

Court File No.: BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario**

**MOTION RECORD**

May 16, 2025

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Interim Receiver and Trustee in  
Bankruptcy of Thomas Dylan Sutor

TO THE SERVICE LIST

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**INDEX**

Tab

- 1 Notice of Motion dated May 16, 2025
- 2 Second Report of the Interim Receiver

**Appendices**

- A Appointment Order dated October 7, 2024
- B Endorsement of Justice Osborne dated October 7, 2024
- C Bankruptcy Order of Justice Steele dated March 26, 2025
- D Endorsement of Justice Steele dated March 26, 2025
- E Notice of Appeal dated March 28, 2025
- F Reasons of Labrosse J. in *Black & White Sales Consultants Ltd. v. CBS Records Canada Ltd.*, 1980 CarswellOnt 193, 36 C.B.R. (N.S.) 125
- G First Report of the Interim Receiver dated November 19, 2024, without appendices
- H Order appointing receiver re 1083 Main Street, Hamilton, Ontario
- I Order appointing receiver re 380-390 Princess Avenue, London, Ontario
- J Order appointing receiver re 17-19 Collier Street, St. Catharines, Ontario
- K Notice of Intention to Enforce Security re 388 Downie Street, Stratford, Ontario

- L Notice of Sale under Mortgage re 267 Leslie Street, Sudbury, Ontario
- M Notice of Intention to Enforce Security re 207 Ross Street, St. Thomas, Ontario
- N Application to appoint a receiver and manager re 43 Centre Street, St. Catharines, Ontario and 34 Rykert Street, St. Catharines, Ontario
- O Application to appoint a receiver and manager re 1391 Ontario Street, Burlington, Ontario
- P Interim Statement of Receipts and Disbursements
- Q Fee Affidavit of Jeffrey Berger sworn May 14, 2025
- R Fee Affidavit of Mindy Tayar affirmed May 14, 2025

**Confidential Appendix “1”**

- 1 Market value estimates respecting the properties
- 3 Draft Order

**TAB 1**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario**

**NOTICE OF MOTION**

TDB Restructuring Limited ("**TDB**"), in its capacities as the Trustee in Bankruptcy and Court-Appointed Interim Receiver of Thomas Dylan Sutor ("**Sutor**"), will make a motion to a Judge on Monday, May 26, 2025 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

- ☐ in writing under subrule 37.12.1(1) because it is unopposed.
- ☐ in writing as an opposed motion under subrule 37.12.1(4).
- ☒ orally, via video-conference.

**THE MOTION IS FOR:**

1. An order, substantially in the form attached as Tab 3 of the Motion Record, *inter alia*:
  - a. abridging the time for service of the notice of motion and motion record, if necessary;

- b. approving the Second Report of the Interim Receiver ("**Second Report**") and the activities and conduct of TDB as described therein;
  - c. authorizing TDB to sell the Sales Process Properties (defined below);
  - d. declaring that TDB shall remain the interim receiver, without security, of all of the property, assets and undertaking of Suitor under the Order of the Honourable Justice Osborne dated October 7, 2024 ("**Appointment Order**") until disposition of Suitor's appeal of the Bankruptcy Order dated March 26, 2025 ("**Bankruptcy Order**") or further Order of the Court;
  - e. granting charges on the Sales Process Properties to secure (i) the fees and disbursements of TDB and those of its counsel and (ii) the borrowings of TDB;
  - f. authorizing TDB to redact Confidential Appendix "1" from its Second Report, and sealing it from the public record until the closing of the sales of the Sales Process Properties or further order of the Court;
  - g. approving the interim statement of receipts and disbursements of TDB and its counsel;
  - h. approving the fees and disbursements of TDB and those of its counsel, as set out in the Second Report and the Fee Affidavits (defined below); and
  - i. granting costs of this motion.
2. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On October 7, 2024, pursuant to the Appointment Order, TDB was appointed interim receiver of the property, assets and undertaking of Suitor.
2. TDB delivered the First Report of the Interim Receiver dated November 19, 2024 ("**First Report**") in connection with its motion heard on November 21, 2024 for, among other things, establishing a protocol for periodic payments to be made by Suitor or his companies, authorizing TDB to share confidential information with certain stakeholders, approval of TDB's activities and First Report, and approval of TDB's fees and disbursements and those of its counsel. The motion was granted.
3. On March 26, 2025, pursuant to the Bankruptcy Order, Suitor was adjudged bankrupt and TDB was appointed his Trustee in Bankruptcy.
4. On or about March 28, 2025, Suitor served and filed a Notice of Appeal from the Bankruptcy Order to the Court of Appeal for Ontario. The Bankruptcy Order is stayed.
5. With the acquiescence of Suitor, TDB continued to operate as interim receiver under the powers granted by the Appointment Order.
6. Since the date of the First Report, TDB has performed activities and rendered services for the protection of Suitor's estate and for the benefit of potential stakeholders. TDB's activities and services rendered are described in the Second Report.

7. The fees and disbursements of TDB and those of its counsel are fair and reasonable. Paragraph 15 of the Appointment Order provides that each of them shall be paid their reasonable fees and disbursements.

8. In order to maximize realizations for all stakeholders, TDB seeks to conduct a Court-supervised sale process with respect to the following ten properties (the “**Sales Process Properties**”), held either by Suitor or by corporations associated with, related to or controlled by him:

<b>Municipal Address</b>	<b>PIN</b>	<b>Property Description</b>	<b>Registered Owner</b>
775 King Rd., Burlington, Ontario	07096-0052 (LT)	PT LT 1 , CON BROKEN FRONT , PART 1 , 20R11690; CITY OF BURLINGTON	Thomas Dylan Suitor
2298 Fassel Ave., Burlington, Ontario	07077-0108 (LT)	PT LT 103 , PL 338 , AS IN 791083 ; BURLINGTON	Thomas Dylan Suitor
642 Hamilton Rd., London, Ontario	08335-0013 (LT)	LOT 8 PLAN 404 LONDON/LONDON TOWNSHIP	642 Hamilton Road Inc.
10 Norfolk St S, Simcoe, Ontario	50225-0112 (LT)	PT LT 1-2 BLK 96 PL 182 AS IN NR412200 T/W NR412200; NORFOLK COUNTY	10 Norfolk St. Inc.
164-168 Picton St E, Hamilton, Ontario	17157-0186 (LT)	PT LT 18-19 PL 61 S/S PICTON ST BTN MARY ST & FERGUSON AV AS IN AB395681 EXCEPT THE EASEMENT THEREIN; CITY OF HAMILTON	164 Picton St. Inc.
133 Prospect Ave. Hamilton, Ontario	17208-0073 (LT)	LT 87, PL 506 ; PT LT 88, PL 506 , AS IN CD385956, S/T	Prospect Real Estate Holdings Inc.

Municipal Address	PIN	Property Description	Registered Owner
		CD385956, IF ANY ; HAMILTON	
38 Duncan Ave. S, Kirkland Lake, Ontario	61407-0431 (LT)	PCL 1061 SEC CST; LT 48 PL M32TIM TECK SRO; KIRKLAND LAKE; DISTRICT OF TIMISKAMING	Commercial Urkel Inc.
388 Downie Street, Stratford, Ontario	53116-0113 (LT)	LT 17 PL 25 STRATFORD; PT LT 18 PL 25 STRATFORD AS IN R310549 ; STRATFORD	388 Downie St. Inc.
267 Leslie Street, Sudbury, Ontario	02132-0333 (LT)	PCL 3750 SEC SES LT 27, PLAN M125, EXCEPT COMM AT A POINT IN THE S EASTERN LIMIT OF SAID LT 27 DISTANT 5.7 FT FROM THE MOST SLY ANGLE OF SAID LT; THENCE S WLY ALONG SAID S EASTERN LIMIT 5.7 FT TO SAID MOST SLY ANGLE; THENCE N WLY ALONG SAID S WESTERN LIMIT OF SAID LT, 107.0 FT 6 IN TO THE MOST WLY ANGLE OF SAID LT; THENCE N ELY ALONG THE N WESTERN LIMIT OF SAID LT, 2.6 FT; THENCE S ELY IN A STRAIGHT LINE TO THE POC. PLAN ATTACHED TO 118472, NOW PCL 20288 S.E.S. CITY OF SUDBURY	Upgrade Housing Inc.
207 Ross Street, St. Thomas, Ontario	35220-0174 (LT)	LOT 65 PLAN 86, PART OF LOT 46 PLAN 86 AS IN E401586 & E411464; CITY OF ST. THOMAS	McWhirter-Horvath Properties Inc.

9. Many of the Sales Process Properties are not cash-flow positive and do not generate sufficient income to sustain their ongoing operating costs, including mortgage payments, property taxes, utilities, and maintenance expenses. Defaults have already been made under several mortgages on title to the Sales Process Properties.

10. A consolidated and court-approved sale process is the most efficient, equitable, and value-maximizing path forward in these circumstances. It will provide stakeholders with a centralized forum for the orderly realization of the Sales Process Properties and will avoid the uncertainty, cost, and risk associated with overlapping and potentially competing enforcement proceedings.

11. Confidential Appendix “1” of the Second Report contains estimates of market values respecting the Sales Process Properties. Confidential Appendix “1”, if disclosed to the public before the Sales Process Properties are sold, could detrimentally impact marketing and sale efforts for the Sales Process Properties.

12. A charge on the Sales Process Properties in the amount of \$250,000 (the “**Sales Process Administrative Charge**”) will be appropriate to secure payment of the respective fees and disbursements of TDB and those of its counsel. The Sales Process Administrative Charge should rank in priority to all other encumbrances, including those of secured creditors, but it should rank on a *pari passu* basis with the Interim Receiver’s Charge defined in paragraph 15 of the Appointment Order, and should be subordinate in priority to the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the

*Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”). This priority is necessary to ensure that TDB and its counsel are compensated for their services from the proceeds of the sale of the Sales Process Properties, before any distributions are made to secured creditors. Such a priority is consistent with the standard practice in court-appointed receiverships and is essential to allow TDB to carry out its duties effectively, in a manner that preserves and maximizes value for all stakeholders.

13. To carry out its role and fulfill its duties, TDB will need to borrow funds from time to time. A charge on the Sales Process Properties will be appropriate to secure payment of funds borrowed by TDB by way of a credit facility (the “**Sales Process Borrowings Charge**”). The Sales Process Borrowings Charge should rank in priority to all other encumbrances, including those of secured creditors, but it should rank on a *pari passu* basis with the Interim Receiver’s Borrowings Charge defined in paragraph 18 of the Appointment Order, and should be subordinate in priority to the Sales Process Administrative Charge, the Interim Receiver’s Charge defined in paragraph 15 of the Appointment Order, and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

14. Section 195 of the *BIA*.

15. The applicant The Fuller Landau Group Inc. (“**Fuller**”) consents to the relief sought in this motion.

16. Such further and other grounds as counsel may advise and this Honourable Court permits.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

1. The Second Report, and the appendices thereto.
2. The affidavits of Jeffrey Berger and Mindy Tayar as to fees (the "**Fee Affidavits**").
3. The Consent of Fuller.
4. Such further and other material as counsel may advise and this Honourable Court permits.

May 16, 2025

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IN THE MATTER OF THE **BANKRUPTCY OF THOMAS DYLAN SUITOR**, AN INDIVIDUAL WITH A LOCALITY OF **BURLINGTON, ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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**IN THE MATTER OF THE INTERIM RECEIVERSHIP OF**

**THOMAS DYLAN SUITOR**

**SECOND REPORT OF THE INTERIM RECEIVER**

**MAY 16, 2025**

## **Contents**

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>1.1</b>	<b>Background on Bankruptcy Application .....</b>	<b>3</b>
<b>1.2</b>	<b>Purpose of Report .....</b>	<b>3</b>
<b>1.3</b>	<b>Terms of Reference .....</b>	<b>5</b>
<b>2.0</b>	<b>ACTIVITIES OF THE INTERIM RECEIVER .....</b>	<b>5</b>
<b>3.0</b>	<b>ACTIVITIES OF THE TRUSTEE.....</b>	<b>7</b>
<b>4.0</b>	<b>BACKGROUND OF REAL PROPERTIES.....</b>	<b>7</b>
<b>5.0</b>	<b>ENFORCEMENT PROCEEDINGS BY SECURED CREDITORS .....</b>	<b>10</b>
<b>6.0</b>	<b>PROPOSED CONSOLIDATED SALES PROCESS.....</b>	<b>11</b>
<b>7.0</b>	<b>INTERIM RECEIVER’S CHARGES .....</b>	<b>15</b>
<b>7.1</b>	<b>Initial Charges Granted by the Court.....</b>	<b>15</b>
<b>7.2</b>	<b>Proposed Second Administration Charge .....</b>	<b>16</b>
<b>7.3</b>	<b>Proposed Consolidated Borrowing Charge .....</b>	<b>17</b>
<b>7.4</b>	<b>Allocation of Fees and Disbursements .....</b>	<b>17</b>
<b>7.5</b>	<b>Limitation on Borrowing .....</b>	<b>17</b>
<b>7.6</b>	<b>Priority of Charges .....</b>	<b>18</b>
<b>8.0</b>	<b>RECEIPTS AND DISBURSEMENTS.....</b>	<b>18</b>
<b>8.1</b>	<b>Statement of Receipts and Disbursements .....</b>	<b>18</b>
<b>8.2</b>	<b>Outstanding Fees.....</b>	<b>19</b>
<b>9.0</b>	<b>PROFESSIONAL FEES .....</b>	<b>19</b>
<b>10.0</b>	<b>RECEIVER’S REQUEST OF THE COURT.....</b>	<b>20</b>

## **APPENDICES**

Appointment Order .....	A
Endorsement of Justice Osborne dated October 7, 2024.....	B
Bankruptcy Order .....	C
Related Endorsement .....	D
Notice of Appeal.....	E
Reasons of Labrosse J.....	F
First Report.....	G
1083 Main Street, Hamilton, Ontario – Appointment Order .....	H
380-390 Princess Avenue, London, Ontario – Appointment Order.....	I
17-19 Collier Street, St. Catharines, Ontario – Appointment Order.....	J
388 Downie Street, Stratford, Ontario – Notice of Intention to Enforce Security.....	K
267 Leslie Street, Sudbury, Ontario – Notice of Sale .....	L
207 Ross Street, St. Thomas, Ontario - Notice of Intention to Enforce Security .....	M
43 Centre Street, St. Catharines, Ontario and 34 Rykert Street, St. Catharines, Ontario – Application Record .....	N
1391 Ontario Street, Burlington, Ontario - Application Record .....	O
Interim Statement of Receipts and Disbursements .....	P
Affidavit of Jeffrey Berger.....	Q
Affidavit of Mindy Tayar.....	R

## **CONFIDENTIAL APPENDIX**

Estimated Market Values.....	1
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## 1.0 INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 7, 2024 (the “**Appointment Order**”), TDB Restructuring Limited was appointed as interim receiver (the “**Interim Receiver**”) of the property, assets and undertaking of Thomas Dylan Suitor (“**Mr. Suitor**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order empowered and authorized the Interim Receiver to, among other things:
  - (a) ***monitor the Debtor’s bank accounts and the accounts of Related Entities** (as defined below) and approve all disbursements from the Debtor’s bank accounts and the accounts of Related Entities; and*
  - (b) *take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor **or corporations or other entities associated with, related to or controlled by the Debtor (the “Related Entities”)** [...]*<sup>1</sup>.
3. The Endorsement of Justice Osborne dated October 7, 2024 (the “**Endorsement**”), is attached hereto as **Appendix “B”**.
4. Of the Related Entities, the following ten (10) own real properties:
  - i. 642 Hamilton Road Inc.;
  - ii. 207 Ross Inc.;
  - iii. 10 Norfolk St Inc.;

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<sup>1</sup> Emphasis added



- iv. 164 Picton St Inc.;
- v. 388 Downie St Inc.;
- vi. Prospect Real Estate Holdings Inc.;
- vii. 1391 Ontario St Inc.;
- viii. Commercial Urkel Inc.;
- ix. Upgrade Housing Inc.; and
- x. Happy Town Housing Inc.

Collectively, the ("**Real Estate Entities**").

5. The Court issued an Order dated November 21, 2024 approving:
  - (a) the activities of the Interim Receiver to the date of the First Report dated November 19, 2024 (the "**First Report**");
  - (b) a payment protocol to be created for the disbursements of the Related Entities; and
  - (c) the disclosure of information with the applicant, The Fuller Landau Group Inc. ("**Fuller**") and KSV Restructuring Inc. ("**KSV**") as the Court-appointed Monitor of the Balboa Group of companies, of which Mr. Suitor is a principal.
6. The Appointment Order, the Endorsement and other pertinent documents related to these proceedings, has been posted on the Interim Receiver's website, which can be found at:

<https://tdbadvisory.ca/insolvency-case/d-suitor/>

## **1.1 Background on Bankruptcy Application**

7. Fuller, in its capacity as Court-appointed receiver of The Lion's Share Group Inc., an unsecured creditor of Mr. Suitor, made an application on August 30, 2024, for a bankruptcy order against Mr. Suitor.
8. Mr. Suitor's bankruptcy hearing was held on February 24, 2025, and on March 25, 2025, the Honorable Justice Steele issued a Bankruptcy Order (the "**Bankruptcy Order**") and endorsement which adjudged Mr. Suitor bankrupt and appointed TDB Restructuring Limited as trustee (the "**Trustee**"). A copy of the Bankruptcy Order and the related endorsement are attached hereto as **Appendices "C" and "D"**, respectively.
9. On March 28, 2025, counsel for Mr. Suitor served and filed a Notice of Appeal, a copy of which is attached hereto as **Appendix "E"**.
10. As of the date of this report the appeal has not been perfected. It is the Interim Receiver's understanding that a court file number was obtained on May 1, 2025, and Mr. Suitor has until June 2, 2025, to perfect his appeal.
11. Pursuant to s. 67(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), upon the granting of the Bankruptcy Order, Mr. Suitor's property vested in the Trustee. Three days later, upon delivery of the Notice of Appeal, the Bankruptcy Order was stayed pursuant to s. 195 of the *BIA*. Attached hereto as **Appendix "F"** are the Reasons of Labrosse J. (as he then was) wherein the Court held that the delivery of a Notice of Appeal from a bankruptcy order does not re-vest the property in the bankrupt.

## **1.2 Purpose of Report**

12. The purpose of this Second Report to Court (the "**Second Report**") is to:
  - (a) report to the Court with information about the Interim Receiver's activities from the date of the First Report to the date of this Second Report. A copy of the First Report, without appendices is attached hereto as **Appendix "G"**;

- (b) report to the Court with information about the Trustee's activities since the date of the Bankruptcy Order;
- (c) report to the Court with information about the real properties owned by Mr. Suitor and the Related Entities;
- (d) report to the Court about the enforcement proceedings that have been initiated by various creditors against the Real Estate Entities;
- (e) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period of October 7, 2024, to May 13, 2025 (the "**Interim R&D**");
- (f) request that the Court grant an order:
  - i. approving the Second Report and the activities of the Interim Receiver and the Trustee as set out herein;
  - ii. approving the proposed Sales Process (as defined herein);
  - iii. approving the Sales Process Administration Charge on the Sales Process Properties (both terms as defined herein) in favour of the Interim Receiver and its counsel;
  - iv. approving the Sales Process Borrowing Charge (as defined herein);
  - v. approving the Interim R&D;
  - vi. approving the fees and disbursements of the Interim Receiver and its counsel to April 30, 2025; and
  - vii. sealing Confidential Appendix "1".

### **1.3 Terms of Reference**

13. In preparing the Second Report, the Interim Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in the Second 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 Interim Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Interim 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 Chartered Professional Accountants Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.
14. Capitalized terms not defined herein have the meanings ascribed to them in the First Report.
15. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.

### **2.0 ACTIVITIES OF THE INTERIM RECEIVER**

16. The following is a summary of the Interim Receiver’s activities from the date of the First Report:
  - (a) corresponded with Fuller and KSV regarding the information collected from Mr. Suitor and the Related Entities;
  - (b) prepared and implemented a monitoring protocol allowing Mr. Suitor to pay certain invoices, in the ordinary course;

- (c) conducted weekly meetings with Mr. Suitor and certain of the Related Entities' employees to discuss the status of the weekly operations of the Related Entities, payment approvals, etc.;
- (d) considered and responded to requests of secured creditors holding real estate mortgages on properties owned by the Real Estate Entities;
- (e) responded to inquiries from creditors of Mr. Suitor and the Related Entities to elaborate on the Interim Receiver's mandate and the scope of the Interim Receiver's authority;
- (f) discussed with independent legal counsel whether to approve proposed sales of properties, and if so, on what terms;
- (g) facilitated discussions with MNP Ltd., in its capacity as Court-appointed receiver of 2710654 Ontario Inc., 1083 Main Street Inc., 2842879 Ontario Inc. and 2044583 Ontario Inc. (the "**MNP Receivership Entities**"), regarding funds owed by related entity Grow Ontario Property Management Inc. to the MNP Receivership Entities;
- (h) prepared a liquidation analysis, with assistance of an opinion of value obtained from a qualified real estate brokerage firm;
- (i) ensured that the Real Estate Entities had property insurance in place in respect to the owned real estate;
- (j) engaged in discussions with independent legal counsel to ensure compliance with the terms of the Appointment Order and scope of the Interim Receiver's authority;
- (k) corresponded with several real estate mortgagees, Mr. Suitor and independent legal counsel regarding the proposed Sales Process; and
- (l) prepared this Second Report to Court.

### **3.0 ACTIVITIES OF THE TRUSTEE**

17. The following is a summary of the Trustee's activities since the date of the Bankruptcy Order:
  - (a) arranged for the freezing of Mr. Suitor's personal bank accounts; and
  - (b) corresponded with Mr. Suitor to explain his duties as a bankrupt.
18. Following service and filing of the Notice of Appeal, the Trustee was stayed from continuing the administration of the estate pursuant to section 195 of the *BIA*. Consequently, with the acquiescence of Mr. Suitor, the Interim Receiver has continued to operate under the powers granted by the Appointment Order.
19. Following service and filing of the Notice of Appeal, the Interim Receiver:
  - (a) reviewed and approved payment requests made by Mr. Suitor and the Related Entities on a weekly basis to be satisfied that the payments are reasonable and made in the ordinary course of business; and
  - (b) responded to creditor inquiries regarding the appeal and its impact on the Interim Receiver's administration.

### **4.0 BACKGROUND OF REAL PROPERTIES**

20. Mr. Suitor personally owns two real properties: his personal residence and a residential rental property which is currently tenanted. The Related Entities collectively own eleven rental properties. Together, the properties owned by Mr. Suitor and the Related Entities are referred to herein as (the "**Real Properties**").
21. The Real Properties consist of a mix of building types, including mixed-use properties, duplexes, and multi-family residential dwellings. Several of the Real Properties are not cash-flow positive and do not generate sufficient revenue to sustain their ongoing operating costs including mortgage payments, property taxes, utilities, and maintenance expenses.

22. Mr. Suitor has advised the Interim Receiver that he is not financially able to raise or inject further funds into the Related Entities to support the carrying costs of the Real Properties. Considering Mr. Suitor's financial situation and the defaults already made under the mortgages registered against the Real Properties, it is necessary that the Real Properties be sold in an orderly manner to preserve and maximize the return to stakeholders. The following mortgages are in default:

<b>Address</b>	<b>Lender</b>	<b>Default Date</b>
133 Prospect Ave, Hamilton, ON	Lorrasons Holdings Inc.	April 2024
1391 Ontario Street, Burlington, ON	Business Development Bank of Canada	October 2024
38 Duncan Avenue South, Kirkland Lake, ON	Dennis and Jessica Domenichini	November 2023
43 Centre Street, St. Catharines, ON	Bank of Montreal (BMO)	June 2024
34 Rykert Street, St. Catharines, ON	Bank of Montreal (BMO)	June 2024
267 Leslie Street, Sudbury, ON	Lift Capital Inc.	December 2024

23. The Interim Receiver notes that if the Real Properties are not adequately maintained by Mr. Suitor and/or his property managers on an ongoing basis, the market value of the Real Properties is likely to deteriorate, to the detriment of the estate and its stakeholders.

24. Below is a table listing each real property by municipal address, name of registered owner on title, and Mr. Suitor's estimate of the outstanding mortgage indebtedness.

<b>Municipal Address</b>	<b>Registered Owner</b>	<b>Mortgage Indebtedness Estimate</b>
642 Hamilton Road, London, ON	642 Hamilton Road Inc.	\$3,200,369
207 Ross St, St. Thomas, ON	McWhirter-Horvath Properties Inc.	\$191,911
10 Norfolk St S, Simcoe, ON	10 Norfolk St Inc.	\$1,300,000
164-168 Picton St E, Hamilton, ON	164 Picton St Inc.	\$2,011,421
388 Downie St, Stratford, ON	388 Downie St Inc.	\$1,700,000
133 Prospect Ave, Hamilton, ON	Prospect Real Estate Holdings Inc.	\$4,070,000
1391 Ontario St, Burlington, ON	1391 Ontario St Inc.	\$2,446,000
38 Duncan Ave S, Kirkland Lake, ON	Commercial Urkel Inc.	\$543,750
267 Leslie St, Sudbury, ON	Upgrade Housing Inc.	\$260,000
34 Rykert St, St. Catharines, ON	Happy Town Housing Inc.	\$456,000
43 Centre St, St. Catharines, ON	Happy Town Housing Inc.	\$538,000
775 King Road, Burlington, ON	Thomas Dylan Suitor	\$1,200,000
2298 Fassel Ave, Burlington, ON	Thomas Dylan Suitor	\$992,000

Mr. Suitor has estimated the market values of each of the Real Properties. To determine the reasonableness of Mr. Suitor's market value estimates, the Interim Receiver obtained an independent opinion of value from CBRE Limited ("**CBRE**"). The Interim Receiver has prepared a summary of the estimates of value provided by both Mr. Suitor and CBRE, copy of which is attached hereto as **Confidential Appendix "1"**.



## 5.0 ENFORCEMENT PROCEEDINGS BY SECURED CREDITORS

25. Since the date of the Appointment Order, the following enforcement actions have been taken against properties held by the Related Entities:

- (a) 1083 Main Street, Hamilton, Ontario - was placed in Court-appointed receivership by an application brought by Paradise Media LTD., and MNP Ltd. has been appointed as receiver and the appointment order is attached hereto as **Appendix “H”**;
- (b) 380-390 Princess Avenue, London, Ontario - was placed in Court-appointed receivership by an application brought by Paradise Media LTD., and MNP Ltd. has been appointed as receiver and the appointment order is attached hereto as **Appendix “I”**;
- (c) 17-19 Collier Street, St. Catharines, Ontario - was placed in Court-appointed receivership by an application brought by Paradise Media LTD., and MNP Ltd. has been appointed as receiver and the appointment order is attached hereto as **Appendix “J”**;
- (d) 388 Downie Street, Stratford, Ontario – the secured creditor, Sabbatical Holdings Inc. has issued a Notice of Intention to Enforce Security under subsection 244(1) of the *BIA*, a copy of which is attached hereto as **Appendix “K”**;
- (e) 267 Leslie Street, Sudbury, Ontario, - the secured creditor, Lift Capital Incorporated, has issued a Notice of Sale under Part II of the *Mortgages Act*, a copy of which is attached hereto as **Appendix “L”**;
- (f) 207 Ross Street, St. Thomas, Ontario – the secured creditor, Libro Credit Union Limited, has issued a Notice of Intention to Enforce Security under subsection 244(1) of the *BIA*, a copy of which is attached hereto as **Appendix “M”**;

- (g) 43 Centre Street, St. Catharines, Ontario and 34 Rykert Street, St. Catharines, Ontario – the secured creditor, Bank of Montreal, is seeking the appointment of a receiver over both properties. A copy of the application record is attached hereto as **Appendix “N”**. This receivership application is scheduled to be heard by the Court on June 3, 2025; and
  - (h) 1391 Ontario Street, Burlington, Ontario – the secured creditor, Business Development Bank of Canada, is seeking the appointment of a receiver over both properties. A copy of the application record is attached hereto as **Appendix “O”**. This receivership application is scheduled to be heard by the Court on June 3, 2025.
26. As of the date of this Second Report, no enforcement actions have been commenced with respect to the following properties held by the Related Entities:
- (a) 775 King Rd., Burlington, Ontario;
  - (b) 2298 Fassel Ave., Burlington, Ontario;
  - (c) 642 Hamilton Rd., London, Ontario;
  - (d) 10 Norfolk St S, Simcoe, Ontario;
  - (e) 164-168 Picton St E, Hamilton, Ontario;
  - (f) 133 Prospect Ave. Hamilton, Ontario; and
  - (g) 38 Duncan Ave. S, Kirkland Lake, Ontario.

## **6.0 PROPOSED CONSOLIDATED SALES PROCESS**

27. The following real properties are the properties that the Interim Receiver would propose to be included in the Sales Process:
- (a) 775 King Rd., Burlington, Ontario;

- (b) 2298 Fassel Ave., Burlington, Ontario;
- (c) 642 Hamilton Rd., London, Ontario;
- (d) 10 Norfolk St S, Simcoe, Ontario;
- (e) 164-168 Picton St E, Hamilton, Ontario;
- (f) 133 Prospect Ave. Hamilton, Ontario;
- (g) 38 Duncan Ave. S, Kirkland Lake, Ontario;
- (h) 388 Downie Street, Stratford, Ontario;
- (i) 267 Leslie Street, Sudbury, Ontario; and
- (j) 207 Ross Street, St. Thomas, Ontario.

Collectively (the “**Sales Process Properties**”).

28. As set out in this Second Report, the Interim Receiver believes that a centralized, Court-supervised sale process will produce materially better outcomes for all stakeholders when compared to individual enforcement actions by various secured creditors. The primary benefits of expanding the scope of the Interim Receiver’s powers to act as a sales officer include:

- (a) **Judicial Economy:** A single, coordinated sales process will avoid inefficient consumption of the Court's time and resources associated with multiple independent enforcement proceedings;
- (b) **Cost Efficiency:** A single, coordinated sales process will avoid the duplication of legal and professional fees associated with multiple independent enforcement proceedings;

- (c) **Lower Transaction Costs:** The Interim Receiver will seek to negotiate reduced real estate commissions through a consolidated engagement strategy, resulting in lower overall brokerage costs;
  - (d) **Preservation of Value:** A structured process ensures that the Sales Process Properties are marketed cohesively and professionally, helping to avoid distressed or forced-sale outcomes that could arise from fragmented proceedings;
  - (e) **Maximize Realizations:** By marketing the Sales Process Properties individually and/or as a portfolio, the Interim Receiver can attract a wider range of potential purchasers and optimize sale proceeds for the benefit of all stakeholders; and
  - (f) **Reduction of Ongoing Carrying Costs:** A prompt, coordinated sale of the Sales Process Properties will minimize the impact of ongoing operating expenses such as property taxes, utilities, insurance, and maintenance costs, all of which may serve to diminish the funds ultimately available for distribution to stakeholders.
29. In order to maximize realizations for all stakeholders, the Interim Receiver proposes to conduct a Court-supervised sale process (the “**Sales Process**”) for the Sales Process Properties.
30. The objectives of the proposed Sales Process are to:
- (a) maximize the value of the Sales Process Properties through a competitive, transparent, and robust marketing campaign;
  - (b) preserve stakeholder value by avoiding unnecessary duplication of enforcement-related legal and professional costs;
  - (c) minimize operational disruptions during the marketing period, and preserve tenancies where possible and desirable; and

- (d) seek Court approval for agreements of purchase and sale that result from this process.
31. To achieve these objectives, the Interim Receiver proposes the following plan for the Sales Process:
- (a) **Engagement of a Qualified Broker:** The Interim Receiver will conduct a request for proposals with a minimum of three (3) proposals from qualified brokers for each of the properties;
  - (b) **Preparation of Marketing Materials:** The broker, in consultation with the Interim Receiver, will prepare marketing materials for the Sales Process Properties, including a brochure and confidential information memorandum with a link to an electronic data room for qualified purchasers;
  - (c) **Public and Targeted Marketing Campaign:** The Sales Process Properties will be broadly marketed through commercial real estate listing services (e.g., MLS), targeted emails to investor databases, and direct outreach to known active purchasers of similar assets. Where appropriate, the Sales Process Properties will be marketed both individually and en bloc;
  - (d) **Solicitation of Offers:** A bid deadline will be established, and formal offers will be reviewed by the Interim Receiver in consultation with its legal counsel and with secured creditors who hold security interests in the properties;
  - (e) **Negotiation and Selection of Winning Bid(s):** The Interim Receiver will evaluate offers based on several factors, including price, conditions, closing timeline, and financial capacity of the bidder. The Interim Receiver will retain flexibility to negotiate with one or more bidders and to select and recommend offers for individual or multiple properties; and
  - (f) **Court Approval and Closing:** The Interim Receiver will return to the Court to seek approval of all sales, with a view to obtaining approvals for multiple sales on each attendance thereby reducing the burden on the Court.

32. The Interim Receiver believes that a consolidated and Court-approved Sales Process is the most efficient, equitable, and value-maximizing path forward in these circumstances. It will provide stakeholders with a centralized forum for the orderly realization of the Sales Process Properties and will avoid the uncertainty, cost, and risk associated with overlapping and potentially competing enforcement proceedings.
33. Both Mr. Suitor and Fuller have expressed their support for the proposed Sales Process.

## **7.0 INTERIM RECEIVER’S CHARGES**

### **7.1 Initial Charges Granted by the Court**

34. As outlined in the First Report, the Interim Receiver accepted its mandate at the request of the Applicant, and a \$100,000 retainer (the “**Retainer**”) was provided by KSV, in its capacity as Court-appointed Monitor of the Balboa Group of Companies. This Retainer was intended to secure the professional fees and disbursements of the Interim Receiver and its legal counsel.
35. In addition to the Retainer, the Court granted the Interim Receiver the following charges:
  - (a) a charge over the two personal properties owned by Mr. Suitor to secure the fees and disbursements of the Interim Receiver and its Counsel (the “**Initial Administration Charge**”); and
  - (b) a borrowing charge in the amount of \$100,000, also secured against Mr. Suitor’s two personal properties, to fund property-specific expenses such as maintenance, taxes and insurance (the “**Initial Borrowing Charge**”).
36. The Retainer has been applied to certain fees and disbursements as set out in the Interim R&D. The Interim Receiver has not yet borrowed funds pursuant to the Initial Borrowing Charge.

## **7.2 Proposed Second Administration Charge**

37. The Interim Receiver respectfully requests that the Court grant a second and separate administration charge, in the amount of \$250,000 (the “**Sales Process Administration Charge**”). This charge will secure the professional fees and disbursements of the Interim Receiver and its counsel for work undertaken from the date of the date of the Sales Process Order (sought herein) forward, should the Court be inclined to grant the Sales Process Order.
38. Fuller shall be entitled to its costs of the motion for the appointment of the Interim Receiver on a full indemnity basis, to be paid from the proceeds of sale of the Sales Process Properties. Fuller shall also benefit from the Sales Process Administration Charge with respect to such costs; however, this entitlement shall be subordinate to all valid and enforceable mortgage debt registered on title to the Sales Process Properties.
39. The Sales Process Administration Charge is to be secured against all the Sales Process Properties. This additional charge ensures the continued funding of the Interim Receiver’s activities through the next phase of the mandate, including the conduct of the Sales Process and ensuing reporting obligations to the Court and stakeholders.
40. To date, the Interim Receiver has performed a broad range of activities as documented in the First Report and Second Report. Further, should the Court grant the relief being sought by the Interim Receiver, the scope and complexity of the interim receivership will increase and professional time above what was initially contemplated when the Appointment Order was granted will be required to complete the sale of the Sales Process Properties, report to the Court, and otherwise administer the estate.

### **7.3 Proposed Consolidated Borrowing Charge**

41. The Interim Receiver also seeks the Court's approval to implement a new consolidated borrowing charge of \$500,000, secured over the Sales Process Properties (the "**Sales Process Borrowing Charge**"). This borrowing facility will be used to fund costs necessary to preserve and market the Sales Process Properties, including but not limited to:

- (a) property taxes;
- (b) insurance;
- (c) ongoing maintenance and repairs;
- (d) sales process related costs; and
- (e) incidental expenses required to protect or maintain the value of the Sales Process Properties.

### **7.4 Allocation of Fees and Disbursements**

42. The Interim Receiver, intends, subject to Court approval, to allocate professional fees and disbursements on a property-by-property basis, where applicable. Any common activities or expenses that benefit all Sales Process Properties collectively will be allocated on a reasonable and equitable basis amongst those properties. The Interim Receiver will seek approval for its proposed allocation of costs when bringing a motion for distribution of sale proceeds.

### **7.5 Limitation on Borrowing**

43. The Interim Receiver proposes that no more than \$100,000 in borrowings be allocated to any individual Sales Process Property under the Sales Process Borrowing Charge, without first obtaining further approval from the Court.



## 7.6 Priority of Charges

44. The Interim Receiver further requests that:

- (a) the Sales Process Administration Charge rank in priority to all other encumbrances, including those of secured creditors, in accordance with the proposed Order but it shall rank on a *pari passu* basis with the Interim Receiver's Charge defined in paragraph 15 of the Appointment Order; and
- (b) the Sales Process Borrowing Charge rank in priority to all other encumbrances, including those of secured creditors, in accordance with the proposed Order, but it shall rank on a *pari passu* basis with the Interim Receiver's Borrowings Charge defined in paragraph 18 of the Appointment Order, and shall be subordinate in priority to the Sales Process Administrative Charge and the Interim Receiver's Charge defined in paragraph 15 of the Appointment Order.

45. These priorities are necessary to ensure that the Interim Receiver and its counsel are compensated for their services from the proceeds of the sale of the Sales Process Properties, before any distributions are made to secured creditors. Such a priority is consistent with the standard practice in court-appointed receiverships and is essential to allow the Interim Receiver to continue carrying out its duties effectively, in a manner that preserves and maximizes value for all stakeholders.

## 8.0 RECEIPTS AND DISBURSEMENTS

### 8.1 Statement of Receipts and Disbursements

46. The Interim R&D sets out cash receipts of \$101,161, including the Retainer, and cash disbursements of \$91,176, resulting in an excess of receipts over disbursements of \$9,985. A copy of the Interim R&D is attached hereto as **Appendix "P"**.
47. As set out in Section 9.0 of this Second Report, the Interim Receiver and its counsel have issued invoices to the period ending April 30, 2025. The outstanding amounts

payable inclusive of HST are approximately \$110,216 for the Interim Receiver and \$48,798 for its legal counsel, totaling \$159,014 (together, the “**Outstanding Fees**”).

## **8.2 Outstanding Fees**

48. The Outstanding Fees will be paid from the Retainer or from the proceeds of the sale of the two personal properties owned by Mr. Suitor, which are subject to the existing Initial Administration Charge. For clarity, no portion of the professional fees or disbursements incurred by the Interim Receiver and its counsel will be allocated to the Sales Process Properties other than the King Rd. and Fassel Ave. properties which currently form the security for these fees and disbursements pursuant to the terms of the Appointment Order. Should the Court grant the Sales Process Order and approve the Sales Process Administrative Charge, only those fees and disbursements incurred thereafter in connection with the Sales Process will be allocated to the Sales Process Properties.

## **9.0 PROFESSIONAL FEES**

49. The Interim Receiver’s accounts for the period from November 1, 2024, to April 30, 2025 total \$111,649.50 in fees and disbursements, plus HST of \$14,514.44, for a total amount of \$126,163.95. A copy of the Interim Receiver’s accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Jeffrey Berger sworn on May 14, 2025, and attached hereto as **Appendix “Q”**.
50. The accounts of the Interim Receiver’s counsel, Fred Tayar & Associates P.C., for the period from November 11, 2024, to April 30, 2025 total \$56,885.53 in fees and disbursements, plus HST of \$7,392.00 for a total amount of \$64,277.53. A copy of these accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Mindy Tayar affirmed on May 14, 2025, and attached hereto as **Appendix “R”**.

## **10.0 RECEIVER'S REQUEST OF THE COURT**

51. Based on the foregoing, the Interim Receiver respectfully requests that the Court grant the order described in paragraph 12(f) above.

All of which is respectfully submitted to this Court as of this 16<sup>th</sup> day of May 2025.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as  
Interim Receiver of Thomas Dylan Sutor and not in its personal or  
corporate capacity

Per:



Jeffrey Berger, CPA, CA, CIRP, LIT  
Managing Director

# Appendix A

*THE HONOURABLE JUSTICE OSBORNE*

*OCTOBER 7, 2024*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**ORDER**

**(Appointing Interim Receiver)**

**THIS MOTION** made by the applicant, The Fuller Landau Group Inc., in its capacity as receiver of the property, assets and undertaking of The Lion's Share Group Inc., (the "**Applicant**") for an Order pursuant to section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing TDB Restructuring Limited ("**TDB**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the property, assets and undertaking of Thomas Dylan Sutor (the "**Debtor**"), was heard orally on October 3, 2024, in Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant dated August 31, 2024; the Fourth Report of the Applicant dated August 31, 2024; the Supplement to the Fourth Report of the Applicant dated September 30, 2024; the consent of TDB to act as Interim Receiver dated August 30, 2024; and the affidavit of verification of Gary Abrahamson sworn August 30, 2024;

**AND UPON** hearing the submissions of counsel for the Interim Receiver, counsel for the Applicant, counsel for the Debtor, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn September 19, 2024 and the affidavits of service of Lauren Archibald sworn September 19, 2024 and October 1, 2024.

## 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 matter is properly heard today and hereby dispenses with further service thereof.

## APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 46 of the BIA, TDB is hereby appointed Interim Receiver, without security, of all of the property, assets and undertaking of the Debtor, including, without limitation, the real property described in Schedule “A” hereto (the “**Property**”).

## INTERIM RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor the Debtor’s bank accounts and the accounts of Related Entities (as defined below) and approve all disbursements from the Debtor’s bank accounts and the accounts of Related Entities;
- (b) to take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor or corporations or other entities associated with, related to or controlled by the Debtor (the “**Related Entities**”), including the Related Entities listed on Schedule “C” hereto;
- (c) to engage independent security personnel to preserve and protect the Property;
- (d) to take any steps the Interim Receiver may deem necessary or desirable to preserve and protect the personal property and real property legally or beneficially owned by the Debtor or the Related Entities pending further order of the Court including, but not limited to, changing locks, security codes and passwords and the taking of physical inventories, and the control of access to the Debtor’s or the Related Entities’ Records (as defined below) and premises;

- (e) 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 Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (g) to undertake any investigations deemed appropriate by the Interim Receiver with respect to the business and affairs of the Debtor;
- (h) to apply to this Court for such further relief, advice and directions as the Interim Receiver may determine as necessary or desirable;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to the Property or against title to the assets of the Related Entities;
- (j) to conduct examinations of any person, if deemed necessary in the Interim Receiver's discretion; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtor or the Related Entities,

and in each case the Interim Receiver shall be exclusively authorized and empowered to do so, to the exclusion of the Debtor, and without interference from any other person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) 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 Interim Receiver of the existence of any Property in such Person’s possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtor or the Related Entities, and any computer programs, computer tapes, computer disks, cloud 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software, cloud 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 Interim 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, in the cloud 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 Interim Receiver for the purpose of allowing the Interim 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 Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer, cloud or other system and providing the Interim Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.



**NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or any Related Entities or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor, the Related Entities or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Related Entities, the Interim Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtor, to carry on any business which the Debtor, is not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtor, 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 INTERIM RECEIVER**

10. **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 Debtor or a Related Entity, without written consent of the Interim Receiver or leave of this Court.

## CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or any of the Related Entities, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtor or the Related Entities, 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 Interim Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Interim Receiver shall be entitled to the continued use of the Debtor's or the Related Entities' 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 Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

## EMPLOYEES

12. **THIS COURT ORDERS** that all employees of the Debtor or the Related Entities shall remain the employees of the Debtor or the Related Entities. The Interim 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 Interim 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* (the "**WEPPA**").

## LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property or the Related Entities 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property or any property of the Related Entities within the meaning of any Environmental Legislation, unless it is actually in Possession.

### **LIMITATION ON THE INTERIM RECEIVER’S LIABILITY**

14. **THIS COURT ORDERS** that the Interim 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 WEPPA. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **INTERIM RECEIVER’S ACCOUNTS**

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the “**Interim 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 Interim 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.

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

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim 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 INTERIM RECEIVERSHIP**

18. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a credit facility, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, 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 Interim 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 “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Interim Receiver’s Certificate**”), as modified to reflect the terms of the credit facility between the Interim Receiver and the Applicant referred to in paragraph 18, for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver’s Certificates.

## SERVICE AND NOTICE

22. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (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 <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) 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: <https://tdbadvisory.ca/insolvency-case/d-suitor>.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 any creditors of the Debtor or other interested parties at their respective addresses as last shown on the records of the Debtor, 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.

24. **THIS COURT ORDERS** that the Applicant, the Interim Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

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

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver, trustee in bankruptcy or monitor of the Debtor.

27. **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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Interim 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 Interim 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.

29. **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 Interim Receiver from the estates of the Debtor, with such priority and at such time as this Court may determine.

30. **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 Interim 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.

31. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.

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**SCHEDULE “A”**  
**DESCRIPTION OF REAL PROPERTY**

<b>No.</b>	<b>Municipal Address</b>	<b>PIN</b>	<b>Registered Owner</b>
1.	775 King Road, Burlington, Ontario, L7T 3K6	PIN 07096-0052 (LT)	Thomas Dylan Sutor
2.	2298 Fassel Avenue, Burlington, Ontario, L7R 3P3	PIN 07077-0108 (LT)	Thomas Dylan Sutor

**SCHEDULE “B”**  
**INTERIM RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that TDB Restructuring Limited, the interim receiver (the “**Interim Receiver**”) of the property, assets and undertaking of Thomas Dylan Suitor acquired for, or used in relation to a business carried on by the Debtor, 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 August, 2024 (the “**Order**”) made in an action having Court file number BK-24-00208718-OT31, has received as such Interim Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_, which the Interim 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 [**daily**][**monthly not in advance on the \_\_\_\_ day of each month**] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ percent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
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 Interim 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 Interim 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 Interim 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 Interim 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 Interim 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 \_\_\_\_\_, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE “C”  
RELATED ENTITIES**

<b>No.</b>	<b>Entity Name</b>
1.	10 Norfolk St. Inc.
2.	1083 Main Street Inc.
3.	2657677 Ontario Inc.
4.	2710654 Ontario Inc.
5.	388 Downie St. Inc.
6.	642 Hamilton Road Inc.
7.	Commercial Urkel Inc.
8.	Conduit Asset Management Inc.
9.	Dylan Suitor Professional Real Estate Holding Corporation
10.	Elev8 Inc.
11.	Elevation Reality Network Inc.
12.	Happy Town Housing Inc.
13.	Old Thing Back Inc.
14.	Prospect Real Estate Inc.
15.	Upgrade Housing Inc.
16.	Up-town Funk Inc.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

**INTERIM RECEIVER ORDER**

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Lawyers for the Receiver

# Appendix B



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP / ENDORSEMENT**

COURT FILE  
NO.:

BK-24-00208718-OT31

DATE: 7 October 2024

NO. ON LIST: 3,4

In the matter of the Bankruptcy of Thomas Dylan Suitor

BEFORE  
JUSTICE: Osborne

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam, Evan Cobb & Lauren Archibald	The Fuller Landau Group Inc, receiver of the property, assets and undertaking of The Lion's Share Group Inc.	<a href="mailto:Jennifer.stam@nortonrosefulbright.com">Jennifer.stam@nortonrosefulbright.com</a> <a href="mailto:Evan.cobb@nortonrosefulbright.com">Evan.cobb@nortonrosefulbright.com</a> <a href="mailto:Lauren.archibald@nortonrosefulbright.com">Lauren.archibald@nortonrosefulbright.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Tanya Pagliaroli & Vinayak Mishra	Thomas Dylan Suitor, Debtor	<a href="mailto:tanya@taplaw.ca">tanya@taplaw.ca</a> <a href="mailto:vin@taplaw.ca">vin@taplaw.ca</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Shaun F. Parsons	The Noteholders of The Lion's Share Group Inc.	<a href="mailto:sparsons@airdberlis.com">sparsons@airdberlis.com</a>
Mario Forte	Unsecured Lenders of The Lion's Share Group Inc.	<a href="mailto:forte@gsnh.com">forte@gsnh.com</a>

## **ENDORSEMENT OF JUSTICE OSBORNE:**

### **The Motion**

1. The Receiver of The Lions Share Group Inc. seeks an order appointing TDB Restructuring Limited as interim receiver over the property of Thomas Dylan Suitor pursuant to section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “*BIA*”) within this Bankruptcy Application, with the powers and responsibilities as set out in the draft order appended to the Motion Record.
2. The Receiver relies upon the Fourth Report dated August 31, 2024, the Supplement to the Fourth Report dated September 30, 2024 and the Affidavit of Verification of Gary Abrahamson sworn August 30, 2024, together with their respective Appendices and Exhibits.
3. The Receiver’s motion, which it brings in its capacity as Receiver and not for any self-interested purpose, is supported by:
  - a. Representative Counsel to the Secured Creditors appointed in the Balboa CCAA Proceedings (described below);
  - b. Representative Counsel appointed in the Balboa CCAA Proceedings on behalf of the holders of the non-Lion’s Share unsecured claims; and
  - c. Representative Counsel appointed in the Lion’s Share receivership proceedings on behalf of the LS Lenders (described below).
4. The Debtor opposes the appointment of an interim receiver and relies on his affidavit affirmed September 26, 2024 and his supplementary affidavit affirmed October 2, 2024, together with Exhibits thereto.
5. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
6. For the reasons set out below, the motion is granted.

### **The Test**

7. There is no dispute about the applicable test. An interim receiver may be appointed pursuant to section 46(1) of the *BIA* if:
  - a. an Application for a Bankruptcy Order has been filed; and
  - b. the appointment of an interim receiver is necessary for the protection of the estate.
8. There is no issue here that an Application for Bankruptcy Order in respect of the Debtor was filed on August 30, 2024 in the judicial district of the Debtor’s locality, in this case, Burlington, Ontario.
9. Accordingly, the focus on this motion is on the second branch of the test. Courts have held that in determining whether an interim receiver is necessary for the protection of the estate, the moving party must establish that:
  - a. on a balance of probabilities, the creditor petitioning the debtor into bankruptcy is likely to succeed in obtaining a Bankruptcy Order; and
  - b. there is an immediate need for protection of the debtor’s estate due to the grave danger that assets will disappear, or the estate is otherwise in jeopardy.

See: *Konopy, Re*, 2009 CanLII 44412 (ONSC) (“*Konopy*”) at para. 21, quoting with approval from Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4<sup>th</sup> ed., (Toronto: Carswell, Looseleaf ed., 2009) at p. 2-115.

10. It is important to note at the outset of the analysis that I am not determining for the purposes of this interim receivership motion whether the Bankruptcy Application will succeed. That is for another day. The purpose of an interim receivership pursuant to section 46 of the *BIA* is to protect the interests of secured creditors during the brief period between the time when a secured creditor delivers the Notice and the determination of the Bankruptcy Application.
11. Moreover, the powers of an interim receiver are intended to advance this interim objective of conserving assets and are limited, both generally by section 46(2) which specifies those things that the court may direct an interim receiver to do, and specifically in this case by the terms of the draft order sought by the Receiver. Those terms are discussed further below.

### **Receiver Likely to Succeed in Obtaining a Bankruptcy Order**

12. The Receiver submits on this motion that the Bankruptcy Application is likely to be successful since Sutor has engaged in several acts of bankruptcy, and that it is clear that a trustee in bankruptcy should be appointed over his affairs for the benefit of all stakeholders.
13. The Receiver further submits that its investigation is continuing, so the full extent and quantum of Mr. Sutor’s indebtedness and obligations to Lion’s Share under certain promissory notes and/or otherwise, continues to be investigated. For this reason, it was unable to quantify an exact quantum of that indebtedness (even subject to per diem interest and costs that continue to accrue).
14. The overarching context within which this motion is brought is relevant to this analysis.
15. The Receivership Order in the Lion’s Share Receivership Proceedings appointing the Receiver over the property of Lion’s Share was granted on April 3, 2024.
16. Lion’s Share carried on business of, among other things, issuing promissory notes to individuals and corporations (the “LS Lenders”) to generate funds to then be advanced as loans, usually by way of promissory notes issued to corporations and individuals (“LS Borrowers”). The assets of The Lion’s Share consist almost exclusively of these unsecured loans to borrowers documented through those promissory notes.
17. Claire Drage (“Drage”) is the owner of the Lion’s Share. Drage filed an assignment in bankruptcy on April 8, 2024, five days after the Receivership Order was made in the Lion’s Share Receivership Proceedings.
18. One of those significant LS Borrower groups is a group of borrowers consisting of a number of corporations collectively referred to as the “Balboa Borrowers”.<sup>1</sup> The Balboa Borrowers commenced CCAA proceedings which are continuing.
19. The Debtor, Dylan Sutor (“Sutor”), is one of the four principals of the Balboa Borrowers. By order made in the Balboa CCAA Proceedings on June 25, 2024, the powers of the Balboa CCAA Monitor were substantially enhanced, and the power and authority of the four principals to manage or govern the Balboa CCAA Borrowers was correspondingly displaced.
20. The Receiver submits that Sutor has significant liabilities and obligations to Lion’s Share as one of the Balboa Principals, and pursuant to other direct obligations and personal guarantees.

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<sup>1</sup> The Balboa Borrowers are defined at paragraph four of the Fourth Report.

21. The Receiver submits on this motion that the Debtor is indebted to Lion's Share in the amount of \$23,169,435.25 plus chargeable enforcement costs incurred to date and interest and costs that continue to accrue.
22. The Receiver has identified at least 16 Related Entities through searches and public filings owned or controlled by the Debtor (the name of each Related Entity is set out in the motion materials).
23. For all of these reasons, the Receiver submits that interim relief to prevent creditors from getting an advantage over other creditors is appropriate. It further submits that the appointment of an interim receiver is not prejudicial to the Debtor since the powers will be restricted to requiring the Debtor to provide full disclosure with respect to all of his holdings and those of his companies, and powers necessary to preserve his assets.
24. The Receiver submits that numerous acts of bankruptcy under section 42 of the *BIA* have been committed here and that the Debtor has ceased paying his obligations generally as they become due.
25. The Debtor disputes that either of the two branches of the test has been met here. He takes the position that he is not personally indebted to Lion's Share, and while he concedes that it is his signature on the relevant promissory notes, he submits that he did not understand that he was giving any personal guarantees or that he had personal liabilities.
26. I begin with the Bankruptcy Application. It states at paragraph two that:

the said Debtor is justly and truly indebted to Lion's Share for, among other things, the following amounts:

  - a) \$1,267,948.83; and
  - b) \$1,403,393.17.
27. Those amounts represent indebtedness owing to Lion's Share pursuant to various promissory notes. A number of those notes are appended to the Fourth Report at Appendix "A".
28. The Affidavit of Verification sworn in support of the Bankruptcy Application is to the same effect, and states that the Debtor is indebted to Lion's Share [for the above amounts] and that the debt "arises from promissory notes signed and guaranteed by Thomas Dylan Sutor in favour of Lion's Share on behalf of a number of companies indebted to Lion's Share, including 10 Norfolk St. Inc. and 388 Downie St. Inc. [among others]" (the Sutor Lion's Share Notes").
29. Upon its appointment, the Receiver reached out to Sutor to discuss these Sutor Lion's Share Notes and a plan for repayment of same. Sutor did not provide any proposal for repayment.
30. The Receiver made formal Demands on the notes on June 18, 2024 and August 16, 2024, which Demand Letters are also attached to the Fourth Report as Appendices "B" and "C" respectively. Each of those two Demand letters sets out the amount owing in respect of the specific named Sutor Lion's Share Borrowers. For example, in the June 18, 2024 Demand Letter, the following amounts are demanded:
  - a. 10. Norfolk \$281,342.35;
  - b. 388 Downie \$130,980.21;
  - c. Commercial Urkel \$273,398.32;
  - d. Happy Town \$318,426.20; and
  - e. Up-town Funk \$263,801.75.



31. Those amounts in the aggregate equal the sum of \$1,267,948.83 referred to above in the Bankruptcy Application.
32. The June 18, 2024 Demand Letter was also delivered to Suitor as guarantor of the above obligations.
33. Subsequent to the June 18 2024 Demand Letter, additional Suitor Lion's Share Notes matured and were not repaid, with the result that the second Demand Letter, the August 16, 2024 Demand Letter, was delivered demanding repayment of the second amount referred to above in the Bankruptcy Application, \$1,403,393.17 pursuant to an additional promissory note dated February 16, 2023.
34. The Fourth Report (at paragraph 19) states that in addition to the above obligations, there is an additional Promissory Note owed by Suitor and in default with a principal balance of \$177,974.69 and interest continuing to accrue.
35. It is agreed by the parties that for the purposes of this motion, the language of each of the Suitor Lion's Share Notes is substantially the same in the relevant respects. For the purposes of this motion, I reference the language of the Note that appears first at Appendix "A" to the Fourth Report in respect of 10 Norfolk Street Inc. to which both parties referred in their materials and submissions, and which they both agreed was representative of all of the Notes at issue.
36. I pause to observe that this company is one of the 16 companies identified in the motion materials as being owned and controlled by Suitor. As noted above, Suitor does not dispute that he owns and controls these 16 companies and indeed admits such in his affidavit (see paragraph 20, and the reference to "my corporation 10 Norfolk St. Inc." and paragraph 21, and the reference to "my corporation 388 Downie Inc.").
37. In submissions this was confirmed, and his counsel further fairly conceded that there is no issue that the debts are due and owing by the corporate entities.
38. Those companies owned several properties (see Appendix "D" to the Fourth Report). As further described below, pursuant to the terms of the Suitor Lion's Share Notes, the Borrowers agreed to allow a charge to be registered against title to those properties. Pursuant to Orders granted by this Court on June 12 and June 26, 2024, respectively, the Receiver was authorized to register the orders on title to those properties, to protect the interests of the Lion's Share estate for the benefit of its creditors.
39. In addition to guaranteeing obligations of the Lion's Share Borrowers, the Receiver submits that Suitor also guaranteed certain obligations of the Balboa Borrowers (entities of which he is one of four principals). Suitor also owns, directly or indirectly through 2657677 Ontario Inc., at least four of these Balboa Borrowers: Interlude, Hometown, Horses, Neat Nests (collectively with Mulligan, the "Suitor Balboa Borrowers").
40. At the time of filing, Suitor was the sole director of these parties. According to corporate profile reports for these entities appended to the Fourth Report, Suitor was an officer, director and shareholder of the Suitor Balboa Borrowers but it appears that he has recently resigned as director and officer.
41. As set out in the Clark Affidavit (Appendix "F") and the Fourth Report (see paragraph 24), the Suitor Balboa Borrowers had outstanding mortgage debt as of December 31, 2023 in amounts exceeding \$25 million. According to the Receiver, certain of those loans were guaranteed by Suitor. Those same entities are obligated under a series of unsecured notes with principal amounts that were due on January 23, 2024 and in the specific amounts set out at paragraph 26 of the Fourth Report. In the aggregate, they total over \$35 million, of which approximately \$23 million is owed to the Lion's Share. That amount is in addition to the obligations owed by the Suitor Lion's Share Borrowers.
42. Suitor's position on this motion is that his personal guarantees of those corporate obligations are not valid. Indeed, this was his principal defence to the motion.

43. As stated above, Suitor does not contest that:

- a. the Suitor Lion's Share Notes were validly issued;
- b. the Suitor Lion's Share Notes were properly and validly executed by Suitor himself on behalf of the relevant corporation named in each;
- c. the terms of the Notes were agreed;
- d. the principal amount of each Note is accurate, and the funds were advanced;
- e. the funds remain owing by those respective Suitor Lion's Share Borrowers to Lion's Share, and the Notes have not been repaid.

44. Suitor maintains, however, that the obligations under these Notes are those of the respective corporations, and not him personally as a Borrower. Suitor further submits that to the extent that there was any intention that he be a Guarantor, the Notes lack sufficient particulars to give rise to an enforceable guarantee with the result that he is not personally liable thereunder.

45. For the limited purpose of this motion (i.e., whether an interim receiver should be appointed), and recognizing that the relief sought is temporary in nature and that the issue can and will be finally determined in the Bankruptcy Application itself, I am satisfied that the Receiver is likely to succeed on the Bankruptcy Application.

46. It is of assistance to look at the language of these Suitor Lion's Share Notes themselves.

47. The 10 Norfolk Street Inc., Promissory Note Loan Agreement states, in relevant part, the following:

- a. Recital: "Borrowers: 10 Norfolk Street Inc. (the "Borrowers") with personal guarantor(s) Dylan Suitor (the "Borrowers")";
- b. Article 8: "This Note is secured by the Lender's right to register this Note on title on **all or any properties held by the Borrowers and Guarantors as security** (the "Security") if not paid in full by 6:00 PM on April 13, 2024." [emphasis in original]; and
- c. Signatories: "Dylan Suitor 10 Norfolk St. Inc. (Borrowers)" and "Dylan Suitor (Borrowers/Guarantors)".

48. Suitor submits that these Notes are the basis for the Demand Letters delivered, that the Receiver did not advance the position before delivery of its factum on this motion that Suitor was a Borrower as well as a Guarantor, and that the guarantee language in the Notes set out above, without more, is insufficient to create an enforceable guarantee.

49. Suitor submits that the definition of "Borrowers" is at best ambiguous and at worst refers to the company only and not him in his personal capacity.

50. For the purposes of this motion only, in my view, it is far from clear that Suitor is not a Borrower as well as a Guarantor. The recital excerpted above states that 10 Norfolk Street is defined as "the Borrowers", as are both that company together "with personal guarantor(s) Dylan Suitor". While the reference or potential reference to the plural of "Borrower" in both instances reflects drafting that is arguably not as clear as it could be, there is a very real argument that Suitor is both a Borrower and a Guarantor.

51. I am reinforced in this conclusion, again for the limited purposes of this motion, by the two other Articles of the Note excerpted above. First, Article 8 refers to other properties held by both the Borrowers and Guarantors as security. Second, Suitor signs as a signatory twice. It is undisputed that he signs first on behalf of the corporate Borrower, 10 Norfolk.

52. However, he also signs a second time. Suitor argues on this motion both that he is not a Borrower, and also that he is not a Guarantor since he did not appreciate or understand that he was signing as such. This is, in contradistinction to the fact that he expressly signs (separate and apart from signing as a corporate representative) as “Borrower/Guarantor”.
53. If Suitor is correct that only the corporate entity was bound, and intended to be bound, by the terms of the Note, including the guarantee, that would have been acknowledged and agreed to by that corporate entity through Suitor’s first signature on its behalf. There must be an explanation as to the intention of the parties and the legal effect as to what Suitor’s second signature, as “Borrowers/Guarantors” means.
54. Again, in my view, there is a real argument on the Bankruptcy Application that Suitor is a Borrower as well as a Guarantor.
55. Leaving aside for a moment the issue of Suitor’s liability as a Borrower, Suitor also denies liability with respect to the guarantee. His submission is that the three excerpted paragraphs set above comprise the only references to the guarantee obligation or the fact that Suitor signed in his capacity as personal Guarantor, and that, without more, those provisions are insufficient to give rise to an enforceable guarantee obligation.
56. Suitor submits that these Lion’s Share Promissory Notes were drafted by Drage and/or her group of affiliated companies, including Lion’s Share. He further submits that: Drage encouraged him not to get legal advice; while he “entered into the Lion’s Share Promissory Notes”, he did so without knowledge that he would be bound as a personal guarantor with unlimited liability (factum, para. 5(c)); he entered into the Notes on the basis that they were short-term instruments that his companies would be able to pay off at the end of the term with additional funds promised by Drage and her companies; Drage unilaterally altered terms of the Notes and increased interest payments contrary to his expectations and often without notice; and, finally, that the Notes contain insufficient certainty of terms.
57. With respect to all of those factual defences, Suitor relies on his affidavits. He disputes that he personally owes any money to Lion’s Share pursuant to the Lion’s Share Promissory notes *as a guarantor*, and repeats the statements advanced on his behalf in his factum as set out above (paragraph eight).
58. Suitor further denies owing any funds to Lion’s Share under the Lion’s Share Promissory Notes *personally* (paragraph nine), although notwithstanding this, he submits that he is “committed to try to get the most value out of the properties owned by my corporations to satisfy as many of the secured and unsecured creditors as possible on behalf of the corporations who are party to the agreements” (paragraph 19). I pause to observe that this reinforces my conclusion that an interim receivership is appropriate at this time. It is intended to achieve precisely the objective that Suitor states is also his own objective.
59. With respect to Suitor’s argument about the technical sufficiency of the language in the guarantees, he places considerable reliance on the *Konopy* decision referred to above.
60. In that case, the basis for the bankruptcy order was liability pursuant to a guarantee. A number of arguments were advanced on behalf of the debtor there as to why the applicant had failed to show that a bankruptcy order was “almost certain” to be made, including the fact that there was no original of the guarantee, no evidence at all concerning the circumstances in which the guarantee was executed, the guarantee was not signed by the petitioning creditor, and notwithstanding the alleged execution of the guarantee, the creditor repeatedly sought to obtain a personal guarantee - i.e., it did not consider the form relied upon to be a guarantee (see *Konopy*, at paragraph 18).
61. Strathy J. went on to observe, noting circumstances similar to the present case, that the guarantor in that case did not deny that he had signed the form or that his signature was forged, but rather that he had no recollection of signing the form. (paragraph 24).

62. Notwithstanding all of this, the Court in *Konopy* was satisfied that the applicant had made out a *prima facie* case that the guarantor had indeed signed the guarantee. Strathy J. further observed that: “the form of the guarantee is simple and clear. He guarantees payment of all money due by his company ... There may be defences, whether technical or substantial, but those defences will have to be proven and have not been identified to me. Richards has established a meritorious claim, on the balance of probabilities.”. (para. 25).
63. The approach of Strathy, J. is equally applicable here. Sutor challenges the certainty of terms of the guarantee document he admits he signed. For example, and with respect to 10 Norfolk (although, as noted above, the same argument applies to all of the Notes), and notwithstanding that the language of the Note sets out clearly the principal amount advanced, the applicable interest rate, the maturity and due date for the Note on which date the principal and interest was due and owing, the fact that the Lender could register security on any Property of the Borrowers or the Guarantors if the Note was not repaid on maturity, Sutor submits that there is no certainty as to what amount he guaranteed or when it was due.
64. Sutor further submits that this lack of clarity of language has been held in other cases to be fatal to the successful enforcement of guarantees. See, for example: *Waterloo-Oxford Co-Operative Inc. v. Hamm*, 2005 CanLII 2953; *Times Square v. Shimizu*, 2001 BCCA 448; and *Bank of Nova Scotia v. Williamson*, 2009, ONCA 754, among others.
65. As Strathy J. found in *Konopy*, there may be defences, whether technical or substantial, but those defences will have to be proven. All of that can occur at the hearing of the Bankruptcy Application.
66. I observe that, while Sutor submits as noted above, that Drage and/or her affiliated companies drafted the Notes including the guarantees, that Sutor did not understand he was incurring any liability, and Drage unilaterally amended terms from time to time such that there is no meeting of minds and there was the presence of undue influence, there is no evidence on this motion from Drage or anyone else other than Sutor with respect to the circumstances surrounding the negotiation and execution of these documents. All of that can be explored in the Bankruptcy Application.
67. Finally, Sutor challenges the motivation of the moving party on this motion, which has been held to be a relevant factor in considering the appointment of an interim receiver: *La Hogue Financial Management Services Ltd., v. One Shaftesbury Community Association*, 2005 CanLII 25954 at paras. 29-34.
68. In my view, the motivation of the petitioning creditor here militates in favour of the appointment of an interim receiver. The Receiver is not seeking any relief to advance its own beneficial interest. On the contrary, it is acting exclusively for the benefit of the creditors and the estate generally, in accordance with the terms of its appointment order. It is not a petitioning creditor with a vested interest in recovering funds for its own benefit. Moreover, it is not seeking any beneficial entitlement finding, but rather preservation of assets for an interim period of time.
69. For all of these reasons, I am satisfied that for the purposes of this motion, the Receiver is on a balance of probabilities likely to succeed on the Bankruptcy Application.

### **Immediate Need for protection of the Debtor's Estate**

70. The Receiver submitted that there was some urgency to the appointment of an interim receiver given its submission that the estate is in jeopardy. It further submits that the appointment of a receiver is just and convenient for the protection of the Debtor's estate, given the steps the Receiver submits that Sutor has taken to deal with and dissipate assets surreptitiously despite extensive claims, the absence of any meaningful steps to resolve his debts, and the concerns of a high volume of competing creditors.
71. Among others, the Receiver submits two things.

72. First, it submits that in March and May, 2024, the Debtor appears to have granted mortgages to National Bank over two residential properties owned by him for \$3,200,000 and \$1,450,000, respectively, and that it is unclear what Suitor used the proceeds of these loans for.
73. Second, it submits that on May 21, 2024, the Debtor, through one of his holding companies, Elevation Realty Network Inc., purported to take charges in respect of properties owned by one of the LS Borrowers (Happy Town Housing Inc.). After initially suggesting that value had been given for these mortgages, Suitor failed to provide any response to the Receiver after it requested the evidence of such value.
74. All of this is of particular concern, submits the Receiver, given the facts set out in the Fourth Report of the Balboa CCAA Monitor dated June 11, 2024. That Report, appended to the Fourth Report of the Receiver as Appendix “K” and filed on this motion, included findings, among others, that the principals of the Balboa Borrowers had:
- a. engaged in questionable transfers without any apparent benefit to the business, including over \$4 million of payments to corporations affiliated with Suitor or to Suitor himself;
  - b. caused the Balboa Borrowers to make questionable dividend payments;
  - c. exhibited a pervasive lack of proper record keeping and other deficient business practices; and
  - d. in the case of Suitor specifically, swearing false statutory declarations.
75. It was these concerns, placed before the Court through the Fourth Report of the Balboa CCAA Monitor on the motion to expand the powers of that Monitor and restrict the powers of the principals of the Balboa Borrowers (of whom Suitor is one of four), that caused the Court to grant that relief.
76. In addition to the above, the Receiver submits that given the Related Entities that Suitor owns or controls, including those that have been identified by the Receiver to date (and those in turn include the 16 companies referred to above), and further given the sheer number of claims and potential claims to be asserted against Suitor and those Related Entities, interim relief is appropriate to prevent creditors from “jumping the queue” and attempting to gain an advantage over other creditors and/or prejudice the estate and creditors generally.
77. In this regard, and while there is currently in place a stay of proceedings against Suitor in respect of personal claims against him in connection with his obligations related to the Balboa Borrowers, that stay may soon expire upon the completion of transition of management of property in connection with the expansion of the powers of the Balboa CCAA Monitor, after which time the Receiver fully expects that there will be possibly hundreds of additional claims against Suitor absent the granting of the bankruptcy order and the interim receivership order sought here.
78. For his part, Suitor admits that he placed the mortgages and charges on the properties referred to above and highlighted by the Receiver. He maintains that he did so, however, in the ordinary course and not for any improper purpose.
79. I have reviewed all of that evidence. I accept that (as attached as exhibits to Suitor’s affidavit), he has now produced documents such as mortgages and wire confirmations related to the proceeds of the mortgages and loans and questions.
80. It may be that he ultimately succeeds on the Bankruptcy Application in satisfying the Court that he continues to meet his obligations as they come due. However, and notwithstanding his affidavit evidence, in my view, it is appropriate that the interim receiver be appointed in the circumstances where the Receiver has been seeking information from him for months, those inquiries remain outstanding, and there are a number of outstanding questions and issues relating to Suitor’s assets and those of his companies. The

interim receivership will sift through all of this information, and attempt to sort out all of that material, and the resulting entitlements.

81. Moreover, and even if Suitor ultimately establishes on the Bankruptcy Application that, for example, the two National Bank mortgages were placed in the ordinary course to refinance existing obligations, and even if he can further establish that the use of proceeds was not an attempt to dissipate or hide assets from the Receiver (see, for example, paragraphs 26 – 55 relating to the National Bank mortgages, and paragraphs 57- 74 with respect to the Elevation transaction), it is of significant concern that he would not have, at a minimum, disclosed these transactions to the Receiver and to the Balboa CCAA Monitor at the time, and moreover sought their consent.
82. It is not an answer in my view, to say (as he submits) that Suitor undertook some of the transactions at issue before the date of the Notice of Bankruptcy Application. Those transactions clearly took place during the currency of the Balboa CCAA Proceedings (during which Suitor enjoyed the protections that flow from the stay of proceedings - creditors were prohibited from commencing proceedings against him), and indeed he was of course well aware not only of those Proceedings, but also of the fact that the powers of the Monitor had been enhanced and his powers and those of his fellow co-principals restricted, for the very reasons that the Monitor had concerns about Suitor, his companies and the transactions they had undertaken.
83. Given that, aside from all else, these transactions were undertaken while the stay against imposed in the context of the Balboa CCAA Proceedings was pending, it is difficult to accept the submission that these transactions were undertaken as Suitor submits “in the ordinary course” at all. Respectfully, nothing is ordinary about the circumstances of the Balboa CCAA Proceeding, and the Lion’s Share Receivership Proceeding. Significant questions about the whereabouts of millions of dollars belonging to investors remain unanswered.
84. A number of these transactions were undertaken within three months of the insolvency, at least as of August, 2024. I pause to observe the obvious with respect to the Suitor Lion’s Share Promissory Notes: while Suitor has, according to his own affidavit, been working with and cooperating with other unrelated creditors with a view to paying (secured) debts apparently owing to them, the Notes have not been repaid, by Suitor or the companies he owns and controls, the Demand Letters have not been satisfied, and he has advanced no plan or proposal for the repayment of those Notes, even in the record filed in respect of this motion.
85. In addition, Suitor states in his affidavit that he has “been working with secured creditors to minimize costs and maximize returns” (paragraph 25). Suitor goes on to describe how he has been working to negotiate standstill agreements with banks, attempt to sell other properties and engage in other activities involving his assets and those of companies he controls.
86. For example, and with respect to one property (43 Centre), he describes in his affidavit how the Bank of Montréal wanted to proceed with the sale in its capacity as first ranking mortgagee, and that notwithstanding the refusal of the Receiver to consent, BMO intends to go ahead with the sale in any event and intends to proceed with a Notice of Intent to Enforce Security.
87. The Bank may, ultimately, establish that it is entitled to a first priority interest. However, this transaction is one about which the Receiver has concerns, and it is illustrative about the overarching challenge here arising from the interrelated web of Balboa and Lion’s Share principals, entities and transactions: the property at 43 Centre was sold to Suitor’s parents indirectly, through a numbered company they own, as has been admitted. (See electronic mail communication to counsel for the Receiver from Suitor’s counsel respecting this transaction dated August 19, 2024).
88. It was, therefore, a related party transaction. Whatever the ultimate entitlements may be, these assets should not be transferred and encumbered while all the issues described above are still being investigated

and resolved or determined. That is exactly the type of circumstance where an interim receivership to preserve assets is appropriate.

89. In addition, Suitor describes in detail in his affidavit, and in the context of his description of events regarding the two National Bank mortgages, the “Addison King Mortgage” (paragraphs 42 and on). He states that paragraph 50(b) and in the related chart in the affidavit that he paid \$353,965 to [the law firm with carriage of the mortgage transaction] “by selling investments in a Scotiabank investing account”, all of which was inconsistent with the outstanding and unsatisfied Demand from the Lion’s Share Receiver.
90. In my view, the chaos that will inevitably result in the circumstances of all of the above from an ad hoc series of efforts by individual creditors who understandably wish to maximize their own position, and the fact that all of this will have the further effect of increasing costs and risking prejudice to other creditors, can and should be avoided or at least minimized through the interim receivership.
91. Moreover, Suitor submits that the allegations against him in the Balboa CCAA Proceedings are “at its highest, allegations of questionable business practices on the part of Suitor in separate CCAA Proceedings that [the Receiver] has been aware of since June 2024 and which have no direct bearing on the issues to be decided on this motion.”
92. I cannot accept the submission as a basis to decline to appoint an interim receiver. In my view, and for the reasons set out above, I am satisfied that the activities of Suitor and companies that he owns or controls (or owned or controlled at the relevant time, and in respect of which he has recently resigned as a director) are inextricably intertwined with the very issues that underlie the Balboa CCAA proceedings.
93. As noted above, Suitor is one of the four principal Balboa Borrowers, the powers of whom were expressly restricted by the Court on motion in that proceeding as a result of concerns arising out of the very issues that underlie both the concerns in that proceeding and Suitor’s assets and entities that are the subject of the proposed interim receivership on this motion.
94. The notion that the issues in the Balboa CCAA Proceedings have no direct bearing on the issues to be decided on this motion is artificial. They are inescapably linked, and the full extent of the relationship between and among all of these entities is the very thing that it is proposed that the interim receiver will investigate if appointed, all in order that creditors and stakeholders are not prejudiced, and beneficial entitlement to those assets can be determined in a fair and transparent way.
95. To be clear, the Receiver does not take the position on this motion that Suitor has misappropriated assets in undertaking the transactions on which the Receiver relies and in respect of which Suitor maintains he undertook for no improper purpose. The point is that Suitor is in fact using and dealing with his assets and those of companies he owns or controls, all in the face of the unsatisfied Demands and the matters being undertaken in the course of both the Balboa CCAA Proceedings and the Lion’s Share Receivership Proceeding.
96. Finally, the powers of the proposed interim receiver will, as set out above, be limited. The fact that those powers are not unlimited is a factor to be considered in approving the interim receivership. An interim receiver is not appointed in a vacuum, and the terms of the proposed appointment are relevant to whether the appointment should be made.
97. The draft order would permit the interim receiver, if appointed, to:
  - a. monitor Suitor’s bank accounts in the accounts of Related Entities and approve all disbursements;
  - b. take any steps deemed necessary or desirable to prevent disbursements, transfers or encumbrances of property;
  - c. to undertake investigations deemed appropriate;

- d. to apply to this Court for further advice and directions; and
- e. undertake other related activities.

98. The object and intent of the proposed interim receivership is to identify and preserve assets in this interim period. It is the disclosure necessary to identify and preserve those assets that the Receiver maintains has been lacking today. I also observe that the powers sought for the interim receiver here are substantially similar to the powers already granted to the Balboa CCAA Monitor. Again, and to state the obvious, those powers do not include the ability to make any final determination as to entitlement to assets of Sutor or companies that he controls. They do, however, provide for the preservation of those assets pending such determinations.
99. Given Sutor's own expressed objective as described in his affidavit of assisting in working with creditors, I accept the submission of the Receiver that the prejudice to him by this interim receivership is limited.
100. Moreover, other than as to the transactions described in his affidavits, which he maintains represent ordinary course refinancings or working with existing creditors in any event, there is no evidence of other recent or pending transactions that would be impacted in any event.
101. Finally in this regard, Sutor submits that he has given an undertaking - confirmed in Court by his counsel - to the effect that while these proceedings are pending, he will not seek to sell, transfer, convey, encumber or otherwise deal with any of his property, including but not limited to real property and other assets, without the consent of the Receiver or further order of the Court.
102. That is consistent with the objects of the receivership, but achieving this asset preservation in the context of the receivership will maximize the fairness and transparency of the process while immensely complex transactions are investigated and explored in a fair and transparent manner. The undertaking, while acknowledged, does not provide the visibility into what is admittedly a complex web of transactions, as I am satisfied is required here.
103. For all of these reasons, I am satisfied that there is an immediate need for protection of the debtor's estate due to the grave danger that assets will disappear, or the estate is otherwise in jeopardy.

### **Result and Disposition**

104. For all of the above reasons, the motion is granted. Order to go in the form signed by me and attached to this Endorsement which has immediate effect without the necessity of issuing and entering.



# Appendix C

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**BANKRUPTCY ORDER**

**UPON** the application of The Fuller Landau Group Inc. (the “**Applicant**”), in its capacity as receiver of the property, assets, and undertaking of The Lion’s Share Group Inc. (“**Lion’s Share**”), a creditor, issued on the 30<sup>th</sup> day of August, 2024;

**AND UPON** reading the Applicant’s Application Record dated November 22, 2024; the Applicant’s Supplementary Application Record dated February 14, 2025; Dylan Sutor’s (the “**Debtor**”) Responding Motion Record dated September 26, 2024; the Debtor’s Supplementary Responding Motion Record dated October 2, 2024; the Debtor’s Responding Application Record dated January 14, 2025; the Debtor’s Notice of Dispute dated February 3, 2025; the Supplementary Affidavit of Dylan Sutor affirmed February 3, 2025, the Transcript Brief dated February 14, 2025; the Debtor’s Supplementary Responding Application Record dated February 21, 2025; the Applicant’s Factum dated February 14, 2025; the Debtor’s Responding Factum dated February 19, 2024; the Applicant’s Compendium dated February 24, 2025; the Debtor’s Oral Hearing Compendium dated February 24, 2025; and hearing submissions of counsel for the Applicant, the Debtor, the Secured Lender Representative, the Unsecured Lender Representative, and the National Bank of Canada;

**AND** it appearing to the Court that the following acts of bankruptcy have been committed by the debtor (the “**Debtor**”), Thomas Dylan Sutor:

- (a) has ceased meeting his liabilities generally as they become due, including,

without limitation, the indebtedness owing by the Debtor to Lion's Share;

1. **IT IS ORDERED** that the Debtor, of the City of Burlington, in the Province of Ontario, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against the Debtor on this date.
2. **IT IS FURTHER ORDERED** that TDB Restructuring Limited, of the City of Toronto, in the Province of Ontario, is hereby appointed as trustee of the estate of the bankrupt Debtor.
3. **IT IS FURTHER ORDERED** that the trustee give security in cash or by bond or suretyship without delay, in accordance with subsection 16(1) of the *Bankruptcy and Insolvency Act*.
4. **IT IS FURTHER ORDERED** that the costs of the Applicant be paid out of the estate of the bankrupt on taxation of the estate.

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IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL  
WITH A LOCALITY OF BURLINGTON, ONTARIO

Court File No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**BANKRUPTCY ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**

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Lawyers for the Receiver

# Appendix D

**CITATION:** Sutor v. Fuller Landau Group, 2025 ONSC 1686  
**COURT FILE NO.:** BK-24-208718-000T  
**DATE:** 20250325

**ONTARIO**

**SUPERIOR COURT OF JUSTICE [Commercial List]**

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

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

**BEFORE:** Justice Jana Steele

**HEARD:** February 25, 2025

**COUNSEL:** *James Renihan, Jennifer Stam & Lauren Archibald*, for The Fuller Landau Group Inc., in its capacity as Receiver of The Lion's Share Group Inc.

*Tanya Pagliaroli & Vinayak Mishra*, for Dylan Sutor

*George Benchetrit*, Secured Lender Representative Counsel

*Mario Forte*, Unsecured Lender Representative Counsel

*Patrick Corney*, for the National Bank of Canada

**JUSTICE JANA STEELE**

[1] The applicant, The Fuller Landau Group Inc. (the "LS Receiver"), in its capacity as receiver of the property of The Lion's Share Group Inc. ("Lion's Share"), asks the court to adjudge Thomas Dylan Sutor as Bankrupt and make a Bankruptcy Order in respect of Mr. Sutor's property pursuant to s. 43 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[2] The application is opposed by the respondent debtor, Mr. Sutor. Mr. Sutor disputes that the applicant has satisfied the test for a bankruptcy order and asks that the application be dismissed.

[3] In the alternative, Mr. Sutor seeks a stay of the bankruptcy proceedings until his personal liability is determined in civil court.

[4] For the reasons set out below, the application is granted.

## **Background**

[5] On April 3, 2024, the Court appointed The Fuller Landau Group Inc. as receiver of the property of Lion's Share.

[6] Lion's Share's operations consisted principally of the issuance of promissory notes to persons to generate funds to be advanced as loans by way of promissory notes to other individuals and companies.

[7] Claire Drage owns Lion's Share.

[8] Ms. Drage is also CEO of The Windrose Group Inc. ("Windrose").

[9] On April 8, 2024, Ms. Drage filed an assignment in bankruptcy.

[10] Mr. Suitor is one of the four principals of a significant Lion's Share borrower group consisting of Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. (collectively, the "Balboa Borrowers"). Mr. Suitor has certain guarantee obligations in respect of the Balboa Borrowers. The Balboa Borrowers commenced CCAA proceedings on or about January 23, 2024.

[11] In addition to the guarantee obligations in respect of the Balboa Borrowers, Mr. Suitor signed promissory notes in his personal capacity in favour of Lion's Share on behalf of certain companies indebted to Lion's Share, including: 10 Norfolk St. Inc. ("Norfolk"), 388 Downie St. Inc. ("Downie"), Commercial Urkel Inc. ("Commercial Urkel"), Happy Town Housing Inc. ("Happy Town"), and Up-town Funk Inc. ("Up-town Funk") (collectively the "Non-Balboa Borrowers"). Mr. Suitor is the sole shareholder of each of these companies (other than Commercial Urkel, of which Mr. Suitor is a 50% shareholder). Each company owns one real property asset, except Happy Town, which owns two.

[12] By letter dated June 18, 2024 to Norfolk, Downie, Commercial Urkel, Happy Town, Up-town Funk, Mr. Suitor, and Aruba Butt, the LS Receiver made demand for payment under the promissory notes. The demand letter stated:

[...]

The Promissory Notes require the Borrowers to repay the funds advanced by the Lender by certain dates (the "Maturity Dates"). Dylan Suitor (the "Guarantor") is a signatory to each note as a guarantor of the Borrower's obligations. In addition, Aruba Butt (the "38 Duncan Guarantor", and together with the Guarantor, the "Guarantors") is a signatory to the 38 Duncan Note (as defined in Schedule A to this letter) as a guarantor of Commercial Urkel Inc.'s obligations under the 38 Duncan Note.

Pursuant to each of the Promissory Notes, the Guarantor, on an unlimited basis, guaranteed the obligations of each Borrower to the Lender, including payment of all amounts owing under each Promissory Note. Pursuant to the 38 Duncan Note, the 38 Duncan Guarantor, on an unlimited basis, guaranteed the obligations of Commercial Urkel Inc. to the Lender, including payment of all amounts owing under the 38 Duncan Note. The Maturity Dates for all of the Promissory Notes have now passed and there is unpaid interest on all of the Promissory Notes, but neither the Borrowers nor the Guarantors have paid the amounts owing, as applicable. Please be advised that as further set out below, the Borrowers and the Guarantors are in default of their obligations under each of their respective Promissory Notes, including monetary defaults.

