Court File No.

## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

BETWEEN:

## MARSHALLZEHR GROUP INC., AS ADMINISTRATOR

Applicant

- and -

## 12252856 CANADA 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**

(re appointment of a Receiver)

## CHAITONS LLP

5000 Yonge Street, 10<sup>th</sup> Floor Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F) Tel: (416) 218-1129 E-mail: harvey@chaitons.com

Lawyers for the Applicant

TO: **12252856 CANADA INC.** 155 Commerce Valley Drive East Markham, Ontario L3T 7T2

12252856 CANADA INC.	RSM CANADA LIMITED
155 Commerce Valley Drive East	11 King Street West, Suite 700, Box 27
Markham, ON L3T 7T2	Toronto, ON M5H 4C7
Prem Yachamanani	Bryan Tannenbaum
E-mail: prem@consortia-na.ca	Tel: (416) 238-5055
	Email: bryan.tannenbaum@rsmcanada.com
	Proposed Receiver
CONSORTIA EQUITY CAPITAL LIMITED	BRIDLEPATH FINANCE INC.
-	
155 Commerce Valley Drive East	1280 Finch Avenue West, Suite 611
Markham, ON L3T 7T2	North York, Ontario M3J 3K6
Mir Ali	Shafiq Punjani
E-mail: mirali@consortia-na.ca	E-mail: spunjani@bridlepathproperties.com
2752865 ONTARIO LIMITED	12279266 CANADA INC.
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Markham, ON L3R 9W9	Markham, ON L3T 7T2
Brooke W. Askin	Mir Ali
E-mail: baskin97@gmail.com	E-mail: mirali@consortia-na.ca
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2a- 8100 Yonge Street	333 Adelaide Street West, 4th Floor
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Evan Moore	Email: diane.winters@justice.gc.ca
Tel: (647) 800-9780	
E-mail: emoore@moorelawyers.ca	Lawyers for Canada Revenue Agency
Lawyers for Top Producer Team Realty Inc.	
HIS MAJESTY THE KING IN RIGHT OF	
THE PROVINCE OF ONTARIO AS	
<b>REPRESENTED BY THE MINISTER OF</b>	
FINANCE	
Insolvency Unit	
33 King Street West, 6 <sup>th</sup> floor	
Oshawa, Ontario L1H 8H5	
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-	

# INDEX

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## TAB 1

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## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

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## 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 writing
	In person
	By telephone conference
$\boxtimes$	By video conference

on Wednesday, December 21, 2022, at 12:00 p.m.

**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	December 9, 2022	Issued by	
			Local Registrar

Address of<br/>court office:Superior Court of Justice330 University Avenue, 9th Floor<br/>Toronto, Ontario M5G 1R7

TO: **12252856 CANADA INC.** 155 Commerce Valley Drive East Markham, Ontario L3T 7T2

## APPLICATION

- 1. The Applicant, MarshallZehr Group Inc. ("MarshallZehr"), in its capacity as administrator of the Loan (as defined below) (the "Administrator"), makes application for:
  - (a) if necessary, an order validating service of this Notice of Application and the Application Record in the manner effected, abridging the time for service thereof, and dispensing with service thereof on any party other than the parties served;
  - (b) an order appointing RSM Canada Limited ("**RSM**") as receiver ("**Receiver**") of the property, assets and undertaking of 12252856 Canada Inc. (the "**Debtor**") pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3 (the "*BIA*"), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "*CJA*"); and
  - (c) such further and other relief as this Honourable Court may deem just.
- 2. The grounds for the application are:

## The Debtor and the Real Property

- (a) The Debtor is a federal corporation with its head office located in Markham, Ontario.
- (b) The Debtor is the owner of real property municipally known as 201, 227 and 235King Road, Richmond Hill, Ontario (the "Real Property").
- (c) The Real Property consists of undeveloped land.

(d) The Debtor acquired the Real Property on October 20, 2020 for the purpose of constructing a 178 stacked townhome development (the "Development").

## Loan and Security

- (e) Pursuant to a commitment letter dated August 18, 2020, as amended (the "Commitment Letter"), MarshallZehr agreed to loan \$18.0 million (the "Loan") to the Debtor to finance its acquisition of the Real Property.
- (f) MarshallZehr syndicated an interest in the Loan to another lender (together with MarshallZehr, the "Lenders").
- (g) The Lenders appointed MarshallZehr to act as Administrator of the Loan.
- (h) The original maturity date for the Loan was December 1, 2021. It was first extended to June 1, 2022, and then to September 1, 2022.
- (i) The indebtedness of the Debtor to the Lenders is secured by, among other things, a first-registered charge/mortgage in the principal amount of \$20.0 million, and a general security agreement (collectively, the "Security").
- (j) Under the Security, the Debtor has agreed that, upon the occurrence of an event of default, the Administrator is permitted to seek the appointment of a receiver over the Debtor's property.

## **Default and Forbearance**

(k) The Debtor failed to make interest payments under the Commitment Letter that were due on March 1 and April 1, 2021.

- (1) On April 9, 2021, the Administrator demanded payment of the Debtor's indebtedness to the Lenders and delivered its notice of intention to enforce security under section 244 of the *BIA*.
- (m) On April 22, 2021, the Debtor and the Administrator entered into a forbearance agreement (the "Forbearance Agreement"), pursuant to which the Administrator agreed not to enforce the Security until the earlier of December 1, 2021 or the occurrence of an Event of Default (as defined therein), and the Debtor agreed to repay the Lenders in full on or before December 1, 2021.

## Attempts at Refinancing

- (n) Over the past twenty (20) months, the Debtor has tried and failed to obtain refinancing to repay the Lenders.
- (o) As a result of the Debtor's representations that completion of a refinancing was imminent, the Administrator did not take steps to enforce the Security after the Forbearance Agreement expired, and extended the maturity date of the Loan from December 1, 2021 to June 1, 2022, and from June 1, 2022 to September 1, 2022.

## Status of Development

- (p) Since the Loan was advanced to the Debtor in October 2020, there has been little progress on the Development.
- (q) No construction has commenced. The Debtor appears to still be in the process of obtaining site plan approval from the City of Richmond Hill.

## Maturity and Demand

- (r) The Loan matured on September 1, 2022.
- (s) On September 9, 2022, the Administrator demanded payment of the Loan from the Debtor in the amount of \$18,751,238.67 for principal and interest (excluding fees and legal costs). The Administrator also delivered its notice of intention to enforce security under section 244 of the *BIA*.
- (t) The Administrator has received no payment from the Debtor since demand was made three (3) months ago.

## Just and Convenient to Appoint a Receiver

- (u) The Loan has matured, and the Administrator has demanded payment from the Debtor and delivered its *BIA* notice.
- (v) The Debtor has been unable to refinance the Loan during the past 20 months.
- (w) The Debtor has made no payment since demand was made 3 months ago, and has provided no information to suggest that it will be in a position to repay the Loan in the near future, if ever.
- (x) The Debtor has agreed that the Administrator make seek the Court appointment of a Receiver.
- (y) The Real Property is subject to four subordinate mortgages with principal amounts totalling \$16.0 million. Another creditor is claiming that it is entitled to a \$230,000

charge against the Real Property. A construction lien of almost \$400,000 has also been registered against title to the Real Property.

- (z) It is in the best interests of the Lenders and the Debtor's creditors generally, and is just and convenient, to appoint a Receiver to take control and realize on the Real Property and the Debtor's other property and assets.
- (aa) RSM has agreed to accept the appointment as Receiver.

## Statutory and Other Grounds

- (bb) Section 243 of the *BIA*, and Section 101 of the *CJA*.
- (cc) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
- (dd) Such further and other grounds as counsel may advise and this Honourable Court permits.
- 3. The following documentary evidence will be used at the hearing of the application:
  - (a) the affidavit of Cecil Hayes sworn December 9, 2022 and the exhibits thereto; and
  - (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

December 9, 2022

## **CHAITONS LLP**

5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F) Tel: (416) 218-1129 E-mail: harvey@chaitons.com

Lawyers for the Applicant

MARSHALLZEHR GROUP INC., AS ADMINISTRATOR Applicant

-and-

12252856 CANADA INC. Respondent

Court File No.

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

# NOTICE OF APPLICATION

# CHAITONS LLP

5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F) Tel: (416) 218-1129 E-mail: harvey@chaitons.com

Lawyers for the Applicant

## TAB 2

Court File No.

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## AFFIDAVIT OF CECIL HAYES

(sworn December 9, 2022)

I, CECIL HAYES, of the City of Waterloo, in the Province of Ontario, MAKE OATH

## AND SAY AS FOLLOWS:

1. I am the Chief Operating Officer of the Applicant, MarshallZehr Group Inc. ("**MarshallZehr**"). The facts below are within my personal knowledge or determined from the face of the documents attached as exhibits and from information and advice provided to me by others. When matters are based upon information and advice received from others, I have identified the source of the information and advice and believe it to be true. 2. This affidavit is sworn in support of the application by MarshallZehr for the appointment of RSM Canada Limited ("**RSM**") as receiver ("**Receiver**") of the property, assets and undertakings of the Respondent, 12252856 Canada Inc. (the "**Debtor**").

### **THE PARTIES**

3. The Debtor is a corporation governed by the *Canada Business Corporations Act* and has its registered office located in Markham, Ontario. The Debtor was incorporated on August 7, 2020. The sole listed director of the Debtor is Prem Yachamanani. A copy of the Corporate Profile report for the Debtor is attached as **Exhibit "A"** to this affidavit.

4. The Debtor is the owner of real property municipally known as 201, 227 and 235 King Road, Richmond Hill, Ontario (collectively, the "**Real Property**"). Copies of the parcel registers for the Real Property are collectively attached as **Exhibit "B"** to this affidavit.

5. MarshallZehr is an Ontario corporation that provides syndicated construction and development financing to commercial borrowers. The financing is sourced from institutional and private lenders. MarshallZehr is also a licensed mortgage brokerage and mortgage administrator.

## THE DEBTOR'S ACQUISITION OF THE REAL PROPERTY

6. The Real Property was previously owned by 9265988 Canada Corp. ("**926 Canada**"). MarshallZehr was the administrator of, and a participant in, a loan (the "**926 Canada Loan**") made by Vector Financial Services Limited ("**Vector**") to 926 Canada.

7. In February 2020, MarshallZehr, as administrator of the 926 Canada Loan, brought an application for the appointment of a receiver over the property and assets of 926 Canada.

8. On February 12, 2020, KSV Kofman Inc. was appointed as receiver of 926 Canada (the "**926 Receiver**") pursuant to the Order of Madam Justice Conway.

9. On April 30, 2020, the 926 Receiver entered into an agreement of purchase and sale (the "**APS**") with Bridlepath Capital Corporation ("**Bridlepath**") and City Core Consortia Limited ("**City Core**"), on behalf of a corporation to be incorporated, for the sale of the Real Property.

10. Bridlepath and City Core are shareholders of the Debtor. The Debtor was incorporated to be the purchaser under the APS.

11. The 926 Receiver brought a motion for Court approval of the APS. On August 11, 2020, the Court approved the APS and ordered that title to the Real Property vest in the Debtor free and clear of all claims and encumbrances (other than permitted encumbrances) on the closing of the sale transaction.

12. The sale transaction under the APS closed on October 20, 2020.

## FINANCING FOR THE DEBTOR

13. Pursuant to a commitment letter dated August 18, 2020, as amended (the "**Commitment** Letter"), MarshallZehr agreed to loan \$18.0 million to the Debtor (the "Loan"). Interest was to be paid monthly, on the first day of each month, in arrears. A copy of the Commitment Letter is attached as Exhibit "C" to this affidavit.

14. The Loan was granted to finance the Debtor's acquisition of the Real Property for the purpose of constructing a 178 stacked townhome development (the "**Development**").

15. In accordance with the terms of the Commitment Letter, MarshallZehr was entitled to syndicate an interest in the Loan to one or more co-lenders. MarshallZehr and Vector are the lenders under the Loan. As certain of Vector's investors invest their funds through RRSPs or other registered plans, Olympia Trust Company ("**Olympia**", and together with MarshallZehr and Vector, the "Lenders") was appointed as trustee to manage such investments.

16. MarshallZehr was appointed by the Lenders to be the administrator of the Loan.

17. The term of the Loan initially was to mature on December 1, 2021. As discussed below, the term was first extended to June 1, 2022, and then to September 1, 2022.

## Security

18. As security for the Loan, the Debtor granted, among other things, the following security documents in favour of the Lenders (collectively, the "Lenders Security"):

- (a) a Charge/Mortgage registered on title to the Real Property on October 20, 2020 in the principal amount of \$20.0 million as Instrument No. YR3157405, as amended by a Transfer of Charge registered on title to the Real Property on November 25, 2020 as Instrument No. 3173773 (collectively, the "Lenders Charge"), copies of which are collectively attached as Exhibit "D" to this affidavit; and
- (b) a General Security Agreement dated October 20, 2020 (the "General Security Agreement"), a copy of which is attached as Exhibit "E" to this affidavit.

19. Pursuant to an Assignment of Charge and Collateral Security dated November 25, 2020 (the "Assignment of Security"), Vector assigned its interest in the Lenders Security to

MarshallZehr and Olympia. A copy of the Assignment of Security is attached as **Exhibit "F"** to this affidavit.

20. Pursuant to the terms of the Lenders Charge and the General Security Agreement, failure by the Debtor to pay principal or interest when due is an event of default.

21. The Debtor has also agreed that, upon default, the Lenders are entitled to appoint a receiver in writing and/or make an application for the court appointment of a Receiver.

## **OTHER CREDITORS**

## **Real Property Charges**

22. In addition to the Lenders Charge, the following charges/mortgages are also registered on title to the Real Property:

- (a) a \$5.5 million charge/mortgage in favour of Consortia Equity Capital Limited ("Consortia") registered against title to the Real Property on November 13, 2020 as Instrument No. YR3169142 (the "Consortia Charge"), a copy of which is attached as Exhibit "G" to this affidavit;
- (b) a \$1.0 million charge/mortgage in favour of Bridlepath Finance Inc. ("BFI") registered against title to the Real Property on November 12, 2021 as Instrument No. YR3340352 (the "Bridlepath Charge"), a copy of which is attached as Exhibit "H" to this affidavit;
- (c) a \$500,000 charge/mortgage in favour of Marilyn Goldberg registered against title
   to the Real Property on July 13, 2022 as Instrument No. YR3451700 (the

"Goldberg Charge"), a copy of which is attached as Exhibit "I" to this affidavit; and

(d) a \$9.0 million charge/mortgage in favour of 12279266 Canada Inc. ("1227 Canada") registered against title to the Real Property on August 26, 2022 as Instrument No. YR3470244 (the "1227 Canada Charge"), a copy of which is attached as Exhibit "J" to this affidavit.

23. The 1227 Canada Charge states that 1227 Canada and the Debtor are related persons under section 251 of the *Income Tax Act* (Canada). Based on my review of the Corporate Profile report for 1227 Canada, I understand that Mir Ali is the sole director of 1227 Canada. Mir Ali is the indirect majority shareholder of the Debtor, and is, or was, a director of the Debtor. A copy of the Corporate Profile report for 1227 Canada is attached as **Exhibit "K"** to this affidavit.

24. Consortia granted postponements of the Consortia Charge in favour of the Bridlepath Charge and the Goldberg Charge, copies of which are collectively attached as **Exhibit "L"** to this affidavit.

25. With respect to the Bridlepath Charge, on November 1, 2021, MarshallZehr, Olympia, BFI and the Debtor entered into a Subordination and Standstill Agreement (the "Subordination Agreement"). The Subordination Agreement provides, among other things, that the Bridlepath Charge is subordinated in favour of the Lenders Charge. A copy of the Subordination Agreement is attached as **Exhibit "M"** to this affidavit.

26. I am advised by Harvey Chaiton, a lawyer with Chaitons LLP ("**Chaitons**"), MarshallZehr's legal counsel, that, as a result of the postponements noted above, the charges against the Real Property are ranked as follows:

- (a) Lenders Charge;
- (b) Bridlepath Charge;
- (c) Goldberg Charge;
- (d) Consortia Charge; and
- (e) 1227 Canada Charge.

## **Construction Lien**

27. On August 29, 2022, a construction lien in the amount of \$391,141.50 was registered by Prime Design Build Corporation ("**Prime Design**") against title to the Real Property as Instrument No. YR3470704 (the "**Construction Lien**"). A copy of the Construction Lien is attached as **Exhibit "N"** to this affidavit.

28. In the Construction Lien, Prime Design alleges that it supplied pre-construction services to the Debtor from December 10, 2021 to June 30, 2022.

29. In its statement of claim issued on November 4, 2022, Prime Design alleges that it managed construction of the Development for the Debtor. Prime Design also claims that it is entitled to priority over the Lenders Charge and the other charges registered against title the Real Property. MarshallZehr has not been served with Prime Design's statement of claim to date. A copy of the Prime Design statement of claim is attached as **Exhibit "O"** to this affidavit.

## **PPSA**

30. I am advised by Mr. Chaiton that, in addition to financing statements registered against the Debtor under the *Personal Property Security Act* (Ontario) ("*PPSA*") in favour of the Lenders, BFI and Ms. Goldberg have each registered a financing statement against the Debtor under the *PPSA*. A copy of the *PPSA* search result for the Debtor current as of November 28, 2022 is attached as **Exhibit "P"** to this affidavit.

## **Other Creditors**

31. I am advised by Mr. Chaiton that on September 23, 2022, Top Producer Team Realty Inc. ("**Top Producer**") registered a Caution against title to the Real Property as Instrument No. YR3480178 in the amount of \$230,000 (the "**Caution**"). A copy of the Caution is attached as **Exhibit "Q"** to this affidavit.

32. The Caution was registered to prevent any dealing with the Real Property for a 60-day period, after which the Caution was deleted from title.

33. Chaitons has obtained a copy of Top Producer's statement of claim against the Debtor and others issued on May 13, 2022. In the statement of claim, Top Producer alleges that it is a real estate brokerage firm and is entitled to damages of \$230,000 and a charge against the Real Property in connection with agreements entered into by the parties. A copy of the statement of claim is attached as **Exhibit "R"** to this affidavit.

34. Based on a review of the Court file conducted by a process server retained by Chaitons, no steps have been taken in this proceeding to date other than the issuance of the claim and the defendants filing a notice of intent to defend the lawsuit.

## **STATUS OF THE LOAN**

## **First Demand and Forbearance**

35. As noted above, under the Commitment Letter, the Debtor is required to make interest payments to the Lenders on the first day of each month.

36. The Debtor failed to make the interest payments that were due on March 1 and April 1, 2021. As a result, on April 9, 2021, MarshallZehr demanded payment of the Debtor's indebtedness to the Lenders and delivered a notice of intention to enforce security under section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). A copy of the demand letter and the 244 BIA Notice is attached as **Exhibit "S"** to this affidavit.

37. The Debtor and MarshallZehr subsequently entered into a forbearance agreement dated April 22, 2021 (the "Forbearance Agreement"), a copy of which is attached as Exhibit "T" to this affidavit.

38. Under the Forbearance Agreement, the Lenders agreed not to enforce the Lenders Security until the earlier of December 1, 2021 or the occurrence of an Event of Default (as defined therein). The Debtor agreed to repay the Lenders in full on or before December 1, 2021.

## **Attempts to Refinance**

39. During the almost twenty (20) month period since the parties entered into the Forbearance Agreement, the Debtor has repeatedly informed MarshallZehr that it was negotiating with various potential lenders for refinancing that would permit the Debtor to repay the Lenders.

40. The Debtor was unable to complete such a refinancing by December 1, 2021 as required under the Forbearance Agreement. They were only able to obtain \$1.0 million in subordinate financing from BFI in November 2021, as discussed above.

41. As a result of the Debtor's representations that completion of a refinancing was imminent, MarshallZehr did not take steps to enforce the Lenders Security after the Forbearance Agreement expired. Additionally, in October 2021, MarshallZehr agreed to extend the maturity date for the Loan from December 1, 2021 to June 1, 2022. In May 2022, MarshallZehr again agreed to extend the maturity date for the Loan, this time from June 1, 2022 to September 1, 2022.

## STATUS OF DEVELOPMENT

42. Since the Loan was advanced to the Debtor in October 2020, there has been little progress on the Development. No construction has commenced.

43. The most recent information that MarshallZehr has received from the Debtor is a copy of a status letter dated February 7, 2022 from the Debtor's planner, which indicated that further submissions regarding the Debtor's site plan were to be made to the City of Richmond Hill. The Debtor also provided to MarshallZehr a draft copy of an appraisal effective February 13, 2022, which indicated that there were still a number of technical issues outstanding regarding the Debtor's site plan application.

## DEMAND

44. As noted above, the Loan matured on September 1, 2022.

45. As a result of the maturity of the Loan, and given that the Debtor had been unable to obtain refinancing to repay the Lenders, on September 9, 2022, the Lenders demanded payment of the

Debtor's indebtedness in the amount of \$18,751,238.67 and delivered a notice of intention to enforce security under section 244 of the BIA. A copy of the demand letter and the 244 BIA notice is attached hereto as **Exhibit "U"** to this affidavit.

46. As of the date of the swearing of this affidavit, MarshallZehr has received no payment from the Debtor since demand was made three (3) months ago.

47. The Debtor has informed MarshallZehr that it is in discussions with another potential lender. The Debtor has been unable to produce a binding commitment from the lender for the new financing.

## JUST AND CONVENIENT TO APPOINT A RECEIVER

48. The Debtor owes in excess of \$18.75 million to the Lenders. The Loan matured on September 1, 2022. The Debtor has unsuccessfully attempted to refinance the Loan for over 20 months. The Debtor has provided no information to suggest that it will be in a position to repay the Loan in the near future, if ever.

49. In addition to the Lenders Charge, the Real Property is subject to four subordinate mortgages with principal amounts totalling \$16.0 million. Another creditor is claiming that it is entitled to a \$230,000 charge against the Real Property. A construction lien of almost \$400,000 has also been registered against the Real Property.

50. In these circumstances, I believe it is in the best interests of the Lenders and the Debtor's creditors generally that a receiver be appointed to take control over and realize on the Real Property and the Debtor's other property and assets.

51. MarshallZehr proposes that RSM be appointed as Receiver. RSM has agreed to accept the

appointment, and a copy of its consent is attached as Exhibit "V" to this affidavit.

## **SWORN BEFORE ME** over

videoconference on this 9th day of December, 2022. The affiant was located in the City of Waterloo and the commissioner was located in the City of Toronto, both in the Province of Ontario. This affidavit was commissioned remotely in accordance O. Reg. 431/20, Administering Oath or Declaration Remotely 52.

Laura Culleton Commissioner for Taking Affidavits (or as may be)

CECIL HAYES

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF CECIL HAYES, SWORN BEFORE ME THIS 9<sup>TH</sup> DAY OF DECEMBER, 2022 Aller A Commissioner, etc.





Innovation, Sciences et Développement économique Canada <sup>Corporations Canada</sup>

Corporations Canada C. D. Howe Building 235 Queen St Ottawa ON K1A 0H5 Corporations Canada Édifice C.D.Howe 235 rue Queen Ottawa ON K1A 0H5

## **Corporate Profile / Profil corporatif**

 Date and time of Corporate Profile (YYYY-MM-DD)
 2022-11-28 4:06 PM
 (AAAA-MM-JJ) Date et heure du Profil corporatif

CORPORATE INFORMATION		RENSEIGNEMENTS CORPORATIFS
Corporate name		Dénomination
	12252856 Canada Inc.	
Corporation number	1225285-6	Numéro de société ou d'organisation
Business number	719240871RC0001	Numéro d'entreprise
Governing legislation		Régime législatif
	Canada Business Corporations Act (CBCA) - 2020-08-07	
	Loi canadienne sur les sociétés par actions (LCSA) - 2020-08-07	
Status		Statut
	Active	
	Active	

REGISTERED OFFICE ADDRESS		ADRESSE DU SIÈGE
	155 Commerce Valley Drive East Markham ON L3T 7T2 Canada	

ANNUAL FILINGS				DÉPÔTS ANNUELS
Anniversary date (MM-DD)		08-07		(MM-JJ) Date anniversaire
Filing period (MM-DD)	08-0	07 to/au 10-	06	(MM-JJ) Période de dépôt
Status of annual filings				Statut des dépôts annuels
	Filed Filed	2022 2021	Déposé Déposé	
Date of last annual meeting (YYYY-MM-DD)	2	2022-11-14		(AAAA-MM-JJ) Date de la dernière assemblée annuelle
Туре				Туре
Non-distrit	buting corpora	tion with 50	or fewer sh	nareholders
Société n'ayant pas	fait appel au p	public et cor	mptant 50 a	ctionnaires ou moins



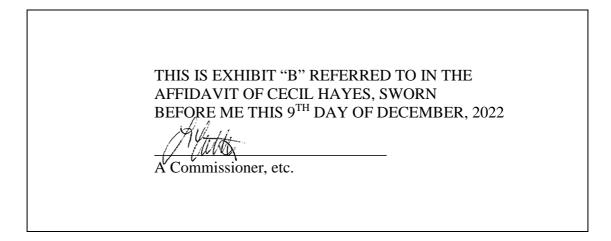
DIRECTORS		ADMINISTRATEURS
Minimum number	1	Nombre minimal
Maximum number	10	Nombre maximal
Current number	1	Nombre actuel
Prem Kumar G. Yachamanani	155 Commerce Valley Drive, Markham ON L3T 7T2, Canada	

Certificates issued (YYYY-MM-DD) Certificate of Incorporation 2020-08-0	(AAAA-MM-JJ) <b>Historique de la dénomination</b> 52856 Canada Inc. (AAAA-MM-JJ) <b>Certificats émis</b> 7 Certificat de constitution en société 2 Certificat de modification Renseignements concernant les modifications aux statuts :
Certificates issued (YYYY-MM-DD) Certificate of Incorporation 2020-08-0 Certificate of Amendment 2020-10-1 Amendment details: Other Certificate of Amendment 2020-10-1 Amendment details:	(AAAA-MM-JJ) <b>Certificats émis</b> 7 Certificat de constitution en société 2 Certificat de modification
Certificate of Incorporation       2020-08-0         Certificate of Amendment       2020-10-1         Amendment details:       0ther         Certificate of Amendment       2020-10-1         Amendment details:       2020-10-1         Amendment details:       2020-10-1	<ul> <li>7 Certificat de constitution en société</li> <li>2 Certificat de modification</li> </ul>
Certificate of Amendment2020-10-11Amendment details: Other0Certificate of Amendment2020-10-11Amendment details:0	2 Certificat de modification
Amendment details:	Autre
	5 Certificat de modification Renseignements concernant les modifications aux statuts : Autre
2010-03-20. Some certificates issued prior to 2000 may not be listed. 2010	s les renseignements concernant les modifications effectuées après I-03-20 sont disponibles. Certains certificats émis avant 2000 pourraient ne être listés.
Documents filed (YYYY-MM-DD)	(AAAA-MM-JJ) Documents déposés

The Corporate Profile sets out the most recent information filed with and accepted by Corporations Canada as of the date and time set out on the Profile.

Le Profil corporatif fait état des renseignements fournis et acceptés par Corporations Canada à la date et à l'heure indiquées dans le profil.





PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PREPARED FOR Lynda001 PAGE 1 OF 2

ON 2022/11/29 AT 11:59:14

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \* 03196-0037 (LT)

PROPERTY DESCRIPTION: LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL

Ontario ServiceOntario

REGISTRY LAND

OFFICE #65

ESTATE/QUALIFIER: PROPERTY REMARKS: CORRECTION: DOCUMENT IF351 ADDED TO 03196-0037 ON 2011/01/10 AT 12:15 BY GRAM, SANDRA. CORRECTION: DOCUMENT IF367 ADDED TO 03196-0037 ON 2011/01/10 AT 12:33 BY GRAM, SANDRA. RECENTLY:

FEE SIMPLE LT CONVERSION QUALIFIED

RE-ENTRY FROM 03196-0111

1999/07/23 PIN CREATION DATE:

CAPACITY SHARE

12252856 CANADA INC. OWNERS' NAMES

12252856 CANADA INC.	NC.					
REG. NUM. D	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
**EFFECTIVE 2000	2000/07/29 THE	NOTATION OF THE	"BLOCK IMPLEMENTATION	<i>I DATE" OF 1997/06/23 ON THIS PIN**</i>		
**WAS REPLACED WITH	THE	"PIN CREATION DATE" OF	F 1999/07/23**			
** PRINTOUT INCL	UDES ALL D	INCLUDES ALL DOCUMENT TYPES (DELE	(DELETED INSTRUMENTS NOT	" INCLUDED) **		
**SUBJECT, ON FI	RST REGIST.	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT,	ND TITLES ACT, TO			
* * SUBSE	CTION 44 (1	SUBSECTION 44 (1) OF THE LAND TITLES ACT,	S ACT, EXCEPT PARAGRAPH 11,	RAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *		
** AND E	ESCHEATS OR	OR FORFEITURE TO THE	THE CROWN.			
** THE R	RIGHTS OF A.	OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT,	, BUT FOR THE LAND	TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF		
** IT TH	THROUGH LENG	LENGTH OF ADVERSE POSSE	SSION, PRESCRIPTION	POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY		
* * CONVE	CONVENTION.					
** ANY LEASE		TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.	70(2) OF THE REGIS	TRY ACT APPLIES.		
**DATE OF CONVER	SION TO LA	OF CONVERSION TO LAND TITLES: 1999/07/26 **	* *			
IF351 1951.	1951/02/19 BY	BYLAW				Ω
IF367 1952	1952/04/28 BY	BYLAW		THE CORPORATION OF THE TOWNSHIP OF KING		Ω
REMARKS: BY-LAW	: BY-LAW 951	AMENDING BY-LAW	929			
YR3157404 2020.	2020/10/20 APL	L VESTING ORDER	\$20,250,000	ONTARIO SUPERIOR COURT OF JUSTICE	12252856 CANADA INC.	Ω
YR3157405 2020	2020/10/20 CH	CHARGE	\$20,000,000	12252856 CANADA INC.	MARSHALLZEHR GROUP INC. VECTOR FINANCIAL SERVICES LIMITED	Ω
YR3157406 2020	2020/10/20 NO	NO ASSGN RENT GEN		12252856 CANADA INC.	MARSHALLZEHR GROUP INC.	Q
REMARKS :	REMARKS: YR3157405.	5.				

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.

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 2 PREPARED FOR Lynda001

ON 2022/11/29 AT 11:59:14

03196-0037 (LT)

Ontario ServiceOntario

LAND

REGISTRY OFFICE #65

YR3451700 YR3340353 YR3173773 YR3494793 YR3480655 YR3470244 YR3451701 YR3470704 YR3340352 YR3169142 REG. NUM. REMARKS: YR3157405, YR3157406, YR3173773 REMARKS: YR3169142 TO YR3451700 REMARKS: YR3169142 TO YR3340352 REMARKS: YR3157405 REMARKS: YR3470704 2022/08/26 2022/07/13 POSTPONEMENT 2021/11/12 POSTPONEMENT 2021/11/12 CHARGE 2022/09/26 NO CHNG ADDR INST 2022/11/07 CERTIFICATE 2022/08/29 | CONSTRUCTION LIEN 2022/07/13 2020/11/25 2020/11/13 CHARGE DATE CHARGE TRANSFER OF CHARGE CHARGE INSTRUMENT TYPE AMOUNT \$9,000,000 | 12252856 CANADA INC \$1,000,000 | 12252856 CANADA INC. \$5,500,000 | 12252856 CANADA INC. \$500,000 | 12252856 CANADA INC \$391,141 PRIME DESIGN BUILD CORPORATION CERTIFIED IN ACCORDANCE WITH THE MARSHALLZEHR GROUP INC CONSORTIA EQUITY CAPITAL LIMITED PRIME DESIGN BUILD CORPORATION CONSORTIA EQUITY CAPITAL LIMITED VECTOR FINANCIAL SERVICES LIMITED PARTIES FROM LAND TITLES ACT SUBJECT TO RESERVATIONS IN CROWN GRANT GOLDBERG, MARILYN BRIDLEPATH FINANCE INC MARSHALLZEHR GROUP INC GOLDBERG, MARILYN BRIDLEPATH FINANCE INC OLYMPIA TRUST COMPANY CONSORTIA EQUITY CAPITAL LIMITED 12279266 CANADA INC. PARTIES ΠO

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CERT/ CHKD

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

		PAGE 1 OF 2	
Ontario ServiceOntario REGISTRY     OFFICE #65     * CERTIFIED IN ACCORDANCE WITH	03196-0038 (LT) THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN	ED H 2/11	
PROPERTY DESCRIPTION: LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HI	HILL		
PROPERTY REMARKS: CORRECTION: DOCUMENT IF351 ADDED TO 03196-0038 ON 2011/01/10 AT 12:33 BY GRAM, SANDRA.	AT 12:15 BY GRAM, SANDRA. CORRECTION: DOCUMENT IF367	ADDED TO 03196-0038 ON 2011/01/10	
<u>ESTATE/QUALIFIER:</u> FEE SIMPLE LT CONVERSION QUALIFIED		PIN CREATION DATE: 1999/07/23	
OWNERS' NAMES 12252856 CANADA INC.			
REG. NUM. DATE INSTRUMENT TYPE AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1997/06/23 ON	THIS PIN**		
**MAS REPLACED WITH THE "PIN CREATION DATE" OF 1999/07/23**			
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **			
**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 POS\$ESSION, PRESCRIPTION, MISDESCRIPTION OR BOU	BOUNDARIES SETTLED BY		
** CONVENTION.			
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.			
**DATE OF CONVERSION TO LAND TITLES: 1999/07/26 **			
IF351 1951/02/19 BYLAW		0	()
E CORPORATION OF THE	TOWNSHIP	0	( )
REMARKS: BY-LAW 951 AMENDING BY-LAW 929			
65R420 1971/01/14 PLAN REFERENCE		0	
YR3157404 2020/10/20 APL VESTING ORDER \$20,250,000 ONTARIO SUPERIOR COURT C	OF JUSTICE 12252856 CANADA INC	A INC.	
YR3157405 2020/10/20 CHARGE \$20,000,000 12252856 CANADA INC.	MARSHALLZEHR GROUP INC. VECTOR FINANCIAL SERVICES	AL SERVICES LIMITED	0
YR3157406 2020/10/20 NO ASSGN RENT GEN 12252856 CANADA INC.	MARSHALLZEHR GROUP INC. VECTOR FINANCIAL SERVIC	LZEHR GROUP INC. C	()
NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIP	ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED	NTED FOR THIS PROPERTY.	

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 2

ON 2022/11/29 AT 12:01:20 PREPARED FOR Lynda001

Ontario ServiceOntario OFFICE #65 REGISTRY 03196-0038 (LT)

LAND

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PREPARED FOR Lynda001 PAGE 1 OF 2

QN

2022/11/29 AT 12:02:02

CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT 03196-0039 (LT) SUBJECT TO RESERVATIONS IN CROWN GRANT

PROPERTY DESCRIPTION: PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL

Ontario ServiceOntario

LAND

OFFICE #65 REGISTRY

PROPERTY REMARKS: CORRECTION: DOCUMENT IF351 ADDED TO 03196-0039 ON 2011/01/10 AT 12:15 BY GRAM, SANDRA. CORRECTION: DOCUMENT IF367 ADDED TO 03196-0039 ON 2011/01/10 AT 12:33 BY GRAM, SANDRA.

RE-ENTRY FROM 03196-0113 RECENTLY:

CAPACITY SHARE

FEE SIMPLE LT CONVERSION QUALIFIED

ESTATE/QUALIFIER:

12252856 CANADA INC.

REG. NUM.

\*\* PRINTOUT

DWNERS' NAMES

1999/07/23 PIN CREATION DATE:

CERT/ CHKD

\*\*DATE OF CONVERSION TO LAND TITLES: 1999/07/26 \*\* \*\*SUBJECT, ON FIRST REGISTRATION UNDER THE \*\*WAS REPLACED WITH THE "PIN CREATION DATE" OF 1999/07/23\*\* \*\*EFFECTIVE 2000/07/29 AND ESCHEATS OR FORFEITURE TO THE CROWN SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES the rights of any person who would, but for the land titles act, be entitled to the land or any INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) \*\* 1951/02/19 DATE THE NOTATION OF THE BYLAW INSTRUMENT TYPE LAND TITLES ACT, BLOCK IMPLEMENTATION AMOUNT ΤO DATE" OF 1997/06/23 ON THIS PIN\*\* PARTIES FROM PART OF \* PARTIES ΠO

ΤT THROUGH LÅNGTH OF ADVERSE POS\$ESSION, PRESCRIPTIÓN, MISDESCRIPTION OR BOUNDARIES SETTLED BY

\* \* CONVENTION. \* \* \* \* \*

IF351

IF367

1952/04/28

BYLAW

YR3157404

2020/10/20

APL VESTING ORDER

\$20,250,000 ONTARIO SUPERIOR COURT OF JUSTICE

OF KING

THE CORPORATION OF THE TOWNSHIP

\$20,000,000 | 12252856 CANADA INC

12252856 CANADA INC

MARSHALLZEHR GROUP INC

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VECTOR FINANCIAL SERVICES LIMITED

VECTOR FINANCIAL SERVICES LIMITED

MARSHALLZEHR GROUP INC.

12252856 CANADA INC

REMARKS: BY-LAM 951 AMENDING BY-LAM 929

YR3157405

2020/10/20

CHARGE

YR3157406

2020/10/20

NO ASSGN RENT GEN

REMARKS: YR3157405

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.

\*

ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 2 PREPARED FOR Lunds

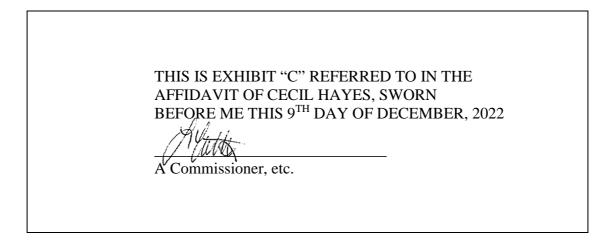
PREPARED FOR Lynda001 ON 2022/11/29 AT 12:02:02

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CR

Ontario ServiceOntario

LAND REGISTRY

		* CER	CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *	RVATIONS IN CROWN GRANT *	
REG. NUM. DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR3169142 2020/11/13	CHARGE	\$5,500,000	12252856 CANADA INC.	CONSORTIA EQUITY CAPITAL LIMITED	Ω
YR3173773 2020/11/25	TRANSFER OF CHARGE		VECTOR FINANCIAL SERVICES LIMITED	MARSHALLZEHR GROUP INC.	Ω
REMARKS: YR3157405.	7405.				
YR3340352 2021/11/12	CHARGE	\$1,000,000	12252856 CANADA INC.	BRIDLEPATH FINANCE INC.	Ω
YR3340353 2021/11/12 REMARKS: YR316	3 2021/11/12 POSTPONEMENT REMARKS: YR3169142 TO YR3340352		CONSORTIA EQUITY CAPITAL LIMITED	BRIDLEPATH FINANCE INC.	Q
YR3451700 2022/07/13	CHARGE	\$500,000	12252856 CANADA INC.	GOLDBERG, MARILYN	Ω
YR3451701 2022/07/13 REMARKS: YR316	L 2022/07/13 POSTPONEMENT REMARKS: YR3169142 TO YR3451700		CONSORTIA EQUITY CAPITAL LIMITED	GOLDBERG, MARILYN	Q
YR3470244 2022/08/26	CHARGE	\$9,000,000	12252856 CANADA INC.	12279266 CANADA INC.	Ω
YR3470704 2022/08/29	CONSTRUCTION LIEN	\$391,141	PRIME DESIGN BUILD CORPORATION		Q
YR3480655 2022/09/26 REMARKS: YR315	5 2022/09/26 NO CHNG ADDR INST REMARKS: YR3157405, YR3157406, YR3173773	ω 	MARSHALLZEHR GROUP INC.		Q
YR3494793 2022/11/07 CE REMARKS: YR3470704	CERTIFICATE		PRIME DESIGN BUILD CORPORATION		Ω





Tuesday, 18 August 2020

#### Attention: Shafiq Punjani and Jack Pong

Bridlepath Capital Corporation and City Core Consortia Limited 1280 Finch Ave W #611 North York, ON M3J 3K6

Dear Shafiq Punjani, Jack Pong

Re: 1<sup>st</sup> Mortgage for Acquisition of 201-235 King Road

Project Name: 201 King Road Bridge – MZGI 329 (the "Project")

This commitment letter confirms that MarshallZehr Group Inc. (the "Lender") is prepared to provide financing (the "Loan") for the Project conditional on the terms and conditions contained in this letter agreement (the "Commitment").

- I. LOAN
- Borrower: 12252856 Canada Inc. (the "Borrower")
- **Guarantors:** Corporate guarantors affiliated with the borrowing entity who shall provide a guarantee of 33% of the Loan Amount. (Guarantors are subject to Lender approval upon Lender acceptance of Guarantor due diligence confirming Guarantor assets are satisfactory to support guarantee).
- **Obligors:** Means, collectively, the Borrower and the Guarantors and the "Obligor(s)" means any one of them.
- Lender: MarshallZehr Group Inc. (the "Lender") and/or such other assignee or lenders as MarshallZehr Group Inc. may arrange to participate in the Loan.
- Project: Those lands and premises described municipally as 201-235 King Road and legally as PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ; TOWN OF RICHMOND HILL, and LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL, and LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL.

Loan Amount: \$18,000,000 (the "Loan") to be advanced through multiple tranches as follows:

Tranche A:	\$12,000,000
Tranche B:	<u>\$ 6,000,000</u>
Total Loan Amount:	\$18,000,000

Tranche B shall be fully subordinate and postponed to Tranche A.

**Purpose:** 1st Mortgage for Acquisition Loan.



The Lender understands that the Project is to consist of 178 Stacked Townhomes with a Gross Floor Area of approximately 163,500 square feet on 3.87-acres. Furthermore, the Lender understands that the Project is allowable based on the Official Plan.

Sources and Uses of Funds:

Uses		
Land Acquisition	\$	20,250,000
Land Transfer Tax	\$	520,000
Legal Fees for Land Closing	\$	70,000
Legals for Mortgage Closing	\$	60,000
Prepaid Mortgage Interest (3 Months)	\$	480,000
Lender Fee	\$	360,000
Deferred Lender Fee	\$	180,000
Total Uses	\$	21,920,000
Sources		
Facility 1 Translas A	<u> </u>	10,000,000

Facility 1 - Tranche A	\$ 12,000,000
Facility 1 - Tranche B	\$ 6,000,000
Cash Equity Injected on Closing	\$ 3,740,000
Deferred Equity	\$ 180,000
Total Uses	\$ 21,920,000

\*Loans from any Affiliate of the Borrower ("Affiliate Loans") shall be considered as part of Cash Equity

# Syndication

of the Loan: It is the Lender's intention to syndicate all or a portion of the Loan with other lenders on terms and conditions satisfactory to the Lender. All obligations of the Lender are conditional on successful syndication by the Lender. This Commitment shall be null and void if the Lender is unable to syndicate the Loan, and all fees less any legal costs incurred by the Lender, shall be returned to the Borrower. The Lender shall notify the Borrower within 21 days from the date of the Borrower signing this Commitment that the Lender has successfully syndicated this Loan. If the Lender is unable to provide the Borrower written confirmation that the Loan has been successfully syndicated within this time, it will be the sole option of the Lender to terminate this agreement, in which case this Commitment will be null and void and all fees less any legal costs incurred by the Lender, shall be returned to the Borrower.



#### Initial Advance:

ce: The Loan shall be advanced in one draw as follows:

The first draw ("Draw 1" or the "Initial Advance") is anticipated to be in the principal amount of \$18,000,000 and advanced upon satisfaction of the conditions contained herein and by the applicable Notices (see Appendix A, B, C and D). The Initial Advance is expected to be advanced as follows:

Land Acquisition	\$ 16,510,000
Land Transfer Tax	\$ 520,000
Legal Fees for Land Closing	\$ 70,000
Legals for Mortgage Closing	\$ 60,000
Prepaid Mortgage Interest (3 Months)	\$ 480,000
Lender Fee	\$ 360,000
Total Initial Advance	\$ 18,000,000

## Lender

Advance: A Lender Advance is defined as the transfer of funds from the participating Lender(s) to MarshallZehr's Trust account. Interest shall become payable on these funds from the date of the deposit of the funds into the MarshallZehr Trust account, regardless of whether the funds are used in the project immediately, or later returned to the Lender without ever having been drawn by the Borrower. Refer to Appendix C.

#### Borrower

- **Draw:** A Borrower Draw is defined as the request of funds from MarshallZehr's Trust account to fund the Project bank account or to be directly applied against project expenses. A Borrower Draw will not be processed until such time as all the conditions related to the Draw are met, as outlined in Section 2.1. Refer to Appendix D.
- **Term:** Thirteen (13) months (commencing from the Interest Adjustment Date or IAD). Interest from the date of the Initial Advance to the IAD shall be deducted by the Lender from the Initial Advance.



Interest Rate:	Tranche A: Tranche B:	Prime + 7.05% per annum (Floor Rate: 9.50% per annum) 13.0% per annum			
Massila	(365 days/year), con payments made from interest payments v resources with the in Prime shall be defin purpose of determini	commencing on the date of the Initial Advance, calculated daily npounded and payable monthly in arrears with interest only in the Borrower and/or the Guarantor's own resources. Monthly will come from the Borrower and/or the Guarantor's own terest reserve to be used in the final three months of the loan. ed as the Bank of Montreal Prime Rate of Interest. For the ing the interest rate used in the interest calculation, the Bank of ness Rate on the first day of each month will be used as the interest.			
Wrap Up Period:	interest at twice the	e Term shall be the beginning of the Wrap Up Period, and bear Interest Rate, and if there are multiple Tranches, calculated, ayable in the same manner as prior to entering the Wrap Up cable Tranche.			
Interest Adjustment Date: Standby	The "Interest Adjustr Initial Advance.	nent Date" or "IAD" shall be the 1st of the month following the			
Interest:	a result of any action commence on the ad standby interest ("Standby interest ("Standby become due and pay	Loan has not been fully advanced by September 10 <sup>th</sup> , 2020 as on or other default hereunder by the Borrower, interest will vance date established herein for such advance, in the form of andby Interest") on any unadvanced portion of the Loan and will able on the date the Loan is advanced or upon the termination Letter without any advances having been made.			
	5	II be calculated from the date of the expected advance as the IAD and shall be payable at the time of the advance and dvance.			
Advance Deductions:	equal to the applicab	ance, the Lender may at its sole discretion, deduct an amount le interest for such advance for the last 3 months of the term erest reserve (the "Interest Reserve").			
	Interest Reserve Amo	ount: \$480,000			
	The Interest Reserve shall be held in the Lender's trust account and be used to service the interest payments on the final 3 months of the loan balance. Any funds held in the Lender's trust account from an advance are considered to be and shall be deemed to be principal advanced to the Borrower and interest shall accrue on those funds as if they had been paid directly to the Borrower.				
Cancellation:	or accrued in connect	emand require immediate payment of all amounts outstanding stion with this Commitment. The Lender may at any time, for			

any reason and without notice, cancel the undrawn portion of the Loan.



Anniversary Date:	The anniversary date is defined as one year from the Interest Adjustment Date (IAD). The Lender may request compliance deliverables based on anniversary dates of the mortgage, or as the lender deems necessary in their sole discretion.
Time and Place of	
Payments:	Payments are to be made to the Lender at its offices at Suite 206, 465 Phillip Street, Waterloo, Ontario no later than 1:00 p.m. on the date scheduled for payment. Payments made after such time shall be treated as having been received on the next business day. Payments made after the date scheduled for payment must be made by certified cheque or bank draft. Whenever any payment is due on a day that is not a business day, then such payment will be due on the next business day, and interest will accrue to such business day. Any NSF Cheques will incur a fee of \$500.
Principal	
Payments:	There shall be no regularly scheduled principal repayments and the entire outstanding principal amount shall become due and payable at maturity.
Prepayment:	<ul> <li>The mortgage may be prepaid in whole or in part at any time or times on the following terms:</li> <li>a) At least 60 days prior written notice is given to the Lender in the form provided in Appendix E - Repayment Notice</li> <li>b) No pre-payment shall be in an amount of less than \$100,000 without consent of the Lender</li> <li>c) The Borrower shall pay the Lender an administration fee of \$500.00 and its solicitor's reasonable legal fees in respect to the discharge or repayment</li> </ul>



**Fees:** The Borrower shall pay the following Lender fees to the transaction mortgage broker, MarshallZehr Group Inc.:

#### Good Faith

- **Deposit:** \$25,000 non-refundable if Borrower fails to proceed based on the terms of this Commitment Letter and is full compensation to the Lender for its work and efforts in preparation of this Commitment Letter. The Borrower shall also be responsible for the Lender's legal and other, professional fees and out of pocket expenses if the Borrower fails to proceed with the Loan. This fee is accepted upon signing of the Commitment Letter and is payable to "MarshallZehr Group Inc. in Trust". The Good Faith Deposit will be credited to the Borrower against the Lender Fee payable on closing.
- Lender Fee: \$540,000, the Lender Fee, shall be earned by the Lender upon notification of successful syndication. A portion of the Lender Fee (\$360,000) less the Good Faith Deposit shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Borrower. The deferred portion (\$180,000) of the Lender Fee is payable upon discharge or refinancing of the mortgage.

#### Admin

Fee: An additional fee of \$5,000 payable to MarshallZehr Group Inc. will be paid by the Borrower at closing of the Initial Advance in order to complete the FSCO required documentation.

#### Final

- **Discharge Fee:** The Borrower will pay the Lender an administration fee of \$500.00 and its solicitor's reasonable legal fees in respect of the preparation of the final discharge of this mortgage.
- **Expenses:** All reasonable expenses of the Lender and the Borrower shall be paid by the Borrower including (but not limited to), the cost of any third party reports and any costs of recovery of unpaid amounts should that be necessary if the transaction does not proceed as a result of any action or other default hereunder by the Borrower. Upon request the Lender shall provide an estimate of the legal fees to be incurred by the Lender. Regardless, the Borrower is responsible for all reasonable legal fees incurred by the Lender, even if there is no default hereunder by the Borrower.



#### Subordinate Financing:

No additional financing other than Affiliate Loans will be permitted without the prior written consent of the Lender and in the event of a default under this restriction, the entire principal, interest, fees and all other amounts under the Commitment and security issued pursuant thereto shall become immediately due and payable.

Should additional subordinate financing be placed by the Borrower on the consent of the Lender, such consent will be conditional upon the secondary lender entering into a postponement, subordination and standstill agreement that requires complete cooperation in executing all postponements and consents as may be required to advance the development of the Project. Failure to comply shall be considered a default by the Borrower.

#### Maximum Rate of

# Return:

The parties agree that notwithstanding any agreement to the contrary, no interest on the credit advanced will be payable in excess of that permitted by the laws of Canada. If the effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles would exceed sixty (60) percent (or such other rate as the Parliament of Canada may deem from time to time as The Criminal Rate) on the credit advance, then (1) the amount of any fees, bonus, commissions or like charges payable in connection therewith will be reduced to the extent necessary to eliminate such excess; (2) any remaining excess that has been paid will be credited toward prepayment of the credit advanced; and (3) any overpayment that may remain after such crediting will be returned forthwith upon demand. In this paragraph the terms "interest", "Criminal Rate" and "credit advanced" have the meaning ascribed to them in Section 347 of The Criminal Code; and "credit advanced" has the same meaning as "Loan" referred to elsewhere in this Commitment.

# Administration

# Fee Payable

on Default: In the event of a default by the Borrower or any Guarantor in their respective obligations under this Commitment, Loan or Security that is not cured within the timeframes set out herein, the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of \$5,000.00 for each month or part thereof that the Borrower and/or any Guarantor is in default of its obligations under the Commitment, Loan or Security. The said sum or sums are agreed to be liquidated damages to cover the Lender's administration and management costs and are not intended nor shall they be construed as a penalty. All such sums payable to the Lender shall be a charge upon the Project and its assets and interest shall accrue thereon as if they were Loan principal.



## II. TERMS AND CONDITIONS

The Loan terms and conditions shall be such terms and conditions as the Lender may from time to time reasonably require and shall include, but not be limited to the following:

## 2.1 Initial Funding Conditions

The Lender shall not be required to advance any funds prior to the Borrower having fulfilled to the Lender's satisfaction the following conditions:

- a) All the Security and ancillary loan agreements and documents and opinions shall have been executed and delivered to the Lender or its solicitors and registered where and as required. Please refer to Section III. SECURITY TO BE DELIVERED for a complete listing.
- b) The Lender shall have satisfied itself with the financial performance and condition of the Borrower and each of the Guarantors in the Lender's sole discretion acting reasonably. Each of the Obligors shall provide within five (5) business days of the date of execution of this Commitment, at a minimum, the following deliverables:
  - i. Corporate Borrowers shall provide external accountant prepared financial statements for its two most recently ended fiscal years.
  - ii. Corporate Guarantors shall provide external accountant prepared financial statements (Review Engagement or Notice to Reader) for its two most recently ended fiscal years.
  - iii. Corporate Obligors shall provide Corporate Notice of Assessments for its two most recently ended fiscal years.
  - iv. Personal Obligors shall provide Notices of Assessment received from the Canada Revenue Agency for their two most recently ended taxation years, with respect to their income tax filings.
  - v. Personal Obligors shall provide the Lender's form of Personal Net Worth Statement with supporting documentation.
  - vi. All Obligors shall complete the Lender's form of Mortgage Application. To facilitate the Lender's due diligence regarding the creditworthiness of the Obligors, each of the Obligors shall authorize the Lender to conduct credit checks and authorize each of the financial institutions with which the Obligors deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each respectively.
- c) The Borrower shall deliver to the Lender within five (5) business days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance the following:
  - i. A copy of the Purchase and Sale Agreement (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Project Lands confirming a purchase price of not less than \$20,250,000.
  - ii. A soils-test/geotechnical report (load bearing capacity) by a professional engineer as is acceptable to the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and with the recommendations, if any, which may be contained in such soils-test/geotechnical report. Such geotechnical report must be addressed to the Lender or be accompanied by a Transmittal Letter from the engineer to the Lender and shall confirm that the Lender can rely upon such report for lending purposes (received).
  - iii. An appraisal, satisfactory to the Lender, of the Project confirming a fair market value of the land as-is in the minimum amount of \$25,000,000 inclusive of HST to be prepared at the Borrower's expense and paid in advance by a Lender approved appraiser. Such



appraisal report must be addressed to the Lender or be accompanied by a Transmittal Letter from the appraiser to the Lender and shall confirm that the Lender can rely upon such appraisal for lending purposes (received).

