

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

- AND -

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants in Appeal – Moving Party)

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**MOTION RECORD**

December 15, 2021

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**COURT OF APPEAL FOR ONTARIO**

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Respondents  
(Appellants in Appeal – Moving Party)

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**I N D E X**

<b>Tab</b>	<b>Description</b>	<b>Page No.</b>
1.	Notice of Motion, returnable December 24, 2021	1-9
2.	Order of Justice Pattillo dated December 10, 2021	10-35
3.	Endorsement of Justice Pattillo dated December 10, 2021	36-41
4.	Affidavit of Oscar Furtado, sworn December 14, 2021	42-66
<b>Exhibits</b>		
A	Receivership Order of Justice Pattillo dated December 10, 2021	67-93
B	Endorsement of Justice Pattillo dated December 10, 2021	94-100
C	Notice of Appeal dated December 14, 2021	101-108
D	Corporate Profile Report of Go-To Developments Holdings Inc. dated December 13, 2021	109-117
E	Organizational Chart	118-119
F	List of Real Properties	120-121

G	Freeze Directions	122-126
H	Email dated December 6, 2021 from Erin Hoult of the Commission to Mr. Mann	127-128
I	Email dated December 6, 2021 from Mr. Mann to Ms. Hoult	129-131
J	Email dated December 6, 2021 from Erin Hoult of the Commission to Mr. Mann	132-134
K	Index of the Application Record	135-144
L	Notice of Application	145-158
M	Affidavit of Stephanie Collins, sworn December 6, 2021 (without exhibits)	159-192
N	Adelaide LP Agreement	193-234
O	Marek's Biography	235-237
5.	Draft Order	238-241



# TAB 1

Court of Appeal File No. C70114  
Court File No. CV-20-00650853-00CL

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

- and -

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants in Appeal – Moving Party)

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**NOTICE OF MOTION**

The Appellants (the “**Moving Parties**”) will make a motion to a Judge on Friday, December 24, 2021 at 10:00 a.m. or as soon after that time as the motion can be heard by way of judicial video conference via Zoom due to the COVID-19 pandemic, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5. The estimated length for the oral argument of the Moving Parties is 30 minutes, not including reply.

-2-

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

- ☐ In writing under subrule 37.12.1(1) because it is;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

At the following location: *Link to be provided*

**THE MOTION IS FOR**

1. An Order staying the Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) in Court File No. CV-21-00673521-00CL dated December 10, 2021 (the “**Receivership Order**”), until the appeal of this matter can be heard;
2. Costs of the proceedings below and this appeal on a substantial indemnity basis; and
3. Such further and other relief as counsel may request and this Honourable Court deems just, including, without limitation:
  - (a) the appointment of a monitor to oversee the business and operations of the Moving Parties during the period in which the stay is in effect; and
  - (b) a continuation of the freeze directions dated December 6, 2021 issued under section 126(1) of the *Securities Act*.

-3-

**THE GROUNDS FOR THE MOTION ARE**

4. Pursuant to the Application (the “**Receivership Application**”) of the Ontario Securities Commission (the “**Commission**”), on December 10, 2021, the Honourable Mr. Justice Pattillo (the “**Application Judge**”) ordered certain of the Appellants (which Appellants are identified at Schedule “B” to the Receivership Order) to be placed into receivership and appointed KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”);
5. There are *prima facie* or serious issues to be decided, as specified in the Notice of Appeal, filed with the Court on December 14, 2021;
6. The respondents first received notice of the Receivership Application during the evening of Monday December 6, 2021, when they were served (through counsel) with a link to an electronic copy of the Application Record (the “**Application Record**”);
7. The Application Record was comprised of a number of documents including the Affidavit of Stephanie Collins sworn December 6, 2021 (the “**Collins Affidavit**”), which is 1,958 pages long, and includes 113 exhibits;
8. The Receivership Application proceeded less than 72 hours after service of the Application Record, despite the respondents’ requests to the Commission for an adjournment on terms that provided safeguards;
9. The Commission refused the adjournment request, despite factors that included the late service of the Application Record, the massive size of the Collins Affidavit, the failure of the

-4-

Commission to disclose certain of the evidence upon which it purported to rely, and the respondents need to engage independent counsel;

10. At the hearing of the Receivership Application, the Honourable Application Judge declined the respondents' adjournment request (which included terms that provided adequate safeguards);

11. Despite being advised that the respondents had been unable to properly respond to the Receivership Application and the factors described at paragraph 10 above, the Honourable Application Judge found that the respondents had received sufficient notice of the Application to have filed responding material, and dismissed the adjournment request;

12. The Appellants will suffer irreparable harm if the stay is not granted;

13. The balance of convenience favours the granting of a stay of the Receivership Order pending a hearing of the Appeal;

14. A failure to stay the Receivership Order will work a substantial injustice and prejudice against the Appellants;

15. There was no evidence before the Application Judge that the appointment of a Receiver is in the best interests of the creditors, security holders, or any other interested party, including the investors;

16. There was no evidence before the Application Judge that it was appropriate for the due administration of securities law to grant the appointment of a Receiver;

-5-

17. There was no evidence before the Application Judge demonstrating any urgency to the hearing of the Receivership Application or to the granting of the Receivership Order;
18. The respondent, Oscar Furtado, was not given sufficient notice or time to file responding material to the Receivership Application;
19. None of the other Moving Parties were given sufficient notice or time to file responding material to the Receivership Application;
20. The Moving Parties were denied a meaningful opportunity to engage independent counsel to respond to the Receivership Application;
21. The allegations made against Mr. Furtado, including the serious concerns related to fraud and misappropriation of funds, necessitated that Mr. Furtado be afforded the opportunity to properly respond to the Receivership Application, including retaining new counsel, cross-examining the Commission's affiant and preparing and filing responding materials;
22. The adjournment sought by Mr. Furtado and which the Honourable Application Judge declined to grant was reasonable in the circumstances;
23. There is no evidence before the Honourable Application Judge that a monitor would be inadequate to address the issues raised by the Commission, particularly in light of the freezing directions imposed on the Appellants to which Mr. Furtado agreed to continue alongside a court-appointed monitor;

-6-

24. The Honourable Application Judge failed to consider and recognize the grave and irreparable harm that may result and the negative impact on the interests of the investors as a result of the Receivership Order;

25. Rules 1.04, 13.1.01(1), and 63.02 of the *Rules of Civil Procedure*, and sections 6 and 106 of the *Courts of Justice Act*, R.S.O. 1990, as amended; and

26. Such further and other grounds as the lawyers may advise.

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

1. The Affidavit of Oscar Furtado, sworn December 14, 2021, and the exhibits attached thereto;

2. The Affidavit of Stephanie Collins, sworn December 6, 2021, and the exhibits attached thereto; and

3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

-7-

December 15, 2021

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**ONTARIO SECURITIES COMMISSION** and **GO-TO DEVELOPMENTS HOLDINGS INC. et al** Court of Appeal File No. C70114  
Court File No: CV-21-00673521-00CL

Applicant (Respondent in Appeal)

Respondents (Appellants in Appeal – Moving Party)

***COURT OF APPEAL FOR ONTARIO***

Proceeding Commenced at  
TORONTO

**NOTICE OF MOTION**

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Lawyers for the Appellants

RCP-F 4C (September 1, 2020)

# TAB 2

Court File No. CV-21-00673521-00CL

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

THE HONOURABLE  
JUSTICE L. PATTILLO

)  
)  
)

FRIDAY, THE 10th  
DAY OF DECEMBER, 2021



**ONTARIO SECURITIES COMMISSION**

- and -

Applicant

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED**

Respondents

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**ORDER  
(appointing Receiver)**

**THIS APPLICATION**, made by the Ontario Securities Commission ("**OSC**") for an Order pursuant to sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the

"Act"), appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**") without security, of the real property listed on **Schedule "A"** hereto (the "**Real Property**") and all the other assets, undertakings and properties of each of the parties listed on **Schedule "B"** hereto (the "**Receivership Respondents**"), was heard this day by judicial videoconference via Zoom due to the COVID-19 emergency.

**ON READING** the affidavit of Stephanie Collins sworn December 6, 2021 and the exhibits thereto (the "**Collins Affidavit**"), and on hearing the submissions of counsel for the OSC and counsel for the Respondents, and on reading the consent of KSV 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.

### **FREEZE DIRECTIONS**

2. **THIS COURT ORDERS** that the Freeze Directions issued by the OSC to Oscar Furtado and RBC Direct Investing on December 6, 2021, copies of which are attached at **Schedule "C"** hereto, shall continue until further order of this Court or until the OSC revokes the Freeze Directions or consents to release funds, securities or property from the Freeze Directions.

### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 129 of the Act, KSV is hereby appointed Receiver, without security, of the Real Property and all the other assets, undertakings and properties of each of the Receivership Respondents, including all of the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other Person (as defined below), and all proceeds thereof (together with the Real Property, the "**Property**").

## RECEIVER'S POWERS

4. **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 any of the Receivership Respondents, 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 any of the Receivership Respondents;
- (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 any of the Receivership Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to any of the Receivership Respondents and to exercise all remedies of any

of the Receivership Respondents in collecting such monies, including, without limitation, to enforce any security held by any of the Receivership Respondents;

- (g) to settle, extend or compromise any indebtedness owing to any of the Receivership Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Receivership Respondents, 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 any of the Receivership Respondents, 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) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and, in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Receivership Respondents;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Receivership Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Receivership Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which any of the Receivership Respondents may have;
- (r) to examine under oath any person the Receiver reasonably considers to have knowledge of the affairs of the Receivership Respondents, including, without limitation, any present or former director, officer, employee or any other person registered or previously registered with the OSC or subject to or formerly subject to the jurisdiction of the OSC or any other regulatory body respecting or having jurisdiction over any of the Property and the affairs of any of the Receivership Respondents; and
- (s) 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 Receivership Respondents, and without interference from any other Person.

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

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

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not required, to take possession and control of any monies, funds, deposit instruments, securities, or other Property held by or in the name of any of the Receivership Respondents, or by any third party for the benefit of any of the Receivership Respondents.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Receivership Respondents, or the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

9. **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**

10. **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 ANY OF THE RECEIVERSHIP RESPONDENTS OR THE PROPERTY**

11. **THIS COURT ORDERS** that no Proceeding against or in respect of any of the Receivership Respondents 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 any of the Receivership Respondents or the Property are hereby stayed and suspended pending further Order of this Court, provided that nothing herein shall prevent the commencement or continuation of any investigation or proceedings in respect of the Receivership Respondents, or any of them, by or before the OSC and its enforcement staff.

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

12. **THIS COURT ORDERS** that all rights and remedies against any of the Receivership Respondents, 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 *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Receivership Respondents to carry on any business which the Receivership Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Receivership Respondents 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**

13. **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 any of the Receivership Respondents, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with any of the Receivership Respondents 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 any of the Receivership Respondents 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 Receivership Respondents' 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 Receivership Respondents 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**

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

### **EMPLOYEES**

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

## PIPEDA AND ANTI-SPAM LEGISLATION

17. **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 Receivership Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

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

## LIMITATION ON ENVIRONMENTAL LIABILITIES

19. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste

or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

### **RECEIVER'S ACCOUNTS**

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

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

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

#### **FUNDING OF THE RECEIVERSHIP**

24. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

## SEALING

28. **THIS COURT ORDERS** that the OSC is authorized to redact any Personal Information (as defined below) contained in the exhibits to the Collins Affidavit (as so redacted, the “**Redacted Exhibits**”) and file with the Court the Collins Affidavit with the Redacted Exhibits. “Personal Information” means information about an identifiable individual, including, but not limited to, the following: (i) social insurance number; (ii) driver’s license number; (iii) passport number; (iv) license plate number; (v) health plan number; (vi) date of birth; (vii) address (not including city or province); (viii) telephone number; and (ix) bank or trading account number (including a joint account). For greater certainty, “Personal Information” does not include an individual’s name or the title, contact information, or designation of an individual in a business, professional, or official capacity.

29. **THIS COURT ORDERS** that the OSC shall file with the Court the Collins Affidavit without exhibits pending filing of the Redacted Exhibits with the Court. The OSC shall file the Redacted Exhibits with the Court as soon as reasonably practicable.

30. **THIS COURT ORDERS** that the OSC is authorized to deliver the Collins Affidavit containing the unredacted exhibits to each of the following parties and its respective lawyers: the Receiver and the Respondents (each such party, a “**Recipient**”). Each Recipient shall keep the unredacted exhibits to the Collins Affidavit confidential and shall not disclose the unredacted exhibits to the Collins Affidavit to any other party without further order of the Court.

31. **THIS COURT ORDERS** that the unredacted exhibits to the Collins Affidavit shall be sealed, kept confidential and shall not form part of the public record pending further Order of the Court.

## SERVICE AND NOTICE

32. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil*



*Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/go-to>.

33. **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 a notice with a link to the Case Website by email, ordinary mail, courier, personal delivery or facsimile transmission to the Receivership Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Receivership Respondents and that any such service or distribution by email, courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

34. **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.

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Receivership Respondents.

36. **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.

37. **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.

38. **THIS COURT ORDERS** that the Receiver may engage as its legal counsel Aird & Berlis LLP, notwithstanding that Aird & Berlis LLP has had an advisory role with respect to the OSC in connection with this proceeding.

39. **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.

40. **THIS COURT ORDERS** that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.



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**SCHEDULE "A"**  
**REAL PROPERTY**

1. 527 Glendale Avenue  
St. Catharines, ON  
PIN: 46415-0949
2. 185 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0047
3. 197 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0049
4. 209 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0051
5. 191 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0048
6. 203 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0050
7. 215 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0052
8. 4210 Lyons Creek Road  
Niagara Falls, ON  
PIN: 64258-0110
9. 4248 Lyons Creek Road  
Niagara Falls, ON  
PIN: 64258-0713
10. 2334 St. Paul Avenue  
Niagara Falls, ON  
PIN: 64269-0559
11. 355 Adelaide Street West  
Toronto, ON  
PIN: 21412-0150

12. 46 Charlotte Street  
Toronto, ON  
PIN: 21412-0151
13. Highland Road  
Hamilton, ON  
PIN: 17376-0025
14. Upper Centennial Parkway  
Hamilton, ON  
PIN: 17376-0111
15. 19 Beard Place  
St. Catharines, ON  
PIN: 46265-0022
16. 7386 Islington Avenue  
Vaughan, ON  
PIN: 03222-0909
17. 4951 Aurora Road  
Stouffville, ON  
PIN: 03691-0193

**SCHEDULE "B"**  
**RECEIVERSHIP RESPONDENTS**

1. GO-TO DEVELOPMENTS HOLDINGS INC.
2. FURTADO HOLDINGS INC.
3. GO-TO DEVELOPMENTS ACQUISITIONS INC.
4. GO-TO GLENDALE AVENUE INC.
5. GO-TO GLENDALE AVENUE LP
6. GO-TO MAJOR MACKENZIE SOUTH BLOCK INC.
7. GO-TO MAJOR MACKENZIE SOUTH BLOCK LP
8. GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC.
9. GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP
10. GO-TO NIAGARA FALLS CHIPPAWA INC.
11. GO-TO NIAGARA FALLS CHIPPAWA LP
12. GO-TO NIAGARA FALLS EAGLE VALLEY INC.
13. GO-TO NIAGARA FALLS EAGLE VALLEY LP
14. GO-TO SPADINA ADELAIDE SQUARE INC.
15. GO-TO SPADINA ADELAIDE SQUARE LP
16. GO-TO STONEY CREEK ELFRIDA INC.
17. GO-TO STONEY CREEK ELFRIDA LP
18. GO-TO ST. CATHARINES BEARD INC.
19. GO-TO ST. CATHARINES BEARD LP
20. GO-TO VAUGHAN ISLINGTON AVENUE INC.
21. GO-TO VAUGHAN ISLINGTON AVENUE LP
22. AURORA ROAD LIMITED PARTNERSHIP
23. 2506039 ONTARIO LIMITED

**SCHEDULE "C"**  
**FREEZE DIRECTIONS**

See attached.



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3B8

22<sup>e</sup> étage  
20, rue queen ouest  
Toronto ON M5H 3B8

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**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,  
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION  
(Sections 126(1)(b) and 126(1)(c))**

**TO:** Oscar Furtado (DOB: July 15, 1962)  
2354 Sakome Drive  
Oakville, Ontario  
L6H 7N3

**RE:** Proceeds of sale of units of Go-To limited partnerships

**TAKE NOTICE THAT** pursuant to paragraph 126(1)(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), you are directed to refrain from withdrawing any funds, securities or property that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to Go-To Developments Holdings Inc. ("GTDH"), from another person or company who has them on deposit, under control or for safekeeping; and, without limiting the generality of the foregoing, in RBC Direct Investing account no. 685-92809-2-4 ("RBC Direct Account"); and to hold these funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise.

**AND TAKE FURTHER NOTICE** that pursuant to paragraph 126(1)(c) of the Act, you are directed to maintain funds, securities or property that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to GTDH; and, without limiting the generality of the foregoing, in the RBC Direct Account; and you are directed to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value

of those funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, security or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, except that you may dispose of securities or derivatives already held in the RBC Direct Account provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the RBC Direct Account.

**DATED** at Toronto, Ontario this 6<sup>th</sup> day of December, 2021.

Timothy Moseley





Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3B8

22<sup>e</sup> étage  
20, rue queen ouest  
Toronto ON M5H 3B8

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**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,  
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION  
(Section 126(1)(a))**

**TO:** The Manager  
RBC Direct Investing Inc.  
200 Bay Street  
P.O. Box 75  
Toronto, ON M5J 2Z5

**RE:** FURTADO, Oscar  
Account No. 685-92809-2-4  
(CAD and USD)

**TAKE NOTICE** that pursuant to paragraph 126(1)(a) of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "*Act*"), RBC Direct Investing Inc. ("**RBC Direct**") is directed to retain any funds, securities or property that it has on deposit or under its control or for safekeeping in the name of or otherwise under the control of Oscar Furtado, including any funds, securities or property on deposit in account no. 685-92809-2-4 (the "**Account**"), and hold the funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, with the exception that securities or derivatives already held in the Account may be sold provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the Account.

2

**AND TAKE FURTHER NOTICE THAT** this Direction applies to any and all funds, securities or property in a recognized clearing agency and to any and all securities in the process of transfer by a transfer agent.

**AND TAKE FURTHER NOTICE THAT** this Direction may be served by e-mail, fax or courier to the above-noted address for and the last known address of the parties named in this Direction in the records of RBC Direct.

**DATED** at Toronto, Ontario this 6<sup>th</sup> day of December, 2021.

*Timothy Moseley*

**SCHEDULE "D"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of the real property listed on Schedule "A" of the Receivership Order (as defined below) (the "**Real Property**") and all the other assets, undertakings and properties of each of the parties listed on Schedule "B" of the Receivership Order (the "**Receivership Respondents**"), including all of the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other Person (as defined in the Receivership Order), and all proceeds thereof (together with the Real Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 9<sup>th</sup> day of December, 2021 (the "**Receivership Order**") made in an application having Court file number CV-21-00673521-00CL, 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 \$250,000.00 which the Receiver is authorized to borrow under and pursuant to the Receivership 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 Receivership Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Receivership 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 Receivership 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 Receivership 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 Receivership Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

KSV Restructuring Inc., solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

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

Name:

Title:

**ONTARIO SECURITIES COMMISSION**

Applicant

**GO-TO DEVELOPMENTS HOLDINGS INC., ET AL.**

Respondents

Court File No. CV-21-00673521-00CL

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

**Proceedings commenced at Toronto**

**ORDER**  
**(appointing Receiver)**

**Ontario Securities Commission**  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

**Erin Hault (LSO No. 54002C)**  
Tel.: (416) 593-8290  
Email: [ehault@osc.gov.on.ca](mailto:ehault@osc.gov.on.ca)

*Lawyers for the Ontario Securities Commission*

# TAB 3

**CITATION:** Ontario Securities Commission v. Go-To Developments Holdings Inc.,  
2021 ONSC 8133

**COURT FILE NO.:** CV-21-00673521-00CL

**DATE:** 20211210

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ONTARIO SECURITIES COMMISSION

Applicant

– and –

GO-TO DEVELOPMENTS HOLDINGS  
INC., OSCAR FURTADO, FURTADO  
HOLDINGS INC., GO-TO  
DEVELOPMENTS ACQUISITIONS INC.,  
GO-TO GLENDALE AVENUE INC., GO-  
TO GLENDALE AVENUE LP, GO-TO  
MAJOR MACKENZIE SOUTH BLOCK  
INC., GO-TO MAJOR MACKENZIE  
SOUTH BLOCK LP, GO-TO MAJOR  
MACKENZIE SOUTH BLOCK II INC.,  
GO-TO MAJOR MACKENZIE SOUTH  
BLOCK II LP, GO-TO NIAGARA FALLS  
CHIPPAWA INC., GO-TO NIAGARA  
FALLS CHIPPAWA LP, GO-TO  
NIAGARA FALLS EAGLE VALLEY  
INC., GO-TO NIAGARA FALLS EAGLE  
VALLEY LP, GO-TO SPADINA  
ADELAIDE SQUARE INC., GO-TO  
SPADINA ADELAIDE SQUARE LP, GO-  
TO STONEY CREEK ELFRIDA INC.,  
GO-TO STONEY CREEK ELFRIDA LP,  
GO-TO ST. CATHARINES BEARD INC.,  
GO-TO ST. CATHARINES BEARD LP,  
GO-TO VAUGHAN ISLINGTON  
AVENUE INC., GO-TO VAUGHAN  
ISLINGTON AVENUE LP, AURORA  
ROAD LIMITED PARTNERSHIP and  
2506039 ONTARIO LIMITED

Respondents

*Erin Hoult and Braden Stapleton, for the  
Applicant*

*Darryl Mann, for the Respondents*

*Steven Graff and Ian Aversa, for KSV  
Restructuring Inc., proposed Receiver and  
Manager*

**HEARD:** December 9, 2021

**L. A. PATTILLO J**

[1] On December 6, 2021, the Ontario Securities Commission (the “Commission”) issued two freeze directions under s. 126(1) of the Securities Act, R.S.O. 1990 c.s.5 (the “Act”) which require the respondent Oscar Furtado (“Furtado”) to maintain and refrain from imperiling assets derived from investor funds and require RBC Direct Investing to maintain the assets in Furtado’s RBC Direct Account.

[2] The Commission brings this application to continue those directions and for the appointment of KSV Restructuring Inc. as receiver and manager of the respondent Go-To entities.

[3] At the outset of the hearing, Furtado requested a short adjournment to permit him to retain new counsel (Mr. Mann appears on a limited retainer) and file responding material. He submitted, notwithstanding the Commission’s Staff’s investigation has been ongoing since March 2019, he was only advised of this proceeding on Monday and did not receive the Commission’s material until Monday evening. He disagrees with the Commission’s allegations, particularly that he misled Staff during the investigation and wants to respond. Nothing in the Commission’s material indicates anything precipitous was about to happen.

[4] In support of his request, Furtado has offered terms including continuing the freeze directions (with some access for living expenses and legal fees), production of the investigation transcripts and the appointment of a monitor as opposed to a receiver at the Commission’s expense.

[5] The Commission opposed the request. It submitted that a monitor would not be sufficient as it would leave Furtado in charge. Rather, in light of the record, a receiver was necessary to safeguard the interests of the investors. Further, while it could have proceeded *ex parte* under s. 129 of the Act, it gave Furtado notice and sufficient time to file material if required. In that regard, in the absence of material, many of Furtado’s submissions were unsubstantiated.

[6] Based on the allegations concerning Furtado’s actions in respect of his dealings with the Go-To projects and specifically the Go-To Spadina Adelaide Square Limited Partnership. (“Adelaide LP”) as set out in the Commission’s material and which I will address shortly, I was satisfied, despite the length of time the Commission’s investigation has been ongoing, that it was necessary having regard to the interests of the investors to deal with the application rather than adjourn it to a future date and leave Furtado in charge. I also was of the view that Furtado had sufficient notice to file material.

[7] Accordingly, I dismissed Furtado’s adjournment request.

[8] Furtado is the founder and directing mind of the Go-To entities which are limited partnerships. Between 2016 and 2020, Furtado and the respondent Go-To Developments Holdings Inc. (GTDH) raised almost \$80 million from Ontario investors for nine Go-To real estate projects by selling limited partnership units. The projects are not complete, and the investors’ funds remain outstanding.

[9] One of the projects is Adelaide LP, whose business is described as purchasing, holding an interest in, conducting pre-development planning with respect to development and construction of two properties, 355 Adelaide St. W. and 46 Charlotte Street in downtown Toronto (the



“Properties”). Beginning in February 2019, Furtado began to raise capital for Adelaide LP by selling units.

[10] The Adelaide LP agreement provides that investors would be paid returns pro-rata, after all investors received a return of their capital. It also provides no investor could require return of any capital contributions back until the dissolution, winding up or liquidation of the partnership.

[11] The purchase rights to the Properties were secured by Adelaide Square Developments Inc. (ASD) a company owned, in part, by AKM Holdings Corp. (AKM) which was in turn owned by the wife of Alfredo Malanca (Malanca). Furtado negotiated the Adelaide LP’s acquisitions of the Properties with Malanca as a representative of ASD.

[12] In late March, early April 2019, Adelaide LP and ASD entered into agreements whereby ASD assigned the purchase and sale agreements for the properties to Adelaide LP (the purchase price for the Properties was \$53.3 million plus a density bonus on one of the properties). They also entered into an Assignment Fee agreement which provided Adelaide LP would pay ASD an assignment fee of \$20.95 million. Adelaide LP paid the assignment fee from investors monies.

[13] At the same time, Furtado pledged the assets of two other Go-To LP’s to secure Adelaide LP obligations contrary to the LP agreements and without notice to any of the unit holders.

[14] On April 4, 2019, Adelaide LP entered into a demand loan agreement with ASD for \$19.8 million. The proceeds were paid by ASD to an investor in Adelaide LP for its redemption of \$16.8 million units and a \$2.7 million flat fee return and \$300,000 to Goldmount Financial Group Corp. (Goldmount), a mortgage brokerage in which Malanca is a director, as a referral fee for introducing the investor.

[15] On April 15, 2019, the respondent Furtado Holdings Inc. and AKM each received from ASD 11 shares of ASD and \$388,087.33 paid by ASD out of the assignment fee.

[16] On September 19 to 30, 2019, Furtado raised \$13.25 million for Adelaide LP from four investors. On October 1, 2019, Adelaide LP paid ASD \$12 million on the demand loan although no payment was due or demand made. On the same day, ASD paid both Furtado Holdings and AKM a “dividend” of \$6 million each. Furtado denied that he planned to profit on Adelaide LP’s purchase of the Properties and said that ASD decided to give Furtado Holdings “a thank you”.

[17] By August 2020, Furtado Holdings had used the bulk of the \$6 million dividend to transfer \$2.25 million to Furtado’s personal bank account and loan or otherwise transfer approximately \$3.265 million to every Go-To General Partner (GP), GTDH and Go-To Developments Acquisitions Inc. The Commission states it appears the transfers to the GPs were spent on operating costs and payments due to LP investors.

[18] Further, from Furtado’s bank account, approximately \$2.026 million was transferred to his RBC Direct Investing account in close proximity to the transfers received from Furtado Holdings.

[19] In addition to the above events involving Adelaide LP, Furtado and ASD, the Commission also submits that Furtado misled Staff during its investigation in respect of some of the answers

he gave. As noted, Furtado denies that allegation and submits that he co-operated with Staff and answered all of their questions.

[20] Section 129(1) and (2) of the Act gives the court the discretion, on application by the Commission, to appoint a receiver and manager of the property of any person or company where: (a) it is in the best interests of the creditors, security holders, or subscribers of such person or company; or (b) it is appropriate for the due administration of securities law.

[21] In *Ontario Securities Commission v. Sextant Strategic Opportunities Hedge Fund L.P.*, 2009 CanLII38503 (ONSC) at para. 54, Morawetz J. (as he then was) emphasized that the analysis of the “best interests” of the creditors and security holders in s. 129 is broader than the solvency test. Instead the court should consider “all the circumstances and whether, in the context of those circumstances, it is in the best interests of creditors that a receiver be appointed. The criteria should also take into account the interests of all stakeholders.”

[22] In my view, having regard to all the circumstances, I am satisfied based on the Commission’s evidence of Furtado’s dealings in respect of Adelaide LP that it is in the best interests of the investors in the Go-To projects that a receiver be appointed to ensure that the Go-To projects are managed in a proper fashion to protect the investors’ investments.

[23] The Commission’s investigation has revealed evidence of undisclosed payments to Furtado arising from Adelaide LP’s purchase of the Properties, resulting in misappropriation and improper use of Adelaide LP funds through his dealings with ASD.

[24] The Commission’s evidence establishes Furtado:

- a) Arranged to personally profit from Adelaide LP’s purchase of the Properties;
- b) Misused other Go-To LP assets to secure Adelaide LP’s acquisition of the Properties; and
- c) Gave false and/or misleading evidence to Staff about his dealings with ASD and Furtado Holdings’ receipt of shares and moneys from ASD.

[25] While I acknowledge that Furtado disputes the Commission’s allegation that he mislead Staff, in my view his dealings in respect of Adelaide LP and the cross-collateralization are of great concern by themselves.

[26] I agree with the Commission’s submission that the gravity of the potential breaches of the Act indicated by the evidence raises significant concerns about Furtado’s ability to operate in capital markets in a manner compliant with securities laws.

[27] Accordingly, I am satisfied the Commission has met the requirements of s. 126 of the Act. The appointment of a receiver will ensure that the investors’ interests are protected and that the Go-To entities are properly administered.

[28] Furtado submits that the appointment of a receiver will be the “death knell” for the Go-To projects. It will result in defaults under the various Go-To LP loan agreements. The receivership

is not in respect of an insolvency. There is no reason that the various projects can not continue under the control of a receiver. Further, with a stay in place, none of the loan agreements can be placed in default.

[29] Section 126(5.1) of the Act permits the court to continue a freeze direction where it is satisfied that such order would be reasonable and expedient in the circumstances, having due regard to the public interest and either (a) the due administration of Ontario securities law; or (b) the regulation of capital markets in Ontario.

[30] In order to continue a freeze direction, the Commission must establish: (a) there is a serious issue to be tried in respect of the respondents' breaches of the Act; (b) there is a basis to suspect, suggest or prove a connection between the frozen assets and the conduct in issue; and (c) the freeze directions are necessary for the due administration of securities laws or the regulation of capital markets, in Ontario or elsewhere: *OSC v. Future Solar Developments*, 2015 ONSC 2334 at para. 31.

[31] In my view, the evidence establishes all three parts of the above test. There is at least a serious issue to be tried as to potential breaches of the act by Furtado and Furtado Holdings, including fraud; the directions freeze Furtado's RBC Direct Account and any other assets he derived from investor funds. The evidence of Furtado's uses of the \$6 million dividend shows at least a basis to "suspect, suggest or prove" a connection between the assets frozen and the conduct in issue. Finally, continuation of the directions is necessary for the due administration of securities laws. They address inappropriate use of investor funds, dissipation of assets and preservation of assets.

[32] The application is allowed. KSV is appointed as receiver and manager without security of the respondent Go-To entities and the directions are continued until withdrawn or altered by the Commission or further order of the court.

[33] The Commission shall redact any personal information concerning any individual (excluding name, title, contact information or designation of business, profession or official capacity) contained in the exhibits to the affidavit filed in support of the application.



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L. A. Pattillo J.

**CITATION:** Ontario Securities Commission v. Go-To Developments Holdings Inc.,  
2021 ONSC 8133  
**COURT FILE NO.:** CV-21-00673521-00CL  
**DATE:** 20211210

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ONTARIO SECURITIES COMMISSION

Applicant

– and –

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED

Respondents

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**REASONS FOR JUDGMENT**

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Pattillo J.

# TAB 4

Court of Appeal File No.:C70114  
Court File No.: CV-21-00673521-00CL

***COURT OF APPEAL FOR ONTARIO***

BETWEEN:

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

- and -

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants in Appeal – Moving Party)

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**AFFIDAVIT OF OSCAR FURTADO  
(sworn December 14, 2021)**

December 14, 2021

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Lawyers for the Appellants

## CONTENTS

	Page
I. INTRODUCTION .....	2 -
II. BACKGROUND .....	3 -
A. Go-To Developments.....	3 -
B. The Real Properties.....	4 -
C. The Investors.....	4 -
III. THE ONTARIO SECURITIES COMMISSION.....	4 -
A. Staff Investigation.....	4 -
B. Interviews by the Commission.....	4 -
C. Freeze Directions .....	6 -
IV. THE RECEIVERSHIP APPLICATION .....	6 -
A. Service of the Application Record.....	6 -
B. Overview of Allegations in Application Record .....	7 -
C. Hearing of Application .....	8 -
V. THE RECEIVERSHIP ORDER .....	10 -
A. Issuance of the Receivership Order .....	10 -
B. Impact of the Order .....	12 -
VI. RESPONSES TO THE COMMISSION’S ALLEGATIONS .....	12 -
A. Allegations Regarding Improper Benefits .....	13 -
B. Allegations Regarding Attempts to Mislead Staff .....	19 -
VII. CONCLUSION.....	20 -
A. No Urgency to Application.....	20 -
B. Stay is Appropriate in the Circumstances .....	21 -



Court of Appeal File No.: C70114  
Court File No.: CV-21-00673521-00CL

***COURT OF APPEAL FOR ONTARIO***

BETWEEN:

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

- and -

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants in Appeal – Moving Party)

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**AFFIDAVIT OF OSCAR FURTADO  
(sworn December 14, 2021)**

**I, OSCAR FURTADO**, of the Town of Oakville, in the Regional Municipality of Halton,  
in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the founder and sole officer and director of Go-To Developments Holdings Inc. (“**GTDH**”) and as such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true. All references to currency in this Affidavit are references to Canadian dollars, unless otherwise indicated.

## **I. INTRODUCTION**

2. This Affidavit is sworn in support of a Motion for an Order staying the Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) issued December 10, 2021 (the “**Receivership Order**”), among other things, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of: (i) the real properties and entities listed on Schedule “A” to the Receivership Order (collectively, the “**Real Properties**”), and (ii) all the other assets, undertakings and properties of each of the parties listed on Schedule “B” to the Receivership Order (collectively, the “**Receivership Entities**”). Copies of the Receivership Order and the related Endorsement of the Honourable Mr. Justice Pattillo issued December 10, 2021 (the “**Endorsement**”) are attached hereto as **Exhibits “A”** and “**B**”, respectively.

3. GTDH and the other Receivership Entities and respondents (collectively, the “**Appellants**” or the “**Moving Parties**”) filed a Notice of Appeal dated December 14, 2021 (the “**Notice of Appeal**”) in respect of the Receivership Order. A copy of the Notice of Appeal is attached hereto as **Exhibit “C”**.