[...]

On behalf of the Lender, and without in any way prejudicing the Lender from demanding any other amount properly owing to it or taking such other steps and making such further demands as the Receiver may see fit, the Receiver hereby makes formal demand for payment of the following amounts from each Borrower, the Guarantor, and in the case of the amounts owing by Commercial Urkel Inc., the 38 Duncan Guarantor:

1. 10 Norfolk St. Inc.: \$281,342.35;
2. 388 Downie St. Inc.: \$130,981.21;
3. Commercial Urkel Inc.: \$273,398.32;
4. Happy Town Housing Inc.: \$318,426.20; and
5. Up-town Funk Inc.: \$263,801.75;

[...]

[13] On August 16, 2024, the LS Receiver issued a second demand letter to Downie and Mr. Suitor demanding repayment of an amount of \$1,403,393.17 from Downie and Mr. Suitor (as guarantor) further to an additional promissory note.

[14] On August 30, 2024, the LS Receiver filed an application for a bankruptcy order in respect of Mr. Suitor.

[15] On October 7, 2024, TDB Restructuring Limited was appointed as the interim receiver of all Mr. Suitor's property, assets and undertakings.



### Analysis

[16] The applicant asks the Court to adjudge Mr. Suitor as bankrupt and make a bankruptcy order. Under s. 43 of the *Bankruptcy and Insolvency Act* (the “BIA”):

(1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

(a) The debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

(b) The debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

[...]

(6) At the hearing of the application, the court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order.

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[...]

(9) If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor’s property and for any period of time that may be required for trial of the issue relating to the disputed facts

[17] The applicant must establish that Mr. Suitor owes it a debt of at least \$1,000, and that Mr. Suitor has committed an act of bankruptcy within six months preceding the date of the application. For the purposes of s. 43(1)(b), the act of bankruptcy relied upon by the applicant is s. 42(1)(j) of the BIA: “if he ceases to meet his liabilities generally as they become due.”

[18] The burden of proof in a bankruptcy application is the civil standard: *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909, at para. 40.

*Does Mr. Suitor have debts owing to the applicant creditor of at least \$1,000?*

[19] The applicant claims Mr. Suitor owes \$2,671,342 to Lion's Share under certain promissory notes with the Non-Balboa Borrowers.

[20] The application is founded based on Mr. Suitor's debts to the applicant. I am satisfied that Mr. Suitor has debts to the applicant of at least \$1,000.

[21] The applicant says that Mr. Suitor's debt arises due to certain Promissory Notes he signed as a personal guarantor regarding loans to the Non-Balboa Borrowers. The issue of whether Mr. Suitor has debts owing to the applicant of at least \$1,000 comes down to whether he is liable under the promissory notes he signed as guarantor in respect of the Non-Balboa Borrowers.

[22] The parties agree that the form of promissory note that was used for the liability in issue in this proceeding is substantially similar to the form of promissory note at tab 7 of the applicant's oral compendium. At tab 7 of the applicant's oral compendium is a sample promissory note (the "Norfolk Promissory Note"). Mr. Suitor signed eight promissory notes of the same form (different company, debt amount, date, etc.) (each a "Promissory Note").

[23] Despite having signed the Promissory Notes, Mr. Suitor denies that he is personally liable under these Promissory Notes.

[24] Mr. Suitor does not dispute that there is more than \$1,000 owing by the companies under the Promissory Notes.

[25] Mr. Suitor submits that the applicant has not proven a debt of \$1,000. I disagree.

[26] As noted in *Beach (Re)*, 2022 ONSC 6474, at para. 25, citing *Diwold v. Diwold* (1940), [1941] S.C.R. 35, "[a] debt is a sum payable in respect of a liquidated demand, recoverable by action." The Court states further, at para. 26, citing *Relectra Limited, Re* (1979), 30 C.B.R. (N.S.) 141, that "[s]o long as it is proved that the debtor is indebted to the applicant creditor for at least \$1,000, it is unnecessary for the court to determine the exact amount owing to the applicant creditor."

[27] The issue of whether Mr. Suitor is personally liable under these promissory notes is a matter of contractual interpretation.

[28] A guarantee is contractual promise: *Patrick Street Holdings Limited v. 11368 NL Inc.*, 2024 NLCA 11, at para. 540. As noted in *Xiang v. Atlas Healthcare (Brampton) Ltd.*, 2021 ONSC 1225, at para. 43, "the extent of a guarantor's liability under a guarantee is a matter of contractual interpretation with respect to the construction of the guarantee at issue."

[29] The principles of contractual interpretation were recently summarized by the Court of Appeal in *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONCA 54, at para. 25:

- a. Determine the intention of the parties in accordance with the language they have used in the written document, based upon the “cardinal presumption” that they have intended what they have said;
- b. Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
- c. Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
- d. Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[30] The applicant submits that the plain language of the promissory notes illustrates an objective intention to make Mr. Suitor liable as a guarantor of the amounts due under the notes. I agree.

[31] In each Promissory Note, Mr. Suitor is described as both a “Borrower” and a “Guarantor”. At the top of the Promissory Note the “Borrowers” are set out as follows:

**Borrowers:** 10 Norfolk St. Inc. [or another company owned by Mr. Suitor, or in the case of Commercial Urkel, by Mr. Suitor and Ms. Butt] (the “Borrowers”) with personal guarantor(s) Dylan Suitor (the “Borrowers”)

[32] Mr. Suitor is defined as a “Borrower”.

[33] The term “Guarantor” (capitalized), although used twice in the Promissory Note, is not a defined term. Guarantor (capitalized) appears on the signing lines and in section 8 of the Promissory Notes.

[34] Mr. Suitor also signed the Promissory Notes twice. Once for the company Borrower, and once in his personal capacity, which signing line is set out as follows:

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Dylan Suitor (Borrowers/Guarantors)

[35] The term Borrower(s) is used throughout the Promissory Note to set out the payment and other obligations of the Borrowers. Among other things, in the Norfolk Promissory Note the Borrowers promise to pay the Lenders the principal sum of \$200,000. The term Guarantors<sup>1</sup> is used only at the bottom of the Promissory Notes, and in section 8,<sup>2</sup> which provides:

All costs, expenses and expenditures including, and without limitation, legal costs, fees and disbursements on a **substantial indemnity basis**, incurred by the Lenders in enforcing this Note as a result of any default by the Borrowers, will be added to the principle then outstanding and will immediately be paid by the Borrowers. In the case of the Borrowers default and the acceleration of the amount due to the Lenders all amounts outstanding under this Note will bear interest at the rate of 3% higher than the Initial Interest Rate charged per annum from the date of demand until paid. This Note is secured by the Lenders [*sic*] right to register this Note on title on **all or any properties held by the Borrowers and Guarantors as security** (the 'Security'), if not paid in full by 6:00 pm on April 13, 2024. This includes, but is not limited to, the property located at [...].

[36] Section 8 of the Promissory Notes permits registration on title to any properties held by the Borrowers and Guarantors as security. As noted by the applicants, the ability to register the note on title to Mr. Suitor's personal properties supports their position that he has a payment obligation.

[37] Mr. Suitor argues that he was only a guarantor (and not personally liable) and that the Promissory Notes are void of any terms regarding the guarantee. Mr. Suitor points to *Times Square v. Shimizu*, 2001 BCCA 448, as an example of a case where the majority of the court refused to enforce a guarantee because there was no provision with substantive content defining the guarantee obligation. He submits the Promissory Notes similarly do not define the guarantee obligation. I disagree. In *Times Square* the guarantor was separately defined as the guarantor and there were no obligations on the guarantor. As noted above, in the instant case Mr. Suitor is also defined as a borrower.

[38] Mr. Suitor also points to *Waterloo-Oxford Co-Operative Inc. v. Hamm*, 2005 CanLII 2953 (Ont. Sup. Ct.). For similar reasons, *Waterloo-Oxford* is not applicable to the instant case. In *Waterloo-Oxford* the court was faced with a very broad guarantee that could be interpreted in either of two ways: one party said that it was a guarantee of all debts incurred as of the date of the guarantee; the other party said that it was a guarantee for any debts ever incurred or to be incurred at any time before, during or after the date of the letter. The court refused to enforce the letter guarantee because it lacked enough precision to be enforced.

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<sup>1</sup> The term "guarantor" issued in the definition of "Borrowers" as set out above.

<sup>2</sup> There was a prior form of promissory note that was used to evidence loans with Lion's Share. Section 8 is different in those prior promissory notes.

[39] Mr. Suitor submits that the guarantee provisions in the Promissory Notes are completely lacking. However, this again ignores the fact that Mr. Suitor is also defined as a borrower under the Promissory Notes.

[40] Mr. Suitor states that he cannot have the same obligations as the corporate borrower under the Promissory Notes. He argues that principal debtors and guarantors are distinct at law.

[41] The applicant submits that there is no law that suggests that a guarantor cannot have the same obligations as the principal debtor. This is, there is no reason why a lender and borrower and guarantor cannot sign an agreement where the guarantor is liable for all obligations of the borrower. I agree. This comes down to contractual interpretation and what was agreed among the parties. Mr. Suitor is the sole shareholder of these companies (other than Commercial Urkel), and he contractually agreed to be the personal guarantor in respect of all terms of the Promissory Notes.

[42] Mr. Suitor also relies on *Chand Morningside Plaza Inc. v. Healthy Lifestyle Medical Group Inc.*, 2024 ONSC 7285, which does not apply to the instant case. As noted by Koehnen J. in para. 81, the guarantors in *Chand* were accommodation sureties, the parents of the borrower. They had provided a guarantee “with the expectation of little or no remuneration for the purpose of accommodating others.”<sup>3</sup> That is not the case here. Mr. Suitor guaranteed the loans to companies of which he holds, directly or indirectly, 100% of the shares (other than Commercial Urkel, of which he holds 50% of the shares).

[43] The Promissory Notes are each just over two pages long. They have drafting issues. Among other things, the term “Guarantor” is not defined. Mr. Suitor is defined with the corporate entity as the Borrowers. However, reading the document as a whole, and taking into consideration the fact that Mr. Suitor knew that he was a personal guarantor (as discussed further below), the commercially reasonable interpretation is that Mr. Suitor is the guarantor of the loan to the company in which he held all (or 50%) of the shares. The plain language of the document defines Mr. Suitor as Borrower and gives him the same obligations as the corporate borrower. Accordingly, in his capacity as guarantor Mr. Suitor agreed to the same terms as the borrower company. That is the contract that was reached among the parties.

[44] Mr. Suitor also argues that there was no consensus ad idem. As noted by the Court of Appeal in *UBS Securities Canada v. Sands Brothers Canada, Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93, at para. 47, in order for a contract to exist, there must be a meeting of minds, or consensus ad idem.

[45] Mr. Suitor says that he was not aware of his personal liability under the Promissory Notes. This is not credible given the record before me. Included in Ms. Drage’s evidence is a link to a webinar, which I viewed. Ms. Drage stated in her affidavit that she and Mr. Suitor jointly participated in the webinar with some of the lenders to Mr. Suitor and his companies. During the

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<sup>3</sup> *Citadel Assurance v. Johns-Manville Canada Inc.*, [1983] 1 S.C.R. 513, at 521.

webinar Ms. Drage explained to all participants that “Dylan has provided a personal guarantee, not just of the property and the corporation that property’s in, but his entire portfolio and assets.” Mr. Suitor, who was also on screen at the webinar, including when Ms. Drage made the statement regarding Mr. Suitor’s personal guarantee, did not disagree or say anything in response.

[46] Mr. Suitor’s position, as set out at para. 93 of his factum, is that:

- a. Mr. Suitor was not asked to provide financial net worth information to Drage or lenders.
- b. None of the Windrose/Drage materials, communications, and/or advertisements include any reference to personal liability related to the LS-Investor Notes or the Promissory Notes. In fact, the Promissory Notes were consistently described as high risk and requiring a general securities agreement to create security.
- c. The term “guarantee” was used inconsistently and ambiguously in the LS-Investor Notes. In early LS-Investor Notes, the right to register the LS-Investor Note on title to the corporate borrower’s property was explained as “the personal guarantee”, when it did not relate to Suitor. In other LS-Investor Notes, both Suitor and his corporation were described as “Borrowers/Guarantors”.
- d. The sole Windrose presentation to lenders for Promissory Note opportunities related to Suitor in evidence interchangeably states that Suitor and his corporation provided a “personal guarantee”; the security described in the presentation is exclusively in relation to the lender’s right to register the note on the corporate borrower’s property. The presentation also referenced that Drage was underwriting the Promissory Note, which created further ambiguity on who (if anyone) was personally liable.

[47] In my view, none of the above submissions take away from the fact that the parties signed the Promissory Notes setting out the terms of the agreement and monies were advanced further to such Promissory Notes. The fact that Mr. Suitor was not asked to provide financial net worth information does not impair the meaning of the contract. The marketing materials and presentations are not part of the contract and were general materials/presentations provided to potential lenders by Windrose/Drage. Finally, the prior promissory notes are just that — prior notes. The form of promissory note used by Lion’s Share changed at some point. The ones in issue in this application are the revised form, several of which were signed by Mr. Suitor.

[48] As set out by the Court of Appeal in *UBS Securities Canada*, at para. 86, the test for consensus ad idem is an objective one. I agree with the applicant that because there is a written agreement and money was advanced further to the written agreement, there was consensus ad idem. In respect of each Promissory Note, there was a signed contract and action taken under the contract – of course there was of meeting of the minds.

*Are there multiple creditors or special circumstances?*

[49] Mr. Suitor submits that the applicants have not established that there are other creditors or special circumstances.

[50] As noted by the Court in *In the Matter of the Bankruptcies of Jasvir Johal Sulakhan Johal*, 2024 ONSC 7386 (“*Johal*”), at para. 43, citing *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 7, “the provisions of the *BIA* are intended to be utilized for the benefit of the creditors of a debtor as a class, not for the enforcement of an individual debt.”

[51] Only where special circumstances exist will the court grant bankruptcy in a single creditor case: *Johal*, at para. 44. The categories of special circumstances were set out in *Valente v. Courey* (2004), 70 O.R. (3d) 31, at para. 8:

- a. Where repeated demands for payment have been made within the six-month period;
- b. Where the debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets which require that the processes of the *BIA* be set in motion; and
- c. Prior to the filing of the petition, the debtor has admitted its inability to pay creditors generally without identifying the creditors.

[52] In *Johal*, Osborne J. referred to the expansion of the categories of special circumstances in *Sergio Grillone (Re)*, 2023 ONSC 5710. Osborne J. notes at para. 50:

In that case, Kimmel J. observed that, in the particular circumstances of that matter, an order under s. 43(1) of the *BIA* was necessary to achieve an orderly distribution of the estate of the bankrupt to creditors, and to create a single forum in which the multiplicity of claims involving the debtor could be determined while ensuring that no creditor obtains an unfair advantage over the others in the interim. In that case, the Court found that such was a special circumstance that supported the granting of a bankruptcy order.

[53] In *Johal* Osborne J. determined that there were no special circumstances justifying the bankruptcy application. The bankruptcy applications were stayed, and the creditor was directed to pursue its claims in CCAA proceedings that were ongoing in respect of the companies owned by the debtors. At para. 51, Osborne J. noted that he was applying the same rationale expressed by Kimmel J. in *Grillone*, namely creating a single forum for the many claims.

[54] Mr. Suitor argues that the applicants have not established that he has other debts, nor are there special circumstances that would warrant a bankruptcy order with a single creditor.

[55] The LS Receiver argues that there are other debts, pointing to (i) the Statement of Claim by Nicole Kelly against Upgrade Housing Inc. and Mr. Suitor, and the Statement of Defence filed (the “Kelly Claim”), (ii) the demand letter to Mr. Suitor, Aruba Butt, and Commercial Urkel from counsel to Dennis and Jessica Domenichini (the “Domenichini Claim”); and (iii) the Balboa creditors under the CCAA proceedings.

[56] The Kelly Claim is a claim for payment of \$75,000 (plus interest) in accordance with a promissory note. The Domenichini Claim is for \$630,642.38 (plus further interest) in respect of a mortgage that has matured and remains in default since November 12, 2023. There is evidence on the record that there are other creditors. Mr. Suitor has not provided anything to refute that there are other creditors, other than to assert that the applicant’s evidence is insufficient.

[57] Mr. Suitor states that the applicant has not led “sound and convincing evidence” of these debts as required. He points to *Barkhouse (Re)*, 2018 NSSC 101 and *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 6. *Barkhouse* deals with proof of the debts owing to the applicant, not other third-party creditors. *Levesque*, at para. 6, in considering the issue of whether the debtor had ceased to meet his liabilities generally as they become due, stated:

The application judge correctly set out the nature of bankruptcy proceedings and the standard of proof, at para. 4 of her reasons:

It is well established that proceedings under the *BIA* are quasi-criminal in nature. The act(s) of bankruptcy and all allegations set out in the application must be proven on sufficient evidence: *Re Holmes* (1975), 9 O.R. (2d) 240 (S.C.); *Re Valente* (2004), 70 O.R. (3d) 31 (C.A.).

[58] At para. 4 of *Levesque* the Court of Appeal set out the essential elements that the petitioning creditor must establish to obtain a bankruptcy order, which do not include debts of other creditors. In fact, s. 43(1) of the BIA contemplates that “one or more creditors” may file an application for a bankruptcy.

[59] Based on the record before me, I am satisfied that Mr. Suitor has other creditors. In any event, I agree with the LS Receiver that the special circumstances noted in *Grillone* apply here. Mr. Suitor’s plan is to sell the properties that he holds through the various companies. As discussed above, there are numerous creditors potentially involved with this estate. A bankruptcy trustee will be able to deal with Mr. Suitor’s assets. Similar to *Grillone*, an order under s. 43(1) of the BIA will allow for the orderly distribution of Mr. Suitor’s assets to his creditors and will create a single forum in which the multiple claims involving Mr. Suitor can be determined.

*Has Mr. Suitor ceased to meet his liabilities generally as they become due?*

[60] The second part of the test that the applicants must satisfy is that Mr. Suitor must have committed an act of bankruptcy. As noted above, the applicants rely on s. 42(1)(j) of the BIA: “if he ceases to meet his liabilities generally as they become due.”



[61] The LS Receiver made demand on the non-Balboa promissory notes within six months of the commencement of the application. Payment on the notes has not been made.

[62] Mr. Suitor points to his illiquid assets that he holds personally or directly or indirectly through one of the Non-Balboa Borrowers.

[63] As the Quebec Superior Court clarified in *Immeubles Zenda Ltée/Zenda Realities Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS 3450, at paras. 15-16, the lack of liquidity does not assist a creditor who is unable to pay his or her debts as they become due:

[15] The Debtors argue that the bankruptcy applications should be dismissed because the value of their assets – essentially their investments in commercial properties – is greater than the amount of their debts. However, this is an irrelevant consideration. The issue is not whether the Debtors have sufficient assets to pay their debts, but whether they have ceased to meet their liabilities generally as they become due.

[16] Zenda and Levy do not deny that they have ceased meeting their liabilities generally as they become due. They do not deny that they are presently unable to pay their creditors. Their argument is that they need time to liquidate their real estate holdings in order to pay their creditors.

[64] Mr. Suitor's case is similar to that in *Immeubles Zenda*. The fact that he has illiquid real estate assets through the companies he holds directly or indirectly does not assist in meeting the test of whether he has ceased to meet his liabilities generally as they become due. It is not a question of whether Mr. Suitor potentially could pay if he sold off his illiquid assets; it is whether he has failed to meet his liabilities as they become due.

[65] I am satisfied that Mr. Suitor has committed an act of bankruptcy.

*Should the Court exercise its discretion under s. 43(1) of the BIA?*

[66] The Court can exercise discretion under s. 43(7) of the BIA to not grant the bankruptcy order if Mr. Suitor proves that he can pay his debts:

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[67] Mr. Suitor has not proven that he can pay his debts.

[68] In *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, the court stated, at para. 9, that the power in s. 43(7) of the BIA is discretionary.

[69] Collier J., of the Quebec Superior Court in *Immeubles Zenda*, at para. 31, citing *Goulakos (Syndic de)*, 2016 QCCS 84, stated:

The Court's discretion to stay a bankruptcy application under ss 43(7) and 43(11) *BIA* "should not be exercised lightly, but on the basis of sound judicial reasoning, credible evidence, according to common sense and in a manner which does not cause an injustice."

[70] In Mr. Suitor's supplementary affidavit, he provides estimated values of the various properties he owns directly (or through the companies) and details of the mortgages on the properties. He sets out a chart where he estimates that he would have approximately \$1.48 million remaining after paying the secured lenders, the debt claimed by the applicants as set out in their demand letters, and commission on the real property sales.

[71] While there are appraisals from within the last year for certain of the properties, in some cases the appraisals date back to 2022 or 2023. Of greater concern, however, is the lack of other financial information regarding the companies. Because the bulk of the real properties are owned by companies which Mr. Suitor either directly or indirectly owns, the Court would need the full financial picture of these companies to understand the value of Mr. Suitor's shares in the companies. Other than the specific property information, Mr. Suitor has not disclosed the other assets and liabilities of the companies. With regard to the properties Mr. Suitor owns personally, even assuming the March and April 2024 valuations continue to represent the value of the properties, after payment of the mortgages on the properties, there would not be sufficient net proceeds to satisfy the applicant's debt.

[72] Accordingly, I am not satisfied that the court should exercise its discretion under s. 43(7) of the *BIA*.

J. Steele J.

A handwritten signature in blue ink, appearing to read 'J. Steele', is positioned above a horizontal line.

**Released:** March 25, 2025

**CITATION:** Suitor v. Fuller Landau Group, 2025 ONSC 1686  
**COURT FILE NO.:** BK-24-208718-00OT  
**DATE:** 20250325

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF  
BURLINGTON, ONTARIO**

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**REASONS FOR DECISION**

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Justice Steele

**Released:** March 25, 2025

# Appendix E

**COURT OF APPEAL FOR ONTARIO**

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN  
SUITOR, an individual with a locality of Burlington, Ontario

**NOTICE OF APPEAL**

**THE APPELLANT, THOMAS DYLAN SUITOR, APPEALS** to the Court of Appeal from the judgement of Justice Jana Steele (the “**Application Judge**”) dated March 25, 2025, made at the Commercial List, Superior Court of Justice, in Toronto.

**THE APPELLANT ASKS** that the judgment be set aside and a judgment be granted as follows

1. The application for a bankruptcy order be dismissed with costs;
2. In the alternative, the application for a bankruptcy order be stayed;
3. Costs of the application below and of this appeal; and
4. Such further and other relief be granted as counsel for the Appellant may request and this Honourable Court deems just.

**THIS GROUNDS OF THE APPEAL are as follows:**

1. The Application Judge erred by holding that Suitor owed a “debt or debts” to the Applicant under s. 43(1)(a) of the *Bankruptcy and Insolvency Act* (“**BIA**”). In particular, the Application Judge erred:

- a. In law in holding that Suitor as a “guarantor” had the same non-contingent liabilities of the principal debtor corporations under promissory note agreements contrary to *Morin v. Hammond Lumber Co.*, [1922 CanLII 33 \(SCC\)](#) and subsequent authorities.
- b. In law in enforcing a guarantee contract without contractual language embodying a promise to guarantee contrary to *Times Square v Shimizu*, [2001 BCCA 448](#) and subsequent authorities.
- c. In failing to apply or misapprehending the principles of *contra proferentum* in interpreting the promissory note agreements; and in failing to address this legal principle or provide adequate reasons in addressing the “drafting issues” in the promissory note agreements and in “reading the document as a whole”.
- d. In law in her contractual interpretation of the promissory note agreements by relying on Suitor’s intentions and subjective knowledge *after* contract formation.
- e. In making findings of Suitor’s credibility and subjective knowledge of his liability under the promissory note agreements that were not available to her on the evidentiary record on the bankruptcy application.
- f. In failing to apply the correct legal principles and/or misapprehending that “debts” under s. 43(1) of the *BIA* cannot be claims or contingent liabilities as confirmed in *Re Bankruptcies of Down et al*, [2000 BCSC 1148 \(CanLII\)](#) aff’d [2000 BCCA 637 \(CanLII\)](#); and in failing to address this law or provide adequate reasons.
- g. In interpreting Suitor’s obligations under the standard form promissory note agreements.

2. The Applicant Judge erred by failing to dismiss or stay the bankruptcy application under ss. 43(7), (10), and/or (11) of the *BIA*. In particular, the Application Judge erred:
  - a. In failing to apply or misapprehending that bankruptcy court is not the appropriate forum where there is a *bona fide* dispute with respect to debt as confirmed by *Re Bearcat Exploration Ltd. (Bankrupt)*, [2003 ABCA 365 \(CanLII\)](#) and subsequent authorities.
  - b. In failing to consider or address Suitor's arguments that its dispute was *bona fide*, Suitor's evidence of virtually identical claims in civil court and argument of the risk of inconsistency findings, and the Applicant's contradictory treatment of the guarantor's obligation under similar contracts.
3. The Application Judge erred in holding that Suitor had ceased to meet his liabilities generally as they become due under s. 42(1)(j) of the *BIA*. In particular, the Applicant Judge erred:
  - a. In failing to apply or misapprehending (i) the Applicant's strict evidentiary burden to establish Suitor has ceased to meet his liabilities generally as they become due with respect to multiple creditors and (ii) the existence of unpaid creditors is not sufficient to satisfy this burden as confirmed by *Levesque (Re)*, [2016 ONCA 393 \(CanLII\)](#).
  - b. In failing to apply or misapprehending the Applicant's strict evidentiary burden to establish special circumstances in single creditor cases, and in law in holding that "numerous creditors potentially involved with [Suitor's] estate" satisfied this burden.
  - c. In making findings that were unavailable to her on the evidentiary application record, including that Suitor had multiple creditors.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. Section 193 of the [Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3.](#)
2. The decision appealed involves future rights of Suitor.
3. The decision appealed involves property in excess of \$10,000.00.

March 28, 2025

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Lawyers for the Respondent

AND **Service List**  
TO:



IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario

Court of Appeal File No.  
Court File No. BK-24-00208718-OT31

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**COURT OF APPEAL FOR ONTARIO**

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**NOTICE OF APPEAL**

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Lawyers for the Appellant

# Appendix F

1980 CarswellOnt 193  
Ontario Supreme Court

Black & White Sales Consultants Ltd. v. CBS Records Canada Ltd.

1980 CarswellOnt 193, [1980] O.J. No. 3831, 118 D.L.R. (3d)  
726, 20 C.P.C. 148, 31 O.R. (2d) 46, 36 C.B.R. (N.S.) 125

**BLACK & WHITE SALES CONSULTANTS  
LIMITED v. CBS RECORDS CANADA LTD. et al.**

Labrosse J.

Heard: December 4, 1980  
Judgment: December 5, 1980

Counsel: *N. Waterman*, for applicants (defendants).  
*A. Hill*, for respondent (plaintiff).

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure; Property

**Headnote**

**Bankruptcy --- Property of bankrupt — Choses in action — Right of action of bankrupt — General**

**Bankruptcy --- Effect of bankruptcy on other proceedings — Proceedings by bankrupt Practice --- Practice on appeal — Staying of proceedings pending appeal — General**

Property of the bankrupt — Assets vesting in trustee — Rights of action of debtor — Effect of filing notice of appeal — The [Bankruptcy Act](#), s. 165.

An undischarged bankrupt has no status to commence an action or other proceeding in his own name. Only his trustee in bankruptcy has such status.

[Section 165 of the Bankruptcy Act](#), which provides for a stay of proceedings where a judge has granted leave to appeal from a receiving order, does not apply when a bankrupt has appealed as of right. There is no other provision for a stay of proceedings in the Bankruptcy Act. From the moment the receiving order is made, all the bankrupt's property is vested in the trustee. A stay of proceedings can only affect the execution under the receiving order and prevent the trustee from realizing on the assets. It cannot have the effect of re-vesting the property in the bankrupt. The bankrupt remains an undischarged bankrupt, and his status is not changed by the filing of a notice of appeal from the receiving order.

APPLICATION to have action of undischarged bankrupt dismissed.

**Labrosse J. (orally):**

1 This is an application made pursuant to R. 126 to have the plaintiff's action dismissed or in the alternative to require the plaintiff to deliver particulars.

2 The first ground in support of the application is that the plaintiff, as an undischarged bankrupt, has no status to bring this action.

3 On 23rd August 1979 a petition in bankruptcy was issued against the plaintiff by CBS Records Canada Ltd., one of the defendants in this action. On the same date, the registrar in bankruptcy appointed the Clarkson Company Limited as interim receiver of the plaintiff, and on 7th December 1979, following a six-day trial, a receiving order was issued by Saunders J., appointing the Clarkson Company [Limited as trustee \[33 C.B.R. \(N.S.\) 87\]](#). On 10th December 1979 a notice of appeal from the receiving order was filed by the plaintiff. The appeal, which is now nearly a year old, has not yet been perfected. The trustee has not commenced the present action.

4 Under [s. 50\(5\) of the Bankruptcy Act, R.S.C. 1970, c. B-3](#), upon a receiving order being made, a bankrupt ceases to have any capacity to dispose or otherwise deal with his property which, under the definition of "property" under [s. 2](#), includes causes of action. The law is clear that an undischarged bankrupt has no status to commence an action or other proceeding in his own name. Only his trustee in bankruptcy has such status: see *Christie v. Dom. Bank*, [\[1939\] O.W.N. 60, 20 C.B.R. 158](#); *Metro. Bank Ltd. v. Pooley* (1885), [10 App. Cas. 210](#) (H.L.); and *Scott v. Rauf* (1975), [10 O.R. \(2d\) 468, 21 C.B.R. \(N.S.\) 123, 63 D.L.R. \(3d\) 580](#) (C.A.).

5 It is argued on behalf of the plaintiff that the present case does not fall within the principle above stated because the appeal has had the effect of staying the receiving order and the plaintiff is thereby entitled to bring this action in its own name.

6 [Section 165 of the Bankruptcy Act](#) provides for a stay of proceedings where a judge has granted leave to appeal. In the present case, the plaintiff has appealed as of right, and this section does not apply. There is no other provision for a stay of proceedings in the Act. Counsel for the plaintiff argues that the court should look at R. 506 of the Rules of Practice, and, as the present case does not fall within the exceptions stated, it follows that the receiving order is stayed pending the disposition of the appeal. Accordingly, the plaintiff can continue to deal with its property in the same manner that a judgment debtor can deal with his property pending an appeal.

7 Assuming without deciding that the receiving order is stayed pending the disposition of the appeal, I cannot accept that the filing of a notice of appeal would permit the plaintiff to proceed as if nothing had happened. The practical result of this argument would be that a person petitioned into bankruptcy could file a notice of appeal and then carry on his venture for a year or more as

if no receiving order had been made against him. This would be clearly against the intent of the Bankruptcy Act which is to preserve the assets of the bankrupt for the benefit of the creditors.

8 From the moment the receiving order was made all the plaintiff's property vested in the trustee. A stay of proceedings could only affect the execution under the receiving order and prevent the trustee from realizing on the assets. It could not have the effect of re-vesting the property in the plaintiff. The plaintiff remains an undischarged bankrupt, and its status is not changed by the filing of a notice of appeal from the receiving order.

9 In my opinion, the law, as stated in the decisions referred to earlier, is not changed in any manner by the simple filing of a notice of appeal.


10 I am well aware that, at this stage of the proceedings, an order dismissing an action should be granted only in a plain case and that this step should be sparingly exercised: see *Barnes v. Carter* (1910), 16 O.W.R. 911, 2 O.W.N. 8. However, in my view the plaintiff has no status to bring this action. Its cause of action has passed to the trustee and, accordingly, I conclude that the statement of claim discloses no cause of action by this plaintiff. The statement of claim is struck out and the action is dismissed. I am not satisfied that I should order costs as against an undischarged bankrupt. The action is dismissed without costs.

*Application granted; action dismissed.*


# Appendix G




**TDB Restructuring Limited**  
Licensed Insolvency Trustee

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**IN THE MATTER OF THE INTERIM RECEIVERSHIP OF**

**THOMAS DYLAN SUITOR**

**FIRST REPORT OF THE INTERIM RECEIVER**

**NOVEMBER 19, 2024**

## Contents

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>1.1</b>	<b>Purpose of Report .....</b>	<b>2</b>
<b>1.2</b>	<b>Terms of Reference .....</b>	<b>2</b>
<b>2.0</b>	<b>ACTIVITIES OF THE INTERIM RECEIVER .....</b>	<b>3</b>
<b>3.0</b>	<b>INFORMATION REQUEST .....</b>	<b>4</b>
<b>4.0</b>	<b>THE RELATED ENTITIES .....</b>	<b>5</b>
<b>5.0</b>	<b>THE DISCLOSURE OF INFORMATION.....</b>	<b>6</b>
<b>6.0</b>	<b>THE RETAINER .....</b>	<b>9</b>
<b>7.0</b>	<b>PROFESSIONAL FEES .....</b>	<b>9</b>
<b>8.0</b>	<b>RECEIVER’S REQUEST OF THE COURT .....</b>	<b>10</b>



## **APPENDICES**

Appointment Order .....	A
Endorsement of Justice Osborne dated October 7, 2024.....	B
Information Request.....	C
Updated List of Related Entities.....	D
Correspondence Between Counsel .....	E
Fee Affidavit of Jeffrey Berger .....	F
Fee Affidavit of Mindy Tayar .....	G

## 1.0 INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 7, 2024 (the “**Appointment Order**”), TDB Restructuring Limited was appointed as interim receiver (the “**Interim Receiver**”) of the property, assets and undertaking (the “**Property**”) of Thomas Dylan Suitor (“**Mr. Suitor**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order empowered and authorized the Interim Receiver to, among other things:
  - (a) ***monitor the Debtor’s bank accounts and the accounts of Related Entities** (as defined below) and approve all disbursements from the Debtor’s bank accounts and the accounts of Related Entities; and*
  - (b) *take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor **or corporations or other entities associated with, related to or controlled by the Debtor (the “Related Entities”)** [...]*<sup>1</sup>
3. The Endorsement of Justice Osborne dated October 7, 2024 (the “**Endorsement**”), is attached as **Appendix “B”** to this report.
4. The Appointment Order, the Endorsement and other pertinent documents related to these proceedings, has been posted on the Receiver’s website, which can be found at:

<https://tdbadvisory.ca/insolvency-case/d-suitor/>

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<sup>1</sup> Emphasis added

## **1.1 Purpose of Report**

5. The purpose of this first report to Court (the “**First Report**”) is to:
- (a) provide the Court with information about the Interim Receiver’s activities since the date of the Appointment Order to the date of this First Report;
  - (b) seek advice and directions from the Court regarding:
    - i. the disclosure of the Provided Information (as defined herein) to Mr. Suitor’s creditors and other interested parties; and
    - ii. the Interim Receiver’s obligation to continue monitoring the accounts of the Related Entities and the disbursements therefrom;
  - (c) request that the Court grant an order:
    - i. approving the First Report and the activities of the Interim Receiver as set out herein;
    - ii. approving the disclosure of the Provided Information (as defined herein) and confirming that any disclosure of the Provided Information does not contravene the provisions of the BIA or the Rules thereunder, and may be utilized by the parties to the pending bankruptcy application in respect of Mr. Suitor or any other proceedings involving Mr. Suitor or any of the Suitor Companies (as defined herein);
    - iii. approving the Monitoring Protocol (as defined herein); and
    - iv. approving the fees and disbursements of the Interim Receiver to October 31, 2024, and the fees and disbursements of the Interim Receiver’s counsel to November 10, 2024.

## **1.2 Terms of Reference**

6. In preparing the First Report and making the comments herein, the Interim Receiver has relied upon information from third-party sources (collectively, the

**“Information”**). Certain of the information contained in the First 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 Interim Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Interim 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 Chartered Professional Accountants Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

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

## **2.0 ACTIVITIES OF THE INTERIM RECEIVER**

8. The following is a summary of the Receiver’s activities since the date of the Appointment Order:
  - (a) engaged in preliminary discussions with the Fuller Landau Group Inc. (**“Fuller”** or the **“Applicant”**), in its capacity as Court-Appointed receiver of The Lion’s Share Group Inc. (**“Lion’s Share”**) to gather preliminary information regarding Mr. Suitor’s affairs and specifically the debts owing by Mr. Suitor to Lion’s Share;
  - (b) reviewed court filings in the Lion’s Share receivership, the Balboa Group of companies’ (the **“Balboa Group”**) CCAA proceedings, and other documents relating to the appointment the Interim Receiver;
  - (c) engaged in discussions with independent legal counsel to clarify terms of the Appointment Order and scope of the Interim Receiver’s authority;
  - (d) prepared the Information Request (as defined herein) and corresponded extensively with Mr. Suitor and his representatives regarding same;

- (e) conducted weekly meetings with Mr. Suitor, his employees and his counsel to discuss the status of the Information Request, monitoring processes, and payment approvals, etc.;
- (f) responded to inquiries from creditors of Mr. Suitor and the Related Entities, providing clarity on the Interim Receiver's mandate and the scope of the Interim Receiver's authority;
- (g) Considered and responded to various requests for the Interim Receiver to lift the stay of proceedings under the terms of the Appointment Order with respect to the Related Entities;
- (h) arranged for the registration of the Order on the real properties identified by Mr. Suitor as being owned by companies in which Mr. Suitor is a shareholder, or one of the Related Entities; and
- (i) prepared this First Report to Court.

### **3.0 INFORMATION REQUEST**

- 9. Upon its appointment, the Interim Receiver prepared a preliminary request for information to Mr. Suitor regarding his assets and liabilities, and the assets and liabilities of the Related Entities (the "**Information Request**"). A copy of the Information Request is attached as **Appendix "C"** to this report.
- 10. As of the date of the First Report, Mr. Suitor and his representatives have provided the following information to the Interim Receiver in response to the Information Request (collectively, the "**Provided Information**"):
  - (a) a list of thirty-nine (39) companies that are associated with, related to, or controlled by Mr. Suitor (the "**Suitor Companies**"). A list of the Suitor Companies is attached as **Appendix "D"** to this report.;
  - (b) a list of all bank accounts, credit cards, and investment accounts held by or associated with Mr. Suitor or the Suitor Companies;
  - (c) a statement of personal net worth for Mr. Suitor;

- (d) details regarding pending sales of assets owned by Mr. Suitor or the Suitor Companies;
- (e) details regarding any enforcement proceedings, legal action or other steps that have been commenced in respect of Mr. Suitor or the Suitor Companies' assets;
- (f) access to certain digital books and records for the Suitor Companies;
- (g) copies of insurance policies relating to the assets held by Mr. Suitor and the Suitor Companies; and
- (h) a monthly budget for Mr. Suitor's personal income and expenses.

#### **4.0 THE RELATED ENTITIES**

11. Pursuant to the terms of the Appointment Order, the Interim Receiver was empowered to monitor the bank accounts and disbursements of both Mr. Suitor and the Related Entities, but the complexity of Mr. Suitor's affairs has caused difficulties given the limited funding provided to the Interim Receiver to complete its mandate (as defined below).
12. Schedule "C" to the Appointment Order set out a list of sixteen (16) corporations in which Mr. Suitor was believed to have an interest as a shareholder (the "**Related Entities**" as defined by the Appointment Order). As set out previously in this First Report, Mr. Suitor has provided an expanded list of companies in which he holds shares either directly or indirectly, referred to as the Suitor Companies.
13. Since its appointment, the Interim Receiver required that Mr. Suitor provide it with a weekly list of proposed disbursements relating to Mr. Suitor's personal accounts and the accounts of the Suitor Companies (collectively, the "**Disbursements**") together with the invoices supporting those Disbursements. The Interim Receiver has been reviewing those invoices, and provided approval for payments which appear to be in the normal course of business. The Interim Receiver has been careful to balance its mandate to elicit information with the requirement of Justice

Osborne's Order to not interfere with the business operations of Mr. Suitor or the Suitor Companies.

14. The Interim Receiver notes that the review and approval process has rapidly become onerous, time-consuming, and costly, as the weekly list typically includes 40 to 75 payments. Given (i) the volume of Disbursements, (ii) the lack of background information regarding the transactions and the business practices of each of the Related Entities, and (iii) the limited financial resources available to the Interim Receiver, the Interim Receiver is concerned that it is not in a position to do a sufficient analysis of the underlying transactions prior to approval, and therefore cannot be fully comfortable regarding the propriety of the Disbursements.
15. In view of the foregoing, the Interim Receiver believes that the current level of monitoring of the Suitor Companies is not sustainable. To streamline the process, the Interim Receiver proposes the following protocol (the “**Monitoring Protocol**”):
  - (a) Mr. Suitor will have blanket authorization to pay invoices to any person, provided that the amount to that person does not exceed a pre-determined threshold to be quantified by the Interim Receiver (the “**Approval Threshold**”);
  - (b) any payment exceeding the Approval Threshold must receive prior approval from the Interim Receiver; and
  - (c) Mr. Suitor will provide the Interim Receiver on a weekly basis with a list of all payments issued below the Approval Threshold during the prior week, along with corresponding bank statements for all accounts from which payments were processed. The Interim Receiver reserves the right to review any such payments, raise concerns, and restrict further payments to any persons as deemed necessary.

## **5.0 THE DISCLOSURE OF INFORMATION**

16. The Applicant is the Court-appointed Receiver of Lion's Share, which it says is a significant creditor of Mr. Suitor. KSV Restructuring Inc. (“**KSV**”) is the Court-

appointed Monitor of the Balboa Group, of which Mr. Sutor is a principal. The affairs of Mr. Sutor, Lion's Share, and the Balboa Group are complex and entangled.<sup>2</sup>

17. Under the provisions of the Appointment Order, the Interim Receiver was authorized:

*to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable[.]*

18. Paragraph 4 of the Appointment Order defines Persons as follows:

**4. THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) 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 Interim Receiver of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.<sup>3</sup>

19. In paragraphs 80, 94, and 99 of his Endorsement, Justice Osborne held as follows:

80. ...[I]n my view, it is appropriate that the interim receiver be appointed **in the circumstances where the Receiver has been seeking information from him for months, those inquiries remain outstanding**, and there are a number of outstanding questions and issues relating to Sutor's assets and those of his companies. **The interim receivership will sift through all of this**

---

<sup>2</sup> Endorsement at paragraphs 14-23

<sup>3</sup> Emphasis added



**information, and attempt to sort out all of that material, and the resulting entitlements.**

94. *The notion that the issues in the Balboa CCAA Proceedings have no direct bearing on the issues to be decided on this motion is artificial. **They are inescapably linked, and the full extent of the relationship between and among all of these entities is the very thing that it is proposed that the interim receiver will investigate if appointed, all in order that creditors and stakeholders are not prejudiced,** and beneficial entitlement to those assets can be determined in a fair and transparent way.*

99. *Given Suitor's own expressed objective as described in his affidavit of assisting in working with creditors, I accept the submission of the Receiver that the prejudice to him by this interim receivership is limited.<sup>4</sup>*

20. The Interim Receiver believes that the intent of the Appointment Order was to enable the Interim Receiver to share information derived from its mandate pursuant to the terms of the Appointment Order with Fuller, all at the discretion of the Interim Receiver.
21. However, the Bankruptcy and Insolvency Act RSC 1985, c B-3 (the "**BIA**"), and the jurisprudence thereunder do not permit the Applicant to obtain discovery from Mr. Suitor in advance of the bankruptcy trial.<sup>5</sup>
22. Conscious of this restriction, the Interim Receiver has asked Mr. Suitor's counsel for confirmation that "information received or gathered by the Interim Receiver may be shared" with the Applicant and KSV. Counsel for Mr. Suitor declined to provide that confirmation, stating in part that:

*[t]he objection my client has at this point with sharing the information gathered by the interim receiver is that it is not complete...The information, if my client consents*

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<sup>4</sup> Emphasis added

<sup>5</sup> *Media-1-Stop (London) Limited.* (1970), 13 C.B.R. (N.S.) 96 (Ont. Sup. Ct.)

*to sharing it, should not be provided piecemeal or incomplete as this will potentially prejudice my client...*

23. Recently, Mr. Suitor's counsel has stated that Mr. Suitor will not oppose disclosure to Fuller or KSV, on certain terms.
24. Copies of the correspondence between counsel are attached as **Appendix "E"** to this report.
25. The Interim Receiver is therefore asking the Court to provide it with direction identifying the entities to which it may disclose information derived from its mandate. More specifically, the Interim Receiver requests permission to disclose such information to the Applicant, and a declaration that such disclosure does not contravene the BIA.

## **6.0 THE RETAINER**

26. The Interim Receiver undertook this assignment at the request of the Applicant, with a retainer of \$100,000 (the "**Retainer**") provided by KSV. As set out in further detail herein, the Retainer is rapidly being depleted, and the Interim Receiver is concerned that, given the time required to perform even basic monitoring of the Suitor Companies' expenditures (rather than intensive review), the Retainer will not last until Mr. Suitor's bankruptcy application is tried on February 25, 2025 (as currently scheduled), much less be sufficient for the administration of his bankruptcy estate.

## **7.0 PROFESSIONAL FEES**

27. The Interim Receiver's accounts for the period from October 7, 2024 to October 31, 2024 total \$34,337.95 in fees and disbursements, plus HST of \$4,462.91, for a total amount of \$38,800.85. A copy of the Interim Receiver's accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Jeffrey Berger sworn on November 19, 2024 and attached as **Appendix "F"** to this report.
28. The accounts of the Receiver's counsel, Fred Tayar & Associates P.C., for the period from October 7, 2024 to November 10, 2024 total \$13,591.25 in fees and

disbursements, plus HST of \$1,766.87 for a total amount of \$15,358.12. A copy of counsel's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Mindy Tayar affirmed on November 18, 2024 and attached as **Appendix "G"** to this report.

## **8.0 RECEIVER'S REQUEST OF THE COURT**

29. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 5(c) above.

All of which is respectfully submitted to this Court as of this 19<sup>th</sup> day of November, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as  
Interim Receiver of Thomas Dylan Suitor and not in its personal or  
corporate capacity

Per:



Jeffrey Berger, CPA, CA, CIRP, LIT  
Managing Director

# Appendix H

Court File No. CV-24-00087494-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	TUESDAY, THE 10 <sup>TH</sup>
	)	
	)	
JUSTICE L. SHEARD	)	DAY OF DECEMBER, 2024

B E T W E E N:

**PARADISE MEDIA, LTD.**

Applicant

- and -

**1083 MAIN STREET INC.**

Respondent

**APPLICATION UNDER SUBSECTION 243(1) 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  
(Appointing Receiver)**

**THIS APPLICATION** made by Paradise Media, Ltd. (“**Paradise**”) 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 MNP Ltd. (“**MNP**”) as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of 1083 Main Street Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including, without limitation, the real property municipally known as 1083 Main Street, Hamilton, Ontario and legally described in PIN 17227-0123 (LT) in LRO #62 as PT LT 6, CON 2 BARTON, AS IN CD470792; HAMILTON (the “**Real Property**”), was heard this day by judicial videoconference via Zoom.

**ON READING** the affidavit of Timothy Miller sworn October 9, 2024, the affidavit of Jackson Chau sworn November 20, 2024 and the Exhibits thereto, the affidavit of Alex Zaharia sworn December 4, 2024 and the Exhibits thereto, and the pre-filing report of MNP Ltd. dated November 11, 2024 (the “**Pre-Filing Report**”), and on hearing the submissions of counsel for Equitable Bank (“**EQ Bank**”), and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service, filed, and on reading the consent of MNP to act as the Receiver, filed,

## **SERVICE**

1. **THIS COURT ORDERS** that the time and method for service of the notice of application and application record, and the responding application records, 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, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including without limitation the Real Property and all proceeds thereof (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 Debtor, 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 any contracts of the Debtor;
- (d) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, trades, engineers, quantity surveyors, experts, auditors, brokers, 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 undertake any construction at the Property necessary to preserve and protect the Property;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) 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 the Debtor, for any purpose pursuant to this Order;
- (j) 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 Debtor, 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;

- (k) 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;
- (l) 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 \$50,000, 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;

- (m) 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;
- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) 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 the Debtor;



- (q) to file an assignment into bankruptcy, and to act as trustee in bankruptcy, on behalf of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) 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 Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor; (ii) all of its current and former directors, officers, employees, construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, service providers, architects, realtors, property managers, 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 the Debtor, 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.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. **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**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property 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 Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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**

10. **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 Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, not renewing 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 Debtor’s 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 Debtor 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.

12. **THIS COURT ORDERS** that, subject to order of this Court, in the event that an account for the supply of goods and/or services is transferred from the Debtor 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.

## RECEIVER TO HOLD FUNDS

13. **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

14. **THIS COURT ORDERS** that all employees of the Debtor, if any, shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’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 AND ANTI-SPAM LEGISLATION

15. **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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

16. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **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 their 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 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 by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, 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, EQ Bank’s mortgage in respect of the Real Property, 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 "A" 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.

#### **SEALING OF CONFIDENTIAL APPENDICES**

26. **THIS COURT ORDERS** that MNP is authorized and directed to redact from the PreFiling Report served on the parties in the service list the confidential appendices contained therein.

27. **THIS COURT ORDERS** that the unredacted version of the Pre-Filing Report filed with the Court, including the confidential appendices contained therein, be sealed from the public record, pending further Order of the Court.

#### **SERVICE AND NOTICE**

28. **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 <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservicecommercial>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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 and shall be accessible by selecting the Debtor's name from the engagement list at the following URL: [www.mnpdebt.ca/1083Main](http://www.mnpdebt.ca/1083Main)

29. **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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

## **GENERAL**

30. **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.

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

32. **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.

33. **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.

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



35. **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.

36. **THIS COURT ORDERS** that this Order and all of its provisions are effective as today's date and is enforceable without the need for entry or filing.

*L. Sheard J.*

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**Justice L. Sheard**

**SCHEDULE “A”**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the “**Receiver**”) of all of the assets, undertakings and properties of 1083 Main Street Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”), appointed by Order of the Ontario Superior Court of Justice (the “**Court**”) dated the 10<sup>th</sup> day of December, 2024 (the “**Order**”) made in an application having Court file number Court File No. CV-24-00087494-0000, 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 \$500,000 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 [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

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 \_\_\_\_\_, 20\_\_.

MNP Ltd., solely in its capacity as Receiver of  
the Property, and not in its personal capacity

Per:

---

Name:

Title:

- and -

1083 MAIN STREET INC.

**PARADISE MEDIA, LTD.**

Applicant

Respondent

Court File No. CV-24-00087494-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

**Proceedings commenced at Hamilton**

**APPOINTMENT ORDER**

**AIRD & BERLIS LLP**  
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*Lawyers for Equitable Bank*

# Appendix I



G1

Court File No. CV-24-00003341-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) 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**

THE HONOURABLE

)

FRIDAY THE 22<sup>ND</sup>

)

JUSTICE M.A. COOK

)

DAY OF NOVEMBER, 2024

B E T W E E N:

**PARADISE MEDIA, LTD.**

Applicant

and

**2842879 ONTARIO INC. and 2044583 ONTARIO INC.**

Respondents

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant Paradise Media, Ltd. (the “**Applicant**”) 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 MNP Ltd., as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondents 2842879 Ontario Inc. and 2044583 Ontario Inc. (collectively, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the lands and premises legally described in Schedule “A” hereto and all proceeds thereof, was heard this day by Zoom videoconference.

G1

ON READING the Affidavit of Timothy Miller sworn October 29, 2024, and on hearing the submissions of counsel for the Applicant, counsel for the Corporation of the City of London appearing but not making submissions, no one else on the service list appearing, although duly served, as appears from the Affidavit of Service of Janet Nairne sworn November 5, 2024, and on reading the consent of MNP Ltd. to act as the Receiver, filed,

### **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 motion 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, MNP Ltd. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including and without in any way limiting the generality of the foregoing, the lands and premises legally described in Schedule “A” hereto, and all proceeds thereof (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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtor or in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, trades, engineers, quantity surveyors, 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 undertake any construction at the Property necessary to ensure the Property is well maintained and rentable and to bring the Property into compliance with applicable laws and building codes;
- (f) to market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable;



- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (i) to settle, extend or compromise any indebtedness owing to the Debtor;
- (j) 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 the Debtor, for any purpose pursuant to this Order;
- (k) 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 Debtor, 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;
- (l) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtor thereon;
- (m) 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;

- (n) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, in which case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, and section 31 of the Ontario *Mortgages Act*, shall not be required;
- (o) 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;
- (p) 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;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) 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 the Debtor, and to meet with and discuss with such governmental authorities and execute any such agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);

- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) 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 Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that the Receiver shall seek the consent of the Corporation of the City of London for the sale, conveyance, transfer, lease or assignment of the Property, or for a change in the beneficial ownership of 2044583 Ontario Inc., prior to seeking approval of the Court for same.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. THIS COURT ORDERS that (i) the Debtor, (ii) Dylan Sutor (“**Sutor**”) and TDB Restructuring Limited in its capacity as Interim Receiver of Sutor (iii) all of the Debtor’s current and former directors, officers, employees, construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, service providers, architects, realtors, property managers, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iv) 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.

6. 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 Debtor or to the Property, 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 6 or in paragraph 7 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.

7. 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.

#### **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 Debtor or the Property 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 Debtor or the Property 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 Debtor, 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 Debtor to carry on any business which the

Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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 Debtor 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 Debtor 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, not renewing 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 Debtor's 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 Debtor 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.

13. THIS COURT ORDERS that, subject to order of this Court, in the event that an account for the supply of goods and/or services is transferred from the Debtor 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.

#### **RECEIVER TO HOLD FUNDS**

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 Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor'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 Debtor, 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 their 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 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 by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, 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.mnpdebt.ca/3880&3990Princess](http://www.mnpdebt.ca/3880&3990Princess)

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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

#### **GENERAL**

28. 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.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a Trustee in bankruptcy of the Debtor.

30. 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.

31. 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.

32. 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 Debtor's estate with such priority, at such time and at time as this Court may determine.

33. 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 that reads "M.A. Cook J." is written over a horizontal line.

The Hon. Justice M.A. Cook

Justice M.A. Cook

Digitally signed by Justice M.A.  
Cook  
Date: 2024.11.22 15:09:36 -05'00'

**SCHEDULE "A"**

<i>PIN</i>	08270-0081 (LT) in LRO #33
<i>Description</i>	LOTS 4, 5, 6, 7, 10, 11, 12, 13, 14 & PT LT 3 PLAN 158(E) AS IN 887914; S/T EASE AS IN ER270923; LONDON; SUBJECT TO AN EASEMENT AS IN ER1130011
<i>Address</i>	380-390 Princess Avenue, London, Ontario

**SCHEDULE “B”**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. ●

AMOUNT \$ ●

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the “**Receiver**”) of the assets, undertakings and properties of 2842879 Ontario Inc. and 2044583 Ontario Inc. (collectively, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”), appointed by Order of the Ontario Superior Court of Justice (the “**Court**”) dated the ● day of ●, 2024 (the “**Order**”) made in an application having Court file number ●, 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 the rate of ● per cent above the prime commercial lending rate of Bank of ● from time to time.

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.

1. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
2. 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.
3. 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.
4. 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 ●, ●.

MNP LTD., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:

\_\_\_\_\_  
Name:

Title:



**PARADISE MEDIA, LTD.**  
Applicant

-and-

**2842879 ONTARIO INC. et al.**  
Respondents

**G20**

Court File No. CV-24-00003341-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
**LONDON**

**ORDER**

**DICKINSON WRIGHT LLP**

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Lawyers for the Applicant

**G20**

# Appendix J

ONTARIO  
SUPERIOR COURT OF JUSTICE (CIVIL)  
St. Catharines, Ontario

FILE NO: CV-24-  
00062711-0000

ENDORSEMENT

Paradise Media LTD  
*Plaintiff(s)*

J. Rosekat  
*Counsel(s)*

v.

2710654 Ontario Inc  
*Defendant(s)*

UNREPRESENTED  
*Counsel(s)*

**DATE**

Dec. 19, 2024

The application was heard November 28, 2024. Present before the court were J. Rosekat, D. Preger and T. Bertler, for the applicant and P. Corney, counsel for National Bank as first mortgagee.

The applicant applies for the appointment of MNP Ltd. as receiver and manager of all of the respondent's assets, undertakings, and properties acquired for or used in relation to a business carried on by it, including and without in any way limiting the generality of the foregoing the property known municipally as 17-19 Collier Street Street, St. Catharines, Ontario.

A summary of facts is outlined in the application record, and affidavits filed.

Given the urgency of the order sought, I do not propose to outline those facts in my endorsement as they are wholly uncontested.


Bankruptcy proceedings were initiated against the respondent. Within the bankruptcy proceeding, an interim receivership order was obtained, which provides, among other things, that no proceeding against or in respect of Dylan Suitor or related entities, which includes the respondent to this application, may be commenced or continued except with written consent of the interim receiver or with leave of the court. I have received consent from the interim receiver appointed in the bankruptcy proceeding to lift the stay that would enable the applicant to pursue the appointment of MNP Ltd. as receiver manager. Accordingly, I need not deal with that request for relief in the application.

.....

A determination of whether to appoint an interim receiver is undertaken pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The circumstances that I may consider in determining whether it is just and convenient to appoint a receiver have been referred to in *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (S.C.) Commercial List paras. 19-24.

This application is not opposed, and therefore, the evidence is not contradicted. MNP Ltd. consents to the appointment sought by the applicant. Having regard to all of the circumstances in this case, in particular the nature of the property at 17-19 Collier Street, St. Catharines as a fully tenanted multi-unit residential property, and on hearing the submissions of counsel for the applicant and counsel for the National Bank, I find that it is just and convenient to appoint MLP Ltd. as receiver and manager on the terms set out in the draft order filed.

Order to go in accordance with the draft attached as schedule "A".



\_\_\_\_\_  
L. E. Standryk J.

Schedule "A"

Court File No. CV-24-00062711-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) 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**

THE HONOURABLE

)

THURSDAY, THE 28<sup>TH</sup>

)

JUSTICE

)

DAY OF NOVEMBER, 2024

B E T W E E N:

**PARADISE MEDIA, LTD.**

Applicant

and

**2710654 ONTARIO INC.**

Respondent

**ORDER**  
**(Appointing Receiver)**

THIS APPLICATION made by the Applicant Paradise Media, Ltd. (the “**Applicant**”) 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 MNP Ltd., as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent 2710654 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the lands and premises legally described in Schedule “A” hereto and all proceeds thereof, was heard this day by Zoom videoconference.

ON READING the Affidavit of Timothy Miller sworn October 29, 2024 and the consent of MNP Ltd. to act as the Receiver, and on hearing the submissions of counsel for the Applicant and counsel for Paradise Media Ltd. and others appearing at the motion, no one else on the service list appearing, although duly served, as appears from the Affidavits of Service of Janet Nairine sworn November 12, 2024 and November 19, 2024, filed,

### **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 motion 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, MNP Ltd. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including and without in any way limiting the generality of the foregoing, the lands and premises legally described in Schedule “A” hereto, and all proceeds thereof (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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtor or in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, trades, engineers, quantity surveyors, 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 undertake any construction at the Property necessary to ensure the Property is well maintained and rentable and to bring the Property into compliance with applicable laws and building codes;
- (f) to market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable;

- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (i) to settle, extend or compromise any indebtedness owing to the Debtor;
- (j) 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 the Debtor, for any purpose pursuant to this Order;
- (k) 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 Debtor, 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;
- (l) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtor thereon;
- (m) 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;



- (n) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, in which case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, and section 31 of the Ontario *Mortgages Act*, shall not be required;
- (o) 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;
- (p) 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;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) 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 the Debtor, and to meet with and discuss with such governmental authorities and execute any such agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);

- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) 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 Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that the Receiver, on behalf of the Debtor, is required to pay (a) any amounts outstanding to National Bank as at the date of this Order; and (b) the Debtor's going-forward monthly debt service obligations to National Bank until the termination of this receivership proceeding. All payments made pursuant to this paragraph shall be made out of the Debtor's cash flow from operations and not funds obtained through borrowings through Receiver's Certificates (defined below), unless such operating cash flow is insufficient and only to the amount such operating cash flow is insufficient.

5. THIS COURT ORDERS that National Bank shall have the following rights regarding any marketing of the Debtor and/or the Property:

- (a) The Receiver shall make weekly reporting to National Bank regarding sale or investment interest in the Debtor and/or the Property, whether such interest is

generated through a sale and investment solicitation process (“**SISP**”) or otherwise, including (i) information related to how the Debtor and/or the Property is being marketed, including, without limitation, the preparation of potential buyer/investor lists, the dissemination of marketing material to potential buyers and investors, and responding to requests for information, and (ii) all relevant details about any potentially interested party.

- (b) If the Receiver seeks Court-approval of a SISP in addition to the powers and obligations of the Receiver under paragraph 3 above, the Receiver shall consult with National Bank on the terms of the proposed SISP at least seven (7) calendar days in advance of service of the motion seeking approval of same.
- (c) Notwithstanding any other paragraphs of this Order, National Bank shall not be obligated to furnish any of its non-public loan documentation related to the Debtor and/or the Property, unless such party has executed a non-disclosure agreement in a form and substance satisfactory to the Receiver and National Bank, in their reasonable business judgment.
- (d) In assessing bids for the shares of the Debtor and/or the Property, whether generated through a SISP or otherwise, the Receiver shall consult with National Bank regarding any potential bidder(s), to assess, among other things, any of the following: (i) the bidder’s ability to meet the National Bank’s mortgage approval requirements (if any bidder is proposing to assume, directly or indirectly, the Debtor’s obligations to National Bank); (ii) the amount of recovery that will be available for secured creditors; (iii) the assumption of regulatory obligations and

liabilities; (iv) the financial capability of any potential bidder(s); and (v) the ability of the bidder to close a transaction and the likelihood of same.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

6. THIS COURT ORDERS that (i) the Debtor, (ii) Mr. Dylan Sutor (“**Sutor**”) and TDB Restructuring Limited in its capacity as Interim Receiver of Sutor (iii) all of the Debtor’s current and former directors, officers, employees, construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, service providers, architects, realtors, property managers, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iv) 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.

7. 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 Debtor or to the Property, 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.

8. 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.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. 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**

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property 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 Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that all rights and remedies against the Debtor, 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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**

12. 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 Debtor without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons, having oral or written agreements with the Debtor 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, not renewing 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 Debtor's 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 Debtor 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.

14. THIS COURT ORDERS that, subject to order of this Court, in the event that an account for the supply of goods and/or services is transferred from the Debtor 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.

### **RECEIVER TO HOLD FUNDS**

15. 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. For certainty, and without limiting the foregoing, the Receiver shall open a bank account exclusively for the purpose of holding funds generated by the Property

16. THIS COURT ORDERS that funds generated by the Property shall be used to fund taxes, operating costs, and other ordinary-course expenses relating to the Property, including the Debtor’s debt service obligations to National Bank, in priority to the use of the Receiver’s Certificate (defined below) borrowings to finance the same.

#### **EMPLOYEES**

17. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’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**

18. 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

19. 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**

20. 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**

21. 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.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their 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 Ontario Superior Court of Justice.

23. 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**

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, 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.

25. 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.

26. 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.

27. 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**

28. 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: [https://mnpdebt.ca/17\\_19 Collier](https://mnpdebt.ca/17_19_Collier).

29. 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

Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

#### **GENERAL**

30. 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.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a Trustee in bankruptcy of the Debtor.

32. 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.

33. 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.

34. 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 Debtor's estate with such priority, at such time and at time as this Court may determine.

35. 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.

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## **SCHEDULE “A”**

<i>PIN</i>	46265-0026 (LT) in LRO #30
<i>Description</i>	LT 2810 CP PL 2 GRANTHAM; ST. CATHARINES
<i>Address</i>	17-19 Collier Street, St. Catharines, Ontario

**SCHEDULE “B”**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. ●

AMOUNT \$ ●

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the “**Receiver**”) of the assets, undertakings and properties of 2710654 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”), appointed by Order of the Ontario Superior Court of Justice (the “**Court**”) dated the 28<sup>th</sup> day of November, 2024 (the “**Order**”) made in an application having Court file number CV-24-00062711-0000, 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 the rate of ● per cent above the prime commercial lending rate of Bank of ● from time to time.

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.



1. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
2. 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.
3. 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.
4. 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 ●, ●.

MNP LTD., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:

\_\_\_\_\_  
Name:

Title:

**PARADISE MEDIA, LTD.**  
Applicant

-and-

**2710654 ONTARIO INC.**  
Respondent

Court File No.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
**ST. CATHARINES**

**ORDER**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JEFF ROSEKAT (43352Q)**

Email: [jrosekat@dickinsonwright.com](mailto:jrosekat@dickinsonwright.com)  
Tel: (416) 644-2856

**TALYA R. BERTLER (90315H)**

Email: [tbertler@dickinsonwright.com](mailto:tbertler@dickinsonwright.com)  
Tel: 416-777-2394

Lawyers for the Applicant

# Appendix K



**WATEROUS HOLDEN AMEY HITCHON<sup>LLP</sup>**  
**L A W Y E R S**

January 17, 2025

**BY REGISTERED MAIL**

**388 Downie St. Inc.**  
1 King St. W, 10<sup>th</sup> Floor,  
Hamilton, Ontario,  
L8P 1A4

Attention: To whom it may concern

**RE: Sabbatical Holdings Inc. m/t 388 Downie St. Inc.**  
**Properties: 388 Downie Street, Stratford, ON.**  
**Our File No.**

P.O. Box 1510  
20 Wellington Street,  
Brantford, ON N3T 5V6  
t. (519) 759-6220  
f. (519) 759-8360  
www.waterousholden.com

We are solicitors for Sabbatical Holdings Inc. and as such have been instructed to formally notify you that the mortgage secured against the above noted property is in default as of January 15, 2025 and we hereby formally demand payment in full of \$1,141,327.40 being the current indebtedness on behalf of our client on or before January 28, 2025.

**Mortgage**

Principle	\$1,140,000.00
Interest as of January 17	\$1,327.40 (per diem of \$265.48)
<b>Total:</b>	<b>\$1,141,327.40</b>

You are required to pay to **WATEROUS, HOLDEN, AMEY, HITCHON, IN TRUST**, by certified cheque or bank draft, the total sum of \$1,141,327.40 plus applicable per diem on or before January 28, 2025 in accordance with the summary enclosed.

If your mortgage, as referred to above is not fully paid in accordance with this demand letter, an action may be commenced against you, either by way of power of sale, foreclosure or such other manner as we may advise, and our client instructs. If an action is taken, you will be responsible for all costs incurred on a substantial indemnity costs basis in accordance with the terms of your mortgages.

We are also enclosing the Notice of Intention to Enforce Security under subsection 244(1) of the *Bankruptcy and Insolvency Act*.

Please govern yourselves accordingly.

Yours truly,  
WATEROUS HOLDEN AMEY HITCHON LLP  
Per:



Madelaine I. Douglas

MID

Encls.

Email: [mdouglas@waterousholden.com](mailto:mdouglas@waterousholden.com)

Direct: (519) 759-6220ext 312.

## **NOTICE OF INTENTION TO ENFORCE SECURITY (Subsection 244(1) of the BIA)**

To: 388 Downie St. Inc. (an insolvent corporation\*)  
1 King St. W, 10<sup>th</sup> Floor, Hamilton  
Ontario, L8P 1A4

### **TAKE NOTE THAT:**

1. Sabbatical Holdings Inc., a secured creditor, intends to enforce its security on the insolvent person's property described below:

LT 17 PL 25 STRATFORD; PT LT 18 PL 25 STRATFORD AS IN R310549;  
STRATFORD

being PIN 53116-0113 LT

2. The security that is to be enforced is in the form of a first Charge/Mortgage in favour of Sabbatical Holdings Inc. registered on July 17, 2023, in the Land Registry Office for the Land Titles Division of Perth (No. 44) as Instrument Number PC215362 against real property shown on the said Charge/Mortgage and Notice.
3. As of January 15, 2025, the total amount of indebtedness secured by the Security is CAD \$1,140,000.00 exclusive of interest, enforcement costs, and other costs and expenses.
4. Sabbatical Holdings Inc., will not have the right to enforce the Security until after the expiry of the ten (10) day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

**\*NOTE:** No adverse conclusions should be made from the use of the words "insolvent person" and/or "insolvent corporation". This is merely a formality which is prescribed for this document.

DATED at Brantford this 17 day of January, 2025.

SABBATICAL HOLDINGS INC.

by their solicitors

WATEROUS HOLDEN AMEY HITCHON LLP

PER: 

Name: Madeline I. Douglas

Title: Associate Lawyer

# Appendix L



**NOTICE OF SALE UNDER MORTGAGE**  
*Mortgages Act*

**TO: SEE SCHEDULE "A" ATTACHED**

**TAKE NOTICE** that default has been made in payment of the money due under a certain mortgage dated 14<sup>th</sup> of February, 2024 made between

**UPGRADE HOUSING INC.**

Mortgagor

and

**LIFT CAPITAL INCORPORATED**

Mortgagee

on the security of PCL 3750 SEC SES LT 27, PLAN M125, EXCEPT COMM AT A POINT IN THE S EASTERN LIMIT OF SAID LT 27 DISTANT 5.7 FT FROM THE MOST SLY ANGLE OF SAID LT; THENCE S WLY ALONG SAID S EASTERN LIMIT 5.7 FT TO SAID MOST SLY ANGLE; THENCE N WLY ALONG SAID S WESTERN LIMIT OF SAID LT, 107.0 FT 6 IN TO THE MOST WLY ANGLE OF SAID LT; THENCE N ELY ALONG THE N WESTERN LIMIT OF SAID LT, 2.6 FT; THENCE S ELY IN A STRAIGHT LINE TO THE POC. PLAN ATTACHED TO 118472, NOW PCL 20288 S.E.S. CITY OF SUDBURY being PIN: 02132-0333 (LT), which mortgage was registered on 14<sup>th</sup> of February 2024, in the Land Registry Office for the Land Titles Division of Sudbury (No. 53) as Instrument No. SD492335 registered on the 14<sup>th</sup> day of February2024.

The property is municipally known as 267 LESLIE STREET, SUDBURY ONTARIO.

**AND WE HEREBY GIVE YOU NOTICE** that the amount now due on the mortgage for principal money, interest, and costs, respectively, are made up as follows:


For Principal	\$	177,209.43
For Interest to April 29, 2025	\$	60,768.30
For Contractual fees	\$	25,050.00
For costs for legal fees and disbursements on a solicitor and client basis to and including service of this notice only	\$	4,000.00
For harmonized sales tax payable on such legal fees and disbursements	\$	520.00
<b>TOTAL DUE AS AT April 29, 2025</b>	<b>\$</b>	<b>267,547.73</b>

(such amount for costs being up to and including the service of this notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 14.50% per cent per annum, on the principal, interest and costs hereinbefore mentioned, from April 29, 2025)

**AND UNLESS THE SAID SUMS ARE PAID** on or before the 9<sup>th</sup> day of June, 2025, LIFT CAPITAL INCORPORATED, shall sell the property covered by the said mortgage under the provisions of contained in it (or if applicable: under Part II of the *Mortgages Act*).

**THIS NOTICE** is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED: April 29, 2025



Signer ID: FXGGUMJUJU...

**LIFT CAPITAL INCORPORATED**

by his lawyers

FIJ Law LLP

50 West Pearce Street Suite 10

Richmond Hill, Ontario L4B 1C5

**ROBERT A. IZSAK**

Tel: (905) 763-3770 ext. 211

Fax: (905) 763-3772

Email: [rzsak@fijlaw.com](mailto:rzsak@fijlaw.com)

**SCHEDULE "A"**

**TO: UPGRADE HOUSING INC.**  
267 Leslie Street,  
Sudbury Ontario P3B 2T5

**AND TO: UPGRADE HOUSING INC.**  
1 King Street West, 10th Floor,  
Hamilton, Ontario, Canada,  
L8P 1A4

**AND TO: DYLAN SUITOR**  
267 Leslie Street,  
Sudbury Ontario P3B 2T5

**AND TO: ELEVATION REALTY NETWORK INC.**  
4-245 Wyecroft Road,  
Oakville, Ontario L6K 3Y6

# Appendix M

# Harrison Pensa

LAWYERS

**Michael Cassone**

Direct Line: (519) 661-6765  
mcassone@harrisonpensa.com

Assistant: Brianna O'Leary  
Direct Line: (519) 850-5592  
boleary@harrisonpensa.com

April 25, 2025

**SENT BY REGULAR AND REGISTERED MAIL**

Dylan Suitor  
1 King Street West 10 Floor  
Hamilton, ON L8P 1A4

Dylan Suitor  
902 Second Street West, Suite 101  
Cornwall, ON K6J 1H7

**RE: Your Indebtedness to Libro Credit Union Limited  
Our File No. 207125**

We act as the solicitors for Libro Credit Union Limited ("**Libro**").

You guaranteed the obligations owing by Mcwhirter-Horvath Properties Inc. (the "**Borrower**") to Libro pursuant to a guarantee dated October 19, 2022 (the "**Guarantee**").

The Borrower is indebted to Libro in the amount of \$189,086.77 as of April 14, 2025 (demand enclosed).

The Guarantee is payable on demand.

On behalf of Libro we hereby demand payment of the above noted sum plus interest and all legal costs incurred.

Please also take notice that Libro is claiming prejudgment and postjudgment interest pursuant to the terms of the Guarantee.

We have been instructed to commence whatever further legal proceedings are deemed necessary unless payment or arrangements satisfactory to our client are made within ten (10) days of the date hereof. No intermediate acts, negotiations or indulgences shall act as a waiver of Libro's rights, or demand as set out herein, unless so expressly stated in writing.

Harrison Pensa LLP

130 Dufferin Avenue, Suite 1101, P.O. Box 3237, London, Ontario N6A 4K3 Phone: 519.679.9660 Fax: 519.667.3362  
harrisonpensa.com

Please govern yourself accordingly.

Yours very truly,

**HARRISON PENZA** <sup>LLP</sup>

A handwritten signature in black ink, appearing to be 'MC' with a stylized flourish extending to the right.

Michael Cassone  
MEC/bol  
[Encl.]

# Harrison Pensa

LAWYERS

**Michael Cassone**

Direct Line: (519) 661-6765  
mcassone@harrisonpensa.com

Assistant: Brianna O'Leary  
Direct Line: (519) 850-5592  
boleary@harrisonpensa.com

April 25, 2025

## SENT BY REGULAR AND REGISTERED MAIL

Mcwhirter-Horvath Properties Inc.  
31 Woodhaven Court  
St. Thomas, ON N5P 3Z2

Mcwhirter-Horvath Properties Inc.  
1 King Street West, 10<sup>th</sup> Floor  
Hamilton, ON L8P 1A4

**RE: Your Indebtedness to Libro Credit Union Limited  
Our File No. 207125**

We act as the solicitors for Libro Credit Union Limited ("**Libro**").

You are indebted to Libro pursuant to the terms of Commitment Letter dated October 14, 2016, as amended (the "**Commitment Letter**").

The Commitment Letter establishes the following outstanding credit facility:

### Facility A – Commercial Mortgage Loan (the "**Loan**")

The Loan is secured by a mortgage registered as instrument CT134021 against title to the property known municipally as 207 Ross Street, St. Thomas, Ontario (the "**Mortgage**").

The amount due and owing by you to Libro is \$189,086.77 as of April 14, 2025, the particulars of which are as follows:

### The Loan

Amount owing as of April 14, 2025	\$189,086.77
-----------------------------------	--------------

Together with interest in the amount of \$21.81 per day from April 14, 2025 until the date of payment, in full.

(the "**Indebtedness**")

Please also take notice that Libro is claiming prejudgment and postjudgment interest pursuant to the terms of the Loan and the Mortgage.

Harrison Pensa LLP

130 Dufferin Avenue, Suite 1101, P.O. Box 3237, London, Ontario N6A 4K3 Phone: 519.679.9660 Fax: 519.667.3362  
harrisonpensa.com

The Loan and Mortgage are payable on demand. On behalf of Libro, we demand payment of the Indebtedness together with interest and all legal costs incurred to the date of payment in full.

We have been instructed to commence whatever further legal proceedings are deemed necessary unless payment or arrangements satisfactory to Libro are made within ten (10) days of the date hereof. No intermediate acts, negotiations or indulgences shall act as a waiver to Libro's rights, or demand as set out herein, unless so expressly stated in writing.

Enclosed please find a Notice of Intent to Enforce Security which is served upon you pursuant to the provisions of the Bankruptcy and Insolvency Act. Kindly date, sign and return the enclosed Waiver if you consent to early enforcement.

Please govern yourself accordingly.

Yours very truly,

**HARRISON PENSALLP**

A handwritten signature in black ink, appearing to be 'MC' with a stylized flourish extending to the right.

Michael Cassone  
MEC/bol  
[Encl.]



## NOTICE OF INTENTION TO ENFORCE SECURITY

(Section 244(1) of the *Bankruptcy and Insolvency Act*)

TO: **Mcwhirter-Horvath Properties Inc., an insolvent corporation**

TAKE NOTICE THAT:

Libro Credit Union Limited ("**Libro**") a secured creditor, intends to enforce its security on the property of the insolvent person described as:

207 Ross Street, St. Thomas, Ontario (the "**Property**")

The security that is to be enforced is in the form of:

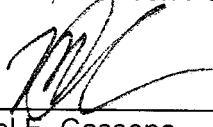
Mortgage registered against title to the Property as Instrument CT134021

The total amount of indebtedness secured by the security is \$189,086.77, plus interest as set out in the Loan and the Mortgage plus all costs of enforcement on a solicitor and client basis.

The secured creditor will not have the right to enforce its security until after the expiry of the 10 day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at London, Ontario this 25<sup>th</sup> day of April, 2025

**LIBRO CREDIT UNION LIMITED**  
by its solicitors, Harrison Pensa<sup>LLP</sup>

Per:   
\_\_\_\_\_  
Michael E. Cassone  
Harrison Pensa<sup>LLP</sup>  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2  
(519) 679-9660  
(519) 667-3362

**WAIVER**

Receipt of Notice of Intention to Enforce Security is acknowledged.

The undersigned hereby waives the notice period therein and consents to the immediate enforcement of the security.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2025

**MCWHIRTER-HORVATH PROPERTIES INC.**

\_\_\_\_\_  
**Name:**

**Title:**

I have the authority to bind the corporation

# Appendix N

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**BANK OF MONTREAL**

Applicant

- and -

**HAPPY TOWN HOUSING INC.**

Respondent

APPLICATION UNDER SUBSECTION 243(1) 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

**APPLICATION RECORD  
(Returnable June 3, 2025)**

May 9, 2025

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON N6A 5R8

**Tony Van Klink** LSO#: 29008M  
tvanklink@millethomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Bank of Montreal**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BANK OF MONTREAL**

Applicant

- and -

**HAPPY TOWNHOUSING INC.**

Respondent

APPLICATION UNDER SUBSECTION 243(1) 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

**TABLE OF CONTENTS**

<b><u>TAB</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO.</u></b>
<b>1</b>	Notice of Application returnable June 3, 2025	1 – 10
<b>2</b>	Affidavit of Lisa Jaques Lewis sworn May 8, 2025	11 – 24
<i>EXHIBITS</i>		
<i>A</i>	Corporate Profile Report	25 – 32
<i>B</i>	Credit Agreement	33 – 53
<i>C</i>	Mortgages	54 – 80
<i>D</i>	Parcel Register – Centre Street Property	81 – 86
<i>E</i>	Parcel Register – Rykert Street Property	87 – 90
<i>F</i>	Standstill Agreement	91 – 105
<i>G</i>	Standstill Extension Agreement	106 – 111
<i>H</i>	Lion’s Share receivership Order	112 – 117
<i>I</i>	Demand for Payment and Enforcement Notice	118 – 122
<i>J</i>	Notices of Sale	123 – 128
<i>K</i>	Bankruptcy Application against Suitor	129 – 137

<b><u>TAB</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO.</u></b>
<i>L</i>	Interim Receivership Order	138 – 153
<i>M</i>	Email dated April 14, 2025	154 – 156
<i>N</i>	Bankruptcy Order against Suitor	157 – 174
<i>O</i>	Property tax certificates	175 – 178
<b>3</b>	Receivership Order	179 – 197
<b>4</b>	Blackline to Model Receivership Order	198 – 221
<b>5</b>	Consent of msi Spergel Inc.	222 – 224

# TAB 1

Court File No.:  
CV-25-00090173-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N :



**BANK OF MONTREAL**

Applicant

- and -

**HAPPY TOWN HOUSING INC.**

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, c. c-43, AS AMENDED

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

☐ In person

☐ By telephone conference

☒ By video conference

at the following location

Via zoom videoconference – particulars to be provided by the Court.

on Tuesday, June 3, 2025 at 10:00 a.m., or as soon after that time as the Application can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.




IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 8, 2025

Issued by Harsimran K  
Sandhu

 Digitally signed by Harsimran K Sandhu  
Date: 2025.05.08 16:56:55 -04'00'

Local registrar

Address of 45 Main Street East  
court office Hamilton, ON L8N 2B7

TO: **SERVICE LIST**

## APPLICATION

1. The Applicant, Bank of Montreal (“**BMO**” or the “**Bank**”) makes application for an Order substantially in the form attached at Tab “3” (the “**Draft Order**”) of the Application Record, including,

- (a) if necessary, abridging the time for and validating service of this application and dispensing with further service of same;
- (b) appointing msi Spergel Inc. (“**Spergel**”) as receiver and manager (the “**Receiver**”), without security, of the real properties municipally known as 43 Centre Street, St. Catharines, Ontario and 34 Rykert Street, St. Catharines, Ontario (together, the “**Real Properties**”) and owned by the Respondent, Happy Town Housing Inc. (the “**Debtor**”) 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**”);
- (c) costs on a solicitor and client basis, plus HST, in accordance with the security and loan documents granted by the Respondent to BMO; and
- (d) such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:

- (a) The Debtor is an Ontario corporation and the owner of the Real Properties;

- (b) BMO extended loans (the “**Loans**”) to the Debtor to finance the Real Properties.  
As of April 30, 2025, \$628,189.01, plus accruing interest and costs, is owing to BMO on the Loans (the “**Indebtedness**”);
- (c) As security for the Indebtedness, BMO holds, among other things, a mortgage (the “**Mortgages**”) on each of the Real Properties;
- (d) Following default by the Debtor, in March 2024, BMO and the Debtor entered into a Standstill Agreement pursuant to which,
  - (i) the Debtor acknowledged its liability for the amounts then owing by it to BMO and the validity of the Mortgages;
  - (ii) BMO agreed to standstill from taking further recovery action until June 15, 2024; and
  - (iii) The Debtor agreed to repay its indebtedness to BMO by the end of the standstill period.
- (e) The standstill period was extended to August 15, 2024 but the Indebtedness was not repaid;
- (f) Subsequent to the expiry of the standstill period, the Debtor made efforts to sell the 43 Centre Street, St. Catharines property but was unable to complete the sale because of the registration of a court order on title to the property;
- (g) Ongoing bankruptcy and interim receivership proceedings affecting the principal of the Debtor are impeding the Debtor’s ability to sell the Real Properties;
- (h) The Debtor has defaulted in the repayment of the Loans;

- (i) Events of default have occurred under the loan agreement and Mortgages;
- (j) BMO has demanded payment of the Indebtedness from the Debtor, given the Debtor notice under s. 244 of the *BIA* of its intention to enforce its security against the Real Properties (the “NITES”) and issued notices of sale under mortgage in respect of the Real Properties;
- (k) The demand for payment has not been satisfied;
- (l) The 10-day notice period in the NITES has lapsed and the Mortgages are enforceable;
- (m) The Mortgages provide that upon the occurrence of an event of default, the Bank may commence proceedings for the appointment of a receiver and manager by the court;
- (n) The appointment of the Receiver is just and convenient;
- (o) Given the various and subsequent interests affecting the Real Properties, it is desirable for the sale of the Real Properties to be completed by a court appointed receiver under the supervision of the Court;
- (p) Spergel is a licensed trustee in bankruptcy and has consented to being appointed as Receiver by the Court;
- (q) Rules 1.04, 2.03, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*;
- (r) Section 243 of the *BIA* and Section 101 of the *CJA*;

- (s) Rules 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*; and
  - (t) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit of Lisa Jaques Lewis sworn May 8, 2025 and the exhibits thereto;
  - (b) the Consent of Spergel to act as receiver, if so appointed; and
  - (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

May 8, 2025

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Bank of Montreal**

**SERVICE LIST**

**TO: Happy Town Housing Inc.**  
1 King Street West, 10<sup>th</sup> Fl.  
Hamilton, ON L8P 1A4

**Thomas Dylan Suitor**  
Email: dylan@elevationrealty.ca

**AND TO: msi Spergel Inc.**  
1100 - 200 Yorkland Blvd.  
Toronto, ON M2J 5C1

**Philip Gennis, J.D., CIRP, LIT**  
Tel: 416.498.4325  
Email: pgennis@spergel.ca

*Proposed Receiver*

**AND TO: TDB Restructuring Limited**  
11 King St. West, Suite 700  
Toronto, ON M5H 4C7

**Jeffrey Berger, CPA, CA, CIRP, LIT**  
Tel: 647.726.0496  
Email: jberger@tdbadvisory.ca

*Interim Receiver and Bankruptcy Trustee of Thomas Dylan Suitor*

**AND TO: Fred Tayar & Associates PC**  
65 Queen Street West, Suite 1200  
Toronto, ON M5H 2M5

**Fred Tayar**  
Tel: 416.363.1800 x200  
Email: fred@fredtayar.com

*Lawyers for TDB Restructuring Limited*

**AND TO: The Fuller Landau Group Inc.**  
151 Bloor Street West, 12<sup>th</sup> Fl.  
Toronto, ON M5S 1S4

**Gary Abrahamson, CPA, CA, CIRP, LIT**  
Tel: 416.645.6524  
Email: gabrahamson@fullerllp.com

*Court Appointed Receiver of The Lion's Share Group Inc.*

AND TO: **Norton Rose Fulbright Canada LLP**  
222 Bay Street, Suite 3000  
Toronto, ON M5K 1E7

**Jennifer Stam**  
Tel: 416,202.6707  
Email: jennifer.stam@nortonrosefulbright.com

*Lawyers for The Fuller Landau Group Inc.*

AND TO: **Ministry of Finance Legal Services Branch**  
Michael Starr Building  
33 King Street West, 6<sup>th</sup> Floor  
P.O. Box 627, Station A  
Oshawa, ON L1H 8H5

Email: insolvency.unit@ontario.ca

AND TO: **Canada Revenue Agency**  
**c/o Department of Justice (CRA)**  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T7

Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

AND TO: **27662147 Ontario Inc.**  
1421 McNab Rd.  
Niagara-on-the Lake, ON L0S 1J0

*Mortgagee*

AND TO: **J&Y Bulk Enterprises Inc.**  
P.O. Box 33  
Dunnville, ON N1A 2X1

*Mortgagee*

AND TO: **Elevation Realty Network Inc.**  
4-245 Wyecroft Road  
Oakville, ON L6K 3Y6

*Mortgagee*

BANK OF MONTREAL

and

HAPPY TOWN HOUSING INC.