- iv. A satisfactory Phase 1 Environmental Site Assessment Report (and further Environmental Site Assessment Reports, Environmental Remediation Plans or a Record of Site Condition, if necessary) conducted and prepared by a consultant approved by the Lender together with a Letter of Transmittal from the consultant permitting the Lender to rely on the Assessment Report (and the subsequent environmental reports, if any). If deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate environmental professional engaged by the Lender at the Borrower's expense and the Borrower will provide an appropriate Emergency Response Plan for the Project and related activities (received).
- v. A survey of the Project by an Ontario licensed land surveyor showing the relationship of the lands to public thoroughfares for access purposes; and indicating no encroachments, easements or rights of way, save and except those that do not encroach or hinder the Borrower's ability to construct the project in accordance with the proposed site plan which the Lender may specifically accept. If no survey is available at the time of the Initial Advance, the Lender in its sole discretion may rely upon the title insurance policy to be obtained in connection with the Loan (received).
- vi. Satisfactory proof of \$3,740,000 in capital to be invested (inclusive of Affiliate Loans) in the Project and means to cover any potential closing costs, if required.
- vii. A detailed project schedule outlining the time to complete the various stages and phases of the Project, acceptable to the Lender.
- d) The initial Loan to Value ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 90%. For the purpose of calculating the Loan to Value ratio in the absence of current market values;
  - i. The Loan amount shall include all debt obligations including all senior ranking and unapproved subordinate debt and outstanding Project accounts payable exclusive of Affiliate Loans.
  - ii. Value shall be calculated by utilizing the Purchase Price unless otherwise agreed to by the Lender.
- e) The initial Loan to Cost ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 90%. For the purpose of calculating the Loan to Cost ratio in the absence of current market values;
  - i. The Loan amount shall include all debt obligations including senior ranking and unapproved subordinate debt and outstanding Project accounts payable exclusive of Affiliate Loans.
  - ii. Cost shall be determined by utilizing the Net Cost to Date as agreed to by the Lender.
- f) Confirmation satisfactory to the Lender that all property taxes for the Project are current and have been paid.
- g) Applicable Notices in the form provided in Appendix A, B, C & D.
- h) Anti-Money Laundering Compliance documentation to be completed; Agent Examination of Identification Form will be provided to the Borrower's lawyer with the closing documents. (to be completed by the Borrower and each Guarantor, the identification of all authorized signatories as outlined on the Director's Resolution, to a maximum of three must be obtained).
- i) Such other matters as the Lender may deem appropriate and necessary to satisfy itself of the Project's viability, the Borrower's creditworthiness and the ability of the Borrower and Guarantors to fulfil their obligations herein.



#### III. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the "Security") duly registered where applicable and all in the form and on the terms acceptable to the Lender's solicitors:

- a) **Mortgage** A 1<sup>st</sup> Mortgage in the amount of \$20,000,000 on the 201 King Road Bridge MZGI 329 Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being two times Prime + 15.1%.
- b) **GSA** General Security Agreement over all of the assets and undertaking of the Borrower and each Guarantor, if any.
- c) General Assignment of all leases and rents with respect to this project.
- d) **Guarantees** Joint and several guarantees from each of the guarantors limited to a maximum of 33% of the Loan Amount.
- e) Environmental An Environmental Undertaking and Indemnity and Checklist from the Borrower in such form as the Lender shall require.
- f) Security Opinion A favourable Letter of Opinion from the Lender's solicitor confirming the validity and enforceability of the Lender's security.
- g) Insurance Proof of appropriate Insurance and an assignment of insurance satisfactory to an insurance professional engaged on behalf of the Lender. In addition, a certificate of insurance showing the Lender as additional insured on any required insurance, and Commercial Liability coverage of not less than the amount deemed appropriate by the Lender's Insurance Consultant.
- h) **Title Insurance** Satisfactory title insurance.
- i) **Taxes** Borrower provides satisfactory proof that taxes are current.
- j) **Postponement** Postponement, Subrogation and Assignment from the shareholders of the Borrower (and such other creditors as the Lender may require upon completion of its due diligence) of all indebtedness owed by and claims against the Borrower to and by the shareholders to the indebtedness and claims of the Lender.
- k) General Assignment General Assignment and Transmittal Letters from the authors of all project plans, specifications, drawings and permits, all architectural, engineering, general contractor and construction contracts and copies of all third party purchase and sale agreements and deposits for individual units sold together with any other rights, interests and obligations of any kind respecting the Project and reasonably necessary for the completion of the Project as contemplated by the Lender on a default by the Borrower.
- I) **Preauthorized Payment** If required by the Lender such preauthorized payment documentation necessary to authorize the Lender to debit directly from the Borrower's account amounts due under the Commitment and Loan.
- m) **Deficiency Agreement** Joint and Several Deficiency Agreement executed by the Borrower and the Guarantors agreeing to fund costs not included or in excess of forecasted expenditure.
- n) Assignment of Purchaser Deposits Such assignments of purchaser's deposits as the Lender and its solicitor's may reasonably require provided, the Borrower shall be permitted to inject the deposit funds into the Project in respect of direct Project construction costs.
- o) Further Security Such further security, guarantors and ancillary documents and agreements as the Lender or its solicitors may, acting reasonably, deem necessary to adequately secure the Loan obligations and complete and perfect the Security.



#### IV. BORROWERS COVENANTS

The Borrower and, where applicable, each of the Guarantors covenants as follows and a breach of any covenant shall be a default under the terms of the Security:

#### 4.1 Affirmative Covenants

So long as any amount under the Loan is outstanding or available, the Borrower covenants and agrees with the Lender that unless the Lender otherwise consents in writing:

- a) **Punctual Payment** The Borrower shall duly and punctually pay the principal of all Advances made to it under the Loan, all interest thereon and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.
- b) Corporate Existence and Conduct of Business The Borrower shall, and the Borrower shall cause the Guarantors to, maintain their respective corporate existences in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licences and qualifications to carry on business in any jurisdiction in which it or they carry on business and each of the Borrowers shall, and the Borrower shall cause the Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
- c) Compliance with Legislation The Borrower shall do or cause to be done, and the Borrower shall cause the Guarantors to do or cause to be done, all acts necessary or desirable to comply with all material Applicable Laws, including, without limitation, all Requirements of Environmental Law and to preserve and keep in full force and effect all franchises, licences, rights, privileges and permits necessary to enable each of the Obligors to operate and conduct their respective businesses in accordance with standard industry practice and to advise the Lender of any anticipated changes, loss or sale of such franchises, licences, rights, privileges and permits.
- d) Material Litigation The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting it or any of the other Obligors if the result might, in such Borrower's bona fide opinion, have a material adverse effect on the financial condition or operations of any of the Obligors or any of its Subsidiaries and from time to time furnish to the Lender all reasonable information requested by the Lender concerning the status of any such litigation, proceeding or dispute.
- e) Financial Statements and Other Information The Borrower shall deliver, or cause to be delivered, to the Lender:
  - i. Annual Financial Statements of the Borrower as soon as available and, in any event, within one hundred and twenty (90) days after the end of each of its fiscal years, copies of the Borrower's externally professional accountant prepared financial statements are required. Statements on a consolidated basis in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such year, together with the notes thereto, all prepared in accordance with Generally Accepted Accounting Principles ("GAAP") consistently applied;
  - ii. Annual Financial Statements of the Guarantors as soon as available and, in any event within ninety (90) days after the end of each fiscal year of each Guarantor, copies of such Guarantor's externally professional accountant prepared (Review Engagement or Notice to Reader) financial statements are required. Statements on an unconsolidated basis, in each case consisting of the balance sheet, statement of profit and loss and surplus and statements of change in financial condition for each such period, all in reasonable detail and stating in comparative form the figures for the corresponding



date and period in the previous fiscal year prepared and certified by such Guarantor's, Chief Executive Office or Chief Financial Officer, without personal liability;

- iii. Quarterly Officers' & Compliance Certificates as soon as available, and in any event, within thirty (30) days of the end of each Fiscal Quarter, an Officer's Certificate and a Loan Compliance Certificate as provided in Appendix A and B of this agreement are to be provided to the Lender.
- iv. Quarterly Property Taxes The Borrower shall ensure that all property taxes and any other taxes applicable to the Project have been paid at all times when due except if such taxes are Permitted Encumbrances. On each tax installment date, the Borrower will provide to the Lender proof that all taxes are current.
- v. **Project Bank Account Control** at the Lender's discretion, the Borrower may be required to open a Bank Account which provides access and controls to ensure that only Lender approved activity flows through the account, also known as Positive Pay. Any fees related to this service will be to the account of the Borrower.
- vi. **Project Budget** as soon as available, and in any event, within ninety (90) days prior to the end of each Fiscal Year a Project Budget for the immediately following two Fiscal Years for the Project;
- vii. Insurance 30 days prior to the insurance expiry date(s), the Borrower will provide to the Lender, a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lender is adequate and still in effect. Refer to Section 4.1 h) for further details.
- viii. Personal Net Worth Statements On each anniversary date of the mortgage, the personal Obligors will provide to the Lender, an updated personal net worth statement with supporting documentation.
- ix. Corporate Notice of Assessment Corporate Obligors, shall provide the Lender with their respective Notice of Assessments within 60 days of their corporate tax deadlines.
- x. Personal Notice of Assessment Personal Obligors, shall provide the Lender with their respective Notice of Assessments by June 30<sup>th</sup> of each year, for the most recently ended taxation year.
- xi. Other The Lender may reasonably request such other financial information, reporting, certificates, projections of income and cash flow, and any information affecting the financial condition of the Project, the Property Interest, or the Obligor's business. This list is not exhaustive and the Lender may also reasonably request such other qualitative information including expected pre-sales, expected closings and associated timing, closed transactions, and editorial updates including project status, and photos showing progress at a reporting frequency prescribed at the time of request. Should such a request be made please refer to Appendix F.
- f) Rights of Inspection At any reasonable time and from time to time upon reasonable prior notice, the Borrower shall permit and cause each of the other Obligors to permit, the Lender or any representative(s) thereof, at the expense and risk of the Borrower, to examine and make copies of and abstracts from the records and its physical and computer books of account with respect to the Project and the Property Interests and to visit and inspect the Project and to discuss the affairs, finances and accounts of it with any of its officers, senior employees or managers (but not tenants, if applicable).
- g) Insurance
  - i. The Borrower shall maintain or shall cause to be maintained appropriate insurance coverage as agreed with the Lender or any Insurance consultant engaged by the Lender to assess the required coverage during the Project. The following shall be provided with



respect to insurance on the Project:

- a) Proof of appropriate Commercial Liability Insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured, and coverage of not less than the amount deemed adequate by the Lender's Insurance Consultant.
- b) Builders' all risks property insurance in connection with the Project, including rental loss insurance (if applicable) with responsible and reputable insurance companies in such amounts equal to 100% of replacement value
- c) The Lender shall be added as an additional insured to the liability policies.
- d) Other insurance as the Lender's Insurance Consultant may deem necessary given the nature of the Project. The amount of coverage required shall be reasonably determined by the Lender's Insurance Consultant.
- ii. All such insurance policies shall:
  - a) name the Lender as a mortgagee thereunder as its interest may appear;
  - b) name MarshallZehr Group Inc. as additional insured;
  - c) have attached the Insurance Bureau of Canada standard mortgage clause;
  - d) provide that no cancellation, termination or adverse amendment thereof shall take effect unless the insurer concerned has given the Lender not less than thirty (30) days prior written notice of such proposed action;
  - e) provide that proceeds of all insurance for physical damage and rental losses shall be payable to the Lender or as it may direct; and
  - f) otherwise be in such form as the Lender shall reasonably require.
- iii. So long as no Event of Default has occurred and is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be, with the approval of the Lender:
  - a) applied in reduction of amounts outstanding hereunder; or
  - b) released to the Borrower subject to compliance with such conditions as the Lender may require.
- iv. If an Event of Default has occurred or is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be payable to the Lender to be applied by it in reduction of the amounts outstanding hereunder.
- v. The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Borrower as aforesaid, constitute continuing collateral security for the Borrower's obligations and liabilities in respect of amounts outstanding hereunder. The Lender shall place such funds in an interest-bearing account and interest thereon shall accrue to the benefit of the Borrower.
- vi. In the event that the Lender shall not be obligated hereunder to apply the proceeds of insurance to pay for the cost of repairing the damage or destruction to or replacement of the property in respect of which the insurance is payable and the Lender elects to apply the proceeds of insurance to amounts owing by the Borrower hereunder, each of the Borrower (on its own behalf and on behalf of each of the Guarantors), hereby irrevocably waives any and all statutory provisions which may require that proceeds of insurance be used to restore or rebuild the Property.
- vii. The Borrower shall deliver or cause to be delivered to the Lender, certificates of insurance signed by the insurers, or other evidence satisfactory to the Lender, acting reasonably, of the insurance coverage required hereunder, including certificates of renewal as soon as they are available.
- viii. Insurance Consultant: The Borrower acknowledges that all policies of insurance shall



be subject to review and approval by an **insurance consultant** acting on behalf of the Lender and the Borrower agrees to pay for the consultant's fees in connection with such review upon registration of the mortgage and for each insurance renewal throughout the term of the mortgage.

- h) Notices The Borrower shall promptly give notice to the Lender of:
  - a) any fire or other casualty or any notice of expropriation, action or proceeding materially affecting any Project;
  - b) all claims, proceedings, suits, actions or litigation in respect of any Obligor or the Project (whether or not any such claim, proceeding, suit, action or litigation is covered by insurance) which, if determined adversely, could have a Material Adverse Effect; the occurrence of any Default or Event of Default;
  - c) any other matter or event that has a Material Adverse Effect.
- i) Use of Advances The Borrower shall use all Advances made to it for the specific purposes set out in the Loan.
- j) **Taxes** On each anniversary date of the mortgage, the Borrower will provide to the Lender proof that the taxes are current
- k) **Payment of Taxes, etc. -** The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:
  - i. pay or cause to be paid all rents, Taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, lawfully levied, assessed or imposed upon any Obligor or any of the assets of any Obligor, as and when the same become due and payable;
  - ii. withhold, deduct and collect all Taxes required to be withheld, deducted and collected by it, and remit such Taxes to the appropriate Governmental Authority at the time and in the manner required; and
  - iii. pay and discharge all obligations incidental to any trust imposed upon it, by statute which, if unpaid, might become an Encumbrance upon any of the Properties,

except when and so long as any such rents, Taxes, rates, levies, assessments, fees, dues or obligations constitute a Permitted Encumbrance and the validity thereof is in good faith being contested by such Obligor.

- I) Material Documents, Leases and Permitted Encumbrances The Borrower shall ensure that all Material Documents and Permitted Encumbrances are kept in good standing in all material respects and will advise the Lender forthwith after being so notified of a material breach or alleged material breach of any Material Documents or Permitted Encumbrances. It will ensure that it does not default under any Major Lease related to any Property and will advise the Lender forthwith after being so notified of a material breach of any Major Lease.
- m) New Material Documents The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a Material Document and shall provide a copy of such agreement to the Lender.
- n) **Security** The Borrower shall, and the Borrower shall cause each of the Guarantors to, provide the Security contemplated hereunder, perfected to the satisfaction of the Lender.
- o) Environmental Law The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:
  - i. notify the Lender promptly of any event or occurrence that will, or is likely to, give rise to an inquiry or investigation, or any legal proceeding, relating to, or a violation of, the Requirements of Environmental Law;
  - ii. provide the Lender, on request, such information, certificates or statutory declarations, and shall conduct such environmental audits or site assessments, as may be



reasonably necessary to ensure the compliance with all Requirements of Environmental Law; and

- iii. execute, and cause each of the Guarantors to execute, all consents, authorizations and directions to appropriate Governmental Authorities that are required to permit the inspections mandated by law of each of the Properties or the property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Borrower hereby irrevocably constitutes and appoints, and the Borrower shall cause each Guarantor to irrevocably constitute and appoint, the Lender the true and lawful attorney of the such Borrower or such Guarantor, as the case may be, with full power of substitution, to execute any of the foregoing consents, authorizations and directions; provided however that such power of attorney shall only be exercised during the continuance of an Event of Default.
- p) Maintain Security The Borrower will fully and effectually maintain and keep the Security valid and effective at all times during the continuance of this Agreement, and it will not permit or suffer the registration of any debt, lien, privilege or Encumbrance whatsoever other than Permitted Encumbrances and the Security (including the Existing Security), whether of workmen, builders, contractors, engineers, architects or suppliers of material, on or in respect of any Property (except such liens which only affect or purport to affect a tenant's interest in the Property), provided that the registration of any construction lien or privilege shall not be deemed to be a breach of this covenant if the Borrower shall contest same and shall if the Lender so requires, give security to the satisfaction of the Lender for the due payment of the amount claimed in respect thereof and provided further that nothing herein will require the Borrower to renew or amend financing statements filed under personal property security statutes.
- q) Operation and Repair Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of each of the Properties and repair and keep in repair and good order and condition, or cause to be so repaired and kept in repair and good order and condition, all buildings, structures, plant, machinery and equipment used in or in connection with each of the Properties and which are necessary in connection with the efficient operation of such business and undertaking up to a modern standard of usage and, subject to the provisions of this Agreement, renew and replace, or cause to be renewed or replaced all and any of the same which may be worn, dilapidated, unserviceable, inconvenient or destroyed, even by a fortuitous event, fire or other cause, and at all reasonable times allow, and cause the Guarantors to allow, the Lender or its representative access to each of the Properties in order to review the state and condition the same are in.
- r) Payment of Preferred Claims The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time pay or cause to be paid, all amounts related to taxes, wages, workers' compensation obligations, government royalties or pension fund obligations and any other amount which may result in an Encumbrance against the assets of any Obligor arising under Applicable Law.
- s) Maintain and Operate The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Property Interest and the Project, in a proper and efficient manner so as to preserve and protect the Property Interest and each of the Properties.
- t) Lease Attornment Subject to the requirements, if any, within any Leases for the Lender to execute and deliver non-disturbance agreements, the Borrower agrees, at the written request of the Lender, to use all reasonable commercial efforts to obtain from the tenants under such Leases and deliver to the Lender such instruments of attornment, postponement or subordination as the tenants under such Leases are required to provide and as the Lender may



reasonably request in a form acceptable to the Lender, acting reasonably, and which is otherwise consistent with the terms of such Leases.

u) **Expropriation** – Any awards or payments received by an Obligor for expropriation of any Project Lands, or any part thereof, which are, in respect of any single payment or award, equal to or greater than \$1,000 shall, unless the Lender otherwise agrees, be forthwith paid to the Lender to repay amounts outstanding up to the amount outstanding hereunder at such time.



#### 4.2 Financial Covenants

So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Borrower covenants and agrees with the Lenders that, unless the Lender otherwise consents in writing:

- a) **Project Net Equity** The Borrower and Guarantors must have and maintain throughout the term of the loan a minimum combined net equity in the Project equal to \$3,740,000.
  - i. For the purposes of this paragraph net equity shall be equal to the sum of the cost of the raw land as determined by the Lender (to a maximum value of \$20,250,000) plus the cost of the Project completed to date (exclusive of land value), net of all payables, purchaser deposits paid into the Project, unsubordinated Project financing, amounts advanced by the Lender and all Recoveries (Recoveries being defined as all recaptured Project expenses including, HST, previously funded by the proceeds of the Loan herein).
- b) Project Loan to Value Ratio (LTV) The Borrower shall, at all times, maintain an LTV Ratio of less than 90%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;
- c) Project Loan to Cost Ratio (LTC) The Borrower shall, at all times, maintain an LTC Ratio of less than 90%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;
- d) **Maximum Borrowing** The Borrower shall ensure that outstanding Advances under the Commitment Letter do not exceed the most current calculation of the Maximum Total Amount Available (Loan Amount less estimated costs to complete). The Loan Amount is the total credit approved as outlined in Section I.

Affiliate Loans shall be considered part of the net equity.



#### 4.3 Negative Covenants

So long as any amount payable hereunder is outstanding or the Loan Tranches are available hereunder, each of the Borrower (with respect to itself and each of the other Obligors) covenants and agrees with the Lender that, unless the Lender otherwise consents in writing:

- a) Sale of Guarantors The Borrower shall not, and shall cause every other Person with an ownership interest in a Guarantor (other than the Borrower) not to, sell, transfer, assign, convey or otherwise dispose of its ownership interest in any of the Guarantors (other than the Borrower) to any Person except another Affiliate of the Borrower (but only if such Guarantor remains a direct or indirect wholly-owned Subsidiary of the Borrower) or except with the prior written consent of the Lenders, such consent not to be unreasonably withheld or delayed.
- b) No Merger, Amalgamation, Etc. Except as otherwise permitted hereunder, no Obligor shall enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise).
- c) No Sale, etc. of Property Interest No Obligor shall sell, transfer, assign or otherwise dispose of all or any portion of any Property Interest except pursuant to a Permitted Encumbrance.
- d) No Dissolution No Obligor shall liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith, provided, however, that a Guarantor (other than the Borrower) may enter into a transaction designed to wind-up or dissolve such Guarantor into the Borrower, but not without the Lender's consent, such consent not to be unreasonably withheld or delayed; the parties agree that the Lender's consent will not have been unreasonably withheld if, in the Lender's sole discretion, the Lenders' credit risk or the Security will be adversely affected by the proposed transaction.
- e) Non-Arm's Length Transactions No Obligor shall enter into any contract relating in any manner to the Property Interest with an Affiliate (e.g. any related entity with a related ownership interest held directly or indirectly) for the sale, purchase, lease or other dealing in any property other than at a consideration which is no more than the fair market value of such property or other than at a fair market rental as regards leased property.
- f) Negative Pledge Except for Permitted Encumbrances, no Obligor shall create, issue, incur, assume or permit to exist any mortgage, charge, lien or other Encumbrance on the Property Interest other than Permitted Encumbrances.
- g) No Changes to Material Document No Obligor shall amend, surrender or terminate any Material Document without the prior written consent of the Lender which consent is not to be unreasonably withheld or delayed.
- h) No Changes to Major Leases No Obligor shall terminate or accept a surrender of, or agree to any material amendment to, any Major Lease without the consent of the Lender which consent is not to be unreasonably withheld or delayed. For the sake of clarification, amendments related to the term, rent or premises to be rented shall be considered material.
- i) **Dealing with Leases** None of the Obligors shall enter into any Leases or amend, renew, terminate, forfeit or cancel any Leases unless:
  - i. such Leases, amendments, renewals, terminations, forfeitures or cancellations are made on arm's length terms and in good faith; and
  - ii. such Leases, amendments, renewals, terminations, forfeitures or cancellations reflect good business practice.



- j) Concerning Leases Generally Except in the ordinary course of business and provided such action is prudent in the circumstances, none of the Obligors shall accept or require payment of rent or other moneys payable by a tenant under any Lease that would result in more than three months of such rent or other moneys being prepaid under such Lease other than:
  - i. prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such Lease; or
  - ii. amounts representing a bona fide pre-calculation of any amount (which is required to be paid under such Lease) in addition to basic rent, including amounts payable with respect to taxes and maintenance of the applicable Property and overage and percentage rents; or
  - iii. lease surrender payments made by the tenant under such Lease; and
  - iv. except for any renewals or extensions of existing Leases pursuant to the terms thereof, each of the Obligors shall not hereafter enter or purport to enter into or suffer to exist any Lease in respect of any Project except if the Security shall have priority over such Lease and such Lease shall provide that such Lease is subordinated to the Security and contain a covenant of the tenant thereunder obligating such tenant if and whenever required by the Lender to attorn to and become the tenant of the Lenders or any purchaser from the Lenders in the event of an exercise by the Lenders of their remedies under the Documents, for the then unexpired residue of the term of, and upon all of the terms and conditions of such Lease.
- k) No Waiver Except as otherwise provided pursuant to Section 5, no Obligor shall waive, or agree to waive, any failure of any party to any Permitted Encumbrance, Material Document or Lease to perform any material obligation thereunder or suffer or permit anything allowing any party thereto to terminate any such agreement or consent to any assignment thereof by any party thereto unless the same is in the ordinary course of business, is in accordance with good business practice and the same would not have a Material Adverse Effect.
- I) Ground Leases No Obligor will agree with the landlords under any of the Ground Leases to terminate, forfeit, cancel, alter, amend or modify any Ground Lease or provide a surrender of any Ground Lease prior to the end of the term of such Ground Lease unless such surrender occurs concurrently with the acquisition of the freehold interest in the applicable Property and the applicable Obligor concurrently provides a Mortgage of such freehold interest to the Lender together with such legal opinions and other documents and agreements as the Lender may reasonably require in connection therewith. No Obligor shall exercise any right of termination it may have under any Ground Lease.
- m) Freehold Interest in the Property Unless the Lender otherwise expressly consents in writing, which consent shall not be unreasonably withheld or delayed, the freehold estate in the Property and the leasehold estate demised by the Ground Leases, respectively, shall not merge but shall always remain, respectively, separate and distinct notwithstanding the union of such estates either in the respective landlords or, any Obligor.
- n) Name Change No Obligor shall change its name without first giving notice to the Lender of its new name and the date when such new name is to become effective.
- o) Change of Chief Executive Office No Obligor shall change its chief executive office or the location of the offices where it keeps its records respecting receivables and rents or move any of the inventory, securities or equipment from the present locations thereof without prior written notice to the Lender.



#### **v**. DEFAULT PROVISIONS

The content of this Default Provisions section shall be subject to the restrictions of any priority agreement(s) between the Lender and any other permitted encumbrance holders.

#### 5.1 Events of Default

The occurrence of any one or more of the following events (each such event being herein referred to as an "Event of Default") shall constitute an Event of Default under this Agreement:

- a) **Payment of Principal** if the Borrower defaults in the payment of the principal of any Advance under any Credit Facility when due and payable, without any requirement by the Lender to provide notice of the same;
- b) Payment of Interest and Fees if the Borrower defaults in the payment of:
  - i. any interest (including, if applicable, default interest) due on any Advance under this Commitment;
  - ii. any fee with respect to this Commitment, including Lender Fee, Renewal Fee, etc.
  - iii. any other amount not specifically referred to herein payable by the Borrower to the Mortgage Administrator or the Lenders (or any of them) hereunder when due and payable; and such default continues for three (3) Business Days after notice of such default has been given by the Lender to the Borrower;
- c) Covenants or Obligations if any Obligor neglects to observe or perform any covenant or obligation contained in any Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 5.0) and, such Obligor shall fail (in the case of those defaults which can be rectified by such Obligor) to remedy such default within a period of thirty (30) days after the giving of notice, unless the Lender (having regard to the subject matter of the default) shall have agreed to a longer period and, in such event, within the period agreed to by the Lender;
- d) Cross Default if a default or an event of default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of any Obligor or of any Associate (as that term is defined in the Business Corporations Act R.S.O. 1990) of any Obligor has occurred and is continuing; provided, however, that if such default or event of default under such indenture or instrument shall be remedied or cured by such Obligor or Associate of such Obligor or be waived by the holders of such indebtedness before any judgment or decree for the payment of the money due shall have been obtained or entered, then the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action on the part of the Lender;
- e) **Priority Encumbrance Cross Default** if an event of default as defined in any indenture or instrument which is an Encumbrance on any Property in priority to the Security shall have occurred and be continuing and all applicable cure periods have expired;
- f) Bankruptcy or Insolvency Order if a decree or order of a court of competent jurisdiction is entered adjudging any Obligor a bankrupt or insolvent, or approving as properly filed a petition seeking the winding-up of such Obligor, under the Companies' Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) or the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against, or against any substantial part of the assets of any Obligor or Material Subsidiary or ordering the winding up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of ten (10) business days;



- g) **Insolvency** if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the Bankruptcy and Insolvency Act (Canada) or any comparable law, seeks relief under the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency;
- h) Trustee or Receiver Appointed if any proceedings are commenced against, or steps are taken by, any Obligor for the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of such Obligor or of all or any substantial portion of its assets, or seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights and in the case of any such proceedings commenced against such Obligor, such proceedings are not stayed or dismissed within ten (10) days after the commencement thereof;
- Material Provision or Agreement Null and Void if any material provision of this Agreement or of any Material Document ceases to be in full force and effect (other than through the normal expiration of the stated term of such Material Document pursuant to the terms thereof) or is declared null and void or invalid or any breach or default shall occur under any Material Document that has a Material Adverse Effect and such breach or default is not remedied within ten Business Days of such occurrence or such longer or shorter cure period as may be allowed the applicable Obligor pursuant to the terms of such Material Document;
- j) Judgements if a judgment or decree for payment of money due in an amount of \$5,000 or more (in any single instance or in the aggregate for all such judgments and decrees against each of the Obligors) shall have been obtained or entered against any Obligor (except in the case of any such judgment or decree in respect of which recourse is limited to property which is not subject to the Security hereunder) and such judgment or decree shall not have been, and remain, vacated, discharged or stayed pending appeal within the applicable appeal period;
- k) Incorrect Representation or Warranty if any representation or warranty made or deemed to be made by any Obligor in any Document or in any certificate or other document at any time delivered in connection with this Agreement to the Lender shall prove to have been incorrect or misleading in any material respect on and as of the date thereof and with respect to any such incorrect or misleading representation or warranty that is capable of being cured, such incorrectness or misleading aspect continues for a period of ten (10) Business Days or more;
- Invalid Security if any of the Security shall cease to be a valid and perfected first priority security interest as against third parties subject only to Permitted Encumbrances and such state continues for more than two business (2) days;
- m) Material Adverse Change if the Lenders determine, in their sole discretion acting reasonably, that there has been a material adverse change in the financial condition of the Borrower or if there is a qualification in any report of the auditors or in the Borrower's annual financial statements that materially adversely affects the credit risk of the Lenders hereunder;+
- n) Creditor Seized Property if the property of any Obligor or a part thereof which is, in the opinion of the Lender, a substantial portion thereof, is seized or otherwise attached by creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied or enforced against any Obligor and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of thirty (30) days or such shorter period as would permit any Property or any part thereof to be sold thereunder;



- Dissolution, Liquidation or Wind-Up Proceedings if proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor, unless such proceedings are stayed or dismissed within thirty (30) days of the commencement thereof;
- p) Assignment, Disposition or Conveyance if any Obligor makes or agrees to make an assignment, disposition or conveyance, whether by sale or otherwise, of all its assets (or a material portion thereof) in bulk;
- q) Default Under Permitted Encumbrance or Material Document if there is a default by any Obligor under any Permitted Encumbrance, or Material Document in respect of the Project and such default has a Material Adverse Effect and is not rectified within five business days; or
- r) **Financial Covenant Default** if there is a default by the Borrower of any of the Financial Covenants outlined in Section 4.2;
- s) Merger or Amalgamation if any transaction occurs (whether by reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise) whereby all or substantially all of an Obligor's undertaking, property and assets, or any interest therein becomes the property of any other person, or in the case of any amalgamation, of the continuing company resulting therefrom, or if any Obligor is dissolved; or
- t) Environmental if any Obligor violates or breaches any Requirements of Environmental Law applicable to the Project (or, in the case of the Guarantor, applicable to all or any material part of its property and assets) or if any Obligor violates or breaches any other Applicable Law and such breach or violation of Applicable Law has or could reasonably be expected to have a Material Adverse Effect and continues for the shorter of a period of 30 days or 10 business days less than any such period as would permit the property in question to escheat to the Crown or be sold or otherwise forfeited; or

For greater certainty, none of the foregoing events shall constitute an Event of Default hereunder if the default is cured or remedied within the time limited therefor pursuant to the applicable provision of this Section 5.1.



#### 5.2 Acceleration and Demand

Upon the occurrence of any Event of Default that has not been cured within the timelines set out herein, the Lender by written notice to the Borrower (an "Acceleration Notice") shall be entitled to:

- a) declare the Loan and the right of the Borrower to apply for further Advances to be terminated; and
- b) declare all Obligations (whether matured or unmatured, drawn or undrawn) of the Borrower to the Lender (including, without limitation, the all unpaid fees whether or not deemed earned) to be immediately due and payable (or to be due and payable at such later time as may be stated in such notice) without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by Borrower;

but upon the occurrence of an Event of Default specified in Section 5.1(a), the Loan shall automatically terminate and all Obligations specified in Section I shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower. Immediately upon the occurrence of an Event of Default specified in Section 5.1 or at the time stated in an Acceleration Notice, the Borrower shall pay to the Lender all amounts owing or payable in respect of all Obligations of such Borrower specified in Section I, failing which all rights and remedies of the Lender under the Documents, at law, in equity or otherwise shall thereupon become enforceable and shall be enforced by the Lender.



#### 5.3 Appointment of Receiver

- a) Upon any default under this Commitment or the Security, that is not cured within the time frames set out herein, the Lender may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their instead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Project or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Borrower. Any such receiver or receivers so appointed shall have power to take possession of the Project or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Project or any part thereof, and to further charge the Project in priority to the security constituted by this Commitment as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Project on such terms and conditions and in such manner as he shall determine. In exercising any powers, any such receiver or receivers shall act as agent or agents for the Borrower and the Lender shall not be responsible for his or their actions.
- b) In addition, the Lender may enter upon the applicable premises and lease or sell the whole or any part or parts of the Project. The Borrower agrees that it will be commercially reasonable to sell such part of the Project:
  - i. as a whole or in various units;
  - ii. by a public sale or call for tenders by advertising such sale; and
  - iii. by private sale.
- c) Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.
- d) No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this letter includes a receiver and manager.



## 5.4 Application of Payments Following Demand and Acceleration

Except as otherwise agreed to by the Lender in its' sole discretion, any sum received by the Lender at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 which the Lender is obliged to apply in or towards the satisfaction of sums due from the Borrower under any Document shall be applied by the Lender in accordance with amounts owed to the Lender by the Borrower in respect of each category of amounts set forth below, each such application to be made in the following order with the balance remaining after application in respect of each category to be applied to the next succeeding category:

- a) in or towards payment of any expenses and fees then due and payable to the Lender hereunder and owing by the Borrower (including, without limitation, in the case of the Borrower, any such fees and expenses owing whether or not deferred or contingent);
- b) in respect of amounts due and payable by such Borrower to the Lenders by way of interest and fees (including, without limitation, in the case of the Borrower, any such interest and fees owing whether or not deferred or contingent);
- c) in respect of any other amount (other than Advances) not hereinbefore referred to in this Section 5.4 which are then due and payable by the Borrower hereunder such Borrower under any Document (including, without limitation, in the case of the Borrower, any such other amounts owing whether deferred or contingent);
- d) in or towards repayment to the Lender of the Principal Advances to such Borrower then outstanding hereunder; and
- e) any remaining amounts to be released to the Borrower or as required by the loan.

For certainty, unless otherwise agreed by the Lender, all amounts owing by the Borrower in each of the above-noted categories (whether directly or indirectly by virtue of Guarantees) shall, within each category, rank pari passu and be applied pro rata to the Obligations owing by the Borrower within such category based on the respective outstanding amounts.

#### 5.5 Remedies Cumulative

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Lender under the Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement therein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled for the same default or breach, and any waiver by the Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement therein contained, and any indulgence granted thereby, shall be deemed not to be a waiver of any subsequent default. The Lender may, to the extent permitted by Applicable Law, bring suit at law, in equity or otherwise for any available relief or purpose including but not limited to:

- a) the specific performance of any covenant or agreement contained in the Documents;
- b) enjoining a violation of any of the terms of the Documents;
- c) aiding in the exercise of any power granted by the Documents or by law; or
- d) obtaining and recovering judgment for any and all amounts due in respect of the Advances or amounts otherwise due hereunder or under the Documents.

To the extent permitted by applicable law, Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which may limit or modify any of the Lender's rights or remedies under the Documents.



#### 5.6 Set-Off

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Lender is authorized at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 which has not theretofore been waived or rescinded by the Lender and from time to time thereafter without notice to Borrower or to any other person, any such notice being expressly waived by the Borrower, to set-off and to appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing to the Lender for the account of the Borrower against and on account of the obligations and liabilities of the such Borrower to the Lender or such Lender under this Agreement, including, without limitation, contingent or deferred obligations of the Lenders.

#### 5.7 Cash Collateral Accounts

Upon delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 and in addition to any other rights or remedies of the Lenders hereunder, the Lender shall thereafter be entitled to deposit and retain in an account to be maintained by the Lender, and which for the purposes hereof shall be considered to be the Lender's account and not the Borrower's account bearing interest for the Borrower at the rates of interest of the Lender as may be applicable in respect of other deposits of similar amounts for similar terms, amounts which are received by the Lender from the Borrower to the extent that and for so long as such amounts either may be required to satisfy any Obligations of such Borrower or are actually used to satisfy any such Obligations; provided that if such amounts are no longer required or not so used, the Lender shall forthwith return the same together with interest accrued thereon to the Borrower.

#### 5.8 Lender May Perform Covenants

If the Borrower shall fail to perform any covenant on its part herein contained, the Lender may, upon prior notice to the Borrower, perform any of the said covenants capable of being performed by the Lender and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds and shall be entitled to reimbursement of any such expenditure. All amounts so paid by the Lender hereunder shall be repaid by the Borrower on demand therefor, and shall bear interest at the rate set forth in Section I from the date paid by the Lender hereunder to and including the date such amounts are repaid in full by the Borrower.



#### VI. GENERAL PROVISIONS

- a) The Lender shall have no obligation to advance funds unless and until all of the above terms and conditions have been deemed by the Lender to be complete, true and otherwise in all respects satisfactory, in the Lender's sole discretion acting reasonably.
- b) No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by the Borrower and Guarantor.
- c) The Lenders solicitors shall be:

Chaitons LLP 5000 Yonge Street, 10<sup>th</sup> Floor Toronto, ON M2N 7E9 Attention: Robert Miller

d) The Borrower's solicitor shall be:

Goldman Sloan Nash & Haber LLP 480 University Ave Suite 1600 Toronto, ON, M5G1V2

The Borrower shall bear any and all reasonable legal costs of the Lender.

- e) Time is of the essence in this Commitment.
- f) The Borrower and Guarantors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- g) The waiver by the Lender of any breach or default by the Borrower of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
- h) The representations, warranties, covenants and obligations herein set out shall not merge or be extinguished by the execution or registration of the Security but shall survive until all obligations under this Commitment and the Security have been duly performed and the Loan, interest thereon and any other moneys payable to the Lender are repaid in full. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the Lender shall choose which provisions that will prevail.
- i) Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment Letter shall not merge with the delivery and/or registration of the Security and shall remain in full force and effect. Any default under the terms of this Commitment Letter



shall be deemed a default under the Security and any default under the terms of the Security shall be deemed a default under the terms hereof. In the event of a conflict between the terms of the Security and the terms of this Commitment Letter, the Lender, in its sole discretion may determine which shall take precedence and govern.

j) This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

If you are in agreement with the above terms pertaining to 201 King Road Bridge – MZGI 329 please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement together with the \$25,000 Good Faith Deposit payable to MarshallZehr Group Inc. in Trust. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

By signing this Commitment Letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

Unless this Commitment Letter is accepted by the Borrower and all required Guarantors within five (5) business days of the date hereof by delivery of a fully executed copy to the Lender, along with the Good Faith Deposit, then, at the Lender's sole option, the Commitment shall be terminated.

This Commitment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Yours truly,

DocuSigned by: Murray Snedden -5D7B047774B943F... 8/18/2020



Financing Efficiency = Opportunity

Murray Snedden CPA, CMA, CMC Chief Financial Officer & Principal Broker

T 519 342 1000 X 232 C 416 996 1778

marshallzehr.com | email

Principal Broker MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453

Much



Acknowledged and agreed at Tuesday, 18 August 2020

Acknowledged and agreed at <u>Toronto</u> this <u>21st</u> day of <u>August</u>, 2020.

Borrowers

12252856 Canada Inc Shafiq Punjani Name:

I have authority to bind the corporation

Title: Director

Per:

Name: Prem Yachamanani Title: Director I have authority to bind the corporation

The following parties execute this Commitment letter in their capacities as guarantors only.

Corporate guarantors affiliated with the borrowing entity who shall provide a guarantee timited to 33% of the loan amount.

Per:	
Name:	
<del>Title:</del>	
I have authority to bind the corporation	<del>)</del>

Witness:	Shafiq Punjani	<u> </u>	
		<u> </u>	
Witness:	Prem Yachamani	<u>l/s</u>	Pfuntur



#### Lender:

I HEREBY accept the terms and conditions as stated herein. 201 King Road Bridge - MZGI 329

DATED at Waterloo, this \_\_\_\_\_ day of \_\_\_\_\_, 2020. 8/26/2020

MarshallZehr Group Inc. "in Trust"

DocuSigned by: Per: C7AE499691764A8

Gregory Zehr CEO & Co-Founder "I/We have the authority to bind the Corporation"



## APPENDIX A – OFFICERS' CERTIFICATE & STATUTORY DECLARATION

(This document may be updated from time to time and confirms the Obligor(s) are in full compliance with the terms of the Commitment Letter. It further provides details on how funds provided will be used and details on any amounts the could rank in priority to the security registered to secure this Loan).

[Date of Letter]

[Borrower] [Borrower Address]

MarshallZehr Group Inc. 206-465 Phillip St Waterloo ON N2L 6C7 Attention: [MZ Contact]

#### Re: Officers' Certificate for [Project Name] [Funding # or Quarterly Update]

I/we, [Officer #1] of [Borrower], being respectively the [Officer #1 Title] of [Borrower] in my capacity as an officer of [Borrower] and not in my personal capacity, do hereby certify that:

- 1. This Certificate is being delivered pursuant to Section [2.1 for Initial Funding, 2.2 for Borrower Draws or 4.1 for Quarterly Certificates] of the Commitment dated as of [DAY] day of [MONTH, YEAR] made among [Borrower] and MarshallZehr Group Inc. ("MZG").
- 2. To the best of our knowledge and belief, no Event of Default exists as of the date of this Certificate.
- 3. The representations and warranties contained in Section 4.1 of the Commitment are true and correct as though made on the date hereof, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4.1 and any representation and warranty which is stated to be made as of a certain date.
- 4. We hereby confirm that the Financial Covenants set out in Section 4.2 of the Loan Agreement are in full compliance as of the date of execution of this Certificate.
- 5. We hereby acknowledge that we have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Borrower in performance of the work required to complete the Project, and for which the Borrower(s) and/or Owner(s) of the Borrower(s) might in any way be held responsible, have been paid in full as required by the Commitment up to and including the latest progress payment received, being on the [DAY] day of [MONTH], [YEAR], except for
  - a. Holdback monies properly retained amounting to [\$•]
  - b. Payments deferred by agreement amounting to [\$•], or
  - c. Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld amounting to [\$•].

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the [DAY] day of [MONTH], [YEAR]



[Name of Borrower]

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

Name: Title: I have authority to bind the corporation



## APPENDIX B – COMPLIANCE CERTIFICATE

(This document may be updated from time to time and confirms full compliance with the terms contained within the Commitment Letter and provides details of the calculations confirming same)

[Date of Letter]

[Borrower] [Borrower Address]

MarshallZehr Group Inc. 206-465 Phillip St Waterloo ON N2L 6C7 Attention: [MZ Contact]

## <u>Re: Compliance Certificate for [Project Name] [Funding #1 or Quarterly Update]</u>

The undersigned, [Borrower], refers to the Commitment Letter dated as of [MONTH] [DAY], [YEAR] (as amended, supplemented, replaced or restated from time to time, the "Commitment", the terms defined therein being used herein as therein defined) among the Obligors and the Lender party thereto

I/we, [Officer #1] of [Borrower], being respectively the [Officer #1 Title] of [Borrower] in my capacity as an officer of [Borrower] and not in my personal capacity, do hereby certify that:

- 1. This Compliance Certificate is delivered pursuant to Section [2.1 for Initial Funding or 4.1 for Quarterly Certificates) of the Loan Agreement for [Funding #1 dated [DAY] [MONTH], [YEAR] (the "Initial Funding Period") or the Financial Fiscal Quarter/Year ending on [DAY] [MONTH]. [YEAR] (the "Fiscal Period")].
- 2. I am familiar with and have examined the provisions of the Commitment.
- 3. The financial statements most recently delivered pursuant to Section 4.1 of the Commitment present fairly the financial position, results of operations and changes in financial position of the persons specified therein in accordance with GAAP (subject to normal year-end adjustments and the absence of any required notes to such financial statements).
- 4. As of the date hereof, [Borrower] is not in breach of any of the covenants contained in Sections 4 and 5 of the Commitment, and no Default or Event of Default has occurred and is continuing as at the date hereof.
- 5. As of [DAY] [MONTH], [YEAR], the [Initial Funding or Fiscal Period]:
  - a. Total Net Project Costs to Date: [\$•] b. Estimated Cost to Complete Project (incl. lien holdback): [\$•] c. Total Advanced Loan ([incl. current/previous funding #]): [\$•] d. Estimated Current Project Value: [\$•] [\$•]
  - e. Last Appraised Value as of [MONTH] [DAY], [YEAR]:



6. The Financial Covenants outlined in Section 4.2 of the Commitment have been calculated below as of the [Initial Funding or Fiscal Period]:

FINANCIAL COVENANTS: Guideline only, refer to Commitment for Covenants that are required.	<u>CALCULATIONS:</u> Guideline only, refer to Commitment on how to calculate Covenants and update accordingly.	AMOUNT:
Project Net Equity	Project Costs to Date (a) Less Advanced Loan (c)	\$
Maximum Borrowing	Loan Amount Less Costs to Complete (b)	\$
Estimated Loan to Value Ratio	Loan Advanced to Date (c) Divided by Estimated Current Value (d)	%
Estimated Loan to Cost Ratio	Loan Advanced to Date (c) Divided by Project Costs to Date (a)	%
Estimated Borrower Interest Coverage Ratio	Company's earnings before interest & taxes (EBIT) Divided by Company's interest expenses for the same period	%
Estimated Borrower Debt Service Coverage Ratio	Net Operating Income (NOI) Divided by Debt Service Requirements including interest and principal payments due in same period	%

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the [DAY] day of [MONTH], [YEAR]

[Name of Borrower]

Per: \_\_\_\_\_ Name: Title: I have authority to bind the corporation



## APPENDIX C - REQUEST FOR LENDER ADVANCE NOTICE

(This document may be updated from time to time and is used to request funds from the Lender(s) that will be advanced to the Mortgage Administrator and start interest charges to the Borrower).

[Date of Letter] [Borrower] [Borrower Address]

MarshallZehr Group Inc. 206-465 Phillip St Waterloo ON N2L 6C7 Attention: [MZ Contact]

## Re: Request for Lender Advance of Funds for [Project Name] Initial Advance

I hereby formally request the advance of CAD [Advance Amount] from the Commitment dated [Commitment Date] (the "Commitment") and secured against the lands described as [Municipal Address] and legally known as [Legal Address] as well as all other security issued pursuant to the Commitment (the "Security").

I understand and acknowledge that the interest will begin on the date of the advance regardless of if funds are released or held in Trust by MarshallZehr.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

[Name of Borrower]

Per:	
Name:	
Title:	
I have authority to b	ind the corporation



## APPENDIX D - BORROWER DRAW NOTICE

(This document may be updated from time to time and is required for funds to be delivered to the Borrower from funds held by the Mortgage Administrator in accordance with the terms of the Commitment Letter)

[Date of Letter]

[Borrower] [Borrower Address]

MarshallZehr Group Inc. 206-465 Phillip St Waterloo ON N2L 6C7 Attention: [MZ Contact]

## Re: Request for Draw #1 of Funds for [Project Name] Initial Advance

I hereby formally request the advance of CAD [Advance Amount] from the Commitment dated [Commitment Date] (the "Commitment") and secured with the instrument registered as [Instrument Number] and secured against the lands described as [Municipal Address] and legally known as [Legal Address] as well as other security issued pursuant to the Commitment (the "Security").

I hereby certify, represent and warrant that all conditions and covenants of the Commitment and Security are met, and that the Borrower and the guarantors have not violated any of the conditions or covenants of the Commitment or Security. Specifically, the Borrower and Guarantors certify, represent and warrant:

- There are no liens on the Property
- No subordinate financing has been placed on the Property without prior written consent
- No party has committed any waste on the Property
- At this time Property taxes are current
- There have been no sales or purchases of shares, or payments of dividends from the Borrower to any party without prior written consent of the Lender
- The owner of the Borrower has not changed
- The Borrower where applicable is in compliance with the Construction Lien Act, and there are no Liens on the Property
- The Borrower has informed the Lender of all changes to the Project schedule and the budget

The hereby gives you notice pursuant to Section 2.1 of the Commitment Letter that the undersigned hereby requests a Draw under the Commitment Letter, and, in that connection sets forth below the information relating to such Draw as required by:

- a. The date of the Draw, being a Business Day, is [•].
- b. The aggregate amount of the Draw is [\$•].



The undersigned hereby certifies and confirms that on the date of this Notice and the date of the corresponding Draw, and immediately after giving effect thereto and to the application of any proceeds therefrom, the representations and warranties contained in Section 4 of the Commitment Letter are true and correct on and as of each such date, all as though made on and as of each such date, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4. Any representation and warranty which is stated to be made as of a certain date shall confirm:

- a. no event or condition has occurred and is continuing, or would result from such Borrowing or giving effect to this Borrowing Notice, which constitutes a Default or an Event of Default; and
- b. such Borrowing, or otherwise giving effect to this Borrowing Notice, will not violate any Applicable Law now in effect.

The undersigned further confirms and certifies to each Lender that the proceeds of the proposed Borrowing will be used solely for the purposes permitted by the Credit Agreement.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

Borrower:

[Name of Borrower]

Per: \_\_\_\_\_ Name: Title: I have authority to bind the corporation



## APPENDIX E - REPAYMENT NOTICE

(This document may be updated from time to time and is to be provided in advance of any repayment in accordance with the terms of the Commitment Letter)

[DATE]

<u>Borrower:</u> [Borrower Name] [Borrower Address]

<u>Lender:</u> MarshallZehr Group Inc. 206-465 Phillip St Waterloo ON N2L 6C7 Attention: [MZ Contact]

## Re: Notice of Repayment for [PROJECT NAME]

I hereby formally inform MarshallZehr Group Inc. of the repayment of the [PROJECT NAME] Loan as per the Commitment Letter dated [DATE], and as further amended [DATE] and per the renewal dated [DATE]. This repayment is inclusive of all principal, interest and fees.

I hereby acknowledge the Borrower must provide 60 days' written notice of repayment as per the Commitment Letter. With this notice, we would request a Discharge Statement contemplating the stated repayment date.

The maturity date on this Loan is [DATE], (however or and) the anticipated date of repayment will be [DATE].

I hereby acknowledge according to the Commitment Letter that the Borrower must pay the Lender an administration fee of \$500.00 and its solicitor's reasonable legal fees in respect to the preparation of the discharge or repayment.

Borrower:

[Borrower Name]

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

MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453 465 Phillip St., Suite 206, Waterloo, ON N2L 6C7 | p.519.342.1000 f.519.342.0851|www.marshallzehr.com Version: 2018-05-24



Name: [Name] Title: [Title] I have authority to bind the corporation



## APPENDIX F - PROJECT OPERATING REPORT

(This document may be updated from time to time and is to be provided upon request by the Borrower to the Lender providing detail on the items outlined below)

(Borrower/Developer letterhead)

[Date of Letter]

[Borrower] [Borrower Address]

MarshallZehr Group Inc. 206-465 Phillip St Waterloo ON N2L 6C7 Attention: [MZ Contact]

#### Re: Compliance Project Operating Report for [Project Name]

[Project Magnitude – Total Units/Acres/Construction Costs/ Expected Gross Receipts]

[Sales Activity - Pre-Sales Order Book/Homes under Construction/Closed, Expected Closings & Closing Schedule]

[Project Completion Status – Status of Approvals, Completion Schedule, Cost to Date, Expected Costs to Complete/Budget]

[Current Project Debt and Description of Debt and related Liens]

[Estimated Current Project Value]

[Project Site Pictures]



Tuesday, October 13, 2020

# PRIVATE AND CONFIDENTIAL

Bridlepath Capital Corporation and City Core Consortia Limited 1280 Finch Ave W #611 North York, ON M3J 3K6

Attention: Shafiq Punjani and Jack Pong

Project:	201 King Road Bridge - MZGI 329
Purpose:	First (1 <sup>st</sup> ) Amendment
Borrower:	12252856 Canada Inc.
Property Address:	201, 227 & 235 King Road, Richmond Hill
	Purpose: Borrower:

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "First Amendment) to the above noted mortgage (the "Amendment") and Commitment Letter dated August 18th, 2020:

## I. LOAN

Delete (Original):

**Guarantors:** Corporate guarantors affiliated with the borrowing entity who shall provide a guarantee of 33% of the Loan Amount. (Guarantors are subject to Lender approval upon Lender acceptance of Guarantor due diligence confirming Guarantor assets are satisfactory to support guarantee).

Insert (New):

**Guarantors:** 2752865 Ontario Limited, together with such other related parties as the Lender may deem advisable (the "Guarantors").

The following provisions shall be included in this Amendment that were not contemplated in the original Commitment:

Amendment Fee: NIL

All other terms of the Commitment shall survive, unamended.



This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

If you are in agreement with the above terms, please indicate such agreement pertaining to 201 King Road Bridge - MZGI 329 by signing and forwarding to the undersigned a copy of this agreement, along with the Amendment Fee, by October 14, 2020.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Sincerely,

DocuSigned by 697E6642B774AE 10/14/2020



Financing Efficiency = Opportunity

Cecil Hayes CIM Chief Operating Officer

T 519 342 1000 X 233 C 519 590 3810

marshallzehr.com | email

#### Broker

MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453



By signing below, I agree to the extension of the above-noted mortgage.

# Borrower:

I HEREBY accept the terms and conditions as stated herein.

DATED this 14 day of OCTOBER, 2020.

12252856 Canada Inc.

Per: Name: PREMEWRAN ACTAMANANI Title: DIRECTOR I have authority to bind the corporation

The following parties execute this Commitment letter in their capacities as guarantors only.

2752865 Ontario Limited

Per: Brooke Askin Name: Director Title:

I have authority to bind the corporation



Lender:

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this <u>14th</u> day of <u>October</u>, 2020.

MarshallZehr Group Inc. "in Trust"

DocuSign Per:

Gregory Zehr CEO & Co-Founder "I/We have the authority to bind the Corporation"

201 King Road Bridge - MZGI 329



Friday, October 1, 2021

#### PRIVATE AND CONFIDENTIAL

Bridlepath Capital Corporation and City Core Consortia Limited 1280 Finch Ave W #611 North York, ON M3J 3K6

Attention: Shafiq Punjani and Jack Pong

RE:	Project:	201 King Road Bridge – MZGI 329
	Purpose:	Second (2 <sup>nd</sup> ) Amendment
	Borrower:	12252856 Canada Inc.
	Property Address:	201, 227 & 235 King Road, Richmond Hill
	Maturity Date:	December 1, 2021

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "Second Amendment) to the Commitment Letter dated August 18th, 2020, and amended October 13, 2020 (the "Commitment"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Commitment.