## II. BACKGROUND

### A. Go-To Developments

4. GTDH operates a property development business. GTDH is an Ontario corporation with its head office in Oakville, Ontario. Attached hereto as **Exhibit “D”** is a copy of a Corporate Profile Report dated December 13, 2021.

5. GTDH conducts its business through an organizational structure that includes a number of limited partnerships (collectively, with GTDH, **“Go-To Developments”**). GTDH is the sole shareholder in respect of each of the corporate general partners in the structure. An organizational chart in respect of Go-To Developments is attached hereto as **Exhibit “E”**.

6. I am the sole officer and director of each of the Moving Parties in this proceeding except for Go-To Major Mackenzie South Block Inc. and Go-To Major Mackenzie South Block II Inc. I am the sole director, President and Secretary of those two corporations, and Mike Smith (a project manager at the construction management firm retained in respect of certain development projects) is also listed as an officer for these two entities in accordance with a request from Tarion (formerly known as the Ontario New Home Warranty Program).

7. The corporate respondents, other than GTDH, Furtado Holdings and Go-To Developments Acquisitions Inc. (**“GTDA”**), are the general partners (the **“GPs”**) of the limited partnership (the **“LPs”**) respondents in this proceeding. Although there are nine Go-To Developments projects (collectively, the **“Projects”**), there are ten GPs and ten LPs, as one project (*ie*, Major Mackenzie South Block) has two of each.

**B. The Real Properties**

8. Each of the LPs owns, alone or with others, one or more Real Properties in Ontario. Attached as **Exhibit “F”** hereto is a list of the Real Properties.

**C. The Investors**

9. Between May 2016 and June 2020, Go-To Developments raised approximately \$60.5 million from Ontario residents (collectively, the “**Investors**”) via distributions of units of the 10 LPs. Most if not all of the Investors are my friends and family, and were known to me or I was known to them. This amount includes an aggregate amount of approximately \$24.3 million raised by Adelaide LP from 23 investors between February 15, 2019 and June 18, 2020. I note that the paragraphs 18 and 21 to the Collins Affidavit (as defined below) include incorrect information in this regard.

**III. THE ONTARIO SECURITIES COMMISSION****A. Staff Investigation**

10. The Enforcement Branch (“**Staff**”) of the Ontario Securities Commission (the “**Commission**”) has been conducting an investigation of GTDH since before March of 2019.

11. I first learned of the Commission’s interest in Go-To Developments in late March of 2019, when Staff delivered an Enquiry Letter in respect of GTDH.

**B. Interviews by the Commission**

12. In the course of its investigation of Go-To Developments, the Commission interviewed me three times (collectively, the “**Furtado Interviews**”), on:

(a) September 24, 2020;

(b) November 5, 2020; and

(c) July 7, 2021.

13. The Collins Affidavit contains a number of excerpts from the transcripts of the Furtado Interviews (the “**Furtado Transcripts**”). However, despite requests, the Commission has refused to provide me or my counsel with copies of either the Furtado Transcripts or the exhibits thereto.

14. In addition to my three interviews, I, through counsel, provided dozens of written responses and extensive supporting documentation to more than two dozen separate Staff requests for information and documents.

15. I understand from my review of the Collins Affidavit that the Commission has also interviewed Anthony Marek (“**Marek**”), and relies on excerpts from the transcripts (the “**Marek Transcripts**”) of his interview (the “**Marek Interview**”) in support of the Receivership Application.

16. However, despite requests, the Commission has refused to provide me with copies of the Marek Transcripts and the exhibits thereto. Given the manner in which the investigation was described in the Application, I would assume that the Commission has interviewed other investors. However, absolutely no evidence or information from any other investor, other than Marek, was disclosed on the Application or has ever been disclosed to me or to my counsel. Moreover, there is absolutely no evidence that any other investor has complained or made any allegations in support of the allegations made by the Committee in its Application. With my limited ability to review the evidence (as a result of the Commission’s refusal to provide me with the Marek Transcripts and

the exhibits thereto), I deny the evidence or information that the Commission attributes to Marek in its Application.

### **C. Freeze Directions**

17. On December 6, 2021, the Commission issued two Freeze Directions in connection with this matter (together, the “**Freeze Directions**”). Copies of the Freeze Directions are attached together hereto as **Exhibit “G”**

## **IV. THE RECEIVERSHIP APPLICATION**

### **A. Service of the Application Record**

18. I am advised by my counsel, Darryl Mann of Torkin Manes LLP, and do verily believe that at approximately 3:35 pm on Monday December 6, 2021, the Commission notified him of an Application being brought by the Commission returnable December 9, 2021 and the availability an electronic copy of the Application Record (the “**Application Record**”). The Application Record was not attached to that e-mail. The e-mail from the Commission did not contain any information as to the nature of the Application, including the relief sought by the Commission. Attached as **Exhibit “H”** hereto is a copy of an email dated December 6, 2021 from Erin Hoult of the Commission to Mr. Mann.

19. By email sent at 7:08 pm on Monday December 6, 2021, Mr. Mann confirmed to Ms. Hoult that he would accept service of the Application Record, and requested that a copy be delivered as soon as possible. Mr. Mann also expressly reserved all rights in respect of the short notice of the proceeding. Attached as **Exhibit “I”** hereto is a copy of an email dated December 6, 2021 from Mr. Mann to Ms. Hoult.

20. By email sent at 7:21 pm on Monday December 6, 2021, Ms. Hoult provided a link to an electronic copy of Application Record. Attached as **Exhibit “J”** hereto is a copy of an email dated December 6, 2021 from Ms. Hoult to Mr. Mann including a link to the Application Record. It was only upon the review of the Application Record (which I was only able to review on December 7, 2021 as a result of its size and the inability to forward through email) that it became clear that the Commission’s Application was for the appointment of a receiver and manager.

21. The Application Record was comprised of a number of documents including the Affidavit of Stephanie Collins sworn December 6, 2021 (the “**Collins Affidavit**”). Due to its volume it is not practical to attach the Application Record as an exhibit to this Affidavit, but I have attached hereto copies of the Index of the Application Record and the Notice of Application as **Exhibits “K”** and “**L**” respectively.

22. I note that the Collins Affidavit is 1,958 pages long, and includes 113 exhibits. Consequently, attached as **Exhibit “M”** is a copy of the Collins Affidavit without the exhibits.

#### **B. Overview of Allegations in Application Record**

23. The Application for the Receivership Order (the “**Application**”) is premised on the following two principal allegations by the Commission:

- (a) That I received benefits (through my holding company, Furtado Holdings Inc. (“**Furtado Holdings**”), that were not disclosed to the unitholders of Go-To Spadina Adelaide Square LP (“**Adelaide LP**”); and
- (b) That I attempted to conceal information from and gave conflicting and misleading evidence to Staff.

24. I deny the Commission's allegations, conclusions or characterizations, as more particularly set out at paragraphs 38 through 68 below. However, due to the late notice of the voluminous Application Record, and Staff's failure and refusal to disclose the entirety of the evidence, including the Transcripts, I have not been provided with a meaningful opportunity to respond to the Commission.

**C. Hearing of Application**

25. The Application was heard by Justice Pattillo at approximately 2:00 pm EST on Thursday December 9, 2021 (the "**Hearing**"), less than 72 hours after receipt of notice of the Hearing and access to the Application Record on Monday December 6<sup>th</sup>.

26. I am advised by Mr. Mann and do verily believe that:

- (a) On the morning of Tuesday December 7, 2021, he contacted Ms. Hoult by e-mail to set up a telephone call. On the telephone call in the late afternoon of Tuesday December 7, 2021, Mr. Mann advised that, given factors that included the late service of the Application Record, the massive size of the Collins Affidavit, the failure of the Commission to disclose the full Furtado Transcripts and Marek Transcripts, and Go-To Developments' need to engage independent counsel, it would not be possible for the respondents to properly respond to the Application;
- (b) During the telephone call of December 7, 2021, with a view to allaying the Commission's concerns set out in its Application Record, he requested a consensual adjournment of the Application and proposed interim terms to be implemented



during the course of the adjournment. Those proposed terms included (collectively, the “**Adjournment and Proposed Terms**”):

- (1) that the hearing be adjourned to a date in January, with at least a half day scheduled before the Court for the hearing;
- (2) that the Freeze Directions be continued during the course of the adjournment, with certain exceptions for the payment of legal fees and living expenses;
- (3) that a monitor be appointed until the return date of the Application;
- (4) that the monitor, if appointed, be provided with full and unfettered access to all documents and information pertaining to the LPs and the Projects;
- (5) that KSV may be appointed as the monitor;
- (6) between the proposed adjournment and the return date, if the Commission or monitor discovered any new information, the matter could be returned to Court immediately; and
- (7) On the return date, the Commission may seek any order in respect of the monitor, including converting the monitor’s appointment into a receivership, or discharging the monitor, as necessary.

- (c) On December 8, 2021, the Commission advised Mr. Mann that it would not consent to any adjournment or any terms whatsoever.

27. As such, the Hearing proceeded as scheduled, with Mr. Mann in attendance on behalf of the respondents. I was also in attendance and observed the Hearing virtually.

28. During the Hearing, Mr. Mann advised Justice Pattillo that, given factors that included the late service of the Application Record, the massive size of the Collins Affidavit and Go-To Developments' need to engage independent counsel, it had effectively been impossible for me (or the other respondents) to properly respond to the Application. As such, Mr. Mann requested an adjournment of the Application, and proposed the Adjournment and Proposed Terms, which, as detailed above, were proposed to and denied by the Commission.

29. Notably, during the Hearing, Ms. Hoult advised the Court that it was a "close call" as to whether the Commission was to proceed with or without notice. While the Commission has characterized their Application as one with notice, it was for all intents and purposes a "without notice" Application by virtue of the extreme short notice that was provided, and they have failed to produce and disclose all of the appropriate evidence and have also clearly failed to provide full and fair disclosure of all pertinent and material facts and evidence.

## **V. THE RECEIVERSHIP ORDER**

### **A. Issuance of the Receivership Order**

30. For the reasons set out in the Endorsement, Justice Pattillo declined to grant the adjournment and issued the Receivership Order.

31. As set out in the Endorsement, Justice Pattillo found that the respondents had received sufficient notice of the Application to have filed responding material, and dismissed the adjournment request. Justice Pattillo also found that, despite the length of time the Commission's investigation had been ongoing, having regard to the interests of the Investors it was necessary that the Receiver be appointed immediately.

32. With all due respect to Justice Pattillo, I categorically disagree with both of these findings. First, there was no realistic way that between 7:21 pm on Monday and 2:00 pm on Thursday, I could have read and considered the Collins Affidavit and balance of the Application Record so as to put myself in a position to engage and instruct independent counsel for Go-To Developments and have them file responding materials, much less cross-examine the affiant of the Collins Affidavit.

33. While I acknowledge the serious nature of certain of the allegations in the Application Record, that does not mean (and I do not agree) that those allegations are true. In fact, I disagree with many of the Commission's allegations, as well as many of the characterizations and conclusions in the Collins Affidavit, and I do not believe that the Commission provided all of the relevant facts.

34. Second, I do not believe that there was any urgency to the hearing of the Application. The Commission's own conduct belies any claim to urgency. The fact is that substantially all of the facts alleged by the Commission have been known to it for well over a year. There was no allegation or evidence relied upon by the Commission that arose subsequent to 2020. The Application Record does not disclose any suggestion of imminent prejudice to the Investors or any other person.

35. Furthermore, as noted above, any residual concerns for Investors could have been addressed through consensual measures far less draconian, disruptive and prejudicial to Go-To Developments than the appointment of the Receiver, including the Adjournment and Proposed Terms.

### **B. Impact of the Order**

36. The issuance of the Receivership Order is devastating to Go-To Developments and its business, and I believe it will have a significant negative impact on the Investors.

37. In particular, Go-To Developments is engaged in a number of pending transactions including a sale of one of the Properties on terms that I believe are excellent and will substantially benefit certain Investors, as well as re-financings of certain of the Properties. In addition, the appointment of the Receiver is causing substantial – and in my view, entirely unwarranted – reputational damage to Go-To Developments and to me personally.

## **VI. RESPONSES TO THE COMMISSION’S ALLEGATIONS**

38. As noted above, the Application is premised on two principal categories of allegations by the Commission. For the reasons set out below, I deny the Commission’s allegations, conclusions and characterizations.

39. As a preliminary matter, I note that the Commission included only 25 pages of the Furtado Transcripts from my extensive interviews. As noted above, my counsel has requested copies of the full Furtado Transcripts, including the exhibits, but the Commission has refused them to date. I require the full Furtado Transcripts along with the Marek Transcripts, with exhibits, in order to

meaningfully respond to the out-of-context and incomplete excerpts that were “cherry-picked” for inclusion in the Collins Affidavit.

**A. Allegations Regarding Improper Benefits**

40. The Commission has alleged that I improperly received benefits (through Furtado Holdings) that were not disclosed to the 23 unitholders of Adelaide LP (the “**Adelaide Unitholders**”). I deny with this allegation.

**(i) Background to Acquisition of Adelaide Properties**

41. In early April 2019, Adelaide LP acquired the downtown Toronto properties known municipally as 355 Adelaide Street West and 46 Charlotte Street (the “**Charlotte Property**”) (together, the “**Adelaide Properties**”), the rights to which it acquired from Adelaide Square Developments Inc. (“**ASD**”). The total acquisition cost of the Adelaide Properties to Adelaide LP at closing was \$74.25 million, which included the payment of a \$20.95 million assignment fee (the “**Assignment Fee**”) to ASD.

42. The Adelaide Properties were brought to my attention by Alfredo Malanca (“**Malanca**”) in order about early 2018. Malanca is the sole officer and director of Goldmount Financial Group Corporation (“**GFGC**”). Malanca’s spouse, Katarzyna Pikula, is the sole officer and director of Goldmount Capital Inc. (together with GFGC, “**Goldmount**”) and of AKM Holdings Inc. (“**AKM**”). Goldmount has assisted with the mortgage financing for several of the Go-To projects, including the Adelaide LP.

43. I note that I have been actively engaged in terminating all business dealings with Malanca since Spring 2021.

(ii) **No Failure to Disclose Benefits**

44. The Commission incorrectly alleges that ASD improperly issued shares and made payments in the aggregate amount of \$6,388,087.33 to each of Furtado Holdings and AKM and that I improperly failed to disclose the issuance of such shares or payments to the Adelaide Unitholders.

45. It is correct that Furtado Holdings received a cheque dated April 15, 2019, from Concorde Law for \$388,087.33 (the “**\$388K Dividend**”). However, I do not agree with the Commission’s allegation that the \$388K Dividend was improper or required disclosure.

46. This amount was paid to Furtado Holdings for assuming the risk of losing a non-refundable deposit made by the Adelaide LP on behalf of ASD with respect to the acquisition of 355 Adelaide Street West for an extension prior to the closing date.

47. It is also correct that Furtado Holdings received a \$6 million dividend from ASD (the “**\$6M Dividend**”). However, I do not agree with the Commission’s allegation that the \$6M Dividend was improper or required disclosure. The \$6M Dividend originated and was paid to me outside of the Adelaide LP structure.

48. During my interviews and in many of the written communications with Staff, the Commission was provided with a full explanation regarding the acquisition of the Adelaide Properties. I have, at all times, answered all of the questions that were posed to me by staff, and at no time have I withheld information or misled Staff in any manner whatsoever. The Commission has chosen not to disclose the relevant details that provide the full context, circumstances, and bases upon which the \$388K Dividend and the \$6M Dividend were paid.

49. In addition, I note that my conduct in receiving the \$388K Dividend and the \$6M Dividend was entirely consistent with my obligations under the Limited Partnership Agreement dated April 4, 2019 in respect of the Adelaide Property (the “**Adelaide LP Agreement**”), which expressly contemplated and authorized outside activities of the type that led to the \$388K Dividend and the \$6M Dividend. Specifically, section 10.6 of the Adelaide LP Agreement provides as follows:

“**10.6 Competing Interests.** Each Unitholder and the shareholders, officers, directors and employees of the General Partner and its Affiliates shall be entitled, without the consent of the other parties, to carry on any business of the same nature as, or competing with that of, the Partnership, and is not liable to account to the other Unitholders or the Partnership therefor. It is further acknowledged and agreed that the directors, officers and employees of the General Partner will not act exclusively for the Partnership, and, consequently, the directors, officers and employees of the General Partner will only devote as much time as is necessary (but not all of his or her full time) to supervise the management of the business and affairs of the Partnership.

The Unitholders acknowledge and agree that the shareholders, directors and officers of the General Partner are not in any way limited or affected in their ability to carry on other business ventures for their own account or the account of others, and may be engaged in in a wide range of transactions, investments and other business activities, which may include, direct and/or indirect, acquisition, ownership and operation of businesses which compete with the Partnership. The Unitholders acknowledge and waive any rights to which they might otherwise be entitled as partners of the Partnership to invest in any other property or venture of the shareholders, directors and officers of the General Partner, or to profit therefrom or to any interest therein. The Unitholders acknowledge and agree that:

(a) if an investment opportunity does not arise solely from a director's or officer's activities on behalf of the General Partner, the directors and officers of the General Partner have no obligation to offer the investment opportunity to the Partnership; and

(b) the General Partner has the discretion to determine whether the Partnership will avail itself of the investment opportunity and, if it does not, any of the directors and officers of the General Partner shall be able to decide amongst themselves whether to pursue the opportunity for their respective accounts.”

50. Attached as **Exhibit “N”** hereto is a copy of the Adelaide LP Agreement.

51. The Collins Affidavit is rife with incorrect statements. For example, the Collins Affidavit refers to a demand loan agreement dated April 4, 2019 for \$19.8 million between the Adelaide LP

as the borrower and ASD as the lender (the “**Demand Loan**”). The Commission alleges that I improperly authorized the registration of a \$19.8 million charge against the Properties on behalf of ASD as security for the Demand Loan. This is entirely false; I did not authorize registration of the charge and had no prior knowledge of it.

52. In addition, I disagree entirely with Marek’s characterization of the events that led to his \$12 million investment on September 26, 2019. Prior to making that investment, Marek was fully aware of the structure and financials of the original purchase that was shared with him when he invested the original \$16.8 million, which was subsequently returned.

53. Marek is a sophisticated, experienced and seasoned real-estate investor and residential land developer, and it strains credulity for the Commission to suggest that Marek truly believed the \$12 million investment was to be used for development charges. Marek was provided with the limited partnership agreement on various occasions, and was aware that the mandate of the LP was to sell the property prior to construction, which would mean that no development charges would ever be paid by Adelaide LP. The Collins Affidavit has also chosen to omit the important fact that Marek invested a further \$1 million after the \$12 million investment, and failed to disclose Marek’s explanation for investing the further \$1 million. Attached as **Exhibit “O”** is a copy of Marek’s biography, demonstrating his decades of experience in property development.

**(iii) No Improper Use of Proceeds**

54. The Commission incorrectly alleges that I improperly used proceeds of the \$6 million Furtado Holdings received from ASD in October 2019 to, among other things, make personal investments and to provide funds to other Go-To Developments LPs.



55. First of all, I do not believe that the \$6M Dividend was improper. As noted above, the dividend originated and was paid to me outside of the Adelaide LP structure. It had no impact on the purchase price in respect of the Adelaide Property either before or after the acquisition date, and was fully disclosed to Adelaide Unitholders.

56. As such, I do not believe that my uses of the proceeds of the \$6M Dividend are relevant to this proceeding. However, to the extent such uses are relevant, it is noteworthy – and known to the Commission – that since the beginning of the Dividend Period (as defined in the Collins Affidavit) I have injected approximately \$5.75 million into Go-To Developments and the LPs that required funds. It is unclear to me why the Commission would not have disclosed this fact in the Collins Affidavit. The Collins Affidavit references the amount of \$3.265 million, which is incorrect.

57. The Commission also claims that I used Go-To Developments' funds to pay outstanding amounts on my personal Visa card. Once again, it is disappointing that the Commission has failed to tell the whole story in this regard. The Commission is well aware that a large amount of Visa expenses were business-related, including legal fees in particular, as the Commission has previously been provided with this explanation as well as copies of the relevant Visa statements.

58. The Commission alleges that, if left in control of Go-To Developments, I would “bleed” the business. This is, quite frankly, absurd. Since its founding in February of 2016, I have never collected a salary from the business, and contrary to the Commission's allegations, I have not taken a “guarantee fee” since June 2019.

59. With respect to the Commission's allegations that I am prejudicing the LPs by collecting administration fees, this is also demonstrably false. Administrative fees have only ever been paid

(in accordance with the limited partnership agreements) to GTDH, not me personally. Moreover, these fees were only paid when an LP was in a position to do so. Where a LP did not have cash, the administrative fees have simply accrued.

**(iv) Cross-Collateralization**

60. Finally, the Commission alleges that I improperly: (i) pledged the assets of two other LPs to secure obligations of Adelaide LP in relation to the acquisition of the Adelaide Properties in contravention of the relevant limited partnership agreements, and (ii) failed to disclose such pledges to the Investors in those LPs on a timely basis.

61. Specifically, the Commission alleges that I improperly signed a memorandum of understanding dated April 3, 2019 (the “**MOU**”) on behalf of the Adelaide LP and Adelaide GP, myself, and on behalf of Go-To Stoney Creek Elfrida LP (the “**Elfrida LP**”) and Go-To Stoney Creek Elfrida Inc. (the “**Elfrida GP**”).

62. Under the MOU, the Elfrida GP and Elfrida LP are guarantors of obligations of the Adelaide LP, as set out in that agreement. Among other things in the MOU, the Elfrida GP and Elfrida LP agreed to the registration of a \$7.15 million collateral charge on the Elfrida LP’s property.

63. The Commission also alleges that I improperly caused the Eagle Valley LP and Go-To Niagara Falls Eagle Valley Inc. to agree to the registration of a \$13,712,500 charge (the “**Scarecrow Charge**”) on the Eagle Valley LP’s property as collateral for Scarecrow in respect of its mortgage loan to the Adelaide LP.

64. Staff has been aware of the MOU and the Scarecrow Charge since at least as early as September 24, 2020. In addition, the Scarecrow Charge was transferred and subsequently removed from title by the transferee on April 1, 2021 without any negative impact whatsoever on the Investors. I do not understand how the Commission can now rely on the MOU or the Scarecrow Charge as a basis for an “urgent” receivership.

65. Similarly, the Collins Affidavit refers to a Memorandum of Understanding dated April 3, 2019, between parties that include ASD and FAAN Mortgage Administrators Inc. (“FAAN”). FAAN was the Court-appointed trustee of one of the mortgage holders on the Charlotte Property. FAAN registered a \$7.15 million charge (the “FAAN Charge”) against the Elfrida LP’s property on April 5, 2019.

66. The FAAN Charge was removed from title on November 9, 2021. Moreover, there was no negative impact whatsoever on the Investors by any of these events.

**B. Allegations Regarding Attempts to Mislead Staff**

67. The Commission has alleged that I attempted to conceal information from and gave conflicting and misleading evidence to Staff.

68. As noted above, I do not have access to certain evidence upon which the Commission relies heavily in its Application Record, namely, the complete Furtado Transcripts and Marek Transcripts, and the exhibits thereto. However, based on my review of the excerpts included in the Collins Affidavit as well as my recollection of the interviews themselves, it is clear to me that the Commission “cherry-picked” certain of my statements for inclusion in the Collins Affidavit and

deliberately failed to include the surrounding statements, which provided context and legitimate explanations.

69. I have at all times answered the questions posed of me by Staff. Throughout its investigation, Staff has consistently failed to provide me with an opportunity to review documents in advance of asking questions on any of the events discussed in its Application. In each instance where I was not able to provide a detailed answer immediately to Staff, I have routinely subsequently provided a fulsome explanation and detailed information after having an opportunity to review and consider the relevant information and documents.

## **VII. CONCLUSION**

### **A. No Urgency to Application**

70. I do not believe that there was any urgency to the Commission's Application for the Receivership Order. As of the time of the Hearing, all or nearly all of the information and facts upon which the Commission bases its Application were known to the Commission for well over a year. In any event, many months had passed since the Commission had become aware of any new information regarding Go-To Developments and its business, with absolutely no new information being relied upon to bring the Application on such short notice.

71. I must reiterate my view that it was simply not possible for me to have properly and fairly responded to the Application given the timelines, my need to engage new counsel, the extremely voluminous materials, and the refusal by the Commission to provide me with the Furtado Transcripts and Marek Transcripts, including the exhibits.

72. There are no imminent threats to Investors. In fact, the Commission's materials do not even contain allegations of any imminent threat.

**B. Stay is Appropriate in the Circumstances**

73. As more particularly set out above, I believe that the Moving Parties have raised a number of "serious issues" in their Notice of Appeal. I do not believe that there was a legitimate basis for the Application Judge to appoint the Receiver.

74. Furthermore, given such factors as the late service of the Application Record, the massive size of the Collins Affidavit, the failure to disclose the Furtado Transcripts and Marek Transcripts, including the exhibits, and Go-To Developments' need to engage independent counsel, it was effectively impossible for Go-To Developments to have properly responded to the Application.

75. I believe that the Moving Parties will suffer irreparable harm if a stay of the Order is not granted. The Order has caused, and so long as it is effective it will continue to cause, a rising lack of confidence among the Investors and other stakeholders in the Projects' ability to proceed.

76. I am personally suffering prejudice as a result of the combination of the Receivership Order and the Freeze Direction. Since the inception of Go-To Developments I have not collected a salary (despite having an employment agreement). In addition to my large long-term investments in the business, I have routinely paid business expenses with personal credit cards and have a substantial balance outstanding. As a result of the Receivership Order I am unable to reimburse myself for such expenses and have no other access to funds. This is particularly significant to me as I have medical expenses due to certain conditions.

77. Finally, I believe that the balance of convenience favours a stay of the Order, particularly with the proposed terms that were put forward to Justice Pattillo at the Hearing.

78. In summary, I do not agree with many of the Commission's allegations, and I believe that, had Go-To Developments been provided with sufficient time to properly respond to the Application, the Receivership Order would not have been granted. Furthermore, there was no urgency to the hearing of the Application, particularly in light of the interim safeguards proposed by my counsel.

79. I swear this affidavit in support of the Motion of the Moving Parties for a stay of the Receivership Order, and for no other or improper purpose or delay.

SWORN before me at the City of Mississauga, in the Province of Ontario, this 14<sup>th</sup> day of December, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

*Monica Faheim*

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Commissioner for Taking Affidavits

**Monica Faheim**

DocuSigned by:

*Oscar Furtado*

006CCDA688A5437...

**OSCAR FURTADO**

This is Exhibit “A” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for Taking Affidavits (or as may be)

**MONICA FAHEIM**

Court File No. CV-21-00673521-00CL

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

THE HONOURABLE  
JUSTICE L. PATTILLO

)  
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)

FRIDAY, THE 10th  
DAY OF DECEMBER, 2021



**ONTARIO SECURITIES COMMISSION**

- and -

Applicant

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED**

Respondents

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**ORDER  
(appointing Receiver)**

**THIS APPLICATION**, made by the Ontario Securities Commission ("**OSC**") for an Order pursuant to sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the



"Act"), appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**") without security, of the real property listed on **Schedule "A"** hereto (the "**Real Property**") and all the other assets, undertakings and properties of each of the parties listed on **Schedule "B"** hereto (the "**Receivership Respondents**"), was heard this day by judicial videoconference via Zoom due to the COVID-19 emergency.

**ON READING** the affidavit of Stephanie Collins sworn December 6, 2021 and the exhibits thereto (the "**Collins Affidavit**"), and on hearing the submissions of counsel for the OSC and counsel for the Respondents, and on reading the consent of KSV 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.

### **FREEZE DIRECTIONS**

2. **THIS COURT ORDERS** that the Freeze Directions issued by the OSC to Oscar Furtado and RBC Direct Investing on December 6, 2021, copies of which are attached at **Schedule "C"** hereto, shall continue until further order of this Court or until the OSC revokes the Freeze Directions or consents to release funds, securities or property from the Freeze Directions.

### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 129 of the Act, KSV is hereby appointed Receiver, without security, of the Real Property and all the other assets, undertakings and properties of each of the Receivership Respondents, including all of the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other Person (as defined below), and all proceeds thereof (together with the Real Property, the "**Property**").

## RECEIVER'S POWERS

4. **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 any of the Receivership Respondents, 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 any of the Receivership Respondents;
- (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 any of the Receivership Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to any of the Receivership Respondents and to exercise all remedies of any

of the Receivership Respondents in collecting such monies, including, without limitation, to enforce any security held by any of the Receivership Respondents;

- (g) to settle, extend or compromise any indebtedness owing to any of the Receivership Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Receivership Respondents, 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 any of the Receivership Respondents, 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) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and, in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Receivership Respondents;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Receivership Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Receivership Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which any of the Receivership Respondents may have;
- (r) to examine under oath any person the Receiver reasonably considers to have knowledge of the affairs of the Receivership Respondents, including, without limitation, any present or former director, officer, employee or any other person registered or previously registered with the OSC or subject to or formerly subject to the jurisdiction of the OSC or any other regulatory body respecting or having jurisdiction over any of the Property and the affairs of any of the Receivership Respondents; and
- (s) 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 Receivership Respondents, and without interference from any other Person.

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

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

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not required, to take possession and control of any monies, funds, deposit instruments, securities, or other Property held by or in the name of any of the Receivership Respondents, or by any third party for the benefit of any of the Receivership Respondents.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Receivership Respondents, or the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

9. **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**

10. **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 ANY OF THE RECEIVERSHIP RESPONDENTS OR THE PROPERTY**

11. **THIS COURT ORDERS** that no Proceeding against or in respect of any of the Receivership Respondents 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 any of the Receivership Respondents or the Property are hereby stayed and suspended pending further Order of this Court, provided that nothing herein shall prevent the commencement or continuation of any investigation or proceedings in respect of the Receivership Respondents, or any of them, by or before the OSC and its enforcement staff.

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

12. **THIS COURT ORDERS** that all rights and remedies against any of the Receivership Respondents, 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 *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Receivership Respondents to carry on any business which the Receivership Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Receivership Respondents 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**

13. **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 any of the Receivership Respondents, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with any of the Receivership Respondents 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 any of the Receivership Respondents 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 Receivership Respondents' 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 Receivership Respondents 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**

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

### **EMPLOYEES**

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



## PIPEDA AND ANTI-SPAM LEGISLATION

17. **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 Receivership Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

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

## LIMITATION ON ENVIRONMENTAL LIABILITIES

19. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste

or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

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

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

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

#### **FUNDING OF THE RECEIVERSHIP**

24. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

## SEALING

28. **THIS COURT ORDERS** that the OSC is authorized to redact any Personal Information (as defined below) contained in the exhibits to the Collins Affidavit (as so redacted, the “**Redacted Exhibits**”) and file with the Court the Collins Affidavit with the Redacted Exhibits. “Personal Information” means information about an identifiable individual, including, but not limited to, the following: (i) social insurance number; (ii) driver’s license number; (iii) passport number; (iv) license plate number; (v) health plan number; (vi) date of birth; (vii) address (not including city or province); (viii) telephone number; and (ix) bank or trading account number (including a joint account). For greater certainty, “Personal Information” does not include an individual’s name or the title, contact information, or designation of an individual in a business, professional, or official capacity.

29. **THIS COURT ORDERS** that the OSC shall file with the Court the Collins Affidavit without exhibits pending filing of the Redacted Exhibits with the Court. The OSC shall file the Redacted Exhibits with the Court as soon as reasonably practicable.

30. **THIS COURT ORDERS** that the OSC is authorized to deliver the Collins Affidavit containing the unredacted exhibits to each of the following parties and its respective lawyers: the Receiver and the Respondents (each such party, a “**Recipient**”). Each Recipient shall keep the unredacted exhibits to the Collins Affidavit confidential and shall not disclose the unredacted exhibits to the Collins Affidavit to any other party without further order of the Court.

31. **THIS COURT ORDERS** that the unredacted exhibits to the Collins Affidavit shall be sealed, kept confidential and shall not form part of the public record pending further Order of the Court.

## SERVICE AND NOTICE

32. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil*

*Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/go-to>.

33. **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 a notice with a link to the Case Website by email, ordinary mail, courier, personal delivery or facsimile transmission to the Receivership Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Receivership Respondents and that any such service or distribution by email, courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

34. **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.

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Receivership Respondents.

36. **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.

37. **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.

38. **THIS COURT ORDERS** that the Receiver may engage as its legal counsel Aird & Berlis LLP, notwithstanding that Aird & Berlis LLP has had an advisory role with respect to the OSC in connection with this proceeding.

39. **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.

40. **THIS COURT ORDERS** that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.



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**SCHEDULE "A"**  
**REAL PROPERTY**

1. 527 Glendale Avenue  
St. Catharines, ON  
PIN: 46415-0949
2. 185 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0047
3. 197 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0049
4. 209 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0051
5. 191 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0048
6. 203 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0050
7. 215 Major MacKenzie Drive East  
Richmond Hill, ON  
PIN: 03139-0052
8. 4210 Lyons Creek Road  
Niagara Falls, ON  
PIN: 64258-0110
9. 4248 Lyons Creek Road  
Niagara Falls, ON  
PIN: 64258-0713
10. 2334 St. Paul Avenue  
Niagara Falls, ON  
PIN: 64269-0559
11. 355 Adelaide Street West  
Toronto, ON  
PIN: 21412-0150

12. 46 Charlotte Street  
Toronto, ON  
PIN: 21412-0151
13. Highland Road  
Hamilton, ON  
PIN: 17376-0025
14. Upper Centennial Parkway  
Hamilton, ON  
PIN: 17376-0111
15. 19 Beard Place  
St. Catharines, ON  
PIN: 46265-0022
16. 7386 Islington Avenue  
Vaughan, ON  
PIN: 03222-0909
17. 4951 Aurora Road  
Stouffville, ON  
PIN: 03691-0193



**SCHEDULE "B"**  
**RECEIVERSHIP RESPONDENTS**

1. GO-TO DEVELOPMENTS HOLDINGS INC.
2. FURTADO HOLDINGS INC.
3. GO-TO DEVELOPMENTS ACQUISITIONS INC.
4. GO-TO GLENDALE AVENUE INC.
5. GO-TO GLENDALE AVENUE LP
6. GO-TO MAJOR MACKENZIE SOUTH BLOCK INC.
7. GO-TO MAJOR MACKENZIE SOUTH BLOCK LP
8. GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC.
9. GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP
10. GO-TO NIAGARA FALLS CHIPPAWA INC.
11. GO-TO NIAGARA FALLS CHIPPAWA LP
12. GO-TO NIAGARA FALLS EAGLE VALLEY INC.
13. GO-TO NIAGARA FALLS EAGLE VALLEY LP
14. GO-TO SPADINA ADELAIDE SQUARE INC.
15. GO-TO SPADINA ADELAIDE SQUARE LP
16. GO-TO STONEY CREEK ELFRIDA INC.
17. GO-TO STONEY CREEK ELFRIDA LP
18. GO-TO ST. CATHARINES BEARD INC.
19. GO-TO ST. CATHARINES BEARD LP
20. GO-TO VAUGHAN ISLINGTON AVENUE INC.
21. GO-TO VAUGHAN ISLINGTON AVENUE LP
22. AURORA ROAD LIMITED PARTNERSHIP
23. 2506039 ONTARIO LIMITED

**SCHEDULE "C"**  
**FREEZE DIRECTIONS**

See attached.