Applicant

Respondent

Court File No.:  
CV-25-00090173-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**NOTICE OF APPLICATION**

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

**Lawyers for the Applicant,  
Bank of Montreal**



# TAB 2

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BANK OF MONTREAL**

**Applicant**

- and -

**HAPPY TOWN HOUSING INC.**

**Respondent**

APPLICATION UNDER SUBSECTION 243(1) 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 LISA JAQUES LEWIS  
(Sworn May 8, 2025)**

I, Lisa Jaques Lewis, of the City of Windsor, Province of Ontario, MAKE OATH AND  
SAY:

**INTRODUCTION**

1. I am account manager with the Special Accounts Management Unit (“**SAMU**”) of the applicant, Bank of Montreal (the “**Bank**”). I am primarily responsible for monitoring the loans provided by the Bank to the debtor described in this affidavit.

2. The facts set forth in this affidavit are within my knowledge or determined from the face of documents attached as exhibits or held in the Bank’s records and from information and advice provided to me from others. When matters deposed to herein are based upon

information and advice from others, I have identified the source of my information and do verily believe same to be true.

## **BACKGROUND**

3. The Respondent, Happy Town Housing Inc. (“**Happy Town**” or the “**Debtor**”), is an Ontario corporation incorporated on March 1, 2019 with its registered head office in Cornwall, Ontario. A true copy of the corporation profile report for Happy Town is attached as **Exhibit A** to this affidavit.

4. The principal of Happy Town is Thomas Dylan Suitor (“**Suitor**”). Suitor is a real estate agent and investor and has personally guaranteed payment of Happy Town’s indebtedness to the Bank.

5. Happy Town is the registered owner of the real properties located at 43 Centre Street, St. Catharines (the “**Centre Street Property**”) and 34 Rykert Street, St. Catharines (the “**Rykert Street Property**”) and together with the Centre Street Property, the “**Real Properties**”).

6. The Bank made loans to Happy Town to finance the Real Properties. As of April 30, 2025, \$628,189.01, plus accruing interest and costs, is owing on the loans.

7. To secure the repayment of its indebtedness to the Bank, the Debtor provided the Bank with, among other security, mortgages over the Real Properties.

8. Following default by the Debtor, the Bank and the Debtor entered into a Standstill Agreement to permit the Debtor to sell the Real Properties and repay its indebtedness to the

Bank in an orderly manner. The standstill period expired on August 15, 2024 without the indebtedness owing to the Bank being repaid.

9. As explained below, ongoing insolvency proceedings affecting Sutor have impaired the Debtor's ability to sell the Real Properties and repay the Loans.

10. On September 19, 2024, the Bank demanded payment of its loans and gave notice to the Debtor under section 244 of the *Bankruptcy and Insolvency Act* (the "**Enforcement Notice**") of its intention to enforce its security. The statutory 10-day period provided for in the Enforcement Notice has lapsed and the Bank's security is enforceable.

11. In October 2024, the Bank issued notices of sale under mortgage for the Real Properties. However, for the reasons explained in this affidavit, the Bank now seeks to enforce its mortgages against the Real Properties by the appointment of a receiver and manager by the Court.

12. This affidavit is sworn in support of the Bank's application for an order appointing MSI Spergel Inc. ("**Spergel**") as receiver and manager by the court of the Real Properties. Spergel has consented to act as receiver and manager if so appointed.

### **THE INDEBTEDNESS**

13. Pursuant to a Letter of Agreement dated August 19, 2019 (the "**Credit Agreement**"), the Bank made a series of loans (the "**Loans**") to Happy Town to finance the Real Properties and other real properties owned by Happy Town. A true copy of the Credit Agreement is attached as **Exhibit B** to this affidavit.

14. By their terms, the Loans are payable on demand.

15. As of April 30, 2025, \$628,189.01 was outstanding and payable on the Loans, broken down as follows:

Loan Number	Principal	Interest	Total
3712-1669-002	\$ 257,227.70	\$ 13,612.01	\$ 270,839.71
3712-1669-004	\$ 339,398.67	\$ 17,950.63	\$ 357,349.30

## THE SECURITY

16. As security for its obligations to the Bank, the Debtor provided the Bank with, among other things, mortgages over the Real Properties, the particulars of which are as follows (the “**Mortgages**”):

- (a) charge/mortgage over the Centre Street Property securing the principal sum of \$396,000 registered in the Niagara North land registry office on September 6, 2019 as instrument NR520562; and
- (b) charge/mortgage over the Rykert Street Property securing the principal sum of \$334,000 registered in the Niagara North land registry office on September 6, 2019 as instrument NR520563.

17. Copies of the Mortgages (including standard charge terms 201607) are attached hereto as **Exhibit C**.

18. The Mortgages provide that upon the occurrence of an event of default under the Credit Agreement, the Bank may, among other things, initiate proceedings for the appointment of a receiver over the Real Properties.

19. Subject to any unpaid realty taxes, it is my understanding that the Bank has a first ranking charge over the Real Properties.

### **THE REAL PROPERTIES**

20. The Real Properties are single family dwellings that have been converted to multi-residential tenant use.

21. A true copy of the parcel register for the Centre Street Property is attached as **Exhibit D** to this affidavit.

22. A true copy of the parcel register for the Rykert Street Property is attached as **Exhibit E** to this affidavit.

23. As shown on the parcel registers, three mortgages are registered on title to the Real Properties after the Bank's Mortgages:

- (a) May 15, 2023 - \$127, 218 mortgage in favour of Cheryl Johnston-Klemens and 1000027984 Ontario Limited, which mortgage was assigned to 2762147 Ontario Inc. on July 12, 2024;
- (b) May 8, 2024 - \$80,500 charge in favour of J&Y Bulk Enterprises Inc.;  
and
- (c) May 21, 2024 - \$597,597 charge in favour of Elevation Realty Network Inc.

## **DEFAULT AND TRANSFER TO THE SAMU**

24. The SAMU manages accounts with a higher than acceptable level of risk. Responsibility for the management of the Debtor's loans with the Bank was transferred to the SAMU in the spring of 2024 after the Debtor failed to make required payments on the Loans.

25. At the time of the transfer to the SAMU, the Debtor was indebted to the Bank under three loans and the Bank held mortgages over three properties: the Real Properties and a third property located at 75 Queenston Street, St. Catharines (the "**Queenston Property**"). Since then, the Queenston Property was sold by the Debtor and one of the three loans has been repaid leaving only the two loans described previously in this affidavit as unpaid.

## **THE STANDSTILL AGREEMENT**

26. The Debtor, Suitor and the Bank entered into a Standstill Agreement dated March 14, 2024, a true copy of which is attached as **Exhibit F** to this affidavit. In the Standstill Agreement,

- (a) the Debtor acknowledged its indebtedness owing to the Bank and the validity of the Mortgages;
- (b) the Bank agreed to standstill from the enforcement of the Mortgages, and other security, until 5:00 p.m. on June 15, 2024 to allow the Debtor to continue with its efforts to sell or refinance the Real Properties; and
- (c) the Debtor agreed to repay the Loans by the end of the standstill period.

27. The Loans were not repaid by June 15, 2024 as agreed. The Standstill Period was extended to August 15, 2024. A true copy of the Standstill Extension Agreement is attached as **Exhibit G** to this affidavit.

28. The standstill period expired on August 15, 2024 and was not extended further.

#### **THE LION'S SHARE GROUP INC. RECEIVERSHIP**

29. On April 3, 2024, The Fuller Landau Group Inc. ("**FLG**") was appointed by the court as receiver of the property, assets and undertaking of The Lion's Share Group Inc. ("**Lion's Share**"), a private real estate investment and consulting company based in the Hamilton area.

30. On June 26, 2024, an order (the "**Order**") was made in the Lion's Share receivership proceeding that certain promissory notes issued by the Debtor constitute good and valid charges upon the Real Properties and the Queenston Property. A true copy of the Order is attached as **Exhibit H** to this affidavit.

31. As shown on the parcel registers for the Real Properties attached as Exhibit D and Exhibit E, the Order was registered against title to the Real Properties on August 8, 2024.

32. On August 21, 2024, the Debtor completed the sale of the Queenston Property. FLG as receiver of Lion's Share facilitated the completion of that sale by agreeing to lift the Order from title to the Queenston Property for the closing. Upon the closing of the sale of the Queenston Property one of the three loans owing to the Bank was repaid.

33. In early September 2024, the Debtor sought to complete the sale of the Centre Street Property, however, FLG declined to lift the Order from title to the Centre Street Property to permit the closing to occur. As a result, the sale did not proceed.



## **THE BANK DEMANDS PAYMENT AND BEGINS ENFORCEMENT ACTION**

34. With the registration of the Order on title to the Real Properties, the sale of the Real Properties by the Debtor was no longer assured.

35. On September 19, 2024, the Bank demanded payment of the Loans and served notice on the Debtor under s. 244 of the *Bankruptcy and Insolvency Act* (the “**Enforcement Notice**”) of the Bank’s intention to enforce the Mortgages and other security held by the Bank. True copies of the demand for payment and Enforcement Notice are attached as **Exhibit I** to this affidavit.

36. The Bank demanded payment of the Loans and served the Enforcement Notice so that it would be able to enforce the Mortgages and sell the Real Properties if necessary.

37. On October 1, 2024, notices of sale under mortgage (the “**Notices of Sale**”) were issued on behalf of the Bank in respect of the Centre Street Property and the Rykert Street Property. True copies of the Notices of Sale are attached as **Exhibit J** to this affidavit.

## **THE APPOINTMENT OF THE INTERIM RECEIVER**

38. On August 30, 2024, FLG as court appointed receiver of Lion’s Share issued an application for a bankruptcy order against Suitor. The bankruptcy application alleges that Suitor is indebted to Lion’s Share in the amount of \$2,671,342. A true copy of the bankruptcy application is attached as **Exhibit K** to this affidavit.

39. On October 7, 2024, an order (the “**Interim Receivership Order**”) was made in the bankruptcy proceeding appointing TDB Restructuring Limited as interim receiver (the “**Interim Receiver**”) of all of the property, assets and undertaking of Suitor. A true copy of the Interim Receivership Order is attached as **Exhibit L** to this affidavit.

40. Paragraphs 8 and 9 of the Interim Receivership Order prohibit the commencement of any proceeding or enforcement process in any court and stay the exercise of all rights and remedies against Sutor, certain real properties listed in the Interim Receivership Order, and “Related Entities” except with the written consent of the Interim Receiver or with leave of the Court. “Related Entities” is defined in the Interim Receivership Order as meaning “corporations or other entities associated with, related to or controlled by” Sutor.

41. Happy Town is a “Related Entity” within the meaning of the Interim Receivership Order. As shown on the parcel registers for the Real Properties attached as Exhibit D and Exhibit E, the Interim Receivership Order was registered against title to the Real Properties on November 15, 2024.

42. Despite being affected by the stay in paragraphs 8 and 9 of the Interim Receivership Order, the Bank was not provided with notice of the motion to obtain the Interim Receivership Order or notice of the Interim Receivership Order after it was made. The Interim Receivership Order only came to the Bank’s attention after counsel for Sutor brought it to the attention of the Bank’s lawyer in mid-November, 2024.

43. Upon becoming aware of the Interim Receivership Order, the Bank, through its legal counsel, sought the consent of the Interim Receiver to the enforcement by the Bank of the Mortgages. In an email dated April 14, 2025, the Interim Receiver provided its consent. Attached as **Exhibit M** to this affidavit is a true copy of that email.

44. On March 25, 2025, a bankruptcy order was made against Sutor, a copy of which is attached as **Exhibit N** to this affidavit. It is my understanding that Sutor has filed an appeal from the Bankruptcy Order although I am unaware of the status of that appeal.

## **DEFAULT UNDER THE CREDIT AGREEMENT AND SECURITY**

45. The Debtor was required to make monthly payments on the Loans. The last monthly payment on the Loans was made on January 31, 2024. Since then, a partial payment on the Loans was made in August 2024 from the sale proceeds of the Queenston Property.

46. No payments have been made on the Loans since the Bank demanded payment on September 19, 2024.

47. As of the date of this affidavit, the demand for payment has not been satisfied and no arrangement has been made for the repayment of the Loans.

48. Attached as **Exhibit O** to this affidavit are true copies of property tax certificates for the Real Properties. As shown on the certificates, as of April 10, 2025 there are unpaid taxes of \$15,938.45 owing on the Centre Street Property and unpaid taxes of \$41,210.72 owing on the Rykert Street Property.

## **THE BANK SEEKS TO ENFORCE ITS SECURITY AND APPOINT A RECEIVER**

49. The Debtor is in default of its obligations to the Bank and under the Mortgages, including (i) failing to make required monthly payments on the Loans, (ii) failing to repay the Loan as demanded, and (ii) failing to pay the property taxes for the Real Properties. The Mortgages provide that upon default the Bank may enforce the Mortgages.

50. The Bank has not been provided with anything to indicate that the Debtor is able, or will be able if more time is provided, to refinance or repay the Loans.

51. The Bank has lost confidence in the Debtor and Sutor and their ability or willingness to repay the Loans.

52. The Loans and Mortgages are in default. The Bank requests the assistance of this Honourable Court in the enforcement of the Bank's security rights and proposes that Spergel be appointed as receiver by the court.

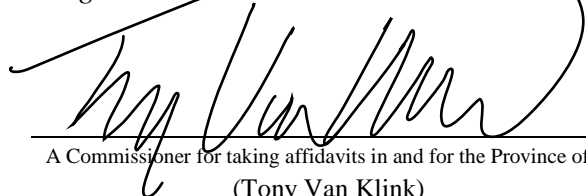
53. Given the ongoing interim receivership and bankruptcy proceeding affecting Sutor and the Real Properties, the registration of the Order and Interim Receivership Order on title to the Real Properties and the other encumbrances affecting the Real Properties, the Bank seeks to enforce its security by the appointment of a receiver by the court.


54. A receivership conducted under the court's supervision will,

- (a) facilitate the realization of the Real Properties in a stabilized environment under the supervision of the court;
- (b) give prospective purchasers confidence that they will obtain clear title via a vesting order from the court which will aid in maximizing the realization from the Real Properties; and
- (c) ensure that the Real Properties are realized upon and administered in accordance with the rights of the Bank and other stakeholders.

55. Spergel is a licensed trustee in bankruptcy and is prepared to act as receiver if so appointed by the court.

**SWORN/AFFIRMED BEFORE ME** via )  
video-conference with the deponent in the City )  
of Windsor, Ontario, and the Commissioner in )  
the Municipality of Thames Centre, Ontario this )  
8<sup>th</sup> day of May, 2025. This affidavit was )  
commissioned remotely and the declaration was )  
administered in accordance with Ontario )  
*Regulation 431/20*. )

  
A Commissioner for taking affidavits in and for the Province of Ontario.  
(Tony Van Klink)

Signed by:  
  
2DD3C9A4E577409...

Lisa Jaques Lewis

Attached are Exhibits A to O to the  
Affidavit of Lisa Jaques Lewis sworn the  
8th day of May, 2025.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "Mythia".

A Commissioner, Etc.

# EXHIBIT A



Ministry of Public and  
Business Service Delivery

## Profile Report

HAPPY TOWN HOUSING INC. as of May 06, 2025

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	HAPPY TOWN HOUSING INC.
Ontario Corporation Number (OCN)	2683607
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	March 01, 2019
Registered or Head Office Address	Attention/Care of Dylan Suitor, 902 Second Street West, Suite 101, Cornwall, Ontario, K6J 1H7, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.



Minimum Number of Directors 1  
Maximum Number of Directors 10

**Active Director(s)**

<b>Name</b>	THOMAS DYLAN SUITOR
<b>Address for Service</b>	902 Second Street West, Suite 101, Cornwall, Ontario, K6J 1H7, Canada
<b>Resident Canadian</b>	Yes
<b>Date Began</b>	March 01, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

**Active Officer(s)**

**Name**

**Position**

**Address for Service**

**Date Began**

THOMAS DYLAN SUITOR

President

902 Second Street West, Suite 101, Cornwall, Ontario, K6J  
1H7, Canada

March 01, 2019

**Name**

**Position**

**Address for Service**

**Date Began**

THOMAS DYLAN SUITOR

Secretary

902 Second Street West, Suite 101, Cornwall, Ontario, K6J  
1H7, Canada

March 01, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Corporate Name History

Name

HAPPY TOWN HOUSING INC.

Effective Date

March 01, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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#### Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

## Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: THOMAS DYLAN SUITOR	March 15, 2024
CIA - Notice of Change PAF: THOMAS DYLAN SUITOR	April 26, 2023
Annual Return - 2019 PAF: DYLAN SUITOR DANYCHUK - DIRECTOR	November 22, 2020
CIA - Initial Return PAF: THOMAS DYLAN SUITOR - DIRECTOR	October 01, 2019
BCA - Articles of Incorporation	March 01, 2019

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

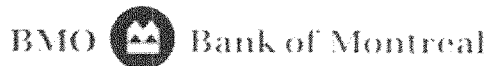
Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

# EXHIBIT B

# Letter of Agreement

34



6760 Morrison Street,  
Niagara Falls, ON  
L2E 6Z8

August 19, 2019

4-245 Wyecroft rd,  
Oakville, Ontario  
L6K 3Y6

Attention: Thomas Dylan Sutor

## LETTER OF AGREEMENT

Bank of Montreal ("**BMO**") is pleased to advise that it has authorized the following new credit Facilities for **HAPPY TOWN HOUSING INC.** (each, a "**Facility**" and collectively, the "**Facilities**") on the terms and conditions outlined in this Letter of Agreement. The Schedules listed below and attached form part of this Letter of Agreement.

Notwithstanding any other provision of this Letter of Agreement or in any applicable agreements, any Advance under any Facility hereunder will be made at BMO's sole discretion. Any unutilized portion of any Facility hereunder may be cancelled by BMO at any time without prior notice.

<b>Borrower(s):</b>	<b>HAPPY TOWN HOUSING INC.</b> <b>(the "Borrower")</b>
<b>Guarantor(s):</b>	<b>THOMAS DYLAN SUITOR,</b> <b>(the "Guarantor(s)")</b>
<b>Total Facility Limit:</b>	The total approved amount of all facilities shall not exceed \$2,260,000.00 at any time.



**Facility # 1**

**Facility Authorization:** \$396,000.00 CAD

**Type of Loan:** Real Estate Financing

**Purpose:** To refinance 43 Centre St., St. Catharines, ON L2R 3A8

**Maximum Amortization:** 300 months

<b>Advance Options</b> (each a "Loan" and collectively the "Loans")	<b>Cap Amount</b>	<b>Additional Details</b>
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**Demand Loan**  
**Non**  
**Revolving**

**Interest Rate:** Prime Rate plus **0.50%**. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of August 19, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Fixed Rate**  
**Term Loan**

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of August 19<sup>th</sup>, 2019 for a 2 year term is **4.16%** per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The

amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

*At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.*

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

## Facility # 2

**Facility Authorization:** \$334,000.00 CAD

**Type of Loan:** Real Estate Financing

**Purpose:** To purchase 34 Rykert St., St. Catharines, ON L2S 1Z1

**Maximum Amortization:** 300 months

Advance Options(each a "Loan" and collectively the "Loans")	Cap Amount	Additional Details

**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus **0.50%**. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of August 19, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Fixed Rate  
Term Loan**

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of August 19<sup>th</sup>, 2019 for a 2 year term is **4.16%** per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility

Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

*At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.*

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

### Facility # 3

**Facility Authorization:** \$352,000.00 CAD

**Type of Loan:** Real Estate Financing

**Purpose:** To purchase 75 Queenston St., St. Catharines, ON L2R 2Z1

**Maximum Amortization:** 300 months

**Advance Options**(each a "Loan" and collectively the "Loans")

**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus **0.50%**. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of August 19, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Fixed Rate  
Term Loan**

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of August 19<sup>th</sup>, 2019 for a 2 year term is **4.16%**

per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

*At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.*

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

#### **Facility # 4**

**Facility Authorization:** \$413,000.00 CAD

**Type of Loan:** Real Estate Financing

**Purpose:** To purchase 18 Linwood Ave., St. Catharines, ON L2R 1H3

**Maximum Amortization:** 300 months

**Advance Options**(each a "Loan" and collectively the "Loans")

**Cap Amount**

**Additional Details**

**Fixed Rate  
Term Loan**

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of August 19<sup>th</sup>, 2019 for a 2 year term is **4.16%** per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

**Demand Loan  
Non**

**Interest Rate:** Prime Rate plus **0.50%**. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of August 19, 2019 is 3.95%.

**Revolving**

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

*At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.*

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

**Facility # 5**

**Facility Authorization:** \$360,000.00 CAD

**Type of Loan:** Real Estate Financing

**Purpose:** To purchase 26 Vine St., St. Catharines, ON L2R 3X8

**Maximum Amortization:** 300 months

<b>Advance Options</b> (each a "Loan" and collectively the "Loans")	<b>Cap Amount</b>	<b>Additional Details</b>
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**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus **0.50%**. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of August 19, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

**Fixed Rate  
Term Loan**

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of August 19<sup>th</sup>, 2019 for a 2 year term is **4.16%** per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.



*At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.*

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

#### Facility # 6

**Facility Authorization:** \$380,000.00 CAD

**Type of Loan:** Real Estate Financing

**Purpose:** To purchase 8 Bruce St., St. Catharines, ON L2R 5S6

**Maximum Amortization:** 300 months

<b>Advance Options</b> (each a "Loan" and collectively the "Loans")	<b>Cap Amount</b>	<b>Additional Details</b>
---	-------------------	---------------------------

**Demand Loan  
Non  
Revolving**

**Interest Rate:** Prime Rate plus **0.50%**. Interest is calculated monthly in arrears, and payable monthly. The Prime Rate in effect as of August 19, 2019 is 3.95%.

**Repayment Terms:** Repayable on demand, provided that until demand is made by BMO:

Equal monthly principal payments and monthly interest, to be collected separately on the last day of each month. The amount of the payments will be determined based on the Loan amount, amortization and the interest rate in effect at the time of the Advance, as applicable.

Prepayments of principal in whole or in part are permitted, without penalty

**Fixed Rate  
Term Loan**

**Type of Loan:** Closed Term Loan

**Interest Rate:** To be determined at time of Advance. By way of reference only, the rate in effect as of August 19<sup>th</sup>, 2019 for a 2 year term is **4.16%** per annum; and the rate is valid for 14 days, and thereafter subject to change at BMO's sole discretion from time to time.

Notwithstanding the foregoing and unless otherwise prohibited by law, if the Loan is not paid in full with interest at the Maturity Date, the Loan

shall bear interest at a rate per annum equal to the sum of 3% plus the Prime Rate, determined and accrued daily and compounded monthly, not in advance, on the outstanding balance, from the Maturity Date and both before and after demand and both before and after judgment until actual payment in full.

**Repayment Terms:** Blended monthly payments comprising principal and interest to be paid monthly in arrears, on the last day of each month. The amount of the payment will be determined based on the Loan amount, term, amortization and the interest rate in effect at the time of the Advance.

The balance of the Loan then outstanding, together with all accrued and unpaid interest, shall be due and payable at the end of the term of the Loan.

**Prepayment Terms:** May not be prepaid, in whole or in part, prior to the maturity date.

**Maximum Term:** 5 years

**Maturity Date:** The last day of the month determined based on the term selected and the date of advance.

The aggregate of all outstanding Advances under this Facility shall at no time exceed the Facility Authorization for this Facility.

Each Loan under this Facility shall be a separate Loan, shall be non-revolving and shall be permanently reduced by any repayments or payments by the Borrower.

*At the request of the Borrower, the rate may be fixed up to 45 days before the Advance is made. If requested, the Borrower shall pay a refundable rate reservation fee of 1% of the principal amount of the Advance, which fee will be refunded to the Borrower on the day the Advance is made. In the event that the Advance is cancelled by the Borrower, such fee will not be refunded to the Borrower.*

The Borrower shall give to BMO 5 Business Days notice with respect to any request for a Loan under this Facility.

#### **Facility # 7**

<b>Facility Authorization:</b>	\$25,000.00 CAD
<b>Type of Loan:</b>	Operating Demand Loan
<b>Purpose:</b>	Operating Financing

- Interest Rate:** Prime Rate plus 0.50%. Interest is calculated monthly in arrears, and payable monthly on the last day of each month. The Prime Rate in effect as of August 19, 2019 is 3.95%.
- Repayments:** Repayable on demand
- Facility Fee:** \$25.00 per month. This is the fee for the loan and does not include other account fees. Refer to our Better Banking Guide for other applicable fees.
- Other Costs:** BMO is not obliged to permit the Advances under this Facility to exceed the Facility Authorization.

In the event the Advances under this Facility exceeds the Facility Authorization, the excess will bear interest at the Overdraft Rate, which is currently 21% per annum. BMO shall also be entitled to charge the Borrower a fee of 1% calculated on the amount of excess over the Facility Authorization or \$100, whichever is greater and a \$5 overdraft handling charge per item that creates or increases the excess.

#### Conditions Precedent to Advances:

BMO will not be required to make any advance to the Borrower unless and until each of the conditions set out below and in Schedule C has been completed to BMO's satisfaction

1. Completion of all loan and account documents and all Security as outlined below.
2. Compliance with all covenants, representations and warranties in all loan documents and Security.
3. Receipt of all information necessary for BMO to comply with all legal and internal requirements in respect of money laundering and proceeds of crime legislation, and "know your customer" requirements.
4. Satisfactory review by BMO of insurance policies issued to the Borrower and each Guarantor, if any, and compliance with any changes required to satisfy BMO's insurance requirements.
5. Confirmation of no material adverse change to the Borrower and the Guarantor and their respective property and assets since the latest financial statements provided to BMO.
6. Confirmation that no default or breach under this Letter of Agreement, any of the loan documents or the Security has occurred.
7. Confirmation that the \$11,791.01 balance owing on Dylan Suitor's 2018 Notice of Assessment has been paid in full.
8. Lease agreement for 34 Rykert St., St. Catharines, ON L2S 1Z1 to be on hand prior to funding, to show no material difference then rents claimed on Investor Property Spreadsheet. To be satisfactory to the Relationship Manager.
9. Receipt of satisfactory evidence of compliance with all applicable building and zoning by-laws and building and fire codes with regard to the use, development and occupancy of the Lands.
10. Confirmation that all real property taxes have been paid to date.
11. Receipt of satisfactory appraisal of the Lands from a CRA Appraiser and directed to BMO confirming a minimum market value of the following amounts for each property:
  - 1.1. 26 Vine St., St. Catharines, ON L2R 3X8 - ~~\$440,000.00~~
  - 1.2. 75 Queenston St., St. Catharines, ON L2R 2Z1 - ~~\$440,000.00~~
  - 1.3. 34 Rykert St., St. Catharines, ON L2S 1Z1 - ~~\$447,000.00~~ *\$417,000.00*

1.4. 18 Linwood Ave., St. Catharines, ON L2R 1H3 - **\$517,000.00**

1.5. 43 Centre St., St. Catharines, ON L2R 3A8 - **\$495,000.00**

**Covenants:**

As long as any Advance remains outstanding under or in connection with this Letter of Agreement, or so long as this Letter of Agreement remains in effect, the Borrower and any Guarantor will perform and comply with the covenants set out in Schedule A.

**Financial Covenants: N/A**

**Additional Covenants:**

In addition, the Borrower and each Guarantor, as applicable, will perform and comply with the following covenants:

1. The Borrower will not, without BMO's prior written consent, participate in any retrofit project or energy or water efficiency project affecting the Mortgaged Property which would have the effect of creating a lien, hypothec or other interest (including, but without limitation, a local improvement charge or similar interest) in the Mortgaged Property ranking, or potentially ranking, in priority to or *pari passu* with the interest of BMO in the Mortgaged Property, whether or not such project is sponsored or endorsed by a municipal or other government, governmental organization or utility.
2. No change in majority ownership to be made without the prior consent of BMO Bank of Montreal.
3. No additional debt outside the Normal course of business to be incurred by the Borrower.

**Security:**

Each of the following documents, instruments, agreements and other assurances (collectively, the "**Security**") shall be delivered to BMO prior to any advance of funds, in form and substance acceptable to BMO and its solicitors, acting reasonably:

1. Insurance on a "Fire and Extended Coverage" or "All Risks" basis must be arranged (with satisfactory evidence thereof delivered to BMO) satisfactory to BMO for the full insurable or replacement value with loss payable to BMO. The policy is to contain the Standard Mortgage Clause. A copy of the policy is to be provided for all of the following properties:
  - 1.1. 43 Centre St., St. Catharines, ON L2R 3A8
  - 1.2. 8 Bruce St., St. Catharines, ON L2R 5S6
  - 1.3. 26 Vine St., St. Catharines, ON L2R 3X8
  - 1.4. 75 Queenston St., St. Catharines, ON L2R 2Z1
  - 1.5. 34 Rykert St., St. Catharines, ON L2S 1Z1
  - 1.6. 18 Linwood Ave., St. Catharines, ON L2R 1H3
2. Delivery of an Up to Date or Existing survey/certificate of location of Mortgaged Property(ies) and all buildings located on the Mortgaged Property(ies), prepared by a surveyor licensed in the jurisdiction in which the property(ies) is/are located, which:
  - bears the name, address and signature of the surveyor, his official seal and licence number (any, or both), the date of a survey, and
  - includes a Surveyor's Certificate in the form and content required by the jurisdiction(s) in which the property is located
 OR
  - Title insurance from an Approved Title Insurance Provider naming BMO as beneficiary

For all of the following properties:

- 2.1. 43 Centre St., St. Catharines, ON L2R 3A8
  - 2.2. 8 Bruce St., St. Catharines, ON L2R 5S6
  - 2.3. 26 Vine St., St. Catharines, ON L2R 3X8
  - 2.4. 75 Queenston St., St. Catharines, ON L2R 2Z1
  - 2.5. 34 Rykert St., St. Catharines, ON L2S 1Z1
  - 2.6. 18 Linwood Ave., St. Catharines, ON L2R 1H3
3. Registered first-ranking All Indebtedness/Collateral Mortgage in the amount of \$396,000.00 registered over "CP 2 Pt LOT 170 RP 30R10352 Part 1" with the municipal address of 43 Centre Street, St. Catharines, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
  4. Assignment of Rents over 43 Centre Street, St. Catharines, ON, to be registered under PPSA.
  5. Registered first-ranking All Indebtedness/Collateral Mortgage in the amount of \$334,000.00 registered over "LT 1830 CP PL 2 GRANTHAM; ST. CATHARINES" with the municipal address of 34 Rykert Street., St. Catharines, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
  6. Assignment of Rents over 34 Rykert Street., St. Catharines, ON, to be registered under PPSA.
  7. Registered first-ranking All Indebtedness/Collateral Mortgage in the amount of \$413,000.00 registered over "LT 4 CY PL 142 GRANTHAM; ST. CATHARINES" with the municipal address of 18 Linwood Ave, St. Catharines, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
  8. Assignment of Rents over 18 Linwood Ave, St. Catharines, ON to be registered under PPSA.
  9. Registered first-ranking All Indebtedness/Collateral Mortgage in the amount of \$360,000.00 registered over "LT 4119 CP PL 2 GRANTHAM; ST. CATHARINES" with the municipal address of 26 Vine St., St. Catharines, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
  10. Assignment of Rents over 26 Vine St., St. Catharines, ON to be registered under PPSA.
  11. Registered first-ranking All Indebtedness/Collateral Mortgage in the amount of \$380,000.00 registered over "PT LT 65-66 CY PL 101 GRANTHAM AS IN RO362578; ST. CATHARINES" with the municipal address of 8 Bruce Street, St. Catharines, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
  12. Assignment of Rents over 8 Bruce Street, St. Catharines, ON to be registered under PPSA.
  13. Registered first-ranking All Indebtedness/Collateral Mortgage in the amount of \$388,000.00 registered over "LT 3667 CP LP 2 GRANTHAM; ST. CATHARINES" with the municipal address of 75 Queenston Street., St. Catharines, ON, (the "Mortgaged Property") with appropriate enabling resolutions and documentation
  14. Assignment of Rents over 75 Queenston Street., St. Catharines, ON to be registered under PPSA.
  15. \$2,260,000.00 Personal guarantee from THOMAS DYLAN SUITOR
  16. Registered General Security Agreement ("GSA")/Moveable Hypothec ("Hypothec") providing BMO with a security interest/hypothec over all present and after-acquired personal/movable property of the Borrower with a First ranking for CDN Accounts Receivable, Machinery and Equipment, Inventory/Warehouse Receipts

Any other documents, instruments or agreements as may be required by BMO, acting reasonably

**Reporting Requirements:**

<p><b>Annual</b></p>	<p>Annual accountant prepared, minimum Notice to Reader Financial Statements of the Borrower are to be submitted to your Relationship Manager within 120 days following the Fiscal Year-End.</p> <p>Rent Rolls, Confirmation of Insurance and confirmation that property taxes are up to date for:</p> <ul style="list-style-type: none"> <li>• 43 Centre Street, St. Catharines, Ontario L2R 3A8</li> <li>• 8 Bruce Street, St. Catharines, Ontario L2R 5S6</li> <li>• 26 Vine Street, St. Catharines, Ontario L2R 3X8</li> <li>• 75 Queenston Street, St. Catharines, Ontario L2R 2Z1</li> <li>• 34 Rykert Street St. Catharines, Ontario L2S 1Z1</li> <li>• 18 Linwood Ave., St. Catharines, Ontario L2R 1H3</li> </ul> <p>Updated personal net worth statement for Dylan Suitor with Tax Return and Notice of Assessment.</p> <p>Any other information the Bank may request from time to time.</p>
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A \$100 per month fee will be applied for non compliance with reporting requirements. The application of this fee does not waive the default condition.

Prompt notification of management letters, default notices, litigation, and any other material events

Satisfactory evidence that all taxes (including, without limitation, GST, HST, sales tax, withholdings, etc.) have been paid to date

**Representations and Warranties:**

The Borrower and each Guarantor, as applicable, makes the representations and warranties set out in Schedule B. All representations and warranties of the Borrower and any Guarantor, in addition to any representation or warranty provided in any document executed in connection with a Facility or any Security, shall be true and correct on the date of this Letter of Agreement and on the date of any Advance under a Facility.

**Noteless Advances:**

The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Facilities, and interest, fees and other amounts due in connection with the Facilities, in an account of the Borrower maintained by BMO, shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Facilities; provided that the obligation of the Borrower to pay or repay any indebtedness and liability in accordance with the terms and conditions of the Facilities set out in this Letter of Agreement shall not be affected by the failure of BMO to make such recording. The Borrower also hereby acknowledges being indebted to BMO for principal amounts shown as outstanding from time to time

in BMO's account records, and all accrued and unpaid interest in respect thereto, which principal and interest the Borrower hereby undertakes to pay to BMO in accordance with the terms and conditions applicable to the Facilities as set out in this Letter of Agreement.

#### **Fees:**

All costs and expense incurred by BMO in connection with this Letter of Agreement and the Facilities (including without limitation all legal, appraisal and consulting fees), and the enforcement of the Security are for the account of the Borrower.

A one-time fee ("Fee") of **\$7,500.00** is payable by the Borrower to BMO upon acceptance of this Letter of Agreement. This fee is deemed to be earned by BMO upon acceptance of this Letter of Agreement, to compensate for time, effort and expense incurred by BMO in authorizing these Facilities.

Credit renewal fees will be payable as advised by BMO annually; at the date of this letter such fees are estimated to be **\$1,500.00** and is subject to review each annually.

All fees payable under this Letter of Agreement shall be paid to BMO on the dates due, in immediately available funds. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

#### **Banking Services:**

The Borrower shall maintain its bank accounts, solely with BMO. Borrower acknowledges that the pricing (including interest, fees and charges) contained in this Letter of Agreement is contingent on the Borrower maintaining all of its operating accounts with BMO. In the event the Borrower does not do so, BMO may, at any time, in its sole discretion and without any requirement to obtain the agreement of, or provide prior notice to the Borrower, increase such pricing.

#### **Treasury & Payment Solutions:**

BMO will provide Non-Credit and treasury & payment solutions to the Borrower. A Treasury & Payment Specialist will contact the Borrower to implement BMO's On-Line Banking for Business platform (OLBB) and discuss additional treasury & payment features such as Electronic Funds Transfer (EFT), Wire Payments, BMO DepositEdge® and Moneris® Payment Processing Solutions. BMO's objective is to provide a package of services that are tailored to meet both the current and future needs of the Borrower in a cost efficient operating environment.

#### **Commercial Loan Insurance Plan:**

**You understand that unless you submit an Application for Commercial Loan Insurance Plan ("Application"), and it has been approved by Canada Life as the insurer, you will not be covered under the Commercial Loan Insurance Plan for any facilities under this Letter of Agreement and would be ineligible to submit a claim should you undergo an insurable event.**

#### **Counterparts; Electronic Transmissions:**

This agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. Any counterpart of this Agreement may be executed and circulated by facsimile, PDF or other electronic means and any counterpart executed and circulated in such a manner shall be deemed to be an original counterpart of this Agreement. All counterparts shall be construed together and shall constitute one and the same original agreement.

#### **Governing Law:**

Ontario and the federal laws of Canada applicable therein.

#### **Schedules:**

The following Schedules are attached to and form part of this letter of agreement:

Schedule A – Covenants

Schedule B – Representations and Warranties

Schedule C – Conditions Precedent to Advances

**BMO's Legal Counsel: TBD**

**Borrower's Legal Counsel: TBD**

In accepting this Letter of Agreement you acknowledge that if, in the opinion of BMO, a material adverse change in risk occurs including, without limitation, any material adverse change in the financial condition, business, property or prospects of the Borrower or any Guarantor, the rights and remedies of BMO, or the ability of the Borrower or any Guarantor to perform its obligations to BMO, any obligation to advance some or all of the above Facilities may be withdrawn or cancelled.

Please indicate your acceptance of the terms and conditions hereof by signing and returning one copy of this Letter of Agreement (and making payment of the above noted fee, if applicable) to BMO no later than August 23<sup>rd</sup>, 2019. If your acceptance of this Letter of Agreement is not received by BMO by that date, BMO shall not be required to proceed with any of the Facilities.

Yours truly,  
BANK OF MONTREAL

By:   
Name: AUSTIN MULDER  
Title: Relationship Manager

Accepted and agreed to this 19<sup>th</sup> day of August, 20 19

**BORROWER(S)**

**HAPPY TOWN HOUSING INC.**

Signature: 

Name: **Thomas Dylan Suitor**

Title: \_\_\_\_\_

**GUARANTOR(S)**

**THOMAS DYLAN. SUITOR**

Witness: 

Signature: 

Name: Austin Mulder

Name: **Thomas Dylan Suitor**



SCHEDULE ACOVENANTS

1. Payment of all indebtedness due to BMO in connection with this Letter of Agreement or any Facility
2. Maintenance of corporate existence and status, if applicable
3. Payment of all taxes when due (including, without limitation, corporate, GST, HST, sales tax and withholdings)
4. Compliance with all material laws, regulations and applicable permits or approvals (including health, safety and employment standards, labour codes and environmental laws)
5. Compliance with all material agreements
6. Use of proceeds to be consistent with the approved purpose
7. Notices of death of Borrower or Guarantor, default, material litigation, and regulatory proceedings to be provided to BMO on a timely basis
8. Access by BMO to books and records; BMO to have right to inspect property to which its security applies
9. No assumption of additional indebtedness or guarantee obligations by Borrower without prior written consent of BMO
10. No liens or encumbrances on any assets except with the prior written consent of BMO
11. No change of control or ownership of the Borrower without the prior written consent of BMO
12. No disposition of property or assets (except in the ordinary course of business) without the prior written consent of BMO
13. No material acquisitions, hostile takeovers, mergers or amalgamations without BMO's prior written approval
14. [For multiple currencies]:

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Letter of Agreement, it becomes necessary to convert into a particular currency (the "Judgment Currency") any amount due under this Letter of Agreement in any currency other than the Judgment Currency (the "Currency Due"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which BMO is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its principal office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by BMO of the amount due, the Borrower will, on the date of receipt by BMO, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by BMO on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by BMO is the amount then due under this Letter of Agreement in the Currency Due. If the amount of the Currency Due which BMO is so able to purchase is less than the amount of the Currency Due originally due to it, the Borrower and each Guarantor jointly and severally (solidarily) agree to indemnify BMO from and against any and all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Letter of Agreement, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by BMO from time to time and shall continue in full force and effect notwithstanding any judgment or order in respect of an amount due under this Letter of Agreement or under any judgment or order.

SCHEDULE BREPRESENTATIONS AND WARRANTIES

1. It has the corporate status, power and authority to enter into this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party, and to perform its obligations hereunder and thereunder
2. It is in compliance with all applicable laws (including environmental laws) and its existing agreements
3. Except as otherwise disclosed to BMO in writing, no consent or approval of, registration or filing with, or any other action by, any governmental authority is required in connection with the execution, delivery and performance by it of this Letter of Agreement and any agreement executed in connection with a Facility or any Security to which it is a party
4. All factual information that has been provided to BMO for purposes of or in connection with this Letter of Agreement or any transaction contemplated herein is true and complete in all material respects on the date as of which such information is dated or certified
5. No event, development or circumstance has occurred that has had or could reasonably be expected to have a material adverse effect on the business, assets, operations or condition, financial or otherwise, of the Borrower or any Guarantor
6. There is no material litigation pending against it or, to its knowledge, threatened against or affecting it
7. It has timely filed or caused to be filed all required tax returns and reports and has paid or caused to be paid all required taxes
8. It has good and marketable title to its properties and assets including ownership of and/or sufficient rights in any material intellectual property.
9. It has complied with all obligations in connection with any pension plan which it has sponsored, administered or contributed to, or is required to contribute to including, without limitation, registration in accordance with applicable laws, timely payment of all required contributions or premiums, and performance of all fiduciary and administration obligations
10. It maintains insurance policies and coverage that provides sufficient insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area by persons in the same or a similar business
11. It is not in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default under any loan, credit or security agreement, or under any material instrument or agreement, to which it is a party.

SCHEDULE CCONDITIONS PRECEDENT TO ADVANCES

1. Evidence of corporate (or other) status and authority
2. Completion and registration (as applicable) of all Security (defined herein) and other supporting documents
3. Completion of all facility documentation and account agreements and authorities, as applicable
4. Compliance with all representations and warranties contained herein
5. Compliance with all covenants (financial and non-financial) contained herein
6. No Event of Default (defined herein) shall have occurred and be continuing
7. Compliance with all laws (including environmental)
8. Payment of all fees and expenses
9. Receipt of all necessary material governmental, regulatory and other third party approvals including environmental approvals and certificates
10. Satisfactory due diligence (including, without limitation, anti-money laundering, proceeds of crime and "know your customer" requirements and procedures, environmental and insurance due diligence)
11. Repayment of all existing indebtedness (excluding permitted indebtedness), as applicable.
12. Satisfactory review of material contracts, as applicable
13. Satisfactory review by BMO (or, at BMO's option and the Borrower's expense, an insurance consultant) of insurance policies issued to the Borrower(s) and/or the Guarantor(s) and compliance with any changes required to satisfy BMO's insurance requirements
14. Disclosure of all material contingent obligations
15. Confirmation that no shares of the Borrower held by the principal shareholders have been pledged as security for any financial or other indebtedness
16. Corporate taxes of the Borrower and corporate/personal taxes of the Guarantor(s) are to be confirmed current and up-to-date
17. Satisfactory evidence that all other taxes payable by the Borrower and Guarantor(s) (including, without limitation, GST, HST, sales tax, and withholdings) have been paid to date
18. No material judgments or material legal action initiated against the Borrower and/or any Guarantor(s)
19. Any other document or action which BMO may reasonably require

# EXHIBIT C

Properties

PIN 46177 - 0033 LT Interest/Estate Fee Simple  
Description LT 1830 CP PL 2 GRANTHAM; ST. CATHARINES  
Address 34 RYKERT STREET  
ST. CATHARINES

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name HAPPY TOWN HOUSING INC.  
Address for Service 245 Wyecroft Road,  
Suite 4,  
Oakville, ON L6K 3Y6  
I, THOMAS DYLAN SUITOR, President, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

Chargee(s) Capacity Share

Name BANK OF MONTREAL  
Address for Service 20 Erb Street West, Suite 101,  
Waterloo, ON  
N2L 1T2

Provisions

Principal \$334,000.00 Currency CDN  
Calculation Period Monthly, not in advance  
Balance Due Date ON DEMAND  
Interest Rate Mortgagee's Prime Rate + 5% per annum  
Payments  
Interest Adjustment Date  
Payment Date ON DEMAND  
First Payment Date  
Last Payment Date  
Standard Charge Terms 201607  
Insurance Amount Full insurable value  
Guarantor

Signed By

Denise Patricia Kocsis 1 James Street South, 14 th floor, acting for Signed 2019 09 06  
PO Box 926 Depo Chargor(s)  
Hamilton  
L8N 3P9  
Tel 905-523-1333  
Fax 905-523-5878  
I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

SCARFONE HAWKINS LLP 1 James Street South, 14 th floor, PO 2019 09 06  
Box 926 Depo  
Hamilton  
L8N 3P9  
Tel 905-523-1333  
Fax 905-523-5878

Fees/Taxes/Payment

Statutory Registration Fee \$64.40  
Total Paid \$64.40

LRO # 30 Charge/Mortgage

Received as NR520563 on 2019 09 06 at 16:07

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

<b>File Number</b>
--------------------

Chargee Client File Number : 19R1759

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Properties

PIN                    46220 - 0112    LT                    Interest/Estate    Fee Simple

Description        PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES

Address            43 CENTRE STREET

                         ST. CATHARINES

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name                    HAPPY TOWN HOUSING INC.

Address for Service    245 Wyecroft Road,

                         Suite 4,

                         Oakville, ON L6K 3Y6

I, THOMAS DYLAN SUITOR, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
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Name	BANK OF MONTREAL
Address for Service	20 Erb Street West, Suite 101,
	Waterloo, ON
	N2L 1T2

Provisions

Principal	\$396,000.00	Currency	CDN
Calculation Period	Monthly, not in advance		
Balance Due Date	ON DEMAND		
Interest Rate	Mortgagee's Prime Rate + 5% per annum		
Payments			
Interest Adjustment Date			
Payment Date	ON DEMAND		
First Payment Date			
Last Payment Date			
Standard Charge Terms	201607		
Insurance Amount	Full insurable value		
Guarantor			

Signed By

Denise Patricia Kocsis	1 James Street South, 14 th floor,	acting for	Signed	2019 09 06
	PO Box 926 Depo	Chargor(s)		
	Hamilton			
	L8N 3P9			

Tel            905-523-1333

Fax            905-523-5878

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

SCARFONE HAWKINS LLP	1 James Street South, 14 th floor, PO	2019 09 06
	Box 926 Depo	
	Hamilton	
	L8N 3P9	

Tel            905-523-1333

Fax            905-523-5878

Fees/Taxes/Payment

Statutory Registration Fee	\$64.40
Total Paid	\$64.40



LRO # 30 Charge/Mortgage

Received as NR520562 on 2019 09 06 at 16:07

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

File Number

Chargee Client File Number : 19R1759

**BANK OF MONTREAL**  
**ONTARIO**  
**STANDARD CHARGE TERMS**  
**ALL INDEBTEDNESS MORTGAGE**  
**(COMMERCIAL/FARM)**

Filing Number: 201607

he following set of standard charge terms (together with the schedule attached hereto, the “**Standard Charge Terms**”) shall be deemed to be included in each mortgage or charge in which it is referred to by its filing number as provided in section 9 of the *Land Registration Reform Act*, R.S.O. 1990, except to the extent that the provisions of the Standard Charge Terms are excluded or varied by such mortgage or charge.

**A. TABLE OF CONTENTS**

A.	TABLE OF CONTENTS.....	1
B.	DEFINITIONS.....	3
C.	OPERATION OF THE MORTGAGE .....	4
	1. Charge of Mortgaged Land.....	4
	2. Repayment of Principal on Demand.....	4
	3. Restriction on Voluntary Prepayments.....	4
	4. Calculation and Payment of Interest.....	4
	5. Continuing Security. The Mortgage shall be continuing security in favour of the Mortgagee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is: .....	5
	6. Divided Parts of Mortgaged Land.....	5
	7. Application of Amounts Paid.....	5
	8. Discharge of Mortgage.....	5
	9. Consolidation of Mortgages.....	5
D.	COVENANTS, REPRESENTATIONS AND WARRANTIES OF MORTGAGOR .....	5
	1. Payment of Principal and Interest.....	5
	2. Observance and Performance of Other Obligations.....	5
	3. Payment of Taxes.....	6
	4. Good Title and Free From Encumbrances.....	6
	5. Insurance.....	6
	6. Payment of Other Encumbrances.....	6
	7. Payment of Expenses.....	7
	8. Compliance with Laws.....	7
	9. Maintain in Good Repair and Avoid Waste.....	7
	10. Environmental Representation and Indemnity.....	7
	11. No Alterations or Change in Use.....	7
	12. No Unapproved Charge or Encumbrance by Mortgagor.....	8
	13. Change in Ownership or Spousal Status.....	8
	14. Expropriation.....	8
	15. Power of Attorney.....	8
	16. Further Assurances.....	8
	17. Business Purposes Only.....	8
	18. No Registration of Condominiums or Strata Title Developments.....	8
	19. Delivery of Information.....	8
	20. No Litigation or Other Proceedings.....	8
	21. Mortgagor a Canadian Resident.....	9
	22. Good Management of Mortgaged Land.....	9
	23. Abutting Real Property.....	9
	24. Deemed Covenants Excluded.....	9
	25. Defeasance Provisions Excluded.....	9
E.	MORTGAGE OF LEASEHOLD INTEREST .....	9
	1. Representations and Warranties.....	9
	2. Covenants Relating to Lease.....	9
	3. Last Day of Term Excepted.....	10
	4. Charge by way of Sublease.....	10
	5. Leasehold Interests.....	11

F.	ASSIGNMENT OF LEASES AND RENTS.....	11
1.	Assignment. ....	11
2.	Separate Assignments. ....	11
3.	Collection by Mortgagor before Default.....	11
4.	No Liability of Mortgagee and Indemnity by Mortgagor. ....	11
5.	Re-assignment. ....	11
6.	Application by Mortgagee. ....	11
7.	Not Mortgagee in Possession. ....	11
G.	CONDOMINIUM OR STRATA TITLE DEVELOPMENT PROVISIONS .....	11
1.	Compliance with Requirements. ....	11
2.	Common Expense Payments.....	11
3.	Right of Mortgagee to Pay. ....	12
4.	Voting by Mortgagee. ....	12
H.	MORTGAGE AS SECURITY FOR A GUARANTEE .....	12
I.	DEFAULT .....	12
J.	REMEDIES OF MORTGAGEE .....	13
1.	Acceleration and Termination of Obligation to Extend Credit.....	13
2.	Right of Entry. ....	13
3.	Sale.....	14
4.	Sale or Lease. ....	14
5.	Attornment. ....	15
6.	Right to Distrain.....	15
7.	Judgments and Non-Merger.....	15
8.	Separate Remedies. ....	15
9.	Application of Proceeds and Mortgagor's Liability for Deficiency. ....	15
10.	Mortgagor's Insolvency Proceedings. ....	15
K.	APPOINTMENT OF A RECEIVER.....	16
1.	Appointment. ....	16
2.	Powers of Receiver. ....	16
3.	Identity of Receiver and Removal. ....	17
4.	Receiver as Agent of Mortgagor.....	17
5.	Receivership Expenses.....	17
6.	No Enquiries Required.....	17
L.	MISCELLANEOUS .....	18
1.	Records of Mortgagee.....	18
2.	Revolving Line of Credit. ....	18
3.	Assignment and Syndication.....	18
4.	General Indemnity by Mortgagor. ....	18
5.	Effect of Sale.....	18
6.	Dealings with the Mortgagor and Others.....	18
7.	Amendments to Mortgage.....	19
8.	Waiver.....	19
9.	Discharge or Assignment.....	19
10.	No Obligation to Advance. ....	19
11.	Appointment of Attorney Irrevocable.....	19
12.	Other Security. ....	19
13.	Financing Statement.....	19
14.	Notice.....	19
15.	Different Currencies.....	19
16.	Judgment Currency. ....	19
17.	Foreign Exchange Rate Determinations. ....	20
18.	Governing Law. ....	20
19.	Time of Essence. ....	20
20.	Severability. ....	20
21.	Interpretation.....	20
22.	Titles. ....	20
23.	Joint and Several Obligations. ....	20
24.	Schedule.....	20
25.	Equivalent Rate Information.....	20
26.	Successors and Assigns.....	20

## B. DEFINITIONS

In this set of Standard Charge Terms and in each Mortgage, the following terms shall have the following meanings:

1. **“Applicable Rate”** means:
  - (a) the applicable interest rate specified by the applicable note or agreement delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee; or
  - (b) if the interest rate referred to in subsection (a) is not so specified, the applicable interest rate specified by the Mortgage.
2. **“Controlling Entity”** means any corporation or other entity which on the date of the Mortgage beneficially owned, directly or indirectly, shares, other securities or other equity interests issued by the Mortgagor or a Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor.
3. **“Default”** means a default referred to in section I.
4. **“Guarantor”** means a person who guaranteed payment of all or any Indebtedness.
5. **“Indebtedness”** means all present and future indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee whether direct or indirect, absolute or contingent, or revolving or non-revolving, whether incurred by the Mortgagor alone or together with any other debtor or debtors and whether incurred pursuant to the provisions of the Mortgage or otherwise including all principal, interest, guarantee liabilities, letter of credit indemnity liabilities, bankers’ acceptance indemnity liabilities, fees and expenses now or hereafter owing by the Mortgagor to the Mortgagee.
6. **“Insolvency Proceeding”** means a proceeding commenced under the *Companies’ Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any other similar statute.
7. **“Lease”** means a lease, offer to lease or other similar agreement of or with respect to the Mortgaged Land in favour of, or held by the Mortgagor as tenant and referred to in the Mortgage, as such lease, offer to lease or other similar agreement is amended or replaced from time to time.
8. **“Mortgage”** means the applicable registered mortgage or charge (as amended from time to time) in which this set of Standard Charge Terms is incorporated by reference to its filing number (including all Schedules thereto), includes any such mortgage or charge registered electronically or otherwise and includes such mortgage or charge whether or not any provision of the Standard Charge Terms is excluded or varied.
9. **“Mortgaged Land”** means the real property described in the Mortgage, all appurtenances thereto and all estates and interests therein, and includes all buildings, plant, machinery, crops, erections and improvements, fixed or otherwise, present or future, built, grown, placed or put thereon including all fences, heating equipment, plumbing equipment, antennae, radiators, mirrors, air-conditioning equipment, ventilating equipment, fire alarm and protective systems, lighting and lighting fixtures, hay racks, barn fixtures, milking machine equipment, water tanks, pumps and windmills, water bowls and pipes, feed boxes, litter carriers and tracks, mobile homes affixed to the real property, furnaces, boilers, oil burners, stokers, water heating equipment, cooking and refrigeration equipment, window blinds, floor coverings, storm windows, storm doors, window screens, door screens, shutters and awnings, all apparatus and equipment appurtenant thereto, and all other fixtures and accessions of any kind or nature.
10. **“Mortgagee”** means the mortgagee or chargee referred to in the Mortgage and its successors and assigns.

11. **“Mortgagee’s Prime Rate”** means the fluctuating annual rate of interest determined by Bank of Montreal from time to time as the reference rate it will use to determine rates of interest payable by borrowers from Bank of Montreal of Canadian dollar loans made in Canada and designated by Bank of Montreal as its prime rate.
12. **“Mortgagor”** means the person or persons identified as the mortgagor or chargor in the Mortgage and his, her, its or their respective heirs, executors, administrators, personal representatives, successors and assigns.
13. **“Other Encumbrances”** means all statutory liens, construction liens, mechanics’ liens, builders’ liens, other liens, executions, mortgages, charges, and other encumbrances which charge or otherwise affect or could affect the Mortgaged Land but excludes the Mortgage.
14. **“Permitted Prior Mortgage”** means a mortgage or charge of the Mortgaged Land which ranks in priority to the Mortgage and which the Mortgagee has approved in writing.
15. **“Receiver”** means a receiver, receiver and manager or other similar person.
16. **“Schedule”** means a schedule to the Mortgage.
17. **“Taxes”** means all taxes, rates and assessments, municipal, provincial, federal or otherwise, with respect to the Mortgaged Land.

### C. OPERATION OF THE MORTGAGE

1. *Charge of Mortgaged Land.* In consideration of other valuable consideration and a loan advance made or other credit extended by the Mortgagee to the Mortgagor (the receipt and sufficiency of which are acknowledged by the Mortgagor), the Mortgagor hereby mortgages and charges the Mortgaged Land to and in favour of the Mortgagee as security for payment to the Mortgagee of all Indebtedness and as security for the observance and performance by the Mortgagor of all other obligations of the Mortgagor pursuant to or in respect of the Mortgage or the Standard Charge Terms. Subject to the provisions of the Mortgage, the Mortgagor releases to the Mortgagee, all the Mortgagor’s claims upon the Mortgaged Land.
2. *Repayment of Principal on Demand.* The Mortgagor shall pay all Indebtedness to the Mortgagee on demand by the Mortgagee for payment.
3. *Restriction on Voluntary Prepayments.* The Mortgagor shall not be entitled to prepay voluntarily any principal amount (including any principal amount owing with respect to a revolving line of credit or a demand loan) except to the extent agreed to by the Mortgagee in writing.
4. *Calculation and Payment of Interest.* The Mortgagor shall pay to the Mortgagee when due interest payable by the Mortgagor on each part of the Indebtedness (including interest on overdue interest) at the Applicable Rate which applies to such part of the Indebtedness. Interest shall accrue on each part of the Indebtedness from the date such part is incurred to the date such part is paid to the Mortgagee in full. Interest shall, both before and after Default, be calculated and payable monthly not in advance on the first day of each month unless otherwise agreed by the Mortgagor and the Mortgagee in writing. Whenever there is more than one Applicable Rate, the Applicable Rate referred to in sections D, E, G, J and K shall, unless otherwise agreed by the Mortgagee in writing, be the higher or highest of such Applicable Rates.

5. *Continuing Security.* The Mortgage shall be continuing security in favour of the Mortgagee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is:

- (a) any change in the nature, state or form of any account between the Mortgagor and the Mortgagee;
- (b) any new advance by the Mortgagee to the Mortgagor, whether by way of loan, discount, the drawing of a cheque against an account of the Mortgagor or otherwise;
- (c) any discount or acceptance by the Mortgagee from or for the Mortgagor of any note, bill of exchange or other negotiable instrument or commercial paper;
- (d) any credit of any amount to any account of the Mortgagor by reason of deposit of moneys or otherwise; or
- (e) any renewal, replacement, substitution or alteration of any note, bill of exchange or other negotiable instrument or other commercial paper from time to time held by the Mortgagee or any reduction, satisfaction, payment, release or discharge thereof or of any other security therefor.

Nothing herein shall prejudice any of the Mortgagee's rights pursuant to or in respect of any note, bill of exchange, other agreement or other security now or hereafter held by the Mortgagee.

6. *Divided Parts of Mortgaged Land.* Every part of the Mortgaged Land into which the Mortgaged Land may hereafter be divided by a plan of subdivision or otherwise shall continue to be charged with payment of all Indebtedness but the Mortgagee may discharge any part or parts of the Mortgaged Land with or without sufficient consideration and without releasing the Mortgagor from the Mortgage and no person shall have any right to require the Indebtedness to be apportioned between or among such parts.

7. *Application of Amounts Paid.* Any and all amounts received by the Mortgagee with respect to Indebtedness before a Default shall, unless otherwise specified by the Mortgagee in writing, be applied firstly to reduce compound interest, secondly to reduce interest (other than compound interest), thirdly to reduce principal and fourthly to reduce any other Indebtedness. Any and all amounts received by the Mortgagee after a Default (including any and all amounts received from any security held by the Mortgagee) shall be applied by the Mortgagee in the manner determined by the Mortgagee in its sole discretion.

8. *Discharge of Mortgage.* If the Mortgagor shall duly pay to the Mortgagee all Indebtedness and the Mortgagee is not then obligated to extend any credit to the Mortgagor, the Mortgagor may request from the Mortgagee a discharge of the Mortgage and, upon delivery by the Mortgagee to the Mortgagor of a discharge of the Mortgage, the Mortgage shall terminate and cease to operate; provided that the Mortgage shall not terminate or cease to operate while any Indebtedness remains unpaid or while the Mortgagee is obligated to extend any credit to the Mortgagor only because, at any prior time or times, all Indebtedness had been paid in full. The Mortgagee shall not be obligated to deliver any partial discharge of the Mortgage.

9. *Consolidation of Mortgages.* To the extent permitted by law, the doctrine of consolidation shall apply with respect to *inter alia* the Mortgage.

#### **D. COVENANTS, REPRESENTATIONS AND WARRANTIES OF MORTGAGOR**

1. *Payment of Principal and Interest.* The Mortgagor shall pay to the Mortgagee when due all Indebtedness without deduction or set-off of any kind. The Mortgagor expressly agrees not to fail to pay any Indebtedness when due and not to reduce the amount of any due payment of any Indebtedness as a result, or in respect of any existing or future claim by the Mortgagor against the Mortgagee or against any other person whether such claim relates to any or all Indebtedness, the Mortgage, any other agreement between the Mortgagor and the Mortgagee, any other transaction or any other agreement or matter whatsoever.

2. *Observance and Performance of Other Obligations.* The Mortgagor shall duly and punctually observe and perform all the Mortgagor's existing and future obligations pursuant to

the Mortgage and all the Mortgagor's existing and future obligations pursuant to any and all other existing and future agreements delivered by the Mortgagor to the Mortgagee or between the Mortgagor and the Mortgagee.

3. *Payment of Taxes.* The Mortgagor shall promptly pay all Taxes as they become due and, within one month after the date fixed for the payment of the last installment of Taxes in each year, shall deliver to the Mortgagee a receipted tax bill showing payment in full of all such Taxes payable during such year. If the Mortgagor fails to pay any Taxes as they become due, the Mortgagee may, at its option, pay the whole or any part of such Taxes. The amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

4. *Good Title and Free From Encumbrances.* The Mortgagor represents and warrants to the Mortgagee that the Mortgagor is the legal and beneficial owner of, and has good, absolute and indefeasible title and estate in fee simple to the Mortgaged Land (or the leasehold interest therein if section E applies), free of any Other Encumbrances except any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears, public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land or other encumbrances consented to by the Mortgagee in writing, and free of any reservations, limitations, provisos or conditions whatsoever except those contained in the original grant thereof, if any, from the Crown; the Mortgagor has good right, full power and lawful and absolute authority to mortgage and charge the Mortgaged Land (or, if section E applies, its leasehold interest therein) to the Mortgagee in accordance with the provisions of the Mortgage.

5. *Insurance.* The Mortgagor shall maintain, in form, substance and amount and with insurers satisfactory to the Mortgagee, all insurance required by the Mortgagee from time to time with respect to the Mortgaged Land (including boiler, property, public liability, rental, environmental and business interruption insurance and insurance covering all crops grown on the Mortgaged Land insuring such crops against damage by hail and against perils covered by all-risk crop insurance). The Mortgagor shall deliver to the Mortgagee, from time to time at the Mortgagee's request, certificates of insurance and certified copies of such insurance policies showing all loss payable to the Mortgagee as first mortgagee (subject to the interests of the holder of any Permitted Prior Mortgage) and loss payee and containing a mortgage clause satisfactory to the Mortgagee. As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns to the Mortgagee all the Mortgagor's present and future interests in and to all such present and future insurance policies and all proceeds therefrom. The Mortgagor shall not repair any damage using proceeds of any insurance without the Mortgagee's prior written consent and the Mortgagee may, at its discretion, apply any and all insurance proceeds to reduce Indebtedness. If the Mortgagor fails to maintain insurance required by the Mortgagee, the Mortgagee may arrange insurance with respect to the Mortgaged Land, the Mortgagor shall pay to the Mortgagee, on demand by the Mortgagee, all amounts paid by the Mortgagee to effect such insurance and the Mortgagor shall pay interest thereon at the Applicable Rate; and all such amounts owing by the Mortgagor shall be part of the Indebtedness and secured by the Mortgage. The Mortgagor shall, forthwith on the occurrence of any loss or damage, furnish at the Mortgagor's own expense all necessary proofs and do all necessary acts to enable the Mortgagee to obtain payment of the insurance monies. Any insurance monies received may, at the option of the Mortgagee, to the extent permitted by law, be applied to rebuild or repair the premises on the Mortgaged Land or be paid to the Mortgagor or any other person appearing by the registered title to be or to have been the owner of the Mortgaged Land, or be applied to pay Indebtedness whether or not then due, despite any law, equity or statute to the contrary. The Mortgagor, to the extent permitted by law, hereby waives any statutory or other right it may have to require any insurance proceeds to be applied in any particular manner.

6. *Payment of Other Encumbrances.* The Mortgagor shall promptly pay when due all amounts now or hereafter owing pursuant to or with respect to any Other Encumbrances and shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any Other Encumbrances when due, the Mortgagee may, at its option, pay the whole or any part of any present or future Other Encumbrances. The amounts so paid shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. In the event the Mortgagee pays any Other Encumbrance, it shall be entitled to all the equities, rights and securities of the person or persons so paid and to obtain an assignment of

such Other Encumbrance so paid and of any right to payment and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit to do so.

7. *Payment of Expenses.* The Mortgagor shall, on demand by the Mortgagee, pay all costs, charges, expenses (including legal fees as between a solicitor and his or her own client), commissions and fees which may be incurred by the Mortgagee in negotiating any credit or credits secured by the Mortgage, investigating the title to the Mortgaged Land, preparing and registering the Mortgage and other documents, administering any credit or credits extended by the Mortgagee to the Mortgagor, inspecting the Mortgaged Land, collecting any Indebtedness, taking any proceeding in connection with or to collect any Indebtedness, taking and maintaining possession of the Mortgaged Land, maintaining and repairing the Mortgaged Land, and taking any other enforcement proceedings. The Mortgagor shall deliver to the Mortgagee, at the Mortgagee's request, evidence showing payment in full of all such amounts. If the Mortgagor fails to pay any such amounts as they become due, the Mortgagee may, at its option, pay any such amounts and the amounts so paid by the Mortgagee shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

8. *Compliance with Laws.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, the Mortgagor has complied with, and the Mortgagor agrees that it shall comply with all laws, by-laws and regulations affecting the Mortgaged Land and all orders and decisions of any governmental authority, governmental agency or court having jurisdiction affecting the Mortgaged Land (including all such laws, by-laws, regulations, orders and decisions relating to the environment or to residential or other property, including those relating to the amount of rent charged by the Mortgagor with respect to any part of the Mortgaged Land). The Mortgagor shall, at the Mortgagor's expense, promptly and in good and workmanlike manner make all improvements, alterations, clean-ups and repairs and effect any change in use that may be required from time to time to so comply.

9. *Maintain in Good Repair and Avoid Waste.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage, all buildings, erections, equipment, machinery and improvements on the Mortgaged Land are in good condition and repair and that all noxious weeds have been eradicated from the Mortgaged Land. The Mortgagor shall maintain all buildings, erections, equipment, machinery and improvements on the Mortgaged Land in good condition and repair to the satisfaction of the Mortgagee, shall eradicate all noxious weeds from the Mortgaged Land and shall not permit waste to be committed or suffered on the Mortgaged Land or any part thereof. The Mortgagee or its agent shall be entitled, from time to time, to enter on the Mortgaged Land to inspect the Mortgaged Land and to undertake any tests (including intrusive environmental tests) required by the Mortgagee. If the Mortgagor neglects to keep the Mortgaged Land or any buildings, erections, equipment, machinery or improvements on the Mortgaged Land in good condition and repair, fails to eradicate noxious weeds from the Mortgaged Land or commits or permits any act of waste on the Mortgaged Land (as to which the Mortgagee shall be the sole judge), or fails to comply with section D.8., the Mortgagee or its agent may enter upon the Mortgaged Land and make such repairs and undertake such work and take such action as the Mortgagee deems necessary. All costs of such inspection, testing, repairs, work and action shall be payable forthwith by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage.

10. *Environmental Representation and Indemnity.* The Mortgagor represents and warrants to the Mortgagee that there has not occurred, after the date the Mortgagor acquired an interest in the Mortgaged Land, any spill, leak, contamination or other material environmental problem affecting the Mortgaged Land or any part thereof (other than any such spill, leak, contamination or other environmental problem which has been remedied). The Mortgagor shall indemnify and save harmless the Mortgagee and any Receiver of the Mortgaged Land from any and all expenses and damages incurred or suffered by the Mortgagee or such Receiver as a result, or in respect of any spill, leak, contamination or other environmental problem affecting the Mortgaged Land or any part thereof. This indemnity shall survive the payment of all Indebtedness and the satisfaction, discharge or enforcement of the Mortgage or any other security.

11. *No Alterations or Change in Use.* The Mortgagor shall not, without the prior written consent of the Mortgagee, make, or permit to be made, any alterations or additions to the Mortgaged Land or any building thereon or change the Mortgagor's use of the Mortgaged Land



or any building thereon and the Mortgagor shall not allow the Mortgaged Land to be unoccupied or unused.

12. *No Unapproved Charge or Encumbrance by Mortgagor.* The Mortgagor shall not, without the Mortgagee's prior written consent, mortgage, charge, lien or encumber the Mortgaged Land or any part thereof or any interest therein or permit any Other Encumbrance to remain thereon except for any Permitted Prior Mortgage, statutory liens that secure payment of amounts not in arrears and public utilities easements or minor easements or restrictive covenants that do not impair the value, marketability or use of the Mortgaged Land.

13. *Change in Ownership or Spousal Status.* Upon any change or event affecting any of the following, namely:

- (a) the spousal status of the Mortgagor, if the Mortgagor is an individual;
- (b) the qualification of the Mortgaged Land as a matrimonial home; or
- (c) the ownership of the Mortgaged Land,

the Mortgagor shall forthwith advise the Mortgagee accordingly in writing and furnish the Mortgagee with full particulars thereof, the intention being that the Mortgagee shall be kept fully informed of the names and addresses of the owner or owners of the Mortgaged Land and of any spouse who is not an owner but who may have a legal right of possession of or interest in the Mortgaged Land. The Mortgagor shall furnish the Mortgagee with such evidence in connection with any of subsections (a), (b) and (c) of this provision as the Mortgagee may from time to time request.

14. *Expropriation.* If the Mortgaged Land or any part thereof is condemned or expropriated to an extent which, in the Mortgagee's sole discretion, materially affects the Mortgagee's security, all Indebtedness shall, at the option of the Mortgagee, be deemed to have become due and payable on the day before such condemnation or expropriation, and interest shall continue to accrue thereon, at the Applicable Rate, until the Mortgagee has been paid all Indebtedness. The Mortgagor shall pay to the Mortgagee from any condemnation or expropriation proceeds the full amount thereof, to be applied by the Mortgagee to reduce Indebtedness.

15. *Power of Attorney.* The Mortgagor hereby irrevocably appoints the Mortgagee or any Receiver appointed by the Mortgagee under or pursuant to the Mortgage or by any order of a court of competent jurisdiction, as the Mortgagor's attorney for all purposes to take any and all action deemed appropriate by the Mortgagee or such Receiver after the occurrence of a Default.

16. *Further Assurances.* The Mortgagor shall (and shall cause each person having or claiming to have an estate, right, title or interest in or to the Mortgaged Land to) at any time and from time to time, at the Mortgagee's request, do, execute and deliver or cause to be made, executed and delivered to the Mortgagee such further and other reasonable acts, deeds, conveyances, charges and assurances as may be required by the Mortgagee to fully and effectually carry out the intention and meaning of the Mortgage and the provisions included in the Mortgage and the reasonable cost of such further assurances shall be part of the Indebtedness and secured by the Mortgage.

17. *Business Purposes Only.* The Mortgagor shall use only for business purposes any amounts loaned by the Mortgagee to the Mortgagor and secured by the Mortgage.

18. *No Registration of Condominiums or Strata Title Developments.* The Mortgagor shall not, without the Mortgagee's prior written consent, register any condominium or strata title development with respect to all or part of the Mortgaged Land or any declaration or description with respect thereto and the Mortgagee shall not have any obligation to provide such consent.

19. *Delivery of Information.* The Mortgagor shall deliver to the Mortgagee, promptly at the Mortgagee's request, all financial statements and other information as the Mortgagee may request from time to time with respect to the Mortgagor, a Guarantor or the Mortgaged Land.

20. *No Litigation or Other Proceedings.* The Mortgagor represents and warrants that, as at the date of the Mortgage, there is no application, litigation, proceeding or investigation outstanding or, to the Mortgagor's knowledge, pending or threatened, against the Mortgagor or any Guarantor or with respect to the Mortgaged Land or any part thereof including any application,

litigation, proceeding or investigation in respect of residential or other property by-laws or regulations. The Mortgagor shall notify the Mortgagee in writing of any such application, litigation, proceeding or investigation commenced after the date of the Mortgage, promptly after such commencement.

21. *Mortgagor a Canadian Resident.* The Mortgagor represents and warrants that, as at the date of the Mortgage, it is not a non-resident of Canada for purposes of the Income Tax Act and agrees that the Mortgagor shall not, without the Mortgagee's prior written consent, become a non-resident of Canada.

22. *Good Management of Mortgaged Land.* The Mortgagor shall at all times cause the Mortgaged Land to be managed in a commercially reasonable manner by the Mortgagor or by a property manager satisfactory to the Mortgagee, acting reasonably.

23. *Abutting Real Property.* The Mortgagor shall not, without the Mortgagee's prior written consent, acquire any real property which abuts the Mortgaged Land. If the Mortgagee gives such consent, the Mortgagor shall, at the Mortgagee's request, deliver to the Mortgagee a mortgage or charge of such abutting real property and of the Mortgaged Land in form and substance satisfactory to the Mortgagee.

24. *Deemed Covenants Excluded.* In accordance with subsection 7(3) of the *Land Registration Reform Act*, the covenants deemed to be included in a mortgage or charge by subsection 7(1) of such statute are expressly excluded from the Mortgage.

25. *Defeasance Provisions Excluded.* The provisions relating to defeasance in subsection 6(2) of the *Land Registration Reform Act* are expressly excluded from the Mortgage.

#### **E. MORTGAGE OF LEASEHOLD INTEREST**

If the Mortgagor is not the owner of the Mortgaged Land in fee simple but is the owner of a leasehold interest in the Mortgaged Land as tenant, or as an assignee or successor of a tenant, pursuant to a Lease, the following provisions shall apply:

1. *Representations and Warranties.* The Mortgagor represents and warrants to the Mortgagee that, as at the date of the Mortgage:

- (a) the Lease is a good, valid and subsisting lease and has not been surrendered, forfeited or terminated or, except as specified in the Mortgage, amended, and the rents, covenants and provisions therein reserved and contained have been duly paid, performed and observed by the Mortgagor up to the date of the Mortgage; and
- (b) the Mortgagor has good right and full, lawful and absolute authority to charge, mortgage, demise and sublet the Mortgaged Land in accordance with the Mortgage and any consent thereto required of the applicable landlord has been obtained.

2. *Covenants Relating to Lease.* The Mortgagor agrees with the Mortgagee as follows:

- (a) The Mortgagor shall at all times fully perform and comply with all the obligations of the Mortgagor under or with respect to the Lease, or imposed on, assumed by or agreed to by the Mortgagor pursuant to any Other Encumbrances and, if the Mortgagor fails to do so, the Mortgagee may (but shall not be obliged to) take any action the Mortgagee deems necessary or desirable to prevent or to cure any default by the Mortgagor in the performance of or compliance with any such obligations. The Mortgagor shall promptly provide to the Mortgagee a copy of any notice the Mortgagor receives from the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person under or relating to the Lease of the Mortgaged Land. Upon receipt by the Mortgagee from the Mortgagor, the landlord, any prior mortgagee or encumbrancer, any claimant of any of the Other Encumbrances or any other person of any notice, including a notice of default, the Mortgagee may rely thereon and take any action with respect to such notice as may be required in the Mortgagee's sole discretion, including to cure a default even though the existence

of such default or the nature thereof may be questioned or denied by or on behalf of the Mortgagor and the Mortgagee shall have the absolute and immediate right to enter in and upon the Mortgaged Land or any part thereof to such extent and as often as the Mortgagee, in its sole discretion deems necessary or desirable, in order to prevent or to cure any such default. The Mortgagee may pay and expend such amounts as the Mortgagee in its sole discretion deems necessary for any such purpose, and the amounts so paid shall be payable by the Mortgagor to the Mortgagee on demand by the Mortgagee with interest thereon at the Applicable Rate, and shall be a part of the Indebtedness and be secured by the Mortgage.

- (b) If the Mortgage is outstanding at the expiration of the term of the Lease and the Mortgagor refuses or neglects to exercise the Mortgagor's right, if any, to renew or extend the term of the Lease or refuses to pay any fees, costs, charges or expenses payable upon any such renewal or extension, the Mortgagee may effect such renewal or extension in the name of the Mortgagor or otherwise, and every such renewed or extended Lease shall remain and be mortgaged and charged pursuant to the Mortgage in accordance with the Mortgage.
- (c) From and after the execution and delivery of the Mortgage, the Mortgagor shall stand possessed of the Mortgaged Land for the remainder of the Lease in trust for the Mortgagee, and shall exercise any right to renew or extend the term of the Lease or to assign the Lease as the Mortgagee may direct, but subject to the Mortgagor's right of redemption under the Mortgage. The Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagor's attorney for and on behalf of the Mortgagor to exercise any such renewal or extension right and to assign the Lease and convey the leasehold interest in the Mortgaged Land and the reversion thereof as the Mortgagee shall at any time direct after the occurrence of a Default and, in particular, upon any sale made by the Mortgagee under any power of sale contained in the Mortgage or granted by statute to assign the Lease and convey the Mortgagor's leasehold interest in the Mortgaged Land and the reversion to a purchaser. The Mortgagee may at any time remove the Mortgagor or any other person from being a trustee of the Lease under the above declaration of trust and appoint a new trustee or trustees.
- (d) The Mortgagor shall not surrender, terminate, amend or modify the Lease or agree to do so without the prior written consent of the Mortgagee, which the Mortgagee may withhold in its absolute discretion. No release or forbearance of any of the Mortgagor's obligations under the Lease or under any Other Encumbrance shall release the Mortgagor from any of the Mortgagor's obligations under the Mortgage.
- (e) Unless the Mortgagee expressly consents in writing, the title in fee simple to the Mortgaged Land and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates by purchase or otherwise.

3. *Last Day of Term Excepted.* Despite any other provision of the Mortgage, the last day of the term of the Lease and of any renewal or extension thereof and of any agreement therefor now held or hereafter acquired by the Mortgagor shall be excepted out of the mortgage, charge and demise contained in the Mortgage.

4. *Charge by way of Sublease.* Despite section C.1. and any other provision of the Mortgage (except section E.3.), the Mortgagor mortgages and charges, by way of sublease, the Mortgagor's leasehold interest in the Mortgaged Land pursuant to the Lease, the mortgages and charges contained in the Mortgage shall be by way of sublease and the Mortgagee shall not have any obligation or liability to the landlord or any other person pursuant to or in respect of the Lease.

5. *Leasehold Interests.* Wherever any reference is made in the Mortgage to any right of the Mortgagee to sell, transfer, assign, lease, sublease, alienate or otherwise deal with the Mortgaged Land, such reference shall be deemed, subject to section E.3., to relate to the existing and future rights and interests of the Mortgagor in the Mortgaged Land pursuant to the Lease.

#### **F. ASSIGNMENT OF LEASES AND RENTS**

If the Mortgagor or any predecessor of the Mortgagor grants or has granted any lease, offer to lease, tenancy agreement or other similar agreement of all or any part of the Mortgaged Land as landlord, the following provisions shall apply:

1. *Assignment.* As additional and separate security for payment of all Indebtedness, the Mortgagor hereby assigns, transfers and sets over to the Mortgagee, all the Mortgagor's rights and interests as landlord in all existing and future leases, tenancy agreements, offers to lease and other similar agreements with respect to all or part of the Mortgaged Land, and all rents, incomes, profits and other amounts now or hereafter arising from or out of all or part of the Mortgaged Land or any building, improvement, fixture or part thereof forming part of the Mortgaged Land.

2. *Separate Assignments.* The assignment of each of the foregoing and of each of the rents, incomes, profits and other amounts by the Mortgagor to the Mortgagee pursuant to section F.1. shall be deemed to be a separate assignment so that the Mortgagee in its discretion may exercise its rights in respect of any or all of such leases, offers to lease, tenancy agreements or other similar agreements or the rents, incomes, profits or other amounts paid or payable thereunder.

3. *Collection by Mortgagor before Default.* Until there occurs a Default, the Mortgagor may collect, retain and apply all rents, incomes, profits and other amounts and deal with all leases, offers to lease, tenancy agreements and other similar agreements from time to time in accordance with sound business practice.

4. *No Liability of Mortgagee and Indemnity by Mortgagor.* Nothing herein shall obligate the Mortgagee to assume or perform (and nothing herein shall impose on the Mortgagee) any liability or obligation of the Mortgagor to any tenant or other person pursuant to or in respect of any lease, offer to lease, tenancy agreement, other similar agreement or otherwise and the Mortgagor hereby indemnifies and saves harmless the Mortgagee from any and all claims with respect thereto, provided that the Mortgagee may, at its sole option, assume or perform any such obligations as it considers necessary or desirable.

5. *Re-assignment.* The Mortgagee may, at any time without further request or agreement by the Mortgagor, reassign to the Mortgagor, or the Mortgagor's heirs, administrators, successors or assigns, any or all of the collateral referred to in section F.1.

6. *Application by Mortgagee.* The Mortgagee's obligations with respect to any amount collected by the Mortgagee shall be discharged by the application of such amount to reduce Indebtedness.

7. *Not Mortgagee in Possession.* Nothing contained herein shall have the effect of making the Mortgagee a mortgagee in possession of the Mortgaged Land.

#### **G. CONDOMINIUM OR STRATA TITLE DEVELOPMENT PROVISIONS**

If the Mortgaged Land is or includes one or more condominium units or strata title units, the following provisions shall apply:

1. *Compliance with Requirements.* The Mortgagor shall observe and perform each of the covenants and provisions required to be observed and performed pursuant to the Mortgage, all applicable statutes governing or affecting condominiums or strata title developments, and the declaration, description, by-laws and rules, as amended from time to time, of the applicable condominium corporation or strata corporation.

2. *Common Expense Payments.* The Mortgagor shall pay promptly when due any and all unpaid condominium or strata development fees, common expenses, common element expenses, assessments, levies, instalments, payments or any other amounts due to the applicable

condominium corporation or strata corporation or any agent thereof by the Mortgagor and, at the Mortgagee's request, deliver to the Mortgagee evidence of the payment thereof.

3. *Right of Mortgagee to Pay.* If the Mortgagor does not pay when due any condominium or strata development fees, common expenses or other amounts referred to in section G.2., the Mortgagee may (but shall not be obliged to) pay such amounts, the Mortgagor shall forthwith pay such amounts to the Mortgagee with interest thereon at the Applicable Rate, and all such amounts owing by the Mortgagor to the Mortgagee shall be a part of the Indebtedness and secured by the Mortgage.

4. *Voting by Mortgagee.* The Mortgagor hereby irrevocably authorizes the Mortgagee to exercise the rights of the Mortgagor as an owner of the Mortgaged Land to vote or to consent in all matters relating to the affairs of the condominium corporation or strata corporation or arising under applicable law or the declaration or by-laws of the condominium or strata corporation, provided that:

- (a) in any case where the Mortgagee is entitled to receive and does receive notice of a meeting of owners, the Mortgagee may notify the condominium or strata corporation and the Mortgagor of its intention to exercise the right of the owner to vote or to consent at such meeting at least two days before the date specified in the notice for the meeting, failing which the Mortgagor may exercise such right to vote or consent at such meeting;
- (b) the Mortgagee shall not, by virtue of the giving to the Mortgagee of the right to vote or consent, be under any obligation to vote or consent or to protect the interests of the Mortgagor, and the Mortgagee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and
- (c) nothing herein contained, including the exercise by the Mortgagee of the right to vote or consent, shall constitute the Mortgagee a mortgagee in possession.

## **H. MORTGAGE AS SECURITY FOR A GUARANTEE**

If the Mortgagor has delivered to the Mortgagee or now or hereafter delivers to the Mortgagee a guarantee or guarantees of payment to the Mortgagee of indebtedness or liability of another or others, the Indebtedness shall include all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee or guarantees, whether direct or indirect, absolute or contingent, and the Mortgage shall secure payment of all such indebtedness and liability of the Mortgagor pursuant to such guarantee or guarantees in addition to all other Indebtedness. If any such guarantee is increased or otherwise amended, the Mortgage shall also secure payment of all indebtedness and liability now or hereafter owing by the Mortgagor to the Mortgagee pursuant to such guarantee as increased or otherwise amended.