# THIS LETTER REPLACES AND RENDERS NULL AND VOID THE PREVIOUS 2<sup>nd</sup> AMENDMENT DATED JUNE 25, 2001

Delete (Original):

Maturity Date: December 1, 2021

Insert (New):

Maturity Date: June 1, 2022

The following provisions shall be included in this Second Amendment that were not contemplated in the original Commitment:

Amendment Fee: Upon execution of this Second Amendment, the Borrower shall pay a fee of \$180,000 (the "Amendment Fee") to the Lender. This Second Amendment fee shall be earned by the Lender as of the date of execution of the Second Amendment. Please make the cheque payable to MarshallZehr Group Inc.



# **Subsearch:** A subsearch will be completed prior to executing this Second Amendment at the expense of the Borrower.

# All other terms of the Commitment shall survive, unamended and all existing agreements shall remain in effect.

This Second Amendment may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this Second Amendment, the Borrower(s) and Guarantor(s) agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

# If you are in agreement with the above terms, please indicate such agreement pertaining to 201 King Road Bridge – MZGI 329 by signing and forwarding to the undersigned a copy of this Second Amendment, along with the Amendment Fee, by October 7, 2021.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Sincerely,





Cecil Hayes CIM Chief Operating Officer

T 519 342 1000 X 233 C 519 590 3810

Broker MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453



By signing below, I agree to the extension of the above-noted mortgage.

#### Borrower:

I HEREBY accept the terms and conditions as stated herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

12252856 Canada Inc.

ىك ٢ Per:

Name: Prem Yachamanani Title: <sup>Director</sup> I have authority to bind the corporation.

The following parties execute this Commitment letter in their capacities as guarantors only.

2752865 Ontario Limited Pe

Name: **Brooke** Kin Title: <sub>Director</sub> I have authority to bind the corporation.



## Lender:

I HEREBY accept the terms and conditions as stated herein. 11/1/2021

DATED at Waterloo, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

MarshallZehr Group Inc. "in Trust"

DocuSigned by:  $\leq$ Per: C7AE499691764A

Gregory Zehr CEO & Co-Founder "I/We have the authority to bind the Corporation."

201 King Road Bridge – MZGI 329



May 3, 2022

PRIVATE AND CONFIDENTIAL

12252856 Canada Inc. MAG Centre, 155 Commerce Valley Drive East Markham, ON L3T 7T2 MIR M. ALI Attention: Shafiq Punjani and Jack Pong-

RE:	Project:	201 King Road Bridge – MZGI 329
	Purpose:	Third (3 <sup>rd</sup> ) Amendment
	Borrower:	12252856 Canada Inc.
	Property Address:	201, 227 & 235 King Road, Richmond Hill
	Current Maturity Date:	June 1,2022

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "3<sup>rd</sup> Amendment") to the above noted mortgage and Commitment Letter dated August 18<sup>th</sup>, 2020, and amended October 13, 2020, and October 1, 2021:

Delete (Original): Maturity Date: June 1,2022 Insert (New):

Maturity Date: September 1, 2022

The following provisions shall be included in this Amendment that were not contemplated in the original Commitment:

- Amendment Fee: Upon execution of this Amendment, the Borrower shall pay a fee of \$99,000 to the Lender (the "3<sup>rd</sup> Amendment Fee"). The Amendment fee shall be earned by the Lender as of the date of execution of the 3<sup>rd</sup> Amendment and shall not be effective until such time as the Lender has received the Amendment Fee in full. <u>Please make the cheque payable to MarshallZehr Group Inc.</u>
- Subsearch: A subsearch will be completed prior to executing this Amendment at the expense of the Borrower .

All other terms of the Commitment shall survive, unamended.



Project: 201 King Road Bridge-MZGI 329 May 3, 2022

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement, along with the Amendment Fee, by Friday May 6, 2022.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc. and the mortgage is in good standing.

Sincerely,



Cecil Hayes CIM Chief Operating Officer

T 519 342 1000 X 233 C 519 590 3810

marshallzehr.com | email

Broker MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453



By signing below, I agree to the extension of the above-noted mortgage.

Borrower:

I HEREBY accept the terms and conditions as stated herein.

DATED this <u>11th</u> day of MAY , 2022.



Amendment fee of \$99,000.00 to be paid by May 17th 2022

l/s

Mir M Ali Director

[mirali@consortia-na.ca C: (613) 899-4556]

The following parties execute this Commitment letter in their capacities as guarantors only.

2752865 Ontario Inc. Per: Name:

Brooke Askin, Director

Name: Title: I have authority to bind the corporation

Witness: Prem Yachamanani



Project: 201 King Road Bridge-MZGI 329 May 3, 2022

Lender:

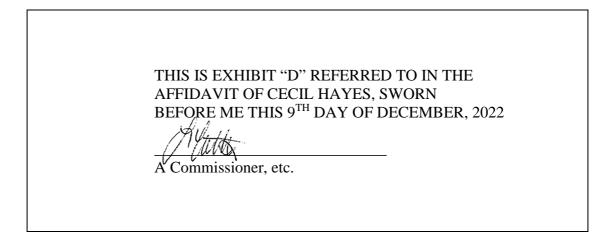
I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this day of , 2022.

MarshallZehr Group Inc.

DocuSigned by: C7AE499691764A8.

Per: <u>C7AE499691764A8.</u> Gregory Zehr CEO & Co-Founder I have the authority to bind the Corporation



#### LRO # 65 Charge/Mortgage

The applicant(s) hereby applies to the Land Registrar.

Propertie	es s
PIN	03196 - 0037 LT Interest/Estate Fee Simple
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
Address	235 KING RD RICHMOND HILL
PIN	03196 - 0038 LT Interest/Estate Fee Simple
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
Address	227 KING RD RICHMOND HILL
PIN	03196 - 0039 LT Interest/Estate Fee Simple
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; TOWN OF RICHMOND HILL
Address	201 KING ROAD RICHMOND HILL

# 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	12252856 CANADA INC.
Address for Service	1280 Finch Avenue West, Suite 301
	Toronto, Ontario M3J 3K6
I, Premkumar Yachama	nani, Authorized Signing Officer, have the authority to bind the corporation.
<b>-</b>	

This document is not authorized under Power of Attorney by this party.

Chargee(s)		Capacity	Share
Name	MARSHALLZEHR GROUP INC.		40%
Address for Service	465 Phillip Street, Suite 206 Waterloo, Ontario N2L 6C7		
Name	VECTOR FINANCIAL SERVICES LIMITED		60%
Address for Service	245 Eglinton Avenue East, Suite 400 Toronto, Ontario M4P 3B7		

#### Provisions

Principal	\$20,000,000.00	Currency	CDN
Calculation Period	monthly, interest only		
Balance Due Date	2021/12/01		
Interest Rate	Twice the Prime Rate plus	s 15.1%, per annu	m
Payments			
Interest Adjustment Date	2020 11 01		
Payment Date	1st day of each and every	month	
First Payment Date	2020 11 01		
Last Payment Date	2021 12 01		
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor	2752865 Ontario Limited		

## Additional Provisions

See Schedules

#### Signed By

Alexandra Mary Ann Krancevic

5000 Yonge Street, 10th Flooracting forTorontoChargor(s)M2N 7E9

Signed 2020 10 20

Tel 416-222-8888

Fax 416-218-1860

I have the authority to sign and register the document on behalf of the Chargor(s).

Г

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 20

-

CHAITONS LLP	5000 Yonge Street, 10th Floor Toronto M2N 7E9	2020 10 20
Tel 416-222-8888		
Fax 416-218-1860		
Fees/Taxes/Payment		
Fees/Taxes/Payment Statutory Registration Fee	\$65.05	
_	\$65.05 \$65.05	
Statutory Registration Fee		

#### **SCHEDULE - ADDITIONAL PROVISIONS**

#### 1. **DEFINITIONS**

In this Charge, unless the context requires otherwise:

- (a) "Act" means the *Condominium Act, 1998* (Ontario) as amended.
- (b) "Affiliate" shall mean, with respect to the Chargor, any other Person who directly or indirectly controls the Chargor or holds directly the majority of all issued and outstanding shares in the capital of the Chargor and includes any Person in like relation to an Affiliate. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the Chargor, whether through the ownership of voting securities, by contract or otherwise.
- (c) "**Applicable Taxes**" means any goods and services tax levied under Part IV of the *Excise Tax Act* (Canada), the provincial portion of harmonized sales tax, value-added tax or any similar tax applicable thereon.
- (d) **"Business Day**" means any day, other than a Saturday or Sunday, on which Canadian chartered banks are open for domestic and foreign exchange business in the Province of Ontario.
- (e) "**Charge**" means this charge/mortgage of land (including the attached electronic form of charge/mortgage, this schedule and all other schedules to this charge) as it may be amended, restated or replaced from time to time.
- (f) "Chargee" means collectively MarshallZehr Group Inc. and Vector Financial Services Limited.
- (g) "**Chargor**" means the Person or Persons indicated in the applicable Computer Field.
- (h) **"Commitment**" means collectively, the loan proposal and the letter of commitment, each issued by the Chargee to the Chargor in connection with the borrowing contemplated hereby, as may be subsequently amended from time to time.
- (i) **"Computer Field**" means a computer data entry field in the attached electronic form of charge/mortgage registered pursuant to Part 111 of the *Land Registration Reform Act* (Ontario) in which the terms and conditions of this Charge may be inserted.
- (j) "Condominium Corporation" means, if applicable, the proposed condominium corporation which may be created on any portion of the Real Property upon registration of a declaration and description by the Chargor.
- (k) "**Costs**" means the Schedule of costs attached as Schedule "A" to the Commitment and includes all fees, costs, charges and expenses of the Chargee of and incidental to, including without limitation:
  - (i) the collection of any amounts payable hereunder, enforcement of any covenants contained herein, and the realization of the security herein contained;
  - procuring or attempting to procure payment of any portion of the outstanding principal sum secured hereunder or any other amounts due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Chargee or any other party;
  - (iii) the Chargee having to go into possession of the Real Property and secure, complete and equip any buildings or improvements situate thereon in any way in connection therewith;
  - (iv) the exercise of any of the powers of a Receiver contained herein; and
  - (v) all solicitor's costs, charges and expenses relating to any of the foregoing and any necessary examination of title to the Real Property.

For greater certainty, Costs shall:

- (i) extend to and include legal costs incurred by the Chargee on a substantial indemnity basis;
- (ii) be payable forthwith by the Chargor;
- (iii) bear interest at the Interest Rate; and
- (iv) be a charge on the Real Property.

- (l) "Covenantor" means the Person or Persons indicated in the applicable Computer Field.
- (m) "Governmental Authority" means, when used with respect to any Person, any government, parliament, legislature, regulatory authority, agency, commission, tribunal, department, commission, board, administrative agency, court, arbitration board or arbitrator or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of, or pursuant to the laws of Canada or any province, municipality or district located therein.
- (n) "Hazardous Substance" means any hazardous waste or substance, pollutant, contaminant, waste or other substance, whether solid, liquid or gaseous in form, which when released into the natural environment may immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing:
  - (i) any such substance as defined or designated under any applicable laws and regulations for the protection of the environment or any living thing;
  - (ii) asbestos, urea formaldehyde, poly-chlorinated biphenyl ("**PCB's**") and materials manufactured with or containing the same; and
  - (iii) radioactive and toxic substances.
- (o) "Interest Adjustment Date" means the date indicated in the applicable Computer Field.
- (p) "Interest Rate" means the interest rate set out in the Commitment.
- (q) **"Loan**" means the loan extended by the Chargee to the Chargor pursuant to the terms of the Commitment.
- (r) **"Maturity Date**" means the Balance Due Date as set out in the applicable Computer Field.
- (s) "**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, and the executors, administrators or other legal representatives of an individual in such capacity.
- (t) **"Project**" means the proposed project intended to be developed by the Chargor on the Real Property, which may consist of the Units together with any ancillary amenities thereto.
- (u) "**Real Property**" means the real property described in the attached electronic form of charge/mortgage, together with all of the present and future interest of the Chargor in the Real Property including, all rights, benefits, agreements, rights-of-way, easements, privileges and right to use or occupy now or hereafter to such real property; and, all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property (including all such property now or in the future owned, leased, licensed, possessed or acquired by the Chargor, or in which the Chargor now or in the future has any interest or to which the Chargor is now or may in the future become entitled).
- (v) "Requirements of Environmental Law" means all requirements of the common law or the statutes, regulations, by-laws, ordinances, treaties, judgments and decrees and (whether or not they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives and the like, of any Governmental Authority relating to environmental, health, fire or safety matters, or any of them and the Real Property and the activities carried out therein (whether in the past, present or the future), including, but not limited to, all such requirements relating to Hazardous Substances.
- (w) "Taxes" means all taxes, rates and assessments of whatever nature or kind and to whomever imposed, levied, collected, withheld or assessed as of the date of this Charge or at any time in the future charged or payable with respect to the Real Property by any Governmental Authority having jurisdiction, including local improvement rates and any and all interest, fines and penalties in connection therewith.
- (x) **"Term**" means the term of this Charge, to expire on the Maturity Date.
- (y) "Unit" means any portion of the Real Property (i) designated or intended for use as a single family residential dwelling in accordance with the *Planning Act* (Ontario) and/or (ii) consisting of an individual condominium unit created in accordance with the provisions of the Act, and "Units" means more than one (1) Unit.

#### 2. <u>NON-MERGER</u>

Notwithstanding the registration of this Charge and the advance of funds secured hereunder, the Chargor hereby acknowledges that the terms, conditions, obligations, liabilities, warranties and representations contained in the Commitment shall not merge on the closing, registration and/or delivery of the Loan security, including, without limitation, this Charge, but shall remain binding and effective upon the parties hereto and in full force effect. It is understood and agreed that any default under the Commitment shall be deemed a default under this Charge. In the event of an inconsistency or conflict between any of the terms of this Charge and the terms of the Commitment, the Commitment shall prevail.

#### 3. LOAN FACILITY EXTENDED TO THE CHARGOR AND SECURED HEREIN

- (a) Whereas pursuant to the terms of the Commitment, the Chargee has agreed to extend a loan facility to the Chargor and the Chargor hereby charges the Real Property in favour of the Chargee with the indebtedness owing from time to time pursuant to the Loan up to the principal amount set out in the Commitment, together with interest thereon at the Interest Rate, Costs and other amounts thereon as provided for herein.
- (b) Provided this Charge to be void upon payment to the Chargee of the aggregate of the unpaid balance advanced to the Chargor by the Chargee by the Initial Advance in lawful money of Canada with interest thereon at the Interest Rate, and, which interest shall be calculated and compounded monthly not in advance as hereinafter set forth, as well after as before maturity and both before and after default and judgment.
- (c) Interest calculated daily and compounded monthly, not in advance, at the Interest Rate on the amount advanced from time to time shall become due and payable monthly on the first (1<sup>st</sup>) day of each and every month from and including the first (1<sup>st</sup>) day of the month immediately following the Interest Adjustment Date to and including the first (1<sup>st</sup>) day of the month in which the Maturity Date takes place. The aggregate sum advanced to the Chargor by the Chargee by the Initial Advance, together with interest thereon at the Interest Rate shall become due and payable on the Maturity Date. The first payment of interest to be computed from the Interest Adjustment Date shall be due and payable on the first (1<sup>st</sup>) day of the month immediately following such date.
- (d) Costs and Taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

## 4. <u>COMPOUND INTEREST</u>

It is hereby agreed that in case default shall be made in payment of any sum in respect of the Loan to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in one (1) month from the time of default a rest shall be made, and compound interest at the Interest Rate shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Real Property.

#### 5. **<u>CAPITALIZED INTEREST</u>**

The Chargee shall have the right at its sole option to capitalize any interest owing from time to time and to add same to the principal amount of the Loan and to treat it as part thereof and charge interest thereon. Such capitalized interest and interest thereon shall at all times be secured under the security granted by the Chargor to the Chargee pursuant to this Loan in first priority in the same manner as accrued interest. The Chargee at its sole option shall have the right to treat such capitalized interest as principal or accrued interest. Notwithstanding anything contained herein to the contrary, the principle of deemed reinvestment of interest shall not apply to any interest calculation in respect of this Charge.

#### 6. **<u>PREPAYMENT</u>**

The Chargor, when not in default hereunder, the Commitment, and/or any other Additional Security, shall have the prepayment rights set out in the Commitment.

#### 7. PRE-AUTHORIZED DEBIT

- (a) If so requested by the Chargee from time to time, all or a portion of the payments to be made by the Chargor to the Chargee hereunder shall be made by way of automatic monthly debit withdrawals by the Chargee from a designated bank account of the Chargor, as the Chargor may notify the Chargee in writing. In this regard, the Chargor hereby authorizes and directs the Chargee to automatically debit any bank account designated by the Chargor for amounts payable hereunder. The Chargor hereby further agrees to do, make and execute, or cause to be done, made and executed, all such documents, acts, matters and things as may be reasonably required by the Chargee to give effect to the foregoing, including, without limitation, executing the Chargee's Pre-Authorized Debit Form.
- (b) Alternatively (or in addition), if so requested by the Chargee, the Chargor shall deliver to the Chargee a series of post-dated cheques from time to time at any time during the Term following the delivery to the Chargor by the Chargee of the final advance to be made under the Loan, representing all or a portion of monthly payments on account of interest due and owing on account thereof throughout the then-remaining Term.

#### 8. PAYMENTS AFTER 1:00 P.M.

Any payment received by the Chargee after 1:00 P.M. (local time) on any Business Day, shall be deemed for the purpose of calculation of interest, to have been made and received on the immediately following Business Day. For greater certainty, if funds are received (or deemed received) on a Friday after 1:00 P.M. (local time), interest shall be calculated to the following Business Day.

#### 9. SALE OR CHANGE OF CONTROL

- (a) In the event that the Chargor directly or indirectly sells, conveys, transfers, assigns or exercises a power of appointment with respect to the Real Property or any portion thereof to a purchaser, transferee or assignee, other than a sale or transfer of individual Units to a purchaser thereof as contemplated by Section 15 hereof, or in the event of a change of shareholders of the Chargor which results in a change of control of the Chargor, or in the event of a change in the legal or beneficial ownership of the Real Property or any portion thereof, other than a sale or transfer of individual Units to a purchaser thereof as contemplated by Section 15 hereof, the Chargee may, at the Chargee's sole option, declare all of the sums secured by this Charge to be immediately due and payable and invoke any remedies permitted by this Charge or law, unless the written consent of the Chargee is first obtained, which consent may be arbitrarily or unreasonably withheld. The right of the Chargee pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under this Charge hereunder shall continue without diminution for any reason whatsoever until such time as the Chargee has consented in writing as required by this provision.
- (b) No sale or other dealings by the Chargor with the equity of redemption in the Real Property or any part thereof shall in any way change the liability of the Chargor for the observance, fulfilment and maintenance of all covenants, terms and provisions herein or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the moneys hereby secured. No dealing between the Chargee and the Chargor or the owner of the equity of redemption, including extending or renewing this Charge, shall in any way affect, change or prejudice the liability of the Chargor for the observance, fulfilment and maintaining of all covenants, terms, provisos, conditions, agreements and stipulations in this Charge or any amendment or extension thereof or in any way alter the rights of the Chargee as against the Chargor expressly waives all notice of such dealings between the Chargee.

## 10. MATERIAL ADVERSE CHANGES

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of this Charge, the Chargee discovers that there is or has been any material adverse change, discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Chargee by or on behalf of the Chargor and/or any Covenantor concerning the Real Property or the financial condition and responsibility of the Chargor or any Covenantor, or in the event of default by the Chargor or any Covenantor, then, in the event of such default, or if such material change, discrepancy or inaccuracy cannot be rectified or nullified by the Chargor or such Covenantor within thirty (30) days after written notification thereof by the

Chargee to the Chargor or such Covenantor, the Chargee shall be entitled forthwith to withdraw and cancel its obligations hereunder or decline to advance any further funds, as the case may be, and to declare any funds which have been advanced, together with interest, to be forthwith due and repayable in full.

#### 11. **RESTRICTIONS ON FURTHER FINANCING**

The Chargor covenants and agrees that it will not enter into, create, incur, assume, suffer or permit to exist any other charge, pledge or other form of financing against the Real Property and/or in respect of any chattels or other equipment directly related to the Real Property other than to secure a loan from an Affiliate, and not to further encumber same in any manner without the prior written consent of the Chargee, which approval may be unreasonably withheld by the Chargee.

#### 12. CONSENT TO REGISTRATION OF A PLAN OF CONDOMINIUM

Provided that the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee hereby agrees that it will consent to the Chargor registering a plan of condominium and declaration (the **"Condominium**") pursuant to the Act with respect to a portion of the Real Property provided that the Chargee has received and approved the draft plan of condominium and the declaration.

#### 13. NON-APPORTIONMENT

Units into which the Real Property is or may hereafter be divided do and shall stand charged with the whole of the principal amount of this Charge and interest and all other amounts payable under this Charge, and no Person shall have any right to require the principal amount of this Charge or interest or such other amounts to be apportioned upon or in respect of any such Unit, other than as provided for in the Act.

#### 14. **DEVELOPMENT PROVISIONS**

- (a) The Chargor, its agents, employees, and parties authorized by it may not conduct development and construction operations on the Real Property, including, without limitation, demolition and removal of existing structures, survey work, grading and excavation operations, installation of services, construction of a sales pavilion and all other acts incidental to the development of the Project without the prior written consent of the Chargee, in its sole and unfettered discretion. Provided that in the event that the Chargee has approved of any such construction operations on the Real Property and the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee shall, on written request from the Chargor, execute and deliver within five (5) Business Days of written request therefore, without the requirement of payment of any principal or interest under this Charge, all plans, agreements, consents, postponements, releases and other documents so that the Chargor may develop the Real Property, including, without limitation the following:
  - (i) engineering, financial, condominium, subdivision, servicing, site plan, development, costsharing and reciprocal agreements required by the Governmental Authorities;
  - (ii) consents or authorizations required to have the Real Property or any part thereof rezoned or divided or to comply with the provisions of the *Planning Act* (Ontario);
  - (iii) consents or postponements for any easements required to be granted for any public service or other purpose including the realignment of the existing pedestrian and vehicular easement with the adjoining land owner;
  - (iv) consents or partial discharges for or relating to parts of the Real Property required by the Governmental Authorities for the purpose of granting or dedicating roads, road widenings, walkways, reserves, parklands, recreation sites, school sites, drainage areas, buffer strips or other public purposes, provided such conveyances do not negatively impact on continued access to the Real Property; and
  - (v) consents for the registration of the Condominium relating to the Real Property.
- (b) Provided, however, that the Chargee shall not be required to undertake or assume any financial or other obligation as a result thereof and provided further, that with respect to partial discharges or consents required for any of the purposes referred to herein, an amount shall be paid for a partial discharge for such portion of the Real Property equal to the amount if any, received by the Chargor from any third party for the transfer or dedication of any such lands as set out in Section 15 herein.

- (c) The Chargor hereby covenants and agrees that it will:
  - (i) indemnify the Chargee and save it harmless from any losses, claims, actions or damages arising as a result of its agreement to execute any of the documentation referred to above; and
  - (ii) bear the Costs of the Chargee's solicitors and consultants in connection with the review of such documentation.

#### 15. **PARTIAL DISCHARGE PROVISIONS**

- (a) The following provisions shall apply in respect of each and every partial discharge of this Charge from any part of the Real Property as may be requested by the Chargor and/or given by the Chargee pursuant to the terms of this Charge:
  - notwithstanding anything otherwise contained herein, the Chargor shall not be entitled to request or receive any partial discharge when there is any outstanding material default by the Chargor hereunder;
  - (ii) in addition to all amounts on account of principal required to be paid by the Chargor to the Chargee in respect of any part of the Real Property to be partially discharged, the Chargor shall also pay to the Chargee:
    - a. accrued and unpaid interest on such principal amounts to the date of partial discharge;
    - b. the reasonable legal and other costs incurred by the Chargee in connection with each such partial discharge; and
    - c. any and all other charges due and owing by the Chargor pursuant to the provisions of this Charge;
  - (iii) the Chargor shall not be entitled to request and the Chargee shall not be obliged to give any partial discharge if doing so and registration of the same would result in any of the following:
    - a. a violation of the *Planning Act* (Ontario);
    - b. any undischarged parts of the Real Property becoming landlocked;
    - c. the occupancy and use of any undischarged parts of the Real Property in the same manner as prior to such partial discharge to be in non-compliance with any laws, by-laws or regulations of any Governmental Authority having jurisdiction;
  - (iv) the Chargee hereby agrees to deliver to the Chargor, upon prior written request, execution copies of all instruments and other documents reasonably required to be executed by the Chargee in connection with any partial discharge(s) of this Charge (collectively, the "Discharge Documents") contemplated to be registered at any time during the Term, in respect of any portion of the Real Property designated or intended for use as a Unit, provided that any such Discharge Documents so delivered to the Chargor by the Chargee pursuant to this subsection (d) shall be held in escrow by the Chargor's solicitors (provided that the Chargor's solicitors are acceptable to the Chargee) pending (i) the successful sale of any such Unit to a third party purchaser for value and delivery of the applicable Net Closing Proceeds (as hereinafter defined) to the Chargee (or as it may otherwise direct) together with payment of the Chargee's reasonable administrative and legal costs incurred with respect to preparation and delivery of such partial discharge(s), and (ii) written notice from the Chargee or its solicitors that any such Discharge Documents may be so released. Any other request for partial discharge shall be made by the Chargor upon not less than five (5) Business Days' prior written notice to the Chargee accompanied by execution copies of all Discharge Documents required to be executed by the Chargee in connection therewith; and
  - (v) all monies payable to the Chargee in respect of each partial discharge shall be paid by certified cheque, in lawful money of Canada.

- (b) When and if pursuant to exercise of the partial discharge provisions set forth in this Charge, the Chargor has paid to the Chargee all amounts secured by this Charge, then the Chargee acknowledges and agrees that, notwithstanding anything otherwise contained herein, the Chargor shall be entitled to request and obtain from the Chargee one or more partial discharges of this Charge from all parts of the Real Property then remaining undischarged without further payment on account of principal, but subject always to the provisions set forth in this Section 15.
- (c) Notwithstanding the foregoing, but subject always to the provisions set forth in this Section 15(a) (e), the Chargor shall be entitled to request and obtain from the Chargee a partial discharge of any portion of the Real Property designated or intended for use as a Unit upon payment to the Chargee for each such Unit an amount on account of principal which is equal to one hundred (100%) percent of the Net Closing Proceeds from the sale of each such Unit. For the purposes herein, "Net Closing Proceeds" shall mean the sale price of such Unit (which sale price shall be approved by the Chargee) less, the aggregate of:
  - (i) approved legal costs in respect of such sale;
  - (ii) approved sales commission in respect of such sale; and
  - (iii) any Applicable Taxes payable in respect of the sale of such Unit.

## 16. **CONDOMINIUM PROVISIONS**

- (a) Provided that if all or any part of the Real Property is or becomes a Unit pursuant to the provisions of the Act, the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in this Charge:
  - (i) for the purposes of all parts of the Real Property comprising one or more such Unit, all references in this Charge to the Real Property shall include the Chargor's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;
  - (ii) the Chargor shall at all times comply with the Act;
  - (iii) the Chargor shall pay, when due, all monies payable by the Chargor or with respect to the Real Property in accordance with the provisions of the Act and the declaration, by-laws and rules of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Chargee upon request; and if the Chargor fails to make any such payment, the Chargee may do so at its option and all amounts so paid by the Chargee shall be secured by this Charge and shall be payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided;
  - (iv) the Chargee shall not be under any obligation to vote or to consent or to protect the interests of the Chargor;
  - (v) the exercise by the Chargee of its right to vote or to consent or to abstain from doing so shall not constitute the Chargee as a mortgagee or chargee in possession and shall not give rise to any liability on the part of the Chargee;
  - (vi) the Chargor hereby authorizes and directs the Condominium Corporation to permit the Chargee to inspect the records of the Condominium Corporation at any reasonable time;
  - (vii) in addition to and notwithstanding any other provisions of this Charge, the outstanding principal amount and all accrued interest and other charges secured by this Charge shall, at the Chargee's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:
    - a. the government of the Condominium Corporation or the government of the Real Property by the Condominium Corporation is terminated;

- b. a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Real Property;
- c. the Condominium Corporation fails to comply with any provision of the Act or its declaration or any of its by-laws and rules; and/or
- d. the Condominium Corporation fails to insure its assets, including the Real Property, in accordance with the Act and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same;
- (viii) the Chargee is hereby irrevocably authorized and empowered to exercise all rights of the Chargor (in its capacity as an owner of any particular Unit forming a part of the condominium development (the "Condominium")) to vote or to consent in all matters relating to the affairs of the Condominium Corporation (collectively, the "Rights") provided that:
  - a. the Chargee may at any time or from time to time give notice in writing to the undersigned and the Condominium Corporation that the Chargee does not intend to exercise the Rights until such time as the Chargee revokes same and the undersigned may exercise its respective Rights. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter; and
  - b. the Chargee shall not by virtue of the assignment to the Chargee of the Rights be under any obligation to vote or consent or to protect the interest of the undersigned;
  - c. the foregoing assignment is made pursuant to the (i) *Land Registration Reform Act*, R.S.O. 1990, Chapter L.4 and (ii) Act.

#### 17. ENVIRONMENTAL PROVISIONS

- (a) The Chargor represents and warrants that:
  - (i) it has not caused or permitted, and to the best of its knowledge, information and belief after making due inquiry, no other person has caused or permitted, any Hazardous Substance to be manufactured, refined, traded, transported or transformed to or from, handled, produced, processed, placed, stored, located or disposed of on, under or at the Real Property;
  - (ii) it has no knowledge that any owner or occupier of any abutting or neighbouring properties has done any one or more of the matters or things prohibited by subsection (a) hereof;
  - (iii) it and its tenants, invitees and other occupiers of the Real Property have and will at all times carry out, and to the best of their respective knowledge, information and belief after making due inquiry, all prior owners and occupiers of the Real Property have at all times carried out, all business and other activities upon the Real Property in compliance with all applicable laws intended to protect the environment including, without limitation, laws respecting the discharge, emission, spill or disposal of any Hazardous Substance;
  - (iv) no order, direction, enforcement action or other governmental or regulatory action or notice, nor any action, suit or proceeding relating to an Hazardous Substance or the environment has been issued or is otherwise threatened or pending with respect to the Real Property;
  - (v) all of the representations and warranties set out herein shall remain true and accurate in all respects until all amounts secured hereunder are paid in full; and
  - (vi) the Chargee may delay or refuse to make any advance to the Chargor if the Chargee believes that any of the representations and warranties set out herein were not true and accurate when made or at any time thereafter.

- (b) The Chargee or agent of the Chargee may, at any time, before and after default of this Charge, and for any purpose deemed necessary by the Chargee, enter upon the Real Property to inspect the Real Property and buildings thereon. Without in any way limiting the generality of the foregoing, the Chargee (or its respective agents) may enter upon the Real Property to conduct any and all tests, inspections, appraisals and environmental audits of the Real Property deemed necessary by the Chargee so as to determine and ensure compliance with the provisions of this Charge including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Real Property or the businesses and other activities conducted thereon at any time and from time to time. The reasonable cost of such testing, assessment, investigation or study, as the case may be, with interest at the Interest Rate, shall be payable by the Chargor forthwith and shall be a charge upon the Real Property. The exercise of any of the powers enumerated in this clause shall not deem the Chargee or its respective agents to be in possession, management or control of the Real Property.
- (c) In consideration of the advance of funds by the Chargee, the Chargor and the Covenantor by way of separate guarantee, hereby agree that, in addition to any liability imposed on the Chargor and the Covenantor under any instrument evidencing or securing the Loan indebtedness, the Chargor and the Covenantor shall be jointly and severally liable for any and all of the costs, expenses, damages or liabilities of the Chargee, its directors and officers (including, without limitation, all reasonable legal fees) directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Real Property of any Hazardous Substances and such liability shall survive foreclosure of the security for the Loan and any other existing obligations of the Chargee of any remedies available to it for any default under the Charge.
- (d) The Chargor covenants that it will:
  - (i) remedy forthwith, at its own expense, any environment damage that may occur or be discovered on the Real Property in the future;
  - (ii) comply with and monitor, on a regular basis, its compliance and the compliance of any tenant, subtenant, assignee or other occupant of the Real Property with all Requirements of Environmental Law;
  - (iii) notify the Chargee promptly of any event or occurrence that has given, or is likely to give, rise to a report, order, inquiry or investigation relating to a matter that may have an adverse effect on the financial position of the Chargor or the Real Property or any action, suit or proceeding against the Chargor or others having an interest in the Real Property relating to, or a violation of, the Requirements of Environmental Law, including any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Substances into, on or under the Real Property, air and surface and ground water, and will also notify the Chargee promptly or any such above-mentioned information of which the Chargor has or receives knowledge relating to lands adjacent to the Real Property;
  - (iv) not lease or content to any sublease or assignment of any part of the Real Property to a tenant, subtenant or assignee who may engage in, nor permit any tenant, subtenant, assignee or occupant of the Real Property to engage in a business involving the generation of Hazardous Substances or the storing, handling, processing, manufacturing or disposing of Hazardous Substances in, or, under or from the Real Property save and except in accordance with the Requirements of Environmental Law, and any lease, sublease or assignment of any part of the Real Property shall preserve as against any lessee, sublessee or assignee all of the rights of the Chargee herein;
  - (v) save and except for those Hazardous Substances which are present on, in or under the Real Property in accordance with the Requirements of Environmental Law and which have been disclosed to the Chargee in writing remove, in accordance with all Requirements of Environmental Law, any Hazardous Substances from the Real Property forthwith upon their discovery and advise the Chargee forthwith in writing of the procedures taken;
  - (vi) provide to the Chargee upon request such information, certificates or statutory declarations as to compliance with the provisions hereof and all Requirements of Environmental Law and conduct such environmental audits or site assessments as may be reasonably necessary to ensure compliance with the Requirements of Environmental Law,

and to provide to the Chargee copies of any environmental, soils, safety or health reports or studies in respect of the Real Property that it receives or possesses from time to time; and

- (vii) permit the Chargee to conduct such inspections and appraisals of all of any of its records, business and property relating to the Real Property at any time and from time to time to monitor compliance with the Requirements of Environmental Law.
- (e) The Chargor and Covenantor further covenant that they will be liable for and fully indemnify and save harmless the Chargee and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, costs and expenses of any and every nature and kind whatsoever (including legal fees on a substantial indemnity basis and any environmental remediation costs included by the Chargee) which at any time or from time to time may be paid or incurred by or asserted against any of them as a direct or indirect result of:
  - (i) a breach of any of the representations, warranties or covenants hereinbefore set out;
  - (ii) the presence of any Hazardous Substance in, on or under the Real Property; or
  - the discharge, emission, spill or disposal of any Hazardous Substance from the Real Property into or upon any property, the atmosphere, any watercourse, body of water or wetland;

and such losses, damages, costs and expenses include, without limitation:

- (i) the costs of defending, counterclaiming or claiming over against one or more third parties in respect of any action or matter; and
- (ii) any settlement of any action or proceeding entered into by the Chargee with the consent of the Chargor (which consent shall not be unreasonably withheld);

and the provisions of all representations, warranties, covenants and indemnifications set out herein shall survive the release and discharge of this Charge and any other security held by the Chargee and repayment and satisfaction of the Loan. The provisions of this indemnity shall enure to the benefit of the Chargee and its successors and assigns including, without limitation, any assignees of this Charge.

# 18. <u>TAXES</u>

(a) The Chargor covenants and agrees that in the event the Chargee does not elect to collect the realty taxes imposed for the Real Property that the Chargor shall pay all instalments as they become due and shall provide proof of payment by way of a receipt to the Chargee on or before the due date for each such payment. In the event the Chargee elects to collect the realty taxes levied for the Real Property together with the monthly interest payment hereunder, and subsequently the monthly realty tax payments collected from the Chargor are insufficient to pay any realty tax bill when due, the Chargor covenants to pay all arrears, insufficiencies and instalments to the Chargee within fourteen (14) days of written notice from the Chargee's solicitors to make such payment. In the event that the Chargor fails to provide proof of payment as set out above, the Chargor agrees that the Chargee's solicitors may obtain verbal information from the applicable Governmental Authority, or for those Governmental Authorities which do not provide verbal information pertaining to realty tax accounts, by obtaining a tax certificate, and the Chargor agrees that the cost of obtaining such information shall be borne by the Chargor plus disbursements and Applicable Taxes which cost will be determined by the Chargee and will be added to the principal amount secured by the Charge. In all other respects, the Chargor covenants and agrees with the Chargee that it will comply strictly with every requirement of any Governmental Authority including without limitation, pay all Taxes as and when they are due and deliver to the Chargee evidence of such payment.

# 19. **INSURANCE**

Insurance shall be provided to the Chargee in accordance with the provisions of Paragraph 16 of Standard Charge Terms 200033 and in accordance with the provisions of the Commitment and shall be subject to the review and approval of the insurance consultant of the Chargee as contemplated in the Commitment.

# 20. ACKNOWLEDGEMENT ON ASSIGNMENT

In the event that the Chargee assigns, transfers or otherwise conveys its interest hereunder, and upon the delivery of notice of same to the Chargor, the Chargor, if so requested, shall without cost, at any time and from time to time, execute an acknowledgment with respect to the terms and conditions of this Charge and the amount outstanding thereunder. Failure to execute the acknowledgment shall be deemed to be default by the Chargor hereunder.

#### 21. **INSPECTION OF REAL PROPERTY**

- (a) The Chargee shall be entitled to inspect the Real Property periodically and/or to appoint a monitor to conduct such inspections. The Chargee and/or any monitor when so appointed shall have the power to:
  - (i) inspect physical status of the Real Property and to make or cause to be made such tests and inspections in connection therewith as it may deem advisable; and
  - (ii) review the management and financial position of the business being conducted at the Real Property, and for such purpose shall have full access to all books and records relating to same.
- (b) The Chargee will not, by virtue of the exercise of the foregoing rights, or in exercising any of the rights given to the Chargee in this Charge, be deemed to be a mortgagee-in-possession of the Real Property.

#### 22. **EXPROPRIATION**

If the Real Property or any part of it is expropriated by any Governmental Authority having powers of expropriation, all money payable in respect of such expropriation shall be paid to the Chargee and, if received by the Chargor, shall be received in trust for the Chargee and forthwith paid over to the Chargee subject to the rights of any prior chargee pursuant to the terms of its charge provided such charge is permitted by this Charge. Such money shall, at the option of the Chargee, be applied against the obligations hereunder or such part of them as the Chargee may determine, or be held unappropriated in a collateral account as continuing security for the full payment and performance of the obligations hereunder. The Chargor shall forthwith deliver to the Chargee a copy of any notice of expropriation or proposed expropriation received by the Chargor in respect of the Real Property.

#### 23. <u>LIENS</u>

The Chargor shall provide such additional security, information, documentation and assurances as may be required from time to time by the Chargee during the currency of this Charge to determine and to establish and preserve, in all respects, the priority of this Charge and all advances made hereunder over any rights of lien claimants pursuant to the provisions of the *Construction Act* (Ontario). If the Chargee makes any payment, in connection with the determination, establishment or preservation of its priority, whether such payment is made to a lien claimant or other Person claiming an interest in the Real Property or is paid into court, then the amount or amounts so paid and all costs, charges and expenses incurred in connection therewith shall be forthwith payable to the Chargee by the Chargor and shall be a charge on the Real Property and shall be added to the debt hereby secured and shall bear interest at the applicable rate and, in default of payment, the powers of sale and other remedies hereunder may be exercised. It is further agreed that the Chargee shall not become a mortgagee in possession by reason only of exercising any of the rights given to it under this Section 23 or in making any payment to preserve, protect or secure the Real Property.

## 24. ADDITIONAL SECURITY

(a) A General Assignment of Rents, General Security Agreement and other collateral security documents contemplated by the Commitment (collectively, the "Additional Security") are being given as further security to this Charge, which Additional Security is being granted by the Chargor to the Chargee and any default under the Additional Security shall constitute default under this Charge and any default under the Charge shall constitute default under the Additional Security and at the option of the Chargee require the entire principal secured under the Additional Security shall constitute payment under this Charge and payable. Payment under the Additional Security shall constitute payment under the Additional Security.

- (b) It is agreed that the Chargee's rights hereunder shall in no way merge or be affected by any proceedings the Chargee may take under the Additional Security and the Chargee shall not be required to take proceedings under such Additional Security or any part thereof before proceeding under this Charge, and conversely, no proceedings under this Charge shall in any way affect the rights of the Chargee under such Additional Security and the Chargee shall not be required to take proceedings under this Charge before proceeding under the Additional Security and the Chargee shall not be required to take proceedings under this Charge before proceeding under the Additional Security or any part thereof.
- (c) Upon request from the Chargee, the Chargor agrees forthwith upon delivery from time to time of any chattels in which it has an ownership interest (including replacements thereof) relating to the Real Property, it shall promptly notify the Chargee, and its solicitors, of such delivery and shall forthwith supply the Chargee with all serial numbers and a description which shall include make and model. The Chargor agrees to provide written evidence of proof of purchase of the chattels, free of encumbrances, and of insurance of same, both in the form and content satisfactory to the Chargee.

#### 25. <u>UNDERTAKINGS</u>

In the event the Chargor or any Covenantor default with respect to any undertakings delivered to the Chargee in consideration of the advance of funds under this Charge or with respect to any covenant contained in the terms and provisions contained in this Charge or the Additional Security, such default will be an event of default under this Charge.

## 26. <u>SALE ON TERMS</u>

In the event power of sale proceedings are taken, the Chargee, as vendor, may sell the Real Property on terms and if the result is that any mortgages taken back are at a rate lower than the rate for first and/or second mortgages in the industry then the Chargee shall be entitled to sell these charges at a discount and the discount shall form part of the loss incurred by the Chargee and be recoverable against the Chargor.

## 27. <u>COSTS</u>

It is agreed that all Costs of the Chargee incurred in endeavouring to collect any money overdue under this Charge, including all legal costs on a substantial indemnity basis, whether legal proceedings are instituted or not, shall be added to the principal and be payable forthwith by the Charger. Furthermore, and in addition to any Costs payable by the Chargee as aforesaid, upon default under this Charge resulting in the Chargee entering into or taking possession of the Real Property or any part of it, the Chargee or any Person appointed on its behalf shall be entitled to a management fee equal to five (5%) percent of the outstanding principal indebtedness hereunder plus Applicable Taxes thereon, which fee shall be added to the mortgage indebtedness and shall bear interest at the rate herein set forth.

# 28. MORTGAGE STATEMENT

Any request for a mortgage statement shall be made in writing allowing the Chargee, at minimum, five (5) Business Days to respond. The Cost of any such statement shall be borne by the Chargor.

#### 29. EVENTS OF DEFAULT

- (a) At the option of the Chargee, it shall constitute default hereunder if the Chargor or any Covenantor shall become insolvent or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation or any transaction or series of transactions which results in a change in control of the Chargor (subject to Section 9), reorganization (subject to Section 9), or any liquidation, windingup, dissolution or receivership or without the Chargee's consent, seeks continuation under the laws of any other jurisdiction. In the event of a default by the Chargor under this Charge, the Chargor will, if required by the Chargee, establish a separate bank account for the Project.
- (b) Provided and without in any way limiting anything herein contained, in the event that:
  - (a) the Chargor makes default in the payment of any principal or interest or any other monies required to be paid by the Chargor hereunder;
  - (b) the Chargor fails to observe or perform any other covenant or agreement herein contained and/or the Commitment;

- (c) any representation or warranty made herein and/or in the Commitment by the Chargor is at any time while this Charge is outstanding not true;
- (d) any construction lien is registered against any portion of the Real Property and is not removed within ten (10) Business Days;
- (e) an order is made or a resolution is passed for the winding up of the Chargor, or if a petition is filed for the winding up of the Chargor;
- (f) the Chargor becomes insolvent or makes an unauthorized assignment or bulk sale of the Chargor's assets or if a bankruptcy petition is filed or presented against the Chargor;
- (g) any proceedings with respect to the Chargor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or other debtor relief legislation;
- (h) an execution, sequestration, extent or any other process of any court becomes enforceable against the Chargor or if a distress of analogous process is levied against the Real Property or any portion thereof, provided such execution, sequestration, extent, process of court, distress or analogous process is not in good faith being disputed by the Chargor;
- the Chargor shall permit any sum which has been admitted as due by the Chargor or is not disputed to be due by the Chargor and which forms, or is capable of being made, a charge upon any portion of the Real Property in priority to or raking equally with the charge of this Charge to be or remain unpaid;
- (j) any charge or encumbrance created or issued by the Chargor having the nature of a fixed and/or floating charge shall become enforceable, whether ranking in priority to, or pari passu with this Charge; and/or
- (k) the Chargor ceases or threatens to cease to carry on its business or if the Chargor commits or threatens to commit any act of bankruptcy;

then, and in any such event, this Charge shall, at the option of the Chargee, be deemed to be in default.

#### 30. **<u>REMEDIES ON DEFAULT</u>**

- (a) Upon the occurrence and during the continuance of default the Chargee may, personally or by agent, at such time or times as the Chargee in its discretion may determine to exercise any one or more of the remedies in and by this Charge or conferred by law in case of default, including the following remedies:
  - Possession. Entry into possession and use of the Real Property or any part or parts of it (a) with power, among other things, to exclude the Chargor therefrom, to preserve and maintain the Real Property and to make such repairs, replacements, alterations and additions to the whole or any part of the Real Property that the Chargee may think advisable, to satisfy the whole or any part of any prior charge or any other prior claim or encumbrance then affecting the Real Property, to receive rents, income and profits of all kinds owing to the Chargor in respect of the Real Property and to pay from it all expenses of maintaining, preserving, protecting and operating the Real Property, including payments which may be due for insurance, Taxes, assessments, charges or liens prior to the charge of this Charge upon the Real Property and for the services of lawyers, agents and other Persons, and all costs, charges and expenses incurred in connection with the execution of the powers contained in this Charge; and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including the power to advance its own money (with interest payable on it at the Interest Rate) and to enter into contracts and to undertake obligations for the foregoing purposes upon the security of this Charge;
  - (b) <u>Court Receiver</u>. Proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Real Property, and removal or replacement from time to time of any such receiver;

- (c) <u>Private Receiver</u>. Appointment by instrument in writing of a receiver of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it, and removal or replacement from time to time of any such receiver;
- (d) <u>Distress</u>. The Chargee may distrain for arrears of payments in respect of the principal amount of this Charge, interest or any other amount payable under this Charge;
- (e) <u>Sale or Lease</u>. Sale, lease or other disposition of all or any part of the Real Property whether before or after entry into possession of the Real Property or any part of it;
- (f) <u>Foreclosure</u>. Proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Real Property, with or without entry into possession of it;
- (g) <u>Action on Covenant</u>. Taking any action or proceeding to enforce the performance of any covenant in favour of the Chargor contained in this Charge, whether before or after entry into possession of the Real Property or any part of it;
- (h) <u>Proof of Claim</u>. Filing of proofs of claim and other documents to establish the claims of the Chargee in any proceeding relating to the Chargor; and
- (i) <u>Other</u>. Any other remedy or proceeding authorized or permitted by this Charge or at law or in equity.
- (b) No right or remedy of the Chargee under this Charge or that the Chargee may have at law or in equity shall be exclusive or dependent on any other right or remedy, but any one or more of such rights and remedies may from time to time be exercised independently or in combination. The rights, remedies and powers conferred under this Charge are supplementary to and not in substitution for any of the powers that the Chargee may have or be entitled to at law, in equity or otherwise.

### 31. **<u>RECEIVER</u>**

- (a) Upon the occurrence of any one or more events of default, the Chargee may, in its discretion, by writing appoint a receiver (which term shall include a receiver and manager) (a "Receiver") of the Real Property or any part of it and of the rents and profits from it and may from time to time remove any Receiver and appoint another in his place, and in making any such appointment or appointments the Chargee shall be deemed to be acting as the attorney for the Chargor unless the Chargee indicates in writing a contrary intention. The following provisions shall apply in respect of the appointment of any Receiver:
  - (i) such appointment may be made either before or after the Chargee shall have entered into or taken possession of the Real Property or any part of it;
  - such Receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee and shall have the power to borrow on the security of the Real Property;
  - (iii) the Chargee may from time to time fix the remuneration of such Receiver and direct the payment of such remuneration from out of the proceeds of the Real Property;
  - (iv) such Receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent of the Chargor and in no event the agent of the Chargee and the Chargee in making or consenting to such appointment shall not incur any liability to the Receiver for his remuneration or otherwise howsoever;
  - (v) such Receiver shall from time to time have the power to collect, realize, sell or otherwise deal with the Real Property in such manner, upon such terms and conditions and at such time or times as may seem to the Receiver to be advisable and without notice to the Chargor;
  - (vi) such Receiver shall from time to time have the power to lease any portion of the Real Property which may become vacant for such term and subject to such provisions as the Receiver may deem advisable or expedient and, in so doing, such Receiver shall act as the attorney or agent for the Chargor (unless specifically appointed by the Chargee as the agent of the Chargee) and such Receiver shall have authority to execute, under seal or otherwise, any leases of any such premises in the name of and on behalf of the Chargor and the Chargor

undertakes to ratify and confirm whatever any such Receiver may do on the Real Property; and

- (vii) such Receiver shall have full power to manage, operate, amend, repair, alter or extend the Real Property or any part of it in the name of the Chargor for the purpose of securing the payment of rental from the Real Property or any part of it, including the power to:
  - a. take proceedings in the name of the Chargor or otherwise and to make any arrangement or compromise;
  - b. borrow or raise money on all or any part of the Real Property in priority to this Charge or otherwise for such purposes as may be approved by the Chargee;
  - c. give any and all notices to be given by the Chargor under any leases and exercise any and all rights of the Chargor under them;
  - d. do or cause to be done any and all acts and things under any lease and adjust and settle all matters relating to such performance; and
  - e. institute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Real Property, defend all suits, proceedings and actions against the Chargor or the Receiver, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action.

### 32. APPLICATION OF PROCEEDS

All money and other proceeds of disposition of any Real Property of the Chargor received by the Chargee or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Chargee rights against the Chargor under this Charge), encumbrances over the Real Property of the Chargor in favour of Persons other than the Chargee, borrowings, Taxes and other outgoings affecting the Real Property of the Chargor or which are considered advisable by the Chargee or the Receiver to protect, preserve, repair, process, maintain or enhance the Real Property of the Chargor or prepare it for sale, lease or other disposition, or to keep in good standing any encumbrances on the Real Property ranking in priority to the Charge from the Chargor, or to sell, lease or otherwise dispose of the Real Property of the Chargor. The balance of such proceeds, if any, may, at the sole discretion of the Chargee, be held as security for the obligations of the Chargor hereunder or be applied to such of the obligations (whether or not they are due and payable) in such manner and at such times as the Chargee considers appropriate (including in such manner as may be required to comply with any priority, subordination or security sharing arrangements between any one or more of those for whom the Chargee is the chargee) and thereafter will be accounted for as required by law.

# 33. ATTORNEY OF THE CHARGOR

- (a) <u>Under Leases</u>. The Chargee, as attorney or agent for the Chargor and in its name, may at any time and from time to time after default, exercise any of the rights, powers, authorities and discretion which under the terms of any of the leases could be exercised by the Chargor.
- (b) On Sale. In case of any sale under this Charge, whether by the Chargee or by a Receiver or under any judicial proceedings, the Chargor agrees that it will, forthwith upon request, execute and deliver to the purchaser such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the Real Property or any part or parts of it sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such Receiver may execute and deliver to the purchaser of the Real Property or any part or parts of it such deeds, assurances, conveyances and receipts as may be necessary to transfer good and sufficient title to it, the Chargee or, if appointed, the Receiver being hereby irrevocably constituted the attorney of the Chargor for the purpose of making such sale and executing all deeds, assurances, conveyances, receipts and documents pertaining thereto.

# 34. <u>LIMITATION OF OBLIGATIONS</u>

The Chargee shall not, nor shall any Receiver appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by it or for salaries during any period during which the Chargee or such Receiver is managing the Real Property or any part or parts of it upon or after entry, as provided for in this Charge, nor shall the Chargee nor the Receiver be liable to account as mortgagee in possession or for

anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable.

# 35. CHARGEE'S COSTS

- (a) The Chargee may (but shall not be obliged to) pay all costs, charges and expenses (including agents' charges and solicitors' fees and disbursements on a solicitor and his own client basis) incurred from time to time in taking, recovering and keeping possession of the Real Property or in performing work in respect of the buildings, erections, structures and improvements situate on it or in inspecting it and generally in any other proceedings taken to realize the money secured by this Charge or in protecting the security for such money, whether any action or other judicial proceeding to enforce such payment has been taken or not. Any and all amounts so paid shall be added to the obligation and shall be payable forthwith by the Charger to the Chargee with interest at the Interest Rate from the date of payment by the Chargee.
- (b) The Chargor shall immediately pay to the Chargee all amounts paid or incurred by or on behalf of the Chargee and all costs and expenses of preparing, executing and registering the Charge and any other related instruments, inspecting, protecting, repairing, completing, insuring, taking, keeping possession of and managing all or any part of the Real Property, preparing the Real Property for sale or lease, selling or leasing the Real Property, collecting all or any part of the Principal amount of this Charge, the exercise of any of the rights of a Receiver appointed pursuant to the provisions of this Charge and such Receiver's fees and expenses, agents' costs and expenses, legal fees and disbursements on a solicitor and his own client basis, and any other costs and expenses of exercising or protecting the Chargee's rights (under this Charge or otherwise) or all or any part of the Real Property.

# 36. **ADDITIONAL REMEDIES**

The rights, powers, and remedies conferred herein are supplementary to and not in substitution for any of the powers which the Chargee may have or be entitled to at law or otherwise. Any one or more remedies may from time to time be exercised independently of or in combination with any of the others, as often and in such order as the Chargee considers appropriate and the remedies include, but are not limited to, the Chargee's right to commence court proceedings to foreclose the Chargor's right, title and equity of redemption to the Real Property and the Chargee's right to ask the court to order the sale of the Real Property under the court's supervision. Such rights, powers and remedies shall not be capable of being waived or varied except by virtue of an expressed waiver or variation in writing signed by an officer of the Chargee. In particular, any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy, any defective or partial exercise of any of such rights shall not preclude any other or future exercise of that or any other such right in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

# 37. CONSENT TO PERSONAL INFORMATION AS PER PRIVACY POLICY

The Chargor and each Covenantor agrees that any information, personal or otherwise, either that the Chargor and each Covenantor has provided or will provide to the Chargee or that the Chargee has on file about the Chargor and each Covenantor shall be retained and may be used as the Chargee deems necessary in its sole discretion for the mortgage placement herein, collection of any arrears or deficiencies in the event of a default and any renewals or extensions of same. The Chargor and each Covenantor also agree to any credit bureau search being carried out by the Chargee from time to time as the Chargee deems necessary in its sole and unfettered discretion. By signing this Charge, the Chargor and each Covenantor agree that the Chargee shall have the right to seek any information from any Governmental Authority at any time either before or after the registration of the Charge and before and after default including to request site inspections or any information on file about the Chargor and each Covenantor also agree that the Chargee shall have the right to retain such information which may be used as the Chargee deems necessary in its sole and unfettered discretion. The Chargor and each Covenantor also agree that the Chargee may retain all information provided to it in accordance with the provisions of this Section 37 on file for as long as the Chargee deems appropriate.