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3B8

22<sup>e</sup> étage  
20, rue queen ouest  
Toronto ON M5H 3B8

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**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,  
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION  
(Sections 126(1)(b) and 126(1)(c))**

**TO:** Oscar Furtado (DOB: July 15, 1962)  
2354 Sakome Drive  
Oakville, Ontario  
L6H 7N3

**RE:** Proceeds of sale of units of Go-To limited partnerships

**TAKE NOTICE THAT** pursuant to paragraph 126(1)(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), you are directed to refrain from withdrawing any funds, securities or property: that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to Go-To Developments Holdings Inc. ("GTDH"), from another person or company who has them on deposit, under control or for safekeeping; and, without limiting the generality of the foregoing, in RBC Direct Investing account no. 685-92809-2-4 ("RBC Direct Account"); and to hold these funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise.

**AND TAKE FURTHER NOTICE** that pursuant to paragraph 126(1)(c) of the Act, you are directed to maintain funds, securities or property: that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to GTDH; and, without limiting the generality of the foregoing, in the RBC Direct Account; and you are directed to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value

of those funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, security or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, except that you may dispose of securities or derivatives already held in the RBC Direct Account provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the RBC Direct Account.

**DATED** at Toronto, Ontario this 6<sup>th</sup> day of December, 2021.

Timothy Moseley



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3B8

22<sup>e</sup> étage  
20, rue queen ouest  
Toronto ON M5H 3B8

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**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,  
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION  
(Section 126(1)(a))**

**TO:** The Manager  
RBC Direct Investing Inc.  
200 Bay Street  
P.O. Box 75  
Toronto, ON M5J 2Z5

**RE:** FURTADO, Oscar  
Account No. 685-92809-2-4  
(CAD and USD)

**TAKE NOTICE** that pursuant to paragraph 126(1)(a) of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "*Act*"), RBC Direct Investing Inc. ("**RBC Direct**") is directed to retain any funds, securities or property that it has on deposit or under its control or for safekeeping in the name of or otherwise under the control of Oscar Furtado, including any funds, securities or property on deposit in account no. 685-92809-2-4 (the "**Account**"), and hold the funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, with the exception that securities or derivatives already held in the Account may be sold provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the Account.

**AND TAKE FURTHER NOTICE THAT** this Direction applies to any and all funds, securities or property in a recognized clearing agency and to any and all securities in the process of transfer by a transfer agent.

**AND TAKE FURTHER NOTICE THAT** this Direction may be served by e-mail, fax or courier to the above-noted address for and the last known address of the parties named in this Direction in the records of RBC Direct.

**DATED** at Toronto, Ontario this 6<sup>th</sup> day of December, 2021.

*Timothy Moseley*

**SCHEDULE "D"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of the real property listed on Schedule "A" of the Receivership Order (as defined below) (the "**Real Property**") and all the other assets, undertakings and properties of each of the parties listed on Schedule "B" of the Receivership Order (the "**Receivership Respondents**"), including all of the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other Person (as defined in the Receivership Order), and all proceeds thereof (together with the Real Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 9<sup>th</sup> day of December, 2021 (the "**Receivership Order**") made in an application having Court file number CV-21-00673521-00CL, 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 \$250,000.00 which the Receiver is authorized to borrow under and pursuant to the Receivership 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 Receivership Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Receivership 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 Receivership 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 Receivership 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 Receivership Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

KSV Restructuring Inc., solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

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

Name:

Title:



**ONTARIO SECURITIES COMMISSION**

Applicant

**GO-TO DEVELOPMENTS HOLDINGS INC., ET AL.**

Respondents

Court File No. CV-21-00673521-00CL

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

**Proceedings commenced at Toronto**

**ORDER**  
**(appointing Receiver)**

**Ontario Securities Commission**  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

**Erin Hault (LSO No. 54002C)**  
Tel.: (416) 593-8290  
Email: [ehault@osc.gov.on.ca](mailto:ehault@osc.gov.on.ca)

*Lawyers for the Ontario Securities Commission*

- 2 -

This is Exhibit "B" referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in black ink that reads "Monica Faheim". The signature is written in a cursive style.

A927328446B742A...

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*Commissioner for taking Affidavits (or as may be)***MONICA FAHEIM**

**CITATION:** Ontario Securities Commission v. Go-To Developments Holdings Inc.,  
2021 ONSC 8133

**COURT FILE NO.:** CV-21-00673521-00CL

**DATE:** 20211210

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ONTARIO SECURITIES COMMISSION

Applicant

– and –

GO-TO DEVELOPMENTS HOLDINGS  
INC., OSCAR FURTADO, FURTADO  
HOLDINGS INC., GO-TO  
DEVELOPMENTS ACQUISITIONS INC.,  
GO-TO GLENDALE AVENUE INC., GO-  
TO GLENDALE AVENUE LP, GO-TO  
MAJOR MACKENZIE SOUTH BLOCK  
INC., GO-TO MAJOR MACKENZIE  
SOUTH BLOCK LP, GO-TO MAJOR  
MACKENZIE SOUTH BLOCK II INC.,  
GO-TO MAJOR MACKENZIE SOUTH  
BLOCK II LP, GO-TO NIAGARA FALLS  
CHIPPAWA INC., GO-TO NIAGARA  
FALLS CHIPPAWA LP, GO-TO  
NIAGARA FALLS EAGLE VALLEY  
INC., GO-TO NIAGARA FALLS EAGLE  
VALLEY LP, GO-TO SPADINA  
ADELAIDE SQUARE INC., GO-TO  
SPADINA ADELAIDE SQUARE LP, GO-  
TO STONEY CREEK ELFRIDA INC.,  
GO-TO STONEY CREEK ELFRIDA LP,  
GO-TO ST. CATHARINES BEARD INC.,  
GO-TO ST. CATHARINES BEARD LP,  
GO-TO VAUGHAN ISLINGTON  
AVENUE INC., GO-TO VAUGHAN  
ISLINGTON AVENUE LP, AURORA  
ROAD LIMITED PARTNERSHIP and  
2506039 ONTARIO LIMITED

Respondents

*Erin Hoult and Braden Stapleton, for the  
Applicant*

*Darryl Mann, for the Respondents*

*Steven Graff and Ian Aversa, for KSV  
Restructuring Inc., proposed Receiver and  
Manager*

**HEARD:** December 9, 2021

**L. A. PATTILLO J**

[1] On December 6, 2021, the Ontario Securities Commission (the “Commission”) issued two freeze directions under s. 126(1) of the Securities Act, R.S.O. 1990 c.s.5 (the “Act”) which require the respondent Oscar Furtado (“Furtado”) to maintain and refrain from imperiling assets derived from investor funds and require RBC Direct Investing to maintain the assets in Furtado’s RBC Direct Account.

[2] The Commission brings this application to continue those directions and for the appointment of KSV Restructuring Inc. as receiver and manager of the respondent Go-To entities.

[3] At the outset of the hearing, Furtado requested a short adjournment to permit him to retain new counsel (Mr. Mann appears on a limited retainer) and file responding material. He submitted, notwithstanding the Commission’s Staff’s investigation has been ongoing since March 2019, he was only advised of this proceeding on Monday and did not receive the Commission’s material until Monday evening. He disagrees with the Commission’s allegations, particularly that he misled Staff during the investigation and wants to respond. Nothing in the Commission’s material indicates anything precipitous was about to happen.

[4] In support of his request, Furtado has offered terms including continuing the freeze directions (with some access for living expenses and legal fees), production of the investigation transcripts and the appointment of a monitor as opposed to a receiver at the Commission’s expense.

[5] The Commission opposed the request. It submitted that a monitor would not be sufficient as it would leave Furtado in charge. Rather, in light of the record, a receiver was necessary to safeguard the interests of the investors. Further, while it could have proceeded *ex parte* under s. 129 of the Act, it gave Furtado notice and sufficient time to file material if required. In that regard, in the absence of material, many of Furtado’s submissions were unsubstantiated.

[6] Based on the allegations concerning Furtado’s actions in respect of his dealings with the Go-To projects and specifically the Go-To Spadina Adelaide Square Limited Partnership. (“Adelaide LP”) as set out in the Commission’s material and which I will address shortly, I was satisfied, despite the length of time the Commission’s investigation has been ongoing, that it was necessary having regard to the interests of the investors to deal with the application rather than adjourn it to a future date and leave Furtado in charge. I also was of the view that Furtado had sufficient notice to file material.

[7] Accordingly, I dismissed Furtado’s adjournment request.

[8] Furtado is the founder and directing mind of the Go-To entities which are limited partnerships. Between 2016 and 2020, Furtado and the respondent Go-To Developments Holdings Inc. (GTDH) raised almost \$80 million from Ontario investors for nine Go-To real estate projects by selling limited partnership units. The projects are not complete, and the investors’ funds remain outstanding.

[9] One of the projects is Adelaide LP, whose business is described as purchasing, holding an interest in, conducting pre-development planning with respect to development and construction of two properties, 355 Adelaide St. W. and 46 Charlotte Street in downtown Toronto (the

“Properties”). Beginning in February 2019, Furtado began to raise capital for Adelaide LP by selling units.

[10] The Adelaide LP agreement provides that investors would be paid returns pro-rata, after all investors received a return of their capital. It also provides no investor could require return of any capital contributions back until the dissolution, winding up or liquidation of the partnership.

[11] The purchase rights to the Properties were secured by Adelaide Square Developments Inc. (ASD) a company owned, in part, by AKM Holdings Corp. (AKM) which was in turn owned by the wife of Alfredo Malanca (Malanca). Furtado negotiated the Adelaide LP’s acquisitions of the Properties with Malanca as a representative of ASD.

[12] In late March, early April 2019, Adelaide LP and ASD entered into agreements whereby ASD assigned the purchase and sale agreements for the properties to Adelaide LP (the purchase price for the Properties was \$53.3 million plus a density bonus on one of the properties). They also entered into an Assignment Fee agreement which provided Adelaide LP would pay ASD an assignment fee of \$20.95 million. Adelaide LP paid the assignment fee from investors monies.

[13] At the same time, Furtado pledged the assets of two other Go-To LP’s to secure Adelaide LP obligations contrary to the LP agreements and without notice to any of the unit holders.

[14] On April 4, 2019, Adelaide LP entered into a demand loan agreement with ASD for \$19.8 million. The proceeds were paid by ASD to an investor in Adelaide LP for its redemption of \$16.8 million units and a \$2.7 million flat fee return and \$300,000 to Goldmount Financial Group Corp. (Goldmount), a mortgage brokerage in which Malanca is a director, as a referral fee for introducing the investor.

[15] On April 15, 2019, the respondent Furtado Holdings Inc. and AKM each received from ASD 11 shares of ASD and \$388,087.33 paid by ASD out of the assignment fee.

[16] On September 19 to 30, 2019, Furtado raised \$13.25 million for Adelaide LP from four investors. On October 1, 2019, Adelaide LP paid ASD \$12 million on the demand loan although no payment was due or demand made. On the same day, ASD paid both Furtado Holdings and AKM a “dividend” of \$6 million each. Furtado denied that he planned to profit on Adelaide LP’s purchase of the Properties and said that ASD decided to give Furtado Holdings “a thank you”.

[17] By August 2020, Furtado Holdings had used the bulk of the \$6 million dividend to transfer \$2.25 million to Furtado’s personal bank account and loan or otherwise transfer approximately \$3.265 million to every Go-To General Partner (GP), GTDH and Go-To Developments Acquisitions Inc. The Commission states it appears the transfers to the GPs were spent on operating costs and payments due to LP investors.

[18] Further, from Furtado’s bank account, approximately \$2.026 million was transferred to his RBC Direct Investing account in close proximity to the transfers received from Furtado Holdings.

[19] In addition to the above events involving Adelaide LP, Furtado and ASD, the Commission also submits that Furtado misled Staff during its investigation in respect of some of the answers

he gave. As noted, Furtado denies that allegation and submits that he co-operated with Staff and answered all of their questions.

[20] Section 129(1) and (2) of the Act gives the court the discretion, on application by the Commission, to appoint a receiver and manager of the property of any person or company where: (a) it is in the best interests of the creditors, security holders, or subscribers of such person or company; or (b) it is appropriate for the due administration of securities law.

[21] In *Ontario Securities Commission v. Sextant Strategic Opportunities Hedge Fund L.P.*, 2009 CanLII38503 (ONSC) at para. 54, Morawetz J. (as he then was) emphasized that the analysis of the “best interests” of the creditors and security holders in s. 129 is broader than the solvency test. Instead the court should consider “all the circumstances and whether, in the context of those circumstances, it is in the best interests of creditors that a receiver be appointed. The criteria should also take into account the interests of all stakeholders.”

[22] In my view, having regard to all the circumstances, I am satisfied based on the Commission’s evidence of Furtado’s dealings in respect of Adelaide LP that it is in the best interests of the investors in the Go-To projects that a receiver be appointed to ensure that the Go-To projects are managed in a proper fashion to protect the investors’ investments.

[23] The Commission’s investigation has revealed evidence of undisclosed payments to Furtado arising from Adelaide LP’s purchase of the Properties, resulting in misappropriation and improper use of Adelaide LP funds through his dealings with ASD.

[24] The Commission’s evidence establishes Furtado:

- a) Arranged to personally profit from Adelaide LP’s purchase of the Properties;
- b) Misused other Go-To LP assets to secure Adelaide LP’s acquisition of the Properties; and
- c) Gave false and/or misleading evidence to Staff about his dealings with ASD and Furtado Holdings’ receipt of shares and moneys from ASD.

[25] While I acknowledge that Furtado disputes the Commission’s allegation that he mislead Staff, in my view his dealings in respect of Adelaide LP and the cross-collateralization are of great concern by themselves.

[26] I agree with the Commission’s submission that the gravity of the potential breaches of the Act indicated by the evidence raises significant concerns about Furtado’s ability to operate in capital markets in a manner compliant with securities laws.

[27] Accordingly, I am satisfied the Commission has met the requirements of s. 126 of the Act. The appointment of a receiver will ensure that the investors’ interests are protected and that the Go-To entities are properly administered.

[28] Furtado submits that the appointment of a receiver will be the “death knell” for the Go-To projects. It will result in defaults under the various Go-To LP loan agreements. The receivership

is not in respect of an insolvency. There is no reason that the various projects can not continue under the control of a receiver. Further, with a stay in place, none of the loan agreements can be placed in default.

[29] Section 126(5.1) of the Act permits the court to continue a freeze direction where it is satisfied that such order would be reasonable and expedient in the circumstances, having due regard to the public interest and either (a) the due administration of Ontario securities law; or (b) the regulation of capital markets in Ontario.

[30] In order to continue a freeze direction, the Commission must establish: (a) there is a serious issue to be tried in respect of the respondents' breaches of the Act; (b) there is a basis to suspect, suggest or prove a connection between the frozen assets and the conduct in issue; and (c) the freeze directions are necessary for the due administration of securities laws or the regulation of capital markets, in Ontario or elsewhere: *OSC v. Future Solar Developments*, 2015 ONSC 2334 at para. 31.

[31] In my view, the evidence establishes all three parts of the above test. There is at least a serious issue to be tried as to potential breaches of the act by Furtado and Furtado Holdings, including fraud; the directions freeze Furtado's RBC Direct Account and any other assets he derived from investor funds. The evidence of Furtado's uses of the \$6 million dividend shows at least a basis to "suspect, suggest or prove" a connection between the assets frozen and the conduct in issue. Finally, continuation of the directions is necessary for the due administration of securities laws. They address inappropriate use of investor funds, dissipation of assets and preservation of assets.

[32] The application is allowed. KSV is appointed as receiver and manager without security of the respondent Go-To entities and the directions are continued until withdrawn or altered by the Commission or further order of the court.

[33] The Commission shall redact any personal information concerning any individual (excluding name, title, contact information or designation of business, profession or official capacity) contained in the exhibits to the affidavit filed in support of the application.



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L. A. Pattillo J.

**CITATION:** Ontario Securities Commission v. Go-To Developments Holdings Inc.,  
2021 ONSC 8133  
**COURT FILE NO.:** CV-21-00673521-00CL  
**DATE:** 20211210

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ONTARIO SECURITIES COMMISSION

Applicant

– and –

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED

Respondents

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**REASONS FOR JUDGMENT**

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Pattillo J.



- 3 -

This is Exhibit "C" referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in blue ink that reads "Monica Faheim".

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*Commissioner for taking Affidavits (or as may be)***MONICA FAHEIM**

Court of Appeal File No.  
Court File No.: CV-21-00673521-00CL

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

- and -

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants in Appeal – Moving Party)

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

**NOTICE OF APPEAL**

**THE APPELLANTS APPEAL** to the Court of Appeal from the Order of the Honourable Justice Pattillo (the “**Application Judge**”) of the Ontario Superior Court of Justice (Commercial List), dated December 10, 2021 (the “**Receivership Order**”), *inter alia*, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) over the real property and all other assets, undertakings and properties (the “**Property**”) of the parties identified at Schedule “B” to the Receivership Order (the “**Receivership Entities**”).

**THE APPELLANTS ASK that:**

1. The Receivership Order be set aside and that the Application of the Ontario Securities Commission (the “**Commission**”) dated December 6, 2021 (the “**Receivership Application**”) be dismissed;
2. In the alternative, the Receivership Order be set aside and a new hearing be ordered for the Receivership Application;
3. An Order staying the Receivership Order pending the hearing of this appeal be granted;
4. An Order abridging the time for service and the filing of this motion record, and factum, if necessary be granted;
5. Costs of the proceedings below, the Appellants’ motion for an Order staying the Receivership Order and this Appeal on a substantial indemnity basis; and
6. Such further and other relief as counsel may request and that this Honourable Court deems just, including, without limitation, such interim protective measures as this Honourable Court considers appropriate in the circumstances.

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

7. The Application Judge erred in law and fact:
  - (a) In granting the Receivership Order;
  - (b) In denying the adjournment request of the respondent, Oscar Furtado, in order to permit Mr. Furtado to retain independent counsel and file responding material addressing the very serious allegations made against him;
  - (c) In considering the fact that the Commission could have proceeded *ex parte* in finding that sufficient notice was given;

- (d) In finding that Mr. Furtado had sufficient time to meaningfully respond to the Receivership Application, despite the insufficient notice and voluminous Application Record of the Commission;
- (e) In denying the Appellants the opportunity to engage independent counsel to respond to the Receivership Application;
- (f) In refusing to grant the adjournment despite:
  - (i) the Application Judge's finding that there was no evidence in the Commission's materials of any precipitous or imminent event that mandated the appointment of a receiver and manager;
  - (ii) the absence of evidence presented by the Commission as to why the Respondents could not or should not have been provided with additional time to deliver a fulsome responding Application Record; and
  - (iii) the absence of any explanation in the Commission's Application Record as to why the Commission did not move for the Receivership Order at an earlier date;
- (g) In finding that the test for the appointment of a receiver under section 129 of the *Securities Act* (Ontario) was met in the circumstances;
- (h) In granting the appointment of the Receiver based on a fundamental misunderstanding of the facts and the evidence, including, without limitation, the finding that the evidence raises concerns as to Mr. Furtado's ability to operate in capital markets in a manner compliant with securities laws;

- (i) In failing to consider the devastating impact of the Receivership Order on the Appellants' business operations; and
  - (j) In exercising his discretion to grant the Receivership Order despite the availability of less intrusive means of addressing the concerns raised by the Commission, including the appointment of a monitor in parallel to the continuation of the freeze directions issued under section 126(1) of the *Securities Act*.
8. The decision to appoint the Receiver was an error in law;
9. The test for staying the Receivership Order pending appeal is met on the basis that it is in the interests of justice that the stay be granted and:
- (a) there is a serious question to be determined on appeal, namely whether the Receivership Order was an appropriate exercise of the Application Judge's discretion in the circumstances and whether the test for the appointment of a receiver under section 129 of the *Securities Act* was met and the Appeal is not frivolous or vexatious;
  - (b) absent a stay of the Receivership Order pending this appeal, the Appellants would suffer irreparable harm; and
  - (c) the balance of convenience weighs in favour of staying the Receivership Order pending this appeal;
10. Section 63.02 of the *Rules of Civil Procedure*; and
11. Such further and other grounds as counsel may advise and this Court permit.

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

12. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, as amended;

13. The Receivership Order appealed from is a final order;

14. Leave to appeal is not required; and

15. No other facts are relevant to establishing jurisdiction.

December 14, 2021

**MILLER THOMSON LLP**

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**AND TO: ONTARIO SECURITIES COMMISSION**

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Lawyers for the Receiver, KSV Restructuring Inc.

**ONTARIO SECURITIES COMMISSION** and **GO-TO DEVELOPMENTS HOLDINGS INC. *et al*** Court of Appeal File No.  
 Court File No: CV-21-00673521-00CL

Applicant (Respondent in Appeal) Respondents (Appellants in Appeal – Moving Party)

***COURT OF APPEAL FOR ONTARIO***

Proceeding Commenced at  
 TORONTO

**NOTICE OF APPEAL**

**MILLER THOMSON LLP**

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**Gregory Azeff LSO#: 45324C**

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 Email: gazeff@millerthomson.com

**Monica Faheim, LSO#: 82213R**

Tel: 416.597.6087  
 Email: mfaheim@millerthomson.com

Lawyers for the Appellants

RCP-F 4C (September 1, 2020)



- 4 -

This is Exhibit “D” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in black ink that reads "Monica Faheim". The signature is written in a cursive, flowing style.

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*Commissioner for Taking Affidavits (or as may be)*

**MONICA FAHEIM**

Ministry of Government and  
Consumer Services

## Profile Report

GO-TO DEVELOPMENTS HOLDINGS INC. as of December 13, 2021

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	GO-TO DEVELOPMENTS HOLDINGS INC.
Ontario Corporation Number (OCN)	2506758
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	February 29, 2016
Registered or Head Office Address	1267 Cornwall Road, 201, Oakville, Ontario, Canada, L6J 7T5

Certified a true copy of the record of the Ministry of Government and Consumer Services.

Director/Registrar

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

**Active Director(s)****Minimum Number of Directors**

1

**Maximum Number of Directors**

10

**Name**

Oscar FURTADO

**Address for Service**

1267 Cornwall Road, 201, Oakville, Ontario, Canada, L6J 7T5

**Resident Canadian**

Yes

**Date Began**

February 29, 2016

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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**Active Officer(s)****Name****Position****Address for Service****Date Began**

Oscar FURTADO

Secretary

1267 Cornwall Road, 201, Oakville, Ontario, Canada, L6J 7T5

February 29, 2016

**Name****Position****Address for Service****Date Began**

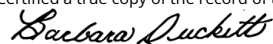
Oscar FURTADO

President

1267 Cornwall Road, 201, Oakville, Ontario, Canada, L6J 7T5

February 29, 2016

Certified a true copy of the record of the Ministry of Government and Consumer Services.



Director/Registrar

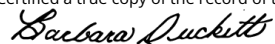
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**Corporate Name History****Name****Effective Date**

GO-TO DEVELOPMENTS HOLDINGS INC.

February 29, 2016

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#### Active Business Names

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

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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### Expired or Cancelled Business Names

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

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*Barbara Duckitt*

Director/Registrar

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## Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: OSCAR FURTADO - DIRECTOR	September 27, 2021
CIA - Notice of Change PAF: OSCAR FURTADO - DIRECTOR	September 27, 2021
Annual Return - 2019 PAF: OSCAR FURTADO - DIRECTOR	October 11, 2020
Annual Return - 2018 PAF: OSCAR FURTADO - DIRECTOR	March 13, 2019
BCA - Articles of Amendment	October 17, 2018
Annual Return - 2017 PAF: OSCAR FURTADO - DIRECTOR	July 08, 2018
CIA - Notice of Change PAF: OSCAR FURTADO - DIRECTOR	January 08, 2018
CIA - Notice of Change PAF: OSCAR FURTADO - DIRECTOR	October 13, 2017
Annual Return - 2016 PAF: OSCAR FURTADO - DIRECTOR	July 09, 2017
CIA - Notice of Change PAF: OSCAR FURTADO - DIRECTOR	March 10, 2017
CIA - Notice of Change PAF: OSCAR FURTADO - DIRECTOR	July 21, 2016
CIA - Initial Return PAF: OSCAR FURTADO - DIRECTOR	March 11, 2016
BCA - Articles of Incorporation	February 29, 2016

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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- 5 -

This is Exhibit "E" referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

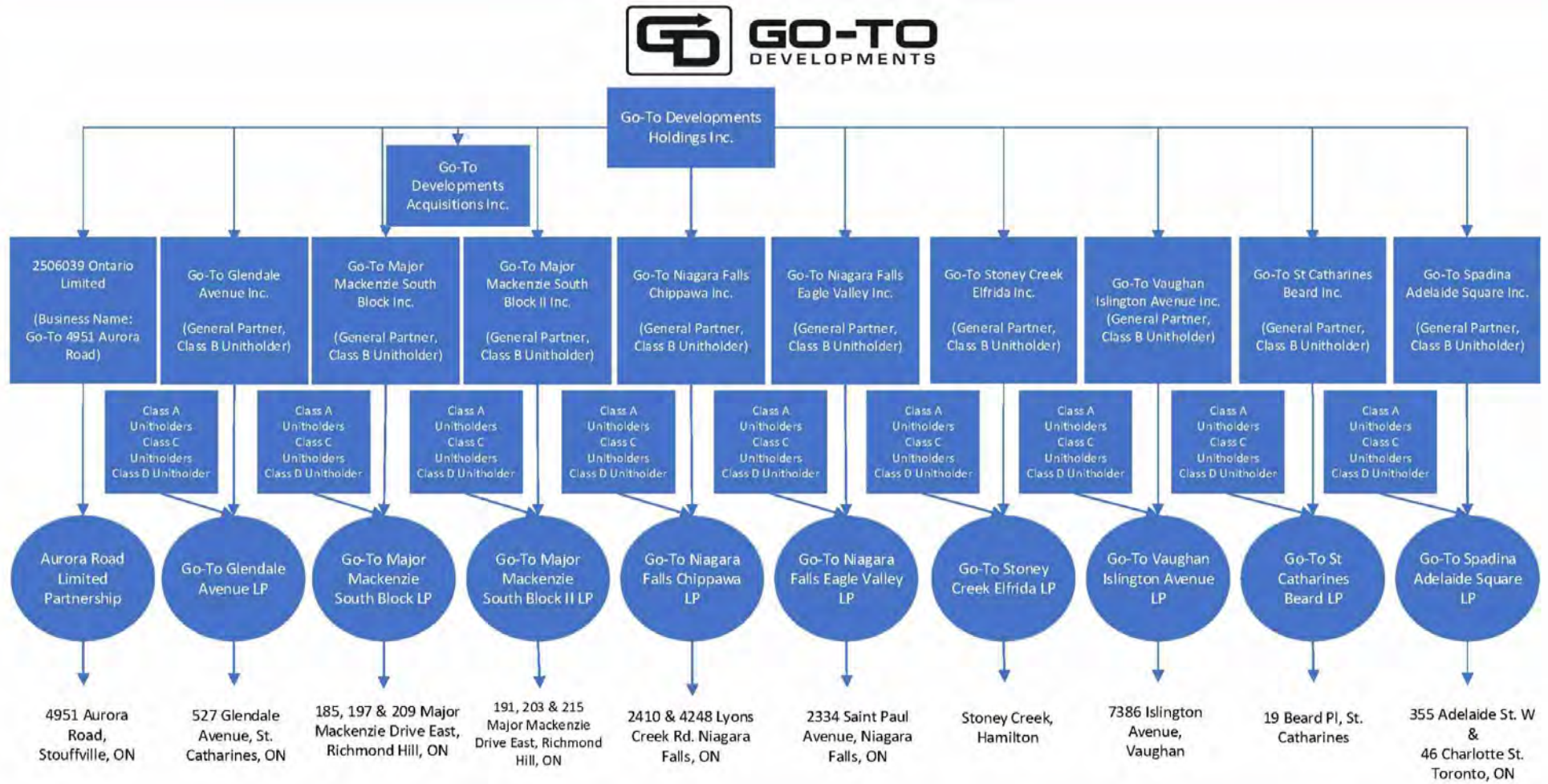
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*Commissioner for taking Affidavits (or as may be)*

**MONICA FAHEIM**

## Corporate Structure



- 6 -

This is Exhibit "F" referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in black ink that reads "Monica Faheim". The signature is written in a cursive style.

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*Commissioner for taking Affidavits (or as may be)***MONICA FAHEIM**

Appendix "A" - Go-To Limited Partnerships' Properties\*

Limited Partnership	Properties Owned Municipal Address (PIN)	Registered Owner(s)	Current Registered Monetary Charges*	Exhibit
Go-To Glendale Avenue LP	527 Glendale Avenue St. Catharines, ON (46415-0949)	Go-To Glendale Avenue Inc./ LP	1. Meridian Credit Union (\$1.15M) 2. Reciprocal Opportunities Incorporated (\$2.37M) 3. Trisura Guarantee Insurance Company (\$4.1M)	Exhibit "103"
Go-To Major Mackenzie South Block LP	Major MacKenzie Drive East Richmond Hill, ON 1. 185 Major MacKenzie (03139-0047) 2. 197 Major MacKenzie (03139-0049) 3. 209 Major MacKenzie (03139-0051)	Go-To Major MacKenzie South Block Inc.	1. Cameron Stephens Financial Corporation (\$6.5M) 2. GOH, et al. (\$1.75M)	Exhibit "104"
Go-To Major Mackenzie South Block II LP	Major MacKenzie Drive East Richmond Hill, ON 1. 191 Major MacKenzie (03139-0048) 2. 203 Major MacKenzie (03139-0050) 3. 215 Major MacKenzie (03139-0052)	Go-To Major MacKenzie South Block II Inc.	1. Cameron Stephens Financial Corporation (\$6.5M) 2. GOH, <i>et al.</i> (\$1.75M)	Exhibit "105"
Go-To Niagara Falls Chippawa LP	Lyons Creek Road Niagara Falls, ON 1. 4210 Lyons Creek (64258-0110) 2. 4248 Lyons Creek (64258-0713)	Go-To Niagara Falls Chippawa Inc./ LP	Green Leaf Financial Limited (\$2.425M)	Exhibit "106"
Go-To Niagara Falls Eagle Valley LP	2334 St. Paul Avenue Niagara Falls, ON (64269-0559)	Go-To Niagara Falls Eagle Valley Inc./ LP	1. Trisura Guarantee Insurance Company (\$2.65M) 2. Imperio SA Holdings Inc. <i>et al.</i> (\$3M) 3. Lesdow, Peter (\$200K) 4. Menard Canada Inc. (\$338,355.91)	Exhibit "107"
Go-To Spadina Adelaide Square LP	1. 355 Adelaide Street West Toronto, ON (21412-0150)  2. 46 Charlotte Street Toronto, ON (21412-0151)	Go-To Spadina Adelaide Square Inc./ LP	1. Cameron Stephens Mortgage Capital Ltd. (\$56.275M) 2. Northridge Maroak Developments Inc. (\$18.489M) 3. Adelaide Square Developments Inc. (\$19.8M)	Exhibit "108"
Go-To Stoney Creek Elfrida LP	1. Highland Road Hamilton, ON (17376-0025)  2. Upper Centennial Parkway Hamilton, ON (17376-0111)	Go-To Stoney Creek Elfrida Inc./ LP	1. Podesta Group Inc. et al. (\$10.65M) 2. 2106622 Ontario Ltd. et al. (\$1,689,274)	Exhibit "109"
Go-To St. Catharines Beard LP	19 Beard Place St. Catharines, ON (46265-0022)	Go-To St Catharines Beard Inc./ LP	1. Prudential Property Management Inc. (\$750K) 2. Imperio SA Holdings Inc. et al. (\$3M)	Exhibit "110"
Go-To Vaughan Islington Avenue LP	7386 Islington Avenue Vaughan, ON (03222-0909)	Go-To Vaughan Islington Avenue Inc./ LP	Dorr Capital Corporation (\$10M)	Exhibit "111"
Aurora Road Limited Partnership	4951 Aurora Road Stouffville, ON (03691-0193)	2506039 Ontario Limited	Hillmount Capital Mortgage Holdings Inc. (\$2.125M)**	Exhibit "112"

**Notes**  
\* As of November 24, 2021.  
\*\* Unquantified charges (e.g. non-assignment of rent) are not listed. Cross-collateral charges are listed.  
\*\*\* Note that this charge is registered against this property as well as properties belonging to this partnership's joint venture partners.

- 7 -

This is Exhibit "G" referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in black ink that reads "Monica Faheim". The signature is written in a cursive style.

A927328446B742A...

---

*Commissioner for taking Affidavits (or as may be)***MONICA FAHEIM**



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22<sup>e</sup> étage  
20, rue queen ouest  
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,  
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION  
(Sections 126(1)(b) and 126(1)(c))**

**TO:** Oscar Furtado (DOB: July 15, 1962)  
2354 Salcome Drive  
Oakville, Ontario  
L6H 7N3

**RE:** Proceeds of sale of units of Go-To limited partnerships

**TAKE NOTICE THAT** pursuant to paragraph 126(1)(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), you are directed to refrain from withdrawing any funds, securities or property: that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to Go-To Developments Holdings Inc. (“GTDH”), from another person or company who has them on deposit, under control or for safekeeping; and, without limiting the generality of the foregoing, in RBC Direct Investing account no. 685-92809-2-4 (“**RBC Direct Account**”); and to hold these funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise.

**AND TAKE FURTHER NOTICE** that pursuant to paragraph 126(1)(c) of the Act, you are directed to maintain funds, securities or property: that constitute or are derived from the proceeds of, or are otherwise related to the sale of units in any limited partnership related to GTDH; and, without limiting the generality of the foregoing, in the RBC Direct Account; and you are directed to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value

of those funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, security or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, except that you may dispose of securities or derivatives already held in the RBC Direct Account provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the RBC Direct Account.