## **I. DEFAULT**

The Mortgagor shall be in default of the Mortgage and a Default shall occur pursuant to the Mortgage if:

- 1. the Mortgagor fails to pay any Indebtedness when due;
- 2. the Mortgagor or a Guarantor fails to comply with any obligation of the Mortgagor or the Guarantor pursuant to or in respect of the Mortgage or any existing or future note, instrument or agreement delivered by the Mortgagor and the Guarantors (or any of them) to the Mortgagee or between the Mortgagor and the Guarantors (or any of them) and the Mortgagee;
- 3. the Mortgagor fails to comply with any obligation of the Mortgagor pursuant to or in respect of any Permitted Prior Mortgage or any Other Encumbrance;
- 4. any representation or warranty made by the Mortgagor or a Guarantor in the Mortgage, any agreement between the Mortgagor and the Guarantors (or any of them) and the Mortgagee, or any loan or credit application made in connection with any Indebtedness was untrue when made;

5. a Receiver is appointed of any asset of the Mortgagor or of a Guarantor;
6. any construction lien, mechanics' lien or builders' lien is registered against all or any part of the Mortgaged Land and is not discharged within seven days after a request by the Mortgagee that such lien be discharged;
7. all or any part of the Mortgaged Land is condemned or expropriated;
8. the Mortgagor or a Guarantor becomes bankrupt or insolvent;
9. a petition in bankruptcy is filed against the Mortgagor or a Guarantor;
10. the Mortgagor or a Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
11. the Mortgagor or a Guarantor makes an application as a debtor in any Insolvency Proceeding or any other person makes an application against the Mortgagor or a Guarantor in any Insolvency Proceeding;
12. the Mortgagor sells, transfers or disposes of in any other manner the Mortgaged Land, any part thereof or any interest therein (unless the Mortgagee has approved in writing such sale, transfer or other disposition);
13. an execution, judgment or order of execution is filed or made against the Mortgaged Land or any part thereof and remains unsatisfied for a period of ten days;
14. the Mortgagor fails to pay when due any amount owing by the Mortgagor to the applicable condominium corporation or strata corporation or any agent thereof referred to in section G.2.; or
15. the Mortgagor or a Guarantor is not an individual and a change in control of the Mortgagor or such Guarantor occurs without the prior written consent of the Mortgagee; for the purposes hereof, a change in control of the Mortgagor or a Guarantor shall be deemed to occur if there occurs one or more sales, transfers or other dispositions of the beneficial ownership existing on the date of the Mortgage in the aggregate of:
  - (a) shares, other securities or other equity interests issued by the Mortgagor or such Guarantor which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by the Mortgagor or such Guarantor; or
  - (b) shares, other securities or equity interests issued by any Controlling Entity which have more than 50% of the total ordinary voting power of all shares, other securities and other equity interests issued by such Controlling Entity.

## **J. REMEDIES OF MORTGAGEE**

1. *Acceleration and Termination of Obligation to Extend Credit.* Without prejudice to any right of the Mortgagee to demand at any time payment by the Mortgagor of any and all Indebtedness, upon the occurrence of a Default all Indebtedness (or any part thereof determined by the Mortgagee) shall, at the Mortgagee's option, forthwith become due and payable, the Mortgage shall become enforceable and the Mortgagee shall not be obligated to extend any further credit to the Mortgagor.

2. *Right of Entry.* Upon the occurrence of a Default, the Mortgagee may, at any time or times without the concurrence of any person, enter upon, take and maintain possession of the Mortgaged Land, inspect, complete the construction of, repair or maintain any buildings or other improvements thereon, lease, collect the rents, profits and other amounts derived from the Mortgaged Land and manage the Mortgaged Land as the Mortgagee may deem fit without hindrance or interruption by the Mortgagor or any other person, and all reasonable costs, charges and expenses, including legal fees on a solicitor and his or her own client basis, and disbursements, commissions and allowances for the time and services of any employees of the Mortgagee or any agent of the Mortgagee or other persons appointed for any such purpose shall be forthwith payable by the Mortgagor to the Mortgagee with interest thereon at the Applicable Rate, shall be a part of the Indebtedness and shall be secured by the Mortgage. Upon the

occurrence of a Default, the Mortgagee may also enforce its security against all crops growing on the Mortgaged Land, the Mortgagee may, at any time or times without the concurrence of any person, enter upon the Mortgaged Land for the purpose of cutting, harvesting and removing such crops and for otherwise farming and working the Mortgaged Land, the Mortgagee may bring on the Mortgaged Land all machines, equipment and instruments necessary for such purposes, and the Mortgagee may use all yards, barns, granaries, grain bins or all other improvements and equipment located on the Mortgaged Land to carry out any of such activities.

3. *Sale.* Upon the occurrence of a Default which continues for at least fifteen days, the Mortgagee may, on at least thirty-five days' notice, sell the Mortgaged Land or any part or parts thereof, in accordance with the following provisions:

- (a) notice shall be given to such persons and in such manner and form and within such time as provided by law; provided that, in the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice may be effectually given by leaving it with a person on the Mortgaged Land, if occupied, or by placing the same on some portion thereof, if unoccupied or, at the option of the Mortgagee, by mailing it by registered mail in a notice or letter addressed to the Mortgagor at the Mortgagor's last known address, or by publishing it once in a newspaper published in the area or region in which the Mortgaged Land is situated;
- (b) such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under any disability;
- (c) sale of the Mortgaged Land may be by public auction or private sale or partly by one and partly by the other, for such price or prices as can reasonably be obtained therefor and on such terms as to credit or otherwise and with such conditions of sale and stipulations as to title or evidence of title or otherwise as the Mortgagee in its sole discretion shall deem appropriate;
- (d) in the event of any sale on credit or for part cash and part credit, the Mortgagee shall not be accountable for or charged with any moneys until actually received;
- (e) the Mortgagee may rescind or vary any contract of sale and may buy in and re-sell the Mortgaged Land or any part thereof without being answerable for any loss occasioned thereby;
- (f) the Mortgagee may sell all or any part of the buildings, fixtures, machinery, equipment, crops and standing or fallen trees separately from the Mortgaged Land and the purchaser shall have all necessary access to the Mortgaged Land for the purposes of severing, cutting and removal; and
- (g) subject to compliance with law, sales may be made from time to time of any part or parts of the Mortgaged Land to satisfy any part or parts of the Indebtedness then owing to the Mortgagee leaving the remaining outstanding Indebtedness secured by the Mortgage as a charge of the remainder of the Mortgaged Land.

4. *Sale or Lease.* The following shall apply with respect to any sale or lease by the Mortgagee, its agent or any Receiver of all or part of the Mortgaged Land after the occurrence of a Default:

- (a) no purchaser or lessee shall be bound to enquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety and no lack of default or lack of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease;
- (b) the Mortgagee may sell or lease all or part of the Mortgaged Land without entering into actual possession of the Mortgaged Land and, when it desires to take possession, it may break locks and bolts and while in possession shall only be accountable for moneys actually received by it;



- (c) the Mortgagor hereby appoints the Mortgagee as the Mortgagor's true and lawful attorney and agent to make application under any statute for consent to sever, sell or lease part or parts of the Mortgaged Land and to do all things and execute all documents to effectually complete any such severance, sale or lease;
- (d) the Mortgagee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending;
- (e) the Mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale of the Mortgaged Land unless such loss is caused by the Mortgagee's willful misconduct; and
- (f) no sale, leasing or other dealing by the Mortgagee with the Mortgaged Land or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person liable for payment of any Indebtedness.

5. *Attornment.* To the extent the Mortgaged Land or any part thereof is not a residential premises so as to be subject to the provisions of the applicable statute governing residential tenancies, the Mortgagor hereby attorns to and becomes a tenant of such Mortgaged Land to the Mortgagee from year to year from the date of the execution of the Mortgage until the Mortgage is discharged at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the Indebtedness, the legal relation of landlord and tenant being hereby constituted between the Mortgagee and the Mortgagor in regard to the Mortgaged Land. The Mortgagor agrees that neither the existence of this provision nor anything done by virtue hereof shall impose any obligation on the Mortgagee or render the Mortgagee a mortgagee in possession or accountable for any moneys except moneys actually received by the Mortgagee and the Mortgagee may, upon the occurrence of any Default, enter on the Mortgaged Land and terminate the tenancy hereby created without notice.

6. *Right to Distrain.* Upon the occurrence of a Default, to the extent permitted by law, the Mortgagee may distrain for payment of any and all Indebtedness upon the Mortgaged Land or any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the Mortgaged Land, such moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Mortgagee with respect to or in connection therewith as in like cases of distress for rent. The Mortgagor waives the right to claim exceptions and agrees that the Mortgagee shall not be limited in the amount for which it may distrain.

7. *Judgments and Non-Merger.* The taking of a judgment or judgments with respect to any of the covenants contained herein, in the Mortgage or otherwise shall not operate as a merger of any such covenants or affect the Mortgagee's right to receive interest under the Mortgage and each such judgment may provide, at the option of the Mortgagee, that interest thereon shall be computed and payable until such judgment has been fully paid and satisfied.

8. *Separate Remedies.* All remedies of the Mortgagee may be exercised from time to time separately or in combination and are in addition to and not in substitution for any other rights of the Mortgagee however created.

9. *Application of Proceeds and Mortgagor's Liability for Deficiency.* All amounts received by the Mortgagee or any Receiver pursuant to any enforcement of the Mortgage may be held by the Mortgagee as security for the Indebtedness or applied to reduce Indebtedness in such manner as may be determined by the Mortgagee and the Mortgagee may at any time apply or change any such appropriation of such payments to such part or parts of the Indebtedness as the Mortgagee may determine in its sole discretion. The Mortgagor shall be and remain liable to the Mortgagee for any deficiency. Any surplus amounts realized after payment of all Indebtedness shall be paid in accordance with applicable law.

10. *Mortgagor's Insolvency Proceedings.* The Mortgagor acknowledges that the Mortgaged Land is of such a unique nature that, if the Mortgagor seeks to reorganize or restructure its affairs pursuant to any Insolvency Proceeding, the Mortgagee would not have a sufficient commonality of interest with any other creditor or creditors of the Mortgagor such that the Mortgagee would be required to vote on any plan, reorganization, arrangement, compromise or other transaction in a class with any other creditor or creditors of the Mortgagor and, in that regard, the Mortgagor



agrees that the Mortgagee shall be placed in its own exclusive class of creditors for voting purposes. The Mortgagor further agrees that:

- (a) it will give the Mortgagee not less than 10 days written notice prior to the commencement of any Insolvency Proceeding with respect to the Mortgagor;
- (b) in no circumstance will the Mortgagor seek an order which stays any right of the Mortgagee or, to the extent permitted by law, permit any right of the Mortgagee to be stayed, in any Insolvency Proceeding and, if any court-ordered or automatic stay is imposed on the Mortgagee, the Mortgagor hereby consents to an order lifting such stay as against the Mortgagee;
- (c) if an Insolvency Proceeding is commenced with respect to the Mortgagor, the Mortgagor will consent to an order directing that all rents or other revenues generated or received from or in respect of the Mortgaged Land be deposited to a segregated trust account under the sole control of the Mortgagee and that same shall not result in the Mortgagee's being a mortgagee in possession of, or in control or management of the Mortgaged Land or result in the acceleration of payment of any Indebtedness unless such acceleration is required by the Mortgagee in writing; and
- (d) it shall not, without the Mortgagee's prior written consent, propose or permit the sale or transfer of the Mortgaged Land or any part thereof, in or as part of any Insolvency Proceeding, for a net sale price less than the amount required to pay in full all Indebtedness outstanding as at the date of payment of such net sale proceeds to the Mortgagee.

#### K. APPOINTMENT OF A RECEIVER

1. *Appointment.* Upon the occurrence of a Default, in addition to any other remedies available to the Mortgagee, the Mortgagee may by instrument in writing appoint a Receiver of all or any part of the Mortgaged Land and all rents, incomes, profits and other amounts now or hereafter arising therefrom. The Mortgagee may also apply to any court of competent jurisdiction for the appointment of a Receiver.

2. *Powers of Receiver.* Any Receiver appointed by the Mortgagee shall, to the extent permitted by law, have the following powers:

- (a) to enter upon, take possession of, use, and occupy the Mortgaged Land or any part thereof;
- (b) to collect all rents, incomes, profits and other amounts in respect of the Mortgaged Land and to carry on the business of the Mortgagor on the Mortgaged Land;
- (c) to borrow money required for the maintenance, preservation or protection of the Mortgaged Land or for carrying on the business of the Mortgagor and, in the discretion of the Receiver, to charge the Mortgaged Land in priority to the Mortgage as security for the principal amounts so borrowed, interest thereon and costs related thereto;
- (d) to sell, lease, or otherwise dispose of the Mortgaged Land or any part thereof on such terms and conditions and in such manner as the Receiver shall determine in its sole discretion, and to effect such sale by conveying in the name and on behalf of the Mortgagor or otherwise;
- (e) to demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession of the Mortgaged Land, and to give valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the rents, accounts receivable or any other obligation of any person to the Mortgagor;

- (f) to exercise any rights or remedies which could have been exercised by the Mortgagee against the Mortgagor or the Mortgaged Land or with respect thereto; and
- (g) to execute all documents required to effect any of the foregoing.

3. *Identity of Receiver and Removal.* Any Receiver so appointed by the Mortgagee may be any person or persons satisfactory to the Mortgagee, and the Mortgagee may remove any Receiver so appointed and appoint another or others instead.

4. *Receiver as Agent of Mortgagor.* Any Receiver appointed by the Mortgagee shall be deemed to be agent of the Mortgagor unless the Mortgagee expressly specifies in writing that the Receiver shall be agent of the Mortgagee. The Mortgagor agrees to ratify and confirm all actions of the Receiver acting as agent for the Mortgagor and to release and indemnify the Receiver in respect of all such actions.

5. *Receivership Expenses.* The Mortgagor shall pay to the Receiver, forthwith on demand by the Mortgagee or the Receiver, the amount of all reasonable fees, disbursements and other expenses incurred by the Receiver in the exercise of its powers hereunder, with interest thereon at the Applicable Rate from the date on which such sums are incurred. All such sums, together with interest thereon at the Applicable Rate, shall be part of the Indebtedness and secured by the Mortgage.

6. *No Enquiries Required.* No persons dealing with the Receiver or its agents, upon any sale or other dealing with the Mortgaged Land, shall be concerned to inquire as to their powers or as to the application of any money paid to them, such sale or dealing shall be deemed as regards such person to be within the powers hereby conferred and to be valid and effectual.

## L. MISCELLANEOUS

1. *Records of Mortgagee.* The records of the Mortgagee disclosing the amount of an extension of credit by the Mortgagee to the Mortgagor, the repayment of any principal amount of Indebtedness, the amount of accrued and unpaid interest owing by the Mortgagor and the amount of other Indebtedness (or any part thereof) at any time outstanding, shall constitute conclusive evidence thereof in the absence of mathematical error.

2. *Revolving Line of Credit.* The Mortgagee may wish to make loan advances and re-advances or otherwise extend credit to the Mortgagor from time to time up to a total outstanding principal amount not exceeding the principal amount referred to in the Mortgage. The Mortgage is and shall be continuing security to the Mortgagee for the payment of all Indebtedness. Any portion of the Indebtedness may be advanced or re-advanced by the Mortgagee or other credit may be extended by the Mortgagee in one or more sums at any future time or times and the amount of all such advances, re-advances or other credits when so made or extended shall be secured by the Mortgage and be payable by the Mortgagor with interest thereon at the Applicable Rate and the Mortgage shall be deemed to be taken as security for the ultimate balance of the monies hereby secured, provided that none of the execution or registration of the Mortgage or the advance in part of any monies or extension of any other credit by the Mortgagee shall obligate the Mortgagee to advance any unadvanced portion thereof or to extend any other credit. The Mortgage shall not be void or cease to operate because the Indebtedness secured hereby has at any time or times been paid in full.

3. *Assignment and Syndication.* The Mortgagee shall be entitled from time to time, both before and after a Default, without notice to, or the consent of the Mortgagor or any Guarantor:

- (a) to sell or assign all or part of the Indebtedness and the Mortgagee's interests in the Mortgage and any other security and agreements held by the Mortgagee; and
- (b) to syndicate all or part of the Indebtedness, the Mortgage and any other security and agreements held by the Mortgagee and to grant participations therein.

To facilitate the foregoing, the Mortgagee may provide each prospective purchaser, assignee, syndicated lender or participant and their respective advisers with financial and other information concerning the Indebtedness, the Mortgagor, the Mortgaged Land, any Guarantor, any other collateral or any other matter.

4. *General Indemnity by Mortgagor.* The Mortgagor hereby agrees, on demand by the Mortgagee, to indemnify and hold harmless the Mortgagee and its officers, directors, employees and agents from and against any and all claims, expenses, liabilities, losses and damages that may be asserted against or incurred by any of such indemnified persons arising out of, or in connection with the Mortgage, any Indebtedness or any claim, investigation, proceeding or litigation relating to any of the foregoing, regardless of whether any such indemnified person is a party thereto (including any and all breakage costs reasonably incurred by the Mortgagee in respect of any breach by the Mortgagor of any of its obligations under the Mortgage) and to reimburse each such indemnified person, on demand by the Mortgagee, for any and all reasonable legal and other expenses incurred in investigating, pursuing or defending any of the foregoing or otherwise in connection with any of the foregoing; provided that the foregoing indemnity shall not, as to any indemnified person, apply to any claim, expense, liability, loss or damage or related expense to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the wilful misconduct or gross negligence of such indemnified person.

5. *Effect of Sale.* No sale, conveyance, transfer or other dealing by the Mortgagor with the Mortgaged Land or any part thereof or any approval of the Mortgagee relating thereto shall in any way change or affect the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against the Mortgagor or any other person or persons liable for payment of the Indebtedness or any part thereof.

6. *Dealings with the Mortgagor and Others.* The Mortgagee may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and give the same and any and all existing security up to, may abstain from taking security from or from perfecting security of, may accept compositions from, may amend the Mortgage, and may otherwise deal

with the Mortgagor and all other persons (including any principal debtor, any Guarantor or any owner of the Mortgaged Land) and security as the Mortgagee may see fit without prejudicing any rights of the Mortgagee under the Mortgage.

7. *Amendments to Mortgage.* The Mortgagor and the Mortgagee may from time to time amend the Mortgage (including to increase the interest rate specified by the Mortgage) by an amendment agreement between the Mortgagor and the Mortgagee, whether or not such amendment agreement (or notice thereof) is registered. This provision shall constitute notice of such amendments and the Mortgage shall secure payment of all Indebtedness (including all interest and other Indebtedness arising or resulting from such amendments) and retain its priority with respect thereto over any mortgage, charge or other instrument registered subsequent to the Mortgage.

8. *Waiver.* No waiver, condonation or excusing by the Mortgagee of any default, breach or other non-performance by the Mortgagor at any time or times in respect of any provision of the Mortgage (including any Default) shall operate as a waiver by the Mortgagee of any subsequent or other default, breach or non-performance or prejudice or affect in any way the rights of the Mortgagee in respect of any such subsequent or other default, breach or non-performance.

9. *Discharge or Assignment.* The Mortgagee shall be entitled to prepare or have its counsel prepare a discharge or assignment of the Mortgage and any other documents necessary to discharge or assign any other security held by the Mortgagee and shall have a reasonable time after payment of the Indebtedness in full within which to prepare, execute and deliver such instruments. All reasonable costs, fees and disbursements of the Mortgagee and the Mortgagee's counsel in connection with the preparation, review, execution and delivery of the discharge, assignment or any other documents necessary to discharge or assign the Mortgage or any other security shall, to the extent permitted by law, be paid by the Mortgagor to the Mortgagee and be secured by the Mortgage.

10. *No Obligation to Advance.* Nothing herein and nothing contained in the Mortgage shall obligate the Mortgagee to loan any amount to the Mortgagor or to extend any other credit to the Mortgagor.

11. *Appointment of Attorney Irrevocable.* Each appointment by the Mortgagor of an attorney in the Mortgage or the Standard Charge Terms is coupled with an interest and may not be revoked.

12. *Other Security.* The Mortgage is in addition to and not in substitution for any other security at any time held by the Mortgagee as security for payment of all or any part of the Indebtedness, and the Mortgagee may, at its option, pursue its remedies thereunder or under the Mortgage concurrently or successively. Any judgment or recovery under the Mortgage or under any other security held by the Mortgagee as security for payment of Indebtedness shall not affect the right of the Mortgagee to enforce or realize on the Mortgage or any other such security.

13. *Financing Statement.* To the extent permitted by law, the Mortgagor hereby waives its right to receive from the Mortgagee a copy of any financing statement, financing change statement, verification statement or other similar statement filed by or received by the Mortgagee or any agent of the Mortgagee.

14. *Notice.* Except as otherwise herein provided, any notice, demand or other communication to the Mortgagor referred to herein or in the Mortgage may be forwarded to the Mortgagor by personal delivery or mailed by prepaid ordinary or registered mail to the Mortgagor at the Mortgagor's last known address as shown on the Mortgagee's records. The Mortgagor shall be deemed to have received the same on the date of delivery, if personally delivered, or on the fourth day after the same is mailed by prepaid ordinary mail or registered mail, if mailed, even if the Mortgagor does not actually receive it.

15. *Different Currencies.* The payment of any part of the Indebtedness shall be made by the Mortgagor in the same currency as the currency in which such part of the Indebtedness is then denominated and all interest and fees shall be paid by the Mortgagor in the same currency as the currency in which that part of the Indebtedness to which they relate is denominated.

16. *Judgment Currency.* If in the recovery by the Mortgagee of any Indebtedness in any currency, judgment can only be obtained in another currency and, because of changes in the

exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the recovery under the judgment differs from the receipt by the Mortgagee of the full amount of such Indebtedness, the Mortgagor shall pay any such deficiency to the Mortgagee, such deficiency may be claimed by the Mortgagee against the Mortgagor as an alternative or additional cause of action and any surplus received by the Mortgagee shall be repaid to the Mortgagor.

17. *Foreign Exchange Rate Determinations.* Whenever any provision of the Mortgage requires or permits the determination of the rate of exchange between any currencies, such rate of exchange shall be determined by the Mortgagee based on its normal practice as at the date of such determination.

18. *Governing Law.* The Standard Charge Terms and the Mortgage shall be governed by the law of the jurisdiction in which the Mortgaged Land is located.

19. *Time of Essence.* Time shall be of the essence of the Mortgage.

20. *Severability.* If any provision of the Mortgage is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the Mortgage shall remain in full force and effect without such provision.

21. *Interpretation.* Whenever the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing any gender shall include the other genders. Whenever used in the Standard Charge Terms, the Mortgage or any Schedule, the words “including” and “includes” shall mean “including, without limitation” and “includes, without limitation”, respectively, and the word “person” shall include an individual, corporation, partnership, government, government agency and any other entity.

22. *Titles.* Titles used in the Standard Charge Terms, the Mortgage or any Schedule are inserted for convenience of reference only and shall not affect or modify the interpretation or construction of any provision of the Standard Charge Terms, the Mortgage or any Schedule.

23. *Joint and Several Obligations.* If there is more than one Mortgagor, all Mortgagors shall be jointly and severally liable for all obligations of the Mortgagors pursuant to the Mortgage.

24. *Schedule.* Schedule “A” shall form part of the Standard Charge Terms.

25. *Equivalent Rate Information.* Schedule “A” is a summary of various annual rates of interest calculated half-yearly not in advance equivalent to the corresponding annual rates calculated monthly not in advance or calculated quarter-annually not in advance. The rate of interest chargeable, calculated half-yearly not in advance, equivalent to each Applicable Rate, is shown by Schedule “A”.

26. *Successors and Assigns.* All rights and powers of the Mortgagee shall enure to the benefit of and be exercisable by the Mortgagee and the Mortgagee’s successors and assigns. All covenants, obligations and liabilities entered into or imposed on the Mortgagor shall be binding on the Mortgagor and the Mortgagor’s heirs, executors, administrators, personal representatives, successors and assigns.

SCHEDULE “A”

The interest rates set out in Column C are the annual interest rates calculated half-yearly not in advance which are equivalent to the corresponding annual interest rates calculated monthly not in advance set out in Column A and quarter-annually not in advance set out in Column B.

COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C
Interest rate calculated monthly not in advance	Interest rate calculated quarter- annually not in advance	Interest rate calculated half-yearly not in advance	Interest rate calculated monthly not in advance	Interest rate calculated quarter- annually not in advance	Interest rate calculated half-yearly not in advance
1.0000%	1.0008%	1.0021%	9.5000%	9.5754%	9.6900%
1.1250%	1.1261%	1.1276%	9.6250%	9.7024%	9.8201%
1.2500%	1.2513%	1.2533%	9.7500%	9.8294%	9.9502%
1.3750%	1.3766%	1.3789%	9.8750%	9.9565%	10.0804%
1.5000%	1.5019%	1.5047%	10.0000%	10.0836%	10.2107%
1.6250%	1.6272%	1.6305%	10.1250%	10.2107%	10.3410%
1.7500%	1.7526%	1.7564%	10.2500%	10.3378%	10.4714%
1.8750%	1.8779%	1.8823%	10.3750%	10.4650%	10.6019%
2.0000%	2.0033%	2.0084%	10.5000%	10.5921%	10.7324%
2.1250%	2.1288%	2.1344%	10.6250%	10.7194%	10.8630%
2.2500%	2.2542%	2.2606%	10.7500%	10.8466%	10.9937%
2.3750%	2.3797%	2.3868%	10.8750%	10.9739%	11.1244%
2.5000%	2.5052%	2.5131%	11.0000%	11.1011%	11.2552%
2.6250%	2.6307%	2.6394%	11.1250%	11.2285%	11.3861%
2.7500%	2.7563%	2.7658%	11.2500%	11.3558%	11.5170%
2.8750%	2.8819%	2.8923%	11.3750%	11.4832%	11.6480%
3.0000%	3.0075%	3.0188%	11.5000%	11.6106%	11.7791%
3.1250%	3.1331%	3.1454%	11.6250%	11.7380%	11.9102%
3.2500%	3.2588%	3.2721%	11.7500%	11.8654%	12.0414%
3.3750%	3.3845%	3.3988%	11.8750%	11.9929%	12.1727%
3.5000%	3.5102%	3.5256%	12.0000%	12.1204%	12.3040%
3.6250%	3.6360%	3.6525%	12.1250%	12.2479%	12.4354%
3.7500%	3.7617%	3.7794%	12.2500%	12.3755%	12.5669%
3.8750%	3.8875%	3.9064%	12.3750%	12.5031%	12.6985%
4.0000%	4.0133%	4.0335%	12.5000%	12.6307%	12.8301%
4.1250%	4.1392%	4.1606%	12.6250%	12.7583%	12.9618%
4.2500%	4.2651%	4.2878%	12.7500%	12.8859%	13.0935%
4.3750%	4.3910%	4.4151%	12.8750%	13.0136%	13.2253%
4.5000%	4.5169%	4.5424%	13.0000%	13.1413%	13.3572%
4.6250%	4.6428%	4.6698%	13.1250%	13.2691%	13.4892%
4.7500%	4.7688%	4.7973%	13.2500%	13.3968%	13.6212%
4.8750%	4.8948%	4.9248%	13.3750%	13.5246%	13.7533%
5.0000%	5.0209%	5.0524%	13.5000%	13.6524%	13.8854%
5.1250%	5.1469%	5.1800%	13.6250%	13.7803%	14.0177%
5.2500%	5.2730%	5.3078%	13.7500%	13.9082%	14.1499%
5.3750%	5.3991%	5.4355%	13.8750%	14.0360%	14.2823%
5.5000%	5.5252%	5.5634%	14.0000%	14.1640%	14.4147%
5.6250%	5.6514%	5.6913%	14.1250%	14.2919%	14.5472%
5.7500%	5.7776%	5.8193%	14.2500%	14.4199%	14.6798%
5.8750%	5.9038%	5.9474%	14.3750%	14.5479%	14.8124%
6.0000%	6.0300%	6.0755%	14.5000%	14.6759%	14.9451%
6.1250%	6.1563%	6.2037%	14.6250%	14.8040%	15.0779%
6.2500%	6.2826%	6.3319%	14.7500%	14.9320%	15.2108%
6.3750%	6.4089%	6.4603%	14.8750%	15.0601%	15.3437%
6.5000%	6.5353%	6.5887%	15.0000%	15.1883%	15.4766%
6.6250%	6.6616%	6.7171%	15.1250%	15.3164%	15.6097%
6.7500%	6.7880%	6.8456%	15.2500%	15.4446%	15.7428%
6.8750%	6.9145%	6.9742%	15.3750%	15.5728%	15.8760%
7.0000%	7.0409%	7.1029%	15.5000%	15.7011%	16.0092%
7.1250%	7.1674%	7.2316%	15.6250%	15.8293%	16.1425%
7.2500%	7.2939%	7.3604%	15.7500%	15.9576%	16.2759%
7.3750%	7.4204%	7.4892%	15.8750%	16.0859%	16.4094%
7.5000%	7.5470%	7.6182%	16.0000%	16.2143%	16.5429%
7.6250%	7.6736%	7.7472%	16.1250%	16.3427%	16.6765%
7.7500%	7.8002%	7.8762%	16.2500%	16.4710%	16.8102%
7.8750%	7.9268%	8.0053%	16.3750%	16.5995%	16.9439%
8.0000%	8.0535%	8.1345%	16.5000%	16.7279%	17.0777%
8.1250%	8.1801%	8.2638%	16.6250%	16.8564%	17.2116%
8.2500%	8.3068%	8.3931%	16.7500%	16.9849%	17.3455%
8.3750%	8.4336%	8.5225%	16.8750%	17.1134%	17.4795%
8.5000%	8.5604%	8.6519%	17.0000%	17.2420%	17.6136%
8.6250%	8.6871%	8.7815%	17.1250%	17.3706%	17.7477%
8.7500%	8.8140%	8.9111%	17.2500%	17.4992%	17.8819%
8.8750%	8.9408%	9.0407%	17.3750%	17.6278%	18.0162%
9.0000%	9.0677%	9.1704%	17.5000%	17.7564%	18.1506%
9.1250%	9.1946%	9.3002%	17.6250%	17.8851%	18.2850%
9.2500%	9.3215%	9.4301%	17.7500%	18.0138%	18.4195%
9.3750%	9.4484%	9.5600%	17.8750%	18.1426%	18.5540%

# EXHIBIT D

PROPERTY DESCRIPTION: PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

RE-ENTRY FROM 46220-0243

PIN CREATION DATE:

2003/08/25

OWNERS' NAMES

HAPPY TOWN HOUSING INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/08/22 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/08/25 **						
RO493091	1985/03/04	NOTICE				C
REMARKS: ZONING REGULATIONS						
30R10352	2001/11/30	PLAN REFERENCE				C
RO788649	2001/12/07	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** HRABOWSKY, YVONNA VLADISLAVA	MURRAY, JULIA	
REMARKS: PLANNING ACT STATEMENTS						
RO788650	2001/12/07	CHARGE		*** DELETED AGAINST THIS PROPERTY *** MURRAY, JULIA	THE TORONTO-DOMINION BANK	
NR192532	2008/10/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
REMARKS: RE: RO788650						
NR214624	2009/07/24	CHARGE		*** COMPLETELY DELETED *** MURRAY, JULIA	THE TORONTO-DOMINION BANK	
NR345501	2014/02/03	TRANSFER		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				MURRAY, JULIA	INGRIBELLI, MIRANDA	
NR345502	2014/02/03	CHARGE		*** COMPLETELY DELETED *** INGRIBELLI, MIRANDA	BANK OF MONTREAL	
NR345508	2014/02/03	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** INGRIBELLI, MIRANDA	BANK OF MONTREAL	
NR345767	2014/02/07	NO SEC INTEREST		*** COMPLETELY DELETED *** SNAP HOME FINANCE CORP.		
NR346611	2014/02/24	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
NR347550	2014/03/10	DISCHARGE INTEREST		*** COMPLETELY DELETED *** SNAP HOME FINANCE CORP.		
NR390021	2015/08/20	TRANSFER		*** COMPLETELY DELETED *** INGRIBELLI, MIRANDA	INGRIBELLI, MIRANDA JOAN INGRIBELLI, GIUSEPPE	
NR390022	2015/08/20	CHARGE		*** COMPLETELY DELETED *** INGRIBELLI, MIRANDA JOAN INGRIBELLI, GIUSEPPE	FIRST NATIONAL FINANCIAL GP CORPORATION	
NR390023	2015/08/20	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** INGRIBELLI, GIUSEPPE INGRIBELLI, MIRANDA JOAN	FIRST NATIONAL FINANCIAL GP CORPORATION	
NR392096	2015/09/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
NR481409	2018/05/23	TRANSFER		*** COMPLETELY DELETED *** INGRIBELLI, GIUSEPPE INGRIBELLI, MIRANDA JOAN	MOLONY, RYAN	
NR481463	2018/05/24	CHARGE		*** COMPLETELY DELETED ***		

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NR481464	2018/05/24	NO ASSGN RENT GEN		MOLONY, RYAN  *** COMPLETELY DELETED *** MOLONY, RYAN	RAJAKARUNA, GASTON  RAJAKARUNA, GASTON	
NR484744	2018/06/29	DISCH OF CHARGE		*** COMPLETELY DELETED *** FIRST NATIONAL FINANCIAL GP CORPORATION		
NR491725	2018/09/19	CHARGE		*** COMPLETELY DELETED *** MOLONY, RYAN	2512681 ONTARIO INC. DIGBY, BRIAN	
NR502931	2019/01/30	CHARGE		*** COMPLETELY DELETED *** MOLONY, RYAN	EQUITABLE BANK	
NR502932	2019/01/30	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** MOLONY, RYAN	EQUITABLE BANK	
NR503731	2019/02/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** RAJAKARUNA, GASTON		
NR504748	2019/02/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2512681 ONTARIO INC. DIGBY, BRIAN		
NR507211	2019/03/29	TRANSFER	\$485,000	MOLONY, RYAN	HAPPY TOWN HOUSING INC.	C
NR507720	2019/04/05	CAUTION-LAND		*** COMPLETELY DELETED *** HAPPY TOWN HOUSING INC.  DELETED FROM PIN 46220-0112 PURSUANT TO BULLETIN 89004	CLARK, DANIEL	
NR509608	2019/05/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** EQUITABLE BANK		
NR516118	2019/07/18	CHARGE		*** COMPLETELY DELETED *** HAPPY TOWN HOUSING INC.	DWORECKI, EUGENE	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NR516119	2019/07/18	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** HAPPY TOWN HOUSING INC.	RASO, TONY BREWER, CHRIS	
	REMARKS: NR516118.				DWORECKI, EUGENE RASO, TONY BREWER, CHRIS	
NR519351	2019/08/26	DISCH OF CHARGE		*** COMPLETELY DELETED *** DWORECKI, EUGENE RASO, TONY BREWER, CHRIS		
	REMARKS: NR516118.					
NR520562	2019/09/06	CHARGE	\$396,000	HAPPY TOWN HOUSING INC.	BANK OF MONTREAL	C
NR641701	2023/05/15	CHARGE	\$132,842	HAPPY TOWN HOUSING INC.	1000027984 ONTARIO LIMITED JOHNSTON-KLEMENS, CHERYL	C
NR641702	2023/05/15	NO ASSGN RENT GEN		HAPPY TOWN HOUSING INC.	JOHNSTON-KLEMENS, CHERYL 1000027984 ONTARIO LIMITED	C
	REMARKS: NR641701					
NR665623	2024/05/08	CHARGE	\$80,500	HAPPY TOWN HOUSING INC.	J & Y BULK ENTERPRISES INC.	C
NR666382	2024/05/21	CHARGE	\$597,597	HAPPY TOWN HOUSING INC.	ELEVATION REALTY NETWORK INC.	C
NR668594	2024/06/19	CAUTION-LAND		*** COMPLETELY DELETED *** HAPPY TOWN HOUSING INC.	THE LION'S SHARE GROUP INC.	
	REMARKS: EXPIRES 60 DAYS FROM 2024/06/19					
NR670503	2024/07/12	TRANSFER OF CHARGE		1000027984 ONTARIO LIMITED JOHNSTON-KLEMENS, CHERYL	2762147 ONTARIO INC.	C
	REMARKS: NR641701.					
NR672213	2024/08/08	WITHDRAWAL CAUTION		*** COMPLETELY DELETED *** THE LION'S SHARE GROUP INC.		
	REMARKS: NR668594.					
NR672214	2024/08/08	APL COURT ORDER		SUPERIOR COURT OF JUSTICE	THE FULLER LANDAU GROUP INC.	C
	REMARKS: APPOINTING RECEIVER					

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

46220-0112 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NR679386	2024/11/15	APL COURT ORDER		SUPERIOR COURT OF JUSTICE	TDB RESTRUCTURING LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

# EXHIBIT E

PROPERTY DESCRIPTION: LT 1830 CP PL 2 GRANTHAM; CITY OF ST. CATHARINES

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:

RE-ENTRY FROM 46177-0171

PIN CREATION DATE:

2003/07/28

OWNERS' NAMES

HAPPY TOWN HOUSING INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/07/25 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/07/28 **						
RO493091	1985/03/04	NOTICE				C
REMARKS: ZONING REGULATIONS						
RO792307	2002/03/07	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** LAIRD, LINDA JANE LAIRD, IDA BEATRICE	LAIRD, LINDA JANE	
NR497917	2018/11/27	TRANSFER		*** COMPLETELY DELETED *** LAIRD, LINDA JANE	OLD THING BACK INC.	
REMARKS: PLANNING ACT STATEMENTS.						
NR497918	2018/11/27	CHARGE		*** COMPLETELY DELETED *** OLD THING BACK INC.	2384805 ONTARIO INC.	
NR497919	2018/11/27	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** OLD THING BACK INC.	2384805 ONTARIO INC.	
REMARKS: NR497918.						
NR507766	2019/04/05	CAUTION-LAND		*** COMPLETELY DELETED *** OLD THING BACK INC.	CLARK, DANIEL	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NR520529	2019/09/06	TRANSFER	\$334,000	OLD THING BACK INC.	HAPPY TOWN HOUSING INC.	C
NR520563	2019/09/06	CHARGE	\$334,000	HAPPY TOWN HOUSING INC.	BANK OF MONTREAL	C
NR520590	2019/09/09	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2384805 ONTARIO INC.		
NR532181	2020/01/14	CERTIFICATE		*** COMPLETELY DELETED *** CLARK, DANIEL		
NR584480	2021/07/28	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	HAPPY TOWN HOUSING INC.	
NR641699	2023/05/15	CHARGE	\$127,218	HAPPY TOWN HOUSING INC.	JOHNSTON-KLEMENS, CHERYL 1000027984 ONTARIO LIMITED	C
NR641700	2023/05/15	NO ASSGN RENT GEN		HAPPY TOWN HOUSING INC.	1000027984 ONTARIO LIMITED JOHNSTON-KLEMENS, CHERYL	C
NR665623	2024/05/08	CHARGE	\$80,500	HAPPY TOWN HOUSING INC.	J & Y BULK ENTERPRISES INC.	C
NR666382	2024/05/21	CHARGE	\$597,597	HAPPY TOWN HOUSING INC.	ELEVATION REALTY NETWORK INC.	C
NR668594	2024/06/19	CAUTION-LAND		*** COMPLETELY DELETED *** HAPPY TOWN HOUSING INC.	THE LION'S SHARE GROUP INC.	
NR670505	2024/07/12	TRANSFER OF CHARGE		JOHNSTON-KLEMENS, CHERYL 1000027984 ONTARIO LIMITED	2762147 ONTARIO INC.	C
NR672213	2024/08/08	WITHDRAWAL CAUTION		*** COMPLETELY DELETED *** THE LION'S SHARE GROUP INC.		
NR672214	2024/08/08	APL COURT ORDER		SUPERIOR COURT OF JUSTICE	THE FULLER LANDAU GROUP INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

46177-0033 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NR679386	2024/11/15	APL COURT ORDER		SUPERIOR COURT OF JUSTICE	TDB RESTRUCTURING LIMITED	C



# EXHIBIT F

**STANDSTILL AGREEMENT**

**THIS AGREEMENT** made as of the 14th day of March, 2024.

**BETWEEN:**

**BANK OF MONTREAL**, a chartered bank under the laws of Canada having an office at 100 King Street West, 19<sup>th</sup> Floor, Toronto, Ontario

(hereinafter called the “**Bank**”)

**OF THE FIRST PART**

- AND –

**HAPPY TOWN HOUSING INC.**, an Ontario corporation having its registered head office in the City of Hamilton, Ontario

(hereinafter called the “**Borrower**”)

**OF THE SECOND PART**

- AND –

**THOMAS DYLAN SUITOR**, the principal of the Borrower

(hereinafter called the “**Guarantor**”)

**OF THE THIRD PART****RECITALS**

1. The Borrower is indebted to the Bank on the loans described on **Schedule A**.
2. As of March 13, 2024, \$982,250.40 was outstanding for principal and accrued interest on the Loans as shown on **Schedule B**.
3. The Borrower owns, among other properties, the real properties municipally known as 34 Rykert Street, St. Catharines, 43 Centre Street, St. Catharines and 75 Queenston Street, St. Catharines (collectively, the “**Properties**”).
4. The Guarantor has signed the guarantee described on **Schedule C** (the “**Guarantee**”) for the liabilities of the Borrower to the Bank.
5. The Borrower has provided to the Bank the security documents described on **Schedule D** (the “**Security**”) to secure its liabilities and indebtedness to the Bank.

6. The Borrower has defaulted on the Loans and under the terms of the Security by failing to make required payments on the Loans, failing to pay the realty taxes for the Properties when due and further encumbering the Properties without the Bank's consent (the **"Defaults"**).
7. The Borrower is making efforts to sell the Properties.
8. The Borrower and the Guarantor have requested that the Bank standstill from demanding payment of the Loans and exercising its rights and remedies under the Security and against them to allow the Borrower the opportunity to sell and/or refinance the Properties with another lender (the **"Sale/Refinancing"**) and repay the Loans in an orderly fashion and the Bank has agreed to do so on the terms and conditions in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in consideration of the mutual terms herein set forth, the parties hereto agree as follows:

**1.0 Acknowledgment of Amounts Outstanding on Loans and Liability to Pay**

1.1 The Borrower acknowledges and confirms to the Bank as follows:

- (a) as of March 13, 2024, the amount outstanding for principal and interest on the Loans was \$982,250.40 (the **"Outstanding Balance"**) as shown on Schedule D; and
- (b) the Outstanding Balance, plus accruing interest thereon, is unconditionally owing by the Borrower to the Bank without set off or counterclaim and the Borrower does not dispute its liability to pay the Outstanding Balance, together with accruing interest thereon.

1.2 The Guarantor acknowledges and confirms to the Bank as follows:

- (a) the Guarantee is binding and enforceable in accordance with its written terms; and
- (b) he does not dispute on any grounds whatsoever his liability under the Guarantee.

## **2.0 Release**

- 2.1 The Borrower and the Guarantor acknowledge and agree that, as of the date hereof, they have no causes of action, disputes or claims for damages, set off or counterclaim (collectively, the “**Claims**”) against the Bank, its officers, directors, employees and agents on any basis whatsoever including, without limitation, any Claims related to or in any manner connected with the Loans, the administration of the Borrower’s accounts with the Bank or the Security and if there are any Claims, they are hereby forever released and discharged.

## **3.0 Confirmation of Security**

- 3.1 The Borrower acknowledges and confirms that,
- (a) the Security has not been released, discharged, waived or varied, other than as expressly provided in this Agreement; and
  - (b) it does not and, in the event of an Enforcement Action (as defined below) by the Bank, will not dispute that the Security is binding and enforceable in accordance with its written terms.

## **4.0 Accuracy of Recitals**

- 4.1 The parties acknowledge and confirm that the recitals to this Agreement are true and accurate in all respects.

## **5.0 Standstill**

- 5.1 Subject to and on the terms and conditions in this Agreement, the Bank agrees to standstill from any Enforcement Action from the Standstill Effective Time (as defined below) until 5:00 p.m. (EST) on June 15, 2024, subject to any extension which may be granted as set forth in section 6.4 below (such period, being hereafter referred to as the “**Standstill Period**”). “**Enforcement Action**” means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager or a receiver and manager, or other person having similar powers, the acceleration of all or any part of the Loans or other amounts owing, the taking possession or control of any property or undertaking, commencing, giving or making any demand for payment (including demanding payment of the Loans), any notice of intention

to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness or damages in lieu thereof, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to the Bank under the Security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

## **6.0 Repayment of Loans**

- 6.1 The Loans shall be repaid, in full, by the end of the Standstill Period.
- 6.2 During the Standstill Period, the Borrower shall not be required to make any scheduled payments on the Loans.
- 6.3 It is anticipated that the Loans will be repaid by the Sale/Refinancing. At all times during the Standstill Period, the Borrower will diligently pursue the Sale/Refinancing and shall keep the Bank updated on the status of the Sale/Refinancing, with a written report to be provided by the 15<sup>th</sup> day of each month. The Borrower shall advise the Bank upon receipt by it of all offers to purchase, commitment letters/term sheets and discussion papers as and when received from prospective lenders and/or purchasers and shall provide copies of same to the Bank unless prohibited from doing so pursuant to any confidentiality provisions contained therein.
- 6.4 Provided that a Standstill Termination Event (as defined below) has not occurred, if by 5:00 p.m. on June 15, 2024 the Borrower has been unable to fully repay the Loans but has obtained a financing commitment or entered into binding sale agreements for the Properties (or some of them) which, when completed, will enable the Borrower to repay the Loans, in full, the Standstill Period shall be extended for an additional 30 days to permit the Borrower to do so.
- 6.5 The Borrower and the Guarantor acknowledge and agree that nothing in this Agreement shall affect, or shall be interpreted as affecting, the Bank's right, in its sole discretion, to demand payment of the Loans after the Standstill Period is at an end. The Borrower and the Guarantor understand that if by the end of the Standstill Period (including any extension which may be granted under section 6.4 above) the Loans have not been fully repaid, the Bank's intention, in that event, is to demand payment of the Loans at that time.

**7.0 Interest Rates on the Loans**

- 7.1 Upon the execution of this Agreement, the interest rates on the Loans shall be increased to Prime Rate + 2% per year. “**Prime Rate**” is the floating rate of interest established from time to time by the Bank as the base rate it will use to determine rates of interest on Canadian dollar loans to customers in Canada and designated as “Prime Rate”.

**8.0 No Additional Credit**

- 8.1 The Borrower acknowledges that the Operating Loan (as defined on Schedule A) has been cancelled and is no longer available for use. The Borrower acknowledges and agrees that the Bank is not obligated to extend any additional credit to the Borrower, whether during or after the conclusion of the Standstill Period.

**9.0 Reporting**

- 9.1 Until the Loans are repaid, the Borrower and the Guarantor shall provide to the Bank all reporting required to be provided in connection with the Loans and such other reporting as the Bank may from time to time require.

**10.0 Defaults**

- 10.1 The Borrower acknowledges the Defaults and agrees that the Bank has not waived the Defaults or any and all rights that flow from or arise by virtue of same and nothing in this Agreement constitutes or shall be deemed or implied to be a waiver by the Bank of the Defaults or any and all rights which flow from same, provided that the Bank shall standstill from the taking of any Enforcement Action by reason on the Defaults as provided for in this Agreement.

**11.0 No Transfer of Assets without Bank Consent**

- 11.1 During the Standstill Period, the Borrower shall not without the prior written consent of the Bank sell, lease or dispose of any part of the collateral subject to the Security out of the ordinary course of business without the Bank’s prior written consent.

## 12.0 **Standstill Termination Events**

- 12.1 The Standstill Period shall, at the Bank's option, terminate and be at an end upon the occurrence of a Standstill Termination Event. The following shall be Standstill Termination Events hereunder:
- (a) if the Borrower defaults in the performance of any obligation or covenant in this Agreement or any other agreement between it and the Bank, other than the continuation of any existing default(s) as at the date of this Agreement of which the Bank has knowledge;
  - (b) there occurs an event of default under the Security, other than the continuation of any existing default(s) as at the date of this Agreement of which the Bank has knowledge;
  - (c) the second mortgagees of the Properties fail or refuse to provide a discharge of their mortgage(s) to facilitate a sale by the Borrower of the Properties, or any of them; and
  - (d) a material adverse change in the Borrower's assets, liabilities or condition (financial or otherwise) has occurred
- 12.2 Upon the conclusion of the Standstill Period (whether as a result of the occurrence of a Standstill Termination Event or otherwise), the Bank shall be under no obligation to continue to standstill from any Enforcement Action and shall be entitled, in its sole discretion, to accelerate and demand payment of the Loans and exercise its rights and remedies against the Borrower, the Guarantor and under the Security for repayment of the Loans, including any Enforcement Action, subject only to the Bank issuing such enforcement notices as may be required under the *Bankruptcy and Insolvency Act*, (the "**Enforcement Notice**") or as otherwise required by law.
- 12.3 The Borrower and the Guarantor agree that the intent of this Standstill Agreement is to allow the Borrower the opportunity to complete the Sale/Refinancing and repay the Loans in an orderly manner. The Borrower and the Guarantor agree that in the event that the Borrower is unable to do so, the Bank should not be delayed from proceeding with the enforcement of the Security beyond the expiration of the demand for payment and the notice period in the Enforcement Notice. In that event, the Borrower and Guarantor will co-operate with the Bank in the realization of the collateral subject to the Security.

- 12.4 In the event that the Bank does not demand payment of the Loans or take steps to exercise its rights and remedies against the Borrower and the Guarantor and under the Security for the repayment of the Loans immediately upon the conclusion of the Standstill Period (whether by the passage of time or the occurrence of a Standstill Termination Event), by continuing to standstill the Bank shall not be deemed to have (a) waived its right to demand payment of the Loans and exercise its rights and remedies against the Borrower, the Guarantor and under the Security or (b) waived any Standstill Termination Event which has occurred.

### **13.0 Environmental Compliance**

- 13.1 The Borrower shall forthwith provide to the Bank any correspondence received by it from the Ministry of the Environment and Climate Change or any other regulatory authority in connection with environmental matters affecting or relating to the Properties, or any of them.

### **14.0 Effective Date**

- 14.1 This Agreement shall become effective upon the receipt by the Bank of a counterpart of this Agreement, duly executed and delivered by the Borrower and the Guarantor by no later than March 20, 2024 (the “**Standstill Effective Time**”).

### **15.0 Administration Fee**

- 15.1 In consideration of the Bank’s agreement to standstill on the terms and conditions provided for in this Agreement and in recognition of and to help offset the additional costs associated with the administration of the Loans and management of the Borrower’s account as a result of the Defaults, the Borrower shall pay to the Bank a one-time administration fee in the amount of \$3,000 (the “**Fee**”). The Fee shall be fully earned upon the signing of this Agreement and shall be added to the Outstanding Balance and be payable upon the repayment of the Loans.

### **16.0 Independent Legal Advice**

- 16.1 The Borrower and the Guarantor acknowledge that they have obtained, or had the opportunity to obtain, independent legal advice with respect to entering into this Agreement and have read this Agreement in its entirety, understand its contents and are



signing this Agreement freely and voluntarily, without duress or undue influence from any party.

## **17.0 Miscellaneous**

- 17.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The Borrower and the Guarantor acknowledge and agree that except as herein expressly stated, no representation, statement, understanding, promise, warranty or collateral agreement, either oral or in writing, has been made or exists relating to this agreement or to induce the Borrower or the Guarantor to enter into this Agreement.
- 17.2 No modification or amendment of this Agreement shall be effective unless in writing and signed by all parties to this Agreement.
- 17.3 The Borrower and Guarantor agree that they will from time to time upon every reasonable request of the Bank do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, documents and assurances whatsoever for the better effecting of the provisions of this Agreement in accordance with its true intent.
- 17.4 This Agreement shall be binding upon the parties and each of their respective successors and assigns.
- 17.5 Time will, in all respects, be of the essence in this Agreement, and no extension of time or variation of any term of this Agreement will operate as a waiver of this provision.
- 17.6 Save and except as amended hereby, all terms and conditions of the Loans Documents, Security and Loans remain in full force and effect.
- 17.7 The Borrower and the Guarantor agree that the Bank shall have no obligation to discharge the Security, or any part thereof, until all liabilities and obligations secured thereby have been indefeasibly paid and satisfied in full.
- 17.8 All references in this Agreement to dollars or to “\$” are references to Canadian currency unless otherwise specifically indicated.
- 17.9 The Borrower agrees to pay all reasonable legal, consultant, appraisal and other professional fees and disbursements (collectively, “**Professional Fees**”) incurred and to be incurred by the Bank with respect to the Loans and the Borrower’s account, including

the legal costs incurred and to be incurred by the Bank in the preparation of this Agreement. The Professional Fees shall be secured by the Security until paid.

- 17.10 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Transmission by facsimile or electronic transmission in PDF format of an executed copy of this Agreement shall be deemed to and constitute due and sufficient delivery of such counterpart.

***[Signature page follows]***

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the date first above written.

**BANK OF MONTREAL**

Per: Eugene Chow  
Name: Eugene Chow  
Title: Senior Account Manager  
I have authority to bind the Bank

**HAPPY TOWN HOUSING INC.**

Per: DocuSigned by:  
Dylan Suitor  
5EF9CA0F830B418...  
Name: Thomas Dylan Suitor  
Title: President  
I have authority to bind the Company

DocuSigned by:  
Dylan Suitor  
5EF9CA0F830B418...  
**THOMAS DYLAN SUITOR**, in his personal capacity

**SCHEDULE A**

(Loans)

1. operating loan number 0490-1995-189 (the “**Operating Loan**”)
2. Non-revolving loan number 3712-1669-001 (“**Demand Loan No. 1**”)
3. Non-revolving loan number 3712-1669-002 (“**Demand Loan No. 2**”)
4. Non-revolving loan number 3712-1669-003 (“**Demand Loan No. 3**”)
5. Non-revolving loan number 3712-1669-004 (“**Demand Loan No. 4**”)

**SCHEDULE B**

(Outstanding balances on the Loans as of March 13, 2024)

Operating Loan

- Principal \$ 29,420.83
- Interest \$ 130.51

Demand Loan No. 1

- Principal \$ 303,035.85
- Interest \$ 5,267.49

Demand Loan No. 2

- Principal \$ 342,300.01
- Interest \$ 5,949.96

Demand Loan No. 3

- Principal \$ 32,831.61
- Interest \$ 335.58

Demand Loan No. 4

- Principal \$ 258,458.50
- Interest \$ 4,493.06

**SCHEDULE C**

(Guarantee)

1. Guarantee dated August 29, 201 in the principal amount of \$2,260,000

**SCHEDULE D**

(Security)

1. General Security Agreement dated August 29, 2019
2. Charge/ mortgage registered in the Niagara North land registry office (LRO 30) on September 6, 2019 as instrument NR520563 for the property municipally known as 34 Rykert Street, St. Catharines (PIN 46177-0033)
3. Charge/ mortgage registered in the Niagara North land registry office (LRO 30) on September 6, 2019 as instrument NR520562 for the property municipally known as 43 Centre Street, St. Catharines (PIN 46220-0112)
4. Charge/ mortgage registered in the Niagara North land registry office (LRO 30) on September 6, 2019 as instrument NR520561 for the property municipally known as 75 Queenston Street, St. Catharines (PIN 46264-0040)

# EXHIBIT G



**STANDSTILL EXTENSION AGREEMENT**

**THIS AGREEMENT** made as of June 15, 2024.

**AMONG:**

**BANK OF MONTREAL**, a Canadian chartered bank  
having an office at 100 King Street West, 19<sup>th</sup> Floor,  
Toronto, Ontario

(hereinafter called the “**Bank**”)

**OF THE FIRST PART**

- AND –

**HAPPY TOWN HOUSING INC.**, an Ontario corporation  
having its registered head office in the City of Hamilton,  
Ontario

(hereinafter called the “**Borrower**”)

**OF THE SECOND PART**

- AND –

**THOMAS DYLAN SUITOR**, the principal of the Borrower  
(hereinafter called the “**Guarantor**”)

**OF THE THIRD PART**

**RECITALS**

1. The parties have previously entered into a Standstill Agreement made as of March 14, 2024 (the “**Standstill Agreement**”).
2. Capitalized terms in this Agreement have the same meaning as in the Standstill Agreement.
3. The Standstill Period expires at 5:00 p.m. on June 15, 2024.
4. The Borrower and the Guarantor have requested, and the Bank has agreed, to extend the Standstill Period as provided for in this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in consideration of the mutual terms herein set forth, the parties hereto agree as follows:

1. Subject to the terms hereof, the Standstill Period is hereby extended to 5:00 p.m. on August 15, 2024 (the “**Standstill Extension Date**”). For clarity, the 30-day extension provided for in section 6.4 of the Standstill Agreement shall no longer apply.
2. The Borrower shall provide to the Bank weekly updates on the status of the Sale/Refinancing.
3. Save and except as amended hereby, all terms and conditions in the Standstill Agreement remain in full force and effect.
4. The Borrower and the Guarantor acknowledge and confirms to the Bank as follows:
  - (a) as of June 12, 2024, the Outstanding Balance on the Loans is \$1,007,188.62 as shown on Schedule A;
  - (b) the Outstanding Balance is unconditionally owing to the Bank without set off or counterclaim; and
  - (c) they do not dispute on any grounds whatsoever their liability to pay the Outstanding Balance, and in the event of an Enforcement Action by the Bank, they will not dispute their liability to pay the Outstanding Balance, plus accruing interest thereon.
5. In consideration of the extension of the Standstill Period, the Borrowers shall pay to the Bank a one-time extension fee in the amount of \$2,000 (the “**Extension Fee**”). The Extension Fee is in addition to the Fee, shall be fully earned on the signing of this Agreement by the Borrower and shall be added to the Outstanding Balance and be payable upon the repayment of the Loans.
6. This Agreement shall be binding upon the parties hereto and each of their respective successors and assigns.
7. Time will, in all respects, be of the essence in this Agreement and no extension of time or variation of any term of this Agreement will operate as a waiver of this provision.
8. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Transmission by facsimile or electronic transmission in PDF format of an executed copy

of this Agreement shall be deemed to and constitute due and sufficient delivery of such counterpart.

**[*Signature page follows*]**

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the date first above written.

**BANK OF MONTREAL**

Per: *Eugene Chow*  
Eugene Chow, Senior Account  
Manager  
I have authority to bind the Bank

**HAPPY TOWN HOUSING INC.**

Per: DocuSigned by:  
*Dylan Suitor*  
5EF9CA0F830B418...  
Name: Thomas Dylan Suitor  
Title: President  
I have authority to bind the Company

DocuSigned by:  
*Dylan Suitor*  
5EF9CA0F830B418...  
**THOMAS DYLAN SUITOR**, in his personal  
capacity

SCHEDULE A

(Outstanding balances on the Loans as of June 12, 2024)

Operating Loan

- Principal \$ NIL
- Interest \$ 0.06

Demand Loan No. 1

- Principal \$ 303,035.85
- Interest \$ 12,110.63

Demand Loan No. 2

- Principal \$ 342,300.01
- Interest \$ 13,679.77

Demand Loan No. 3

- Principal \$ 32,831.61
- Interest \$ 1,076.99

Demand Loan No. 4

- Principal \$ 258,485.50
- Interest \$ 10,330.17

Demand Loan No. 5

- Principal \$ 32,953.40
- Interest \$ 384.63

# EXHIBIT H



Court File No. CV-24-00717669-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE

)

WEDNESDAY, THE 26<sup>TH</sup>

JUSTICE OSBORNE

)

DAY OF JUNE, 2024

)

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF THE  
LION'S SHARE GROUP INC. AND THE WINDROSE GROUP INC.

ORDER  
(HAPPY TOWN HOUSING PROPERTIES)

**THIS MOTION** made by The Fuller Landau Group Inc. ("**Fuller**"), in its capacity as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings, and properties (collectively, the "**Property**") of The Lion's Share Group Inc. and The Windrose Group Inc. for an Order, among other things, i) ordering that certain Promissory Notes (defined below), listed on the Schedule A attached hereto, constitute good and valid charges upon the real property associated with such Promissory Notes (the "**Associated Properties**"); and ii) the applicable land registry office register this Order on title of the Associated Properties, was heard this day by Zoom videoconference.

**ON READING** the motion record of the Receiver and on hearing the submissions of counsel for the Receiver and those other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Katie Parent, sworn June 24, 2024 and the Affidavit of Service of Jennifer Stam sworn June 24, 2024:

**SERVICE**

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

## LAND TITLE REGISTRATIONS

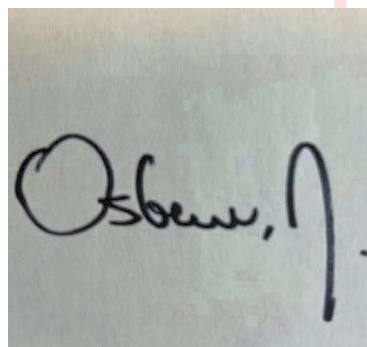
2. **THIS COURT ORDERS** With respect to each row of the table attached hereto as Schedule A, the Promissory Note identified in Column A of the Table constitutes a good and valid charge upon the real property legally described in Column B in favour of creditor party name in the principal amount set out in Column C.

3. **THIS COURT ORDERS** that this Order may be registered against title to the Associated Properties listed in Schedule A hereto, provided that this Order may be deleted from title to any Property upon application to the Land Registrar by the Receiver.

## MISCELLANEOUS

4. **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.

5. **THIS COURT ORDERS** that the Receiver and its counsel, may serve or distribute this Order and any related materials, by forwarding true copies thereof by email or regular mail to the Noteholders, creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and the notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).



2024.06.2

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**Schedule “A”**

		COLUMN A			COLUMN B	COLUMN C	
	Land Titles Office No.	Promissory Notes Creating Charges	Municipal Address of Real Property specifically referenced in Promissory Note	Municipal Address of Real Property generally referenced in Promissory Note	Legal Description and PIN of specific or general Real Property as disclosed by title search	Principal Amount of Charge as set out in Promissory Note	Registered Owner as disclosed by title search
109	30 (Niagara North)	Promissory Note Loan Agreement dated March 11, 2021, renewed by Promissory Note Renewal dated August 21, 2023, renewed by Promissory Note Renewal dated September 7, 2023, renewed by Promissory Note Renewal dated September 7, 2023 given by Happy Town Housing Inc., as borrower, and Dylan Sutor as guarantor	n/a	34 Rykert St. St. Catharines, ON	PIN 46177-0033 (LT); LT 1830 CP PL 2 GRANTHAM CITY OF ST. CATHARINES	\$ 88,750.69	Happy Town Housing Inc.
109	30 (Niagara North)	Promissory Note Loan Agreement dated March 11, 2021, renewed by Promissory Note Renewal dated August 21, 2023, renewed by Promissory Note Renewal dated September 7, 2023, renewed by Promissory Note Renewal dated September 7, 2023 given by Happy Town Housing Inc., as borrower, and Dylan Sutor as guarantor	n/a	75 Queenston St. St. Catharines, ON	PIN 46264-0040 (LT); LT 3667 CP PL 2 GRANTHAM CITY OF ST. CATHARINES	\$ 88,750.69	Happy Town Housing Inc.
109	30 (Niagara North)	Promissory Note Loan Agreement dated March 11, 2021, renewed by Promissory Note Renewal dated August 21, 2023, renewed by Promissory Note Renewal dated September 7, 2023, renewed by Promissory Note Renewal dated September 7, 2023 given by Happy Town Housing Inc., as borrower, and Dylan Sutor as guarantor	n/a	43 Centre St. St. Catharines, ON	PIN 46220-0112 (LT); PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES	\$ 88,750.69	Happy Town Housing Inc.
110	30 (Niagara North)	Promissory Note Loan Agreement dated March 23, 2023 given by Happy Town Housing Inc., as borrower, and Dylan Sutor as guarantor	n/a	34 Rykert St. St. Catharines, ON	PIN 46177-0033 (LT); LT 1830 CP PL 2 GRANTHAM CITY OF ST. CATHARINES	\$ 161,605.32	Happy Town Housing Inc.
110	30 (Niagara North)	Promissory Note Loan Agreement dated March 23, 2023 given by Happy Town Housing Inc., as borrower, and Dylan Sutor as guarantor	n/a	75 Queenston St. St. Catharines, ON	PIN 46264-0040 (LT); LT 3667 CP PL 2 GRANTHAM CITY OF ST. CATHARINES	\$ 161,605.32	Happy Town Housing Inc.
110	30 (Niagara North)	Promissory Note Loan Agreement dated March 23, 2023 given by Happy Town Housing Inc., as borrower, and Dylan Sutor as guarantor	n/a	43 Centre St. St. Catharines, ON	PIN 46220-0112 (LT); PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES	\$ 161,605.32	Happy Town Housing Inc.

Court File No. CV-24-00717669-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF THE LION'S SHARE GROUP INC.  
AND THE WINDROSE GROUP INC.

<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>COMMERCIAL LIST</b>  PROCEEDING COMMENCED AT TORONTO	
<b>ORDER</b> <b>(HAPPY TOWN HOUSING PROPERTIES)</b>	
<b>NORTON ROSE FULBRIGHT CANADA LLP</b> 222 Bay Street, Suite 3000 Toronto ON M5K 1E7  <b>Jennifer Stam LSO#: 46735J</b> Tel: 416.202.6707 <a href="mailto:jennifer.stam@nortonrosefulbright.com">jennifer.stam@nortonrosefulbright.com</a>  <b>James Renihan LSO#: 57553U</b> Tel: 416.216.1944 <a href="mailto:james.renihan@nortonrosefulbright.com">james.renihan@nortonrosefulbright.com</a>  Lawyers for the Receiver	

# EXHIBIT I



MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
CANADA

**119**  
T 519.931.3500  
F 519.858.8511

MILLERTHOMSON.COM

September 19, 2024

**Registered Mail and Email**  
**(dylan@elevationrealty.ca)**

**Tony Van Klink**  
Direct Line: +1 519.931.3509  
tvanklink@millerthomson.com

File No. 0082754.0981

Happy Town Housing Inc.  
1 King Street West, 10<sup>th</sup> Fl.  
Hamilton, ON L8P 1A4

Attention: Thomas Dylan Suitor

Dear Sir:

**Re: Loans with Bank of Montreal ("BMO")**

We are the lawyers for BMO.

We refer to the loans (the "**Loans**") made by BMO to Happy Town Housing Inc. (the "**Company**") as listed on Schedule A to this letter. We are advised by BMO that as of September 18, 2024, there was an outstanding balance on the Loans of \$600,547.69, the breakdown of which is on Schedule B to this letter.

The Loans are repayable on demand.

On behalf of BMO, we hereby demand immediate payment from the Company of the outstanding balance on the Loans in the amount of \$600,547.69, plus accruing interest thereon and all accrued and accruing costs.

Enclosed is a notice under section 244 of the *Bankruptcy and Insolvency Act*.

Yours truly,

Tony Van Klink  
TVK/jf

Enclosure  
c. Eugene Chow

**SCHEDULE A**

(Loans)

1. Non-revolving demand loan number 3712-1669-002 ("**Loan 002**")
2. Non-revolving demand loan number 3712-1669-004 ("**Loan 004**")



**SCHEDULE B**

(Outstanding balance as of September 18, 2024)

**Loan 002**

- Principal \$ 339,398.67
- Interest \$ 2,226.50

**Loan 004**

- Principal \$ 257,227.70
- Interest \$ 1,694.82



**NOTICE OF INTENTION TO ENFORCE SECURITY  
(SUBSECTION 244(1) OF THE BANKRUPTCY AND INSOLVENCY ACT)**

**TO:** Happy Town Housing Inc.,  
an Insolvent Person

**TAKE NOTICE THAT:**

1. **Bank of Montreal**, a secured creditor, intends to enforce its security on the property of the insolvent person, being:
  - (a) all present and future personal property, whether tangible or intangible and including, without limitation, all inventory, equipment, machinery, fixtures, accounts receivable, monies, choses in action, documents of title, securities and any and all proceeds derived from any dealing therewith;
  - (b) the real property located at 43 Centre Street, St. Catharines, Ontario and legally described as PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES (PIN 46220-0112), Land Registry Office #30 (the “**Centre Street Property**”); and
  - (c) the real property located at 34 Rykert Street, St. Catharines, Ontario and legally described as LT 1830 CP PL 2 GRANTHAM; CITY OF ST. CATHARINES (PIN 46177-0033), Land Registry Office #30 (the “**Rykert Street Property**”).
2. The security that is to be enforced is in the form of:
  - (a) General Security Agreement dated August 29, 2019;
  - (b) Charge registered in the Niagara North land registry office on September 6, 2019 as instrument number NR520562 in respect of the Centre Street Property; and
  - (c) Charge registered in the Niagara North land registry office on September 6, 2019 as instrument number NR520563 in respect of the Rykert Street Property.
3. The total amount of indebtedness secured by the security is \$600,547.69 on account of principal and interest as of September 18, 2024, together with accruing interest and costs.
4. The secured creditor will not have the right to enforce the security until after the expiry of the ten-day period following the sending of this Notice, unless the insolvent person consents to an earlier enforcement.

**DATED** at London, Ontario this 19th day of September, 2024.

**BANK OF MONTREAL**  
By its Solicitors  
Miller Thomson LLP  
2010 – 255 Queens Avenue  
London, ON N6A 5R8

Per:

Tony Van Klink



# EXHIBIT J

NOTICE OF SALE UNDER MORTGAGE

TO: See Schedule A

TAKE NOTICE that default has been made in payment of the moneys due under a certain Mortgage dated the 6th day of September, 2019 made between:

Happy Town Housing Inc.

as Mortgagor,

- and -

Bank of Montreal

as Mortgagee,

upon the following property, namely:

the lands and premises legally described as PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES (PIN 46220-0112(LT)) and municipally known as 43 Centre Street, St. Catharines, Ontario;

which Mortgage was registered on the 6th day of September, 2019 in the Niagara North Land Registry Office (#30) as No. NR520562.

AND I HEREBY give you notice that the amount due on the mortgage as of September 18, 2024 for principal money, interest and costs, respectively, are as follows:

Principal and interest	\$341,625.17
For legal costs	\$3,500.00
<b>TOTAL</b>	<b><u>\$345,125.17</u></b>

(such amount for legal costs being up to the sending of this Notice only. Such further costs and disbursements will be charged as may be proper), together with further interest from September 19, 2024 at the mortgagee’s prime rate plus 5% per annum, compounded monthly.

AND unless the said sums are paid on or before the 6th day of November, 2024, Bank of Montreal shall sell the property covered by the said mortgage under the provisions contained in it.

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 1st day of October, 2024.

**BANK OF MONTREAL**  
by their solicitors and authorized agents  
Miller Thomson LLP  
Barristers and Solicitors  
2010 – 255 Queens Avenue  
London, ON N6A 5N6  
(519) 931-3509

Per:

Tony Van Klink

**SCHEDULE A**

TO: Happy Town Housing Inc.  
1 King Street West, 10<sup>th</sup> Fl.  
Hamilton, ON L8P 1A4

Happy Town Housing Inc.  
245 Wyecroft Road, Suite 4  
Oakville, ON L6K 3Y6

Email: dylan@elevationrealty.ca

AND TO: Thomas Dylan Suitor  
1 King Street West, 10<sup>th</sup> Fl.  
Hamilton, ON L8P 1A4

AND TO: 1000027984 Ontario Limited  
1930 Seacliff Drive  
Kingsville, ON N9Y 2N1

AND TO: Cheryl Johnston-Klemens  
53 Road 12  
Leamington, ON N8H 3V7

AND TO: J&Y Bulk Enterprises Inc.  
P.O. Box 33  
Dunnville, ON N1A 2X1

AND TO: Elevation Realty Network Inc.  
4-245 Wyecroft Road  
Oakville, ON L6K 3Y6

AND TO: The Fuller Landau Group Inc.  
151 Bloor Street West, 12<sup>th</sup> Floor  
Toronto, ON M5S 1S4  
Attention: Gary Abrahamson

AND TO: 2762147 Ontario Inc.  
1421 McNab Rd.  
Niagara-on-the-Lake, ON L0S 1J0

INTENTIONALLY LEFT BLANK

NOTICE OF SALE UNDER MORTGAGE

TO: See Schedule A

TAKE NOTICE that default has been made in payment of the moneys due under a certain Mortgage dated the 6th day of September, 2019 made between:

Happy Town Housing Inc.

as Mortgagor,

- and -

Bank of Montreal

as Mortgagee,

upon the following property, namely:

the lands and premises legally described as LT 1830 CP PL 2 GRANTHAM; CITY OF ST. CATHARINES (PIN 46177-0033(LT)) and municipally known as 34 Rykert Street, St. Catharines, Ontario;

which Mortgage was registered on the 6th day of September, 2019 in the Niagara North Land Registry Office (#30) as No. NR520563.

AND I HEREBY give you notice that the amount due on the mortgage as of September 18, 2024 for principal money, interest and costs, respectively, are as follows:

Principal and interest	\$258,922.52
For legal costs	\$3,500.00
<b>TOTAL</b>	<b><u>\$262,422.52</u></b>

(such amount for legal costs being up to the sending of this Notice only. Such further costs and disbursements will be charged as may be proper), together with further interest from September 19, 2024 at the mortgagee’s prime rate plus 5% per annum, compounded monthly.

AND unless the said sums are paid on or before the 6th day of November, 2024, Bank of Montreal shall sell the property covered by the said mortgage under the provisions contained in it.

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 1st day of October, 2024.

**BANK OF MONTREAL**  
by their solicitors and authorized agents  
Miller Thomson LLP  
Barristers and Solicitors  
2010 – 255 Queens Avenue  
London, ON N6A 5N6  
(519) 931-3509

Per:

  
Tony Van Klink

**SCHEDULE A**

TO: Happy Town Housing Inc.  
1 King Street West, 10th Fl.  
Hamilton, ON L8P 1A4

Happy Town Housing Inc.  
245 Wyecroft Road, Suite 4  
Oakville, ON L6K 3Y6

Email: dylan@elevationrealty.ca

AND TO: Thomas Dylan Suitor  
1 King Street West, 10th Fl.  
Hamilton, ON L8P 1A4

AND TO: 1000027984 Ontario Limited  
1930 Seacliff Drive  
Kingsville, ON N9Y 2N1

AND TO: Cheryl Johnston-Klemens  
53 Road 12  
Leamington, ON N8H 3V7

AND TO: J&Y Bulk Enterprises Inc.  
P.O. Box 33  
Dunnville, ON N1A 2X1

AND TO: Elevation Realty Network Inc.  
4-245 Wyecroft Road  
Oakville, ON L6K 3Y6

AND TO: The Fuller Landau Group Inc.  
151 Bloor Street West, 12th Floor  
Toronto, ON M5S 1S4  
Attention: Gary Abrahamson

AND TO: 2762147 Ontario Inc.  
1421 McNab Rd.  
Niagara-on-the-Lake, ON L0S 1J0

# EXHIBIT K



Court File No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**APPLICATION FOR BANKRUPTCY ORDER**

The applicant (the “**Applicant**”), The Fuller Landau Group Inc., in its capacity as receiver (the “**Receiver**”) of the property, assets and undertaking of The Lion’s Share Group Inc. (“**Lion’s Share**”), hereby makes an application to the Court that Thomas Dylan Sutor (the “**Debtor**”) be adjudged Bankrupt and that a Bankruptcy Order be made in respect of the property of the Debtor, of the City of Burlington, in the Province of Ontario, lately carrying on business in the Province of Ontario, and say:

1. THAT the said Debtor has at some time during the six months next preceding the filing of this Application resided and/or conducted business in the City of Burlington, Province of Ontario.
2. THAT the said Debtor is justly and truly indebted to Lion’s Share for, among other things, the following amounts:
  - (a) \$1,267,948.83; and
  - (b) \$1,403,393.17.
3. THAT interest and costs continue to accrue on the above amounts.



4. THAT pursuant to an Order of the Court made on April 3, 2024 in Court File No. CV-24-00717669-00CL (the “**Receivership Order**”), Fuller was appointed as Receiver over all of the property, assets and undertaking of Lion’s Share;
5. THAT the Receiver has the power and authority to bring this application pursuant to, among other things, paragraph 3(e) and (i) of the Receivership Order;
6. THAT Lion’s Share does not, nor does any person on its behalf, hold any security on the said Debtor’s property, or on any part thereof, for the payment of the said sum;
7. THAT the Debtor has, within the six months next preceding the date of the filing of this Application, committed the following acts of bankruptcy, namely:
  - (a) he has ceased to meet his liabilities generally as they become due, including without limitation, the indebtedness owing by the Debtor to Lion’s Share and to other creditors;
  - (b) he has made a fraudulent gift, delivery or transfer of the Debtor’s property to related parties, including by granting mortgages to National Bank of Canada over two residential properties owned by him and dissipating the proceeds of such mortgages; and
  - (c) he, through holding companies, has purported to create a charge on certain properties indirectly held by him, including by registering mortgages on such properties by other holding companies, which charges would, under the *Bankruptcy and Insolvency Act* (Canada) be void as a fraudulent preference or would be further fraudulent transfers, gifts or deliveries of the Debtor’s property.

8. THAT TDB Restructuring Limited of the City of Toronto in the Province of Ontario, is a person qualified to act as trustee of the property of the Debtor (the “**Trustee**”), has agreed to act as such and is acceptable to the undermentioned creditors:

<u>CREDITOR</u>	<u>ADDRESS</u>	<u>AMOUNT</u>
Lion’s Share	c/o Fuller Landau 151 Bloor Street West 12 <sup>th</sup> Floor Toronto, Ontario M5S1S4	(a) \$1,267,948.83; and (b) \$1,403,393.17 Plus interest and expenses
Nicole Kelly	c/o Aird & Berlis LLP 181 Bay Street, Suite 1800 Toronto, Ontario M5J2T9	\$75,000.00, plus interest and expenses

**DATED** at Toronto, Ontario this 30<sup>th</sup> day of August, 2024

SIGNED by the Applicant

In the presence of:

*Lauren Archibald*

(Signature of Witness)

Lauren Archibald  
87151U

*Gary Abrahamson*

THE FULLER LANDAU GROUP INC.  
solely in its capacity as receiver of the  
property, assets and undertaking of THE  
LION'S SHARE GROUP INC. and not  
in its personal capacity

**ISSUED** at Toronto, in the Province of Ontario this 30th. day of August, 2024

**Debbie L Stubbs**

Digitally signed by Debbie L Stubbs  
Date: 2024.08.30 16:15:13 -04'00'

REGISTRAR IN BANKRUPTCY

PER Jove Ponniah, Registrar in Bankruptcy  
OFFICER OF THE BANKRUPTCY COURT IN ONTARIO

Court File No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario**

**AFFIDAVIT OF VERIFICATION OF STATEMENTS IN APPLICATION**

I, Gary Abrahamson, of the City of Toronto, in the Province of Ontario, applicant  
named in the application hereunto annexed, **MAKE OATH AND SAY:**

1. That I am the president of The Fuller Landau Group Inc. (“**Fuller**”), the court appointed receiver (the “**Receiver**”) of the property, assets and undertakings of The Lion’s Share Group Inc. (“**Lion’s Share**”). As such, I have knowledge of the facts hereinafter deposed to.
2. Fuller was appointed Receiver pursuant to an Order of the Court made on April 3, 2024 in Court File No. CV-24-00717669-00CL.
3. Pursuant to, among other things, paragraphs 3(e) and (i) of the Receivership Order, the Receiver has the power and authority to bring this application.
4. That Thomas Dylan Sutor is justly and truly indebted to Lion’s Share for, among other things, the following amounts:
  - (a) \$1,267,948.83; and
  - (b) \$1,403,393.17.

5. THAT interest and costs continue to accrue on the above amounts.
6. This debt arises from promissory notes signed and guaranteed by Thomas Dylan Suitor in favor of Lion's Share on behalf of a number of companies indebted to Lion's Share, including: 10 Norfolk St. Inc., 388 Downie St. Inc., Commercial Urkel Inc., Happy Town Housing Inc., and Up-town Funk Inc.
7. That the facts all alleged in the said Application are, within my own knowledge, true.

SWORN before me at the City of  
Toronto, in the Province of Ontario,  
this 30<sup>th</sup> day of August, 2024

*Lauren Archibald*

A Commissioner of Oaths

Lauren Archibald  
87151U

*Gary Abrahamson*

GARY ABRAHAMSON

**TO: Thomas Dylan Suitor**

775 King Road, Burlington, ON, L7T3K7

TAKE NOTICE that an Application for a Bankruptcy Order has been made in respect of your property and will be heard before the presiding Judge, at 330 University Avenue, in the City of Toronto, Ontario on \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_, 2024 at the hour of \_\_\_\_ o'clock a.m., or so soon thereafter as the Application can be heard.

AND FURTHER TAKE NOTICE that if notice of cause against the Application is not filed in Court and a copy thereof served on the solicitor for the Applicant creditor at least two (2) days before the hearing and if you do not appear at the hearing, the Court may make a Bankruptcy Order on such proof of the statements in the application as the Court shall think sufficient.

DATED at Toronto, in the Province of Ontario this 30th. day of August, 2024.

Court No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual with  
the locality of Burlington, Ontario

**APPLICATION FOR  
BANKRUPTCY ORDER**

**Norton Rose Fulbright Canada LLP**  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, Ontario  
M5K 1E7 CANADA

**Jennifer Stam LSO#:46735J**

Tel: 416.202.6707

[Jennifer.stam@nortonrosefulbright.com](mailto:Jennifer.stam@nortonrosefulbright.com)

**James Renihan LSO#: 57553U**

Tel: 416.216.1944

[james.renihan@nortonrosefulbright.com](mailto:james.renihan@nortonrosefulbright.com)

Lawyers for The Fuller Landau Group Inc., receiver  
the property, assets and undertaking of The Lion's  
Share Group Inc.



# EXHIBIT L



THE HONOURABLE JUSTICE OSBORNE

OCTOBER 7, 2024



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**ORDER**

**(Appointing Interim Receiver)**

**THIS MOTION** made by the applicant, The Fuller Landau Group Inc., in its capacity as receiver of the property, assets and undertaking of The Lion's Share Group Inc., (the "**Applicant**") for an Order pursuant to section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing TDB Restructuring Limited ("**TDB**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the property, assets and undertaking of Thomas Dylan Sutor (the "**Debtor**"), was heard orally on October 3, 2024, in Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant dated August 31, 2024; the Fourth Report of the Applicant dated August 31, 2024; the Supplement to the Fourth Report of the Applicant dated September 30, 2024; the consent of TDB to act as Interim Receiver dated August 30, 2024; and the affidavit of verification of Gary Abrahamson sworn August 30, 2024;

**AND UPON** hearing the submissions of counsel for the Interim Receiver, counsel for the Applicant, counsel for the Debtor, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn September 19, 2024 and the affidavits of service of Lauren Archibald sworn September 19, 2024 and October 1, 2024.

## 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 matter is properly heard today and hereby dispenses with further service thereof.

## APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 46 of the BIA, TDB is hereby appointed Interim Receiver, without security, of all of the property, assets and undertaking of the Debtor, including, without limitation, the real property described in Schedule “A” hereto (the “**Property**”).

## INTERIM RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor the Debtor’s bank accounts and the accounts of Related Entities (as defined below) and approve all disbursements from the Debtor’s bank accounts and the accounts of Related Entities;
- (b) to take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor or corporations or other entities associated with, related to or controlled by the Debtor (the “**Related Entities**”), including the Related Entities listed on Schedule “C” hereto;
- (c) to engage independent security personnel to preserve and protect the Property;
- (d) to take any steps the Interim Receiver may deem necessary or desirable to preserve and protect the personal property and real property legally or beneficially owned by the Debtor or the Related Entities pending further order of the Court including, but not limited to, changing locks, security codes and passwords and the taking of physical inventories, and the control of access to the Debtor’s or the Related Entities’ Records (as defined below) and premises;

- (e) 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 Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (g) to undertake any investigations deemed appropriate by the Interim Receiver with respect to the business and affairs of the Debtor;
- (h) to apply to this Court for such further relief, advice and directions as the Interim Receiver may determine as necessary or desirable;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to the Property or against title to the assets of the Related Entities;
- (j) to conduct examinations of any person, if deemed necessary in the Interim Receiver's discretion; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtor or the Related Entities,

and in each case the Interim Receiver shall be exclusively authorized and empowered to do so, to the exclusion of the Debtor, and without interference from any other person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) 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 Interim Receiver of the existence of any Property in such Person’s possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtor or the Related Entities, and any computer programs, computer tapes, computer disks, cloud 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software, cloud 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 Interim 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, in the cloud 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 Interim Receiver for the purpose of allowing the Interim 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 Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer, cloud or other system and providing the Interim Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or any Related Entities or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor, the Related Entities or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Related Entities, the Interim Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtor, to carry on any business which the Debtor, is not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtor, 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 INTERIM RECEIVER**

10. **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 Debtor or a Related Entity, without written consent of the Interim Receiver or leave of this Court.

## CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or any of the Related Entities, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtor or the Related Entities, 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 Interim Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Interim Receiver shall be entitled to the continued use of the Debtor's or the Related Entities' 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 Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

## EMPLOYEES

12. **THIS COURT ORDERS** that all employees of the Debtor or the Related Entities shall remain the employees of the Debtor or the Related Entities. The Interim 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 Interim 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* (the "**WEPPA**").

## LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property or the Related Entities 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property or any property of the Related Entities within the meaning of any Environmental Legislation, unless it is actually in Possession.

#### **LIMITATION ON THE INTERIM RECEIVER’S LIABILITY**

14. **THIS COURT ORDERS** that the Interim 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 WEPPA. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER’S ACCOUNTS**

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the “**Interim 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 Interim 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.

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

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim 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 INTERIM RECEIVERSHIP**

18. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a credit facility, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, 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 Interim 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 “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Interim Receiver’s Certificate**”), as modified to reflect the terms of the credit facility between the Interim Receiver and the Applicant referred to in paragraph 18, for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver’s Certificates.



## SERVICE AND NOTICE

22. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (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 <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) 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: <https://tdbadvisory.ca/insolvency-case/d-suitor>.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 any creditors of the Debtor or other interested parties at their respective addresses as last shown on the records of the Debtor, 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.

24. **THIS COURT ORDERS** that the Applicant, the Interim Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

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

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver, trustee in bankruptcy or monitor of the Debtor.

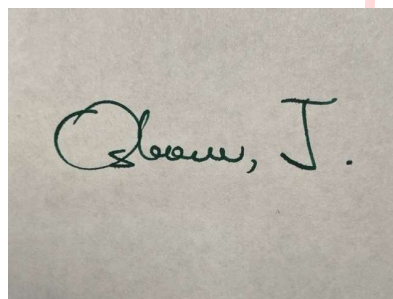
27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts,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

28. **THIS COURT ORDERS** that the Interim 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 Interim 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.

