odeh re September HST calculation; email to Choice re payment of September service invoices; emails with PenEquity re TD account and outstanding cheques; discussion with E. Odeh re City of Barrie water bills; review and approve disbursement for payment. |
| 10/06/2020 | Daniel Weisz | Review emails re closure of account; process electronic payment. |

| Date | Professional | Description |
|------------|------------------|---|
| 10/06/2020 | Echa Odeh | Review of outstanding cheques and reconcile with bank statement, email sent to D. Canham re cheque to vendor; prepare calculations for September HST return; prepare cheque requisition for expense; follow up email sent to City of Barrie. |
| 10/07/2020 | Brenda Wong | Review status of Wasteco invoices and respond to emails from Choice re payment of September accounts; respond to email from PenEquity re payment of final accounts; review and approve cheque requests. |
| 10/07/2020 | Echa Odeh | Prepare cheque requisition for final expenses; email and phone call with vendors to obtain payment information. |
| 10/08/2020 | Brenda Wong | Review and respond to emails from Choice re Statement of Adjustments and Astley Gilbert; review summary of activities; review and respond to email from the City of Barrie; review MeadowBrook invoices for payment, email to vendor to request payment information; review list of outstanding information requested from PenEquity; receipt of TD cheque and prepare forms for processing; review and respond to email from E. Golden of Blaney McMurtry LLP ("Blaney"). |
| 10/09/2020 | Brenda Wong | Review emails from Osler Hoskin & Harcourt LLP ("Osler") and Blaney re PRC HST liability and respond to questions re same. |
| 10/09/2020 | Daniel Weisz | Process electronic payments; review emails re status of HST and discussion with B. Wong on same; review information re HST and email to B. Wong on same. |
| 10/09/2020 | Bryan Tannenbaum | Receipt and review of various emails from/to Osler and Blaney re HST issue. |
| 10/10/2020 | Daniel Weisz | Review email from B. Wong re HST issue and reply thereto. |
| 10/10/2020 | Brenda Wong | Review information on Mady (Barrie) and send to Blaney and Osler. |
| 10/13/2020 | Brenda Wong | Review and respond to email from Mitchell Sandham re cancellation of liability policy; review email from TD re account activity from October 1 to 9; review emails from Blaney/Osler; call with B. Tannenbaum and D. Weisz re HST liability; review post-closing collections to date; call with Blaney and Osler and RSM re HST liability; review and respond to email from City of Barrie re water charges; emails with PenEquity and TD re closing of TD account; review and file emails; letter to Canada Revenue Agency ("CRA") re 2015 return. |
| 10/13/2020 | Daniel Weisz | Process electronic payment; conference call with B. Wong and B. Tannenbaum; prepare for and attend call with S. Jeffery, E. Golden, M. Taylor of Blaney, D. Rosenblat of Osler, B. Wong and B. Tannenbaum re status of HST liability. |
| 10/13/2020 | Anne Baptiste | Post receipts to Ascend; post disbursements to Ascend. |
| 10/13/2020 | Bryan Tannenbaum | Conference call on HST issue with D. Rosenblat; E. Golden, S. Jeffery, M. Taylor and D. Weisz and B. Wong; various emails re the HST liability. |
| 10/14/2020 | Anne Baptiste | Post disbursements to Ascend. |
| 10/14/2020 | Brenda Wong | Review and respond to email from City of Barrie re outstanding balances; download payment history for payments received by City of Barrie; review and update disbursements summary schedule. |
| 10/15/2020 | Echa Odeh | Prepare cheque requisition for expense. |
| 10/15/2020 | Daniel Weisz | Review and exchange emails re HST liability. |

| Date | Professional | Description |
|------------|---------------|--|
| 10/15/2020 | Brenda Wong | Review invoices paid for September service contracts; call and email from CRA re its audit of June HST return; review CRA letter and information request and email to E. Odeh re same; review and respond to email from Osler re CRA audit and potential impact on HST liability. |
| 10/16/2020 | Daniel Weisz | Process electronic payments; discussion with C. Da Silva of Choice re same; exchange emails with E. Golden re HST; review summary of activities; email to Penady re funds sent. |
| 10/16/2020 | Brenda Wong | Review and respond to email from Blaney re HST refunds; prepare cheque requisition with supporting documentation for transfer of rent collected post-closing to Choice; review and approve disbursement request. |
| 10/19/2020 | Brenda Wong | Emails to Choice re rent collections. |
| 10/19/2020 | Echa Odeh | Prepare response letter for HST audit; summarize ITCs in Excel spreadsheet and collate invoices for HST audit; email to B. Wong re same. |
| 10/20/2020 | Brenda Wong | Respond to email from Choice re rent transfer; review schedule of ITCs claimed for CRA audit; email to PenEquity re outstanding information and CRA audit; respond to Blaney email re RT0001 account; emails with Mitchell Sandham re correspondence received re policy payments; review email from PenEquity re tenant insurance claim report and forward to Choice; discussion with E. Odeh and email to Choice re HST reporting and Statement of Adjustments. |
| 10/21/2020 | Anne Baptiste | Post disbursements to Ascend. |
| 10/21/2020 | Echa Odeh | Prepare receipt processing form. |
| 10/22/2020 | Brenda Wong | Download copies of final billing statements for City of Barrie water accounts and submit for payment; calculate revised rent adjustment for SOA and email to Choice re same. |
| 10/22/2020 | Daniel Weisz | Discussion with B. Tannenbaum re status of HST liability; process electronic payments. |
| 10/22/2020 | Anne Baptiste | Prepare bank reconciliation. |
| 10/23/2020 | Anne Baptiste | Post receipt to Ascend. |
| 10/23/2020 | Daniel Weisz | Review email from E. Golden re CRA HST claim and respond thereto. |
| 10/26/2020 | Brenda Wong | Email to D. Canham re outstanding information; update schedule of cash requirements and disbursements to be paid; review and file emails; email to Choice re prospective leases; email to Meadowbrook re outstanding invoices; review CRA Notice of Assessment re PRC HST liability (the "NOA") and forward to Blaney and Osler; prepare letter to BMO re funds to be invested in a GIC. |
| 10/26/2020 | Daniel Weisz | Discussion with B. Wong re status of HST; review Blaney account; review schedule re estimated disbursements to be made and discussion with B. Wong re amount to be invested. |
| 10/26/2020 | Echa Odeh | Review of information and update HST calculations for September. |
| 10/27/2020 | Brenda Wong | Review and update the September HST calculation and emails with E. Odeh re HST included in receipts; review and respond to email from Choice re leasing fees payable on prospective leases; respond to Osler re the NOA; discussion with C. Da Silva re accounts receivable; update schedule of rent |

| Date | Professional | Description |
|------------|---------------|---|
| | | collections and send to Choice; review updated HST calculation; calculate expenses to be allocated on the final statement of adjustments. |
| 10/27/2020 | Echa Odeh | Emails with B. Wong regarding HST calculations; review of past GL and amend HST September calculation; file HST return for September. |
| 10/28/2020 | Brenda Wong | Follow up with PenEquity re outstanding information; call with Osler, Blaney and D. Weisz re HST liability; emails with D. Canham re ITCs claimed by PRC and emails to Osler re same; email and fax to BMO re funds to be invested in GIC. |
| 10/28/2020 | Daniel Weisz | Discussion with B. Wong on HST return; conference call with D. Rosenblat, E. Golden and B. Wong re HST; review email from D. Rosenblat and reply thereto; review and sign letter re investment of funds and exchange emails with E. Golden re same; discussion with B. Wong re HST liability calculation. |
| 10/29/2020 | Daniel Weisz | Discussion with B. Wong re HST; process electronic payments; exchange emails with E. Golden re the CRA deemed trust claim. |
| 10/29/2020 | Brenda Wong | Respond to email re interest on deemed trust; prepare cheque requisitions for payment of disbursements; review invoices received from City of Barrie; review and respond to email from Meadowbrook re addresses covered under its contract; follow up with D. Canham re outstanding information. |
| 10/30/2020 | Anne Baptiste | Post disbursements in Ascend. |
| 10/30/2020 | Brenda Wong | Review and respond to email from C. Da Silva re rent collections; email to C. Da Silva re cheque received by the Receiver. |
| 10/30/2020 | Daniel Weisz | Review emails re status of information requested. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|--------------|-------------|---------------------|
| Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT | President | 1.3 | \$ 625 | \$ 812.50 |
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 9.2 | \$ 595 | 5,474.00 |
| Brenda Wong, CIRP, LIT | Senior Manager | 18.4 | \$ 485 | 8,924.00 |
| Echa Odeh | Senior Associate | 9.3 | \$ 250 | 2,325.00 |
| Anne Baptiste | Estate Administrator | 3.6 | \$ 110 | 396.00 |
| Total hours and professional fees | | 41.8 | | \$ 17,931.50 |
| HST @ 13% | | | | 2,331.10 |
| Total payable | | | | \$ 20,262.60 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date December 10, 2020

Client File 7887424

Invoice 9

No. 6192426

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period November 1, 2020 to November 30, 2020.

| Date | Professional | Description |
|-------------|---------------------|--|
| 11/02/2020 | Brenda Wong | Follow up call and emails to D. Canham of PenEquity Realty Corporation ("PenEquity") re outstanding information requested by the Receiver; email to Choice Properties Limited Partnership ("Choice") re Astley-Gilbert portal; prepare schedule of final adjustments for the Statement of Adjustments. |
| 11/02/2020 | Daniel Weisz | Review calculation of amendments to the Statement of Adjustments and email to B. Wong re same. |
| 11/03/2020 | Brenda Wong | Check online statement to confirm rent cheque was not returned NSF and for final insurance premium payment; discussion with D. Canham re outstanding information request; email to D. Canham re yearend adjustments; review 2020 accounting records provided by PenEquity and obtain copies of June invoices for HST audit by Canada Revenue Agency ("CRA"); review emails from D. Canham with attached reports; emails to Choice re information received. |
| 11/03/2020 | Daniel Weisz | Review email from B. Wong re revised statement of adjustments; B. Wong re information requested from and by PenEquity. |
| 11/04/2020 | Brenda Wong | Review Stalking Horse Agreement re purchase price and calculation of Credit Agreement Bid Amount and email to D. Weisz re same; email to D. Canham re HST returns filed by the Receiver; email to Choice re PenEquity Account Statements; follow up with Choice re deposit of rent cheque received by the Receiver and prepare Receipts Processing Form re same; emails with D. Weisz re reporting of the sale transaction on the Receiver's HST return; review and make changes to draft letter to CRA in respect of the HST audit and email to D. Weisz re same; gather reports for the CRA audit. |

| Date | Professional | Description |
|------------|---------------|--|
| 11/04/2020 | Daniel Weisz | Review letter from CRA re audit of the June HST return, review draft response and B. Wong on same. |
| 11/04/2020 | Anne Baptiste | Post disbursement. |
| 11/05/2020 | Brenda Wong | Make revisions to letter to CRA re the audit of Penady's June return, review D. Weisz changes and email to Blaney McMurtry LLP ("Blaney") for comments; email to PenEquity re cheque to be issued in November; prepare cheque requisition for payment of WMI invoice and submit for processing. |
| 11/05/2020 | Daniel Weisz | Review updated letter to CRA re HST and B. Wong on same; review and update summary of activities; process electronic payment. |
| 11/05/2020 | Anne Baptiste | Post disbursements. |
| 11/06/2020 | Anne Baptiste | Post receipts and disbursement. |
| 11/06/2020 | Brenda Wong | Respond to email from Meadowbrook Construction Inc. re its outstanding invoices. |
| 11/06/2020 | Daniel Weisz | Review summary of activities. |
| 11/09/2020 | Brenda Wong | Follow up with Blaney re CRA letter, make final changes and fax to CRA; email to Choice re rent cheque received and prepare paperwork for processing of same. |
| 11/10/2020 | Daniel Weisz | Review Penady account. |
| 11/10/2020 | Anne Baptiste | Preparation of banking reconciliations; post term deposit to Ascend. |
| 11/11/2020 | Brenda Wong | Prepare cheque requisitions for payment of disbursements; start drafting Receiver's third report to the Court. |
| 11/11/2020 | Daniel Weisz | Review file and B. Wong re preparation of report to the Court. |
| 11/12/2020 | Brenda Wong | Review email from Choice re tenant November rent cheque sent to PenEquity and follow up with PenEquity re same; continue drafting third report. |
| 11/13/2020 | Daniel Weisz | Process electronic payments. |
| 11/13/2020 | Echa Odeh | Phone call with CRA regarding HST audit and potential further audit required. |
| 11/16/2020 | Brenda Wong | Check online statement for final insurance payment and prepare cheque requisition for same; review CRA Notice of Assessment re 2015 corporate tax return. |
| 11/16/2020 | Echa Odeh | Calculate Penady HST liability for the month of October. |
| 11/17/2020 | Brenda Wong | Follow up with PenEquity re contractor invoice submitted for payment; review calculation of October HST liability and make revision; discussion with CRA re sale of Barrie property to be reported on the October HST return and HST refunds to be applied to any outstanding balances; fax statement of adjustments in respect of the sale of the Barrie property to CRA. |
| 11/17/2020 | Echa Odeh | Phone call to CRA to obtain access code for RT0001, file RT0001 returns, file RT0002 October return. |
| 11/18/2020 | Brenda Wong | Follow up re tenant November rent cheque sent to the Receiver by PenEquity; prepare cheque requisition for payment of invoice and emails with contractor to obtain EFT payment information. |
| 11/18/2020 | Anne Baptiste | Post receipt. |