**DATED** at Toronto, Ontario this 6<sup>th</sup> day of December, 2021.

*"Timothy Moseley"*





Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF GO-TO DEVELOPMENTS HOLDINGS INC.,  
OSCAR FURTADO, and FURTADO HOLDINGS INC.**

**FREEZE DIRECTION  
(Section 126(1)(a))**

**TO:** The Manager  
RBC Direct Investing Inc.  
200 Bay Street  
P.O. Box 75  
Toronto, ON M5J 2Z5

**RE:** FURTADO, Oscar  
Account No. 685-92809-2-4  
(CAD and USD)

**TAKE NOTICE** that pursuant to paragraph 126(1)(a) of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "**Act**"), RBC Direct Investing Inc. ("**RBC Direct**") is directed to retain any funds, securities or property that it has on deposit or under its control or for safekeeping in the name of or otherwise under the control of Oscar Furtado, including any funds, securities or property on deposit in account no. 685-92809-2-4 (the "**Account**"), and hold the funds, securities or property until the Ontario Securities Commission in writing revokes or varies this Direction or consents to release a particular fund, securities or property from this Direction or until the Ontario Superior Court of Justice orders otherwise, with the exception that securities or derivatives already held in the Account may be sold provided that any disposition occurs through the facilities of a recognized exchange and all proceeds of such sales are maintained in the Account.

**AND TAKE FURTHER NOTICE THAT** this Direction applies to any and all funds, securities or property in a recognized clearing agency and to any and all securities in the process of transfer by a transfer agent.

**AND TAKE FURTHER NOTICE THAT** this Direction may be served by e-mail, fax or courier to the above-noted address for and the last known address of the parties named in this Direction in the records of RBC Direct.

**DATED** at Toronto, Ontario this 6<sup>th</sup> day of December, 2021.

*"Timothy Moseley"*

This is Exhibit "H" referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for taking Affidavits (or as may be)

**MONICA FAHEIM**

**From:** Erin Hoult <[EHoult@osc.gov.on.ca](mailto:EHoult@osc.gov.on.ca)>

**Sent:** December 6, 2021 3:35 PM

**To:** Darryl T. Mann <[dmann@torkinmanes.com](mailto:dmann@torkinmanes.com)>; Michael Hanley <[mhanley@torkinmanes.com](mailto:mhanley@torkinmanes.com)>

**Cc:** Steve Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Ian Aversa <[iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)>

**Subject:** Dec. 9, 2021 Commercial List Hearing – OSC v. GTDH et al.

**Importance:** High

**This is an external email.**

---

Dear Counsel:

I am writing to advise that the Ontario Securities Commission is bringing an application which is returnable December 9, 2021 at 2 p.m., via Zoom, before the Commercial List.

The respondents to the application, which is to be issued, are: Go-To Developments Holdings Inc., Oscar Furtado, Furtado Holdings Inc., Go-To Developments Acquisitions Inc., Go-To Glendale Avenue Inc., Go-To Glendale Avenue LP, Go-To Major Mackenzie South Block Inc., Go-To Major Mackenzie South Block LP, Go-To Major Mackenzie South Block II Inc., Go-To Major Mackenzie South Block II LP, Go-To Niagara Falls Chippawa Inc., Go-To Niagara Falls Chippawa LP, Go-To Niagara Falls Eagle Valley Inc., Go-To Niagara Falls Eagle Valley LP, Go-To Spadina Adelaide Square Inc., Go-To Spadina Adelaide Square LP, Go-To Stoney Creek Elfrida Inc., Go-To Stoney Creek Elfrida LP, Go-To St. Catharines Beard Inc., Go-To St. Catharines Beard LP, Go-To Vaughan Islington Avenue Inc., Go-To Vaughan Islington Avenue LP, Aurora Road Limited Partnership, and 2506039 Ontario Limited.

The materials for the application are available electronically. Please advise if you have instructions to accept service of same on behalf of the respondents.

I can also advise that Staff of the Commission anticipate sending enforcement notices under separate cover in the next day or so.

Yours truly,

**Erin Hoult** | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8  
416-593-8290 | [ehoult@osc.gov.on.ca](mailto:ehoult@osc.gov.on.ca)

This is Exhibit "I" referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

*Monica Faheim*

A927328446B742A...

*Commissioner for Taking Affidavits (or as may be)*

**MONICA FAHEIM**

**Faheim, Monica**

---

**From:** Darryl T. Mann <dmann@torkinmanes.com>  
**Sent:** Monday, December 6, 2021 7:08 PM  
**To:** Erin Hoult  
**Cc:** Steve Graff; Ian Aversa; Michael Hanley; Laura Beatty  
**Subject:** RE: Dec. 9, 2021 Commercial List Hearing – OSC v. GTDH et al.

**Importance:** High

Ms. Hoult,

Further to your email, below, we will accept service of the Application material on behalf of the Respondents that/who you have listed in your email.

Our agreement to accept service is provided to you as a courtesy and without acknowledging the propriety of the proceeding or of the short notice that you are providing of Thursday's Hearing and without us agreeing to go "on the record". For the sake of certainty, the named Respondents assert and maintain any and all procedural and substantive rights and positions in this respect.

On this basis, kindly forward the material to us as soon as possible.

Regards,

**Darryl T. Mann**

Legal Services provided through D.T. Mann Professional Corporation  
 Tel: 416-777-5407  
 Fax: 1-888-587-5767

**Torkin Manes LLP**  
 Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

---

**From:** Erin Hoult <EHoult@osc.gov.on.ca>  
**Sent:** December 6, 2021 3:35 PM  
**To:** Darryl T. Mann <dmann@torkinmanes.com>; Michael Hanley <mhanley@torkinmanes.com>  
**Cc:** Steve Graff <sgraff@airdberlis.com>; Ian Aversa <iaversa@airdberlis.com>  
**Subject:** Dec. 9, 2021 Commercial List Hearing – OSC v. GTDH et al.  
**Importance:** High

**This is an external email.**

---

Dear Counsel:

I am writing to advise that the Ontario Securities Commission is bringing an application which is returnable December 9, 2021 at 2 p.m., via Zoom, before the Commercial List.

The respondents to the application, which is to be issued, are: Go-To Developments Holdings Inc., Oscar Furtado, Furtado Holdings Inc., Go-To Developments Acquisitions Inc., Go-To Glendale Avenue Inc., Go-To Glendale Avenue LP, Go-To Major Mackenzie South Block Inc., Go-To Major Mackenzie South Block LP, Go-To Major Mackenzie South Block II Inc., Go-To Major Mackenzie South Block II LP, Go-To Niagara Falls Chippawa Inc., Go-To Niagara Falls Chippawa LP, Go-To Niagara Falls Eagle Valley Inc., Go-To Niagara Falls Eagle Valley LP, Go-To Spadina Adelaide Square Inc., Go-To Spadina Adelaide Square LP, Go-To Stoney Creek Elfrida Inc., Go-To Stoney Creek Elfrida LP, Go-To St. Catharines Beard Inc., Go-To St. Catharines Beard LP, Go-To Vaughan Islington Avenue Inc., Go-To Vaughan Islington Avenue LP, Aurora Road Limited Partnership, and 2506039 Ontario Limited.

The materials for the application are available electronically. Please advise if you have instructions to accept service of same on behalf of the respondents.

I can also advise that Staff of the Commission anticipate sending enforcement notices under separate cover in the next day or so.

Yours truly,

**Erin Hoult** | Ontario Securities Commission | Enforcement | Senior Litigation Counsel  
20 Queen Street West, Suite 2200 | Toronto ON M5H 3S8  
416-593-8290 | [ehoult@osc.gov.on.ca](mailto:ehoult@osc.gov.on.ca)

## OSC Disclaimer

This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient or have received this communication in error, you are hereby notified that any unauthorized use or disclosure is strictly prohibited. Please notify the sender immediately and delete the original without making a copy or disclosing its contents.

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[Ontario Securities Commission](https://www.ontario.ca/gov)

– 10 –

This is Exhibit “J” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in black ink that reads "Monica Faheim". The signature is written in a cursive style.

A927328446B742A...

---

*Commissioner for taking Affidavits (or as may be)*

**MONICA FAHEIM**



**Faheim, Monica**

---

**From:** Darryl T. Mann <dmann@torkinmanes.com>  
**Sent:** Tuesday, December 7, 2021 2:20 PM  
**To:** EHoult@osc.gov.on.ca  
**Cc:** Laura Beatty  
**Subject:** RE: OSC v. GTDH et al

Erin,

I have reviewed your material. Kindly advise whether you would like to have a without prejudice discussion concerning Thursday's Hearing. If so, I have some time for a call this afternoon.

Please let me know.

Thanks and regards,

**Darryl T. Mann**

Legal Services provided through D.T. Mann Professional Corporation  
Tel: 416-777-5407  
Fax: 1-888-587-5767

**Torkin Manes LLP**

Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

---

**From:** Erin Hoult via Proofpoint <SecureShareAdmin@proofpoint.com>  
**Sent:** December 6, 2021 7:21 PM  
**To:** Darryl T. Mann <dmann@torkinmanes.com>  
**Subject:** OSC v. GTDH et al

**This is an external email.**

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ONTARIO  
SECURITIES  
COMMISSION

**2** FILE(S)  
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**377.4** MB  
TOTAL

**30** DAYS UNTIL  
EXPIRATION

---

Erin Hoult has invited you to a new Secure Share

**Message from Erin Hault:**

Please find at the link in this email, for service on the Respondents, the: (1) Application Record; and (2) Factum; of the Ontario Securities Commission for the application in the matter Ontario Securities Commission v. Go-To Developments Holdings Inc. et al., returnable December 9, 2021 at 2 p.m. before the Ontario Superior Court of Justice - Commercial List.

If you have any issue accessing the materials, please contact me at [ehault@osc.gov.on.ca](mailto:ehault@osc.gov.on.ca).

**Shared Files:**

Application Record - OSC.zip

Factum.zip

[Go to Secure Share](#)**POWERED BY** proofpoint<sup>®</sup>

- 11 -

This is Exhibit “K” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in blue ink that reads "Monica Faheim".

A927328446B742A...

---

*Commissioner for Taking Affidavits (Or as may be)***MONICA FAHEIM**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N :****ONTARIO SECURITIES COMMISSION****Applicant****- AND -**

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

**Respondents**

**APPLICATION RECORD  
(Returnable December 9, 2021)**

December 6, 2021

**ONTARIO SECURITIES COMMISSION**  
20 Queen Street West – 20<sup>th</sup> Floor  
Toronto, ON M5H 3S8

**Erin Hault**  
LSO No. 54002C  
Tel.: (416) 593-8290  
Email: ehault@osc.gov.on.ca

Counsel for the Ontario Securities Commission

## APPLICATION RECORD INDEX

<b>Tab</b>	<b>Document</b>	<b>PDF Page Range</b>
1	Notice of Application dated December 6, 2021 (to be issued)	1-13
2	Affidavit of Stephanie Collins sworn December 6, 2021	1-33
A	Appendix “A” – Go-To Limited Partnerships’ Properties	34-35
B	Appendix “B” – Funds Raised from Investors for all Go-To Limited Partnerships	36-38
C	Appendix “C” – Funds Raised from Investors for the Adelaide LP	39-40
D	Appendix “D” – Excerpt from Draft Source and Application Analysis for Furtado Holdings Account in the Dividend Period	41-45
1	Exhibit 1 – Corporation Profile Report Re: Goldmount Financial Group Corporation	46-51
2	Exhibit 2 – Corporation Profile Report Re: Goldmount Capital Inc.	52-57
3	Exhibit 3 – Corporation Profile Report Re: AKM Holdings Corp.	58-61
4	Exhibit 4 – Corporation Profile Report Re: Go-To Developments Holdings Inc.	62-66
5	Exhibit 5 – Email dated April 18, 2019 from Torkin Manes to Staff Responding to Staff’s Enquiry Letter of March 20, 2019	67-73
6	Exhibit 6 – Go-To Developments Corporate Organizational Chart	74-75
7	Exhibit 7 – Furtado Transcript Excerpts (pp. 9-10)	76-78
8	Exhibit 8 – Furtado Transcript Excerpts (pp. 210-235, 344-345)	79-107
9	Exhibit 9 – Investment Opportunity Re: Eagle Valley	108-127
10	Exhibit 10 – Corporate Subscription Agreement Re: Eagle Valley	128-143
11	Exhibit 11 – Individual Subscription Agreement Re: Eagle Valley	144-159
12	Exhibit 12 – Investment Opportunity Re: Stoney Creek Elfrida	160-185
13	Exhibit 13 – Corporate Subscription Agreement Re: Stoney Creek Elfrida	186-201

<b>Tab</b>	<b>Document</b>	<b>PDF Page Range</b>
14	Exhibit 14 – Individual Subscription Agreement Re: Stoney Creek Eflrida	202-217
15	Exhibit 15 – Limited Partnership Agreement Re: Niagara Falls Eagle Valley	218-261
16	Exhibit 16 – Limited Partnership Agreement Re: Glendale Avenue	262-305
17	Exhibit 17 – Limited Partnership Agreement Re: Niagara Falls Chippawa	306-349
18	Exhibit 18 – Limited Partnership Agreement Re: St. Catharines Beard	350-393
19	Exhibit 19 – Limited Partnership Agreement Re: Stoney Creek Elfrida	394-438
20	Exhibit 20 – Limited Partnership Agreement Re: Vaughan Islington Avenue	439-482
21	Exhibit 21 – Limited Partnership Agreement Re: Major MacKenzie South Block 1	483-526
22	Exhibit 22 – Limited Partnership Agreement Re: Major MacKenzie South Block 2	527-570
23	Exhibit 23 – Limited Partnership Agreement Re: Spadina Adelaide	571-616
24	Exhibit 24 – Amended and Restated Limited Partnership Agreement Re: Aurora Road	617-657
25	Exhibit 25 – Email from Malanca attaching Adelaide Square Presentation Deck	658-699
26	Exhibit 26 – Furtado Transcript Excerpts (pp. 32-46)	700-715
27	Exhibit 27 – Corporation Point in Time Report and Corporation Profile Report Re: Adelaide Square Developments Inc. (ASD)	716-731
28	Exhibit 28 – Corporate Subscription Agreement Re: Adelaide LP	732-747
29	Exhibit 29 – Individual Subscription Agreement Re: Adelaide LP	748-763
30	Exhibit 30 – Brochure Re: Adelaide Square	764-807
31	Exhibit 31 – Agreement of Purchase and Sale Re: 355 Adelaide St W., amendments thereto and assignment thereof	808-837
32	Exhibit 32 – Agreement of Purchase and Sale Re: 46 Charlotte Street, and assignment thereof	838-859
33	Exhibit 33 – Assignment Fee Agreement between ASD and the Adelaide LP	860-865
34	Exhibit 34 – Memorandum of Understanding	866-893

<b>Tab</b>	<b>Document</b>	<b>PDF Page Range</b>
35	Exhibit 35 – Direction Re: Disbursement of Funds	894-896
36	Exhibit 36 – Written Answers from Furtado, dated July 24, 2020, to Questions from OSC Staff	897-903
37	Exhibit 37 – Re-Direction dated April 15, 2019	904-905
38	Exhibit 38 – Corporation Profile report Re: West Maroak Developments Inc.	906-913
39	Exhibit 39 – Marek Transcript Excerpts (pp. 25-31, 41-44, 73-74, 77-81, 84-85, 157-158)	914-936
40	Exhibit 40 – Limited Partnership Agreement Re: Adelaide LP	937-978
41	Exhibit 41 – Resolution of the Sole Director of Adelaide GP	979-982
42	Exhibit 42 – RBC Business Account Statement Re: West Maroak Developments Inc. (March 29, 2019 to April 30, 2019)	983-984
43	Exhibit 43 – Cheque from Concorde Law to Furtado Holdings Inc. in the amount of \$388,087.33	985-987
44	Exhibit 44 – Cheque from Concorde Law to AKM Holding Corp. in the amount of \$388,087.33	988-989
45	Exhibit 45 – Furtado Transcript Excerpts (pp. 112-115, 111-119)	990-1003
46	Exhibit 46 – Demand Loan Agreement between ASD and the Adelaide LP	1004-1011
47	Exhibit 47 – Land Registry Documents Re: ASD Charge on Adelaide LP properties	1012-1014
48	Exhibit 48 – Articles of Amendment Re: ASD	1015-1020
49	Exhibit 49 – ASD Share Certificate	1021-1022
50	Exhibit 50 – Resolution of the Board of Directors of ASD	1023-1025
51	Exhibit 51 – Subscription of ASD Shares dated April 15, 2019	1026-1027
52	Exhibit 52 – Special Resolution of the Shareholders of ASD	1028-1033
53	Exhibit 53 – Shareholders Agreement re ASD dated April 15, 2019	1034-1050
54	Exhibit 54 – Marek Transcript Excerpts (pp. 84-85, 173-175)	1051-1056

<b>Tab</b>	<b>Document</b>	<b>PDF Page Range</b>
55	Exhibit 55 – Furtado Transcript Excerpts (pp. 102-105)	1057-1061
56	Exhibit 56 – Brochure Re: Adelaide Square	1062-1090
57	Exhibit 57 – Marek Transcript Excerpts (pp. 104-105, 140, 175-179)	1091-1099
58	Exhibit 58 – Furtado Transcript Excerpts (pp. 219-220)	1100-1102
59	Exhibit 59 – Furtado Transcript Excerpts (pp. 216-219)	1103-1107
60	Exhibit 60 – Marek Transcript Excerpts (pp. 206-210)	1108-1113
61	Exhibit 61 – RBC Business Account Statement Re: Go-To Spadina Adelaide Square Inc. and supporting documentation	1114-1122
62	Exhibit 62 – Written Answers to Summons Provided by Furtado dated March 31, 2021 (excerpt)	1123-1124
63	Exhibit 63 – Furtado Transcript Excerpts (pp. 120-123)	1125-1129
64	Exhibit 64 – Memo Re: Direction Re Funds	1130-1131
65	Exhibit 65 – RBC Business Account Statement Re: Furtado Holdings	1132-1134
66	Exhibit 66 – Wire Payment Statement Re: AKM	1135-1136
67	Exhibit 67 – T5 – Statement of Investment Income (2019) - AKM	1137-1139
68	Exhibit 68 – T5 – Statement of Investment Income (2019) - Furtado Holdings	1140-1141
69	Exhibit 69 – RBC Bank Account Statements Re: Furtado with supporting documents	1142-1179
70	Exhibit 70 – RBC Direct Investing Account Statements Re: Furtado	1180-1198
71	Exhibit 71 – Furtado Transcript Excerpts (pp. 275-276, 85)	1199-1202
72	Exhibit 72 – Furtado Transcript Excerpts (pp. 202-203)	1203-1205
73	Exhibit 73 – Furtado Transcript Excerpts (p. 208)	1206-1207
74	Exhibit 74 – Furtado Transcript Excerpts (pp. 259-262)	1208-1212
75	Exhibit 75 – Furtado Transcript Excerpts (pp. 265-276)	1213-1225



<b>Tab</b>	<b>Document</b>	<b>PDF Page Range</b>
76	Exhibit 76 – Written Answers to Summons Provided by Furtado	1226-1234
77	Exhibit 77 – Memorandum of Agreement between ASD, the Adelaide LP, and Furtado dated March 26, 2019	1235-1236
78	Exhibit 78 – Memorandum of Agreement dated March 26, 2019	1237-1238
79	Exhibit 79 – Redacted Copies of ASD Shareholding Documents and Re-Direction of Assignment Fee Provided to Staff by Furtado	1239-1263
80	Exhibit 80 – Furtado Transcript Excerpts (pp. 81-83, 92-98)	1264-1274
81	Exhibit 81 – Furtado Transcript Excerpts (pp. 87-91)	1275-1280
82	Exhibit 82 – Furtado’s Answers to Questions Taken Under Advisement from July 2021 Examination	1281-1283
83	Exhibit 83 – Furtado Transcript Excerpts (pp. 84-85, 110)	1284-1287
84	Exhibit 84 – Email chain between Malanca and Furtado	1288-1291
85	Exhibit 85 – Email chain between Malanca and Furtado Re: Spadina Adelaide Land Proforma	1292-1295
86	Exhibit 86 – Email chain between Malanca and Furtado Re: Lift Analysis	1296-1299
87	Exhibit 87 – Email chain between Malanca and Furtado Re: Numbers run using Louis spreadsheet	1300-1304
88	Exhibit 88 – Furtado Transcript Excerpts (pp. 149-201)	1305-1358
89	Exhibit 89 – Furtado Transcript Excerpts (pp. 137-147)	1359-1370
90	Exhibit 90 – Furtado Transcript Excerpts (pp. 201-205)	1371-1376
91	Exhibit 91 – Marek Transcript Excerpts (pp. 44-55)	1377-1389
92	Exhibit 92 – <i>R. v. Malanca</i> [2006] O.J. No. 1974 – Reasons for Sentence	1390-1430
93	Exhibit 93 – <i>R. v. Malanca</i> (2007), 88 O.R. (3d) 570 (C.A.)	1431-1450
94	Exhibit 94 – <i>R. v. Malanca</i> – SCC Case Summary	1451-1452
95	Exhibit 95 – Project Management Agreement re: Adelaide LP dated July 31, 2020	1453-1489

<b>Tab</b>	<b>Document</b>	<b>PDF Page Range</b>
96	Exhibit 96 – Correspondence and Draft Adelaide LP 2020 Financial Statements	1490-1503
97	Exhibit 97 – Land Registry Documents Re: Charge by FAAN on Elfrida LP Property and Discharge thereof	1504-1516
98	Exhibit 98 – Land Registry Documents Re: Charge by Scarecrow on Eagle Valley Property	1517-1542
99	Exhibit 99 – Land Registry Documents Re: Transfer and Discharge of Scarecrow Charge on Eagle Valley	1543-1546
100	Exhibit 100 – Furtado Transcript Excerpts (pp. 77-81, 147-149, 284-288, 126-137)	1547-1572
101	Exhibit 101 – Progress Report dated November 9, 2020 Re: Go-To Niagara Falls Eagle Valley Inc.	1573-1574
102	Exhibit 102 – Progress Report dated December 18, 2020 Re: Go-To Stoney Creek Elfrida Inc.	1575-1577
103	Exhibit 103 – Land Registry Documents Re: Go-To Glendale Avenue LP	1578-1600
104	Exhibit 104 – Land Registry Documents Re: Go-To Major Mackenzie South Block LP	1601-1653
105	Exhibit 105 – Land Registry Documents Re: Go-To Major Mackenzie South Block II LP	1654-1707
106	Exhibit 106 – Land Registry Documents Re: Go-To Niagara Falls Chippawa LP	1708-1724
107	Exhibit 107 – Land Registry Documents Re: Go-To Niagara Falls Eagle Valley LP	1725-1764
108	Exhibit 108 – Land Registry Documents Re: Go-To Spadina Adelaide Square LP	1765-1828
109	Exhibit 109 – Land Registry Documents Re: Go-To Stoney Creek Elfrida LP	1829-1844
110	Exhibit 110 – Land Registry Documents Re: Go-To St. Catharines Beard LP	1845-1856
111	Exhibit 111 – Land Registry Documents Re: Go-To Vaughan Islington Avenue LP	1857-1889
112	Exhibit 112 – Land Registry Documents Re: Aurora Road Limited Partnership	1890-1932
113	Exhibit 113 - RBC Business Account Statements Re: Furtado Holdings Inc.	1933-1958
3	Consent of KSV Restructuring Inc. dated December 6, 2021	1-2

<b>Tab</b>	<b>Document</b>	<b>PDF Page Range</b>
4	Freeze Directions issued by the Commission dated December 6, 2021	1-4
5	Draft Order	1-26
6	Blackline of Draft Order to Model Order Appointing Receiver	1-26

ONTARIO SECURITIES COMMISSION  
Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC. *et al.*  
Respondents

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

**APPLICATION RECORD  
(Returnable December 9, 2021)**

**Ontario Securities Commission**  
20 Queen Street West – 20th Floor  
Toronto, ON M5H 3S8

**Erin Hault (LSO No. 54002C)**  
Tel.: (416) 593-8290  
Email: ehault@osc.gov.on.ca

Counsel for the Ontario Securities Commission

– 12 –

This is Exhibit “L” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in black ink that reads "Monica Faheim". The signature is written in a cursive style.

A927328446B742A...

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*Commissioner for taking Affidavits (or as may be)***MONICA FAHEIM**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N :****ONTARIO SECURITIES COMMISSION****Applicant****- and -**

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

**Respondents**

**APPLICATION UNDER  
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended**

**NOTICE OF APPLICATION****TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing

☒ By video conference

at the following location:

via Zoom meeting to be arranged by the Court, details of which will be provided when available;

on Thursday, December 9, 2021 at 2 p.m., or as soon after that time as the matter can be heard.

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

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

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

Date: December 6, 2021

Issued by

\_\_\_\_\_  
Local Registrar

Address of Court Office:

Commercial List Office,  
9th Floor, 330 University Avenue,  
Toronto, Ontario  
M5G 1R7

**TO: Oscar Furtado  
Furtado Holdings Inc.**

2354 Salcome Drive  
Oakville, ON  
L6H 7N3

**AND TO: Go-To Developments Holdings Inc.  
Go-To Developments Acquisitions Inc.  
Go-To Glendale Avenue Inc.  
Go-To Glendale Avenue LP  
Go-To Major Mackenzie South Block Inc.  
Go-To Major Mackenzie South Block LP  
Go-To Major Mackenzie South Block II Inc.  
Go-To Major Mackenzie South Block II LP  
Go-To Niagara Falls Chippawa Inc.  
Go-To Niagara Falls Chippawa LP  
Go-To Niagara Falls Eagle Valley Inc.  
Go-To Niagara Falls Eagle Valley LP  
Go-To Spadina Adelaide Square Inc.  
Go-To Spadina Adelaide Square LP  
Go-To Stoney Creek Elfrida Inc.  
Go-To Stoney Creek Elfrida LP  
Go-To St. Catharines Beard Inc.  
Go-To St. Catharines Beard LP  
Go-To Vaughan Islington Avenue Inc.  
Go-To Vaughan Islington Avenue LP  
Aurora Road Limited Partnership  
2506039 Ontario Limited**

1267 Cornwall Road  
Suite 301  
Oakville, ON  
L6J 7T5



## APPLICATION

1. **THE APPLICANT MAKES APPLICATION FOR:**

- (a) Orders pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the **Act**), substantially in the form attached at Tab 5 of the application record, appointing KSV Restructuring Inc. (**KSV**) as receiver and manager (in such capacities, the **Receiver**), without security, of all of the assets, undertakings and properties (collectively, the **Property**) of each of the Respondents except Oscar Furtado (collectively, the **Go-To Respondents**), and all proceeds thereof;
- (b) Orders pursuant to section 126 of the Act continuing two freeze directions issued by the Ontario Securities Commission on December 6, 2021 (the **Directions**) in relation to assets held by Furtado, until further order of this Honourable Court or until the Commission revokes the Directions or consents to the release of assets from the Directions;
- (c) Orders, if necessary, abridging the time for service and filing of this Application or, alternatively, validating service of same, such that this Application is properly returnable on the date it is heard;
- (d) An order, if necessary, appointing KSV as interim Receiver of all the Property of the Go- To Respondents; and
- (e) Such further and other relief as counsel may advise and this Honourable Court permit.

## 2. THE GROUNDS FOR THE APPLICATION ARE:

### Overview

- (a) This application arises from an investigation into a principal of a property development group (Furtado) who appears to have used his position to defraud investors and engage in undisclosed self-dealing to enrich himself. The Ontario Securities Commission (**Commission**) thus seeks the: (i) immediate appointment of the Receiver; and (ii) continuation of the Directions to preserve assets in Furtado's hands; to safeguard the best interests of stakeholders, and in the interests of the the due administration of Ontario securities law, and/or the regulation of the capital markets;
- (b) Furtado is the founder and directing mind of all the Go-To Respondents. He is an Ontario resident. Each of the Go-To Respondents are Ontario entities, whether corporations or limited partnerships (**LPs**), involved in real estate development;
- (c) Between 2016 and 2020, Furtado and Go-To Developments Holdings Inc. (**GTDH**) raised almost \$80 million from approximately 85 Ontario investors for nine projects, by selling LP units;
- (d) For each Go-To project, Furtado and GTDH set up an LP and a wholly-owned subsidiary of GTDH to act as the general partner (**GP**) (for one project, they set up two LPs and GPs). The projects contemplate development of land and/or of a variety of buildings, including condos, townhouses and single-family homes. No project has begun construction yet, although it appears one has begun site servicing;

- (e) Staff of the Enforcement Branch of the Commission (**Staff**) have been investigating the Go-To business, Furtado and others (the **Investigation**). The Investigation has uncovered evidence indicating that Furtado has engaged some of the Go-To Respondents in transactions to improperly divert partnership funds to his personal benefit, failed to act in the best interests of the Go-To Respondents or their stakeholders, and breached the Act in several ways, including by misleading Staff during the Investigation;

The Investigation & Breaches of the *Securities Act*

- (f) The Investigation has focused on, among other things, the Go-To business and potential breaches of the Act, including fraud, misleading statements to investors, and misleading Staff;
- (g) The Investigation has uncovered evidence that, among other things:
- (i) From February to October 2019, Furtado raised capital from investors for the Go-To Spadina Adelaide Square LP (**Adelaide LP**);
  - (ii) Commencing in or before April 2019, Furtado caused the Adelaide LP to undertake a number of transactions with Adelaide Square Developments Inc. (**ASD**) and others, which ultimately resulted in his personal holding company, Furtado Holdings Inc. (**Furtado Holdings**), receiving ASD shares and undisclosed payments of \$388,087.33 and \$6 million from ASD;
  - (iii) The transactions with ASD relate to the Adelaide LP's acquisition of two properties in downtown Toronto in April 2019, for which ASD had the purchase rights. As part of the acquisition, the Adelaide LP paid ASD a

\$20.95 million assignment fee. Less than 2 weeks later, Furtado Holdings received ASD shares and a \$388,087.33 payment from ASD, which were not disclosed to investors.

- (iv) Within a day of the property acquisitions, the Adelaide LP received a purported \$19.8 million loan from ASD (**Demand Loan**). The majority of the loan proceeds were paid to redeem the units of one Adelaide LP investor together with a significant return;
- (v) Furtado raised additional investor funds for the Adelaide LP in September and October 2019. On October 1, 2019, he used investor funds to pay \$12 million on the Demand Loan, even though no payment was due or demanded. The same day, ASD paid Furtado Holdings a \$6 million dividend. This payment was not disclosed to investors;
- (vi) Furtado's key contact for ASD was Alfredo Malanca. A holding company belonging to Malanca's spouse (AKM Holdings Inc. (**AKM**)) received the same quantum of shares and payments from ASD that Furtado Holdings received, on the same dates;
- (vii) Furtado continues to allow Malanca to be involved with the Adelaide LP project, and to further his, Malanca's and/or ASD's interests by:
  - (1) giving Malanca a Go-To email account under a different last name;

- (2) causing the Adelaide LP to accrue \$1.5 million in fees in 2020 for “development management services”, which are payable, in equal amounts, to GTDH and to AKM; and
  - (3) allowing the registration of a \$19.8 million charge for ASD on the Adelaide LP’s properties in June 2021;
- (viii) Furtado used the \$6 million Furtado Holdings received to, among other things:
  - (1) make investments in his personal investment account;
  - (2) pay personal expenses, including credit card bills; and
  - (3) provide funds to Go-To entities, which they then used to fund operating expenses and make payments to investors;
- (ix) Further, as part of the Adelaide LP’s acquisition of properties in April 2019, Furtado pledged the assets of two other Go-To LPs to secure obligations of the Adelaide LP, which was prohibited by the applicable LP agreements. He did not disclose this misuse of partnership assets to investors for more than a year, and only after he was questioned by Staff; and
- (x) Furtado has provided shifting, misleading evidence to Staff during examinations under oath, including about his contacts at ASD and the payments received by Furtado Holdings;

- (h) Fraud is among the most egregious violations of the Act. The Investigation has revealed evidence of misappropriation, undisclosed payments to Furtado, improper use and intermingling of partnership assets, and deception to conceal transactions from investors and from Staff of the Commission. Furtado's conduct has jeopardized the assets of the Go-To LPs and investors' interests;
- (i) Furtado also failed to provide complete and accurate information to Staff during the Investigation, including during examinations under oath;
- (j) The requirements to deal honestly with investors and to provide full and accurate information to the Commission are cornerstones of the Act's regulatory regime;

#### Need for a Receiver

- (k) Given Furtado's conduct and its effect on the Go-To Respondents and their assets, the appointment of the Receiver is in the best interests of investors and other stakeholders;
- (l) By his actions, Furtado has demonstrated that he lacks the necessary integrity to continue to control projects involving investor funds. The most effective way to safeguard the best interests of stakeholders and the integrity of Ontario's capital markets is to appoint the Receiver and remove Furtado from the positions of trust he occupies with the Go-To Respondents. This is especially so given that:
  - (i) The primary vehicle via which Furtado Holdings was improperly enriched, the Demand Loan payable to ASD, has an outstanding balance of several million dollars; and

- (ii) Furtado has allowed Malanca to remain involved in the Adelaide LP project;
- (m) Appointment of the Receiver is needed to ensure the Go-To business is in the hands of an honest, competent, and responsible custodian, and is appropriate for the due administration of Ontario securities law;

Continuation of the Directions is Reasonable and Expedient

- (n) As some of the \$6 million received by Furtado Holdings from ASD was used by Furtado to make investments in his personal investment account, Staff sought and on December 6, 2021, the Commission issued, the Directions;
- (o) Subject to the terms therein, the Directions essentially require:
  - (i) RBC Direct Investing Inc. to retain all funds, securities and property on deposit in investment accounts belonging to Furtado; and,
  - (ii) Furtado to maintain any funds, securities or property derived from Go-To investor funds, (collectively, the **Assets**);
- (p) Continuation of the Directions would be reasonable and expedient in the circumstances, having due regard to the public interest and,
  - (i) the due administration of Ontario securities law; and/or
  - (ii) the regulation of the capital markets in Ontario;
- (q) There is a serious issue to be tried with respect to possible contraventions of the Act by Furtado and others, including potential fraud;

- (r) The Assets subject to the Directions were obtained by Furtado using proceeds obtained from the conduct at issue. Alternatively, there is at least a basis to suspect that the Assets are connected to the conduct at issue;
- (s) The Directions are necessary for the due administration of Ontario securities law. The Directions preserve assets connected to the conduct in issue for the benefit of investors and prevent dissipation of those assets by Furtado, to ensure such assets are available in the event that enforcement proceedings are brought before the Commission;

Legislative provisions, etc.