29. **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 Interim Receiver from the estates of the Debtor, with such priority and at such time as this Court may determine.

30. **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 Interim 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.

31. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.

A rectangular box containing a handwritten signature in dark ink. The signature appears to be "Osborne, J." written in a cursive, slightly slanted style.

Digitally signed  
by Osborne J.

Date:

2024.10.07

14:11:30 -04'00'

**SCHEDULE “A”**  
**DESCRIPTION OF REAL PROPERTY**

<b>No.</b>	<b>Municipal Address</b>	<b>PIN</b>	<b>Registered Owner</b>
1.	775 King Road, Burlington, Ontario, L7T 3K6	PIN 07096-0052 (LT)	Thomas Dylan Suitor
2.	2298 Fassel Avenue, Burlington, Ontario, L7R 3P3	PIN 07077-0108 (LT)	Thomas Dylan Suitor

**SCHEDULE “B”**  
**INTERIM RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that TDB Restructuring Limited, the interim receiver (the “**Interim Receiver**”) of the property, assets and undertaking of Thomas Dylan Suitor acquired for, or used in relation to a business carried on by the Debtor, 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 August, 2024 (the “**Order**”) made in an action having Court file number BK-24-00208718-OT31, has received as such Interim Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_, which the Interim 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 [**daily**][**monthly not in advance on the \_\_\_\_ day of each month**] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ percent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
  
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 Interim 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 Interim 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 Interim 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 Interim 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 Interim 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 \_\_\_\_\_, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE “C”  
RELATED ENTITIES**

<b>No.</b>	<b>Entity Name</b>
1.	10 Norfolk St. Inc.
2.	1083 Main Street Inc.
3.	2657677 Ontario Inc.
4.	2710654 Ontario Inc.
5.	388 Downie St. Inc.
6.	642 Hamilton Road Inc.
7.	Commercial Urkel Inc.
8.	Conduit Asset Management Inc.
9.	Dylan Suitor Professional Real Estate Holding Corporation
10.	Elev8 Inc.
11.	Elevation Reality Network Inc.
12.	Happy Town Housing Inc.
13.	Old Thing Back Inc.
14.	Prospect Real Estate Inc.
15.	Upgrade Housing Inc.
16.	Up-town Funk Inc.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

**INTERIM RECEIVER ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7

**Jennifer Stam LSO#: 46735J**  
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**Evan Cobb LSO#: 55787N**  
Tel: 416.216.1929  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

Lawyers for the Receiver

# EXHIBIT M



**From:** Jeffrey Berger <jberger@tdbadvisory.ca>  
**Sent:** Monday, April 14, 2025 11:26 AM  
**To:** Van Klink, Tony  
**Cc:** 'CHOW, EUGENE'; 'TORRELLI, Gianna (TORONTO)'; Bryan Tannenbaum; 'Fred Tayar'  
**Subject:** [\*\*EXT\*\*] RE: Happy Town Housing (BMO) and 1391 Ontario Street (BDC) [MTDMS-Legal.FID12658569]

Tony,

We are writing to confirm that the Interim Receiver consents to the lifting of the stay for the purpose of BMO and BDC proceeding with the enforcement of their security.

As discussed on our last call, and as our counsel has brought to your attention previously, Mr. Suitor has asked the Interim Receiver to convey that he intends to fully support the sale of these properties, and he is willing to co-operate in any way necessary in the hopes that enforcement costs can be minimized. **Incurring unnecessary enforcement costs will ultimately be to the detriment of the creditors (including your clients)**, given the anticipated realizations from these assets.

If Mr. Suitor is willing to comply and list the properties immediately, the Interim Receiver could oversee the sale process pursuant to the terms of the existing Order and work with the secured lenders throughout the process to ensure transparency. Alternatively, should the secured lenders wish to proceed with enforcement we believe that it would be most efficient and cost-effective for your clients to appoint the Interim Receiver as agent or receiver to sell the subject properties directly.

Mr. Suitor has advised that he is agreeable to having the properties listed for sale immediately upon receiving the consent of the secured lenders to proceed in this manner, should they be agreeable.

We would welcome an opportunity to discuss the foregoing options with you and your clients prior to any additional enforcement actions being taken.

Thank you,



**TDB Restructuring Limited**  
 Licensed Insolvency Trustee

**Jeffrey Berger, CPA, CA, CIRP, LIT**  
 Managing Director

✉ [jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca)

☎ 647-726-0496

📠 416-915-6228

📍 11 King St. West, Suite 700  
 Toronto, ON M5H 4C7

**tdbadvisory.ca**

Integrity. Leadership. Excellence.

**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** April 11, 2025 4:32 PM  
**To:** Jeffrey Berger <jberger@tdbadvisory.ca>; 'Fred Tayar' <fred@fredtayar.com>  
**Cc:** 'CHOW, EUGENE' <EUGENE.CHOW@bmo.com>; 'TORRELLI, Gianna (TORONTO)' <gianna.torrelli@bdc.ca>  
**Subject:** Happy Town Housing (BMO) and 1391 Ontario Street (BDC) [MTDMS-Legal.FID12658569]

External sender

Fred, Jeffrey,

I am following up on our Teams videocall on Tuesday afternoon during which we discussed the IR providing its consent to BMO and BDC proceeding with the enforcement of their security. I understood from the call that the IR did not take any issue with same and would be providing its consent. As of this afternoon the consent has not yet been received.

Please confirm by reply email that the IR consents.

If something has changed since our call that the IR is no longer prepared to consent, I trust that you will let me know.

If I do not receive a reply to this email by 12 noon on Monday, April 14, I will assume that the IR is no longer prepared to consent and both BMO and BDC will proceed with bringing a lift stay motion.

**TONY VAN KLINK**  
**Partner**

**Miller Thomson LLP**  
**One London Place**  
255 Queens Avenue, Suite 2010  
London, Ontario | N6A 5R8  
**T** +1 519.931.3509  
**C** +1 519.636.7425  
[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

View my [web page](#)



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# EXHIBIT N

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**BANKRUPTCY ORDER**

UPON the application of The Fuller Landau Group Inc. (the “**Applicant**”), in its capacity as receiver of the property, assets, and undertaking of The Lion’s Share Group Inc. (“**Lion’s Share**”), a creditor, issued on the 30<sup>th</sup> day of August, 2024;

AND UPON reading the Applicant’s Application Record dated November 22, 2024; the Applicant’s Supplementary Application Record dated February 14, 2025; Dylan Sutor’s (the “**Debtor**”) Responding Motion Record dated September 26, 2024; the Debtor’s Supplementary Responding Motion Record dated October 2, 2024; the Debtor’s Responding Application Record dated January 14, 2025; the Debtor’s Notice of Dispute dated February 3, 2025; the Supplementary Affidavit of Dylan Sutor affirmed February 3, 2025, the Transcript Brief dated February 14, 2025; the Debtor’s Supplementary Responding Application Record dated February 21, 2025; the Applicant’s Factum dated February 14, 2025; the Debtor’s Responding Factum dated February 19, 2024; the Applicant’s Compendium dated February 24, 2025; the Debtor’s Oral Hearing Compendium dated February 24, 2025; and hearing submissions of counsel for the Applicant, the Debtor, the Secured Lender Representative, the Unsecured Lender Representative, and the National Bank of Canada;

AND it appearing to the Court that the following acts of bankruptcy have been committed by the debtor (the “**Debtor**”), Thomas Dylan Sutor:

- (a) has ceased meeting his liabilities generally as they become due, including,

without limitation, the indebtedness owing by the Debtor to Lion's Share;

1. **IT IS ORDERED** that the Debtor, of the City of Burlington, in the Province of Ontario, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against the Debtor on this date.
2. **IT IS FURTHER ORDERED** that TDB Restructuring Limited, of the City of Toronto, in the Province of Ontario, is hereby appointed as trustee of the estate of the bankrupt Debtor.
3. **IT IS FURTHER ORDERED** that the trustee give security in cash or by bond or suretyship without delay, in accordance with subsection 16(1) of the *Bankruptcy and Insolvency Act*.
4. **IT IS FURTHER ORDERED** that the costs of the Applicant be paid out of the estate of the bankrupt on taxation of the estate.

Jana  
Steele

Digitally signed  
by Jana Steele  
Date: 2025.03.26  
17:24:47 -04'00'

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**BANKRUPTCY ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7

**Jennifer Stam LSO#: 46735J**  
Tel: 416.202.6707  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

**James Renihan LSO#: 57553U**  
Tel: 416.216.1944  
[james.renihan@nortonrosefulbright.com](mailto:james.renihan@nortonrosefulbright.com)

Lawyers for the Receiver

**CITATION:** Suitor v. Fuller Landau Group, 2025 ONSC 1686  
**COURT FILE NO.:** BK-24-208718-000T  
**DATE:** 20250325

**ONTARIO**

**SUPERIOR COURT OF JUSTICE [Commercial List]**

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

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

**BEFORE:** Justice Jana Steele

**HEARD:** February 25, 2025

**COUNSEL:** *James Renihan, Jennifer Stam & Lauren Archibald*, for The Fuller Landau Group Inc., in its capacity as Receiver of The Lion's Share Group Inc.

*Tanya Pagliaroli & Vinayak Mishra*, for Dylan Suitor

*George Benchetrit*, Secured Lender Representative Counsel

*Mario Forte*, Unsecured Lender Representative Counsel

*Patrick Corney*, for the National Bank of Canada

**JUSTICE JANA STEELE**

[1] The applicant, The Fuller Landau Group Inc. (the "LS Receiver"), in its capacity as receiver of the property of The Lion's Share Group Inc. ("Lion's Share"), asks the court to adjudge Thomas Dylan Suitor as Bankrupt and make a Bankruptcy Order in respect of Mr. Suitor's property pursuant to s. 43 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[2] The application is opposed by the respondent debtor, Mr. Suitor. Mr. Suitor disputes that the applicant has satisfied the test for a bankruptcy order and asks that the application be dismissed.

[3] In the alternative, Mr. Suitor seeks a stay of the bankruptcy proceedings until his personal liability is determined in civil court.

[4] For the reasons set out below, the application is granted.

**Background**

[5] On April 3, 2024, the Court appointed The Fuller Landau Group Inc. as receiver of the property of Lion's Share.

[6] Lion's Share's operations consisted principally of the issuance of promissory notes to persons to generate funds to be advanced as loans by way of promissory notes to other individuals and companies.

[7] Claire Drage owns Lion's Share.

[8] Ms. Drage is also CEO of The Windrose Group Inc. ("Windrose").

[9] On April 8, 2024, Ms. Drage filed an assignment in bankruptcy.

[10] Mr. Suitor is one of the four principals of a significant Lion's Share borrower group consisting of Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. (collectively, the "Balboa Borrowers"). Mr. Suitor has certain guarantee obligations in respect of the Balboa Borrowers. The Balboa Borrowers commenced CCAA proceedings on or about January 23, 2024.

[11] In addition to the guarantee obligations in respect of the Balboa Borrowers, Mr. Suitor signed promissory notes in his personal capacity in favour of Lion's Share on behalf of certain companies indebted to Lion's Share, including: 10 Norfolk St. Inc. ("Norfolk"), 388 Downie St. Inc. ("Downie"), Commercial Urkel Inc. ("Commercial Urkel"), Happy Town Housing Inc. ("Happy Town"), and Up-town Funk Inc. ("Up-town Funk") (collectively the "Non-Balboa Borrowers"). Mr. Suitor is the sole shareholder of each of these companies (other than Commercial Urkel, of which Mr. Suitor is a 50% shareholder). Each company owns one real property asset, except Happy Town, which owns two.

[12] By letter dated June 18, 2024 to Norfolk, Downie, Commercial Urkel, Happy Town, Up-town Funk, Mr. Suitor, and Aruba Butt, the LS Receiver made demand for payment under the promissory notes. The demand letter stated:

[...]

The Promissory Notes require the Borrowers to repay the funds advanced by the Lender by certain dates (the "Maturity Dates"). Dylan Suitor (the "Guarantor") is a signatory to each note as a guarantor of the Borrower's obligations. In addition, Aruba Butt (the "38 Duncan Guarantor", and together with the Guarantor, the "Guarantors") is a signatory to the 38 Duncan Note (as defined in Schedule A to this letter) as a guarantor of Commercial Urkel Inc.'s obligations under the 38 Duncan Note.



Pursuant to each of the Promissory Notes, the Guarantor, on an unlimited basis, guaranteed the obligations of each Borrower to the Lender, including payment of all amounts owing under each Promissory Note. Pursuant to the 38 Duncan Note, the 38 Duncan Guarantor, on an unlimited basis, guaranteed the obligations of Commercial Urkel Inc. to the Lender, including payment of all amounts owing under the 38 Duncan Note. The Maturity Dates for all of the Promissory Notes have now passed and there is unpaid interest on all of the Promissory Notes, but neither the Borrowers nor the Guarantors have paid the amounts owing, as applicable. Please be advised that as further set out below, the Borrowers and the Guarantors are in default of their obligations under each of their respective Promissory Notes, including monetary defaults.

[...]

On behalf of the Lender, and without in any way prejudicing the Lender from demanding any other amount properly owing to it or taking such other steps and making such further demands as the Receiver may see fit, the Receiver hereby makes formal demand for payment of the following amounts from each Borrower, the Guarantor, and in the case of the amounts owing by Commercial Urkel Inc., the 38 Duncan Guarantor:

1. 10 Norfolk St. Inc.: \$281,342.35;
2. 388 Downie St. Inc.: \$130,981.21;
3. Commercial Urkel Inc.: \$273,398.32;
4. Happy Town Housing Inc.: \$318,426.20; and
5. Up-town Funk Inc.: \$263,801.75;

[...]

[13] On August 16, 2024, the LS Receiver issued a second demand letter to Downie and Mr. Suitor demanding repayment of an amount of \$1,403,393.17 from Downie and Mr. Suitor (as guarantor) further to an additional promissory note.

[14] On August 30, 2024, the LS Receiver filed an application for a bankruptcy order in respect of Mr. Suitor.

[15] On October 7, 2024, TDB Restructuring Limited was appointed as the interim receiver of all Mr. Suitor's property, assets and undertakings.

### Analysis

[16] The applicant asks the Court to adjudge Mr. Suitor as bankrupt and make a bankruptcy order. Under s. 43 of the *Bankruptcy and Insolvency Act* (the “BIA”):

(1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

(a) The debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

(b) The debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

[...]

(6) At the hearing of the application, the court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order.

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[...]

(9) If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor’s property and for any period of time that may be required for trial of the issue relating to the disputed facts

[17] The applicant must establish that Mr. Suitor owes it a debt of at least \$1,000, and that Mr. Suitor has committed an act of bankruptcy within six months preceding the date of the application. For the purposes of s. 43(1)(b), the act of bankruptcy relied upon by the applicant is s. 42(1)(j) of the BIA: “if he ceases to meet his liabilities generally as they become due.”

[18] The burden of proof in a bankruptcy application is the civil standard: *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909, at para. 40.

*Does Mr. Suitor have debts owing to the applicant creditor of at least \$1,000?*

[19] The applicant claims Mr. Suitor owes \$2,671,342 to Lion's Share under certain promissory notes with the Non-Balboa Borrowers.

[20] The application is founded based on Mr. Suitor's debts to the applicant. I am satisfied that Mr. Suitor has debts to the applicant of at least \$1,000.

[21] The applicant says that Mr. Suitor's debt arises due to certain Promissory Notes he signed as a personal guarantor regarding loans to the Non-Balboa Borrowers. The issue of whether Mr. Suitor has debts owing to the applicant of at least \$1,000 comes down to whether he is liable under the promissory notes he signed as guarantor in respect of the Non-Balboa Borrowers.

[22] The parties agree that the form of promissory note that was used for the liability in issue in this proceeding is substantially similar to the form of promissory note at tab 7 of the applicant's oral compendium. At tab 7 of the applicant's oral compendium is a sample promissory note (the "Norfolk Promissory Note"). Mr. Suitor signed eight promissory notes of the same form (different company, debt amount, date, etc.) (each a "Promissory Note").

[23] Despite having signed the Promissory Notes, Mr. Suitor denies that he is personally liable under these Promissory Notes.

[24] Mr. Suitor does not dispute that there is more than \$1,000 owing by the companies under the Promissory Notes.

[25] Mr. Suitor submits that the applicant has not proven a debt of \$1,000. I disagree.

[26] As noted in *Beach (Re)*, 2022 ONSC 6474, at para. 25, citing *Diwold v. Diwold* (1940), [1941] S.C.R. 35, "[a] debt is a sum payable in respect of a liquidated demand, recoverable by action." The Court states further, at para. 26, citing *Relectra Limited, Re* (1979), 30 C.B.R. (N.S.) 141, that "[s]o long as it is proved that the debtor is indebted to the applicant creditor for at least \$1,000, it is unnecessary for the court to determine the exact amount owing to the applicant creditor."

[27] The issue of whether Mr. Suitor is personally liable under these promissory notes is a matter of contractual interpretation.

[28] A guarantee is contractual promise: *Patrick Street Holdings Limited v. 11368 NL Inc.*, 2024 NLCA 11, at para. 540. As noted in *Xiang v. Atlas Healthcare (Brampton) Ltd.*, 2021 ONSC 1225, at para. 43, "the extent of a guarantor's liability under a guarantee is a matter of contractual interpretation with respect to the construction of the guarantee at issue."

[29] The principles of contractual interpretation were recently summarized by the Court of Appeal in *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONCA 54, at para. 25:

- a. Determine the intention of the parties in accordance with the language they have used in the written document, based upon the “cardinal presumption” that they have intended what they have said;
- b. Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
- c. Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
- d. Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[30] The applicant submits that the plain language of the promissory notes illustrates an objective intention to make Mr. Suitor liable as a guarantor of the amounts due under the notes. I agree.

[31] In each Promissory Note, Mr. Suitor is described as both a “Borrower” and a “Guarantor”. At the top of the Promissory Note the “Borrowers” are set out as follows:

**Borrowers:** 10 Norfolk St. Inc. [or another company owned by Mr. Suitor, or in the case of Commercial Urkel, by Mr. Suitor and Ms. Butt] (the “Borrowers”) with personal guarantor(s) Dylan Suitor (the “Borrowers”)

[32] Mr. Suitor is defined as a “Borrower”.

[33] The term “Guarantor” (capitalized), although used twice in the Promissory Note, is not a defined term. Guarantor (capitalized) appears on the signing lines and in section 8 of the Promissory Notes.

[34] Mr. Suitor also signed the Promissory Notes twice. Once for the company Borrower, and once in his personal capacity, which signing line is set out as follows:

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Dylan Suitor (Borrowers/Guarantors)

[35] The term Borrower(s) is used throughout the Promissory Note to set out the payment and other obligations of the Borrowers. Among other things, in the Norfolk Promissory Note the Borrowers promise to pay the Lenders the principal sum of \$200,000. The term Guarantors<sup>1</sup> is used only at the bottom of the Promissory Notes, and in section 8,<sup>2</sup> which provides:

All costs, expenses and expenditures including, and without limitation, legal costs, fees and disbursements on a **substantial indemnity basis**, incurred by the Lenders in enforcing this Note as a result of any default by the Borrowers, will be added to the principle then outstanding and will immediately be paid by the Borrowers. In the case of the Borrowers default and the acceleration of the amount due to the Lenders all amounts outstanding under this Note will bear interest at the rate of 3% higher than the Initial Interest Rate charged per annum from the date of demand until paid. This Note is secured by the Lenders [*sic*] right to register this Note on title on **all or any properties held by the Borrowers and Guarantors as security** (the ‘Security’), if not paid in full by 6:00 pm on April 13, 2024. This includes, but is not limited to, the property located at [...].

[36] Section 8 of the Promissory Notes permits registration on title to any properties held by the Borrowers and Guarantors as security. As noted by the applicants, the ability to register the note on title to Mr. Suitor’s personal properties supports their position that he has a payment obligation.

[37] Mr. Suitor argues that he was only a guarantor (and not personally liable) and that the Promissory Notes are void of any terms regarding the guarantee. Mr. Suitor points to *Times Square v. Shimizu*, 2001 BCCA 448, as an example of a case where the majority of the court refused to enforce a guarantee because there was no provision with substantive content defining the guarantee obligation. He submits the Promissory Notes similarly do not define the guarantee obligation. I disagree. In *Times Square* the guarantor was separately defined as the guarantor and there were no obligations on the guarantor. As noted above, in the instant case Mr. Suitor is also defined as a borrower.

[38] Mr. Suitor also points to *Waterloo-Oxford Co-Operative Inc. v. Hamm*, 2005 CanLII 2953 (Ont. Sup. Ct.). For similar reasons, *Waterloo-Oxford* is not applicable to the instant case. In *Waterloo-Oxford* the court was faced with a very broad guarantee that could be interpreted in either of two ways: one party said that it was a guarantee of all debts incurred as of the date of the guarantee; the other party said that it was a guarantee for any debts ever incurred or to be incurred at any time before, during or after the date of the letter. The court refused to enforce the letter guarantee because it lacked enough precision to be enforced.

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<sup>1</sup> The term “guarantor” issued in the definition of “Borrowers” as set out above.

<sup>2</sup> There was a prior form of promissory note that was used to evidence loans with Lion’s Share. Section 8 is different in those prior promissory notes.

[39] Mr. Suitor submits that the guarantee provisions in the Promissory Notes are completely lacking. However, this again ignores the fact that Mr. Suitor is also defined as a borrower under the Promissory Notes.

[40] Mr. Suitor states that he cannot have the same obligations as the corporate borrower under the Promissory Notes. He argues that principal debtors and guarantors are distinct at law.

[41] The applicant submits that there is no law that suggests that a guarantor cannot have the same obligations as the principal debtor. This is, there is no reason why a lender and borrower and guarantor cannot sign an agreement where the guarantor is liable for all obligations of the borrower. I agree. This comes down to contractual interpretation and what was agreed among the parties. Mr. Suitor is the sole shareholder of these companies (other than Commercial Urkel), and he contractually agreed to be the personal guarantor in respect of all terms of the Promissory Notes.

[42] Mr. Suitor also relies on *Chand Morningside Plaza Inc. v. Healthy Lifestyle Medical Group Inc.*, 2024 ONSC 7285, which does not apply to the instant case. As noted by Koehnen J. in para. 81, the guarantors in *Chand* were accommodation sureties, the parents of the borrower. They had provided a guarantee “with the expectation of little or no remuneration for the purpose of accommodating others.”<sup>3</sup> That is not the case here. Mr. Suitor guaranteed the loans to companies of which he holds, directly or indirectly, 100% of the shares (other than Commercial Urkel, of which he holds 50% of the shares).

[43] The Promissory Notes are each just over two pages long. They have drafting issues. Among other things, the term “Guarantor” is not defined. Mr. Suitor is defined with the corporate entity as the Borrowers. However, reading the document as a whole, and taking into consideration the fact that Mr. Suitor knew that he was a personal guarantor (as discussed further below), the commercially reasonable interpretation is that Mr. Suitor is the guarantor of the loan to the company in which he held all (or 50%) of the shares. The plain language of the document defines Mr. Suitor as Borrower and gives him the same obligations as the corporate borrower. Accordingly, in his capacity as guarantor Mr. Suitor agreed to the same terms as the borrower company. That is the contract that was reached among the parties.

[44] Mr. Suitor also argues that there was no consensus ad idem. As noted by the Court of Appeal in *UBS Securities Canada v. Sands Brothers Canada, Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93, at para. 47, in order for a contract to exist, there must be a meeting of minds, or consensus ad idem.

[45] Mr. Suitor says that he was not aware of his personal liability under the Promissory Notes. This is not credible given the record before me. Included in Ms. Drage’s evidence is a link to a webinar, which I viewed. Ms. Drage stated in her affidavit that she and Mr. Suitor jointly participated in the webinar with some of the lenders to Mr. Suitor and his companies. During the

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<sup>3</sup> *Citadel Assurance v. Johns-Manville Canada Inc.*, [1983] 1 S.C.R. 513, at 521.

webinar Ms. Drage explained to all participants that “Dylan has provided a personal guarantee, not just of the property and the corporation that property’s in, but his entire portfolio and assets.” Mr. Suitor, who was also on screen at the webinar, including when Ms. Drage made the statement regarding Mr. Suitor’s personal guarantee, did not disagree or say anything in response.

[46] Mr. Suitor’s position, as set out at para. 93 of his factum, is that:

- a. Mr. Suitor was not asked to provide financial net worth information to Drage or lenders.
- b. None of the Windrose/Drage materials, communications, and/or advertisements include any reference to personal liability related to the LS-Investor Notes or the Promissory Notes. In fact, the Promissory Notes were consistently described as high risk and requiring a general securities agreement to create security.
- c. The term “guarantee” was used inconsistently and ambiguously in the LS-Investor Notes. In early LS-Investor Notes, the right to register the LS-Investor Note on title to the corporate borrower’s property was explained as “the personal guarantee”, when it did not relate to Suitor. In other LS-Investor Notes, both Suitor and his corporation were described as “Borrowers/Guarantors”.
- d. The sole Windrose presentation to lenders for Promissory Note opportunities related to Suitor in evidence interchangeably states that Suitor and his corporation provided a “personal guarantee”; the security described in the presentation is exclusively in relation to the lender’s right to register the note on the corporate borrower’s property. The presentation also referenced that Drage was underwriting the Promissory Note, which created further ambiguity on who (if anyone) was personally liable.

[47] In my view, none of the above submissions take away from the fact that the parties signed the Promissory Notes setting out the terms of the agreement and monies were advanced further to such Promissory Notes. The fact that Mr. Suitor was not asked to provide financial net worth information does not impair the meaning of the contract. The marketing materials and presentations are not part of the contract and were general materials/presentations provided to potential lenders by Windrose/Drage. Finally, the prior promissory notes are just that — prior notes. The form of promissory note used by Lion’s Share changed at some point. The ones in issue in this application are the revised form, several of which were signed by Mr. Suitor.

[48] As set out by the Court of Appeal in *UBS Securities Canada*, at para. 86, the test for consensus ad idem is an objective one. I agree with the applicant that because there is a written agreement and money was advanced further to the written agreement, there was consensus ad idem. In respect of each Promissory Note, there was a signed contract and action taken under the contract – of course there was of meeting of the minds.

*Are there multiple creditors or special circumstances?*

[49] Mr. Suitor submits that the applicants have not established that there are other creditors or special circumstances.

[50] As noted by the Court in *In the Matter of the Bankruptcies of Jasvir Johal Sulakhan Johal*, 2024 ONSC 7386 (“*Johal*”), at para. 43, citing *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 7, “the provisions of the *BIA* are intended to be utilized for the benefit of the creditors of a debtor as a class, not for the enforcement of an individual debt.”

[51] Only where special circumstances exist will the court grant bankruptcy in a single creditor case: *Johal*, at para. 44. The categories of special circumstances were set out in *Valente v. Courey* (2004), 70 O.R. (3d) 31, at para. 8:

- a. Where repeated demands for payment have been made within the six-month period;
- b. Where the debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets which require that the processes of the *BIA* be set in motion; and
- c. Prior to the filing of the petition, the debtor has admitted its inability to pay creditors generally without identifying the creditors.

[52] In *Johal*, Osborne J. referred to the expansion of the categories of special circumstances in *Sergio Grillone (Re)*, 2023 ONSC 5710. Osborne J. notes at para. 50:

In that case, Kimmel J. observed that, in the particular circumstances of that matter, an order under s. 43(1) of the *BIA* was necessary to achieve an orderly distribution of the estate of the bankrupt to creditors, and to create a single forum in which the multiplicity of claims involving the debtor could be determined while ensuring that no creditor obtains an unfair advantage over the others in the interim. In that case, the Court found that such was a special circumstance that supported the granting of a bankruptcy order.

[53] In *Johal* Osborne J. determined that there were no special circumstances justifying the bankruptcy application. The bankruptcy applications were stayed, and the creditor was directed to pursue its claims in CCAA proceedings that were ongoing in respect of the companies owned by the debtors. At para. 51, Osborne J. noted that he was applying the same rationale expressed by Kimmel J. in *Grillone*, namely creating a single forum for the many claims.

[54] Mr. Suitor argues that the applicants have not established that he has other debts, nor are there special circumstances that would warrant a bankruptcy order with a single creditor.



[55] The LS Receiver argues that there are other debts, pointing to (i) the Statement of Claim by Nicole Kelly against Upgrade Housing Inc. and Mr. Suitor, and the Statement of Defence filed (the “Kelly Claim”), (ii) the demand letter to Mr. Suitor, Aruba Butt, and Commercial Urkel from counsel to Dennis and Jessica Domenichini (the “Domenichini Claim”); and (iii) the Balboa creditors under the CCAA proceedings.

[56] The Kelly Claim is a claim for payment of \$75,000 (plus interest) in accordance with a promissory note. The Domenichini Claim is for \$630,642.38 (plus further interest) in respect of a mortgage that has matured and remains in default since November 12, 2023. There is evidence on the record that there are other creditors. Mr. Suitor has not provided anything to refute that there are other creditors, other than to assert that the applicant’s evidence is insufficient.

[57] Mr. Suitor states that the applicant has not led “sound and convincing evidence” of these debts as required. He points to *Barkhouse (Re)*, 2018 NSSC 101 and *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 6. *Barkhouse* deals with proof of the debts owing to the applicant, not other third-party creditors. *Levesque*, at para. 6, in considering the issue of whether the debtor had ceased to meet his liabilities generally as they become due, stated:

The application judge correctly set out the nature of bankruptcy proceedings and the standard of proof, at para. 4 of her reasons:

It is well established that proceedings under the *BIA* are quasi-criminal in nature. The act(s) of bankruptcy and all allegations set out in the application must be proven on sufficient evidence: *Re Holmes* (1975), 9 O.R. (2d) 240 (S.C.); *Re Valente* (2004), 70 O.R. (3d) 31 (C.A.).

[58] At para. 4 of *Levesque* the Court of Appeal set out the essential elements that the petitioning creditor must establish to obtain a bankruptcy order, which do not include debts of other creditors. In fact, s. 43(1) of the BIA contemplates that “one or more creditors” may file an application for a bankruptcy.

[59] Based on the record before me, I am satisfied that Mr. Suitor has other creditors. In any event, I agree with the LS Receiver that the special circumstances noted in *Grillone* apply here. Mr. Suitor’s plan is to sell the properties that he holds through the various companies. As discussed above, there are numerous creditors potentially involved with this estate. A bankruptcy trustee will be able to deal with Mr. Suitor’s assets. Similar to *Grillone*, an order under s. 43(1) of the BIA will allow for the orderly distribution of Mr. Suitor’s assets to his creditors and will create a single forum in which the multiple claims involving Mr. Suitor can be determined.

*Has Mr. Suitor ceased to meet his liabilities generally as they become due?*

[60] The second part of the test that the applicants must satisfy is that Mr. Suitor must have committed an act of bankruptcy. As noted above, the applicants rely on s. 42(1)(j) of the BIA: “if he ceases to meet his liabilities generally as they become due.”

[61] The LS Receiver made demand on the non-Balboa promissory notes within six months of the commencement of the application. Payment on the notes has not been made.

[62] Mr. Suitor points to his illiquid assets that he holds personally or directly or indirectly through one of the Non-Balboa Borrowers.

[63] As the Quebec Superior Court clarified in *Immeubles Zenda Ltée/Zenda Realities Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS 3450, at paras. 15-16, the lack of liquidity does not assist a creditor who is unable to pay his or her debts as they become due:

[15] The Debtors argue that the bankruptcy applications should be dismissed because the value of their assets – essentially their investments in commercial properties – is greater than the amount of their debts. However, this is an irrelevant consideration. The issue is not whether the Debtors have sufficient assets to pay their debts, but whether they have ceased to meet their liabilities generally as they become due.

[16] Zenda and Levy do not deny that they have ceased meeting their liabilities generally as they become due. They do not deny that they are presently unable to pay their creditors. Their argument is that they need time to liquidate their real estate holdings in order to pay their creditors.

[64] Mr. Suitor's case is similar to that in *Immeubles Zenda*. The fact that he has illiquid real estate assets through the companies he holds directly or indirectly does not assist in meeting the test of whether he has ceased to meet his liabilities generally as they become due. It is not a question of whether Mr. Suitor potentially could pay if he sold off his illiquid assets; it is whether he has failed to meet his liabilities as they become due.

[65] I am satisfied that Mr. Suitor has committed an act of bankruptcy.

*Should the Court exercise its discretion under s. 43(1) of the BIA?*

[66] The Court can exercise discretion under s. 43(7) of the BIA to not grant the bankruptcy order if Mr. Suitor proves that he can pay his debts:

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[67] Mr. Suitor has not proven that he can pay his debts.

[68] In *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, the court stated, at para. 9, that the power in s. 43(7) of the BIA is discretionary.

[69] Collier J., of the Quebec Superior Court in *Immeubles Zenda*, at para. 31, citing *Goulakos (Syndic de)*, 2016 QCCS 84, stated:

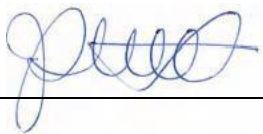
The Court's discretion to stay a bankruptcy application under ss 43(7) and 43(11) *BIA* "should not be exercised lightly, but on the basis of sound judicial reasoning, credible evidence, according to common sense and in a manner which does not cause an injustice."

[70] In Mr. Suitor's supplementary affidavit, he provides estimated values of the various properties he owns directly (or through the companies) and details of the mortgages on the properties. He sets out a chart where he estimates that he would have approximately \$1.48 million remaining after paying the secured lenders, the debt claimed by the applicants as set out in their demand letters, and commission on the real property sales.

[71] While there are appraisals from within the last year for certain of the properties, in some cases the appraisals date back to 2022 or 2023. Of greater concern, however, is the lack of other financial information regarding the companies. Because the bulk of the real properties are owned by companies which Mr. Suitor either directly or indirectly owns, the Court would need the full financial picture of these companies to understand the value of Mr. Suitor's shares in the companies. Other than the specific property information, Mr. Suitor has not disclosed the other assets and liabilities of the companies. With regard to the properties Mr. Suitor owns personally, even assuming the March and April 2024 valuations continue to represent the value of the properties, after payment of the mortgages on the properties, there would not be sufficient net proceeds to satisfy the applicant's debt.

[72] Accordingly, I am not satisfied that the court should exercise its discretion under s. 43(7) of the *BIA*.

J. Steele J.



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**Released:** March 25, 2025

**CITATION:** Suitor v. Fuller Landau Group, 2025 ONSC 1686  
**COURT FILE NO.:** BK-24-208718-00OT  
**DATE:** 20250325

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF  
BURLINGTON, ONTARIO**

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**REASONS FOR DECISION**

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Justice Steele

**Released:** March 25, 2025

# EXHIBIT O

# CERTIFICATE OF THE TREASURER

176



Certificate No. 16532  
Date of Certificate April 30, 2025

50 Church St PO Box 3012  
St. Catharines On L2R7C2  
Email: taxes@stcatharines.ca  
Telephone: (905) 688-5600  
Fax: (905) 688-4077

ISSUED TO Rebecca Armstrong  
rarmstrong@millerthomson.com

REFERENCE 0082754.0981  
ROLL NUMBER 2629.040.004.05700.0000  
ASSESSED OWNER  
HAPPY TOWN HOUSING INC

## PROPERTY DESCRIPTION

43 CENTRE ST ST CATHARINES  
CP 2 PT LOT 170 RP 30R10352 PART 1

PENALTY/INTEREST OF 1.250 %  
HAS BEEN CALCULATED AS OF THE DATE THIS CERTIFICATE IS ISSUED

Unapproved transactions on account, contact the Tax Department for more information.

## TAX ARREARS Statement showing arrears of taxes on the above lands.

YEAR	TAXES LEVIED	TAXES OUTSTANDING	INTEREST	ARREARS OUTSTANDING
2024	3,381.34	5,809.56	776.41	6,585.97
2023	3,293.85	2,655.08	727.00	3,382.08
2022+	29,898.98	0.00	0.00	0.00

## STATEMENT OF CURRENT TAXES

CURRENT LEVY	INSTALMENT DUE DATES AND AMOUNTS				CURRENT OUTSTANDING
INTERIM 1,690.67	2025/02/28	845.67	2025/04/30	845.00	TAX 3,709.50
FINAL 2,018.83	2025/06/30	1,009.83	2025/09/29	1,009.00	OTHER CHARGES 2,186.37
SUPP/ADJ 0.00					PENALTY 74.53
TOTAL 3,709.50					TOTAL CURRENT 5,970.40

TOTAL OUTSTANDING 15,938.45

I hereby certify that the above statement shows all arrears of taxes against the above lands.

For The City Treasurer

## LOCAL IMPROVEMENTS ASSESSED TO THIS PROPERTY TO DATE INCLUDE

CODE	DESCRIPTION	AMOUNT	EXPIRY

# CERTIFICATE OF THE TREASURER

177



Certificate No. 16533  
Date of Certificate April 30, 2025

50 Church St PO Box 3012  
St. Catharines On L2R7C2  
Email: taxes@stcatharines.ca  
Telephone: (905) 688-5600  
Fax: (905) 688-4077

ISSUED TO Rebecca Armstrong  
rarmstrong@millerthomson.com

REFERENCE 0082754.0981  
ROLL NUMBER 2629.020.026.13200.0000  
ASSESSED OWNER  
HAPPY TOWN HOUSING INC

## PROPERTY DESCRIPTION

34 RYKERT ST ST CATHARINES  
CP 2 LOT 1830

PENALTY/INTEREST OF 1.250 %  
HAS BEEN CALCULATED AS OF THE DATE THIS CERTIFICATE IS ISSUED

Unapproved transactions on account, contact the Tax Department for more information.

## TAX ARREARS Statement showing arrears of taxes on the above lands.

YEAR	TAXES LEVIED	TAXES OUTSTANDING	INTEREST	ARREARS OUTSTANDING
2024	2,069.19	26,032.71	4,263.91	30,296.62
2023	2,015.63	6,216.53	1,498.93	7,715.46
2022+	19,909.13	0.00	0.00	0.00

## STATEMENT OF CURRENT TAXES

CURRENT LEVY	INSTALMENT DUE DATES AND AMOUNTS				CURRENT OUTSTANDING
INTERIM 1,034.59	2025/02/28	517.59	2025/04/30	517.00	TAX 2,183.11
FINAL 1,148.52	2025/06/30	574.52	2025/09/29	574.00	OTHER CHARGES 990.09
SUPP/ADJ 0.00					PENALTY 25.44
TOTAL 2,183.11					TOTAL CURRENT 3,198.64

TOTAL OUTSTANDING 41,210.72

I hereby certify that the above statement shows all arrears of taxes against the above lands.

For The City Treasurer

## LOCAL IMPROVEMENTS ASSESSED TO THIS PROPERTY TO DATE INCLUDE

CODE	DESCRIPTION	AMOUNT	EXPIRY

BANK OF MONTREAL

and

HAPPY TOWN HOUSING INC.

Applicant

Respondent

178

Court File No:

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**AFFIDAVIT OF LISA JAQUES LEWIS  
(SWORN MAY 8, 2025)**

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**Lawyers for the Applicant,**

**Bank of Montreal**



# TAB 3

Court File No. CV-25-00090173-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

TUESDAY, THE 3<sup>RD</sup>

JUSTICE

)

DAY OF JUNE, 2025

)

**BANK OF MONTREAL**

**Applicant**

- and -

**HAPPY TOWN HOUSING INC.**

**Respondent**

APPLICATION UNDER SUBSECTION 243(1) 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  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant 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 *msi Spergel Inc.* as receiver and manager (in such capacities, the "Receiver") without security, of the real properties described on Schedule A to this Order (the "Real Properties") owned by the respondent, Happy Town Housing Inc. (the "Debtor"), was heard this day at 45 Main Street East, Hamilton, Ontario, by videoconference.

ON READING the affidavit of Lisa Jaques Lewis sworn May 7, 2025 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties as listed

on the participant information form, no one appearing for any other party on the service list although duly served as appears from the affidavits of service, filed, and on reading the consent of msi Spergel Inc. 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, as necessary, 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*, msi Spergel Inc. is hereby appointed Receiver, without security, of the Real Properties, including all proceeds thereof (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, rents, 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

engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;

- (c) 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;
- (d) 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 the Debtor, for any purpose pursuant to this Order;
- (e) 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 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;
- (f) 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;

- (g) to sell, convey, transfer, lease or assign the Property with the approval of the Court and in each such case notice under section 31 of the Ontario *Mortgages Act* shall not be required;
- (h) to apply for any vesting order or other orders necessary to convey the Property to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (i) 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;
- (j) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (k) 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 the Debtor;
- (l) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for the Property;
- (m) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and

- (n) 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 Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its 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 Property, 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.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. 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**

8. THIS COURT ORDERS that no Proceeding affecting the Property 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 affecting the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies affecting the Property or against the the Receiver, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (ii) prevent the filing of any registration to preserve or perfect a security interest, or (iii) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

10. 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 Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor



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 Debtor's 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 Debtor 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**

12. 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**

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor. 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**

14. 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. 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**

16. 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**

17. 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.

18. 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 Ontario Superior Court of Justice.

19. 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**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, 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.

21. 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.

22. 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.

23. 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**

24. 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.

25. 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

## **GENERAL**

26. 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.

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

28. 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.

29. 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.

30. 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 Debtor's estate with such priority and at such time as this Court may determine.

31. 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.

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

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**Schedule “A”**

(Real Properties)

Property Identifier Number 46220-01126, LRO # 30

PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES and municipally known as 43 Centre Street, St. Catharines, Ontario.

Property Identifier Number 46177-0033, LRO # 30

LT 1830 CP PL 2 GRANTHAM; CITY OF ST. CATHARINES and municipally known as 34 Rykert Street, St. Catharines, Ontario



## Schedule "B"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of the real properties located at 43 Centre Street, St. Catharines, Ontario and 34 Rykert St., St. Catharines, Ontario and the proceeds thereof (the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 3rd day of June, 2025 (the "Order") made in an action having Court file number CV-25-00090173-0000, 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 \$100,000 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 last day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime rate of Bank of Montreal from time to time.

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 \_\_\_\_\_, 20\_\_.

msi Spergel Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

BANK OF MONTREAL      and      HAPPY TOWN HOUSING INC.  
Applicant      Respondent

Court File No.: CV-25-00090173-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**RECEIVERSHIP APPOINTMENT ORDER**

**MILLER THOMSON LLP**  
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**Lawyers for the Applicant,  
Bank of Montreal**

# TAB 4

Revised: January 21, 2014  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. ~~—~~ CV-25-00090173-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE ) ~~WEEKDAY~~ TUESDAY, THE #3<sup>RD</sup>  
 )  
 JUSTICE ) DAY OF ~~MONTH~~ JUNE, ~~20YR~~ 2025

**PLAINTIFF<sup>†</sup>**

**Plaintiff**

BANK OF MONTREAL

Applicant

- and -

**DEFENDANT**

**Defendant**

HAPPY TOWN HOUSING INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) 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**  
**(~~appointing~~ Appointing Receiver)**

<sup>†</sup> ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Applicant 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~~c-43, as amended (the "*CJA*") appointing ~~[RECEIVER'S NAME]~~msi Spergel Inc. as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of ~~all of the assets, undertakings and real~~ properties of ~~[DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the~~ described on Schedule A to this Order (the "Real Properties") owned by the respondent, Happy Town Housing Inc. (the "Debtor"), was heard this day at ~~330 University Avenue, Toronto~~45 Main Street East, Hamilton, Ontario, by videoconference.

ON READING the affidavit of ~~[NAME]~~Lisa Jaques Lewis sworn ~~[DATE]~~May 7, 2025 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~the Applicant and such other parties as listed on the participant information form, no one appearing for ~~[NAME]~~any other party on the service list although duly served as appears from the ~~affidavit~~affidavits of service ~~of [NAME] sworn [DATE], filed,~~ and on reading the consent of ~~[RECEIVER'S NAME]~~msi Spergel Inc. to act as the Receiver<sup>3</sup>.

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated<sup>3</sup>, as necessary, so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

<sup>2</sup> ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, ~~[RECEIVER'S NAME]~~ msi Spergel Inc. is hereby appointed Receiver, without security, of ~~all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor~~ Real Properties, including all proceeds thereof (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, rents, 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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;~~

(c) ~~(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 Debtor or any part or parts thereof;~~

~~(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;~~

~~(g) to settle, extend or compromise any indebtedness owing to the Debtor;~~

(d) ~~(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 the Debtor, for any purpose pursuant to this Order;

(e) ~~(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 ~~Debtor, the~~ Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby

<sup>4</sup> ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~



conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(f) ~~(f)~~ 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;

(g) ~~(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 \$ \_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$ \_\_\_\_\_; 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,]<sup>5</sup> shall not be required, and in each case the Ontario Bulk Sales Act shall not apply;~~

(h) ~~(f)~~ 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;

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (i) ~~(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;
- (j) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (k) ~~(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 the Debtor;
- (l) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for ~~any property owned or leased by the Debtor~~ Property;
- (m) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and
- (n) ~~(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 Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its 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 Debtor~~ Property, 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**

7. ~~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

8. ~~9.~~ THIS COURT ORDERS that no Proceeding ~~against or in respect of the Debtor or affecting~~ the Property 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 Debtor or affecting~~ the Property are hereby stayed and suspended pending further Order of this Court.

#### NO EXERCISE OF RIGHTS OR REMEDIES

9. ~~10.~~ THIS COURT ORDERS that all rights and remedies affecting the Property or against the ~~Debtor,~~ 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on,~~ (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (~~iii~~ii) prevent the filing of any registration to preserve or perfect a security interest, or (~~iv~~iii) prevent the registration of a claim for lien.

#### NO INTERFERENCE WITH THE RECEIVER

10. ~~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 Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

11. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Debtor's 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 Debtor 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**

12. ~~13.~~ 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**

13. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor ~~until such time as the Receiver, on the Debtor'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**

14. ~~15.~~ 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. ~~16.~~ 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**

16. ~~17.~~ 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

17. ~~18.~~ 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.<sup>6</sup>

18. ~~19.~~ 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.

<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

19. ~~20.~~ 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**

20. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~100,000 (or such greater amount as this Court may by further Order authorize) at any time, 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.

21. ~~22.~~ 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.

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

23. ~~24.~~ 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

24. ~~25.~~ 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: <@>.~~

25. ~~26.~~ 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

## GENERAL

26. ~~27.~~ 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.

27. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. ~~29.~~ 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.

29. ~~30.~~ 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.

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

31. ~~32.~~ 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.

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

~~SCHEDULE "A"~~Schedule "A"

(Real Properties)

Property Identifier Number 46220-01126, LRO # 30

PT LT 170 CP PL 2 GRANTHAM PT 1 30R10352; ST. CATHARINES and municipally known as 43 Centre Street, St. Catharines, Ontario.

Property Identifier Number 46177-0033, LRO # 30

LT 1830 CP PL 2 GRANTHAM; CITY OF ST. CATHARINES and municipally known as 34 Rykert Street, St. Catharines, Ontario

Schedule "B"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ msi Spergel Inc., the receiver (the "Receiver") of the ~~assets, undertakings and~~ real properties ~~[DEBTOR'S NAME]~~ acquired for, or used in relation to a business carried on by located at 43 Centre Street, St. Catharines, Ontario and 34 Rykert St., St. Catharines, Ontario and the ~~Debtor, including all~~ proceeds thereof (~~collectively,~~ the "Property") appointed by Order of the Ontario Superior Court of Justice (~~Commercial List~~) (the "Court") dated the 3rd day of June, 2025 (the "Order") made in an action having Court file number CV-CL-25-00090173-0000, 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 \$ 100,000 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 ~~[daily]~~ monthly not in advance on the last day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime ~~commercial lending~~ rate of Bank of Montreal from time to time.

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 \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME]~~ msi Spergel Inc., solely  
in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



BANK OF MONTREALandHAPPY TOWN HOUSING INC.ApplicantRespondentCourt File No.: CV-25-00090173-0000Double Click on mouse to Add space for Third Party ☐Double Click on mouse to Add more space to parties line ☐**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**Proceeding commenced at HAMILTON**RECEIVERSHIP APPOINTMENT ORDER****MILLER THOMSON LLP**One London Place255 Queens Avenue, Suite 2010London, ON Canada N6A 5R8**Tony Van Klink** LSO#: 29008Mtvanklink@millerthomson.comTel: 519.931.3509Fax: 519.858.8511**Lawyers for the Applicant,**  
**Bank of Montreal**

Document comparison by Workshare Compare on Thursday, May 8, 2025 10:44:35 PM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/77861354/1
Description	#77861354v1<Legal> - MODEL RECEIVERSHIP ORDER
Document 2 ID	iManage://mtdmswssc.millerthomson.corp/Legal/84690933/1
Description	#84690933v1<Legal> - Draft Receivership Order - 3-JUNE-2025 (Happy Town Housing)
Rendering set	Standard

Legend:	
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<u>Moved to</u>	
Style change	
Format change	
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Insertions	138
Deletions	172
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	310

# TAB 5

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BANK OF MONTREAL**

Applicant

- and -

**HAPPY TOWN HOUSING INC.**

Respondent

APPLICATION UNDER SUBSECTION 243(1) 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

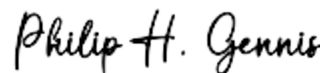
**CONSENT**

msi Spergel Inc. hereby consents to act as receiver and manager of the real properties located at 43 Centre Street, St. Catharines and 34 Rykert Street, St. Catharines pursuant to the Application of Bank of Montreal.

DATED at Toronto, Ontario this 8<sup>th</sup> day of May, 2025.

**MSI SPERGEL INC.**

Per:



---

Philip Gennis, J.D., CIRP, LIT

BANK OF MONTREAL and HAPPY TOWN HOUSING INC.

Court File No.:

Applicant Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
 Proceeding commenced at HAMILTON

**CONSENT**

**MILLER THOMSON LLP**  
 One London Place  
 255 Queens Avenue, Suite 2010  
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**Lawyers for the Applicant,**  
**Bank of Montreal**

BANK OF MONTREAL

and

HAPPY TOWN HOUSING INC.

Applicant

Respondent

Court File No.: CV-25-00090173-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**APPLICATION RECORD**  
**(Returnable June 3, 2025)**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON N6A 5R8

**Tony Van Klink** LSO#: 29008M  
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Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Bank of Montreal**

# Appendix O



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SUBSECTION 243(1) 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

**APPLICATION RECORD  
(Returnable June 3, 2025)**

May 6, 2025

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON N6A 5R8

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**Lawyers for the Applicant,  
Business Development Bank of Canada**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SECTION 243(1) 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

**TABLE OF CONTENTS**

<b><u>TAB</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO.</u></b>
<b>1</b>	Notice of Application returnable June 3, 2025	1 – 9
<b>2</b>	Affidavit of Gianna Torrelli sworn May 5, 2025	10 – 20
<b><i>EXHIBITS</i></b>		
<b><i>A</i></b>	Corporation Profile Report	21 – 28
<b><i>B</i></b>	Credit Agreement	29 – 50
<b><i>C</i></b>	Mortgage	51 – 70
<b><i>D</i></b>	Parcel Register	71 – 74
<b><i>E</i></b>	Construction Lien	75 – 76
<b><i>F</i></b>	Lion's Share bankruptcy application	77 – 85
<b><i>G</i></b>	Interim Receivership Order	86 – 101
<b><i>H</i></b>	Email dated April 14, 2025 re Consent	102 – 104
<b><i>I</i></b>	Suitor Bankruptcy Order	105 – 123
<b><i>J</i></b>	Demand for Payment and Enforcement Notice	124 – 127

<b><u>TAB</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO.</u></b>
<i>K</i>	Property Tax Certificate	128 – 130
<b>3</b>	Receivership Order	131 – 149
<b>4</b>	Blackline to Model Receivership Order	150 – 173
<b>5</b>	Consent of msi Spergel Inc.	174 – 176

# TAB 1

Court File No.:  
CV-25-00090112-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -



**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, c. c-43, AS AMENDED

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

☐ In person

☐ By telephone conference

☒ By video conference

at the following location

Via zoom videoconference – particulars to be provided by the Court.

on Tuesday, June 3, 2025 at 10:00 a.m., or as soon after that time as the Application can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 5, 2025

Issued by Harsimran K  
Sandhu

Digitally signed by Harsimran K  
Sandhu  
Date: 2025.05.05 12:50:51 -04'00'

Local registrar

Address of court office 45 Main Street East  
Hamilton, ON L8N 2B7

TO: **SERVICE LIST**

## APPLICATION

1. The Applicant, Business Development Bank of Canada (“**BDC**” or the “**Bank**”) makes application for an Order substantially in the form attached at Tab “3” (the “**Draft Order**”) of the Application Record, including,

- (a) if necessary, abridging the time for and validating service of this application and dispensing with further service of same;
- (b) appointing *msi Spergel Inc.* (“**Spergel**”) as receiver and manager (the “**Receiver**”), without security, of the real property municipally known as 1391 Ontario St., Burlington, Ontario (the “**Real Property**”) and owned by the Respondent, 1391 Ontario St. Inc. (the “**Debtor**”) 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**”);
- (c) costs on a solicitor and client basis, plus HST, in accordance with the security and loan documents granted by the Respondent to BDC; and
- (d) such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:

- (a) The Debtor is an Ontario corporation and the owner of the Real Property;

- (b) BDC extended a loan to the Debtor to finance the purchase of, and renovations to, the Real Property. As of May 1, 2025, \$2,459,804.12, plus accruing interest and costs, is owing to BDC on the loan (the “**Indebtedness**”);
- (c) As security for the Indebtedness, BDC holds, among other things, a mortgage (the “**Mortgage**”) on the Real Property;
- (d) An interim receivership order and bankruptcy order have been made against the principal of the Debtor;
- (e) The Debtor has defaulted in the repayment of the Loan;
- (f) Events of default have occurred under the loan agreement and Mortgage;
- (g) BDC has demanded payment of the Indebtedness from the Debtor and given the Debtor notice under s. 244 of the *BIA* of its intention to enforce its security against the Real Property (the “**NITES**”);
- (h) The demand for payment has not been satisfied;
- (i) The 10-day notice period in the NITES has lapsed and the Mortgage is enforceable;
- (j) The Mortgage provides that upon the occurrence of an event of default, the Bank may commence proceedings for the appointment of a receiver and manager by the court;
- (k) The appointment of the Receiver is just and convenient;



- (l) Spergel is a licensed trustee in bankruptcy and has consented to being appointed as Receiver by the Court;
  - (m) Rules 1.04, 2.03, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*;
  - (n) Section 243 of the *BIA* and Section 101 of the *CJA*;
  - (o) Rules 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*; and
  - (p) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the affidavit of Gianna Torrelli sworn May 5, 2025 and the exhibits thereto;
  - (b) the Consent of Spergel to act as receiver, if so appointed; and
  - (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

May 5, 2025

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Business Development Bank of Canada**

**SERVICE LIST**

**TO:** **1391 Ontario Street Inc.**  
1 King Street West, 10<sup>th</sup> Fl.  
Hamilton, ON L8P 1A4  
  
**Thomas Dylan Suitor**  
Email: dylan@elevationrealty.ca

**AND TO:** **msi Spergel Inc.**  
1100 - 200 Yorkland Blvd.  
Toronto, ON M2J 5C1  
  
**Philip Gennis, J.D., CIRP, LIT**  
Tel: 416.498.4325  
Email: pgennis@spergel.ca

*Proposed Receiver*

**AND TO:** **Simpson Wigle LLP**  
1006 Skyview Drive, Suite 103  
Burlington, ON L7P 0V1  
  
**Rosemary Fisher**  
Tel: 905.639.1052 ext. 239  
Email: fisherr@simpsonwigle.com

*Lawyers for the proposed receiver*

**AND TO:** **TDB Restructuring Limited**  
11 King St. West, Suite 700  
Toronto, ON M5H 4C7  
  
**Jeffrey Berger, CPA, CA, CIRP, LIT**  
Tel: 647.726.0496  
Email: jberger@tdbadvisory.ca

*Interim Receiver and Bankruptcy Trustee of Thomas Dylan Suitor*

**AND TO:** **Fred Tayar & Associates PC**  
65 Queen Street West, Suite 1200  
Toronto, ON M5H 2M5  
  
**Fred Tayar**  
Tel: 416.363.1800 x200  
Email: fred@fredtayar.com

*Lawyers for TDB Restructuring Limited*

AND TO: **The Fuller Landau Group Inc.**  
151 Bloor Street West, 12<sup>th</sup> Fl.  
Toronto, ON M5S 1S4

**Gary Abrahamson, CPA, CA, CIRP, LIT**  
Tel: 416.645.6524  
Email: gabrahamson@fullerllp.com

*Court Appointed Receiver of The Lion's Share Group Inc.*

AND TO: **Norton Rose Fulbright Canada LLP**  
222 Bay Street, Suite 3000  
Toronto, ON M5K 1E7

**Jennifer Stam**  
Tel: 416,202.6707  
Email: jennifer.stam@nortonrosefulbright.com

*Lawyers for The Fuller Landau Group Inc.*

AND TO: **Ministry of Finance Legal Services Branch**  
Michael Starr Building  
33 King Street West, 6<sup>th</sup> Floor  
P.O. Box 627, Station A  
Oshawa, ON L1H 8H5

Email: insolvency.unit@ontario.ca

AND TO: **Canada Revenue Agency**  
**c/o Department of Justice (CRA)**  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T7

Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

AND TO: **1000660443 Ontario Inc.**  
332 Guelph Street, Unit 7 & 8  
Georgetown, ON L7G 4B5

*Construction lien claimant*

BUSINESS DEVELOPMENT  
BANK OF CANADA

and

1391 ONTARIO ST. INC.

Court File No.:  
CV-25-00090112-0000

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**NOTICE OF APPLICATION**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**  
Tel: 519.931.3509  
Fax: 519.858.8511  
Email: tvanklink@millerthomson.com

**Lawyers for the Applicant,  
Business Development Bank of Canada**

# TAB 2

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

- and -

**1391 ONTARIO ST. INC.**

**Respondent**

APPLICATION UNDER SUBSECTION 243(1) 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 GIANNA TORRELLI  
(Sworn May 5, 2025)**

I, Gianna Torrelli, of the City of Toronto, Province of Ontario, MAKE OATH AND  
SAY:

**INTRODUCTION**

1. I am a specialist with the special accounts' unit of the applicant, Business Development Bank of Canada (the "**Bank**"). I am primarily responsible for monitoring the loan provided by the Bank to the debtor described in this affidavit.

2. The facts set forth in this affidavit are within my knowledge or determined from the face of documents attached as exhibits or held in the Bank's records and from information and advice provided to me from others. When matters deposed to herein are based upon

information and advice from others, I have identified the source of my information and do verily believe same to be true.

## **BACKGROUND**

3. The Respondent, 1391 Ontario St. Inc. (“**1391**” or the “**Debtor**”), is an Ontario corporation incorporated on November 17, 2022 with its registered head office in Cornwall, Ontario. A true copy of the corporation profile report for 1391 is attached as **Exhibit A** to this affidavit.

4. The principal of 1391 is Thomas Dylan Suitor (“**Suitor**”). Suitor is a real estate agent and investor and has personally guaranteed payment of 1391’s indebtedness to the Bank.

5. 1391 is the registered owner of the real property located at 1391 Ontario Street, Burlington, Ontario (the “**Real Property**”). The Real Property is an office building approximately 4,900 square feet in size.

6. The Bank made a \$2,446,000 loan to 1391 to finance the purchase of, and renovations to, the Real Property. As of May 1, 2025, \$2,459,804.12, plus accruing interest and costs, is owing on the loan.

7. To secure the repayment of its indebtedness to the Bank, the Debtor provided the Bank with, among other security, a mortgage over the Real Property.

8. Following default by the Debtor, the Bank demanded payment of its loan and gave notice to the Debtor under section 244 of the *Bankruptcy and Insolvency Act* (the

“**Enforcement Notice**”) of its intention to enforce its security. The statutory 10-day period provided for in the Enforcement Notice has lapsed and the Bank’s security is enforceable.

9. The Bank seeks to enforce its security against the Property by the appointment of a receiver and manager by the Court.

10. This affidavit is sworn in support of the Bank’s application for an order appointing msi Spergel Inc. (“**Spergel**”) as receiver and manager by the court of the Real Property. Spergel has consented to act as receiver and manager if so appointed.

### **THE INDEBTEDNESS**

11. Pursuant to a Letter of Offer dated December 2, 2022 (the “**Credit Agreement**”), the Bank made a \$2,446,000 loan to 1391 under loan no. 242499-01 (the “**Loan**”) to finance the purchase of, and renovations to, the Real Property. A true copy of the Credit Agreement is attached as **Exhibit B** to this affidavit.

12. The Credit Agreement provides that the principal amount of the Loan was to be repaid in a single payment of \$9,150 on February 1, 2024 and 299 consecutive monthly payments of \$8,150 starting on March 1, 2024. The Loan bears interest at the Bank’s floating base rate, from time to time, minus 1.3% per year. The accrued interest on the Loan is to be paid monthly on the first day of each month.

13. As of May 1, 2025, \$2,459,804.12 is outstanding for principal and accrued interest on the Loan as follows:

- Principal - \$2,371,650
- Interest - \$88,154.12



## THE SECURITY

14. As security for its obligations to the Bank, the Debtor provided the Bank with, among other things, a mortgage over the Real Property securing the principal sum of \$2,446,000 which mortgage was registered in the Halton land registry office on January 13, 2023 as instrument HR1943677 (the “**Mortgage**”).

15. A true copy of the Mortgage (including standard charge terms 20011) is attached hereto as **Exhibit C**.

16. Paragraph 11.1(i) of standard charge terms 20011 provides that upon the occurrence of an event of default, the Bank may commence proceedings in a court of competent jurisdiction for the appointment of a receiver.

17. Subject to any unpaid realty taxes, it is my understanding that the Bank has a first ranking charge over the Real Property.

## THE REAL PROPERTY

18. The Real Property is located at the corner of Ontario Street and Burlington Avenue in the City of Burlington. The Real Property is improved with a commercial office building with approximately 4,900 square feet of space. The Debtor purchased the Real Property in January 2023 and renovated it to be used as offices for a real estate agency.

19. A true copy of the parcel register for the Real Property is attached as **Exhibit D** to this affidavit.

20. As shown on the parcel register, the following registrations have been made against title to the Real Property subsequent to the registration of the Bank's Mortgage:

- (a) A construction lien in the amount of \$77,574 on September 24, 2024 (the "**Construction Lien**");
- (b) A court Order appointing TDB Restructuring Limited as interim receiver on November 15, 2024; and
- (c) A certificate of action with respect to the Construction Lien on February 7, 2025.

21. A true copy of the Construction Lien is attached as **Exhibit E** to this affidavit.

#### **THE APPOINTMENT OF THE INTERIM RECEIVER**

22. On April 3, 2024, The Fuller Landau Group Inc. ("**FLG**") was appointed by the court as receiver of the property, assets and undertaking of The Lion's Share Group Inc. ("**Lion's Share**"), a private real estate investment and consulting company based in the Hamilton area.

23. On August 30, 2024, FLG as court appointed receiver of Lion's Share issued an application for a bankruptcy order against Suitor. The bankruptcy application alleges that Suitor is indebted to Lion's Share in the amount of \$2,671,342. A true copy of the bankruptcy application is attached as **Exhibit F** to this affidavit.

24. On October 7, 2024, an order (the "**Interim Receivership Order**") was made in the bankruptcy proceeding appointing TDB Restructuring Limited as interim receiver (the "**Interim Receiver**") of all of the property, assets and undertaking of Suitor. A true copy of the Interim Receivership Order is attached as **Exhibit G** to this affidavit.

25. Paragraphs 8 and 9 of the Interim Receivership Order prohibit the commencement of any proceeding or enforcement process in any court and stay the exercise of all rights and remedies against Suitor, certain real properties listed in the Interim Receivership Order, and “Related Entities” except with the written consent of the Interim Receiver or with leave of the Court. “Related Entities” is defined in the Interim Receivership Order as meaning “corporations or other entities associated with, related to or controlled by” Suitor.

26. 1391 is a “Related Entity” within the meaning of the Interim Receivership Order.

27. Despite being affected by the stay in paragraphs 8 and 9 of the Interim Receivership Order, the Bank was not provided with notice of the motion to obtain the Interim Receivership Order or notice of the Interim Receivership Order after it was made. The Interim Receivership Order came to the Bank’s attention in mid-November, 2024 after it engaged legal counsel that was already aware of the Interim Receivership Order.

28. The Bank, through its legal counsel, sought the consent of the Interim Receiver to the enforcement by the Bank of the Mortgage. In an email dated April 14, 2025, the Interim Receiver provided its consent. Attached as **Exhibit H** to this affidavit is a true copy of that email.

29. On March 25, 2025, a bankruptcy order was made against Suitor, a copy of which is attached as **Exhibit I** to this affidavit. It is my understanding that Suitor has filed an appeal from the Bankruptcy Order although I am unaware of the status of that appeal.

## **DEFAULT UNDER THE CREDIT AGREEMENT AND SECURITY**

30. 1391 has failed to make the required monthly principal and interest payments on the Loan. No payments have been made on the Loan since October 1, 2024.

31. The failure to make the required monthly principal and interest payments on the Loan is an event of default under the Credit Agreement. The Credit Agreement provides that upon an event of default, the Bank may demand immediate payment of the Loan.

32. On February 24, 2025, the Bank demanded payment of the Loan from the Debtor and served the Debtor with the Enforcement Notice. True copies of the demand for payment and Enforcement Notice are attached as **Exhibit J** to this affidavit.

33. No payments have been made on the Loan since the Bank demanded payment.

34. As of the date of this affidavit, the demand for payment has not been satisfied and no arrangement has been made for the repayment of the Loan.

35. Attached as **Exhibit K** to this affidavit is a true copy of a property tax certificate for the Property. As shown on that certificate, as of April 30, 2025 there were unpaid taxes of \$44,180.14 owing for the Property.

## **THE BANK SEEKS TO ENFORCE ITS SECURITY AND APPOINT A RECEIVER**

36. The Debtor is in default of its obligations to the Bank including (i) failing to make required monthly payments on the Loan, (ii) failing to repay the Loan as demanded, and (ii) failing to pay the property taxes for the Property. Under the terms of the Credit Agreement, the bankruptcy and interim receivership proceedings against Suitor are also an event of default.

37. The Bank has not been provided with anything to indicate that the Debtor is able, or will be able if more time is provided, to refinance or repay the Loan.

38. The Bank has lost confidence in the Debtor and Sutor and their ability or willingness to repay the Loan.

39. The Loan and Mortgage are in default. The Credit Agreement provides that if an event of default occurs, the Bank may enforce its security. Standard charge terms 20011 which are incorporated into the Mortgage provide that upon the occurrence of an event of default, the Bank may commence proceedings in a court of competent jurisdiction for the appointment of a receiver.

40. The Bank requests the assistance of this Honourable Court in the enforcement of the Bank's security rights and proposes that Spergel be appointed by the court as receiver of the Real Property.

41. Given the ongoing interim receivership and bankruptcy proceeding affecting Sutor and the Real Property and the registration of the construction lien on title to the Real Property, the Bank seeks to enforce its security by the appointment of a receiver by the court.

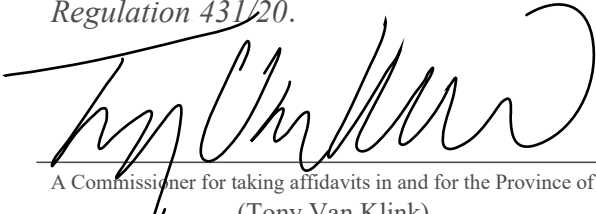
42. A receivership conducted under the court's supervision will,

- (a) facilitate the realization of the Real Property in a stabilized environment under the supervision of the court;
- (b) give prospective purchasers confidence that they will obtain clear title via a vesting order from the court which will aid in maximizing the realization from the Real Property; and

(c) ensure that the Real Property is realized upon and administered in accordance with the rights of the Bank and other stakeholders.

43. Spergel is a licensed trustee in bankruptcy and is prepared to act as receiver if so appointed by the court.

**SWORN/AFFIRMED BEFORE ME** via )  
video-conference with the deponent in the City )  
of Toronto, Ontario, and the Commissioner in )  
the Municipality of Thames Centre, Ontario this )  
5<sup>th</sup> day of May, 2025. This affidavit was )  
commissioned remotely and the declaration was )  
administered in accordance with Ontario )  
*Regulation 431/20.* )

  
A Commissioner for taking affidavits in and for the Province of Ontario.  
(Tony Van Klink)

Signed by:  
  
88BE7FF29EFA41B...  
Gianna Torrelli

Attached are Exhibits A to K  
to the Affidavit of Gianna Torrelli  
sworn the 5th day of May, 2025.

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and cursive, appearing to be a name followed by a surname and possibly initials.

*A Commissioner, Etc.*

# EXHIBIT A





Ministry of Public and  
Business Service Delivery

## Profile Report

1391 ONTARIO ST. INC. as of April 30, 2025

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	1391 ONTARIO ST. INC.
Ontario Corporation Number (OCN)	1000367410
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	November 17, 2022
Registered or Head Office Address	902 Second Street West, Suite 101, Cornwall, Ontario, K6J 1H7, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Minimum Number of Directors 1  
Maximum Number of Directors 10

Active Director(s)  
Name DYLAN SUITOR  
Address for Service 902 Second Street West, Suite 101, Cornwall, Ontario, K6J 1H7, Canada  
Resident Canadian Yes  
Date Began November 17, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*  
Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Officer(s)

Name	DYLAN SUITOR
Position	President
Address for Service	902 Second Street West, Suite 101, Cornwall, Ontario, K6H 1H7, Canada
Date Began	November 17, 2022

Name	DYLAN SUITOR
Position	Secretary
Address for Service	902 Second Street West, Suite 101, Cornwall, Ontario, K6H 1H7, Canada
Date Began	November 17, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Corporate Name History

Name

1391 ONTARIO ST. INC.

Effective Date

November 17, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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#### Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: DYLAN SUITOR	March 18, 2024
CIA - Initial Return PAF: DYLAN SUITOR	December 14, 2022
BCA - Articles of Incorporation	November 17, 2022

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*  
Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

# EXHIBIT B





BDCID: 10030495443

**Letter of Offer dated December 2, 2022**

**1391 Ontario Hold Co TBI**  
 245 Wyecroft Rd, Unit 4  
 Oakville, ON  
 L6K 3Y6

**Attention of: Mr. Dylan Sutor****Re: Loan No. 242499-01**

In accordance with this letter of offer of credit as amended from time to time (the "**Letter of Offer**"), Business Development Bank of Canada ("**BDC**") is pleased to offer you the following loan (hereinafter individually or collectively referred to as the "**Loan**"). The Letter of Offer is open for acceptance until December 12, 2022 (the "**Acceptance Date**") and must be received by BDC duly signed no later than the Acceptance Date otherwise it shall automatically be deemed withdrawn by BDC.

**LOAN PURPOSE AND FUNDING****Loan Purpose**

Realty Purchase	\$2,203,000.00
Renvoations	\$205,405.00
Contingency	\$37,595.00
	<hr/>
	\$2,446,000.00

**Funding**

BDC 242499-01	\$2,446,000.00
	<hr/>
	\$2,446,000.00

No change to the Loan Purpose or Funding may be made without BDC's prior written consent. The proceeds of the Loan may only be used for the Loan Purpose.

**DEFINITIONS**

In the Letter of Offer, capitalized terms have the meanings described in Schedule "A" – Section I or are defined elsewhere in the text of the Letter of Offer.

**LENDER****BDC**

**BORROWER**

1391 Ontario Hold Co TBI (the "**Borrower**")

**GUARANTOR**

Dylan Suitor Personal Real Estate Corporation

Elev8 Inc.

Elevation Realty Network Inc.

Dylan Suitor

(Hereinafter individually or collectively referred to as the "**Guarantor**"). The terms of each guarantee are set forth in the Security section below.

**LOAN AMOUNT**

**Loan 242499-01:** \$2,446,000.00

**INTEREST RATE**

The Loan and all other amounts owing by the Borrower pursuant to the Loan Documents shall bear interest at the following rate:

**Loan 242499-01****Floating Rate**

BDC's Floating Base Rate minus a variance of 1.30% per year (the "**Variance 01**"). On the date hereof, BDC's Floating Base Rate is 8.05% per year.

**INTEREST CALCULATION**

Interest shall be calculated monthly on the outstanding principal, commencing on the date of the first disbursement, both before and after maturity, Default and judgement.

Arrears of interest or principal and all other amounts owing by the Borrower pursuant to the Loan Documents shall bear interest at the rate applicable to the Loan and shall be calculated and compounded monthly.

**REPAYMENT**

Principal of the Loan is repayable according to the following table. The balance of the Loan in principal and interest and all other amounts owing pursuant to the Loan Documents shall become due and payable in full on the Maturity Date indicated below.

**Loan 242499-01****Regular**

Payments			Start Date	End Date
Number	Frequency	Amount (\$)		
1	Once	9,150.00	01/02/2024	01/02/2024
299	Monthly	8,150.00	01/03/2024	01/01/2049

In addition, interest is payable monthly on the 1<sup>st</sup> day of the month (the “**Payment Date 01**”) commencing on the next occurring Payment Date 01 following the first advance on the Loan.

Maturity Date: January 1, 2049 (the “**Maturity Date 01**”).

**PREPAYMENT**

**Annual Prepayment Privilege:** Provided that the Borrower is not in default of any of its obligations to BDC, the Borrower may, once in any 12 month period, prepay up to 15% of the outstanding principal on any Loan without indemnity. The first prepayment can be made at any time more than one year after December 1, 2022. The prepayment privilege is not cumulative and each prepayment on an individual Loan must be at least 12 months subsequent to the last prepayment on that same loan. The prepayment privilege is not transferable from one individual Loan to another and is not applicable if any Loan is being repaid in full. If the loan is prepaid in full within 30 days following receipt of the amount paid as a prepayment privilege, BDC will calculate a prepayment indemnity, effective the day the full balance is repaid, on the amount of the last received prepayment privilege and add it to the prepayment indemnity calculated on the full remaining balance being repaid.

**Prepayment Indemnity:** In addition to the annual prepayment privilege, the Borrower may prepay at any time all or part of the principal provided that the Borrower pays the interest owing up to the time of the prepayment together with an indemnity equal to:

If the interest rate on the Loan is a floating rate:

- three months further interest on the principal prepaid at the floating interest rate then applicable to the Loan.

If the interest rate on the Loan is a fixed rate:

- the sum of (a) three months further interest on the principal prepaid at the fixed interest rate then applicable to the Loan; and (b) the Interest Differential Charge.

Partial prepayments shall be applied regressively on the then last maturing instalments of principal.



## SECURITY

The Loan, interest on the Loan and all other amounts owing pursuant to the Loan Documents shall be secured by the following (the “**Security**”):

### Loan 242499-01

1. First readvanceable mortgage in the principal amount of \$2,446,000 on land (approx. 0.2 Acres) (legally described as PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ; BURLINGTON) and buildings located at 1391 Ontario St. Burlington, ON. Property to be owned by 1391 Ontario Hold Co TBI. Building location survey or title insurance required.
2. General Security Agreement from 1391 Ontario Hold Co TBI providing a first security interest in all present and after-acquired personal property, except consumer goods.
3. Guarantee of Elev8 Inc. for the full amount of the Loan amount supported by a General Security Agreement providing a security interest in all present and after-acquired personal property, except consumer goods, subject to all existing and future registered charges, except charges in favour of a shareholder, director, officer or family member of any of those persons, or any entity in which any of those persons have an interest. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
4. Guarantee of Elevation Realty Network Inc. for the full amount of the Loan amount supported by a General Security Agreement providing a security interest in all present and after-acquired personal property, except consumer goods, subject to all existing and future registered charges, except charges in favour of a shareholder, director, officer or family member of any of those persons, or any entity in which any of those persons have an interest. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
5. Guarantee of Dylan Suitor Personal Real Estate Corporation for the full amount of the Loan amount supported by a General Security Agreement providing a security interest in all present and after-acquired personal property, except consumer goods, subject to all existing and future registered charges, except charges in favour of a shareholder, director, officer or family member of any of those persons, or any entity in which any of those persons have an interest. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
6. Guarantee of Dylan Suitor for 25% of the Loan amount. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
7. Ratification and adoption by resolution or agreement, executed after incorporation, of this Letter of Offer and any security provided from 1391 Ontario Hold Co TBI.

**DISBURSEMENT**

The Loan funds shall be disbursed as follows:

**Loan 242499-01**

1. Once all required Security is completed the loan will be disbursed to the appointed solicitor when requested based on the following:

**REALTY PURCHASE:**

Once applicable Conditions Precedent have been met (Except CP for Designated Substance Survey), BDC will advance funds of \$2,203,000 to complete the purchase of 1391 Ontario St. Burlington, ON.

**RENOVATIONS:**

Once applicable Conditions Precedent have been met, BDC will disburse up to 100% upon receipt of invoices and/or progress billing from the general contractor evidencing expenditures under the Loan Purpose (excluding applicable taxes), less any applicable holdbacks required by BDC until the total amount disbursed by BDC reaches \$243,000 (Including Contingency).

At project completion, any contingency funds not required to support the programmed expenditures will be cancelled.

**SITE VISIT:**

A physical inspection by a BDC representative of the expenditures under the Loan Purpose is to be done when 40% to 60% of construction/renovation project is completed.

Unless otherwise indicated above, funds for each Loan account number shall be disbursed to BDC's solicitor or notary mandated by BDC for security taking for the Loan.

**CONDITIONS PRECEDENT**

Any obligation to make any advance under the Letter of Offer is subject to the following conditions being fulfilled to the satisfaction of BDC:

1. Receipt of the Security in form and substance satisfactory to BDC registered as required to perfect and maintain the validity and rank of the security, and such certificates, authorizations, resolutions and legal opinions as BDC may reasonably require.
2. Satisfactory review of all financial information relating to each Loan Party and its business as BDC may reasonably require.
3. No Default or Event of Default shall have occurred.
4. No Material Adverse Change shall have occurred.
5. Provision of documents evidencing expenditures under the Loan Purpose, if applicable.
6. Satisfaction of all applicable disbursement conditions contained in the Disbursement section of this Letter of Offer.



7. The Borrower will have incorporated a company which will have provided its registered certificate/articles of incorporation to BDC prior to disbursement. The undersigned principals on behalf of the Borrower and the Guarantors agree that if the principals do not incorporate a company, they are responsible for the payment of the Cancellation and Standby Fees as well as the Legal fees and Expenses referred to in this Letter of Offer. The Borrower agrees that the shareholders of the corporation shall be only those persons who have been represented to BDC as the proposed shareholders.
8. Obtain a construction contract acceptable to BDC from Camden Construction supporting the construction costs of \$205,405.
9. Prior to any demolition or renovation activities at the property located at 1391 Ontario St. Burlington, ON, the Borrower undertakes to obtain a Designated Substances Survey prepared by an external consultant acceptable to BDC for that property including, but not limited to, a survey of the building for Lead Containing Materials and Asbestos Containing Materials, which is to be conducted in accordance with the requirements of Regulation 278 of the Ontario Occupational Health and Safety Act ("O.Reg. 278/05"). The contents, conclusions and any problems identified in the Report must all be acceptable to BDC, acting in its sole judgment and discretion. If surveys confirm the presence of any of these designated substances, Management Programs are to be developed and implemented, in accordance with Ontario Regulation 278/05. The Borrower is responsible for the payment of all charges relative to the preparation of the report(s).
10. Provide a prospective market value appraisal report prepared by an independent AACI appraiser commissioned by or acceptable to BDC confirming the market value of the realty after improvements authorized under the Loan Purpose located at 1391 Ontario St. Burlington, ON. pledged as security is not less than - \$2,446,000.

The Borrower is responsible for the appraisal report fees.

11. Borrower is to provide written confirmation fully satisfactory to the Bank that all Income taxes and source deductions (Including HST) are current and up to date for Elevation Realty Network Inc.

#### LAPSING DATE

#### Loan 242499-01

Lapsing Date: December 1, 2023 (the "**Lapsing Date 01**").

Any undisbursed portion of a Loan shall lapse and be cancelled on the occurrence of the earliest of the following events:

- a) on the applicable Lapsing Date indicated above; or
- b) on the date the Borrower notifies BDC of its intention to cancel the Loan; or
- c) on the date BDC issues a notice to the Borrower that an Event of Default has occurred and that BDC has terminated its obligation to make any further advances under the Loan.

Each of the above is hereby considered a "Lapsing Event" and shall be subject to Cancellation Fees as provided for in this Letter of Offer.

## UNDERLYING CONDITIONS

The following conditions shall apply throughout the term of the Loan:

1. You shall abide by the following conditions in relation to the renting and/or occupancy of realty secured by BDC to, or by, parties related to the Borrower or Guarantor:
  - a) All tenants must be approved by BDC;
  - b) You will not, without the prior consent of BDC, permit any change of tenants or occupants, current and future, including any transfer of more than 25% of the voting shares of a tenant to any party which is not the Borrower or a Guarantor on the Loan; and
  - c) You will pay the cost of serving such legal and other notices to your tenants as BDC may deem necessary from time to time to protect BDC's interests in relation to this Loan.
2. Based on the annual financial statements as per BDC's reporting requirements for the borrowers and guarantors, maintain at all times a Fixed Charge Coverage Ratio (FCCR) equal to or greater than 1.10:1.00.

## REPRESENTATIONS AND WARRANTIES

The Loan Parties make the representations and warranties in Schedule "A" – Section II. These representations and warranties shall survive the execution of the Letter of Offer and shall continue in force and effect until the full payment and performance of all obligations of the Loan Parties pursuant to the Loan Documents.

## COVENANTS

Each Loan Party shall perform the covenants in Schedule "A" – Section III. These covenants shall survive the execution of the Letter of Offer and shall continue in force and effect until the full payment and performance of all obligations of the Loan Parties pursuant to the Loan Documents.

## REPORTING OBLIGATIONS

The Borrower shall provide to BDC the following financial statements and other documents:

Company	Type	Frequency	Period Ending
Elev8 Inc.	Compilation Engagement prepared by a CPA	Annual	December
1391 Ontario Hold Co TBI	Compilation Engagement prepared by a CPA	Annual	December
Dylan Suitor Personal Real Estate Corporation	Compilation Engagement prepared by a CPA	Annual	December
Elevation Realty Network Inc.	Review Engagement	Annual	December

The above annual financial statements and other documents indicated as required annually shall be provided to BDC within 90 days following the applicable Period Ending.

If financial statements or other documents are required more frequently than on an annual basis, same shall be provided to BDC within 30 days following each applicable Frequency.



In addition, the Borrower shall provide any other financial and operating statements and reports as and when BDC may reasonably require.

The Loan Parties also agree that the Reporting Obligations above shall apply to all other existing BDC loans to the same Borrower, if any, and the letter(s) of offer for such existing loans are deemed amended accordingly. Furthermore, such amended Reporting Obligations shall continue to be effective in respect of said existing letters of offer notwithstanding that this Letter of Offer may be reimbursed or cancelled.

#### **EVENTS OF DEFAULT**

The occurrence of any of the events listed in Schedule “A” – Section IV constitutes an event of default under the Letter of Offer (each an “**Event of Default**”). If an Event of Default occurs, any obligation of BDC to make any advance, shall, at BDC’s option, terminate and BDC may, at its option, demand immediate payment of the Loan and enforce any Security. Notwithstanding any other provision of this Letter of Offer or any other Loan Document, the parties hereto agree that the time limited for commencement of any action to enforce the obligations of the Borrowers and Guarantors, including the enforcement of any Security, shall not commence until BDC has issued a written demand for full payment of the Loan.

The exercise by BDC of any of its rights shall not preclude it from exercising any other rights resulting from this Letter of Offer or Loan Documents, as BDC’s rights are cumulative and not alternative. No action or omission on the part of BDC shall constitute or imply a renunciation of its rights to determine that a Default or Event of Default has occurred or to avail itself of its rights resulting therefrom.

#### **FEES**

##### **Cancellation Fee**

If the Loan is not fully disbursed due to a Lapsing Event, regardless of the reason for the Lapsing Event, the Loan Parties shall pay BDC a cancellation fee in proportion to the percentage of the Loan that is cancelled, based on the amount below being the fee if 100% of the Loan is cancelled. No cancellation fee will be payable if less than 50% of the Loan is cancelled. If the Loan includes funds to refinance an existing BDC Loan, those funds shall be excluded from the calculation of the percentage of the Loan that is cancelled.

The cancellation fee is payable on demand and is liquidated damages, not a penalty, and represents a reasonable estimate of BDC’s damages should the Loan be cancelled or allowed to lapse in whole or in part.

##### **Loan 242499-01**

Cancellation Fee: \$73,380.00 (the “**Cancellation Fee 01**”).



### Standby Fee

The Loan Parties shall pay BDC a non-refundable standby fee calculated at a rate as indicated below on the portion of the Loan which has not been advanced or cancelled. This fee shall be calculated daily and be payable in arrears commencing on the date indicated below and on each Payment Date thereafter.

#### **Loan 242499-01**

Rate: 1.50% per annum

Date: June 1, 2023

### Legal Fees and Other Expenses

The Loan Parties shall pay, on demand, all legal fees and expenses and other out-of-pocket costs of BDC, incurred in connection with the Loan and the Loan Documents, whether or not any documentation is entered into or any advance is made to the Borrower. All legal and other out-of-pocket expenses of BDC in connection with any amendment or waiver related to the Loan and the Loan documents shall also be for the account of the Loan Parties.

All costs, fees, expenses and protective disbursements incurred for the enforcement of the Loan and the Loan Documents are payable by the Loan Parties, including the full amount of all legal and professional fees and expenses paid by BDC at the rate at which those amounts are billed to BDC.

### Loan Management Fee

The Loan Parties shall pay BDC an annual management fee as indicated below. This management fee is payable annually on the Payment Date immediately following each anniversary of the first advance of the specific Loan account number. This fee is non-refundable and is subject to change at BDC's sole discretion, acting reasonably, effective upon the Borrower's receipt of written notification from BDC, to cover additional costs or fees incurred in the management of the Loan, including, but not limited to, resulting from the Borrower's failure to remit financial statements or other documents as required under the Letter of Offer.

#### **Loan 242499-01**

\$750.00 per year (the "**Management Fee 01**").