| Date | Professional | Description |
|------------|------------------|---|
| 11/19/2020 | Brenda Wong | Call from CRA auditor inquiring re status of receivership and future HST returns; email to Choice re tenant November rent cheque and transfer of post-closing rent collected by the Receiver; email to D. Weisz re transfer of rent to Choice. |
| 11/19/2020 | Daniel Weisz | Review emails re status of HST; process electronic payment. |
| 11/19/2020 | Anne Baptiste | Post disbursement. |
| 11/19/2020 | Echa Odeh | Reconcile expense tracking spreadsheet to final TD bank statement; prepare interim statement of receipts and disbursements ("R&D") and Interim Report of the Receiver pursuant to Section 246(2) of the Bankruptcy and Insolvency Act ("S246 Report") for Penady and Mady. |
| 11/20/2020 | Anne Baptiste | Post disbursements. |
| 11/23/2020 | Brenda Wong | Review draft S246 Report and email to D. Weisz re filing of same; make revisions to S246 Report and revise R&D. |
| 11/23/2020 | Daniel Weisz | Review email from B. Wong on S246 Report; process electronic payment; review changes to statement of adjustments and B. Wong on same. |
| 11/24/2020 | Brenda Wong | Follow up with Choice re Astley-Gilbert portal; follow up re missing November rent cheque and emails with Choice re same; email to Astley-Gilbert re transfer of the account to Choice. |
| 11/24/2020 | Daniel Weisz | Discussion with E. Golden of Blaney re potential adjustment to the statement of adjustments; email to E. Golden re same; B. Tannenbaum on status. |
| 11/25/2020 | Brenda Wong | Review and respond to emails from Astley-Gilbert. |
| 11/26/2020 | Brenda Wong | Review and respond to PenEquity re rent cheque received and arrange for courier to pick-up. |
| 11/26/2020 | Anne Baptiste | Post disbursement. |
| 11/27/2020 | Daniel Weisz | Review draft settlement agreement provided by Osler Hoskin & Harcourt LLP ("Osler") and email to E. Golden re same. |
| 11/27/2020 | Bryan Tannenbaum | Receipt and review of D. Weisz response to Blaney re HST settlement. |
| 11/30/2020 | Brenda Wong | Receipt of tenant rent cheque and email to Choice re same; finalize R&D and fax S246 Report to the Office of the Superintendent of Bankruptcy; review email from Choice re September CECRA payment and email to D. Weisz re same, respond to Choice re funds to be transferred. |
| 11/30/2020 | Daniel Weisz | Review and update R&D; review and sign S246 Report. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|--------------|-------------|---------------------|
| Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT | President | 0.2 | \$625 | \$ 125.00 |
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 4.0 | \$595 | 2,380.00 |
| Brenda Wong, CIRP, LIT | Senior Manager | 12.9 | \$485 | 6,256.50 |
| Echa Odeh | Senior Associate | 3.6 | \$250 | 900.00 |
| Anne Baptiste | Estate Administrator | 1.5 | \$110 | 165.00 |
| Total hours and professional fees | | <u>22.2</u> | | \$ 9,826.50 |
| HST @ 13% | | | | 1,277.45 |
| Total payable | | | | \$ 11,103.95 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date January 15, 2021

Client File 7887424

Invoice 10

No. 6215746

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period December 1, 2020 to December 31, 2020.

| Date | Professional | Description |
|-------------|---------------------|--|
| 12/2/2020 | Brenda Wong | Prepare cheque requisition and payment request for transfer of post-closing receipts to Choice Properties Limited Partnership ("Choice") and e-mail to Choice re same; review e-mail from Astley-Gilbert Limited. |
| 12/2/2020 | Daniel Weisz | Process electronic payment |
| 12/3/2020 | Brenda Wong | Review and respond to e-mail from Choice re 2020 property taxes and Cineplex. |
| 12/3/2020 | Anne Baptiste | Processing receipt. |
| 12/4/2020 | Anne Baptiste | Processing disbursement. |
| 12/7/2020 | Brenda Wong | Review notices of assessment received re June, July and October HST returns. |
| 12/9/2020 | Brenda Wong | Review and respond to e-mail from Alectra Utilities ("Alectra"). |
| 12/9/2020 | Echa Odeh | Add new Alectra account to online account and check whether invoice received. |
| 12/10/2020 | Brenda Wong | Review and respond to e-mail from PenEquity Realty Corporation ("PenEquity") re e-mail insurance claim, forward same to Choice and review e-mail responses from Choice and insurance consultant; review summary of activities. |
| 12/10/2020 | Daniel Weisz | Review proposed agreement re HST and e-mail to E Golden of Blaney McMurtry LLP ("Blaney") re same; review and update summary of activities. |
| 12/10/2020 | Anne Baptiste | Preparation of bank reconciliations. |
| 12/10/2020 | Echa Odeh | Print general ledger and calculate HST liability for monthly return; e-mail to B. Wong for review. |

| Date | Professional | Description |
|------------|---------------|--|
| 12/11/2020 | Brenda Wong | Review changes to draft invoice and finalize same; review calculation of November HST liability. |
| 12/11/2020 | Echa Odeh | File HST return. |
| 12/14/2020 | Daniel Weisz | Review Blaney invoice and e-mail to E Golden re same; e-mail to Choice. |
| 12/15/2020 | Brenda Wong | Review e-mail from E. Odeh re 2020 disbursement invoices to be provided to Choice for annual reconciliation of 2020 operating costs; follow up with E. Odeh re Canada Revenue Agency ("CRA") request for trust exam; prepare affidavit of fees for third report. |
| 12/15/2020 | Echa Odeh | Prepare cheque requisition for final payment to Alectra; compile invoices of operating expenses paid from the Receiver's trust account at BMO Bank of Montreal. |
| 12/15/2020 | Daniel Weisz | Exchange e-mails with E. Golden and B. Wong re finalization of the receivership. |
| 12/16/2020 | Brenda Wong | Review e-mails from E. Golden, review cash on hand and respond to E. Golden; prepare cheque requisitions; e-mails with E. Odeh re CRA trust exam and CRA's revised proof of claim; prepare updated statement of receipts and disbursements ("R&D"); e-mails with E. Odeh re copies of 2020 invoices required for Choice. |
| 12/16/2020 | Daniel Weisz | Exchange e-mails with E. Golden re finalization of the receivership; process electronic payments. |
| 12/16/2020 | Echa Odeh | Phone call with CRA regarding its trust exam. |
| 12/17/2020 | Daniel Weisz | Review draft settlement agreement and e-mail to E. Golden re same. |
| 12/17/2020 | Brenda Wong | Update R&D; review CRA fax re PRC's HST liability and e-mail to D. Weisz and E. Golden re same. |
| 12/17/2020 | Anne Baptiste | Posting disbursements. |
| 12/18/2020 | Daniel Weisz | Discussion with E. Golden re draft settlement agreement and e-mail to E. Golden re same. |
| 12/21/2020 | Brenda Wong | Review and respond to E. Odeh re 2020 invoices paid by the Receiver; review cheque register provided by PenEquity re invoices paid during the receivership; e-mails to Blaney re HST matter; e-mails with E. Odeh re payroll account and CRA trust examiner; prepare general ledger reports for 2020 operating expenses. |
| 12/21/2020 | Echa Odeh | Phone call with CRA regarding status of trust exam to be conducted. |
| 12/22/2020 | Brenda Wong | Prepare general ledger reports for 2020 operating expenses and review supporting invoices; review CRA amended claim letter and e-mails with E. Odeh re same. |
| 12/22/2020 | Echa Odeh | Phone call with CRA to follow up on trust examiner to be assigned and confirm amended claim amounts. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|--------------|-------------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 6.5 | \$ 595 | 3,867.50 |
| Brenda Wong, CIRP, LIT | Senior Manager | 5.4 | \$ 485 | 2,619.00 |
| Echa Odeh | Senior Associate | 1.9 | \$ 250 | 475.00 |
| Anne Baptiste | Estate Administrator | 0.7 | \$ 110 | 77.00 |
| Total hours and professional fees | | 14.5 | | \$ 7,038.50 |
| HST @ 13% | | | | 915.01 |
| Total payable | | | | \$ 7,953.51 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date February 16, 2021

Client File 7887424
Invoice 11
No. 6237513

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period January 1, 2021 to January 31, 2021.

| Date | Professional | Description |
|-------------|---------------------|--|
| 01/05/2021 | Brenda Wong | Review and respond to emails from D. Canham of PenEquity Realty Corporation ("PenEquity") re Canada Revenue Agency ("CRA") audit; review email from E. Odeh re status of CRA audit and emails to D. Weisz and E. Golden of Blaney McMurtry LLP ("Blaney") re same. |
| 01/05/2021 | Echa Odeh | Phone call to CRA to follow up on trust examination. |
| 01/06/2021 | Brenda Wong | Review invoices compiled for 2020 annual reconciliation. |
| 01/08/2021 | Echa Odeh | Review of 2020 cheque register provided by PenEquity; reconcile cheque register with transactions recorded on TD account statement; update to B. Wong re same. |
| 01/11/2021 | Brenda Wong | Review draft reconciliation of Penady cheque register to TD bank statements and make revisions; review email re status of CRA audit. |
| 01/11/2021 | Echa Odeh | Phone call with CRA regarding status of CRA audit, email to B. Wong re same; discussions with B. Wong regarding review of cheque register. |
| 01/12/2021 | Brenda Wong | Upload documentation for 2020 operating costs and send link to C. DaSilva of Choice Properties Limited Partnership ("Choice"); emails with E. Odeh re CRA trust examiner; review and respond to Blaney email re CRA HST audit status. |
| 01/12/2021 | Daniel Weisz | Review and exchange emails re HST status. |
| 01/12/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 01/12/2021 | Echa Odeh | Calculate filing amounts for December HST return and email to B. Wong for review; phone call with CRA and attempt to contact CRA trust examiner. |

| Date | Professional | Description |
|------------|---------------|--|
| 01/13/2021 | Brenda Wong | Review and respond to E. Odeh email re December HST filing; call with D. Weisz, Blaney and Osler, Hoskin & Harcourt LLP ("Osler") re CRA audit; review CRA Notice of Assessment ("NOA") re 2015 HST returns filed. |
| 01/13/2021 | Daniel Weisz | Prepare for and attend conference call with D. Rosenblat, E. Golden of Blaney and B. Wong to discuss the status of the HST liability. |
| 01/13/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 01/13/2021 | Echa Odeh | File HST return. |
| 01/14/2021 | Brenda Wong | Call with CRA re HST audit and email to D. Weisz and E. Golden re same. |
| 01/14/2021 | Daniel Weisz | Review emails re status of HST audit. |
| 01/18/2021 | Brenda Wong | Review summary of activities. |
| 01/19/2021 | Brenda Wong | Email to D. Canham re CRA audit; email to C. Da Silva re 2020 annual reconciliation. |
| 01/20/2021 | Brenda Wong | Review and respond to email from E. Golden re status of CRA audit. |
| 01/20/2021 | Daniel Weisz | Review email re status of HST issue. |
| 01/21/2021 | Brenda Wong | Draft letter to Bank of Montreal to close trust account for Mady Barrie Inc; emails with C. Da Silva re link to obtain documents and resend link. |
| 01/21/2021 | Daniel Weisz | Review and sign letter to close Mady Barrie Inc. bank account; review summary of activities; review Blaney account. |
| 01/22/2021 | Brenda Wong | Review emails from E. Golden and D. Weisz re draft email to CRA re CRA trust exam and make edits to the draft; call to T. Smith of CRA re status of trust exam. |
| 01/22/2021 | Daniel Weisz | Review draft email to D. Winters and email to E. Golden regarding same; review email from E. Golden. |
| 01/25/2021 | Brenda Wong | Prepare cheque requisitions and submit disbursements for payment; review emails from Blaney re HST issue. |
| 01/25/2021 | Daniel Weisz | Review E. Golden email to Osler; process electronic payments. |
| 01/26/2021 | Daniel Weisz | Review email re HST. |
| 01/27/2021 | Brenda Wong | Emails with E. Odeh re update received from T. Smith on PRC HST liability and email to E. Golden and D. Weisz re same; review CRA Notice of Assessment re RT0002 return filed. |
| 01/29/2021 | Echa Odeh | Phone calls with CRA regarding pending HST trust exam, email to D. Canham re CRA request that he contact CRA. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|--------------|-------------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 5.9 | \$595 | 3,510.50 |
| Brenda Wong, CIRP, LIT | Senior Manager | 5.0 | \$485 | 2,425.00 |
| Echa Odeh | Senior Associate | 4.7 | \$250 | 1,175.00 |
| Anne Baptiste | Estate Administrator | 0.3 | \$110 | 33.00 |
| Total hours and professional fees | | <u>15.9</u> | | \$ 7,143.50 |
| HST @ 13% | | | | 928.66 |
| Total payable | | | | \$ 8,072.16 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date March 12, 2021

Client File 7887424

Invoice 12

No. 6261043

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period February 1, 2021 to February 28, 2021.

| Date | Professional | Description |
|-----------|-----------------|--|
| 2/2/2021 | Anne Baptiste | Post disbursements. |
| 2/8/2021 | Brenda Wong | Review and respond to email from E. Golden of Blaney McMurtry LLP ("Blaney") re PRC HST audit. |
| 2/8/2021 | Daniel Weisz | Review exchange of emails re HST status. |
| 2/10/2021 | Daniel Weisz | Review email re status of HST issue. |
| 2/10/2021 | Echa Odeh | Calculate HST position and file January HST return with Canada Revenue Agency ("CRA"). |
| 2/12/2021 | Daniel Weisz | Review summary of activities. |
| 2/16/2021 | Brenda Wong | Call and discuss with CRA the status of the HST audit for PRC Barrie; email to D. Canham of PenEquity Realty Corporation re same and review CRA letter re information requested; email to E. Golden re status update on PRC HST audit. |
| 2/16/2021 | Daniel Weisz | Review emails re status of HST audit. |
| 2/16/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 2/18/2021 | Daniel Weisz | Review Blaney invoice. |
| 2/18/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 2/18/2021 | Echa Odeh | Discuss with CRA status of HST audit. |
| 2/22/2021 | Brenda Wong | Review email from E. Odeh re CRA request for outstanding corporate tax ("CT") returns to be filed; review emails re 2015 CT return and email to D. Canham re returns to be filed. |

| Date | Professional | Description |
|-----------|---------------|--|
| 2/22/2021 | Echa Odeh | Call CRA to confirm dates for outstanding T2 returns. |
| 2/23/2021 | Anne Baptiste | Post disbursements. |
| 2/25/2021 | Brenda Wong | Follow up with D. Canham re PBL's corporate tax returns; email E. Odeh re call from CRA re PRC HST audit. |
| 2/25/2021 | Echa Odeh | Receive phone call from CRA regarding PRC HST audit. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, review and filing of e-mails and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|------------|--------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 3.4 | \$ 595 | \$ 2,023.00 |
| Brenda Wong, CIRP, LIT | Senior Manager | 1.0 | \$ 485 | 485.00 |
| Echa Odeh | Senior Associate | 0.7 | \$ 250 | 175.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.7 | \$ 110 | 77.00 |
| Total hours and professional fees | | <u>5.8</u> | | \$ 2,760.00 |
| HST @ 13% | | | | 358.80 |
| Total payable | | | | \$ 3,118.80 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited



GST/HST: 80784 1440 RT 0001

291

RSM CANADA LIMITED
Licensed Insolvency Trustee
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
Court-appointed Receiver and Manager of
Penady (Barrie) Ltd. and of the interest of each of
PRC Barrie Corp. and Mady (Barrie) Inc. in the
North Barrie Crossing Shopping Centre Lands
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date April 6, 2021

Client File 7887424

Invoice 13

No. 6287525

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period March 1, 2021 to March 31, 2021.

| Date | Professional | Description |
|-----------|-----------------|---|
| 3/2/2021 | Brenda Wong | Review email re status of PRC HST audit; send email to D. Canham of PenEquity Realty Corporation to inquire as to timing. |
| 3/2/2021 | Echa Odeh | Phone call with Canada Revenue Agency ("CRA") regarding trust examination; email to D. Canham regarding same. |
| 3/8/2021 | Brenda Wong | Respond to creditor inquiry; send email to D. Canham re outstanding corporate tax returns. |
| 3/9/2021 | Brenda Wong | Review email from D. Canham and email R. Jessa re preparation of outstanding corporate tax (T2) returns; call from Bell Canada to inquire re status. |
| 3/10/2021 | Echa Odeh | Phone call with CRA regarding examination; prepare and file HST return. |
| 3/11/2021 | Brenda Wong | Review email from E. Odeh re status of PRC HST audit and email to E. Golden of Blaney McMurtry LLP ("Blaney") re same; review and respond to comments from R. Jessa re T2 returns; email to D. Canham re schedules missing from 2015 T2 return; review summary of activities. |
| 3/11/2021 | Daniel Weisz | Review email re status of HST audit. |
| 3/11/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 3/12/2021 | Daniel Weisz | Review and update summary of activities. |
| 3/15/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 3/15/2021 | Daniel Weisz | Review email re HST audit. |
| 3/15/2021 | Brenda Wong | Review and respond to email from D. Canham re missing schedules and shareholder information; review and approve payment of disbursement invoice. |

April 6, 2021
 Invoice 13
 Page 2

| Date | Professional | Description |
|-----------|---------------|--|
| 3/16/2021 | Daniel Weisz | Review Blaney's account. |
| 3/22/2021 | Daniel Weisz | Process electronic payment. |
| 3/24/2021 | Brenda Wong | Review email from D. Canham and email to R. Jessa re information required for preparation of outstanding T2 returns. |
| 3/24/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 3/26/2021 | Anne Baptiste | Post disbursements. |
| 3/29/2021 | Daniel Weisz | Review emails re HST returns to be prepared; process electronic payment. |
| 3/29/2021 | Brenda Wong | Exchange emails with R. Jessa re preparation of T2 returns, email D. Weisz re same; email E. Odeh re status of CRA trust exam. |
| 3/30/2021 | Brenda Wong | Review email from E. Odeh re call with CRA and email to E. Golden re update on status of PRC trust exam. |
| 3/30/2021 | Daniel Weisz | Review email re status of HST audit. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, review and filing of e-mails and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|------------|--------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 0.9 | \$ 595 | \$ 535.50 |
| Brenda Wong, CIRP, LIT | Senior Manager | 1.4 | \$ 485 | 679.00 |
| Echa Odeh | Senior Associate | 0.5 | \$ 250 | 125.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.5 | \$ 110 | 55.00 |
| Total hours and professional fees | | <u>3.3</u> | | \$ 1,394.50 |
| HST @ 13% | | | | 181.29 |
| Total payable | | | | \$ 1,575.79 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
 RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date May 11, 2021

Client File 7887424

Invoice 14

No. 6343847

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period April 1, 2021 to April 30, 2021.

| Date | Professional | Description |
|-----------|-----------------|---|
| 4/5/2021 | Echa Odeh | Prepare draft statement of receipts and disbursements ("SRD") and interim report of Receiver pursuant to section 246(2) of the <i>Bankruptcy and Insolvency Act</i> ("246 Report"). |
| 4/5/2021 | Brenda Wong | Reconcile bank to general ledger; review summary of activities; review draft 246 Report and SRD. |
| 4/6/2021 | Brenda Wong | Review changes and make final edits to the 246 Report. |
| 4/6/2021 | Daniel Weisz | Review summary of activities; review and update 246 Report and the SRD relating thereto. |
| 4/6/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 4/6/2021 | Echa Odeh | Prepare and file HST return. |
| 4/8/2021 | Anne Baptiste | Post disbursement. |
| 4/9/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 4/12/2021 | Brenda Wong | Review and respond to email from D. Canham of PenEquity Realty Corporation re sale transaction and email to D. Weisz re same. |
| 4/15/2021 | Brenda Wong | Follow up re status of corporate tax returns. |
| 4/15/2021 | Victoria Tang | Meet with R. Jessa to discuss corporate tax ("T2") returns to be prepared. |
| 4/19/2021 | Victoria Tang | Prepare 2016-2019 T2 returns. |
| 4/21/2021 | Rishma Jessa | Review draft T2s and send drafts for review. |
| 4/21/2021 | Victoria Tang | Print draft and signature pages. |
| 4/22/2021 | Daniel Weisz | Review email re T2 returns prepared. |

| Date | Professional | Description |
|-----------|---------------|--|
| 4/26/2021 | Brenda Wong | Review draft T2 returns, emails to D. Canham and D. Weisz to follow up re same; email E. Odeh to contact Canada Revenue Agency ("CRA") re changes in PBL's mailing address; review and respond to D. Weisz questions re draft T2 returns; email questions/comments to R. Jessa re draft returns and exchange emails with R. Jessa re additional questions. |
| 4/26/2021 | Daniel Weisz | Review PBL draft T2 returns and review and exchange emails with B. Wong re same; discussion with B. Wong re same. |
| 4/26/2021 | Echa Odeh | Phone call with CRA regarding addresses on file for PBL. |
| 4/26/2021 | Rishma Jessa | Respond to queries from B. Wong. |
| 4/26/2021 | Victoria Tang | Update the T2 returns based on B. Wong comments. |
| 4/27/2021 | Daniel Weisz | Discussion with E. Golden of Blaney McMurtry LLP re the status of the receivership administration. |
| 4/28/2021 | Daniel Weisz | Review status of funds in the possession of the Receiver and email to E. Golden re same. |
| 4/29/2021 | Echa Odeh | Phone call with CRA regarding PRC HST audit. |
| 4/29/2021 | Victoria Tang | Print draft and signature pages. |
| 4/30/2021 | Brenda Wong | Review revised T2 returns and email to R. Jessa re additional edits required. |
| 4/30/2021 | Daniel Weisz | Review emails re T2 returns to be filed. |
| 4/30/2021 | Rishma Jessa | Review of updated T2s. |
| 4/30/2021 | Victoria Tang | Update the T2s as requested and re-print drafts and assemble them. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|---------------------|-------------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 2.60 | \$ 595 | \$ 1,547.00 |
| Brenda Wong, CIRP, LIT | Senior Manager | 3.40 | \$ 485 | 1,649.00 |
| Rishma Jessa, CPA, CGA, MTax, TEP | Senior Director, Tax | 2.10 | \$ 485 | 1,018.50 |
| Victoria Tang, CPA | Senior Associate, Tax | 5.70 | \$ 315 | 1,795.50 |
| Echa Odeh | Senior Associate | 1.20 | \$ 250 | 300.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.50 | \$ 110 | 55.00 |
| Total hours and professional fees | | <u>15.50</u> | | \$ 6,365.00 |
| HST @ 13% | | | | 827.45 |
| Total payable | | | | \$ 7,192.45 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.728.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date June 3, 2021

Client File 7887424

Invoice 15

No. 6364804

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period May 1, 2021 to May 31, 2021.

| Date | Professional | Description |
|-----------|-----------------|--|
| 5/3/2021 | Daniel Weisz | Sign tax return document re 2016-2019 corporate tax returns. |
| 5/3/2021 | Brenda Wong | Review updated tax returns and forward to D. Weisz for signing; review and respond to email from supplier re invoice for services provided post-closing. |
| 5/4/2021 | Echa Odeh | Make follow-up calls to Canada Revenue Agency ("CRA") to obtain update on PRC HST audit. |
| 5/4/2021 | Brenda Wong | Follow up re status of PRC HST audit. |
| 5/4/2021 | Daniel Weisz | Review email re status of HST. |
| 5/6/2021 | Echa Odeh | Discuss with CRA status of PRC HST audit. |
| 5/7/2021 | Echa Odeh | Contact CRA re status of PRC HST audit; prepare HST remittance calculation. |
| 5/7/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 5/10/2021 | Echa Odeh | File HST return. |
| 5/10/2021 | Daniel Weisz | Review exchange of emails re HST. |
| 5/10/2021 | Brenda Wong | Follow up re PRC trust exam and information requested by CRA and exchange emails with Blaney McMurtry LLP ("Blaney") re same. |
| 5/11/2021 | Daniel Weisz | Review and update summary of activities. |
| 5/11/2021 | Brenda Wong | Review summary of activities; review email from counsel re status of PRC HST audit. |
| 5/12/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 5/17/2021 | Brenda Wong | Review Notice of Assessment received from CRA re RC0001 account; review email from Blaney re update on PRC HST audit. |

| Date | Professional | Description |
|-----------|--------------|---|
| 5/17/2021 | Daniel Weisz | Review email from M. Citak. |
| 5/25/2021 | Echa Odeh | Prepare cheque requisition and deposit slip; discussions with CRA regarding PRC audit; email B. Wong to provide update on audit. |
| 5/26/2021 | Echa Odeh | Review voicemail from CRA and provide B. Wong with an update. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|-------------|--------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 0.70 | \$ 595 | \$ 416.50 |
| Brenda Wong, CIRP, LIT | Senior Manager | 0.90 | \$ 485 | 436.50 |
| Echa Odeh | Senior Associate | 1.70 | \$ 250 | 425.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.30 | \$ 110 | 33.00 |
| Total hours and professional fees | | 3.60 | | \$ 1,311.00 |
| HST @ 13% | | | | 170.43 |
| Total payable | | | | \$ 1,481.43 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date July 28, 2021

Client File 7887424

Invoice 16

No. 6405713

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period June 1, 2021 to June 30, 2021.

| Date | Professional | Description |
|-----------|-----------------|---|
| 6/1/2021 | Brenda Wong | Review and respond to email from Blaney McMurtry LLP ("Blaney") re status of PRC HST audit and email to E. Odeh re same; prepare and submit cheque requisition for payment of disbursement. |
| 6/1/2021 | Daniel Weisz | Review emails re status of HST; process electronic payment. |
| 6/2/2021 | Brenda Wong | Review summary of activities. |
| 6/2/2021 | Daniel Weisz | Review summary of activities. |
| 6/3/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 6/4/2021 | Anne Baptiste | Post disbursements. |
| 6/4/2021 | Echa Odeh | Email with Canada Revenue Agency ("CRA") regarding HST audit. |
| 6/7/2021 | Brenda Wong | Review emails from CRA re status of PRC HST audit and email to E. Golden of Blaney re same. |
| 6/8/2021 | Daniel Weisz | Review Blaney account; email to Choice Properties Limited Partnership re Receiver accounts. |
| 6/9/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 6/14/2021 | Echa Odeh | File HST return and save confirmation to the file. |
| 6/16/2021 | Brenda Wong | Approve and submit invoices for processing. |
| 6/16/2021 | Daniel Weisz | Process electronic payments. |
| 6/21/2021 | Anne Baptiste | Post disbursement. |
| 6/22/2021 | Brenda Wong | Send update to E. Golden re PRC HST audit. |

| Date | Professional | Description |
|------|--------------|---|
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|-------------|--------|------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 0.70 | \$ 595 | \$ 416.50 |
| Brenda Wong, CIRP, LIT | Senior Manager | 0.60 | \$ 485 | 291.00 |
| Echa Odeh | Senior Associate | 0.40 | \$ 250 | 100.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.60 | \$ 110 | 66.00 |
| Total hours and professional fees | | <u>2.30</u> | | \$ 873.50 |
| HST @ 13% | | | | 113.56 |
| Total payable | | | | \$ 987.06 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date September 20, 2021

Client File 7887424

Invoice 17

No. 6439217

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period July 1, 2021 to August 31, 2021.

| Date | Professional | Description |
|-------------|---------------------|---|
| 7/6/2021 | Daniel Weisz | Review email re status of information requested from the debtor by Canada Revenue Agency ("CRA"). |
| 7/7/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 7/19/2021 | Echa Odeh | Calculate HST amounts and file returns. |
| 7/20/2021 | Echa Odeh | Follow up email to CRA regarding PRC Barrie Audit. |
| 7/27/2021 | Daniel Weisz | Review email re letter of credit and email to E. Golden of Blaney McMurtry LLP ("Blaney") re same. |
| 7/28/2021 | Daniel Weisz | Review email from E. Golden; discussion with E. Golden and email to A. Gravets re letter of credit; review summary of activities. |
| 7/29/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 7/29/2021 | Daniel Weisz | Process electronic payments. |
| 7/29/2021 | Brenda Wong | Review and approve payment request; prepare cheque requisition for payment of disbursement. |
| 7/30/2021 | Anne Baptiste | Post disbursements. |
| 8/6/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 8/9/2021 | Echa Odeh | File HST return and save confirmation to the file. |
| 8/16/2021 | Echa Odeh | Follow up with CRA regarding PRC Barrie Audit. |
| 8/16/2021 | Brenda Wong | Review emails from CRA and email E. Golden re status of PRC HST audit. |
| 8/17/2021 | Echa Odeh | Email regarding the HST audit. |

| Date | Professional | Description |
|-----------|---------------|---|
| 8/17/2021 | Daniel Weisz | Review email re status of HST. |
| 8/17/2021 | Brenda Wong | Review emails from CRA auditor and email to Blaney regarding same. |
| 8/18/2021 | Anne Baptiste | Post receipt. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|-------------|--------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 1.00 | \$ 595 | \$ 595.00 |
| Brenda Wong, CIRP, LIT | Senior Manager | 0.30 | \$ 485 | 145.50 |
| Echa Odeh | Senior Associate | 0.70 | \$ 250 | 175.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.80 | \$ 110 | 88.00 |
| Total hours and professional fees | | 2.80 | | \$ 1,003.50 |
| HST @ 13% | | | | 130.46 |
| Total payable | | | | \$ 1,133.96 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date November 2, 2021