- (t) Sections 1.1, 2.1(2), 44(2), 122, 126, 126.1, 129, and 129.2 of the Act;
- (u) Sections 135 and 137 of the *Courts of Justice Act*;
- (v) Rules 1.04, 2.03, 3.02, 14.05(2), 16.08 and 38 of the *Rules of Civil Procedure*; and
- (w) Such further and other grounds as counsel may advise and this Court may permit.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- (a) the Affidavit of Stephanie Collins sworn December 6, 2021;
- (b) the Directions;
- (c) the Consent of KSV to act as Receiver; and
- (d) such further and other evidence as counsel may advise and this Honorable Court permit.



December 6, 2021

**ONTARIO SECURITIES COMMISSION**

20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

**Erin Hault**

LSO No. 54002C

Tel.: (416) 593-8290

Email: [ehault@osc.gov.on.ca](mailto:ehault@osc.gov.on.ca)

Lawyers for the Ontario Securities Commission

Court File No. \_\_\_\_\_

ONTARIO SECURITIES COMMISSION  
Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC. *et al.*  
Respondents

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

Proceeding commenced at Toronto

**NOTICE OF APPLICATION**  
(Application under sections 126 and 129  
of the *Securities Act*)

**Ontario Securities Commission**  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8

**Erin Hoult (LSO No. 54002C)**  
Tel.: (416) 593-8290  
Email: ehoult@osc.gov.on.ca

Lawyers for the Ontario Securities Commission

This is Exhibit “M” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for taking Affidavits (or as may be)

**MONICA FAHEIM**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N :****ONTARIO SECURITIES COMMISSION****Applicant****- and -**

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

**Respondents**

**APPLICATION UNDER  
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990 c. s.5, as amended**

**AFFIDAVIT OF STEPHANIE COLLINS  
(Sworn via Videoconference December 6, 2021)**

## **TABLE OF CONTENTS – AFFIDAVIT OF STEPHANIE COLLINS**

A.	OVERVIEW .....	1
B.	THE RESPONDENTS’ BUSINESS .....	3
C.	BRIEF HISTORY OF ASD AND THE PROPERTIES PRIOR TO BEING PURCHASED BY THE ADELAIDE LP.....	6
D.	INITIAL ADELAIDE LP CAPITAL RAISES .....	8
E.	ACQUISITION OF THE PROPERTIES BY THE ADELAIDE LP .....	9
F.	TRANSACTIONS WITH ASD IN APRIL 2019.....	10
	1) Redirection of the Assignment Fee by ASD.....	11
	(i) West Maroak Developments.....	11
	(ii) Payment to Goldmount .....	13
	(iii) Payments to Furtado Holdings and AKM.....	13
	2) The Demand Loan from ASD to the Adelaide LP.....	13
	3) ASD Shares.....	14
G.	ADELAIDE LP’S FURTHER SALES OF LP UNITS AND DEMAND LOAN PAYMENT - FALL 2019.....	14
	1) Further Sales of LP Units.....	14
	(i) Discussions prior to Marek’s \$12 million investment .....	15
	2) Demand Loan Payment and its Source of Funds .....	17
H.	PAYMENT OF ASD DIVIDENDS TO FURTADO HOLDINGS AND AKM.....	18
I.	FURTADO’S USE OF THE \$6 MILLION FROM ASD .....	19
J.	FURTADO’S EXPLANATIONS FOR THE ASD SHARES AND PAYMENTS.....	21
	1) First Examination – September 24, 2020.....	21
	2) Second Examination – November 5, 2020 .....	22
	3) Documents Produced After the Second Examination.....	23
	4) Third Examination – July 7, 2021.....	24

K.	FURTADO’S ADDITIONAL BUSINESS DEALINGS WITH MALANCA AND/OR AKM.....	25
L.	CROSS-COLLATERALIZATION – USE OF OTHER LPS’ ASSETS FOR ADELAIDE LP.....	28
M.	CONCLUSION.....	30

**APPENDIX “A”** – Go-To Limited Partnerships’ Properties

**APPENDIX “B”** – Funds Raised from Investors for all Go-To Limited Partnerships

**APPENDIX “C”** – Funds Raised from Investors for the Adelaide LP

**APPENDIX “D”** – Excerpt from Draft Source and Application Analysis for Furtado Holdings  
Account in the Dividend Period

**AFFIDAVIT OF STEPHANIE COLLINS**  
**(Sworn via Videoconference December 6, 2021)**

I, Stephanie Collins, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. This affidavit is sworn in relation to the application by the Ontario Securities Commission (the **Commission**) for the appointment of a receiver and manager and other relief.

2. I am a Senior Forensic Accountant in the Enforcement Branch (**Staff**) of the Commission. I joined the Commission in February 1998 as a Forensic Accountant. I am a member of the Chartered Professional Accountants of Ontario, Certified in Financial Forensics. I am also a member of the Institute of Chartered Accountants in England and Wales and a Certified Fraud Examiner.

3. Staff have been conducting an investigation into Go-To Developments Holdings Inc. (**GTDH**) and its principal, Oscar Furtado (**Furtado**), among others (the **Investigation**). I am the forensic accountant assigned to the Investigation. As such, I have personal knowledge of the matters set out in this affidavit, except where I have been informed by others and I believe that information to be true. The Investigation has focused on potential contraventions of the *Securities Act*, including fraud. In this affidavit, I summarize Staff's findings and concerns identified to date that are relevant to this application.

**A. OVERVIEW**

4. GTDH operates a property development business. Furtado is a Chartered Professional Accountant, the founder of GTDH, and the directing mind of all of the other respondents, including Go-To Spadina Adelaide Square LP (**Adelaide LP**).

2.

5. As briefly summarized in this Overview and described in this affidavit, it appears that Furtado received benefits, via his holding company, that were not disclosed to the unitholders of the Adelaide LP as a result of the Adelaide LP's acquisition of properties.

6. Since 2016, Furtado has raised almost \$80 million from approximately 85 Ontario investors by selling limited partnership units in respect of nine real estate projects (the **Go-To Projects**). For each Go-To Project, investors were told, among other things, that their funds would be used to buy properties and fund soft costs. A summary of the Go-To limited partnerships' properties is attached at **Appendix "A"**.

7. In or before the fall of 2018, Alfredo Malanca (**Malanca**) contacted Furtado to see if he was interested in acquiring property in downtown Toronto, including 355 Adelaide St. West and 46 Charlotte Street (collectively, the **Properties**). Prior to contacting Furtado, Malanca, through certain entities, had obtained agreements of purchase and sale for each of the Properties.

8. Malanca is the sole officer and director of Goldmount Financial Group Corporation. His wife, Katarzyna Pikula is the sole officer and director of Goldmount Capital Inc. (collectively **Goldmount**) and of AKM Holdings Inc. (**AKM**). Goldmount has assisted with the mortgage financing for at least five Go-To Projects, including the Adelaide LP. For the most part, Furtado's communications with any of these three companies take place with Malanca. Copies of the corporation profile reports for the Goldmount corporations and AKM are attached as **Exhibits "1", "2" and "3"** respectively.

9. In early April 2019, as a result of a variety of transactions, the Adelaide LP purchased the Properties, the rights to which it acquired from Adelaide Square Developments Inc. (**ASD**). The



3.

total acquisition cost of both Properties to the Adelaide LP at closing was \$74.25 million, which included the payment of a \$20.95 million assignment fee (**Assignment Fee**) to ASD.

10. After the Adelaide LP acquired the Properties, ASD issued shares and made payments to both Furtado's holding company, Furtado Holdings Inc. (**Furtado Holdings**), and AKM. In particular, each of Furtado Holdings and AKM received 11 shares of ASD and payments of \$388,087.33 in April 2019 and \$6 million in October 2019 from ASD. Furtado did not disclose, to the Adelaide LP investors, the shares or the payments that Furtado Holdings received from ASD.

11. Furtado used the proceeds of the \$6 million received from ASD in October 2019 to, among other things, make personal investments and to provide funds to Go-To limited partnerships. The funds provided to Go-To limited partnerships appear to have been used to fund their operations including payments due to investors.

12. Further, Furtado pledged the assets of two other limited partnerships to secure obligations of the Adelaide LP in relation to the acquisition of the Properties, contrary to the relevant limited partnership agreements. He did not disclose the pledges to the investors in those LPs until more than a year later and only after being questioned about the pledges by Staff.

13. In addition, it appears that during the Investigation Furtado has attempted to conceal information from and given conflicting and misleading evidence to Staff.

## **B. THE RESPONDENTS' BUSINESS**

14. GTDH is an Ontario corporation with its head office in Oakville; a copy of its corporation profile report is attached as **Exhibit "4"**. According to correspondence provided to Staff by GTDH's counsel on April 18, 2019, a copy of which is attached as **Exhibit "5"**:

4.

- (a) GTDH's shares are owned by Furtado Holdings;
- (b) GTDH owns all of the shares of Go-To Developments Acquisitions Inc. (**GTDA**);
- (c) GTDH organizes limited partnerships to acquire and develop land;
- (d) GTDH owns all of the shares of each corporate general partner for each limited partnership;
- (e) Furtado is the only 'key individual' of GTDH; and
- (f) GTDH has a staff of eight persons, including Furtado and five members of his family.

15. As part of the Investigation, I reviewed the corporation profile reports for each of the incorporated respondents, all of which are Ontario corporations. Furtado is the sole officer and director of each of them, except for Go-To Major Mackenzie South Block Inc. and Go-To Major Mackenzie South Block II Inc. Furtado is the sole director, President and Secretary of those two corporations and another individual is listed as an "*Other (untitled)*" officer of them.

16. The incorporated respondents, other than GTDH, Furtado Holdings and GTDA, are the general partners (**GPs**) of the limited partnership (**LPs**) respondents. Although there are nine Go-To projects, there are ten GPs and ten LPs, as one project (Major Mackenzie South Block) has two of each. A copy of a "Corporate Structure" chart that GTDH provided to Staff is attached as **Exhibit "6"**.

17. Each of the LPs owns, alone or with others, one or more real properties in Ontario, all of which are subject to one or more secured charges, as summarized in Appendix A. Furtado's evidence to Staff in July 2021 was that none of the projects has begun construction, but one has entered site servicing. An excerpt of the examination of Furtado is attached as **Exhibit "7"**.

18. Between May 2016 and June 2020, almost \$80 million was raised from approximately 85 Ontario residents via distributions of units of the 10 limited partnerships. Attached at **Appendix “B”** is a table summarizing the funds that were raised from investors for each LP, compiled from a review of a unitholder list provided by Furtado, banking records for the partnerships, subscription agreements signed by investors, and written answers to Staff’s written questions, provided by GTDH and Furtado via counsel. Bank accounts for the respondents are primarily held at the Royal Bank of Canada (RBC). In addition, 2506039 Ontario Limited has account(s) with TD Canada Trust and Go-To Glendale Avenue Inc. has account(s) with Meridian Credit Union.

19. Furtado’s evidence to Staff was that he met with and provided information to all investors in the LPs before they invested. Excerpts of the transcript of the examinations of Furtado are attached as **Exhibit “8”**. Investors were also provided with written materials in relation to their investments. By way of example, I attach copies of:

- (a) an “Investment Opportunity” document and sample corporate and individual subscription agreements for the Go-To Niagara Falls Eagle Valley LP (**Eagle Valley LP**), as **Exhibits “9”, “10”, and “11”**, respectively; and
- (b) an “Investment Opportunity” document and sample corporate and individual subscription agreements for the Go-To Stoney Creek Elfrida LP (**Elfrida LP**), as **Exhibits “12”, “13”, and “14”**, respectively.

20. Copies of the limited partnership agreements for each of the Go-To LPs are attached as Exhibits **“15” to “24”**. In order to protect investors’ information, redactions have been applied to some of the exhibits, including Exhibit 23.

21. Specifically, the Adelaide LP raised approximately \$42 million from 23 investors from February 15, 2019 to June 18, 2020. Attached as **Appendix “C”** is a spreadsheet summarizing the funds raised by the Adelaide LP, compiled from a unitholder list provided by Furtado, banking records for the Adelaide LP, subscription agreements signed by investors, written answers to Staff’s questions provided by GTDH and Furtado, and other supporting documentation.

**C. BRIEF HISTORY OF ASD AND THE PROPERTIES PRIOR TO BEING PURCHASED BY THE ADELAIDE LP**

22. Beginning in approximately February 2018, Malanca was engaged in obtaining agreements of purchase and sale (**PSAs**) for 355 Adelaide Street West, Toronto (**Adelaide Property**) and 46 Charlotte Street, Toronto (**Charlotte Property**). The initial PSAs for the Properties were each subsequently amended, and in the case of the agreement for the Charlotte Property ultimately replaced with a fresh agreement. ASD obtained the purchasers’ rights for each of the Properties, via either amendment or assignment of the PSAs.

23. Beginning in at least April 2018, Malanca liaised with, at least, various non-bank lenders, potential investors, real estate appraisers, planners, architects, environmental consultants and performed due diligence regarding the Properties. Malanca also circulated a promotional “presentation deck” for a project involving the Properties which was called “Adelaide Square”. The contact information on that presentation deck is Malanca’s. For example, a copy of an email from Malanca dated November 26, 2018 with the attached presentation deck is attached as **Exhibit “25”**.

24. At the beginning of 2018, Malanca contacted Furtado to determine if he was interested in acquiring property in downtown Toronto. Furtado subsequently became involved with Malanca

7.

and others in discussing, among other things, options for the structure and financing of the purchase of the Properties. During the Investigation, Furtado's evidence to Staff included that:

- (a) he first met Malanca before he formed Go-To Developments;
- (b) it was his understanding that Malanca was a representative of ASD; and
- (c) before Malanca approached him about the Properties, they had prior business dealings. In particular, Malanca was Furtado's "go-to brokerage person" to find private debt lending for the majority of the Go-To limited partnerships.

An excerpt of the transcript of the examination of Furtado reflecting the foregoing is attached as **Exhibit "26"**.

25. The Adelaide LP and ASD entered into the Acquisition Agreements (defined below), pursuant to which, among other things, ASD assigned the rights to purchase the Properties to the Adelaide LP and the Adelaide LP agreed to pay ASD the Assignment Fee.

26. Angelo Pucci (**Pucci**) is the sole registered officer and director of ASD; copies of its corporation profile report are attached as **Exhibit "27"**.

27. During the Investigation, I attempted to contact and speak to Pucci but was not successful. I have been advised by two individuals, who identified themselves to me as Pucci's former landlord and his son that Pucci has health issues including dementia. Pucci's landlord told me that his first episode of leaving the house and not knowing where he was or how to get back occurred in approximately August 2019.

8.

28. During the Investigation, Furtado's evidence to Staff included that:

- (a) Malanca was his primary contact for the negotiation of the Memorandum of Agreement regarding the \$388K Payment (defined below);
- (b) in the summer of 2019, Furtado was told during a lunch meeting with Malanca and Pucci that ASD intended to pay Furtado Holdings the \$6M Dividend (defined below) "*when they had the funds to pay*". Further, that Malanca had the lead in the discussion; and
- (c) Furtado said that Malanca was present each of the three times that Furtado met Pucci.

29. Furtado's evidence to Staff about his interactions with ASD is discussed in further detail below.

#### **D. INITIAL ADELAIDE LP CAPITAL RAISES**

30. Between February 15 and April 2, 2019, approximately 16 investors invested \$25.25 million in the Adelaide LP, as reflected in Appendix C. Included in this amount is the purchase of 336 Class A units for \$16.8 million by Anthony Marek (**Marek**).

31. Investors in the Adelaide LP signed subscription agreements and were provided with a limited partnership agreement effective April 4, 2019 (**LP Agreement**), a copy of which is attached as Exhibit 23 above. Copies of sample corporate and individual subscription agreements for the Adelaide LP are attached as **Exhibits "28"** and **"29"**, respectively.

32. A copy of a brochure that was given to potential investors about the project is attached as **Exhibit "30"**.

### E. ACQUISITION OF THE PROPERTIES BY THE ADELAIDE LP

33. Ultimately, the Adelaide LP entered into four agreements to acquire the Properties (together, the **Acquisition Agreements**), as follows:

- (a) an Assignment of Agreement of Purchase and Sale with ASD, in respect of the Adelaide Property, dated March 26, 2019, a copy of which together with the agreement of purchase and sale and its amendments are attached as **Exhibit “31”**;
- (b) an Assignment of Agreement of Purchase and Sale with ASD, in respect of the Charlotte Property, dated March 29, 2019, a copy of which together with the agreement of purchase and sale referred to therein are attached as **Exhibit “32”**;
- (c) an Assignment Fee Agreement with ASD, dated March 29, 2019, a copy of which is attached as **Exhibit “33”**; and
- (d) a Memorandum of Understanding, dated April 3, 2019, relating to Charlotte Street with, among others, ASD and FAAN Mortgage Administrators Inc. (**FAAN**), a copy of which is attached as **Exhibit “34” (MOU)**. FAAN is the Court-appointed trustee of one of the mortgage holders on the Charlotte Property.

34. Pursuant to the Acquisition Agreements:

- (a) the purchase price for the Adelaide Property was \$36.8 million;
- (b) the purchase price for the Charlotte Property, on closing, was \$16.5 million. As discussed below in (d), a density bonus was subsequently due;
- (c) the Adelaide LP owed ASD the Assignment Fee of \$20.95 million; and,

- (d) under the MOU, further payments were required in the future for the Charlotte Property, namely a “density bonus” ranging from \$1.95 million to \$7.15 million depending on the size of the allowable residential gross floor area of the Adelaide Square project.

35. Torkin Manes LLP (**Torkin**) acted for the Adelaide LP in relation to the acquisition of the Properties. The funds used on closing to pay for the Properties, the Assignment Fee, taxes and expenses, included mortgages from Canadian Mortgage Service Corporation and Scarecrow Capital Inc. (**Scarecrow**), and investor funds. Furtado, as president of Go-To Spadina Adelaide Square Inc. (**Adelaide GP**), directed Torkin to pay the amounts required to close the transactions. A copy of the Direction to Torkin is attached as **Exhibit “35”**. The Direction provides that the Assignment Fee was to be paid to Concorde Law Professional Corporation, in trust. Attached as **Exhibit “36”** is an excerpt of written answers provided to Staff by Furtado’s counsel, Torkin, summarizing the flow of funds to complete the transactions.

36. The parcel registers for the Properties record their transfers to the Adelaide LP on April 5, 2019. Copies of the parcel registers for the Adelaide Property and the Charlotte Property comprise Exhibit 108 to Appendix A.

#### **F. TRANSACTIONS WITH ASD IN APRIL 2019**

37. In this section, the transactions involving ASD, Furtado Holdings, and AKM that occurred after the Adelaide LP acquired the Properties in April 2019 are detailed. In brief summary, after the payment of the Assignment Fee to ASD:

- (a) on April 5, 2019, the Adelaide LP redeemed Marek’s \$16.8 million of units;



11.

- (b) the redemption of Marek’s units, together with a \$2.7 million fixed fee return, was funded via a redirection by ASD of most of the Assignment Fee (\$19.5 million). The Adelaide LP entered a demand loan agreement dated April 4, 2019, pursuant to which it owed ASD \$19.8 million;
- (c) on April 15, 2019, Furtado Holdings, AKM and two others received shares in ASD; and
- (d) Furtado Holdings and AKM each received a cheque dated April 15, 2019 for \$388,087.33 from the Assignment Fee via a redirection by ASD.

**1) Redirection of the Assignment Fee by ASD**

38. In a Re-Direction dated April 15, 2019, a copy of which is attached as **Exhibit “37”**, ASD instructed its lawyers, Concorde Law, to redirect the Assignment Fee funds as follows:

West Maroak Developments	\$19,500,000.00
Goldmount Financial Group	300,000.00
Concorde Law	115,500.00
RAR Litigation Lawyers	200,000.00
AKM Holdings Corp.	388,087.33
AKM Holdings Corp.	58,325.34
Furtado Holdings Inc.	388,087.33
<b>Total</b>	<b>\$20,950,000.00</b>

**(i) *West Maroak Developments***

39. Marek is an officer and director, and the controlling mind of West Maroak Developments (**West Maroak**). A copy of the corporation profile report is attached as **Exhibit “38”**. As noted above, Marek subscribed for 336 units of the Adelaide LP for \$16.8 million on March 17, 2019.

40. As part of the Investigation, Staff examined Marek over two days. His evidence to Staff, excerpts of the transcript of which are attached as **Exhibit “39”**, included that:

- (a) Marek was introduced to the Adelaide Square project by a lawyer at Concorde Law, who then introduced Marek to Malanca. Marek subsequently met with Furtado;
- (b) prior to the investment in the Adelaide LP, Marek had never bought limited partnership units; and
- (c) Marek did not have a role in the structuring of his initial investment of \$16.8 million. His understanding was that he was providing short-term funding and would receive his \$16.8 million investment back, together with a fixed return of \$2.7 million once the acquisition of the Properties closed. A copy of a limited partnership agreement for the Adelaide LP, which was produced to Staff by Marek and reflects the \$2.7 million flat fee, is attached as **Exhibit “40”**.

41. On April 5, 2019, a resolution of the sole director (Furtado) of the Adelaide GP noted that the Adelaide LP would make a return of capital to Marek in the amount of \$16.8 million. A copy of the resolution with Marek’s signed acknowledgement is attached as **Exhibit “41”**.

42. The initial investment of \$16.8 million plus the fixed return of \$2.7 million totals the \$19.5 million noted in the Re-Direction. While the Re-Direction is dated April 15, 2019, banking records show that West Maroak received \$19.5 million from Concorde Law on April 5, 2019, the date of the resolution to return Marek’s capital. An excerpt of the banking records for West Maroak is attached as **Exhibit “42”**.

(ii) *Payment to Goldmount*

43. As discussed below, Furtado told Staff that \$300,000 was paid to Goldmount for introducing Marek to the Adelaide LP.

(iii) *Payments to Furtado Holdings and AKM*

44. Furtado Holdings received a cheque dated April 15, 2019, from Concorde Law for \$388,087.33 (the **\$388K Payment**) a copy of which is attached as **Exhibit “43”**. Furtado’s changing explanations of that payment are noted below. AKM also received a cheque from Concorde Law for the same amount that day, a copy of which is attached as **Exhibit “44”**.

2) **The Demand Loan from ASD to the Adelaide LP**

45. Furtado told Staff that the Adelaide LP borrowed \$19.8 million from ASD in order to finance the return of capital plus the flat fee to Marek and the \$300,000 payment to Goldmount for referring Marek. Attached as **Exhibit “45”** are excerpts from the transcripts of the examination of Furtado. During the Investigation, Furtado produced a demand loan agreement dated April 4, 2019, for \$19.8 million between the Adelaide LP as the borrower and ASD as the lender (the **Demand Loan**), a copy of which is attached as **Exhibit “46”**. The Demand Loan agreement states that the purpose of the loan was “... *to reimburse the bridge equity loan received from an equity investor who deposited directly to lawyer’s trust account for closing of Adelaide Project [sic]. The Lender reimbursed the funds directly to the equity investor and set up a receivable from the Borrower*”.

46. After being asked by Staff about the loan, on June 29, 2021, Furtado authorized the registration of a \$19.8 million charge against the Properties on behalf of ASD, in relation to the Demand Loan. A copy of that charge is attached as **Exhibit “47”**.

### 3) ASD Shares

47. One week after the Adelaide LP acquired the Properties, on April 12, 2019, the articles of ASD were amended to change the share structure. A copy of the Articles of Amendment is attached as **Exhibit “48”**.

48. Furtado Holdings received 11 Class A common shares in ASD on April 15, 2019; a copy of the share certificate is attached as **Exhibit “49”**. Several documents, each dated April 15, 2019, were executed in relation to the issuance of ASD shares to Furtado Holdings, including:

- (a) A Resolution of the Board of Directors of ASD, resolving to issue 11 shares to each of Furtado Holdings, AKM, and FIM Holdings Inc., and 67 shares to Pucci, a copy of which is attached as **Exhibit “50”**;
- (b) A Subscription of Shares, in which Furtado Holdings agreed to subscribe for 11 common shares of ASD for \$11, a copy of which is attached as **Exhibit “51”**;
- (c) A Special Resolution of the Shareholders of ASD, resolving to reorganize the capital stock of the corporation, a copy of which is attached as **Exhibit “52”**; and
- (d) A Shareholders’ Agreement, a copy of which is attached as **Exhibit “53”**.

## **G. ADELAIDE LP’S FURTHER SALES OF LP UNITS AND DEMAND LOAN PAYMENT - FALL 2019**

### 1) Further Sales of LP Units

49. Between September 19 and 30, 2019, Furtado raised additional funds totalling \$13.25 million for the Adelaide LP from four investors, including a further \$12 million from Marek on September 26, as seen in Appendix C.

(i) *Discussions prior to Marek's \$12 million investment*

50. During his examination, Marek told Staff that Furtado contacted him in August 2019 to seek further investment in the Adelaide LP. Furtado, however, told Staff at his examination in September 2020 that Marek approached him in August 2019 indicating that he was willing to come back as an investor. Excerpts of the transcripts of Marek and Furtado, respectively, are attached as **Exhibits “54” and “55”**.

51. Both Furtado and Marek gave evidence that they met to discuss a potential new investment by Marek in the Adelaide LP, in late August and/or early September 2019. They also agree that Furtado provided Marek with a copy of the brochure attached as **Exhibit “56”**.

52. Furtado and Marek also both gave evidence that Furtado did not expressly tell Marek how the proceeds of any further investment would be used by the Adelaide LP, nor did Marek ask. In this respect:

- (a) Marek's evidence was that, during the meeting, Furtado presented to him about the Adelaide Square project, including about the building, the architects involved, the timing and direction of the total project. Marek's evidence was that he understood that the Adelaide LP was raising funds *“In order to pay its consultants and the development fees and going forward with the project”*. His evidence was that Furtado said *“that they needed another \$12 million to flow through to complete the project”*; and
- (b) Furtado's evidence was that he told Marek *“we are raising equity for the LP. We didn't get into the details of what the money was to be used for.”*

Excerpts of the transcript of the examinations of Marek and Furtado, respectively, that reflect the foregoing are attached as **Exhibits “57” and “58”**.

53. Furtado and Marek were each asked about a portion of the brochure attached as Exhibit 56 above which, again, was provided to Marek in August or September 2019. In particular, each were shown this page 10 of that Exhibit:

10

ADELAIDE  
SQUARE

PROJECT OVERVIEW

Land Acquisition

- The Partnership closed the acquisition of the Project property in April 2019.
- Go-To Developments and its partners in the Project (see Section III) have collectively invested approximately \$19.8 million of the total \$27 million equity required.

Partnership Sources & Uses of Capital (\$ millions)

Sources

Equity – third-party investors	\$ 7.5
Equity – Atria Development	3.0
Equity – Adelaide Square Developments	16.8
1 <sup>st</sup> Mortgage	48.3
2 <sup>nd</sup> Mortgage	13.7
	<b>\$ 89.2</b>

Uses

Acquisition of land	\$ 74.3
Interest reserves & other fees	9.9
Land transfer tax	3.0
Cost to Achieve ZBA & SPA	2.0
	<b>\$ 89.2</b>

54. Furtado’s evidence about page 10 was that it reflected the circumstances as of the day the acquisitions of the Properties closed. Furtado stated that the line “*Equity – Adelaide Square Developments – 16.8*” indicated that ASD was, on April 4, 2019, holding Marek’s \$16.8 million investment and would be the entity paying him back. Furtado asserted that he explained that fact to Marek during their meeting. Among other things, Furtado stated “*It was clearly made clear to [Marek] that that is all that was, was his own money, and he said yes, okay...*”. Furtado acknowledged that ASD had not invested any equity in the Adelaide LP, and stated that the

document “*Could have been worded better...*” An excerpt of the transcript of the examination of Furtado that reflects the foregoing is attached as **Exhibit “59”**.

55. Marek’s evidence, on the other hand, was that Furtado told him “*nothing*” about the line “*Equity – Adelaide Square Developments – 16.8*”. Marek’s evidence was that Furtado did not tell him, nor did he understand before making the investment of \$12 million in September 2019, any of the following:

- (a) the “16.8” figure on page 10 represented Marek’s previous investment of \$16.8 million in the Adelaide LP;
- (b) ASD was the entity that had paid back Marek’s earlier investment;
- (c) the Adelaide LP had received a loan from ASD to repay Marek’s investment; and
- (d) Marek’s \$12 million investment was to be used to repay part of the loan owed to ASD.

An excerpt of the transcript of the examination of Marek that reflects the foregoing is attached as **Exhibit “60”**.

## **2) Demand Loan Payment and its Source of Funds**

56. On October 1, 2019, less than a week after Marek’s \$12 million investment, the Adelaide LP transferred \$12 million to Schneider Ruggiero Spencer Milburn LLP (**Schneider Ruggiero**). The Adelaide LP’s bank balance immediately prior to the payment was approximately \$13.2 million. Based on a review of the bank statements and supporting documentation, the majority of the payment to Schneider Ruggiero must have been comprised of the \$12 million investment by Marek. Copies of the bank statements and supporting documentation are attached as **Exhibit “61”**.

57. Furtado's evidence to Staff was that the \$12 million payment by the Adelaide LP to Schneider Ruggiero on October 1, 2019 was a partial payment on the Demand Loan. He further stated that such payment was not due and had not been demanded by ASD. Furtado also asserted that one of the Adelaide LP's goals was to raise equity to pay down debts. It appears from the Demand Loan agreement and a summary of the status of the loan provided by Furtado's counsel that the interest payable on the Demand Loan was a fixed monthly amount that increased over time but was not changed by the \$12 million payment. Excerpts of written answers provided to Staff by Furtado's counsel, and from the transcripts of the examinations of Furtado on these matters are attached as Exhibit 36 above, **Exhibits "62" and "63"** respectively.

#### **H. PAYMENT OF ASD DIVIDENDS TO FURTADO HOLDINGS AND AKM**

58. In a document titled "Re Direction Re Funds" dated September 30, 2019, a copy of which is attached as **Exhibit "64"**, ASD instructed Schneider Ruggiero to pay a \$6M partial dividend to Furtado Holdings (**\$6M Dividend**). The direction states that it is "*Re: Adelaide Square Developments Inc. dividend distribution relating to the properties municipally known as 355 Adelaide St. W., Toronto, Ontario 46 Charlotte St., Toronto, Ontario*".

59. On October 1, 2019, Furtado Holdings and AKM were each paid a \$6M dividend by Schneider Ruggiero; an excerpt of the Furtado Holdings bank statement is attached as **Exhibit "65"** and a copy of a wire payment confirmation for AKM's account is attached as **Exhibit "66"**. For the year ending 2019, AKM and Furtado Holdings each received a T5 Statement of Investment Income in the amount of \$6,388,087 for dividend income, copies of which are attached as **Exhibits "67" and "68"** respectively. It thus appears that the payments in the amounts of \$388,087 and \$6 million to each of AKM and Furtado Holdings were recorded as dividends for their shareholding in ASD.



60. Thus, on the same day that the Adelaide LP paid \$12 million to Schneider Ruggiero, purportedly as a partial payment on the Demand Loan with ASD, Furtado Holdings and AKM were each wired a \$6 million dividend payment from ASD via Schneider Ruggiero.

#### **I. FURTADO'S USE OF THE \$6 MILLION FROM ASD**

61. Prior to the receipt of the \$6 million dividend on October 1, 2019, the balance in the Furtado Holdings Royal Bank account was approximately \$2,000. Between October 1, 2019 and August 17, 2020 (the **Dividend Period**), the only other funds deposited in the account were: (a) a repayment of a loan by the Adelaide LP in the amount of \$75,000; and (b) approximately \$1,800 from an unknown source. An excerpt from my draft source and application of funds analysis and the relevant bank statements for the Furtado Holdings account for the Dividend Period are attached, respectively, as **Appendix "D"** and **Exhibit "113"** thereto. In summary, during the Dividend Period approximately:

- (a) \$2.25 million was transferred from Furtado Holdings to Furtado's personal account at RBC between November 28, 2019 and March 31, 2020 (**Furtado Bank Account**);
- (b) \$3.265 million was loaned or otherwise transferred to various Go-To entities;
- (c) \$541,000 was transferred to law firms;
- (d) \$10,000 was paid to Humberstone Lands Inc. in relation to "MF Georgetown Expenses"; and
- (e) as at August 17, 2020, the balance in the Furtado Holdings account had diminished to approximately \$11,861.

62. With respect to the approximately \$2.25 million transferred to the Furtado Bank Account, there were transfers out of that account totalling approximately \$2.026 million to Furtado's RBC Direct Investing account (**RBC Direct Account**) which were made close in time to the transfers in from Furtado Holdings. Attached as **Exhibit "69"** are copies of the account statements for the Furtado Bank Account for the period November 8, 2019 to April 9, 2020, together with the supporting documents for the transfers in from Furtado Holdings and the transfers out to the RBC Direct Account in that period.

63. The approximately \$2.026 million which went to the RBC Direct Account was transferred into that account over time, with the first transfer occurring in January 2020. As at the end of December 2019, Furtado's RBC Direct Account had assets valued at CAD (6,822.24) and USD 307,235.58. I reviewed the RBC Direct Account statements for the period January 2020 to October 2021, which is the most recent month for which I have statements. Over that period, Furtado purchased and sold various securities within the RBC Direct Account, in both CAD and USD, the valuations of which fluctuated over time, and made transfers in and out of the RBC Direct Account. As of October 29, 2021, the market values of the securities and cash in the RBC Direct Account were CAD 1,240,041.27 and USD 463,056.44. Attached as **Exhibit "70"** are copies of the CAD and USD December 2019 and October 2021 statements for the RBC Direct Account.

64. Appendix D above contains a summary of the receipts of the \$3.265 million by the Go-To entities in the Dividend Period. I have not yet completed a full source and application analysis of the approximately \$3.265 million that went to other Go-To entities. Generally speaking, however, it appears that those funds were spent on operating costs and payments to LP investors.

## **J. FURTADO'S EXPLANATIONS FOR THE ASD SHARES AND PAYMENTS**

65. In addition to providing, via counsel, answers to written questions, Furtado was examined by Staff over 2.5 days, on September 24, 2020, November 5, 2020 and July 7, 2021. Furtado's evidence to Staff as to Furtado Holdings' receipt of the ASD shares, the \$388K Payment, and the \$6M Dividend has changed over time, and is discussed in chronological order below.

66. Furtado confirmed that none of the \$388K Payment, Furtado Holdings' shareholding in ASD, nor the \$6M Dividend were disclosed to Adelaide LP investors. It was Furtado's position that the shareholding and dividend took place after the Properties were acquired, had no impact on unitholders and there was no disclosure requirement. Attached as **Exhibit "71"** are excerpts of the transcripts of the examination of Furtado reflecting the foregoing.