### Transaction Fees

The Borrower shall pay BDC loan amendment and Security processing fees charged for the administrative handling of the Loan.

### CONFLICTS

The Loan Documents constitute the entire agreement between BDC and the Loan Parties. To the extent that any provision of the Letter of Offer is inconsistent with or in conflict with the provisions of the other Loan Documents, such provision of the Letter of Offer shall govern.

## INDEMNITY

The Borrower shall indemnify and hold BDC harmless against any and all claims, damages, losses, liabilities and expenses incurred, suffered or sustained by BDC by reason of or relating directly or indirectly to the Loan Documents save and except any such claim, damage, loss, liability and expense resulting from the gross negligence or wilful misconduct of BDC.

## GOVERNING LAW

This Letter of Offer shall be governed by and construed in accordance with the laws of the jurisdiction in which the Business Centre of BDC is located as shown on the first page of this Letter of Offer.

## SUCCESSORS AND ASSIGNS

The Letter of Offer shall extend to and be binding on each Loan Party and BDC and their respective permitted successors and assigns. BDC, in its sole discretion, may assign, sell or grant participation in (a “**transfer**”) all or any part of its rights and obligations under the Loan or the Loan Documents to any third party, and the Loan Parties agree to sign any documents and take any actions that BDC may reasonably require in connection with any such transfer. Upon completion of the transfer, the third party will have the same rights and obligations under the Loan Documents as if it were a party to them, with respect to all rights and obligations included in the transfer and BDC will be released to the extent of any interest under the Loan or Loan Documents it assigns. BDC may disclose information it has in connection with the Borrower or any Loan Party to any actual or prospective transferee. No Loan Party shall have the right to assign any of its rights or obligations under or pursuant to the Loan Documents without BDC’s prior written consent.

## ACCEPTANCE

The Letter of Offer and any modification of it may be signed and accepted by an original ink signature or by electronic signature as permitted by BDC, and may be delivered on paper, fax, or in an electronic format (PDF) through BDC’s electronic client portal, or any other electronic means of communication acceptable to BDC. It may also be signed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Letter of Offer.

## SCHEDULE

The Letter of Offer includes Schedule “A” which contains Definitions, Representations and Warranties, Covenants, Events of Default and General Terms and Conditions. Schedule “A” has been inserted after the signature page and forms an integral part of the Letter of Offer.

## LANGUAGE CLAUSE

The parties hereby confirm their express wish that the Letter of Offer and all related documents be drawn up in the English language. Les parties reconnaissent leur volonté expresse que la présente lettre d’offre ainsi que tous les documents qui s’y rattachent soient rédigés en langue anglaise.



Should you have any questions regarding the Letter of Offer, do not hesitate to communicate with one of the undersigned.

*Kim Elsinga*

Kim Elsinga  
Senior Account Manager  
Phone: (905) 315-9242  
Fax: (905) 315-9243  
Kim.ELSINGA@bdc.ca

*Tina MacKinnon*

Tina MacKinnon  
Client Support Coordinator  
Phone: (519) 514-1209  
Tina.MACKINNON@bdc.ca

## ACCEPTANCE

Each Loan Party hereby accepts the terms and conditions set forth above and in the attached Schedule "A".

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

### 1391 Ontario Hold Co TBI

E-SIGNED by Dylan Suitor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: **Dylan Suitor**

*[Please print name of signing party]*

## GUARANTOR(S)

### Dylan Suitor Personal Real Estate Corporation

E-SIGNED by Dylan Suitor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: **Dylan Suitor**

*[Please print name of signing party]*

### Elev8 Inc.

E-SIGNED by Dylan Suitor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: **Dylan Suitor**

*[Please print name of signing party]*

**Elevation Realty Network Inc.**

E-SIGNED by Dylan Suitor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: **Dylan Suitor**

*[Please print name of signing party]*

E-SIGNED by Dylan Suitor  
on 2022-12-02

\_\_\_\_\_  
**Dylan Suitor**

December 2, 2022

## SECTION I - DEFINITIONS

## A. General Definitions:

**"BDC's Base Rate"** – means the annual rate of interest announced by BDC through its offices from time to time as its base rate and, as the case may be, subject to a discount for the duration, applicable to each of BDC's fixed interest rate plans then in effect for determining the fixed interest rates on Canadian dollar loans.

**"BDC's Floating Base Rate"** – means the annual rate of interest announced by BDC through its offices from time to time as its floating rate then in effect for determining the floating interest rates on Canadian dollar loans. The interest rate applicable to the Loan shall vary automatically without notice to the Borrower upon each change in BDC's Floating Base Rate.

**"BDC's US Dollar Floating Base Rate"** – means the 1-month US Dollar floating base rate set the last business day of each month for the following month for determining the floating interest rates on US Dollar loans. The interest rate applicable to the Loan shall vary automatically without notice to the Borrower upon each change in BDC's US Dollar Floating Base Rate. BDC's US Dollar Floating Base Rate for the period from the date of the first advance on the Loan to the first business day of the following month will be the 1-month US Dollar floating base rate as established by BDC on the first business day of the month in which the funds are disbursed. Thereafter, the 1-month US Dollar Floating Base Rate may vary on the first business day of each month.

**"Change of Control"** – means any operation or series of transactions pursuant to which the Control of a Person is transferred from one Person to another or required by a Person, or any binding undertaking to proceed with any such operations.

**"Control"** – means the power to, directly or indirectly, acting alone or together with other Persons, direct or cause the direction of the management, business, affairs or policies of a Loan Party, whether through ownership of partnership interests, trust interests, or voting securities, by contract or otherwise, including, but without limiting the generality of the foregoing, in the case of a corporation, a Person is deemed to control a corporation if such Person (or such Person and its affiliates) holds, directly or indirectly, more than fifty per cent (50%) of the voting rights of the corporation. For the purposes of this definition, indirect control will include, without limitation, control that is exercised by one Person over another, through an intermediary that is controlled by the first.

**"Corresponding Fixed Interest Rate Plan"** – means, at any time in respect of a prepayment, the fixed interest rate plan then being offered by BDC to its clients equal to the number of years, rounded to the nearest year (minimum of one year), from the date such prepayment is received to the next scheduled Interest Adjustment Date (or the Maturity Date if earlier).

**"Default"** – means an Event of Default or any condition that, with the giving of notice, the passage of time or otherwise, is susceptible of being an Event of Default.

**"Equity Interests"** – means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated) of such Person's capital, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, which carry the right to vote on the election of directors or individuals exercising similar functions in respect of such Person and/or which entitle their holder to participate in the profits of such Person.

**"Interest Adjustment Date"** – means, in respect of any fixed interest rate plan, the day after the Interest Expiration Date of such fixed interest rate plan.

**"Interest Differential Charge"** – means, in respect of the prepayment of the Loan for any portion of the Loan on a fixed interest rate plan or the selection by the Borrower of a new interest rate plan prior to the Interest Expiration Date, if, on the date of the prepayment or the selection of the new plan, as applicable, the BDC's Base Rate for the Corresponding Fixed Interest Rate Plan is lower than the BDC's Base Rate in effect when the Borrower entered or renewed the fixed interest rate plan, whichever is most recent, the amount calculated as follows:

- (i) the difference between the two rates;
- (ii) such interest differential is multiplied by the principal that would have been outstanding at each future Payment Date until the next Interest Adjustment Date (or the maturity of the principal if earlier);
- (iii) the Interest Differential Charge is the present value of those monthly amounts calculated using BDC's Base Rate for the Corresponding Fixed Interest Rate Plan as the discount rate. In the case of partial prepayment,



the Interest Differential Charge will be reduced in the same proportion as the amount prepaid bears to the principal outstanding on the Loan at the time prepayment is received. If the Loan is secured by a mortgage or a hypothec on real estate and the Loan is prepaid in full after 5 years from the date of the mortgage or hypothec, the Interest Differential Charge shall not be payable if the mortgage or hypothec is given by an individual and shall only be payable if permitted under the *Interest Act*.

**"Interest Expiration Date"** – means the date on which a fixed interest rate plan expires.

**"Loan"** – shall have the meaning indicated in the Letter of Offer, or, as the context may require, at any time the unpaid principal balance of the Loan.

**"Loan Documents"** – means, collectively, the application for financing, the Letter of Offer, the security contemplated by the Letter of Offer and all other documents, instruments and agreements delivered in connection with the foregoing.

**"Loan Party"** – means either the Borrower or the Guarantor and "Loan Parties" means collectively each of the Borrower and the Guarantor.

**"Material Adverse Change"** – means:

- (i) a material adverse change in, or a material adverse effect upon, the business, assets, properties, liabilities (actual or contingent), operations, condition (financial or otherwise), or prospects, of any Loan Party, or any Person who Controls a Loan Party;
- (ii) a material impairment of the ability of any Loan Party to perform any of their obligations under any Loan Document; or
- (iii) a material adverse effect upon any substantial portion of the assets subject to security in favour of BDC or upon the legality, validity, binding effect, rank or enforceability of any Loan Document.

**"Person"** – includes any natural person, corporation, company, limited liability company, trust, joint venture, association, partnership, limited partnership, governmental authority or other entity, and a natural person in his or her capacity as trustee, executor, administrator, or other legal representative and any other form of organization or entity whatsoever.

**"Public Issuer"** – means any Loan Party whose Equity Interests are listed or posted for trading on the Toronto Stock Exchange or the TSX Venture Exchange or any other stock exchange or over-the-counter market acceptable to BDC.

**"Public Issuer Notice"** – means a written notice delivered by a Public Issuer to BDC as described in the Covenants section of this Schedule "A".

#### **B. Financial Definitions – the following definitions apply if used in this Letter of Offer:**

**"Adjusted EBITDA"** – means EBITDA adjusted by gains/losses on disposal of assets, other non-cash adjustments presented in the statement of cash flow and all extraordinary items presented as per GAAP financial measures.

**"ASPE"** – means accounting standards for private enterprises. ASPE are the Canadian generally accepted accounting principles (GAAP) approved by the Accounting Standards Board for private enterprises in Canada who have not elected to adopt IFRS.

**"Available Funds"** – means in respect of any Loan Party for any period of 12 months, the sum of the net profits before non-recurring or non-operating items that are not related to normal operations (as designated by the external accountant) plus depreciation and amortization, plus deferred income taxes; and minus dividends.

**"Available Funds Coverage Ratio"** – means the ratio of Available Funds over the Current Portion of Term Debt.

**"Capital Expenditures"** – means, with respect to any period of 12 consecutive months, all payments or accruals for any (i) property, plant and equipment, (ii) intangible assets and (iii) development costs that are required to be capitalized under GAAP.

**"Current Portion of Term Debt or CPTD"** – means the scheduled principal payments on Term Debt and lease payments on capital leases over the next 12-month period.

**"Debt-to-capital ratio"** – means the ratio of (A) the sum of (i) outstanding operating line of credit and (ii) Term Debt; by (B) the sum of (i) outstanding operating line of credit, (ii) Term Debt, and (iii) Tangible Equity.

**"Distributions"** – means, for any period of 12 consecutive months, the total of the following:



- (i) the payment or declaration of any dividend (or distribution in case of a partnership or trust);
  - (ii) the purchase, redemption or other acquisition or retirement of any capital stock (including the premium paid);
  - (iii) the change in subordinated loans or advances from the shareholders, partners, directors, or other related entities; and
  - (iv) the change in loans or advances to the shareholders, partners, directors, or other related entities.
- The sum of items (i), (ii), (iii) and (iv) cannot be negative.

**"EBITDA"** – means earnings before Interest Expenses, taxes, depreciation, and amortization.

**"Fixed Charge Coverage Ratio or FCCR"** – means the ratio of (A) Adjusted EBITDA for such period less (i) current income taxes during such period taken from the annual financial statements, (ii) Unfunded Capital Expenditures incurred during the applicable period, (iii) Distributions paid during such period; by (B) the sum of (i) CPTD and (ii) the Interest Expenses for such period.

**"GAAP"** – means Generally Accepted Accounting Principles, with respect to broad principles and conventions of general application as well as rules and procedures that determine accepted accounting practices at a particular time (including, without limitation, IFRS, ASPE, US GAAP, etc., as the case may be). Unless otherwise specifically provided herein, any accounting term used in this Letter of Offer shall have the meaning customarily given such term in accordance with GAAP and all financial computations hereunder shall be computed in accordance with GAAP consistently applied.

**"IFRS"** – means International Financial Reporting Standards. IFRS are the Canadian generally accepted accounting principles (GAAP) approved by the Accounting Standards Board for publicly accountable enterprises and other categories of reporting entities who are permitted, but not required, to apply this set of standards.

**"Interest Expenses"** – means financial expenses (i.e., bank charges as well as interest on short-term and long-term debt, on Subordinated Debt, and on capital leases) as reflected in the statement of earnings.

**"Subordinated Debt"** – means debt with or without a convertible feature and with or without a variable return that normally ranks behind that of the senior secured lenders. Depending on the structure, the instrument of return may include interest, fixed/variable bonuses, royalties, bonus equity, warrants, or dividends.

**"Tangible Equity"** – means the sum of the share capital (owners' capital for non-incorporated businesses); plus retained earnings (accumulated net income); plus contributed surplus; plus postponed loans or advances from the shareholders (owners) and related businesses; minus loans or advances to the shareholders (owners), directors, related or non-related entities; minus the book value of shares redeemable at the holder's option, or shares subject to a formal redemption agreement.

**"Term Debt"** – means the sum of the long-term debt, the Subordinated Debt, and the capital leases including the current portion to be paid over the next 12 months; plus the redemption amount of shares redeemable at the holder's option, or shares subject to a formal redemption agreement.

**"Term Debt to Tangible Equity Ratio"** – means the ratio of the Term Debt over the Tangible Equity.

**"Total Debt/Adjusted EBITDA Ratio"** – means the ratio of (A) the sum of (i) outstanding operating line of credit and (ii) Term Debt; by (B) Adjusted EBITDA.

**"Unfunded Capital Expenditures"** – means, with respect to any period of 12 consecutive months, the aggregate of all Capital Expenditures incurred less the sum of (i) net cash proceeds generated from the sales of tangible and intangible assets, (ii) issuance of net new Term Debt, and (iii) issuance of new equity.

**"Working Capital"** – means the total of current assets minus the total of current liabilities. Current assets includes, but is not limited to, the following: cash on deposit, accounts receivable (trade and other), inventory and prepaid expenses. Current liabilities includes, but is not limited to, the following: bank advances, cheques in transit, accounts payable (trade and other) and the Current Portion of Term Debt.

**"Working Capital Ratio"** – means the ratio of the total current assets over the total current liabilities. Current assets includes, but is not limited to, the following: cash on deposit, accounts receivable (trade and other), inventory and prepaid expenses. Current liabilities includes, but is not limited to, the following: bank advances, cheques in transit, accounts payable (trade and other) and the Current Portion of Term Debt.



## SECTION II - REPRESENTATIONS AND WARRANTIES

Each Loan Party hereby represents and warrants to BDC that:

1. For any Loan Party other than an individual guarantor, it is a sole-proprietorship, partnership, trust or corporation, as the case may be, duly constituted, validly existing and duly registered or qualified to carry on business in each jurisdiction where it is required by applicable laws to be so registered or qualified.
2. The execution, delivery, and performance of its obligations under the Letter of Offer and the other Loan Documents to which it is a party have been duly authorized and constitute legal, valid and binding obligations enforceable in accordance with their respective terms.
3. It is not in violation of any applicable law, which violation could lead to a Material Adverse Change.
4. No Material Adverse Change exists and there are no circumstances or events that constitute or would constitute, with the lapse of time, the giving of notice or otherwise, a Material Adverse Change.
5. No Default or Event of Default exists.
6. All information provided by it to BDC is complete and accurate and does not omit any material fact and, without limiting the generality of the foregoing, all financial statements delivered by it to BDC fairly present its financial condition as of the date of such financial statements and the results of its operations for the period covered by such financial statements, all in accordance with GAAP.
7. There is no ongoing, pending or threatened claim, action, prosecution or proceeding of any kind before any court, tribunal, government board or agency including but not limited to non-compliance with environmental law or arising from the presence or release of any contaminant against it or its assets before any court or administrative agency which, if adversely determined, could lead to a Material Adverse Change.
8. Neither the Loan Party, nor any Person who Controls the Loan Party, nor any officer, director or shareholder of a Loan Party, has been charged with, pled guilty to, or has been convicted of, a criminal offence (other than a conviction for which a Pardon has been granted or other than a criminal offence which has been disclosed in writing to BDC prior to issuing this Letter of Offer).
9. In respect of properties and assets charged to BDC, it has good and marketable title, free and clear of any encumbrances, except those encumbrances which BDC has accepted in writing.

The foregoing representations and warranties shall remain in force and true until the Loan is repaid in full.

## SECTION III - COVENANTS

Each Loan Party shall:

1. Perform their obligations and covenants under the Loan Documents.
2. Maintain in full force and effect and enforceable the Security contemplated by this Letter of Offer.
3. Notify BDC immediately of the occurrence of any Default under the Letter of Offer or any other Loan Documents.
4. Comply with all applicable laws and regulations.
5. Observe BDC's insurance requirements:
  - a. Keep all secured assets insured for physical damages and losses on an "All-Risks" basis, including Equipment Breakdown (or Boiler & Machinery) where applicable, for their full replacement value and cause all such insurance policies to name BDC as loss payee as its interests may appear. The policies shall also name BDC as mortgagee and include a standard mortgage clause in respect of buildings over which BDC holds Security;
  - b. Maintain adequate Marine and/or Aviation insurance for all secured Aircraft or Marine vessels;
  - c. If required as further Security, assign or hypothecate all insurance proceeds to BDC;
  - d. If requested by BDC, maintain adequate Commercial General Liability insurance, and/or Environmental Liability and Clean-Up insurance, including BDC as additional insured to protect it against any losses or claims arising from pollution or contamination incidents, or other risks associated with the Borrower's business, or any other type of insurance BDC may reasonably require;
  - e. Ensure that all insurance policies include a 30-days prior notice of cancellation clause in favour of BDC;
  - f. Provide certificates of insurance for all such policies; and
  - g. Maintain all insurance policies in effect to BDC's standards for the duration of the Loan.

6. Notify BDC immediately of any material loss or damage to their property.
7. Without limiting the generality of paragraph 4 above, in relation to their business operations, projects and all assets of any nature, operate in conformity with all environmental laws and regulations; make certain that their assets are and shall remain free of environmental damage; inform BDC immediately upon becoming aware of any environmental issue and promptly provide BDC with copies of all communications with environmental authorities and all environmental assessments; pay the cost of any external environmental consultant engaged by BDC to effect an environmental audit and the cost of any environmental rehabilitation or removal necessary to protect, preserve or remediate the assets, including any fine or penalty BDC is obligated to incur by reason of any statute, order or directive by a competent authority.
8. Promptly pay all government remittances, assessments and taxes and provide BDC with proof of payments as BDC may request from time to time. Specifically regarding real estate property or other taxes on lands mortgaged to BDC, if a Loan Party fails to pay any instalment of such taxes when due, BDC may, in its sole discretion, provide written notice to the Borrower requiring the Loan Parties to pay BDC monthly payments as calculated by BDC to establish a tax reserve account, and in such event, the Loan Parties hereby authorize BDC to collect monthly pre-authorized payments and to pay the relevant taxing authority as required. No further consent from the Loan Parties shall be required. Should there be insufficient funds to satisfy the taxes owing, the Loan Parties will pay the shortfall. BDC will not be responsible for funding the shortfall or any arrears, including interest and other charges. The Loan Parties shall either instruct the taxing authority to forward a copy of the tax notice to BDC or shall deliver a copy to BDC upon receipt. Funds in this reserve account will earn interest in accordance with BDC's policy then in effect and will be held by BDC as Security for the Loan. After Default, BDC will not have any ongoing responsibility to pay the taxes and any funds in the reserve account may be applied towards any amounts owing to BDC.
9. Promptly furnish to BDC such information, reports, certificates, and other documents concerning any Loan Party as BDC may reasonably request from time to time, including, but not limited to, information regarding the ownership and control of any Loan Party.
10. Not, without the prior written consent of BDC:
  - a. Change the nature of their business;
  - b. Change their jurisdiction of incorporation, formation or continuance, or the jurisdiction in which their chief place of business, chief executive office or registered office is located;
  - c. Amalgamate, merge, acquire or otherwise restructure their business, or create an affiliated company, or sell or otherwise transfer a substantial part of their business or any substantial part of their assets, or grant any operating license; or
  - d. Permit or allow any transaction, including but not limited to the sale, transfer, or issuance of an Equity Interest, that would result in a Person who is not a Loan Party acquiring:
    - (i) a direct Equity Interest in a Loan Party; or
    - (ii) an indirect Equity Interest in a Loan Party of 25% or more. For the purposes of this subparagraph (ii), an indirect Equity Interest means an Equity Interest held by a Person through one or more intermediaries.

This paragraph (d) shall not apply to the sale, transfer, or issuance of any Equity Interests in a Public Issuer.
11. When a Loan Party is Public Issuer:
  - a. deliver a notice to BDC for its review and approval, within 5 business days after any Person or group of Persons, acting jointly or in concert, directly or indirectly, acquire Equity Interests resulting in the ownership of 20% or more of the Equity Interests of such Public Issuer. This Public Issuer Notice shall contain the names and addresses of any Person or group of Persons that acquired such Equity Interests together with the details of the Equity Interests so acquired; and
  - b. repay the Loan in full, including accrued interest, costs and any other outstanding amounts, within 60 days from the date on which BDC notifies the Borrower in writing that BDC, in its sole discretion, is not satisfied with the issuance or transfer of Equity Interests identified in the notice required by paragraph (a) above.

#### **Additional Covenants: Ineligible Activities**

In addition to the above list of Covenants, no Loan Party shall engage in, or permit their respective shareholders, directors or officers to engage in, or permit their premises to be used by a tenant or other Person for, any activity which BDC, from time to time, deems ineligible, including without limitation any of the following ineligible activities:

- a. businesses that: 1) are engaged in or associated with illegal activities or fail to comply with applicable Canadian legislation that restricts dealings, including trade, between Canadians and governments or



residents of countries that are proscribed by the Canadian government or illegally trade in proscribed goods; 2) violate applicable laws with respect to human rights, labour, the environment and anti-corruption; or 3) violate standards with respect to public health and safety or professional conduct, in each case as prescribed by applicable law or by a professional governing body;

- b. businesses that promote violence, incite hatred, or discriminate on any basis protected under the Canadian Human Rights Act; or
- c. businesses that operate any form of sexually exploitive business or disseminate media content that is sexually explicit.

BDC's finding that there is an ineligible activity shall be final and binding between the parties and will not be subject to review. The prohibitions set out in this section shall also apply to any entity that directly or indirectly controls, is controlled by, or that is under the common control with, any Loan Party.

#### SECTION IV - EVENTS OF DEFAULT

1. Any Loan Party fails to pay any amount owing under or pursuant to the Loan Documents.
2. Any Loan Party fails to satisfy, comply with, or perform any covenant or other obligation under the Loan Documents.
3. Any Loan Party is in default under any other agreement with BDC or any third party for the granting of a loan or other financial assistance and such default remains unremedied or unwaived after any cure period provided in such other agreement.
4. Any representation or warranty made by any Loan Party herein or in any other Loan Document is breached, false or misleading in any material respect, or becomes at any time false.
5. Any schedule, certificate, financial statement, report, notice or other writing furnished by or on behalf of any Loan Party to BDC in connection with the Loan is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.
6. The occurrence of a Material Adverse Change.
7. Any Loan Party becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay its debts as they become due; or any Loan Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for such Loan Party or any property thereof, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for any Loan Party or for a substantial part of the property of such Loan party; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of any Loan Party; or any Loan Party takes any action to authorize, or in furtherance of, any of the foregoing.
8. Any Loan Party ceases or threatens to cease to carry on all or a substantial part of its business.
9. The death of any individual Loan Party or any person that Controls any Loan Party.
10. The occurrence of a Change of Control of a Loan Party without BDC's written consent.
11. Any Loan Party, who is a Public Issuer, fails to deliver a Public Issuer Notice when required to do so, or fails to repay the Loan in full, including accrued interest, costs and any other outstanding amounts, within 60 days after receiving written notice that BDC is not satisfied with the Public Issuer Notice.
12. Any Loan Party, any Person who Controls a Loan Party, or any officer, director, or shareholder of a Loan Party, is in violation of any applicable law relating to terrorism or money laundering, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).
13. Any Loan Party, any Person who Controls a Loan Party, or any officer, director, or shareholder of a Loan Party, is in violation of trade and economic sanctions imposed by the Parliament of Canada.

## SECTION V - GENERAL TERMS AND CONDITIONS

Each Loan Party agrees to the following additional provisions:

### Other Available Interest Rate Plans

Upon acceptance of the Letter of Offer, the Borrower can select one of BDC's other available fixed or floating interest rate plans. If the selection is made before the Acceptance Date, there is no fee and the selected plan shall be based on BDC's Base Rate in effect on the Loan Authorization Date. If the selection is made after the initial Acceptance Date, there is a fee and an Interest Differential Charge may apply. The new rate shall become effective on the date on which the written request is received by BDC. However, in the event of a period of increased interest rate volatility, which will be determined by a fluctuation of greater than 0.5% during the same transaction day of the yield to maturity of the five-year Canada bond benchmark, BDC reserves the right to suspend the borrower's right to switch from a floating interest rate plan to a fixed interest rate plan.

### Standby Fee Date Change When Switching From Floating to Fixed Rate Plans – Not applicable to Equipment Line Loans

If the Borrower selects a floating rate interest plan at the time the Letter of Offer is accepted and subsequently switches to a fixed interest rate plan, the Standby Fee applicable to the Loan shall become payable as follows:

- a. if the change is made within 2 months after the Loan Authorization Date, the Standby Fee shall become payable 2 months after the Loan Authorization Date; or
- b. if the change is made more than 2 months after the Loan Authorization Date, the Standby Fee shall become payable on the date the new fixed interest plan takes effect.

There will be no change to the Standby Fee payment schedule if the Borrower elects to switch from a fixed rate interest plan to a floating rate interest plan.

### Interest Adjustment Date

Provided no Default has occurred and is continuing, prior to each Interest Adjustment Date, BDC shall advise the Borrower of BDC's Base Rates then in effect for the fixed interest rate plans available. Not later than on the current Interest Expiration Date, the Borrower shall select a new interest rate plan. If the Borrower selects a new fixed interest rate plan, effective on the Interest Adjustment Date, the interest rate for the Loan shall be BDC's Base Rate applicable to the fixed interest rate plan selected by the Borrower adjusted by the Variance which new rate shall be applicable until the next Interest Expiration Date. If the Loan is on a fixed interest rate plan with blended payments of principal and interest, the repayment schedule shall be adjusted on each Interest Adjustment Date. If the Borrower has not advised BDC in writing of its choice before an Interest Adjustment Date, the Loan shall automatically switch to BDC's floating interest rate plan on the Interest Adjustment Date with an interest rate being BDC's Floating Base Rate as adjusted by the Variance. Outstanding principal for blended payment loans shall then be divided in equal monthly instalments to be paid until Maturity Date.

In the event BDC should demand repayment of the Loan by reason of an Event of Default, any fixed interest rate applicable at the time of demand shall continue to apply to the Loan until full repayment and shall not be adjusted at the next Interest Adjustment Date.

### Pre-Authorized Payment

All payments provided for in the Letter of Offer must be made by pre-authorized payments from the Borrower's bank account. The Borrower shall sign all documentation required to that effect and provide a sample cheque marked void.

### Application of Payments

All payments shall be applied in the following order:

1. any prepayment indemnity (including the monthly interest and Interest Differential Charge)
2. protective disbursements;
3. standby fees (arrears and current);
4. arrears, in the following order: transaction fees, administration fees, management fees, interest and principal;
5. current balances, in the following order: transaction fees, management fees, interest and principal;
6. cancellation fees;
7. credits to the tax reserve account and asset maintenance and upgrade account, if applicable; and
8. other amounts due and payable.



Other than regular payments of principal and interest, BDC may apply any other monies received by it, before or after Default, to any debt the Borrower may owe BDC under or pursuant to the Letter of Offer or any other agreement and BDC may change those applications from time to time.

#### **Consent to Obtaining Information**

The Loan Parties hereby consent to BDC:

- a. collecting personal and business information and using such information for business, analytics and marketing purposes as described in the *Policy on confidentiality and use of personal and business information* (the "Policy") available at [bdc.ca/en/confidentiality](http://bdc.ca/en/confidentiality);
- b. sharing the personal and business information with BDC service providers only for them to provide the services BDC asks from them, such as processing credit verification, background checks and other matters explained in the Policy; and
- c. sharing the personal and business information with authorities in case of fraud or suspected fraud, and with other financial institutions to prevent or control fraud or when there is a breach of a financing agreement with BDC.

#### **Notices**

Notices must be in writing and may be given in person, or by letter sent by fax, mail, courier or electronically; if to the Borrower, at the Borrower's address above or such other addresses as the Borrower may advise BDC in writing, or if to BDC, at BDC's address above.

#### **Joint and Several Liability**

Where in the Loan Documents, any covenant, agreement, warranty, representation or obligation is made or imposed upon two or more Persons or a party comprised of more than one Person, each such covenant, agreement, warranty, representation or obligation shall be deemed to be and be read and construed as a joint and several (solidary in Quebec) covenant, agreement, warranty, representation or obligation of each such Person or party, as the case may be. Without limiting the generality of the foregoing, each Loan Party shall be jointly and severally (solidarily) liable with each other to BDC for the full performance of all obligations under the Loan Documents in accordance with the provisions thereof.

#### **Anti-Money Laundering/Know Your Client**

Each Loan Party acknowledges that, pursuant to prudent banking practices in respect of "knowing your client", BDC, in compliance with its internal policies, is required to verify and record information regarding the Loan Parties, their directors, officers, Persons holding direct or indirect Equity Interests in a Loan Party, and other Persons in Control of each Loan Party. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by BDC or any prospective assignee or other financial institution participating in the Loan with BDC, in order to comply with internal policies and applicable laws on anti-money laundering and anti-terrorist financing.

#### **Confidentiality**

The Loan Parties shall not disclose the contents of this Letter of Offer to anyone except its professional advisors.

#### **Changes in Accounting Standards**

In the event that a Loan Party adopts any changes in its accounting standards which have an effect on any provision in the Letter of Offer relying on financial statement calculations, BDC may amend such provision to reflect the original intent of the provision.

# EXHIBIT C

Properties

PIN

07082 - 0016LT

Interest/Estate

Fee Simple

Description

PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ;  
BURLINGTON

Address

1391 ONTARIO ST  
BURLINGTON

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name

1391 ONTARIO ST. INC.

Address for Service

1 King Street West, 10th Floor  
Hamilton, Ontario, Canada, L8P 1A4

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Chargee(s)CapacityShare

Name

BUSINESS DEVELOPMENT BANK OF CANADA

Address for Service

4145 North Service Road, Suite 401  
Burlington, Ontario  
L7L 6A3

Statements

Schedule: See Schedules

Provisions

Principal

\$2,446,000.00

Currency

CDN

Calculation Period

Balance Due Date

On Demand

Interest Rate

See Schedule

Payments

Interest Adjustment Date

Payment Date

First Payment Date

Last Payment Date

Standard Charge Terms

20011

Insurance Amount

Full insurable value

Guarantor

Signed By

Alexander Joseph Charles Smith

1 James Street South 14th flr PO  
Box 926  
Hamilton  
L8N 3P9

acting for  
Chargor(s)

Signed

2023 01 13

Tel

905-523-1333

Fax

905-523-5878

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

SCARFONE HAWKINS LLP

1 James Street South 14th flr PO Box  
926  
Hamilton  
L8N 3P9

2023 01 13

Tel

905-523-1333

Fax

905-523-5878

The applicant(s) hereby applies to the Land Registrar.

Fees/Taxes/Payment

Statutory Registration Fee	\$69.00
Total Paid	\$69.00



**SCHEDULE A****LAND REGISTRATION REFORM ACT****Payment Provisions**

You charge the property covered by the Charge as security for payment to the Chargee, Business Development Bank of Canada, of all Secured Obligations, as defined in the Standard Charge Terms described in the electronic form of charge to which this document forms a schedule, including the following:

- (i) all present and future debts, liabilities and obligations now or hereafter owing by the Chargor to the Chargee including any and all principal advances and re-advances made by the Chargee to the Chargor after the repayment of any or all principal amounts, provided that the total principal amount secured shall not at any time exceed the principal amount referred to in the electronic form of charge to which this document forms a schedule; and,
- (ii) interest on the amounts payable under paragraph (i) above at the rate equal to the floating base rate of Business Development Bank of Canada for commercial and industrial loans denominated in Canadian dollars announced from time to time, plus 10.00% per year, calculated monthly and payable monthly, both after as well as before maturity, default and/or judgment. If the Chargor and the Chargee have agreed in writing in any agreement referred to in the "Secured Obligations" described in paragraph (i) above, or in any other agreement, that a different interest rate will apply to all or part of the debts and liabilities described in paragraph (i) above, then that different rate will apply.

## STANDARD CHARGE TERMS

FILED BY: BUSINESS DEVELOPMENT BANK OF CANADA

AS

MORTGAGEE

FILING DATE - January 30<sup>th</sup>, 2001

FILING NUMBER - 20011

The following set of standard charge terms is considered to be included in and form a part of every Charge/Mortgage of Land in which this set is referred to by its filing number as provided in Section 9 of the *Land Registration Reform Act* (Ontario)

## CONTENTS

- |                             |   |
|-----------------------------|---|
| 1. Interpretation           | 8. Assignment of Rights of Indemnity            |
| 2. Grant of Security        | 9. Mortgages of Special Interest                |
| 3. Discharge of Mortgage    | 10. Events of Default                           |
| 4. General Representations  | 11. Enforcement                                 |
| 5. General Covenants        | 12. Other Rights                                |
| 6. Environmental Matters    | 13. Preservation of Mortgage and Other Security |
| 7. Assignment of Rents etc. | 14. Miscellaneous                               |

For good and valuable consideration, the receipt and sufficiency of which you hereby acknowledge, you warrant, represent, covenant and agree with us as follows:

## 1. INTERPRETATION

## 1.1 Definitions. In this Mortgage (as hereinafter defined):

- (a) **"Assigned Leases"** means every existing and future Lease and any guarantee of any such Lease;
- (b) **"Assigned Rents"** means all rents, benefits and other monies payable from time to time under the Assigned Leases;
- (c) **"Charge"** means any mortgage, charge (fixed or floating), pledge, lien (statutory or otherwise), assignment, lease, security interest, title retention agreement, trust, easement, restrictive covenant, lease, registered instrument or other encumbrance of any nature however arising;
- (d) **"Environmental/Hazardous Materials Claims"** means enforcement or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental/Hazardous Materials Laws, together with claims made or threatened by any third party against you or in respect of the Mortgaged Property relating to the environment, health, safety, any Wastes/Hazardous Materials or any Environmental/Hazardous Materials Laws;
- (e) **"Environmental/Hazardous Materials Laws"** means laws, by-laws, rules, ordinances, regulations, notices, approvals, orders, licenses, permits, standards, guidelines and policies from time to time of any level of government or other authorized agency relating to the environment, health, safety or any Wastes/Hazardous Materials;
- (f) **"Event of Default"** means any event referred to in paragraph 10.1 hereof, or otherwise herein, as constituting an Event of Default;
- (g) **"Improvements"** means each and every building, structure, erection, improvement, fixture or replacement thereof affixed or attached in, on, or under the Mortgaged Property or any part thereof which now or hereafter constitutes part of Your Interest;

- (h) **"Lease"** means a lease, sub-lease, agreement to lease or sub-lease, right of use or occupation, licence or sub-license, or other agreement as to the use or occupation affecting the Mortgaged Property, or any part thereof, as the case may be, and includes any renewal, replacement or extension of any of the foregoing;
- (i) **"Mortgage"** means the Mortgage Form and these charge terms read together, as amended and extended from time to time;
- (j) **"Mortgage Form"** means the Form 2 Charge/Mortgage of Land under the *Land Registration Reform Act* (Ontario), as amended or replaced from time to time, which refers to these charge terms and is executed by you and all schedules and addenda attached to such Form 2 and "Mortgage Form" includes a Mortgage Form prepared and registered in electronic format and all schedules thereto under Part III of the said Act;
- (k) **"Mortgaged Property"** means the land(s) described or referred to in box 5 of the Mortgage Form (or in the appropriate field as set out in any Mortgage Form prepared in electronic format) together with the Improvements, appurtenances and every other thing referred to in the definition of "land" in Section 1 of the *Land Registration Reform Act* (Ontario), as amended or replaced from time to time, and whether now or hereafter existing or acquired, in connection with such land(s);
- (l) **"Mortgagee"** means the Chargee shown in box 14 of the Mortgage or in the appropriate field as set out in any Mortgage Form prepared in electronic format;
- (m) **"Mortgagor"** means the Chargor shown in box 11 of the Mortgage or in the appropriate field as set out in any Mortgage Form prepared in electronic format;
- (n) **"Permitted Charges"** means any:
  - (i) Charges that are expressly subordinate in priority to the Mortgage and any present or future advances under it;
  - (ii) Charges in our favour; and
  - (iii) Charges approved in writing by us prior to the execution of the Mortgage or the creation of the Charge;
- (o) **"Receiver"** includes a receiver, manager, receiver and manager or receiver-manager however appointed;
- (p) **"Secured Obligations"** means the aggregate of:
  - (a) the principal amount set out in the Mortgage Form;
  - (b) all interest thereon at the Interest Rate set out in the Mortgage Form;
  - (c) any amount, cost, charge and expense which has been added to the Secured Obligations pursuant to the Mortgage;
  - (d) any other amount, cost, charge and expense otherwise due and payable to the Mortgagee hereunder or secured by the Mortgage;
  - (e) interest at the Interest Rate set out in the Mortgage Form on all amounts, costs, charges and expenses payable in accordance with paragraphs (c) and (d) above, which amounts, costs, charges, expenses and interest shall be treated, as to the payment of interest thereon, as principal;
  - (f) compound interest on all overdue interest, calculated at the Interest Rate set out in the Mortgage Form, both before and after default, demand, maturity and judgment until paid; and
  - (g) all other present or future debts, liabilities or obligations of the Mortgagor hereunder, or under any letter of offer, commitment letter, guarantee, or any other agreement with the Mortgagee, (including all future advances and re-advances, interest, and interest on overdue interest), whether direct or indirect, absolute or contingent, joint or several, matured or not, extended or renewed, wherever and however incurred, of whatsoever nature or kind, whether or not provided for herein, and whether owed by the Mortgagor to the Mortgagee, as principal, guarantor, indemnitor or otherwise.

- (q) **"Taxes"** means all taxes, assessments, rates, duties, levies, government fees, utility charges, claims and dues levied, assessed or imposed on Your Interest or on you in respect of Your Interest;
- (r) **"Wastes/Hazardous Materials"** means wastes, materials and substances the storage, manufacture, disposal, treatment, generation, use or transport of which is prohibited, controlled or licensed under any Environmental/ Hazardous Materials Laws, or the remediation or release of which into the environment is likely, immediately or in the future, to cause harm or degradation to any of the Mortgaged Property or the environment, including contaminants, pollutants, corrosive substances, toxic substances, special wastes, substances deleterious to fish or wildlife, explosives, radioactive materials, asbestos, urea formaldehyde, and compounds known as chlorobiphenyls;
- (s) **"Your Interest"** means:
  - (i) the estate, right, title and interest in and to the Mortgaged Property as set out in box 7 of the Mortgage Form (or, in the case of a Mortgage Form which is prepared in electronic format, the estate, right, title and interest described in the appropriate field therein) which, unless the Mortgage Form otherwise expressly provides, includes both the legal and beneficial estate, right, title and interest in and to the Mortgaged Property; and
  - (ii) any other estate, right, title or interest in and to the Mortgaged Property hereafter acquired by you, or in your name.

- 1.2 **Our Certificate Conclusive.** Every certificate signed by one of our representatives purporting to show the amount of monies at any particular time due and payable under this Mortgage shall, in the absence of manifest error, be conclusive evidence as against you of the amount due and payable at such time under this Mortgage.
- 1.3 **Invalidity.** The invalidity or unenforceability of the whole or any part of any paragraph of this Mortgage shall not affect the validity or enforceability of any other paragraph or the remainder of such paragraph.
- 1.4 **Headings.** The headings used in this Mortgage have been inserted for convenience of reference only and do not define, limit, alter or enlarge the meaning of any provision of this Mortgage.
- 1.5 **Jurisdiction.** This Mortgage will be governed by and construed in accordance with the laws of Ontario.
- 1.6 **Time of the Essence.** Time shall be of the essence of this Mortgage.
- 1.7 **Consolidation.** The doctrine of consolidation shall apply to this Mortgage.
- 1.8 **Interpretation.** Whenever in this Mortgage the singular or neuter pronoun is used the same shall be respectively construed as the plural, masculine, feminine or body corporate as the context may require.
- 1.9 **Joint and Several Liability.** If you are comprised of more than one person, the liability of such persons is joint and several and every reference in this Mortgage to you shall be construed as meaning each person who executed this Mortgage as a mortgagor as well as all of them.
- 1.10 **Conflict with Mortgage Form.** If there is any conflict between these charge terms and any express terms in the Mortgage Form, the provisions of the express terms in the Mortgage Form shall prevail.
- 1.11 **Conflict with Agreement.** If you have entered into a letter of offer, commitment letter, loan agreement or guarantee (the "Agreement") with us dealing with, or relating to, the Secured Obligations, or any of them, then, in the event of any conflict between any term of this Mortgage and any term of the Agreement, the term of the Agreement shall prevail.
- 1.12 **Enurement.** This Mortgage shall enure to the benefit of and be binding upon you and us and our respective heirs, personal representatives, successors and permitted assigns.

## 2. GRANT OF SECURITY

- 2.1 **Mortgage.** As security for payment and performance of the Secured Obligations, you hereby charge and mortgage Your Interest to us, subject to Permitted Charges and the

provisions hereof, and, subject to paragraph 3.1, you release all claims to Your Interest to us.

- 2.2 **Title.** If you are not the beneficial owner of Your Interest or any part of Your Interest, you have the right and authority to grant this Mortgage as a charge against both the legal and beneficial title to all of the Mortgaged Property.

### 3. DISCHARGE OF MORTGAGE

- 3.1 This Mortgage will be redeemed and you will be entitled to a discharge of this Mortgage only upon the latest of:

- (a) full payment and satisfaction of the Secured Obligations;
- (b) our receipt of your written request for a discharge of this Mortgage; and
- (c) our receipt of payment of an administrative fee, to be fixed by us, for the preparation, execution and/or registration of a discharge of this Mortgage.

No discharge will be effective unless it is executed by us.

We shall have no obligation to provide any partial release of this Mortgage from any of the Mortgaged Property except as provided by statute, the Mortgage Form or the Agreement.

You will pay an administrative fee, to be fixed by us, for the preparation or execution of any partial release of this Mortgage. No partial release of any of Your Interest will affect our rights under this Mortgage with respect to the remainder of Your Interest.

We shall have a reasonable time after payment of the Mortgage in full within which to execute a discharge of this Mortgage and deliver it to you. If electronic registration is available, we will either execute a discharge of this Mortgage and deliver it to your solicitor or we will register the discharge on your behalf and will provide either you or your solicitor with confirmation of registration.

### 4. GENERAL REPRESENTATIONS AND WARRANTIES

- 4.1 **Title.** You own and possess and have good title in fee simple to all of Your Interest and you will defend Your Interest for our benefit against the claims and demands of all other persons.
- 4.2 **Authority to Charge.** You have good right, full power and lawful authority to enter into this Mortgage, to create the Mortgage and Charge provided for herein and to charge all of Your Interest to us subject only to Permitted Charges.
- 4.3 **Quiet Possession.** On default we shall be entitled to enter into and take possession of, and thereafter shall have quiet enjoyment of, Your Interest free from all Charges, except Permitted Charges.
- 4.4 **Permitted Charges.** You have done no act to encumber Your Interest, save for Permitted Charges.
- 4.5 **No Litigation.** There is no litigation, governmental proceeding, complaint, prosecution or investigation, with respect to environmental matters or otherwise, commenced or pending against you or otherwise affecting Your Interest and you agree to promptly notify us of any such future litigation, proceeding, complaint, prosecution or investigation.
- 4.6 **Construction Liens.** You have fully and completely complied and will comply with all requirements of the *Construction Lien Act* (Ontario) as amended or re-enacted from time to time so as to preserve the priority of the Mortgage and all advances thereunder to any claim for Construction Lien.
- 4.7 **General.** Each statement made by you in this Mortgage is true, complete and accurate and no investigation by us will diminish our right to rely on such statements, all of which will survive until we have discharged this Mortgage.

### 5. COVENANTS

- 5.1 **Secured Obligations.** You will pay, observe, perform and satisfy all of the Secured Obligations as and when the same are required to be paid, observed, performed and satisfied.
- 5.2 **Taxes.** You will promptly pay all Taxes when due and deliver to us a receipt therefor forthwith upon each payment.
- 5.3 **Other Charges.** If this Mortgage is now or at any time hereafter subject to any Permitted Charge(s):
- (a) you will duly observe, perform and comply with the covenants, provisos and agreements contained in each Permitted Charge (including the punctual payment of any money payable under the same) and you agree to indemnify and save us harmless from and against any and all loss and liability thereunder; and
  - (b) any default under any Permitted Charge shall be deemed to be an Event of Default hereunder.
- 5.4 **No Charges.** You will not create, assume or permit the existence of any Charge affecting any of Your Interest except for Permitted Charges, but nothing herein shall be constituted as our granting any priority to any such Permitted Charges.
- 5.5 **Miscellaneous Fees.** You shall pay to us on demand the following, all of which shall constitute a Secured Obligation and be payable immediately with interest at the highest rate of interest then in effect with respect to any part of the Secured Obligations, until paid:
- (a) a reasonable servicing fee to process each application for approval as herein contemplated; and
  - (b) all fees, costs, charges and expenses (including legal fees and expenses on a solicitor and his own client basis, Receiver's, bailiff's or other fees, commissions and expenses, and any fine, cost or penalty we may be obliged to incur by reason of any statute, order or direction by competent authority) incurred by us, or on our behalf, whether before or after court proceedings are commenced, in connection with:
    - (i) the preparation, issue, registration, modification and extension of this Mortgage, investigating title of the Mortgaged Property, recovering, collecting, procuring or enforcing payment or performance of the Secured Obligations, in any way enforcing or protecting the security of this Mortgage, or enforcing any of the terms of this Mortgage or otherwise exercising our rights and powers hereunder (including all of our travelling expenses and those of our employees and agents);
    - (ii) any inspection, appraisal, investigation or environmental audit of the Mortgaged Property or Your Interest;
    - (iii) any environmental rehabilitation, removal or repair necessary to protect, preserve or remediate the Mortgaged Property or Your Interest; and
  - (c) all other amounts paid or incurred by us generally in any other measure or proceeding taken by us or on our behalf to realize or collect the Secured Obligations or to defend or perfect the title of Your Interest, or to protect and preserve the Mortgaged Property.
- 5.6 **Maintain Insurance.** While this Mortgage is in effect you will:
- (a) maintain or cause to be maintained insurance on Your Interest with a reputable insurer, of kinds, for amounts and payable to such person or persons, all as we may require including, without restricting the generality of the foregoing,
    - (i) insurance against loss or damage by fire to the Improvements in an amount of not less than full insurable value on a replacement cost basis; and
    - (ii) insurance against loss or damage to the Improvements on an all-risks basis.
  - (b) cause the insurance policy or policies required by this Mortgage to name us as a loss payee as our interest may appear in respect of Your Interest, and include a standard mortgage clause or a mortgage endorsement;

- (c) pay all premiums respecting such insurance, and deliver all policies to us if required;
- (d) upon request, immediately assign, transfer and deliver over to us each and every policy or policies of insurance and all receipts pertaining to same;
- (e) on the happening of any loss or damage to the Mortgaged Property or any of Your Interest, immediately notify and furnish to us, at your expense, all necessary proofs and do all necessary acts to enable us to obtain payment of any insurance monies otherwise payable to you, but nothing shall limit our right to submit to the insurer a proof of loss on our own behalf; and
- (f) authorize and direct the insurer under any required policy of insurance to include our name as loss payee on any policy of insurance and on any cheque or draft which may be issued respecting a claim settlement under and by virtue of such insurance, and the production by us to any insurer of a certified copy of this Mortgage shall be its complete authority for so doing.

If you fail to maintain insurance as required, we may, but shall not be obliged to, maintain or effect such insurance coverage, or so much insurance coverage as we consider necessary for our protection. If proceeds of any required insurance become payable, we may, in our absolute discretion, apply these proceeds to the Secured Obligations as we see fit or release any insurance proceeds to you to repair, replace or rebuild, but any release of insurance proceeds to you shall not operate as a payment on account of the Secured Obligations or in any way affect this Mortgage or the Charges created hereby. To ensure that we may apply such insurance monies in the manner herein contemplated, you also assign and release to us all of your rights to receive the insurance monies.

**5.7 Use, Maintenance and Alteration of Improvements.** You will:

- (a) promptly observe, perform, execute and comply with all laws, by-laws, rules, requirements, orders, directions, ordinances and regulations of every governmental, municipal and civil authority or agency concerning any part of the Mortgaged Property that constitutes part of Your Interest;
- (b) not permit or commit any act of waste on any part of the Mortgaged Property that constitutes part of Your Interest;
- (c) not change, or agree to any change of, the present use of Your Interest without our prior express written consent;
- (d) keep all improvements in good condition and repair;
- (e) not permit any Improvements to be unoccupied or unused without our prior express written consent;
- (f) carry on your business in a proper, business-like manner and maintain proper books of account;
- (g) not permit any of the following activities to occur in, on or under the Improvements:
  - (i) businesses that are sexually exploitive or that are inconsistent with generally accepted community standards of conduct and propriety, including those that feature sexually explicit entertainment, products or services;
  - (ii) businesses trading with countries that are proscribed by the Federal Government;
  - (iii) businesses which operate as a separate and sole entity nightclubs, bars, lounges, cabarets, casinos, discotheques and similar operations; or
  - (iv) businesses that are engaged in or associated with illegal activities.

You also agree that if following the grant of this Mortgage your business or the business of a tenant of yours fails to comply with this paragraph, the same may, at our discretion, constitute an Event of Default.

- 5.8 **Right to Inspect and Repair.** We and any of our agents, may at such time and from time to time, as we deem necessary and without the concurrence of any person, enter upon any part of the Mortgaged Property and make arrangements for completing the construction, repairing or putting in of Improvements, or for inspecting, appraising, taking care of, leasing, collecting the rents of, and generally managing any or all of Your Interest, as we may deem expedient, including the inspection and copying of your books and records, whether located at the Mortgaged Property or elsewhere. Further, you consent to our contacting and making enquiries of your lessors/lessees, as well as environmental officials, assessors, municipal authorities and any taxing body.
- 5.9 **No Dividends, etc.** If you are a corporation, you will not, without our prior written consent, issue, purchase or redeem any of your shares, permit any of your shareholders to sell, transfer or dispose of their shares, declare or pay any dividends on any of your issued shares, or amalgamate, merge, consolidate or enter into any business combination with any other person.
- 5.10 **Spousal Consent.** If you are a spouse, your spouse if so named in the Mortgage Form, consents to the transaction evidenced by this Mortgage and releases all his or her interest in the Mortgaged Property to the extent necessary to give effect to our rights hereunder.
- 5.11 **Change in Status.** Immediately after any change or event affecting any of the following, namely:
- (a) Your spousal status;
  - (b) the qualification of the land as a family residence within the meaning of Part II of the *Family Law Act* (Ontario); and
  - (c) the legal title or beneficial ownership of the land,
- you will advise us accordingly and furnish us with full particulars thereof, the intention being that we shall be kept fully informed of the names and addresses of the owner or owners for the time being of the land and of any spouse who is not an owner but who has a right of possession in the land by virtue of Section 19 of the *Family Law Act*. In furtherance of such intention, you covenant and agree to furnish us with such evidence in connection with any of (a), (b) and (c) above as we may from time to time request.
- 5.12 **Perfection of Security.** You will do all things required in order that our security under this Mortgage is constantly perfected.
- 5.13 Every part, lot or unit into which the Mortgaged Property is or may hereafter be divided does and shall stand charged with the Secured Obligations and no person shall have any right to require the moneys hereby secured to be apportioned upon or in respect of any such part, lot or unit.

## 6. ENVIRONMENTAL MATTERS

- 6.1 **No Environmental Risks.** You represent and agree that:
- (a) you are not aware of any environmental risks or liabilities in connection with the Mortgaged Property which have not been disclosed to us and approved by us in writing;
  - (b) the operations on the Mortgaged Property are and will be kept in compliance with all Environmental/Hazardous Materials Laws and you will ensure your staff is trained as required for such purpose;
  - (c) you have an environmental emergency response plan and all your officers and employees are familiar with that plan and their duties under it;
  - (d) you possess and will maintain all environmental licences, permits and other governmental approvals as may be necessary for the conduct of your business;
  - (e) the Mortgaged Property is and will remain free of environmental damage or contamination;
  - (f) you will provide us with copies of all communications from or to any person relating to Environmental/Hazardous Materials Laws and any Environmental/Hazardous Materials Claims in connection with the Mortgaged Property that become known to you, and all environmental studies or assessments prepared for you, and you consent to us contacting and making enquiries of environmental officials or assessors;



- (g) you will advise us immediately upon becoming aware of any environmental problem relating to the Mortgaged Property or your business;
- (h) without limiting the above, you will not install in, on or under the Mortgaged Property storage tanks for any Wastes/Hazardous Materials without our prior written consent and only upon full compliance with our requirements and the standards and requirements of all boards and governmental authorities having jurisdiction over the Mortgaged Property, and your activities and assets.

6.2 **Indemnity.** You agree to assume and be responsible for any and all environmental liabilities relating to the Mortgaged Property, including any liability for the clean-up of any Wastes/Hazardous Materials in, on or under the Mortgaged Property, and you agree to protect, save harmless and indemnify us, and any Receiver, and our respective directors, officers, employees and agents, direct and indirect successors and assigns, and our interest in the Mortgaged Property, from and against any and all claims, demands, liabilities, losses, damages and expenses, including legal fees and expenses, suffered by any of such persons arising out of or in connection with any and all environmental liabilities relating to the Mortgaged Property. Your liability will arise upon the earlier of the discovery of any Wastes/Hazardous Materials, and the institution of any Environmental/Hazardous Materials Claims, and will not be dependent upon the realization of any loss or damage or the determination of any liability. This indemnity and your liability hereunder will survive after this Mortgage and the Charges created hereby have been discharged.

## 7. ASSIGNMENT OF RENTS

7.1 As additional security for the payment and performance of the Secured Obligations, you hereby assign the Assigned Rents to us, together with the benefit of all covenants, rights and agreements contained in the Assigned Leases and you agree as follows:

- (a) to execute and deliver such further assignments, notices or other documents as may be required to render this assignment effective;
- (b) we are not obliged to collect any Assigned Rents, nor to comply with any covenant, agreement or term of any Assigned Lease;
- (c) the tenants shall pay the Assigned Rents as we may from time to time direct, and in the absence of direction, may pay them to you;
- (d) none of the Assigned Leases or your rights thereunder including the right to receive the Assigned Rents, has been or will be amended, assigned, encumbered, terminated, discounted or anticipated without our prior written consent;
- (e) no tenant, sub-tenant, licensee or sub-licensee, as the case may be, may make, and you may not accept, a prepayment of Assigned Rents without our prior written consent and where any such person under any Assigned Lease entered into prior to this Mortgage has a contractual right to prepay Assigned Rents, such prepayment will, if made, be paid to us and applied as prepayment on the Secured Obligations or any of them, or held as security for the Secured Obligations, as we may determine, unless we have, in writing, waived our right to receive such prepayment;
- (f) there is no existing default in payment of Assigned Rents or otherwise under any of the Assigned Leases by any of the parties thereto and no outstanding dispute under any of the Assigned Leases;
- (g) you will observe and perform all of your obligations under each of the Assigned Leases and deliver to us a true copy of each of the Assigned Leases upon demand;
- (h) all Assigned Leases made hereafter will contain terms and conditions and be with tenants, sub-tenants, licensees or sub-licensees (as the case may be), which are not less favourable or desirable to you than those which a prudent landlord would expect to receive for the premises to be leased or subleased. Without limiting the foregoing, each such lease shall contain a covenant by the tenant, in form satisfactory to us, to attorn to us as tenant on demand made after occurrence of an Event of Default, for the balance of the term of the tenant's lease and on the same terms and conditions as are contained in the lease. The benefit of such covenant is and is hereby deemed to be assigned by you to us as additional and separate security to the other security created by the Mortgage including the Assignment of Rents and Assignment of Leases, for payment and performance of the Secured Obligations, and may be enforced by us by demand as aforesaid. We shall have no obligation, however, to enforce the covenant, nor shall our rights and remedies otherwise existing under the Mortgage or at law, including the Assignment of Rents and Assignment of Leases, be prejudiced by the taking, assignment or enforcement or non-enforcement of the covenant, except insofar as

enforcement, if any, would be inconsistent with such other rights and remedies including our right to immediate vacant possession or to demand that the tenant attorn to us as a yearly tenant.

- (i) nothing we do pursuant to this paragraph will deem us to be a mortgagee in possession of the Mortgaged Property and we need account only for such monies as we actually receive and we are entitled to charge a reasonable collection fee against such receipts for the collection thereof; and
- (j) we may recover and apply Assigned Rents to such part of the Secured Obligations as may be then due and unpaid without accelerating due dates of the Secured Obligations or any part thereof, or otherwise realizing on our security.

Provided that a discharge of this Mortgage under paragraph 3.1 will constitute a re-assignment to you of all rights and benefits assigned to us by this paragraph.

## 8. ASSIGNMENT OF RIGHTS OF INDEMNITY

- 8.1 You hereby assign to us all and any rights of indemnification you now have, or which you may hereafter have, arising or existing by reason of or with respect to Your Interest and the Improvements to have and to hold, take and receive the same to our use absolutely, provided that a discharge of this Mortgage under paragraph 3.1 will constitute a re-assignment of such rights to you.

## 9. MORTGAGES OF SPECIAL INTERESTS

- 9.1 **Leasehold.** If Your Interest is as a lessee, sub-lessee, licensee or sub-licensee (collectively a "lessee") of the whole or any portion of the Mortgaged Property pursuant to a Lease the representation set out in paragraph 4.1 above shall be deemed not to include the words "in fee simple", and:

- (a) you hereby demise, sub-lease and mortgage Your Interest and the Lease to us, by way of a sub-lease, except for the last day of the term of the Lease (the "reversion") which is excepted out of the Charge created by this Mortgage but which shall be deemed to be held by you in Trust for us to be assigned or disposed of as we or anyone claiming through us may direct, and we shall have power on any realization to appoint a new person as Trustee of the reversion;
- (b) if the Lease cannot be effectively charged without consent, any Charge intended to be created by this Mortgage upon Your Interest in the Lease shall not become effective until, but shall become effective immediately when, all consents necessary for the validity and effectiveness of such Charge have been obtained or waived by all appropriate persons;
- (c) you represent to us that the Lease is valid and in good standing, in full force and effect and unsurrendered, you have the right to mortgage Your Interest and the Lease to us, all rents or other monies payable under the Lease have been paid and all other obligations under the Lease, whether of you or your landlord, have been performed or complied with;
- (d) you will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by you under the Lease, including payment of rent;
- (e) you shall take no action or be guilty of any default which shall or may cause the Lease to be terminated or forfeited, or, without our prior written consent, surrender or give any notice which would have the effect of terminating, or permitting the termination of, the Lease;
- (f) you will promptly notify us in writing of any default or of any condition that with or without the passage of time or the giving of any notice might result in a default under, or the termination of, the Lease, and you will promptly cause a copy of each notice you receive under the Lease to be delivered to us;
- (g) in the event of any renewal, extension, replacement or substitution of the Lease being created, you will immediately so advise us, and provide us with particulars of the same and a true copy of the subject instrument, and when we request, you will execute such further instrument as we may require;
- (h) you will not during the continuance of this Mortgage, without our prior written consent, modify, alter or suffer or permit any modification or alteration of the Lease and any such altered or modified Lease shall be charged by this Mortgage;

- (i) you will promptly obtain from the lessor under the Lease and deliver to us, a certificate stating that the Lease is in full force and effect, is unmodified or modified as the case may be, that no notice of termination thereon has been served on you thereunder, stating the date to which the rent has been paid and stating whether or not there are any defaults thereunder and specifying the nature of such defaults, if any;
- (j) you shall not consent to the subordination of the Lease to any mortgage of the interest of the lessor (or leasehold interest of the sub-lessor) thereof in the Mortgaged Property;
- (k) you will at the proper time and times take such proceedings, and make, do and execute such acts, deeds, matters and things as may be requisite for obtaining a renewal of the Lease; and
- (l) you will hold the reversion and any renewals, extensions, replacements or substitutions thereof in trust for us and you will assign and dispose of the same in such manner as we may direct by notice in writing.

9.2 **Condominium.** If Your Interest is comprised of one or more condominium units and their appurtenant common interests in a condominium corporation registered pursuant to the *Condominium Act* (Ontario):

- (a) you shall comply with, observe and perform all provisions of the *Condominium Act* and its regulations and the Declaration, the by-laws, the rules and the regulations of the condominium corporation (the "Condominium Corporation");
- (b) you shall pay, on or before the due date thereof, each and every common expense charge, assessment, contribution, expense, fine or levy made by or on behalf of the Condominium Corporation in respect of Your Interest;
- (c) you will forward to us within 10 days of our demand a certificate in any form required by the *Condominium Act* certifying that no monies are owing by you to the Condominium Corporation;
- (d) you will not, without our prior written consent:
  - (i) assign any right, power, duty or obligation under the *Condominium Act* or the regulations created under it; or
  - (ii) give possession of the condominium units hereby charged to any person on the basis of an agreement for the purchase of the condominium units by the occupier or on the basis of a lease, sub-lease or assignment of lease for a term of three years or more;
- (e) you hereby grant to us your power and right to vote and to consent conferred on you by or under the *Condominium Act* in respect of all matters in relation to which the *Condominium Act* allows or provides that we may vote and consent, such power and rights being hereby assigned, transferred and set over unto us, and in respect of all other matters, you hereby irrevocably appoint us as your proxy to attend, speak and vote and consent for and on your behalf but in our discretion at all meetings of the Condominium Corporation; provided we shall not be obliged to vote or consent or to protect Your Interest and shall not be liable to you in connection with any consequences of our exercise or failure to exercise such right to vote or consent and that if we, by our authorized representative, agent or proxy have not given due notice of our intent to vote or consent, are not present at any duly called meeting of the Condominium Corporation of which we have received written notice, you may exercise the right to vote or consent. Our right to vote and consent includes the right to vote for or against any matter, and the right to dissent. You agree that neither this clause nor anything done by virtue of it shall render us a mortgagee in possession;
- (f) at least five days prior to each general meeting of the Condominium Corporation, you shall deliver to us written notice of the meeting specifying the place, date, hour and purpose of the meeting;
- (g) you hereby authorize any of our officers to apply at any time and from time to time during the term of this Mortgage to the Condominium Corporation:
  - (i) to have any bylaw for the time being in force governing the condominium units and their appurtenant common interests hereby mortgaged made available for inspection by such officer;

- (ii) for certification to us of the amount of any contribution determined as your contribution, the manner in which any contribution is payable, the extent to which you have paid any contribution and the amount of money expended by the Condominium Corporation on your behalf under the *Condominium Act* and not recovered by it; and
  - (h) at our request, you will deliver to us copies of all notices, financial statements and other documents given by the Condominium Corporation to you.
- 9.3 **Vendor's Interest in Right to Purchase.** If Your Interest is the full fee simple subject to a right to purchase (in this clause called the "Right to Purchase"):
- (a) you transfer and assign to us absolutely all of your right, title and interest in and to the Right to Purchase and the monies now and hereafter owing thereunder, together with the full benefit of all powers and all covenants and provisions in the Right to Purchase, and full power and authority to use your name for enforcing the performance of the covenants and other matters and things contained in the Right to Purchase; and
  - (b) you shall not accept any prepayment of the Right to Purchase other than in accordance with the terms thereof; provided that, if you are obliged to accept a prepayment, the amount thereof shall be paid to us as a prepayment on account of the Secured Obligations unless we waive such prepayment; and
  - (c) we shall be under no obligation to commence action or take any proceeding or step to enforce the Right to Purchase and shall not be liable for any loss arising from any omission by us to take any such action, proceeding or step.
- 9.4 **Purchaser's Interest in Right to Purchase.** If Your Interest is as a purchaser's interest in an agreement for sale, then the Charge created hereby to secure the Secured Obligations is to attach to your increasing equity in the Mortgaged Property to the intent that when you obtain the fee simple to the Mortgaged Property, this Mortgage shall become a Mortgage of the full fee simple.

## 10. EVENTS OF DEFAULT

10.1 The occurrence of any of the following events will constitute an Event of Default:

- (a) if you fail, or threaten to fail, to observe or perform any covenant, agreement, condition or obligation in our favour, whether or not herein contained, including your failure to pay or perform any of the Secured Obligations when due;
- (b) if any representation, warranty or statement made to us either by you or on your behalf and whether or not combined herein or elsewhere, is not or ceases to be true;
- (c) if you, or any other obligant to us, or any other person liable, in respect of any of the Secured Obligations, ceases or threatens to cease to carry on your or its business, as the case may be, or any material part thereof or to sell all or substantially all of your or its assets, or becomes insolvent or files a proposal, a notice of intention to file a proposal, or an assignment for the benefit of creditors under applicable bankruptcy or similar legislation, or if a petition is filed, an order is made, a resolution is passed, or any other step is taken for your, or such other person's, bankruptcy, liquidation, dissolution, winding-up or reorganization or for any arrangement or composition of your or its debts or any protection from your or its creditors;
- (d) if you are in default under any other Charge of Your Interest or under any indebtedness other than Secured Obligations, or you permit to accelerate any indebtedness (other than Secured Obligations) owed by you to any creditor other than us;
- (e) if a Receiver, trustee or similar official of any of Your Interest is appointed;
- (f) if you are a corporation and any member or shareholder commences an action against you or gives notice of dissent to you in accordance with the provisions of any applicable legislation;
- (g) the holder of any other Charge on, or claim against, any of Your Interest does anything to enforce or realize on such Charge or claim, or any execution, sequestration, or other process becomes enforceable against you, or if a distress, seizure or similar process is levied upon or exercised against any of Your Interest;

- (h) if the lessor under any lease to you of any of the Mortgaged Property takes any step to or threatens to terminate such or otherwise exercise any of its remedies under such lease as a result of any default or alleged default by you under such lease;
- (i) if any of the Mortgaged Property is destroyed, substantially damaged, expropriated, or designated or considered for designation as a contaminated site;
- (j) if any permit, licence, certification, quota or order granted to or held by you is cancelled, reduced or revoked, or any order against you is enforced, with the effect of preventing your business from being carried on for more than five days or materially adversely changing the condition (financial or otherwise) of your business;
- (k) if you sell, transfer, convey, lease, assign, release, surrender or otherwise dispose of or part with possession of any of the Mortgaged Property or agree to do so; or
- (l) if you are in arrears of payment to any taxing authority;
- (m) if you cause or allow hazardous materials to be brought upon the Mortgaged Property or incorporated into any of your assets without our prior consent, or if you cause, permit or fail to remedy any environmental contamination upon, in or under the Mortgaged Property or fail to comply with any abatement or remediation order given by a responsible authority;
- (n) if you use any of the monies advanced hereunder for any purpose other than as declared to and agreed upon by us;
- (o) if we deem ourselves insecure or believe that the assets secured hereby are in danger of loss, damage or misuse; or
- (p) if there is a deemed Event of Default pursuant to this Mortgage.

## 11. ENFORCEMENT

11.1 **Enforcement.** Upon the occurrence of an Event of Default, at our option, our security will immediately become enforceable. To enforce and realize on the security created hereby we may take (or refrain from taking) any action permitted by law or in equity as we may deem expedient, including any of the following:

- (a) declare any or all of the Secured Obligations immediately due and payable;
- (b) enter upon, take possession of, occupy, use, preserve and protect Your Interest, with power to exclude you, your agents and employees therefrom;
- (c) maintain, repair, replace and complete Improvements in accordance with existing plans or otherwise as we, in our absolute discretion, may determine;
- (d) collect the Assigned Rents and other assets we hold as security for the Secured Obligations;
- (e) distraint for arrears of interest and for arrears of any other of the Secured Obligations in the same manner as if same were arrears of interest;
- (f) provided that the Event of Default has continued for at least 15 days, on at least 35 days notice in writing, enter on and sell or lease the Mortgaged Property or any part thereof. Such notice shall be given to such persons and in such manner and form and within such time as provided in the *Mortgages Act* (Ontario). In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the Mortgaged Property, if occupied, or by placing it on the Mortgaged Property if unoccupied, or at our option, by mailing it in a registered letter addressed to you at your last known address, or by publishing it once in a newspaper published in the county or district in which the Mortgaged Property is situate; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability. Provided further, that in case default be made in the payment of the principal amount or interest or any other Secured Obligation or any part thereof and such default continues for two months after any payment falls due then we may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by us shall be required by law then notice shall be given to such persons and in such manner and form and within such time as so required by law. It is

hereby further agreed that the whole or any part or parts of the Mortgaged Property may be sold by public auction or private contract, or partly one or partly the other, and that the proceeds of any sale hereunder may be applied first in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Mortgaged Property or by reason of non-payment or procuring payment of monies, secured by the Mortgage or otherwise, and secondly in payment of all amounts of principal and interest and other Secured Obligations owing under the Mortgage; and if any surplus shall remain after fully satisfying our claims as aforesaid same shall be paid as required by law. We may sell any of the Mortgaged Property on such terms as to credit and otherwise as shall appear to us most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which we shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the Mortgaged Property and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit, we shall be bound to pay you only such monies as have been actually received from purchasers after the satisfaction of our claims and for any of said purposes may make and execute all agreements and assurances as we shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

- (g) exercise any or all of your rights and remedies in respect of Your Interest;
- (h) as your agent, appoint by Instrument a Receiver of the Mortgaged Property and of all your properties, assets, effects and undertakings (collectively called the "Undertakings") related to or arising out of Your Interest (all of which are hereby charged and form part of the Mortgaged Property) with or without bond as we may determine, and in our absolute discretion and from time to time, remove any Receiver so appointed and appoint another in its stead, but we shall be under no liability for the remuneration, acts or omissions of the Receiver, its employees and agents;
- (i) commence proceedings in a court of competent jurisdiction for the appointment of a Receiver with such powers and duties (including the powers set out in paragraph 11.2) as the Court may see fit to confer by Order;
- (j)) exercise any other rights and remedies under this Mortgage; or
- (k) exercise any other right and power a Receiver could exercise.

We shall not be liable for any debts we contract during enforcement of this Mortgage, for damages to persons or property, salaries or non-fulfillment of contracts during any period when we take any action referred to above, for any misconduct, negligence or misfeasance by us, or any employee or agent of ours, and neither the provisions of this Mortgage nor the exercise of any of the powers provided in this Mortgage shall render us a mortgagee in possession, and we shall not be accountable except for the monies we actually receive. You waive any provision of law which may be waived which imposes any greater obligations on us than described above.

All reasonable costs, charges and expenses, including allowance for the time and services of any officer of the Mortgagee or other person appointed by it for the purposes of protecting, preserving, remediating, taking care of, leasing, collecting the rents of, or managing generally the Mortgaged Property, including any fine or penalty the Mortgagee is obliged to incur by reason of any statute, order or direction of competent authority, shall be forthwith payable to the Mortgagee, and shall be a charge upon the Mortgaged Property and shall bear interest at the Interest Rate set out in the Mortgage Form.

**11.2 Receiver.** A Receiver appointed pursuant to this Mortgage shall be your agent and not ours, and, to the extent permitted by law or its appointment, shall, in our discretion, have all of our rights and powers (including those under this Mortgage), including the power to:

- (a) take possession of and enter upon the Mortgaged Property which constitutes part of Your Interest and the Undertakings or any part thereof;
- (b) sell or lease or concur in selling or leasing the Mortgaged Property and the Undertakings or any part thereof;
- (c) make any arrangement or compromise which it shall think expedient;
- (d) carry on, or concur in the carrying on of, any development then in progress or otherwise contemplated by you with respect to the Mortgaged Property or your business relating to the Mortgaged Property and for such purposes from time to

time to borrow money either secured or unsecured, and if secured by security on the whole or any part of the Mortgaged Property and the Undertakings, such security may rank before or *pari passu* with or behind this Mortgage; and

- (e) commence, continue or defend proceedings in the name of the Receiver or in your name, which the Receiver considers necessary or advisable for the proper protection of the whole or any portion of Your Interest or the enforcement of this Mortgage.

We may from time to time fix the remuneration of every such Receiver and direct the payment thereof out of the proceeds of the receivership. The rights and powers conferred by this paragraph are in addition to and not in substitution for any right we may from time to time possess.

- 11.3 **Application of Proceeds.** Any money from time to time received by the Receiver shall, subject to the claims of creditors, if any, which are secured by any Charges ranking in priority to this Mortgage, be paid, subject to our direction otherwise, by it **Firstly**, in payment of all costs, charges, expenses of and incidental to the appointment of the Receiver and the exercise by it of all of any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable by it, **Secondly**, in or towards payment to us of the amounts comprised in the Secured Obligation in such manner and order as we shall, in our absolute discretion, deem advisable, and **Thirdly**, any surplus shall be paid to you provided that in the event any party claims a charge against all or a portion of the surplus, the Receiver shall make such disposition of all or any portion of the surplus as the Receiver deems appropriate in the circumstances.

- 11.4 **Appointment of Attorney.** You irrevocably appoint us or the Receiver, as the case may be, with full power of substitution, as your attorney for and in your name to do everything necessary or incidental to the exercise of any or all of the powers conferred on us or the Receiver, as the case may be, pursuant to this Mortgage.

## 12. OTHER RIGHTS

- 12.1 **No Liability to Advance.** None of the preparation, execution or registration of this Mortgage, nor any advance or re-advance of money under it, nor any course of conduct by us, obligates us to advance or re-advance any money, or extend time for payment of a Secured Obligation, all of which remain in our absolute discretion.

- 12.2 **Continuing Security.** This Mortgage shall be general and continuing security for the Secured Obligations and any ultimate unpaid balance thereof, including a current or running account. The Secured Obligations may be reduced to zero from time to time without affecting the continuing nature of this Mortgage as security for any Secured Obligations thereafter incurred. Without limiting the foregoing, no payment, observance, performance or satisfaction of the Secured Obligations, nor any ceasing by you to be indebted or liable to us, will be deemed a redemption or discharge of this Mortgage.

- 12.3 **Security in Addition.** The provisions of this Mortgage and the security of this Mortgage are in addition to, but not in substitution for, any other security now or hereafter held by us for the Secured Obligations or any part thereof. This Mortgage shall not in any way affect or prejudice any security now or hereafter held by us for the whole or any part of the Secured Obligations. Any act done or omitted to be done by us:

- (a) regarding any other securities held by us for the Secured Obligations or any part thereof shall not in any way affect or prejudice this Mortgage; or
- (b) regarding this Mortgage shall not in any way affect or prejudice any other securities held by us for the Secured Obligations or any part thereof.

- 12.4 **Multiple Securities.** The occurrence of an Event of Default under this Mortgage constitutes default under all other agreements and security held by us in relation to the Secured Obligations and default under such other agreements or security constitutes an Event of Default hereunder.

- 12.5 **Performance of Obligations.** If you fail to perform any of your obligations hereunder or fail, upon request, to give us proof of performance thereof, we may (but will not be obligated to) perform any or all of such obligations or cause them to be performed, without prejudice to our other rights and remedies.

- 12.6 **Indulgences.** We may grant extensions of time and other indulgences, take and give up security, accept compositions, compromise, make settlements, grant releases and discharges, refrain from registering or maintaining registration of Charges, and otherwise deal with you, other obligants to us, your other creditors, sureties and other persons and

with Your Interest and other security, all as we see fit in our absolute discretion and without prejudice to your liability or our rights or remedies. You agree that you will not be released nor your liability in any way reduced because we have done, not done, or concurred in doing or not doing, anything whereby a surety would or might be released in whole or in part.

- 12.7 **Waiver.** We may waive any default hereunder provided that no such waiver, nor any failure to enforce at any time or from time to time any of our rights hereunder, shall be effective unless in writing or prejudice our rights in the event of any future default or breach.
- 12.8 **Remedies Cumulative.** We may in our sole discretion realize on various securities (including this Mortgage) and any parts thereof in any order that we consider advisable and no realization or exercise by us of any power or right under this Mortgage or other security shall in any way prejudice any further realization or exercise until all Secured Obligations are satisfied. All rights and remedies available to us are cumulative and not restrictive of remedies at law and in equity and by statute.
- 12.9 **Application of Payments.** We may, both before and after default, apply all payments made in respect of the Secured Obligations from time to time, and any monies realized from any security held therefor, to such parts of the Secured Obligations (whether or not then due) as we see fit.

### 13. PRESERVATION OF MORTGAGE AND OTHER SECURITY

- 13.1 **No Dealing With Equity of Redemption.** No extension of time given by us to you, or anyone claiming under you, or any other dealing by us with the owner(s) of the equity of redemption of Your Interest, shall in any way affect or prejudice our rights or remedies against you or any other person liable either in whole or in part for the payment of or performance of the Secured Obligations.
- 13.2 **No Merger.** Neither this Mortgage nor anything contained herein shall operate so as to create any merger, rebate or discharge of any of your representations, obligations (including debts owing to us) or covenants to us under any Agreement, any amendment to it, or other document or security now or hereafter held by us from you or any other person, all of which survive the execution and delivery of this Mortgage and our advance of money. The taking of a judgement on any covenant herein shall not operate as a merger of this said covenant, or affect our right to receive any interest when due.

### 14. MISCELLANEOUS

- 14.1 **Payment.** We may require payment of the Secured Obligations at any place in Canada as we may direct.
- 14.2 **Strict Observance.** You will strictly observe and perform each your agreements set out herein.
- 14.3 **Further Assurances.** You will execute such documents and further assurances of Your Interest and take such action as we may require.
- 14.4 **No Representations.** We have not made and you do not rely on any representations, warranties, covenants, agreements, conditions or provisos, oral or otherwise, whether made by us or any person acting actually or ostensibly on our behalf, other than those contained in this Mortgage unless those representations, warranties, covenants, agreements, conditions and provisos are contained in a supplementary contact in writing duly executed by both you and us and expressed to be collateral to this Mortgage.
- 14.5 **Assignment.** You will not assign any of your rights or obligations under this Mortgage, and no such purported assignment shall be effective, without our prior written consent, which may be arbitrarily withheld.
- 14.6 **Notice.** Notice may be given to either party by prepaid mail or delivered to the party for whom it is intended, at the address of such party provided on the Mortgage Form or at such other address as may be given in writing by one party to the others, and any notice if posted shall be deemed to have been given at the expiration of three business days after posting and if delivered, on delivery. Delivery by fax transmission is deemed to be received on the day of transmission.
- 14.7 **Modification.** No amendment of this Mortgage will be effective unless signed by all parties to this Mortgage.



- 14.8 **Exclusion of Statutory Covenants.** The implied covenants deemed to be included in a charge under subsection 7(1) of the *Land Registration Reform Act* (Ontario) as amended or re-enacted are excluded from this Mortgage.

END OF DOCUMENT

# EXHIBIT D


**ServiceOntario**

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

 LAND  
 REGISTRY  
 OFFICE #20

07082-0016 (LT)

 PAGE 1 OF 3  
 PREPARED FOR Rebecca01  
 ON 2025/04/30 AT 11:32:57

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ; BURLINGTON

PROPERTY REMARKS:
ESTATE/QUALIFIER:

 FEE SIMPLE  
 LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

1996/12/16

OWNERS' NAMES

1391 ONTARIO ST. INC.

CAPACITY SHARE

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/12/16 ON THIS PIN** **WAS REPLACED WITH THE "PIN CREATION DATE" OF 1996/12/16** ** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1996/12/13 ** **SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO: ** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * ** AND ESCHEATS OR FORFEITURE TO THE CROWN. ** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF ** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY ** CONVENTION. ** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES. **DATE OF CONVERSION TO LAND TITLES: 1996/12/16 **						
119980	1961/01/25	BYLAW				C
214355	1966/11/25	AGREEMENT				C
534022	1981/01/07	AGREEMENT			THE CORPORATION OF THE CITY OF BURLINGTON	C
534023	1981/01/07	AGREEMENT			THE CORPORATION OF THE CITY OF BURLINGTON	C
748726	1990/07/31	CHARGE		*** COMPLETELY DELETED ***		
748727	1990/07/31	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***		
854221	1996/07/31	TRANSFER		*** COMPLETELY DELETED ***		
854222	1996/07/31	CHARGE		*** COMPLETELY DELETED ***	CRUICKSHANKS, WAYNE	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.


**ServiceOntario**

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

 LAND  
 REGISTRY  
 OFFICE #20

07082-0016 (LT)

 PAGE 2 OF 3  
 PREPARED FOR Rebecca01  
 ON 2025/04/30 AT 11:32:57

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
854223	1996/07/31	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***	BUSINESS DEVELOPMENT BANK OF CANADA	
	REMARKS: RENTS,	854222				
H665068	1997/02/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** CIBC MORTGAGE CORPORATION		
	REMARKS: RE: 748726					
H768835	1998/12/11	CHARGE		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	CANADA TRUSTCO MORTGAGE COMPANY	
H768836	1998/12/11	NOTICE		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	CANADA TRUSTCO MORTGAGE COMPANY	
	REMARKS: H768835 - RENTS					
H771873	1999/01/08	DISCH OF CHARGE		*** COMPLETELY DELETED *** BUSINESS DEVELOPMENT BANK OF CANADA		
	REMARKS: RE: 854222					
HR261773	2004/02/05	DISCH OF CHARGE		*** COMPLETELY DELETED *** CANADA TRUSTCO MORTGAGE COMPANY		
	REMARKS: RE: H768835					
HR377135	2005/05/17	CHARGE		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	ROYAL BANK OF CANADA	
HR672797	2008/06/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
	REMARKS: RE: HR377135					
HR1220453	2014/10/15	TRANSFER		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	LISA PHILP & ASSOCIATES LTD.	
	REMARKS: PLANNING ACT STATEMENTS.					
HR1220454	2014/10/15	CHARGE		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	ROYAL BANK OF CANADA	
HR1409772	2016/11/15	CHARGE		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	BARRIS, SHELDON	
HR1409773	2016/11/15	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	BARRIS, SHELDON	
	REMARKS: TO BE DELETED UPON THE DELETION OF HR1409772					

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**ServiceOntario**

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

 LAND  
 REGISTRY  
 OFFICE #20

07082-0016 (LT)

 PAGE 3 OF 3  
 PREPARED FOR Rebecca01  
 ON 2025/04/30 AT 11:32:57

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
HR1497860	2017/10/18	CHARGE		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	ROYAL BANK OF CANADA	
HR1497879	2017/10/18	NO ASSGN RENT GEN		LISA PHILP & ASSOCIATES LTD.	ROYAL BANK OF CANADA	C
HR1498139	2017/10/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** BARRIS, SHELDON		
	REMARKS: HR1409772.					
HR1499861	2017/10/26	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
	REMARKS: HR1220454.					
HR1943676	2023/01/13	TRANSFER	\$2,203,000	LISA PHILP & ASSOCIATES LTD.	1391 ONTARIO ST. INC.	C
	REMARKS: PLANNING ACT STATEMENTS.					
HR1943677	2023/01/13	CHARGE	\$2,446,000	1391 ONTARIO ST. INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
HR2003441	2023/11/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
	REMARKS: HR1497860.					
HR2058879	2024/09/24	CONSTRUCTION LIEN	\$77,574	1000660443 ONTARIO INC.		C
HR2068548	2024/11/15	APL COURT ORDER		SUPERIOR COURT OF JUSTICE	TDB RESTRUCTURING LIMITED	C
	REMARKS: APPOINTING RECEIVER					
HR2084512	2025/02/07	CERTIFICATE		1000660443 ONTARIO INC.		C
	REMARKS: HR2058879					

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

# EXHIBIT E

**Properties**

PIN

07082 - 0016    LT

Description

PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ;  
BURLINGTON

Address

1391 ONTARIO ST  
BURLINGTON

**Consideration**

Consideration

\$77,574.50

**Claimant(s)**

Name

1000660443 ONTARIO INC.

Address for Service

332 Guelph Street Unit 7 & 8  
Georgetown, On L7G 4B5

I am the lien claimant and the facts stated in the claim for lien are true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized    under Power of Attorney by this party.

**Statements**

Name and Address    of Owner 1391 Ontario St. Inc.-1391 Ontario St., Brulington ON Name and address of    person to whom lien claimant supplied services or materials 1391 Ontario St. Inc.-1391 Ontario St., Brulington ON Time within which services or materials were supplied from 2024/05/24 to 2024/07/22 Short description of services or materials that have been supplied Renovations, including labour and materail Contract price or subcontract price \$52,940.50 Amount claimed as owing in respect of services or materials that have been supplied \$52,940.50

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Ravinder Pal Singh Dhaliwal

30 Eglinton Ave West, Suite # 410  
Mississauga  
L5R 3E7

acting for    Signed    2024 09 24

Applicant(s)

Tel

905-795-1117

Fax

905-795-0049

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

RAVINDER DHALIWAL BARRISTER, SOLICITOR

30 Eglinton Ave West, Suite # 410  
Mississauga  
L5R 3E7

2024 09 24

Tel

905-795-1117

Fax

905-795-0049

**Fees/Taxes/Payment**

Statutory Registration Fee

\$69.95

Total Paid

\$69.95

# EXHIBIT F





Court File No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**APPLICATION FOR BANKRUPTCY ORDER**

The applicant (the “**Applicant**”), The Fuller Landau Group Inc., in its capacity as receiver (the “**Receiver**”) of the property, assets and undertaking of The Lion’s Share Group Inc. (“**Lion’s Share**”), hereby makes an application to the Court that Thomas Dylan Sutor (the “**Debtor**”) be adjudged Bankrupt and that a Bankruptcy Order be made in respect of the property of the Debtor, of the City of Burlington, in the Province of Ontario, lately carrying on business in the Province of Ontario, and say:

1. THAT the said Debtor has at some time during the six months next preceding the filing of this Application resided and/or conducted business in the City of Burlington, Province of Ontario.
2. THAT the said Debtor is justly and truly indebted to Lion’s Share for, among other things, the following amounts:
  - (a) \$1,267,948.83; and
  - (b) \$1,403,393.17.
3. THAT interest and costs continue to accrue on the above amounts.