Client File 7887424

Invoice 18

No. 6490790

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period September 1, 2021 to October 31, 2021.

| Date | Professional | Description |
|-------------|---------------------|---|
| 9/1/2021 | Brenda Wong | Email E. Golden of Blaney McMurtry LLP ("Blaney") re follow up with counsel for PenEquity Realty Corporation ("PenEquity") re PRC HST audit. |
| 9/1/2021 | Daniel Weisz | Discussion with B. Tannenbaum regarding the status of HST; review email from E. Golden. |
| 9/1/2021 | Anne Baptiste | Post receipt. |
| 9/1/2021 | Echa Odeh | Follow up with Canada Revenue Agency ("CRA") re status of PRC HST audit. |
| 9/2/2021 | Echa Odeh | Discussions with CRA regarding PRC HST audit. |
| 9/10/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 9/16/2021 | Brenda Wong | Review and respond to emails from Osler, Hoskin & Harcourt LLP ("Osler") re CRA HST audit. |
| 9/20/2021 | Daniel Weisz | Review summary of activities. |
| 9/21/2021 | Daniel Weisz | Process electronic payment. |
| 9/21/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 9/22/2021 | Daniel Weisz | Process electronic payment; review emails re status of the HST audit. |
| 9/22/2021 | Echa Odeh | Discussion with CRA regarding HST audit. |
| 9/23/2021 | Echa Odeh | File PBL HST return. |
| 9/30/2021 | Echa Odeh | Prepare draft interim statement of receipts and disbursements ("SRD") and interim report of receiver pursuant to Section 246 (2) of the Bankruptcy and Insolvency Act (the "246 Report"). |

| Date | Professional | Description |
|------------|---------------|---|
| 10/1/2021 | Echa Odeh | Continue preparing SRD and 246 Report; follow up with CRA regarding PRC HST audit. |
| 10/4/2021 | Brenda Wong | Review and respond to email from E. Odeh re status of PRC HST audit; review SRD. |
| 10/4/2021 | Echa Odeh | Phone call to CRA regarding HST audit. |
| 10/5/2021 | Brenda Wong | Update draft S246 Report and review D. Weisz changes to same, compile final report and fax to the Office of the Superintendent of Bankruptcy. |
| 10/5/2021 | Daniel Weisz | Review and update S246 Report and update; review SRD; review final version of S246 Report and sign. |
| 10/6/2021 | Brenda Wong | Review email from Blaney re CRA's completion of HST audit; update Receiver's draft report to the Court. |
| 10/6/2021 | Daniel Weisz | Review email re status of CRA audit, emails with B. Wong and E. Golden with respect to same. |
| 10/6/2021 | Anne Baptiste | Post disbursements. |
| 10/8/2021 | Echa Odeh | Calculate HST for HST filing. |
| 10/10/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 10/12/2021 | Brenda Wong | Update Receiver's draft report to the Court; prepare affidavit of fees. |
| 10/12/2021 | Echa Odeh | File HST return. |
| 10/13/2021 | Brenda Wong | Review emails from and discussion with D. Weisz re statement of adjustments; review terms of Stalking Horse Agreement. |
| 10/13/2021 | Daniel Weisz | Review files, update draft report to Court, discussion with B. Wong re the report; email to E. Golden. |
| 10/14/2021 | Brenda Wong | Review D. Weisz changes to draft report and make additional updates. |
| 10/18/2021 | Echa Odeh | Call and email CRA re PRC HST audit. |
| 10/19/2021 | Brenda Wong | Review and respond to email from CRA re PRC deemed trust claim; make edits to draft report. |
| 10/20/2021 | Brenda Wong | Review and respond to email from D. Canham of PenEquity. |
| 10/21/2021 | Brenda Wong | Review email and fax from CRA and update draft report re PRC HST liability. |
| 10/26/2021 | Daniel Weisz | Review updated settlement agreement; review files and forward information to E. Golden in preparation for tomorrow's discussion. |
| 10/27/2021 | Brenda Wong | Review D. Weisz email re settlement agreement; discussion with D. Weisz and E. Golden re outstanding matters; email to E. Golden re final changes to Statement of Adjustments. |
| 10/27/2021 | Daniel Weisz | Prepare for and attend conference call with B. Wong and E. Golden re finalizing matters relating to the receivership administration. |
| 10/29/2021 | Daniel Weisz | Email to E. Golden re status of email to Osler. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|---------------------|-------------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 5.50 | \$ 595 | \$ 3,272.50 |
| Brenda Wong, CIRP, LIT | Senior Manager | 5.30 | \$ 485 | 2,570.50 |
| Echa Odeh | Senior Associate | 3.30 | \$ 250 | 825.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.80 | \$ 110 | 88.00 |
| Total hours and professional fees | | <u>14.90</u> | | \$ 6,756.00 |
| HST @ 13% | | | | 878.28 |
| Total payable | | | | \$ 7,634.28 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

To RSM Canada Limited
 Court-appointed Receiver and Manager of
 Penady (Barrie) Ltd. and of the interest of each of
 PRC Barrie Corp. and Mady (Barrie) Inc. in the
 North Barrie Crossing Shopping Centre Lands
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Date December 1, 2021

Client File 7887424

Invoice 19

No. 6511802

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver and Manager of Penady (Barrie) Ltd. ("PBL") and of the interest of each of PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") in the North Barrie Crossing Shopping Centre Lands for the period November 1, 2021 to November 30, 2021.

| Date | Professional | Description |
|-----------|-----------------|---|
| 11/1/2021 | Brenda Wong | Review email from BMO Bank of Montreal ("BMO") re GIC maturity, download online statement and review cash balance; email D. Weisz re re-investment of funds; prepare letter to BMO re purchase of new GIC; review and respond to email from Blaney McMurtry LLP ("Blaney") re draft email to Osler, Hoskin & Harcourt LLP ("Osler") re statement of adjustments and settlement agreement and review emails from Blaney and Osler re same; review summary of activities. |
| 11/1/2021 | Daniel Weisz | Exchange emails with E. Golden of Blaney; review draft email to Osler, review file and email to E. Golden re same; respond to email from B. Wong re renewal of GIC and sign letter regarding same. |
| 11/1/2021 | Anne Baptiste | Post GIC purchase to Ascend. |
| 11/2/2021 | Brenda Wong | Review email from BMO and GIC certificate and prepare forms for posting of same. |
| 11/3/2021 | Brenda Wong | Review emails from Blaney and Osler re settlement agreement and the Receiver's discharge; review disbursement request. |
| 11/3/2021 | Daniel Weisz | Exchange emails with E. Golden re correspondence from Osler. |
| 11/3/2021 | Donna Nishimura | Prepare cheque requisition and submit invoice for payment. |
| 11/8/2021 | Brenda Wong | Review email from Blaney re adjustments to agreement of purchase and sale and settlement agreement and D. Weisz response. |
| 11/9/2021 | Daniel Weisz | Email to E. Golden re various matters; work on report to court. |
| 11/9/2021 | Echa Odeh | File HST return. |

| Date | Professional | Description |
|------------|---------------|---|
| 11/10/2021 | Brenda Wong | Review changes to draft report and make additional changes; forward draft report to Blaney for review. |
| 11/10/2021 | Daniel Weisz | Work on report; review Blaney's accounts. |
| 11/11/2021 | Daniel Weisz | Process electronic payments. |
| 11/12/2021 | Anne Baptiste | Post disbursements. |
| 11/15/2021 | Daniel Weisz | Review emails re court date and email to E. Golden re same. |
| 11/23/2021 | Daniel Weisz | Email to E. Golden. |
| 11/23/2021 | Anne Baptiste | Prepare bank reconciliation. |
| 11/24/2021 | Brenda Wong | Review emails re settlement agreement; review HST refund and status of corporate tax returns ("CT") and emails with E. Odeh re CT filing obligations. |
| 11/24/2021 | Daniel Weisz | Review exchange of emails re settlement agreement; emails to Aird & Berlis LLP in respect of same. |
| 11/24/2021 | Echa Odeh | Phone call to Canada Revenue Agency ("CRA"). |
| 11/25/2021 | Daniel Weisz | Exchange emails with E. Golden re the Receiver's report to court. |
| 11/25/2021 | Echa Odeh | Phone call to CRA. |
| 11/26/2021 | Daniel Weisz | Review Blaney's comments on draft report and email to E. Golden re same; exchange emails with E. Golden re settlement agreement. |
| 11/26/2021 | Echa Odeh | Discussion with CRA; prepare interim statement of receipts and disbursements ("SRD"). |
| 11/29/2021 | Brenda Wong | Discuss with E. Odeh re outstanding questions re preparation of 2020 corporate tax return; review draft SRD; review changes to draft report and make additional changes; update report appendices; review emails from Blaney re draft report; review email from D. Canham of PenEquity Realty Corporation re PBL and PRC income tax reporting and discussion with D. Weisz re same; emails with Blaney re PBL's income tax filing requirements. |
| 11/29/2021 | Daniel Weisz | Review updated draft report and update; discussion with B. Wong re HST refunds; exchange emails with E. Golden. |
| 11/30/2021 | Echa Odeh | Send email to CRA regarding CT filing requirements, phone call with CRA and B. Wong regarding same. |
| 11/30/2021 | Brenda Wong | Review changes to report and reference to source documents; review draft email to CRA re CT filing requirements, discuss with W. Rueger of CRA re same; discussion with CRA agent. |
| 11/30/2021 | Daniel Weisz | Work on report to court and exchange emails with E. Golden; review emails re the report. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|-----------------------|---------------------|-------------|--------------------|
| Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT | Senior Vice President | 7.60 | \$ 595 | \$ 4,522.00 |
| Brenda Wong, CIRP, LIT | Senior Manager | 5.90 | \$ 485 | 2,861.50 |
| Echa Odeh | Senior Associate | 1.50 | \$ 250 | 375.00 |
| Anne Baptiste/Donna Nishimura | Estate Administrator | 0.60 | \$ 110 | 66.00 |
| Total hours and professional fees | | <u>15.60</u> | | \$ 7,824.50 |
| HST @ 13% | | | | 1,017.19 |
| Total payable | | | | \$ 8,841.69 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt.
RSM Canada Limited

**THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF DANIEL WEISZ SWORN REMOTELY
BEFORE ME THIS 1st DAY OF DECEMBER, 2021**



A Commissioner, etc.

**Bryan Allen Tannenbaum,
a Commissioner, etc., Province of Ontario, for
RSM Canada LLP and RSM Canada Limited.
Expires February 4, 2024.**

**In the Matter of the Receivership of
Penady (Barrie) Ltd. and certain of the assets,
undertakings and properties of PRC Barrie Corp. and Mady (Barrie) Inc.
Summary of Receiver's Fees
For the Period August 1, 2020 to November 30, 2021**

| Invoice Date | Period | Hours | Fees | HST | Total | Average Hourly Rate |
|---------------------|---------------------------------|--------------|----------------------|---------------------|----------------------|----------------------------|
| 8-Sep-20 | August 1 to 31, 2020 | 118.2 | \$ 60,897.50 | \$ 7,916.68 | \$ 68,814.18 | \$ 515.21 |
| 26-Oct-20 | September 1 to 30, 2020 | 62.6 | 30,522.00 | 3,967.86 | 34,489.86 | 487.57 |
| 11-Nov-20 | October 1 to 31, 2020 | 41.8 | 17,931.50 | 2,331.10 | 20,262.60 | 428.98 |
| 10-Dec-20 | November 1 to 30, 2020 | 22.2 | 9,826.50 | 1,277.45 | 11,103.95 | 442.64 |
| 15-Jan-21 | December 1 to 31, 2020 | 14.5 | 7,038.50 | 915.01 | 7,953.51 | 485.41 |
| 16-Feb-21 | January 1 to 31, 2021 | 15.9 | 7,143.50 | 928.66 | 8,072.16 | 449.28 |
| 12-Mar-21 | February 1 to 28, 2021 | 5.8 | 2,760.00 | 358.80 | 3,118.80 | 475.86 |
| 6-Apr-21 | March 1 to 31, 2021 | 3.3 | 1,394.50 | 181.29 | 1,575.79 | 422.58 |
| 11-May-21 | April 1 to 30, 2021 | 15.5 | 6,365.00 | 827.45 | 7,192.45 | 410.65 |
| 3-Jun-21 | May 1 to 31, 2021 | 3.6 | 1,311.00 | 170.43 | 1,481.43 | 364.17 |
| 28-Jul-21 | June 1 to 30, 2021 | 2.3 | 873.50 | 113.56 | 987.06 | 379.78 |
| 20-Sep-21 | July 1 to August 31, 2021 | 2.8 | 1,003.50 | 130.46 | 1,133.96 | 358.39 |
| 2-Nov-21 | September 1 to October 31, 2021 | 14.9 | 6,756.00 | 878.28 | 7,634.28 | 453.42 |
| 1-Dec-21 | November 1 to 30, 2021 | 15.6 | 7,824.50 | 1,017.19 | 8,841.69 | 501.57 |
| Total | | 339.0 | \$ 161,647.50 | \$ 21,014.22 | \$ 182,661.72 | \$ 476.84 |

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

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

-and-

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

Applicant

Respondents

| | |
|--|---|
| <p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>PROCEEDING COMMENCED AT TORONTO</p> | <p>AFFIDAVIT OF DANIEL WEISZ</p> |
| <p>RSM CANADA LIMITED Licensed Insolvency Trustee 11 King Street West, Suite 700, Box 27 Toronto, ON M5H 4C7 Tel: 416-480-0160 Fax: 416-480-2646</p> <p>Daniel Weisz, Lic # 1889 Tel: 416-646-8778 daniel.weisz@rsmcanada.com</p> <p>Court-appointed Receiver and Manager of Penady (Barrie) Ltd. and certain of the assets of PRC Barrie Corp. and Mady (Barrie) Inc.</p> | |

Appendix Q

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

**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****

AFFIDAVIT OF CHAD KOPACH

**I, CHAD KOPACH, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Blaney McMurtry LLP (“Blaney”), counsel to the receiver, RSM Canada Limited (the “Receiver”). As such, I have knowledge of the matters hereinafter deposed to except where stated to be on information and belief, and where so stated I verily believe it to be true.
2. By Order of the Honourable Justice McEwen dated March 25, 2020 (the “Appointment Order”), RSM Canada Limited was appointed Receiver without security, of all of the assets,

undertakings and properties of Penady (Barrie) Ltd. (“PBL”) acquired for, or used in relation to a business carried on by PBL, including all proceeds thereof, and the interest of PRC Barrie Corp. (“PRC Barrie”) in the Barrie Property (defined in the Appointment Order) and all assets, undertakings and properties related thereto (collectively, the “Property”). On May 15, 2020, the Appointment Order was amended to include Mady (Barrie) Inc. (“MBI”) as a respondent, and to appoint RSM Canada Limited as receiver and manager without security over MBI’s interest in the Barrie Property, and all assets, undertakings and properties related thereto.