# 38. <u>SEVERABILITY OF ANY INVALID PROVISIONS</u>

If in the event that any covenant, term or provision contained in this Charge is held to be invalid, illegal or unenforceable in whole or in part, then the validity, legality and enforceability of the remaining covenants, provisions and terms shall not be affected or impaired thereby, and all such remaining covenants, provisions and terms shall continue in full force and effect. All covenants, provisions and terms hereof are declared to be separate and distinct covenants, provisions or terms as the case may be.

### 39. **INDEMNIFICATION OF CHARGEE**

In the event the Chargee shall, without fault on its part, be made a party to any litigation commenced by or against the Chargor, the Chargor shall protect and hold the Chargee harmless therefrom and shall pay all costs, expenses and solicitors' fees on a substantial indemnity basis. Such costs shall be a charge on the Real Property and may be added to the Loan.

# 40. **<u>HEADINGS</u>**

The headings herein are not to be considered part of this Charge and are included solely for the convenience of reference and are not intended to be full or accurate descriptions of the contents of the paragraphs to which they relate.

### 41. BREACH OF COVENANT

A breach of any covenant contained in this Charge shall constitute a default hereunder and at the option of the Chargee, it may avail itself of the remedies contained in this Charge or available at law.

# 42. <u>TIME OF ESSENCE</u>

Time shall be of the essence of this Charge in all respects.

# 43. **GOVERNING LAW**

This Charge shall be governed by the laws of the Province of Ontario.

### 44. <u>SUCCESSORS AND ASSIGNS</u>

This Charge shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

# 45. **AGREEMENTS IN WRITING**

No agreement for modification to this Charge or to any other security agreement provided to the Chargee, including any renewals hereof for extension of the time for payment of the indebtedness due hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the Maturity Date, or of any subsequent term agreed to in writing between the Chargor and the Chargee, and that no modification, amendment, renewal hereof of extension of the time for payment of any indebtedness due hereunder shall result from, or be implied from, any other act, matter or thing, save only an express agreement in writing between the Chargor and the Chargee.

# 46. <u>CURRENCY REFERENCES</u>

All dollar amounts referred to in this Charge are stated in lawful money of Canada.

# 47. <u>CONFLICT/AMBIGUITY</u>

In the event of any inconsistency between the terms of this schedule to this Charge and the terms of Standard Charge Terms 200033, the terms of this schedule to this Charge shall prevail and the inclusion of any term in Standard Charge Terms 200033 that is not set out in this schedule to this Charge shall not be an inconsistency.

# 48. **BLANKET CHARGE**

(a) The Chargor hereby acknowledges and agrees that the indebtedness owing from time to time pursuant to the Loan shall be secured by all of the Real Property described under Properties field in the electronic form to which this Schedule is attached. For purposes hereof, each of the parcels of land comprising of the Real Property and designated by the Land Titles Office in which this

- (i) the Charge shall be registered against each of the Parcels;
- (ii) each Parcel shall be charged with the whole of the principal sum secured hereby together with interest thereon at the Interest Rate and Costs and other amounts thereon as provided herein; and
- (iii) the Chargor shall not be entitled to apportion any principal amount due under the Loan in respect of any of the Parcels.

The applicant(s) hereby applies to the Land Registrar.

Propertie	2S
PIN	03196 - 0037 LT
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
Address	235 KING RD RICHMOND HILL
PIN	03196 - 0038 LT
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
Address	227 KING RD RICHMOND HILL
PIN	03196 - 0039 LT
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL
Address	201 KING ROAD RICHMOND HILL

Source Instruments			
Registration No.	Date	Type of Instrument	
YR3157405	2020 10 20	Charge/Mortgage	

# Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name	VECTOR FINANCIAL SERVICES LIMITED			
Address for Service	245 Eglinton Avenue East, Suite 400			
	Toronto, Ontario M4P 3B7			
I, Mitchell Oelbaum, Chief Operating Officer, have the authority to bind the corporation.				

This document is not authorized under Power of Attorney by this party.

Transferee(s)		Capacity	Share
Name	MARSHALLZEHR GROUP INC.		23.12%
Address for Service	465 Phillip Street, Suite 206 Waterloo, Ontario N2L 6C7		
Name	OLYMPIA TRUST COMPANY		36.88%
Address for Service	PO BOx 2581, STN Central Calgary, Alberta T2P 1C8		

# Statements

The chargee transfers the selected charge for \$2.00

Schedule: Vector Financial Services Limited hereby transfers a (i) 23.12% interest in the charge/mortgage of land registered as Instrument No. YR3157405 (the "Charge") to MarshallZehr Group Inc. ("MarshallZehr") and (ii) 36.88% interest in the Charge to Olympia Trust Company ("Olympia"). Following registration of this transfer of charge, MarshallZehr will have an aggregate 63.12% interest in the Charge and Olympia will have a 36.88% interest in the Charge.

This document relates to registration number(s)YR3157406

Sign	ned By				
Alexan	dra Mary Ann Krancevic	5000 Yonge Street, 10th Floor Toronto M2N 7E9	acting for Transferor(s)	Signed	2020 11 25
Tel	416-222-8888				
Fax	416-218-1860				
have t	the authority to sign and register the d	locument on behalf of all parties to the docume	nt.		
Alexan	dra Mary Ann Krancevic	5000 Yonge Street, 10th Floor Toronto M2N 7E9	acting for Transferee(s)	Signed	2020 11 25
Tel	416-222-8888				
Fax	416-218-1860				

I have the authority to sign and register the document on behalf of all parties to the document.

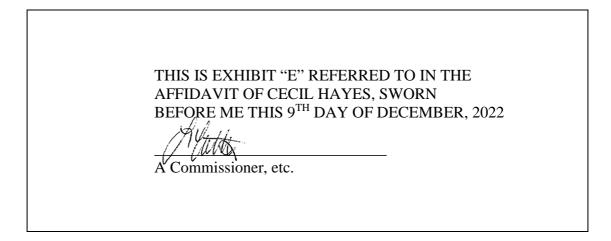
The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

	M2N 7E9	
Tel 416-222-8888		
Fax 416-218-1860		
Statutory Registration Fee	\$65.30	
Total Paid	\$65.30	

Transferor Client File Number :

64987



### **GENERAL SECURITY AGREEMENT**

THIS AGREEMENT dated as of October 20, 2020.

### TO: MARSHALLZEHR GROUP INC. and VECTOR FINANCIAL SERVICES LIMITED

### WHEREAS:

- A. 12252856 Canada Inc. (the "**Debtor**") is, or may become, indebted or liable to MarshallZehr Group Inc. and Vector Financial Services Limited (collectively, the "**Creditor**"); and
- B. To secure the payment and performance of the Liabilities (this term, and other capitalized terms used in this Agreement, have the meanings set forth in Section 1), the Debtor has agreed to grant to the Creditor security interests in respect of the Collateral in accordance with the terms of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the Debtor, the Debtor agrees with and in favour of the Creditor as follows:

**1. Definitions.** Capitalized terms used in this Agreement have the respective meanings ascribed thereto in this section:

- (a) "Accessions", "Account", "Chattel Paper", "Consumer Goods", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory" and "Proceeds" have the meanings given to them in the PPSA;
- (b) **"Books and Records**" means all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the Collateral which are at any time owned by the Debtor or to which the Debtor (or any Person on the Debtor's behalf) has access;
- (c) "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the province referred to in the "Governing Law" section of this Agreement;
- (d) "Collateral" means all of the present and future undertaking, Personal Property (including any Personal Property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Creditor in connection with this Agreement) and real property (including any real property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Creditor in connection with this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Creditor in connection with this Agreement and including all fixtures and all buildings placed, installed or erected from time to time on any such real property) of the Debtor (including all such property at any time owned, leased or licensed by the Debtor, or in which the Debtor at any time has any interest or to which the Debtor is or may at any time become entitled) and all Proceeds thereof, wherever located;
- (e) "Contracts" means all contracts, licences and agreements to which the Debtor is at any time a party or pursuant to which the Debtor has at any time acquired rights, and includes (i) all rights of the Debtor to receive money due and to become due to it in connection with a contract, licence or agreement, (ii) all rights of the Debtor to damages arising out of, or for breach or default in respect of, a contract, licence or agreement, and (iii) all rights of the Debtor to perform and exercise all remedies in connection with a contract, licence or agreement;

- (f) **"Default**" means the occurrence of any of the following events or conditions:
  - (i) the Debtor does not pay any of the Liabilities when due;
  - the Debtor does not observe or perform any of the Debtor's obligations under this Agreement or any other agreement or document existing at any time between the Debtor and the Creditor;
  - (iii) any representation, warranty or statement made by or on behalf of the Debtor to the Creditor, in this Agreement or otherwise, is untrue in any material respect when made;
  - (iv) the Debtor ceases or threatens to cease to carry on in the normal course all or any material part of the Debtor's business;
  - (v) the Debtor becomes insolvent or bankrupt, or makes or files a proposal, a notice of intention to make a proposal or an assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act* (Canada) or comparable legislation in Canada or any other jurisdiction; a petition in bankruptcy is filed against the Debtor; or, if the Debtor is a corporation, proceedings are initiated under any legislation by or against the Debtor seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;
  - (vi) a Receiver, trustee, custodian or other similar official is appointed in respect of the Debtor or any of the Collateral;
  - (vii) any Person holding a Security Interest in respect of any part of the Collateral takes possession of all or any material part of the Collateral, or a distress, execution or other similar process is levied against all or any material part of the Collateral;
  - (viii) the Debtor challenges or threatens to challenge the validity or enforceability of this Agreement or the Security Interests created by this Agreement; or
  - (ix) the Creditor, acting in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance of any of the Liabilities is or is about to be impaired or that all or any material part of the Collateral is or is about to be placed in jeopardy;
- (g) "Intellectual Property Rights" means all industrial and intellectual property rights, including copyrights, patents, trade-marks, industrial designs, know how and trade secrets and all Contracts related to any such industrial and intellectual property rights;
- (h) "Liabilities" means all present and future indebtedness, liabilities and obligations of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Debtor to the Creditor, wherever and however incurred, and any unpaid balance thereof;
- "Money" has the meaning given to it in the PPSA or, if there is no such meaning given in the PPSA, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency;

- "PPSA" means the *Personal Property Security Act* of the province referred to in the "Governing Law" section of this Agreement, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation);
- (k) **"Permits**" means all permits, licences, authorizations, approvals, franchises, rights-of-way, easements and entitlements that the Debtor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business;
- (l) "Person" will be broadly interpreted and includes an individual, a corporation, a limited liability company, a partnership, a trust, a joint venture, an association, an unincorporated organization, the government of a country or any political subdivision thereof, any agency or department of any such government, a regulatory agency or any other juridical entity and the heirs, executors, administrators or other legal representatives of an individual;
- (m) "Personal Property" means personal property and includes Accounts, Books and Records, Chattel Paper, Contracts, Documents of Title, Equipment, Goods, Instruments, Intangibles (including Intellectual Property Rights and Permits), Inventory, Money and Securities;
- (n) "**Receiver**" means a receiver, a manager or a receiver and manager;
- (o) "**Securities**" has the meaning given to it in the PPSA, or if there is no such meaning given in the PPSA but the PPSA defines "security" instead, it means the plural of that term; and
- (p) "Security Interest" means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, finance lease, title retention agreement or arrangement, security interest or other encumbrance or adverse claim of any nature, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property.

2. <u>Grant of Security Interest.</u> As general and continuing collateral security for the due payment and performance of the Liabilities, the Debtor mortgages, charges and assigns to the Creditor, and grants to the Creditor a security interest in, the Collateral.

3. <u>Limitations on Grant of Security Interest.</u> If the grant of any Security Interest in respect of any Contract, Intellectual Property Right or Permit under Section 2 would result in the termination or breach of such Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit will not be subject to any Security Interest under Section 2 but will be held in trust by the Debtor for the benefit of the Creditor and, on exercise by the Creditor of any of its rights under this Agreement following Default, assigned by the Debtor as directed by the Creditor and, on the exercise by the Creditor of any of its rights under this Agreement for lease of real property. Such last day will be held by the Debtor in trust for the Creditor and, on the exercise by the Creditor of any of its rights under this Agreement following Default, will be assigned by the Debtor as directed by the Creditor and, on the exercise by the Creditor of any of its rights under this Agreement following Default, will be assigned by the Debtor as directed by the Creditor and, on the exercise by the Creditor of any of its rights under this Agreement following Default, will be assigned by the Debtor as directed by the Creditor.

4. <u>Attachment; No Obligation to Advance.</u> The Debtor confirms that value has been given by the Creditor to the Debtor, that the Debtor has rights in the Collateral (other than after-acquired property) and that the Debtor and the Creditor have not agreed to postpone the time for attachment of the Security Interests created by this Agreement to any of the Collateral. The Security Interests created by this Agreement to be effective whether or not the Liabilities or any part thereof are owing or in existence before or after or upon the date of this Agreement. Neither the execution of this Agreement nor any advance of funds shall oblige the Creditor to advance any funds or any additional funds.

5. <u>**Representations and Warranties.</u>** The Debtor represents and warrants to the Creditor that:</u>

(a) <u>Places of Business, Name, Location of Collateral.</u> The Debtor's principal place of business and chief executive office, and the place where it keeps its Books and Records, is at the address specified on the signature page of this Agreement, and its full legal name, and any other name under which it conducts its business, is specified on the signature page of this Agreement.

(b) <u>Title; No Other Security Interests.</u> Except for (i) the Security Interests created by this Agreement, and (ii) any other Security Interests permitted in writing by the Creditor, the Debtor owns (or, with respect to any leased or licensed property forming part of the Collateral, holds a valid leasehold or licensed interest in) the Collateral free and clear of any Security Interests. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings in favour of, or permitted in writing by, the Creditor.

(c) <u>Amount of Accounts.</u> The amount represented by the Debtor to the Creditor from time to time as owing by each account debtor or by all account debtors in respect of the Accounts will at such time be the correct amount so owing by such account debtor or debtors and, unless disclosed in writing by the Debtor to the Creditor at that time, will be owed free of any dispute, set-off or counterclaim.

(d) <u>Authority; Consents.</u> The Debtor has full power and authority to grant to the Creditor the Security Interests created by this Agreement and to execute, deliver and perform its obligations under this Agreement, and such execution, delivery and performance does not contravene any of the Debtor's constating documents or by-laws or any agreement, instrument or restriction to which the Debtor is a party or by which the Debtor or any of the Collateral is bound. Except for any consent that has been obtained and is in full force and effect, no consent of any party (other than the Debtor) to any Contract or any obligor in respect of any Account is required, or purports to be required, for the execution, delivery and performance of this Agreement. Except as disclosed in writing by the Debtor to the Creditor, neither the Debtor nor (to the best of the Debtor's knowledge) any other party to any Account or Contract is in default or is likely to become in default in the performance or observance of any of the terms of such Account or Contract.

(e) <u>Execution and Delivery; Enforceability.</u> This Agreement has been duly authorized, executed and delivered by the Debtor and is a valid and binding obligation of the Debtor enforceable against the Debtor in accordance with its terms, subject only to bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws generally affecting the enforcement of creditors' rights, and to the fact that equitable remedies (such as specific performance and injunction) are discretionary remedies.

(f) <u>Motor Vehicles.</u> A description of all motor vehicles and other "serial number" goods (i.e. trailers, mobile homes, aircraft aircraft engines and vessels) (including vehicle identification numbers) presently owned by the Debtor and classified as Equipment is set out in Schedule A to this Agreement.

(g) <u>No Consumer Goods</u>. The Debtor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Debtor.

(h) <u>Intellectual Property Rights.</u> All Intellectual Property Rights owned by the Debtor, and all rights of the Debtor to the use of any Intellectual Property Rights, are described in Schedule A to this Agreement. To the best of the Debtor's knowledge, each such Intellectual Property Right is valid, subsisting, unexpired, enforceable and has not been abandoned. Except as set out in such Schedule, none of such Intellectual Property Rights has been licensed or franchised by the Debtor to any Person. Doc#4884512v2

6. <u>Survival of Representations and Warranties</u>. All agreements, representations, warranties and covenants made by the Debtor in this Agreement are material, will be considered to have been relied on by the Creditor and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Creditor and any disposition or payment of the Liabilities until repayment and performance in full of the Liabilities and termination of all rights of the Debtor that, if exercised, would result in the existence of Liabilities.

7. <u>Covenants.</u> The Debtor covenants and agrees with the Creditor that:

(a) <u>Further Documentation</u>. The Debtor will from time to time, at the expense of the Debtor, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Creditor may request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests created by this Agreement). The Debtor acknowledges that this Agreement has been prepared based on the existing laws in the province referred to in the "Governing Law" section of this Agreement and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, the Debtor agrees that the Creditor will have the right to require that this Agreement be amended, supplemented or replaced, and that the Debtor will immediately on request by the Creditor authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if the Debtor merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Creditor Security Interests similar to, and having the same effect as, the Security Interests created by this Agreement.

(b) <u>Delivery of Certain Collateral.</u> Promptly upon request from time to time by the Creditor, the Debtor will deliver (or cause to be delivered) to the Creditor, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Creditor may reasonably request, any and all Instruments, Securities, Documents of Title and Chattel Paper included in or relating to the Collateral as the Creditor may specify in its request.

(c) <u>Payment of Expenses; Indemnification.</u> The Debtor will pay on demand, and will indemnify and save the Creditor harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and own client basis and any sales, goods and services or other similar taxes payable to any governmental authority with respect to any such liabilities, costs and expenses) (i) incurred by the Creditor in the preparation, registration, administration or enforcement of this Agreement, (ii) with respect to, or resulting from, any failure or delay by the Debtor in performing or observing any of its obligations under this Agreement, or (iii) incurred by the Creditor in performing or observing any of the other covenants of the Debtor under this Agreement.

(d) <u>Maintenance of Records.</u> The Debtor will keep and maintain accurate and complete records of the Collateral, including a record of all payments received and all credits granted with respect to the Accounts and Contracts. At the written request of the Creditor, the Debtor will mark any Collateral specified by the Creditor to evidence the existence of the Security Interests created by this Agreement.

(e) <u>Right of Inspection.</u> The Creditor may, at all times during normal business hours, without charge, examine and make copies of all Books and Records, and may discuss the affairs, finances and accounts of the Debtor with its officers and accountants. The Creditor may also, without charge, enter the premises of the Debtor where any of the Collateral is located for the purpose of inspecting the Collateral, observing its use or otherwise protecting its interests in the Collateral. The Debtor, at its expense, will Doc#4884512v2

provide the Creditor with such clerical and other assistance as may be reasonably requested by the Creditor to exercise any of its rights under this paragraph.

(f) <u>Limitations on Other Security Interests</u>. The Debtor will not create, incur or permit to exist, and will defend the Collateral against, and will take such other action as is necessary to remove, any and all Security Interests in and other claims affecting the Collateral, other than the Security Interests created by this Agreement or as permitted in writing by the Creditor, and the Debtor will defend the right, title and interest of the Creditor in and to the Collateral against the claims and demands of all Persons.

(g) <u>Limitations on Dispositions of Collateral</u>. The Debtor will not, without the Creditor's prior written consent, sell, lease or otherwise dispose of any of the Collateral, except that Inventory may be sold, leased or otherwise disposed of, and subject to Section 17, Accounts may be collected, in the ordinary course of the Debtor's business. Following Default, all Proceeds of the Collateral (including all amounts received in respect of Accounts) received by or on behalf of the Debtor, whether or not arising in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Creditor and will be immediately paid to the Creditor.

(h) <u>Limitations on Modifications, Waivers, Extensions.</u> Other than as permitted by paragraph (i) below, the Debtor will not (i) amend, modify, terminate or waive any provision of any Permit, Contract or any document giving rise to an Account in any manner which is or could reasonably be expected to be materially adverse to the Debtor or the Creditor, or (ii) fail to exercise promptly and diligently its rights under each Contract and each document giving rise to an Account if such failure is or could reasonably be expected to be materially adverse to the Debtor or the Creditor.

(i) <u>Limitations on Discounts, Compromises, Extensions of Accounts</u>. Other than in the ordinary course of business of the Debtor consistent with previous practices, the Debtor will not (i) grant any extension of the time for payment of any Account, (ii) compromise, compound or settle any Account for less than its full amount, (iii) release, wholly or partially, any Person liable for the payment of any Account, or (iv) allow any credit or discount of any Account.

(j) <u>Maintenance of Collateral</u>. The Debtor will maintain all tangible Collateral in good operating condition, ordinary wear and tear excepted, and the Debtor will provide all maintenance, service and repairs necessary for such purpose.

(k) Insurance. The Debtor will keep the Collateral insured with financially sound and reputable companies to its full insurable value against loss or damage by fire, explosion, theft and such other risks as are customarily insured against by Persons carrying on similar businesses or owning similar property within the vicinity in which the Debtor's applicable business or property is located. The applicable insurance policies will be in form and substance satisfactory to the Creditor, and will (i) contain a breach of warranty clause in favour of the Creditor, (ii) provide that no cancellation, material reduction in amount or material change in coverage will be effective until at least 30 days after receipt of written notice thereof by the Creditor, (iii) contain by way of endorsement a mortgagee clause in form and substance satisfactory to the Creditor, and (iv) name the Creditor as loss payee as its interest may appear. The Debtor will, from time to time at the Creditor's request, deliver the applicable insurance policies (or satisfactory evidence of such policies) to the Creditor. If the Debtor does not obtain or maintain such insurance, the Creditor may, but need not, do so, in which event the Debtor will immediately on demand reimburse the Creditor for all payments made by the Creditor in connection with obtaining and maintaining such insurance, and until reimbursed any such payment will form part of the Liabilities and will be secured by the Security Interests created by this Agreement. Neither the Creditor nor its correspondents or its agents will be responsible for the character, adequacy, validity or genuineness of any insurance, the solvency of any insurer, or any other risk connected with insurance. Doc#4884512v2

(l) <u>Further Identification of Collateral.</u> The Debtor will promptly furnish to the Creditor such statements and schedules further identifying and describing the Collateral, and such other reports in connection with the Collateral, as the Creditor may from time to time reasonably request, including an updated list of any motor vehicles or other "serial number" goods owned by the Debtor and classified as Equipment, including vehicle identification numbers.

(m) <u>Notices.</u> The Debtor will advise the Creditor promptly, in reasonable detail, of (i) any Security Interest (other than the Security Interests created by this Agreement and any Security Interest permitted in writing by the Creditor) on, or claim asserted against, any of the Collateral, (ii) the occurrence of any event, claim or occurrence that could reasonably be expected to have a material adverse effect on the value of the Collateral or on the Security Interests created by this Agreement, (iii) any change in the location of any place of business (including additional locations) or the chief executive office of the Debtor, (iv) any change in the location of any of the tangible Collateral (including additional locations), (v) any acquisition of real property by the Debtor, (vi) any change in the name of the Debtor, (vii) any merger or amalgamation of the Debtor with any other Person, (viii) any additional jurisdiction in which material accounts debtors of the Debtor are located, and (ix) any material loss of or damage to any of the Collateral. The Debtor agrees not to effect or permit any of the changes referred to in clauses (iii) to (viii) above unless all filings have been made and all other actions taken that are required in order for the Creditor to continue at all times following such change to have a valid and perfected Security Interest in respect of all of the Collateral.

(n) <u>Delivery of Agreements re Intellectual Property Rights.</u> The Debtor will promptly, following demand from time to time by the Creditor, authorize, execute and deliver any and all agreements, instruments, documents and papers that the Creditor may request to evidence the Creditor's Security Interests in any Intellectual Property Rights and, where applicable, the goodwill of the business of the Debtor connected with the use of, and symbolized by, any such Intellectual Property Rights.

(o) <u>Limitation on Loans and Guarantees.</u> The Debtor will not, without the Creditor's prior written consent, lend money to or guarantee the obligations of any other third party.

(p) <u>Limitation on Investments or Acquisitions</u>. The Debtor will not, without the Creditor's prior written consent, make any investments or acquisitions other than in the normal course of business.

8. <u>**Rights on Default.</u>** On Default, all of the Liabilities will, at the option of the Creditor, become immediately due and payable and the security constituted by this Agreement will become enforceable, and the Creditor may, personally or by agent, at such time or times as the Creditor in its discretion may determine, do any one or more of the following:</u>

(a) <u>Rights under PPSA, etc.</u> Exercise all of the rights and remedies granted to secured parties under the PPSA and any other applicable statute, or otherwise available to the Creditor at law or in equity.

(b) <u>Demand Possession</u>. Demand possession of any or all of the Collateral, in which event the Debtor will, at the expense of the Debtor, immediately cause the Collateral designated by the Creditor to be assembled and made available and/or delivered to the Creditor at any place designated by the Creditor.

(c) <u>Take Possession</u>. Enter on any premises where any Collateral is located and take possession of, disable or remove such Collateral.

(d) <u>Deal with Collateral.</u> Hold, store and keep idle, or operate, lease or otherwise use or permit the use of, any or all of the Collateral for such time and on such terms as the Creditor may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person in respect of any of the Collateral.

(e) <u>Carry on Business</u>. Carry on, or concur in the carrying on of, any or all of the business or undertaking of the Debtor and enter on, occupy and use (without charge by the Debtor) any of the premises, buildings, plant and undertaking of, or occupied or used by, the Debtor.

(f) <u>Enforce Collateral</u>. Seize, collect, receive, enforce or otherwise deal with any Collateral in such manner, on such terms and conditions and at such times as the Creditor deems advisable.

(g) <u>Dispose of Collateral.</u> Realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Creditor or elsewhere, on such terms and conditions as the Creditor may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.

(h) <u>Court-Approved Disposition of Collateral.</u> Apply to a court of competent jurisdiction for the sale or foreclosure of any or all of the Collateral.

(i) <u>Purchase by Creditor</u>. At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and, upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Debtor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Creditor, the Creditor may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Liabilities then due and payable to it as a credit against the purchase price.

(j) <u>Collect Accounts.</u> Notify the account debtors or obligors under any Accounts of the assignment of such Accounts to the Creditor and direct such account debtors or obligors to make payment of all amounts due or to become due to the Debtor in respect of such Accounts directly to the Creditor and, upon such notification and at the expense of the Debtor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Creditor deems appropriate in the circumstances.

(k) <u>Transfer of Securities.</u> Transfer any Securities forming part of the Collateral into the name of the Creditor or its nominee, with or without disclosing that the Securities are subject to the Security Interests arising under this Agreement.

(l) <u>Exercise of Rights.</u> Exercise any and all rights, privileges, entitlements and options pertaining to any Securities forming part of the Collateral as if the Creditor were the absolute owner of such Securities.

(m) <u>Payment of Liabilities.</u> Pay any liability secured by any Security Interest against any Collateral. The Debtor will immediately on demand reimburse the Creditor for all such payments.

(n) <u>Borrow and Grant Security Interests.</u> Borrow money for the maintenance, preservation or protection of any Collateral or for carrying on any of the business or undertaking of the Debtor and grant Security Interests on any Collateral (in priority to the Security Interests created by this Agreement or

otherwise) as security for the money so borrowed. The Debtor will immediately on demand reimburse the Creditor for all such borrowings.

(o) <u>Appoint Receiver</u>. Appoint by instrument in writing one or more Receivers of the Debtor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Creditor under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Creditor will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of the Debtor and not of the Creditor.

(p) <u>Court-Appointed Receiver</u>. Apply to a court of competent jurisdiction for the appointment of a Receiver of the Debtor or of any or all of the Collateral.

(q) <u>Consultants</u>. Require the Debtor to engage a consultant of the Creditor's choice, or engage a consultant on its own behalf, such consultant to receive the full cooperation and support of the Debtor and its employees, including unrestricted access to the premises, books and records of the Debtor; all reasonable fees and expenses of such consultant shall be for the account of the Debtor and the Debtor hereby authorizes any such consultant to report directly to the Creditor and to disclose to the Creditor any and all information obtained in the course of such consultant's employment.

The Creditor may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on the Debtor or any other Person, and the Debtor by this Agreement waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Without prejudice to the ability of the Creditor to dispose of the Collateral in any manner which is commercially reasonable, the Debtor acknowledges that a disposition of Collateral by the Creditor which takes place substantially in accordance with the following provisions will be deemed to be commercially reasonable:

- (i) Collateral may be disposed of in whole or in part;
- (ii) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (iii) any purchaser or lessee of Collateral may be a customer of the Creditor;
- (iv) a disposition of Collateral may be on such terms and conditions as to credit or otherwise as the Creditor, in is sole discretion, may deem advantageous; and
- (v) the Creditor may establish an upset or reserve bid or price in respect of Collateral.

**9. <u>Grant of Licence.</u>** For the purpose of enabling the Creditor to exercise its rights and remedies under Section 8 when the Creditor is entitled to exercise such rights and remedies, and for no other purpose, the Debtor grants to the Creditor an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Debtor) to use, assign or sublicence any or all of the Intellectual Property Rights, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same.

**10.** <u>Sale of Securities.</u> The Creditor is authorized, in connection with any offer or sale of any Securities forming part of the Collateral, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Securities. The Debtor further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Creditor will not be liable or accountable to the Debtor for any discount allowed by reason of the fact that such Securities are sold in compliance with any such limitation or restriction.

**11.** <u>Application of Proceeds.</u> All Proceeds of Collateral received by the Creditor or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Creditor's rights under this Agreement), Security Interests in favour of Persons other than the Creditor, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Creditor or the Receiver to protect, preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Security Interests on the Collateral ranking in priority to any of the Security Interests created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds may, at the sole discretion of the Creditor, be held as collateral security for the Liabilities or be applied to such of the Liabilities (whether or not the same are due and payable) in such manner and at such times as the Creditor considers appropriate and thereafter will be accounted for as required by law.</u>

**12.** <u>**Continuing Liability of Debtor.**</u> The Debtor will remain liable for any Liabilities that are outstanding following realization of all or any part of the Collateral and the application of the Proceeds thereof.

**13.** <u>Creditor's Appointment as Attorney-in-Fact.</u> The Debtor constitutes and appoints the Creditor and any officer or agent of the Creditor, with full power of substitution, as the Debtor's true and lawful attorney-in-fact with full power and authority in the place of the Debtor and in the name of the Debtor or in its own name, from time to time in the Creditor's discretion after a Default, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released. Nothing in this Section affects the right of the Creditor as secured party or any other Person on the Creditor's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as the Creditor or such other Person considers appropriate.</u>

14. <u>Performance by Creditor of Debtor's Obligations.</u> If the Debtor fails to perform or comply with any of the obligations of the Debtor under this Agreement, the Creditor may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Creditor incurred in connection with any such performance or compliance will be payable by the Debtor to the Creditor immediately on demand, and until paid, any such expenses will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.

**15.** <u>Interest.</u> If any amount payable to the Creditor under this Agreement is not paid when due, the Debtor will pay to the Creditor, immediately on demand, interest on such amount from the date due until Doc#4884512v2

paid, at a nominal annual rate equal at all times 24%. All amounts payable by the Debtor to the Creditor under this Agreement, and all interest on all such amounts, compounded monthly on the last Business Day of each month, will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.

**16.** <u>Severability</u>. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

# 17. <u>Rights of Creditor; Limitations on Creditor's Obligations.</u>

(a) <u>Limitations on Creditor's Liability</u>. The Creditor will not be liable to the Debtor or any other Person for any failure or delay in exercising any of the rights of the Debtor under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral, or to preserve rights against prior parties). Neither the Creditor, a Receiver nor any agent of the Creditor (including, in Alberta or British Columbia, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. Neither the Creditor nor any Receiver will be liable for any, and the Debtor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Creditor or any Receiver) caused for any reason other than the gross negligence or willful misconduct of the Creditor or such Receiver.

(b) Debtor Remains Liable under Accounts and Contracts. Notwithstanding any provision of this Agreement, the Debtor will remain liable under each of the documents giving rise to the Accounts and under each of the Contracts to observe and perform all the conditions and obligations to be observed and performed by the Debtor thereunder, all in accordance with the terms of each such document and Contract. The Creditor will have no obligation or liability under any Account (or any document giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Creditor of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Creditor will not be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any Account (or any document giving rise thereto) or under or pursuant to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any document giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

(c) <u>Collections on Accounts and Contracts</u>. The Creditor hereby authorizes the Debtor to collect the Accounts and payments under the Contracts in the normal course of the business of the Debtor and for the purpose of carrying on the same. If required by the Creditor at any time, any payments of Accounts or under Contracts, when collected by the Debtor, will be forthwith (and, in any event, within two Business Days) deposited by the Debtor in the exact form received, duly endorsed by the Debtor to the Creditor if required, in a special collateral account maintained by the Creditor, and until so deposited, will be held by the Debtor in trust for the Creditor, segregated from other funds of the Debtor. All such amounts while held by the Creditor (or by the Debtor in trust for the Creditor) and all income in respect thereof will continue to be collateral security for the Liabilities and will not constitute payment thereof until applied as hereinafter provided. If a Default has occurred and is continuing, the Creditor may apply all or any part of the amounts on deposit in said special collateral account on account of the Liabilities in such order as the Creditor may elect. At the Creditor's request, the Debtor will deliver to the Creditor any documents

evidencing and relating to the agreements and transactions which gave rise to the Accounts and Contracts, including all original orders, invoices and shipping receipts.

(d) <u>Analysis of Accounts</u>. The Creditor will have the right to analyze and verify the Accounts in any manner and through any medium that it reasonably considers advisable, and the Debtor will furnish all such assistance and information as the Creditor may require in connection therewith. The Creditor may in its own name or in the name of others (including the Debtor) communicate with account debtors on the Accounts and parties to the Contracts to verify with them to its satisfaction the existence, status, amount and terms of any Account or any Contract. At any time and from time to time, upon the Creditor's reasonable request and at the expense of the Debtor, the Debtor will furnish to the Creditor reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts.

18. **Dealings by Creditor.** The Creditor will not be obliged to exhaust its recourse against the Debtor or any other Person or against any other security it may hold in respect of the Liabilities before realizing upon or otherwise dealing with the Collateral in such manner as the Creditor may consider desirable. The Creditor may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Debtor and any other Person, and with any or all of the Collateral, and with other security and sureties, as the Creditor may see fit, all without prejudice to the Liabilities or to the rights and remedies of the Creditor under this Agreement. The powers conferred on the Creditor under this Agreement are solely to protect the interests of the Creditor in the Collateral and will not impose any duty upon the Creditor to exercise any such powers.

**19.** <u>Communication</u>. Any communication required or permitted to be given under this Agreement will be in writing and will be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by facsimile transmission or other similar means of electronic communication, in each case to the address or facsimile number of the Debtor or Creditor set out in this Agreement. Any communication so given will be deemed to have been given and to have been received on the day of delivery if so delivered, or on the day of facsimile transmission or sending by other means of recorded electronic communication provided that such day is a Business Day and the communication will be deemed to have been given and to have been received on the following Business Day. Any communication sent by mail will be deemed to have been given and to have been received on the fifth Business Day following mailing, provided that no disruption of postal service is in effect. The Debtor and the Creditor may from time to time change their respective addresses or facsimile numbers for notice by giving notice to the other in accordance with the provisions of this Section.

**20.** <u>**Release of Information.**</u> The Debtor authorizes the Creditor to provide a copy of this Agreement and such other information as may be requested of the Creditor by Persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Debtor.

**21.** <u>Waivers and Indemnity.</u> To the extent permitted by applicable law, the Debtor unconditionally and irrevocably waives (i) all claims, damages and demands it may acquire against the Creditor arising out of the exercise by the Creditor or any Receiver of any rights or remedies under this Agreement or at law, and (ii) all of the rights, benefits and protections given by any present or future statute that imposes limitations on the rights, powers or remedies of a secured party or on the methods of, or procedures for, realization of security, including any "seize or sue" or "anti-deficiency" statute or any similar provision of any other statute. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Creditor. The Creditor will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Creditor, any right, power or privilege hereunder shall Doc#4884512v2

operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Creditor of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Creditor would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of the Debtor to pay the Liabilities, nor will the same operate as a merger or any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any novation. The Debtor agrees to indemnify the Creditor from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (except by reason of the gross negligence or willful misconduct of the Creditor or any of its agents or employees) which may be imposed on, incurred by, or asserted against the Creditor and arising by reason of any action (including any action referred to in this Agreement) or inaction or omission to do any act legally required by the Debtor. This indemnification will survive the satisfaction, release or extinguishment of the Liabilities and the Security Interests created by this Agreement.

**22.** <u>Amalgamation.</u> If the Debtor is a corporation, the Debtor acknowledges that if it amalgamates with any other corporation or corporations, then (i) the Collateral and the Security Interests created by this Agreement will extend to and include all the property and assets of the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (ii) the term "Debtor", where used in this Agreement, will extend to and include the amalgamated corporation, and (iii) the term "Liabilities", where used in this Agreement, will extend to and include the Liabilities of the amalgamated corporation.

**23.** <u>**Governing Law; Attornment.</u>** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario. Without prejudice to the ability of the Creditor to enforce this Agreement in any other proper jurisdiction, the Debtor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such province. To the extent permitted by applicable law, the Debtor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province.</u>

**24. Interpretation.** Unless otherwise expressly provided in this Agreement, if any matter in this Agreement is subject to the consent or approval of the Creditor or is to be acceptable to the Creditor, such consent, approval or determination of acceptability will be in the sole discretion of the Creditor. If any provision in this Agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. The division of this Agreement into sections and paragraphs, and the insertion of this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Agreement, the word "including" (or includes) means "including (or includes) without limitation". Any reference in this Agreement to a "Section" means the relevant Section of this Agreement. If more than one Debtor executes this Agreement, their obligations under this Agreement are joint and several.

**25.** <u>Successors and Assigns.</u> This Agreement will enure to the benefit of, and be binding on, the Debtor and its successors and permitted assigns, and will enure to the benefit of, and be binding on, the Creditor and its successors and assigns. The Debtor may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Creditor. If the Debtor or the Creditor is an individual, then the term "Debtor" or "Creditor", as applicable, will also include his or her heirs, administrators and executors.

**26.** <u>Acknowledgment of Receipt/Waiver.</u> The Debtor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.

**27.** <u>Electronic Transmission</u>. This Agreement may be signed by electronic transmission, which shall for all purposes be deemed to be an original and legally binding instrument.

[remainder of this page intentionally left blank]

DATED as of the date first written above.

12252856	CANADA INC.
Per: Name: Title:	PREMICUMAN YACHAMANANI DIRECTOR

I have authority to bind the Corporation.

Address: 1280 Finch Avenue West, Suite 301 Toronto, Ontario M3J 3K6

Attention: Prem Kumar Yachamanani E-mail: prem@consortia-na.ca

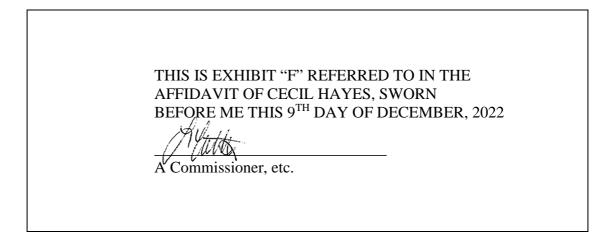
# SCHEDULE A

# Locations of Collateral (Paragraph 5(a))

201-235 King Road, Richmond Hill, Ontario 1280 Finch Avenue West, Suite 301, Toronto, Ontario

# Locations of Real Property (Paragraph 5(a))

201-235 King Road, Richmond Hill, Ontario 1280 Finch Avenue West, Suite 301, Toronto, Ontario



#### ASSIGNMENT OF CHARGE AND COLLATERAL SECURITY

**THIS AGREEMENT** made as of the  $25^{\text{th}}$  day of November, 2020.

AMONG:

### VECTOR FINANCIAL SERVICES LIMITED ("Vector")

- and -

### OLYMPIA TRUST COMPANY ("Olympia")

- and -

# MARSHALLZEHR GROUP INC. ("MarshallZehr")

#### WHEREAS:

- A. A charge/mortgage of land securing the principal amount of Twenty Million (\$20,000,000) Dollars was registered against the lands and premises legally described in PINs 03196-0037 (LT), 03196-0038 (LT) and 03196-0039 (LT) as Instrument No. YR3157405 on the 20<sup>th</sup> day of October, 2020 (the "Charge") in favour of (i) Vector, as to a sixty (60.00%) percent interest in the Charge and (ii) MarshallZehr as to a forty (40%) percent interest in the Charge;
- B. As collateral security for its indebtedness and liabilities to Vector and MarshallZehr (collectively, the "**Original Chargees**"), 12252856 Canada Inc., *inter alios*, granted certain security including, but not limited to, the security set out in Schedule "A" attached hereto to and in favour of the Original Chargees (the "**Collateral Security**");
- C. Vector desires to assign a (i) thirty six and eighty eight one hundredths (36.88%) percent interest of its right, title and interest in the Charge and the Collateral Security to Olympia (the "Olympia Assigned Interest") and (ii) twenty three and twelve one hundredths (23.12%) percent interest of its right, title and interest in the Charge and the Collateral Security to MarshallZehr (the "MarshallZehr Assigned Interest"); and
- D. Olympia and MarshallZehr have agreed to assume and be bound by Vector's respective obligations and covenants in respect of the Olympia Assigned Interest and the MarshallZehr Assigned Interest, respectively (collectively, the "Assigned Interest") subject to the terms and conditions as set out hereinafter.

**NOW THEREFORE** in consideration of the sum of Two (\$2.00) Dollars and other good and valuable consideration now paid by each of the parties hereto to each of the others (the receipt and sufficiency whereof are hereby acknowledged by each of the parties hereto), the parties hereto hereby agree as follows:

- 1. Vector hereby assigns, transfers and conveys the Olympia Assigned Interest to and in favour of Olympia and Olympia hereby assumes, acquires and accepts from Vector, as of the date hereof, the Olympia Assigned Interest, together with all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.
- 2. Olympia hereby (i) accepts and assumes all of the benefits and burdens of the Olympia Assigned Interest (ii) agrees to perform all covenants and obligations of Vector thereunder and (iii) agrees to indemnify, defend and hold harmless Vector from and against any and all costs, losses, claims, judgments, harm or damage (collectively, the "**Claims**") which may arise under or pursuant to or otherwise in connection with the Olympia Assigned Interest from and after the date hereof.
- 3. Vector hereby agrees to indemnify, defend and hold harmless Olympia from and against all Claims which may arise under or pursuant to or otherwise in connection with the Olympia Assigned Interest up until the date hereof.
- 4. Vector hereby assigns, transfers and conveys the MarshallZehr Assigned Interest to and in favour of MarshallZehr and MarshallZehr hereby assumes, acquires and accepts from Vector, as of the date hereof, the MarshallZehr Assigned Interest, together with all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.
- 5. MarshallZehr hereby (i) accepts and assumes all of the benefits and burdens of the MarshallZehr Assigned Interest (ii) agrees to perform all covenants and obligations of Vector thereunder and (iii) agrees to indemnify, defend and hold harmless Vector from and against all Claims which may arise under or pursuant to or otherwise in connection with the MarshallZehr Assigned Interest from and after the date hereof.
- 6. Vector hereby agrees to indemnify, defend and hold harmless MarshallZehr from and against all Claims which may arise under or pursuant to or otherwise in connection with the MarshallZehr Assigned Interest up until the date hereof.
- 7. Vector hereby represents and warrants that (i) it has good right, full power and absolute authority to transfer the Olympia Assigned Interest to Olympia and (ii) its interest in the Olympia Assigned Interest is free and clear of all liens, charges or encumbrances whatsoever.
- 8. Vector hereby represents and warrants that (i) it has good right, full power and absolute authority to transfer the MarshallZehr Assigned Interest to MarshallZehr and (ii) its interest in the MarshallZehr Assigned Interest is free and clear of all liens, charges or encumbrances whatsoever.
- 9. The parties hereto shall from time to time at the request of the other party hereto execute and deliver to the requesting party such further assurances as may be reasonably required for the better assigning of the Assigned Interest.
- 10. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

- 11. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario applicable thereto.
- 12. This Agreement may be executed in counterparts and transmitted by electronic transmission, each of which when so executed and transmitted shall constitute an original and both of which shall together constitute one and the same Agreement.

[remainder of page intentionally left blank]

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first above written above.

#### VECTOR FINANCIAL SERVICES LIMITED

Per: \_\_

Name:Mitchell Oelbaum Title: COO

Per:	
Name:	
Title:	

I/We have authority to bind the Corporation.

### OLYMPIA TRUST COMPANY

Per:			
Nam	e:		
Title			

Per:	 	 
Name:		
Title:		

I/We have authority to bind the Corporation.

# MARSHALLZEHR GROUP INC.

Per:	 	 	
Name:			
Title:			

Per:	 	
Name:		
Title:		

I/We have authority to bind the Corporation.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written above.

#### **VECTOR FINANCIAL SERVICES LIMITED**

Per:	 	
Name:		
Title:		

Per:	 	
Name:		
Title:		

I/We have authority to bind the Corporation.

### **OLYMPIA TRUST COMPANY**

Per:	I
Name:	
Title:	

Maria Gayos Client Relations

Per:

Name: Title:

Cora Dumais Team Lead

I/We have authority to bind the Corporation.

# MARSHALLZEHR GROUP INC.

Per:			
Nam	e:		
Title	:		

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

I/We have authority to bind the Corporation.

- 4 -

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first above written above.

#### **VECTOR FINANCIAL SERVICES LIMITED**

Per:	 	
Name:		
Title:		

Per:	 	
Name:		
Title:		

I/We have authority to bind the Corporation.

### OLYMPIA TRUST COMPANY

Per:	 	
Name:		
Title:		

Per:	 	
Name:		
Title:		

I/We have authority to bind the Corporation.

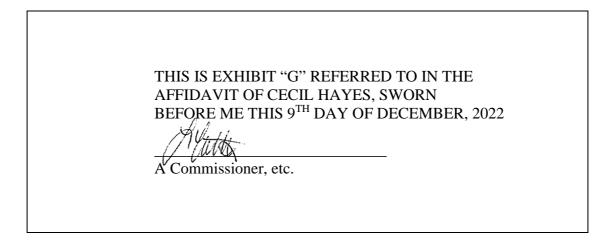
### MARSHALLZEHR GROUP INC.

Per:	
Name:	
Title:	
Per:	
Per:	
Name: Jana Mirt	
Title: Vice President - Transaction Exec	ution

I/We have authority to bind the Corporation.

### SCHEDULE "A" Collateral Security

- 1. General Assignment of Rents granted by 12252856 Canada Inc. (the "**Borrower**") in favour of MarshallZehr Group Inc. and Vector Financial Services Limited (collectively, the "**Original Chargees**") dated October 20, 2020;
- 2. Acknowledgement re Standard Charge Terms No. 200033 granted by the Borrower dated October 20, 2020;
- 3. Acknowledgement re *Personal Property Security Act* (Ontario) Verification Statements granted by the Borrower and 2752865 Ontario Inc. (the "**Guarantor**") dated October 20, 2020;
- 4. General Security Agreement granted by the Borrower in favour of the Original Chargees dated October 20, 2020;
- 5. General Security Agreement granted by the Guarantor in favour of the Original Chargees dated October 20, 2020;
- 6. Guarantee granted by the Guarantor in favour of the Original Chargees dated October 20, 2020;
- 7. Assignment of Insurance in favour of the Original Chargees dated October 20, 2020;
- 8. Assignment of Material Contracts in favour of the Original Chargees dated October 20, 2020;
- 9. Assignment of Sales Agreements in favour of the Original Chargees dated October 20, 2020;
- 10. Assignment and Pledge of Securities in favour of the Original Chargees dated October 20, 2020;
- 11. Assignment re Cash Security in favour of the Original Chargees dated October 20, 2020;
- 12. Postponement of Shareholder Loans in favour of the Original Chargees dated October 20, 2020;
- 13. Direction re Tax Authorities granted by the Borrower dated October 20, 2020;
- 14. Joint and Several Deficiency and Completion Agreement granted by each of the Borrower and the Guarantor in favour of the Original Chargees dated October 20, 2020;
- 15. Environmental Warranty and Indemnity granted by each of the Borrower and the Guarantor in favour of the Original Chargees dated October 20, 2020; and
- 16. Non-Merger Acknowledgement granted by each of the Borrower and the Guarantor in favour of the Original Chargees dated October 20, 2020.



#### LRO # 65 Charge/Mortgage

The applicant(s) hereby applies to the Land Registrar.

Propertie	'S
PIN	03196 - 0037 LT Interest/Estate Fee Simple
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
Address	235 KING ROAD RICHMOND HILL
PIN	03196 - 0038 LT Interest/Estate Fee Simple
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
Address	227 KING ROAD RICHMOND HILL
PIN	03196 - 0039 LT Interest/Estate Fee Simple
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL
Address	201 KING ROAD RICHMOND HILL

# 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.

Name12252856 CANADA INC.Address for Service1280 Finch Avenue West, Suite 301,<br/>Toronto, Ontario M3J 3K6I, Premkumar Yachamanani, A.S.O., have the authority to bind the corporation.This document is not authorized under Power of Attorney by this party.

Chargee(s)		Capacity	Share
Name	CONSORTIA EQUITY CAPITAL LIMITED		
Address for Service	1280 Finch Avenue West, Suite 301, North York, Ontario M3J 3K6		

### Statements

Schedule: See Schedules

#### Provisions

			,
Principal	\$5,500,000.00	Currency	CDN
Calculation Period	Half-Yearly, Not in Advance		
Balance Due Date	ON DEMAND		
Interest Rate	10.00%		
Payments			
Interest Adjustment Date	2020 10 01		
Payment Date	ON DEMAND		
First Payment Date			
Last Payment Date			
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor			

#### **Additional Provisions**

The Chargor shall have the privilege of prepaying the whole or any part or parts of the principal sum hereby secured at any time or times without notice or bonus.

Toronto

M5G 1V2

480 University Ave, # 1600

acting for

Chargor(s)

Signed

2020 11 13

### Signed By

Liz Lamarre

Tel 416-597-9922

Fax 416-597-3370

I have the authority to sign and register the document on behalf of the Chargor(s).

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

GOLDMAN SLOAN NASH & HABER LLP	480 University Ave, # 1600 Toronto M5G 1V2	2020 11 13
Tel 416-597-9922		
Fax 416-597-3370		
Fees/Taxes/Payment		
-	\$65.30	
Statutory Registration Fee	\$65.30 \$65.30	
Fees/Taxes/Payment Statutory Registration Fee Total Paid File Number		

# PAYMENT PROVISIONS - INTEREST ONLY (FIXED RATE) (MONTHLY PAYMENTS)

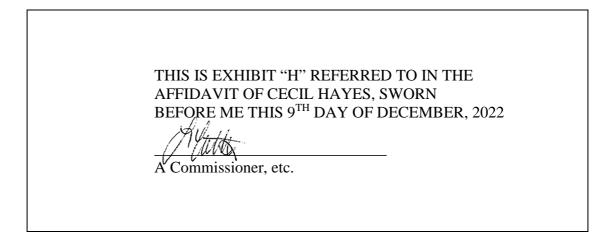
**PROVIDED THIS CHARGE/MORTGAGE OF LAND TO BE VOID** upon payment at the office of the Chargee at Toronto, Ontario of **the principal amount of Five Million Five-Hundred Thousand Dollars (\$5,500,000.00)** of lawful money of Canada with interest at the rate of **Ten percent (10%)**per annum, calculated and accrued semi-annually not in advance and payable as herein set forth, as well after as before maturity and both before and after default as follows:

**INTEREST** calculated semi-annually at the aforesaid rate from and including the 1<sup>st</sup> day of October 2020 on the amount advanced shall be accrued on the 1st days of May and October in each and every year from and including the 1st day of May,2021 and the balance of **Five Million Five-Hundred Thousand Dollars (\$5,500,000.00)** together with accrued interest thereon at the aforesaid rate shall become due and payable upon written demand therefor by the Chargee.

**AND** taxes and performance of Statute Labour; and observance and performance of all covenants, provisos and conditions herein contained.

# COMPOUND INTEREST

**AND** it is hereby agreed that in case default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in one (1) month from the time of default a rest shall be made, and compound interest at the rate aforesaid shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the said lands.



The applicant(s) hereby applies to the Land Registrar.

Propertie	es		
PIN	03196 - 0039 LT Inte	rest/Estate	Fee Simple
Description	PT LT 13 PL 136 KING; PT LT 14 HILL	PL 136 KING A	AS IN R533264 ;; CITY OF RICHMOND
Address	201 KING ROAD RICHMOND HILL		
PIN	03196 - 0038 LT Inte	rest/Estate	Fee Simple
Description	LT 15 PL 136 KING EXCEPT PT 1	0 EXPROP PL	B87881B ; RICHMOND HILL
Address	227 KING RD RICHMOND HILL		
PIN	03196 - 0037 LT Inte	rest/Estate	Fee Simple
Description	LT 16 PL 136 KING EXCEPT PT 1	1 EXPROP PL	B87881B ; RICHMOND HILL
Address	235 KING RD RICHMOND HILL		

# 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	12252856 CANADA INC.
Address for Service	155 Commerce Valley Drive East
	Markham, Ontario
	L3T 7T2
L Durana Marahamanani	Descriptions is a set of a set of a state of the set of

I, Prem Yachamanani, 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	BRIDLEPATH FINANCE INC.		
Address for Service	1280 Finch Avenue West Suite 611 Toronto, Ontario M3J 3K6		

## Statements

Schedule: See Schedules

Principal	\$1,000,000.00	Currency	CDN
Calculation Period	Monthly, not in advance		
Balance Due Date	2022/06/01		
Interest Rate	24% per annum		
Payments			
Interest Adjustment Date	2021 11 12		
Payment Date			
First Payment Date			
Last Payment Date	2022 06 01		
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor			

# Signed By

Gregory	William	Roberts
---------	---------	---------

202-8920 Woodbine Ave Markham L3R 9W9 acting for Chargor(s) Signed 2021 11 12

Tel 866-824-8757

Fax 866-824-8757

I have the authority to sign and register the document on behalf of the Chargor(s).