4. THAT pursuant to an Order of the Court made on April 3, 2024 in Court File No. CV-24-00717669-00CL (the “**Receivership Order**”), Fuller was appointed as Receiver over all of the property, assets and undertaking of Lion’s Share;
5. THAT the Receiver has the power and authority to bring this application pursuant to, among other things, paragraph 3(e) and (i) of the Receivership Order;
6. THAT Lion’s Share does not, nor does any person on its behalf, hold any security on the said Debtor’s property, or on any part thereof, for the payment of the said sum;
7. THAT the Debtor has, within the six months next preceding the date of the filing of this Application, committed the following acts of bankruptcy, namely:
  - (a) he has ceased to meet his liabilities generally as they become due, including without limitation, the indebtedness owing by the Debtor to Lion’s Share and to other creditors;
  - (b) he has made a fraudulent gift, delivery or transfer of the Debtor’s property to related parties, including by granting mortgages to National Bank of Canada over two residential properties owned by him and dissipating the proceeds of such mortgages; and
  - (c) he, through holding companies, has purported to create a charge on certain properties indirectly held by him, including by registering mortgages on such properties by other holding companies, which charges would, under the *Bankruptcy and Insolvency Act* (Canada) be void as a fraudulent preference or would be further fraudulent transfers, gifts or deliveries of the Debtor’s property.

8. THAT TDB Restructuring Limited of the City of Toronto in the Province of Ontario, is a person qualified to act as trustee of the property of the Debtor (the “**Trustee**”), has agreed to act as such and is acceptable to the undermentioned creditors:

<u>CREDITOR</u>	<u>ADDRESS</u>	<u>AMOUNT</u>
Lion’s Share	c/o Fuller Landau 151 Bloor Street West 12 <sup>th</sup> Floor Toronto, Ontario M5S1S4	(a) \$1,267,948.83; and (b) \$1,403,393.17 Plus interest and expenses
Nicole Kelly	c/o Aird & Berlis LLP 181 Bay Street, Suite 1800 Toronto, Ontario M5J2T9	\$75,000.00, plus interest and expenses

**DATED** at Toronto, Ontario this 30<sup>th</sup> day of August, 2024

SIGNED by the Applicant

In the presence of:

*Lauren Archibald*

(Signature of Witness)

Lauren Archibald  
87151U

*Gary Abrahamson*

THE FULLER LANDAU GROUP INC.  
solely in its capacity as receiver of the  
property, assets and undertaking of THE  
LION'S SHARE GROUP INC. and not  
in its personal capacity

**ISSUED** at Toronto, in the Province of Ontario this 30th. day of August, 2024

**Debbie L Stubbs** Digitally signed by Debbie L Stubbs  
Date: 2024.08.30 16:15:13 -04'00'

REGISTRAR IN BANKRUPTCY

PER Jove Ponniah, Registrar in Bankruptcy  
OFFICER OF THE BANKRUPTCY COURT IN ONTARIO

Court File No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario**

**AFFIDAVIT OF VERIFICATION OF STATEMENTS IN APPLICATION**

I, Gary Abrahamson, of the City of Toronto, in the Province of Ontario, applicant  
named in the application hereunto annexed, **MAKE OATH AND SAY:**

1. That I am the president of The Fuller Landau Group Inc. (“**Fuller**”), the court appointed receiver (the “**Receiver**”) of the property, assets and undertakings of The Lion’s Share Group Inc. (“**Lion’s Share**”). As such, I have knowledge of the facts hereinafter deposed to.
2. Fuller was appointed Receiver pursuant to an Order of the Court made on April 3, 2024 in Court File No. CV-24-00717669-00CL.
3. Pursuant to, among other things, paragraphs 3(e) and (i) of the Receivership Order, the Receiver has the power and authority to bring this application.
4. That Thomas Dylan Sutor is justly and truly indebted to Lion’s Share for, among other things, the following amounts:
  - (a) \$1,267,948.83; and
  - (b) \$1,403,393.17.

5. THAT interest and costs continue to accrue on the above amounts.
6. This debt arises from promissory notes signed and guaranteed by Thomas Dylan Suitor in favor of Lion's Share on behalf of a number of companies indebted to Lion's Share, including: 10 Norfolk St. Inc., 388 Downie St. Inc., Commercial Urkel Inc., Happy Town Housing Inc., and Up-town Funk Inc.
7. That the facts all alleged in the said Application are, within my own knowledge, true.

SWORN before me at the City of  
Toronto, in the Province of Ontario,  
this 30<sup>th</sup> day of August, 2024

*Lauren Archibald*

A Commissioner of Oaths

Lauren Archibald  
87151U

*Gary Abrahamson*

GARY ABRAHAMSON

**TO: Thomas Dylan Suitor**

775 King Road, Burlington, ON, L7T3K7

TAKE NOTICE that an Application for a Bankruptcy Order has been made in respect of your property and will be heard before the presiding Judge, at 330 University Avenue, in the City of Toronto, Ontario on \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_, 2024 at the hour of \_\_\_\_ o'clock a.m., or so soon thereafter as the Application can be heard.

AND FURTHER TAKE NOTICE that if notice of cause against the Application is not filed in Court and a copy thereof served on the solicitor for the Applicant creditor at least two (2) days before the hearing and if you do not appear at the hearing, the Court may make a Bankruptcy Order on such proof of the statements in the application as the Court shall think sufficient.

DATED at Toronto, in the Province of Ontario this 30th. day of August, 2024.

Court No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual with  
the locality of Burlington, Ontario

**APPLICATION FOR  
BANKRUPTCY ORDER**

**Norton Rose Fulbright Canada LLP**  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, Ontario  
M5K 1E7 CANADA

**Jennifer Stam LSO#:46735J**

Tel: 416.202.6707

[Jennifer.stam@nortonrosefulbright.com](mailto:Jennifer.stam@nortonrosefulbright.com)

**James Renihan LSO#: 57553U**

Tel: 416.216.1944

[james.renihan@nortonrosefulbright.com](mailto:james.renihan@nortonrosefulbright.com)

Lawyers for The Fuller Landau Group Inc., receiver  
the property, assets and undertaking of The Lion's  
Share Group Inc.





# EXHIBIT G

THE HONOURABLE JUSTICE OSBORNE

OCTOBER 7, 2024



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**ORDER**

**(Appointing Interim Receiver)**

**THIS MOTION** made by the applicant, The Fuller Landau Group Inc., in its capacity as receiver of the property, assets and undertaking of The Lion's Share Group Inc., (the "**Applicant**") for an Order pursuant to section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing TDB Restructuring Limited ("**TDB**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the property, assets and undertaking of Thomas Dylan Sutor (the "**Debtor**"), was heard orally on October 3, 2024, in Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant dated August 31, 2024; the Fourth Report of the Applicant dated August 31, 2024; the Supplement to the Fourth Report of the Applicant dated September 30, 2024; the consent of TDB to act as Interim Receiver dated August 30, 2024; and the affidavit of verification of Gary Abrahamson sworn August 30, 2024;

**AND UPON** hearing the submissions of counsel for the Interim Receiver, counsel for the Applicant, counsel for the Debtor, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn September 19, 2024 and the affidavits of service of Lauren Archibald sworn September 19, 2024 and October 1, 2024.

## 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 matter is properly heard today and hereby dispenses with further service thereof.

## APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 46 of the BIA, TDB is hereby appointed Interim Receiver, without security, of all of the property, assets and undertaking of the Debtor, including, without limitation, the real property described in Schedule “A” hereto (the “**Property**”).

## INTERIM RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor the Debtor’s bank accounts and the accounts of Related Entities (as defined below) and approve all disbursements from the Debtor’s bank accounts and the accounts of Related Entities;
- (b) to take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor or corporations or other entities associated with, related to or controlled by the Debtor (the “**Related Entities**”), including the Related Entities listed on Schedule “C” hereto;
- (c) to engage independent security personnel to preserve and protect the Property;
- (d) to take any steps the Interim Receiver may deem necessary or desirable to preserve and protect the personal property and real property legally or beneficially owned by the Debtor or the Related Entities pending further order of the Court including, but not limited to, changing locks, security codes and passwords and the taking of physical inventories, and the control of access to the Debtor’s or the Related Entities’ Records (as defined below) and premises;

- (e) 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 Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (g) to undertake any investigations deemed appropriate by the Interim Receiver with respect to the business and affairs of the Debtor;
- (h) to apply to this Court for such further relief, advice and directions as the Interim Receiver may determine as necessary or desirable;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to the Property or against title to the assets of the Related Entities;
- (j) to conduct examinations of any person, if deemed necessary in the Interim Receiver's discretion; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtor or the Related Entities,

and in each case the Interim Receiver shall be exclusively authorized and empowered to do so, to the exclusion of the Debtor, and without interference from any other person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) 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 Interim Receiver of the existence of any Property in such Person’s possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtor or the Related Entities, and any computer programs, computer tapes, computer disks, cloud 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software, cloud 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 Interim 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, in the cloud 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 Interim Receiver for the purpose of allowing the Interim 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 Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer, cloud or other system and providing the Interim Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or any Related Entities or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor, the Related Entities or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Related Entities, the Interim Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtor, to carry on any business which the Debtor, is not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtor, 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 INTERIM RECEIVER**

10. **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 Debtor or a Related Entity, without written consent of the Interim Receiver or leave of this Court.

## CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or any of the Related Entities, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtor or the Related Entities, 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 Interim Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Interim Receiver shall be entitled to the continued use of the Debtor's or the Related Entities' 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 Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

## EMPLOYEES

12. **THIS COURT ORDERS** that all employees of the Debtor or the Related Entities shall remain the employees of the Debtor or the Related Entities. The Interim 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 Interim 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* (the "**WEPPA**").

## LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property or the Related Entities 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property or any property of the Related Entities within the meaning of any Environmental Legislation, unless it is actually in Possession.

#### **LIMITATION ON THE INTERIM RECEIVER’S LIABILITY**

14. **THIS COURT ORDERS** that the Interim 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 WEPPA. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER’S ACCOUNTS**

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the “**Interim 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 Interim 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.

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



17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim 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 INTERIM RECEIVERSHIP**

18. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a credit facility, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, 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 Interim 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 “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Interim Receiver’s Certificate**”), as modified to reflect the terms of the credit facility between the Interim Receiver and the Applicant referred to in paragraph 18, for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver’s Certificates.

## SERVICE AND NOTICE

22. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (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 <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) 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: <https://tdbadvisory.ca/insolvency-case/d-suitor>.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 any creditors of the Debtor or other interested parties at their respective addresses as last shown on the records of the Debtor, 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.

24. **THIS COURT ORDERS** that the Applicant, the Interim Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

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

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver, trustee in bankruptcy or monitor of the Debtor.

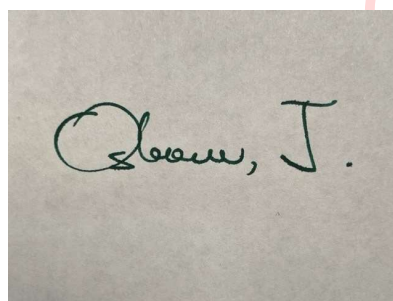
27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts,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

28. **THIS COURT ORDERS** that the Interim 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 Interim 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.

29. **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 Interim Receiver from the estates of the Debtor, with such priority and at such time as this Court may determine.

30. **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 Interim 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.

31. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.

A rectangular box containing a handwritten signature in black ink. The signature appears to be "Osborne, J." written in a cursive, slightly slanted script.

Digitally signed  
by Osborne J.

Date:

2024.10.07

14:11:30 -04'00'

**SCHEDULE “A”**  
**DESCRIPTION OF REAL PROPERTY**

<b>No.</b>	<b>Municipal Address</b>	<b>PIN</b>	<b>Registered Owner</b>
1.	775 King Road, Burlington, Ontario, L7T 3K6	PIN 07096-0052 (LT)	Thomas Dylan Suitor
2.	2298 Fassel Avenue, Burlington, Ontario, L7R 3P3	PIN 07077-0108 (LT)	Thomas Dylan Suitor

**SCHEDULE “B”**  
**INTERIM RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that TDB Restructuring Limited, the interim receiver (the “**Interim Receiver**”) of the property, assets and undertaking of Thomas Dylan Suitor acquired for, or used in relation to a business carried on by the Debtor, 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 August, 2024 (the “**Order**”) made in an action having Court file number BK-24-00208718-OT31, has received as such Interim Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_, which the Interim 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 [**daily**][**monthly not in advance on the \_\_\_\_ day of each month**] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ percent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
  
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 Interim 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 Interim 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 Interim 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 Interim 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 Interim 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 \_\_\_\_\_, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE “C”  
RELATED ENTITIES**

<b>No.</b>	<b>Entity Name</b>
1.	10 Norfolk St. Inc.
2.	1083 Main Street Inc.
3.	2657677 Ontario Inc.
4.	2710654 Ontario Inc.
5.	388 Downie St. Inc.
6.	642 Hamilton Road Inc.
7.	Commercial Urkel Inc.
8.	Conduit Asset Management Inc.
9.	Dylan Suitor Professional Real Estate Holding Corporation
10.	Elev8 Inc.
11.	Elevation Reality Network Inc.
12.	Happy Town Housing Inc.
13.	Old Thing Back Inc.
14.	Prospect Real Estate Inc.
15.	Upgrade Housing Inc.
16.	Up-town Funk Inc.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

**INTERIM RECEIVER ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7

**Jennifer Stam LSO#: 46735J**  
Tel: 416.202.6707  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

**Evan Cobb LSO#: 55787N**  
Tel: 416.216.1929  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

Lawyers for the Receiver



# EXHIBIT H

**From:** Jeffrey Berger <jberger@tdbadvisory.ca>  
**Sent:** Monday, April 14, 2025 11:26 AM  
**To:** Van Klink, Tony  
**Cc:** 'CHOW, EUGENE'; 'TORRELLI, Gianna (TORONTO)'; Bryan Tannenbaum; 'Fred Tayar'  
**Subject:** [\*\*EXT\*\*] RE: Happy Town Housing (BMO) and 1391 Ontario Street (BDC) [MTDMS-Legal.FID12658569]

Tony,

We are writing to confirm that the Interim Receiver consents to the lifting of the stay for the purpose of BMO and BDC proceeding with the enforcement of their security.

As discussed on our last call, and as our counsel has brought to your attention previously, Mr. Suitor has asked the Interim Receiver to convey that he intends to fully support the sale of these properties, and he is willing to co-operate in any way necessary in the hopes that enforcement costs can be minimized. **Incurring unnecessary enforcement costs will ultimately be to the detriment of the creditors (including your clients)**, given the anticipated realizations from these assets.

If Mr. Suitor is willing to comply and list the properties immediately, the Interim Receiver could oversee the sale process pursuant to the terms of the existing Order and work with the secured lenders throughout the process to ensure transparency. Alternatively, should the secured lenders wish to proceed with enforcement we believe that it would be most efficient and cost-effective for your clients to appoint the Interim Receiver as agent or receiver to sell the subject properties directly.

Mr. Suitor has advised that he is agreeable to having the properties listed for sale immediately upon receiving the consent of the secured lenders to proceed in this manner, should they be agreeable.

We would welcome an opportunity to discuss the foregoing options with you and your clients prior to any additional enforcement actions being taken.

Thank you,



**TDB Restructuring Limited**  
Licensed Insolvency Trustee

**Jeffrey Berger, CPA, CA, CIRP, LIT**  
Managing Director

✉ [jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca)

☎ 647-726-0496

📠 416-915-6228

📍 11 King St. West, Suite 700  
Toronto, ON M5H 4C7

**[tdbadvisory.ca](http://tdbadvisory.ca)**

Integrity. Leadership. Excellence.

**From:** Van Klink, Tony <tvanklink@millerthomson.com>  
**Sent:** April 11, 2025 4:32 PM  
**To:** Jeffrey Berger <jberger@tdbadvisory.ca>; 'Fred Tayar' <fred@fredtayar.com>  
**Cc:** 'CHOW, EUGENE' <EUGENE.CHOW@bmo.com>; 'TORRELLI, Gianna (TORONTO)' <gianna.torrelli@bdc.ca>  
**Subject:** Happy Town Housing (BMO) and 1391 Ontario Street (BDC) [MTDMS-Legal.FID12658569]

External sender

Fred, Jeffrey,

I am following up on our Teams videocall on Tuesday afternoon during which we discussed the IR providing its consent to BMO and BDC proceeding with the enforcement of their security. I understood from the call that the IR did not take any issue with same and would be providing its consent. As of this afternoon the consent has not yet been received.

Please confirm by reply email that the IR consents.

If something has changed since our call that the IR is no longer prepared to consent, I trust that you will let me know.

If I do not receive a reply to this email by 12 noon on Monday, April 14, I will assume that the IR is no longer prepared to consent and both BMO and BDC will proceed with bringing a lift stay motion.

**TONY VAN KLINK**  
**Partner**

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# EXHIBIT I

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**BANKRUPTCY ORDER**

**UPON** the application of The Fuller Landau Group Inc. (the “**Applicant**”), in its capacity as receiver of the property, assets, and undertaking of The Lion’s Share Group Inc. (“**Lion’s Share**”), a creditor, issued on the 30<sup>th</sup> day of August, 2024;

**AND UPON** reading the Applicant’s Application Record dated November 22, 2024; the Applicant’s Supplementary Application Record dated February 14, 2025; Dylan Sutor’s (the “**Debtor**”) Responding Motion Record dated September 26, 2024; the Debtor’s Supplementary Responding Motion Record dated October 2, 2024; the Debtor’s Responding Application Record dated January 14, 2025; the Debtor’s Notice of Dispute dated February 3, 2025; the Supplementary Affidavit of Dylan Sutor affirmed February 3, 2025, the Transcript Brief dated February 14, 2025; the Debtor’s Supplementary Responding Application Record dated February 21, 2025; the Applicant’s Factum dated February 14, 2025; the Debtor’s Responding Factum dated February 19, 2024; the Applicant’s Compendium dated February 24, 2025; the Debtor’s Oral Hearing Compendium dated February 24, 2025; and hearing submissions of counsel for the Applicant, the Debtor, the Secured Lender Representative, the Unsecured Lender Representative, and the National Bank of Canada;

**AND** it appearing to the Court that the following acts of bankruptcy have been committed by the debtor (the “**Debtor**”), Thomas Dylan Sutor:

- (a) has ceased meeting his liabilities generally as they become due, including,

without limitation, the indebtedness owing by the Debtor to Lion's Share;

1. **IT IS ORDERED** that the Debtor, of the City of Burlington, in the Province of Ontario, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against the Debtor on this date.
2. **IT IS FURTHER ORDERED** that TDB Restructuring Limited, of the City of Toronto, in the Province of Ontario, is hereby appointed as trustee of the estate of the bankrupt Debtor.
3. **IT IS FURTHER ORDERED** that the trustee give security in cash or by bond or suretyship without delay, in accordance with subsection 16(1) of the *Bankruptcy and Insolvency Act*.
4. **IT IS FURTHER ORDERED** that the costs of the Applicant be paid out of the estate of the bankrupt on taxation of the estate.

Jana  
Steele

Digitally signed  
by Jana Steele  
Date: 2025.03.26  
17:24:47 -04'00'

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

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**BANKRUPTCY ORDER**

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**NORTON ROSE FULBRIGHT CANADA LLP**  
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Lawyers for the Receiver

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**CITATION:** Suitor v. Fuller Landau Group, 2025 ONSC 1686

**COURT FILE NO.:** BK-24-208718-000T

**DATE:** 20250325

**ONTARIO**

**SUPERIOR COURT OF JUSTICE [Commercial List]**

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

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

**BEFORE:** Justice Jana Steele

**HEARD:** February 25, 2025

**COUNSEL:** *James Renihan, Jennifer Stam & Lauren Archibald*, for The Fuller Landau Group Inc., in its capacity as Receiver of The Lion's Share Group Inc.

*Tanya Pagliaroli & Vinayak Mishra*, for Dylan Suitor

*George Benchetrit*, Secured Lender Representative Counsel

*Mario Forte*, Unsecured Lender Representative Counsel

*Patrick Corney*, for the National Bank of Canada

**JUSTICE JANA STEELE**

[1] The applicant, The Fuller Landau Group Inc. (the "LS Receiver"), in its capacity as receiver of the property of The Lion's Share Group Inc. ("Lion's Share"), asks the court to adjudge Thomas Dylan Suitor as Bankrupt and make a Bankruptcy Order in respect of Mr. Suitor's property pursuant to s. 43 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[2] The application is opposed by the respondent debtor, Mr. Suitor. Mr. Suitor disputes that the applicant has satisfied the test for a bankruptcy order and asks that the application be dismissed.

[3] In the alternative, Mr. Suitor seeks a stay of the bankruptcy proceedings until his personal liability is determined in civil court.

[4] For the reasons set out below, the application is granted.

**Background**

[5] On April 3, 2024, the Court appointed The Fuller Landau Group Inc. as receiver of the property of Lion's Share.

[6] Lion's Share's operations consisted principally of the issuance of promissory notes to persons to generate funds to be advanced as loans by way of promissory notes to other individuals and companies.

[7] Claire Drage owns Lion's Share.

[8] Ms. Drage is also CEO of The Windrose Group Inc. ("Windrose").

[9] On April 8, 2024, Ms. Drage filed an assignment in bankruptcy.

[10] Mr. Suitor is one of the four principals of a significant Lion's Share borrower group consisting of Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. (collectively, the "Balboa Borrowers"). Mr. Suitor has certain guarantee obligations in respect of the Balboa Borrowers. The Balboa Borrowers commenced CCAA proceedings on or about January 23, 2024.

[11] In addition to the guarantee obligations in respect of the Balboa Borrowers, Mr. Suitor signed promissory notes in his personal capacity in favour of Lion's Share on behalf of certain companies indebted to Lion's Share, including: 10 Norfolk St. Inc. ("Norfolk"), 388 Downie St. Inc. ("Downie"), Commercial Urkel Inc. ("Commercial Urkel"), Happy Town Housing Inc. ("Happy Town"), and Up-town Funk Inc. ("Up-town Funk") (collectively the "Non-Balboa Borrowers"). Mr. Suitor is the sole shareholder of each of these companies (other than Commercial Urkel, of which Mr. Suitor is a 50% shareholder). Each company owns one real property asset, except Happy Town, which owns two.

[12] By letter dated June 18, 2024 to Norfolk, Downie, Commercial Urkel, Happy Town, Up-town Funk, Mr. Suitor, and Aruba Butt, the LS Receiver made demand for payment under the promissory notes. The demand letter stated:

[...]

The Promissory Notes require the Borrowers to repay the funds advanced by the Lender by certain dates (the "Maturity Dates"). Dylan Suitor (the "Guarantor") is a signatory to each note as a guarantor of the Borrower's obligations. In addition, Aruba Butt (the "38 Duncan Guarantor", and together with the Guarantor, the "Guarantors") is a signatory to the 38 Duncan Note (as defined in Schedule A to this letter) as a guarantor of Commercial Urkel Inc.'s obligations under the 38 Duncan Note.

Pursuant to each of the Promissory Notes, the Guarantor, on an unlimited basis, guaranteed the obligations of each Borrower to the Lender, including payment of all amounts owing under each Promissory Note. Pursuant to the 38 Duncan Note, the 38 Duncan Guarantor, on an unlimited basis, guaranteed the obligations of Commercial Urkel Inc. to the Lender, including payment of all amounts owing under the 38 Duncan Note. The Maturity Dates for all of the Promissory Notes have now passed and there is unpaid interest on all of the Promissory Notes, but neither the Borrowers nor the Guarantors have paid the amounts owing, as applicable. Please be advised that as further set out below, the Borrowers and the Guarantors are in default of their obligations under each of their respective Promissory Notes, including monetary defaults.

[...]

On behalf of the Lender, and without in any way prejudicing the Lender from demanding any other amount properly owing to it or taking such other steps and making such further demands as the Receiver may see fit, the Receiver hereby makes formal demand for payment of the following amounts from each Borrower, the Guarantor, and in the case of the amounts owing by Commercial Urkel Inc., the 38 Duncan Guarantor:

1. 10 Norfolk St. Inc.: \$281,342.35;
2. 388 Downie St. Inc.: \$130,981.21;
3. Commercial Urkel Inc.: \$273,398.32;
4. Happy Town Housing Inc.: \$318,426.20; and
5. Up-town Funk Inc.: \$263,801.75;

[...]

[13] On August 16, 2024, the LS Receiver issued a second demand letter to Downie and Mr. Suitor demanding repayment of an amount of \$1,403,393.17 from Downie and Mr. Suitor (as guarantor) further to an additional promissory note.

[14] On August 30, 2024, the LS Receiver filed an application for a bankruptcy order in respect of Mr. Suitor.

[15] On October 7, 2024, TDB Restructuring Limited was appointed as the interim receiver of all Mr. Suitor's property, assets and undertakings.

### Analysis

[16] The applicant asks the Court to adjudge Mr. Suitor as bankrupt and make a bankruptcy order. Under s. 43 of the *Bankruptcy and Insolvency Act* (the “BIA”):

(1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

(a) The debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

(b) The debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

[...]

(6) At the hearing of the application, the court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order.

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[...]

(9) If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor’s property and for any period of time that may be required for trial of the issue relating to the disputed facts

[17] The applicant must establish that Mr. Suitor owes it a debt of at least \$1,000, and that Mr. Suitor has committed an act of bankruptcy within six months preceding the date of the application. For the purposes of s. 43(1)(b), the act of bankruptcy relied upon by the applicant is s. 42(1)(j) of the BIA: “if he ceases to meet his liabilities generally as they become due.”

[18] The burden of proof in a bankruptcy application is the civil standard: *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909, at para. 40.

*Does Mr. Suitor have debts owing to the applicant creditor of at least \$1,000?*

[19] The applicant claims Mr. Suitor owes \$2,671,342 to Lion's Share under certain promissory notes with the Non-Balboa Borrowers.

[20] The application is founded based on Mr. Suitor's debts to the applicant. I am satisfied that Mr. Suitor has debts to the applicant of at least \$1,000.

[21] The applicant says that Mr. Suitor's debt arises due to certain Promissory Notes he signed as a personal guarantor regarding loans to the Non-Balboa Borrowers. The issue of whether Mr. Suitor has debts owing to the applicant of at least \$1,000 comes down to whether he is liable under the promissory notes he signed as guarantor in respect of the Non-Balboa Borrowers.

[22] The parties agree that the form of promissory note that was used for the liability in issue in this proceeding is substantially similar to the form of promissory note at tab 7 of the applicant's oral compendium. At tab 7 of the applicant's oral compendium is a sample promissory note (the "Norfolk Promissory Note"). Mr. Suitor signed eight promissory notes of the same form (different company, debt amount, date, etc.) (each a "Promissory Note").

[23] Despite having signed the Promissory Notes, Mr. Suitor denies that he is personally liable under these Promissory Notes.

[24] Mr. Suitor does not dispute that there is more than \$1,000 owing by the companies under the Promissory Notes.

[25] Mr. Suitor submits that the applicant has not proven a debt of \$1,000. I disagree.

[26] As noted in *Beach (Re)*, 2022 ONSC 6474, at para. 25, citing *Diwold v. Diwold* (1940), [1941] S.C.R. 35, "[a] debt is a sum payable in respect of a liquidated demand, recoverable by action." The Court states further, at para. 26, citing *Relectra Limited, Re* (1979), 30 C.B.R. (N.S.) 141, that "[s]o long as it is proved that the debtor is indebted to the applicant creditor for at least \$1,000, it is unnecessary for the court to determine the exact amount owing to the applicant creditor."

[27] The issue of whether Mr. Suitor is personally liable under these promissory notes is a matter of contractual interpretation.

[28] A guarantee is contractual promise: *Patrick Street Holdings Limited v. 11368 NL Inc.*, 2024 NLCA 11, at para. 540. As noted in *Xiang v. Atlas Healthcare (Brampton) Ltd.*, 2021 ONSC 1225, at para. 43, "the extent of a guarantor's liability under a guarantee is a matter of contractual interpretation with respect to the construction of the guarantee at issue."

[29] The principles of contractual interpretation were recently summarized by the Court of Appeal in *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONCA 54, at para. 25:

- a. Determine the intention of the parties in accordance with the language they have used in the written document, based upon the “cardinal presumption” that they have intended what they have said;
- b. Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
- c. Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
- d. Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[30] The applicant submits that the plain language of the promissory notes illustrates an objective intention to make Mr. Suitor liable as a guarantor of the amounts due under the notes. I agree.

[31] In each Promissory Note, Mr. Suitor is described as both a “Borrower” and a “Guarantor”. At the top of the Promissory Note the “Borrowers” are set out as follows:

**Borrowers:** 10 Norfolk St. Inc. [or another company owned by Mr. Suitor, or in the case of Commercial Urkel, by Mr. Suitor and Ms. Butt] (the “Borrowers”) with personal guarantor(s) Dylan Suitor (the “Borrowers”)

[32] Mr. Suitor is defined as a “Borrower”.

[33] The term “Guarantor” (capitalized), although used twice in the Promissory Note, is not a defined term. Guarantor (capitalized) appears on the signing lines and in section 8 of the Promissory Notes.

[34] Mr. Suitor also signed the Promissory Notes twice. Once for the company Borrower, and once in his personal capacity, which signing line is set out as follows:

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Dylan Suitor (Borrowers/Guarantors)

[35] The term Borrower(s) is used throughout the Promissory Note to set out the payment and other obligations of the Borrowers. Among other things, in the Norfolk Promissory Note the Borrowers promise to pay the Lenders the principal sum of \$200,000. The term Guarantors<sup>1</sup> is used only at the bottom of the Promissory Notes, and in section 8,<sup>2</sup> which provides:

All costs, expenses and expenditures including, and without limitation, legal costs, fees and disbursements on a **substantial indemnity basis**, incurred by the Lenders in enforcing this Note as a result of any default by the Borrowers, will be added to the principle then outstanding and will immediately be paid by the Borrowers. In the case of the Borrowers default and the acceleration of the amount due to the Lenders all amounts outstanding under this Note will bear interest at the rate of 3% higher than the Initial Interest Rate charged per annum from the date of demand until paid. This Note is secured by the Lenders [*sic*] right to register this Note on title on **all or any properties held by the Borrowers and Guarantors as security** (the ‘Security’), if not paid in full by 6:00 pm on April 13, 2024. This includes, but is not limited to, the property located at [...].

[36] Section 8 of the Promissory Notes permits registration on title to any properties held by the Borrowers and Guarantors as security. As noted by the applicants, the ability to register the note on title to Mr. Suitor’s personal properties supports their position that he has a payment obligation.

[37] Mr. Suitor argues that he was only a guarantor (and not personally liable) and that the Promissory Notes are void of any terms regarding the guarantee. Mr. Suitor points to *Times Square v. Shimizu*, 2001 BCCA 448, as an example of a case where the majority of the court refused to enforce a guarantee because there was no provision with substantive content defining the guarantee obligation. He submits the Promissory Notes similarly do not define the guarantee obligation. I disagree. In *Times Square* the guarantor was separately defined as the guarantor and there were no obligations on the guarantor. As noted above, in the instant case Mr. Suitor is also defined as a borrower.

[38] Mr. Suitor also points to *Waterloo-Oxford Co-Operative Inc. v. Hamm*, 2005 CanLII 2953 (Ont. Sup. Ct.). For similar reasons, *Waterloo-Oxford* is not applicable to the instant case. In *Waterloo-Oxford* the court was faced with a very broad guarantee that could be interpreted in either of two ways: one party said that it was a guarantee of all debts incurred as of the date of the guarantee; the other party said that it was a guarantee for any debts ever incurred or to be incurred at any time before, during or after the date of the letter. The court refused to enforce the letter guarantee because it lacked enough precision to be enforced.

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<sup>1</sup> The term “guarantor” issued in the definition of “Borrowers” as set out above.

<sup>2</sup> There was a prior form of promissory note that was used to evidence loans with Lion’s Share. Section 8 is different in those prior promissory notes.

[39] Mr. Suitor submits that the guarantee provisions in the Promissory Notes are completely lacking. However, this again ignores the fact that Mr. Suitor is also defined as a borrower under the Promissory Notes.

[40] Mr. Suitor states that he cannot have the same obligations as the corporate borrower under the Promissory Notes. He argues that principal debtors and guarantors are distinct at law.

[41] The applicant submits that there is no law that suggests that a guarantor cannot have the same obligations as the principal debtor. This is, there is no reason why a lender and borrower and guarantor cannot sign an agreement where the guarantor is liable for all obligations of the borrower. I agree. This comes down to contractual interpretation and what was agreed among the parties. Mr. Suitor is the sole shareholder of these companies (other than Commercial Urkel), and he contractually agreed to be the personal guarantor in respect of all terms of the Promissory Notes.

[42] Mr. Suitor also relies on *Chand Morningside Plaza Inc. v. Healthy Lifestyle Medical Group Inc.*, 2024 ONSC 7285, which does not apply to the instant case. As noted by Koehnen J. in para. 81, the guarantors in *Chand* were accommodation sureties, the parents of the borrower. They had provided a guarantee “with the expectation of little or no remuneration for the purpose of accommodating others.”<sup>3</sup> That is not the case here. Mr. Suitor guaranteed the loans to companies of which he holds, directly or indirectly, 100% of the shares (other than Commercial Urkel, of which he holds 50% of the shares).

[43] The Promissory Notes are each just over two pages long. They have drafting issues. Among other things, the term “Guarantor” is not defined. Mr. Suitor is defined with the corporate entity as the Borrowers. However, reading the document as a whole, and taking into consideration the fact that Mr. Suitor knew that he was a personal guarantor (as discussed further below), the commercially reasonable interpretation is that Mr. Suitor is the guarantor of the loan to the company in which he held all (or 50%) of the shares. The plain language of the document defines Mr. Suitor as Borrower and gives him the same obligations as the corporate borrower. Accordingly, in his capacity as guarantor Mr. Suitor agreed to the same terms as the borrower company. That is the contract that was reached among the parties.

[44] Mr. Suitor also argues that there was no consensus ad idem. As noted by the Court of Appeal in *UBS Securities Canada v. Sands Brothers Canada, Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93, at para. 47, in order for a contract to exist, there must be a meeting of minds, or consensus ad idem.

[45] Mr. Suitor says that he was not aware of his personal liability under the Promissory Notes. This is not credible given the record before me. Included in Ms. Drage’s evidence is a link to a webinar, which I viewed. Ms. Drage stated in her affidavit that she and Mr. Suitor jointly participated in the webinar with some of the lenders to Mr. Suitor and his companies. During the

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<sup>3</sup> *Citadel Assurance v. Johns-Manville Canada Inc.*, [1983] 1 S.C.R. 513, at 521.



webinar Ms. Drage explained to all participants that “Dylan has provided a personal guarantee, not just of the property and the corporation that property’s in, but his entire portfolio and assets.” Mr. Suitor, who was also on screen at the webinar, including when Ms. Drage made the statement regarding Mr. Suitor’s personal guarantee, did not disagree or say anything in response.

[46] Mr. Suitor’s position, as set out at para. 93 of his factum, is that:

- a. Mr. Suitor was not asked to provide financial net worth information to Drage or lenders.
- b. None of the Windrose/Drage materials, communications, and/or advertisements include any reference to personal liability related to the LS-Investor Notes or the Promissory Notes. In fact, the Promissory Notes were consistently described as high risk and requiring a general securities agreement to create security.
- c. The term “guarantee” was used inconsistently and ambiguously in the LS-Investor Notes. In early LS-Investor Notes, the right to register the LS-Investor Note on title to the corporate borrower’s property was explained as “the personal guarantee”, when it did not relate to Suitor. In other LS-Investor Notes, both Suitor and his corporation were described as “Borrowers/Guarantors”.
- d. The sole Windrose presentation to lenders for Promissory Note opportunities related to Suitor in evidence interchangeably states that Suitor and his corporation provided a “personal guarantee”; the security described in the presentation is exclusively in relation to the lender’s right to register the note on the corporate borrower’s property. The presentation also referenced that Drage was underwriting the Promissory Note, which created further ambiguity on who (if anyone) was personally liable.

[47] In my view, none of the above submissions take away from the fact that the parties signed the Promissory Notes setting out the terms of the agreement and monies were advanced further to such Promissory Notes. The fact that Mr. Suitor was not asked to provide financial net worth information does not impair the meaning of the contract. The marketing materials and presentations are not part of the contract and were general materials/presentations provided to potential lenders by Windrose/Drage. Finally, the prior promissory notes are just that — prior notes. The form of promissory note used by Lion’s Share changed at some point. The ones in issue in this application are the revised form, several of which were signed by Mr. Suitor.

[48] As set out by the Court of Appeal in *UBS Securities Canada*, at para. 86, the test for consensus ad idem is an objective one. I agree with the applicant that because there is a written agreement and money was advanced further to the written agreement, there was consensus ad idem. In respect of each Promissory Note, there was a signed contract and action taken under the contract – of course there was of meeting of the minds.

*Are there multiple creditors or special circumstances?*

[49] Mr. Suitor submits that the applicants have not established that there are other creditors or special circumstances.

[50] As noted by the Court in *In the Matter of the Bankruptcies of Jasvir Johal Sulakhan Johal*, 2024 ONSC 7386 (“*Johal*”), at para. 43, citing *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 7, “the provisions of the *BIA* are intended to be utilized for the benefit of the creditors of a debtor as a class, not for the enforcement of an individual debt.”

[51] Only where special circumstances exist will the court grant bankruptcy in a single creditor case: *Johal*, at para. 44. The categories of special circumstances were set out in *Valente v. Courey* (2004), 70 O.R. (3d) 31, at para. 8:

- a. Where repeated demands for payment have been made within the six-month period;
- b. Where the debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets which require that the processes of the *BIA* be set in motion; and
- c. Prior to the filing of the petition, the debtor has admitted its inability to pay creditors generally without identifying the creditors.

[52] In *Johal*, Osborne J. referred to the expansion of the categories of special circumstances in *Sergio Grillone (Re)*, 2023 ONSC 5710. Osborne J. notes at para. 50:

In that case, Kimmel J. observed that, in the particular circumstances of that matter, an order under s. 43(1) of the *BIA* was necessary to achieve an orderly distribution of the estate of the bankrupt to creditors, and to create a single forum in which the multiplicity of claims involving the debtor could be determined while ensuring that no creditor obtains an unfair advantage over the others in the interim. In that case, the Court found that such was a special circumstance that supported the granting of a bankruptcy order.

[53] In *Johal* Osborne J. determined that there were no special circumstances justifying the bankruptcy application. The bankruptcy applications were stayed, and the creditor was directed to pursue its claims in CCAA proceedings that were ongoing in respect of the companies owned by the debtors. At para. 51, Osborne J. noted that he was applying the same rationale expressed by Kimmel J. in *Grillone*, namely creating a single forum for the many claims.

[54] Mr. Suitor argues that the applicants have not established that he has other debts, nor are there special circumstances that would warrant a bankruptcy order with a single creditor.

[55] The LS Receiver argues that there are other debts, pointing to (i) the Statement of Claim by Nicole Kelly against Upgrade Housing Inc. and Mr. Suitor, and the Statement of Defence filed (the “Kelly Claim”), (ii) the demand letter to Mr. Suitor, Aruba Butt, and Commercial Urkel from counsel to Dennis and Jessica Domenichini (the “Domenichini Claim”); and (iii) the Balboa creditors under the CCAA proceedings.

[56] The Kelly Claim is a claim for payment of \$75,000 (plus interest) in accordance with a promissory note. The Domenichini Claim is for \$630,642.38 (plus further interest) in respect of a mortgage that has matured and remains in default since November 12, 2023. There is evidence on the record that there are other creditors. Mr. Suitor has not provided anything to refute that there are other creditors, other than to assert that the applicant’s evidence is insufficient.

[57] Mr. Suitor states that the applicant has not led “sound and convincing evidence” of these debts as required. He points to *Barkhouse (Re)*, 2018 NSSC 101 and *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 6. *Barkhouse* deals with proof of the debts owing to the applicant, not other third-party creditors. *Levesque*, at para. 6, in considering the issue of whether the debtor had ceased to meet his liabilities generally as they become due, stated:

The application judge correctly set out the nature of bankruptcy proceedings and the standard of proof, at para. 4 of her reasons:

It is well established that proceedings under the *BIA* are quasi-criminal in nature. The act(s) of bankruptcy and all allegations set out in the application must be proven on sufficient evidence: *Re Holmes* (1975), 9 O.R. (2d) 240 (S.C.); *Re Valente* (2004), 70 O.R. (3d) 31 (C.A.).

[58] At para. 4 of *Levesque* the Court of Appeal set out the essential elements that the petitioning creditor must establish to obtain a bankruptcy order, which do not include debts of other creditors. In fact, s. 43(1) of the BIA contemplates that “one or more creditors” may file an application for a bankruptcy.

[59] Based on the record before me, I am satisfied that Mr. Suitor has other creditors. In any event, I agree with the LS Receiver that the special circumstances noted in *Grillone* apply here. Mr. Suitor’s plan is to sell the properties that he holds through the various companies. As discussed above, there are numerous creditors potentially involved with this estate. A bankruptcy trustee will be able to deal with Mr. Suitor’s assets. Similar to *Grillone*, an order under s. 43(1) of the BIA will allow for the orderly distribution of Mr. Suitor’s assets to his creditors and will create a single forum in which the multiple claims involving Mr. Suitor can be determined.

*Has Mr. Suitor ceased to meet his liabilities generally as they become due?*

[60] The second part of the test that the applicants must satisfy is that Mr. Suitor must have committed an act of bankruptcy. As noted above, the applicants rely on s. 42(1)(j) of the BIA: “if he ceases to meet his liabilities generally as they become due.”

[61] The LS Receiver made demand on the non-Balboa promissory notes within six months of the commencement of the application. Payment on the notes has not been made.

[62] Mr. Suitor points to his illiquid assets that he holds personally or directly or indirectly through one of the Non-Balboa Borrowers.

[63] As the Quebec Superior Court clarified in *Immeubles Zenda Ltée/Zenda Realities Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS 3450, at paras. 15-16, the lack of liquidity does not assist a creditor who is unable to pay his or her debts as they become due:

[15] The Debtors argue that the bankruptcy applications should be dismissed because the value of their assets – essentially their investments in commercial properties – is greater than the amount of their debts. However, this is an irrelevant consideration. The issue is not whether the Debtors have sufficient assets to pay their debts, but whether they have ceased to meet their liabilities generally as they become due.

[16] Zenda and Levy do not deny that they have ceased meeting their liabilities generally as they become due. They do not deny that they are presently unable to pay their creditors. Their argument is that they need time to liquidate their real estate holdings in order to pay their creditors.

[64] Mr. Suitor's case is similar to that in *Immeubles Zenda*. The fact that he has illiquid real estate assets through the companies he holds directly or indirectly does not assist in meeting the test of whether he has ceased to meet his liabilities generally as they become due. It is not a question of whether Mr. Suitor potentially could pay if he sold off his illiquid assets; it is whether he has failed to meet his liabilities as they become due.

[65] I am satisfied that Mr. Suitor has committed an act of bankruptcy.

*Should the Court exercise its discretion under s. 43(1) of the BIA?*

[66] The Court can exercise discretion under s. 43(7) of the BIA to not grant the bankruptcy order if Mr. Suitor proves that he can pay his debts:

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[67] Mr. Suitor has not proven that he can pay his debts.

[68] In *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, the court stated, at para. 9, that the power in s. 43(7) of the BIA is discretionary.

[69] Collier J., of the Quebec Superior Court in *Immeubles Zenda*, at para. 31, citing *Goulakos (Syndic de)*, 2016 QCCS 84, stated:

The Court's discretion to stay a bankruptcy application under ss 43(7) and 43(11) *BIA* "should not be exercised lightly, but on the basis of sound judicial reasoning, credible evidence, according to common sense and in a manner which does not cause an injustice."

[70] In Mr. Suitor's supplementary affidavit, he provides estimated values of the various properties he owns directly (or through the companies) and details of the mortgages on the properties. He sets out a chart where he estimates that he would have approximately \$1.48 million remaining after paying the secured lenders, the debt claimed by the applicants as set out in their demand letters, and commission on the real property sales.

[71] While there are appraisals from within the last year for certain of the properties, in some cases the appraisals date back to 2022 or 2023. Of greater concern, however, is the lack of other financial information regarding the companies. Because the bulk of the real properties are owned by companies which Mr. Suitor either directly or indirectly owns, the Court would need the full financial picture of these companies to understand the value of Mr. Suitor's shares in the companies. Other than the specific property information, Mr. Suitor has not disclosed the other assets and liabilities of the companies. With regard to the properties Mr. Suitor owns personally, even assuming the March and April 2024 valuations continue to represent the value of the properties, after payment of the mortgages on the properties, there would not be sufficient net proceeds to satisfy the applicant's debt.

[72] Accordingly, I am not satisfied that the court should exercise its discretion under s. 43(7) of the *BIA*.

J. Steele J.

A handwritten signature in blue ink, appearing to read 'J. Steele', is positioned above a horizontal line.

**Released:** March 25, 2025

**CITATION:** Suitor v. Fuller Landau Group, 2025 ONSC 1686  
**COURT FILE NO.:** BK-24-208718-00OT  
**DATE:** 20250325

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF  
BURLINGTON, ONTARIO**

---

**REASONS FOR DECISION**

---

Justice Steele

**Released:** March 25, 2025

# EXHIBIT J



MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
CANADA

**125**  
T 519.931.3500  
F 519.858.8511

MILLERTHOMSON.COM

February 24, 2025

**Tony Van Klink**  
Direct Line: +1 519.931.3509  
tvanklink@millerthomson.com

**Delivered via Registered Mail and Email**  
**(dylan@elevationrealty.ca)**

File No. 0200437.0119

1391 Ontario St. Inc.  
245 Wyecroft Rd., Suite 4  
Oakville, ON L6K 3Y6

Attention: Dylan Suitor

Dear Sir:

**Re: Loan with Business Development Bank of Canada ("BDC")**

We are the lawyers for BDC.

We refer to the Letter of Offer dated December 2, 2022 (the "**Loan Agreement**") made between BDC, as lender, and 1391 Ontario St. Inc. (the "**Company**"), as borrower, and the loan made by BDC to the Company thereunder (the "**Loan**").

As of February 24, 2025, there was an outstanding balance of \$2,435,269.21 on the Loan comprised as follows:

Loan	Principal	Interest	Annual Admin. and NSF Fees	Total
242499-01	\$2,371,650.00	\$62,834.21	\$785.00	\$2,435,269.21

The Company has failed to make required payments on the Loan. Default has occurred under the Loan Agreement and the security held by BDC. The Loan Agreement provides that upon a default, BDC has the right to demand immediate repayment of the Loan and accumulated interest.

On behalf of BDC we hereby demand immediate payment from the Company of the outstanding balance on the Loan in the amount of \$2,435,269.21, plus accruing interest thereon and all accrued and accruing costs.

Unless the Loan is repaid as demanded, BDC will take steps to recover the outstanding balance, including the enforcement of the security which it holds over the assets of the Company, including the property municipally known as 1391 Ontario Street, Burlington.



Enclosed is a notice pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.

Yours truly,

A handwritten signature in black ink, appearing to read 'Tony Van Klink', written over a horizontal line.

Tony Van Klink  
TVK/jf

Enclosure  
c. Gianna Torrelli



**NOTICE OF INTENTION TO ENFORCE SECURITY  
(SUBSECTION 244(1) OF THE BANKRUPTCY AND INSOLVENCY ACT)**

**TO:** 1391 Ontario St. Inc.,  
an Insolvent Person

**TAKE NOTICE THAT:**

1. **Business Development Bank of Canada**, a secured creditor, intends to enforce its security on the property of the insolvent person, being:
  - (a) all properties, assets and undertakings of the insolvent person including, without limitation all present and future personal property, whether tangible or intangible, and including, without limitation, all inventory, equipment, machinery, fixtures, accounts receivable, monies, choses in action, documents of title, securities and any and all proceeds derived from any dealing therewith; and
  - (b) the real property legally described as PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ; BURLINGTON (PIN 07082-0016) LRO #20 and municipally known as 1391 Ontario Street, Burlington, Ontario (the “Real Property”).
2. The security that is to be enforced is in the form of:
  - (a) General Security Agreement dated January 11, 2023; and
  - (b) Charge/mortgage for the Real Property registered in LRO #20 on January 13, 2023 as instrument no. HR1943677.
3. The total amount of indebtedness secured by the security as at the present time is \$2,435,269.21 as at February 24, 2025, together with accruing interest and costs.
4. The secured creditor will not have the right to enforce the security until after the expiry of the ten-day period following the sending of this Notice, unless the insolvent person consents to an earlier enforcement.

**DATED** at London, Ontario this 24th day of February, 2025.

**BUSINESS DEVELOPMENT BANK  
OF CANADA**

By its Solicitors  
Miller Thomson LLP  
2010 – 255 Queens Avenue  
London, ON N6A 5R8

Per:

Tony Van Klink

# EXHIBIT K



Certificate No.: 13136  
Date of Certificate: Apr 30, 2025

**TAX CERTIFICATE**  
City of Burlington  
P.O. Box 5080  
Burlington ON L7R 4G4  
Tax Office (905) 335-7750  
Toll Free 1-877-213-3609  
[taxownership@burlington.ca](mailto:taxownership@burlington.ca)

129

**Issued To:**  
Rebecca Armstrong  
255 Queens Ave. Suite 2010  
London ON N6A 5R8  
ramstrong@millerthomson.com

**Account Number:** 119313  
**Roll Number:** 2402-060-604-10400-0000  
**Owner(s):** 1391 ONTARIO ST. INC.  
**Civic Address:** 1391 ONTARIO ST BURLINGTON  
**Legal Description:** PLAN 90 PT LOTS 14,15,16

**Reference:** 0200438.0119

**Interest:** 1.25%

Property Class	Property Class Description	Assessed Value
R-T	Residential - Taxable Full	767,400
C-T	Commercial	1,541,600

Tax Year	Taxes Levied	Taxes Owing	Other Fees and Charges	Penalty/Interest	Total Owing
2025	\$42,019.54	\$18,052.51	\$0.00	\$366.70	\$18,419.21
2024	\$40,103.78	\$23,180.11	\$0.00	\$2,580.82	\$25,760.93
2023	\$37,765.16	\$0.00	\$0.00	\$0.00	\$0.00
2022	\$36,080.12	\$0.00	\$0.00	\$0.00	\$0.00
Prior Owing		\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>		<b>\$41,232.62</b>	<b>\$0.00</b>	<b>\$2,947.52</b>	<b>\$44,180.14</b>

Bylaw	Annual Amount	Expiry	Description – Local Improvement	Status

Bill Type	Bill Date	Tax Year	Effective Date	Installment Due Date	Amount
Interim	JAN 10, 2025	2025	JAN 01, 2025	FEB 21, 2025	\$9,026.51
Interim	JAN 10, 2025	2025	JAN 01, 2025	APR 21, 2025	\$9,026.00

Please note that other fees may apply.

Tax responsibility runs with the land. Any future tax additions or adjustments relating back to a prior ownership must be dealt with by the current owner through the solicitor(s) involved in the sale.

Any Credit Balance appearing on this Certificate is not verified. No adjustment should be made unless the credit balance is a known and acknowledged overpayment.

I hereby certify this statement shows all arrears of taxes against the above lands as of the date of this certificate.

*Ann Marie Coulson*

FOR TREASURER AND TAX COLLECTOR

BUSINESS DEVELOPMENT  
BANK OF CANADA

Applicant

1391 ONTARIO ST. INC.

and

Respondent

**130**

Court File No:

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**AFFIDAVIT OF GIANNA TORRELLI**  
**(SWORN MAY 5, 2025)**

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**

tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,**  
**Business Development Bank of Canada**

# TAB 3

Court File No. CV-25-00090112-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

TUESDAY, THE 3<sup>RD</sup>

JUSTICE

)

DAY OF JUNE, 2025

)

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

- and -

**1391 ONTARIO ST. INC.**

**Respondent**

APPLICATION UNDER SUBSECTION 243(1) 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  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant 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 *msi Spergel Inc.* as receiver and manager (in such capacities, the "Receiver") without security, of the real property described on Schedule A to this Order (the "Real Property") owned by the respondent, 1391 Ontario Street Inc. (the "Debtor"), was heard this day at 45 Main Street East, Hamilton, Ontario, by videoconference.

ON READING the affidavit of Gianna Torrelli sworn May 5, 2025 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties as listed on the

participant information form, no one appearing for any other party on the service list although duly served as appears from the affidavits of service, filed, and on reading the consent of msi Spergel Inc. 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, as necessary, 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*, msi Spergel Inc. is hereby appointed Receiver, without security, of the Real Property, including all proceeds thereof (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, rents, 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



engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;

- (c) 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;
- (d) 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 the Debtor, for any purpose pursuant to this Order;
- (e) 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 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;
- (f) 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;

- (g) to sell, convey, transfer, lease or assign the Property with the approval of the Court and in each such case notice under section 31 of the Ontario *Mortgages Act* shall not be required;
- (h) to apply for any vesting order or other orders necessary to convey the Property to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (i) 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;
- (j) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (k) 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 the Debtor;
- (l) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for the Property;
- (m) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and

- (n) 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 Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its 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 Property, 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.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. 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**

8. THIS COURT ORDERS that no Proceeding affecting the Property 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 affecting the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies affecting the Property or against the the Receiver, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (ii) prevent the filing of any registration to preserve or perfect a security interest, or (iii) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

10. 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 Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor

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 Debtor's 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 Debtor 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**

12. 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**

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor. 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**

14. 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. 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**

16. 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**

17. 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.



18. 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 Ontario Superior Court of Justice.

19. 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**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, 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.

21. 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.

22. 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.

23. 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**

24. 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.

25. 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

#### **GENERAL**

26. 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.

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

28. 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.

29. 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.

30. 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 Debtor's estate with such priority and at such time as this Court may determine.

31. 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.

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

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**Schedule “A”**

(Real Property)

*a) Property Identifier Number 07082-0016, LRO # 20*

PT LTS 14, 15 & 16, PL 90, AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292;  
BURLINGTON and municipally known as 1391 Ontario Street, Burlington, Ontario.

## Schedule "B"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of the real property located at 1391 Ontario Street, Burlington, Ontario and the proceeds thereof (the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 3rd day of June, 2025 (the "Order") made in an action having Court file number CV-25-00090112-0000, 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 \$250,000 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 last day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the floating base rate of Business Development of Canada from time to time.

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 \_\_\_\_\_, 20\_\_.

msi Spergel Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

BUSINESS DEVELOPMENT  
BANK OF CANADA

and

1391 ONTARIO STREET INC.

Court File No.: CV-25-00090112-0000

Applicant

Respondent

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**RECEIVERSHIP APPOINTMENT ORDER**

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSO#: 29008M  
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**Lawyers for the Applicant,  
Business Development Bank of Canada**



# TAB 4

Revised: January 21, 2014  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. ~~—~~ CV-25-00090112-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE ) ~~WEEKDAY~~ TUESDAY, THE #3<sup>RD</sup>  
 )  
 JUSTICE ) DAY OF ~~MONTH~~ JUNE, ~~20YR~~ 2025

**PLAINTIFF<sup>†</sup>**

**Plaintiff**

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

- and -

**DEFENDANT**

**Defendant**

**1391 ONTARIO ST. INC.**

**Respondent**

APPLICATION UNDER SUBSECTION 243(1) 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**  
**(~~appointing~~ Appointing Receiver)**

<sup>†</sup> ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Applicant 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~~c-43, as amended (the "*CJA*") appointing ~~[RECEIVER'S NAME]~~msi Spergel Inc. as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of ~~all of the assets, undertakings and properties of [DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the real property described on Schedule A to this Order (the "Real Property") owned by the respondent, 1391 Ontario Street Inc. (the "Debtor"),~~ was heard this day at ~~330 University Avenue, Toronto~~45 Main Street East, Hamilton, Ontario, by videoconference.

ON READING the affidavit of ~~[NAME]~~Gianna Torrelli sworn ~~[DATE]~~May 5, 2025 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~the Applicant and such other parties as listed on the participant information form, no one appearing for ~~[NAME]~~any other party on the service list although duly served as appears from the ~~affidavit~~affidavits of service ~~of [NAME] sworn [DATE], filed,~~ and on reading the consent of ~~[RECEIVER'S NAME]~~msi Spergel Inc. to act as the Receiver<sup>3</sup>.

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated<sup>3</sup>, as necessary, so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

<sup>2</sup> ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, ~~[RECEIVER'S NAME]~~ msi Spergel Inc. is hereby appointed Receiver, without security, of ~~all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor~~ Real Property, including all proceeds thereof (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, rents, 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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;~~

(c) ~~(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 Debtor or any part or parts thereof;~~

~~(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;~~

~~(g) to settle, extend or compromise any indebtedness owing to the Debtor;~~

(d) ~~(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 the Debtor, for any purpose pursuant to this Order;

(e) ~~(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 ~~Debtor~~, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby

<sup>4</sup> ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(f) ~~(f)~~ 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;

(g) ~~(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 \$ \_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$ \_\_\_\_\_; 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,]<sup>5</sup> shall not be required, and in each case the Ontario Bulk Sales Act shall not apply;~~

(h) ~~(f)~~ 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;

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (i) ~~(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;
- (j) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (k) ~~(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 the Debtor;
- (l) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for ~~any property owned or leased by the Debtor~~ Property;
- (m) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and
- (n) ~~(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 Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its 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 Debtor~~ Property, 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**

7. ~~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

8. ~~9.~~ THIS COURT ORDERS that no Proceeding ~~against or in respect of the Debtor or affecting~~ the Property 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 Debtor or affecting~~ the Property are hereby stayed and suspended pending further Order of this Court.

#### NO EXERCISE OF RIGHTS OR REMEDIES

9. ~~10.~~ THIS COURT ORDERS that all rights and remedies affecting the Property or against the ~~Debtor,~~ 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on,~~ (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (~~iii~~ii) prevent the filing of any registration to preserve or perfect a security interest, or (~~iv~~iii) prevent the registration of a claim for lien.

#### NO INTERFERENCE WITH THE RECEIVER

10. ~~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 Debtor, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

11. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Debtor's 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 Debtor 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**

12. ~~13.~~ 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

13. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor ~~until such time as the Receiver, on the Debtor'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

14. ~~15.~~ 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. ~~16.~~ 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**

16. ~~17.~~ 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

17. ~~18.~~ 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.<sup>6</sup>

18. ~~19.~~ 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.

<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

19. ~~20.~~ 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**

20. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~250,000 (or such greater amount as this Court may by further Order authorize) at any time, 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.

21. ~~22.~~ 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.

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

23. ~~24.~~ 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

24. ~~25.~~ 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: <@>.~~

25. ~~26.~~ 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

## GENERAL

26. ~~27.~~ 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.

27. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. ~~29.~~ 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.

29. ~~30.~~ 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.

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

31. ~~32.~~ 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.

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

~~SCHEDULE "A"~~Schedule "A"

(Real Property)

a) *Property Identifier Number 07082-0016, LRO # 20*

PT LTS 14, 15 & 16, PL 90, AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292;  
BURLINGTON and municipally known as 1391 Ontario Street, Burlington, Ontario.

Schedule "B"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ msi Spergel Inc., the receiver (the "Receiver") of the ~~assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all~~ real property located at 1391 Ontario Street, Burlington, Ontario and the proceeds thereof (~~collectively,~~ the "Property") appointed by Order of the Ontario Superior Court of Justice (~~Commercial List~~) (the "Court") dated the 3rd day of June, 20 2025 (the "Order") made in an action having Court file number CV-CL 25-00090112-0000, 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 \$ 250,000 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 ~~[daily]~~ monthly not in advance on the last day of each month ~~] after the date hereof at a notional rate per annum equal to the rate of~~ \_\_\_\_\_ per cent above the ~~prime commercial lending~~ floating base rate of ~~Bank~~ Business Development of Canada from time to time.

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 \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME]~~ msi Spergel Inc., solely  
in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

<u>BUSINESS DEVELOPMENT BANK OF CANADA</u>		<u>1391 ONTARIO STREET INC.</u>	<u>Court File No.: CV-25-00090112-0000</u>
<u>Applicant</u>	<u>and</u>	<u>Respondent</u>	
<u>Double Click on mouse to Add space for Third Party</u> <input type="checkbox"/>			
<u>Double Click on mouse to Add more space to parties line</u> <input type="checkbox"/>			
<u>ONTARIO SUPERIOR COURT OF JUSTICE</u> <u>Proceeding commenced at HAMILTON</u>			
<u>RECEIVERSHIP APPOINTMENT ORDER</u>			
<u>MILLER THOMSON LLP</u> <u>One London Place</u> <u>255 Queens Avenue, Suite 2010</u> <u>London, ON Canada N6A 5R8</u>  <u>Tony Van Klink LSO#: 29008M</u> <u>tvanklink@millerthomson.com</u> <u>Tel: 519.931.3509</u> <u>Fax: 519.858.8511</u>  <u>Lawyers for the Applicant,</u> <u>Business Development Bank of Canada</u>			

Document comparison by Workshare Compare on Monday, May 5, 2025 2:20:08 PM

Input:	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/77861354/1
Description	#77861354v1<Legal> - MODEL RECEIVERSHIP ORDER
Document 2 ID	iManage://mtdmswssc.millerthomson.corp/Legal/84550849/1
Description	#84550849v1<Legal> - Draft Receivership Order - 3-JUNE-2025 (1391 Ontario St.)
Rendering set	Standard

Legend:	
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Statistics:	
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Insertions	137
Deletions	170
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Moved to	0
Style changes	0
Format changes	0
Total changes	307



# TAB 5

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SUBSECTION 243(1) 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

**CONSENT**

msi Spergel Inc. hereby consents to act as receiver and manager of the real property located at 1391 Ontario St., Burlington pursuant to the Application of Business Development Bank of Canada.

DATED at Toronto, Ontario this 2<sup>nd</sup> day of May, 2025.

**MSI SPERGEL INC.**

Per:



---

Philip Gennis, J.D., CIRP, LIT

BUSINESS DEVELOPMENT BANK  
OF CANADA

and

1391 ONTARIO ST. INC.

Court File No.:

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**CONSENT**

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSO#: 29008M

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

**Lawyers for the Applicant,  
Business Development Bank of Canada**

BUSINESS DEVELOPMENT  
BANK OF CANADA

and

1391 ONTARIO ST. INC.

Court File No.: CV-25-00090112-0000

Applicant

Respondent

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**APPLICATION RECORD**  
**(Returnable June 3, 2025)**

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON N6A 5R8

**Tony Van Klink** LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,**  
**Business Development Bank of Canada**

# Appendix P

**TDB Restructuring Limited**  
**Court-Appointed Interim Receiver of Thomas Dylan Suitor**  
**Interim Statement of Receipts and Disbursements**  
**For the period October 7, 2024 to May 13, 2025**

**Receipts**

Retainer from Monitor (Note 1)	\$ 100,000
Interest	1,161

<b>Total receipts</b>	<b>\$ <u>101,161</u></b>
-----------------------	--------------------------

**Disbursements**

Property Searches and Order Registration (Note 2)	\$ 4,881
Miscellaneous	73
Interim Receiver's Fees	48,450
Legal Fees/disbursements	27,290
HST Paid	10,481

<b>Total disbursements</b>	<b>\$ <u>91,176</u></b>
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<b>Excess of Receipts over Disbursements</b>	<b>\$ <u><u>9,985</u></u></b>
--	-------------------------------

**Notes:**

- 1 This amount represents the retainer provided by KSV Restructuring Inc. in its capacity as Court-appointed Monitor of the Balboa Group, of which the Debtor is a principal.
- 2 This amount represents expenses incurred to conduct property searches, corporate searches and register the interim receivership order on title.

***E & OE***

# Appendix Q

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(BANKRUPTCY AND INSOLVENCY)**

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

**THE FULLER LANDAU GROUP INC.**

**RECEIVER OF**  
**THE LION'S SHARE GROUP INC.**

Applicant

- and -

**THOMAS DYLAN SUITOR**

Respondent

**AFFIDAVIT OF JEFFREY BERGER**  
**(Sworn May 14, 2025)**

I, **JEFFREY BERGER**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Managing Director of TDB Restructuring Limited ("**TDB**") 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 an order of the Court dated October 7, 2024, TDB Restructuring Limited ("**TDB**") was appointed interim receiver (the "**Interim Receiver**"), without security, of all of the property, assets, and undertakings of Thomas Dylan Sutor (the "**Debtor**").



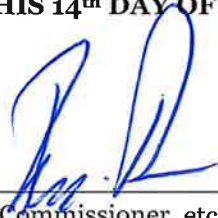
3. Attached hereto and marked as **Exhibit "A"** to this my affidavit are copies of invoices issued by TDB for fees incurred by TDB in respect of the receivership proceedings for the period November 1, 2024, to April 30, 2025 (the "**Period**"). The total fees charged for the Period are \$111,649.50, and HST of \$14,514.44 for a total of \$126,163.95. The average hourly rate charged during the Period was \$491.42.
4. The invoices are a fair and accurate description of the services provided and the amounts charged by TDB 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 at the City of )  
 Toronto, in the Province of Ontario, on the )  
 14<sup>th</sup> day of May 2025 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

  
 A Commissioner, etc., Province of Ontario,  
 for TDB Restructuring Limited.  
 Expires March 6, 2027.

  
 JEFFREY BERGER

**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF JEFFREY BERGER SWORN BEFORE ME  
THIS 14<sup>th</sup> DAY OF MAY 2025**



A Commissioner, etc.

Bryan Allan Tannenbaum,  
a Commissioner, etc., Province of Ontario,  
for TDB Restructuring Limited.  
Expires March 6, 2027.



**To** TDB Restructuring Limited  
Court-Appointed Interim Receiver of Thomas Dylan Suitor  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W, Suite 700  
Toronto, ON M5H 4C7

info@tdbadvisory.ca  
416-575-4440  
416-915-6228

tdbadvisory.ca

**Date** January 15, 2025

**Client File** 46-001  
**Invoice** TDB #3  
**No.** 2501012

For professional services rendered with respect to the appointment of TDB Restructuring Limited as Court-Appointed Interim Receiver of Thomas Dylan Suitor (the "Debtor") for the period November 1, 2024 to November 15, 2024.

Date	Professional	Description
11/1/2024	Nisan Thurairatnam	Receipt and review response from the Debtor re payment request; attend a call with J. Berger to discuss the payment request and to discuss call with employee; email to the Debtor approving payment and scheduling meeting.
11/1/2024	Jeff Berger	Call with N. Thurairatnam to discuss the payment request and to discuss call with employee.
11/4/2024	Jeff Berger	Receipt and review of email from N. Thurairatnam re discussion with the Debtor staff regarding payables and cash flow; discuss same with B. Tannenbaum; call with F. Tayar of Fred Tayar & Associates Professional Corporation re J. Rosekat request of the Interim Receiver to lift the stay of proceedings so that his client can bring another receivership application over one of the Related Entities as defined in the Interim Receivership Order.
11/4/2024	Bryan Tannenbaum	Discuss payables and cashflow with J. Berger.
11/4/2024	Nisan Thurairatnam	Prepare memo to file regarding confidential call that informed the Interim Receiver of several areas to look further into; attend a call with the Debtor's employee.
11/5/2024	Jeff Berger	Call with F. Tayar and N. Thurairatnam to discuss the apparent lack of cash inflow to certain entities and the Interim Receiver's ability to address same in view of the Appointment Order; review file in advance of call tomorrow.
11/5/2024	Nisan Thurairatnam	Attend a call with J. Berger and F. Tayar re request for cashflows from the Debtor; personal net worth statement; email to the Debtor re outstanding information request; review this week's payment request and respond re same.
11/6/2024	Jeff Berger	Call with N. Thurairatnam to discuss status of mandate in advance of call with counsel; call with the Debtor and N. Thurairatnam to review outstanding payables and discuss the status of outstanding information requested by the Interim Receiver; call with N. Thurairatnam and B. Tannenbaum preparing for call with Chaitons, Fuller Landau and KSV; call with G. Benchetrit of Chaitons LLP, J. Stam and L. Archibald of Norton Rose Fulbright Canada LLP, D. Sieradzki of KSV Advisory, K. Plunkett of Aird & Berlis LLP, F. Tayar, N. Thurairatnam and G. Abrahamson of Fuller Landau LLP to discuss general progress to date and the Interim Receiver's concerns about sharing certain

Date	Professional	Description
		confidential information with the lenders; follow-up call with F. Tayar and N. Thurairatnam re same.
11/6/2024	Nisan Thurairatnam	Attend a call with J. Berger to discuss status of mandate and documents provided; send J. Berger a consolidated list re status of mandate and identify outstanding items; call with J. Berger and the Debtor to review outstanding payables and discuss the status of outstanding information requested by the Interim Receiver; attend a call with J. Berger and B. Tannenbaum preparing for call with Chaitons, Fuller Landau and KSV; attend a call with J. Stam, J. Berger, F. Tayar, G. Benchetrit, L. Archibald, N. Thurairatnam to discuss status; attend a call with J. Berger and F. Tayar re Interim Receiver's action items.
11/6/2024	Bryan Tannenbaum	Call with J. Berger and N. Thurairatnam preparing for call with Chaitons, Fuller Landau and KSV.
11/8/2024	Jeff Berger	Call from the Debtor re outstanding information and payables for approval; discuss same with N. Thurairatnam; review updated information uploaded by the Debtor.
11/8/2024	Nisan Thurairatnam	Review draft letter from F. Tayar to T. Pagliaroli and provide comments re same; send an email to the Debtor to clarify what was approved for this week's payment request; email correspondence with the Debtor re subcontractors to be paid; review and approve same; discuss outstanding information and payables for approval with J. Berger.
11/11/2024	Nisan Thurairatnam	Receipt and review notice of lien on 10 Norfolk St; email correspondence with F. Tayar re same; email correspondence with F. Tayar re Court to authorize to share information; review email from J. Stam re call; emails with counsel re consent to share information.
11/11/2024	Nisan Thurairatnam	Attend a meeting with J. Berger and B. Tannenbaum to discuss all aspects of mandate.
11/11/2024	Bryan Tannenbaum	Meeting with N. Thurairatnam and J. Berger to discuss all aspects of mandate.
11/11/2024	Jeff Berger	Review and respond to email from J. Stam re request for a call to discuss whether the Interim Receiver can prepare a report to Court; exchange emails with F. Tayar re approval of payments, the Debtor's position with respect to the Interim Receiver sharing information with the Applicant, and registering the Interim Receivership Order on title to the properties owned by the Related Entities; attend a meeting with N. Thurairatnam and B. Tannenbaum to discuss all aspects of mandate.
11/12/2024	Donna Nishimura	Post Service List to the client webpage on the TDB website.
11/12/2024	Nisan Thurairatnam	Receipt and review of pre-filing report filed by MNP LLP re 1083 Main Street; emails with M. Cardinal re books and records; email correspondence with F. Tayar re registering Order on title; attending a call with the Debtor's staff re this week's payment request; review payment request and discuss same with J. Berger; send comments on payment request to the Debtor and his staff.
11/12/2024	Jeff Berger	Discuss payment request with N. Thurairatnam.
11/13/2024	Jeff Berger	Receipt and review of memo from N. Thurairatnam regarding outstanding payments for approval and other outstanding items; call with F. Tayar and N. Thurairatnam re need to bring a motion to vary the appointment order as the existing Order is too broad and the Interim Receiver does not have sufficient funds to utilize the full scope of its authority, among other concerns; call from J. Henechowicz of MNP re payments to be approved for 1083 Main St.; call with F. Tayar re same; call with J. Stam, J. Renihan, F. Tayar and N. Thurairatnam to discuss the Interim Receiver's ability and authority to prepare a report to Court regarding its findings to date; subsequent call with F. Tayar to discuss

Date	Professional	Description
		same, as well as Aird & Berlis' position with respect to the release of payments re 1083 Main St.
11/13/2024	Nisan Thurairatnam	Attend to several meetings with J. Berger re documents received; attend a call with J. Berger and F. Tayer to discuss registration on title; sale of properties; updated service list; payment to creditors of the related entities; receivership of 1083 Main; attend a call with F. Tayer and B. Lamba re title searches not matching address provided by the Debtor; attend a call with J. Stam, J. Renihan, F. Tayer and J. Berger re bankruptcy application and Interim Receiver's ability or non-ability to share information; review tax returns provided by the Debtor; review and discuss email from the Debtor re sale of properties and reduction to prices; attend a call with M. Cardinal re corporate records she has on her.
11/14/2024	Nisan Thurairatnam	Review email correspondence with S. Mitra and F. Tayar re 1083 receivership and work to be completed on site; review response from S. Mitra; attend to several emails re 1083; call with F. Tayar re urgent payment request for Grow Ontario; receipt and review email from KSV re liens on non-Balboa CCAA properties; arrange for searches and registrations on same; call with J. Berger and F. Tayar re property management firm's trust funds.
11/14/2024	Jeff Berger	Receipt of various emails from the Debtor and staff re urgent payments to be approved; call with F. Tayar re same; discuss issue re property management firm's trust funds with N. Thurairatnam and call with F. Tayar and N. Thurairatnam re same.
11/15/2024	Jeff Berger	Meet with F. Tayar to discuss the Interim Receiver's scope of authority as set out in the initial order and prepare motion materials and a report to the Court to address various issues encountered by the Interim Receiver to date; receipt and review of email from the Debtor re payments for approval, properties for sale, and other matters relating to the operation of the Related Entities; call with the Debtor, the Debtor's staff, and N. Thurairatnam to review the list of payments for approval and discuss the status of other information provided to the Interim Receiver (i.e., cash flows for payroll entities, pending sales of properties, various legal actions being taken in respect of assets of the Related Entities and other matters); receipt and review of email from F. Tayar re registration of Order on title to various properties owned by the Related Entities; correspond with F. Tayar and N. Thurairatnam re urgent approvals requested re sale of two properties.
11/15/2024	Tanveel Irshad	Call with N. Thurairatnam re control list for all owned property addresses; prepare control list for same; review several emails between Fred Tayar & Associates and GLG LLP re registered owners of the properties; update control list with registered owners and Order registrations.
11/15/2024	Nisan Thurairatnam	Receipt and review emails from F. Tayar and J. Stam re hearing; prepare First Report of the Interim Receiver; attend a call with J. Berger, the Debtor's staff and the Debtor re all outstanding matters; review emails regarding pending sales; review list of properties with Order registered on title and provide comments on outstanding properties; review PINs; emails to counsel re preference transfers; call with J. Berger re all aspects of mandate; correspond with F. Tayar and J. Berger re urgent approvals requested re sale of two properties.
		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
Jeff Berger, CPA, CA, CIRP, LIT	Managing Director	14.60	\$ 575	\$ 8,395.00
Nisan Thurairatnam, CPA	Manager	20.20	\$ 425	8,585.00
Tanveel Irshad	Associate	1.30	\$ 295	383.50
Donna Nishimura	Estate Administrator	0.20	\$ 150	30.00
<b>Total hours and professional fees</b>		<b><u>36.30</u></b>		\$ 17,393.50
HST @ 13%				2,261.16
<b>Total payable</b>				<b>\$ 19,654.66</b>

GST/HST: 80784 1440 RT0001





**To** TDB Restructuring Limited  
Court-Appointed Interim Receiver of Thomas Dylan Sutor  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W, Suite 700  
Toronto, ON M5H 4C7  
info@tdbadvisory.ca  
416-575-4440  
416-915-6228  
tdbadvisory.ca

**Date** January 15, 2025

**Client File** 46-001  
**Invoice** TDB #4  
**No.** 2501013

For professional services rendered with respect to the appointment of TDB Restructuring Limited as Court-Appointed Interim Receiver of Thomas Dylan Sutor (the "Debtor") for the period November 16, 2024 to November 30, 2024.

Date	Professional	Description
11/17/2024	Jeff Berger	Review and edit draft First Report of the Interim Receiver ("First Report"); email to F. Tayar of Fred Tayar & Associates Professional Corporation and N. Thurairatnam re same; call with F. Tayar, B. Tannenbaum and N. Thurairatnam to review the draft First Report and discuss the approval of pending property sales requested by D. Sutor, as well as other issues relating to the Interim Receiver's ongoing review of related entity transactions.
11/17/2024	Bryan Tannenbaum	Attend call with F. Tayar, J. Berger and N. Thurairatnam re edit of the First Report and potential sale of assets.
11/17/2024	Nisan Thurairatnam	Attend to emails between the Interim Receiver and F. Tayar re sale requests; prepare for call with J. Berger, B. Tannenbaum and F. Tayar; attend call re the First Report.
11/18/2024	Jennifer Hornbostel	Prepare fee affidavit.
11/18/2024	Jeff Berger	Call with D. Sutor and N. Thurairatnam to discuss various outstanding transaction approvals and cash flow projections for certain Related Entities; review and edit the First Report and email to F. Tayar and N. Thurairatnam re same.
11/18/2024	Nisan Thurairatnam	Update the First Report; review fee affidavit; email to D. Sutor re MT Deez Inc and MTDS Investments Inc.; attend a call with J. Berger and D. Sutor to go over the draft cashflows prepared by D. Sutor and his team.
11/19/2024	Jeff Berger	Review and finalize the First Report and appendices thereto; discuss same with B. Tannenbaum, N. Thurairatnam and F. Tayar.
11/19/2024	Tanveel Irshad	Review email correspondence from F. Tayar re registered owner of properties; update property address control list.
11/19/2024	Bryan Tannenbaum	Second partner read of the First Report; discuss same with F. Tayar, N. Thurairatnam and J. Berger.
11/19/2024	Nisan Thurairatnam	Review notice of motion and update First Report; attend to several calls with F. Tayar re same; review notice of motion; review draft order; attend a call with F. Tayar to edit report; discuss finalization of the First Report with F. Tayar, J. Berger and B. Tannenbaum; review emails re registration on title; identify

Date	Professional	Description
		additional properties of interest and arrange Order to be registered on same; review and approve this week's payment request.
11/20/2024	Donna Nishimura	Post Motion Record of the Interim Receiver and First Report to the client webpage on the TDB website.
11/20/2024	Bryan Tannenbaum	Teams call with F. Tayar, J. Berger and N. Thuraiatnam to discuss preparation and positions for Court tomorrow.
11/20/2024	Nisan Thuraiatnam	Attend a call with D. Suitor, J. Berger and D. Suitor's team to discuss the First Report, this week's payment request and the cashflow statements; review this week's payment request and request additional documents; receipt and review email from D. Suitor's counsel; attend a call with B. Tannenbaum, J. Berger and F. Tayar.
11/20/2024	Jeff Berger	Prepare for and attend call with N. Thuraiatnam, D. Suitor and his staff to review the weekly payment requests and discuss the First Report and motion to the Court; call with B. Tannenbaum, N. Thuraiatnam and F. Tayar to discuss the motion tomorrow and various parties' position re same.
11/21/2024	Tanveel Irshad	Call with N. Thuraiatnam about letter to D. Suitor re payment approval process; prepare and email same to N. Thuraiatnam.
11/21/2024	Donna Nishimura	Post Endorsement and Order to the client webpage on the TDB website.
11/21/2024	Nisan Thuraiatnam	Receipt and review outline of oral argument of D. Suitor's counsel; review email between F. Tayar and J. Stam of Norton Rose Fullbright Canada LLP; attend to calls with F. Tayar re edits to Order; attend Court virtually; receipt and review of Order and Endorsement; arrange for posting on website; review the additional documents provided by D. Suitor and approve this week's payment request; receipt and review email from D. Suitor re summary of meeting from yesterday; respond to all bullet points in D. Suitor's email; call with T. Irshad to discuss letter to D. Suitor re payment approval process.
11/21/2024	Bryan Tannenbaum	Attend Court; receipt and review of Court Endorsement and Order.
11/22/2024	Nisan Thuraiatnam	Respond to creditor inquiry; attend a call with same creditor; email correspondence and attend calls with F. Tayar re three properties in which lenders are looking to enforce a power of sale and/or D. Suitor is looking to sell; approving the payment of credit card and closing the account.
11/25/2024	Jeff Berger	Call with D. Suitor re receivership of Princess property and the Receiver's priority request for information; discussion with N. Thuraiatnam re new protocol for expense review given Court Order issued last week.
11/25/2024	Tanveel Irshad	Correspond with N. Thuraiatnam re liquidation analysis in the event of a bankruptcy; prepare and discuss same with N. Thuraiatnam.
11/25/2024	Nisan Thuraiatnam	Discussion with T. Irshad re liquidation analysis in the event of a bankruptcy; review same and provide to J. Berger; receipt and review cashflows provided by D. Suitor; review all cashflows and send list of questions to D. Suitor; email correspondence with one creditor re their promissory note; receipt and review procedure document; edit same and provide to J. Berger for review; email to GLG LLP re properties to register Order on title to.
11/26/2024	Nisan Thuraiatnam	Attend a call with Fuller Landau LLP and J. Berger re documents received to date; attend to several emails re the sale of 362 Donovan; attend a call with F. Tayar and J. Berger re same.
11/26/2024	Jeff Berger	Prepare for and attend meeting with G. Abrahamson of Fuller Landau and N. Thuraiatnam to review information provided to date and discuss next steps re review of information provided; call with F. Tayar and N. Thuraiatnam re sale of two properties requested by D. Suitor and F. Tayar's discussions with counsel to D. Suitor.



Date	Professional	Description
11/26/2024	Donna Nishimura	Post Service List to the client webpage on the TDB website.
11/27/2024	Jeff Berger	Review and edit letter to D. Suitor re payment approval process; call with F. Tayar and N. Thurairatnam to discuss payment approval process and funding of the administration; call with D. Suitor and his team, and N. Thurairatnam to discuss new payment approval process and specific payments, as well as other receivership proceedings and the requested sale of real property.
11/27/2024	Nisan Thurairatnam	Receipt and review comments from J. Berger on letter to D. Suitor re payment approval process; attend a call with J. Berger re same; attend a call with J. Berger and F. Tayar to discuss among other things the draft letter to be sent to D. Suitor; attend a call with D. Suitor and J. Berger re payment protocol; review emails between D. Suitor's counsel and F. Tayar; respond re same.
11/28/2024	Jeff Berger	Call with F. Tayar and B. Tannenbaum to discuss funding issues; email to prospective lender to arrange a call to discuss an advance pursuant to a Receiver's Certificate; review various emails from counsel re urgent motion being brought by D. Suitor to seek approval of the sale of real property.
11/28/2024	Bryan Tannenbaum	Call with F. Tayar and J. Berger to discuss funding issues.
11/28/2024	Nisan Thurairatnam	Follow up with GLG LLP re property searches and registration on title; prepare a draft memo re documents received and work completed on those documents; send draft to J. Berger; review emails from D. Suitor re this week's payment approval.
11/29/2024	Nisan Thurairatnam	Edit email to Fuller Landau; send draft to F. Tayar; update email to reflect F. Tayar's comments and send same to Fuller Landau with respective documents.
11/29/2024	Jeff Berger	Email to G. Abrahamson re fees to date and next steps; review of email from G. Abrahamson re same; call with potential lender.
		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	Managing Director	2.00	\$ 695	\$ 1,390.00
Jeff Berger, CPA, CA, CIRP, LIT	Managing Director	12.60	\$ 575	7,245.00
Nisan Thurairatnam, CPA	Manager	20.70	\$ 425	8,797.50
Tanveel Irshad	Associate	3.30	\$ 295	973.50
Jennifer Hornbostel/Donna Nishimura	Estate Administrator	1.00	\$ 150	150.00
<b>Total hours and professional fees</b>		<b>39.60</b>		\$ 18,556.00
HST @ 13%				2,412.28
<b>Total payable</b>				<b>\$ 20,968.28</b>



**To** TDB Restructuring Limited  
Court-Appointed Interim Receiver of Thomas Dylan Sutor  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W., Suite 700  
Toronto, ON M5H 4C7  
info@tdbadvisory.ca  
416-575-4440  
416-915-6228  
tdbadvisory.ca

**Date** January 30, 2025

**Client File** 46-001  
**Invoice** TDB #5  
**No.** 2501036

For professional services rendered with respect to the appointment of TDB Restructuring Limited as Court-Appointed Interim Receiver of Thomas Dylan Sutor (the "Debtor") for the period December 1, 2024 to December 31, 2024.

Date	Professional	Description
12/2/2024	Tanveel Irshad	Review email from C. Rubie re PIN searches for certain addresses; update liquidation analysis schedule and email same to N. Thurairatnam.
12/2/2024	Nisan Thurairatnam	Correspond with creditor; approve this week's payment requests; approve special request for repairs due to break-in.
12/3/2024	Nisan Thurairatnam	Receipt and review of the Endorsement of the Honourable Justice Penny; arrange to post on case webpage.
12/3/2024	Donna Nishimura	Post Endorsement to the case webpage on the TDB website.
12/3/2024	Jeff Berger	Prepare for and attend hearing re sale approval motion brought by D. Sutor; arrange call with G. Abrahamson of Fuller Landau LLP to discuss the Interim Receiver's mandate and ongoing support; arrange call with J. Henechowicz of MNP LLP re 1083 Main St. receivership.
12/4/2024	Nisan Thurairatnam	Email correspondence with D. Sutor re need for call and topics to discuss.
12/4/2024	Jeff Berger	Call with B. Tannenbaum and G. Abrahamson to discuss the status of the Interim Receiver's administration and next steps pending the bankruptcy hearing in February, 2025.
12/4/2024	Bryan Tannenbaum	Teams call with G. Abrahamson and J. Berger re Interim Receiver's responsibilities.
12/5/2024	Nisan Thurairatnam	Review this week's payment request and approve same.
12/6/2024	Nisan Thurairatnam	Attend a call with D. Sutor and finance team regarding detailed email from D. Sutor with all requests he has this week for approval; review email and corresponding attachments and approve many of the line items.
12/9/2024	Nisan Thurairatnam	Prepare an analysis regarding all action items required to complete administration.
12/10/2024	Jeff Berger	Review emails from D. Sutor and responses from N. Thurairatnam.
12/10/2024	Nisan Thurairatnam	Receipt and review articles and links provided by a creditor.
12/11/2024	Nisan Thurairatnam	Further edits to estimated professional fee workbook; receipt and review of email from D. Sutor to MNP; attend a call with D. Sutor to discuss this week's payable request and other outstanding items.