### **1) First Examination – September 24, 2020**

67. On the first day of his examination, Furtado was shown the deposit slip and cheque for the \$388K Payment dated April 16, 2019, attached as Exhibit 43 above, which refers to 46 Charlotte in the memo line. Furtado was asked what the cheque represents. Furtado's answer was "*I don't recall. I don't recall offhand*". Attached as **Exhibit "72"** is an excerpt of the transcript containing this exchange.

68. During that examination, Furtado was also shown the Furtado Holdings bank statement showing a \$6 million transfer from Schneider Ruggiero on October 1, 2019 and was asked what the funds were for. Furtado's answer was "*I don't recall offhand*". Attached as **Exhibit "73"** is an excerpt of the transcript containing this exchange.

**2) Second Examination – November 5, 2020**

69. During the second day of his examination in November 2020, Furtado's evidence regarding the \$388K Payment was that:

- (a) by agreement with ASD, Furtado Holdings was paid \$388,087.33 as a return for having "*assumed the risk*" for a non-refundable deposit of \$800,000 that was paid to the vendor of the Adelaide Property with funds from the Adelaide LP;
- (b) ASD did not have the money to fund the deposit, so Furtado offered to fund it. Furtado Holdings "*assumed the risk that it would be lost*" if the transaction did not close and asked ASD to pay a fee if the deal did close; and
- (c) There was no contract or other written document relating to the foregoing and the return was agreed during a "*verbal discussion*" he had with Pucci.

Attached as **Exhibit "74"** is an excerpt of the transcript of the examination of Furtado reflecting the above.

70. Regarding the ASD shares and the \$6M Dividend, Furtado's evidence at the second examination was that:

- (a) ASD's management approached him after the closing of the Properties and said they wanted to give him shares in ASD, comprising a minority interest of 11%, and that he "*was not aware they were going to do so*";
- (b) he met with ASD and completed the paperwork to receive the shares;

23.

- (c) ASD subsequently decided to declare a dividend of \$6 million on Furtado Holdings' shares;
- (d) ASD wanted to give him shares as *"they saw the value that [he] brought to the transaction"*. Furtado claimed that certain negotiation strategies and aspects of the transactions, for example the density bonus for the Charlotte Property, were his ideas and his ideas *"save[d] the deal"*. He stated that his receipt of the \$6M Dividend *"was more of a thank you than anything else"*; and
- (e) His usual contact at ASD was Pucci, and that the conversation about ASD giving Furtado Holdings shares was with Pucci.

Attached as **Exhibit "75"** is an excerpt of the transcript of the examination of Furtado reflecting the above.

### **3) Documents Produced After the Second Examination**

71. After the second examination, Staff sought, via summons, additional documents from Furtado relating to the Adelaide LP transactions and Furtado Holdings' receipt of payments and shares from ASD, including all correspondence with ASD or its representatives in relation to the purchase and sale of the Properties. A copy of Furtado's written answers in response, provided to Staff by his counsel on January 28, 2021, is attached as **Exhibit "76"**.

72. In addition, with the January 2021 written answers Furtado produced:

- (a) a "Memorandum of Agreement" between Furtado, ASD and the Adelaide LP relating to the \$388K Payment, despite his evidence at the second examination that there was no written document regarding the \$388K Payment; a copy is attached as

**Exhibit “77”**. (Furtado also produced a Memorandum of Agreement between himself, Furtado Holdings and the Adelaide LP, a copy of which is attached as **Exhibit “78”**); and

- (b) versions of the Re-Direction and certain of the ASD shareholding documents containing redactions, which removed references to anyone other than Furtado and Pucci, copies of which are attached as **Exhibit “79”**. The unredacted versions of these documents, which are attached as Exhibits 37, 53, 50 and 52 above, were produced to Staff on February 23, 2021.

**4) Third Examination – July 7, 2021**

73. Furtado’s evidence at the third examination included that:

- (a) Malanca was his primary contact for the negotiation of the Memorandum of Agreement regarding the \$388K Payment;
- (b) in the summer of 2019, Furtado was told during a lunch meeting with Malanca and Pucci that ASD intended to pay Furtado Holdings the \$6M Dividend “*when they had the funds to pay*”. Further, that Malanca had the lead in the discussion; and
- (c) he had limited exposure to Pucci, only recalled meeting him 3 times in person, and that Malanca was present at all those meetings.

Attached as **Exhibit “80”** are excerpts of the transcript of the July 2021 examination of Furtado reflecting the above.

74. In addition, with respect to the \$388K Payment to Furtado Holdings, Furtado’s evidence at this examination was that, if the acquisition of the Properties failed to close and the \$800,000

deposit was forfeited, Furtado Holdings would have reimbursed the Adelaide LP the \$800,000 it had advanced. When asked what assets Furtado Holdings had at the time it provided this assurance to the Adelaide LP, Furtado's evidence was that he could not recall offhand and, via counsel, he refused to provide that information by way of undertaking. Attached as **Exhibits "81" and "82"** respectively are excerpts of the transcript reflecting the foregoing and from his written answers to undertakings delivered thereafter.

75. As mentioned above, for the year ending 2019, AKM and Furtado Holdings each received a T5 in the amount of \$6,388,087 for dividend income. When asked why Furtado Holdings received a T5 indicating that the \$388K was a dividend, Furtado's evidence was that payment in that manner was more tax effective. Furtado further indicated that he had "*no idea*" why, or if, AKM also received a payment of \$388,087. Attached as **Exhibit "83"** are excerpts of the transcript reflecting the foregoing.

#### **K. FURTADO'S ADDITIONAL BUSINESS DEALINGS WITH MALANCA AND/OR AKM**

76. During the third examination, Staff also entered as exhibits for identification and questioned Furtado about four email exchanges between him and Malanca in February and March 2019, copies of which, including the exhibit stamps, are attached as **Exhibits "84", "85", "86", and "87"** respectively. All of these Exhibits, which pre-dated the closing of the Properties, refer to a "lift" or "lift payment" within them. An excerpt of the transcript relating to these email exchanges is attached as **Exhibit "88"**.

77. Furtado asserted that "lift" was a term that could imply many things. Further, Furtado stated that in relation to the Properties, Malanca used the term 'lift' in conversations with Furtado relating to "*the profitability that he was making on – that [ASD] was making*". It appears that

ASD's profit, before expenses, on the sale of the Properties to the Adelaide LP was the \$20.95 million Assignment Fee. Furtado's evidence to Staff was that when he was negotiating the Properties' acquisition, he did not negotiate, expect or intend to receive part of the benefit of the Assignment Fee payable to ASD. An excerpt of the transcript reflecting the foregoing is attached as **Exhibit "89"**.

78. Furtado's evidence at the third examination also included that:

- (a) Malanca continues to be involved with the Adelaide LP project, including that he has been assisting with the development application process; and
- (b) Furtado has provided Malanca with a Go-To email account under the name "Alfredo Palmeri", because Malanca asked for the email account to be in that name. Furtado claimed that he did not know why some people know Malanca as Palmeri, other than that Palmeri is Malanca's mother's maiden name.

Excerpts of the transcript reflecting the foregoing are attached as **Exhibit "90"**.

79. In contrast to Furtado's evidence, Marek gave evidence to Staff that, in summary:

- (a) he received emails from both "Alfredo Malanca" and "Alfredo Palmeri" and, at some point after making the \$12 million investment in September 2019, he did some internet searching of those names and discovered, among other things, documents relating to criminal conviction of "Alfredo Italo Malanca";
- (b) he then contacted Furtado to ask if the person they were dealing with was Alfredo Italo Malanca. Furtado invited Marek to a meeting. Among other things, Furtado



confirmed Marek's conclusion about Malanca's history. Further, Marek had a subsequent meeting with Furtado and Malanca, in which Malanca himself confirmed he had spent time in prison; and

- (c) When Marek asked why Malanca sometimes goes by Palmeri, he was told *"...because of his storied past, he could not get financing...because [sic] would do a check on him and most likely ... he would not fall within the requirements ... of what a lender would looking at from a borrower"*.

Excerpts of the transcript of the examination of Marek reflecting the foregoing are attached as **Exhibit "91"**. Attached as **Exhibits "92"**, **"93"**, and **"94"** respectively are copies of the reasons of the Superior Court of Justice, the Court of Appeal, and the Supreme Court of Canada (denying leave) in the proceeding against Alfredo Italo Malanca.

80. The Adelaide GP entered into a Project Management Agreement dated July 31, 2020, with GTDH and AKM as consultants (the **PMA**). In the PMA produced to Staff by Furtado's counsel, the manager is listed as "TBD"; a copy is attached as **Exhibit "95"**. Among other things, the PMA provides that each of GTDH and AKM are to be paid a "Development Consultant Fee" of \$750,000 and a "Construction Consultant Fee" in an amount to be determined (see article 5.2 of the PMA). Note 5 to the draft financial statements for the Adelaide LP for the calendar year ended 2020 states that the Adelaide LP accrued \$750,000 in development management fees owing to both GTDH and AKM in 2020; a copy of those draft financial statements is attached as **Exhibit "96"**.

**L. CROSS-COLLATERALIZATION – USE OF OTHER LPS’ ASSETS FOR ADELAIDE LP**

81. In addition, as part of the transactions to acquire the Properties for the Adelaide LP, Furtado pledged the assets of two other limited partnerships to secure obligations of the Adelaide LP.

82. Furtado signed the MOU attached at Exhibit 34 on behalf of the Adelaide LP and Adelaide GP, himself, and on behalf of the Elfrida LP and Go-To Stoney Creek Elfrida Inc. (**Elfrida GP**). Under the MOU, the Elfrida GP and Elfrida LP are guarantors of obligations of the Adelaide LP, as set out in that agreement. Among other things in the MOU, the Elfrida GP and Elfrida LP agreed to the registration of a \$7.15 million collateral charge on the Elfrida LP’s property. A \$7.15 million charge was registered against the Elfrida LP’s property by FAAN on April 5, 2019 (**FAAN Charge**) and removed from title on November 9, 2021; copies of the FAAN Charge and the discharge are attached as **Exhibit “97”**.

83. Furtado also caused the Eagle Valley LP and Go-To Niagara Falls Eagle Valley Inc. to agree to the registration of a \$13,712,500 charge on the Eagle Valley LP’s property as collateral for Scarecrow in respect of its mortgage loan to the Adelaide LP. The charge was registered against the Eagle Valley LP’s property on April 4, 2019, a copy of which is attached as **Exhibit “98” (Scarecrow Charge)**. The Scarecrow Charge was transferred and subsequently removed from title by the transferee on April 1, 2021. Copies of the transfer and discharge of the Scarecrow Charge are attached as **Exhibit “99”**.

84. The LP Agreements for the Elfrida LP and the Eagle Valley LP, respectively, which are attached at Exhibits 19 and 15 above, both state at section 5.16:

**5.16 Restrictions upon the General Partner.** ... *The General Partner covenants that it shall not:*

- (a) Cause the Partnership to guarantee the obligations or liabilities of, or make loans to, the General Partner or any Affiliate of the General Partner; or*
- (b) Commingle the funds and assets of the Partnership with the funds or assets of any other Person, including those of the General Partner or any Affiliate of the General Partner.*

85. Furtado was asked about uses of other limited partnership assets as security for obligations of the Adelaide LP during Staff's examinations of him. In summary, his evidence included that:

- (a) cross collateralization, which is the nature of the FAAN Charge and Scarecrow Charge, is common in the industry;
- (b) investors were not told of the FAAN Charge and the Scarecrow Charge before they occurred. It was Furtado's position that notice to or approval of investors was not required. Further, he stated that investors were subsequently informed of the charges either via their receipt of audited financial statements for the relevant limited partnership (sent when requested by the investor), a progress report on the relevant project, or in discussions with him. The disclosure to investors via the progress reports occurred only after Staff questioned Furtado about the cross collateralizations; and
- (c) Furtado did not obtain any compensation for either the Eagle Valley LP or the Elfrida LP in exchange for the pledging of their assets for the FAAN Charge and the Scarecrow Charge.

Excerpts of the transcripts of the examination of Furtado reflecting the foregoing are attached as **Exhibit "100"**.

86. Staff began asking questions about these cross-collateralizations at the first examination of Furtado on September 24, 2020. The progress reports to Eagle Valley LP and Elfrida LP investors which first mention the April 2019 cross-collateral charges are dated November 9, 2020 and December 18, 2020, respectively; copies are attached as **Exhibits “101” and “102”**.

### M. CONCLUSION

87. I make this affidavit in relation to the Commission’s application pursuant to the *Securities Act*, and for no other purpose.

SWORN before me remotely by Stephanie Collins stated as being located at the City of Toronto in the Province of Ontario, before me at the City of Mississauga in the Province of Ontario, on this 6<sup>th</sup> day of December, 2021, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for taking affidavits

Michelle Spain, a Commissioner, etc.,  
Province of Ontario, for the Government of Ontario,  
Ontario Securities Commission.  
Expires March 22, 2024.



STEPHANIE COLLINS

– 14 –

This is Exhibit “N” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

A handwritten signature in black ink that reads "Monica Faheim". The signature is written in a cursive style.

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*Commissioner for taking affidavits (or as may be)*

**MONICA FAHEIM**

**LIMITED PARTNERSHIP AGREEMENT**

**THIS AGREEMENT** made with effect as of the 4<sup>th</sup> day of April, 2019.

**BETWEEN:**

**GO-TO SPADINA ADELAIDE SQUARE INC.,**

a corporation incorporated under the laws of the Province of Ontario  
(together with any other Person admitted as a general partner of Go-To Spadina Adelaide Square LP, the “General Partner”)

– and –

**GO-TO DEVELOPMENTS HOLDINGS INC.,**

a corporation incorporated under the laws of the Province of Ontario  
(“Go-To Holdings”)

– and –

**EACH PARTY WHO FROM TIME TO TIME EXECUTES  
THIS AGREEMENT AND THEREBY AGREES TO BE BOUND  
AS A LIMITED PARTNER, OR ANY SUCCESSOR THEREOF**

**WHEREAS:**

A. Go-To Spadina Adelaide Square LP (the “Partnership”) wishes to issue a minimum of 336 Class A Units at a subscription price of \$50,000 per Class A Unit, being an aggregate subscription price for Class A Units of no less than \$16,8000,000, a minimum of 203 Class B Units at a subscription price of \$50,000 per Class B Unit, being an aggregate subscription price for Class B Units of no less than \$10,150,000, and a minimum of 6 Class C Units at a subscription price of \$50,000 per Class C Unit, being an aggregate subscription price for Class C Units of no less than \$300,000, in each case to such subscribers that execute and deliver a Subscription Agreement;

B. The Partnership was formed for the purpose of acquiring and developing real property and intends to acquire and develop the Property; and

C. The parties wish to enter into this limited partnership agreement for the purposes of recording the relationship among them and their respective rights and duties in relation to the Partnership;

**NOW THEREFORE** in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, the parties hereto agree as follows:

- 2 -

**ARTICLE 1**  
**THE PARTNERSHIP**

1.1 **Definitions.** Wherever used in this Agreement, the following terms will have the following meanings, respectively, unless the context indicates otherwise:

- (a) “**Act**” means the *Limited Partnerships Act* (Ontario);
- (b) “**Accountants**” means the accountants appointed by the General Partner to act as accountants for the Partnership from time to time;
- (c) “**Administrative Services Agreement**” means the services agreement dated on or around the date hereof by and between Go-To Holdings and the Partnership with respect to provision of certain administrative services in connection with the Property and pursuant to which the Partnership shall pay a monthly accounting and administration fee to Go-To Holdings;
- (d) “**Affiliates**” has the meaning ascribed thereto in the *Securities Act* (Ontario);
- (e) “**Agreement**” means this agreement, as it may be amended, restated or revised from time to time;
- (f) “**Arm’s Length**” has the meaning attributed to such term in the Tax Act;
- (g) “**Business Day**” means any day, other than a Saturday or Sunday or a day on which chartered banks in the City of Toronto, Ontario are not open for business during normal banking hours;
- (h) “**Capital Contribution**” means the amount of money paid in cash in exchange for Units and any additional capital contributions made in cash by the Unitholders pursuant to ARTICLE 3;
- (i) “**Class A Return**” means in respect of a Class A Unitholder, the annual, cumulative, non-compounding, priority return, calculated on the Capital Contribution of such Class A Unitholder, for the period of time commencing on the date such Capital Contribution (or portion thereof) was made and ending on the day that such Class A Unitholder’s Capital Contribution is repaid in full at a rate per annum of the Class A Return Rate of such Class A Unitholder;
- (j) “**Class A Return Rate**” means, in respect of a particular Class A Unitholder, the percentage listed in the table set forth in Schedule “A” adjacent to the name of such Class A Unitholder under the heading ‘Class A Return Rate’, it being acknowledged and agreed that Schedule “A” may be updated by the General Partner from time to time to reflect changes in the ownership of Class A Units and the issuance by the Partnership of further and additional Class A Units;
- (k) “**Class B Return**” means in respect of a Class B Unitholder, the annual, cumulative, non-compounding, priority return, calculated on the Capital Contribution of such Class B Unitholder, for the period of time commencing on the

- 3 -

date such Capital Contribution (or portion thereof) was made and ending on the day that such Class B Unitholder's Capital Contribution is repaid in full at a rate per annum of the Class B Return Rate of such Class B Unitholder;

- (l) **"Class B Return Rate"** means, in respect of a particular Class B Unitholder, the percentage listed in the table set forth in Schedule "B" adjacent to the name of such Class B Unitholder under the heading 'Class B Return Rate', it being acknowledged and agreed that Schedule "B" may be updated by the General Partner from time to time to reflect changes in the ownership of Class B Units and the issuance by the Partnership of further and additional Class B Units;
- (m) **"Class A Units"** means class A units of the Partnership;
- (n) **"Class B Units"** means class B units of the Partnership;
- (o) **"Class C Units"** means class C units of the Partnership;
- (p) **"Class A Unitholders"** means the holders of Class A Units from time to time;
- (q) **"Class B Unitholders"** means the holders of Class B Units from time to time;
- (r) **"Class C Unitholders"** means the holders of Class C Units from time to time;
- (s) **"Excluded Person"** means a Person:
  - (i) an interest in which is a "tax shelter investment" or whose interest in the Partnership if acquired by such Person, would be a "tax shelter investment" within the meaning of the Tax Act;
  - (ii) that is a "financial institution" for purposes of the Tax Act unless the issuance of Units to such Person would not cause the Partnership to be a "financial institution" for purposes of the Tax Act; or
  - (iii) who has financed or will finance the acquisition of Units for which recourse is limited for purposes of the Tax Act;
- (t) **"Former General Partner"** has the meaning attributed to such term in Section 5.21;
- (u) **"Income for Tax Purposes"** and **"Loss for Tax Purposes"** means, in respect of any fiscal year of the Partnership, the amount of income, or loss, of the Partnership as determined by the General Partner in accordance with this Agreement and the provisions of the Tax Act;
- (v) **"Interest Rate"** means a rate of interest equal to the greater of: (i) the Prime Rate plus five percent (5%) per annum; and (ii) 15% per annum, in each case calculated and compounded monthly;
- (w) **"Initial Capital Contribution"** means, in respect of a Unitholder, the Capital Contribution made by such Unitholder contemporaneous with the first issuance of



- 4 -

Units to such Unitholder pursuant to a Subscription Agreement and as recorded in the Register. For greater certainty only, as at the date hereof, the Class A Unitholders contributed \$17,800,000 of the aggregate Initial Capital Contributions, the Class B Unitholders contributed \$5,450,000 of the aggregate Initial Capital Contributions and the Class C Unitholders contributed \$0 of the aggregate Initial Capital Contributions;

- (x) **"Insolvency Event"** means with respect to a Unitholder or the General Partner, as the case may be: (i) the adjudication by a court of competent jurisdiction as bankrupt or insolvent; (ii) an encumbrancer takes possession of all or any material part of the General Partner's property or the Unitholder's Units, as the case may be; (iii) if a distress or execution or any similar process is levied or enforced upon or against all or any material part of the General Partner's property or the Unitholder's Units, as the case may be; (iv) the voluntary taking of any formal proceeding for the rearrangement of its financial affairs by arrangement or compromise with its creditors; (v) involuntary formal proceedings being taken against it for the rearrangement of its financial affairs by arrangement or compromise with its creditors;
- (y) **"Net Income"** means for any fiscal period, the net income of the Partnership during the period determined in accordance with generally accepted accounting principles;
- (z) **"Net Loss"** means for any fiscal period, the net loss of the Partnership during the period determined in accordance with generally accepted accounting principles;
- (aa) **"New General Partner"** has the meaning attributed to such term in Section in Section 5.21;
- (bb) **"Person"** means and includes any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, limited liability company, unincorporated association or organization, governmental entity, syndicate or other entity, whether or not having legal status;
- (cc) **"Prime Rate"** means, at any time, the annual rate of interest which the bank with whom the Partnership holds its main operating accounts establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge at such time for demand loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest";
- (dd) **"Pro-Rata Basis"** means: (i) in relation to any particular Class A Unitholder, a fraction which has as its numerator the number of Class A Units held by such Class A Unitholder and which has as its denominator the total number of Class A Units which are issued and outstanding at the time; (ii) in relation to any particular Class B Unitholder, a fraction which has as its numerator the number of Class B Units held by such Class B Unitholder and which has as its denominator the total number of Class B Units which are issued and outstanding at the time; (iii) in relation to any particular Class C Unitholder, a fraction which has as its numerator the number of Class C Units held by such Class C Unitholder and which has as its denominator

- 5 -

the total number of Class C Units which are issued and outstanding at the time; and  
(iv) in relation to any particular Unitholder, a fraction which has as its numerator the number of Class A Units, Class B Units and/or Class C Units, as the case may be, held by such Unitholder and which has as its denominator the total number of Class A Units, Class B Units and Class C Units which are issued and outstanding at the time;

- (ee) **“Property”** means the properties listed and described in Schedule “C” hereto;
- (ff) **“Register”** means a record of limited partners of the Partnership, from time to time, a record of the transfer of Units by a limited partner of the Partnership, from time to time, and a record of the Initial Capital Contributions and additional Capital Contributions of limited partners of the Partnership, from time to time;
- (gg) **“Registrar and Transfer Agent”** means the General Partner or an agent appointed by the General Partner to keep the Register;
- (hh) **“Reserves”** means amounts from time to time transferred or credited, in the discretion of the General Partner, to a reserve or contingent account on the books and records of the Partnership for operating expenses or contingent or unforeseen liabilities and obligations;
- (ii) **“Resolution”** means a resolution approved by more than fifty percent (50%) of the Class A Unitholders, more than fifty percent (50%) of the Class B Unitholders and more than fifty percent (50%) of the Class C Unitholders who are entitled to vote, in person or by proxy at a duly convened meeting of the Unitholders, or at any adjournment thereof, called in accordance with this Agreement or a written resolution in one or more counterparts, signed by Unitholders holding in the aggregate more than fifty percent (50%) of the Class A Unitholders, more than fifty percent (50%) of the Class B Unitholders and more than fifty percent (50%) of the Class C Unitholders who are entitled to vote on such resolution;
- (jj) **“Securities Laws”** means, collectively, the applicable securities laws of any jurisdiction and the respective regulations, rules, blanket orders and blanket rulings made under those securities laws together with applicable published policies, policy statements and notices, and shall include all discretionary orders or rulings, if any, of Canadian securities commissions or other securities commissions in any applicable jurisdiction granted in connection with the transactions contemplated by this Agreement;
- (kk) **“Site Plan Approval”** means the site plan approval in respect of the Property by the relevant municipal authority to permit the development of residential, commercial and/or multi-use uses which, with any conditions imposed, in the Partnership’s absolute discretion is acceptable to it and such site plan approval being in full force and effect, with all appeal periods having expired without appeal, or all appeals having been determined to the satisfaction of the Partnership without any further right of appeal;

- 6 -

- (ll) **"Specified Transfer"** means a Transfer of legal and/or beneficial ownership of Units to the executors and estate administrators of a Unitholder upon the death, insolvency or bankruptcy of a Unitholder;
- (mm) **"Subscription Agreement"** means the form of subscription agreement, in such form and substance as required by the General Partner, to be executed and delivered by a subscriber to the General Partner for the subscription of Class A Units, Class B Units and/or Class C Units, as the case may be;
- (nn) **"Tax Act"** means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time;
- (oo) **"Third Party Offer"** means a *bona fide* offer received by the General Partner from a Person who deals at Arm's Length with the General Partner and the Partnership for the purchase of the Property;
- (pp) **"Transfer"** means and includes any sale, exchange, transfer, assignment, gift, pledge, encumbrance, hypothecation, alienation, transmission or other transaction, whether voluntary, involuntary or by operation of law, by which the beneficial ownership of, or a security interest or other interest in, the security or any part thereof passes from one Person to another, or to the same Person in a different capacity or to a successor of such Person such as by amalgamation (except an amalgamation with an affiliate), whether or not for value, and any option, agreement or other commitment in respect of any of the foregoing, and "transferred", "transferor" and "transferee" and similar expressions have corresponding meanings;
- (qq) **"Unit"** means an undivided ownership interest in the Partnership entitling the holder of record thereof to the rights provided in this Agreement represented by a Class A Unit, Class B Unit or Class C Unit, as the case may be;
- (rr) **"Unitholder"** means the holder of a Unit and **"Unitholders"** has a corresponding meaning; and
- (ss) **"Unit Certificate"** means the form of certificate issued by the General Partner, evidencing the type and number of Units owned by a Unitholder.

1.2 **Agreement.** This Agreement contains the entire agreement between the General Partner and the Unitholders as to the formation, organization and management of the Partnership. The General Partner and each Unitholder may hereinafter be referred to individually as a **"Partner"**, and collectively as the **"Partners"**.

1.3 **Formation of Partnership.** The General Partner hereby warrants and represents that the Partnership became a limited partnership under the laws of the Province of Ontario on October 16, 2018 under the name "Go-To Spadina Adelaide Square LP", the date the General Partner filed the original declaration under the Act. The Partnership shall continue as a limited partnership until terminated in accordance with the provisions of this Agreement.

- 7 -

- 1.4 **Limited Liability.** Subject to the Act (and any other similar legislation applicable in any other jurisdiction) and any specific assumption of liability, the liability of each Unitholder for the debts, liabilities and obligations of the Partnership is limited to the amount of capital that such Unitholder has contributed or agrees to contribute to the Partnership, as provided in the Act. A Unitholder shall have no further personal liability for any debts, liabilities and obligations of the Partnership.
- 1.5 **Name.** The Partnership shall carry on business under the name “Go-To Spadina Adelaide Square LP” or such other name or names as the General Partner may determine from time to time, provided that the General Partner files a declaration under the Act as required, giving effect thereto. The General Partner shall promptly advise the Unitholders of any such change.
- 1.6 **Head Office and Mailing Address.** The head office and mailing address of the Partnership shall be located at Suite 301-1267 Cornwall Road, Oakville, Ontario L6J 7T5 and may be changed from time to time by the General Partner giving written notice to that effect to all the Unitholders.
- 1.7 **Registrar and Transfer Agent.**
- (a) The General Partner shall act as the Registrar and Transfer Agent of the Partnership and shall maintain such books and records as are necessary to record the names and addresses of the Unitholders, the type and number of Units held by each Unitholder and particulars of Transfers of Units. The General Partner shall cause the Registrar and Transfer Agent to perform all other duties usually performed by a registrar and transfer agent of certificates of shares in a corporation, except as the same may be modified by reason of the nature of such Units;
  - (b) For so long as the General Partner shall be Registrar and Transfer Agent, the Register shall be kept by the General Partner at the address referred to in Section 1.6 hereof or at the offices of the solicitors for the General Partner; and
  - (c) The General Partner shall promptly advise the Unitholders in writing of any change in the Registrar and Transfer Agent or the location of the Register.
- 1.8 **Inspection of Records.** Upon five (5) Business Days’ notice in writing from any Unitholder to the General Partner, the General Partner shall cause the Registrar and Transfer Agent to make the records relating to the Partnership available for inspection by the Unitholder, or its agent duly authorized in writing, during normal business hours, at the expense of the Unitholder requesting such inspection. A copy of the Register shall be provided to any Unitholder on forty-eight (48) hours’ notice in writing to the Registrar and Transfer Agent, at the expense of the Unitholder requesting same.
- 1.9 **Filing of Declarations.** As soon as practicable following the execution hereof, the General Partner shall cause to be executed and filed such declarations, instruments and documents as may be required under the laws of the Province of Ontario, in connection with the Partnership, and shall keep the Register in accordance with applicable legislation. The General Partner and each Unitholder shall execute and deliver as promptly as possible any documents that may be necessary or desirable to accomplish the purposes of this



- 8 -

Agreement or to give effect to the formation and continuance of the Partnership under applicable laws. The General Partner shall take all necessary actions on the basis of information available to it in order to maintain the status of the Partnership as a limited partnership.

1.10 **Year End.** The fiscal year end of the Partnership shall be December 31 in each year or such other date as the Unitholders may determine by Resolution.

1.11 **Business of the Partnership.** The Partnership has been formed for the purpose of purchasing, holding an interest in, conducting pre-development planning with respect to, development and construction of the Property, and the sale or other disposition of the Property (or part thereof). The Partnership shall have the power to do any and every act and thing necessary, proper, convenient or incidental to the accomplishment of such purposes. Unless approved by the Unitholders in accordance with the terms of this Agreement, the Partnership shall not carry on any other business.

1.12 **Status of Each Unitholder.** Each Unitholder represents, warrants and covenants to each other Unitholder and to the General Partner that it:

- (a) It is not, and will not become, an Excluded Person or otherwise change its status as represented herein;
- (b) If an individual, he/she is of the age of majority and has the legal capacity and competence to enter into and be bound by this Agreement and to take all actions required pursuant hereto and the performance of his/her obligations herein do not and will not conflict with or give rise to a breach of any other agreement by which he/she is bound; and
- (c) If a corporation, partnership, unincorporated association or other entity, it has the legal capacity or competence to enter into and be bound by this Agreement and to take all actions required pursuant hereto, and further that all necessary approvals of directors, shareholders, partners, members or others have been given to accomplish the foregoing, and the performance of its obligations herein do not and will not conflict with or give rise to a breach of its constituting document(s) or agreement(s), articles of incorporation, by-laws, or any other agreement by which it is bound;

and each Unitholder covenants and agrees that: (i) each of the foregoing representations and warranties shall be true and accurate at all times; (ii) it shall promptly provide such evidence of the accuracy of the foregoing representations and warranties to the General Partner upon the reasonable request of the General Partner; and (iii) it will not Transfer or purport to Transfer any of its Units to any Person that is unable to make the representations and warranties contained in this Section 1.12.

1.13 **Mandatory Transfer of Units.** If at any time, any Unitholder is or becomes an Excluded Person, such Unitholder covenants, agrees and undertakes that it will immediately notify the General Partner that it is an Excluded Person. Upon the General Partner becoming aware of, or determining that, a Unitholder has become an Excluded Person since becoming a Unitholder, or if the Unitholder fails to provide evidence satisfactory to the General

- 9 -

Partner that it is not an Excluded Person, the General Partner will require the Unitholder to dispose of all its Units to a Person that is not an Excluded Person, failing which the General Partner, subject to compliance with applicable Securities Laws, will be entitled to sell the Units to the remaining Unitholders on a Pro-Rata Basis or to acquire the Units on behalf of the Partnership.

1.14 **Status of the General Partner.** The General Partner represents, warrants and covenants to each Unitholder that the General Partner:

- (a) Is, and shall continue to be, a corporation incorporated and subsisting in good standing under the laws of the Province of Ontario; and
- (b) Has the capacity and corporate authority to act as the General Partner of the Partnership and to perform its obligations under this Agreement and that the performance of such obligations do not and will not conflict with or give rise to a breach of its articles of incorporation, by-laws, or any other agreement by which it is bound.

1.15 **Compliance with Laws.** The Unitholders shall comply with the provisions of the Act and any other applicable legislation in force from time to time and shall not take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership. Without limiting the generality of the foregoing, each Unitholder shall, on request by the General Partner, immediately execute all certificates, declarations, instruments and documents, including declarations to be filed under the Act, that are necessary to comply with any law or regulation of any jurisdiction in Canada in regard to the formation, continuance, operation or dissolution of the Partnership.

1.16 **Limitation on Authority of Unitholder.** No Unitholder shall (save and except for the General Partner where the General Partner is also a Unitholder):

- (a) Take part in the control or management of the business of the Partnership provided that each Unitholder shall have the right from time to time to examine into the state and progress of the business and affairs of the Partnership;
- (b) Execute any document which binds or purports to bind the Partnership, the General Partner or any Unitholder as such;
- (c) Hold itself out as having the power or authority to bind or sign on behalf of the Partnership, the General Partner or any Unitholder;
- (d) Have any authority to undertake any obligation or responsibility on behalf of the Partnership; or
- (e) Bring any action for partition or sale in connection with any property or other assets of the Partnership, whether real, personal or mixed and whether tangible or intangible, or, except as permitted herein, register or permit any lien or mortgage in respect of the Units of such Unitholder to be filed or registered or remain undischarged against such Units.

- 10 -

- 1.17 **Title.** The General Partner, or its nominee, from time to time, shall at all times hold the rights, assets and agreements in relation to the business of the Partnership in the name of the General Partner, but on behalf of the Partnership, unless otherwise directed by the Partnership.
- 1.18 **Title to Partnership Assets.** Title to the property and assets of the Partnership, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner individually shall have any ownership interest in the assets of the Partnership or any portion thereof. Title to any or all of the Partnership's property and assets shall be held in the name of the General Partner or as the General Partner may determine from time to time. The General Partner declares, represents, and warrants to each of the Unitholders as a continuing declaration, representation and warranty, that any property and assets of the Partnership of which legal title is held in the name of the General Partner shall be held by the General Partner as agent and nominee for the beneficial entitlement and interest of the Partnership for the use and benefit of the Partnership in accordance with the provisions of this Agreement.
- 1.19 **Commingling of Funds.** The funds and assets of the Partnership shall not be commingled with the funds or assets of any other Person, including those of the General Partner.
- 1.20 **Survival of Representations and Warranties.** Each of the parties agrees that the representations and warranties made by it in this Agreement, as applicable, are true and correct on the date hereof and that they shall survive the execution of this Agreement, indefinitely, notwithstanding such execution or any investigations made by or on behalf of any of the other Partners and each Partner covenants and agrees to ensure that each such representation and warranty it has made remains true and correct so long as such Partner remains a Partner.

## **ARTICLE 2**

### **UNITS**

- 2.1 **Number and Classes of Units.** The interest of the Unitholders in the Partnership shall be divided into Units, represented by an unlimited number of Class A Units, an unlimited number of Class B Units and an unlimited number of Class C Units. Except as may otherwise be specifically contemplated in this Agreement, no Unit shall have any preference or right in any circumstances over any other Unit.
- 2.2 **Unit Attributes.**
- (a) Each Class A Unit shall have the following rights and obligations:
    - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
    - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
    - (iii) The right to receive distributions in accordance with the terms hereof.