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 9

GREG ROBERTS PROFESSIONAL CORPORATIO	DN 202-8920 Woodbine Ave Markham L3R 9W9	2021 11 12
Tel 866-824-8757		
Fax 866-824-8757		
Fees/Taxes/Payment		
	\$66.30	
Statutory Registration Fee		

Chargee Client File Number :

21-347

# **SCHEDULE**

# **ADDITIONAL PROVISIONS**

# DEFINITIONS

"**Commitment**" means the mortgage loan commitment dated October 25, 2021, as amended by agreement dated November 9, 2021, among the Mortgagor, the Mortgagee and the guarantors referred to in that mortgage loan commitment, and as it may be amended, restated, supplemented, extended, renewed, replaced or superseded from time to time.

"**Costs**" includes all costs, fees, charges and expenses of every nature and kind whatsoever incurred by the Mortgagee or paid by the Mortgagee to any other party in connection with the administration and enforcement of the Security or protection and preservation of the Property, or for the purpose of preserving and maintaining the enforceability and priority of this Mortgage and any such other Security, or in connection with any and all demands and enforcement proceedings of every nature and kind made or carried out by or on behalf of the Mortgagee under or pursuant to this Mortgage, and includes, without limitation, legal costs incurred by the Mortgagee on a full indemnity basis.

"Mortgagee" or "Chargee" means the chargee named in the Mortgage.

"Mortgagor" or "Chargor" means the chargor named in the Mortgage.

"**Indebtedness**" means all amounts payable to the Mortgagee under the Commitment and the Security from time to time including, without limitation, all advances made by the Mortgagee to or for the benefit of the Mortgagor as set out in the Commitment, and all interest and other amounts payable pursuant to the Commitment and the Security.

"**Mortgage**" means this Schedule, the Charge/Mortgage of Land to which this Schedule is attached, and the Standard Charge Terms.

"Mortgage Loan" means the loan or credit facility described in the Commitment.

"**Property**" means the property charged by this Mortgage.

"Security" means this Mortgage and all other security granted by the Mortgagor to the Mortgagee pursuant to the Commitment and the Mortgage Loan.

"Term" means the term of the Mortgage Loan as described in the Commitment.

### ADVANCES

All advances by the Mortgagee on account of the principal sum secured by the Mortgage shall be made in accordance with the Commitment, and the Mortgagor irrevocably directs the Mortgagee accordingly.

### PREPAYMENT

Provided that the Mortgagor is not then in default, the full (but not part of the) amount outstanding on account of the Mortgage Loan may be prepaid on the first day of any calendar month, upon payment of the equivalent to three months' interest on the outstanding principal balance secured by this Mortgage.

An amount equal to the first three months' interest payable on the initial advance made under this charge shall be held back from the initial advance and applied against the interest payments as they become due, but shall be deemed to have been fully advanced to the Mortgagor together with, and as part of, the initial advance.

# POSTDATED CHEQUES OR DIRECT DEBIT MANDATE

If applicable, the Mortgagor agrees to provide the Mortgagee with a series of postdated cheques as and when required by the Mortgagee for all interest and any other scheduled payments due during the Term. Alternatively, at the sole option of the Mortgagee, the Mortgagor agrees to provide a direct debit mandate to its bank for all payments due during the Term. Failure to provide such cheques or direct debit mandate shall constitute a default under the Mortgage Loan and the Security.

### TIME OF PAYMENT

Any payment that is received at the Mortgagee's office after 1:00 p.m. on any date shall be deemed, for the purpose of calculation of interest, to have been made on the next banking business day of the Mortgagee's bank.

# CAPITALIZATION OF INTEREST

The Mortgagee shall have the right, at its sole option, to capitalize any interest owing from time to time and to add same to the principal amount of the Mortgage Loan and to treat it as part thereof and charge interest thereon. Such capitalized interest and interest thereon shall at all times be secured under the Security in first priority in the same manner as accrued interest. The Mortgagee, at its sole option, shall have the right to treat such capitalized interest as principal or accrued interest.

## COSTS

All Costs incurred by the Mortgagee at any time relating to the Mortgage Loan, whether prior or subsequent to the registration of the Mortgage, are for the account of the Mortgagor and to be reimbursed by Mortgagor and will be added to the principal amount of the Mortgage Loan, if not paid within five (5) days of demand.

## **REALTY TAXES**

The Mortgagee shall have the sole option to require the Mortgagor to pay, in addition to the monthly payments due under the Mortgage Loan, monthly realty tax installments in an amount sufficient to permit the Mortgagee to pay realty taxes due with respect to Property amortized to permit such payment in full as and when due to the municipality.

## DISCHARGE

When a discharge of the Mortgage or other Security is required, then upon request of the same, the Mortgagee's solicitor will prepare the discharge documentation for execution by the Mortgagee, the Costs of which shall be at the Mortgagor's expense.

### ASSIGNMENT BY MORTGAGEE

The Mortgagee may assign the Mortgage Loan or any undivided percentage interest therein to any assignee or assignees and, upon notice to the Mortgagor of such assignment, all payments hereunder shall be made to the assignee(s) as directed by the Mortgagee. In any such event, the Mortgagor shall deliver to the assignee(s) a statement verifying the terms and current balance under this Mortgage Loan and provide any other documentation required by the Mortgagee.

# ALTERATIONS OR CHANGE OF USE

The Mortgagor will not make or permit to be made any structural or other major alterations or additions to the land or to any building or structure thereon situated on the Property or change or permit to be changed the use of the Property without the prior written consent of the Mortgagee. If any such alternations or change of use is made, then this shall constitute a default under this Mortgage Loan, and all amounts, whether principal, interest or otherwise that may be owing hereunder, including all fees, shall be immediately due and payable at the sole option of the Mortgagee.

### **DEFAULT IN ENCUMBRANCES**

The registration of any further encumbrances, or default under any terms or covenants contained in any encumbrances, whether registered in priority or subsequent to this Mortgage Loan shall constitute a default under this Mortgage Loan and the Security, and all amounts, whether principal, interest or otherwise that may be owing hereunder, including all fees, shall be immediately due and payable at the sole option of the Mortgagee.

## DISPOSITION OF THE MORTGAGED PROPERTY

If the Mortgagor sells, transfers, conveys, charge or otherwise disposes of the Property or any interest therein, this shall constitute a default under this Mortgage Loan and the Security, and all amounts, whether principal, interest or otherwise that may be owing hereunder, including all fees, shall become immediately due and payable, at the sole option of the Mortgagee.

# INSOLVENCY

If the Mortgagor or any guarantor becomes insolvent or commits an act of bankruptcy, or makes an assignment in bankruptcy or bankruptcy application shall be filed or presented against any one of them as debtor, then that event shall constitute a default under the terms of this Mortgage and, at the sole option of the Mortgagee, all amounts hereby secured shall immediately become due and payable and all remedies of the Mortgagee shall immediately become exercisable.

# FARM DEBT MEDIATION ACT

The Mortgagor represents and warrants that it is not a "farmer" as defined in the *Farm Debt Mediation Act* (Canada) and the Mortgagor further covenants and agrees that during the currency of the within Mortgage Loan it will not engage in any activity which would have the effects of deeming him a Farmer within the meaning of the *Farm Debt Mediation Act*. In the event that the Mortgagor fails to comply with this provision, then this shall constitute a default under this Mortgage Loan and the Security, and all amounts, whether principal, interest or otherwise that may be owing hereunder, including all fees, shall be immediately due and payable at the sole option of the Mortgagee.

# **CONSTRUCTION ACT**

Unless otherwise provided herein, no portion of the proceeds of this Mortgage Loan is to be used to finance any construction, alterations or improvement to the Property within the meaning of the *Construction Act* (Ontario) or to repay a mortgage or loan which was taken out for this purpose, failing which all amounts, whether principal, interest or otherwise that may be owing hereunder, including all fees, shall be immediately due and payable at the sole option of the Mortgagee.

If any amount of money is claimed in priority over this Mortgage pursuant to the *Construction Act*, and such claim is not settled or discharged within 30 days from the date of such claim, this shall constitute a default under this Mortgage Loan and the Security, and all amounts, whether principal, interest or otherwise that may be owing hereunder, including all fees, shall be immediately due and payable at the sole option of the Mortgagee. In addition, the Mortgagee may, at its sole option, pay such claim, and the claim amount, plus any related Costs may be added to the principal amount outstanding under the Mortgage Loan.

### **ADMINISTRATION FEE**

The Mortgagor shall pay to the Mortgagee an administration fee of \$250.00 for each occurrence of any of the following events:

- 1. Late or dishonoured payment for any reason;
- 2. Failure to provide proof of payment of realty taxes as and when requested;
- 3. Failure to provide proof of insurance coverage on an annual basis;
- 4. Failure to provide postdated cheques or direct debit mandate;
- 5. Failure to notify the Mortgagee of registration of any lien on the Property;
- 6. Request for Mortgage Loan statement or discharge statement;
- 7. Default under prior mortgage, charge or encumbrance.

All administration fees will be added to the principal amount of the Mortgage Loan, if not paid within five (5) days after demand. In the event of a further occurrence of the same event, the administration fee shall increase by a further sum of \$50.00 on a cumulative basis to a maximum of \$500.00 per occurrence.

### SERVICING FEE

In the event that the Mortgagee makes any payment in order to protect its security position, including, but not limited to, the payment of realty taxes, insurance premiums, condominium common expenses (if applicable) or principal, interest or costs under a prior mortgage, it is agreed that such payment shall bear interest at the rate payable under the Mortgage Loan, calculated and compounded monthly, and that there shall be a Service Charge of \$250.00 for making each such payment or payments.

# MAINTENANCE FEE

The Mortgagee shall be entitled to a minimum fee of \$100.00 per day for administering the maintenance and security of any property in its possession, in addition to any other Costs that are incurred by the Mortgagee.

# CHARGES BEING LIQUIDATED DAMAGES

The Mortgagor agrees that each amount (a "**Default Amount**") in this schedule payable by the Mortgagor for administration fees, servicing fees and maintenance fees is fair and reasonable, each Default Amount represents the Mortgagee's reasonable liquidated damages relating to the particular matter, and the Mortgagor will not, under any circumstances, contest the validity of any Default Amount. Each Default Amount shall be a charge upon the Property and shall bear interest at the rate set out in this Mortgage from the date that the Default Amount is payable.

## **ADDITIONAL FEES**

In the event that the entirety of the principal sum and all other amounts owing under this Mortgage are not paid on or prior to the maturity date, or in the event of any other default under this Mortgage, the Mortgagee shall be entitled to the equivalent to three (3) months interest on the full principal amount then outstanding.

## **BY-LAW COMPLIANCE**

The use of the Property shall comply with all relevant bylaws and shall be in accordance with the provisions of all agreements with all governmental authorities and there shall be no work orders or notices of deficiencies whatsoever against the Property.

## POSSESSION

Upon default in the payment of the principal amount or the interest payable thereon or any part thereof, as provided in this Mortgage, or of or in the doing, observing performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations contained herein contrary to the true intent and meaning of this charge, then and in every case the Mortgagee may peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy the Property free and clear of all charges or encumbrances whatsoever subsequent to this charge, without let, suit, hindrance, interruption or denial of the Mortgagor or any other person or persons whatsoever.

## **APPOINTMENT OF RECEIVER**

Any time and from time to time when there shall be default under the provisions of the Mortgage, the Mortgagee may, at such time and from time to time and with or without entry into possession of the Property, or any part thereof, by instrument in writing appoint any person, whether an officer or officers or an employee or employees of the Mortgagee or not, to be a receiver (which term as used herein includes a receiver manager and also includes the plural as well as the singular) of the Property, or any part thereof, and of the rents and profits thereof, and with or without security and may, from time to time by similar writing remove any receiver and appoint another in his stead, and that, in making any such appointment or removal, the Mortgagee shall be deemed to be acting as the agent or attorney for the Mortgagor, but no such appointment shall be revocable by the Mortgagor. Upon the appointment of any receiver from time to time, the following provisions shall apply:

(a) Every receiver shall have unlimited access to the Property as agent and attorney for the Mortgagor (which right of access shall not be revocable by the Mortgagor) and shall have full power and unlimited authority to:

(i) collect the rents and profits from tenancies whether created before or after the Mortgage;

(ii) rent any portion of the Property which may become vacant on those terms and conditions as he considers advisable and enter into and execute leases, accept surrenders and terminate leases;

(iii) complete the construction of any building or buildings or other erections or improvements on the Property left by the Mortgagor in an unfinished state or arrange for others to complete and purchase, repair and maintain any personal property including, without limitation, appliances and equipment, necessary or desirable to render the Property operable or rentable, and take possession of and use or permit others to use all or any part of the Mortgagor's materials, supplies, plans, tools, equipment (including appliances) and Property of every kind and description; and,

(iv) manage, operate, repair, alter or extend the Property or any part thereof.

The Mortgagor undertakes to ratify and confirm whatever any receiver may lawfully do in the Property.

(b) The Mortgagee may at his discretion vest the receiver with all or any of the rights and powers of the Mortgagee.

(c) The Mortgagee may fix the reasonable remuneration of the receiver who shall be entitled to deduct the same out of the revenue or the sale proceeds of the Property.

(d) Every receiver shall be deemed to be the agent or attorney of the Mortgagor and, in no event, the agent of the Mortgagee and the Mortgagee shall not be responsible for the receiver's acts or omissions.

(e) The appointment of any receiver by the Mortgagee shall not result in or create any liability or obligation on the part of the Mortgagee to the receiver or to the Mortgagor or to any other person and no appointment or removal of a receiver and no actions of a receiver shall constitute the Mortgagee a Mortgagee in possession of the Property.

(f) No receiver shall be liable to the Mortgagor to account for monies other than monies actually received by him in respect of the Property, or any part thereof, and out of such monies so received, every receiver shall, in the following order, pay:

(i) his remuneration as indicated above;

(ii) all reasonable costs and expenses of every nature and kind incurred by him in connection with the exercise of his powers and authority hereby conferred;

(iii) interest, principal and other money which may, from time to time, be or become charged upon the Property in priority to the Mortgage, including taxes;

(iv) to the Mortgagee all interest, principal and other monies due hereunder to be paid in that order as the Mortgagee shall, in their discretion, determine; and,

(v) every receiver shall be accountable to the Mortgagor for any surplus.

The remuneration and expenses of the receiver shall be paid by the Mortgagor on demand and shall be a charge on the Property and shall bear interest from the date of demand at the interest rate set out in the Mortgage.

(g) Save as to claims for accounting under clause (f) of this paragraph, the Mortgagor hereby releases and discharges any receiver from every claim of every nature, whether sounding in damages or not, which may arise or be caused to the Mortgagor or any person claiming through or under him by reason or as a result of anything done by the receiver unless the claim be the direct and proximate result of dishonesty or fraud.

(h) The Mortgagee may, at any time and from time to time, terminate any receivership by notice in writing to the Mortgagor and to the receiver.

(i) The statutory declaration of the Mortgagee as to default under the provisions of the Mortgage and as to the due appointment of the receiver pursuant to the terms hereof shall be sufficient proof thereof for the purposes of any person dealing with a receiver who is ostensibly exercising powers herein provided for and such dealing shall be deemed, as regards such person, to be valid and effectual.

(j) The rights and powers conferred herein in respect of the receiver are in addition to and not in substitution of any other rights and powers that the Mortgagee may have.

# SECURED INDEBTEDNESS

This Mortgage secures the same indebtedness that is secured by the charge (the "Additional Charge") granted or to be granted by 2752865 Ontario Limited, as Mortgagor, and registered or to be registered in favour of the Mortgagee against the following properties:

FIRSTLY: PT LTS 2 & 3, S/W HILL STREET, AS IN 586593, 459663, 402002, 401972, 601093; CITY OF LONDON, COUNTY OF MIDDLESEX [Property Identifier Number: 08328-0102(LT)]; and,

SECONDLY: PT LTS 2 & 3, S/W HILL STREET, AS IN LC60952, LC60936, LC60924; EXCEPT LC63942; PT LT 1 & LT 2 & PT LT 3, N/W SOUTH STREET, AS IN W26972, W27380, W42486, W42497, LC62124, LC69283; CITY OF LONDON, COUNTY OF MIDDLESEX [Property Identifier Number: 08328-0119(LT)].

This Mortgage and the Additional Charge are hereinafter collectively referred to as the "Charges".

The Mortgagor covenants and agrees that any and all payment or default under any one or more of the Charges shall constitute concurrent payment or default under each of the Charges. In the event of default under any one or more of the Charges, the Mortgagee shall be entitled to exercise any and all remedies available to the Mortgagee pursuant to any one or more of the Charges, independently or together with any of the other Charges. No single or partial exercise of any of the Mortgagee's powers under any one or more of the Charges shall preclude the further exercise of any other right, power or remedy hereunder or pursuant to any one or more of the other Charges. The Mortgagee shall at all times have the right to proceed against all, any or any portion of the Charges in such order and in such manner as the Mortgagee shall in their sole discretion deem fit, without waiving any rights which the Mortgagee may have with respect to any and all of the Charges, and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Mortgagor or the guarantors under the remaining Charges, provided, however, that upon payment of the full indebtedness secured hereunder, the rights of the Mortgagee with respect to any and all Charges shall be at an end.

The Mortgagee shall not be required to marshall between any Security.

# CONFLICT AND NON-MERGER

The terms and conditions of the Commitment shall survive the execution and registration of this Mortgage and all other Security. There shall be no merger of these provisions or conditions in the Mortgage or other Security; provided that in the event of any conflict between the provisions of the Commitment and the provisions of any of the Security, the Mortgagee may elect which provisions shall prevail.

# SEVERABILITY OF ANY INVALID PROVISIONS

If in the event that any covenant, term or provision contained in the Mortgage Loan is held to be invalid, illegal or unenforceable in whole or in part, then the validity, legality and enforceability of the remaining covenants, provisions and terms shall not be affected or impaired thereby, and all such remaining covenants, provisions and terms shall continue in full force and affect. All covenants, provisions and terms hereof are declared to be separate and distinct covenants, provisions or terms as the case may be.

# FURTHER ADDITIONAL PROVISIONS

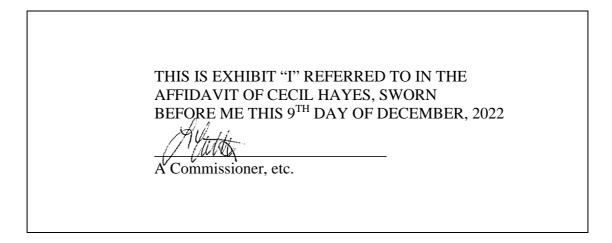
1. The Mortgage is intended to be general and continuing collateral security for payment of the Indebtedness and all other amounts payable under the Mortgage, including interest (provided that the amount secured by the Mortgage shall not exceed the principal amount and all other amounts payable under the Mortgage, including interest), and, accordingly, no payments made from time to time of all or any part of the Indebtedness shall reduce the amount secured by the Mortgage (to the extent of such payments or otherwise).

2. The Mortgage will not become void because at any time or from time to time there is no Indebtedness outstanding unless at such time (i) no other amount is payable under the Mortgage, (ii) you are then complying with all of your other obligations under the Mortgage, (iii) you request, in writing, a discharge or assignment of the Mortgage, (iv) no further Indebtedness becomes outstanding and no other amount becomes payable under the Mortgage prior to the delivery of that discharge or assignment, and (v) you pay the Mortgagee's usual administrative fee for preparing, reviewing or signing such discharge or assignment and all of their related legal and other expenses.

3. If the Indebtedness should at any time or from time to time exceed the principal amount, the Mortgagee may, at any time and from time to time, determine what portion of the Indebtedness (not exceeding the principal amount) shall be secured by the Mortgage and what portion shall not be so secured. Nothing in the Mortgage shall prejudice or otherwise affect in

any way any right the Mortgagee may have, independent of the Mortgage, to enforce payment of any amount now or later owing to it (whether under the Commitment or otherwise) by you or any other person. Any payment made by you to the Mortgagee (whether under the Mortgage or the Commitment or otherwise and whether before or after demand, default or judgment) and any amount realized by the Mortgagee from any Security (including the Mortgage) may be applied to such part or parts of the Indebtedness or to any other amount payable under the Mortgage as the Mortgagee, in their sole discretion, determines.

4. If there is any conflict between the terms of this Schedule and the Standard Charge Terms, the terms of this Schedule shall prevail.



#### LRO # 65 Charge/Mortgage

The applicant(s) hereby applies to the Land Registrar.

Propertie	S
PIN	03196 - 0037 LT Interest/Estate Fee Simple
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
Address	235 KING RD RICHMOND HILL
PIN	03196 - 0038 LT Interest/Estate Fee Simple
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
Address	227 KING RD RICHMOND HILL
PIN	03196 - 0039 LT Interest/Estate Fee Simple
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL
Address	201 KING ROAD RICHMOND HILL

# 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	12252856 CANADA INC.
Address for Service	1280 Finch Avenue West
	Suite 301
	Toronto ON M3J 3K6

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)		Capacity	Share
Name	GOLDBERG, MARILYN		
Address for Service	33 Pinnacle Road Toronto, Ontario M2L 2V6		

### Statements

Schedule: See Schedules

rincipal	\$500,000.00	Currency	CDN
alculation Period	monthly, not in advanc	e, interest only	
alance Due Date	2023/02/15		
erest Rate	5	ed re-investment of m	.3% per annum calculat onthly payments on the is after the interest
nents			
est Adjustment Date	2022 08 01		
nent Date	first day of each month	า	
Payment Date	2022 09 01		
Payment Date	2023 02 01		
lard Charge Terms			
rance Amount	Full insurable value		
arantor	see Additional Provisio	ons	

### Additional Provisions

Interest for the final 15 days of the term shall be at an interest rate equal to the higher of 20% or Royal Bank Prime + 16.3% per annum calculated monthly with no deemed re-investment of monthly payments on the principal outstanding until the principal amount of this Charge is discharged in full.

Payments pursuant to this Charge during the term shall be interest only until the Balance Due Date on which date the outstanding principal balance of this Charge plus all outstanding unpaid interest at the interest rate set forth herein shall be due and payable in full.

#### LRO # 65 Charge/Mortgage

The applicant(s) hereby applies to the Land Registrar.

Registered as YR3451700 on 2022 07 13 at 12:32 yyyy mm dd Page 2 of 24

### **Additional Provisions**

The Chargor acknowledges and agrees that in the event of a conflict between the Charge Terms and Conditions, Additional Mortgage Charge Terms and this Charge, the terms of this Charge shall prevail. The Chargor acknowledges that in accordance with the Commitment, interest for the term shall be deducted from the loan advance pursuant to this Charge.

The Chargor shall have the right to prepay the loan in full but not in part after initial three months of the term.

This Charge is open for repayment on any payment date with 15 days prior written notice and the payment of one month's interest as a bonus.

CONSORTIA EQUITY CAPITAL LIMITED, CITY CORE CONSORTIA LIMITED, CONSORTIA N.A. LIMITED, JAVLEE CONSORTIA LIMITED, Prem Yachamanani and Mir Ali are guaranteeing the obligations of the Chargor under this Charge.

The Charge is being provided by the Chargor to the Chargee as collateral security for the obligations of Chargor (the Borrower) pursuant to a Mortgage Commitment Dated July 6th, 2022, as may be amended from time to time (the Commitment), issued by the Chargee to and accepted by the Chargor and Guarantor. See Schedule "A" and Schedule "B" attached hereto and forming an integral part of this charge/mortgage of Land.

The interest accrued from July 7, 2022 to the interest adjustment date and the term of first 3 months after the interest adjustment date in the total amount of \$22,859.24 will be deducted from the advance. The last 3 interest payments will be paid by post-dated cheques

Signed By				
Kuqin Wang	150 Ferrand Drive #800 Toronto M3C 3E5	acting for Chargor(s)	Signed	2022 07 13
Tel 416-496-3340				
Fax 416-497-3809				
I have the authority to sign and register the document	on behalf of the Chargor(s).			
Submitted By				
WILLIAM FRIEDMAN BARRISTER & SOLICITOR	150 Ferrand Drive #800 Toronto M3C 3E5			2022 07 13
Tel 416-496-3340				
Fax 416-497-3809				
Fees/Taxes/Payment				
Statutory Registration Fee	\$66.30			
Total Paid	\$66.30			
File Number				
Chargee Client File Number : 220372				

### CHARGE TERMS AND CONDITIONS

#### 1. DEFINED TERMS

Unless otherwise expressly defined or otherwise required by the context, the following words and phrases shall have the following meanings when used in the Charge:

- 1.1 **"Borrower**" means all Persons who have given the Charge and who have executed the same as Borrower;
- 1.2 **"Charge**" means the Charge/Mortgage of Land and all schedules attached to the Charge and all amendments thereto and replacements thereof from time to time;
- 1.3 **"Costs"** includes all costs, fees, charges and expenses of every nature and kind whatsoever incurred by the Lender or paid by the Lender to any other party in connection with the protection and preservation of the Property or any other security held by the Lender, or for the purpose of preserving and maintaining the enforceability and priority of the Charge and any such other security, or in connection with any and all demands and enforcement proceedings of every nature and kind made or carried out by or on behalf of the Lender or pursuant to the Charge, and includes, without limitation, legal costs incurred by the Lender on a full indemnity basis;
- 1.4 **"Commitment**" means each and every letter of commitment, loan approval, term sheet or other similar agreement establishing or pertaining to the loan secured by the Charge or pursuant to which the Charge has been given, and all amendments thereto and renewals or replacements thereof from time to time;
- 1.5 **"Condominium Corporation**" means each corporation created or continued pursuant to the *Condominium Act, 1998* (Ontario) and pertaining to all or any part of the Property which are governed by the said Act;
- 1.6 **"Covenantor"** means any party to the Charge expressly defined as such and any and all Persons who have directly, indirectly, as principal debtor or as surety covenanted to pay or guaranteed payment of the whole or any part of the amount or amounts secured by the Charge or which are owing under the loan facilities referred to in this Commitment or who have covenanted to perform or guaranteed performance by the Borrower of its obligations under the Charge or under this Commitment or under any security given in connection therewith;
- 1.7 **"Environmental Laws**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations, and all applicable directives, orders, codes, judgments and decrees of Governmental Bodies, whether now in existence or hereafter arising, intended to regulate and/or protect the environment and/or any living thing and/or relating to Hazardous Substances;
- 1.8 **"Governmental Body"** means any government, parliament, legislature, or any regulatory authority, bureau, tribunal, department, instrumentality, agency, commission or board of any government, parliament or legislature, or any court, and without limiting the foregoing, any other law, regulation or rule-making entity having or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator) and "Governmental Bodies" means any one or more of the foregoing collectively;
- 1.9 **"Hazardous Substance**" means any hazardous or dangerous waste or substance, pollutant, contaminant, waste or other substance without limitation, whether solid, liquid or gaseous in form, which when released into the natural environment may, based upon reasonably authoritative information then available concerning such substance, immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing,
  - 1.9.1 any such substance as defined or designated under any Environmental Laws;
  - 1.9.2 asbestos, urea formaldehyde, poly-chlorinated byphenyl (PCB) and materials manufactured with or containing the same; and,
  - 1.9.3 radioactive and toxic substances;

and "Hazardous Substances" means any one or more of the foregoing collectively;

- 1.10 **"Lender**" means all Persons in whose favour the Charge is given and who is or are named in the Charge as Lender;
- 1.11 **"Person**" means an individual, sole proprietorship, partnership, joint venture, syndicate, association, trust, body corporate, a natural person in its capacity as trustee, personal

representative or other legal representative, the Crown or any agency or instrumentality thereof, and/or any other entity recognized by law;

- 1.12 **"Property**" means the Property, tenements, hereditaments and appurtenances and any estate or interest therein described in the Charge, and all buildings and improvements now or hereafter situate or constructed thereon, and all easements, rights-of-way and other appurtenances thereto, and all structures, additions, improvements, machinery, equipment, decorations and other fixtures of every nature and kind (whether or not affixed in law) attached thereto or placed, installed or erected thereon or used in connection therewith;
- 1.13 **"Receiver"** means any receiver, receiver and manager, receiver-manager or trustee of the Property as may be appointed from time to time by the Lender pursuant to the provisions of the Charge or by any court of competent jurisdiction;
- 1.14 **"Taxes"** means all taxes, rates, assessments, local improvement charges, levies, penalties and other charges imposed upon or in respect of the Property by any Governmental Body having jurisdiction.

### 2. <u>STATUTORY REFERENCES</u>

Unless expressly stipulated or otherwise required by the context, all references in the Charge to any federal, provincial or municipal statute, regulation, by-law, order, directive or other governmental enactment shall be deemed to be and construed as a reference to the same as amended or reenacted from time to time.

### 3. EXCLUSION OF STATUTORY COVENANTS

The implied covenants deemed to be included in a charge under sub-section 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded and replaced by the terms hereof which are covenants by the Borrower, for and on behalf of the Borrower, with the Lender.

### 4. SHORT FORMS OF MORTGAGES ACT

If any of the forms of words contained herein are substantially in the form of words contained in Column One of Schedule B of the *Short Forms of Mortgages Act,* R.S.O. 1980, c. 474, and distinguished by a number therein, the Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act, distinguished by the same number, and the Charge shall be interpreted as if the said Act was still in full force and effect.

### 5. PROVISO FOR REDEMPTION

Provided the Charge to be void upon payment of the principal sum hereby secured, in lawful money of Canada, with interest as herein provided and taxes and performance of statute labour and performance of all covenants and agreements contained in the Charge.

### 6. <u>RELEASE</u>

And the Borrower releases to the Lender all its claims upon the Property subject to the proviso for redemption herein.

### 7. ADVANCE OF FUNDS

The Borrower agrees that neither the preparation, execution nor registration of the Charge shall bind the Lender to advance the monies hereby secured, nor shall the advance of a part of the principal sum herein bind the Lender to advance any unadvanced portion thereof, but nevertheless the estate hereby charged shall take effect forthwith upon the execution of the Charge by the Borrower, and the expenses of the examination of the title and of the Charge and valuation are to be secured hereby in the event of the whole or any balance of the principal sum herein not being advanced, the same to be charged hereby upon the Property, and shall be without demand thereof, payable forthwith with interest at the rate provided for in the Charge, and in default the remedies herein shall be exercisable.

### 8. BORROWER'S COVENANTS

The Borrower covenants with the Lender that the Borrower will pay the principal sum herein and interest and observe the proviso for redemption herein, and will pay as they fall due all Taxes and when required by the Lender, shall transmit the receipts therefore to the Lender;

The Borrower further covenants with the Lender that the Borrower will pay all amounts which are payable hereunder or which are capable of being added to the principal sum herein pursuant to the provisions of the Charge including, without limiting the generality of the foregoing, all servicing or other fees, costs or charges provided for herein; all insurance premiums; the amount paid for the

supply of any fuel or utilities to the Property; all costs, commissions, fees and disbursements incurred by the Lender in constructing, inspecting, appraising, selling, managing, repairing or maintaining the Property; all Costs incurred by the Lender with respect to the Charge or incurred by the Lender arising out, of or in any way related to the Charge; any amounts paid by the Lender on account of any encumbrance, lien or charge against the Property and any and all Costs incurred by the Lender arising out of, or in any way related to, the Lender realizing on its security by sale or lease or otherwise;

And that the Borrower has a good title in fee simple to the Property and has good right, full power and lawful and absolute authority to charge the Property and to give the Charge to the Lender upon the covenants contained in the Charge;

And that the Borrower has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Property, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose; and free from all encumbrances except as may be permitted by the Lender;

And that the Borrower will execute such further assurances of the Property as may be requisite;

And that the Borrower will produce the title deeds and allow copies to be made at the expense of the Borrower.

## 9. <u>COMPLIANCE WITH LAWS AND REGULATIONS</u>

The Borrower shall, in its ownership, operation and use of the Property, promptly and at all times observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every Governmental Body having jurisdiction with respect to the same, and further agrees at its cost and expense to take any and all steps or make any improvements or alterations thereto, structural or otherwise, ordinary or extraordinary, which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances or regulations.

## 10. CHANGE OF USE

The Borrower will not change or permit to be changed the existing use or uses of the Property without the prior written consent of the Lender.

### 11. <u>REPAIR</u>

The Borrower will keep the Property including the buildings, erections and improvements thereon in good condition and repair according to the nature and description thereof, and the Lender may, whenever it deems necessary, enter upon and inspect the Property, and the cost of such inspection shall be added to the indebtedness secured hereunder, and if the Borrower neglects to keep the Property in good condition and repair, or commits or permits any act of waste on the Property (as to which the Lender shall be sole judge) or makes default as to any of the covenants or provisos herein contained, the principal sum herein shall, at the option of the Lender, forthwith become due and payable, and in default of payment thereof with interest as in the case of payment before maturity, the powers of entering upon and leasing or selling hereby given may be exercised forthwith and the Lender, upon five days notice to the Borrower and in the event that the Borrower does not in such period cause and diligently proceed with such repairs, may make such repairs as it deems necessary, and the cost thereof with interest at the rate aforesaid shall be added to the monies hereby secured and shall be payable forthwith and be a charge upon the Property prior to all claims thereon subsequent to the Charge.

### 12. ALTERATIONS OR ADDITIONS

The Borrower will not make or permit to be made any alterations or additions to the Property without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion or may be given only subject to compliance with such terms and conditions at the cost of the Borrower as the Lender may impose. Notwithstanding the foregoing, the Borrower shall be permitted to make those alternations and additions to the Property as contemplated by and in accordance with the Commitment and, otherwise, subject to the reasonable approval of the Lender.

### 13. PROPERTY INCLUDE ALL ADDITIONS

The Property shall include all structures and installations brought or placed on the Property for the particular use and enjoyment thereof or as an integral part of or especially adapted for the buildings thereon whether or not affixed in law to the Property including, without limiting the generality of the foregoing, piping, plumbing, electrical equipment or systems, aerials, refrigerators, stoves, clothes washers and dryers, dishwashers, incinerators, radiators and covers, fixed mirrors, fitted blinds, window screens and screen doors, storm windows and storm doors, shutters and awnings, floor coverings, fences, air conditioning, ventilating, heating, lighting, and water heating equipment,

cooking and refrigeration equipment and all component parts of any of the foregoing and that the same shall become fixtures and an accession to the freehold and a part of the realty.

### 14. ENVIRONMENTAL WARRANTY AND INDEMNITY

The Borrower and each Covenantor jointly and severally represent, warrant, covenant and agree that:

- 14.1. They have not, and to the best of their knowledge, information and belief after making due inquiry, no other Person has caused or permitted any Hazardous Substance to be placed, discharged, stored, located or disposed of, on, under, at or near the Property nor to be released from the Property;
- 14.2. The Property have never been used as a land fill site, waste disposal site or coal gasification site, or to store Hazardous Substances either above or below ground in storage tanks, pipes, conduits or otherwise;
- 14.3. They and, to the best of their knowledge, information and belief after making due inquiry, the tenants, invitees and all other occupiers of the Property have at all times carried out all business and other activities upon the Property in strict compliance with all Environmental Laws;
- 14.4. They will at all times carry out all business and other activities upon the Property in strict compliance with all Environmental Laws, and they will at all times take all necessary measures to ensure that those for whom they are liable in law will also at all times carry out all business and other activities upon the Property in strict compliance with all Environmental Laws.
- 14.5. To the best of their knowledge, information and belief after making due inquiry, the use and occupation of the Property have at all times been in strict compliance with all Environmental Laws;
- 14.6. No notice, order, stop work order, inspection file, investigation, directive, enforcement action, regulatory action, suit, claim, action, proceeding or charge relating to any Hazardous Substance or to a breach or non-compliance with any Environmental Laws has been issued by any Governmental Body with respect to the Borrower or the Property, or is otherwise threatened to be issued;
- 14.7. They will provide the Lender with full and complete copies of all communications received from time to time from all Governmental Bodies with respect to the Property;
- 14.8. They will provide to the Lender on request and from time to time, information with respect to the status of the environmental matters referred to herein and will complete and deliver, on request, the Lender's standard form of report, if any, on environmental matters;
- 14.9. The representations and warranties contained in this Warranty and Indemnity are true and accurate in all respects as of the date of the first advance made pursuant to the Charge, and such representations and warranties shall remain true and accurate in all respects and shall survive the release and discharge of the Charge and the repayment and satisfaction of the indebtedness secured by the Charge; and,
- 14.10. The Lender may delay or refuse to make any advance to the Borrower if the Lender believes that any of the representations and warranties set out in this Warranty and Indemnity are not presently true and accurate or if such representations and warranties have become untrue or inaccurate at any time hereafter.

The Borrower hereby agrees to permit the Lender to conduct, at the Borrower's sole expense, from time to time as required, any and all tests, inspections, appraisals and environmental audits of the Property so as to determine and ensure continuing compliance with the provisions of this Warranty and Indemnity including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Property and/or to the businesses and other activities conducted thereon.

The Borrower and each Covenantor jointly and severally agrees to indemnify and save fully and completely harmless the Lender and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, demands, claims, actions, charges, orders, directives, undertakings, costs, legal fees and expenses, of every nature and kind, whatsoever and howsoever, which at any time or from time to time may be paid by, or incurred by, or suffered by, or asserted against, any of them as a direct or indirect result of:

- a) a breach of any of the representations, warranties or covenants hereinbefore set out;
- b) the presence of any Hazardous Substance in, on, under or about the Property;

- c) the breach of any Environmental Laws; and/or,
- d) the discharge, emission, release, spill or disposal of any Hazardous Substance from the Property into or upon any land, the atmosphere, any watercourse, body of water or wetland or any other property.

The representations, warranties, covenants, acknowledgments and indemnifications set out in this Warranty and Indemnity shall survive the release and discharge of the Charge and of any other security held by the Lender and the repayment and satisfaction of the indebtedness secured by the Charge.

### 15. INSPECTION

The Lender shall have access to and the right to inspect the Property at all reasonable times.

## 16. <u>TAXES</u>

**WITH** respect to Taxes, the Borrower covenants and agrees with the Lender that:

- 16.1. The Lender may deduct from any advance of the monies secured by the Charge an amount sufficient to pay all Taxes which have become due and payable during any calendar year.
- 16.2. The Lender may at its sole option estimate the amount of the Taxes payable in each year and the Borrower shall forthwith upon demand of the Lender pay to the Lender one-twelfth (1/12) of the estimated annual amount of such Taxes on the 1st day of each and every month during the term of the Charge commencing with the 1st day of the first full month of the term of the Charge. The Lender may at its option apply such payments to the Taxes so long as the Borrower is not in default under any covenant or agreement contained in the Charge, but nothing herein contained shall obligate the Lender to apply such payments on account of Taxes more often than yearly. Provided however, that if the Borrower shall pay any sum or sums to the Lender, there shall be default by the Borrower in respect of any payment of principal or interest as herein provided, the Lender may at its option apply such sum or sums in or towards payment of the principal and interest in default. If the Borrower desires to take advantage of any discounts or avoid any penalties in connection with the payment of Taxes, the Borrower may pay to the Lender such additional amounts as are required for that purpose.
- 16.3. In the event that the Taxes actually charged in a calendar year, together with any interest and penalties thereon, exceed the amount estimated by the Lender as aforesaid, the Borrower shall pay to the Lender, on demand, the amount required to make up the deficiency. The Lender may at its option, pay any of the Taxes when payable, either before or after they are due, without notice, or may make advances therefore in excess of the then amount of credit held by the Lender for Taxes. Any excess amount advanced by the Lender shall be secured as an additional principal sum under the Charge and shall bear interest at the rate as provided for in the Charge until repaid by the Borrower.
- 16.4. The Borrower shall transmit to the Lender all assessment notices, tax bills and other notices pertaining to the imposition of Taxes forthwith after receipt thereof.
- 16.5. The Borrower shall pay to the Lender, in addition to any other amounts required to be paid hereunder, the amount required by the Lender in its sole discretion for a reserve on account of future liability for Taxes.
- 16.6. In no event shall the Lender be liable for any interest on any amount paid to it on account of Taxes and the monies so received may be held with its own funds pending payment or application thereof as herein provided; provided that in the event that the Lender does not utilize the funds received on account of Taxes in any calendar year, such amount or amounts may be held by the Lender on account of any pre-estimate of Taxes required for the next succeeding calendar year, or at the Lender's option the Lender may repay such amount to the Borrower without any interest.
- 16.7. The Borrower shall in all instances be responsible for the payment of any and all penalties resulting from any arrears of Taxes or any late payment of current instalments thereof, and at no time shall such penalties be the responsibility of the Lender.
- 16.8. In the event the Lender does not collect payments on account of Taxes as aforesaid, the Borrower shall deliver to the Lender within thirty (30) days following the due date for each instalment of Taxes written evidence from all taxing authorities having jurisdiction to the effect that the then current instalment of Taxes and all other Taxes due in respect of the then current calendar year and any preceding calendar years have been paid in full, failing which, the Lender shall be entitled to charge a servicing fee for each written inquiry directed to such taxing authorities or the Borrower for the purpose of ascertaining the status of the Taxes together with any costs payable to such taxing authorities for such information.

## 17. <u>UTILITIES</u>

The Borrower covenants that it will pay all utility and fuel charges related to the Property as and when they are due and that the Borrower will not allow or cause the supply of utilities or fuel to the Property to be interrupted or discontinued and that, if the supply of fuel oil or utilities is interrupted or discontinued, the Borrower will take all steps that are necessary to ensure that the supply of utilities or fuel is restored forthwith. It is specifically agreed that the failure to pay all fuel and utility charges as and when they are due or the interruption or discontinuing of the supply of fuel or utilities to the Property shall constitute a default by the Borrower within the meaning of the Charge and in addition to all other remedies provided for herein, the principal sum of the Charge shall, at the sole option of the Lender forthwith become due and payable.

### 18. INSURANCE

The Borrower will insure and keep insured during the term of the Charge the buildings and other improvements on the Property (now or hereafter erected) on an all-risks basis in an amount of not less than the greater of the full replacement value of the buildings located thereon from time to time, or the principal money herein, with no co-insurance provisions and with the Lender's standard mortgage clause forming part of such insurance policy. The Borrower shall carry such liability, rental, loss of income, business interruption, boiler, plate glass and other insurance coverage as is required by the Lender to be placed with such insurance companies and in such amounts and in such form as may be acceptable to the Lender. All such policies shall provide for loss payable to the Lender and contain such additional clauses and provisions as the Lender may require. An original of all insurance policies and endorsements from the insurer to the effect that coverage has been bound and/or extended for a minimum period of at least one year and that all premiums with respect to such term of such coverage have been paid for in full, shall be produced to the Lender prior to any advance and at least thirty (30) days before expiration of any term of any such respective policy, failing which the Lender may provide therefore and charge the premium paid therefore and interest thereon at the aforesaid rate to the Borrower and any amounts so paid by the Lender shall be payable forthwith to the Lender and shall also be a charge upon the Property and secured by the Charge. It is further agreed that the Lender may at any time require any insurance on the said buildings to be cancelled and new insurance effected with a company to be named by it, and also may, of its own accord, effect or maintain any insurance herein provided for, and any amount paid by the Lender therefore shall be forthwith payable to it, together with interest at the rate aforesaid by the Borrower (together with any Costs of the Lender as herein set out), and shall be a charge upon the Property and secured by the Charge.

In the event that the evidence of continuation of such insurance as herein required has not been delivered to the Lender within the required time, the Lender shall be entitled to a servicing fee for each written inquiry which the Lender shall make to the insurer or the Borrower pertaining to such renewal (or resulting from the Borrower's non-performance of the within covenant). In the event that the Lender pursuant to the within provision arranges insurance coverage with respect to the Property, the Lender, in addition to the aforenoted servicing fee, shall be entitled to a further servicing fee for arranging the necessary insurance coverage.

In the event of any loss or damage, the Borrower shall forthwith notify the Lender in writing and notwithstanding any other provision to the contrary, statutory or otherwise, in the event of any monies becoming payable pursuant to any insurance policy herein required, the Lender may, at its option, require the said monies to be applied by the Borrower in making good the loss or damage in respect of which the money is received, or in the alternative, may require that any or all of the monies so received be applied in or towards satisfaction of any or all of the indebtedness hereby secured whether or not such indebtedness has become due. No damage may be repaired nor any reconstruction effected without the approval in writing of the Lender in any event.

The Borrower, upon demand, will transfer all policies of insurance provided for herein and the indemnity which may become due therefrom to the Lender. The Lender shall have a lien for the indebtedness hereby secured on all the said insurance proceeds and policies, and may elect to have these insurance monies applied as it may deem appropriate, including payment of monies secured hereby, whether due or not, but the Lender shall not be bound to accept the said monies in payment of any principal not yet due.

#### 19. <u>REMITTANCE AND APPLICATION OF PAYMENTS</u>

All payments of principal, interest and other monies payable hereunder to the Lender shall be payable at par in lawful money of Canada at the Lender's address for service as set out in the Charge or at such other place as the Lender shall designate in writing from time to time. In the event that any of the monies secured by the Charge are forwarded to the Lender by mail, payment will not be deemed to have been made until the Lender has actually received such monies and the Borrower shall assume and be responsible for all risk of loss or delay.

Notwithstanding anything herein to the contrary, in the event of any default under the Charge, the Lender may apply any payments received in whatever order the Lender may elect as between principal, interest, realty taxes, insurance premiums, repairs, Costs and any other advances or payments made by the Lender hereunder.

### 20. <u>RECEIPT OF PAYMENT</u>

Any payment received after 1:00 p.m. on any date shall be deemed, for the purpose of calculation of interest to have been made and received on the next bank business day and the Lender shall be entitled to interest on the amount due it, to and including the date on which the payment is deemed by this provision to have been received.

### 21. <u>NO DEEMED RE-INVESTMENT</u>

Except in the case where the Charge provides for blended payments of principal and interest whether paid monthly or otherwise, the parties hereto agree that the Lender shall not be deemed to reinvest any monthly or other payments received by it hereunder.

### 22. PRE-AUTHORIZED CHEQUING PLAN

If and when required by the Lender, all payments made under the Charge by the Borrower shall be made by a pre-authorized cheque payment plan as approved by the Lender. The Lender shall not be obligated to accept any payment other than payment made by pre-authorized cheque. Failure to make all payments by pre-authorized cheque shall be an act of default within the meaning of the Charge and the Lender shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option.

# 23. POSTDATED CHEQUES

The Borrower shall, if and when required by the Lender, deliver to the Lender upon the first advance of moneys hereunder or upon request and thereafter on each anniversary date thereof in each year for the duration of the term of the Charge, postdated cheques for the payments of principal, interest and estimated realty taxes required to be made herein during the twelve month period commencing on each such anniversary date. In the event of default by the Borrower in delivery to the Lender of the postdated cheques as herein provided, the Charge shall be deemed in default and the Lender shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option. In addition, the Lender upon the Borrower's failure to deliver such postdated cheques as required hereunder shall be entitled to a servicing fee for each written request that it makes to the Borrower for the purpose of obtaining such postdated cheques. Any step taken by the Lender hereunder by way of a request for further postdated cheques shall be without prejudice to the Lender's rights hereunder to declare the Charge to be in default in the event that such postdated cheques are not delivered within the required time.

#### 24. DISHONOURED CHEQUES

In the event that any of the Borrower's cheques are not honoured when presented for payment to the drawee, the Borrower shall pay to the Lender for each such returned cheque a servicing fee to cover the Lender's administration costs with respect to same. In the event that the said cheque which has not been honoured by the drawee is not forthwith replaced by the Borrower, the Lender shall be entitled to a further servicing fee for each written request therefore which may be necessitated by the Borrower not forthwith replacing such dishonoured cheque.

#### 25. FINANCIAL AND OPERATING STATEMENTS

The Borrower covenants that, within the periods of time hereinafter specified, or within such other period(s) of time as may be specified by this Commitment, the Borrower shall deliver or cause to be delivered to the Lender the following:

- 25.1. within one hundred and twenty (120) days after the end of each fiscal year of operation of the Property, an annual operating statement in respect of the Property for the immediately preceding fiscal year setting forth the gross rents and other income derived from the Property, the cost and expenses of operation and maintenance of the Property and such other information and explanations in respect of the same as may be required by the Lender;
- 25.2. within one hundred and twenty (120) days after the end of each fiscal year of each Borrower and Covenantor which is a corporation or partnership, the annual financial statements of each such corporation or partnership for its immediately preceding fiscal year including, without limitation, the balance sheet of the corporation or partnership as at its fiscal year end with comparative figures for prior years, statements of earnings, retained earnings and changes in financial position as at the fiscal year end with comparative figures for prior years thereto and such other information and explanations as may be required by the Lender; and
- 25.3. with respect to each Borrower and Covenantor who is an individual and within thirty (30) days after each anniversary of the date of this Commitment, an annual updated net worth statement of each such individual in such form and including such content and other information and explanations as may be required by the Lender.

All such operating and financial statements shall be prepared at the expense of the Borrower and in accordance with generally accepted accounting principles applied on a consistent basis and by a duly qualified chartered accountant or certified public accountant which is acceptable to the Lender, and shall be submitted in audited form if so required by the Lender in the event of a default occurring pursuant to the Charge, and the completeness and correctness of such statements shall be supported by an affidavit of an authorized officer of the Borrower or Covenantor, as the case may be.

The Lender reserves the right to disclose to third parties, any of the foregoing financial information or otherwise acquired in respect to the Loan as may be required in connection with the fulfillment of its rights and/or obligations under this Commitment or the Charge or to carry out its terms of to enforce its security for mortgage securitization purposes.

### 26. ESTOPPEL ACKNOWLEDGEMENTS

If and whenever the Lender requests an acknowledgement from the Borrower as to the statement of account with respect to the Charge or the status of the terms and conditions of the Charge, the Borrower shall execute such an acknowledgement in such form as may be required by the Lender provided that the contents of such form are correct, and the Borrower shall do so forthwith upon request and without cost to the Lender and shall return such acknowledgement duly executed within two (2) business days of such request.

### 27. STATEMENTS OF ACCOUNT

The Borrower shall be entitled to receive upon written request, a statement of account with respect to the Charge as of any payment date under the Charge and the Lender shall be entitled to a servicing fee for each such statement.

### 28. <u>RENEWAL OR EXTENSION OF TIME; ATTENTION SUBSEQUENT INTERESTS</u>

No renewal or extension of the term of the Charge given by the Lender to the Borrower, or anyone claiming under it, or any other dealing by the Lender with the owner of the equity of redemption of the Property, shall in any way affect or prejudice the rights of the Lender against the Borrower or any other Person liable for the payment of the monies hereby secured. The Charge may be amended, extended and/or renewed by an agreement in writing at maturity for any term with or without an increased rate of interest, or amended from time to time as to any of its terms, including, without limitation, an increase of interest rate or principal amount and notwithstanding that there may be subsequent encumbrancers, and it shall not be necessary to register any such agreement in order to retain priority for the Charge so altered over any instrument registered subsequent to the Charge. PROVIDED that nothing contained in this paragraph shall confer any right of amendment, extension or renewal upon the Borrower.

The terms of the Charge may be amended, extended and the Charge may be renewed from time to time by mutual agreement between the then current owner of the Property and the Lender and the Borrower hereby further covenants and agrees that, notwithstanding that the Borrower may have disposed of its interest in the Property, the Borrower will remain liable as a principal debtor and not as a surety for the observance of all of the terms and provisions herein and will in all matters pertaining to the Charge well and truly do, observe, fulfill and keep all of the covenants, provisos, conditions and agreements in the Charge and all amendment(s), extension(s) and renewal(s) thereof, and without limiting the foregoing, notwithstanding the amendment, extension and/or renewal of the Charge, and notwithstanding the giving of time for the payment of the Charge or the varying of the terms of the payment thereof or of the rate of interest thereon, and notwithstanding any other indulgence by the Lender to the Borrower.

The Borrower covenants and agrees with the Lender that no agreement for amendment, extension and/or renewal hereof, or for extension of the time for payment of any monies payable hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Borrower to the Lender after the expiration of the original term of the Charge or of any subsequent term agreed to in writing between the Borrower and the Lender, and that no amendment, extension and/or renewal hereof or any extension of the time for payment of any monies hereunder shall result from, or be implied from, any other act, matter or thing, save only express agreement in writing between the Borrower and the then current owner of the Property.

### 29. EXPROPRIATION

If the Property or any part thereof which, in the reasonable opinion of the Lender is material to the viability and operations thereon shall be expropriated by any Governmental Body clothed with the powers of expropriation, the principal sum herein remaining unpaid shall at the option of the Lender forthwith become due and payable together with interest thereon at the rate provided for herein to the date of payment together with a bonus equal to the aggregate of (a) three months' interest at the said rate calculated on the amount of the principal remaining unpaid, and (b) one month's interest at the rate provided for herein calculated on the principal remaining unpaid, for each full year of the term of the Charge or any part of such year from the said date of payment to the date the said principal sum or balance thereof remaining unpaid would otherwise under the provisions of

the Charge become due and payable and in any event all the proceeds of any expropriation shall be paid to the Lender at its option in priority to the claims of any other party.

### 30. LETTERS OF CREDIT

The parties to the Charge hereby acknowledge and agree that, in addition to all other amounts advanced and/or secured hereby, the Charge shall stand as good and valid security with respect to any and all letters of credit, letters of guarantee or similar instruments (collectively the "Letters of Credit") issued by or on behalf of the Lender for the benefit of or on account of the Borrower and in favour of any other party as may be requested or directed by the Borrower from time to time, and that the total amount of the financial obligations under each Letter of Credit shall be deemed to have been advanced and fully secured under the Charge as of and from the date of issuance of each such Letter of Credit regardless of when the same may be called upon by the holder thereof. In the event that at any time the Lender is of the opinion, in its sole and unfettered discretion, that the Property or such part(s) thereof as remain undischarged are insufficient to secure the aggregate amount of all of the Lender's outstanding obligations under, pursuant to or in connection with such Letters of Credit from time to time outstanding, the Lender shall be entitled to retain out of any payment received under the Charge or out of the proceeds of any sale or revenue received in respect of the Property or any part(s) thereof or out of the proceeds of any amounts received by the Lender upon the enforcement of the Charge, an amount equal to the aggregate amount of all of the Lender's outstanding obligations under, pursuant to or in connection with Letters of Credit as remain from time to time outstanding without being obliged to apply any portion of such amount on account of any principal, interest or other monies otherwise outstanding and secured by the Charge; and the Lender shall be entitled to retain such amount for such period of time as any of the Letters of Credit remain outstanding and the Lender is hereby irrevocably authorized and directed to utilize the same in order to satisfy payment of any amounts called upon for payment pursuant to the Letters of Credit.

## 31. SALE OR CHANGE OF CONTROL

In the event of any sale, conveyance or transfer of the Property or any portion thereof, or a change in control or beneficial ownership of the Borrower or a change in the beneficial ownership of the Property or any portion thereof or a lease of the whole of the Property, all sums secured hereunder shall, at the Lender's option, become due and payable forthwith unless the prior written consent of the Lender has been obtained, which consent may be arbitrarily or unreasonably withheld. The rights of the Lender pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under the Charge from the Borrower or any Person claiming through or under it and the rights of the Lender hereunder shall continue without diminution for any reason whatsoever until such time as the Lender has consented in writing as required by this provision.