3. Blaney has provided services and incurred disbursements in relation to the receivership for the period from July 24, 2020, to and including November 30, 2021, as described in the Legal Costs Summary attached hereto and marked as **Exhibit “A”**, and the detailed accounts rendered by Blaney dated August 31, 2020, September 30, 2020, October 31, 2020, December 11, 2020, December 31, 2020, January 29, 2021, February 28, 2021, April 30, 2021, May 31, 2021, June 30, 2021, July 31, 2021, September 30, 2021, October 31, 2020, and November 30, 2021, which are attached hereto and marked as **Exhibits “B”, “C”, “D”, “E”, “F”, “G”, “H”, “I”, “J”, “K”, “L”, “M”, “N”, and “O”**, respectively (the “Blaney Accounts”).

4. Notwithstanding the production of the Blaney Accounts, Blaney and the Receiver are in no way waiving privilege or confidentiality with respect to the accounts or the activities described therein.

5. Based on my review of the Blaney Accounts and my personal knowledge of this matter, the Blaney Accounts represent a fair and accurate description of the services provided and the amounts charged by Blaney.


6. A total of approximately 199.7 hours were expended by Steven Jeffery, Eric Golden, Chad Kopach, Mona R. Taylor, Matthew Tapia, Elsir Tawfik, and Blaney's law clerks during the period noted above in performing legal services relating to the Receivership proceeding herein.

7. I verily believe that the hourly billing rates, outlined in detail in the Blaney Accounts, are in the range of normal average hourly rates charged by legal counsel for services rendered in relation to engagements similar to Blaney's engagement with respect to the Receivership.

8. I swear this Affidavit in support of a motion for, among other things, approval of Blaney's fees and disbursements, and for no improper purpose.

SWORN BEFORE ME at

the City of Toronto,
in the Province of Ontario,
this 2nd day of December, 2021



Kelly Vickers (P13560)

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)
)
)
)



CHAD KOPACH

This is Exhibit "A" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

LEGAL COSTS SUMMARY

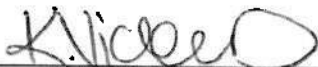
| LAWYER | YEAR OF CALL | HOURLY RATE |
|----------------|--------------|-------------|
| Steven Jeffery | 1984 | \$675.00 |
| Eric Golden | 1996 | \$625.00 |
| Mona R. Taylor | 1989 | \$525.00 |
| Chad Kopach | 2003 | \$500.00 |
| Elsir Tawfik | 2020 | \$300.00 |
| Matthew Tapia | 2019 | \$260.00 |

SUMMARY OF ACCOUNTS

| No. | Date of Account | Fees | Disbursements | H.S.T. | Total |
|-----|--------------------|-------------|---------------|------------|-------------|
| 1. | August 31, 2020 | \$29,882.50 | \$0.00 | \$3,884.73 | \$33,767.23 |
| 2. | September 30, 2020 | \$34,513.00 | \$270.38 | \$4,507.76 | \$39,291.14 |
| 3. | October 31, 2020 | \$9,550.00 | \$0.00 | \$1,241.50 | \$10,791.50 |
| 4. | December 11, 2020 | \$4,725.00 | \$0.00 | \$614.25 | \$5,339.25 |
| 5. | December 31, 2020 | \$3,500.00 | \$0.00 | \$455.00 | \$3,955.00 |
| 6. | January 29, 2021 | \$4,875.00 | \$0.00 | \$633.75 | \$5,508.75 |
| 7. | February 28, 2021 | \$562.50 | \$0.00 | \$73.13 | \$635.63 |
| 8. | April 30, 2021 | \$750.00 | \$0.00 | \$97.50 | \$847.50 |
| 9. | May 31, 2021 | \$1,125.00 | \$0.00 | \$146.25 | \$1,271.25 |
| 10. | June 30, 2021 | \$687.50 | \$0.00 | \$89.38 | \$776.88 |
| 11. | July 31, 2021 | \$2,112.50 | \$0.00 | \$274.63 | \$2,387.13 |
| 12. | September 30, 2021 | \$750.00 | \$0.00 | \$97.50 | \$847.50 |

| No. | Date of Account | Fees | Disbursements | H.S.T. | Total |
|--|-------------------|---|---------------|------------|--------------|
| 13. | October 31, 2021 | \$1,250.00 | \$0.00 | \$162.50 | \$1,412.50 |
| 14. | November 30, 2021 | \$9,597.50 | \$0.00 | \$1,248.68 | \$10,845.18 |
| TOTAL | | | | | \$117,676.44 |
| Average Hourly Rate - (before H.S.T.) | | Total fees (before H.S.T.): \$103,880.50 ÷ Total hours: 199.7 = \$520.18 | | | |

This is Exhibit "B" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada LLP
(formerly Collins Barrow Toronto LLP)
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
August 31, 2020

Invoice No.
694211

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: RSM Canada Inc. re: North Barrie Crossing
Shopping Centre

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended August 28, 2020 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-----------------|---------------|-------------|--|
| August 4, 2020 | SJ | 0.40 | Emails from and to D. Weisz regarding estoppels received to date; |
| August 4, 2020 | EG | 0.20 | Email from RSM with estoppel update and related certificates to date; email from Jeffery to RSM re same; |
| August 6, 2020 | EG | 0.50 | Email from RSM re HST on PRC Barrie; call with Danny re same; email from RSM re CMHC and CECRA; call with Danny re same; |
| August 7, 2020 | EG | 1.60 | Review RSM documents re CEBRA applications; communications with Matt Tapia re same; communications with RSM re same; |
| August 7, 2020 | MTAP | 2.30 | Read and reviewed background documents received from E. Golden and CECRA documents received from the client; reviewed CECRA program requirements applicable to receivers and to identify issues in the context of a receivership; Conference call with the clients and E. Golden to discuss an application to the CECRA program; |
| August 10, 2020 | EG | 3.80 | Review memo from Matt Tapia re CECRA issues; review draft letter from RSM to CMHC re CECRA; revise same; review emails |

Date
August 31, 2020

Invoice No.
694211

File No.
097779-0041

-2-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-----------------|---------------|-------------|---|
| | | | between CMHC and RSM re CECRA; communications with Matt re CECRA issues; review and revise proposed revisions to CMHC letter from Matt; email to RSM re same and issues with various CECRA documents; communications with Matt re same; review emails between RSM and Choice re CECRA and draft RSM response to Choice; review and revise draft RSM email to Choice; emails from and to RSM re same and whether Choice or Penady would run program; emails from and to RSM re tenant privacy waiver; email to Oslers re CRA deemed trust HST claim; |
| August 10, 2020 | MTAP | 5.20 | Read and reviewed CECRA agreements and documents and summarized concerns related to a sale of the shopping centre and general concerns; Revised the client's proposal letter to CMHC; Read and reviewed PenEquity's revisions to the Rent Reduction Agreement; |
| August 11, 2020 | EG | 1.50 | Further emails between RSM and Choice re CECRA and Pen position; call with RSM re CMHC and CECRA; review further draft letter to CMHC from RSM; communications with Matt re same; revisions to same and emails to and from RSM and Matt re same; review tenant acknowledgement and direction re privacy; revise same and communications with Matt and RSM re same; |
| August 11, 2020 | MTAP | 2.50 | Reviewed correspondence from the client regarding administration of the CECRA applications; Conference call with the clients and E. Golden to discuss the proposal to CMHC; Drafted Acknowledgment and Consent regarding personal information; Reviewed client's revisions to the proposal letter to CMHC and to the Acknowledgment and Consent; |
| August 12, 2020 | EG | 0.20 | Emails from RSM re outcome of SISP and call with same re same; |
| August 13, 2020 | EG | 0.70 | Review CMHC to RSM proposal; review portions of CECRA application re solvency attestation; communications with Matt re same; |

Date
August 31, 2020

Invoice No.
694211

File No.
097779-0041

-3-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-----------------|---------------|-------------|--|
| | | | email to RSM re same; email from Matt to RSM re same; review detailed update from RSM to Choice; |
| August 13, 2020 | MTAP | 0.80 | Reviewed CMHC's response to the proposal letter and provided comments; Exchanged emails with the client regarding CMHC's response; |
| August 14, 2020 | EG | 1.70 | Conference call with Choice, Oslers and RSM re status and next steps; emails from RSM re CECRA timeline and draft letter to CMHC; communications with Matt re draft letter to CMHC; call with counsel for Pen re its position on Sale Approval motion; email to RSM, Choice and Oslers re same; email to Court re date for sale approval motion; |
| August 14, 2020 | EG | 2.50 | Preliminary review and revisions to RSM first draft of second report; |
| August 14, 2020 | MTAP | 0.20 | Reviewed correspondence received from the client and exchanged emails with the client regarding preparation of CMHC's acknowledgment letter; |
| August 17, 2020 | SJ | 0.50 | Emails from and to E. Golden regarding wording of report on LCs; emails from and to R. Schwartz; |
| August 17, 2020 | EG | 1.80 | Email from Matt with draft CMHC consent and waiver letter; communications with RSM re final version of letter; email from Oslers re agency agreement; emails from RSM re proposed revisions to same; communications with S. Jeffery re second report; emails between S. Jeffery and Gardiner Roberts re LC; communications with S. Jeffery re status of Gardiner Roberts LC; follow-up to Court re scheduling of Sale Approval Motion; |
| August 17, 2020 | MTAP | 1.80 | Drafted CMHC's acknowledgment letter; Reviewed the client's changes to the same and provided comments; |
| August 18, 2020 | SJ | 0.20 | Emails from and to and telephone call with E. Golden regarding CECRA and CMHC; |

Date
August 31, 2020

Invoice No.
694211

File No.
097779-0041

-4-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-----------------|---------------|-------------|--|
| August 18, 2020 | EG | 2.20 | Review final draft of CMHC letter; communications with Matt re same; call with RSM re same, insurance, second report, and Choice/RSM CECRA agency agreement; follow-up email to and from Alsou re court date; email from and to Oslers re same; further revisions to draft agency agreement; email to S. Jeffery re CECRA issues for APS and closing; emails between RSM and Choice and to RSM re agency agreement; emails from and to RSM re same and timing for RRAs; email to Oslers re agency agreement; review final progress report from AY; |
| August 18, 2020 | CK | 2.80 | Review and revise draft report regarding motion for sale approval and vesting order, as well as other approvals; |
| August 18, 2020 | MTAP | 0.20 | Reviewed CMHC's changes to CMHC's acknowledgment letter and provided comments; |
| August 19, 2020 | EG | 0.80 | Emails from and to with Rosenblatt re proposed revisions to agency agreement; review and revise same; communications with RSM re same; further communications with Rosenblatt re same; |
| August 19, 2020 | CK | 1.30 | Commence draft of notice of motion regarding sale approval and vesting order; instructions to clerk regarding backup for fee affidavit; |
| August 20, 2020 | SJ | 0.10 | Email from R. Schwartz regarding LC; |
| August 20, 2020 | EG | 1.00 | Call with Rosenblatt re agency agreement wording; communications with RSM re same; confirmation to Oslers re wording; emails from and to RSM re landlord's attestations and representations RSM can make; emails from RSM re CMHC positions; communications with S. Jeffery re status of Gardiner Roberts LC and next steps if BMO will not comply with GR requests; |
| August 20, 2020 | CK | 2.40 | Continue draft of motion material for approval and vesting order; draft fee affidavit and review accounts regarding confidential/privileged information; draft account summary for |

Date
August 31, 2020

Invoice No.
694211

File No.
097779-0041

-5-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-----------------|---------------|-------------|--|
| | | | inclusion in affidavit; |
| August 21, 2020 | CK | 1.70 | Continue draft of notice of motion for approval and vesting order; revisions to draft order; |
| August 24, 2020 | EG | 0.50 | Emails to and from RSM re insurance status; call with same re same; email from RSM to Choice re same; review Appointment Order re insurance issue; |
| August 26, 2020 | EG | 4.00 | Email to and from RSM re insurance status; review and revise in detail next draft of second report; emails from and to Oslers re same; email to and from RSM re same; |
| August 27, 2020 | SJ | 0.10 | Telephone call from E. Golden regarding completion of sale of property; |
| August 27, 2020 | EG | 2.50 | Detailed status report from RSM to Choice; further email re HST clarification; review and revise NOM; emails from and Oslers re second report; emails to and from RSM re same; emails from and to RSM re insurance status; emails between Oslers and RSM re closing date; email to Oslers and Jeffery re same and closing to-do list; |
| August 27, 2020 | CK | 3.30 | Continue draft of and revisions to NOM; review revisions to draft report; |
| August 28, 2020 | EG | 0.50 | Call with RSM re insurance; emails from same re same; communications with RSM re exhibits to second report; |
| August 31, 2020 | EG | 5.80 | Review Osler revisions to second report; review further RSM revisions; combine two sets of revisions; email to RSM re same; review next draft of NOM following Kopach revisions; email to Oslers re its proposed revisions and those not included; final proof of report and NOM; email to and from RSM re same; review fee affidavit and related accounts; review index and motion record; emails to service list with motion record; email to RSM re same; |