Date	Professional	Description
12/13/2024	Jeff Berger	Review emails from J. Henechowicz and D. Suitor re funds owing between Grow Ontario Property Management ("GOPM") and related entities in receivership with MNP; call with J. Henechowicz re same; email to J. Henechowicz setting out the Interim Receiver's position with respect to funds held by GOPM and the disbursement of same.
12/16/2024	Jeff Berger	Email to G. Abrahamson re status of Interim Receivership and next steps.
12/17/2024	Jeff Berger	Call with D. Suitor and his team to review the GOPM reconciliations and other outstanding payment issues; call with G. Abrahamson re related entity schedule provided by D. Suitor.
12/18/2024	Nisan Thuraiaratnam	Review this week's payment request and approve several payments.
12/19/2024	Bryan Tannenbaum	Call with F. Tayar of Fred Tayar & Associates Professional Corporation, J. Berger and N. Thuraiaratnam re status and fee.
12/19/2024	Nisan Thuraiaratnam	Attend a call with F. Tayar, J. Berger and B. Tannenbaum re status and fee issue; prepare email to D. Suitor re steps for GOPM and for Promissory Notes.
12/19/2024	Jeff Berger	Call with F. Tayar, N. Thuraiaratnam and B. Tannenbaum re status and fee issue.
12/20/2024	Jeff Berger	Review and respond to emails from G. Abrahamson and J. Stam of Norton Rose Fulbright Canada LLP re funding of Interim Receivership and next steps; call with D. Suitor and Peakhill Capital regarding funds held by GOPM and timing of release to fund Peakhill Capital mortgages.
12/23/2024	Bryan Tannenbaum	Review many emails regarding our position and arrange a call with counsel for the appointing creditors.
12/23/2024	Nisan Thuraiaratnam	Receipt and review of draft email from J. Berger to D. Suitor re GOPM release of payments.
12/26/2024	Bryan Tannenbaum	Teams call with G. Benchetrit of Chaitons LLP, G. Abrahamson, J. Stam and J. Berger re status and funding issues.
12/26/2024	Jeff Berger	Teams call with G. Benchetrit, G. Abrahamson, J. Stam and B. Tannenbaum re status and funding issues.
		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	Managing Director	2.20	\$ 695	\$ 1,529.00
Jeff Berger, CPA, CA, CIRP, LIT	Managing Director	5.60	\$ 575	3,220.00
Nisan Thuraiaratnam, CPA	Manager	6.90	\$ 425	2,932.50
Tanveel Irshad	Associate	0.10	\$ 295	29.50
Donna Nishimura	Estate Administrator	0.10	\$ 150	15.00
<b>Total hours and professional fees</b>		<b>14.90</b>		\$ 7,726.00
HST @ 13%				1,004.38
<b>Total payable</b>				<b>\$ 8,730.38</b>



**To** TDB Restructuring Limited  
 Court-Appointed Interim Receiver of Thomas Dylan Sutor  
 11 King Street West, Suite 700  
 Toronto, ON M5H 4C7

**TDB Restructuring Limited**  
 Licensed Insolvency Trustee

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 Toronto, ON M5H 4C7  
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**Date** March 11, 2025

**Client File** 46-001  
**Invoice** TDB #6  
**No.** 2503010

For professional services rendered with respect to the appointment of TDB Restructuring Limited as Court-Appointed Interim Receiver of Thomas Dylan Sutor (the "Debtor") for the period January 1, 2025 to January 31, 2025.

Date	Professional	Description
1/2/2025	Bryan Tannenbaum	Review email from a creditor re rent payments; email to J. Berger and his response that she is a note holder.
1/2/2025	Jennifer Hornbostel	Prepare and post payments.
1/6/2025	Nisan Thurairatnam	Review email correspondence re the payment of January rents directly to Hamilton Road and Picton.
1/6/2025	Jeff Berger	Review and respond to emails from D. Sutor re release of payments from Grow Ontario Property Management ("GOPM"); discuss same with N. Thurairatnam as well as other outstanding issues to be addressed.
1/7/2025	Nisan Thurairatnam	Review all emails and documents provided by D. Sutor and his finance team over the last two weeks; attend a call with J. Berger re same.
1/7/2025	Jeff Berger	Review of file in preparation for call with D. Sutor and N. Thurairatnam; review latest reports uploaded to iManage by D. Sutor.
1/7/2025	Jennifer Hornbostel	Post transaction.
1/8/2025	Jeff Berger	Call with D. Sutor, his employee and N. Thurairatnam re MNP LLP receivership inquiries, Fuller Landau LLP request for information, update re cash-flow forecast and GOPM balances, etc.
1/8/2025	Nisan Thurairatnam	Attend a call with D. Sutor, his employee and J. Berger to discuss all outstanding items on file, including but not limited to receivership requests from MNP, GOPM transition and personal spending.
1/9/2025	Nisan Thurairatnam	Receipt and review of email from D. Sutor to S. Shrivastava re January rents to be pulled; receipt and review of email from D. Sutor re National Bank enforcement on personal residence; respond re same; review follow-up email from D. Sutor re National Bank enforcement; receipt and review of detailed email from D. Sutor re all outstanding items; provide response re same; approve certain items and request further information on others.
1/10/2025	Nisan Thurairatnam	Email correspondence with D. Sutor re several requests and outstanding items; review uploaded documents and send further questions to D. Sutor; receipt and review of email from D. Sutor re his litigation lawyer is prepared to remove liens from Silva Built and review J. Berger's email approving same.

Date	Professional	Description
1/13/2025	Jeff Berger	Review emails from D. Suitor and N. Thurairatnam re transfer/loan from Elev8 Inc. to certain related entities to assist with immediate cash flow requirements; discuss same with N. Thurairatnam; review emails from F. Tayar of Fred Tayar & Associates Professional Corporation re same.
1/13/2025	Nisan Thurairatnam	Attend a call with D. Suitor re the transfer of funds from Elev8 Inc. to 642 Hamilton; review email and supporting documents; discuss same with J. Berger and F. Tayar, separately.
1/13/2025	Jennifer Hornbostel	Prepare payment.
1/14/2025	Nisan Thurairatnam	Email correspondence with F. Tayar re the approval for D. Suitor to inject funds from holding company into operating company; review emails from D. Suitor to one of his lenders (creditor) re payment has now been processed.
1/15/2025	Jeff Berger	Receipt and review of D. Suitor responding materials in the bankruptcy application proceedings; email to F. Tayar re same; call with D. Suitor and N. Thurairatnam to discuss weekly disbursement requests and ongoing issues re intercompany transfer requests, renovations, etc.
1/15/2025	Nisan Thurairatnam	Call with D. Suitor and J. Berger to discuss weekly disbursement requests and ongoing issues re intercompany transfer requests, renovations, etc.
1/16/2025	Donna Nishimura	Post Service List to the client webpage on the TDB website.
1/16/2025	Jennifer Hornbostel	Prepare and post payment.
1/17/2025	Jeff Berger	Review and respond to email from J. Henechowicz of MNP re distribution of funds from GOPM; receipt and review of correspondence between N. Thurairatnam and D. Suitor re outstanding matters to be addressed.
1/17/2025	Nisan Thurairatnam	Receipt and review of email from J. Carhart of Miller Thomson LLP re National Bank to not end relationship with D. Suitor; review responding application record of D. Suitor; review Affidavit of C. Drage; review responding materials from D. Suitor; review letter to GOPM clients re release of last month rent and deposit; discuss same with F. Tayar; edit same and send to D. Suitor; review D. Suitor's email to inject capital from holding corp. to operating corp. for renovations; approve same.
1/21/2025	Jeff Berger	Review various emails from D. Suitor re enforcement actions from National Bank and Sabbatical Holdings; call with N. Thurairatnam and D. Suitor to discuss same; discussion with J. Henechowicz re status of payments from GOPM to 1083 Main and 17-19 Collier.
1/21/2025	Nisan Thurairatnam	Review email from creditor re missed payments; receipt and review of email from D. Suitor re enforcement actions and request for a meeting; review documents sent by D. Suitor and discuss same with D. Suitor; attend a call with D. Suitor and J. Berger to discuss D. Suitor's concerns on enforcement actions.
1/22/2025	Jeff Berger	Review of email from D. Suitor re reconciliation of GOPM accounts and payment to MNP re amounts held by GOPM; review and respond to email from J. Henechowicz re same; call from D. Suitor re pending enforcement proceedings and payments to MNP.
1/22/2025	Nisan Thurairatnam	Email correspondence with D. Suitor re listing agreement commission and payment of NSF fees; response re 30-day review period to allow sufficient time for everyone to review; receipt and review of several emails from D. Suitor and J. Henechowicz re the payment of rent collected by GOPM; review emails between D. Suitor and a creditor re payment of November and December interest.
1/23/2025	Jeff Berger	Review and respond to email from F. Tayar re motion filed by Libro Credit Union ("Libro") and the Interim Receiver's response to same.



Date	Professional	Description
1/23/2025	Nisan Thuraiaratnam	Receipt and review of motion record of Libro; review comments by J. Berger and F. Tayar.
1/27/2025	Nisan Thuraiaratnam	Receipt and review of Order and Endorsement of J. Nicholson re granting possession of Tecumseh Road.
1/28/2025	Nisan Thuraiaratnam	Receipt and review of list of outstanding items from D. Suitor; respond re same; review all bank accounts for the last two weeks; review automatic approval sheet; review personal spending budget to actual workbook; review GOPM client's waivers; review update on sale of Westcott; review credit cards and send questions to D. Suitor; approve D. Suitor retaining employees on a contractor basis.
1/29/2025	Jeff Berger	Call with N. Thuraiaratnam and D. Suitor re weekly disbursements and various issues that require the Interim Receiver's authorization pursuant to the Order.
1/29/2025	Nisan Thuraiaratnam	Email correspondence with F. Tayar re D. Suitor's request for approval of legal fee payment; review email from D. Suitor on uploaded items and outstanding items; review same and ask question on call; attend a call with J. Berger and D. Suitor; email to a creditor re payment of interest and/or principal.
1/30/2025	Nisan Thuraiaratnam	Review documents provided by D. Suitor re the purchase and refund of a pre-construction condo; review payment receipts; review D. Suitor's legal invoices and approve payment using deposit refund.
		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	Managing Director	0.10	\$ 750	\$ 75.00
Jeff Berger, CPA, CA, CIRP, LIT	Managing Director	7.10	\$ 595	4,224.50
Nisan Thuraiaratnam, CPA	Manager	17.60	\$ 450	7,920.00
Jennifer Hornbostel/Donna Nishimura	Estate Administrator	1.00	\$ 195	195.00
<b>Total hours and professional fees</b>		<b>25.80</b>		\$ 12,414.50
HST @ 13%				1,613.89
<b>Total payable</b>				<b>\$ 14,028.39</b>

\* Annual increase in rates effective January 1, 2025.



**To** TDB Restructuring Limited  
Court-Appointed Interim Receiver of Thomas Dylan Sutor  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W., Suite 700  
Toronto, ON M5H 4C7

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**Date** May 14, 2025

**Client File** 46-001

**Invoice** TDB #7

**No.** 2505015

For professional services rendered with respect to the appointment of TDB Restructuring Limited as Court-Appointed Interim Receiver of Thomas Dylan Sutor (the "Debtor") for the period February 1, 2025 to April 30, 2025.

Date	Professional	Description
2/3/2025	Nisan Thurairatnam	Receipt and review of email from D. Sutor re deal on Westcott; respond re same; attend a call with a creditor of D. Sutor re claims against D. Sutor and/or the related entities; receipt and review of email from D. Sutor re record of employment for himself and dividends to flow from PREC going forward; receipt and review of client letter from F. Tayar of Fred Tayar & Associates Professional Corporation; review letter from F. Tayar to M. Douglas re Downie and Main Street.
2/5/2025	Nisan Thurairatnam	Review January budget with actual personal spending; review all bank accounts; review all credit card statements; review last month rent signed releases and schedule showing funds available to distribute; email to D. Sutor to discuss, among other things, last month rent, payment of salary and certain charges on the credit cards.
2/5/2025	Jeff Berger	Receipt and review of email from D. Sutor with updated financial information and requests for approval; receipt and review of N. Thurairatnam response re same.
2/6/2025	Nisan Thurairatnam	Attend a call with D. Sutor re outstanding payment approval; review uploaded documents and emails from D. Sutor.
2/7/2025	Nisan Thurairatnam	Attend a call with a creditor, explain the process of interim receivership and the bankruptcy application; review email from D. Sutor re last month rent; review signed waivers from related companies; review Grow Ontario Property Management ("GOPM") draft waiver for MNP to sign; send email to J. Berger re same.
2/10/2025	Nisan Thurairatnam	Receipt and review of email from F. Tayar re a creditor of D. Sutor; response re same; review email from D. Sutor re last month rent.
2/11/2025	Nisan Thurairatnam	Email correspondence with D. Sutor re waiver to MNP; review all updated bank documents re payments made in previous week; receipt and review of email from a creditor; email to J. Berger re same; email to F. Tayar re same.
2/12/2025	Anne Baptiste	Prepare bank reconciliation.
2/12/2025	Nisan Thurairatnam	Prepare for and attend a call with D. Sutor and J. Berger re all outstanding matters.

Date	Professional	Description
2/12/2025	Jeff Berger	Attend a call with D. Suitor and N. Thuraiatnam re all outstanding matters.
2/12/2025	Jennifer Hornbostel	Post receipt from pre-filing account.
2/13/2025	Jeff Berger	Receipt of various emails from F. Tayar and D. Suitor re demands from National Bank and BDC; attend a call with D. Suitor and N. Thuraiatnam re same; email to F. Tayar to request a call.
2/13/2025	Nisan Thuraiatnam	Receipt and review of enforcement documents from National Bank; attend a call with J. Berger and D. Suitor re same; review Notice of Motion from D. Suitor's counsel.
2/14/2025	Jeff Berger	Attend a call with F. Tayar and N. Thuraiatnam to discuss various demand notices from National Bank and BDC; attend a call with D. Suitor and N. Thuraiatnam re D. Suitor's proposed response to demand letters and questions about the stay pursuant to the Interim Receivership Order.
2/14/2025	Nisan Thuraiatnam	Attend a call with J. Berger and F. Tayar re demands from creditors; attend a call with D. Suitor and J. Berger re same.
2/18/2025	Jeff Berger	Receipt and review of email from Trustee re debtor's interest in 10 Norfolk; email to N. Thuraiatnam re same; receipt and review of supplementary motion materials filed by Norton Rose.
2/18/2025	Nisan Thuraiatnam	Follow up with J. Henechowicz (MNP) re the signed releases; receipt and review of The Factum of The Fuller Landau Group Inc. and the Supplementary Application Record of Fuller Landau Group Inc.
2/19/2025	Jeff Berger	Weekly update call with D. Suitor and N. Thuraiatnam; review email from N. Thuraiatnam to F. Tayar re pending sales; review email from J. Henechowicz re response to last month rent for GOPM.
2/19/2025	Bryan Tannenbaum	Brief review of the Factum and Supplementary Report of Fuller Landau.
2/19/2025	Nisan Thuraiatnam	Email to D. Suitor re following up with MNP; attend a call with D. Suitor re all aspects of mandate and discuss outstanding items.
2/20/2025	Jeff Berger	Attend a call with N. Thuraiatnam and F. Tayar re D. Suitor's request for approval of property sale; attend a call with J. Stam of Norton Rose re Receiver's position re same; receipt and review of various correspondence from D. Suitor re APS for property and the Interim Receiver's questions re same.
2/20/2025	Nisan Thuraiatnam	Receipt and review of email from J. Henechowicz re last month rent; attend a call with F. Tayar and J. Berger to discuss proposed sale; exchange several emails with D. Suitor re all aspects of mandate along with the proposed sale transaction; correspond with M. Wentland, Farber, re 10 Norfolk.
2/21/2025	Nisan Thuraiatnam	Prepare for and attend a call with S. Quigg (Cardinal law) to discuss documents required for the sale of the property.
2/24/2025	Jeff Berger	Call from J. Henechowicz re release letter for GOPM and last month rent balances; review Caselines materials in advance of hearing.
2/24/2025	Nisan Thuraiatnam	Receipt and review of email follow up from D. Suitor to MNP; email to S. Quigg re all documents for the sale of the property.
2/25/2025	Nisan Thuraiatnam	Receipt and review of all bank statements and credit card transactions for the week; receipt and review of email from S. Quigg on property sale.
2/25/2025	Jeff Berger	Attend the bankruptcy order hearing.
2/26/2025	Nisan Thuraiatnam	Attend a call with D. Suitor to approve medical expense; prepare for and attend a call with D. Suitor re all outstanding matters; review emails from D. Suitor and S. Quigg re property sale.
2/27/2025	Nisan Thuraiatnam	Email correspondence with S. Quigg re property sale agreement; review several documents sent regarding this proposed transaction.



Date	Professional	Description
2/28/2025	Tanveel Irshad	Attend a call with N. Thurairatnam re preparation of detailed email re approval of sale with property; prepare same.
2/28/2025	Nisan Thurairatnam	Attend to two calls from creditors on update of the bankruptcy hearing; attend a call with a lawyer from Katzman Litigators regarding same update; review documents for property sale (trust ledger, discharge statement, joint venture agreement, bank summaries, journal entries, corporate tax returns, APS and deposit documents); email explanations from D. Sutor and S. Quigg; discuss same with T. Irshad; send summary to F. Tayar and J. Berger.
3/3/2025	Jeff Berger	Attend a call with N. Thurairatnam and F. Tayar re pending enforcement actions and the Interim Receiver's actions with respect to same.
3/3/2025	Nisan Thurairatnam	Attend a call with F. Tayar and J. Berger re pending enforcement actions and the Interim Receiver's actions with respect to same.
3/5/2025	Tanveel Irshad	Provide N. Thurairatnam with list of registered mortgages.
3/5/2025	Jeff Berger	Review weekly updates in advance of call with D. Sutor and N. Thurairatnam; discuss same with N. Thurairatnam.
3/5/2025	Nisan Thurairatnam	Discuss weekly updates with J. Berger.
3/6/2025	Nisan Thurairatnam	Review email from J. Berger re D. Sutor's properties listed for sale publicly; review addresses and confirm same; attend a call with D. Sutor to discuss outstanding matters including GOPM payments, bankruptcy order, sale of his properties; follow up with F. Tayar re Trust Agreement discussion.
3/7/2025	Bryan Tannenbaum	Receipt and review of J. Rosekat email regarding court date for bankruptcy hearing; response sent.
3/7/2025	Jeff Berger	Call with F. Tayar and N. Thurairatnam re D. Sutor's request for approval of sale and response to same; review draft letter from F. Tayar to T. Dunn re same; discuss other file matters with N. Thurairatnam.
3/7/2025	Nisan Thurairatnam	Review email from T. Dunn; receipt and review of letter from MNP re outstanding balances owed by GOPM; receipt and review of email from F. Tayar re 1000023127 Ontario sale; attend a call with F. Tayar and J. Berger re 1000023127 Ontario Inc. and the proposed sale; receipt and review of draft letter to T. Dunn from F. Tayar; discuss other file matters with J. Berger.
3/10/2025	Jeff Berger	Review of letter from T. Dunn; discuss same with N. Thurairatnam; attend a call with F. Tayar and N. Thurairatnam to discuss response to T. Dunn.
3/10/2025	Nisan Thurairatnam	Receipt and review of letter from T. Dunn; discuss same with J. Berger; attend a call with J. Berger and F. Tayar re response to T. Dunn.
3/11/2025	Jeff Berger	Review F. Tayar's draft letter to T. Dunn and discuss same with N. Thurairatnam.
3/11/2025	Nisan Thurairatnam	Receipt and review of draft letter to T. Dunn; discuss same with J. Berger; edit same and send to F. Tayar.
3/12/2025	Jeff Berger	Various calls with D. Sutor, N. Thurairatnam and F. Tayar re pending sale of properties and the request for the Interim Receiver's consent re same; call with N. Thurairatnam and B. Tannenbaum re same.
3/12/2025	Bryan Tannenbaum	Teams call with J. Berger and N. Thurairatnam regarding issues relating to sale of half interest in property where the Interim Receiver is being asked at the last minute to consent to closing today.
3/12/2025	Nisan Thurairatnam	Attend a call with J. Berger and D. Sutor re closing of potential transaction; attend a call with F. Tayar and J. Berger re same; attend a call with J. Berger and B. Tannenbaum to confirm approach with B. Tannenbaum; attend a call with D. Sutor and J. Berger to inform D. Sutor of the Interim Receiver's position on the sale; review all documents regarding this matter and ensure the Interim Receiver's understanding and position is documented.

Date	Professional	Description
3/13/2025	Jeff Berger	Receipt and review of letter from T. Pagliaroli; attend a call with F. Tayar re same; attend a call with F. Tayar and T. Pagliaroli re same; attend a call with J. Stam to discuss T. Pagliaroli's letter and Fuller Landau's position, if any, with respect to the Interim Receiver's position; follow-up email to F. Tayar re status and outcome of his subsequent call with T. Pagliaroli; call with N. Thurairatnam re same.
3/13/2025	Nisan Thurairatnam	Email to D. Sutor re update on potential sale of property; receipt and review of update from D. Sutor; review letter from T. Pagliaroli; review appraisal; attend a call with J. Berger re his call with F. Tayar and status of same.
3/14/2025	Nisan Thurairatnam	Receipt and review of all payments made for the period ending March 4; receipt and review of all payments made for the period ending March 11.
3/17/2025	Anne Baptiste	Prepare bank reconciliation – Retainer.
3/17/2025	Nisan Thurairatnam	Discuss with J. Berger re status of potential sale; email to F. Tayar re same.
3/17/2025	Jeff Berger	Discuss status of potential sale with N. Thurairatnam.
3/18/2025	Jeff Berger	Receipt and review of letter from F. Tayar; discuss status of sales with N. Thurairatnam.
3/18/2025	Nisan Thurairatnam	Receipt and review of letter from F. Tayar to T. Pagliaroli; attend a call with a creditor; discuss status of sales with J. Berger.
3/19/2025	Jeff Berger	Weekly update call with N. Thurairatnam and D. Sutor to discuss GOPM reconciliation, status of sale of properties, and other matters.
3/19/2025	Nisan Thurairatnam	Prepare for and attend a weekly update call with J. Berger and D. Sutor to discuss GOPM reconciliation, status of sale of properties, and other matters.
3/21/2025	Nisan Thurairatnam	Email correspondence with a creditor of the entity that sold the Windsor property; receipt and review of email from D. Sutor re proposed sales process; draft comments re same.
3/24/2025	Nisan Thurairatnam	Attend a call with an unsecured promissory note holder re the sale of the Windsor property; advise creditor of steps regarding the distribution of funds from the sale.
3/27/2025	Bryan Tannenbaum	Teams call with F. Tayar, J. Stam and J. Berger re possibility of appeal and strategy to deal with the assets.
3/28/2025	Bryan Tannenbaum	Receipt and review of Notice of Appeal by D. Sutor; teams call with D. Sutor, T. Pagliaroli, V. Mishra, F. Tayar and J. Berger re status of proceedings and game plan; debrief call with F. Tayar and J. Berger.
3/28/2025	Jeff Berger	Receipt and review of Notice of Appeal; discuss same with F. Tayar; prepare for and attend call with T. Pagliaroli, V. Mishra, F. Tayar, B. Tannenbaum and D. Sutor to discuss the automatic stay of the bankruptcy order and the protocol during the appeal, including how to deal with the bankrupt's assets pending the outcome of the appeal.
3/29/2025	Jeff Berger	Receipt and review of email from D. Sutor re lapsed insurance at 388 Downie; email to D. Sutor re same; email to broker to explain that there is no bankruptcy or receivership in effect with respect to 388 Downie, and accordingly, no material change in risk; attend a call from broker re same.
3/30/2025	Nisan Thurairatnam	Review D. Sutor's Supplementary Affidavit; review email from J. Berger re same; receipt and review of email from T. Van Klink re BDC's enforcement steps for 1391 Ontario Street; receipt and review of several emails re follow-ups with banks on D. Sutor's accounts.
3/31/2025	Nisan Thurairatnam	Receipt and review of Notice of Appeal and Appellant's Certificate; attend a call with J. Berger re all aspects of mandate; receipt and review of email from V. Mishra to F. Tayar re cases re stay of professional fees; discuss supplementary affidavit internally and send email to D. Sutor re same; receipt and review of

Date	Professional	Description
		email re insurance coverage for 388 Downie; review exterior photos of 388 Downie; review signed renewal for 388 Downie; review voicemail from lawyers for creditor; attend a call Latzman Litigation back to discuss bankruptcy; prepare and send asset listing to realtor to determine value of liquidation; arrange call with J. Berger and D. Suitor.
3/31/2025	Jeff Berger	Attend a call with J. Stam re need to bring a motion for advice and direction regarding the status of the Interim Receivership order, the preservation of assets during the appeal period, etc.; discuss status of enforcement against D. Suitor's assets with J. Stam; receipt and review of email from D. Suitor re various outstanding questions to be addressed; arrange for bankruptcy order and Notice of Appeal to be posted to TDB's web page; call with N. Thurairatnam to review latest developments and discuss next steps re preservation of assets.
4/1/2025	Jeff Berger	Receipt and review of additional information uploaded by D. Suitor to the Trustee's share-folder; attend a call with D. Suitor and N. Thurairatnam to review cash flows and equity on a property-by-property basis, as well as D. Suitor's opinion on the best way to maximize value from each property; attend a call with F. Tayar and N. Thurairatnam to discuss motion to be brought by J. Stam re lifting of the stay of the bankruptcy order in order to provide clarity to the Trustee regarding its authority to preserve and realize on assets.
4/1/2025	Nisan Thurairatnam	Compile and send rent rolls to realtor; attend a call with J. Berger and D. Suitor to discuss all aspects of the mandate and speaking about all the properties; attend a call with J. Berger and F. Tayar re assets of D. Suitor and potential next steps; receipt and review of email from D. Suitor to S. Quigg re accounting of funds from sale of property; receipt and review of email from F. Tayar to J. Stam re cancellation of the stay of proceedings and the case RBC v. Bodanis; receipt and review of email from J. Berger to F. Tayar re 1391 Ontario and enforcement; review F. Tayar's response re same.
4/1/2025	Tanveel Irshad	Review emails re bank accounts with TD and BMO; review emails re affidavit of the bankrupt; respond to TD re Trustee's information.
4/2/2025	Jeff Berger	Receipt and review of proposed protocol from D. Suitor; discuss same with N. Thurairatnam; attend a call with broker to obtain preliminary estimates of value for all properties; receipt and review of email from F. Tayar to J. Stam re motion for advice and directions; review email from S. Quigg re proceeds of sale re Westcott; review email from N. Thurairatnam to F. Tayar re same; discuss same with N. Thurairatnam; call from J. Henechowicz re D. Suitor purportedly attempting to sell assets subject to a receivership order; receipt and review of email from J. Henechowicz re same; discuss letter on Wescott and the 1000023127 Ontario Inc. trust ledger with N. Thurairatnam.
4/2/2025	Nisan Thurairatnam	Receipt and review email from S. Quigg re funds from sale of property and the bare trustee/joint-venture agreement; respond to S. Quigg re same; receipt and review email from TD insolvency team; review T. Irshad's response re same; review email from J. Stam; review J. Berger and F. Tayar's response re same; receipt and review of email from D. Suitor re protocol; edit same and send to J. Berger; discuss same with J. Berger; receipt and review email from S. Quigg; review letter on Wescott and the 1000023127 Ontario Inc. trust ledger; discuss same with J. Berger and send email to F. Tayar re same; attend a call with Katzman Litigation re Bankruptcy Order; review email from S. Quigg re instructions are from the Company; email to F. Tayar re same and discuss with J. Berger.
4/3/2025	Nisan Thurairatnam	Receipt and review of email chain forwarded by MNP re D. Suitor acting on a company in receivership; receipt and review of several emails between F. Tayar and J. Berger re email from S. Quigg; receipt and review of email from J. Stam; receipt and review of email from N. Webster re debt on certain properties;

Date	Professional	Description
		respond re same; receipt and review of several detailed emails from D. Suitor re entire process and payment procedure.
4/4/2025	Tanveel Irshad	Receipt and review of email from FCT on behalf of TD; discuss same with J. Berger; response email sent; review subsequent emails re same; email J. Berger re status of creditors package which was requested by TD.
4/4/2025	Jeff Berger	Receipt and review of emails from secured lenders' counsel seeking to enforce on various mortgages; attend to calls and emails to F. Tayar re same; attend to a call with J. Stam re motion to be brought with respect to the stay of the bankruptcy order.
4/4/2025	Nisan Thurairatnam	Receipt and review of email from T. Van Klink re 1391 Ontario St.; review emails from J. Berger and F. Tayar re same.
4/7/2025	Jeff Berger	Review of emails from prior week; call from mortgagee re 38 Duncan and possible enforcement; call with F. Tayar, B. Tannenbaum, J. Carhart and P. Corney re National Bank's enforcement against King and Fassel; review and respond to emails re accounts frozen at TD bank and status of same; discussion with F. Tayar re T. Van Klink email re enforcement efforts from BDC and BMO.
4/7/2025	Tanveel Irshad	Request creditor's package from N. Thurairatnam to provide to TD; discuss same with N. Thurairatnam; response email sent to TD bank; review response email from TD.
4/7/2025	Bryan Tannenbaum	Teams call with Miller Thompson (J. Carhart/P. Cooney) for National Bank, F. Tayar and J. Berger to discuss status of National Bank properties.
4/7/2025	Nisan Thurairatnam	Receipt and review of email from D. Domenichini, secured creditor; review documents provided and save to iManage; receipt and review of email from T. Irshad to TD re creditor package; review email from J. Berger stating accounts to remain on hold; review email from TD confirming same.
4/8/2025	Jeff Berger	Discuss with N. Thurairatnam status of all aspects of the mandate; review and respond to email from S. Quigg re distribution of funds from sale of property; exchange emails with F. Tayar re same; attend a call with D. Suitor and N. Thurairatnam to discuss various enforcement actions and status of appeal, etc.; call with F. Tayar, T. Van Klink, B. Tannenbaum and N. Thurairatnam to discuss possible enforcement action by BMO and BDC; debrief with F. Tayar and N. Thurairatnam.
4/8/2025	Bryan Tannenbaum	Teams call with T. Van Klink, J. Berger and F. Tayar re consent on BMO and BDC properties.
4/8/2025	Nisan Thurairatnam	Discuss with J. Berger status of all aspects of the mandate; send email to S. Quigg re call request; send email to D. Suitor re call request; receipt and review email from S. Quigg stating he does not take directions from the Trustee/Interim Receiver; review J. Berger's response re same; attend a call with D. Suitor and J. Berger re all outstanding matters; attend a call with T. Van Klink, B. Tannenbaum, F. Tayar and J. Berger re request to lift stay; subsequent call with J. Berger and F. Tayar; draft email to D. Suitor re consent to lift stay and send same to F. Tayar and J. Berger; respond to creditor emails and calls.
4/9/2025	Tanveel Irshad	Review of email from FCT re creditor's package; send draft email to J. Berger for comments; send response email; review email from FCT re same.
4/9/2025	Nisan Thurairatnam	Arrange for a meeting with D. Suitor and his counsel; send email to D. Suitor re call with T. Van Klink who represents BMO and BDC, re consent to lift stay and re plan for residential properties; review email from T. Irshad to TD re creditor's package.
4/10/2025	Tanveel Irshad	Review all insurance policies to ensure they have not lapsed; create insurance tracking schedule; discuss same with N. Thurairatnam.



Date	Professional	Description
4/10/2025	Nisan Thurairatnam	Prepare and attend a call with D. Sutor, T. Pagliaroli and J. Berger; review payment request folder and send email to D. Sutor re missing documents; receipt and review of payment requests; send email to D. Sutor re need for a copy of the bank statements; arrange for a call with S. Quigg, lawyer holding funds for the Wescott Property.
4/10/2025	Jeff Berger	Attend a call with D. Sutor, T. Pagliaroli and N. Thurairatnam to discuss the protocol for approval of expenses to be paid from corporations in which the shares have vested with the Trustee, as well as the status of the appeal and various enforcement actions being contemplated by secured lenders.
4/11/2025	Jeff Berger	Review email from T. Van Klink and draft response to same; attend a call with A. Dhanani to discuss strategy and next steps.
4/11/2025	Arif Dhanani	Call with J. Berger to discuss strategy and next steps.
4/11/2025	Nisan Thurairatnam	Email to S. Quigg re scheduling call and emphasize to not distribute funds before our call; prepare a summary of the flow of funds re the Wescott property for J. Berger's review; receipt and review email from F. Tayar re response to S. Quigg; attend to two calls from creditors re proof of claim process and if Balboa et al. claims can be filed in the D. Sutor bankruptcy or interim receivership proceedings.
4/14/2025	Jeff Berger	Attend a call with D. Sutor and N. Thurairatnam to discuss various ongoing enforcement actions, personal expenses, and the status of appeal etc.; email to T. Van Klink re consent of Interim Receiver to lift stay for the purpose of BDC and BMO enforcing.
4/14/2025	Nisan Thurairatnam	Email to S. Quigg for a call and re-request special resolution; receipt and review of special resolution for sale of Wescott property; respond to detailed email from a creditor regarding several questions on this creditor's claim; attend a call with a different creditor re the creditor's creditor bid in the Balboa et al. proceedings and the proof of claim to be filed in the bankruptcy for the shortfall under the personal guarantee; return voicemail of a creditor; review emails email to D. Sutor re insurance policy for 38 Duncan; review response re shared ownership with A. Butt; review payment request and email to D. Sutor re support uploaded/missing and request that spreadsheet to be updated; attend a weekly call with D. Sutor and J. Berger re all aspects of mandate.
4/16/2025	Jeff Berger	Prepare for and attend call with S. Quigg and N. Thurairatnam re funds held in trust not to be distributed without further order of the Court or consent of the Interim Receiver; discuss same with N. Thurairatnam; receipt and review of various emails re payment of expenses from Related Entity accounts.
4/16/2025	Nisan Thurairatnam	Receipt and review of email request for this week's payment approval; send email to D. Sutor re further support needed; prepare for and attend a call with J. Berger and S. Quigg re re funds held in trust not to be distributed without further order of the Court or consent of the Interim Receiver; discuss same with J. Berger; email correspondence with S. Quigg re corporate books and records.
4/17/2025	Jeff Berger	Receipt and review of emails between S. Quigg and N. Thurairatnam re books and records of the bankrupt and legal fees owing to S. Quigg.
4/17/2025	Nisan Thurairatnam	Receipt and review of email from S. Quigg re solicitor lien claim; attend a call with J. Berger re same; email to F. Tayar re same; receipt and review of F. Tayar's response; draft email to S. Quigg for J. Berger's review; respond to S. Quigg; attend to several emails with S. Quigg re the books and records of 1000 Ontario Inc.
4/21/2025	Nisan Thurairatnam	Email correspondence with a creditor re adding to service list; attend a call with a creditor re bankruptcy appeal.

Date	Professional	Description
4/22/2025	Tanveel Irshad	Receipt and review of email from FCT re creditor's package; email J. Berger re same.
4/23/2025	Jeff Berger	Attend a call with J. Stam re status of appeal; review of payables email.
4/23/2025	Tanveel Irshad	Response email sent to FCT re creditor's package.
4/24/2025	Jeff Berger	Exchange emails with BMO to arrange a call to discuss their potential enforcement action; review email from D. Suitor.
4/28/2025	Jeff Berger	Attend a call with BMO regarding their enforcement against Centre and Rykert; email to F. Tayar re same; call with J. Stam re status of appeal and whether or not the requisite steps have been taken to perfect the appeal.
4/29/2025	Jeff Berger	Attend to calls with D. Suitor to review status of various Related Entities, enforcement actions re same, status of appeal, and other matters; review of emails from D. Suitor re same; call with J. Stam re status of appeal and timing to perfect; receipt and review of email from T. Pagliaroli re same.
4/30/2025	Jeff Berger	Receipt and review of various emails from D. Suitor re small claims court action, various enforcement actions, appeal status, and other matters; meeting with N. Thurairatnam to review file and discuss various outstanding issues to be addressed.
4/30/2025	Tanveel Irshad	Review insurance policies and email correspondence with insurance brokers to confirm coverage of policies.
4/30/2025	Nisan Thurairatnam	Receipt and review of email from S. Quigg re his client to agree to not release the funds for four weeks; emails with counsel re if D. Suitor perfected his appeal; receipt and review of email from F. Tayar to J. Stam re motion to discuss the appeal for delay; attend to emails with creditors; review email from F. Tayar re emails with R. Izzal re notice of power of sale on a property owned by Upgrade Housing Inc.; review email from S. Quigg if D. Suitor filed the appeal; review J. Berger's response re same; receipt and review demand letter re 207 Ross street; attend a call with D. Suitor re all aspects of mandate; review emails from T. Pagliaroli and J. Stam re the filing of the appeal; receipt and review several emails forwarded by D. Suitor from his creditors; respond to creditors; receipt and review of 388 Downie small claims court filing; emails with a creditor and arrange meeting in person; review several emails from D. Suitor; attend a call with M. Kortess, a creditor of GOPM, explaining the interim receivership and the process; meeting with J. Berger to review file and discuss various outstanding issues to be addressed.
		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	Managing Director	2.60	\$ 750	\$ 1,950.00
Arif N. Dhanani, CPA, CA, CIRP, LIT	Managing Director	0.20	\$ 650	130.00
Jeff Berger, CPA, CA, CIRP, LIT	Managing Director	39.90	\$ 595	23,740.50
Nisan Thurairatnam, CPA	Manager	62.10	\$ 450	27,945.00
Tanveel Irshad	Associate	5.10	\$ 325	1,657.50
Anne Baptiste/Jennifer Hornbostel	Estate Administrator	0.70	\$ 195	136.50
<b>Total hours and professional fees</b>		<b>110.60</b>		\$ 55,559.50
HST @ 13%				7,222.74
<b>Total payable</b>				<b>\$ 62,782.24</b>

GST/HST: 80784 1440 RT0001

**THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF JEFFREY BERGER SWORN BEFORE ME  
THIS 14<sup>th</sup> DAY OF MAY 2025**



A Commissioner, etc.

**Bryan Allan Tannenbaum,  
a Commissioner, etc., Province of Ontario,  
for TDB Restructuring Limited.  
Expires March 6, 2027.**



In the Matter of the Court-Appointed Interim Receivership of  
Thomas Dylan Suitor  
Summary of Interim Receiver's Fees  
November 1, 2024 to April 30, 2025

Invoice #	Invoice Date	Period	Hours	Fees	Disburse - ments	Subtotal	HST	Total	Average Hourly Rate
3	15-Jan-25	November 1, 2024 to November 15, 2024	36.3	\$ 17,393.50	\$ -	\$ 17,393.50	\$ 2,261.16	\$ 19,654.66	\$ 479.16
4	15-Jan-25	November 16, 2024 to November 30, 2024	39.6	\$ 18,556.00	\$ -	\$ 18,556.00	\$ 2,412.28	\$ 20,968.28	\$ 468.59
5	30-Jan-25	December 1, 2024 to December 31, 2024	14.9	7,726.00	\$ -	\$ 7,726.00	\$ 1,004.38	8,730.38	\$ 518.52
6	11-Mar-25	January 1, 2025 to January 31, 2025	25.8	12,414.50	\$ -	\$ 12,414.50	\$ 1,613.89	14,028.39	\$ 481.18
7	12-May-25	February 1, 2025 to April 30, 2025	110.6	55,559.50	\$ -	\$ 55,559.50	\$ 7,222.74	62,782.24	\$ 502.35
<b>Total</b>			<b>227.2</b>	<b>\$ 111,649.50</b>	<b>\$ -</b>	<b>\$ 111,649.50</b>	<b>\$ 14,514.44</b>	<b>\$ 126,163.95</b>	<b>\$ 491.42</b>

# Appendix R

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario

**AFFIDAVIT OF MINDY TAYAR**

I, MINDY TAYAR, of the City of Toronto, in the Province of Ontario, lawyer,  
AFFIRM AND SAY AS FOLLOWS:

1. I am a lawyer with the law firm of Fred Tayar & Associates Professional Corporation ("FTAPC"), counsel to TDB Restructuring Limited (the "Interim Receiver") in its capacity as court-appointed Interim Receiver of the assets, undertakings and properties of Thomas Dylan Sutor, and as such 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. The Order of the Honourable Mr. Justice Osborne dated October 7, 2024 provides at paragraph 15 that the Interim Receiver, and counsel to the Interim Receiver, shall be paid their reasonable fees and disbursements at their standard rates and charges.

3. FTAPC's fees and disbursements for the period November 11, 2024 to April 30, 2025 are summarized in the interim accounts (the "**Accounts**"), dated February 12, 2025 and May 7, 2025, rendered to the Interim Receiver. Attached and marked collectively as **Exhibit "A"** are the Accounts.

4. The Accounts contain a fair and accurate description of the services provided, the disbursements incurred, and the amounts charged by FTAPC. The Accounts set out the

total billable hours per lawyer and their respective hourly rates. Fred Tayar, Mindy Tayar, Colby Linthwaite and Joshua Tayar, the lawyers acting for the Interim Receiver, were called to the Bar in 1984, 1985, 2004 and 2020, respectively.

5. The Accounts consist of fees of \$56,470.00, disbursements of \$415.53, and HST of \$7,392.00, totalling \$64,277.53.

6. To the best of my knowledge, FTAPC's hourly billing rates are comparable to or less than the rates charged by other law firms in the Toronto market for the provision of similar services. The hourly billing rates charged by FTAPC are comparable to the rates charged by FTAPC for services rendered in similar proceedings.

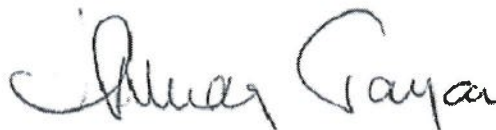
7. Attached as **Exhibit "B"** is a summary of the time of the lawyers whose services are described in the Accounts, including their position, hourly rate, the fees and the hours billed.

8. I make this affidavit in support of the Interim Receiver's motion for, among other things, approval of its fees and disbursements and those of its legal representatives, and for no other or improper purpose.

Affirmed before me at the City of Toronto )  
in the Province of Ontario, this 14<sup>th</sup> day of )  
May 2025 in accordance with )  
O. Reg. 431/20Administering Oath )  
or Declaration Remotely )



\_\_\_\_\_  
A Commissioner, etc.  
"Joshua Tayar"



\_\_\_\_\_  
MINDY TAYAR

This is Exhibit "A" referred to in the Affidavit of Mindy Tayar affirmed before me at the City of Toronto in the Province of Ontario, this 14th day of May 2025 in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



A Commissioner for Taking Affidavits  
"Joshua Tayar"

In Account With:

**FRED TAYAR & ASSOCIATES**  
PROFESSIONAL CORPORATION

DATE: November 28, 2024

Barristers & Solicitors  
65 Queen St. West, Suite 1200  
Toronto, Canada M5H 2M5

Telephone: (416) 363-1800  
Facsimile: (416) 363-3356

HST Registration No. 847141454

**AMENDED ACCOUNT**

Inv #: 11211

Jeffrey Berger  
TDB Restructuring Limited  
11 King Street West  
Suite 700  
Toronto, ON M5H 4C7

File No. 24-3258

**Re:** In the matter of the Bankruptcy of Thomas Dylan Suitor

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-11-24	correspondence to Interim Receiver to report on a) G. Benchetrit and b) lien registered on 10 Norfolk Street, Simcoe; prepared draft letter to G. Sharma; correspondence from J. Stam about doing a report; correspondence to Interim Receiver about same; correspondence from J. Berger to J. Stam;	0.80	500.00	FT
Nov-12-24	several emails from J. Stam and client about scheduling; emails from Nisan about addresses for registration; emails and telephone conversations with Bhupinder; correspondence from B. Lamba with quote on filings of order on Related Parties' property;	1.10	687.50	FT
Nov-13-24	correspondence from Nisan about registering Order on title; email to Bhupinder; correspondence from and reply to J. Berger; Teams meeting with Nisan and Jeff; email from Bhupinder; telephone conversation with Bhupinder and conference with Nisan; Teams meeting with J. Stam, James Remilian, J. Berger and N. Thurairatnam; email from J. Henechowicz about 1083 Main Street; telephone conversation with S. Mitra; telephone conversation with Nisan; email to S. Mitra;	3.20	2,000.00	FT

Nov-14-24	email to and reply from Nisan about land registrations; email from J. Berger to S. Mitra about Main Street; received correspondence  from KSV with liens registered; email from Nisan about King Street East; telephone conversation with Nisan; email from and telephone conversation with J. Berger regarding Main Street claims by trades on the project; numerous emails and telephone conversations with Nisan about further properties to search and if possible, register interim receivership order; numerous further emails and interoffice conferences about what to register and on which properties;  obtain and review searches (property); interoffice conference re: same;	4.30	2,687.50	FT
Nov-15-24	meeting at TDB Restructuring with J. Berger; drafted notice of motion and Interim Receiver's Report; emails from and to D. Goldberg's firm about title registrations; meeting with D. Goldberg; correspondence from T. Pagliaroli refusing to agree to disclosure; correspondence from Nisan about payroll and other proposed disbursements including to The Fuller Landau Group; response to Nisan; received correspondence from D. Goldberg's office; correspondence to J. Stam to secure a date;  interoffice discussion re facts in advance of reviewing draft report; reading Endorsement of Justice Osborne; re-writing Report and Notice of Motion; interoffice discussions; reviewing file materials;	4.00	2,500.00	FT
		4.50	2,700.00	CL
Nov-17-24	received and reviewed Trustee's Amended Report; prepared comments thereto; emails from clients about sale of two properties by D. Sutor, one to his parents; Teams meeting with B. Tannenbaum, J. Berger and N. Thuraiatnam to go through and amend Receiver's Report; correspondence to T. Pagliaroli about her client meeting to bring motion if he wants sales approved;	2.20	1,375.00	FT

Nov-18-24	email to Norton Rose about Alsou; worked on notice of motion; received further draft Report from J. Berger; made further revisions; prepared draft Order; read Media-1-Stop case; emails with Alsou about process and timing; emails with J. Stam; email from T. Pagliaroli;	3.90	2,437.50	FT
	interoffice communication re preparation material;	0.20	120.00	CL
	preparation of hearing request form; emailed the same to Commercial List Office and copied the service list;	0.40	170.00	JT
	draft affidavit of lawyer for fees; interoffice strategizing; further work on material;	1.60	960.00	MT
Nov-19-24	finalized notice of motion and Receiver's Report; telephone conversation with N. Thurairatnam about same; drafted Order; worked on assembly of Record; correspondence to N. Thurairatnam regarding certain questions pertaining to certain properties; email to and telephone conversation with D. Goldberg; telephone conversation with N. Thurairatnam; further email to D. Goldberg; correspondence from J. Bellissimo about editing paragraph 3; emails with Interim Receiver; email to J. Bellissimo;	4.00	2,500.00	FT
	review and revision of draft Order; interoffice discussion;	0.30	180.00	CL
	phone call and email exchange with Nisan; assembled documents electronically regarding the receiver's report and created internal hyperlinks and paginated the body of the receiver's report;	1.20	510.00	JT
	review email from client; obtain searches property and corporate, review same; responding email; interoffice conference;	0.90	540.00	MT
Nov-20-24	correspondence from S. Parsons at Aird & Berlis; correspondence from T. Van Klink about seeking leave of Interim Receiver to bring receivership application for BMO on 43 Centre St. and 34 Rykert in St. Catharines; telephone conversation with S. Parsons; correspondence from D. Suitor's lawyer about	1.30	812.50	FT



	his position on tomorrow's motion; emails to J. Bellissimo and J. Stam; Teams meeting with B. Tannenbaum, J. Berger and N. Thuraiatnam; correspondence to J. Bellissimo and J. Stam;			
Nov-21-24	received outline of oral submissions from D.	4.30	2,687.50	FT
	Suitor's lawyer; emails with J. Stam; worked on amendments to propose draft Order; telephone conversation with N. Thuraiatnam; prepare for and attended motion before Justice Osborne; telephone conversation with J. Carhart; received and sent Order and Endorsement of Justice Osborne to client; email to and telephone conversation with N. Thuraiatnam about responding to S. Mitra about 1082 Main Street lifting of stay; email to S. Mitra;			
Nov-22-24	email from B. Tannenbaum about whether to authorize BMO to apply for Receiver; correspondence to B. Tannenbaum suggesting BMO to share its appraisal; correspondence from T. Pagliaroli attaching 362 Donovan appraisal; correspondence to Interim Receiver; received email from Rosekat's office about hearing particulars; telephone conversation with N. Thuraiatnam about T. Van Klink and BMO power of sale; telephone conversation with T. Van Klink about BMO's mortgages on 43 Centre St. and 34 Rykert, St. Catharines; and BDC's mortgage on 1391 Ontario St., Burlington; telephone conversation with N. Thuraiatnam for instructions; correspondence to T. Van Klink; correspondence to T. Pagliaroli;	1.60	1,000.00	FT
Nov-25-24	correspondence from N. Thuraiatnam to D. Goldberg's clerk;	0.10	62.50	FT
Nov-26-24	correspondence with Interim Receiver about recent decision by Justice Osborne; correspondence from T. Pagliaroli about Donovan property; correspondence from N. Thuraiatnam; correspondence to T. Pagliaroli; received abstract and discharges from T. Pagliaroli; correspondence to Tanya; correspondence from Vinayak Mishra re Donovan; Teams meeting with Jeff and Nisan; correspondence to V. Mishra;	1.30	812.50	FT

Nov-27-24	received correspondence from Nisan about protocol for payments; Teams meeting with Nisan and Jeff; received and reviewed protocol amendments; email to Interim Receiver; read retainer document from KSV to TDB; email to TDB; correspondence from Jeff Rosekat with  a proposed amendment to the November 28 Paradise Media Order; email to TDB; correspondence from V. Mishra re Donovan; forwarded to client; telephone conversation with J. Berger;	1.70	1,062.50	FT
	Totals	44.10	\$27,025.00	
	Total HST on Fees		3,513.25	
	Total HST		\$3,551.80	

**TIME:**

Fred Tayar	-	33.8 hours @ \$625.00 = \$21,125.00
Colby Linthwaite	-	5.0 hours @ \$600.00 = \$3,000.00
Joshua Tayar	-	1.6hours @ \$425.00 = \$680.00
Mindy Tayar	-	3.7 hours @ \$600.00 = \$2,220.00

**DISBURSEMENTS**

Nov-13-24	Teranet Inc. - CSP Property Search	35.50
Nov-14-24	Teranet Inc.-CSP Property Searches (x5)	201.50
	Teranet Inc.-CSP Document View	3.00
Nov-19-24	Corporate Profile Reports (Gov. Fee - \$8 x3)*	24.00
	Print Three-photocopies, tabs and cerlox binding	23.75
Nov-28-24	Photocopies	32.75
	Totals	\$320.50
	Total HST on Disbursements	38.55

**Total Fee & Disbursements****\$30,897.30**

Previous Balance

15,358.12

**Balance Now Due**

**\$46,255.42**

THIS IS OUR STATEMENT OF ACCOUNT

**FRED TAYAR & ASSOCIATES**  
PROFESSIONAL CORPORATION

Per:



Fred Tayar  
FT/mt  
E. & O.E.

Disbursements which are not posted at the time of preparation of this account will be billed at a later time. Accounts due when rendered. All amounts overdue 30 days or more will bear interest at the rate of 1.3% per annum as provided for in Section 138 of the Courts of Justice Act, pursuant to the Solicitors Act.

In Account With:  
**FRED TAYAR & ASSOCIATES**  
PROFESSIONAL CORPORATION

DATE: February 12, 2025

Barristers & Solicitors  
65 Queen St. West, Suite 1200  
Toronto, Canada M5H 2M5

Telephone: (416) 363-1800  
Facsimile: (416) 363-3356

HST Registration No. 847141454

**PERSONAL & CONFIDENTIAL**

Jeffrey Berger  
TDB Restructuring Limited  
11 King Street West | Suite 700  
Toronto, ON  
M5H 4C7

File No.24-3258

**Re: In the matter of the Bankruptcy of Thomas Dylan Suitor**

**TO OUR FINAL ACCOUNT FOR PROFESSIONAL SERVICES** rendered in connection with the above-noted matter from November 24, 2024 to February 10, 2025 as set out in the pre-bill attached.

**OUR FEE:** \$10,070.00

**TAXABLE DISBURSEMENTS**

Teranet Inc.-CSP Property Search (LRO#30, PIN#46349-0039)	\$35.50
Teranet Inc.-CSP Property Search (LRO#30, PIN#46349-0040)	\$40.30
Photocopies	\$2.50

Total Taxable Disbursements	\$78.30
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<b>HST</b> (on fee and taxable disbursements only)	1,319.28
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<b>TOTAL AMOUNT OF THIS ACCOUNT</b>	<b>\$11,467.58</b>
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**THIS IS OUR STATEMENT OF ACCOUNT**

**FRED TAYAR & ASSOCIATES**

PROFESSIONAL CORPORATION

Per:

Fred Tayar  
FT/mt  
E. & O.E.

Disbursements which are not posted at the time of preparation of this account will be billed at a later time. Accounts due when rendered. All amounts overdue 30 days or more will bear interest at the rate of 1.3% per annum as provided for in Section 138 of the Courts of Justice Act, pursuant to the Solicitors Act.

TDB Restructuring Limited  
11 King Street West | Suite 700  
Toronto, ON M5H 4C7

February 11, 2025

## PREBILL

**Attention:** Bryan A. Tannenbaum

File #: 24-3258  
Inv #: ~~Sample~~  
11260

**RE:** In the matter of the Bankruptcy of Thomas Dylan Sutor

DATE	ENTRY #	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-28-24	306071	meeting with D. Goldberg to discuss order and certain title registrations; correspondence to T. Pagliaroli re sale of Donovan; correspondence from V. Mishra with Tandia's discharge of mortgage; correspondence from Nisan about responding to Donovan proposed sale email; email to V. Mishra to respond; correspondence from Interim Receiver about fees; correspondence to Interim Receiver; received Request Form from T. Pagliaroli; responsive email; telephone conference with B. Tannenbaum and J. Berger about charge and fees; correspondence from Tanya and Court about motion;	1.80	1,125.00	FT
Nov-29-24	306078	letter to Receiver; conducted realty search on St. Catharines property once owned by Happy Town Housing Inc. and sold to numbered companies; email to Interim Receiver re another property in St. Catharines; email to Trustee; email to and from Interim Receiver about signing consent for Paradise Media litigation; correspondence from S. Mitra who will seek Receivership Order on Main Street with Equitable Bank; correspondence to S. Mitra; correspondence from Interim Receiver with draft email to G. Abrahamson; made revisions; correspondence from S. Mitra regarding Receivership Application;	1.10	687.50	FT
Dec-01-24	306085	received and reviewed motion record from D. Sutor to approve sale of Donovan property; correspondence from J. Berger	0.80	500.00	FT

about whether responding material is needed; correspondence to J. Berger; correspondence from T. Pagliaroli about her client prepared to pay for appraisals "on terms"; correspondence from J. Berger with draft correspondence to G. Abrahamson about fees overdrawn; made proposed revisions;

Dec-02-24	306133	email to J. Berger about tomorrow's hearing; telephone conversation with J. Berger about tomorrow's hearing on Donovan; email from Gaurika Sharma; responsive email; telephone conversation with J. Berger and J. Stam;	0.80	500.00	FT
Dec-03-24	306153	prepare for argument to today's motion to approve sale of Donovan Street; attended motion before Justice Penny; emails with J. Berger;	1.10	687.50	FT
Dec-04-24	306194	telephone conversation with J. Berger; received from J. Stam black-lined changes to Order of Justice Penny; email to all; email to and reply from J. Stam;	0.30	187.50	FT
Dec-05-24	306219	correspondence from T. Pagliaroli's office and Chaitons about draft Order; email to T. Pagliaroli; received solicitor's opinion on Donovan;	0.20	125.00	FT
Dec-06-24	306247	correspondence from and reply to T. Pagliaroli's office about discharging Order on Donovan;	0.20	125.00	FT
Dec-09-24	307299	correspondence to J. Berger and B. Tannenbaum; correspondence from and reply to J. Berger; correspondence from Tanya about Donovan solicitor's opinion;	0.20	125.00	FT
Dec-10-24	306298	received correspondence from V. Mishra about deleting Appointment Order from title; reply to V. Mishra;	0.30	187.50	FT
Dec-11-24	306350	received correspondence from L. Archibald re Order of Justice Penny;	0.10	62.50	FT
Dec-12-24	306393	received draft email to G. Abrahamson; telephone conference with B. Tannenbaum; email from and reply to J. Berger;	0.30	187.50	FT

Dec-13-24	306404	received signed Order from court; email from J. Berger to J. Henechowicz re Grow;	0.20	125.00	FT
Dec-19-24	306421	correspondence from J. Berger about setting up conference; meeting with J. Berger, Nisan Thurairatnam and M. Krieger;	0.60	375.00	FT
Dec-20-24	306534	exchange of correspondence with J. Berger, B. Tannenbaum, Stam and Abrahamson about motion to discharge receiver;	0.80	500.00	FT
	306439	interoffice discussion;	0.10	60.00	CL
Dec-22-24	306444	email to interim receiver about conference call with all parties about fees; correspondence from J Berger; received and reviewed promissory note agreements; reviewed draft correspondence from Suitor to Grow Property Management; correspondence to I.R. with respect to whether or not rental monies are held in trust for Grow;	0.60	375.00	FT
Dec-23-24	306446	email to J. Berger; correspondence to I.R. about confirming Suitor's representations about Grow's solvency; reply from I.R.; telephone consultations with J. Berger about Grow paying landlords and preparation of language for I.R. to send out to debtor;	1.30	812.50	FT
Dec-24-24	306448	emails from I.R.; correspondence from Suitor concerning Grow and 10 Norfolk;	0.40	250.00	FT
Dec-25-24	306452	correspondence to Bryan and Jeff about proceeding with phone conference with stakeholders; received response;	0.20	125.00	FT
Dec-26-24	306453	emails with I.R.;	0.30	187.50	FT
Dec-27-24	306526	correspondence from Suitor to the I.R. regarding 10 Norfolk;	0.20	125.00	FT
Jan-08-25	306638	voicemail message from J. Henechowicz about rents collected; responsive voicemail; voice message to J. Berger;	0.20	125.00	FT
Jan-10-25	306673	correspondence from J. Berger about whether ok to discharge construction liens on Norfolk; response to J. Berger;	0.30	187.50	FT

Jan-13-25	306704	correspondence from Nisan Thurairatnam about proposed transaction whereby Sutor's holding company will lend money to one of the companies to pay its mortgage debt; further correspondence with Nisan;	0.30	187.50	FT
Jan-14-25	306714	correspondence from N. Thurairatnam about Elev8 Inc. paying a creditor with only one other creditor - CRA; examined Sutor's certificate; further emails with Interim Receiver;	0.60	375.00	FT
Jan-15-25	306746	received correspondence from Tanya's office with link to Responding Application Record for bankruptcy application hearing; correspondence to clients; correspondence from J. Berger about doing minimal work on the Sutor Responding Record received today;	0.40	250.00	FT
Jan-16-25	306777	received correspondence from J. Stam and L. Archibald; received and reviewed Claire Drage's affidavit;	0.40	250.00	FT
Jan-17-25	306793	received correspondence from Nisan Thurairatnam with proposed Release Sutor will ask Grow creditors to sign; correspondence from Henechowicz; received correspondence from J. Berger to Henechowicz;	0.50	312.50	FT
Jan-22-25	306873	received correspondence from Henechowicz and J. Berger about threat to put Grow into receivership;	0.10	62.50	FT
Jan-23-25	306876	reviewed correspondence from T. Dunn with motion record seeking consent judgment for possession and on the covenant; correspondence to Interim Receiver recommending to not interfere in the court motion; correspondence from J. Berger; correspondence to T. Dunn;	0.70	437.50	FT
Jan-27-25	306925	received Endorsement of Justice Nicholson re Tecumseh Road East, Windsor dated January 24, 2025; email to Interim Receiver; email to T. Dunn; email from Nisan;	0.40	250.00	FT
Jan-28-25	306996	received copy of weekly report from F. Ali to Ernst & Young;	0.10	62.50	FT



Feb-10-25	307289 correspondence to Interim Receiver about email from creditor Julie LaGrange;	0.20	135.00	FT
Totals		16.10	\$10,070.00	
HST on Fees			\$1,309.10	

**FEE SUMMARY:**

Lawyer	Hours	Effective Rate	Amount
Fred Tayar	16.00	\$625.63	\$10,010.00
Colby Linthwaite	0.10	\$600.00	\$60.00

**DISBURSEMENTS**

	Disbursements	Receipts
Nov-28-24 306195 Teranet Inc.-CSP Property Search (LRO#30, PIN#46349-0039)	35.50	
306196 Teranet Inc.-CSP Property Search (LRO#30, PIN#46349-0040)	40.30	
Jan-31-25 307062 Photocopies	2.50	
Totals	\$78.30	\$0.00
HST on Disbursements	\$10.18	

**Total Fees, Disbursements & HST****\$11,467.58**

Total Tax: \$1,319.28

\* tax-exempt

In Account With:  
**FRED TAYAR & ASSOCIATES**  
PROFESSIONAL CORPORATION

DATE: May 7, 2025

Barristers & Solicitors  
65 Queen St. West, Suite 1200  
Toronto, Canada M5H 2M5

Telephone: (416) 363-1800  
Facsimile: (416) 363-3356

HST Registration No. 847141454

**PERSONAL & CONFIDENTIAL**

Jeffrey Berger  
TDB Restructuring Limited  
11 King Street West | Suite 700  
Toronto, ON  
M5H 4C7

File No.24-3258

**Re: In the matter of the Interim Receivership of Thomas Dylan Suitor**

**TO OUR FINAL ACCOUNT FOR PROFESSIONAL SERVICES** rendered in connection with the above-noted matter to April 30, 2025 as set out in the pre-bill attached.

**OUR FEE:** \$19,375.00

**TAXABLE DISBURSEMENTS**

Computerize legal research \$1.48

Photocopies \$15.25

Total Taxable Disbursements \$16.73

**HST** (on fee and taxable disbursements only) \$2,520.92

**TOTAL AMOUNT OF THIS ACCOUNT** \$21,912.65

THIS IS OUR STATEMENT OF ACCOUNT

**FRED TAYAR & ASSOCIATES**  
PROFESSIONAL CORPORATION

Per:

Fred Tayar  
FT/mt  
E. & O.E.

Disbursements which are not posted at the time of preparation of this account will be billed at a later time. Accounts due when rendered. All amounts overdue 30 days or more will bear interest at the rate of 1.3% per annum as provided for in Section 138 of the Courts of Justice Act, pursuant to the Solicitors Act.

TDB Restructuring Limited  
11 King Street West | Suite 700  
Toronto, ON M5H 4C7

May 7, 2025

## PREBILL

**Attention:** Bryan A. Tannenbaum

File #: 24-3258

Inv #: ~~Sample~~

11344

**RE:** In the matter of the Bankruptcy of Thomas Dylan Suitor

DATE	ENTRY #	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jan-29-25	308332	correspondence from Nisan which legal invoices from TAP to Suitor; email to client about the corporations to pay for services rendered to them, regarding Main St. East Hamilton and Barrie Street Stratford; received correspondence including a NITES from lawyers representing mortgages; letter to the said lawyers; letter to interim receiver;	1.00	625.00	FT
Feb-11-25	307335	correspondence from Nisan about Julie Lagrange addressing Jennifer Stam; correspondence to J. Lagrange;	0.20	135.00	FT
Feb-13-25	307406	correspondence from P. Corney re National Bank; correspondence to client; received notice of motion from Suitor's lawyer for a sealing order; correspondence from Tony Van Klink seeking to enforce BDC security; correspondence to clients;	0.60	405.00	FT
Feb-14-25	307423	Teams meeting with Nisan Thurairatnam and Jeff Berger; correspondence with Tony Van Klink re BDC mortgage;	0.50	337.50	FT
Feb-19-25	307494	received and reviewed correspondence from Interim Receiver with agreement of purchase and sale for Windsor property;	0.50	337.50	FT
Feb-20-25	307505	emails from Nisan Thurairatnam; Zoom video conference with J. Berger and N. Thurairatnam about whether to approve sale of Tecumseh Rd., Windsor apartment building;	0.50	337.50	FT
Feb-24-25	307621	received correspondence with Notice of Appearance for bankruptcy hearing from Carhart for National Bank;	0.10	67.50	FT

Feb-25-25	307630	correspondence from VT. an Klink with appraisals for Centre Street and Rykert Street properties; email to Interim Receiver;	0.40	270.00	FT
Mar-03-25	307742	emails with Nisan Thurairatnam and scheduling of meeting; emails and Teams meeting with Nisan and Jeff about Tecumseh sale and motion to remove lien;	0.80	540.00	FT
Mar-05-25	307805	voicemail message from T. Dunn; email to T. Dunn; email from and reply to Nisan Thurairatnam; email to T. Dunn;	0.40	270.00	FT
Mar-06-25	307837	correspondence with T. Dunn;	0.20	135.00	FT
Mar-07-25	307848	email to T. Dunn about sale of Tecumseh Road East and "joint venture document"; reporting email to Interim Receiver; emails with and Teams meeting with Nisan Thurairatnam and Jeff Berger; letter to T. Dunn et al;	1.30	877.50	FT
Mar-10-25	307900	correspondence from T. Dunn about Tecumseh Road East deal; Teams meeting with Interim Receiver; draft letter to T. Dunn; Teams meeting with Nisan and Jeff; worked on letter to T. Dunn; emails from client;	1.50	1,012.50	FT
	307922	assisted with preparing correspondence to Tim Dunn;	0.70	315.00	JT
Mar-11-25	307923	email to Interim Receiver about letter re Tecumseh (Windsor); emails from J. Berger and N. Thurairatnam; worked on letter to T. Dunn and sent it out;	0.60	405.00	FT
Mar-12-25	308932	email from J. Berger; responsive email; Teams meeting with Interim Receiver about Suitor who asks to reconsider;	0.60	405.00	FT
Mar-13-25	307964	correspondence from Tanya Pagliaroli re Tecumseh; telephone conversation with J. Berger; telephone conversation with T. Pagliaroli; further telephone conversation with J. Berger;	0.70	472.50	FT
Mar-14-25	307973	letter to T. Pagliaroli;	0.20	135.00	FT
Mar-16-25	307978	received correspondence from J. Henechowicz to D. Suitor;	0.10	67.50	FT

Mar-17-25	308101 draft letter to .T Pagliaroli;	0.10	67.50	FT
Mar-25-25	308120 email from J. Berger with Bankruptcy Application Reasons from Steele J.; read Reasons; Zoom conference with N. Thuraiaratnam, J. Berger and B. Tannenbaum; quick research on appeal rights; correspondence from Trustee with review of draft Order; made comments for J. Stam; exchange of emails with J. Stam; email from and reply to T. Van Klink;	2.10	1,417.50	FT
Mar-26-25	308152 telephone conversation with J. Stam; email to T. Van Klink; emails from J. Berger re TAP invoice and new financing; Teams meeting with J. Berger about same; emails with T. Van Klink, J. Stam and client;	1.60	1,080.00	FT
	308308 research re: vesting of assets and ability of bankrupt to access same while appeal pending;	1.20	750.00	MT
Mar-27-25	308169 correspondence from and reply to T. Van Klink; read Black & White case; Zoom conference with B. Tannenbaum, J. Berger and J. Stam;	1.40	945.00	FT
Mar-28-25	308180 correspondence to J. Berger about meeting with D. Sutor; received and reviewed Notice of Appeal and Certificate; email to J. Berger; telephone conversation with J. Berger; telephone conversation with T. Van Klink; Zoom meeting with T. Pagliaroli, V. Mishra, D. Sutor, J. Berger and B. Tannenbaum;	2.20	1,485.00	FT
Mar-31-25	308231 correspondence from J. Stam re Pat Corney; email to J. Stam;	0.20	135.00	FT
Apr-01-25	308282 correspondence from T. Van Klink; correspondence to and from J. Berger; brief research - canceling the stay of proceedings pending an appeal: Royal Bank v. Bodanis; emails and video conference with J. Berger and N. Thuraiaratnam; letter to J. Stam re appeal;	2.80	1,890.00	FT
Apr-02-25	308319 email from J. Stam; correspondence with clients re payment to creditors re Tecumseh; further email from J. Stam;	0.80	540.00	FT
Apr-03-25	308342 telephone conversation with J. Berger;	0.20	135.00	FT

Apr-04-25	308378	correspondence from T. Van Klink; emails with Interim Receiver;	0.30	202.50	FT
Apr-07-25	308466	correspondence from J. Berger re meeting with P. Corney and Jennifer Stam; responsive email; Teams meeting with J. Carhart, P. Corney, J. Berger and B. Tannenbaum; telephone conversation with T. Van Klink; email to TDB; received e-vite;	1.10	742.50	FT
Apr-08-25	308475	emails from N. Thurairatnam with draft correspondence to S. Quigg; correspondence to Nisan with proposed amendments to correspondence; Teams meeting with T. Van Klink, J. Berger and B. Tannenbaum;	1.10	742.50	FT
Apr-09-25	308484	correspondence from Nisan with draft correspondence to D. Suitor re Van Klink's enforcement; made revisions and email to client;	0.30	202.50	FT
Apr-11-25	308511	correspondence from S. Quigg, J. Berger, N. Thurairatnam; correspondence to Interim Receiver;	0.50	337.50	FT
Apr-15-25	308562	received and reviewed correspondence from T. Van Klink;	0.20	135.00	FT
Apr-16-25	308583	received draft email from J. Berger to T. Van Klink; responsive email;	0.20	135.00	FT
Apr-17-25	308596	correspondence from N. Thurairatnam about S. Quigg's claim of a solicitors' lien over documents; legal research on same; reporting to Trustee in Bankruptcy;	0.60	405.00	FT
Apr-21-25	308640	email from P. Corney re National Bank;	0.10	67.50	FT
	308683	email from S. Quigg; correspondence from J. Berger; correspondence to J. Stam;	0.30	202.50	FT
Apr-25-25	308722	correspondence from Robert Izsak about Upgrade Housing Inc. and Lift Capital; emails with TDB and R. Izsak;	0.40	270.00	FT
Apr-28-25	308762	email from and reply to J. Berger;	0.10	67.50	FT
Apr-29-25	308780	correspondence from S. Quigg and J. Berger; correspondence from R. Izsak re Lift Capital;	0.20	135.00	FT

Apr-30-25	308790emails with Nisan Thurairatnam;	0.20	135.00	FT
	Totals	29.10	\$19,375.00	
	HST on Fees		\$2,518.75	

**FEE SUMMARY:**

Lawyer	Hours	Effective Rate	Amount
Fred Tayar	27.20	\$673.16	\$18,310.00
Joshua Tayar	0.70	\$450.00	\$315.00
Mindy Tayar	1.20	\$625.00	\$750.00

**DISBURSEMENTS**

		Disbursements	Receipts
Feb-28-25	307735 Quicklaw Research	1.48	
Mar-31-25	308224 Photocopies	15.25	
	Totals	\$16.73	\$0.00
	HST on Disbursements	\$2.17	

**Total Fees, Disbursements & HST****\$21,912.65**

Total Tax: \$2,520.92

\* tax-exempt

This is Exhibit "B" referred to in the Affidavit of Mindy Tayar affirmed before me at the City of Toronto in the Province of Ontario, this 14th day of May 2025 in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



A Commissioner for Taking Affidavits  
"Joshua Tayar"



Summary of Fees						
Lawyer	Position	Year of Call	Rate	Hours	Fees Billed	Time Period
Fred Tayar	Partner	1984	\$625	50.6	\$31,625	November 11, 2024 to January 30, 2025
			\$675	26.4	\$17,820	February 1, 2025 to April 30, 2025
Mindy Tayar	Associate	1985	\$600	3.7	\$2,220	November 2024
			\$625	1.2	\$750	March 2025
Colby Linthwaite	Partner	2004	\$600	5.1	\$3,060	November 11-December 2024
Joshua Tayar	Associate	2020	\$425	1.6	\$680	November 2024
			\$450	0.7	\$315	March 2025
Total Fees Billed:					\$56,470	

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**AFFIDAVIT OF MINDY TAYAR  
(Affirmed May 14, 2025)**

**FRED TAYAR & ASSOCIATES  
Professional Corporation**

65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N**

T: 416-363-1800 ext. 200

E: [fred@fredtayar.com](mailto:fred@fredtayar.com)

**Lawyers for TDB Restructuring Limited**  
Interim Receiver of Thomas Dylan Sutor

## **TAB 3**



Justice Osborne dated October 7, 2024 ("**Appointment Order**") until disposition of Suitor's appeal of the Bankruptcy Order dated March 26, 2025 ("**Bankruptcy Order**") or further Order of the Court;

5. granting charges on the Sales Process Properties to secure (i) the fees and disbursements of the Interim Receiver and those of its counsel and (ii) the borrowings of the Interim Receiver;
6. authorizing the Interim Receiver to redact Confidential Appendix "1" from its Second Report, and sealing it from the public record until the closing of the sales of the Sales Process Properties or further order of the Court;
7. approving the interim statement of receipts and disbursements of the Interim Receiver and its counsel; and
8. approving the fees and disbursements of the Interim Receiver and those of its counsel, as set out in the Second Report and the Fee Affidavits;

was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the notice of motion, the Second Report, together with the appendices thereto, the affidavits of Jeffrey Berger and Mindy Tayar as to fees (the "**Fee Affidavits**"), and the Consent of the applicant The Fuller Landau Group Inc. ("**Fuller**") to the making of this Order, filed, and on hearing the submissions of counsel for the Interim Receiver, no one else on the Service List appearing although duly served as evidenced by the affidavit of service of Marie Pacheco, filed:

**Service**

1. **THIS COURT ORDERS THAT** the time for service of the notice of motion and motion record is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

**Approval of Second Report and Professional Fees and Disbursements**

2. **THIS COURT ORDERS THAT** the Second Report and the activities and conduct of the Interim Receiver as described therein, be and are hereby approved.

3. **THIS COURT ORDERS THAT** the fees and disbursements of the Interim Receiver and those of its counsel, as set out in the Second Report and the Fee Affidavits, are hereby approved.

4. **THIS COURT ORDERS AND DECLARES THAT** TDB shall remain the interim receiver, without security, of all of the property, assets and undertaking of Suitor under the Appointment Order until disposition of Suitor's appeal of the Bankruptcy Order or further Order of the Court.

**Sealing of Confidential Appendix "1"**

5. **THIS COURT ORDERS THAT** the Interim Receiver is authorized *nunc pro tunc*, to redact the Confidential Appendix from its Second Report and that the Confidential Appendix be sealed from the public record until the closing of the sales of the Sales Process Properties or further order of the Court.

**Sale of Properties**

6. **THIS COURT ORDERS THAT**, subject to the terms of this Order and further orders of the Court, the properties in the list below (the “**Sales Process Properties**”) shall be sold in the manner described in this Order, subject to approval of the Court:

<b>Municipal Address</b>	<b>PIN</b>	<b>Property Description</b>	<b>Registered Owner</b>
775 King Rd., Burlington, Ontario	07096-0052 (LT)	PT LT 1 , CON BROKEN FRONT , PART 1 , 20R11690; CITY OF BURLINGTON	Thomas Dylan Suitor
2298 Fassel Ave., Burlington, Ontario	07077-0108 (LT)	PT LT 103 , PL 338 , AS IN 791083 ; BURLINGTON	Thomas Dylan Suitor
642 Hamilton Rd., London, Ontario	08335-0013 (LT)	LOT 8 PLAN 404 LONDON/LONDON TOWNSHIP	642 Hamilton Road Inc.
10 Norfolk St S, Simcoe, Ontario	50225-0112 (LT)	PT LT 1-2 BLK 96 PL 182 AS IN NR412200 T/W NR412200; NORFOLK COUNTY	10 Norfolk St. Inc.
164-168 Picton St E, Hamilton, Ontario	17157-0186 (LT)	PT LT 18-19 PL 61 S/S PICTON ST BTN MARY ST & FERGUSON AV AS IN AB395681 EXCEPT THE EASEMENT THEREIN; CITY OF HAMILTON	164 Picton St. Inc.
133 Prospect Ave. Hamilton, Ontario	17208-0073 (LT)	LT 87, PL 506 ; PT LT 88, PL 506 , AS IN CD385956, S/T CD385956, IF ANY ; HAMILTON	Prospect Real Estate Holdings Inc.
38 Duncan Ave. S, Kirkland Lake, Ontario	61407-0431 (LT)	PCL 1061 SEC CST; LT 48 PL M32TIM TECK	Commercial Urkel Inc.

		SRO; KIRKLAND LAKE ; DISTRICT OF TIMISKAMING	
388 Downie Street, Stratford, Ontario	53116-0113 (LT)	LT 17 PL 25 STRATFORD; PT LT 18 PL 25 STRATFORD AS IN R310549 ; STRATFORD	388 Downie St. Inc.
267 Leslie Street, Sudbury, Ontario	02132-0333 (LT)	PCL 3750 SEC SES LT 27, PLAN M125, EXCEPT COMM AT A POINT IN THE S EASTERN LIMIT OF SAID LT 27 DISTANT 5.7 FT FROM THE MOST SLY ANGLE OF SAID LT; THENCE S WLY ALONG SAID S EASTERN LIMIT 5.7 FT TO SAID MOST SLY ANGLE; THENCE N WLY ALONG SAID S WESTERN LIMIT OF SAID LT, 107.0 FT 6 IN TO THE MOST WLY ANGLE OF SAID LT; THENCE NELY ALONG THE N WESTERN LIMIT OF SAID LT, 2.6 FT; THENCE S ELY IN A STRAIGHT LINE TO THE POC. PLAN ATTACHED TO 118472, NOW PCL 20288 S.E.S. CITY OF SUDBURY	Upgrade Housing Inc.
207 Ross Street, St. Thomas, Ontario	35220-0174 (LT)	LOT 65 PLAN 86, PART OF LOT 46 PLAN 86 AS IN E401586 &	McWhirter-Horvath Properties Inc.



		E411464; CITY OF ST. THOMAS	
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**Expanded Powers of the Interim Receiver**

7. **THIS COURT ORDERS THAT** the Interim Receiver is hereby authorized to conduct a sale of the Sales Process Properties in such a manner as the Interim Receiver, in its discretion, may determine for the purpose of maximizing the recovery upon the sales of the Sales Process Properties.

8. **THIS COURT ORDERS THAT** the Interim Receiver be and hereby is empowered and authorized, but not obligated, to act at once in respect of the Sales Process Properties and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

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

(b) 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 Interim Receiver's powers and duties, including, without limitation, those conferred by this Order;

- (c) to market any or all of the Sales Process Properties, including advertising and soliciting offers in respect of the Sales Process Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (d) to sell, convey, transfer, lease or assign the Sales Process Properties, with the approval of this Court in respect of any such transaction;
- (e) to apply for any vesting orders or other orders necessary or advisable to convey the Sales Process Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting the Sales Process Properties;
- (f) to report to, meet with and discuss with Suitor, mortgagees of the Sales Process Properties, and other persons or entities having an interest in any of the Sales Process Properties (collectively, the “**Stakeholders**”) as the Interim Receiver deems appropriate on all matters relating to the Sales Process Properties, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (g) to register a copy of this Order and any other Orders in respect of the Sales Process Properties on title to the Sales Process Properties; and

(h) 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 Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, and without interference from any other person.

9. **THIS COURT ORDERS THAT** the Interim Receiver shall develop a written plan for the sales of the Sales Process Properties in an orderly fashion (the "**Plan of Sale**") which shall provide for the marketing for sale of the Sales Process Properties.

10. **THIS COURT ORDERS THAT** the Interim Receiver shall be at liberty to retain such professionals and obtain such reports as are necessary to draft and undertake the Plan of Sale.

11. **THIS COURT ORDERS THAT** the Interim Receiver shall solicit marketing proposals from a minimum of three (3) real estate brokers of the Interim Receiver's choosing.

12. **THIS COURT ORDERS THAT** the Stakeholders shall participate to the extent reasonably requested by the Interim Receiver in the marketing and sale of the Sales Process Properties.

13. **THIS COURT ORDERS THAT** for the purpose of the matters set out in this Order, all communications to or from the Interim Receiver, or to or from counsel for any of the Stakeholders, may be by way of email. All notices or documents that this Order requires to be given or delivered to any of the Stakeholders or the Interim Receiver may be delivered to the lawyers for the party or the Interim Receiver entitled to such notice.

14. **THIS COURT ORDERS THAT**, upon request of the Interim Receiver, the Stakeholders shall provide to the Interim Receiver such appraisal or valuation information as relates to the Sales Process Properties that is or may come to be in their possession.

15. **THIS COURT ORDERS THAT** the Interim Receiver is hereby directed and empowered to:

- a) seek, upon at least five (5) business days' notice to the Stakeholders, this Court's direction on such matters as the Interim Receiver deems necessary; and
- b) report to this Court as the Interim Receiver deems appropriate or as this Court directs, in respect of such matters as may be relevant to the proceedings herein.

**Fees, Disbursements, and Borrowings of Interim Receiver and Charges**

16. **THIS COURT ORDERS THAT** the Interim Receiver and counsel to the Interim 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. The fees for the Interim Receiver, and its partners or employees, will be

charged at each person's then-prevailing hourly rate.

17. **THIS COURT ORDERS THAT** the Interim Receiver and its counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. **THIS COURT ORDERS THAT** all costs, fees and disbursements of the Interim Receiver, its counsel, and its agents, be allocated to each of the Sales Process Properties on such basis as the Court shall determine upon the passing of accounts or at such other time as the Court deems appropriate.

19. **THIS COURT ORDERS THAT** prior to the passing of its accounts, the Interim 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 Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

20. **THIS COURT ORDERS THAT** the reasonable fees and disbursements of the Interim Receiver in connection with its duties and those of advisors and others whom it engages, including the Interim Receiver's counsel, shall be paid out of the proceeds of sale of the Sales Process Properties, subject to further order or direction of the Court.

21. **THIS COURT ORDERS THAT** the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge on the Sales Process Properties in the amount of \$250,000 (the “**Sales Process Administrative Charge**”), as security for the payment of their respective fees and disbursements, which security shall have priority over all security interests, trusts (including, without limitation, deemed trusts), liens, mortgages, charges and encumbrances, statutory or otherwise, in favour of anyone, but it shall rank on a *pari passu* basis with the Interim Receiver’s Charge defined in paragraph 15 of the Appointment Order, and shall be subordinate in priority to the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”).

22. **THIS COURT ORDERS THAT** the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a credit facility, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 in relation to any Sales Process Property and does not exceed \$500,000 in the aggregate (or such greater amounts that this Court may by further Order authorize) at any time, 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 Interim Receiver by this Order, including interim expenditures. The whole of the Sales Process Properties shall be and are hereby charged by way of a fixed and specific charge (the “**Sales Process Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges

thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of anyone, but it shall rank on a *pari passu* basis with the Interim Receiver's Borrowings Charge defined in paragraph 18 of the Appointment Order, and shall be subordinate in priority to the Sales Process Administrative Charge, the Interim Receiver's Charge defined in paragraph 15 of the Appointment Order, 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 Sales Process Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS THAT** the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" to the Appointment Order (the "**Interim Receiver's Certificates**"), modified as appropriate to reflect its mandate hereunder and the Sales Process Borrowings Charge, for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver's Certificates.

**Limitation of Liability of the Interim Receiver**

26. **THIS COURT ORDERS THAT** the Interim Receiver shall incur no liability or obligation as a result of its appointment or carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

27. **THIS COURT ORDERS THAT** nothing herein contained shall vest in the Interim Receiver the ownership of the Sales Process Properties, or the assets or undertaking of the owners of the Sales Process Properties, nor shall it expose the Interim Receiver to any liability under the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act*, the *Transportation of Dangerous Goods Act* (Canada), the *Canada Environmental Protection Act*, the *Emergency Plans Act* (Ontario), the regulations thereunder, or any similar legislation. The Interim Receiver shall be deemed not to be in possession of the Sales Process Properties under any environmental laws.

**No Proceedings Against the Interim Receiver**

28. **THIS COURT ORDERS THAT** no proceeding or enforcement process in any court or tribunal shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.



**Costs**

29. **THIS COURT ORDERS THAT** the Interim Receiver shall have its costs of this motion on a full indemnity basis to be paid out of the proceeds of sale of the Sales Process Properties.

30. **THIS COURT ORDERS THAT** Fuller, in its capacity as receiver and manager of the property, assets and undertaking of The Lion's Share Group Inc., shall have its costs of the motion for the appointment of the Interim Receiver on a full indemnity basis to be paid out of the proceeds of sale of the Sale Process Properties and shall have the benefit of the Sales Process Administrative Charge in respect of such amounts provided that such entitlement shall be subordinate to the interests of all valid and enforceable mortgage debt registered on title to the Sales Process Properties.

**No Requirement for Entry or Filing of this Order**

31. **THIS COURT ORDERS THAT** this Order is effective from the date it is made, and it is effective and enforceable without the need for entry or filing.

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**Kimmel J.**

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER**

**FRED TAYAR & ASSOCIATES**

**Professional Corporation**

65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N**

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**Lawyers for TDB Restructuring Limited**

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO

<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>IN BANKRUPTCY AND INSOLVENCY</b> <b>(COMMERCIAL LIST)</b></p> <p>Proceeding commenced at Toronto</p>	
<p><b>MOTION RECORD</b></p>	
<p><b>FRED TAYAR &amp; ASSOCIATES</b> <b>Professional Corporation</b> 65 Queen Street West   Suite 1200 Toronto, ON M5H 2M5</p> <p><b>FRED TAYAR – LSO No. 23909N</b> T: 416-363-1800 ext. 200 E: <a href="mailto:fred@fredtayar.com">fred@fredtayar.com</a></p> <p><b>Lawyers for TDB Restructuring Limited</b> Interim Receiver and Trustee in Bankruptcy of Thomas Dylan Sutor</p>	