Provided further that no permitted sale or other dealing by the Borrower with the Property or any part thereof shall in any way change the liability of the Borrower or in any way alter the rights of the Lender as against the Borrower or any other Person liable for payment of the monies hereby secured.

### 32. NO FURTHER ENCUMBRANCES

In the event of that the Borrower enters into, creates, incurs, assumes, suffers or permits to exist any additional charge, encumbrance, pledge or other financing of the Property, or of the chattels, equipment or personal property related to the Property, all sums secured hereunder shall, at the Lender's option, become due and payable forthwith unless the prior written consent of the Lender has been obtained, which consent may be arbitrarily or unreasonably withheld.

### 33. EVENTS OF DEFAULT

Without limiting any of the provisions of the Charge, each of the following events shall be considered events of default hereunder upon the happening of which the whole of the principal sum outstanding and all interest accruing thereon shall immediately become due and payable at the option of the Lender exercised by notice in writing to the Borrower:

- 33.1 Failure by the Borrower to pay any instalment of principal, interest and/or Taxes under the Charge or under any charge or other encumbrance of the Property, on the date upon which any of the payments for same become due;
- 33.2 Failure by the Borrower or any Covenantor to strictly and fully observe or perform any condition, agreement, covenant or term set out in the application or Commitment for the loan secured by the Charge, the provisions of the Charge, or any other document creating a contractual relationship as between them or any of them or if it is found at any time that any representation to the Lender with respect to the loan secured by the Charge or in any way related thereto is incorrect or misleading;
- 33.3 Default by the Borrower in the observance or performance of any of the covenants, provisos, agreements or conditions contained in any charge or other encumbrance affecting the Property, whether or not it has priority over the Charge;

- 33.4 Upon the registration of any construction lien against the Property which is not discharged or vacated within a period of ten (10) days after the date of registration thereof;
- 33.5 In the event that any Hazardous Substance is discovered in, on or under the Property or any part thereof and the same is not completely removed therefrom to the entire satisfaction of the Lender within ten (10) days after demand therefore by the Lender;
- 33.6 In the event that the Property are abandoned or there is any cessation of the business activities or any material part thereof now being conducted upon the Property by the Borrower or the beneficial owner of the Property or any of their respective officers, agents, employees, tenants or invitees;
- 33.7 If the Borrower or any Covenantor commits an act of bankruptcy or becomes insolvent or has a receiver or receiver and manager appointed for it or over any of its assets or if any creditor takes possession of any of its assets or if any execution, distress or other like process is levied or enforced upon the Property or any part thereof or if any compromise or arrangement with creditors is made by any of them; or,
- 33.8 Default by the Borrower, its successors or assigns, or any of the Covenantor(s) in the observance or performance of any representation, warranty, covenant, proviso, agreement or condition contained in any charge or encumbrance or document securing, evidencing or relating to any indebtedness owing by the Borrower, its successors or assigns, to the Lender from time to time whether or not related to or affecting the within Loan and the Property or any other loan and property given as security thereforer.

### 34. DEFAULT

The Lender may, on default of payment or in the performance of any covenant in the Charge contained or implied by law or statute, enter on and lease the Property, or in default of payment or in default in performance of any covenant in the Charge contained or implied by law or statute for at least fifteen (15) days may, on at least thirty-five (35) days' notice sell the Property. Such notice shall be given to such Persons and in such manner and form and within such time as provided under 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 Property, if occupied, or by placing it on the Property if unoccupied, or at the option of the Lender, by mailing it in a registered letter addressed to the Borrower at the Borrower's last known address, or by publishing it once in a newspaper published in the city, county or district in which the Property are 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. If there be legal personal representatives of the Borrower on the death of the Borrower, such notice may, at the option of the Lender, be given in any of the above modes or by personal service upon such representatives.

Without prejudice to the statutory powers of the Lender under the preceding proviso, that in case default be made in the payment of the said principal or interest or any part thereof and such default continues for two months after any payment of either principal or interest falls due, the Lender may exercise the powers given under the preceding proviso with or without entry on the Property without any notice, it being understood and agreed, however, that if the giving of notice by the Lender 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. The Lender may sell the whole or any part or parts of the Property by public auction or private contract, or partly one or partly the other; and the proceeds of any sale hereunder may be applied in payment of any Costs incurred in taking, recovering or keeping possession of the Property or by reason of non-payment or procuring payments of monies secured hereby or otherwise. The Lender may sell any of the Property on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefore and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper; and may buy in or rescind or vary any contract for the sale of the whole or any part of the Property and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Lender shall be bound to pay the Borrower only such monies as have been actually received from purchasers after the satisfaction of the claims of the Lender and for any of said purposes may make and execute all agreements and assurances as it 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 and the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power shall not be liable to be impeached on the ground that no cause had arisen to authorize the exercise of such power or that such power had been improperly or irregularly exercised, or that such notice had not been given, but any Person damnified by an unauthorized, improper or irregular exercise of the power shall have its remedy against the Person exercising the power in damages only.

It is hereby agreed that the Lender may pay all premiums of insurance and all Taxes which shall from time to time fall due and be unpaid in respect of the Property, and that such payments together

with all Costs which may be incurred in taking, recovering and keeping possession of the Property, and of negotiating this loan, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize this security, (including legal fees, real estate commissions, appraisal costs and other Costs incurred in leasing or selling the Property or in exercising the power of entering, leasing and selling herein contained) shall be with interest at the rate aforesaid and shall be a charge upon the Property in favour of the Lender and that the Lender may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the Property, and that any amount paid by the Lender shall be added to the monies hereby secured and shall be payable forthwith with interest at the rate herein, and in default the Charge shall immediately become due and payable at the option of the Lender and all powers in the Charge conferred shall become exercisable. In the event of the Lender paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the money advanced on the security of the Charge or otherwise, the Lender shall be entitled to all the rights, equities and securities of the Person or Persons so paid and is hereby authorized to obtain an assignment or discharge thereof, and to retain same, for whatever period the Lender shall deem it proper to do so.

Whenever a power of sale is hereby conferred upon the Lender, all provisions hereof relating to exercising such power, including, without in any way limiting the generality of the foregoing, the Persons to whom notice of exercising such power shall be given and the manner of giving such notice, shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of the Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no such conflict, the provisions of the Charge shall remain unchanged.

The Lender may lease or sell as aforesaid without entering into possession of the Property.

The Lender may distrain for arrears of interest and the Lender may distrain for arrears of principal and arrears of Taxes in the same manner as if the same were arrears of interest.

Upon default of the payment of the interest hereby secured the principal hereby secured shall become payable at the option of the Lender, together with interest thereon.

Upon default of payment of instalments of principal promptly as the same become due, the balance of the principal and interest shall immediately become due and payable at the option of the Lender. Upon default under the Charge, the Lender shall be entitled and shall have full power to assume control of, manage, operate and carry on the business of the Borrower being conducted at or upon the Property on the date of the Charge or at any time thereafter.

Until default hereunder the Borrower shall have quiet possession of the Property.

On default the Lender shall have quiet possession of the Property.

The Lender may in writing at any time or times after default waive such default and upon such waiver the time or times for payment of the principal secured herein shall be as set out in the proviso for redemption herein. Any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default. No waiver shall be effective or binding on the Lender unless made in writing.

It is further agreed that the Lender may at its discretion at any time, release any part or parts of the Property or any other security or any surety for the money hereby secured either with or without any sufficient consideration therefore, without responsibility therefore, and without thereby releasing any other part of the Property or any Person from the Charge or from any of the covenants herein contained, it being especially agreed that every part or lot into which the Property are or may hereafter be divided does and shall stand charged with all of the monies hereby secured and no Person shall have the right to require the principal secured hereunder to be apportioned; further the Lender shall not be accountable to the Borrower for the value thereof, or for any monies except those actually received by the Lender. No sale or other dealing by the Borrower with the equity of redemption in the Property or any part thereof shall in any way change the liability of the Borrower or in any way alter the rights of the Lender as against the Borrower or any other Person liable for payment of the monies hereby secured.

It is further agreed that the Lender may exercise all remedies provided for in the Charge concurrently or in such order and at such times as it may see fit and shall not be obligated to exhaust any remedy or remedies before exercising its rights under any other provisions contained in the Charge.

Without limiting any other provision of the Charge, the Borrower acknowledges and agrees that, upon the occurrence of any default under the Charge and whether or not the monies hereby secured have been fully advanced, the Lender may, at any time and from time to time as the Lender shall determine at its sole option and discretion, advance such further sums under the Charge as are necessary to pay any arrears of Taxes, utilities or other charges capable of constituting a lien upon the Property *pari passu* with or in priority to the Charge, to pay all amounts

due under any encumbrance having priority over the Charge, to pay all amounts required to discharge or vacate any construction lien registered against the Property whether or not priority is claimed over the Charge, to maintain in good standing any policies of insurance in respect of the Property, to maintain, repair, operate and/or manage the Property and any or all improvements thereon, to complete construction or renovation of any improvements on the Property, to realize upon any security held by the Lender for the loan secured by the Charge and generally to enforce all of the Lender's rights, title and interest hereunder and to protect the Property and to preserve the enforceability and priority of the Charge, and to pay any and all Costs; and all amounts advanced by the Charge from the date so advanced until repaid in full and shall be secured by the Charge in the same priority as the principal amount hereof.

### 35. <u>RIGHT OF LENDER TO REPAIR, ETC.</u>

The Borrower covenants and agrees with the Lender that in the event of default in the payment of any instalment or other monies payable hereunder by the Borrower or on breach of any covenant, proviso or agreement herein contained after all or any of the monies hereby secured have been advanced, the Lender may, at such time or times as the Lender may deem necessary and without the concurrence of any Person, enter upon the Property and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements on the Property or for inspecting, taking care of, leasing, collecting the rents of and generally managing the Property, as the Lender may deem expedient; and all Costs including, but not limited to, allowances for the time and services of any employee of the Lender or other Person appointed for the above purposes and a servicing fee shall be forthwith payable to the Lender by the Borrower and shall be a charge upon the Property and shall bear interest at the rate applicable under the Charge until paid.

### 36. <u>APPOINTMENT OF A RECEIVER</u>

It is agreed that at any time and from time to time when there shall be default under the provisions of the Charge, the Lender may at such time and from time to time and with or without entering into possession of the Property appoint in writing a Receiver of the Property, or any part thereof and of the rents and profits thereof and with or without security, and may from time to time by similar writing remove any such Receiver and appoint another in its place and stead, and in making any such appointment or removal, the Lender shall be deemed to be acting as the agent or attorney for the Borrower. The Borrower hereby irrevocably agrees and consents to the appointment of such Receiver of the Lender's choice and without limitation whether pursuant to the Charge, the Mortgages Act (Ontario), the Construction Lien Act (Ontario), or the Trustee Act (Ontario), as the Lender may at its sole option require. Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Property or any part thereof and the Borrower hereby consents to a court order for the appointment of such Receiver, if the Lender in its discretion chooses to obtain such order, and on such terms and for such purposes as the Lender at its sole discretion may require, including, without limitation, the power to manage, charge, pledge, lease and/or sell the Property and/or to complete or partially complete any construction thereon and to receive advances of monies pursuant to any charges, pledges and/or loans entered into by the Receiver or the Borrower, and if required by the Lender, in priority to any existing encumbrances affecting the Property, including without limitation, charges and construction lien claims.

Upon the appointment of any such Receiver from time to time the following provisions shall apply:

- 36.1. A Statutory Declaration made by the Lender or by any authorized representative of the Lender as to default under the provisions of the Charge shall be conclusive evidence thereof;
- 36.2. Every such Receiver shall be the irrevocable agent or attorney of the Borrower for the collection of all rents falling due in respect to the Property, or any part thereof, whether in respect of any tenancies created in priority to the Charge or subsequent thereto and with respect to all responsibility and liability for its acts and omissions;
- 36.3. The Lender may from time to time fix the remuneration of every such Receiver which shall be a charge on the Property, and may be paid out of the income therefrom or the proceeds of sale thereof;
- 36.4. The appointment of every such Receiver by the Lender shall not incur or create any liability on the part of the Lender to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such receivership shall not have the effect of constituting the Lender a mortgagee in possession in respect of the Property or any part thereof;
- 36.5. The Receiver shall have the power to lease any portion of the Property for such term and subject to such provisions as it may deem advisable or expedient and shall have the authority to execute any lease of the Property or any part thereof in the name and on behalf of the Borrower and the Borrower undertakes to ratify and confirm, and hereby ratifies and confirms, whatever acts such Receiver may do on the Property;

- 36.6. In all instances, the Receiver shall be acting as the attorney or agent of the Borrower;
- 36.7. The Receiver shall have full power to complete any unfinished construction upon the Property;
- 36.8. The Receiver shall have full power to manage, operate, amend, repair, alter or extend the Property or any part thereof in the name of the Borrower for the purposes of securing the payment of rental from the Property or any part thereof;
- 36.9. The Receiver shall have full power to assume control of, manage, operate and carry on the business of the Borrower being conducted at or upon the Property on the date of the Charge or at any time thereafter;
- 36.10. The Receiver shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Lender's interest in the Property including, without limiting the generality of the foregoing, increasing, extending, renewing or amending all charges, mortgages and other encumbrances which may be registered against the Property from time to time, whether or not any of the same are prior to the interest of the Lender in the Property; selling of the Property; borrowing money on the security of the Property; applying for and executing all documents in any way related to any re-zoning applications, severance of Property pursuant to the provisions of the Planning Act (Ontario), as amended, subdivision agreements and development agreements and agreements for the supply or maintenance of utilities or services to the Property, including grants of Property or easements or rights of way necessary or incidental to any such agreements; executing all grants, documents, instruments and agreements related to compliance with the requirements of any competent Governmental Body, whether pursuant to a written agreement or otherwise and applying for and executing all documents in any way related to registration of the Property as a condominium; completing any application for first registration pursuant to the provisions of the Land Titles Act (Ontario) or pursuant to the Certification of Titles Act (Ontario); and for all and every of the purposes aforesaid the Borrower does hereby give and grant unto the Receiver full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done as aforesaid in and about the Property, and to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in and about the Property, as fully and effectually to all intents and purposes as the Borrower itself could do if personally present and acting therein.
- 36.11. The Receiver shall not be liable to the Borrower to account for monies or damages other than cash received by it in respect of the Property or any part thereof and out of such cash so received every such Receiver shall pay in the following order:
  - i) its remuneration;
  - ii) all payments made or incurred by it in the exercise of its powers hereunder;
  - iii) any payment of interest, principal and other money which may from time to time be or become charged upon the Property in priority to the monies owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect of the Property or any part thereof.

The Borrower hereby irrevocably appoints the Lender as its attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Lender and/or its solicitors so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Borrower and all parties dealing with the Borrower, the Lender and/or the Receiver and/or with respect to the Property in the same manner as if such documentation was duly executed by the Borrower itself.

#### 37. LENDER NOT TO BE DEEMED LENDER IN POSSESSION

It is agreed that the Lender in exercising any of the rights given to the Lender under the Charge shall be deemed not to be a Lender or mortgagee in possession.

### 38. ENFORCEMENT OF ADDITIONAL SECURITY

In the event that, in addition to the Property charged hereby, the Lender holds further security on account of the monies secured hereby, it is agreed that no single or partial exercise of any of the Lender's powers hereunder or under any of such security, shall preclude other and further exercise of any other right, power or remedy pursuant to any of such security. The Lender shall at all times have the right to proceed against all, any, or any portion of such security in such order and in such manner as it shall in its sole discretion deem fit, without waiving any rights which the Lender may have with respect to any and all of such security, and the exercise of any such powers or remedies from time to time shall in no way affect the liability of the Borrower under the remaining security,

provided however, that upon payment of the full indebtedness secured hereunder the rights of the Lender with respect to any and all such security shall be at an end.

### 39. TAKING OF JUDGMENT NOT A MERGER

The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Lender's right to interest at the rate and times herein provided; and further that the said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

### 40. BANKRUPTCY AND INSOLVENCY ACT

The Borrower hereby acknowledges and agrees that the security held by the Lender is not all or substantially all of the inventory, accounts receivable or other property of the Borrower acquired for or used in relation to any business carried on by the Borrower. The Borrower hereby further acknowledges and agrees that notwithstanding any act of the Lender by way of appointment of any Person or Persons for the purposes of taking possession of the Property as agent on behalf of the Borrower or otherwise or by taking possession of the Property itself pursuant to any rights that the Lender may have with respect thereto shall not constitute the Lender or any such Person, a receiver within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), and that any and all requirements of Part XI of the BIA as it may pertain to obligations of receivers shall not be applicable to the Lender with respect to the transaction pursuant to which the Charge has been given or with respect to enforcement of the Charge or any other security held by the Lender. The Borrower hereby acknowledges and agrees that no action shall lie against the Lender as a receiver and manager or otherwise for any loss or damage arising from non-compliance with any obligations of a receiver pursuant to the provisions of the BIA whether or not the Lender had reasonable grounds to believe that the Borrower was not insolvent.

The Borrower further acknowledges and agrees that any and all Costs as may be incurred from time to time by the Lender in order to effect compliance or avoid any adverse ramifications of the BIA shall be entirely for the account of the Borrower. The Lender shall be entitled to incur any such Costs, including any costs of its personnel in administering any requirements of the BIA and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Lender for the indebtedness owing to the Lender in the same manner and in the same priority as the principal secured hereunder.

### 41. PERMISSIBLE INTEREST RATE

It is not the intention of the Charge to violate any provisions of the *Interest Act* (Canada), the *Criminal Code* (Canada) (the "Code") or any other statute dealing with permitted rates of interest in the Province of Ontario or in Canada. Notwithstanding any provisions set out herein, in no event shall the "interest" (as that term is defined in the Code) exceed the "criminal rate" (as defined therein) of interest on the "credit advanced" (as defined therein) lawfully permitted under the said legislation. In the event that it is determined at any time that, by virtue of this Commitment, the Charge or any other document given as security for the herein contemplated loan, the payments of interest required to be made by the Borrower exceed the "criminal rate", then the Borrower shall only be required to pay interest at the highest rate permitted by law. Nothing herein shall invalidate any requirements for payment pursuant to this Commitment, the Charge or such other security documents, and any excess interest paid to the Lender shall be refunded to the Borrower and the provisions of the Charge shall in all respects be deemed to be amended accordingly.

### 42. INDEMNIFICATION

The Borrower and Covenantor hereby agree to indemnify and save harmless the Lender, its officers, agents, trustees, employees, contractors, licensees or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature and kind whatsoever and howsoever arising out of the provisions of this Commitment and the Security, any letters of credit or letters of guarantee issued, sale or lease of the Property and/or the use or occupation of the Property including, without limitation, those arising from the right to enter the Property from time to time and to carry out the various tests, inspections, management and other activities permitted by the Commitment and the Security.

In addition to any liability imposed on the Borrower and Covenantor under any instrument evidencing or securing the Loan indebtedness, the Borrower and Covenantor shall be jointly and severally liable for any and all of the Lender's costs, expenses, damages or liabilities, including, without limitation, all reasonable legal fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Property of any hazardous or noxious substances. The Borrower and the Covenantor(s) shall be further bound by the representations, warranties and indemnity set out herein.

The representations, warranties, covenants and agreements of the Borrower and Covenantor set forth in this Section:

- 42.1. are separate and distinct obligations from the Borrower's and Covenantor's other obligations;
- 42.2. survive the payment and satisfaction of their other obligations and the discharge of the Security from time to time taken as security therefore;
- 42.3. are not discharged or satisfied by foreclosure of the charges created by any of the Security; and
- 42.4. shall continue in effect after any transfer of the Property including, without limitation, transfers pursuant to foreclosure proceedings (whether judicial or non-judicial) or by any transfer in lieu of foreclosure.

### 43. <u>NON-MERGER</u>

The Borrower's obligations as contained in this Commitment shall survive the execution and registration of the mortgage and other security documentation and all advances of funds under the mortgage, and the Borrower agrees that those obligations shall not be deemed to be merged in the execution and registration of the mortgage and other security. All terms and conditions of the mortgage and other security documentation shall be deemed to be incorporated in and form part of the Commitment, except to the extent provided for herein. In the event of conflict, the terms of this Commitment shall prevail.

### 44. NOTICES

All notices or other communications to be given pursuant to or in connection with the Charge shall be in writing, signed by the party giving such notice or by its solicitors, and shall be personally delivered or sent by registered mail or facsimile transmission to the party or parties intended at its or their respective addresses for service as set out in the Charge. The date of receipt of such notice or demand, if served personally or by facsimile, shall be deemed to be the date of the delivery thereof, or if mailed as aforesaid, the date of mailing thereof. For the purposes hereof, personal service on the Borrower or any Covenantor shall be effectively given by delivery to any officer, director or employee of such Borrower or Covenantor. Any party may from time to time by notice given as provided herein change its address for the purpose of this provision.

#### 45. PRIORITY OVER VENDOR'S LIEN

The Borrower hereby acknowledges that the Charge is intended to have priority over any vendor's lien, whether in favour of the Borrower or otherwise, and the Borrower covenants that it has done no act to give priority over the Charge to any vendor's lien, nor is it aware of any circumstances that could create a vendor's lien. Further, the Borrower covenants to do all acts and execute or cause to be executed all documents required to give the Charge priority over any vendor's lien and to give effect to the intent of this clause.

#### 46. <u>CONSENT OF LENDER</u>

Whenever the Borrower is required by the Charge to obtain the consent or approval of the Lender, it is agreed that, subject to any other specific provision contained in the Charge to the contrary, the Lender may give or withhold its consent or approval for any reason that it may see fit in its sole and absolute discretion, and the Lender shall not be liable to the Borrower in damages or otherwise for its failure or refusal to give or withhold such consent or approval, and all costs of obtaining such approval shall be for the account of the Borrower.

## 47. <u>DISCHARGE</u>

The Lender shall have a reasonable period of time after payment in full of the monies hereby secured within which to prepare and execute a discharge of the Charge; and interest as aforesaid shall continue to run and accrue until actual payment in full has been received by the Lender; and all legal and other expenses for the preparation and execution of such discharge shall, together with the Lender's fee for providing same, be borne by the Borrower. The discharge shall be prepared and executed by such Persons as are specifically authorized by the Lender and the Lender shall not be obligated to execute any discharge other than a discharge which has been so authorized.

If the Charge, this Commitment or any other document provides for the giving of partial discharges of the Charge, it is agreed that, notwithstanding any other provision to the contrary, the Borrower shall not be entitled to request or receive any such partial discharge if and for so long as the Borrower is in default under the Charge, this Commitment or such other document.

#### 48. FAMILY LAW ACT

The Borrower shall forthwith after any change or happening affecting any of the following, namely, (a) the spousal status of the Borrower, (b) the qualification of the Property or any part thereof as a matrimonial home within the meaning of Part II of the *Family Act* (Ontario), (c) the ownership of the

equity of redemption in the Property or any part thereof, and (d) a shareholder of the Borrower obtaining rights to occupy the Property or any part thereof by virtue of shareholding within the meaning of Section 18(2) of the *Family Law Act* (Ontario), the Borrower will advise the Lender accordingly and furnish the Lender with full particulars thereof, the intention being that the Lender shall be kept fully informed of the names and addresses of the owner or owners for the time being of the said equity of redemption and of any spouse who is not an owner but who has a right of possession in the Property by virtue of Section 19 of the *Family Law Act* (Ontario). In furtherance of such intention, the Borrower covenants and agrees to furnish the Lender with such evidence in connection with any of (a), (b), (c) and (d) above as the Lender may from time to time request.

### 49. INDEPENDENT LEGAL ADVICE

The Borrower and each Covenantor acknowledge that they have full knowledge of the purpose and essence of this transaction, and that they have been appropriately and independently legally advised in that regard or have been advised of their right to independent legal advice and have declined same. Such parties agree to provide to the Lender a Certificate of Independent Legal Advice as and when same may be required, regarding their knowledge and understanding of this transaction.

### 50. SERVICING FEES

All servicing fees as herein provided are intended to and shall be in an amount sufficient in the sole opinion of the Lender to compensate the Lender for its administrative costs and shall not be deemed a penalty. The amount of such servicing fees if not paid shall be added to the principal amount secured hereunder, and shall bear interest at the rate aforesaid and the Lender shall have the same rights with respect to collection of same as it does with respect to collection of principal and interest hereunder or at law.

### 51. CONSENT TO REGISTRATION OF A PLAN OF CONDOMINIUM

Provided the Borrower is not in default of the provisions of this Commitment or any loan documents and provided that there are no costs or financial obligations to the Lender, the Lender hereby agrees that it will consent to the Borrower registering a plan of condominium and declaration (the "Condominium") pursuant to the *Condominium Act, 1998* (Ontario), as amended, with respect to the Property or any part thereof provided that the Lender has received and approved the draft plan of condominium and the declaration and provided further that the Borrower, if requested by the Lender, shall deliver to the Lender prior to the registration of the Condominium, a further charge of the Property (the "Replacement Charge") on the same terms and conditions save and except for the new legal description of the Property. It is agreed that the Replacement Charge shall secure the same indebtedness as the original Charge. In connection with the provision of the Replacement Charge, the Borrower shall also provide a replacement general assignment of rents (the "Replacement Assignment of Rents"), and together with and each Covenantor, where applicable, shall provide a re-confirmation of all existing security and such further and other documentation as may then be required by the Lender's solicitors.

Provided further that the original Charge and the original assignment of rents and leases relating thereto shall not be released or discharged from the Property (save and except for any partial discharge provisions provided for therein) until the expiration of ninety (90) days immediately following the later of the registration of the Condominium and the registration of the Replacement Charge and Replacement Assignment of Rents. Provided further that at the time of the request for a discharge of the Charge and the original assignment of rents and leases the Borrower shall not be in default of the provisions of the Charge, the Replacement Charge and/or this Commitment, failing which the Lender shall not be obliged to discharge same.

### 52. CONDOMINIUM PROVISIONS

If all or any part of the Property is or becomes a condominium unit pursuant to the provisions of the *Condominium Act, 1998* (Ontario) (the "Act"), the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in the Charge:

- 52.1. For the purposes of all parts of the Property comprising one or more such condominium units, all references in the Charge to the Property shall include the Borrower's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;
- 52.2. The Borrower shall at all times comply with the Act and shall forward to the Lender proof of such compliance as the Lender may request from time to time including, without limitation, status certificates issued by the Condominium Corporation; and if the Borrower fails to so comply in any respect, the Lender may do so at its option and all Costs incurred by the Lender in connection therewith shall be secured by the Charge and payable by the Borrower to the Lender forthwith upon demand, together with interest thereon as herein provided;
- 52.3. The Borrower shall pay, when due, all monies payable by the Borrower or with respect to the Property in accordance with the provisions of the Act and the declaration, by-laws and rules

of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Lender upon request; and if the Borrower fails to make any such payment, the Lender may do so at its option and all amounts so paid by the Lender shall be secured by the Charge and shall be payable by the Borrower to the Lender forthwith upon demand, together with interest thereon as herein provided;

- 52.4. The Borrower hereby irrevocably appoints, authorizes and empowers the Lender to exercise the rights of the Borrower to vote or to consent as an owner within the meaning of the Act with respect to all matters relating to the affairs of the Condominium Corporation, or to abstain from doing so, provided that:
  - 51.4.1. the Lender may at any time and from time to time give notice in writing to the Borrower and to the Condominium Corporation that the Lender does not intend to exercise such right to vote or to consent, in which case the Borrower may exercise its right to vote or to consent for so long as such notice remains effective or until such notice is revoked by the Lender; and any such notice may be for an indeterminate period of time, a limited period of time or for a specific meeting or matter;
  - 51.4.2. the Lender shall not be under any obligation to vote or to consent or to protect the interests of the Borrower; and,
  - 51.4.3. the exercise by the Lender of its right to vote or to consent or to abstain from doing so shall not constitute the Lender as a mortgagee or Lender in possession and shall not give rise to any liability on the part of the Lender;
- 52.5. The Borrower shall forward to the Lender by delivery or by prepaid registered mail copies of every notice, assessment, claim, demand, by-law, rule, request for consent and other communication relating to all or any part of the Property or the common elements or affairs of the Condominium Corporation on or before the date which is the earlier of:
  - 51.5.1. fourteen (14) days after receipt of the same by the Borrower;
  - 51.5.2. seven (7) days prior to the date set for any meeting of the Condominium Corporation or any committee thereof;
  - 51.5.3. seven (7) days prior to the due date of any claim or demand for payment; and,
  - 51.5.4. within twenty-four (24) hours after becoming aware of any information concerning termination of any insurance policy, insurance trust agreement or management agreement relating to the Condominium Corporation or any of its assets;
- 52.6. The Borrower hereby authorizes and directs the Condominium Corporation to permit the Lender to inspect the records of the Condominium Corporation at any reasonable time;
- 52.7. In addition to and notwithstanding any other provisions of the Charge, the outstanding principal amount and all accrued interest and other charges secured by the Charge shall, at the Lender's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:
  - 51.7.1. the government of the Condominium Corporation or the government of the Property by the Condominium Corporation is terminated;
  - 51.7.2. a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Property, or any part of the same is expropriated;
  - 51.7.3. the Condominium Corporation fails to comply with any provision of the Act or its declaration or any of its by-laws and rules;
  - 51.7.4. the Condominium Corporation fails to insure its assets, including the Property, in accordance with the Act and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same.

### 53. ASSIGNMENT OF RENTS

As additional primary security for the monies secured by the Charge, the Borrower transfers and assigns to the Lender all rents, income, profits, rights and other benefits (collectively the "Rents") now or hereafter due or arising pursuant to all present and future oral or written leases, agreements to lease, tenancies or other agreements for the use or occupancy of the whole or any part of the Property and all extensions and renewals thereof (collectively the "Leases" and individually a "Lease") granted to any and all tenants, licensees and other occupiers thereof (collectively the

"Tenants" and individually a "Tenant"); and in furtherance thereof, the Borrower covenants and agrees as follows:

- 53.1. the Leases and details thereof heretofore provided by the Borrower to the Lender are in full force and effect and have not been assigned or pledged to any other party except as disclosed by registered title to the Property;
- 53.2. except with the prior written consent of the Lender, the Borrower shall not amend, terminate, release or accept a surrender of any Lease or any guarantee thereof or waive, release, reduce, discount, discharge or otherwise compromise any Rents payable thereunder, and any attempt to do any of the foregoing without such prior written consent shall be null and void as against the Lender;
- 53.3. except for the last month's rent and any security deposit, the Borrower has not received and shall not accept payment of any Rents more than thirty (30) days in advance;
- 53.4. except with the prior written consent of the Lender, the Borrower shall not further assign the Rents, the Leases or any interest therein or consent or agree to any postponement or subordination of the same in favour of any mortgage or other encumbrance now or hereafter affecting the Property;
- 53.5. except with the prior written consent of the Lender, the Borrower shall not consent to or permit any assignment or subletting of the interest of any Tenant under any Lease or exercise any right of election thereunder which would in any way lessen the liability of any Tenant or shorten the stated term of any Lease;
- 53.6. the Borrower shall diligently and in good faith observe and perform all of the landlord's covenants contained in the Leases and shall likewise require that the Tenants and other parties to the Leases fully observe and perform the covenants and agreements imposed upon them by the Leases, failing which, the Lender may, at its option, require the same at the expense and in the name of the Borrower, and all such expenses incurred by the Lender shall be a charge upon the Property and be paid by the Borrower to the Lender forthwith upon demand;
- 53.7. the Borrower shall give prompt written notice to the Lender of default by any Tenant and any notice of default received from any Tenant, including a copy of such notice;
- 53.8. all of the Leases are and shall be bona fide and at rental rates and upon terms which are commercially reasonable and consistent with comparable space in the municipality within which the Property are situate;
- 53.9. the Borrower shall, at its own expense, execute and deliver to the Lender all such further assurance and assignments with respect to the Rents and the Leases and enforce and do all other acts with respect to the Leases as may be required from time to time by the Lender.

Upon default hereunder by the Borrower, the Lender shall be entitled, as agent and attorney of the Borrower, to collect, sue for, waive or compromise the Rents and to enforce performance of the Leases or amend, terminate, release or accept a surrender of the same as the Lender may determine in its sole discretion;

The Lender shall not be obligated to perform or discharge any obligation or liability under the Leases, or under or by reason of the assignment herein contained, and the Borrower agrees to save and hold harmless the Lender of and from any and all actions, proceedings, claims, demands, liability, damages, Costs or expenses which the Lender may incur under or by reason of the Leases or the assignment herein contained; and all Costs incurred by the Lender in connection therewith shall be a charge upon the Property and be paid by the Borrower to the Lender forthwith upon demand.

In the event that the Lender collects any Rents by reason of the Borrower's default, the Lender shall be entitled to payment from the same of an administration fee equal to 5.0% of the gross amount of Rents collected, and the Borrower acknowledges and agrees that such administration fee is just and equitable having regard to the circumstances.

### 54. MATERIAL ADVERSE CHANGES

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of the Charge, the Lender discovers a discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Lender by or on behalf of the Borrower or any Covenantor concerning the Property or the financial condition and responsibility of the Borrower or any Covenantor in the event of any material adverse change in the value of the Property or the financial status of the Borrower or any Covenantor or any lessee on which the Lender relied upon in making any advances hereunder, which material change, discrepancy or inaccuracy cannot be rectified by the Borrower or such Covenantor (if applicable) within thirty (30) days after written

notification thereof by the Lender to the Borrower or such Covenantor, the Lender shall be entitled to decline to advance any further funds pursuant hereto and/or to declare any and all amounts advanced pursuant hereto together with interest thereon to be forthwith due and payable.

### 55. PROFESSIONAL MANAGEMENT

The Property must at all times be professionally managed by property managers acceptable to the Lender, failing which the Lender reserves the right, in its sole discretion, to appoint new or other property managers at the sole expense of the Borrower. A change in the property managers for Property shall require the prior written consent of the Lender. No management fee shall be payable to the manager of the Property, other than to a professional arm's-length manager approved by the Lender, without the prior written consent of the Lender. No management fees in excess of market fees for similar properties in the general location of the Property shall be payable without the prior written consent of the Lender.

### 56. <u>NO PREPAYMENTS</u>

Save and except as otherwise provided for in the Commitment or any schedule to a specific charge, the Borrower shall have no right to prepay all or any part of the amount outstanding under the Charge prior to the maturity date thereof.

### 57. NO PARTIAL DISCHARGES

Save and except as otherwise provided for in the Commitment or any schedule to a specific charge, the Borrower shall have no right to obtain a partial discharge(s) of the Charge

### 58. ADDITIONAL FEES

All advances, in addition to legal fees and disbursements of the Lender's solicitors, shall be subject to an administrative processing fee of One Thousand Dollars (\$1,000.00) for each advance made under the Loan in favour of the Lender. The Borrower shall be permitted one advance per month. If the Lender, in its sole discretion, agrees to make an advance in an amount not less than the minimum amount per advance as specified in this Commitment, an additional processing fee of One Thousand Dollars (\$1,000.00) for any such advance so made shall be payable by the Borrower.

### 59. <u>ABANDONMENT</u>

In the event of abandonment of the Project for a period in excess of fifteen (15) consecutive days, the Lender shall be entitled, after giving the Borrower written notice of any abandonment and provided the Borrower fails to rectify same within ten (10) days after such notice, has been given, to forthwith withdraw and cancel its obligations hereunder and/or decline to advance further funds as the case may be and in addition to declare any funds advanced to forthwith become due and payable plus interest all at the Lender's option.

## 60. INTERPRETATION

It is hereby agreed that, in construing the Charge, everything herein contained shall extend to and bind and may be enforced or applied by the respective heirs, personal representatives, successors and assigns, as the case may be, of each and every of the parties hereto, and where any of the Borrower, the Lender and any Covenantor is more than one Person, their respective covenants shall be deemed to be joint and several, and the provisions of the Charge shall be read and construed with all changes of gender and number as required by the context.

### 61. <u>HEADINGS</u>

The headings with respect to the various paragraphs of the Charge are intended to be for identification of the various provisions of the Charge only and the wording of such headings is not intended to have any legal effect.

### 62. <u>INVALIDITY</u>

If any of the covenants or conditions in the Charge inclusive of all schedules forming a part hereof shall be void for any reason it shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

#### 63. <u>COUNTERPARTS</u>

The Charge may be executed and/or registered in counterparts, each of which, so executed, and/or registered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, and notwithstanding their date of execution shall be deemed to bear date as of the date above written.

Ϋ́B 1 Schedule

#### MORTGAGE CHARGE TERMS Additional

### "SCHEDULE OF FEES"

(This Schedule of Fees is attached to, and forms part of the Mortgage Commitment)

THE AMOUNT LISTED IN THIS SCHEDULE SUPERSEDE ANY AMOUNTS THAT MAY BE CONTAINED IN THE CHARGE OR STANDARD CHARGE TERMS. NOTWITHSTANDING anything to the contrary contained in the Standard Charge Terms (and in the event of any contradiction the following provisions shall prevail), the Borrower(s) covenants and agrees with the Lender as follows:

# Mortgage Renewal:

The borrower shall pay the mortgage full amount including all charges and fees by Maturity date, otherwise mortgage will be considered in default. If in any case, the borrower wants to renew the mortgage, its only on lenders discretion and it should be in writing.

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#### Mortgage Statement Fee:

The Borrower(s) shall pay to the Lender's lawyer Mortgage Statement Fee of (\$450.00), for each occurrence, that the Lender is required to prepare a mortgage statement. (This does not include nor form part of any legal fees which are to be charged for the preparation and discharge of the mortgage. Further, the Borrower(s) are responsible for any and all legal fees due and payable to the Lender's solicitor in relation to the mortgage loan).

#### Mortgage/ Administrative Preparation Fee:

The Borrower(s) shall pay to the Lender Discharge Preparation Fee of (\$450.00), for each Occurrence, for the preparation and review of documentation plus HST. (This does not include or form part of any legal fees which are to be charged for the preparation and discharge of the mortgage. Further, the Borrower(s) are responsible for any and all legal fees due and payable to the Lender's solicitor in relation to the mortgage loan).

#### Discharge Registration Fee:

The Borrower(s) shall pay any out-of-pocket expenses incurred in relation to the preparation and registration of discharge documentation. (This includes, but is not limited to the Government Registration Charge for the registration of a Discharge of Charge).

#### N.S.F or Default Payment Fee:

The Borrower(s) shall pay the amount of \$35.00 for each occurrence of NSF or a default Payment, plus \$50.00 / diem added and payable for each occurrence that a payment is not made when due or the outstanding balance is not paid in full on the Maturity Date and the mortgage loan has not been renewed. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

#### Missed or Late Payment Fee:

The Borrower(s) shall pay the amount of (\$200.00), for each missed or late installment and for the replacement of each cheque or other instrument not honoured when presented for payment. If any cheque has been provided to the Lender which is either late or returned for any reason, the replacement amount must be paid by way of certified cheque or bank draft. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

#### Property Tax Administration Fee:

The Borrower(s) shall pay the amount of Two Hundred and Fifty Dollars, for each occurrence, that the Borrower(s) are unable to provide proof/or evidence that the Property Taxes are paid up to date, at the request of the Lender. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

#### Insurance Administration Fee:

The Borrower(s) shall pay the amount of Two Hundred and Fifty Dollars, for each occurrence, that the Borrower(s) are unable to provide proof/or evidence of a current and effective insurance policy noting the Lender as "loss payee" under the said policy, at the request of the Lender. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

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#### Payment Deferral Fee:

Should the Borrower(s) request a deferral of payment, and same has been approved by the Lender, the Borrower(s)shall pay to the lender a Payment Deferral Fee of (\$250.00), for each such occurrence. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

#### **Post-Dated Cheques:**

The Borrower(s) are to provide the Lender with 6 post-dated cheques prior to the funding of the mortgage loan and upon each half-year anniversary of the mortgage loan. Should the Borrower(s) fail to provide the 12-post-dated cheque payable to the Lender; the Borrower(s) shall pay to the Lender a Post-Dated Cheques Fee of Two Hundred and Fifty Dollars (\$250.00), for each such occurrence. Such fees will be added to the principal amount outstanding not paid within five days of occurrence. Failure to provide such cheques shall constitute a default under the Mortgage at the sole option of the Lender.

#### Legal / Demand Letters:

Should the Lender or their solicitor be required to send a letter to you in relation to your Mortgage Loan and any default or demand letters thereto, the Borrower(s) shall pay the Lender or lender's lawyer the sum of Five Hundred Dollars (\$500.00) for each such occurrence. Such fees will be added to the principal amount outstanding not paid within five days of occurrence.

3 months interest penalty and Power of Sale Upon default:

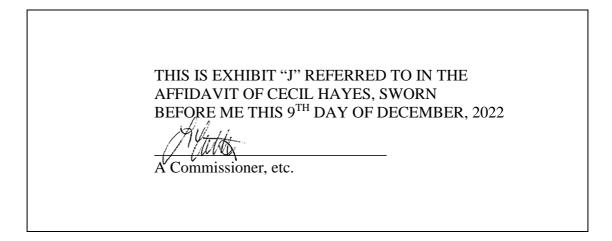
3 Months interest penalty due upon default. The lender has the right to initiate power of sale proceedings upon the default of 3 months of payment without further notice to the borrower or his representative. In case of default proceedings, an administration fee of \$ 6,500.00 will be charged for each action or proceeding.

The Mortgagee's additional administration and servicing fees are and shall be as follows:

Default Proceedings:	Payable for each step in any legal action or proceeding instituted	\$6,500.00
Admin Renewal Fee:	Minimum admin fee charged upon each renewal	\$450.00
Mortgage Statements:	Minimum fee for preparation of each statement by the mortgagee or mortgagee lawyer	\$ 450.00
Possession:	For attendance to take possession following default by the lender	\$6,500.00
Administration Fee:	Administration fee upon discharging your mortgage.	\$ 450.00
Maintenance:	For administering maintenance and security of the property in mortgagee's possession per day.	\$ 350.00

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45540496.2



#### LRO # 65 Charge/Mortgage

The applicant(s) hereby applies to the Land Registrar.

Propertie	es
PIN	03196 - 0037 LT Interest/Estate Fee Simple
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
Address	235 KING RD RICHMOND HILL
PIN	03196 - 0038 LT Interest/Estate Fee Simple
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
Address	227 KING RD RICHMOND HILL
PIN	03196 - 0039 LT Interest/Estate Fee Simple
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL
Address	201 KING ROAD RICHMOND HILL

# 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
 12252856 CANADA INC.

 Address for Service
 155 Commerce Valley Drive East

 Markham ON L3T 7T2
 Markham ON L3T 7T2

 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)		Capacity	Share
Name	12279266 CANADA INC.		
Address for Service	155 Commerce Valley Drive East Markham ON L3T 7T2		

#### Statements

Schedule: See Schedules

I STEPHANE HUTT solicitor make the following law statement The Chargor and Chargee are related persons pursuant to s. 251 of the Income Tax Act (Canada) (\*R.S.C., 1985, c. 1 (5th Suppl)..

### Provisions

Principal	\$9,000,000.00	Currency	CDN
Calculation Period	Compounded monthly, not in	advance	
Balance Due Date			
Interest Rate	24% per annum		
Payments			
Interest Adjustment Date			
Payment Date			
First Payment Date			
Last Payment Date			
Standard Charge Terms	200033		
Insurance Amount	Full insurable value		
Guarantor			

### Additional Provisions

see schedule

### Signed By

Joseph Matthieu Stephane Hutt

4275 Innes Road, Suite 208 Ottawa K1C 1T1 acting for Chargor(s) Signed 2022 08 26

### LRO # 65 Charge/Mortgage

The applicant(s) hereby applies to the Land Registrar.

# Signed By

I have the authority to sign and register the document on behalf of the Chargor(s).

SICOTTE GUILBAULT LLP		4275 Innes Road, Suite 208 Ottawa K1C 1T1	2022 08 26
Tel	613-837-7408		
Fax	613-837-8015		
Fee	s/Taxes/Payment		
Statuto	ory Registration Fee	\$66.30	
	Paid	\$66.30	

### SCHEDULE

### ADDITIONAL PROVISIONS

#### 1. Standard Charges Terms

The terms contained in this Schedule are in addition to the terms contained the Standard Charge Terms filed as No. 200033 (the "Standard Charge Terms"). In the event of any inconsistency or conflict between the terms contained in this Schedule and those contained in the Standard Charge Terms, the terms contained in this Schedule shall, to the extent of the inconsistency or conflict, prevail.

#### 2. Interest

Interest shall accrue in addition to the principal amount until the Charge is discharged by the Chargor repaying all of the outstanding Charge balance, including all accrued interest up to the date of discharge and the principal amount, to the Chargee.

#### 3. Demand Charge

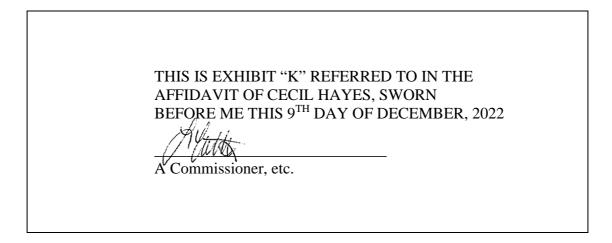
The Charge is a demand charge and the Chargor shall repay all amounts owing to the Chargee in relation to the Charge, including all accrued interest up to the date of discharge and the principal amount, once the Chargee demands repayment at its own absolute discretion. The Chargee may demand the Chargor to repay in full by giving a thirty (30) day written notice to the Chargor.

### 4. Restriction on Transfer

Should the Chargor directly or indirectly sell, convey, transfer, further encumber or dispose of the Property, or any part thereof or any interest therein, or agree so to do without the written consent of the Chargee in its absolute discretion being first obtained, then the Chargee shall have the right, at its option, to declare forthwith due and payable the entire balance of the unpaid principal with accrued and unpaid interest due thereon. The decision to accelerate the Loan shall be at the sole option of the Chargee. The consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. For the purposes hereof, the expression "indirectly" shall include a "Change of Control" of the general partner of a Chargor.

"Change of Control" means the issuance of additional shares, the sale, transfer, assignment or other disposition of outstanding shares, the redemption or cancellation of outstanding shares, the amalgamation or merger of a corporation with another corporation or an agreement entered into or amended or terminated which results in a change in the person or persons who control a corporation.

"Control" means the legal and beneficial ownership of shares of a corporation entitling the holder or holders thereof to 50% or more of the votes and shall include shares warrants, options or other rights to purchase such securities or obligations convertible into or exchangeable for such securities, or any shareholders and shall include any agreement by which one or more persons may control or veto decisions made by the board of directors or shareholders of a corporation.







Innovation, Sciences et Développement économique Canada <sup>Corporations Canada</sup>

Corporations Canada C. D. Howe Building 235 Queen St Ottawa ON K1A 0H5 Corporations Canada Édifice C.D.Howe 235 rue Queen Ottawa ON K1A 0H5

# **Corporate Profile / Profil corporatif**

 Date and time of Corporate Profile (YYYY-MM-DD)
 2022-11-29 3:09 PM
 (AAAA-MM-JJ) Date et heure du Profil corporatif

CORPORATE INFORMATION		RENSEIGNEMENTS CORPORATIFS
Corporate name		Dénomination
	12279266 Canada Inc.	
Corporation number	1227926-6	Numéro de société ou d'organisation
Business number	717274138RC0001	Numéro d'entreprise
Governing legislation		Régime législatif
	Canada Business Corporations Act (CBCA) - 2020-08-19	
	Loi canadienne sur les sociétés par actions (LCSA) - 2020-08-19	
Status		Statut
	Active	
	Active	

REGISTERED OFFICE ADDRESS		ADRESSE DU SIÈGE
	155 Commerce Valley Drive East Markham ON L3T 7T2 Canada	

ANNUAL FILINGS				DÉPÔTS ANNUELS	
Anniversary date (MM-DD)		08-19		(MM-JJ) Date anniversaire	
Filing period (MM-DD)	08-	19 to/au 10-	18	(MM-JJ) Période de dépôt	
Status of annual filings				Statut des dépôts annuels	
	Overdue Filed	2022 2021	En retard Déposé	I	
Date of last annual meeting (YYYY-MM-DD)	:	2021-08-18		(AAAA-MM-JJ) Date de la dernière assemblée annuelle	
Туре				Туре	
	Non-distributing corporation with 50 or fewer shareholders Société n'ayant pas fait appel au public et comptant 50 actionnaires ou moins				



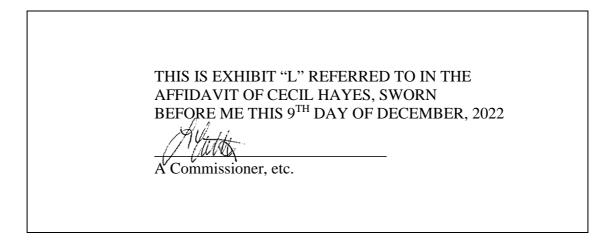
DIRECTORS		ADMINISTRATEURS
Minimum number	1	Nombre minimal
Maximum number	10	Nombre maximal
Current number	1	Nombre actuel
Mir Imaad Ali	1280 Finch Avenue West, Suite 301, Toronto ON M3J 3K6, Canada	

CORPORATE HISTORY	HISTORIQUE CORPORATIF
Corporate name history (YYYY-MM-DD)	(AAAA-MM-JJ) Historique de la dénomination
2020-08-19 to present / à maintenant	12279266 Canada Inc.
Certificates issued (YYYY-MM-DD)	(AAAA-MM-JJ) Certificats émis
Certificate of Incorporation	2020-08-19 Certificat de constitution en société
Amendments details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed.	Seuls les renseignements concernant les modifications effectuées après 2010-03-20 sont disponibles. Certains certificats émis avant 2000 pourraient ne pas être listés.
Documents filed (YYYY-MM-DD)	(AAAA-MM-JJ) Documents déposés

The Corporate Profile sets out the most recent information filed with and accepted by Corporations Canada as of the date and time set out on the Profile.

Le Profil corporatif fait état des renseignements fournis et acceptés par Corporations Canada à la date et à l'heure indiquées dans le profil.





#### LRO # 65 Postponement Of Interest

The applicant(s) hereby applies to the Land Registrar.

Propertie	Properties		
PIN	03196 - 0037 LT		
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL		
Address	235 KING RD RICHMOND HILL		
PIN	03196 - 0038 LT		
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL		
Address	227 KING RD RICHMOND HILL		
PIN	03196 - 0039 LT		
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL		
Address	201 KING ROAD RICHMOND HILL		

Source Instruments					
Registration No.	Date	Type of Instrument			
YR3169142	2020 11 13	Charge/Mortgage			
Party From(s)					
Name	CONSORTIA EQUITY CAPITAL	_ LIMITED			

Address for Service 1280 Finch Avenue West Suite 301 Toronto, Ontario M3J 3K6

I, Mir Ali, Director, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s)		Capacity	Share
Name	BRIDLEPATH FINANCE INC.		
Address for Service	1280 Finch Avenue West Suite 611 Toronto, Ontario M3J 3K6		

### Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number YR3340352 registered on 2021/11/12

Grego	y William Roberts	202-8920 Woodbine Ave Markham L3R 9W9	acting for Party From(s)	Signed	2021 11 01
Tel	866-824-8757				
Fax	866-824-8757				
I have	the authority to sign and register the document or	h behalf of the Party From(s).			
	<i>mitted By</i> ROBERTS PROFESSIONAL CORPORATION	202-8920 Woodbine Ave Markham L 3R 9W9			2021 11 12
GREG	•				2021 11 12
GREG Tel	ROBERTS PROFESSIONAL CORPORATION	Markham			2021 11 12
GREG Tel Fax	ROBERTS PROFESSIONAL CORPORATION 866-824-8757	Markham			2021 11 1

Total Paid

\$66.30 \$66.30

### LRO # 65 Postponement Of Interest

The applicant(s) hereby applies to the Land Registrar.

# File Number

Party From Client File Number : Party To Client File Number :

5277-007 21-347

### LRO # 65 Postponement Of Interest

The applicant(s) hereby applies to the Land Registrar.

Properties				
PIN	03196 - 0037 LT			
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Registration No.	Date	Type of Instrument
YR3169142	2020 11 13	Charge/Mortgage
Party From(s)		
Name	CONSORTIA EQUITY CAPITAL	_ LIMITED
Address for Service	1280 Finch Avenue West	
	Suite 301	
	Sulle SUI	
	Toronto ON M3J 3K6	

Party To(s)		Capacity	Share
Name	GOLDBERG, MARILYN		
Address for Service	33 Pinnacle Road Toronto, Ontario M2L 2V6		

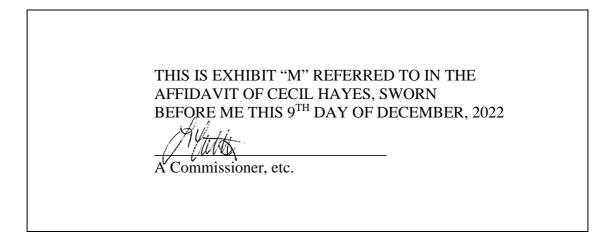
# Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number YR3451700 registered on 2022/07/13

This document relates to registration number(s)YR3169142

Signed By				
Xuqin Wang	150 Ferrand Drive #800 Toronto	acting for	Signed	2022 07 13
	M3C 3E5	Party From(s)		
Tel 416-496-3340				
Fax 416-497-3809				
I have the authority to sign and register the document	on behalf of the Party From(s).			
Submitted By				
WILLIAM FRIEDMAN BARRISTER & SOLICITOR	150 Ferrand Drive #800			2022 07 13
	Toronto M3C 3E5			
Tel 416-496-3340				
Fax 416-497-3809				
Fees/Taxes/Payment				
Statutory Registration Fee	\$66.30			
Total Paid	\$66.30			
File Number				
Party To Client File Number : 220372				

220372



### SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of this first day of November, 2021.

BETWEEN:

#### MARSHALLZEHR GROUP INC. ("MarshallZehr")

- and -

#### OLYMPIA TRUST COMPANY ("Olympia")

- and -

### BRIDLEPATH FINANCE INC. (the "Subordinate Lender")

-and-

### 12252856 CANADA INC. (the "Borrower")

WHEREAS:

- A. The Borrower is the owner of certain lands and premises known municipally as 201-235 King Road, Richmond Hill, Ontario and more particularly described legally in Schedule "A" attached hereto (the "Lands") together with all personal property (the "Personal Property") located on or arising out of, from or in connection with ownership, use or disposition of the Lands (the said Lands and Personal Property being hereinafter collectively referred to as the "Property");
- B. MarshallZehr and Olympia (collectively, the "Prior Lender") have agreed to make or extend a loan or credit facility (the "Loan") to the Borrower in the maximum principal amount of Eighteen Million (\$18,000,000) Dollars which loan or credit facility is secured by, *inter alia*, the following security:
  - a first Charge/Mortgage of Land (the "Original Charge") relating to the Lands registered in the Land Registry Office for the Land Titles Division of York (the "Registry Office") as Instrument No. YR3157405 and the accompanying transfer of the Original Charge registered as Instrument No. YR3173773 (the "Transfer of Charge" and collectively with the Original Charge, the "Charge");
  - (ii) an Assignment of Rents and Leases relating to the Charge registered as Instrument No. YR3157406; and
  - a General Security Agreement and an Assignment of Rents and Leases securing the Personal Property of the Borrower, notice of which was filed on October 15, 2020 as File Nos. 766750707 and 766750554, respectively, pursuant to the *Personal Property Security Act* (Ontario), as amended (the "**PPSA**");

All existing and future indebtedness and all other obligations and liabilities owing by the Borrower to the Prior Lender from time to time pursuant to the Loan, including but not limited to the principal sum, all interest thereon, all future advances and all other amounts owing to the Prior Lender thereunder being hereinafter referred to as the "**Prior Indebtedness**", and the Charge and all other additional or collateral security now or hereafter securing the Prior Indebtedness being hereinafter referred to as the "**Prior Indebtedness**".