- 11 -

- (b) Each Class B Unit shall have the following rights and obligations:
  - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
  - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
  - (iii) The right to receive distributions in accordance with the terms hereof.
- (c) Each Class C Unit shall have the following rights and obligations:
  - (i) The right to vote in respect of all matters to be decided by the Unitholders in accordance with the terms hereof;
  - (ii) The right to allocations of Net Income, Net Loss, Income for Tax Purposes and Loss for Tax Purposes, in accordance with the terms hereof; and
  - (iii) The right to receive distributions in accordance with the terms hereof.

2.3 **Securities Transfer Act.** It is acknowledged that the Units shall be considered a “security” for the purposes of the *Securities Transfer Act, 2006* (Ontario) and any other applicable securities transfer laws.

2.4 **Unit Certificates.** Certificates may be issued to evidence the Units and a Unit Certificate for each class of Units shall be in such form as is from time to time approved by the General Partner and shall be signed by the General Partner. It is acknowledged and agreed that the General Partner shall not be required to issue a Unit Certificate to a Unitholder, and a Unitholder shall not be entitled to receive a Unit Certificate, until such time that a Unitholder makes a written request for a Unit Certificate to be issued. All Unit Certificates issued or to be issued by the General Partner will be endorsed with a memorandum as follows:

“This certificate is a “security” for the purposes of the *Securities Transfer Act, 2006* (Ontario) and is subject to a Limited Partnership Agreement and the units represented by this certificate cannot be sold, transferred, assigned or otherwise disposed of or mortgaged, pledged, hypothecated, charged or otherwise encumbered except pursuant to the terms of the said Limited Partnership Agreement.”

2.5 **Lost Unit Certificates.** Where a Unitholder claims that the Unit Certificate for its Unit has been defaced, lost, apparently destroyed or wrongly taken, the General Partner shall cause a new Unit Certificate to be issued to such Unitholder, provided that the Unitholder files with the Registrar and Transfer Agent an indemnity bond in the form and in an amount satisfactory to the General Partner to protect the Registrar and Transfer Agent and the Partnership from any loss, cost or damage that they may incur or suffer by complying with the request to issue a new Unit Certificate and provided further that the Unitholder satisfies all other reasonable requirements imposed by the Registrar and Transfer Agent, including delivery of a form of proof of loss.



- 12 -

## 2.6 Transfer and Encumbering of Units.

- (a) A Unitholder shall not, without the prior written consent of the General Partner (which consent may be unreasonably withheld), Transfer (other than a Specified Transfer) any of such Unitholder's Units or interest in the Partnership;
- (b) (A) No Transfer of a fraction of a Unit will be permitted unless it is transferred as part of the Transfer of all, but not less than all, of the Units held by such transferring Unitholder; and (B) Units may not be Transferred by a Unitholder, or its agent duly authorized in writing, unless and until the following conditions are satisfied:
  - (i) to the extent required, the consent of the General Partner shall have been obtained in accordance with Section 2.6(a);
  - (ii) the transferee has delivered to the Registrar and Transfer Agent an executed transfer document in respect of the Units being transferred (a "Unit Transfer") in such form and substance as required by the General Partner;
  - (iii) the transferee has agreed in writing, in such form and substance as required by the General Partner, to be bound by the terms of this Agreement and to assume the obligations of the transferor that pertain to the Units being transferred to it;
  - (iv) the provisions of all applicable Securities Laws have been complied with;
  - (v) the transferor or transferee pays such costs, expenses, disbursements and transfer fees as determined by the General Partner from time to time, and such reasonable legal and other professional fees and disbursements, as are reasonably incurred by the Partnership by reason of the Transfer;
  - (vi) the transferor surrenders or causes to be surrendered to the General Partner or the Registrar and Transfer Agent the Unit Certificate(s) issued pursuant to this Agreement for the Units being Transferred duly endorsed for Transfer by the transferor;
  - (vii) the transferee has delivered to the General Partner an executed declaration whereby such transferee makes the representations, warranties and covenants set forth in Section 1.12 of this Agreement and grants the power of attorney contained in Section 5.7; and
  - (viii) such other requirements as may be required by law or may reasonably be required by the General Partner and/or the Registrar and Transfer Agent are satisfied;

provided that a transferee of a Unit will not become a Unitholder in respect of that Unit until it is recorded in the Register and all filings and recordings required by law to validly effect a Transfer have been duly made as referred to hereunder; and

- 13 -

(c) When a transferee is entitled to become a Unitholder pursuant to the provisions hereof, the General Partner shall be authorized to admit such transferee to the Partnership as a Unitholder and the Unitholders hereby consent to the admission of, and will admit, the transferee to the Partnership as a Unitholder without further act of the Unitholders. The General Partner or the Registrar and Transfer Agent will:

- (i) record at the registered office of the Partnership any such assignment and Transfer;
- (ii) make such filings and cause to be made such recordings as are required by law;
- (iii) forward a notice of the Transfer to the transferee; and
- (iv) subject to Section 2.4, issue a Unit Certificate to the transferee in respect of the Units Transferred to it.

2.7 **Parties Not Bound to See to Trust or Equity.** Except where specific provision has been made therefor in this Agreement, the Registrar and Transfer Agent shall not, nor shall the General Partner or the Unitholders, be bound to see to the execution of any trust, express, implied or constructive, or any mortgage, pledge or equity to which any Unit or any interest therein is subject, or to ascertain or inquire whether any Transfer of any such Unit or interest therein by any Unitholder or its representatives is authorized by such trust, mortgage, pledge or equity, or to recognize any Person having any interest therein except for the entity recorded as such Unitholder in the Register maintained by the Registrar and Transfer Agent.

2.8 **Liability on Transfer.** When a Transfer of any Unit is completed and the transferee is registered as a Unitholder, the transferor of that Unit will be thereupon be relieved of all obligations and liabilities relating to such Unit, including the obligations and liabilities under this Agreement to the extent permitted by law and the transferee will assume all such obligations and liabilities; provided, however, that no Transfer of Units shall relieve the transferor from any obligations to the Partnership arising or incurred prior to the Transfer becoming effective.

2.9 **Successors in Interest of Partners.** The Partnership shall continue notwithstanding the admission of any new General Partner or Unitholder or the withdrawal, death, insolvency, bankruptcy or other disability or incapacity of the General Partner or any Unitholder. The Partnership shall be dissolved only in the manner provided for in ARTICLE 8 hereof.

2.10 **Entitlement upon Death, Insolvency or Bankruptcy.** Where a Person becomes entitled to a Unit as a result of a Specified Transfer, in addition to the requirements of Section 2.6(b), that Person will not be recorded as or become a Unitholder until it produces evidence satisfactory to the General Partner of such entitlement and has delivered such other evidence, approvals and consents in respect of such entitlement as the General Partner may require and as may be required by law or by this Agreement.

- 14 -

- 2.11 **Option to Purchase.** Upon the occurrence of an Insolvency Event in respect of a Unitholder (the “**Insolvent Unitholder**”), the Insolvent Unitholder shall immediately provide the General Partner with written notice setting out the details of the Insolvency Event (who shall promptly provide a copy of such written notice to each of the other Unitholders). Each of the other Unitholders (the “**Interested Unitholder**”) shall, as of and from the date of such Insolvency Event (the “**Date of Default**”), have an option to purchase all, but not less than all, of the Insolvent Unitholder’s Units (the “**Default Units**”), which option will be exercisable by the delivery of written notice (the “**Purchase Notice**”) to the Insolvent Unitholder on or before the 40<sup>th</sup> Business Day following the Date of Default, which notice shall contain the price that each such Interested Unitholder is willing to pay for the Default Units. If more than one Interested Unitholder elects to exercise the option herein granted, the Interested Unitholder that stated the highest purchase price for the Default Units in its Purchase Notice (the “**Purchasing Unitholder**” in this section) shall purchase the Default Units at the purchase price stated in its Purchase Notice.

In the event that no Interested Unitholder delivers a Purchase Notice within the applicable time period, the General Partner may, at its sole discretion, cause the Partnership to purchase the Default Units from the Insolvent Unitholder for cancellation at a purchase price equal to fifty percent (50%) of the fair market value of the Default Units, as determined by the Partnership’s Accountants with no right to appeal by the Insolvent Unitholder or any other Unitholder.

The purchase price for the Default Units shall be paid as follows:

- (a) 25% of the purchase price payable by the Purchasing Unitholder or the General Partner, as the case may be, will be paid on the date that is 90 days following the Date of Default; and
- (b) The balance of the purchase price payable by the Purchasing Unitholder or the General Partner, as the case may be, shall not accrue interest and will be paid in three equal consecutive annual payments, with the first such payment due and payable on the date that is one (1) year following the Date of Default and the last such payment due and payable on the date that is three (3) years following the Date of Default.

Any costs and expenses incurred by the General Partner or the Partnership in connection with the purchase and sale of the Default Units shall be deducted from the purchase price paid to the Insolvent Unitholder for the Default Units and shall be paid by the Purchasing Unitholder or the General Partner, as the case may be, on behalf of the Insolvent Unitholder to the General Partner or the Partnership, as the case may be.

### **ARTICLE 3** **CAPITAL CONTRIBUTIONS**

- 3.1 **Capital Contributions.** The initial capital of the Partnership shall be the aggregate of the Initial Capital Contributions of all the Unitholders, contributed in accordance with the Subscription Agreement executed and delivered by each Unitholder. The Initial Capital Contributions and other Capital Contributions of the Unitholders shall be as set forth in the

- 15 -

Register. The Register shall, subject to manifest error, be updated by the General Partner from time to time as necessary to reflect such adjustments or new Unitholders, at which point the updated Register will become binding and supersede the predecessor Register. The inadvertent failure by the General Partner to amend the Register in accordance with the terms of this Agreement shall not affect the status of any Unitholder or such Unitholder's rights or obligations hereunder.

- 3.2 **Additional Capital Contribution.** It is expressly provided that, except to the extent contemplated in a Subscription Agreement, there shall be no requirement of any of the Unitholders to contribute further capital.

#### **ARTICLE 4** **DISTRIBUTIONS AND ALLOCATIONS**

4.1 **Distributions.**

The General Partner may, from time to time, in its sole discretion, cause the Partnership to make distributions, of cash or other property to the Partners from funds or property that are not otherwise reasonably necessary for the conduct of the Partnership's business, including without limitation, the payment of operating costs and expenses of the Partnership (including, without limitation, the fees payable pursuant to the Administrative Services Agreement). In addition, the General Partner may, from time to time, in its sole discretion, retain or establish one or more Reserves in such amounts that it considers prudent with respect to contingent or unforeseen liabilities and obligations. Subject to this Section, whenever the Partnership is to make a distribution to its Partners under this Section 4.1 the Partnership shall make such distributions in the following order and priority:

- (a) *first*, to pay the General Partner 0.0001% of Net Income as a distribution;
- (b) *second*, to repay to each Unitholder, on a Pro-Rata Basis, any outstanding Capital Contributions made by such Unitholder to the Partnership, as the case may be;
- (c) *third*, to pay the balance thereof (the "**Balance**"), on a contemporaneous basis as among (i) and (ii) below, as follows:
  - (i) as to 44% of the Balance, as follows:
    - (A) *first*, to pay the Class A Return of each Class A Unitholder, as a distribution, on a Pro-Rata Basis among all Class A Unitholders entitled to receive a Class A Return, to the extent not previously paid to them; and
    - (B) *second*, to pay the balance thereof, as a distribution, to such Class A Unitholder(s) as selected jointly by Hans Jain and Oscar Furtado in writing to the General Partner (which selection, once made, may not be changed);
  - (ii) as to 44% of the Balance, as follows:



- 16 -

- (A) *first*, to pay the Class B Return of each Class B Unitholder, as a distribution, on a Pro-Rata Basis among all Class B Unitholders entitled to receive a Class B Return, to the extent not previously paid to them; and
- (B) *second*, to pay the balance thereof as a distribution, to such Class B Unitholder(s) as selected by Oscar Furtado in writing to the General Partner (which selection, once made, may not be changed); and
- (iii) as to 12% of the Balance, as a distribution, on a Pro-Rata Basis among all Class C Unitholders.

For greater certainty, except as specifically contemplated otherwise, none of the payments in the list set out in Section 4.1 shall be made until such time as the immediately preceding payment in such list has been paid in full.

Distributions under this Section 4.1 to the Unitholders are to be made at such time or times and in such manner as the General Partner may determine as being in the best interests of the Partnership. Notwithstanding anything to the contrary herein:

- i. the General Partner has full and absolute discretion to delay the payment of distributions and/or the return of Capital Contributions to the Unitholders; and
- ii. it is acknowledged and agreed by the Partners that distributions and/or the return of Capital Contributions to the Unitholders may not occur until the completion of a future sale of the Property.

4.2 **Allocation of Income and Loss for Tax Purposes.** For each fiscal year of the Partnership, the Income for Tax Purposes or Loss for Tax Purposes in accordance with the Tax Act and any other applicable taxing statute from each source for that fiscal year shall be allocated amongst the Partners as follows:

- (a) Income for Tax Purposes or Loss for Tax Purposes will be allocated as among the Partners, pro rata among them in proportion to the aggregate distributions (which, for greater certainty, shall not include the repayment of Capital Contributions contemplated in Section 4.1(b)) made to each of them; and
- (b) All other items of income, gain, loss, deduction, recapture and credit of the Partnership which are allocable for purposes of the Tax Act and any other applicable taxing statute shall be allocated among the Unitholders on a Pro-Rata Basis.

4.3 **Allocation of Income and Loss for Accounting Purposes.** The Net Income or Net Loss of the Partnership for accounting purposes for a given fiscal year of the Partnership shall be allocated among the Partners in the same proportion as Income for Tax Purposes or Loss for Tax Purposes is allocated for such fiscal year of the Partnership.

4.4 **Effect of Assignment.** If, during any fiscal year of the Partnership, a Unitholder Transfers a Unit, the allocation to such transferor Unitholder and transferee Unitholder of Net

- 17 -

Income, Net Loss, Income for Tax Purposes or Loss for Tax Purposes of the Partnership, as applicable, for such fiscal year of the Partnership, shall be made in a manner that is fair and equitable in the circumstances, as determined by the General Partner, acting reasonably, in consultation with the Accountants.

- 4.5 **Adjustments.** If the Accountants determine the proportionate share of a Partner, in the distribution or allocation of Net Income, Net Loss, Income for Tax Purposes or Loss for Tax Purposes, differs from such Partner's share as determined by the General Partner, then the determination of the Accountants shall, absent manifest error, be deemed to be correct and binding upon the Partnership and the applicable Partner. The General Partner will cause the necessary adjustments to be made in respect of such Unitholder as the case may be.
- 4.6 **Repayments.** If, as determined by the Accountants, it appears that any Partner has received an amount under Section 4.1 that is less than the Partner's entitlement hereunder, the Partnership will reimburse the Partner to the extent of such deficiency within thirty (30) days following the date of notice from the General Partner to the Partner of any such determination by the Accountants. If, as determined by the Accountants, it appears that any Partner has received an amount under Section 4.1 that is in excess of the Partner's entitlement hereunder, the Partner will reimburse the Partnership to the extent of the excess within thirty (30) days following the date of notice from the General Partner to the Partner of any such determination by the Accountants. If such excess is not reimbursed by the Partner within such thirty (30) day time period, such excess shall thereafter bear interest in favour of the Partnership at a rate equal to five percent (5%) per annum, calculated and compounded monthly, and the General Partner may set-off and deduct from any amounts otherwise payable to such Partner hereunder, the amount of any such adjustment and accrued and unpaid interest owing by such Partner to the Partnership.
- 4.7 **Separate Capital Accounts.** A separate capital account for accounting purposes shall be established by the General Partner for each Unitholder.
- 4.8 **No Interest Payable.** No Unitholder shall be entitled to receive interest on the amount of its Capital Contribution or any balance in its capital account from the Partnership. No Unitholder shall be liable to pay interest to the Partnership on any negative balance in its capital account.
- 4.9 **Return of Capital.** A Unitholder is only entitled to call for a return of its Capital Contribution upon the dissolution, winding-up or liquidation of the Partnership as provided for in ARTICLE 8 hereof.
- 4.10 **Withholding Taxes.** The General Partner shall deduct or withhold from distributions payable to any Unitholder all amounts required by applicable laws to be withheld from such distribution. To the extent that amounts are so deducted or withheld, such amounts shall be treated for all purposes hereof as having been paid to the holder of such Units in respect of which such deduction and withholding was made. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a Unitholder exceeds the cash portion of the distribution otherwise payable to the holder, the General Partner is hereby authorized to set-off against any amounts owed to, or other non-cash distribution being made to, the Unitholder as is necessary to provide sufficient funds to the

- 18 -

Partnership to enable the Partnership to comply with such deduction or withholding requirement. The General Partner may make such other arrangements as it, in its sole discretion, considers appropriate, including seeking funding of the withholding from the Unitholder or selling the Unitholder's Units to the remaining Unitholders on a Pro-Rata Basis or acquiring the Unitholder's Units on behalf of the Partnership, to satisfy the Partnership's deduction, withholding and remittance obligations.

## **ARTICLE 5**

### **THE GENERAL PARTNER**

- 5.1 **General Partner and Duties of the General Partner.** Subject to any delegation of its powers properly authorized hereunder and to those matters requiring a Resolution, the General Partner will control and have full and exclusive power, authority and responsibility for the business of the Partnership and will do or cause to be done in a prudent and reasonable manner any and all acts necessary, appropriate or incidental to the business of the Partnership. The General Partner shall have unlimited liability for the debts, liabilities and obligations of the Partnership. The General Partner represents and warrants that it has entered into, or covenants that it will enter into, as the case may be, the agreements reasonably necessary to the undertaking of business on behalf of the Partnership, including all agreements to purchase the interest of the Partnership in the Property and assume the obligations therefor. Without limiting the generality of the foregoing, the General Partner shall diligently enforce the obligations and commitments contained in the aforementioned agreements on behalf of the Partnership without further authorization from any Unitholder.
- 5.2 **Authority of the General Partner.** No Person dealing with the Partnership is required to inquire into the authority of the General Partner to take any action or make any decision on behalf of and in the name of the Partnership.
- 5.3 **Specific Powers.** Subject, in all cases, to the provisions of this Agreement specifying the requirement for Unitholder approval, without limiting the generality of Section 5.1 or any other specific power in this section or elsewhere in this Agreement and subject to compliance with agreements made on behalf of the Partnership, the General Partner is authorized, at the appropriate time, on behalf of and without further authority from the Unitholders:
- (a) To retain or act as the Registrar and Transfer Agent;
  - (b) To engage such professional advisers as the General Partner considers advisable in order to perform or assist it in the performance of its duties hereunder;
  - (c) To open and operate in the name of the Partnership a separate bank account in order to deposit and distribute funds with respect to the Partnership;
  - (d) To execute, deliver and carry out all agreements and other instruments or documents which require execution by or on behalf of the Partnership;
  - (e) To establish such Reserves as the General Partner considers necessary, in each case in accordance with usual and prudent commercial practices;

- 19 -

- (f) To pay all taxes, fees and other expenses relating to the orderly maintenance and management of the Partnership and the assets owned by the Partnership, including, without limitation, payment of the fees payable pursuant to the Administrative Services Agreement;
- (g) In relation to the purchase, ownership, financing, management, development, sale or other disposition of the Property (or part thereof), to enter into and perform its or the Partnership's obligations under any agreements contemplated therein, and any other agreement of purchase and sale, joint venture agreement, co-ownership agreement or management agreement that, in the opinion of the General Partner is required in connection with the ownership and development of the Property;
- (h) To make all payments relating to the purchase and development of the Property including, without limitation, all of its costs and expenses incurred in connection with the purchase, and development of the Property including, without limitation, all legal and other professional fees and disbursements, mortgage-related fees and expenses, mutation taxes, due diligence costs and Arm's Length broker commissions;
- (i) To commence or defend on behalf of the Partnership any and all actions and other proceedings pertaining to the Partnership or the Property;
- (j) To determine the amount and type of insurance coverage, if any, to be maintained in order to protect the Partnership from all usual perils of the type covered in respect of comparable assets and businesses and in order to comply with the requirements of the lenders of funds to the Partnership;
- (k) To determine the amount, if any, to be claimed by the Partnership in any year for income tax purposes in respect of capital cost allowance and amortization or deduction of other costs of services incurred by the Partnership;
- (l) To invest funds not immediately required for the business of the Partnership in interest-bearing accounts, term deposits, money market mutual funds, guaranteed investment certificates of banks or trust companies or in other similar money market securities of banks or trust companies;
- (m) To make distributions to Unitholders in accordance with the provisions of this Agreement;
- (n) To provide or arrange for the provision of such financial and other reporting functions as may be required by the provisions hereof or applicable regulatory authorities;
- (o) To make such determinations, attend meetings, vote, pass such resolutions and exercise all rights of and on behalf of the Partnership, as the General Partner may deem necessary or desirable for the Partnership; and
- (p) To execute any and all deeds, documents, income tax election forms, information returns and instruments and to do all acts as may be necessary or desirable to carry



- 20 -

out the intent and purpose of this Agreement, including, without limitation, retaining qualified agents to carry out any of the foregoing.

Notwithstanding the foregoing, it is acknowledged and agreed that from and after the date hereof until the Unitholders by Special Resolution approve otherwise, the powers of the General Partner as set out generally in Section 5.1 or as specified in this Section 5.3 shall, in respect of the development and construction of the Property, be limited to the Partnership obtaining Site Plan Approval and all matters that are necessary, related or incidental to the Partnership obtaining Site Plan Approval, all as determined by the General Partner in its sole discretion, acting reasonably.

- 5.4 **Reimbursement of the General Partner.** The General Partner is entitled to reimbursement by the Partnership for all reasonable third-party costs and expenses that are incurred by the General Partner on behalf of the Partnership in the ordinary course of business, and all reasonable other costs and expenses incidental to acting as General Partner to the Partnership, provided the General Partner is not in default of its duties hereunder in connection with such costs and expenses.
- 5.5 **Borrowing.** The General Partner may borrow funds in the name of and on the security of the assets of the Partnership for the purposes of financing and refinancing the business and operations of the Partnership, but not for any other purpose.
- 5.6 **Amendment of Agreement.** Unless otherwise provided for herein, this Agreement may be amended on the initiative of the General Partner with the consent of the Unitholders given by Resolution, except that any amendment affecting the rights of the General Partner shall be ineffective unless consented to in writing by the General Partner. Notwithstanding the foregoing, the General Partner may, without prior notice to or consent from any Unitholder, amend any provision of this Agreement from time to time:
- (a) For the purpose of adding to this Agreement any further covenant, restriction or provision which in the opinion of the General Partner is necessary for the protection of the Unitholders and/or for the efficient and orderly management of the Partnership or its business;
  - (b) To cure any ambiguity or to correct or supplement any provisions contained herein which, in the opinion of the General Partner, may be defective or inconsistent with any other provisions contained herein provided that such cure, correction or supplemental provision does not and will not, in the opinion of the General Partner, adversely affect the interests of the Unitholders; and
  - (c) To make such other provisions in regard to matters or questions arising under this Agreement which in the opinion of the General Partner do not and will not adversely affect the interest of the Unitholders.

Unitholders will be notified of the full details of any amendment to this Agreement within a reasonable time period following the effective date of any such amendment.

- 5.7 **Power of Attorney.** To the extent permitted by applicable law, each Unitholder irrevocably nominates, constitutes and appoints the General Partner (and Persons

- 21 -

appointed to replace the General Partner pursuant to Sections 5.19 and 5.20 hereof), to act, with full power of substitution, as its true and lawful attorney and agent, with full power and authority, in its name, place and stead and for its use and benefit to execute (under seal or otherwise) and do the following, namely:

- (a) Execute, swear to, acknowledge, deliver and file as and where required and when required any and all of the following:
  - (i) this Agreement and all declarations and declarations of change required under the Act and all other instruments necessary to form, qualify or continue and keep in good standing the Partnership as a limited partnership;
  - (ii) all instruments, declarations and certificates necessary to reflect any amendment to this Agreement made pursuant to the provisions hereof;
  - (iii) all conveyances, agreements and other instruments necessary or desirable to reflect the dissolution and termination of the Partnership pursuant to the provisions hereof including cancellation of any certificates or declarations and including any elections under the Tax Act (including without limitation pursuant to subsection 98(3) of the Tax Act), and any analogous provincial or territorial legislation; and
  - (iv) any election, determination, designation, objection, notice of objection, return, information return or similar document or instrument as may be required or desirable for the Partnership at any time under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province, territory or jurisdiction which relates to the affairs of the Partnership or the interest of any Person in the Partnership;
- (b) Execute and file with any governmental body or instrumentality thereof of the Government of Canada or a province any documents necessary to be filed in connection with the business, property, assets and undertaking of the Partnership;
- (c) Execute and deliver transfer forms and such other documents on behalf of and in the name of the Unitholders and as may be necessary to effect the Transfer of Units in accordance with this Agreement; and
- (d) Execute and deliver all such other documents, income tax election forms, information returns or instruments on behalf of and in the name of the Partnership and for the Unitholders or any Unitholder as may be deemed necessary or desirable by the General Partner to carry out fully the provisions of a Unitholder's Subscription Agreement for the purchase of Units or this Agreement in accordance with its terms.

In addition to the foregoing, and to additionally evidence the same, each Unitholder agrees to deliver to the General Partner, which may be by execution of such Unitholder's Subscription Agreement for the purchase of Units or the transfer form for the acquisition of Units, a power of attorney substantially in the form noted above. The power of attorney granted herein is irrevocable, including without limitation during the existence of the

- 22 -

Partnership and in connection with the dissolution or winding up thereof, is a power coupled with an interest, shall survive the death, disability, dissolution, winding up or other legal incapacity of a Unitholder and shall survive the assignment, to the extent of the obligations of a Unitholder hereunder or under such Unitholder's Subscription Agreement, for the purchase of Units by a Unitholder of the whole or any part of the interest of a Unitholder in the Partnership and extends to and is binding upon the heirs, executors, administrators, legal and personal representatives, transferees, successors and assigns of the Unitholder, and may be exercised by the General Partner for and on behalf of each Unitholder by reference to all Unitholders executing any instrument with a single signature as attorney and agent for each and all of them. Each Unitholder agrees to be bound by any representations and actions made or taken by the General Partner pursuant to such power of attorney in accordance with the terms thereof and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.

In accordance with the *Power of Attorney Act* (Ontario), the *Powers of Attorney Act* (Alberta), the *Powers of Attorney Act, 1996* (Saskatchewan), the *Powers of Attorney Act* (Manitoba), the *Substitute Decisions Act, 1992* (Ontario), the *Property Act* (New Brunswick), the *Powers of Attorney Act* (Prince Edward Island), the *Powers of Attorney Act* (Nova Scotia), the *Enduring Powers of Attorney Act* (Newfoundland), and the *Enduring Power of Attorney Act* (Yukon) and any similar legislation governing a power of attorney, each Unitholder declares that these powers of attorney may be exercised during any legal incapacity, mental incapacity or infirmity, or mental incompetence on the Unitholder's part.

The power of attorney granted in this section is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Unitholder's incapacity to manage property, or any similar power of attorney under equivalent legislation in any other jurisdiction (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Unitholder previously and will not be terminated by the execution by the Unitholder in the future of a CPOA, and the Unitholder hereby agrees not to take any action in future which results in the termination of this power of attorney.

The General Partner may require, in connection with the subscription for, or any transfer of, Units, that the Subscription Agreement or Unit Transfer, if any, be accompanied by the explanatory notes set out in the *Powers of Attorney Act* (Alberta) and the *Enduring Power of Attorney Act* (Yukon) and a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse.

This power of attorney will continue in respect of the General Partner so long as it is the general partner of the Partnership, and will immediately terminate thereafter, without any further act or formality, but will continue in respect of a New General Partner as if the New General Partner were the original attorney.

A purchaser or transferee of a Unit will, upon becoming a Unitholder, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement



- 23 -

as a Unitholder and will be conclusively deemed to have provided the General Partner with the power of attorney described in this Section 5.7.

- 5.8 **Informing Creditors.** The General Partner shall inform each creditor of the Partnership, prior to conducting any transaction with such creditor, that the Partnership is a limited partnership within the meaning of the Act. The General Partner shall use its reasonable best efforts to ensure that all written contracts and other written instruments creating an obligation upon the Partnership contain or are accompanied by an acknowledgment that neither the Unitholders nor their assignees will have any personal liability thereunder.
- 5.9 **Duties of General Partner.** The General Partner shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Partnership and shall exercise the care, diligence and skill of a reasonably prudent general partner in similar circumstances in managing the business, affairs and assets of the Partnership. The General Partner shall be entitled to retain advisors, experts or consultants to assist it in the exercise of its powers and the performance of its duties hereunder. The General Partner further covenants that it shall maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interest of the Partnership or a Unitholder, except to the extent that the disclosure is required by law or is in the best interests of the Partnership, and it shall utilize any such information and data only for the business of the Partnership.
- 5.10 **Income Tax Claims and Deductions.** In respect of any fiscal year of the Partnership, the General Partner may claim the maximum capital cost allowance in respect of depreciable property of the Partnership, the maximum amount of other deductions and the maximum reserves, each as permitted under the Tax Act, provided that the General Partner may claim less than the maximum in any Fiscal Period if it so determines in its sole and uncontrolled discretion.
- 5.11 **Enforcement of Rights and Discharge of Duties by General Partner.** In the event the General Partner admits, refuses or unduly delays in taking, or refrains from taking, any action or enforcing any right which the Unitholders believe, acting reasonably, are in the best interests of the Partnership or required by applicable agreements or applicable law, the Unitholders may, by Resolution, require the General Partner to take such action or enforce such right and nominate an independent third party to act in accordance with this section in the event the General Partner fails to do so. If the General Partner fails to act within ten (10) days following the date of the Resolution, then the Unitholders may appoint the independent third party so nominated to take such action or enforce such right in the name and stead of the General Partner on behalf of the Partnership, and to the extent of such retainer the independent third party shall for all purposes be deemed to be and shall have the powers of the General Partner and the General Partner hereby irrevocably appoints such third party as its attorney for all such purposes as aforesaid. Nothing contained in this section shall be construed to enable any Unitholder to take part in the control of the management or business of the Partnership.
- 5.12 **Employment of an Affiliate.** The General Partner may employ or retain an Affiliate of the General Partner (which for greater certainty includes Go-To Holdings) on behalf of the Partnership to provide goods or services to the Partnership, provided that the cost of such

- 24 -

goods or services are reasonable and competitive with the cost of similar goods or services provided by an independent third party.

- 5.13 **Transactions Involving Affiliates.** The validity of a transaction, agreement or payment involving the Partnership and an Affiliate of the General Partner is not affected by reason of the relationship between the General Partner and such Affiliate or by reason of the approval or lack thereof of the transaction, agreement or payment by the directors of the General Partner, all of whom may be officers or directors of or otherwise interested in or related to such Affiliate.

The parties hereto acknowledge that: (i) the General Partner and Go-To Holdings may have the same directors, officers, direct or indirect shareholders, employees and affiliates; and (ii) that Go-To Holdings and the directors, officers, shareholders, employees and affiliates of each of Go-To Holdings and the General Partner are engaged in a wide range of investing and other business activities, which may include, direct and/or indirect, ownership and development of real property. Consequently, the directors, officers or employees of the General Partner will only devote as much time as is necessary (but not all of his or her full time) to supervise the management of the business and affairs of the Partnership.

- 5.14 **Safekeeping of Assets.** The General Partner is responsible for the safekeeping and use of all funds and assets of the Partnership, whether or not in its immediate possession or control, and will not employ or permit any other Person to employ such funds or assets except for the exclusive benefit of the Partnership.

- 5.15 **Indemnity of General Partner.**

- (a) To the fullest extent permitted by law, but subject to the General Partner or any Former General Partner's material compliance with this Agreement and their obligations hereunder, the General Partner, any Former General Partner, any Person who is or was an officer, director, employee, agent or trustee of the General Partner or any Former General Partner, but only in their capacity as such (collectively, an "Indemnitee") will be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses on a full indemnity basis), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as:

- (i) the General Partner, a Former General Partner; or
- (ii) an officer, director, employee, partner, agent or trustee of the General Partner, any Former General Partner, but only in their capacity as such; or
- (iii) a Person engaged by the General Partner or any Former General Partner for the purposes of facilitating the requirements of the Partnership's Business in the manner contemplated hereby;

provided, that

- 25 -

- (iv) in each case the Indemnatee acted honestly and in good faith with a view to the best interests of the Partnership and in compliance with the General Partner's or the Former General Partner's obligations under this Agreement;
  - (v) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, the Indemnatee had reasonable grounds for believing its conduct was lawful; and
  - (vi) no indemnification pursuant to this Section 5.15 will be available to an Indemnatee where the Indemnatee has been adjudged by a final decision of a court of competent jurisdiction in Ontario that is no longer appealable to have been grossly negligent in the performance of its obligations under this Agreement. The termination of any action, suit or proceeding by judgment, order, settlement or conviction will not create a presumption that the Indemnatee acted in a manner contrary to that specified above.
- (b) To the fullest extent permitted by law, expenses (including legal fees and expenses on a full indemnity basis) incurred by an Indemnatee in defending any claim, demand, action, suit or proceeding will, from time to time, be advanced by the Partnership prior to the final disposition of any claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnatee to repay that amount if it is determined that the Indemnatee is not entitled to be indemnified as authorized in this Section 5.15.
- (c) The indemnification provided by this Section 5.15 will be in addition to any other rights to which an Indemnatee may be entitled under any agreement, as a matter of law or otherwise, as to actions in the Indemnatee's capacity as:
- (i) the General Partner or a Former General Partner, but only in their capacity as such;
  - (ii) an officer, director, employee, partner, agent or trustee of the General Partner or a Former General Partner or any of their respective affiliates, but only in their capacity as such; and/or
  - (iii) a Person serving at the request of the General Partner, any Former General Partner or any of their respective affiliates as a director, officer, employee, agent or trustee of another Person, but only in their capacity as such;
- and will continue as to an Indemnatee who has ceased to serve in that capacity.
- (d) The Partnership may purchase and maintain (or reimburse the General Partner or its affiliates for the cost of) insurance, on behalf of those Persons (other than the General Partner itself) as the General Partner determines, against any liability that may be asserted against or expense that may be incurred by that Person in connection with the Partnership's activities, whether or not the Partnership would have the power to indemnify those Persons against those liabilities under the provisions of this Agreement.

- 26 -

- (e) The General Partner will hold the benefit of this indemnity in trust and as agent for the Indemnitees.
- (f) Any indemnification pursuant to this Section 5.15 will be made only out of the assets of the Partnership.