OUR FEE HEREIN:
FEE HST:

\$29,882.50
\$3,884.73

Date
August 31, 2020

Invoice No.
694211

File No.
097779-0041

-6-

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|----------------|--------------|--------------|-------------|---------------|
| Steven Jeffery | Partner | 1.30 | \$675.00 | \$877.50 |
| Eric Golden | Partner | 31.80 | \$625.00 | \$19,875.00 |
| Chad Kopach | Partner | 11.50 | \$500.00 | \$5,750.00 |
| Matthew Tapia | Associate | 13.00 | \$260.00 | \$3,380.00 |

| | |
|-------------------------------|-------------------|
| TOTAL FEES AND DISBURSEMENTS: | \$29,882.50 |
| TOTAL HST: | <u>\$3,884.73</u> |

| | |
|-------------------|--------------------|
| TOTAL AMOUNT DUE: | <u>\$33,767.23</u> |
|-------------------|--------------------|

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

Make payment(s) payable to Blaney McMurtry LLP.
We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR

**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "C" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.

A handwritten signature in black ink, appearing to read "K. Vickers", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

RE: RSM Canada Inc. re: North Barrie Crossing Shopping Centre

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended September 30, 2020 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-------------------|---------------|-------------|--|
| August 31, 2020 | CK | 3.80 | Finalize fee affidavit; revisions to and finalize report and notice of motion; review finalized motion record; |
| September 1, 2020 | EG | 0.10 | Communications with RSM re HST issue; email from Oslers re proposed closing date; |
| September 2, 2020 | EG | 2.20 | Further email from Oslers re closing date; email from Oslers with draft closing agenda and draft assignment and assumption agreements contemplated by the APS; review same; communications with S. Jeffery re same and closing details; emails to and from RSM re HST liability for Jan 2020; call with Choice and RSM re HST and GR LC; communications with RSM re Sale Approval motion record; |
| September 3, 2020 | SJ | 0.50 | Emails from and to R. Davidge and A. Kovalev regarding closing of sale of property; email to D. Weisz; instructions to M. Tapia; emails from and to B. Tannenbaum and R. Schwartz regarding letter of credit; |
| September 3, 2020 | EG | 2.40 | Review PM agreement re termination; emails between Steve J. and Oslers re closing; communications with Steve re same and |

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-------------------|---------------|-------------|---|
| | | | contracts; email to and from RSM re same and contracts/terminating PM agreement; review and revise draft RSM termination letter to PM; emails from and to RSM re BMO LC and payment of funds directy to RSM; |
| September 3, 2020 | MTAP | 3.50 | Read and reviewed the Agreement of Purchase and Sale; Read and reviewed the Purchaser's counsel's Closing Agenda and Assignments and Assumptions and provided comments to S. Jeffery; Exchanged emails with the Purchaser's counsel regarding required documents; |
| September 4, 2020 | SJ | 0.20 | Emails from and to E. Golden and B. Tannenbaum regarding LC proceeds; |
| September 4, 2020 | EG | 0.20 | Communications with Jeffery and RSM re BMO LC; |
| September 7, 2020 | SJ | 0.10 | Emails from and to E. Golden, C. Kopach and M. Tapia regarding updating instruments on title; |
| September 8, 2020 | SJ | 0.40 | Emails from and to E. Golden and M. Tapia; review updated PINs; emails from and to R. Davidge; |
| September 8, 2020 | EG | 2.80 | Emails and call with Citak re HST and Pen position on motion; further emails to and from same re HST issue; communications with Oslers and RSM re Pen position; instructions to Kopach re draft Orders; communications with same and Jeffery re draft orders; review and revise draft Orders; communications with Oslers re same; |
| September 8, 2020 | CK | 3.70 | Draft and revise order regarding upcoming approval and vesting order; correspondence with Oslers (lawyer for applicant) regarding same; correspondence with court regarding access to material for Zoom conference and regarding status of motion (proceeding unopposed); |
| September 8, 2020 | MTAP | 0.30 | Completed title searches against the Property; |
| September 9, 2020 | SJ | 0.30 | Email from C. Kopach; email from R. Davidge with revised vesting order; emails from R. |

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|--------------------|---------------|-------------|--|
| | | | Schwartz and B. Tannenbaum regarding LC proceeds; |
| September 9, 2020 | EG | 2.50 | Final revisions to draft Orders; communications with Kopach re same and instructions to same re material for Justice McEwen for hearing; emails to and from Oslers and RSM re draft orders; attend Sale Approval hearing; |
| September 9, 2020 | CK | 4.20 | Further revisions to draft orders; correspondence with Receiver and with lawyer for applicant regarding revisions to approvals order and vesting order; correspondence with lawyer for respondents and lawyer for MashalZehrs regarding attendance and position on motion; attend on motion; correspondence with court regarding updated counsel slip; receipt of issued orders; |
| September 10, 2020 | SJ | 0.20 | Review email from M. Tapia and instructions to him regarding assignments; |
| September 10, 2020 | EG | 1.00 | Communications with Jeffery and Tapia re closing; emails from RSM re BMO LC; email from and to RSM re winddown estimate; emails to and from Oslers re winddown estimate; |
| September 11, 2020 | MTAP | 3.40 | Drafted and revised the Assignments and Assumptions of Leases, Assumed Contracts and Permitted Encumbrances; |
| September 14, 2020 | SJ | 0.50 | Email from E. Golden; review revised assignments and instructions to M. Tapia; |
| September 14, 2020 | EG | 0.80 | Emails from RSM re HST; call from oslers re HST; email from same re vesting order to be registered on title; email from Tappia re same; email to same re same and HST issue; |
| September 14, 2020 | MTAP | 1.00 | Read and reviewed the draft Application for Vesting Order received from the Purchaser's counsel to ensure completeness and identify issues; Exchanged emails with the Purchaser's counsel regarding the same and regarding revisions to the Assignments and Assumptions; |

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|--------------------|---------------|-------------|---|
| September 17, 2020 | SJ | 0.20 | Emails from A. Kovalev with draft documents; email from M. Tapia; |
| September 17, 2020 | MTAP | 0.50 | Exchanged emails with the Purchaser's counsel regarding the draft closing documents; Exchanged emails with S. Jeffery and E. Golden regarding the same; |
| September 18, 2020 | EG | 0.50 | Communications with Jeffery/Matt and with Danny re closing issues and wind down; |
| September 19, 2020 | MTAP | 4.20 | Read and reviewed the draft closing documents received from the Purchaser's counsel; Drafted and revised the closing documents; |
| September 21, 2020 | SJ | 0.30 | Emails from A. Kovalev and M. Tapia; |
| September 21, 2020 | EG | 2.20 | Review Oslers closing documents; review Blaneys comments to Oslers closing documents; review APA; communications with Matt and Steve re wind-down estimate; communications with RSM re same, CECRA and statement of adjustments; emails between Blaneys and Oslers re closing issues; emails between Matt and Danny re same; communications with Matt re contracts to be assumed; |
| September 21, 2020 | MTAP | 1.10 | Exchanged emails with the client regarding the Statement of Adjustments, Wind-Down Estimate and Assumed Contracts; Reviewed termination letter received from the client; Exchanged emails with S. Jeffery and E. Golden regarding processing the transaction; |
| September 22, 2020 | SJ | 3.00 | Telephone calls with E. Golden; email from D. Rosenblat; review emails from M. Tapia and revised documents and draft amending agreement and instructions to M. Tapia; emails from and to D. Weisz; review revised documents from Oslers; review draft statement of adjustments; email to E. Golden; |
| September 22, 2020 | EG | 4.50 | Communications throughout day with RSM, Jeffery and Matt and between same and and RSM re receiver certificates, credit agreement bid amount, CECRA assignment, revisions to |

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|--------------------|---------------|-------------|--|
| | | | closing documents wind-down amount/requirement, amending agreement, notices to tenants, assumed contracts, statement of adjustments, EQ LC; revise draft releases; email from Oslers with revised releases, CECRA assignment and allocation of purchase price; communications with Matt and Jeffery re same; |
| September 22, 2020 | MTAP | 7.20 | Exchanged various emails with the Purchaser's counsel, S. Jeffery, E. Golden and the client regarding the closing documents and outstanding matters; Provided comments to the Purchaser's counsel on the draft closing documents; Read and reviewed additional draft closing documents and revisions received from the Purchaser's counsel; Drafted and prepared the Statement of Adjustments, Statement re Receiver's Certificate Obligations and Statement re Wind-Down Amount and compiled attachments; |
| September 23, 2020 | SJ | 2.40 | Email to D. Weisz with documents to be executed; telephone calls with E. Golden; telephone call from D. Weisz; emails from and to M. Tapia; emails from A. Kovalev; emails from and to D. Weisz regarding execution of documents and other closing matters; emails from and to E. Golden; |
| September 23, 2020 | EG | 3.80 | Communications between Oslers and Blaneys and RSM and Blaneys re various closing issues; communications with Jeffery, Matt, Kopach and RSM re same throughout day; |
| September 23, 2020 | MTAP | 5.30 | Read and reviewed execution copies of the closing documents and revisions received from the Purchaser's counsel to confirm completeness and identify issues; Searched the Purchaser's HST number to confirm registration; Ordered corporate searches against the Purchaser and the nominee and reviewed results; Exchanged various emails with the Purchaser's counsel and the client regarding execution copies and outstanding matters; Various phone calls with the Purchaser's counsel regarding closing; Read |

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|--------------------|---------------|-------------|---|
| | | | and reviewed the Purchaser's and Vendor's executed documents to confirm completeness; communications with E. Golden and S. Jeffery throughout day; |
| September 23, 2020 | JK | 0.20 | Conducted LP search on Choice Properties Limited Partnership; obtained Certificate of Status on CP Reit Ontario Properties Limited; |
| September 24, 2020 | EG | 0.50 | Emails between RSM, Blaneys and Oslers re remaining closing issues; communications with Matt and Kopach re same; |
| September 24, 2020 | CK | 0.30 | Correspondence exchanged with court regarding proof of filing of Receiver's Certificate; review correspondence with Receiver regarding same; |
| September 24, 2020 | MTAP | 0.70 | Exchanged various emails with E. Golden, C. Kopach, the Purchaser's counsel and the client regarding post-closing matters; |
| September 25, 2020 | MTAP | 0.60 | Exchanged various emails with the Purchaser's counsel and the client regarding post-closing matters; |
| September 26, 2020 | MTAP | 2.40 | Compiled signature pages, slip-sheeted revised pages and dated the executed closing documents; Drafted letter to the City of Barrie regarding change of ownership; Drafted the report to the client and compiled closing documents to create the report book; Exchanged emails with the Purchaser's counsel regarding post-closing matters; |
| September 30, 2020 | EG | 0.40 | Email from RSM re potential minor adjustments to Statement of Adjustments; review same and email to RSM re same; communications with Jeffery re same; call with RSM re same and next steps; |
| September 30, 2020 | MTAP | 0.80 | Read and reviewed email and attachment from the client regarding the Statement of Adjustments and revised rent collections; Reviewed adjustment provisions in the Agreement of Purchase and Sale; Exchanged emails with the client, S. Jeffery and E. Golden regarding the same; |

| | |
|-----------------|-------------|
| OUR FEE HEREIN: | \$34,513.00 |
| FEE HST: | \$4,486.69 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|----------------|--------------|--------------|-------------|---------------|
| Steven Jeffery | Partner | 8.10 | \$675.00 | \$5,467.50 |
| Eric Golden | Partner | 23.90 | \$625.00 | \$14,937.50 |
| Chad Kopach | Partner | 12.00 | \$500.00 | \$6,000.00 |
| Matthew Tapia | Associate | 31.00 | \$260.00 | \$8,060.00 |
| John Kroupis | Clerk | 0.20 | \$240.00 | \$48.00 |

| <u>Disbursements</u> | <u>Amount</u> |
|---|---------------|
| Certificate of Status* - Non-Taxable | \$26.00 |
| Business Names List* - Non-Taxable | \$8.00 |
| Computer Searches - R.E. (Teraview) * - | \$74.30 |
| Cyberbahn Agent Service Fee | \$22.78 |
| Computer Searches - R.E. (Teraview) | \$139.30 |

| | |
|----------------------|----------|
| TOTAL DISBURSEMENTS: | \$270.38 |
|----------------------|----------|

*HST is not charged

| | |
|-------------------|----------------|
| DISBURSEMENT HST: | <u>\$21.07</u> |
|-------------------|----------------|

| | |
|-------------------------------|-------------|
| TOTAL FEES AND DISBURSEMENTS: | \$34,783.38 |
|-------------------------------|-------------|

| | |
|------------|-------------------|
| TOTAL HST: | <u>\$4,507.76</u> |
|------------|-------------------|

| | |
|-------------------|--------------------|
| TOTAL AMOUNT DUE: | <u>\$39,291.14</u> |
|-------------------|--------------------|

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Eric Golden
E. & O.E

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the wire transfer.