And for greater particularity, reference in this Agreement to the Loan, the Prior Indebtedness and the Prior Security includes all renewals, extensions, amendments, modifications and restatements thereof or thereto from time to time, but no increase in the maximum principal amount and/or the interest rate applicable to the Loan in excess of the interest rates (which includes a wrap up rate) applicable to the Prior Indebtedness as set out in the Prior Lender's commitment letter relating to the Prior Security;

- C. The Subordinate Lender has made or extended a loan or credit facility (the "**Subordinate Loan**") available to the Borrower in the maximum principal amount of One Million (\$1,000,000) Dollars which loan or credit facility is secured by, *inter alia*, the following security:
  - (i) a Charge/Mortgage of Land (the "**Subordinate Charge**") relating to the Lands registered in the Registry Office as Instrument No. YR <u>3340352</u>; and
  - (ii) a General Security Agreement securing the Personal Property of the Borrower notice of which was filed as File No. 777767004 pursuant to the PPSA;

All existing and future indebtedness and all other obligations and liabilities owing by the Borrower to the Subordinate Lender from time to time pursuant to the Subordinate Loan, including but not limited to the principal sum, all interest thereon, all future advances and all other amounts owing to the Subordinate Lender thereunder being hereinafter referred to as the "Subordinate Indebtedness", and the Subordinate Charge and all other additional or collateral security now or hereafter securing the Subordinate Indebtedness being hereinafter referred to as the "Subordinate Security";

And for greater particularity, reference in this Agreement to the Subordinate Loan, the Subordinate Indebtedness and the Subordinate Security includes all renewals, extensions, amendments, modifications and restatements thereof or thereto from time to time; and

D. The Subordinate Lender has agreed to subordinate and postpone the Subordinate Loan, the Subordinate Indebtedness and the Subordinate Security to and in favour of the Prior Lender, the Loan, the Prior Indebtedness and the Prior Security.

**NOW THEREFORE** for good and valuable consideration, including the sum of CAD TEN DOLLARS (CAD 10.00) now paid by the Prior Lender to the Subordinate Lender, the receipt and sufficiency of which is hereby acknowledged by the Subordinate Lender, the parties agree as follows:

- 1. **Covenants, Representations and Warranties of the Subordinate Lender.** The Subordinate Lender consents to the Prior Indebtedness and the Prior Security, and represents and warrants to the Prior Lender that:
- (a) the Subordinate Loan and the Subordinate Security are in good standing, in full force and effect, unamended, and the Borrower is not in default thereunder;
- (b) it holds no security of any kind against the Property other than the Subordinate Security;
- (c) it is the sole owner of the Subordinate Loan, Subordinate Indebtedness and the Subordinate Security, it has the full power, lawful authority and legal right to enter into this Agreement and this Agreement constitutes a valid and binding obligation of the Subordinate Lender enforceable against it in accordance with its terms;
- (d) the total amount owing to the Subordinate Lender under the Subordinate Indebtedness and Subordinate Security is Five Hundred Thousand (\$500,000) Dollars plus accrued and unpaid interest as of the date hereof, but the amount owing to the Subordinate Lender may increase in accordance with the terms of the Subordinate Indebtedness and the Subordinate Security;
- (e) the Subordinate Loan bears interest at twenty four (24%) percent per annum compounded and calculated monthly, not in advance; and
- (f) upon request by the Prior Lender from time to time, the Subordinate Lender shall provide the Prior Lender with copies of the Subordinate Security and/or a statement in detail of the Subordinate Indebtedness then outstanding.

Subordination and Postponement. The Subordinate Lender hereby unconditionally 2. subordinates and postpones the Subordinate Loan, the Subordinate Indebtedness and the Subordinate Security to the Prior Security and the Prior Indebtedness and agrees with the Prior Lender that the Prior Security shall be a first priority lien and charge against the Property for the full amount of the Prior Indebtedness in full priority to the Subordinate Security. The subordination and postponement of the Subordinate Loan, Subordinate Indebtedness and the Subordinate Security to the Prior Security and the Prior Indebtedness, shall include subordination of the Subordinate Loan and the Subordinate Indebtedness to the extent required to make the Prior Security and the Prior Indebtedness a first priority lien and charge against the Property. No discharge, release or waiver by the Prior Lender of any of the Prior Security against or in respect of the Property or any person(s), corporation(s) or entity(ies), or any amendment, renewal, extension, replacement, discharge, modification, supplement or restatement of any portion of the Prior Indebtedness and/or the Prior Security shall require notice to or the consent of the Subordinate Lender or otherwise affect the subordination and postponement of the Subordinate Security, the Subordinate Loan and the Subordinate Indebtedness hereby granted by the Subordinate Lender.

And without limiting the generality of the foregoing, whether or not the Borrower is now or hereafter in default of the Prior Security and the Prior Indebtedness and/or the Subordinate Security and the Subordinate Indebtedness, the Subordinate Lender hereby postpones and subordinates the Subordinate Security and the Subordinate Indebtedness, and all of its rights, powers and interests thereunder, to and in favour of the Prior Security and the Prior Indebtedness and the Prior Lender, with such postponement and subordination to be valid and effective regardless of the respective times of execution, delivery, registration, attachment, perfection, crystallization and/or enforceability of the Prior Security and the Prior Indebtedness and the Subordinate Security and the Subordinate Indebtedness and regardless of whether:

(a) any or all of the Prior Lender's advances are made prior to, or subsequent to, the date of registration of the Subordinate Security;

- (b) there is any outstanding default by the Borrower, the guarantor, the beneficial owner or any other party under the Prior Security and Prior Indebtedness before, at the time, or after any such advance(s) by the Prior Lender;
- (c) there is any outstanding default by the Borrower, the guarantor(s), the beneficial owner or any other party or parties under the Subordinate Security and the Subordinate Indebtedness before, at the time, or after any such advance(s) by the Subordinate Lender;
- (d) the Prior Lender has failed to register, maintain, renew or keep current any registration of or pertaining to the Prior Indebtedness and/or the Prior Security; and/or
- (e) any partial repayment is made from time to time by the Borrower or the beneficial owner and/or any guarantor of the Prior Indebtedness.

The Subordinate Lender hereby acknowledges and agrees that this Agreement shall not defer or otherwise affect the present or future rights and remedies of the Prior Lender with respect to the present or future indebtedness and other liabilities of the Borrower to the Prior Lender, or with respect to any securities which the Prior Lender now holds or may hereafter receive from the Borrower as collateral for the Prior Indebtedness.

The Subordinate Lender agrees to execute and deliver at its cost (which cost the Borrower agrees shall ultimately be recoverable by the Subordinate Lender from the Borrower pursuant to the terms of the Subordinate Security and the Subordinate Indebtedness), upon request by the Prior Lender, such further instruments and agreements and assurances as may reasonably be required by the Prior Lender in the circumstances in order to confirm and give effect to the provisions of this Agreement, and further, to register, record, amend, file or re-file notice of this Agreement and/or the subordination and postponement of the Subordinate Security in any office of public record as the Prior Lender may in its discretion consider necessary or desirable from time to time.

Payments. Until such time as the Loan and the Prior Indebtedness are indefeasibly repaid in full, 3. the Subordinate Lender agrees that: (i) all rents, revenue, income, cash flow and other proceeds arising from or relating to the Property (the "Rents"), and/or any proceeds of the Loan shall not be applied to any payment on account of the Subordinate Loan or the Subordinate Indebtedness, whether on account of principal, interest or otherwise; (ii) it shall not accept any payment on account of the Subordinate Loan and the Subordinate Indebtedness which the Subordinate Lender knows or reasonably ought to know are payments made from the Rents and/or any proceeds of the Loan, and if any such payments are received from the Rents or proceeds of the Loan, the Subordinate Lender shall be deemed to have received and be holding same in trust for the Prior Lender and shall immediately pay such amount to the Prior Lender; and (iii) it shall not increase the principal amount and/or the interest rate applicable to the Subordinate Loan and the Subordinate Indebtedness. The Prior Lender and the Subordinate Lender shall provide reasonable cooperation to each other following the giving of such notice of default to ensure that the provisions of this paragraph are complied with. Notwithstanding the foregoing and/or anything contained herein to the contrary, the Subordinate Lender shall be permitted to receive the prepayment of interest and regular monthly interest payments and other payments due under the Subordinate Indebtedness pursuant to the commitment letter dated the 25th day of October, 2021, issued by the Subordinate Lender to the Borrower in respect of the Subordinate Loan, until such time as the Subordinate Lender is in receipt of written notice from the Prior Lender of a default by the Borrower under the Prior Security, which default remains uncured.

4. <u>Standstill.</u> The Subordinate Lender hereby agrees that so long as any part of the Prior Indebtedness and the Prior Security is outstanding, the Subordinate Lender shall not take any Enforcement Action (as defined hereunder) under or in respect of the Subordinate Loan, Subordinate Indebtedness or the Subordinate Security with respect to all or any part of the Property or against the Borrower or against any guarantors or covenantors of the Prior Loan, namely 2752865 Ontario Limited without reasonable prior notice to and the written consent of the Prior Lender, which consent may be given or withheld by the Prior Lender in its sole discretion. Notwithstanding the foregoing and/or anything contained herein to the contrary, the Subordinate Lender shall be permitted to take any Enforcement Action under, or in respect of the Subordinate Loan and the Subordinate Security upon the expiry of ninety (90) days following the delivery of written notice by the Subordinate Lender to the Prior Lender of a default by the Borrower under the Subordinate Security. The Subordinate Lender shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security or any Enforcement Action taken by the Prior Lender or in respect of the Prior Security or Prior Indebtedness against all or any part of the Property or against the Borrower or against any guarantor or covenantor of the Subordinate Loan.

In this Agreement the term "**Enforcement Action**" means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, the appointment or obtaining of the appointment of a receiver, a manager, or a receiver/ manager of all or any part of the Property, or the appointment of any other person, corporation or entity having similar powers as the aforesaid, the attornment of Rents, the taking possession or control of all or any part of the Property or any other property or undertaking of the Borrower, the taking or commencement of any action or proceeding seeking payment of or recovery of all or any part of any indebtedness or damages in lieu thereof, the accepting of a transfer of any property in lieu of foreclosure, and/or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings.

5. <u>**Receivership.**</u> Notwithstanding anything contained herein, (i) the Subordinate Lender will not appoint or seek the appointment of a separate receiver or receiver-manager if the Prior Lender has already

appointed or had appointed a properly licensed receiver or receiver-manager, (ii) if a receiver or receivermanager (which receiver or receiver-manager must be properly licensed) is appointed by, or as a result of an application by, the Subordinate Lender prior to the Prior Lender appointing or having appointed a properly licensed receiver or receiver-manager then the Subordinate Lender will terminate or seek to terminate, as applicable, the appointment upon such receiver or receiver-manager being appointed, or as a result of an application, by the Prior Lender of a properly licensed receiver or receiver-manager notwithstanding the order in which such defaults may have occurred, and (iii) any receiver or receivermanager to be appointed by, or as a result of an application by, the Subordinate Lender must be acceptable to the Prior Lender in its sole discretion.

6. <u>Assignment by Subordinate Lender.</u> Except for any permitted Enforcement Action after expiration of the notice period described in section 5, the Subordinate Lender agrees that it shall not sell, transfer, assign, alienate or otherwise dispose of any interest in the Subordinate Loan, the Subordinate Indebtedness or the Subordinate Security to any person(s), corporation(s) or entity(ties) (hereinafter, an "Assignee") except in accordance with terms and conditions which are expressly subject to all of the terms of this Agreement. Concurrently with any such sale, transfer, assignment, alienation or other disposition from time to time, the Subordinate Lender shall cause each and every Assignee to enter into a subordination and standstill agreement with the Prior Lender on the same terms and conditions as this Agreement.

7. **Development of the Lands.** The Subordinate Lender hereby acknowledges and agrees, whether or not the Subordinate Loan, the Subordinate Indebtedness and/or the Subordinate Security are in default, without any conditions or impediments imposed on or claimed by the Subordinate Lender whatsoever and howsoever, and without payment of any additional monetary amount to the Subordinate Lender (but the Borrower agrees that all of the Subordinate Lender's costs shall ultimately be recoverable by the Subordinate Lender from the Borrower pursuant to the terms of the Subordinate Security and the Subordinate Indebtedness), that it will forthwith upon request by the Borrower (or by the Prior Lender as the case may be) execute all usual documentation required in connection with the development and servicing of the Lands and in connection with the registration of the Lands as a subdivision or condominium, as the case may be, including, without limitation, consents to the registration of the Lands with a Land Titles absolute title, postponements to easements and to subdivision, development and utility agreements, and to the granting of partial discharges of its security with respect to any land to be conveyed to any governmental authority as may be required by the terms of any applicable subdivision and development agreements.

8. **Notices from Subordinate Lender.** The Subordinate Lender shall give to the Prior Lender, contemporaneously with the giving thereof to the Borrower, copies of any notices given by it to the Borrower under the Subordinate Loan, including without limitation any notices of defaults, breaches or events of default or of events that with the giving of notice or the passage of time and failure to cure, would result in a default, breach or event of default under the Subordinate Loan.

9. <u>Entire Agreement.</u> This Agreement and all schedules thereto contain the whole of the agreement between the parties hereto and there are no collateral or precedent conditions, warranties, agreements, representations, promises, understandings or inducements, whether oral or written, that are not specifically set forth herein, and no modification, amendment or variation hereof shall be effective or binding on the parties hereto unless agreed to in writing by all of them.

10. **Paramountcy.** This Agreement constitutes the entire Agreement among the parties and supersedes all prior proposals and agreements, whether oral or written. In the event of any conflict, omission, inconsistency, ambiguity or difference between the provisions of this Agreement and the provisions of any of the Subordinate Security, the provisions of this Agreement shall govern and be paramount to the extent necessary to resolve such conflict or inconsistency so long as this Agreement is in force.

11. <u>No Waiver.</u> The waiver by any party of the breach of any term, covenant or condition herein contained shall not constitute a waiver of such term, covenant or condition, except in respect of the particular breach giving rise to such waiver. No term, covenant or condition of this Agreement is deemed to have been waived by any party hereto unless such waiver is in given in writing by that party.

12. <u>Severability.</u> All of the sections, paragraphs, sentences, clauses and parts of this Agreement are distinct and severable, and if any of the same shall be held illegal or void, the validity or legality of the remainder of this Agreement shall not be affected.

13. <u>Survival of Covenants and Warranties.</u> The covenants, warranties and representations of the Subordinate Lender contained in this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect for the benefit of the Prior Lender until the Loan has been repaid in full.

14. <u>**Governing Law.**</u> This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and the parties hereto irrevocably attorn to the jurisdiction of the courts of this Province sitting at Toronto, Ontario.

15. **Successors.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns including any successors by amalgamation and any appointed receivers or trustees in bankruptcy.

16. **Counterparts.** This Agreement may be executed in counterparts and all counterparts so executed will constitute one Agreement binding on the parties effective upon execution by all of the parties.

17. <u>Time Is of the Essence.</u> Time is of the essence of this Agreement and every part hereof.

15. <u>Delivery of information.</u> Upon request by the Prior Lender from time to time, the Subordinate Lender shall provide the Prior Lender with copies of the Subordinate Security and/or a statement in detail of the Subordinate Indebtedness then outstanding.

[remainder of this page intentionally left blank]

**IN WITNESS WHEREOF** the undersigned have executed this Agreement as of the date first above written.

### MARSHALLZEHR GROUP INC.

Per: Name: Title:	DocuSigned by:	
Per		

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

I/We have the authority to bind the Corporation.

### **OLYMPIA TRUST COMPANY**

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

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

Title:

I/We have the authority to bind the Corporation.

### BRIDLEPATH FINANCE INC.

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

Per:

Name: Title:

I/We have the authority to bind the Corporation.

#### 12252856 CANADA INC.

Per: \_\_\_\_\_\_ Name: Prem Kumar Yachamanani Title: President

I have the authority to bind the Corporation.

**IN WITNESS WHEREOF** the undersigned have executed this Agreement as of the date first above written.

### MARSHALLZEHR GROUP INC.

Per: Name: Title:	 	 	
Per:	 	 	

Name: Title:

I/We have the authority to bind the Corporation.

### **OLYMPIA TRUST COMPANY**

Per:	CV
Name:	Cora Dumais
Title:	Team Lead

Per: \_\_\_\_\_\_ Name:Samantha Johnson Title: Team Lead

I/We have the authority to bind the Corporation.

### BRIDLEPATH FINANCE INC.

Per:	
Name:	
Title:	

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

I/We have the authority to bind the Corporation.

#### 12252856 CANADA INC.

Per: \_\_\_\_\_\_ Name: Prem Kumar Yachamanani Title: President

I have the authority to bind the Corporation.

**IN WITNESS WHEREOF** the undersigned have executed this Agreement as of the date first above written.

### MARSHALLZEHR GROUP INC.

Per: Name: Title:	 	 	
Per: Name: Title:	 	 	

I/We have the authority to bind the Corporation.

### **OLYMPIA TRUST COMPANY**

Per: _	
Name	e:
Title:	

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

I/We have the authority to bind the Corporation.

BRIDLEPATH	FINANCE	INC.
BRIDLEPATH	4	m

Per:	mor
Name:	1.0
Title:	

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

I/We have the authority to bind the Corporation.

12252856 CANADA INC. P. 1 cchre Per: . Name: Prem Kumar Yachamanani

Title: President

I have the authority to bind the Corporation.

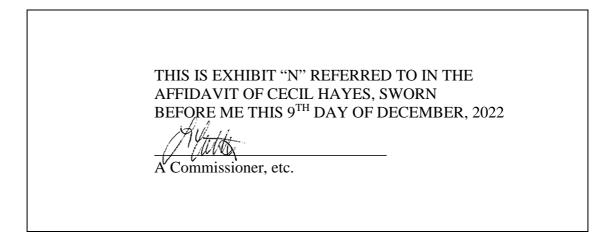
# SCHEDULE "A"

# LEGAL DESCRIPTION:

Firstly:	Part Lot 13 Plan 136 King; Part Lot 14 Plan 136 King as in R533264; City of Richmond Hill,
	being all of PIN 03196-0039 (LT);
Secondly:	Lot 15 Plan 136 King Except Part 10 Expropriation Plan B87881B; Richmond Hill,
	being all of PIN 03196-0038 (LT); and
Thirdly:	Lot 16 Plan 136 King Except Part 11 Expropriation Plan B87881B; Richmond Hill,
	being all of PIN 03196-0037 (LT).

# MUNICIPAL ADDRESS

201-235 King Road, Richmond Hill, Ontario



#### LRO # 65 Construction Lien

The applicant(s) hereby applies to the Land Registrar.

Propertie	Properties	
PIN	03196 - 0037 LT	
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL	
Address	235 KING RD RICHMOND HILL	
PIN	03196 - 0038 LT	
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL	
Address	227 KING RD RICHMOND HILL	
PIN	03196 - 0039 LT	
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL	
Address	201 KING ROAD RICHMOND HILL	

### Consideration

Consideration \$391,141.50

Claimant(s)		
Name	PRIME DESIGN BUILD CORPORATION	
Address for Service	c/o A G Professional Corporation	
	2a- 8100 Yonge Street	
	Thornhill, Ontario	
	L4J 6W6	
A person or persons w	ith authority to bind the corporation has/have consented to the registration of this document.	

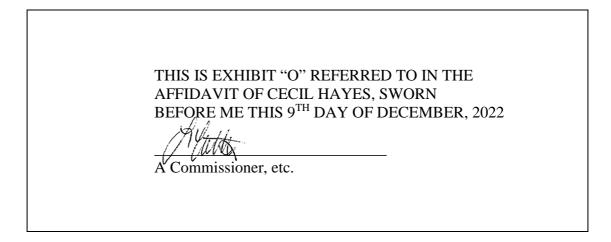
This document is not authorized under Power of Attorney by this party.

### Statements

Name and Address of Owner 12252856 Canada inc. 155 Commerce Valley Drive East, Markham, Ontario L3T 7T2 Name and address of person to whom lien claimant supplied services or materials Ali Mir 155 Commerce Valley Drive East, Markham, Ontario L3T 7T2 Time within which services or materials were supplied from 2021/12/10 to 2022/06/30 Short description of services or materials that have been supplied Pre construction Services Contract price or subcontract price 346142.92 plus hst Amount claimed as owing in respect of services or materials that have been supplied 391141.50

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				
Azin Ghorbankhani	8100 Yonge St., Unit 2A Thornhill L4J 6W6	acting for Applicant(s)	Signed	2022 08 29
Tel 905-707-5000				
Fax				
I have the authority to sign and registe	er the document on behalf of the Applicant(s).			
Submitted By				
AG PROFESSIONAL CORP	8100 Yonge St., Unit 2A Thornhill L4J 6W6			2022 08 29
Tel 905-707-5000				
Fax				
Fees/Taxes/Payment				
Statutory Registration Fee	\$66.30			
Total Paid	\$66.30			





Court File No.

# ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the Construction Act, R.S.O. 1990, c. C.30

BETWEEN:

(Court Seal)

### PRIME DESIGN BUILD CORPORATION

Plaintiff

and

12252856 CANADA INC., MARSHALLZEHR GROUP INC., CONSORTIA EQUITY CAPITAL LIMITED, OLYMPIA TRUST COMPANY, BRIDLEPATH FINANCE INC., MARILYN GOLDBERG, 12279266 CANADA INC. and TOP PRODUCER TEAM REALTY INC.

Defendants

# STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE. -2-

	-2-	
Date	Issued by	Local Registrar
	Address of court office:	5
TO:	12252856 Canada Inc. 155 Commerce Valley Drive East Markham, Ontario L3T 7T2	
AND TO:	Marshallzehr Group Inc. 412 Albert Street, Suite 100 Waterloo, Ontario N2L 3V3	
AND TO:	Consortia Equity Capital Limited 155 Commerce Valley Drive Markham, Ontario L3T 7T2	
AND TO:	Olympia Trust Company 520 - 3 Avenue SW, Suite 4000 Calgary, Alberta T2P 0R3	
AND TO:	Bridlepath Finance Inc. 1280 Finch Avenue West, 611 North York, Ontario M3J 3K6	
AND TO:	Marilyn Goldberg 33 Pinnacle Road Toronto, Ontario M2L 2V6	
AND TO:	12279266 Canada Inc. 155 Commerce Valley Drive East Markham, Ontario L3T 7T2	

AND TO: Top Producer Team Realty Inc. 104 Whitwell Drive Brampton, Ontario L6P 1L2 -4-

# CLAIM

- 1. The Plaintiff, Prime Design Build Corporation (the "**Plaintiff**"), claims:
  - (a) the sum of \$391,141.50, inclusive of HST, for breach of contract;
  - (b) in the alternative, payment of the sum of \$391,141.50 by the Defendant, 12252856 Canada Inc. ("1225") as restitution to the Plaintiff for the reasonable value of materials and services supplied by the Plaintiff to the properties, municipally described as 201 King Road, Richmond Hill, Ontario, L4E 2W2, 227 King Road, Richmond Hill, Ontario, L4E 2W2, and 235 King Road, Richmond Hill, Ontario, L4E 2W2 (collectively, the "Properties"), and legally described in Schedule "A" attached hereto, to the detriment of the Plaintiff and to the benefit of 1225 on the basis of *quantum meruit* and unjust enrichment;
  - (c) an Order requiring that, in default of payment of the said sum of \$391,141.50 inclusive of HST plus interest and costs, all the estate and interest of 1225 in the Properties be sold, and the proceeds applied toward payment of the Plaintiff's claim as aforesaid, pursuant to the provisions of the Construction Act, RSO 1990, c C.30, as amended (the "*Act*");
  - (d) an Order for a declaration that the Plaintiff has and is entitled to a lien on the Properties described below and in Schedule "A" attached hereto;
  - (e) a declaration that the Plaintiff is entitled to priority over the mortgages, or any advances thereof, of the Defendants, Marshallzehr Group Inc.

-5-

("Marshallzehr"), Consortia Equity Capital Limited ("Consortia"), Olympia Trust Company ("Olympia"), Bridlepath Finance Inc. ("Bridlepath"), Marilyn Goldberg ("Ms. Goldberg"), 12279266 Canada Inc. ("12279266") and Top Producer Team Realty Inc. ("Top Producer") (collectively, the "Mortgagees"), or alternatively, priority over the mortgages to the extent of any holdbacks 1225 failed to maintain, or in the further alternative priority over the mortgages to the extent that any portion of the mortgages advanced exceeded the actual value of the Properties at the time when the lien arose, or in the further alternative, priority over the mortgages to the extent of any unadvanced portions thereof;

- (f) a declaration that the Plaintiff is entitled to priority over all other conveyances, mortgages or other agreements affecting the ownership interest in the Properties;
- (g) prejudgment and postjudgment interest in accordance with the Agreement, hereinafter described;
- (h) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) the costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and

-6-

(k) such further and other Relief as to this Honourable Court may seem just.

### Parties

2. The Plaintiff is a corporation duly incorporated pursuant to the laws of Ontario. The Plaintiff carries on business as a construction manager.

3. The Defendant, 1225 is a corporation duly incorporated pursuant to the laws of Canada. At all material times, 1225 held an interest in the Properties and was a legal and or beneficial owner of the Properties, being the lands upon which an improvement was made and in respect of which the Plaintiff supplied the goods and services described below.

4. The Defendant, Marshallzehr is a corporation duly incorporated pursuant to the laws of Ontario. Marshallzehr has a registered mortgage on the Properties.

5. The Defendant, Consortia is a corporation duly incorporated pursuant to the laws of Ontario. Vector has a registered mortgage on the Properties.

6. The Defendant, Olympia is a corporation duly incorporated pursuant to the laws of Alberta. Olympia has a registered mortgage on the Properties.

7. The Defendant, Bridlepath is a corporation duly incorporated pursuant to the laws of Ontario. Vector has a registered mortgage on the Properties.

8. The Defendant, Ms. Goldberg is an individual residing in the City of Toronto, in the Province of Ontario. Ms. Goldberg has a registered mortgage on the Properties.

-7-

9. The Defendant, 12279266 is a corporation duly incorporated pursuant to the laws of Canada. Vector has a registered mortgage on the Properties.

10. The Defendant, Top Producer is a corporation duly incorporated pursuant to the laws of Ontario. Top Producer has an interest in the Properties.

11. The Defendants, or any one or more of them, are, and were at all material times:

- (a) persons and/or entities having an interest in the liened Properties, at whose request, and upon whose credit, or upon whose behalf, or with whose privity or consent or for whose direct benefit an improvement was made to the Properties described in the claim for lien of the Plaintiff; and
- (b) "Owners" as defined by the *Act*.

# The Agreement

12. On or about November 25, 2021, the Plaintiff entered into a written contract with1225 to manage the construction of the Properties (the "Agreement").

13. From November 25, 2021 until completion, the Plaintiff diligently performed preconstruction services pursuant to the Agreement, including but not limited to:

(a) Project management services;

- (b) Project coordination services;
- (c) Development management services;
- (d) Estimations; and

-8-

(e) Consulting services (collectively, the "**Work**").

14. The Work performed by the Plaintiff constitutes an improvement to the Properties.

# **Breach of Contract**

15. Notwithstanding the Plaintiff's supply of the Work pursuant to the terms of the Agreement with 1225, 1225 has refused, failed, and/or otherwise neglected to pay the amounts which remain outstanding in respect of the improvements and Work under the Agreement, being \$391,141.50 inclusive of HST.

16. Specifically, 1225 has either failed or refused to pay the following:

- (a) Invoice number: 22101-01 dated January 31, 2022 for \$11,352.70;
- (b) Invoice number: 22101-02PB dated March 3, 2022 for \$13,469.68;
- (c) Invoice number: 22101-03PB dated March 31, 2022 for \$39,257.56;
- (d) Invoice number: 22101-04PB dated April 30, 2022 for \$29,286.78;
- (e) Invoice number: 22101-05PB dated April 30, 2022 for \$247,978.50;
- (f) Invoice number: 22101-06PB dated May 31, 2022 for \$44,329.90; and
- (g) Invoice number: 22101-07PB dated July 7, 2022 for \$5,466.38 (collectively, the "**Invoices**").

17. By reason of supplying its Work as previously mentioned, the Plaintiff is entitled to a lien upon the Properties or interest of 1225 in the Properties for the total sum of the

Invoices, being \$391,141.50, inclusive of HST, plus the Plaintiff's costs of this action, pursuant to the provisions of the *Act*.

18. On August 29, 2022, the Plaintiff registered a lien in the Land Registry Office No. 65, as Instrument No. YR3470704, against the Properties, by electronic registration in the form attached as "Schedule B" (the "**Lien**").

19. 1225 was at all material times the "Owner" of the Properties within the meaning of the *Act*, at whose express or implied request and upon whose credit, or on whose behalf, or with whose privity or consent, or for whose direct benefit, the Plaintiff furnished its services to the Properties.

# **Unjust Enrichment**

20. In the alternative, the Plaintiff pleads that 1225 has been enriched whilst the Plaintiff has suffered a corresponding deprivation in the amount of approximately \$391,141.50 plus pre-judgment interest. There is no juristic reason for the enrichment of 1225 and the corresponding deprivation to the Plaintiff. 1225 received valuable services, which were provided by the Plaintiff, pursuant to the Agreement and the Invoices. The Work as per the Agreement and Invoices was accepted, used and enjoyed by 1225. Accordingly, it would be unfair for 1225 to retain the benefit of the Work provided by the Plaintiff whilst not paying for them.

21. The Plaintiff pleads and relies upon the doctrine of unjust enrichment and, in the further alternative, pleads that it is entitled to payment of its claim from 1225 on the basis of *quantum meruit*.

-10-

22. The Plaintiff proposes that this action be tried in the City of Newmarket, in the

Province of Ontario.

November 4, 2022

CAMBRIDGE LLP 333 Adelaide Street West 4th Floor Toronto, Ontario M5V 1R5

Ruzbeh Hosseini (LSO# 57692N) Tel: 647.430.5375 (Direct Line) rhosseini@cambridgellp.com N. Joan Kasozi (LSO# 70332Q) jkasozi@cambridgellp.com Darren Frank (LSO# 81700U) dfrank@cambridgellp.com

Tel: 416.477.7007 Fax: 289.812.7385

Lawyers for the Plaintiff Prime Design Build Corporation -11-

# SCHEDULE "A"

Legal Description of the Premises Upon Which the Lien is Claimed

PIN:	03196-0039 (LT)
Description:	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL
Address:	201 King Road, Richmond Hill, Ontario, L4E 2W2
PIN:	03196-0038 (LT)
Description:	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
Address:	227 King Road, Richmond Hill, Ontario, L4E 2W2
PIN:	03196-0037 (LT)
Description:	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
Address:	235 King Road, Richmond Hill, Ontario, L4E 2W2

-12-

# SCHEDULE "B"

#### Electronically issued / Délivré par voie électronique : 04-Nov-2022 Newmarket Superior Court of Justice / Cour supérieure de justice

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Propertie	s
PIN	03196 - 0037 LT
Description	LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL
Address	235 KING RD RICHMOND HILL
PIN	03196 - 0038 LT
Description	LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL
Address	227 KING RD RICHMOND HILL
PIN	03196 - 0039 LT
Description	PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL
Address	201 KING ROAD RICHMOND HILL

#### Consideration

Consideration \$391,141.50

# Claimant(s) Name PRIME DESIGN BUILD CORPORATION Address for Service c/o A G Professional Corporation 2a- 8100 Yonge Street Thornhill, Ontario L4J 6W6 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 12252856 Canada inc. 155 Commerce Valley Drive East, Markham, Ontario L3T 7T2 Name and address of person to whom lien claimant supplied services or materials Ali Mir 155 Commerce Valley Drive East, Markham, Ontario L3T 7T2 Time within which services or materials were supplied from 2021/12/10 to 2022/06/30 Short description of services or materials that have been supplied Pre construction Services Contract price or subcontract price 346142.92 plus hst Amount claimed as owing in respect of services or materials that have been supplied 391141.50

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				
Azin Ghorbankhani	8100 Yonge St., Unit 2A Thornhill L4J 6W6	acting for Applicant(s)	Signed	2022 08 29
Tel 905-707-5000				
Fax				
I have the authority to sign and	d register the document on behalf of the Applicant(s).			
Submitted By				
AG PROFESSIONAL CORP	8100 Yonge St., Unit 2A Thornhill L4J 6W6			2022 08 29
Tel 905-707-5000				
Fax				
Fees/Taxes/Payment				
Statutory Registration Fee	\$66.30			
Total Paid	\$66.30			

Electronically issued / Délivré par voie électronique : 04-Nov-2022 Newmarket Superior Court of Justice / Cour supérieure de Justice PRINTE DESIGN BUILD CORPORT IION Plaintiff

Court File No./N° du dossier du greffe:CV-22-00003551-0000

-and- 12252856 снічнин інс. ет аг. Defendants

Court File No.

# ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the Construction Act, R.S.O. 1990, c. C.30

PROCEEDING COMMENCED AT

# STATEMENT OF CLAIM

## **CAMBRIDGE LLP** 333 Adelaide Street West 4th Floor

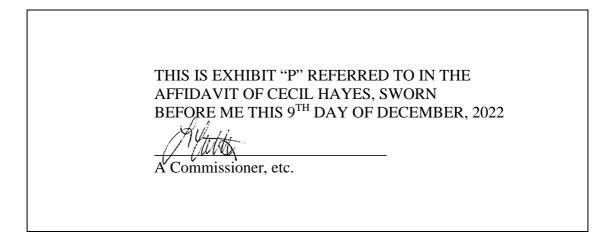
Toronto, Ontario M5V 1R5

## Ruzbeh Hosseini (LSO# 57692N) rhosseini@cambridgellp.com Tel: 647.430.5375 N. Joan Kasozi (LSO# 70332O)

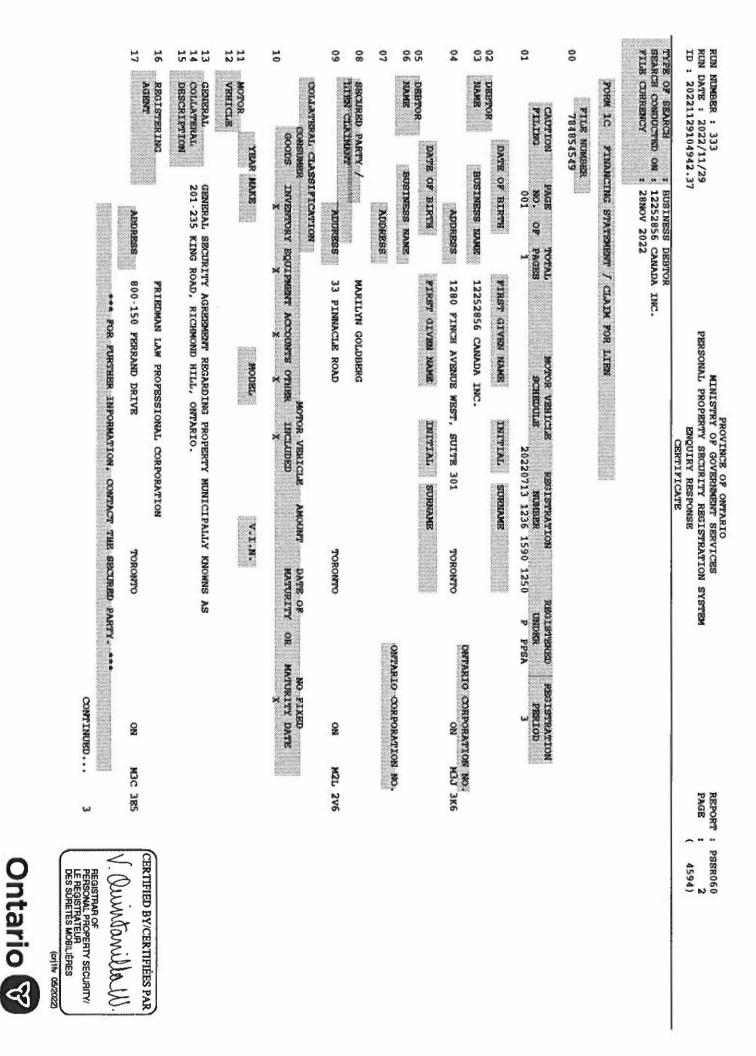
N. Joan Kasozi (LSO# 70332Q) jkasozi@cambridgellp.com Darren Frank (LSO# 81700U) dfrank@cambridgellp.com

Tel: 416.477.7007

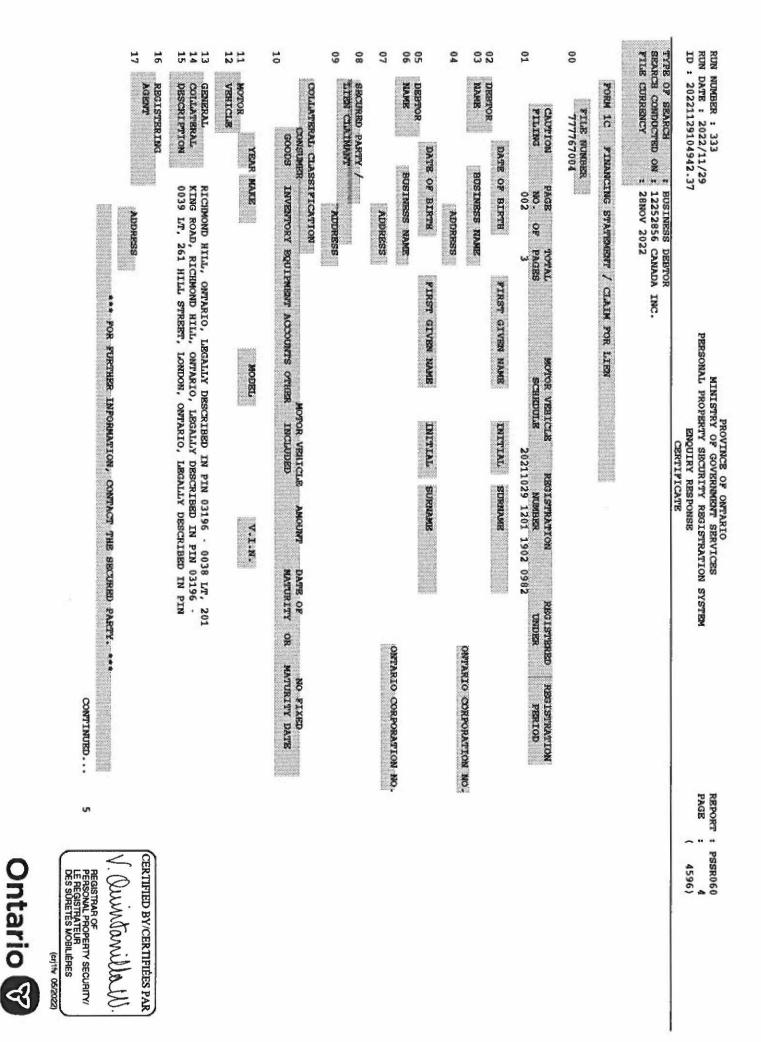
Lawyers for the Plaintiff Prime Design Build Corporation

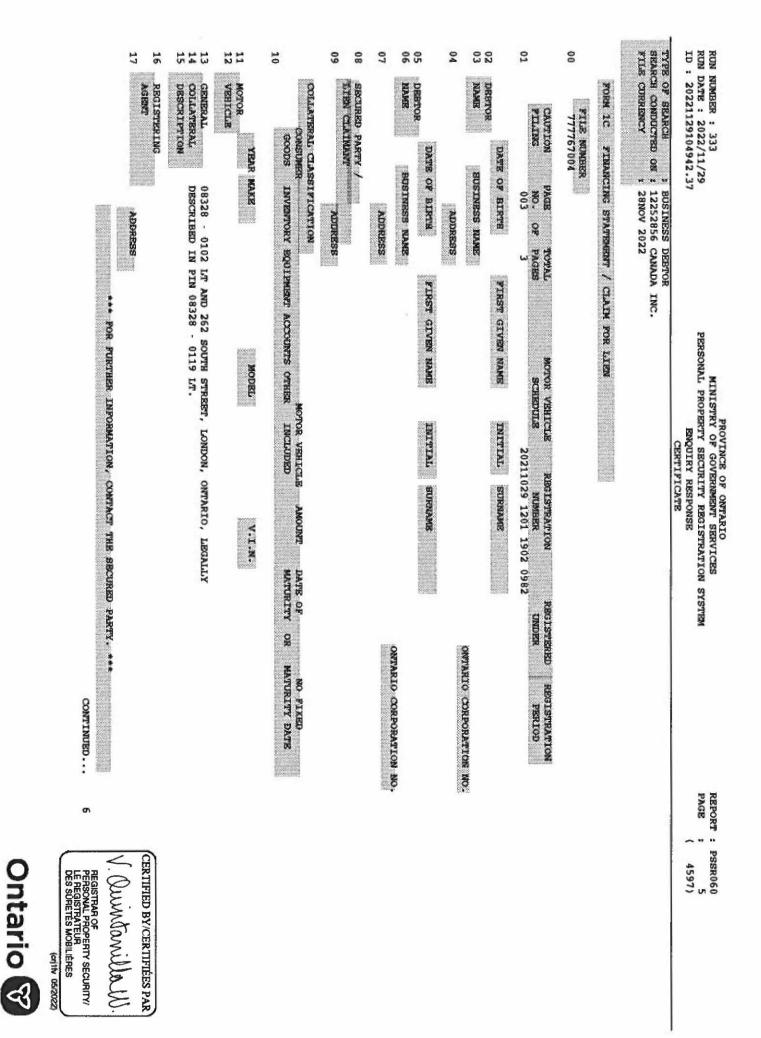


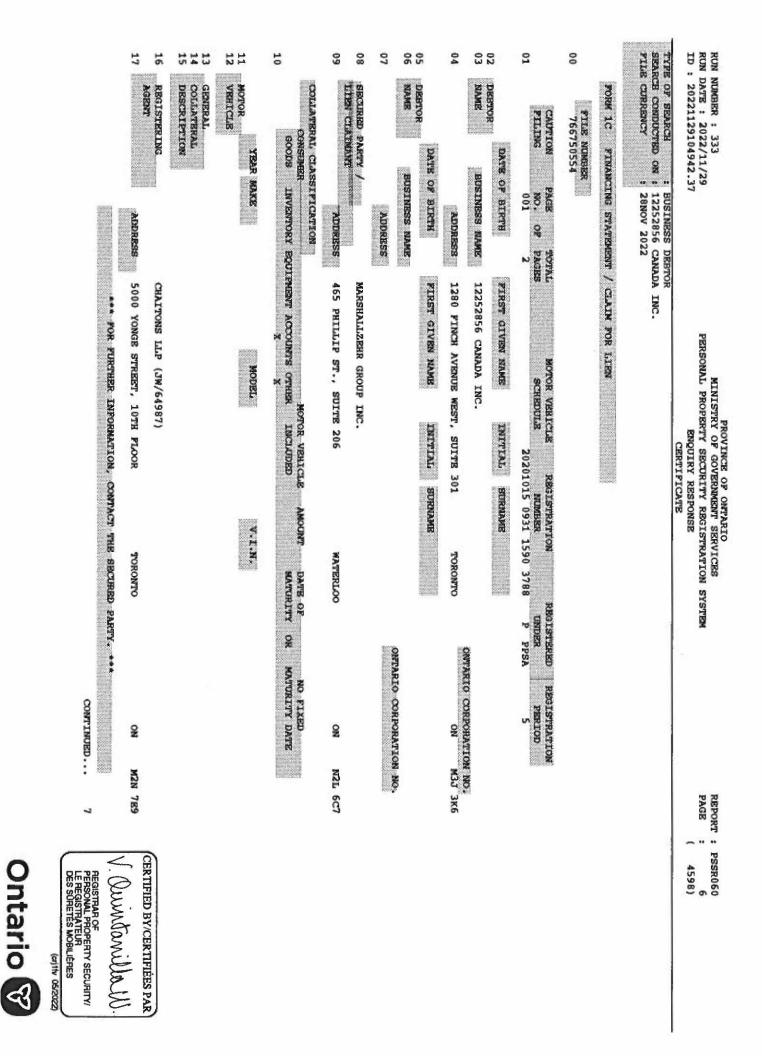
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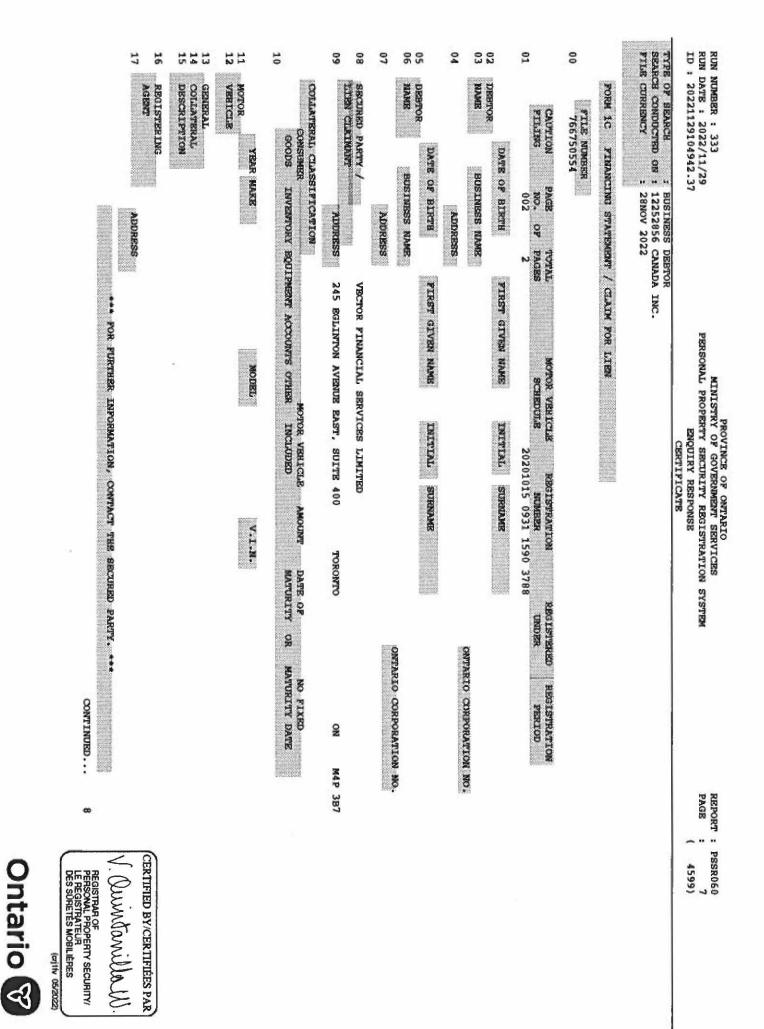


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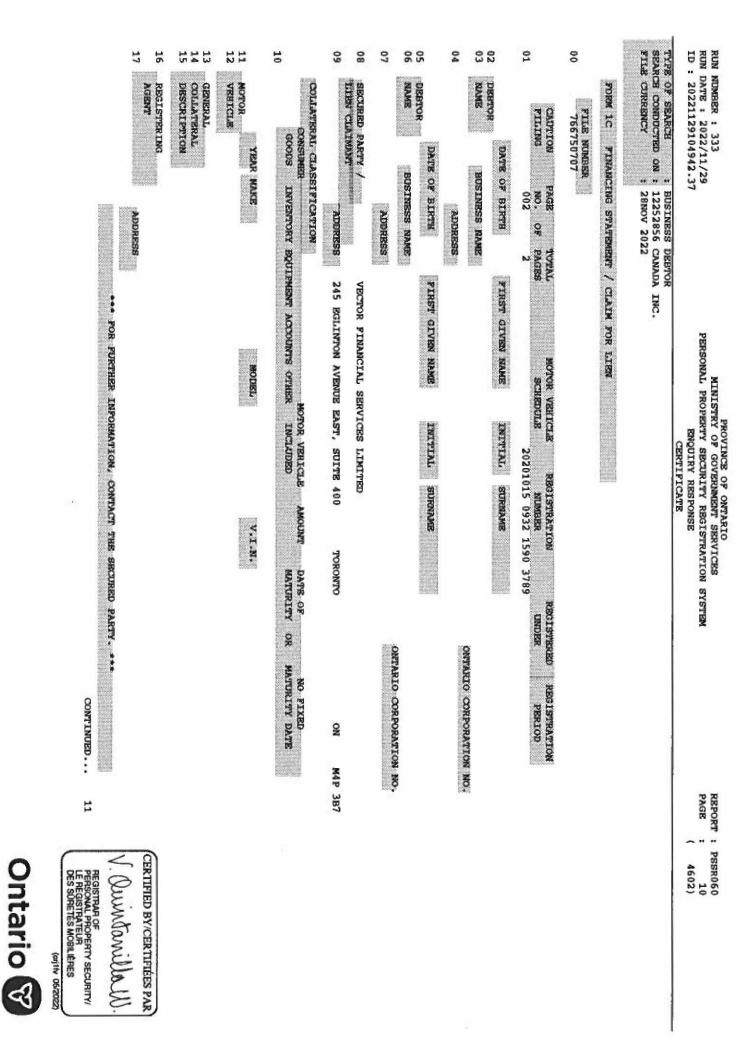






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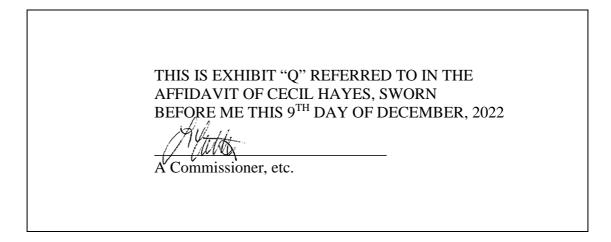
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6 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

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#### LRO # 65 Caution-Land

The applicant(s) hereby applies to the Land Registrar.

**Properties** PIN 03196 - 0039 LT Interest/Estate Fee Simple Description PT LT 13 PL 136 KING; PT LT 14 PL 136 KING AS IN R533264 ;; CITY OF RICHMOND HILL 201 KING ROAD Address **RICHMOND HILL** PIN 03196 - 0037 LT Interest/Estate Fee Simple LT 16 PL 136 KING EXCEPT PT 11 EXPROP PL B87881B ; RICHMOND HILL Description 235 KING RD Address **RICHMOND HILL** PIN 03196 - 0038 LT Interest/Estate Fee Simple Description LT 15 PL 136 KING EXCEPT PT 10 EXPROP PL B87881B ; RICHMOND HILL Address 227 KING RD **RICHMOND HILL** 

#### Consideration

Consideration \$230,000.00

#### Owner(s)

Name	12252856 CANADA INC.
Address for Service	155 Commerce Valley Drive East
	Markham, Ontario
	L3T 7T2

Cautioner(s)		Capacity	Share
Name	TOP PRODUCER TEAM REALTY INC.		
Address for Service	c/o Moore Law 57 Mill Street North Suite 307 Brampton, Ontario L6X 1S9		

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

The applicant is entitled to register a caution to prevent any dealing with the land without the applicant's consent. The nature of the interest is The Cautioner has an unregistered Mortgage on the property. This caution is registered based on a proprietary interest and the Cautioner has the right to receive a transfer of lands.

The Land Registrar is authorized to delete this caution 60 days from the date of registration.

Signed By				
Fyler Hugh Mc Lean	42A Lakeshore Road East Mississauga L5G 1C8	acting for Cautioner(s)	First Signed	2022 09 23
Fel 905-271-1010				
Fax 905-274-8857				
Гyler Hugh Mc Lean	42A Lakeshore Road East Mississauga L5G 1C8	acting for Cautioner(s)	Last Signed	2022 11 16
Fel 905-271-1010				
Fax 905-274-8857				

I have the authority to sign and register the document on behalf of the Cautioner(s).

#### Submitted By

MCLEAN & MCLEAN REGISTRATIONS INC.

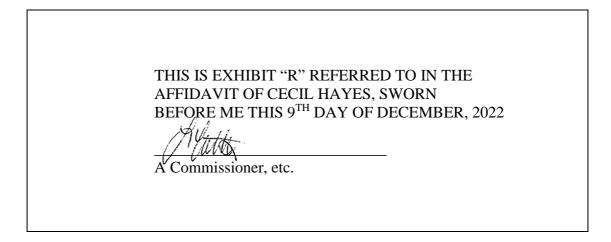
42A Lakeshore Road East Mississauga L5G 1C8

#### LRO # 65 Caution-Land

The applicant(s) hereby applies to the Land Registrar.