5.16 **Restrictions upon the General Partner.** The General Partner's power and authority does not extend to any power, action or authority enumerated in Sections 6.14 hereof, unless and until the requisite Resolution is passed by the Unitholders. The General Partner covenants that it shall not:

- (a) Cause the Partnership to guarantee the obligations or liabilities of, or make loans to, the General Partner or any Affiliate of the General Partner; or
- (b) Commingle the funds and assets of the Partnership with the funds or assets of any other Person, including those of the General Partner or any Affiliate of the General Partner.

5.17 **Payments.** The General Partner shall pay or cause to be paid out of the funds of the Partnership, whether on hand or borrowed, costs and expenses relating to the Partnership's business, as and when such costs or expenses become due and payable.

5.18 **Resignation.** Subject to Section 5.19, the General Partner shall resign only upon one hundred and eighty (180) days' prior written notice to the Partnership.

5.19 **Insolvency of the General Partner.** The General Partner shall be deemed to resign as the General Partner of the Partnership in the event that an Insolvency Event occurs in respect of the General Partner, but such resignation shall not be effective and such General Partner shall not cease to be the general partner of the Partnership until the admission of a replacement general partner to the Partnership appointed as follows:

- (a) In the event that General Partner is not also to be removed in accordance with Section 5.20, then Go-To Holdings shall have the right to appoint a replacement general partner of the Partnership; or
- (b) In the event that: (i) the General Partner is also to be removed in accordance with Section 5.20; or (ii) Go-To Holdings fails to appoint a replacement general partner of the Partnership after a period of ten (10) days following the deemed resignation of the General Partner in accordance with this Section 5.19, the Unitholders shall, by Resolution, admit a replacement general partner to the Partnership.

5.20 **Removal of General Partner.** The General Partner may be removed immediately by the Unitholders as General Partner without its consent only if a final non-appealable court of competent jurisdiction determines ultimately that the General Partner has engaged in fraud, wilful misconduct or gross negligence in the operations of the Partnership and that such fraud, wilful misconduct or gross negligence has a material adverse effect on the value of the operations, business or properties of the Partnership. For greater certainty, the General Partner may not be removed as General Partner at any time (by a vote of the Unitholders



- 27 -

or by any other means), save and except for pursuant to Sections 5.19 or 5.20, or as a result of the General Partner's resignation in accordance with Section 5.18.

5.21 **Replacement General Partner.** In the event that the Unitholders, pursuant to the provisions of Sections 5.19(b) and/or 5.20, or Go-To Holdings, pursuant to the provisions of Section 5.19(a), are entitled to appoint a replacement general partner (the "**New General Partner**") to assume all of the responsibilities and obligations under this Agreement of the removed or resigned General Partner (the "**Former General Partner**"), such appointment of the New General Partner may occur if, but only if:

- (a) All amounts owing by the Partnership to the Former General Partner (in its capacity as the General Partner and not as a Unitholder) shall have been paid in full, provided that no amount owing to the Partnership by the Former General Partner or by the latter to the former shall be accelerated by virtue of the removal of the Former General Partner;
- (b) The New General Partner causes to be delivered to the Former General Partner a release by the Partnership in favour of the Former General Partner of the responsibilities and obligations to be assumed by the New General Partner and the Partnership shall hold harmless the Former General Partner from all actions, claims, costs, demands, losses, damages and expenses (including all reasonable legal and other professional fees and disbursements) with respect to events which occur in relation to the Partnership after the appointment of the New General Partner;
- (c) The New General Partner, prior to assuming its responsibilities as the General Partner of the Partnership under the terms of this Agreement, executes the documents presented by the Partnership to give effect to the assumption;
- (d) The Former General Partner assigns its interest in the Partnership (in its capacity as the General Partner and not as a Unitholder) to the New General Partner for an amount equal to the credit balance outstanding in the capital account of the Former General Partner (in its capacity as the General Partner and not as a Unitholder) as at the effective date of removal; and
- (e) The Former General Partner shall continue to be entitled to receive the distributions, if any, payable to the Former General Partner (in its capacity as the General Partner and not as a Unitholder) pursuant to Section 4.1 for the period up to the date the Former General Partner is no longer a general partner of the Partnership.

5.22 **General Partner as a Unitholder.** Notwithstanding anything else contained in this Agreement, if a General Partner becomes a Former General Partner, and at the time such General Partner becomes a Former General Partner it is also a Unitholder, then such Former General Partner shall not be obligated to forfeit, surrender or assign any of its Units held in its capacity as a Unitholder.

5.23 **Indemnity by General Partner.** The General Partner hereby indemnifies and holds harmless the Partnership and each Unitholder from and against all costs, expenses,



- 28 -

damages or liabilities suffered or incurred by the Partnership or any Unitholder by reason of any act of wilful misconduct, gross negligence or fraud by the General Partner.

- 5.24 **Decisions re Property.** The parties hereto acknowledge and agree that the management and administration of the day-to-day affairs of the Property and the general supervision of the development of the Property and the decision making process with respect to the Property will be performed by the General Partner or such manager selected by the General Partner from time to time for such purpose.
- 5.25 **Ratification of Contracts.** Each Unitholder acknowledges and agrees that all actions, contracts, resolutions, proceedings, appointments and other acts taken by the General Partner (and its directors and officers) for and on behalf of the Partnership, be and the same are hereby approved, ratified and confirmed, notwithstanding any irregularity attendant upon such acts or any lack of qualification or authorization of the parties thereto.
- 5.26 **Authority of General Partner to Make Tax Elections.** The General Partner shall be responsible for all tax matters and tax elections of the Partnership under the Tax Act and any other applicable taxation legislation and, without limiting the foregoing, the General Partner will be entitled to make or execute elections under the Tax Act and other applicable taxation legislation that relate to a fiscal year of the Partnership on behalf of all Persons who are Unitholders or who are the beneficial owners of Units during such fiscal year of the Partnership and will have the authority to act for the Partnership in connection herewith.

## **ARTICLE 6** **MEETINGS**

- 6.1 **Meetings.** The General Partner may convene a meeting of the Unitholders at any time upon the giving of notice as hereinafter provided.
- 6.2 **Place of Meeting.** Every meeting shall be held either in the City of Toronto, Ontario or at such other place in Canada as may be approved by Resolution. All meetings of the Unitholders may be held by means of such telephonic, electronic or other communication facilities as permits all the Unitholders participating in the meeting to communicate with each other simultaneously and instantaneously.
- 6.3 **Notice of Meeting.** Notice of any meeting shall be given to the Unitholders (with a copy to all other Unitholders) in accordance with Section 10.7 not less than fourteen (14) days prior to such meeting, and shall state:
- (a) The time, date and place of such meeting; and
  - (b) In general terms, the nature of the business to be transacted at the meeting.
- 6.4 **Accidental Omissions.** Accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Unitholder of the Partnership shall not invalidate the proceedings at that meeting.

- 29 -

- 6.5 **Proxies.** Any Unitholder of the Partnership entitled to vote at a meeting may vote by proxy if a proxy has been received by the General Partner or the chairman of the meeting for verification prior to the meeting.
- 6.6 **Validity of Proxies.** A proxy shall be considered to be valid unless challenged at the time of or prior to its exercise, and the Person challenging shall have the burden of proving to the satisfaction of the chairman of the meeting that the proxy is invalid and any decision of the chairman concerning the validity of a proxy will be final.
- 6.7 **Form of Proxy.** Every proxy shall be substantially in the form which follows or such other form as may be approved by the General Partner or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised:

"I/we \_\_\_\_\_ of \_\_\_\_\_ in the  
Province of \_\_\_\_\_ being a Unitholder of Go-To Spadina Adelaide  
Square LP, hereby appoint \_\_\_\_\_ of  
\_\_\_\_\_ in the Province of \_\_\_\_\_ as my  
proxy, with full power of substitution to vote for me and on my behalf at the  
meeting of Unitholders to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
and every adjournment or adjournments thereof and on every poll that may take  
place in consequence thereof. As witness my hand this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_."

- 6.8 **Corporations which are Unitholders.** A Unitholder which is a corporation may appoint an officer, director or other authorized Person as its representative to attend, vote and act on its behalf at a meeting of Unitholders.
- 6.9 **Attendance of Others.** Go-To Holdings, and all officers and directors of the General Partner and any representatives of the Accountants shall be entitled to attend and receive notice of any meeting of Unitholders. The General Partner has the right to authorize the presence of any Person at a meeting regardless of whether the Person is a Unitholder and, with the approval of the General Partner, such Person shall be entitled to address the meeting.
- 6.10 **Chairman.** The General Partner may nominate an individual (who need not be a Unitholder) to be chairman of a meeting and the Person nominated by the General Partner shall be chairman of such meeting unless the Unitholders elect another chairman by Resolution.
- 6.11 **Quorum.** Subject to this Agreement, a quorum at any meeting of Unitholders shall consist of the General Partner and two (2) or more Unitholders present in person who collectively hold, or represent by proxy, more than fifty percent (50%) of all outstanding Class A Units, more than fifty percent (50%) of all outstanding Class B Units and more than fifty percent (50%) of all outstanding Class C Units and who are entitled to vote on any resolution. If within half an hour after the time fixed for the holding of such meeting a quorum for the meeting is not present, the meeting shall be held at the same time and, if available, the same place, not less than ten (10) days or more than fourteen (14) days later (or if that date is not a Business Day the first Business Day after that date), and the General Partner shall give at least seven (7) days' notice in writing to all Unitholders of the date and place of the

- 30 -

reconvening of the adjourned meeting. Such notice need not set forth the matters to be considered unless they are different from those for which the original meeting was called.

**6.12 Voting.**

- (a) Every question submitted to a meeting shall be decided by a vote conducted in such fashion as the chairman of the meeting may decide, it being agreed that the number of votes which may be exercised by the holder of any particular Class A Unit, Class B Unit or Class C Unit (or its/his proxy) shall be equal to one (1) vote for each such Class A Unit held, one (1) vote for each such Class B Unit held and one (1) vote for each such Class C Unit held (or the applicable fraction for each fractional Unit held). The General Partner may convene a meeting to consider any issues which the Partnership is proposing to deal with so that the Unitholders can determine the manner of voting on such issues;
- (b) In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated. The chairman shall be entitled to vote in respect of any Class A Units, Class B Units or Class C Units held by him/her or for which he/she may be proxyholder. On any vote at a meeting of Unitholders, a declaration of the chairman concerning the result of the vote shall be conclusive;
- (c) For greater certainty, except as otherwise contemplated in this Agreement, the General Partner shall not be entitled to a vote in respect of its interests in the Partnership except to the extent that the General Partner is also a Unitholder; and
- (d) Any Unitholder who is a party to a contract or proposed contract or who has a material interest in a contract, proposed contract or transaction (either directly or indirectly) which is the subject matter of a resolution shall not be entitled to any vote on such resolution; provided, however, that a Unitholder shall be deemed not to have a material interest in a contract, proposed contract or transaction if the interest arises merely from the ownership of Units where the Unitholder shall have or receive no extra or special benefit or advantage not shared on an equal basis by all other Unitholders;

**6.13 Resolutions Binding.** Any resolution passed in accordance with this Agreement shall be binding on all the Unitholders and their respective heirs, executors, administrators, successors and assigns, whether or not any such Unitholder was present in person or voted (or was not entitled to vote) against any resolution so passed.

**6.14 Powers Exercisable by Resolution.** The following powers shall only be exercisable by Resolution passed by the Unitholders:

- (a) Amending this Agreement, except as otherwise provided herein;
- (b) Waiving any default by the General Partner on such terms as the Unitholders may determine;
- (c) Continuing the Partnership in the event that the Partnership is terminated by operation of law;

- 31 -

- (d) Agreeing to any compromise or arrangement by the Partnership with any creditor, or class or classes of creditors;
- (e) Changing the fiscal year end of the Partnership;
- (f) Amending, modifying, altering or repealing any previously-passed Resolution;
- (g) Subject to the provisions of this Agreement, removing the General Partner and appointing a new General Partner;
- (h) Dissolving or terminating the Partnership;
- (i) Raising of any additional capital whether by the sale of further Units or otherwise, but only to the extent that the subscription price for such Units are less than \$50,000 per Unit;
- (j) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Partnership at any time prior to the Partnership obtaining Site Plan Approval; and
- (k) Initiating an action against the General Partner as a result of a breach of its duties, and/or approving a settlement of an action against the General Partner as a result of a breach of its duties.

The parties acknowledge and agree that in the event that any Resolution adversely affect the rights of the General Partner (other than removal or replacement of the General Partner pursuant to Sections 5.19(b) and 5.20) hereunder, the General Partner shall have the right to approve or disapprove the said Resolution, and the right of the General Partner shall be considered a veto in relation to the vote of the Unitholders.

- 6.15 **Minutes.** The General Partner shall cause minutes to be kept of all proceedings and resolutions at every meeting, and copies of any resolutions of the Unitholders to be made and entered in books to be kept for that purpose, and any minutes, if signed by the chairman of the meeting, shall be deemed as conclusive evidence of the matters stated in them, and such meeting shall be deemed to have been duly convened and held and all resolutions and proceedings shown in them shall be deemed to have been duly passed and taken.
- 6.16 **Additional Rules and Procedures.** To the extent that the rules and procedures for the conduct of a meeting of the Unitholders are not prescribed in this Agreement, the rules and procedures shall be determined by the chairman of the meeting, provided the rules shall generally accord, to the extent applicable, to the rules governing the conduct of a meeting of the shareholders of a public company.

## **ARTICLE 7**

### **ACCOUNTING AND REPORTING**

- 7.1 **Annual Financial Information.** The General Partner shall cause the Accountants to prepare annual audited financial statements of the Partnership as at the end of each fiscal year of the Partnership. The General Partner, or its agent in that behalf, shall distribute a



- 32 -

copy of such audited annual financial statements to each Unitholder as soon as reasonably possible after the end of each fiscal year and shall provide each Unitholder with annual income tax information for each fiscal year by March 31<sup>st</sup> of the following year to assist in declaring each such Unitholder's share of the Partnership income; provided, however, that each Unitholder shall be solely responsible for filing all income tax returns and reporting its share of the Partnership income or losses.

- 7.2 **Unaudited Quarterly Financial Statements and Reports.** The General Partner shall cause to be prepared unaudited quarterly internal financial statements of the Partnership in the format of internal management statements and narrative reports. The General Partner shall use reasonable efforts to cause to be distributed a copy of such unaudited quarterly internal financial statements to each Unitholder within sixty (60) days after the end of the period to which such statements relate.

## **ARTICLE 8**

### **DISSOLUTION AND LIQUIDATION**

- 8.1 **Dissolution and Termination.** The Partnership shall be dissolved on the earlier of the following dates:

- (a) If the General Partner should resign upon giving the required one hundred and eighty (180) days' prior written notice and the Unitholders shall have not appointed a New General Partner prior to the effective date of such resignation, the effective date of such resignation;
- (b) The date which is 120 days following the bankruptcy, dissolution or winding-up of the General Partner, unless the General Partner is replaced within 120 days following such bankruptcy, dissolution or winding-up;
- (c) If determined by the General Partner, thirty (30) days after the date on which the Partnership no longer holds any interest in the Property, the balance of each Unitholder's capital account to be returned to such Unitholder has been returned and the Partnership has no outstanding debts or obligations;
- (d) The date on which a Resolution approving the dissolution and winding-up of the Partnership is passed and approved by the General Partner; or
- (e) The date on which the Partnership is dissolved by operation of law.

The General Partner may make a recommendation for approval by Resolution that the Partnership be dissolved upon such terms and conditions as the General Partner sees fit and, without limiting the generality of the foregoing, the recommendation of the General Partner may include those terms and conditions which shall govern the relationship among the Unitholders with respect to their respective interests subsequent to a dissolution of the Partnership.

- 8.2 **Administrator.** The General Partner shall serve as the administrator of the Partnership in the event that the Partnership is to be dissolved, unless such dissolution is as a result of provisions of Sections 8.1(a) or 8.1(b) or if the General Partner is unable or unwilling to so

- 33 -

act. If the General Partner is disqualified or unable to act as administrator, then the Unitholders by Resolution shall appoint some other appropriate Person to act as the administrator of the Partnership. Each Unitholder covenants and agrees to use reasonable efforts to do and perform (and cause to be done and performed) such further and other acts or things as may be necessary or desirable in order facilitate the dissolution of the Partnership on a tax efficient and beneficial basis accounting for the tax and other circumstances of each Unitholder.

- 8.3 **Liquidation of Assets.** As soon as practicable after the authorization of the dissolution of the Partnership, the administrator of the Partnership shall prepare or cause to be prepared an unaudited statement of financial position of the Partnership which shall be reported upon by the Accountants and a copy of which shall be forwarded to each Unitholder. The administrator of the Partnership shall proceed diligently to wind up the affairs of the Partnership and all assets of the Partnership shall be disposed of in an orderly fashion having regard to prevailing market conditions. In selling the Partnership's assets, the administrator shall take all reasonable steps to locate potential purchasers in order to accomplish the sale at the highest attainable price. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any losses. During the course of such liquidation, the administrator of the Partnership shall operate the undertakings of the Partnership and in so doing shall be vested with all the powers and authorities of the General Partner in relation to the business and affairs of the Partnership under the terms of this Agreement. The administrator of the Partnership shall be paid its reasonable fees and disbursements incurred in carrying out its duties as such.
- 8.4 **Distribution.** After the payment of all liabilities owing to the creditors of the Partnership, the administrator shall set up such Reserves as it deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Said Reserves may be paid over by the administrator to a bank, to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the administrator may deem advisable, such Reserves shall be distributed to the Partners or their assigns as provided below. After provision has been made for: (i) the payment of all costs and expenses (including, without limitation, all legal and other professional fees and disbursements) involved in the sale of the Partnership assets and the winding up of the Partnership; and (ii) the repayment or other satisfaction of all debts and liabilities of the Partnership including, without limitation, all fees relating to the Administration Services Agreement, applicable taxes, and all amounts owing to the General Partner in respect of costs and expenses owing to it pursuant to this Agreement, the net assets of the Partnership and/or the proceeds arising therefrom shall be distributed in accordance with the provisions of Section 4.1.
- 8.5 **Distribution of Interest in Property.** Notwithstanding anything to the contrary in this Agreement, the Unitholders, upon the dissolution, winding-up or liquidation of the Partnership, shall only have the right and entitlement to the distributions of the proceeds arising from the sale or other disposition of the Property, but shall have no right or entitlement to a distribution of the Property, or any part thereof, in kind or in specie.
- 8.6 **Events Not Causing Dissolution.** Notwithstanding any rule of law or equity to the contrary, the Partnership shall not be dissolved except in accordance with the provisions of

- 34 -

this Agreement. In particular, but without restricting the generality of the foregoing, the Partnership shall not be dissolved or terminated by the removal, actual or deemed resignation, death, incompetence, bankruptcy, insolvency, other disability or incapacity, dissolution, liquidation, winding-up or receivership, or the admission, resignation or withdrawal of, any Partner.

## **ARTICLE 9**

### **SALE OF PROPERTY**

- 9.1 **Right to First Offer.** If, at any time following the Partnership obtaining Site Plan Approval, the General Partner receives a Third Party Offer for the purchase of the Property which the General Partner wishes to accept, then each Unitholder will have an opportunity to submit an offer to purchase the Property and the following terms and conditions will apply:
- (a) The General Partner will give written notice to each Unitholder within five (5) Business Days of its receipt of the Third Party Offer referring to this ARTICLE 9, accompanied by a true copy of the Third Party Offer;
  - (b) Each Unitholder will be entitled to give written notice to the General Partner on or before the date that is fifteen (15) Business Days following receipt of the General Partner's notice (the "**Final Acceptance Date**") setting forth the details of such Unitholder's offer to purchase the Property (each, a "**Unitholder's Purchase Offer**"), which Unitholder's Purchase Offer shall only be considered by the General Partner if: (i) it is a cash only offer; (ii) the aggregate purchase price is in excess of the aggregate purchase price specified in the Third Party Offer; (iii) the Property is to be sold on an 'as is, where is' basis; and (iv) the Closing Date will be no more than forty (40) days following the Final Acceptance Date;
  - (c) The General Partner shall, within five (5) Business Days of the Final Acceptance Date review each Unitholder's Purchase Offer received and shall, in its sole and absolute discretion, select a Unitholder's Purchase Offer or the Third Party Offer for the purpose of proceeding to sell the Property. The General Partner shall provide written notice to each Unitholder within three (3) Business Days following the completion of its selection notifying the Unitholders of the selection and accompanied by a true copy of the selected Unitholder's Purchase Offer, if applicable;
  - (d) The Property will be sold in accordance with the Third Party Offer or applicable Unitholder's Purchase Offer, as the case may be; and
  - (e) If the sale of the Property is not completed within 180 days following the Final Acceptance Date, then the Partnership shall not thereafter sell the Property without again complying with this Section 9.1.

**ARTICLE 10**  
**GENERAL**

- 10.1 **Guarantee Fee.** In the event that a Unitholder or any person related to a Unitholder or the General Partner or a direct or indirect shareholder, director or officer of any of the foregoing, is required to act, and acts, as a guarantor of any loans made to the Partnership, such guarantor shall have the right to charge, and the Partnership shall pay, a guarantee fee at a reasonable market rate as determined by the General Partner, which guarantee fee shall be subject to a standalone guarantee fee agreement to be entered into between the Partnership and such guarantor.
- 10.2 **Confidentiality.** Each Unitholder covenants and agrees to hold in confidence and keep confidential, and to use only for the purposes of the Partnership, any and all financial and other information and data which it may obtain or receive from, or on behalf of, the Partnership or the General Partner, including, without limitation, any information relating to the Property, except to the extent that the disclosure of such confidential information is to such Unitholder's legal, financial and tax advisors or is required by law.
- 10.3 **Initial Limited Partnership Agreement and Initial Unit.** This Agreement hereby amends and restates the initial limited partnership agreement (the "**Initial LP Agreement**") entered into between the General Partner and Go-To Holdings in connection with the Partnership dated October 16, 2018. Pursuant to the Initial LP Agreement, Go-To Holdings was issued 1 unit (the "**Initial Unit**") at a subscription price of \$10.00 per unit. Effective as of the issuance of Units to Unitholders on or after the date hereof, the Partnership hereby purchases the Initial Unit from Go-To Holdings, and Go-To Holdings hereby sells the Initial Unit to the Partnership for cancellation for a purchase price of CDN \$10.00 and, upon the completion of such purchase and sale, the Initial Unit is, without any further act or formality, hereby cancelled and no longer outstanding for any of the purpose. Nothing in this Section shall be interpreted so as to prevent Go-To Holdings from subscribing for, acquiring and holding Units as a Unitholder.
- 10.4 **Receipt by a Unitholder.** The receipt of any money, securities and other property from the Partnership by a Person in whose name any Unit is recorded, or if such Unit is recorded in the names of more than one Person, the receipt thereof by any one or more of such Persons, or by the duly authorized agent of any such Person in that regard, shall be a sufficient and proper discharge for that amount of money, securities and other property payable, issuable or deliverable in respect of such Unit.
- 10.5 **Interpretation.** For all purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:
- (a) The headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
  - (b) All accounting terms not otherwise defined herein have the meanings assigned to them and all computations made pursuant to this Agreement, except as expressly provided otherwise, shall be made in accordance with generally accepted accounting principles applied on a consistent basis;



- 36 -

- (c) All references to currency herein are references to Canadian currency;
- (d) Any reference to an entity shall include and shall be deemed to be a reference to any entity that is a successor to or assign of such entity; and
- (e) Words importing gender include the masculine, feminine and neuter genders, words in the singular include the plural and vice versa.

10.6 **Competing Interests.** Each Unitholder and the shareholders, officers, directors and employees of the General Partner and its Affiliates shall be entitled, without the consent of the other parties, to carry on any business of the same nature as, or competing with that of, the Partnership, and is not liable to account to the other Unitholders or the Partnership therefor. It is further acknowledged and agreed that the directors, officers and employees of the General Partner will not act exclusively for the Partnership, and, consequently, the directors, officers and employees of the General Partner will only devote as much time as is necessary (but not all of his or her full time) to supervise the management of the business and affairs of the Partnership.

The Unitholders acknowledge and agree that the shareholders, directors and officers of the General Partner are not in any way limited or affected in their ability to carry on other business ventures for their own account or the account of others, and may be engaged in a wide range of transactions, investments and other business activities, which may include, direct and/or indirect, acquisition, ownership and operation of businesses which compete with the Partnership. The Unitholders acknowledge and waive any rights to which they might otherwise be entitled as partners of the Partnership to invest in any other property or venture of the shareholders, directors and officers of the General Partner, or to profit therefrom or to any interest therein. The Unitholders acknowledge and agree that:

- (a) if an investment opportunity does not arise solely from a director's or officer's activities on behalf of the General Partner, the directors and officers of the General Partner have no obligation to offer the investment opportunity to the Partnership; and
- (b) the General Partner has the discretion to determine whether the Partnership will avail itself of the investment opportunity and, if it does not, any of the directors and officers of the General Partner shall be able to decide amongst themselves whether to pursue the opportunity for their respective accounts.

10.7 **Notices.** Except as otherwise provided in this Agreement, any notice or other communication to the General Partner or the Unitholders under this Agreement (including without limitation, the notices contemplated under Section 6.3) shall be sufficiently given if in writing and served personally on such party or, in the case of corporate entities, on any officer of the General Partner or the Unitholders, or if sent by facsimile or other electronic means of communication (such as e-mail), or by letter, postage prepaid unless at the time of mailing or within four (4) days thereafter there shall be a strike, interruption or lockout in the Canadian postal service, in which case the notice shall be given by personal delivery, facsimile or other electronic means of communication. Notices shall be addressed to:

- 37 -

If to the Partnership, the General Partner or Go-To Holdings:	Suite 301-1267 Cornwall Road Oakville, Ontario L6J 7T5 Attention: Oscar Furtado Email: oscarfurtado@gotodevelopments.com
If to any other Unitholder:	The contact information of such Unitholder as then listed in the books and records of the Partnership

Notice shall be considered to have been given, if delivered, on the date of delivery, or if sent by facsimile, electronic means of communication or by letter, on the next Business Day following the day of sending of the facsimile or electronic means of communication, or if sent by letter on the third (3<sup>rd</sup>) Business Day following the date of mailing the letter. The General Partner and Unitholders shall advise the General Partner and Registrar and Transfer Agent of any change in their address for notice.

- 10.8 **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original. This Agreement may also be adopted in any subscription, assignment form or similar instrument signed by a Unitholder and which includes an agreement to become a Unitholder of the Partnership, with the same effect as if such Unitholder had executed a counterpart of this Agreement. All counterparts and adopting instruments shall be construed together and shall constitute one and the same instrument. Facsimile or other electronic copies of signatures shall for all purposes be treated as original signatures.
- 10.9 **Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.
- 10.10 **Set Off.** The General Partner may set-off and deduct from any amounts otherwise payable by the Partnership to a Unitholder hereunder, any amount owing by a Unitholder to the Partnership.
- 10.11 **Further Acts.** The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.
- 10.12 **Binding Effect.** Subject to the restrictions on Transfer herein contained, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and other legal representatives and successors and assigns.
- 10.13 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto does hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario.
- 10.14 **Time of the Essence.** Time shall be of the essence of this Agreement and every part hereof.

- 38 -

- 10.15 **Independent Legal Advice.** Each Unitholder acknowledges that it has been advised to receive independent legal advice in connection with its execution and delivery of its Subscription Agreement and this Agreement, such Unitholder has had ample opportunity to receive such independent legal advice and has either done so or chosen not to obtain such advice of its own volition.

*[The next page is the signature page.]*

- 39 -

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

**GO-TO SPADINA ADELAIDE SQUARE  
INC.**

Per: 

Name: Oscar Furtado

Title: President

I have the authority to bind the corporation

**GO-TO DEVELOPMENTS HOLDINGS INC.**

Per: 

Name: Oscar Furtado

Title: President

We have the authority to bind the corporation

**GO-TO SPADINA ADELAIDE SQUARE  
INC.**

(on behalf of, and as the authorized attorney for, each  
limited partner of the Partnership)

Per: 

Name: Oscar Furtado

Title: President

I have the authority to bind the corporation

**SCHEDULE "C"**  
**PROPERTY**

Firstly:

355 Adelaide Street West, Toronto, Ontario

LT 3-4, 25 PL D160 TORONTO; PT LT 5, 24, 26 PL D160 TORONTO AS IN CT70633, PT 1  
64R16307, CT70642; CITY OF TORONTO, being PIN 21412-0150 (LT)

and Secondly:

46 Charlotte Street, Toronto, Ontario

LT 1-2 PL D160 TORONTO; CITY OF TORONTO, being PIN 21412-0151 (LT)

40852.0001/11801150\_9

**SCHEDULE "A"**  
**CLASS A DISTRIBUTIONS**

<b>Class A Unitholder</b>	<b>Return Rate</b>	<b>Target Annualized Return to Class A Unitholder as the basis for calculating the Return Rate</b>
Anthony Marek	Flat Fee	In respect of his subscription for <u>336</u> Class A units for an aggregate subscription price of \$16.8 Million: Fee of \$2.7 Million

This is Exhibit “O” referred to in the Affidavit of Oscar Furtado sworn before me via video-conference with the deponent in the town of Oakville, and the Commissioner in the City of Mississauga, this 14th day of December, 2021

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for taking Affidavits (or as may be)

**MONICA FAHEIM**



# ANTHONY MAREK



## PERSONAL BRIEF BIOGRAPHY

### 2004 to Present:      REAL ESTATE INVESTOR

- Own, operate and manage corporate executive rental homes
- Invest in commercial and residential properties in Canada and the USA
- Mortgage financing of residential, commercial and developments properties

### 2004 to Present:      PERSONAL PORTFOLIO INVESTOR

- Manage personal and family portfolios
- Actively manage personal portfolio of 8M+ of stocks and ETFs
- Actively manage personal and family retirement and educational funds

### 1996 to Present:      RESIDENTIAL LAND DEVELOPER

- Own, operate and manage land development of several residential subdivisions from green field to final completion of projects. These projects last from 8 to 15 years each.

### 1984 to 2004:      MANAGER OF PLANNING AND SURVEYING AT A PRIVATE MUNICIPAL ENGINEERING FIRM

- Manage the planning and surveying department of a municipal engineering firm in Toronto, Canada.
- These functions include Land Planning, Design and Surveying in the procurement of Residential and Commercial subdivision in the Greater Toronto Area.

If you have any further questions, please do not hesitate to contact me at [REDACTED]

This brief biography is for use only by Mr. Oscar Furtado/Mr. Cameron Stevens for single use only and is limited to Go-To Developments (Adelaide Square) transaction only.

Dated: March 1, 2020



**ONTARIO SECURITIES COMMISSION** and **GO-TO DEVELOPMENTS HOLDINGS INC. *et al*** Court of Appeal File No.: C70114

Court File No: CV-21-00673521-00CL

Applicant (Respondent in Appeal)

Respondents (Appellants in Appeal – Moving Party)

***COURT OF APPEAL FOR ONTARIO***

Proceeding Commenced at  
TORONTO

**AFFIDAVIT OF OSCAR FURTADO  
(SWORN DECEMBER 14, 2021)**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, ON Canada M5H 3S1

**Gregory Azeff LSO#: 45324C**

Tel: 416.595.2660  
Email: gazeff@millerthomson.com

**Monica Faheim, LSO#: 82213R**

Tel: 416.597.6087  
Email: mfaheim@millerthomson.com

Lawyers for the Appellants

RCP-F 4C (September 1, 2020)

# TAB 5

Court of Appeal File No.: C70114  
Court File No.: CV-21-00673521-00CL

## COURT OF APPEAL FOR ONTARIO

THE HONOURABLE	)	FRIDAY THE 24 <sup>TH</sup>
	)	
JUSTICE	)	DAY OF DECEMBER, 2021

B E T W E E N:

*(Court Seal)*

**ONTARIO SECURITIES COMMISSION**

Applicant  
(Respondent in Appeal)

- and -

**GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP, and 2506039 ONTARIO LIMITED**

Respondents  
(Appellants in Appeal – Moving Party)

**APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

## ORDER

THIS MOTION by the Appellants, for an order staying the Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) in Court File No. CV-21-

-2-

00673521-00CL dated December 10, 2021 (the “**Receivership Order**”), was heard this day by way of judicial video conference via Zoom due to the COVID-19 pandemic, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Notice of Motion, the Affidavit of Oscar Furtado sworn December 14, 2021 and the Affidavit of Stephanie Collins sworn December 6, 2021, and the Appellants’ Factum dated December 14, 2021, as filed, and on hearing the submissions of the lawyer(s) for the parties,

1. THIS COURT ORDERS that the Receivership Order is hereby stayed until the appeal of this matter can be heard and determined on the merits (the “**Stay Period**”).
2. THE COURT ORDERS that during the Stay Period:
  - (a) KSV Restructuring Inc. (“**KSV**”) shall be appointed monitor (in such capacity, the “**Monitor**”) to oversee and report on the activities of the Appellants provided that it shall not interfere with the operation or conduct of their business; and
  - (b) The Freeze Directions dated December 6, 2021 issued by the Ontario Securities Commission (the “**Commission**”) under section 126(1) of the *Securities Act* (Ontario) in respect of Oscar Furtado shall be continued until further Order of the Court.
3. THIS COURT ORDERS that nothing contained herein shall prevent the Monitor, the Commission or any other interested party from applying to this Court to vary or amend this Order on not less than seven (7) days’ notice to the Appellants 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.

-3-

4. THIS COURT ORDERS that KSV shall forthwith remove the Case Website (as defined in the Receivership Order) from its website.

5. THIS COURT ORDERS that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.

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*(Signature of judge or registrar)*

RCP-E 59C (September 1, 2020)

**ONTARIO SECURITIES COMMISSION** and **GO-TO DEVELOPMENTS HOLDINGS INC. et al** Court of Appeal File No.: C70114  
 Court File No: CV-21-00673521-00CL

Applicant (Respondent in Appeal)

Respondents (Appellants in Appeal – Moving Party)

***COURT OF APPEAL FOR ONTARIO***

Proceeding Commenced at  
 TORONTO

**ORDER**

**MILLER THOMSON LLP**

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 Email: mfaheim@millerthomson.com

Lawyers for the Appellants

RCP-F 4C (September 1, 2020)

Applicant (Respondent in Appeal)

Respondents (Appellants in Appeal – Moving Party)

***COURT OF APPEAL FOR ONTARIO***

Proceeding Commenced at  
TORONTO

**MOTION RECORD  
(RETURNABLE DECEMBER 24, 2021)**

**MILLER THOMSON LLP**

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Email: mfaheim@millerthomson.com

Lawyers for the Appellants

RCP-F 4C (September 1, 2020)