This is Exhibit "D" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

RE: RSM Canada Inc. re: North Barrie Crossing Shopping Centre

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended October 31, 2020 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|------------------|---------------|-------------|--|
| October 2, 2020 | EG | 0.10 | Email from Oslers re bankruptcy motion; |
| October 5, 2020 | EG | 0.80 | Emails from Oslers re their communications with Gradiner Roberts re HST; emails to same re same; email from and to and call with Citak re HST; |
| October 7, 2020 | EG | 0.10 | Email from Citak re HST position and his communications with Oslers; |
| October 8, 2020 | EG | 1.40 | Emails from and to Oslers re HST issue; review communications from RSM re same and PRC/Mady/Penady relationship; communications with RSM re same; email from and to Citak re status; |
| October 9, 2020 | SJ | 0.70 | Emails from and to E. Golden, D. Rosenblat and others at Oslers re HST; |
| October 9, 2020 | EG | 2.20 | Review Choice receivership application record to review Choice security package and PRC limited recourse guarantee; review same re impact on HST issue; emails to and from S. Jeffery re same; emails to and from Oslers re HST issue; |
| October 13, 2020 | SJ | 1.20 | Emails from and to E. Golden regarding HST; |

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|------------------|---------------|-------------|--|
| | | | review materials regarding legal description of adjacent Penequity lands and instructions to Indira to subsearch; conference telephone call with D. Rosenblat, B. Tannenbaum, D. Weisz, E. Golden et al.; |
| October 13, 2020 | EG | 2.30 | Emails from and to S. Jeffery re HST issues; review limited recourse guarantee wording; call with Mona Taylor re HST issues; call with Blaneys, RSM and Oslers re same; call with Citak re same; email to Oslers re same; |
| October 15, 2020 | EG | 0.80 | Emails from RSM re HST and ITC's and CRA letter; emails between Oslers and RSM re same and additional schedules from RSM re ITCs ; email to RSM re same; email to and from Oslers re negotiations with Citak; |
| October 16, 2020 | EG | 0.50 | Communications with Mona Taylor re HST issue; |
| October 19, 2020 | MRT | 1.40 | Reviewing documents re HST facts; drafting various emails to E. Golden regarding the CRA treatment of bare trusts for GST/HST purposes |
| October 19, 2020 | EG | 0.30 | Communications with Mona Taylor and communications with RSM re Penady prior HST registration; |
| October 20, 2020 | EG | 0.20 | Communications with RSM and Mona re HST issue as a result of CRA letter to Penady; |
| October 21, 2020 | EG | 1.40 | Communications with Mona re HST Penady issue; email to RSM re same; email from Oslers re status of negotiations with Citak; email to same re next steps, potential alternatives to bankruptcy and potential assets of PRC Barrie based on PPSA and real estate searches; |
| October 22, 2020 | EG | 0.50 | Call with D. Rosenblatt re HST, Citak position and potential solutions; |
| October 23, 2020 | EG | 0.20 | Communications with RSM and Mona Taylor re potential HST resolution; |
| October 27, 2020 | MRT | 0.30 | Reviewing information forwarded by E. Golden and quick telephone conversation with E. Golden to discuss approach |

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|------------------|---------------|-------------|--|
| October 27, 2020 | EG | 0.20 | Review CRA NOA for PRC for PRC for March 2020; emails between Oslers and RSM re same; call with Mona; |
| October 28, 2020 | EG | 0.50 | Conference call with RSM and Oslers re HST and discharge motion; email from RSM re ITCs; emails to and from RSM and Oslers re reserve; |
| October 29, 2020 | EG | 0.30 | Emails between RSM and Oslers re HST; emails to and from RSM re same and interest claim; |

| | |
|-----------------|------------|
| OUR FEE HEREIN: | \$9,550.00 |
| FEE HST: | \$1,241.50 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|----------------|--------------|--------------|-------------|---------------|
| Steven Jeffery | Partner | 1.90 | \$675.00 | \$1,282.50 |
| Eric Golden | Partner | 11.80 | \$625.00 | \$7,375.00 |
| Mona R. Taylor | Associate | 1.70 | \$525.00 | \$892.50 |

| | |
|-------------------------------|-------------------|
| TOTAL FEES AND DISBURSEMENTS: | \$9,550.00 |
| TOTAL HST: | <u>\$1,241.50</u> |

| | |
|-------------------|--------------------|
| TOTAL AMOUNT DUE: | <u>\$10,791.50</u> |
|-------------------|--------------------|

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Eric Golden
E. & O.E

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the wire transfer.

This is Exhibit "E" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada LLP
(formerly Collins Barrow Toronto LLP)
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
December 11, 2020

Invoice No.
701167

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: RSM Canada Inc. re: North Barrie Crossing
Shopping Centre

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the
above noted matter for the period ended November 30, 2020 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|------------------|---------------|-------------|---|
| October 13, 2020 | MRT | 0.90 | Telephone conversation E. Golden to discuss harmonized sales tax owing in respect of the failure of an operator to remit harmonized sales tax but receivership order issued again bare trustee which is legal owner of land |
| October 21, 2020 | MRT | 1.10 | Reviewing emails forwarded by E. Golden; telephone conversation with E. Golden to discuss various issues including the need to bankrupt the bare trustee; |
| November 4, 2020 | SJ | 0.20 | Emails from and to E. Golden regarding report book; |
| November 4, 2020 | EG | 0.30 | Request Pen for closing book; communications with RSM and Blaneys re same; |
| November 5, 2020 | MRT | 0.40 | Communications with E. Golden |
| November 5, 2020 | EG | 0.40 | Email from RSM re draft response letter to CRA re HST; communications with Mona re same; |
| November 9, 2020 | MRT | 0.30 | Telephone conversation with E. Golden to discuss CRA letter to be submitted by receiver; |
| November 9, 2020 | EG | 0.50 | Further discussion with Mona re HST letter to |

Date
December 11, 2020

Invoice No.
701167

File No.
097779-0041

-2-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-------------------|---------------|-------------|--|
| | | | CRA; email from and to RSM re same; |
| November 11, 2020 | EG | 0.10 | Email from and to Oslers re HST settlement; |
| November 12, 2020 | EG | 0.30 | Call with D. Rosenblatt re HST settlement; |
| November 12, 2020 | ET | 4.00 | Review of file regarding drafting next Notice of Motion; |
| November 13, 2020 | EG | 0.10 | Email to RSM re Oslers and Pen HST settlement; |
| November 16, 2020 | ET | 2.20 | Drafting Notice of Motion; |
| November 19, 2020 | EG | 0.10 | Email to and from Oslers re status of HST settlement and next motion date; |
| November 25, 2020 | EG | 0.30 | Call with RSM re HST settlement and next steps; |

| | |
|-----------------|------------|
| OUR FEE HEREIN: | \$4,725.00 |
| FEE HST: | \$614.25 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|----------------|--------------|--------------|-------------|---------------|
| Steven Jeffery | Partner | 0.20 | \$675.00 | \$135.00 |
| Eric Golden | Partner | 2.10 | \$625.00 | \$1,312.50 |
| Mona R. Taylor | Associate | 2.70 | \$525.00 | \$1,417.50 |
| Elsir Tawfik | Associate | 6.20 | \$300.00 | \$1,860.00 |

| | |
|-------------------------------|-----------------|
| TOTAL FEES AND DISBURSEMENTS: | \$4,725.00 |
| TOTAL HST: | <u>\$614.25</u> |

| | |
|-------------------|-------------------|
| TOTAL AMOUNT DUE: | <u>\$5,339.25</u> |
|-------------------|-------------------|

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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Details are available upon request.

Date
December 11, 2020

Invoice No.
701167

File No.
097779-0041

-3-

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the wire transfer.**

This is Exhibit "F" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada LLP
(formerly Collins Barrow Toronto LLP)
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
December 31, 2020

Invoice No.
701833

File No.
097779-0041

Attention: Bryan A. Tannenbaum

**RE: RSM Canada Inc. re: North Barrie Crossing
Shopping Centre**

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended December 31, 2020 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-------------------|---------------|-------------|--|
| December 9, 2020 | EG | 0.50 | Email from Oslers with revised proposed HST settlement agreement from A&B; review same; email to RSM re same; |
| December 10, 2020 | EG | 0.30 | Call with D. Rosenblat re proposed revised HST settlement between Crown and Choice; |
| December 10, 2020 | EG | 0.50 | Call with Oslers and Aird & Berlis re HST settlement agreement; |
| December 14, 2020 | EG | 0.40 | Email from A&B with revised HST settlement agreement; review same; email to RSM re same; |
| December 15, 2020 | EG | 0.60 | Email to and from Court re motion date; communications with RSM and Citak re same; communications with RSM re potential CRA audit of borrowers; communications with Oslers and A&B re motion date; email to Court with CL request form for Jan 14; |
| December 16, 2020 | EG | 1.40 | Emails from and to RSM re HST, CRA revised proof of claim and CRA audit; status updates to Oslers; revise updated settlement agreement from A&B re Choice/Crown HST; emails to and from RSM re same; |

Date
December 31, 2020

Invoice No.
701833

File No.
097779-0041

-2-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-------------------|---------------|-------------|--|
| December 17, 2020 | EG | 0.60 | Email from RSM with CRA revised proof of claim; email to Oslers re same; email from RSM with its proposed revisions to Crown-Oslers agreement; |
| December 18, 2020 | EG | 1.00 | Emails from and to Oslers re CRA status; emails to and from and call with RSM re draft settlement agreement, CRA audit, period and scope; emails to and from Oslers re same; |
| December 22, 2020 | EG | 0.30 | Emails from and to Oslers and RSM re HST; email from Oslers to A&B re settlement; |

| | |
|-----------------|------------|
| OUR FEE HEREIN: | \$3,500.00 |
| FEE HST: | \$455.00 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|---------------|--------------|--------------|-------------|---------------|
| Eric Golden | Partner | 5.60 | \$625.00 | \$3,500.00 |

| | |
|-------------------------------|-----------------|
| TOTAL FEES AND DISBURSEMENTS: | \$3,500.00 |
| TOTAL HST: | <u>\$455.00</u> |

| | |
|-------------------|-------------------|
| TOTAL AMOUNT DUE: | <u>\$3,955.00</u> |
|-------------------|-------------------|

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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This is Exhibit "G" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
January 29, 2021

Invoice No.
703935

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended January 29, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|------------------|---------------|-------------|---|
| January 2, 2021 | EG | 0.50 | Email from Oslers with revised settlement agreement between Choice and Crown; review same; amend same and email to Aird & Berlis re same; email to and from RSM re same and audit status; |
| January 5, 2021 | EG | 0.30 | Email to and from RSM re CRA audit status; emails between RSM and Penady re CRA HST audit; emails from and to Oslers re status; |
| January 6, 2021 | EG | 0.20 | Call with D. Rosenblatt re status and next steps with CRA and potential audit; |
| January 8, 2021 | EG | 0.10 | Status email to Oslers re CRA; |
| January 11, 2021 | EG | 0.20 | Email from Oslers re CRA status; emails to and from RSM re CRA status and possible next steps; email to Oslers re status; |
| January 12, 2021 | EG | 0.30 | Emails from and to Oslers and RSM re next steps; |
| January 13, 2021 | EG | 0.50 | Call with Oslers and RSM re CRA issues and next steps; |
| January 14, 2021 | EG | 0.10 | Email to and from RSM re status; |
| January 20, 2021 | EG | 2.80 | Email to and from RSM re status of HST |

Date
January 29, 2021

Invoice No.
703935

File No.
097779-0041

-2-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> | |
|-------------------------------|---------------|--------------|--|-----------------|
| | | | issues with CRA; review all HST related correspondence to and from RSM and between RSM/Blanays and third parties; prepare draft email to Diane Winters re HST; email to RSM re same; | |
| January 22, 2021 | EG | 1.20 | Revisions to CRA email from RSM; email to same re same; email from Brenda with latest details from CRA; email from A&B with revised settlement agreement; email from Oslers responding to same; emails from and Oslers re status of CRA inquiries; | |
| January 25, 2021 | EG | 0.40 | Review Brenda's revisions to draft CRA email; revise draft letter accordingly; email to RSM re same; email to Oslers re same; | |
| January 26, 2021 | EG | 0.60 | Email from Oslers re CRA letter; briefly review caselaw re Requirement to Pay; email to Oslers re same; | |
| January 27, 2021 | EG | 0.10 | Emails from RSM re CRA audit status; | |
| January 28, 2021 | EG | 0.50 | Email from A&B with revised settlement agreement; review same; email from Oslers with its comments; emails between A&B and Oslers re call to discuss; email to same re RSM position on revised settlement; status email to RSM; | |
| OUR FEE HEREIN: | | | | \$4,875.00 |
| FEE HST: | | | | \$633.75 |
| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
| Eric Golden | Partner | 7.80 | \$625.00 | \$4,875.00 |
| TOTAL FEES AND DISBURSEMENTS: | | | | \$4,875.00 |
| TOTAL HST: | | | | <u>\$633.75</u> |

Date
January 29, 2021

Invoice No.
703935

File No.
097779-0041

-3-

TOTAL AMOUNT DUE: \$5,508.75

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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This is Exhibit "H" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

RE: **Penady (Barrie) Ltd. et al**

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended February 28, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-------------------|---------------|-------------|--|
| February 4, 2021 | EG | 0.20 | Call with Osler and update to RSM |
| February 8, 2021 | EG | 0.10 | Email to and from RSM re HST audit status; |
| February 10, 2021 | EG | 0.30 | Email from A&B with latest draft HST settlement; email to RSM re same; email to and from oslers re same and audit date; |
| February 16, 2021 | EG | 0.30 | Email from RSM re CRA HST audit status, CRA letter to PRC Barrie re audit period and communications between RSM and Pen re same; email to RSM re same; |

| | |
|-----------------|----------|
| OUR FEE HEREIN: | \$562.50 |
| FEE HST: | \$73.13 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|---------------|--------------|--------------|-------------|---------------|
| Eric Golden | Partner | 0.90 | \$625.00 | \$562.50 |

| | |
|-------------------------------|----------------|
| TOTAL FEES AND DISBURSEMENTS: | \$562.50 |
| TOTAL HST: | <u>\$73.13</u> |

TOTAL AMOUNT DUE:

\$635.63

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

Make payment(s) payable to Blaney McMurtry LLP.