#### Fees/Taxes/Payment

Statutory Registration Fee Total Paid \$66.30 \$66.30





Electronically issued Délivré par voie électronique : 13-May-2022 Toronto

BETWEEN:

ONTARIO SUPERIOR COURT OF JUSTICE

#### TOP PRODUCER TEAM REALTY INC.

Plaintiff

and

### CITY CORE CONSORTIA LIMITED, 12252856 CANADA INC., PREMKUMAR YACHMANANI, JACK PONG, and WILLIAM BROOK ASKIN aka BROOKE ASKIN

Defendants

#### STATEMENT OF CLAIM

#### TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$3,500.00 for costs, within the time for serving and filing the Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$2,500.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: \_\_\_\_\_

Issued by:

Local Registrar

Ontario Superior Court of Justice 393 University Avenue Toronto, ON M5G 1E6

- TO: CITY CORE CONSORTIA LIMITED 1280 Finch Avenue West, Suite 301 Toronto, ON M3J 3K6
- TO: 12252856 CANADA INC. 155 Commerce Valley Drive East Markham, ON L3T 7T2
- TO: PREMKUMAR YACHMANANI 1280 Finch Avenue West, Suite 301 Toronto, ON M3J 3K6
- TO: JACK PONG 1280 Finch Avenue West, Suite 301 Toronto, ON M3J 3K6
- TO: WILLIAM BROOK ASKIN aka BROOKE ASKIN Email: <u>baskin97@gmail.com</u>

#### CLAIM

- The Plaintiff, Top Producer Team Realty Inc. ("TPT") claims as against the Defendants, City Core Consortia Limited ("CCCL"), 12252856 Canada Inc. ("122"), Premkumar Yachmanani ("Yachmanani"), Jack Pong ("Pong"), and William Brook Askin aka Brooke Askin ("Askin"):
  - a. An order for a declaration that the Defendants, CCCL and 122 are in breach of the agreement between the parties, dated March 7, 2021 (the "**Agreement**").
  - b. Specific performance of the Agreement;
  - c. In the alternative to specific performance, damages in an amount to be particularized prior to trial for breach of the Exclusivity Clause (as defined below), together with H.S.T.;
  - d. Liquidated damages in the amount of \$200,000.00 for a loan advanced under the Agreement;
  - In the alternative, liquidated damages in the amount of \$200,000.00 as against
     Yachmanani, Pong, and Askin for breach of contract, fraud, conversion, and
     misappropriation;
  - f. Liquidated damages for return of investment in the amount of \$30,000.00 in accordance with the terms of the Agreement;
  - g. Pre-judgment and post-judgment interest of \$2,500.00 per month from July 2021 in accordance with the terms of the Agreement;
  - h. A declaration that TPT is entitled to register a charge on the property municipally known as 201, 227, 235 King Road, Richmond Hill, Ontario (the "Richmond Hill Property") in accordance with the terms of the Agreement;
  - i. Leave to register a certificate of pending litigation on the Richmond Hill Property, more particularly described at Schedule "A";
  - j. A declaration that,

- i. the business and affairs of the Defendants, CCCL and 1222, have been and are being carried on in a manner; and
- ii. the Defendants, Yachmanani and Pong, have carried out and exercised their powers as officers, directors, and shareholders in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of TPT as a creditor of CCCL and 1222, contrary to section 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA");
- k. An order for remedy of the oppressive conduct of the Defendants;
- A declaration that that any judgment survives the present or future bankruptcy of Yachmanani, Pong, and Askin;
- m. Costs of this action, together with H.S.T; and
- n. Such further and other relief as this Honourable Court may deem just.

#### The Parties:

- 2. The Plaintiff, TPT, is a real estate brokerage located in Brampton, Ontario. Amandeep Dhillon ("Dhillon"), Amandeep Warraich ("Warraich"), and Hassan Lakhani ("Lakhani") are the directors of TPT. Dhillon is the broker of record for TPT and Lakhani is a real estate broker with TPT.
- The Defendant, CCCL, is a company that specializes in the construction and development of real estate developments in the Great Toronto Area. CCCL's head office is located in Woodbridge, Ontario.
- 4. The Defendant, 122, is a corporation incorporated pursuant to the laws of Ontario.

- 5. The Defendant, Yachmanani, is an individual residing in Ontario. At all materials times Yachmanani held himself as an officer and director of CCCL and 122.
- 6. The Defendant, Pong, is an individual residing in Ontario. At all materials times Pong held himself as an officer and director of CCCL and 122.
- 7. The Defendant, Askin, is an individual residing in Ontario.

#### Agreement between the Parties:

- In or about early-2021, Yachmanani and Pong, on behalf of CCCL and 122, approached TPT seeking an investment into real estate development projects being completed by CCCL and 122. The development projects (the "Projects") were as follows:
  - a. 122 was the owner and developer of 201, 227, 235 King Road, Richmond Hill,
     Ontario (the "Richmond Hill Property"), at which it was building 178 stacked townhome units.
  - b. CCCL was under contract to develop 1137 residential units on Highway 7, East of Ninth Line, Markham, Ontario (the "Markham Property").
- 9. Specifically, CCCL and 122 requested a loan of \$200,000.00 from TPT, in exchange for which TPT would receive the right to act as the exclusive listing agent to sell fifty (50) units at either the Richmond Hill Property or the Markham Property. TPT was also advised the \$200,000.00 loan would be repaid within four (4) months and would receive a \$30,000.00 return on investment for the loan. Finally, the \$200,000.00 loan would be secured by a mortgaged on the Richmond Hill Property.

- 10. TPT was prepared to loan the amount requested on the terms proposed and on March 7, 2021, CCCL, 122 and TPT entered into the Agreement, which contained the following terms, among others:
  - a. TPT would loan the amount of \$200,000.00 to 122, which would be paid directly into 122's bank account (the "Loan").
  - b. The Loan would be used by CCCL and 122 to fund the development of the Richmond Hill Property.
  - c. The Loan would be for a period of four (4) months, after which CCCL and 122 would return the Loan together with a return of investment in the amount of \$30,000.00 (the "ROI").
  - In the event the Loan was not repaid, together with the ROPI, in four (4) months,
     TPT would receive interest of \$2,500.00 per month until the Loan and ROI were paid in full (the "Interest").
  - e. 122 would provide a "secured last charge" on the Richmond Hill Property in the amount of \$200,000.00 (the "Charge"), which would be discharged when the Loan was repaid.
  - f. TPT would receive "commission exclusivity" to sell fifty (50) available units at the Richmond Hill Property or the Markham Property for a period of forty-five (45) days upon receipt of a complete sales package for the properties (the "Exclusivity Clause"). The Exclusivity Clause further provided that in the event TPT sold all fifty (50) units within the forty-five (45) day exclusivity period then it would receive a further "commission exclusivity" to sell an additional fifty (50) units for another forty-five (45) days. This would continue until TPT had "commission exclusivity" for up to 200 units for six (6) months at both the Richmond Hill Property and the Markham Property. TPT would be entitled to 3% commissions, plus HST, for each unit sold under the Exclusivity Clause.

- g. The Agreement, including the Exclusivity Clause, would automatically terminate after the initial forty-five (45) day exclusivity period unless TPT sold fifty (50) units. Upon automatic termination CCCL and 122 would have to pay to TPT the Loan and the ROI.
- h. Askin would provide a personal guarantee to TPT for the Loan.
- 11. Yachmanani signed the Agreement on behalf of CCCL and 122. Askin signed the Agreement as per his personal guarantee. Dhillon, Warraich, and Lakhani all signed the Agreement on behalf of TPT.
- 12. On March 9, 2021, TPT deposited the sum of \$200,000.00 in to 122's bank account as per the terms of the Agreement.
- 13. On March 9, 2021, Askin sent an email to Lakhani confirming that 122 would be registering the Charge as per the Agreement.

#### Breach of the Agreement by CCCL and 122:

- 14. Despite complying with its obligations under the Agreement, TPT was not given exclusive rights to sell units at either the Richmond Hill Property or the Markham Property. Furthermore, 122 did not register the Charge on the Richmond Hill Property as security for the Loan.
- 15. In July 2021, and upon the conclusion of the four (4) month repayment period, TPT began making inquiries of CCCL and 122 for return of the Loan and the ROI.

- 16. Initially, Pong, on behalf of CCCL and 122, advised that new financing was being arranged and payment would be made to TPT in short course. When payment was not forthcoming, Pong the denied ever receiving the funds for the Loan from TPT. Pong advised that the funds for the Loan were taken by Askin and TPT had to recover those funds from Askin himself.
- 17. In November 2021, TPT gave notice to CCCL and 122 that if payment was not received by November 10, 2021, legal action would be taken. None of the Defendants responded to this notice.
- 18. Despite repeated requests, the Defendants have not repaid the Loan, paid the ROI, or the Interest. Furthermore, 122 has not registered the Charge on the Richmond Hill Property. Finally, CCCL and 122 have not complied with the Exclusivity Clause.

#### **Claim for Specific Performance:**

19. CCCL and 122 are in breach of the terms of the Agreement as follows:

- a. They have not provided TPT with the rights under the Exclusivity Clause;
- b. They have not returned the Loan;
- c. 122 has not registered the Charge on the Richmond Hill Property;
- d. They have not repaid the ROI; and
- e. They have not paid the Interest on the Loan.
- 20. To remedy the breach of the Agreement, TPTT seeks an order for specific performance of the contract. In particular, TPT seeks specific relief in accordance with the Exclusivity Clause.

- 21. Furthermore, TPT seeks leave to register a charge in the amount of \$200,000.00 on the Richmond Hill Property in accordance with the Charge under the Agreement.
- 22. In the alternative, TPT seeks an order for damages equal to the amount of the commissions it would have earned under the Exclusivity Agreement, together with H.S.T.

#### **Oppression Claim:**

- 23. TPT states that it is a creditor of CCCL and 112, and is, therefore, a complainant under section 248 of the OBCA. TPT states it is entitled to a remedy to correct the oppressive conduct of CCCL, 122, Yachmanani, and Pong.
- 24. TPT states that Yachmanani and Pong conducted the affairs of CCCL and 122 in a manner that is unfairly prejudicial to or that unfairly disregards the interests of TPT. TPT states that in accordance with the terms of the Agreement it had a reasonable expectation that it would be afforded the rights under the Exclusivity Clause and would be provided security with the Charge. TPT states that its reasonable expectations were unfairly disregarded when the Defendants engaged in certain conduct, including, but not limited to,
  - a. Using the Loan for purposes other than development of the Projects, including for the personal benefit of Yachmanani, Pong, and/or Askin.
  - b. Refusing to keep TPT apprised of the progress of the Projects;
  - c. Refusing to honour the Exclusivity Clause in the Agreement; and
  - d. Failing to provide TPT security for the Loan by registering the Charge.
- 25. Full particulars of the oppressive conduct are in the exclusive knowledge of the Defendants and will be particularized prior to, or at, trial.

#### Fraudulent Misrepresentation by Yachmanani, Pong, and Askin:

- 26. TPT states that it was induced to enter into the Agreement by the misrepresentations made
  - by Yachmanani, Pong, and Askin, which included:
    - a. The assurance that the Loan would be used by 122 and CCCL for the Projects;
    - b. The assurance that the Loan would be secured by the Charge and Askin's personal guarantee;
    - c. The assurance that TPT would be afforded the rights set out in the Exclusivity Clause; and
    - d. The assurance that TPT would be repaid the Loan, with the ROI, and Interest.
- 27. TPT states that the above misrepresentations were known to be false, or were made with reckless disregard for the truth, by Yachmanani, Pong, and Askin. TPT states the misrepresentations were made to induce TPT into providing the Loan, which was used for purposes other than set out in the Agreement. TPT states it suffered a loss of the sum of \$200,000.00 because of these misrepresentations, which were false, and fraudulently made.
- 28. As a result of the fraudulent misrepresentations, TPT seeks an order that any judgment against Yachmanani, Pong, and/or Askin survives the present or future bankruptcy of any of them.

#### **Unjust Enrichment:**

29. TPT states that 122, or in addition or in the alternative, all of the Defendants, were unjustly enriched by receipt of the \$200,000.00 from TPT. TPT states that as a result of the breach of the Agreement, there was no juristic reason for the Defendants' enrichment, which was received to TPT's detriment.

30. As remedy for the unjust enrichment, TPT seeks an order for a constructive trust in the title of either the Richmond Hill Property or the Markham Property.

#### Leave to Register a Certificate of Pending Litigation:

31. TPT requires a certificate of pending litigation to be registered against the Richmond Hill Property or the Markham Property either pursuant to the terms of the Agreement or as a result of the equitable remedies of constructive trust.

#### General:

- 32. TPT pleads and relies on:
  - a. Rule 42 of the Rules of Civil Procedure;
  - b. Sections 96, 97, 99, 100, and 103 of the Courts of Justice Act, R.S.O. 1990, c. C.43;
  - c. the Ontario *Business Corporations Act*, R.S.O 1990, c. B.16, and in particular sections 245 and 248; and
  - d. Sections 4 and 5 of the *Real Properties Limitations Act,* RSO 1990, c L.15.

Date: May 13, 2022

MOORE LAW PROFESSIONAL CORPORATION 57 Mill Street North Suite 307 Brampton, ON L6X 1S9

#### Evan Moore (56617T)

Tel: (647) 800-9770 Direct: (647) 800-9780 emoore@moorelawyers.ca

Lawyers for the Plaintiff, Top Producer Team Realty Inc.

# Plaintiff **TOP PRODUCER TEAM REALTY INC.**

and

CITY CORE CONSORTIA LIMITED, ET AL. Defendants

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

**MOORE LAW PROFESSIONAL CORPORATION** 

Brampton, ON L6X 1S9 Suite 307 57 Mill Street North

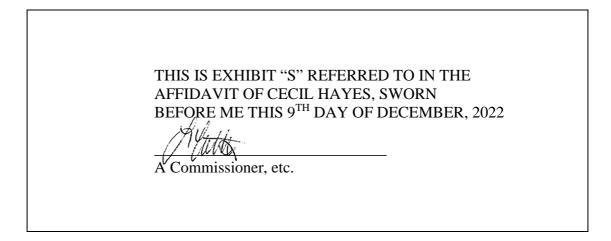
EVAN MOORE | LSO 55617T

Direct: (647) 800-9780 Tel: (647) 800-9770

emoore@moorelawyers.ca

Top Producer Team Realty Inc.

Lawyers for the Plaintiff,



## Chaitons

REPLY TO: FILE NO.: DIRECT: FAX: EMAIL: HARVEY CHAITON 64987 416-218-1129 416-218-1849 harvey@chaitons.com

#### PRIVATE & CONFIDENTIAL

April 9, 2021

#### VIA E-MAIL, REGISTERED AND REGULAR MAIL

12252856 Canada Inc. 1280 Finch Avenue West, Suite 301 Toronto, ON M3J 3K6

#### Re: Indebtedness of 12252856 Canada Inc. (the "Borrower") to MarshallZehr Group Inc. ("MZG") and Vector Financial Services Limited (collectively, the "Lenders")

Dear Sirs,

We are the lawyers for MZG. MZG is the mortgage administrator with respect to the advances made by the Lenders to the Borrower pursuant to the commitment letter dated August 18, 2020, as amended on October 13, 2020 (the "**Commitment Letter**").

We are advised by MZG that the Borrower is indebted to the Lenders in the amount of \$18,211,857.23 for principal and interest (excluding fees and costs) as of April 9, 2021 under the Commitment Letter, which is broken down as follows:

<u>Loan Type</u>	<b>Principal</b>	Interest
Tranche A	\$12,000,000	\$125,650.21
Tranche B	<u>\$ 6,000,000</u>	<u>\$ 86,207.02</u>
	\$18,000,000	\$211,857.23

We are further advised by MZG that the Borrower has failed to pay interest in the amount of \$164,072.81 that was due under the Commitment Letter on April 1, 2021. The non-payment of interest constitutes an Event of Default under the Commitment Letter, entitling the Lenders to declare the entire outstanding amount owing thereunder to be immediately due and payable.

The Borrower's indebtedness to the Lenders is secured by, *inter alia*, a Charge/Mortgage in the principal amount of \$20.0 million granted in favour of the Lenders and registered on lands municipally known as 201-235 King Road, Richmond Hill, ON as instrument number YR3157405, and a General Security Agreement dated October 20, 2020 (collectively, the "**Security**").

On behalf of MZG, we hereby demand payment of the Borrower's indebtedness to the Lenders. Unless payment of the amount set out above, together with additional interest accrued and fees and costs incurred to the date of payment are paid forthwith, the Lenders shall take such steps as they deem necessary to recover payment of the Borrower's indebtedness in full, without further demand upon or notice to you.

Enclosed please find the Lenders' Notice of Intention to Enforce Security, which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Govern yourselves accordingly.

Yours truly, CHAITONS LLP

Haven Chalon

Harvey Chaiton PARTNER Encl.

Cc: MarshallZehr Group Inc. 2752865 Ontario Limited

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#### NOTICE OF INTENTION TO ENFORCE A SECURITY (given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: 12252856 Canada Inc., an insolvent person

Take notice that:

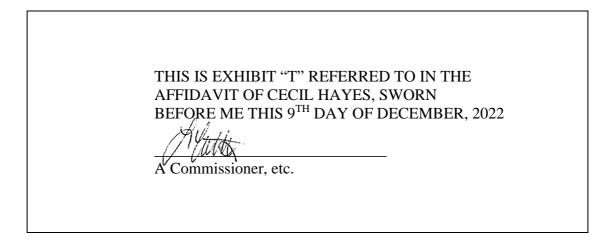
- 1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 12252856 Canada Inc.
- 2. The security that is to be enforced includes, *inter alia*, a Charge/Mortgage in the principal amount of \$20.0 million registered on lands municipally known as 201-235 King Road, Richmond Hill, ON as instrument number YR3157405, and a General Security Agreement dated October 20, 2020 (collectively, the "Security").
- The total amount of indebtedness secured by the Security as at the close of business on April 9, 2021 is \$18,211,857.23 inclusive of principal and interest (excluding fees and costs).
- 4. The secured creditor will not have the right to enforce the 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 Toronto, this 9th day of April, 2021.

MARSHALLZEHR GROUP INC., by its lawyers, Chaitons LLP

Haven Challon

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



### FORBEARANCE AGREEMENT

**THIS AGREEMENT** is made as of the 22<sup>nd</sup> day of April, 2021,

### **BETWEEN:**

### MARSHALLZEHR GROUP INC. ("MZG")

- and -

### 12252856 CANADA INC. (the "Borrower")

- and -

### 2752865 ONTARIO LIMITED (the "Guarantor")

### **RECITALS:**

- A. Pursuant to a commitment lender dated August 18, 2020, as amended (the "**Commitment** Letter"), MZG and Vector Financial Services Limited (together with such other parties that may be lenders under the Commitment Letter, the "Lenders") advanced a loan in the amount of \$18.0 million to the Borrower (the "Loan"), having a Loan maturity date of December 1, 2021.
- B. The Borrower and the Guarantor have executed and delivered to the Lenders the agreements described in **Schedule** "A" attached hereto as security for the Loan and other obligations owed by the Borrower and the Guarantor to the Lenders (collectively, the "Security").
- C. The Lenders appointed MZG as the mortgage administrator (the "Administrator") with respect to the Loan and have authorized the Administrator to, among other things, exercise all of the powers and rights of the Lenders under the Commitment Letter and the Security.
- D. The Borrower is in default of its obligations to the Lenders under the Commitment Letter and the Security.
- E. By letters respectively dated April 9, 2021 and April 19, 2021, the Lenders demanded payment of the Borrower's and the Guarantor's indebtedness, liabilities and obligations to the Lenders and issued Notices of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") to the Borrower and the Guarantor.

At the request of the Borrower and the Guarantor, the Lenders have agreed to forbear from F. enforcing the Security, subject to and in accordance with the terms of this Forbearance Agreement (the "Agreement").

NOW THEREFORE THIS AGREEMENT WITNESSETH that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties agree as follows:

### **INTERPRETATION**

- Definitions. In this Agreement, unless the context otherwise requires, all capitalized terms 1.1 defined in the Commitment Letter and the Security and not otherwise defined herein shall have the meanings ascribed to such terms in the Commitment Letter and the Security, as applicable.
- Gender and Number. Words importing the singular include the plural and vice versa and 1.2 words importing gender include all genders.
- Time. Time is of the essence in the performance of the Borrower's and the Guarantor's 1.3 obligations.
- Severability. Each of the provisions contained in this Agreement is distinct and severable, 1.4 and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.
- Headings. The division of this Agreement into articles, sections and clauses, and the 1.5 insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- Entire Agreement. This Agreement, the Commitment Letter and the Security together 1.6 with the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understanding or other agreements, oral or written, express, implied or collateral between the parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.
- Governing Law. This Agreement shall be construed in accordance with the laws of the 1.7 Province of Ontario and the laws of Canada applicable therein.
- Conflicts. If there is any inconsistency or conflict between the terms of this Agreement 1.8 and the terms of the Commitment Letter and the Security or any other agreement executed

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in connection therewith or herewith, the provisions of this Agreement shall prevail to the extent of the inconsistency.

### **ACKNOWLEDGEMENTS**

- 2.1 **Recitals.** The parties hereto acknowledge and agree that each of the foregoing recitals is true and accurate both in substance and in fact.
- 2.2 Indebtedness. The Borrower acknowledges that as of April 9, 2021, the amount owing to the Lenders under the Commitment Letter and secured by the Security is \$18,211,857.23 for principal and interest. The amount of \$18,211,857.23, together with all additional accrued interest, fees, costs, and other amounts payable under the Commitment Letter and the Security, is referred to herein as the "Indebtedness". The Borrower confirms that the Indebtedness is unconditionally owing to the Lenders, they do not dispute that its is liable to pay the Indebtedness to the Lenders on any ground whatsoever, they have no claim, demand, setoff or counterclaim against the Lenders on any basis whatsoever, and there is no matter, fact or thing which may be asserted by it in extinction or diminution of the Indebtedness or result in any bar to or delay in the recovery thereof. If there are any claims for setoff, counterclaim or damages, they are hereby expressly released and discharged.
- 2.3 **Default**. The Borrower acknowledges and agrees that it is in default of its obligations contained in the Commitment Letter and the Security, including without limitation by reason of their non-payment of the Indebtedness pursuant to the Borrower Demand (as such term is defined below).
- 2.4 **The Borrower**. The Borrower acknowledges and agrees that the Commitment Letter and the Security now held by the Lenders for payment and performance of the Indebtedness have not been released, waived or varied, and are valid, binding and enforceable against them in accordance with their written terms.
- 2.5 **Guarantor**. The Guarantor confirms that it has guaranteed the payment and performance of the Indebtedness and obligations owing by the Borrower to the Lenders in accordance with the Guarantee (as defined in Schedule "A"). The Guarantor does not dispute its liability to the Lenders under the Guarantee on any basis whatsoever and confirms that it has no claim for setoff, counterclaim or damages on any basis whatsoever against the Lenders. If there are any claims, they are hereby expressly released and discharged. The Guarantor confirms that the Guarantee has not been released, waived or varied, that it is binding upon it and that it is valid and enforceable against it in accordance with its written terms.
- 2.6 Lenders' Rights. Each of the Borrower and the Guarantor acknowledges, confirms and agrees that the Administrator, on behalf of the Lenders, is entitled to exercise the Lenders rights and remedies under the Commitment Letter and the Security, at law and in equity. Each of the Borrower and the Guarantor further acknowledges and agrees that except as provided in this Agreement, the Administrator and the Lenders (by themselves or through their respective employees or agents) have not made any promises, or taken any action or omitted to take any action which would constitute a waiver of their right to take any

enforcement action in connection with the enforcement of the Commitment Letter and the Security, or which would estop them from so doing and that no statement, representation, promise, act or omission by the Administrator and the Lenders or their respective employees or agents shall create such a waiver or estoppel. Each of the Borrower and the Guarantor acknowledges and agrees that by entering into this Agreement, the Administrator and the Lenders, except as provided in this Agreement, have not waived any of their rights under any of the Commitment Letter and the Security, including without limitation the Lenders' right to take any enforcement action in connection with the enforcement of the Commitment Letter and the Security.

2.7 **Demands and BIA Notices**. The Borrower acknowledge receipt of a demand letter sent by the Administrator dated April 9, 2021 (the "**Borrower Demand**") wherein the Lenders demanded immediate payment of the Borrower's indebtedness, obligations and liabilities to the Lenders. The Guarantor acknowledge receipt of a demand letter sent by the Administrator dated April 19, 2021 (together with the Borrower Demand, the "**Demands**") wherein the Lenders demanded immediate payment of the Guarantor's indebtedness, obligations and liabilities to the Lenders. The Borrower and the Guarantor each acknowledge receipt of a Notice of Intention to Enforce Security respectively dated April 9, 2021 and April 19, 2021 (collectively, the "**BIA Notices**") issued on behalf of the Lenders pursuant to Section 244(1) of the BIA. The Borrower and the Guarantor each further acknowledge that the Demands and the BIA Notices are valid and effective, and that the time given by the Lender for payment was reasonable. The Borrower and the Guarantor each agree not to contest the validity of the Demands, the BIA Notices, or the reasonableness of the time given for payment in any proceeding for any reason whatsoever.

### FORBEARANCE

- 3.1 The Borrower and the Guarantor have requested and the Administrator has agreed to forbear from enforcing the Security, subject to and in accordance with the terms of this Agreement.
- 3.2 The Administrator agrees not to take any steps to enforce the Security until the earlier of:
  - (a) December 1, 2021 (or such later date as the Lender, acting in its sole discretion may agree to in writing); and
  - (b) the occurrence of an Event of Default,

(hereinafter referred to as the "Forbearance Termination Date" and the period commencing on the date hereof and ending on (but excluding) the Forbearance Termination Date is the "Forbearance Period").

### **CONDITIONS**

4.1 The Administrator's agreement to forbear is conditional upon compliance on or before 5:00 p.m. on April 22, 2021 with each of the following terms and conditions, which conditions have been inserted solely for the benefit of the Administrator and may be waived by the Administrator, in its sole and unfettered discretion:

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- (a) the Borrower and the Guarantor delivering executed copies of this Agreement;
- (b) the Administrator receives payment of interest earned and unpaid for the months of March and April 2021 in the amount of \$323,354.21; and
- (c) the Administrator receives payment of \$5,500 plus HST with respect to the legal fees and disbursements that the Administrator has incurred or will incur in connection with the Demands, the BIA Notices, and negotiation and preparation of this Agreement.

### COVENANTS AND AGREEMENTS

During the Forbearance Period:

- 5.1 **Interest Payable**. The Borrower shall continue to pay to the Administrator all interest payments owing under the Commitment Letter when due.
- 5.2 **Management**. The Borrower and the Guarantor shall not permit there to be any change in their respective senior management without the prior written consent of the Administrator acting reasonably.
- 5.3 **Reporting Requirements.** The Borrower and the Guarantor are required to satisfy all reporting requirements set out in the Commitment Letter and the Security and shall promptly provide the Administrator with whatever additional documentation and information that it may request.
- 5.4 **Priority Payables.** The Borrower and the Guarantor shall keep current all of their obligations to their creditors who may have a lien, charge, security interest or deemed trust in their respective properties and assets which may rank in priority to or *parri passu* with the security held by the Lenders on such properties and assets, including, without limitation, all amounts owing for wages, vacation pay, property tax, employee source deductions, harmonized goods and services tax, and provincial sales tax (collectively, the "**Priority Payables**").
- 5.5 **Proof of Priority Payables**. The Borrower and the Guarantor shall provide written evidence to the Administrator, forthwith upon request made by the Administrator, that all Priority Payables have been paid, such written evidence to be in a form and content to the satisfaction of the Administrator in its sole and absolute discretion.
- 5.6 **Payments to Creditors.** The Borrower and the Guarantor shall utilize their available cash in a manner so as to ensure their respective continued operation, and not to make any payments out of the ordinary course of business.
- 5.7 Agreements Out of Ordinary Course. The Borrower and the Guarantor shall not enter into any material agreements out of the ordinary course of business, except with the prior written consent of the Administrator, which consent may be withheld in the Administrator's sole discretion.

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- 5.8 **Encumbrances, etc.** The Borrower and the Guarantor shall not encumber, sell, transfer, convey, lease or otherwise dispose of any of their respective assets or property out of the ordinary course of business without the prior written consent of the Administrator, which consent may be withheld in the Administrator's sole discretion.
- 5.9 **Loans, Advances, etc.** The Borrower and the Guarantor shall not, without the prior consent of the Administrator, make any loans or advance money or property to any other person or invest in or purchase shares of another party or guarantee, assume or otherwise become responsible for the indebtedness, performance or obligations of any other person.
- 5.10 **Remuneration**. Without the prior written consent of the Administrator, the Borrower and the Guarantor shall not make any distributions, directly or indirectly, to or for the benefit of any shareholder, director, officer, employee or any other person not dealing at arm's-length with the Borrower and the Guarantor, other than the current remuneration paid by the Borrower and the Guarantor to such individuals.
- 5.11 **Corporate Existence**. The Borrower and the Guarantor shall maintain their corporate existence as valid and subsisting entities and shall not merge, amalgamate or consolidate with any other corporation(s) without the Administrator's prior written consent.
- 5.12 Access to Premises, Books and Records. The Borrower and the Guarantor shall upon request, permit the Administrator and its representatives or agents, during normal business hours, to enter upon their respective premises to inspect their respective property and assets, and to examine and take away copies of all books and records relating thereto.
- 5.13 **Notice of Default**. The Borrower and the Guarantor shall forthwith provide the Administrator with written notice of the occurrence of an Event of Default hereunder.
- 5.14 **Notice of Proceedings**. The Borrower and the Guarantor shall provide the Administrator with notice of the commencement of any legal proceeding brought by any person against them within one Business Day of receipt of same, and provide the Administrator with a copy of the relevant pleadings and diligently keep the Administrator current and up to date with respect to the status of any such proceeding;
- 5.15 **Material Contracts**. The Borrower and the Guarantor shall not surrender, terminate, repudiate or amend, vary or modify in a manner adverse to the Lenders acting reasonably, any material contract with respect to its property and assets without the prior written consent of the Administrator which may be withheld in the Administrator's discretion, acting reasonably.
- 5.16 **Other Agreements.** The covenants and other terms and conditions contained in the Commitment Letter and the Security shall continue in full force and effect, except that, to the extent there exists any actual inconsistency between such provisions and the provisions of this Agreement, the provisions of this Agreement shall govern; and
- 5.17 **Insolvency Proceedings**. The Borrower and the Guarantor shall not commence any proceeding under the *BIA*, the *Companies' Creditors Arrangement Act* (Canada) ("*CCAA*"), or similar legislation without the Administrator's prior written consent. In the

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event that any of the Borrower or the Guarantor commence such proceedings, they agree that the Lenders shall be "unaffected creditors" under any such proceedings and hereby consent to a court order lifting any stay of proceeding as against the Lenders.

### DEFAULT

- 6.1 **Events of Default**. Any one or more of the following events will constitute an event of default under this Agreement (each an "Event of Default"):
  - (a) the non-payment when due of any principal, interest or other amounts payable by the Borrower to the Administrator or the Lenders under this Agreement, the Commitment Letter or the Security, including, without limitation, payment of the Indebtedness in full on or before December 1, 2021;
  - (b) a default or breach of any obligation, promise, covenant, term or condition occurs under this Agreement, the Commitment Letter or the Security after execution of this Agreement;
  - (c) any representation or warranty made by any of the Borrower or the Guarantor in the Commitment Letter or the Security, or in any certificate or other document delivered to the Administrator or the Lenders in connection with the Commitment Letter, the Security or this Agreement, is false or misleading in any material respect;
  - (d) any change of ownership, control or management of any of the Borrower or the Guarantor, without the prior written consent of the Administrator;
  - (e) any default occurs under any material contract which would permit the counter party to terminate the contract;
  - (f) any of the Borrower or the Guarantor ceases or threatens to cease to carry on its business or a substantial part thereof in the ordinary course;
  - (g) any of the Borrower or the Guarantor becomes insolvent or bankrupt, or makes or files a petition, application, proposal, a notice of intention to make a proposal or an assignment for the benefit of creditors under the BIA, the CCAA, or comparable legislation in Canada or any other jurisdiction; an application for a bankruptcy order or for the appointment of a receiver, receiver and manager or interim receiver is filed against any of the Borrower or the Guarantor; a receiver is appointed with respect to any of the Borrower or the Guarantor; or, if proceedings are initiated under any legislation by or against any of the Borrower or the Guarantor for their restructuring, liquidation, winding-up, dissolution or reorganization or any arrangement or composition of their debts;
  - (h) any person takes possession of all or any material part of the property of any of the Borrower or the Guarantor by distress or execution or similar process is levied or enforced against all or any material part of the property of any of the Borrower or the Guarantor;

- (i) any other creditor of the Borrower or the Guarantor exercises or purports to exercise any rights against any of the property, assets or undertaking of any of the Borrower or the Guarantor;
- (j) the non-payment when due of any Priority Payables amount owed by any of the Borrower or the Guarantor;
- (k) any default occurs under any other credit, loan or security agreement executed and delivered by any of the Borrower or the Guarantor to any other creditor;
- (1) if any financial reporting information provided by or on behalf of the Borrower or the Guarantor to the Administrator or the Lenders proves to be false, misleading, inaccurate or incorrect in any material respect, or if there is a failure to provide the Administrator or the Lenders with such financial reporting or other information as they may require from time to time acting reasonably; or
- (m) if the Administrator, in its sole and absolute discretion, acting reasonably, determines that there's a material adverse change in the business or financial condition of any of the Borrower or the Guarantor.
- 6.2 **Remedies**. In addition to the Lenders' rights and remedies available under the Commitment Letter, the Security, under this Agreement, at law or in equity, on the Forbearance Termination Date or upon the occurrence of an Event of Default, whichever is earlier:
  - (a) the outstanding balance of the Indebtedness owing by the Borrower to the Lenders shall, at the option of the Administrator, become immediately due and payable; and
  - (b) the Security shall, at the Administrator's option, become enforceable in accordance with their terms, including without limitation the Lenders' right to the appointment of a private receiver or the court appointment of an interim receiver, national receiver and receiver and manager of the property, assets and undertakings of any of the Borrower or the Guarantor.

### **CONSENTS**

7.1 Subject to applicable law, upon the occurrence of an Event of Default, the Borrower and the Guarantor consent to any action by the Administrator in connection with the enforcement of the Security, without the necessity of further notice or demand, and hereby agree not to directly or indirectly commence, carry on, consent to, or be a party in any way to any proceeding which would constrain any such action or which would call into question the validity or enforceability of the Indebtedness, and/or the Security. Without limiting the generality of the foregoing, upon or after the occurrence of an Event of Default, the Borrower and the Guarantor each hereby irrevocably consent to the private or Court appointment of a receiver in respect of any or all of the property or assets of each of the Borrower and the Guarantor.

### **GENERAL PROVISIONS**

- 8.1 Release. The Borrower and the Guarantor hereby absolutely and irrevocably release. remise, acquit and forever discharge the Administrator, the Lenders, their respective officers, directors, employees, agents and lawyers (all of the foregoing hereinafter called the "Released Parties") from any and all actions and causes of action, suits, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter arising, for or because of any fact, matter or things done, omitted or suffered to be done by the Released Parties prior to and including the date of execution hereof, and in any way directly or indirectly arising out of or in any way connected to this Agreement, the Commitment Letter, the Security, and the administration and enforcement of the Loan and the Security (the "Released Matters"). The Borrower and the Guarantor acknowledge that the agreements in this paragraph are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Released Matters. The Borrower and the Guarantor represent and warrant to the Released Parties that they have not purported to transfer, assign or otherwise convey any of their respective rights, title or interest in any Released Matter to any other person and that the foregoing constitutes a full and complete release of all Released Matters. The foregoing release shall survive the termination of this Agreement, the Commitment Letter and the Security the payment in full of the Indebtedness.
- 8.2 **Independent Legal Advice**. The Borrower and the Guarantor acknowledge that, in executing and delivering this Agreement, they have acted and continue to act freely and without duress. The Borrower and the Guarantor acknowledge that the Administrator and the Lenders (i) have not acted in a managerial capacity with respect to the Borrower or the Guarantor, and (ii) has no fiduciary duty to the Borrower or the Guarantor in connection with this Agreement, the Commitment Letter or the Security. The Borrower and the Guarantor confirm that they have had the benefit of independent legal advice in connection with the negotiation of this Agreement. The Borrower and the Guarantor hereby waive and agree not to assert or cause to be asserted any defence, right or claim with respect to any matter set forth in this Agreement.
- 8.3 **Capacity and Authority.** The Borrower and the Guarantor represent and warrant to the Administrator that they have the capacity and authority to enter into and perform their obligations under this Agreement.
- 8.4 **Necessary Proceedings.** The execution and delivery of this Agreement and the performance by the Borrower and the Guarantor of their obligations hereunder have been duly authorized by all necessary proceedings.
- 8.5 **Notices.** Any notice, consent or approval required or permitted to be given in connection with this Agreement (a "**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by e-mail:
  - (a) in the case of a Notice to the Administrator at:

MarshallZehr Group Inc. 465 Phillip St., Suite 206 Waterloo, ON N2L 6C7

Attention:Murray SneddenE-mail:msnedden@marshallzehr.com

and with a copy to:

Chaitons LLP 5000 Yonge Street, 10<sup>th</sup> Floor Toronto, ON M2N 7E9

Attention:	Harvey Chaiton
E-mail:	harvey@chaitons.com

(b) in the case of a Notice to the Borrower and the Guarantor:

The date of receipt of such notice shall be the date of the actual delivery to the address specified if delivered or the date of actual transmission to the electronic address if sent by electronic communication, respectively, unless such date is not a Business Day, in which event the date of receipt shall be the next Business Day immediately following the date of such delivery or transmission. **"Business Day"** means a day other than a Saturday, Sunday, statutory holiday in the Province of Ontario, or any other day on which the Schedule 1 Canadian Chartered Banks located in the City of Toronto are not open for business during normal banking hours.

- 8.6 **Assignment**. The Borrower and the Guarantor may not assign this Agreement or any rights or obligations under this Agreement except with the prior written consent of the Administrator which may be withheld in the Administrator's sole discretion.
- 8.7 **Amendment**. No amendment, modification, waiver of this Agreement and, unless otherwise specified, no consent or approval by any party, shall be binding unless executed in writing by the party to be bound thereby.
- 8.8 **Enurement**. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors (including any successor by reason of amalgamation of any party), and permitted assigns.
- 8.9 **No Third-Party Beneficiaries**. Unless expressly stated herein, this Agreement shall be solely for the benefit of the parties hereto and no other person or entity shall be a third-party beneficiary hereof.

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- 8.10 No Novation. This Agreement shall not constitute and shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Commitment Letter or the Security.
- 8.11 Execution and Delivery. This Agreement may be executed in counterparts, and acceptance of this Agreement may be provided by email transmission in PDF format and, on such execution and transmission, this Agreement shall be binding on the parties with the same force and effect as if originally executed.

### [THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

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**IN WITNESS OF WHICH** the parties have duly executed this Agreement on the date described above.

MARSHALLZEHR GROUP INC., solely in its capacity as the Administrator and not in its personal or corporate capacity

	DocuSigned by:
	CardHam
Per:	6697E6642B774AE
Name:	Cecil Hayes
Title:	

I have authority to bind the corporation.

### 12252856 CANADA INC.

Per: YACHANIAMANI Name: ARGHIKUMA Title: PIREETO

I have authority to bind the corporation.

### 2752865 ONTARIO LIMITED

Per:

Name: Brooke Askin Title:

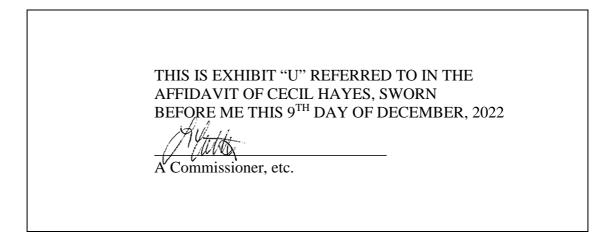
I have authority to bind the corporation.

### **SCHEDULE "A"**

### SECURITY

- 1. Charge/Mortgage in the principal amount of \$20.0 million registered on October 20, 2020 as instrument number YR3157405
- 2. Notice of Assignment of Rents General registered on October 20, 2020 as instrument number YR3157406
- 3. General Assignment of Rents dated October 20, 2020 between the Borrower and the Lenders
- 4. Assignment of Charge and Collateral Security dated November 25, 2020
- 5. General Security Agreement dated October 20, 2020 executed by the Borrower
- 6. General Security Agreement dated October 20, 2020 executed by the Guarantor
- 7. Guarantee dated October 20, 2020 executed by the Guarantor (the "Guarantee")
- 8. Assignment of Insurance dated October 20, 2020
- 9. Assignment of Material Contracts dated October 20, 2020
- 10. Assignment of Sale Agreements dated October 20, 2020
- 11. Assignment and Pledge of Securities dated October 2020
- 12. Assignment re Cash Security dated October 20, 2020
- 13. Postponement of Shareholder Loans dated October 20, 2020
- 14. Deficiency and Completion Agreement dated October 20, 2020
- 15. Environmental Warranty and Indemnity dated October 20, 2020

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REPLY TO:SANFILE NO.:649DIRECT:416EMAIL:san

SAM RAPPOS 64987 416-218-1137 samr@chaitons.com

### PRIVATE & CONFIDENTIAL

September 9, 2022

### VIA EMAIL, REGISTERED AND REGULAR MAIL

12252856 Canada Inc.	12252856 Canada Inc.
1280 Finch Avenue West, Suite 301	155 Commerce Valley Drive East
Toronto, ON M3J 3K6	Markham, ON L3T 7T2

### Re: Indebtedness of 12252856 Canada Inc. (the "Borrower") to MarshallZehr Group Inc. ("MZG") and Vector Financial Services Limited (collectively, the "Lenders")

Dear Sirs,

We are the lawyers for MZG. MZG is the mortgage administrator with respect to a loan in the principal amount of \$18.0 million (the "Loan") made by the Lenders to the Borrower pursuant to the commitment letter dated August 18, 2020, as amended by letters dated October 13, 2020, October 1, 2021, and May 3, 2022 (collectively, the "Commitment Letter").

This letter replaces the letter sent to you dated September 2, 2022.

We are advised by MZG that the Borrower is indebted to the Lenders under the Loan in the amount of **\$18,751,238.67** for principal, interest, and fees (excluding legal costs) as of September 8, 2022, as detailed in the discharge statement enclosed herewith.

The Borrower's indebtedness to the Lenders is secured by, *inter alia*, a Charge/Mortgage in the principal amount of \$20 million granted in favour of the Lenders and registered on lands municipally known as 201-235 King Road, Richmond Hill, as instrument number YR3157405, and a General Security Agreement dated October 20, 2020 (collectively, the "**Security**").

The Loan matured on September 1, 2022.

On behalf of MZG, we hereby demand payment of the Borrower's indebtedness to the Lenders. Unless payment of the amount set out above, together with additional interest accrued and fees and costs incurred to the date of payment are paid forthwith, the Lenders shall take such steps as they deem necessary to recover payment of the Borrower's indebtedness in full, without further demand upon or notice to you.

Enclosed please find the Lenders' Notice of Intention to Enforce Security, which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Govern yourselves accordingly.

Yours truly, CHAITONS LLP

Ram

Sam Rappos PARTNER ENCL.

Cc: MarshallZehr Group Inc. 2752865 Ontario Limited

DOC#10386044v1



### **DISCHARGE STATEMENT AT: September 9th, 2022**

Prepared on September 8th, 2022

Terms:\$18,000,000 1st mortgage for Acquisition Loan with a term of 13 months.<br/>Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum<br/>Tranche B: \$8,000,000: Interest at 13% per annum

As of August 1st, 2022 the loan entered the Wrap Up Period where the applicable rates are as follows: Tranche A: \$12,000,000: Interest at Prime + 7.05% per annum x 2 (Prime + 14.10%) Tranche B: \$8,000,000: Interest at 13% per annum x 2 (26%)

Both tranches are calculated daily, compounded and payable monthly with interest only payment made from the

### 201 King Road Bridge - MZGI 329

201-235 King Road, Richmond Hill ON

		Tranche A	Tranche B	Total
Principal Amount Outstanding	\$	12,000,000.00	\$ 6,000,000.00	\$ 18,000,000.00
Unpaid Monthly Interest	\$	365,581.54	\$ 207,661.72	\$ 573,243.26
Deferred Lender Fee				\$ 180,000.00
Cost Recovery				\$ 750.75
Final Discharge Admin Fee				\$ 500.00
Less: Cash held in Trust				\$ 3,255.34
Balance due on September 9th, 2022				\$ 18,751,238.67
Per Diem	\$	7,920.61	\$ 4,396.84	\$ 12,317.45

Payment must be received by 1:00 p.m. or per diem interest will be aaaea up to tne next business aay

You are authorized and directed to make the balance due payable to our solicitor; **Chaitons LLP "In Trust"**, OR as they may further direct.

### MARSHALLZEHR GROUP INC.

DocuSigned by: Murray Snedden Per: -5D7B047774B943F

Mortgage Administrator #: 11955

E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid until September 30th, 2022. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the Proposed Settlement Date are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

### NOTICE OF INTENTION TO ENFORCE A SECURITY (given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

### To: **12252856 Canada Inc.**, an insolvent person

Take notice that:

- 1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 12252856 Canada Inc.
- 2. The security that is to be enforced includes, *inter alia*, a Charge/Mortgage in the principal amount of \$20.0 million registered on lands municipally known as 201-235 King Road, Richmond Hill, ON as instrument number YR3157405, and a General Security Agreement dated October 20, 2020 (collectively, the "Security").
- 3. The total amount of indebtedness secured by the Security as at the close of business on September 8, 2022 is **\$18,751,238.67** inclusive of principal, interest, and fees (excluding legal costs).
- 4. The secured creditor will not have the right to enforce the 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.

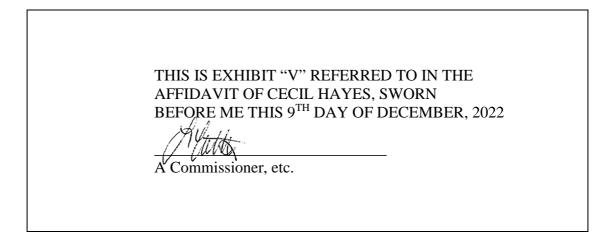
DATED at Toronto, this 9<sup>th</sup> day of September, 2022.

MARSHALLZEHR GROUP INC.,

by its lawyers, Chaitons LLP

SmRap

Per: \_\_\_\_



Court File No.

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

BETWEEN:

### MARSHALLZEHR GROUP INC., AS ADMINISTRATOR

Applicant

- and -

### 12252856 CANADA 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

**RSM CANADA LIMITED** ("**RSM**") hereby consents to act as Court-appointed receiver, without security, of all of the assets, undertakings and properties of the Respondent pursuant to subsection 243(1) of *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, in accordance with an order substantially in the form requested by the Applicant, or as such order may be amended in a manner satisfactory to RSM.

DATED this 8<sup>th</sup> day of December, 2022

**RSM CANADA LIMITED** 

By:

Name: Bryan Tannenbaum Position: President

I have authority to bind the corporation

Court File No.

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

# AFFIDAVIT OF CECIL HAYES

(sworn December 9, 2022)

### CHAITONS LLP 5000 Yonge Street 10th

5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F) Tel: (416) 218-1129 E-mail: harvey@chaitons.com

Lawyers for the Applicant

## TAB 3

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

THE HONOURABLE MR.	)	WEDNESDAY, THE 21st
JUSTICE OSBORNE	) )	DAY OF DECEMBER, 2022

BETWEEN:

### MARSHALLZEHR GROUP INC., AS ADMINISTRATOR

Applicant

- and -

### 12252856 CANADA 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 RSM Canada Limited as receiver (the **''Receiver**") without security, of all of the assets, undertakings and properties of 12252856 Canada Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via videoconference. **ON READING** the affidavit of Cecil Hayes sworn December 9, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and the other parties listed on the Participation Information Sheet, no one else appearing for the parties listed on the service list although duly served as appears from the affidavits of service filed with the Court, and on reading the consent of RSM Canada Limited to act as the Receiver,

### SERVICE

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

### APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited 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 all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

### **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 any contracts of the Debtor;
- (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;

- (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;
- (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. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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;

- to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- 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;
- (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;
- (q) to exercise any shareholder, partnership, joint venture or other rights which theDebtor may have; and

 (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the 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, 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 any and all access codes, account names and account numbers that may be required to gain access to the information.

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

secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

### NO PROCEEDINGS AGAINST THE RECEIVER

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

### NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the 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 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**

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 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

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

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

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**

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.

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.

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

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.

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.

23. **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.

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.

### **RETENTION OF LAWYERS**

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

### SERVICE AND NOTICE

THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "Guide") 26. is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website established in accordance with Guide with following URL shall be the the http://www.rsmcanada.com/12252856-canada-inc.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the 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.

28. **THIS COURT ORDERS** that the Applicant, the 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. 81000-2-175 (SOR/DORS).

### GENERAL

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

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

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

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

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this 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 Applicant from the Debtor's estate with such priority and at such time as this Court may determine.

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

### **SCHEDULE "A"**

PIN:	03196-0037 (LT)
Property Description:	Lot 16 Plan 136 King Except Part 11 Expropriation Plan B87881B ; Richmond Hill
PIN:	03196-0038 (LT)
Property Description:	Lot 15 Plan 136 King Except Part 10 Expropriation Plan B87881B ; Richmond Hill
PIN:	03196-0039 (LT)
Property Description:	Part Lot 13 Plan 136 King; Part Lot 14 Plan 136 King As In R533264 ;; City of Richmond Hill

### SCHEDULE "B"

### **RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties 12252856 Canada 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 (Commercial List) (the "**Court**") dated the 21<sup>st</sup> day of December, 2022 (the "**Order**") made in an application having Court file number CV-22-•-00CL, 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 [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 \_\_\_\_\_, 202\_\_.

**RSM CANADA LIMITED**, solely in its capacity as Receiver of the Debtor, and not in its personal capacity

Per:

Name: Title:

MARSHALLZEHR GROUP INC., AS ADMINISTRATOR Applicant

-and-

Court File No.

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

## ORDER

(appointing Receiver)

## CHAITONS LLP

5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F) Tel: (416) 218-1129 E-mail: harvey@chaitons.com

Lawyers for the Applicant

## TAB 4

### Revised: January 21, 2014 s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No.

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

)	WEEKDAY WEDNESDAY, THE #
)	<u>21</u> <sup>st</sup>
,	DAY OF MONTH DECEMBER,
	<del>20YR</del> 2022
	) )

BETWEEN:

PLAINTIFF<sup>4</sup>

Plaintiff

### MARSHALLZEHR GROUP INC., AS ADMINISTRATOR

Applicant

- and -**DEFENDANT** 

Defendant

12252856 CANADA 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

<sup>&</sup>lt;sup>1</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.

### **ORDER** (appointing Receiver)

THIS MOTION<u>APPLICATION</u> made by the Plaintiff<sup>®</sup><u>Applicant</u> 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 [RECEIVER'S NAME]RSM Canada Limited as receiver [and manager] (in such capacities, \_(the "Receiver") without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME]12252856 Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontariovia videoconference.

ON READING the affidavit of [NAME]Cecil Hayes sworn [DATE]December 9, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for [NAMES]the Applicant and the other parties listed on the Participation Information Sheet, no one else appearing for [NAME]the parties listed on the service list although duly served as appears from the affidavitaffidavits of service of [NAME] sworn [DATE]filed with the Court, and on reading the consent of <u>[RECEIVER'S NAME]RSM Canada Limited</u> to act as the Receiver,

### SERVICE

 $^2$  Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

1. **THIS COURT ORDERS** that the time for service of the Notice of <u>MotionApplication</u> and the <u>MotionApplication Record</u> is hereby abridged and validated<sup>3</sup> so that this <u>motionapplication</u> 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, [RECEIVER'S NAME]RSM Canada Limited 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 all proceeds thereof (the "Property")<sub>2</sub> including, without limitation, the real property described in Schedule "A" attached hereto.

### **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

<sup>&</sup>lt;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.

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;
- (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, premisesor 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;
- (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;

- 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 conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$\_\_\_\_\_250,000, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_500,000; 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;

<sup>&</sup>lt;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.

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.;

- to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below)
   as the Receiver deems appropriate on all matters relating to the Property and the
   receivership, and to share information, subject to such terms as to confidentiality
   as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- 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;
- (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;

<sup>&</sup>lt;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.

- (q) to exercise any shareholder, partnership, joint venture or other rights which theDebtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the 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, 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 any and all access codes, account names and account numbers that may be required to gain access to the information.

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

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

### NO PROCEEDINGS AGAINST THE RECEIVER

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

### NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the 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 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**

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 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**

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

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 *Mater 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

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**

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>

<sup>&</sup>lt;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. **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.

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

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.

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.

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

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.

### **RETENTION OF LAWYERS**

25. THIS COURT ORDERS that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

### **SERVICE AND NOTICE**

26. 25. THIS COURT ORDERS that the E-Service ProtocolGuide of the Commercial List (the "ProtocolGuide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ProtocolGuide (which can be found on the

Commercial

website

List

http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/www.onta riocourts.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 2113 of the ProtocolGuide, service of documents in accordance with the ProtocolGuide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ProtocolGuide with the following URL 'Car'http://www.rsmcanada.com/12252856-canada-inc.

27. 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.

28. <u>THIS COURT ORDERS</u> that the Applicant, the 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. 81000-2-175 (SOR/DORS).

GENERAL

29. 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.

<u>30.</u> <u>28.</u> **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

<u>31.</u> 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.

<u>32.</u> <u>30.</u> **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.

<u>33.</u> <u>31.</u>-THIS COURT ORDERS that the <u>PlaintiffApplicant</u> shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the <u>PlaintiffApplicant</u>'s security or, if not so provided by the <u>PlaintiffApplicant</u>'s security, then on a substantial indemnity basis to be paid by the <u>ReceiverApplicant</u> from the Debtor's estate with such priority and at such time as this Court may determine.

34. 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.

1

### **SCHEDULE "A"**

<u>PIN:</u>	<u>03196-0037 (LT)</u>
Property Description:	Lot 16 Plan 136 King Except Part 11 Expropriation Plan B87881B ; Richmond Hill
PIN:	03196-0038 (LT)
Property Description:	Lot 15 Plan 136 King Except Part 10 Expropriation Plan B87881B ; Richmond Hill
PIN:	<u>03196-0039 (LT)</u>

Property Description:Part Lot 13 Plan 136 King; Part Lot 14 Plan 136 King As InR533264 ;; City of Richmond Hill

### SCHEDULE "AB"

### **RECEIVER CERTIFICATE**

CERTIFICATE NO.

AMOUNT \$

1. THIS IS TO CERTIFY that [RECEIVER'S NAME]RSM Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME]12252856 Canada 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 (Commercial List) (the "Court") dated the \_\_\_\_21<sup>st</sup> day of \_\_\_\_\_December, 20\_\_2022 (the "Order") made in an aetionapplication having Court file number \_\_CV-22-•-00CL-\_\_\_\_, 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 [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 \_\_\_\_\_\_, <u>20202</u>\_\_\_.

[RECEIVER'S NAME]RSM CANADA LIMITED, solely in its capacity as Receiver of the PropertyDebtor, and not in its personal capacity

Per:

Name: Title:

				MARSHALLZEHR GROUP INC., AS ADMINISTRATOR Applicant
				-and-
CHAITONS LLP         5000 Yonge Street, 10th Floor         Toronto, Ontario M2N 7E9         Harvey Chaiton (LSO No. 21592F)         Tel:       (416) 218-1129         E-mail: harvey@chaitons.com         Lawyers for the Applicant	ORDER (appointing Receiver)	<u>ONTARIO</u> SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) PROCEEDING COMMENCED AT TORONTO	Court File No.	12252856 CANADA INC. Respondent

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Total changes	203

Court File No.

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

Proceedings commenced at Toronto

# **APPLICATION RECORD**

(re appointment of a Receiver)

## CHAITONS LLP

5000 Yonge Street, 10<sup>th</sup> Floor Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F) Tel: (416) 218-1129 E-mail: harvey@chaitons.com

Lawyers for the Applicant