We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR

**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "I" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
April 30, 2021

Invoice No.
712575

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended April 30, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|----------------|---------------|-------------|---|
| March 11, 2021 | EG | 0.30 | Email from RSM re HST audit status email to Oslers re status; email to Citak re same; |
| March 15, 2021 | EG | 0.10 | Email to RSM re status of communications with Oslers and Gardiner; |
| March 30, 2021 | EG | 0.10 | Email from RSM re HST audit status; |
| April 26, 2021 | EG | 0.50 | Email to and from Danny Weisz re status call; email to Brenda Wong re status of CRA HST audit; emails from and to Oslers re same; |
| April 27, 2021 | EG | 0.20 | Call with RSM re status and next steps; |

| | |
|-----------------|----------|
| OUR FEE HEREIN: | \$750.00 |
| FEE HST: | \$97.50 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|---------------|--------------|--------------|-------------|---------------|
| Eric Golden | Partner | 1.20 | \$625.00 | \$750.00 |

| | |
|-------------------------------|----------------|
| TOTAL FEES AND DISBURSEMENTS: | \$750.00 |
| TOTAL HST: | <u>\$97.50</u> |

Date
April 30, 2021

Invoice No.
712575

File No.
097779-0041

-2-

TOTAL AMOUNT DUE:

\$847.50

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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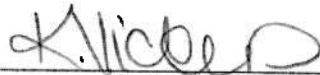
Make payment(s) payable to Blaney McMurtry LLP.

We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR

**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "J" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
May 31, 2021

Invoice No.
714634

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended May 31, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|--------------|---------------|-------------|---|
| May 4, 2021 | EG | 0.20 | Email from Oslers re HST status; email to and from RSM re same; email to Oslers re same; |
| May 7, 2021 | EG | 0.10 | Email from and to Brenda re HST status; |
| May 10, 2021 | EG | 0.90 | Email from and to Brenda re HST; email from and to Oslers re status; email to and from Citak re audit; call with Mona re HST audit questions; |
| May 11, 2021 | EG | 0.50 | Email from Oslers re HST audit status; emails to and from Citak re same; email to Oslers re same; |
| May 17, 2021 | EG | 0.10 | Email from Citak re status of HST production ; email to Oslers re same |

OUR FEE HEREIN: \$1,125.00
FEE HST: \$146.25

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|---------------|--------------|--------------|-------------|---------------|
| Eric Golden | Partner | 1.80 | \$625.00 | \$1,125.00 |

TOTAL FEES AND DISBURSEMENTS: \$1,125.00
TOTAL HST: \$146.25

Date
May 31, 2021

Invoice No.
714634

File No.
097779-0041

-2-

TOTAL AMOUNT DUE:

\$1,271.25

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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General Account No. 0680-5215022 Swift Code: TDOMCATTOR

**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "K" referred to in the Affidavit of Chad Kopach
sworn December 2, 2021.

A handwritten signature in black ink, appearing to read "K. Vickers", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
June 30, 2021

Invoice No.
716315

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended June 30, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|---------------|---------------|-------------|--|
| June 1, 2021 | EG | 0.20 | Email to RSM re status of audit; email to Citak re same; email from Citak; status update to Oslers; |
| June 7, 2021 | EG | 0.20 | Status audit update from RSM; emails to and from Oslers and RSM re next motion date; |
| June 23, 2021 | EG | 0.30 | Email from Brenda re status of HST audit; call with Danny re same; vm for Oslers and email to Oslers re same; |
| June 24, 2021 | EG | 0.40 | Call with D. Rosenblatt re HST issue; email from Dave re same and his communications with Citak; status update to RSM; |

| | |
|-----------------|----------|
| OUR FEE HEREIN: | \$687.50 |
| FEE HST: | \$89.38 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|---------------|--------------|--------------|-------------|---------------|
| Eric Golden | Partner | 1.10 | \$625.00 | \$687.50 |

| | |
|-------------------------------|----------------|
| TOTAL FEES AND DISBURSEMENTS: | \$687.50 |
| TOTAL HST: | <u>\$89.38</u> |

Date
June 30, 2021

Invoice No.
716315

File No.
097779-0041

-2-

TOTAL AMOUNT DUE:

\$776.88

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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Details are available upon request.

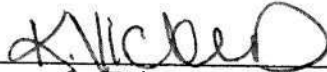
Make payment(s) payable to Blaney McMurtry LLP.

We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR

**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "L" referred to in the Affidavit of Chad Kopach
sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
July 31, 2021

Invoice No.
718799

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended July 31, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|---------------|---------------|-------------|---|
| July 5, 2021 | EG | 0.20 | Email from Citak re CRA doc status; email from and to Oslers re same; further email from Citak re same; status update to RSM; |
| July 6, 2021 | EG | 0.10 | Email from Citak re status of HST production; emails to RSM and Oslers re same; |
| July 27, 2021 | SJ | 0.10 | Email from E. Golden regarding LC's; |
| July 27, 2021 | EG | 0.20 | Emails from RSM re LC's with City; email to same and S. Jeffery re same; |
| July 28, 2021 | SJ | 0.20 | Emails from D. Weisz and E. Golden regarding LC's; |
| July 28, 2021 | EG | 1.20 | Communications with Steve re EQ LC; review LC background; email from and to RSM re same; call with Danny re same; email between Danny and Choice re same; email to and from Steve re same; email to Danny and Choice re same; |
| July 29, 2021 | SJ | 1.20 | Emails from and to E. Golden and D. Weisz; prepare email to N. Myers at City of Barrie; |

OUR FEE HEREIN:
FEE HST:

\$2,112.50
\$274.63

Date
July 31, 2021

Invoice No.
718799

File No.
097779-0041

-2-

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|----------------|--------------|--------------|-------------|---------------|
| Steven Jeffery | Partner | 1.50 | \$700.00 | \$1,050.00 |
| Eric Golden | Partner | 1.70 | \$625.00 | \$1,062.50 |

| | |
|-------------------------------|-------------------|
| TOTAL FEES AND DISBURSEMENTS: | \$2,112.50 |
| TOTAL HST: | <u>\$274.63</u> |
| TOTAL AMOUNT DUE: | <u>\$2,387.13</u> |

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

Make payment(s) payable to Blaney McMurtry LLP.

We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR

**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "M" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
September 30, 2021

Invoice No.
722072

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended September 30, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|--------------------|---------------|-------------|---|
| September 1, 2021 | EG | 0.30 | Emails from RSM and Oslers re status of CRA audit; email to Citak re same; |
| September 2, 2021 | EG | 0.30 | Email from Citak re CRA audit; email to RSM re status; email to Oslers re same; |
| September 15, 2021 | EG | 0.10 | Email to Citak re CRA audit status; |
| September 17, 2021 | EG | 0.20 | Emails from Citak, and between RSM and Oslers, re CRA audit status; |
| September 22, 2021 | EG | 0.30 | Emails from and to Citak re CRA audit status; emails with RSM and Oslers re same; |

| | |
|-----------------|----------|
| OUR FEE HEREIN: | \$750.00 |
| FEE HST: | \$97.50 |

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|---------------|--------------|--------------|-------------|---------------|
| Eric Golden | Partner | 1.20 | \$625.00 | \$750.00 |

| | |
|-------------------------------|----------------|
| TOTAL FEES AND DISBURSEMENTS: | \$750.00 |
| TOTAL HST: | <u>\$97.50</u> |

Date
September 30, 2021

Invoice No.
722072

File No.
097779-0041

-2-

TOTAL AMOUNT DUE: \$847.50

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.


Make payment(s) payable to Blaney McMurtry LLP.

We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR

**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "N" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
October 31, 2021

Invoice No.
724938

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended October 31, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|------------------|---------------|-------------|---|
| October 6, 2021 | EG | 1.10 | Email from Citak re completion of audit; review where Crown-Choice settlement was left off; email to Oslers re same and audit status; email from RSM re same; |
| October 26, 2021 | EG | 0.90 | Follow-up to Oslers re Choice-Crown HST settlement; emails from and to RSM re status and next steps; email from Oslers with most recent draft settlement agreement; review same and proposed revisions; |

OUR FEE HEREIN: \$1,250.00
FEE HST: \$162.50

| <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | <u>Amount</u> |
|---------------|--------------|--------------|-------------|---------------|
| Eric Golden | Partner | 2.00 | \$625.00 | \$1,250.00 |

TOTAL FEES AND DISBURSEMENTS: \$1,250.00
TOTAL HST: \$162.50

Date
October 31, 2021

Invoice No.
724938

File No.
097779-0041

-2-

TOTAL AMOUNT DUE:

\$1,412.50

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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Details are available upon request.

Make payment(s) payable to Blaney McMurtry LLP.

We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,

General Account No. 0680-5215022 Swift Code: TDOMCATTOR

Please ensure our account number and/or file number is quoted on the wire transfer.

This is Exhibit "O" referred to in the Affidavit of Chad Kopach sworn December 2, 2021.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
RSM Canada Limited
RSM Place
700-11 King St. West
Toronto, ON M5H 4C7

Date
November 30, 2021

Invoice No.
726475

File No.
097779-0041

Attention: Bryan A. Tannenbaum

RE: Penady (Barrie) Ltd. et al

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended November 30, 2021 as more particularly described below.

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|------------------|---------------|-------------|--|
| November 1, 2021 | EG | 1.10 | Compare-write revisions to Crown-Choice settlement; email to RSM re draft email to Oslers re same, discharge and adjustments; |
| November 1, 2021 | EG | 0.40 | Emails from and to RSM re Receiver Certificates and potential adjustments; email from and to Oslers re same and settlement between Crown/Choice as well as discharge; |
| November 3, 2021 | EG | 0.80 | Emails from and to Oslers re Crown-Choice settlement; email to and from RSM re same; call with Dave re same; email to Court re hearing date; |
| November 4, 2021 | EG | 2.20 | Review APA re wind down and adjustments; email to and from Matt Tapia re same; email to and from RSM re current SRD; email from Oslers to A&B re completion of settlement; email to RSM re outstanding issues for discharge; follow-up email to court re date for motion; review statement of adjustments and wind down amount on closing; further emails to and from Matt re adjustments; email from RSM re CRA letters re audit; |
| November 8, 2021 | EG | 0.10 | Follow-up to court re motion date; |

Date
November 30, 2021

Invoice No.
726475

File No.
097779-0041

-2-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> |
|-------------------|---------------|-------------|---|
| November 9, 2021 | EG | 0.10 | Follow-up email to Court re motion date; emails between Oslers and A&B re status of Choice-Crown settlement; |
| November 10, 2021 | EG | 0.10 | Email from and to Court re scheduling of motion; |
| November 11, 2021 | EG | 0.10 | Email from Oslers to A&B re status; communications with RSM re status; |
| November 15, 2021 | EG | 0.60 | Follow-up with court re status of hearing date; email from same re Dec 8 date; emails from and to RSM re status; emails to and from Oslers re status; emails to A&B and from Citak re court date; complete CL request form and email to court re same; |
| November 16, 2021 | EG | 0.20 | Email from court confirming Dec 8 motion date; emails to court and counsel confirming same; |
| November 23, 2021 | EG | 0.30 | Emails from A&B re Crown position on settlement; email from Oslers re same; email to counsel re same; |
| November 24, 2021 | EG | 0.30 | Email from A&B re confirming settlement; emails to and from RSM re same; emails between RSM and A&B re same; |
| November 26, 2021 | EG | 4.80 | Review 3rd report; review relevant background documents; revise 3rd report; communications with RSM re same; emails to Oslers re question for 3rd report; |
| November 29, 2021 | MRT | 0.90 | Review law regarding treatment of bare trustees for income tax reporting purposes and confirming CRA administrative policy regarding change of year ends on receivership and bankruptcy |
| November 29, 2021 | EG | 1.30 | Emails from and to Oslers re third report; emails from and to RSM re same and Crown-Choice settlement; emails to and from Oslers and A&B re same; emails from and to RSM re Pen tax issue re bare trustee; email to and from Mona re same; further proof of third report; |
| November 30, 2021 | EG | 2.20 | Complete revisions to report; email to RSM re same; emails from and to same re CHP |

Date
November 30, 2021

Invoice No.
726475

File No.
097779-0041

-3-

| <u>Date</u> | <u>Lawyer</u> | <u>Time</u> | <u>Description</u> | | | |
|-------------|-------------------------------|--------------|--|-------------|--|--------------------|
| | | | payout; email from RSM with further revised report; review same; emails to and from A&B with portions of report relating to CRA/HST; email to and from Oslers with report and re CHP payout; emails to and from RSM re next steps and outstanding matters; | | | |
| | OUR FEE HEREIN: | | | | | \$9,597.50 |
| | FEE HST: | | | | | \$1,247.68 |
| | <u>Lawyer</u> | <u>Title</u> | <u>Hours</u> | <u>Rate</u> | | <u>Amount</u> |
| | Eric Golden | Partner | 14.60 | \$625.00 | | \$9,125.00 |
| | Mona R. Taylor | Associate | 0.90 | \$525.00 | | \$472.50 |
| | TOTAL FEES AND DISBURSEMENTS: | | | | | \$9,597.50 |
| | TOTAL HST: | | | | | <u>\$1,247.68</u> |
| | TOTAL AMOUNT DUE: | | | | | <u>\$10,845.18</u> |

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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Details are available upon request.

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We accept Visa, Mastercard and AMEX.

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General Account No. 0680-5215022 Swift Code: TDOMCATTOR

Please ensure our account number and/or file number is quoted on the wire transfer.

Appendix R

ChoiceProperties

Choice Properties Limited Partnership (Choice LP)
Mortgage Statement - Penady (Barrie) Ltd.
As of November 30, 2021

| | |
|---|-------------------------|
| Amount of loan outstanding - November 30, 2021 | \$ 18,427,875.03 |
| Amount of interest outstanding - November 30, 2021 | 136,315.79 |
| Total amount of loan outstanding - November 30, 2021 | <u>18,564,190.82</u> |
| Extension fee per s1.5 of Credit Agreement Amendment (November 9, 2019) | 50,000.00 |
| Legal fee per s1.6 of Credit Agreement Amendment (November 9, 2019) | 50,000.00 |
| Payable to Choice LP on November 30, 2021 | <u>\$ 18,664,190.82</u> |

E. & O.E.